

Issued September 30, 2009

Regulatory excerpt

WorkSafeBC's mandate over occupational health and safety in the province is set out under section 111 in the *Workers Compensation Act* ("*Act*"). The mandate includes ensuring that reasonable standards are maintained for the protection of the health and safety of workers, and the occupational environment in which they work. The functions, duties, and powers that WorkSafeBC may exercise in fulfilling this mandate include, in part

- (a) To exercise its authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work
- (b) To provide services to assist joint committees, worker health and safety representatives, employers, and workers in maintaining reasonable standards for occupational health and safety and occupational environment
- (c) To ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally
- (d) To provide assistance to persons concerned with occupational health and safety and occupational environment

In addition to the requirements for health and safety and the occupational environment that are set out in the *Act*, the *Occupational Health and Safety Regulation* ("*Regulation*") also sets out legal requirements. To assist with the administration of the *Act* and the *Regulation*, WorkSafeBC publishes policies, guidelines, and other materials.

Hierarchy of authority

The hierarchy of authority between the *Act*, *Regulation*, policies, and guidelines is as follows:

The *Act* provides the legal authority and framework for all WorkSafeBC prevention activity. The *Regulation* is enacted under the authority of the *Act*. The *Act* and the *Regulation* both set out legally binding requirements on employers, workers, and other workplace parties.

Policies and guidelines are intended to provide direction on compliance with the *Act* and the *Regulation*. Prevention policies are issued by the Board of Directors and are binding on WorkSafeBC decision makers. They cannot conflict with requirements in the *Act* or the *Regulation*.

Guidelines are issued to further WorkSafeBC's prevention mandate by providing information to stakeholders. They cannot conflict with the requirements in the *Act* or the *Regulation*. In the event of a conflict, a prevention policy will take precedence over a guideline.

About Prevention Policies and the Prevention Manual

Prevention policies are issued on the authority of the Board of Directors. The policies related to occupational health and safety are published in the ["Prevention Manual."](#)

About OHS Guidelines

OHS guidelines are interpretive documents relating to specific sections of the *Act* or the *Regulation* which are intended to assist in the application and interpretation of these many requirements. Guidelines are issued on the authority of the Vice-President, Worker and Employer Services Division. In general terms, they are published to provide workplace parties with information about how compliance can be achieved under a particular section, and the approach to compliance that a WorkSafeBC prevention officer can be expected to take on an inspection at a workplace.

The guidelines communicate information to assist workplace parties in a variety of ways. A guideline may do one or more of the following:

- Explain terms or phrases used in the *Act* or the *Regulation*
- Explain the intent of a legal requirement, or provide background or educational information to enhance understanding of a legal requirement
- Provide one or more suggested options for compliance
- Prescribe procedures, measures, standards, or training courses acceptable to WorkSafeBC
- Communicate the existence of a vice-president directive suspending the application of a regulatory requirement

How "Enforceable" Are Guidelines?

A frequent question is whether workplace parties are required to apply the information provided in a guideline, and what are the consequences if they choose not to.

The simple answer is that whether a party is bound by a guideline will depend on the reason for, and intent of the particular guideline.

1. Information about complying

Most OHS guidelines simply provide information about complying with legal requirements that are in the *Act* or the *Regulation*. For these guidelines, the information and examples discussed in the guideline are not, strictly speaking, mandatory in nature - other means of complying may be acceptable, provided that the objectives of the requirement in the *Act* or the *Regulation* are met.

One common use of a guideline to provide information about compliance is where a section sets out very broad based requirements (referred to as

performance based requirements). Many employers will want to know in these instances, "What do I need to do to meet this requirement?"

In the case where there may be more than one way to comply with a requirement, a workplace party can choose to follow a method of compliance that is not contemplated by the applicable guideline. To accept an alternative approach to compliance, prevention officers will consider the information provided in a guideline as one source of information for deciding to assist them in determining if the chosen method of compliance being proposed meets the legal requirements in the *Act* or the *Regulation*.

For example, [section 4.21](#) of the *Regulation* requires that an employer develop and implement procedures for checking the well being of workers who work alone. The guideline for this section ([G4.21](#)) provides information about methods for accomplishing this, including the various systems and technologies that may be used. The guideline serves to assist the employer only, and is not meant to be strictly followed in order to achieve compliance. The employer can review this information and use it to determine how they can best meet the requirements of section 4.21 given their particular circumstances.

2. Prescribing WorkSafeBC determinations

Many guidelines relate to sections of the *Regulation* that give WorkSafeBC the ability to set out mandatory standards. In these cases, the guideline simply communicates WorkSafeBC's standard that must be followed. Such sections tend to have language like "acceptable to the board" or "approved by the board."

For example, [section 21.5](#) of the *Regulation* provides that only the holder of a valid blaster's certificate issue "by the board" or "acceptable to the board" may conduct or supervise a blasting operation. Guideline [G21.5](#) sets out the agencies that are accepted by WorkSafeBC to issue valid certificates. Only certificates issued in accordance with the guideline will be recognized as valid by prevention officers.

In any event, whether providing information about compliance, or setting out a standard to be followed, the actual wording of the *Act* or the *Regulation* and the information contained in a guideline should be thoroughly reviewed by a workplace party when choosing a course of action.

Developing and updating OHS Guidelines

The Prevention Practices and Quality Department at WorkSafeBC coordinates the development and updating of guidelines. The guideline process uses the expertise of subject matter experts within WorkSafeBC, as well as input from industry and labour representatives, and affected stakeholders, to thoroughly canvas the issues at hand, and reach practical, workable resolutions which are communicated in guidelines.

New guidelines and updates to guidelines are initially released for use marked as a "Preliminary Issue" with the effective date indicated, and will remain so marked for a minimum of 60 days. These guidelines are posted on the WorkSafeBC website for public comment during this time period. There are two reasons for the "Preliminary Issue" step. First, it allows WorkSafeBC to issue guidance material in a timely manner to address issues that arise. Second, a consultative body called the Policy and Practice Consultative Committee (PPCC) made up of representatives of industry and labour receives the guideline and is given the opportunity to review and comment before it is finalized.

At the conclusion of the 60-day consultation period, any necessary changes to a guideline are made, and the "Preliminary Issue" marking is removed.

Anyone who wishes to comment on a guideline or has suggestions for a new guideline can contact the Prevention Practices and Quality Department at WorkSafeBC's Richmond office at 604-231-8644.

G-D1-108-1 WorkSafeBC jurisdiction over operations involving Aboriginal people

Issued: September 28, 2005

Regulatory excerpt

Section 108 of the *Workers Compensation Act* ("*Act*") provides:

- (1) Subject to subsection (2), this Part applies to
...
- (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
...

Policy Item D1-108-1 provides:

- (a) Where, for jurisdictional reasons, the Board is totally excluded from inspecting an operation

Board officers will not knowingly issue an order or exercise another Board power under Part 3 with respect to an operation in this situation.

If Board officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will:

- notify the other agency of the observation; and
- cooperate with that agency in dealing with the situation to the extent this is consistent with the Board's mandate and the officers' duties under the *Workers Compensation Act*.

Purpose of guideline

The purpose of this guideline is to clarify the authority of WorkSafeBC over the occupational health and safety (OH&S) of organizations that are operated by Aboriginal people or employ Aboriginal workers, or which are located on Indian reserves.

Summary

WorkSafeBC has jurisdiction over the OH&S of employers operating in B.C. until it can be established otherwise. With respect to organizations involving Aboriginal people or located on an Indian reserve, the federal government, and not WorkSafeBC, will have jurisdiction over:

- Activities undertaken by an Indian band or band council, or an organization that is operated directly by or closely integrated with an Indian band or band council, that are related to the administration or governance of the band or the reserve.
- An organization that is engaged in activities that are closely connected with Indian status, rights or identity.

Jurisdiction remains with WorkSafeBC where the operations in question are not linked to band administration or Indian status, rights or identity.

Ordinary commercial operations will fall under Board jurisdiction, even where the workers or owners of the business are Aboriginal people, or the business is located on a reserve.

A Board prevention officer faced with the assertion that OH&S enforcement infringes an Aboriginal or treaty right should refer the matter to his or her manager.

Jurisdiction over "Indians" and OH&S

The *Constitution Act, 1867* lists exclusive areas in which each of the federal and provincial governments may enact laws. OH&S laws are considered to fall under the provincial authority over "property and civil rights."

Though there is a presumption that OH&S falls under provincial jurisdiction, if it can be established that an organization operates predominantly in an area the *Constitution* provides is to be regulated by the federal government, the OH&S of that organization will fall under federal jurisdiction and WorkSafeBC will have no jurisdiction.

One area listed in the *Constitution* as falling under federal jurisdiction is "Indians and lands reserved for the Indians". The federal government regulates this area through the *Indian Act*, which defines the legal rights of Indians, establishes and regulates Indian reserves, establishes band councils to administer reserves, and describes a number of things that a band council is empowered to do.

While the federal government has the exclusive power to enact laws relating to "Indians", this does not mean that only laws enacted by the federal government can apply to Aboriginal people. Provincial laws of "general application," like OH&S laws, will apply to Aboriginal people and organizations that are owned by Aboriginal people or employ Aboriginal workers, or which operate on a reserve, unless it can be said that regulating the labour relations of the organization is integral to regulating "Indians and the lands reserved for Indians."

In this regard the federal government, and not WorkSafeBC, will have jurisdiction over band councils, or organizations integrated with them, that:

- Are carrying out activities that relate to the administration and governance of reserves and band members in accordance with the authority granted band councils under the *Indian Act*.
- Are carrying out activities that relate to Indian status, rights or identity.

Examples of situations where the federal government, and not WorkSafeBC, will have jurisdiction include:

- Workers employed by a band who carry out construction work on reserve residences or provide other municipal services exclusively on an Indian reserve.
- Law enforcement officers on an Indian reserve operating under the authority of a band.
- Health services organizations on an Indian reserve, provided the organization is operated by, or under the authority of the band, and the clientele is predominantly "Indian".
- Social service agencies operated by, or under the authority of a band, provided the target clientele is predominantly "Indian".

Note that the determination of WorkSafeBC jurisdiction over OH&S under [Part 3](#) of the *Act* is separate from the requirement for employers to pay assessments to WorkSafeBC and the entitlement of workers to compensation for work related injury or illness under [Part 1](#) of the *Act*; that is, WorkSafeBC may not have jurisdiction over the OH&S of an organization, even though the organization is required to be registered as an employer with WorkSafeBC.

Subsidiary organizations and contractors

Band councils will often delegate to separate organizations or engage contractors to perform tasks associated with the band administration. Such organizations may fall under federal jurisdiction if:

- They themselves can be said to be federal organizations, that is if they exist predominantly for the purposes of carrying out functions relating to the band council's mandate and their operations are predominantly dedicated to carrying out these functions.
- There is a "high degree" of operational integration with a federally regulated organization, or if the contractor forms an integral part of a federally regulated enterprise.
- If the federally regulated organization is dependent on the provincial enterprise to carry out its federally regulated tasks.

In determining jurisdiction over contractors engaged in activities on an Indian reserve or connected to a band's operations or authority, prevention

officers should determine the nature of the contractor's business on an ongoing basis, and assess whether the above factors are present.

Board jurisdiction

While the activities of bands or band councils in governing and administering reserves will fall under federal jurisdiction, not all activities carried out by a band or by a band council are necessarily federally regulated. The OH&S of ordinary commercial activities, even if carried out directly by an Indian band or located on a reserve will not normally be federally regulated and will fall under Board jurisdiction.

Examples where WorkSafeBC will have jurisdiction over organizations operated by Aboriginal people include:

- Forestry operations.
- Commercial fishing.
- Recreational guiding operations.
- Manufacturing, services, or other commercial/industrial activities, whether on reserve or off.

Aboriginal and treaty rights, the Nisga'a Treaty and self government

Prevention officers may encounter situations where there is an assertion that WorkSafeBC does not have jurisdiction because the activity in question relates to an Aboriginal or treaty right, or that the activity falls under a band's right to self government.

While Aboriginal and treaty rights are protected under the *Constitution*, it is unlikely that Board enforcement activities would be undertaken in a way that would infringe those rights.

With respect to the Nisga'a Treaty, that Treaty explicitly sets out that it does not affect federal or provincial jurisdiction in respect of OH&S. However, the Treaty provides that the Nisga'a government must have notice of industrial relations proceedings involving individuals employed on Nisga'a lands where an issue relating to the Treaty or Nisga'a culture has been raised. This right to notification probably extends to enforcement activities by WorkSafeBC.

One band in British Columbia, the Sechelt Band, has formally established the right to self government. However, under this arrangement, the laws of general application of Canada and British Columbia continue to apply, and therefore WorkSafeBC is not precluded from asserting its jurisdiction over OH&S enforcement.

Prevention officers should engage in enforcement activities under the presumption that the enforcement activity is not precluded as the result of the existence of a treaty or Aboriginal right. A prevention officer faced with the assertion that OH&S enforcement infringes an Aboriginal or treaty right or a right to self government should refer the matter to his or her manager.

What should prevention officers consider?

The following questions may assist in determining if jurisdiction over an employer or workplace involving Aboriginal people rests with the federal government:

- Is the operation run by a band council?
- What is the nature of the operation? Is it a commercial enterprise? Does it carry out tasks related to band or reserve administration or governance (see above - i.e. policing, municipal services, governance, providing reserve housing, or health care)?
- If the organization is a contractor/subsidiary, what is the nature of the organization's normal activities? Does the organization have a permanent and very close relationship with a band council? Is the council dependent on the contractor/subsidiary to carry out tasks relating to governance or administration?
- Does the organization have a purpose of benefiting band members or first nations?

G-D1-108-2 BC Safety Authority

Issued October 26, 2005; Revised February 13, 2006; Revised October 19, 2007; Revised April 13, 2011; Revised December 19, 2014; Editorial Revision November 21, 2017

Regulatory excerpt

Section 108(1) of the *Workers Compensation Act* ("Act") states:

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

Purpose of guideline

The purpose of this guideline is to describe the respective areas of authority of WorkSafeBC and the BC Safety Authority (operating as Technical Safety BC — "TSBC").

Purpose and jurisdiction of Technical Safety BC (TSBC)

Technical Safety BC is an independent, self-funded organization that is responsible for administering the *Safety Standards Act* and regulations under it. TSBC oversees the safe installation and operation of the following:

- Electrical equipment and systems
- Boilers, pressure vessels, and refrigeration systems
- Natural gas and propane appliances and systems, including hydrogen
- Elevating devices, such as elevators and escalators
- Railways, including commuter rail
- Passenger ropeways, such as aerial trams and ski lifts
- Amusement devices
- Complex and integrated technical systems involving several technologies

Inspections, investigations, and other enforcement by WorkSafeBC

WorkSafeBC expects workplace parties to comply with safety standards and certification levels established by TSBC, but any compliance orders issued by WorkSafeBC will be based on a provision of the *Act* or the *Occupational Health and Safety Regulation* ("*Regulation*").

WorkSafeBC prevention officers will not issue orders pursuant to the *Safety Standards Act* or regulations under it

TSBC's legislation focuses primarily on ensuring that systems are installed, maintained, and operated properly for the safety of the public. While WorkSafeBC has jurisdiction over workplaces that involve the types of equipment and systems that are regulated by TSBC, WorkSafeBC's authority is limited to the occupational health and safety aspects of those workplaces. As a result, a single employer may be inspected or investigated by WorkSafeBC prevention officers for occupational health and safety compliance, and by TSBC inspectors for public safety compliance. Where practicable, inspection or investigation personnel from both agencies will coordinate their inspection and investigation efforts where it may be beneficial to safety or necessary to minimize disruption at the workplace.

Requirements for notifying and cooperating with TSBC

Prevention Manual Policy Item [D1-108-1 Application of Part 3 – Where Jurisdictional Limits Exist](#) provides direction to prevention officers inspecting an operation that WorkSafeBC is not totally excluded from, but where certain equipment or activities included in the operation are covered by a statute or regulation administered by another agency, such as TSBC. The policy requires prevention officers who observe what they believe to be a violation of the *Safety Standards Act*, or regulations under it, to do the following:

- Notify TSBC of the details of the observation that they believe to be a violation of TSBC legislation
- Cooperate with TSBC in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and prevention officers' duties under the *Act*

Before notifying TSBC, the prevention officer should inform the employer of the situation and mention that TSBC will be contacted.

If TSBC requests it and it is practicable to do so, the prevention officer will preserve the scene of an incident until TSBC personnel are able to attend. TSBC inspectors are instructed to do the same if a similar request is made by a prevention officer.

There is a Memorandum of Understanding between WorkSafeBC and the BC Safety Authority (TSBC), which requires cooperation and permits information sharing. Prevention officers who have questions about the Memorandum of Understanding may contact the Prevention Practices and Quality Department.

Example of cooperation between WorkSafeBC and TSBC

During the course of an inspection of a ski resort, a prevention officer learns that the employer has failed to implement an occupational health and safety program even though one is required under [section 3.1](#) of the *Regulation*. The prevention officer may make an order requiring that a program be established.

During the inspection, the prevention officer also observes a worker doing maintenance on a piece of equipment without the use of lockout as required by [Part 10](#) of the *Regulation*. The prevention officer may issue an order requiring that proper lockout procedures be followed. The prevention officer also learns that the employer conducts avalanche control by deploying explosives from the chair lift. [Part 21](#) of the *Regulation* will apply, and the officer may issue orders as appropriate.

Finally, the prevention officer notices that operating permits for the chairlifts are not kept where these devices are located, as required by the *Elevating Devices Safety Regulation*, administered by TSBC. The prevention officer decides that in this case there is no immediate danger or undue risk present. The prevention officer will not write an order to enforce this requirement of the *Elevating Devices Safety Regulation*, but will notify TSBC and cooperate in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and the prevention officer's duties under the *Act*.

Where a prevention officer identifies a condition of immediate danger or undue hazard at a workplace that is a possible violation of the *Safety Standards Act* or regulations under it, the prevention officer will contact TSBC immediately. The prevention officer may also consider taking action to minimize the danger to workers under an appropriate provision of the *Act* or *Regulation*, such as a stop work order.

Sharing of information

Prevention officers will provide TSBC with timely notification whenever their activities will impact TSBC. Prevention officers, after consulting with their managers, will respond in a timely manner to TSBC's requests for information related to an inspection or incident investigation. This includes statistical information and analysis, where resources allow, or copies of summaries of records of inspections, investigations, witness statements, and

other information relevant to an inspection or incident investigation. TSBC inspectors will do the same.

Where information is requested by TSBC that does not pertain to an inspection or incident investigation, such requests will be forwarded to WorkSafeBC's Freedom of Information and Protection of Privacy Office.

Seizure of evidence

WorkSafeBC and TSBC each have the power to seize evidence in the course of an investigation. Personnel from both parties should cooperate prior to the seizure of evidence to ensure, as much as possible, that one party's seizure of evidence does not adversely affect the other party's investigation.

If seized evidence is to be tested, prevention officers will consult with TSBC and make reasonable efforts to ensure the testing does not adversely affect TSBC's investigation. Prevention officers will provide TSBC with advance notice of the time and location of testing so that TSBC personnel may attend if they wish to do so. TSBC inspectors will do the same.

Contact information for TSBC

Technical Safety BC
Suite 400 - 88 6th Street
New Westminster, BC V3L 5B3
Email: contact@technicalsaftybc.ca
Toll free: 1-866-566-SAFE (7233)
Phone: (604) 660-6286
Fax: (604) 660-6215

G-D1-108-3 Labour program - Employment and Social Development Canada (ESDC) jurisdiction

Issued February 22, 2006; Editorial Revision September 30, 2009; Revised September 30, 2010; Editorial Revision June 26, 2014

Regulatory excerpt

WorkSafeBC's prevention jurisdiction is set out in section 108 of the *Workers Compensation Act* ("Act"):

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

Purpose of guideline

The purpose of this guideline is to provide general guidance on the limits to WorkSafeBC's prevention jurisdiction resulting from the constitutional division of powers between the federal and provincial governments.

Federal/Provincial jurisdiction

The *Constitution Act, 1867* ("*Constitution*") lists exclusive areas in which each of the federal and provincial governments may enact laws. Most labour relations and employment matters including Occupational Health and Safety ("OHS"), fall under the provincial authority over "property and civil rights." This authority over provincial organizations is regulated and administered by WorkSafeBC.

Although there is a presumption that all OHS falls under provincial jurisdiction, the OHS of certain organizations will fall under federal jurisdiction. The OHS of an organization may come under federal jurisdiction in one of the following two ways:

1. Federal competence

First, if it can be established that an organization operates predominantly in an area of federal competence under the *Constitution*, and if it can be said that regulating the labour relations of that organization is necessary for regulating that area of federal competence, the OHS of that organization will fall under federal jurisdiction and WorkSafeBC will have no jurisdiction. Examples of areas of federal competence include the following:

- o Businesses connected with navigation and shipping (see OHS Guideline [G-D1-108-8](#))
- o Railways, pipelines, and lines of ships extending beyond the limits of B.C.
- o Ferries between B.C. and another province or between B.C. and another country
- o Interprovincial or international trucking and shipping
- o Airports, aircraft and airlines
- o The administration of Indian reserves
- o Banks within the meaning of section 2 of the federal *Bank Act*
- o Telecommunications (radio and television broadcasting, as well as cable, telephone, and internet systems)
- o Grain elevators licensed by the Canadian Grain Commission
- o Federal public service, including federal Crown corporations and agencies

- Exploration and development of petroleum on lands subject to federal jurisdiction

In evaluating whether an organization operates in an area of federal competence, the enquiry must be made into the normal activities of the organization in the context of the nature of the service, business, or work performed by the organization. It is the core nature of the business that must be evaluated; individual or intermittent projects or activities should not bear on the determination of whether an organization is under federal jurisdiction.

2. Integral to federal organization

Second, if an organization's operations cannot be considered federally regulated on their own (such as with a contractor doing work for a federally regulated business), the organization may be considered to be under federal jurisdiction if the organization is "integral" to a federally regulated organization. This may exist where there is a high degree of operational integration with a federally regulated organization, (for example, where there is common management, corporate control and direction, or a natural link or operational continuity), or where the federally regulated organization is dependent on the provincial enterprise to carry out its federally regulated operations.

It is important to note also that employers in B.C. under federal jurisdiction must be registered and pay assessments to WorkSafeBC, and WorkSafeBC will administer claims of workers for these employers. The registration status of an employer is irrelevant to whether that employer falls under WorkSafeBC's prevention jurisdiction, and a determination that an employer is beyond WorkSafeBC's prevention jurisdiction does not impact the requirement to register or a worker's entitlement to compensation.

WorkSafeBC protocol where there are jurisdictional limits

Where the OHS of an organization falls under federal jurisdiction, WorkSafeBC is precluded from exercising its powers to inspect that organization. The occupational health and safety of organizations under federal jurisdiction is regulated through Part II of the Canada Labour Code and its associated regulations, which is administered by the Labour Program of Employment and Social Development Canada ("ESDC").

Policy Item [D1-108-1](#) provides general guidance on how WorkSafeBC prevention officers will exercise their powers in situations where it has been established that there are jurisdictional limits on those powers. The policy states that, where WorkSafeBC is totally excluded from inspecting an operation, prevention officers will not knowingly issue an order or exercise another power under [Part 3](#) with respect to an operation in this situation.

If prevention officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will

- Notify the other agency of the observation that they believe to be a violation of its statute or regulation. As part of this notification, it is recommended that prevention officers forward a copy of the inspection report, if one was prepared, to the other agency. It should be noted, for further clarity, that if the workplace is not within the OHS jurisdiction of WorkSafeBC, the inspection report must not include an order and it is not required to be posted.
- Cooperate with that agency in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and the prevention officers' duties under the *Act*.

While section 108(1)(c) of the *Act* permits the federal government to submit to the application of Part 3 of the *Act*, which would give WorkSafeBC the ability to inspect organizations that are under federal jurisdiction, the federal government has not submitted to the application of Part 3 of the *Act* under this section.

Questions

Prevention officers' questions about jurisdiction may be directed to the Prevention Practices and Quality Department of WorkSafeBC.

G-D1-108-4 Fire safety and prevention

Issued February 22, 2006; Revised April 4, 2006

Regulatory excerpt

Section 108(1) of the *Workers Compensation Act* states:

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

Purpose of guideline

The purpose of this guideline is to describe WorkSafeBC's relationship to the Office of the Fire Commissioner ("Office") and the Office's jurisdiction over fire safety and fire protection in British Columbia.

Jurisdiction

The Office is the senior authority having jurisdiction over fire safety and prevention in B.C. The Office administers the *Fire Services Act* and its regulations, and appoints and trains local assistants to the Fire Commissioner.

Under the authority of *Prevention Manual* Policy Item Policy Item [D1-108-1 Application of Part 3 - Where Jurisdictional Limits Exist](#), where WorkSafeBC prevention officers observe what they believe to be a violation of the *Fire Services Act* or its regulations, prevention officers will notify the local assistant to the Fire Commissioner. Before notifying the local assistant, the prevention officer should inform the employer of the situation that may be a violation of the *Fire Services Act* or its regulations and that the officer will be advising the Office about a possible violation. Prevention officers will not issue an order or exercise another power to directly enforce a statute or regulation of another agency.

Prevention officers can contact the Office at (250) 952-4913 to obtain contact information for local assistants in their region.

The Office advises that at times, there may be some outstanding fire safety issues that are not resolved in a workplace. These could be violations under the *Workers Compensation Act* or the *OHS Regulation*. The local assistants to the fire commissioner (LAFCS) will let the owners/employers know that the items, if not corrected, will be reported to WorkSafeBC. The LAFCS will report issues they are aware of that affect worker health and safety to WorkSafeBC by calling the Prevention Call Centre or the toll free number. If the issue involves a high risk or immediate danger to a worker, the LAFCS would advise the Prevention Call Centre so that a prevention officer could be assigned to respond promptly. For less urgent matters, the LAFCS would understand that it may take several business days for the prevention officer to receive the information and follow up.

G-D1-108-5 Jurisdiction over railways

Issued April 1, 2006; Revised October 19, 2007; Editorial Revision November 21, 2017

Regulatory excerpt

WorkSafeBC's prevention jurisdiction is set out in section 108 of the *Workers Compensation Act* ("Act"):

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.
- (2) This Part and the regulations do not apply in respect of
 - (a) mines to which the *Mines Act* applies,
 - (b) [Repealed 2004-8-33.], or
 - (c) subject to subsection (3), the operation of industrial camps to the extent their operation is subject to regulations under the *Public Health Act*.
- (3) The Lieutenant Governor in Council may, by regulation, provide that all aspects of this Part and the regulations apply to camps referred to in subsection (2)(c), in which case this Part and the regulations prevail over the regulations under the *Public Health Act* to the extent of any conflict.

Purpose of guideline

The purpose of this guideline is to outline WorkSafeBC's jurisdiction over railways. Prior to the enactment of legislative changes in 2004 which redesigned the regulatory framework governing railways, the *Act* excluded prevention jurisdiction over railways. On April 1, 2004, WorkSafeBC was given jurisdiction over the occupational health and safety of railways and rail operations within provincial jurisdiction. The BC Safety Authority (operating as Technical Safety BC — "TSBC") assumed the other regulatory responsibilities which previously rested with the provincial government.

Provincial jurisdiction

Only railways and rail-related operations operating entirely within the province fall under WorkSafeBC's prevention jurisdiction. Certain railways still remain beyond provincial jurisdiction, namely railways extending beyond the province. These fall under federal jurisdiction and WorkSafeBC is excluded from exercising powers under Part 3 of the *Act* over these operations.

Specific railways/operations

WorkSafeBC's jurisdiction extends to the occupational health and safety of onboard operations and facilities of the following types of operations:

- Common carrier passenger or freight railways operating exclusively within the province, including:
 - Island Corridor Foundation (Southern Railway of Vancouver Island Ltd., formerly Esquimalt and Nanaimo Railway)
 - Grand Forks Railway

- International Rail Road Systems
- Southern Railway of British Columbia
- Industrial railways and sidings e.g. at pulp and paper mills (provided they are not operated by federal employers like ports, grain terminals, etc.)
- Commuter railways, which include:
 - Skytrain (BC Rapid Transit Company)
 - Canada Line (Intransit BC)
 - Evergreen Line (proposed)
 - All proposed street car systems
- Recreational railways, such as amusement rides

For further clarification, railway operations once carried on by BC Rail have been transferred to CN Rail. As CN Rail is a national carrier, the former BC Rail operations are now under federal jurisdiction, including occupational health and safety requirements.

Notifying Technical Safety BC

While WorkSafeBC has jurisdiction over occupational health and safety with respect to provincial railways, the TSBC - Railway Safety Program is responsible for regulating the general railway safety standards for the protection of the public. TSBC's railway inspectors enforce the *Railway Safety Act* and regulations and have jurisdiction over the same provincial railways and provincial common carrier railways as WorkSafeBC (see above).

Prevention Manual Policy Item [D1-108-1 Application of Part 3 - Where Jurisdictional Limits Exist](#) provides directions to WorkSafeBC prevention officers inspecting an operation that WorkSafeBC is not totally excluded from, but for which certain equipment or activities included in the operation are covered by a statute or regulation administered by another agency, such as TSBC.

For example, where a prevention officer in the course of an inspection or investigation of a railway becomes aware of possible breaches of the railway operating rules under the *Railway Safety Act* or regulations, the policy requires the prevention officer to

- Notify TSBC of the details of the observation that they believe to be a violation of its statutes or regulation
- Cooperate with TSBC in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and the prevention officer's duties under the *Act*

Before notifying TSBC, the prevention officer should inform the employer of the situation that may be a violation of a statute or regulation of TSBC.

G-D1-108-6 WorkSafeBC jurisdiction over helilogging operations

Issued June 6, 2006

Regulatory excerpt

Section 108 of the *Workers Compensation Act* ("Act") provides:

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government
 - (b) every employer and worker whose OHS are ordinarily within the jurisdiction of the Provincial government

Purpose of guideline

The purpose of this guideline is to clarify the authority of WorkSafeBC over the occupational health and safety (OHS) of organizations that conduct helilogging operations.

Summary

WorkSafeBC has jurisdiction over the regulation of OHS of employers operating in B.C. until they are excluded for some reason. WorkSafeBC is excluded from OHS enforcement activity with respect to employers that operate in federally regulated industries.

For helilogging operations, employers involved in air operations will fall under federal jurisdiction. In addition, helilogging ground crews that are employed by such federally regulated employers or that work for different employers that are integrated with the federal employer will fall under federal jurisdiction.

Jurisdiction over OHS

The *Constitution Act, 1867* ("*Constitution*") lists exclusive areas in which each of the federal and provincial governments may enact laws. Labour relations and employment matters, including OHS, fall under the provincial authority over "property and civil rights."

Regulation of OHS falls under provincial jurisdiction, unless it can be established that an organization operates predominantly in an area of federal competence under the *Constitution* and that regulating the labour relations of the organization is integral to regulating that area of federal competence. The OHS of that organization then will fall under federal jurisdiction and WorkSafeBC will have no jurisdiction over OHS concerns.

Likewise, an operation that would otherwise fall under provincial jurisdiction may fall under federal jurisdiction if there is a "high degree of

operational integration" with a federally regulated organization. For example, if that operation forms an integral part of a federally regulated organization, or if the federally regulated organization is dependent on the provincial enterprise to carry out its federally regulated tasks.

In assessing whether an organization is federally regulated, the courts inquire into the operations and normal activities of the organization in the context of the nature of the service, business, or work performed.

Federal jurisdiction over helilogging

It is clear that the OHS of helilogging workers engaged in air operations will generally fall under the federal jurisdiction over aeronautics. However, determining the OHS jurisdiction of the helilogging ground crew requires a case by case inquiry into the particular circumstances.

The federal government will have jurisdiction over the operations of ground crews involved in helilogging operations if it can be established that the ground crew's operations form part of the federally regulated aeronautics operations. For example, where both the ground crew and the air crew have the same employer.

Where there is a ground crew that is not part of an aeronautics operation, the crew will be under federal jurisdiction if there is a high degree of "functional integration" with the aeronautics undertaking. Functional integration may exist where there is common management, corporate control and direction over both the ground crew and air crew, or where there is a natural link or operational continuity between the activities of the ground and air crew.

WorkSafeBC will have jurisdiction over the ground crew where the crew operates independently of the aeronautic undertaking and cannot be said to be integrated into the operations of the aeronautic undertaking. This may exist where the ground operation undertakes a variety of operations, some of which may relate to helilogging or helilogging clients and where there is little interaction between the air crew and the ground crew.

What should field officers ask?

In determining if a ground crew working in helilogging is under WorkSafeBC jurisdiction, WorkSafeBC prevention officers should consider the following:

- Who is the employer? A large integrated logging firm? An air service or helilogging business? A ground crew contractor? A smaller contractor supplying services or equipment to the above?
- Does the ground crew employer carry out only ground operations? Are the ground operations part of a larger operation?
- Is the ground crew dedicated to helilogging operations only?
- Are air and ground crews separated into different divisions or administrative units?
- Is there common management for air and ground crews?
- Are the ground crews full time employees, or contractors? If they are contractors, is the helilogging operation reliant in an ongoing, permanent, or continuous nature?
- What is the nature of the normal or predominant activities of the ground crew contractor? What services does it provide? Does it engage exclusively or primarily in the provision of helilogging ground crews? What percentage of the business is dedicated to helilogging operations?
- How much control does the helilogging employer exercise over the contractor? How dependent is the contractor on the helilogging operation? In what way "dependent?"
- Does the contractor's ground crew have special skills, training or knowledge relating to helilogging?
- Are the activities they carry out unique or specific to helilogging?
- How are the helilogging operations performed? How direct is the link between the actual activities of the contractor's ground crew and the air operations?

Questions about jurisdiction in helilogging, and other questions relating to the jurisdiction of WorkSafeBC over OHS, may be directed to the Prevention Practices and Quality Department of WorkSafeBC.

G-D1-108-7 Jurisdiction over mines

Issued June 18, 2008; Editorial Revision September 19, 2014

Regulatory excerpt

WorkSafeBC's prevention jurisdiction is set out in section 108 of Part 3 (Occupational Health and Safety) of the *Workers Compensation Act* ("Act"):

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.
- (2) This Part and the regulations do not apply in respect of

(a) mines to which the *Mines Act* applies,

(b) [Repealed 2004-8-33.]

(c) subject to subsection (3), the operation of industrial camps to the extent their operation is subject to regulations under the *Public Health Act*.

(3) The Lieutenant Governor in Council may, by regulation, provide that all aspects of this Part and the regulations apply to camps referred to in subsection (2) (c), in which case this Part and the regulations prevail over the regulations under the *Public Health Act* to the extent of any conflict.

Purpose of guideline

The purpose of this guideline is to clarify the authority of WorkSafeBC over the occupational health and safety ("OHS") of organizations that conduct operations on or around mines.

Ministry of Energy and Mines OHS Jurisdiction

WorkSafeBC's prevention jurisdiction does not extend to mines to which the *Mines Act* applies. Under the *Mines Act*, a "mine" includes

- (a) a place where mechanical disturbance of the ground or any excavation is made to explore for or to produce coal, mineral bearing substances, placer minerals, rock, limestone, earth, clay, sand or gravel
- (b) all cleared areas, machinery and equipment for use in servicing a mine or for use in connection with a mine and buildings other than bunkhouses, cook houses and related residential facilities
- (c) all activities including exploratory drilling, excavation, processing, concentrating, waste disposal and site reclamation
- (d) closed and abandoned mines
- (e) a place designated by the chief inspector as a mine

The approval of mining projects under the *Mines Act* and the *Health, Safety and Reclamation Code for Mines in British Columbia* is administered by the Ministry of Energy and Mines ("MEM"). A permit from MEM is required for coal and mineral exploration programs, placer mining, sand and gravel pits and quarries, proposed coal or hardrock mineral mines, major expansions or modifications of producing coal and hardrock mineral mines, as well as large pilot projects, bulk samples, trial cargoes and test shipments.

All activities conducted in relation to mining within the boundaries of a *Mines Act* permit area fall within the OHS jurisdiction of MEM. Examples include: mining drilling and exploration; construction and blasting on mine property; operation of mining company labs and mobile equipment at a mine site; roads on mine property; and processing facilities, power lines and pipelines that service the mine and are situated within the mine boundaries. Sites outside of the mine permit area that are designated as "mines" by the Chief Inspector of Mines will also fall under MEM's OHS jurisdiction.

Aggregate pits, such as gravel pits, that are exploited primarily for commercial purposes constitute "mines" under the *Mines Act* and are thus within the OHS jurisdiction of MEM. In other words, if the primary purpose of the excavation is to extract aggregate, OHS over the pit will be the responsibility of MEM. Examples of such pits include gravel pits primarily used for building a logging road (unless the pit is situated within the road's right-of-way) or for selling gravel. On the other hand, if the excavation is primarily conducted for development purposes (for example, for erecting a foundation structure for a building) under a development or building permit from another level of government (such as a municipality or regional district), the aggregate pit will fall within the jurisdiction of WorkSafeBC, even if the excavated material is eventually sold.

WorkSafeBC OHS Jurisdiction

WorkSafeBC has jurisdiction over OHS with respect to areas, machinery, equipment and buildings that are not used to service or in connection with a "mine" as defined above. This includes, for example, access roads outside of the mine boundaries, and timber removal operations that are not connected to the mining activity (even if they are carried out within the mine boundaries). Likewise, WorkSafeBC has OHS jurisdiction over bunkhouses, cook houses and related residential facilities that are used to service a mine or in connection with a mine, to the extent that they are workplaces in which workers such as cooks, maintenance people and others are employed.

WorkSafeBC's jurisdiction also extends to service roads running through mine boundaries that are used to access areas beyond the mine, such as forestry or oil and gas operations. It should also be noted that oil and gas exploration and production activities are within WorkSafeBC's jurisdiction.

Dual OHS Jurisdiction

While WorkSafeBC is excluded from enforcing OHS requirements at a "mine" site, there are employers in respect of which jurisdiction will be divided between WorkSafeBC and MEM. In other words, there are employers who are under WorkSafeBC jurisdiction for much of their business, but who operate on some "mine" workplaces where WorkSafeBC has no jurisdiction. In these situations, WorkSafeBC requirements will apply in general to the employers, but WorkSafeBC has no jurisdiction to enforce specific requirements with respect to those "mine" workplaces. For example, a road construction firm that operates a gravel pit to build an industrial road (such as a logging road) will be subject to general WorkSafeBC requirements around safety programs and health and safety committees. However, WorkSafeBC may not enforce specific requirements around the firm's operation of mobile equipment at the gravel pit.

Other examples of situations where dual jurisdiction may arise include concrete plants with associated gravel pits. In these situations, the jurisdictional dividing line will vary from case to case. The more direct and regular the connection between the activity and the mine site, the more likely it is to be "for use in servicing a mine or for use in connection with a mine." For instance, a loader that is routinely used to dump gravel into the processing plant will fall within WorkSafeBC's jurisdiction. In contrast, if the loader constitutes a significant part of the operation of the gravel pit and is only used occasionally in relation to the processing plant, OHS over that piece of equipment will be the responsibility of MEM.

Further information

When faced with assertions that OHS over a particular facility or activity falls outside of WorkSafeBC's jurisdiction, or situations where the jurisdictional divide is unclear, prevention officers may contact MEM to obtain further information about the operations in question. In addition, prevention officers should consult with their manager.

Questions about jurisdiction over mines, and other questions relating to the jurisdiction of WorkSafeBC over OHS, may be directed to the Prevention Practices and Quality Department of WorkSafeBC.

Requirements for notifying and cooperating with MEM

Prevention Manual Policy Item [D1-108-1 Application of Part 3 - Where Jurisdictional Limits Exist](#) provides that WorkSafeBC prevention officers will not issue an order or exercise another power to directly enforce a statute or regulation administered by MEM. The policy also requires prevention officers who observe what they believe to be a violation of a statute or a regulation administered by MEM to

- Notify MEM of the details of the observation that they believe to be a violation of its statute or regulation. As part of this notification, it is recommended that prevention officers forward a copy of the inspection report, if one was prepared, to MEM. It should be noted, for further clarity, that if the workplace is outside of WorkSafeBC's jurisdiction, the inspection report must not include an order and it is not required to be posted.
- Cooperate with MEM in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and prevention officers' duties under the *Act*.

Before notifying MEM, the prevention officer should inform the employer of the situation that may be a violation of a statute or regulation of MEM and that the prevention officer will be contacting MEM for their follow-up.

Contact information for MEM regional offices is available online at <http://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining/further-information/regional-offices>

G-D1-108-8 Jurisdiction over marine operations

Issued September 24, 2008; Revised February 4, 2010; Revised November 23, 2010

Regulatory excerpt

WorkSafeBC's prevention jurisdiction is set out in section 108 of Part 3 (Occupational Health and Safety) of the *Workers Compensation Act* ("*Act*"), which provides, in part:

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

Purpose of guideline

The purpose of this guideline is to clarify the authority of WorkSafeBC over the occupational health and safety ("OHS") of organizations that conduct marine operations.

Jurisdiction over OHS

The *Constitution Act, 1867* ("*Constitution*") lists exclusive areas in which the federal and provincial governments may enact laws. The regulation of OHS falls under provincial jurisdiction. However, if an organization operates predominantly in an area that is within federal jurisdiction under the *Constitution*, such as navigation and shipping, and the regulation of the OHS of the organization is integral to regulating that area of federal competence, the OHS of that organization will fall under federal jurisdiction (Human Resources and Social Development Canada and Transport Canada have signed a [memorandum of understanding](#) to administer the OHS requirements in the federal transportation section). In those instances, WorkSafeBC will have no jurisdiction over OHS concerns.

Likewise, an operation that would otherwise be under provincial jurisdiction may fall under federal jurisdiction if there is a high degree of operational integration with a federally regulated organization. In other words, if the provincial operation forms an integral part of a federally regulated organization, or if the federally regulated organization is dependent on the provincial enterprise to carry out its federally regulated tasks, OHS over the operation will be under federal jurisdiction.

In assessing whether an organization is federally regulated, the courts inquire into the operations and normal activities of the organization in the context of the nature of the service, business, or work performed.

Commercial fishing

WorkSafeBC has OHS jurisdiction over the business of fishing, which encompasses the activities of the crew and the operation of the vessel and its gear in the territorial waters and navigable rivers of British Columbia. If the journey is between two ports within the province, WorkSafeBC has jurisdiction over these matters. Fishing operations are subject to the requirements of the *OHS Regulation* ("*Regulation*"), including sections [24.69 - 24.143](#).

Transport Canada may control only the fundamental aspects of navigation and shipping within the province. For example, it may impose rules designed to ensure the safety of vessels as long as the rules relate only to maritime matters, such as communication procedures, crew navigation qualifications, and emergency equipment. In addition, Fisheries and Oceans Canada may manage the fishery resources.

There are a number of activities on board commercial fishing vessels that are the joint focus of WorkSafeBC and the federal government. These include the stowing of cargo and catch, the setting and retrieving of the vessel's anchor, engine room procedures, and emergency drills.

This division of responsibilities is reflected in a memorandum of understanding between WorkSafeBC and Transport Canada respecting OHS jurisdiction on fishing vessels.

Vessels

WorkSafeBC has OHS jurisdiction over ferries, tugboats, boom boats, and vessels used to transport workers that travel between ports in British Columbia. Firms that carry out regular interprovincial or international operations fall under the exclusive OHS jurisdiction of the federal government.

Even when a firm is within the OHS jurisdiction of WorkSafeBC (for instance, BC Ferries), any aspects of that firm's operations that are integral to navigation and shipping will fall under federal jurisdiction. The following are some examples:

- Bridge and helm station activities relating to navigational components of the vessel (e.g. autopilot operations, helming)
- "Rules of the road" (Transport Canada's collision regulations)
- Crew qualifications and certification respecting navigational aspects
- Emergency drills and rescue procedures prescribed by Transport Canada
- Emergency equipment
- Land-to-vessel and vessel-to-vessel communication procedures relating to navigation
- Vessel navigational components

The following are some examples of matters that are within the OHS jurisdiction of WorkSafeBC:

- Engine room procedures relating to matters such as indoor air quality, electrical safety, and emergency evacuation
- Personal protective equipment ("PPE") requirements for workers tasked with set-up and retrieval of the vessel's anchor, as applicable
- OHS aspects of emergency drills (e.g. PPE requirements, procedures)
- Vessels used to transport workers are subject to the requirements of the *Regulation*, including sections [17.15-17.26](#)

Wharves

Wharves, docks, and mooring floats are within the OHS jurisdiction of WorkSafeBC. As a result, they are subject to the requirements of the *Regulation*, including sections [24.2-24.6](#).

Ports and harbours

The federal government has OHS jurisdiction over ports and harbours that serve interprovincial or international routes. The federal government's responsibility also extends to any operations in those sites that are functionally integrated with or essential to federal navigation or shipping undertakings. For example, firms that provide stevedoring services (loading and unloading of ships) are under federal jurisdiction.

Federal jurisdiction over the OHS of enterprises that transport or handle goods may also arise if the transportation of grains or dangerous goods is involved.

Ship construction and repairs

WorkSafeBC has jurisdiction over the OHS of enterprises engaged in the construction, repair, and maintenance of vessels. However, if the ship repair operations are conducted by a firm that is under federal jurisdiction (e.g. because it provides regular international shipping services), the OHS of those operations will fall under federal jurisdiction.

Aquaculture

Firms that conduct aquaculture operations (e.g. fish farming) are under the OHS jurisdiction of WorkSafeBC.

Dredging and construction of works

The federal government has OHS jurisdiction over firms engaged in the dredging of waterways for the purpose of creating, repairing, or maintaining navigation lanes and harbours. However, the construction of other works in navigable watercourses (including wharf construction and foundation piling) is under the jurisdiction of WorkSafeBC.

Dual jurisdiction

Often times a firm will engage in more than one activity. The typical approach for jurisdictional analysis is to treat an entire firm as a single entity—that is, treating all parts of the firm as being under either provincial or federal jurisdiction without dividing it up. However, where a firm's operations can be divided into distinct divisions or operational areas (for example, pier construction vs. channel dredging) each division can be treated separately for jurisdictional purposes.

Requirements for notifying and cooperating with the federal government

Prevention Manual Policy Item [D1-108-1 Application of Part 3 - Where Jurisdictional Limits Exist](#) provides that WorkSafeBC prevention officers will not knowingly issue an order or exercise another power to directly enforce a statute or regulation administered by another agency. The policy also requires prevention officers who observe what they believe to be a violation of a statute or a regulation administered by another agency to conduct the following:

- Notify the agency of the details of the observation that they believe to be a violation of its statute or regulation. As part of this notification, it is recommended that prevention officers forward a copy of the inspection report, if one was prepared, to the agency. It should be noted that if the workplace is outside of WorkSafeBC's jurisdiction, the inspection report must not include an order and it is not required to be posted.
- Cooperate with the agency in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and prevention officers' duties under the *Act*.

Before notifying the agency, the prevention officer should inform the employer of the situation which may be a violation of a statute or regulation of another agency, and that the prevention officer will be contacting the agency for their follow-up.

Questions

When faced with assertions that OHS over a particular facility or activity falls outside of WorkSafeBC's jurisdiction, or situations where the jurisdictional divide is unclear, prevention officers should consult with their manager. Questions about jurisdiction over OHS may also be directed to the Prevention Practices and Quality Department of WorkSafeBC.

G-D1-108-9 Jurisdiction over oil and gas operations

Issued April 13, 2011

Regulatory excerpt

WorkSafeBC's prevention jurisdiction is set out in section 108 of Part 3 (Occupational Health and Safety) of the *Workers Compensation Act* ("*Act*"), which provides, in part:

- (1) Subject to subsection (2), this Part applies to
 - (a) the Provincial government and every agency of the Provincial government,
 - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
 - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

Purpose of guideline

The purpose of this guideline is to explain the authority WorkSafeBC has over the occupational health and safety ("OHS") of organizations that conduct oil and gas operations.

Jurisdiction over OHS

The *Constitution Act, 1867* ("*Constitution*") lists exclusive areas in which the federal and provincial governments may enact laws. The regulation of OHS falls within provincial jurisdiction. However, if an organization operates predominantly in an area that is within federal jurisdiction under the *Constitution*, and the regulation of the OHS of the organization is integral to regulating that area of federal competence, the OHS of that organization will fall within federal jurisdiction. In those instances, WorkSafeBC will have no jurisdiction over OHS concerns.

Likewise, an operation that would otherwise be under provincial jurisdiction may fall within federal jurisdiction if there is a high degree of operational integration with a federally regulated organization. In other words, if the provincial operation forms an integral part of a federally regulated organization, or if the federally regulated organization is dependent on the provincial enterprise to carry out its federally regulated tasks, OHS over the operation will be under federal jurisdiction.

In assessing whether an organization is federally regulated, the courts inquire into the operations and normal activities of the organization in the context of the nature of the service, business, or work performed.

Pipelines

WorkSafeBC has OHS jurisdiction over pipelines that are located entirely within the bounds of the province. This includes bypass pipelines used to connect directly with interprovincial pipelines. On the other hand, interprovincial and international pipelines are under federal jurisdiction.

Upstream facilities

Upstream gathering and processing facilities will be under federal jurisdiction if they form part of a single undertaking with an interprovincial or

international, and thus federal, pipeline. A mere physical connection between upstream facilities and a federal pipeline, in the absence of other factors, is not sufficient to make them a single federal undertaking. In order for several operations to constitute a single federal undertaking, they must be "functionally integrated" and subject to "common management, control and direction." For example, a single federal undertaking is likely to exist if the same personnel are responsible for operating and servicing both the upstream facilities and the pipeline. This is done under the direction and supervision of a common management team, and the primary purpose of the upstream plants is to facilitate transmission of the product through the pipeline.

If the facilities do not constitute a single federal undertaking, they will only be federally regulated if they are "integral" to the interprovincial or international pipeline. For example, in cases where the upstream operations (e.g., production of natural gas) constitute the primary activity and the interprovincial or international pipeline is clearly secondary, then the upstream facilities will be under WorkSafeBC jurisdiction.

Provincial contractors

Provincial contractors working on federal undertakings (including interprovincial and international pipelines) are normally within WorkSafeBC jurisdiction regarding OHS requirements. However, provincial contractors will generally fall within federal jurisdiction if: (1) there is an ongoing high degree of operational and functional integration between the contractor and the federal operation; or (2) the federal operation is entirely dependent on the contractor.

If a WorkSafeBC prevention officer encounters a provincial firm working on a federal undertaking, the prevention officer should collect information relating to the degree of integration between the provincial contractor's crews and the federal enterprise. As well, the prevention officer should collect information relating to the dependency of the federal operation on the provincial contractor. Specifically, the prevention officer should attempt to determine the following:

- The extent to which the provincial contractor's crews are working closely with the federal operator's crews, and if the provincial contractor and its crews are managed by the federal enterprise
- The length of the relationship between the provincial contractor and the federal operator (i.e., is it ongoing or for a specified time period?)
- If the provincial contractor works exclusively with the federal operator or if the provincial contractor has many clients
- If the performance of the federal enterprise is entirely dependent upon the provincial contractor
- If the provincial contractor is owned in whole or in part by the federal operator

Requirements for notifying and cooperating with the federal government

Human Resources and Skills Development Canada ("HRSDC") is responsible for enforcing OHS requirements in federal workplaces. HRSDC has entered into a memorandum of understanding with the National Energy Board ("NEB") regarding the application and enforcement of OHS legislation in the federal oil and gas sector. Under that memorandum of understanding, the NEB is responsible for the investigation of hazardous occurrences and enforcement in the federal oil and gas sector, while HRSDC is responsible for the investigation of hazardous occurrences and enforcement at the head offices and regional offices located in metropolitan centres.

[Prevention Manual Policy Item D1-108-1 Application of Part 3 - Where Jurisdictional Limits Exist](#) provides that prevention officers will not knowingly issue an order or exercise another power to directly enforce a statute or regulation administered by another agency. The policy also requires prevention officers who observe what they believe to be a violation of a statute or a regulation administered by another agency to:

- Notify the agency of the details of the observation that they believe to be a violation of its statute or regulation. As part of this notification, it is recommended that prevention officers forward a copy of the inspection report, if one was prepared, to the agency. It should be noted that if the workplace is outside of WorkSafeBC's jurisdiction, the inspection report must not include an order and it is not required to be posted.
- Cooperate with the agency in dealing with the situation to the extent this is consistent with WorkSafeBC's mandate and prevention officers' duties under the *Act*.

Before notifying the agency, the prevention officer should inform the employer about the situation which may be a violation of a statute or regulation of another agency, and that the prevention officer will be contacting the agency for their follow-up.

Questions

When faced with assertions that OHS over a particular facility or activity falls outside of WorkSafeBC's jurisdiction, or situations where the jurisdictional divide is unclear, prevention officers should consult with their manager. Questions about jurisdiction over OHS may also be directed to the Prevention Practices and Quality Department of WorkSafeBC.

G-D4-126-1 Variations in joint committee requirements

Issued January 20, 2012; Revised consequential to January 1, 2016 Amendments to the Act; Editorial Revision May 29, 2018

Regulatory excerpt

The *Workers Compensation Act* ("*Act*") states:

When a joint committee is required

125

An employer must establish and maintain a joint health and safety committee

(a) in each workplace where 20 or more workers of the employer are regularly employed, and

(b) in any other workplace for which a joint committee is required by order.

Variations in committee requirements

126

(1) Despite section 125, the Board may, by order, require or permit an employer to establish and maintain

(a) more than one joint committee for a single workplace of the employer,

(b) one joint committee for more than one workplace or parts of more than one workplace of the employer, or

(c) one joint committee for the workplace or parts of the workplaces of a number of employers, if the workplaces are the same, overlapping or adjoining.

(2) An order under subsection (1) may

(a) specify the workplace, workplaces or parts for which a joint committee is required or permitted, and

(b) provide for variations regarding the practice and procedure of a joint committee from the provisions otherwise applicable under this Part or the regulations.

Duties and functions of joint committee

130

A joint committee has the following duties and functions in relation to its workplace:

(a) to identify situations that may be unhealthy or unsafe for workers and advise on effective systems for responding to those situations;

(b) to consider and expeditiously deal with complaints relating to the health and safety of workers;

(c) to consult with workers and the employer on issues related to occupational health and safety and occupational environment;

(d) to make recommendations to the employer and the workers for the improvement of the occupational health and safety and occupational environment of workers;

(e) to make recommendations to the employer on educational programs promoting the health and safety of workers and compliance with this Part and the regulations and to monitor their effectiveness;

(f) to advise the employer on programs and policies required under the regulations for the workplace and to monitor their effectiveness;

(g) to advise the employer on proposed changes to the workplace, including significant proposed changes to equipment and machinery, or the work processes that may affect the health or safety of workers;

(h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;

(i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;

(j) to carry out any other duties and functions prescribed by regulation.

Joint committee procedure

131

(1) Subject to this Part and the regulations, a joint committee must establish its own rules of procedure, including rules respecting how it is to perform its duties and functions.

(2) A joint committee must meet regularly at least once each month, unless another schedule is permitted or required by regulation or order.

Purpose of guideline

The joint health and safety committee ("joint committee") plays an important role in an employer's internal responsibility system, providing workers and the employer a forum to address health and safety issues in a consultative manner.

The purpose of this guideline is to set out the employer's responsibility in ensuring the joint committee is properly established and maintained.

This guideline is also intended to provide guidance on the factors that a WorkSafeBC prevention officer may consider in determining whether to issue an order to vary the joint committee structure under section 126.

Employer obligation

Under section 125, the employer has an obligation to "establish and maintain" a joint committee where required. The establishment and maintenance of the joint committee means that the employer must ensure the following:

- The committee is meeting its obligations under section 130 in actively identifying and addressing potential health and safety concerns
- The committee established rules and procedures for its operation under section 131(1)
- The committee meets a minimum of once a month as required by section 131(2)

The employer also has obligations under section [3.26](#) and [3.27](#) of the OHS Regulation regarding evaluation of the committee and training of members.

The employer should work with the joint committee in ensuring that obligations under these sections, as well as its other general duties as required by the *Act* or the *OHS Regulation*, are met.

The employer is expected to take an active role in ensuring the joint committee functions as required.

Varying the joint committee structure

Section 125 requires a joint committee be established and maintained at each workplace where there are 20 or more workers of the employer. An employer, or members of a joint committee at a particular workplace may wish to vary this requirement to provide a structure that is more appropriate for the type of workplace or workplaces operated by the employer. The situations where this may arise include the following:

- The employer may have a number of similar workplaces and it may be more practical or effective to have a single joint committee encompassing all of these workplaces, rather than a number of distinct committees operating separately
- The employer may wish to have distinct committees for each workplace, but operated under the umbrella of a corporate safety committee
- The employer may have a number of similar workplaces; some of which may not have the 20 workers needed to require a joint committee, and worker representatives may desire a structure that includes these workplaces
- The workplace might not have 20 or more workers "regularly" employed, though there may be a large number of workers with irregular employment and health and safety issues that are best addressed through a committee structure
- The employer has different workforces with different health and safety issues at a single workplace
- Two or more employers in the same workplace

Process

Varying the joint committee requirements in section 125 may only be done by a Board (i.e., WorkSafeBC) order. Typically this will be triggered by a request from the employer, members of the committee, or the union.

The request should be supported by as much relevant information as possible. This could include the following:

- Terms of reference for the proposed committee
- Reasoning as to why the proponent believes that a new structure will work better towards addressing hazards and reducing injuries
- Proposed number of representatives
- Meeting minutes for any existing committees
- Injury statistics
- Hazard rating for each of the workplaces involved and types of hazards present at the workplace
- Most recent committee evaluation (as required by section 3.26(2) of the *OHSR*) for any existing committees

In considering the request, the prevention officer's goal is to evaluate whether the proposed structure will be practical and equal or more effective than the structure set out in section 125. Factors that the prevention officer should consider include the following:

- Nature of the employer's overall safety program or safety history
- Nature of the work undertaken at the different workplaces and whether the health and safety issues vary widely or share broad similarities
- Nature or makeup of the workforce, and whether there should be representation from specific workplaces
- Nature of the relationship between workers and the employer at the different workplaces
- Practicality of communication between workers and their committee representatives

The prevention officer should ensure that there is a union or workers' representative agreement to the proposed structure and that workers' interests are best represented in the proposed structure.

The prevention officer will provide a time limit to the order to allow for the new structure to be reviewed and a renewal by the prevention officer will be based on the findings of the review. This review should include the committee evaluation to ensure the new structure is effective.

The initial approval will be for 1 year to allow for the new structure to be evaluated. Subsequent approval may be for up to three years.

G-D4-135-1 Joint committee course approval

Issued February 27, 2001; Revised March 25, 2005; Editorial Revision October 23, 2012; Editorial Revision September 15, 2015; Editorial Revision consequential to April 3, 2017 Regulatory Amendment

Regulatory excerpt

Section 135(1) of the *Workers Compensation Act* ("Act") states:

Each member of a joint committee is entitled to an annual educational leave totalling 8 hours, or a longer period if prescribed by regulation, for the purposes of attending occupational health and safety training courses conducted by or with the approval of the Board.

Purpose of guideline

The purpose of this guideline is to provide information on determining what courses are considered approved to meet the educational leave entitlement.

Under section 135 of the *Act*, each member of a joint committee and each worker health and safety representative is entitled to eight hours of annual educational leave for the purposes of attending occupational health and safety training courses. This educational leave is an entitlement, and is in addition to the mandatory minimum training for members of a joint committee and worker health and safety representative required under section 3.27 of the *OHS Regulation*.

Approved courses

The following sets out what is a course "conducted by or with the approval of the Board" under section 135 of the *Act*.

WorkSafeBC developed courses

Course materials and guides are available free of charge on WorkSafeBC's website <https://www.worksafebc.com/en/health-safety/education-training-certification/joint-health-safety-committee-member>.

WorkSafeBC does not provide occupational health and safety training courses to the general public. For information on providers of WorkSafeBC developed courses, contact local [OHS Training Providers](#).

WorkSafeBC's Certification Services department is also available to provide information about training, and can be reached at (604) 276-3090 or toll-free (from within BC) at 1-888-621-7233, extension 3090 for further information.

Other courses

Other occupational health and safety (OHS) training courses are acceptable provided the employer follows a reasonable process of assessing the training needs of joint committee members and selecting appropriate training programs. Appropriate OHS training courses for joint committee members are related to the duties and the responsibilities of the joint committee.

A reasonable process for selecting OHS training courses would include the steps set out in [Policy Item D4-135-1](#) of the Prevention Manual and should consider the following:

- Applicability to the role as a joint committee member or worker health and safety representative
- Relevance to the training taken previously by the joint committee member or worker health and safety representative
- Relevance to the industry
- Relevance to occupational health and safety in general
- Needs assessment conducted by the joint committee member or worker health and safety representative

The selected training programs do not need to be referred to WorkSafeBC for pre-approval. However, WorkSafeBC reserves the right to deal with any disputes over the appropriateness of training and otherwise to monitor or inquire into the contents and conduct of training.

G-D7-156(1) Maintaining the confidentiality of information

Issued October 23, 2012

Regulatory excerpt

Section 156(1)(e) of the *Workers Compensation Act* ("Act") states:

(1) A person must not disclose or publish the following information, except for the purpose of administering this Act and the regulations or as otherwise required by law:

...

(e) in the case of information received by the person in confidence by reason of the performance of any duty or the exercise of any power under this Part, Part 4 or the regulations, the name of the informant.

Purpose of guideline

This guideline discusses the obligation placed upon WorkSafeBC prevention officers to protect the confidentiality of workers or other persons who bring workplace health and safety concerns to the attention of WorkSafeBC.

Discussion

Concerns about health and safety conditions at or near workplaces are regularly brought to the attention of WorkSafeBC. Often these concerns are raised by workers or other persons who wish to remain anonymous.

An environment that encourages individuals to bring forward health and safety concerns is an element in furthering WorkSafeBC's health and safety

mandate. Such an environment requires that health and safety concerns can be brought to WorkSafeBC by individuals without fear of reprisal, retribution, or damage to their relationship with the employer or other workplace party. As a result, WorkSafeBC will, to the extent of its ability, protect the identities of individuals that bring concerns forward.

In the majority of instances where health and safety concerns are reported to WorkSafeBC, officers will respond by conducting an inspection of the workplace. Where the concern has been brought forward by a person wishing to remain anonymous, prevention officers will protect the identity of the individual to the extent possible and are prohibited by section 156(1)(e) of the *Act* from disclosing to the employers at the worksite the identity of the person that reported the health and safety concern.

While prevention officers will, to the extent possible, protect the identity of individuals bringing health and safety concerns forward, this may not fully guarantee that the individual's identity will never be learned by the employer or other workplace party. For example, where the workplace party challenges any orders issued to it as a result of the inspection through an order review, the workplace party will have the right to challenge evidence that is relevant to the order. Where the individual has provided information that was necessary to provide as evidence relevant to the order, it may be necessary to provide the name of that individual so that the workplace party can look into the accuracy of the information. For this reason, prevention officers will typically attempt to obtain adequate evidence without using information provided by the individual seeking anonymity. Where this is not possible prevention officers should alert the individual to the need to use that information to issue an order, and should be sensitive to the concerns of that individual while balancing the need to ensure health and safety issues at the workplace are addressed.

G-D6-152 Worker complaints of discriminatory action and failure to pay wages complaints

Issued August 16, 2000; Revised April 2, 2004; Revised February 16, 2006; Revised May 17, 2006; Editorial Revision March 7, 2011; Editorial Revision June 26, 2014; Editorial Revision July 2, 2015; Revised March 18, 2016; Editorial Revision July 27, 2016

Regulatory excerpt

The discrimination action provisions are in [Division 6 of Part 3](#) of the *Workers Compensation Act* ("*Act*").

Purpose of guideline

The purpose of this guideline is to describe the enforcement steps WorkSafeBC may take if an employer does not comply with an order arising out of a discriminatory action complaint.

Background

Section 151 of the *Act* protects workers from certain discriminatory actions by an employer, union, or person acting on behalf of an employer or union. More information for workers around what is considered discriminatory action, the process for making a complaint, including submitting a complaint online, is available at <https://www.worksafebc.com/en/for-workers/just-for-you/discriminatory-action-complaints>

Enforcing orders arising from discrimination claims

If a worker makes a complaint about discriminatory action, and that complaint is accepted, WorkSafeBC may order the employer to take certain steps to correct the discriminatory action. This may include paying lost wages, paying expenses, or reinstating the worker. The order will often include a requirement to submit a notice of compliance, which requires the employer to outline how the employer plans to comply with the order. As with any orders, employers must comply with all discriminatory action orders, including orders to submit a notice of compliance.

When an employer does not comply with an order arising out of a discriminatory action complaint, WorkSafeBC may take additional enforcement action. This can include the following:

- Issuing an order under section 115(1)(b) of the *Act* for failing to comply with an order
- Proceeding towards a citation under section 196.1 (refer to Policy Item G-D12-196.1-1-OHS Citations)
- Proceeding towards an administrative penalty under section 196

More information for employers around what is considered discriminatory action, and the remedies WorkSafeBC may order as a result of a successful discriminatory action complaint is available at <https://www.worksafebc.com/en/for-employers/just-for-you/respond-discriminatory-action-complaints>.

G-D6-153(1) Determining if a discrimination complaint has been settled

Issued September 28, 2007

Regulatory excerpt

Section 153(1) of the *Workers Compensation Act* ("*Act*") states:

- (1) If the Board receives a complaint under section 152 (2), it must immediately inquire into the matter and, if the complaint is not settled or withdrawn, must
 - (a) determine whether the alleged contravention occurred, and
 - (b) deliver a written statement of the Board's determination to the worker and to the employer or union, as applicable.

Section 152(2) of the *Act* states:

- (2) A complaint under subsection (1) must be made in writing to the Board,
 - (a) in the case of a complaint referred to in subsection (1) (a), within 1 year of the action considered to be discriminatory, and
 - (b) in the case of a complaint referred to in subsection (1) (b), within 60 days after the wages became payable.

Purpose of guideline

This guideline sets out the authority and practice that WorkSafeBC applies in determining whether a discrimination complaint has been "settled" as contemplated under section 153 of the *Act*.

Background

Section 153(1) requires WorkSafeBC to determine whether an alleged contravention under section 152(2) has occurred, unless the complaint "is not settled or withdrawn."

In some cases, the parties to a discrimination complaint may disagree about whether they, in fact, reached a settlement of the complaint that they agreed was final and binding on them. It then becomes necessary to determine if a final and binding settlement was reached before any further considerations can take place regarding the complaint.

Discussion

Section 113 of the *Act* sets out WorkSafeBC's jurisdiction with respect to [Part 3](#) of the *Act*, and provides WorkSafeBC with the exclusive authority to "...inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined..." under Part 3. The broad jurisdiction for WorkSafeBC to make determinations under Part 3 includes the authority to determine whether a discrimination complaint has been settled for the purposes of section 153. Further, as provided in section 113, once WorkSafeBC has determined whether a settlement has been reached, that determination is "...final and conclusive and is not open to question or review in any court" (subject to a judicial review).

Where the parties to a discrimination complaint dispute whether they reached a final and binding settlement of the complaint, it becomes the duty of WorkSafeBC to consider the disputed settlement, together with the circumstances leading to it, and make a final determination of the issue. This practice applies regardless of the complaint settlement process in which the parties engaged, and includes any WorkSafeBC-sponsored mediation or settlement process.

Where WorkSafeBC determines a final and binding settlement was reached by the parties, WorkSafeBC will regard the complaint as having been settled as contemplated by section 153(1) and will take no further action on it. Alternatively, where WorkSafeBC determines a final and binding settlement was not reached, WorkSafeBC will proceed with adjudication of the complaint in accordance with the discrimination provisions under the *Act*.

G-D3-115(1) The *Human Rights Code* of British Columbia and Responsibilities of Employers

Issued February 4, 2005; Editorial Revision June 29, 2017

Regulatory excerpt

Section 115(1) of the *Workers Compensation Act* ("*Act*") states:

- 115(1) Every employer must
 - (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
 - (b) comply with this Part, the regulations and any applicable orders.

Sections 13(1) and 13(4) of the *Human Rights Code* ("*Code*") of British Columbia state:

Discrimination in employment

13(1) A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

13(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

Purpose of guideline

The purpose of this guideline is to provide direction to WorkSafeBC prevention officers in dealing with worker complaints that compliance with provisions of the *Act* or *OHS Regulation* ("*Regulation*") may violate provisions of the *Code*.

Background

There are circumstances in which a worker may refuse to perform certain work practices prescribed by the *Act* or *Regulation* based upon religious or other protected characteristics specified in section 13(1) of the *Code*. Moreover, a worker may complain that an employer that attempts to compel the worker to comply with the requirements of the *Act* or *Regulation* in light of his or her particular complaint is discriminating against the worker contrary to the provisions of the *Code*. At this point, the employer may choose to call a prevention officer to assist in resolving the matter.

Bona fide occupational requirements and accommodation of workers

It is generally accepted that regulatory requirements are *bona fide* occupational requirements, as they are reasonably necessary to assure the safety of workers. Even so, an employer may have to make reasonable attempts to accommodate a worker's protected characteristics listed in section 13(1) of the *Code* (such as a physical disability or religious beliefs).

What constitutes accommodation to the point of undue hardship is a question that rests on the unique facts of each case. Accommodation may take many forms depending on the circumstances, including reassignment, changing work schedules, modifying machinery, and so forth. The point of undue hardship will generally vary with the size of the employer, as larger employers may find it easier to accommodate a worker's protected characteristics without suffering a great degree of harm.

The employer is usually expected to take the initiative in proposing ways to accommodate a worker, and a worker is expected to actively participate in the process.

Role of the prevention officer

WorkSafeBC does not enforce *Code* requirements, which are beyond the scope of the *Act*. *Code* requirements are administered by the BC Human Rights Tribunal. If a prevention officer encounters a situation where the *Code* is at issue and a violation of the *Act* or *Regulation* is apparent, the prevention officer will first ensure that any immediate risk to the health and safety of workers is controlled. The prevention officer will then inform the employer that he or she may have a duty to accommodate the worker's protected characteristics (such as a physical disability, religious beliefs, or other characteristics listed in section 13(1) of the *Code*). The prevention officer will advise the employer to contact the BC Human Rights Tribunal or seek legal advice.

The prevention officer will not advise the employer on accommodation issues, as the nature of accommodation is a complex legal question which is dependent on numerous factors related to the employer's operations. The prevention officer should also refrain from writing orders until the employer has had an opportunity to seek further advice, including legal counsel, to resolve the issue. However, the prevention officer could advise on alternative work practices that comply with the *Act* or *Regulation* which could be acceptable to both parties.

The prevention officer should return to the worksite after a reasonable period of time and discuss what steps (if any) the employer has taken to resolve the issue and any ongoing *Act* or *Regulation* violations that stem from *Code*-related issues. If the employer has not taken steps to address any ongoing violations, the prevention officer should no longer refrain from writing orders against the employer. The prevention officer should ensure compliance with the *Act* and *Regulation*, regardless of any outstanding *Code*-related issues at the worksite, as the onus rests with the employer to accommodate a worker in the face of *bona fide* occupational requirements.

Any dispute that arises regarding the employer's choice of accommodation measures (if any) would fall within the jurisdiction of the BC Human Rights Tribunal and should be dealt with by that agency.

G-D3-115(1)-2 Labour supply firms and client employers - Responsibilities

Issued April 13, 2011; Editorial revision consequential to August 4, 2015 Regulatory Amendment; Revised July 27, 2017

Regulatory excerpt

Responsibilities for worker health and safety are established by the *Workers Compensation Act* ("*Act*") and the *OHS Regulation* ("*Regulation*").

Section 115 of the *Act* states:

115 General duties of employers

- (1) Every employer must
 - (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
 - (b) comply with this Part, the regulations and any applicable orders.
- (2) Without limiting subsection (1), an employer must

- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
- (b) ensure that the employer's workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
 - (ii) comply with this Part, the regulations and any applicable orders, and
 - (iii) are made aware of their rights and duties under this Part and the regulations,
- (c) establish occupational health and safety policies and programs in accordance with the regulations,
- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,
- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
- (f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
- (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
- (h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

Section 124 of the *Act* states:

If

- (a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and
 - (b) one of the persons subject to the obligation complies with the applicable provision,
- the other persons subject to the obligation are relieved of that obligation only during the time when
- (c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
 - (d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

Section 3.1 of the *Regulation* states:

3.1 When program required

(1) An occupational health and safety program as outlined in section 3.3 must be initiated and maintained

(a) by each employer that has

- (i) a workforce of 20 or more workers, and
- (ii) at least one workplace that is determined under section 3.16 (2)(b) to create a moderate or high risk of injury, or

(b) by each employer that has a workforce of 50 or more workers.

(1.1) If subsection (1)(a) or (b) applies to the employer, the occupational health and safety program applies to the whole of the employer's operations.

(2) Despite subsection (1) an occupational health and safety program may be required in any workplace when, in the opinion of an officer, such a program is necessary.

Purpose of guideline

The purpose of this guideline is to

- Provide information regarding labour supply firms and their role as employers of workers that are provided to workplaces operated by other employers
- Discuss the occupational health and safety responsibilities of employers who use workers supplied by labour supply firms
- Discuss how the requirements for a health and safety program apply to workplaces where workers of labour supply firms are present
- Provide information on responsibilities for investigating and reporting on workplace incidents

Background

Many firms in a variety of industries routinely engage the services of labour supply firms to supply workers to their workplaces. These labour supply firms hire workers directly and arrange for them to work at their client firms' workplaces. This practice is most common in the construction industry, but also occurs in manufacturing, warehousing, and other industries where the need for labour will fluctuate. In these situations, questions can arise as to the role of both the labour supply firm as the direct employer of the worker, and the client firm as the employer who is responsible for conditions at the workplace and who directs the work performed by the worker.

Labour supply firms and their responsibilities as employers

Both the client firm and the labour supply firm have health and safety obligations with respect to these workers. The labour supply firm is the direct employer of the workers, and therefore has the responsibilities of an employer with respect to these workers.

Under section 115(1) of the *Act*, the labour supply firm as the direct employer has the responsibility to ensure the worker's health and safety. A key element is to evaluate the client's ability to adequately protect, instruct, and supervise the worker. Engaging a less sophisticated client firm will necessarily entail more diligence from the labour supply firm regarding the instruction and supervision it gives its workers.

Aspects of fulfilling this obligation should include the following:

- Assessing the capacity of the client firm to protect, instruct, and supervise the worker
- Clarifying with the client firm the tasks the worker will be performing and ensuring the worker is limited to tasks for which he or she is qualified
- Ensuring the worker is adequately qualified, experienced, and trained for the tasks that the client firm will have the worker perform
- Providing general safety orientation and training
- Monitoring the work on an ongoing basis to ensure the worker is performing work in a safe environment within his or her capabilities

Under section 115(2) of the *Act*, the labour supply firm's obligation includes the following:

- Making the worker aware of reasonably foreseeable hazards that the worker will be exposed to at the client firm's workplace
- Ensuring the worker is provided with appropriate personal protective equipment
- Providing information, instruction, and supervision necessary for the worker to ensure the health and safety of that worker and other workers at the client firm's workplace

The labour supply firm may rely to a greater or lesser degree on the client firm to carry out aspects of these obligations. However, the labour supply firm is expected to confirm that these elements of its compliance will be carried out by the client firm by communicating clearly its expectations in advance and following up with the client firm. Failure of the client firm to carry out these elements will result in the labour supply firm's non-compliance.

The client firms and their responsibilities as employers

As a practical matter workplace conditions, site-specific matters, and the direct supervision of the worker are necessarily beyond the direct control of the labour supply firm and within the control of its client firm. The client firm also has health and safety obligations with respect to the labour supply firm's workers.

Section 115(1)(a)(ii) of the *Act* sets out that every employer must ensure the health and safety not only of its own workers, but "any other workers present at a workplace at which that employer's work is being carried out." The scope of this duty depends on the employer's knowledge of and control over the workplace, its hazards, and the workers in question. Though it may depend on the type of work and the sophistication of the client firm, in many situations the role of the client firm should be nearly identical to that of the direct employer. That is, the client firm should ensure the health and safety of the labour supply firm's worker to the same extent that it is required to ensure the health and safety of its own workers.

The client firm should

- Accurately detail the tasks that it requires the worker to perform
- Ensure the labour supply firm is supplying an adequately qualified worker for those tasks
- Limit the worker to the tasks it has communicated to the labour supply firm
- Provide personal protective equipment not already supplied by the worker or the labour supply firm
- Provide site orientation and instruction to the worker regarding the task and associated hazards, and confirm the worker's ability to perform those tasks safely

The following clarifies how some specific requirements in the *Regulation* should be approached where workers of labour supply firms are present at client firm workplaces.

Impact on the client firm's OHS program requirements

OHS Guideline [G3.1 \(Occupational health and safety program\)](#) provides detailed information on the application of section 3.1 of the *Regulation*. It discusses how to count workers for the purposes of determining whether a formal occupational health and safety (OHS) program is required, and outlines considerations that will be used by WorkSafeBC prevention officers when exercising their discretion to require a formal OHS program under [section 3.2](#) of the *Regulation*. A brief summary of the main points from the guideline is provided below.

Workers are included in the count if they are employed for more than a month. In addition, they are included if they have currently worked for less than a month but have previously worked periodically for the employer.

As noted in section 3.1(1) of the *Regulation*, if an employer employs workers in at least one moderate- or high-risk operation, there must be a

formal OHS program if the total workforce in all operations is 20 workers or more. Construction workplaces, for example, are normally considered to be moderate- to high-risk workplaces.

First aid

Under the requirements for first aid in [Part 3 \(Rights and Responsibilities\)](#) of the *Regulation*, the labour supply firm, as the employer, is responsible for ensuring that first aid is provided for its workers. In complying with this obligation, typically the labour supply firm will need to confirm with its client firm that first aid is being supplied at the workplace.

The client firm is expected to include the labour supply firm's workers in its first aid planning, and adjust the first aid services to include the total number of workers on site.

Protection from hazardous materials/WHMIS

Under their responsibilities as employers, the client firms are required to maintain a safe workplace.

Information requirements on hazardous materials are covered primarily in Part 5 (Chemical Agents and Biological Agents) of the *Regulation*. Most substances to which a worker might be exposed are covered by the Workplace Hazardous Materials Information System (WHMIS), which is addressed in [sections 5.3 to 5.18](#). For hazardous substances covered by WHMIS, the worker must receive the education and training required by sections 5.6 and 5.7 of the *Regulation*. [Section 5.6](#) deals with general (generic) requirements to ensure workers know, among other things, the elements of the WHMIS program, and the content required on labels and safety data sheets (SDS). [Section 5.7](#) addresses site-specific requirements for training in the safe procedures for hazardous products in the workplace.

The labour supply firm and the client firm may, depending on the arrangements between them, share in the responsibilities for both generic instruction and site-specific training. It may be a typical scenario for the labour supply firm to ensure generic instruction is given, and the client firm to cover site-specific training.

New Worker Orientation

[Sections 3.22 to 3.25](#) of the *Regulation* require all young and new workers to receive orientation and training specific to the workplace. New workers include workers who are relocated to a new workplace if the hazards in that workplace are different from the hazards in their previous workplace. Again, responsibilities may be shared between the client firm and the labour supply firm on how the various specified training and orientation elements are addressed. It may, for example, be reasonable to expect that the labour supply firm take the lead on providing generic instruction on topics that are not site-specific, with the client firm taking responsibility for site-specific topics. Records must be kept of the orientation and training provided.

Specific direction concerning the obligations of farm labour contractors to establish occupational health and safety programs is set out in OHS Guideline [G3.1-2 Farm labour contractors and growers](#).

Accident Reporting and Investigation

[Sections 172-177](#) of the *Act* set out employer obligations to report and investigate workplace accidents. An employer must immediately notify WorkSafeBC of any incident that involves the following:

- Serious injury to or death of a worker
- Major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system, or excavation
- Major release of hazardous substances
- Fire or explosion that had a potential for causing serious injury to a worker
- Blasting accident causing personal injury
- Dangerous incident involving explosives, whether or not there is personal injury

An employer must investigate any of the above listed incidents, as well as any incident that involves the following:

- Diving incident, as set out in section 24.34 of the *Regulation*
- Injury requiring medical treatment
- Minor injury or no injury but had potential for causing serious injury (near miss or close call)

Generally, the obligation to report and investigate a workplace incident rests primarily with the employer present at the workplace at which the accident or incident took place. This is because the employer present at the workplace, generally the client firm, will likely be best positioned to

- Identify any unsafe conditions, acts, or procedures that significantly contributed to the incident
- Determine the corrective action necessary to prevent the recurrence of similar incidents
- Determine the cause(s) of the incident
- Take the necessary corrective actions

If the client firm conducts an incident investigation, the labour supply firm can help the people investigating the incident by providing details about the information, instruction, and training that workers received. The labour supply firm can also provide insight into how expectations were communicated between the labour supply firm and client firm.

A labour supply firm may be required to undertake an independent incident investigation in some situations. Examples include, but are not limited to, the following:

- The client firm has not complied with the obligation to investigate the incident
- The client firm's incident investigation identified gaps in communication between the labour supply firm and the client firm as significantly contributing to the incident

The employer(s) that conducts an incident investigation must prepare any associated incident investigation reports or corrective action reports that are required. More information about incident investigations and associated reports are set out in Prevention policies [D10-175-1](#) and [D10-176-1](#), and the associated guidelines.

G-D3-115(1)-3 Bullying and harassment

Issued November 1, 2013

Regulatory excerpt

Responsibilities for worker health and safety are established by the *Workers Compensation Act* ("Act") and the *OHS Regulation* ("Regulation").

Section 115 of the *Act* states:

115 General duties of employers

(1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out, and

(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

Policy D3-115-2 ("Policy") states:

"bullying and harassment"

(a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

Reasonable Steps to Address the Hazard

WorkSafeBC considers that reasonable steps by an employer to prevent where possible, or otherwise minimize, workplace bullying and harassment include the following:

(a) developing a policy statement with respect to workplace bullying and harassment not being acceptable or tolerated;

(b) taking steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;

(c) developing and implementing procedures for workers to report incidents or complaints of workplace bullying and harassment including how, when and to whom a worker should report incidents or complaints. Included must be procedures for a worker to report if the employer, supervisor or person acting on behalf of the employer, is the alleged bully and harasser;

(d) developing and implementing procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment including:

i. how and when investigations will be conducted;

ii. what will be included in the investigation;

iii. roles and responsibilities of employers, supervisors, workers and others;

iv. follow-up to the investigation (description of corrective actions, timeframe, dealing with adverse symptoms, etc.); and

v. record keeping requirements;

- (e) informing workers of the policy statement in (a) and the steps taken in (b);
- (f) training supervisors and workers on:
 - i. recognizing the potential for bullying and harassment;
 - ii. responding to bullying and harassment; and
 - iii. procedures for reporting, and how the employer will deal with incidents or complaints of bullying and harassment in (c) and (d) respectively;
- (g) annually reviewing (a), (b), (c), and (d);
- (h) not engaging in bullying and harassment of workers and supervisors; and
- (i) applying and complying with the employer's policies and procedures on bullying and harassment.

Purpose of guideline

The purpose of this guideline is to provide information regarding the requirement for employers to prevent where possible, or otherwise minimize, workplace bullying and harassment. This guideline also provides information on WorkSafeBC's approach to dealing with individual specific complaints relating to cases of bullying and harassment, including the right to refuse work and discrimination concerns.

While this guideline provides guidance on the application of the Policy under section 115 relating to bullying and harassment, a handbook and other resources providing detailed information on how to prevent and deal with workplace bullying and harassment is provided in an [online tool kit](#) of resources produced by WorkSafeBC.

Background

All employers are required to take steps to eliminate, where possible, or otherwise minimize the risks to workers from bullying and harassment in the workplace. It is the employer's responsibility to take steps including developing and implementing procedures for workers to report incidents or complaints of workplace bullying and harassment, and developing and implementing procedures for how the employer will deal with complaints, in order to minimize bullying and harassing behaviours at the workplace. Supervisors and workers also have obligations in connection with bullying and harassment. The Policies relevant to [supervisors](#) and [workers](#) are available here.

Prevention officers' role is to ensure employers have implemented policies and have an appropriate framework for dealing with bullying and harassment, and that supervisors and workers are meeting their obligations under the Policy. Prevention officers will also ensure that workers with individual complaints about bullying or harassment are referred to appropriate resources at WorkSafeBC for proper assistance guided by each individual's circumstances.

What is "bullying and harassment?"

"Bullying and harassment" is defined in the Policy as including "any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment."

There are a number of elements in the definition, which are described below.

"Conduct or comment"

The use of these two terms is intended to indicate that a broad spectrum of behaviour is captured in the definition. It includes not just words, but actions, gestures and other behaviours.

Examples of conduct or comment that might constitute bullying and harassment include, but are not limited to, the following:

- Verbal aggression or insults; calling someone derogatory names
- Vandalizing a worker's belongings or work equipment
- Sabotaging a person's work
- Spreading malicious gossip or rumours about a person
- Engaging in harmful or offensive initiation practices
- Physical assault or threats (this would also constitute "violence" or "improper activity or behaviour")
- Making personal attacks based on someone's private life and/or personal traits
- Making aggressive or threatening gestures
- Engaging in targeted social isolation

While a number of these examples will involve overt or easily observable behaviours, bullying and harassment can also include more subtle and less obvious conduct or comment. Whether any conduct or comment will constitute bullying and harassment will depend on the context, and whether the individual engaging in the conduct or comment knew or reasonably ought to have known that the worker subject to it would be humiliated or intimidated.

"By a person"

Bullying and harassment is not limited to behaviour engaged in by a worker towards another. The definition encompasses behaviour engaged in by a person that a worker may encounter at the workplace, such as clients, customers, members of the public, etc. While employers and supervisors may not have direct control over the behaviour of such non-workers, it is important to acknowledge that employers and supervisors must

implement procedures to ensure bullying and harassing behaviour from non-workers is prevented or minimized, and appropriately addressed if such behaviour should occur.

"Knew or reasonably ought to have known would cause that worker to be humiliated or intimidated"

The use of the phrase "knew or reasonably ought to have known" creates an objective standard for bullying and harassing behaviour. That is, the test of whether any conduct or comment is bullying and harassment includes the following:

- The person knew his or her conduct or comment would cause that worker to be humiliated or intimidated, or
- A reasonable person would have considered the conduct to cause humiliation or intimidation to that worker.

Even if the person alleged to have engaged in bullying and harassment claims to be unaware that the behaviour was humiliating or intimidating, the behaviour may still be bullying and harassment if a reasonable person in the same situation would have known the behaviour was humiliating or intimidating to that worker. The use of this phrase ensures that anyone engaging in offensive behaviour cannot be "willfully blind" to its effects, nor can the behaviour be excused on the basis that the person engaging in the behaviour didn't intend it to humiliate or intimidate the worker.

The use of the phrase "that worker," means that the characteristics of the worker who is the subject of the alleged bullying or harassment need to be taken into account in determining if the conduct or comment would be humiliating or intimidating. Conduct or comments that one worker may accept or tolerate might cause a different worker to be humiliated or intimidated.

What is *not* bullying and harassment?

The definition of "bullying and harassment" specifically excludes reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

Management and direction of workers or the place of employment include, for example, decisions relating to the following:

- Job duties or the work to be performed
- Workloads and deadlines
- Lay offs, transfers, and reorganizations
- Work instruction, supervision, or feedback
- Work evaluation
- Performance management
- Discipline, suspension, or termination

While the employer may exercise its authority to make legitimate management decisions, this does not mean that these decisions can be undertaken in a manner that would constitute bullying or harassment.

Reasonable steps to address the hazard

Employers must take a number of steps to prevent or otherwise minimize workplace bullying and harassment. These steps include the following:

- *Developing a policy statement with respect to bullying and harassment*
The policy statement must clearly state that bullying and harassment will not be tolerated.
- *Taking steps to prevent or minimize bullying and harassment*
The employer must take steps to eliminate or otherwise minimize workplace bullying and harassment. It is not enough for an employer to merely respond to complaints of bullying and harassment if it arises. Where an employer is aware of circumstances that present a risk of bullying or harassment, the employer must consider how best to proactively prevent or minimize that risk and must take action to do so. The specific action the employer takes must be appropriate to the circumstances. These actions may range from providing direction and supervision to affected workers, to providing specific training to workers on managing difficult situations, to imposing workplace arrangements that minimize the risk of bullying and harassment.
- *Developing and implementing reporting procedures*
The employer must implement a mechanism by which bullying and harassment issues are reported to the employer including how, when, and to whom a worker should report incidents or complaints. Included must be procedures for a worker to report if the employer, supervisor, or person acting on behalf of the employer is the alleged bully and harasser.

Reporting procedures should clearly set out the method by which a worker can report a complaint. For example, the procedures should indicate if workers are to report directly to the employer, or to specified designates such as human resources personnel, or to supervisors.

- *Developing and implementing procedures on how to deal with incidents and complaints*
The employer must implement procedures for responding to complaints or incidents of bullying and harassment. The procedures must ensure a reasonable response to the complaint or incident and aim to fully address the incident and ensure that bullying and harassment is prevented or minimized in the future.

Developing and implementing procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment must include the following:

- How and when investigations will be conducted

- What will be included in the investigation
- Roles and responsibilities of employers, supervisors, workers and others
- Follow up to the investigation (description of corrective actions, timeframe, dealing with adverse symptoms, etc.)
- Record-keeping requirements

Investigations into bullying and harassment should:

- Be undertaken promptly and diligently, and be as thorough as necessary in the circumstances
- Be fair and impartial, providing both the complainant and the subject of the complaint fairness in evaluating the allegations
- Be sensitive to the interests of the parties, and maintain confidentiality to the extent possible in the circumstances
- Be focused on finding facts and evidence, including interviews of the complainant, the subject, and any witnesses
- Incorporate, where necessary, the need for both the complainant and the subject of the investigation to have assistance during the investigation process

Following the investigation, the employer must promptly take any necessary corrective action.

The extent to which employers are required to involve worker and employer representatives of the joint health and safety committee, as well as whether the employer must provide the joint health and safety committee with the results of a bullying and harassment investigation, is currently being reviewed for further Policy development by WorkSafeBC. Further direction on the obligations of employers in conducting investigations will be communicated by that Policy.

While more detailed Policy on the role of the joint health and safety committee is being developed, it is important to note that section 115(2)(g) of the *Act* requires employers to consult and cooperate with joint committees and worker health and safety representatives at the employer's workplace. It is expected that employers will engage in ongoing consultation with the joint health and safety committee or worker health and safety representative regarding the nature and effectiveness of their bullying and harassment program, and to engage with the joint health and safety committee in the course of the annual review.

- *Training and communication*
Every employer must ensure everyone understands their responsibilities in connection with bullying and harassment. This includes providing specific training with regard to the employer's policy and procedures. Workers and supervisors should be trained on the following:
 - How to recognize bullying and harassment
 - How workers who experience or witness bullying and harassment should respond
 - Who workers can go to for help and what help will be provided
 - Who the contacts are for reporting incidents
 - Who is responsible for following up on complaints and incidents

Workers who investigate incidents and complaints should receive specific training and instruction that is appropriate for the sensitive and challenging task of responding to bullying and harassment complaints.

- *Annual review*
Employers must engage in an annual review of the policy statement, reporting and investigation procedures, and steps taken to prevent or minimize bullying and harassment to ensure their effectiveness.

WorkSafeBC has published additional resources to assist with developing policies and procedures to deal with workplace bullying and harassment, which can be found [here](#).

Multiple employer workplaces

Situations involving bullying and harassment are not limited to single employer workplaces. It is important to bear in mind that employers must take steps to prevent or minimize bullying and harassment that might originate from workers of other employers at a multiple employer workplace, as well as ensuring the employer's own workers do not bully or harass the workers of other employers.

Section 118 of the *Act* requires a prime contractor at a multiple employer workplace to do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with health and safety requirements. This requirement would extend to maintaining a system for dealing with complaints of bullying and harassment between workers of different employers and ensuring employers comply with the requirements around bullying and harassment.

Other rights and remedies

In addition to the requirements of the Policies under the *Act*, there may be other avenues that are available to a worker who believes they have been bullied or harassed at the workplace. Whether any of these will be appropriate avenues to pursue will depend on the circumstances of each case.

Refusal of unsafe work - Section 3.12 of the Regulation

A worker may refuse to carry out any work process where he or she has "reasonable cause to believe that to do so would create an undue hazard to the health and safety of that person." In some situations, continuing to work where there is exposure to bullying and harassment may provide reasonable grounds to believe there is an undue hazard to the worker who is subject to the behaviour. An exercise of a worker's right to refuse work in such cases will follow, as with other refusals, the direction and procedures set out in [section 3.12](#) and as further discussed in OHS Guideline [G3.12 Refusal of unsafe work](#).

Discriminatory Action - Sections 150–153 Workers Compensation Act

There may be cases where a worker who has made a complaint about bullying or harassment believes he or she has also suffered adverse affects with respect to any term or condition of their employment as a consequence of making the complaint. In such instances, a worker may make a complaint of discriminatory action to WorkSafeBC. The usual practice and procedures established for discrimination complaints would apply. Further information is set out in OHS Guideline [G-D6-152 Worker complaints of discriminatory action and failure to pay wages complaints](#).

Others

The collective agreement at a workplace may include language which prohibits harassment and provides further measures, such as requiring an investigation and/or filing of a grievance. Also, if bullying and harassment is based on a prohibited ground within the provisions of the *Human Rights Code*, the worker may also have redress under that legislation. At the extreme, bullying and harassment could involve threats of or actual violence, and would therefore fall within the violence provisions in sections [4.27 through 4.31](#) of the *Regulation*, and even into the realm of police investigation and criminal sanction.

Enforcement

Prevention officers in the course of regular inspections will seek to confirm that the requirements of the Policies have been implemented at the workplace. In doing so, they will apply the normal practice used by prevention officers to determine and confirm compliance with occupational health and safety requirements.

Prevention officers may also attend a workplace in response to an "action request" based on a complaint or concern. For example, a worker may advise WorkSafeBC of concerns such as the requirements of the Policies not having been put into place at a workplace, or the policy statement or established procedures not having been implemented.

Given the sensitivity of surrounding allegations of bullying and harassment, in the course of their inspections, prevention officers will take care to protect sensitive and confidential information that they collect, either through a review of documentation or witness interviews. However, complete confidentiality cannot be guaranteed; full disclosure of information can occur during a review or appeal procedure. Finally, all persons questioned during an inspection by a prevention officer have the right to be accompanied by a person of their choice who is reasonably available during questioning, as is provided by section 184 of the *Act*.

G-D3-115(2)(f) Copy of the *Act* readily available

Issued April 27, 2000; Updated March 28, 2002; Editorial Revision February 7, 2006

Regulatory excerpt

Section 115(2)(f) of the *Workers Compensation Act (Act)* states:

Without limiting subsection (1), an employer must...(f) make a copy of this *Act* and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,...

Purpose of guideline

This guideline discusses considerations involved in determining how to make a copy of the *Act* and *OHS Regulation* ("*Regulation*") "readily available" under section 115(2)(f) of the *Act*.

"Readily available"

What constitutes "readily available" requires the exercise of judgement with some consideration of the circumstances surrounding the request. For example, if reference to the *Act* or *Regulation* is for health and safety purposes related to the work under way or about to take place, then a worker should be able to review the relevant material promptly, though not necessarily immediately on demand. However, this may mean that the work has to stop, or may not start until the health or safety issue is clarified. This will be particularly relevant if the issue is one of a worker exercising the right to refuse unsafe work. If the need for reference is for a claims or assessment matter, the actual time it takes to make the *Act* readily available for review might reasonably be a longer time than for making the health and safety related portions available.

Use of electronic versions of the legislation

The copy of the *Regulation* and *Act* that is made readily available for workers may be either a printed or electronic version. If an employer chooses to meet the requirement under section 115(2)(f) by providing access to an electronic version of the *Act* and *Regulation*, the employer should be prepared to provide assistance to workers who do not have sufficient computer skills or equipment to access the electronic version on their own. The employer should also be prepared to print off portions of the *Act* or *Regulation* as the worker may reasonably request to deal with a particular topic or issue.

The use of WorkSafeBC's "Excerpts" from the *Act*

WorkSafeBC reproduces some portions of the *Act* relating to occupational health and safety matters as "**Excerpts**" from the *Act*, which are available on-line (see below). An employer might comply with section 115(2)(f) of the *Act* by having a copy of these excerpts as well as the *Regulation* reasonably available at the workplace and by having a plan in place to provide workers access to the complete *Act* within a few work days.

The employer's plan for providing workers access to the complete *Act* might include arrangements to visit a company's office or other fixed work location, a local library or another resource center where the relevant material can be accessed in print form or online. The *Act* requires the employer to post and keep posted "a notice advising where the copy is available for review".

Sources of the *Act* and *Regulation*

The following Internet addresses provide unofficial online versions of the *Regulation* and excerpts of the *Act*.

- [OHS Regulation](#)
- [Workers Compensation Act](#)

Legislation can also be purchased from [Crown Publications Inc.](#) (phone 250-387-6409 or 1-800-663-6105 toll-free in North America)

G-D3-116 Orders to workers

Issued September 30, 2009

Regulatory excerpt

Section 116 (General duties of workers) of the *Workers Compensation Act* ("Act") states:

(1) Every worker must

(a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, and

(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), a worker must

(a) carry out his or her work in accordance with established safe work procedures as required by this Part and the regulations,

(b) use or wear protective equipment, devices and clothing as required by the regulations,

(c) not engage in horseplay or similar conduct that may endanger the worker or any other person,

(d) ensure that the worker's ability to work without risk to his or her health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes,

(e) report to the supervisor or employer

(i) any contravention of this Part, the regulations or an applicable order of which the worker is aware, and

(ii) the absence of or defect in any protective equipment, device or clothing, or the existence of any other hazard, that the worker considers is likely to endanger the worker or any other person,

(f) cooperate with the joint committee or worker health and safety representative for the workplace, and

(g) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

Section 117 (General duties of supervisors) of the *Act* states:

(1) Every supervisor must

(a) ensure the health and safety of all workers under the direct supervision of the supervisor,

(b) be knowledgeable about this Part and those regulations applicable to the work being supervised, and

(c) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), a supervisor must

(a) ensure that the workers under his or her direct supervision

(i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and

(ii) comply with this Part, the regulations and any applicable orders,

(b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and

(c) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

Purpose of guideline

The purpose of this guideline is to explain the factors that will be considered in determining whether or not to issue orders to workers (OtWs).

Background

Under the broad enforcement power in section 187 of the *Act*, WorkSafeBC prevention officers may issue orders to various workplace parties

pursuant to provisions of the *Act* and the *OHS Regulation* ("*Regulation*"). The general duty sections of [Part 3, Division 3](#) of the *Act* assign responsibilities for health and safety in the workplace to employers, workers, supervisors, prime contractors, and suppliers, as well as directors and officers of corporations.

Prevention policy provides that all parties with duties under the *Act* may be able to affect the health and safety of persons at or near a workplace. While the employer has the primary responsibility for health and safety at their workplace, any and all of the parties may be cited for violations of their statutory duties as more than one party may be responsible. Each party must fulfill the obligations imposed on him or her and where those obligations have not been fulfilled, prevention officers may issue orders to all the parties.

In issuing orders, the main consideration is not which party is most responsible for a workplace violation. Rather, prevention officers consider issuing orders on those persons who are not in compliance with their responsibilities under the *Act* and *Regulation*. Whether orders are issued on an employer or not, the prevention officer will consider if orders on the supervisors and workers are required. OtWs may also be issued against an employer, if they are acting in the capacity of a worker.

Responsibilities

Worker

Workers must work safely, and should encourage their co-workers to do the same. An important component of a worker's responsibility for his or her own safety is to ask for training if he or she is unsure about the hazards of their job or how to safely perform a work task.

Responsibilities of workers set out under section 116 of the *Act* include

- Taking reasonable care to protect his or her health and safety and the health and safety of others
- Following safe work procedures
- Using appropriate personal protective equipment (ppe)
- Not engaging in horseplay or other hazardous conduct
- Ensuring that their ability to work is not impaired by alcohol, drugs, or other causes
- Reporting to his or her supervisor or employer unsafe conditions and contraventions of the *Act* or *Regulation*
- Co-operating with prevention officers

Workers may not be disciplined for refusing to perform a task that they have reasonable cause to believe is dangerous. A supervisor or worker has the right to refuse unsafe work and the employer should advise them of that right.

Supervisor

Under section 117 of the *Act*, supervisors have specific responsibilities that are additional to their duties as workers under section 116. The supervisor's responsibilities include

- Providing training and orientation to new and young workers
- Instructing workers in safe work procedures
- Training workers in their assigned tasks, and checking that their work is being done safely
- Ensuring that only authorized and properly trained workers operate tools and machinery, use hazardous chemicals, and enter confined spaces
- Ensuring that equipment and materials are properly handled, stored, and maintained
- Correcting and investigating unsafe acts and conditions that they observe or that are reported to them

Supervisors have the right and responsibility to refuse to direct workers to perform work the supervisor considers unsafe.

Issuing orders

In determining whether or not an OtW is appropriate against a supervisor or worker, a prevention officer needs to consider three elements and determine the role that each element contributed.

Knowledge

First, did the supervisor or worker have knowledge of the hazard, the risk of injury, or the requirements applicable to the work involved? Evidence of sufficient knowledge may be demonstrated by considering what training and orientation they received on the job. For example, the supervisor or worker may have obtained general knowledge of the hazard through previous education, from training received through a formal trade qualification, experience at the task, or in the industry.

Control

Second, did the supervisor or worker have control over the hazard? Were adequate controls readily available at the worksite and were the controls properly used? Examples of controls include personal protective equipment, local exhaust ventilation, or an exposure control plan. An order should only be issued if the supervisor or worker had some means within their authority to control or reduce the hazard.

Reasonable steps to be taken

Third, did the supervisor or worker take reasonable steps within their authority to control the hazard? Taking reasonable steps may include wearing personal protective equipment or using appropriate safety procedures.

Situations where an OtW may be appropriate include

- Worker fails to use ppe in accordance with requirements ([section 8.9](#) of the *Regulation*)

- Supervisor does not ensure appropriate ppe is available, properly worn, and maintained ([section 8.8](#) of the *Regulation*)
- Blaster fails to follow safe blasting procedures ([section 21.66](#) of the *Regulation*)
- Worker fails to comply with lockout procedures ([section 10.7](#) of the *Regulation*)
- Worker engages in improper activity or behaviour at the workplace ([section 4.25](#) of the *Regulation*)
- Crane operator does not follow proper procedures ([section 14.38\(2\)](#) of the *Regulation*)
- Worker remains at workplace while being impaired ([section 4.20\(1\)](#) of the *Regulation*)
- While spraying isocyanate-containing paint, the worker does not wear the airline respirator that was properly selected and provided for the worker's use by the employer. The worker was aware of the lung sensitization hazard associated with exposure to isocyanate.
- Worker enters a live sewer well (confined space) without conducting pre-entry atmospheric testing and without ventilating the space. The worker was aware that the well was a confined space that could contain a hazardous atmosphere. Worker was also provided with adequate instruction and training regarding pre-entry requirements and other safe work procedures for confined space entry work.

Examples

1. A WorkSafeBC prevention officer observes three workers on a roof without proper fall arrest equipment at a height of 20 feet from ground. The prevention officer determines through discussion that one of them is the assigned supervisor and the other two are workers that are working on this job after hours from their regular employment.

The prevention officer finds that the employer has supplied all three workers with fall arrest equipment, but the equipment has been left in the truck. The supervisor is unable to produce training logs to demonstrate that the workers have been instructed in fall protection, and neither of the workers is able to properly don their harnesses when asked to do so by the prevention officer. The prevention officer determines that the supervisor had knowledge of the hazards of falling from the roof, and sufficient ability to control the hazard but failed to take reasonable steps to do so.

The supervisor would be issued an OtW for failing to fulfill his obligations under the *Act* and the *Regulation*. The workers in this example were neither properly trained nor instructed by the supervisor to wear the fall arrest equipment. This lack of training meant the workers did not know how to use the equipment, and they did not understand the risks of failing to wear it. In addition to issuing an OtW to the supervisor, the prevention officer could consider if orders would be warranted against the employer for failing to ensure that proper training and orientation were done.

2. In another example, a prevention officer finds a similar situation but the supervisor is able to produce a training log that shows the workers were trained in fall protection, and the workers can demonstrate that they understand the purpose of, and how to use, the fall arrest equipment at the worksite.

In this case, the prevention officer would issue an OtW against each of the workers. These workers had knowledge of the hazard, and were supplied with the proper equipment and training to control the hazard. Through their own actions they failed to take reasonable steps to control the hazard. The prevention officer could also consider if an OtW is warranted against the supervisor for failing to fulfill his obligations as a supervisor under the *Act* and *Regulation* to ensure the workers wore the equipment.

Collaborative approach

While orders are often regarded by employers and others as punitive in nature, they are not meant to punish. Orders are meant to provide direction to the workplace parties to ensure compliance with general duties and other requirements that address specific hazards at the workplace, thereby ensuring the health and safety of all. This is true of worker orders as well as orders to other parties.

In many cases, the OtW can be used as a learning tool for a supervisor or worker and should not be regarded as a punitive measure. However, the OtW can be used appropriately to serve as the foundation for progressive discipline by an employer or further compliance activity by a prevention officer.

The OtW also supports engaging the supervisor or worker in health and safety at work through

- Educating the supervisor or worker about their responsibilities
- Ensuring the safety of supervisor or worker (and others) at the workplace
- Persuading the supervisor or worker to take responsibility for their own safety
- Having the supervisor or worker understand the effect of their actions on the health and safety of others at the workplace

When issuing an OtW, these goals can often best be achieved by including the employer and using a collaborative approach between the employer and worker. The prevention officer can also ask the employer to agree to follow-up with the supervisor or worker to ensure their understanding of, and compliance with, the OtW.

Orders to workers against employers, suppliers, directors, or officers

Orders to workers may be issued against any workplace party who meets the definition of a worker, even where they also meet the definition of an employer, supplier, director, or officer. Where these workplace parties are also workers, they must comply with the duties of a worker.

Appendix

Procedural Directions When Issuing an OtW

Procedures

Where a prevention officer determines that the criteria for issuing an OtW have been met the following procedures apply when issuing the OtW.

First, the prevention officer should consult with the worker and the employer of the worker. This consultation should cover

- Why the OtW is being issued
- What are the responsibilities of each party to ensure compliance with the OtW
- What are the possible consequences of not complying with the OtW

Second, the prevention officer will issue the OtW, and require the order to be posted in the worksite (see below for further information). The prevention officer may include text outlining the consequences of not complying with the order. Consequences include possible prosecution and fine, orders being issued against the employer for failing to ensure the worker complies with the OtW, and orders to stop using equipment or stop work generally where either order is appropriate.

The prevention officer may also include a Notice of Compliance for the worker to complete. The Notice of Compliance will be completed and signed by the worker, in conjunction with the employer, and will outline what steps the worker agrees to take to ensure compliance with the order.

Finally, the prevention officer will determine if a follow-up is needed with the worker and/or employer to ensure that compliance has been achieved, and if applicable, if the steps in the Notice of Compliance have been followed.

Posting of OtWs

The prevention officer should instruct the employer to post the OtW at the workplace in a similar manner that is required to post an Inspection Report (IR). The employer should be instructed to give a copy of the OtW to the joint health and safety committee or worker health and safety representative, as applicable. The authority to instruct the employer to post the OtW is [section 187\(2\)\(f\)](#) of the *Act*. Under this section, a prevention officer may also order any person to post the OtW, if the prevention officer deems it necessary.

Disclosure to the employer of the OtW and posting the OtW are meant to assist workplace parties to meet the required standards for occupational health and safety. For example, the information on an OtW can assist an employer to

- Determine what procedure or practice improvements, training, or other measures may be required in the workplace to prevent similar violations
- Ensure that the violation was made by the employer's worker or supervisor and not that of another party, such as a subcontractor
- Identify the possible need for corrective action relating to a particular worker or supervisor, such as further training or discipline
- Make other parties at the workplace aware of potential hazards and improper practices

Information in an IR

Where an OtW is issued as the result of a prevention officer's findings on an inspection, the prevention officer should reference the number of the OtW report in the applicable IR. The name or other personal information about the worker related to the OtW should not be included in the IR or in any other records that are available to the public upon request to Prevention Records. A request to WorkSafeBC for disclosure of an OtW will be dealt with by Prevention Records, and in accordance with the *Freedom of Information and Protection of Privacy Act*.

G-D3-119-1 Owner obligations - Public lands

Issued December 21, 2009; Editorial Revision March 7, 2011

Regulatory excerpt

Section 119 of the *Workers Compensation Act* ("Act") states:

Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
- (c) comply with this Part, the regulations and any applicable orders.

Purpose of guideline

The purpose of this guideline is to provide some clarification of the owner's obligations with respect to publicly owned land that may be used or accessed by workers.

Background

Most of the province consists of land that is owned publicly. While most work in the province is carried out on privately owned lands and premises, much work in the province is carried out on publicly owned land. This land is managed through government departments or through Crown corporations or similar agencies (public owners) which provide a variety of different forms of access to these lands for industrial or commercial purposes. Owners of public lands include the province and various levels of government such as cities, towns and municipalities.

The various forms of access to public lands include the following

- Agricultural leases and grazing permits
- Forestry tenures, such as forest licenses, licenses to cut, timber sales, woodlot licenses, pulpwood agreements and forest road permits
- Leases and Rights of way (e.g. for roads, power lines, pipelines)
- Municipal permits to work on or access municipally-owned or controlled property
- Control or authority granted over lands exercised by government or public bodies through specific pieces of legislation
- Licenses of occupation
- Oil and gas exploration licenses and leases
- Work permits and other temporary access permits
- Guide outfitters licenses
- Trap line permits

Public owners will have the obligations under the *Act* with respect to public lands used as workplaces. The primary obligation is that of an owner under section 119 of the *Act*, however in certain circumstances other obligations contained in the *Act* and the *OHS Regulation* ("*Regulation*") may come into play.

The owner's obligation

The *Act* places specific obligations on owners of workplaces, as follows:

Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace,

These obligations reflect the unique role that owners of workplaces have in possessing knowledge of risks inherent in their lands and premises as well as the control they have over shaping the infrastructure. They also acknowledge that the owner of lands and premises where work is being carried out does not have the same level of control over or responsibility for the work that is being carried out as the direct employer of the workers doing the work, who have the primary health and safety obligations under the *Act* and *Regulation* towards workers at the workplace.

The obligations in section 119 are to provide lands and premises in a manner that ensures health and safety and to provide information to employers about known health and safety hazards.

The owner's obligation - Providing lands and premises in a safe condition

With respect to the first obligation in section 119, providing lands and premises in a manner that ensures health and safety, the nature of the obligation will depend on the nature of the workplace.

Most access granted to public lands is to lands in an undeveloped state. In such circumstances, the extent of the public owner's obligation under this section would be minimal. For example, though remote lands to which the province grants access to guides and outfitters are unquestionably workplaces, it would be unreasonable to expect ministries of the government to take steps to remove or mitigate hazards that are an inherent part of the environment, and which would be reasonably expected by employers and workers to be present.

Where the public owner provides access to lands on which they own improvements, it will be expected that these improvements will be provided and maintained in a condition that provides a safe environment for workers. For example, where an employer is provided access to a workplace across a bridge owned by a municipality, the municipality must ensure that the bridge has been adequately maintained and has the capacity to withstand loads placed on it by the employer and its workers.

The owner's obligation - Providing information

Under section 119(b), the owner also has an obligation to provide information it is aware of to employers or prime contractors on its lands in order to allow them to control those hazards.

As with the obligation under section 119(a), this obligation with respect to undeveloped lands is relatively straightforward. The public owner would be expected to provide information about unusual hazards present at such workplaces, but not about hazards that can reasonably be expected by the employer. For example, where a grazing permit area includes an abandoned mine, it would be expected that the presence of that mine would be communicated to the permit holder.

The information that the owner should provide includes the presence of other permit holders to the same area, where overlapping operations might create a hazard to the workers of the different operations. Providing information about the presence of other permit holders allow them to take steps to coordinate among themselves. For example, the recipient of an oil and gas licence should be made aware of forest tenures in the area for which the permit is issued.

Prime contractor obligations

The obligations of a public owner are not limited to those in section 119.

[Section 118](#) of the *Act* states that where there are workers of two or more employers present at a workplace, the prime contractor must ensure coordination of activities and establish and maintain a system for ensuring health and safety compliance. Where no prime contractor is designated, those obligations will fall to the owner.

It is important to recognize that while the public owner is clearly an owner of the public lands, the definition of "owner" in [section 106](#) of the *Act* is broad, and includes permit holders, licensees, lessees and other delegates of the owner. As a result, workplaces on public lands will often have multiple owners. Policy [D3-119-1](#) sets out a number of considerations for determining responsibilities in multiple owner situations. Considerations are knowledge, control and reasonableness.

In most situations where the public owner provides access to its lands to employers, the public entity will not have sufficient knowledge of or control over the workplace to be considered the owner that will be the prime contractor if none is designated. For example, where a municipality leases an entertainment venue to a third party, the municipality will tend to provide control over the facility to the lessee, and the lessee will have the most knowledge of the work that occurring at the venue. This suggests that the lessee would be the prime contractor if none is designated. However, each situation is unique and must be evaluated independently. Where the public entity maintains the greatest degree of control over and knowledge of the operations of a multiple employer workplace on its land it will be responsible for the obligations under section 118, if no prime contractor is designated.

Employer obligations

In addition to the owner obligation, a public entity will have obligations as an employer. In addition to the obligations the public entity will have to its own workers, it will have obligations under [section 115\(1\)\(a\)\(ii\)](#) where workers of other employers are present at a workplace that the entity's work is being carried out. In most situations where the public entity is merely providing access, rather than commissioning work or obtaining services, this will not be the case, as the entity's "work" is simply to administer the lands. However, this will depend on the nature of the public entity's involvement in the work, and the extent to which the workplace should be characterized as one where the entity's work is being carried out.

A public entity may also have additional obligations of an employer where it administers public lands. A number of sections of the *Act* and *Regulation* place obligations on "an" employer. The result is that employers other than the direct employer of the worker at the relevant workplace may have those obligations. In such situations, the obligation may arise where it is reasonable to have expected the public entity to have fulfilled that obligation, depending on whether there is a nexus between the obligation and the elements of the workplace under the control of the public entity. For example, [section 173](#) of the *Act* states that an employer must undertake an investigation of an accident that involved a major structural failure or collapse of a building. Even though the public entity may not be the employer of the workers present at the workplace, where that accident involved public owned infrastructure, this obligation will require the public entity to investigate the collapse of a public owned building.

G-D3-124 Responsibilities of the persons/parties in a workplace

Issued March 28, 2002; Revised June 6, 2007

Regulatory excerpt

Section 124 of the *Workers Compensation Act* ("*Act*") states:

If

- (a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and
 - (b) one of the persons subject to the obligation complies with the applicable provision,
- the other persons subject to the obligation are relieved of that obligation only during the time when
- (c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
 - (d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

Policy Item D3-123/124-1 provides:

All parties with duties under the *Act* may be able to affect the health and safety of persons at or near a workplace. Any and all of these parties may be cited for violations of their statutory duties regardless of whether or not another person has fulfilled his or her statutory responsibilities.

Under section 124 of the *Act*, one person may be relieved of his or her obligations under Part 3 of the *Act* or the regulations if:

- Another person who is subject to the same obligations complies with those obligations
- Simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense
- The health and safety of persons at the workplace would not be put at risk by the compliance of only one person

The first requirement of this Limited Exemption means that persons who have the same duty under the *Act* or regulations may agree amongst themselves as to who should perform it. The Board is neither bound by any agreements of this nature, nor by whether the terms of the agreement are complied with. The Board's primary concern is that the duty in question is fulfilled.

Further, even if the first requirement is satisfied, the Limited Exemption will only apply if the Board determines that the second and third requirements set out in section 124 are also satisfied. The third requirement of the Limited Exemption will not be met if performance of the occupational health and safety duty by one person leaves health and safety risks that would be eliminated by others performing their duty.

Purpose of guideline

The purpose of this guideline is to provide examples of the application of section 124 of the *Act*.

Background

At any workplace, more than one workplace party may be responsible for particular workplace conditions or hazards. Each party must fulfill the obligations posed on him or her through the *Act* and *OHS Regulation* ("*Regulation*"). Where those obligations have not been fulfilled, WorkSafeBC prevention officers may issue orders and, where appropriate, recommend administrative penalties or prosecutions.

In most circumstances, workplace parties may not contract out or delegate their responsibilities, or otherwise rely on others to discharge their responsibilities. However, section 124 of the *Act* provides for a Limited Exemption to a workplace party's compliance obligations. This exemption, further described in Policy Item [D3-123/124-1: General Duties - Overlapping Obligations](#) (Policy) above, allows a workplace party to make arrangements with another party to fulfill that party's obligation. It is important to bear in mind that in order for the Limited Exemption to apply, all the elements set out in section 124 and summarized in the bulleted list in the Policy must be met. These are

- Another person who is subject to the same obligations complies with those obligations
- Simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense
- The health and safety of persons at the workplace would not be put at risk by the compliance of only one person

Some examples may assist in understanding the applicability of the Limited Exemption in section 124 of the *Act*.

Example 1:

An employer operates a small wood-processing plant. The employer decides to hire a contractor to supervise a small crew made up of both the contractor's and the employer's workers to clean up wood waste around machines and conveyors on a Saturday when the plant is not operating. The employer tells the contractor he is responsible for making sure everything is done safely, ensures the contractor understands lockout procedures, and provides the contractor with access to the controls for the machinery. The contractor ensures the machinery is adequately locked out, as required by [Part 10](#) of the *Regulation*, and performs the required maintenance safely.

In this example, the employer fulfilled its obligation for the Saturday job. The elements of section 124 are met, as both the employer and the contractor had an obligation to ensure that the machinery was locked out, but having the employer comply with the lockout provisions as well as the contractor would have resulted in unnecessary duplication. However, had the contracting employer not fulfilled the lockout requirements, both the employer and the contracting employer would have been in violation of Part 10.

Example 2:

An employer operates a manufacturing plant and requires an air compressor. The employer contacts a supplier (an equipment dealer/rental firm) and orders a used compressor. The only compressor the supplier had was missing the guard around the cooling fan and its drive belts. The supplier shipped the unit to the employer with the guard missing. The employer noticed the guard was missing, and before putting the compressor into service in the plant, ensured that a replacement guard that met the requirements of [Part 12](#) of the *Regulation* was made in its machine shop from a guard from another piece of equipment that was not in service.

While the guarding on the equipment was ultimately compliant, the supplier did not meet its obligations under [section 120](#) of the *Act* to ensure its equipment was safe or provide directions regarding the safe use of the equipment. Section 124 does not apply, as the employer and the supplier did not have the same obligation. Further, the Policy states that: "The third requirement of the Limited Exemption will not be met if performance of the occupational health and safety duty by one person leaves health and safety risks that would be eliminated by others performing their duty." In this example, the supplier left the risk to be eliminated by the employer performing its duty. Section 124 does not automatically excuse one party from compliance merely because another party has addressed the non-compliant situation and ensured that a hazardous situation was avoided.

Example 3:

An office building is being renovated. The owner has hired a prime contractor to coordinate the various contractors working on the renovation. Each contractor that is an employer for the purposes of the *Act* and *Regulation*, must provide its workers "the information, instruction, training and supervision necessary to ensure the health and safety of those workers" under [section 115](#) of the *Act*. However, some aspects of this obligation may of necessity be fulfilled by the prime contractor at the workplace, as it fulfills its obligation to coordinate the workplace, depending on the prime contractor's system of coordination and the realities of the particular workplace.

The employer will inevitably remain responsible for certain aspects of instruction, training, and supervision (such as how to perform tasks safely and to ensure the workers conform to the prime contractor's system for coordinating the workplace). For those aspects of instruction, training, and supervision that the realities of the workplace suggest would be better performed by the prime contractor, then section 124 permits the employer to be excused from having to undertake those activities. However, if the prime contractor is not performing its obligations effectively, or its system of coordination is such that contact with workers is limited, then the employer is responsible to ensure that all aspects of worker instruction, training, and supervision are adequate to ensure health and safety.

G-D15-214 Prosecutions: Board's practices for providing approval to lay an information in respect of an offence

Issued September 28, 2005; Retired March 18, 2016

Guidelines – Workers Compensation Act, Part 3 Division 1 – Interpretation and Purposes

G-D1-107 [About OHS Guidelines](#)

- G-D1-108-1 [WorkSafeBC jurisdiction over operations involving Aboriginal people](#)
- G-D1-108-2 [BC Safety Authority](#)
- G-D1-108-3 [Labour Program – Employment and Social Development Canada \(ESDC\) jurisdiction](#)
- G-D1-108-4 [Fire safety and prevention](#)
- G-D1-108-5 [Jurisdiction over railways](#)
- G-D1-108-6 [WorkSafeBC jurisdiction over helilogging operations](#)
- G-D1-108-7 [Jurisdiction over mines](#)
- G-D1-108-8 [Jurisdiction over marine operations](#)
- G-D1-108-9 [Jurisdiction over oil and gas operations](#)

Guidelines – Workers Compensation Act, Part 3 Division 3 – General Duties of Employers, Workers and Others

- G-D3-115(1) [The BC Human Rights Code and responsibilities of employers](#)
- G-D3-115(1)-2 [Labour supply firms and client employers – Responsibilities](#)
- G-D3-115(1)-3 [Bullying and harassment](#)
- G-D3-115(2)(f) [Copy of the Act readily available](#)
- G-D3-116 [Orders to workers](#)
- G-D3-119-1 [Owner obligations – Public lands](#)
- G-D3-124 [Responsibilities of the persons/parties in a workplace](#)

Guidelines – Workers Compensation Act, Part 3 Division 4 – Joint Committees and Worker Representatives

- G-D4-126-1 [Variations in joint committee requirements](#)
- G-D4-135-1 [Joint committee course approval](#)

Guidelines – Workers Compensation Act, Part 3 Division 6 – Prohibition Against Discriminatory Action

- G-D6-152 [Worker complaints of discriminatory action and failure to pay wages complaints](#)
- G-D6-153(1) [Determining if a discrimination complaint has been settled](#)

Guidelines – Workers Compensation Act, Part 3 Division 7 – Information and Confidentiality

- G-D7-156(1) [Maintaining the confidentiality of information](#)

Guidelines – Workers Compensation Act, Part 3 Division 9 – Variance Orders

- G-D9-164 [Variance process](#)

Guidelines – Workers Compensation Act, Part 3 Division 10 – Accident Reporting and Investigation

- G-D10-172-1 [WorkSafeBC notification of serious injuries](#)
- G-D10-174-1 [Participation by worker representatives in incident investigations](#)
- G-D10-175-1 [Preliminary incident investigation and interim corrective actions](#)
- G-D10-176-1 [Full incident investigation, report, and follow-up actions](#)

Guidelines – Workers Compensation Act, Part 3 Division 11 – Inspections, Investigations and Inquiries

- G-D11-179-1 [Advance notice of inspections](#)
- G-D11-179-2 [Commencement of an inspection](#)
- G-D11-179-3 [Follow up inspections](#) [Retired]
- G-D11-179-4 [Use of equipment during inspections](#)
- G-D11-179-5 [Incident Investigations](#) [Retired]
- G-D11-179(1) [WorkSafeBC Authority on a Public Road](#)
- G-D11-179(3)(c) [Use of Legal Sample Bags for samples collected by WorkSafeBC officers](#)

Guidelines – Workers Compensation Act, Part 3 Division 12 – Enforcement

- G-D12-186.1-1 [Compliance agreements](#)
- G-D12-187-1 [Worker orders](#) [Withdrawn]
- G-D12-187-2 [Order\(s\) where there is no violation](#)
- G-D12-187-3 [Protection of privacy in inspection reports](#)
- G-D12-188(4)-1 [Extension of implementation period](#)
- G-D12-188(4)-2 [Approvals, acceptances, authorizations, or permissions under the OHS Regulation](#)
- G-D12-190 [Orders to stop using or supplying unsafe equipment, etc.](#)

G-D12-196.1-1 [OHS citations](#)

G-D12-196-2 [OHS penalties – High risk violations](#)

Guidelines – Workers Compensation Act, Part 3 Division 15 – Offences

G-D15-214 [Prosecutions: Board's practices for providing approval to lay an information in respect of an offence](#) [Retired]

G-D9-164 Variance process

Issued April 1, 2006; Editorial Revision November 24, 2006; Revised September 30, 2010

Regulatory excerpt

Sections 164–171 of Division 9 of Part 3 of the ("*Act*") outline the statutory requirements concerning variances to requirements of the *OHS Regulation* ("*Regulation*"). The *Act* can be accessed on the [WorkSafeBC web site](#).

The following four sections have central relevance to the variance process:

- Section 164, which provides WorkSafeBC with the authority to consider applications, the scope of possible variance decisions, and the criteria that must be met in issuing a decision
- Section 166, which deals with information that must be provided by the applicant
- Section 167, which outlines the obligation of the applicant to post notice of a variance application and to provide copies to parties such as the joint occupational health and safety committee or worker representative, and to the union as applicable
- Section 168, which establishes the obligation of WorkSafeBC to consult with persons who may be affected by a requested variance

Excerpts of these provisions are shown below.

Section 164 – Board may authorize variances

(1) On application, the Board may, by order, authorize a variance from a provision of the regulations.

(2) A variance order may be made only if the Board is satisfied that the variance

(a) affords protection for workers equal to or greater than the protection established by the provision being varied, or

(b) has substantially the same purpose and effect as the provision being varied.

(3) A variance order may be made applicable to

(a) a specified workplace, or

(b) a specified work process at all or specified workplaces of a specified employer.

(4) As a limit on the authority under subsection (1), a provision in a regulation of the Lieutenant Governor in Council under this Part may only be varied if this is permitted by regulation of the Lieutenant Governor in Council.

Section 166 – Application for variance

(1) Subject to the regulations and subsection (2), an application for a variance must be made in writing to the Board and must include

(a) a description of the requested variance,

(b) a statement of why the variance is requested, and

(c) information with respect to the benefits and drawbacks in relation to the matters addressed by the regulation that might reasonably be anticipated if the variation is allowed.

(2) In the case of an application by a single worker for a variance order that would apply only to that worker, an application may be made as permitted by the Board.

(3) The applicant must also provide the Board with the technical and any other information required by the Board to deal with the application.

Section 167 – Notice of application

(1) If the variance would apply to an existing workplace, the applicant must

(a) post a copy of the application at the workplace and keep it posted there until the decision on the requested variance is received by the applicant,

(b) provide a copy to the joint committee or worker representative, as applicable, and

(c) if workers at the workplace are represented by a union, send a copy to the union.

(2) If the variance would apply to a workplace that is not yet in existence, immediately after submitting the application for variance, the applicant must publish a notice of the application, including

(a) a description of the requested variance, and

(b) a statement of why the variance is requested,

where it would reasonably be expected to come to the attention of persons who may be affected by the decision on the requested variance.

Section 168 – Consultation on application

(1) After receiving an application for variance, the Board may give notice of the application and conduct consultations respecting that application as the Board considers advisable.

(2) Before making a decision on an application, the Board must provide an opportunity for persons who may be affected by the requested variance to submit to the Board information respecting their position on the requested variance.

(3) A union representing workers who may be affected by the requested variance is considered a person who may be affected for the purposes of subsection (2).

Purpose of guideline

This guideline provides information on how to submit an application for a variance and the information needed in the submission. It describes the process followed by WorkSafeBC in reviewing an application and issuing a decision.

The guideline also addresses matters such as the obligation of the applicant to post information and advise persons who may be affected by the variance, and the obligation of WorkSafeBC to consult with those affected persons.

Submitting an application

A variance application must, as required by section 166 of the *Act*, be in writing and signed. It should be directed to: Prevention Practices and Quality Department, WorkSafeBC, PO Box 5350 Stn Terminal, Vancouver BC V6B 5L5.

Information needed in a submission

In assembling the information for a submission the applicant should be aware that any variance issued by WorkSafeBC must meet at least one of the criteria for equivalent protection for workers, as established by section 164(2) of the *Act*.

Section 166 of the *Act* outlines specific types of information to be included in the submission: a description of the variance, why it is requested, and information on benefits and drawbacks. Information on the reason(s) for the request is expected to include comments on the practicability of complying with the unvaried requirement. "Practicability" is defined in Part 1 of the *Regulation* as "that which is reasonably capable of being done."

Also, section 166(3) of the *Act* requires that the applicant provide technical and any "other information" needed by WorkSafeBC to deal with the application.

"Other information," as established by [Policy D9-166-1](#), will generally include the following:

- The location of the workplace
- The type and nature of the work process
- The regulation(s) proposed for modification
- A description of the proposed procedure or practice that would provide an equivalent level of health and safety to that provided by the regulation(s)
- How workers will be trained and supervised
- Confirmation that, as per section 167 of the *Act*
 - The variance application has been posted at the workplace, and a copy has been provided to the joint occupational health and safety (OHS) committee or the worker health and safety representative and to the union, if the workers at the workplace are represented by a union, or
 - If the workplace is not yet in existence, notice has been published where it would reasonably be expected to come to the attention of persons who may be affected

Review of an application

The technical review of an application is conducted at WorkSafeBC by a variance coordinator who specializes in the matters involved. The coordinator may request additional technical information from the applicant as per section 166(3) of the *Act*. The coordinator will also draw together any further required information, for example, from the WorkSafeBC prevention officer who is familiar with the applicant's operation.

Consultation on an application

Section 168 of the *Act* establishes the obligation of WorkSafeBC to consult with persons who may be affected by a variance decision. The application is reviewed to determine whether there is information that identifies the affected persons. In a workplace these parties will typically be the joint OHS committee or worker health and safety representative, as applicable, and as per section 168(2), any union representing affected workers.

In some circumstances there may be other affected persons. For example, on a multi-employer worksite, an affected person may be a subcontractor whose workers work near the location or process to which the variance would apply.

If the identity of affected parties is not clear from the application, then WorkSafeBC will contact the applicant for that information. In terms of timeliness of the process, it is in the applicant's interest to ensure that affected persons are identified in the application, and further, to include information from those parties that provides their position on the requested variance.

Issuance of a decision

The criteria for accepting or rejecting an application for a variance are established by section 164(2) of the *Act*. WorkSafeBC must be satisfied that a variance provides protection for workers equal to or greater than the protection established by the provision being varied, or that it has substantially the same purpose and effect as that provision.

The decision will be issued to the applicant in writing. Copies will also be sent to any affected parties who submitted information in the consultation process.

Requirement to post the decision

The applicant for the variance must post a copy of the decision at the workplace. If the variance is accepted the applicant must keep the decision posted throughout the time the variance is in effect. If the application is denied the decision must be posted for 7 days or the period required by the order, whichever is longer.

Previous advice regarding exceptions to OHS regulatory requirements

Please note that any directives or advice relating to interpretations of the *Regulation* providing for exceptions to any regulatory requirements that may have been issued by the Board prior to the enactment of [Part 3](#) of the *Act* in 1999, whether through letters or other documentation, are of **NO FORCE AND EFFECT**.

All requirements of the current *Regulation* must be complied with unless an alternative approach has specifically been granted to a person who has made an application under Division 9 of the *Act*, in accordance with the variance process set out therein. Anyone wishing to rely on an alternative approach to a requirement under the *Regulation* must follow the variance process outlined above.

Prevention officers will not accept any documentation relating to previous advice or interpretations relating to variances to regulatory requirements. Only those variances that have been documented and provided to persons under the *Act* will be considered.

G-D10-172-1 WorkSafeBC notification of serious injuries

Issued February 12, 2008; Editorial Revision February 11, 2009; Revised consequential to January 1, 2016 Amendments to the Act

Regulatory excerpt

Section 172 of the *Workers Compensation Act* ("*Act*") states:

172(1) An employer must immediately notify the Board of the occurrence of any accident that

- (a) resulted in serious injury to or the death of a worker,
- (b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,
- (c) involved the major release of a hazardous substance,
 - (c.1) involved a fire or explosion that had a potential for causing serious injury to a worker, or
- (d) was an incident required by regulation to be reported.

Purpose of guideline

The purpose of this guideline is to set out what WorkSafeBC considers to be a "serious injury," which an employer would be required to report to WorkSafeBC.

What employers must report

Section 172 provides that employers must immediately report

- Any incident that kills or seriously injures a worker
- A major leak or release of a dangerous substance
- A major structural failure or collapse of a structure, equipment, construction support system, or excavation
- A fire or explosion that had a potential for causing serious injury to a worker
- Any blasting accident that results in injury, or unusual event involving explosives (required by regulation)

- A diving incident that causes death, injury, or decompression sickness requiring treatment (required by regulation)

Such incidents must also be investigated by the employer under [section 173](#).

"Serious Injury"

Section 172 provides that employers must notify WorkSafeBC of an accident that resulted in the "serious injury" or death of a worker. The term "serious injury" is not defined in the *Act*.

A serious injury is any injury that can reasonably be expected at the time of the incident to endanger life or cause permanent injury. Serious injuries include both traumatic injuries that are life threatening or that result in a loss of consciousness, and incidents such as chemical exposures, heat stress, and cold stress which are likely to result in a life threatening condition or cause permanent injury or significant physical impairment.

Traumatic injuries that should be considered "serious injuries" include

- Major fractures or crush injuries, such as
 - A fracture of the skull, spine, or pelvis
 - Multiple, open or compound fractures, or fractures to major bones such as the humerus, fibula or tibia, or radius or ulna
 - Crushing injuries to the trunk, head or neck, or multiple crush injuries
- An amputation, at the time of the accident, of an arm or leg or amputation of a major part of a hand or foot
- Penetrating injuries to eye, head, neck, chest, abdomen, or groin
- An accident that caused significant respiratory compromise, or punctured lung
- Circulatory shock (i.e., internal hemorrhage) or injury to any internal organ
- Lacerations that cause severe hemorrhages
- All burns that meet the rapid transport criteria of the Occupational First Aid Training Manual, including
 - Third degree burns to more than 2% of the body surface
 - Third degree burns to the face, head, or neck
 - Burns of any degree with complications
- An asphyxiation or poisoning resulting in a partial or total loss of physical control (i.e., loss of consciousness of a worker in a confined space) or a respiratory rate of fewer than 10 breaths per minute or severe dyspnea (difficult or laboured breathing)
- Decompression illness, or lung over-pressurization during or after a dive or any incident of near drowning
- Traumatic injury which is likely to result in a loss of
 - Sight
 - Hearing
 - Touch

Injuries that require a critical intervention such as CPR, artificial ventilation or control of hemorrhaging or treatment beyond First Aid, such as the intervention of Emergency Health Services personnel (e.g. transportation to further medical attention), a physician and subsequent surgery, or admittance to an intensive care unit should also be considered "serious injuries."

"Major Release of a Hazardous Substance"

Section 172 provides that employers must notify WorkSafeBC of any accident that involved the major release of a hazardous substance. The term "major release of a hazardous substance" is explained in [Policy Item D10-172-1](#).

A major release does not only mean a considerable quantity, or the peculiar nature of the release, such as a gas or volatile liquid, but, more importantly, the seriousness of the risk to the health of workers. Factors that determine the seriousness of the risk include the degree of preparedness of the employer to respond to the release, the necessity of working in close proximity to the release, the atmospheric conditions at the time of the release and the nature of the substance.

"Immediately"

Employers are required to report serious injuries and fatalities to WorkSafeBC immediately. This reporting should occur as part of the employers' response at the time of the incident. In responding to the incident, employers should ensure any workplace conditions that present an immediate hazard to other workers are addressed, ensure first aid and medical treatment for the worker, and then notify WorkSafeBC of the incident.

The purpose of the reporting requirement in section 172 is to ensure that a WorkSafeBC prevention officer and/or an investigations officer is able to respond to the incident, as soon as possible, in order to:

- Attend at the scene to conduct an investigation of the incident and ensure the integrity of the scene
- Offer availability of counseling services, as appropriate
- Undertake an inspection of the workplace to help ensure that workers are protected before work is resumed
- Help ensure that any post-incident response or cleanup is performed in a safe manner
- Provide a referral to compensation services

The requirement to immediately report a serious injury or fatality is separate from the requirement to report injuries for claims purposes. **Filing a Form 7 will not satisfy the obligation to immediately report a serious injury or fatality.**

Failure to immediately notify WorkSafeBC of a serious injury or fatality will be considered a breach of section 172 of the *Act*, and may result in an administrative penalty.

To report a serious incident or fatality, phone 1 888 621-SAFE (7233) (during business hours) or toll-free 1 866 WCB-HELP (922-4357) (after hours).

G-D10-174-1 Participation by worker representatives in incident investigations

Issued July 27, 2016; Revised consequential to April 3, 2017 Regulatory Amendment

Regulatory excerpt

Section 174 of the *Workers Compensation Act* ("Act") states:

(1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.

(1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

(a) viewing the scene of the incident with the persons carrying out the investigation;

(b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;

(c) other activities, as prescribed by the Board.

(2) Repealed.

(3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the incident and any other persons whose presence might be necessary for a proper investigation of the incident.

(4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

Section 3.28 of the *OHS Regulation* ("Regulation") states:

For the purposes of section 174(1.1)(c) of the *Workers Compensation Act*, the following activities are prescribed:

(a) assisting the persons carrying out the investigation with gathering information relating to the investigation;

(b) assisting the persons carrying out the investigation with analyzing the information gathered during the investigation;

(c) assisting the persons carrying out the investigation with identifying any corrective actions necessary to prevent recurrence of similar incidents.

Purpose of guideline

The purpose of this guideline is to clarify the role of worker representatives in employer incident investigations, and to explain how to determine whether a worker representative is "reasonably available" to participate.

Worker representative participation

Section 173 of the *Act* specifies which incidents must be investigated by an employer, and requires that both a preliminary investigation (section 175) and a full investigation (section 176) be conducted. Section 174 of the *Act* specifies that these investigations must be carried out by persons knowledgeable about the type of work involved. It also requires the participation of the employer or employer representative, and a worker representative, if they are reasonably available.

Pursuant to section 174(1.1) of the *Act* and section 3.28 of the *Regulation*, the participation of a worker representative includes, but is not limited to, the following:

- Viewing the scene of the incident with the persons carrying out the investigation
- Providing advice respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation
- Assisting the persons carrying out the investigation with
 - Gathering information related to the investigation
 - Analyzing the information gathered during the investigation
 - Identifying any corrective actions necessary to prevent recurrence of similar incidents

Incident investigations involve managers and workers working together as both bring different experience, understanding, and perspective to the process. The participation of worker representatives in incident investigations plays an important part in maintaining healthy and safe workplaces. Employers must ensure that if worker representatives are reasonably available they participate in the incident investigation. This may include the following:

- Delaying the investigation until a worker representative is available, provided the delay will not compromise the quality of the investigation, and the timelines prescribed by sections 175 and 176 of the *Act* can be met
- Facilitating the participation of a worker representative by telephone, video conferencing, or other means

"Reasonably available"

Whether a worker representative is reasonably available to participate in an employer incident investigation is a question that needs to be determined on a case-by-case basis after taking into account all relevant factors. Some of these considerations include the following:

- The distance to be travelled by the worker representatives from their current location to the scene of the incident: For example, the incident may have occurred at a remote location or at a site with limited access, or the worker representative may be conducting work at a distant location.
- Workplace practices around after-hours work: Calling a worker representative in to participate in an incident investigation after hours may be easily accommodated in some workplaces. However, this may not be the case in workplaces with strict shift schedules.
- The type of investigation to be conducted (preliminary or full): Given the timelines prescribed by sections 175 and 176 of the *Act* (48 hours and 30 days, respectively), incident investigations cannot be held up unreasonably. If no worker representative is available until after the expiry of the 48-hour deadline, then the preliminary investigation should proceed without participation from a worker representative. However, if a worker representative is not available at the start of the full investigation, the person conducting it should do what is necessary immediately and then facilitate participation when the worker representative becomes available.
- The shift schedule of worker representatives: As outlined above, a preliminary investigation must be completed within 48 hours of the occurrence of an incident. If a worker representative will be on shift within a timeframe that allows for both participation and the timely completion of that preliminary investigation, then the employer will facilitate participation when the worker returns to work. On the other hand, if no worker representative will be on shift within that timeframe, the employer is expected to attempt to contact all worker representatives to ascertain if they are available.

In workplaces where there is a joint health and safety committee, the committee should consider establishing rules of procedure around contacting worker representatives to participate in incident investigations. If no worker representative is reasonably available, another worker who was designated as an alternate by a worker representative may participate in the investigation (refer to section 140 of the *Act*).

Concerns about participation

There may be situations where a worker representative is not reasonably available to participate in an employer incident investigation. However, these situations will be the exception rather than the rule. If there are concerns that worker representatives are not adequately participating in incident investigations or the investigation report appears incomplete and no corrective action has been taken, these issues should be raised at a joint health and safety committee meeting. Should the issues remain unresolved, a WorkSafeBC prevention officer can be requested to investigate and determine the employer's compliance with this obligation.

In workplaces where there is no joint health and safety committee, concerns about worker participation, incomplete incident investigation reports, or insufficient corrective action can be raised with a prevention officer.

G-D10-175-1 Preliminary incident investigation and interim corrective actions

Issued January 1, 2016; ; Editorial Revision consequential to April 3, 2017 Regulatory Amendment

Regulatory excerpts

Section 175 of the *Workers Compensation Act* ("*Act*") states:

- (1) An employer must, immediately after the occurrence of an incident described in section 173, undertake a preliminary investigation to, as far as possible,
 - (a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
 - (b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section 176, the recurrence of similar incidents.
- (2) The employer must ensure that a report of the preliminary investigation is
 - (a) prepared in accordance with the policies of the board of directors,
 - (b) completed within 48 hours of the occurrence of the incident
 - (c) provided to the Board on request of the Board, and
 - (d) as soon as practicable after the report is completed, either
 - (i) provided to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be

necessary under subsection (1)(b).

(4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

[Prevention Policy D10-175-1](#) sets out the elements of a preliminary investigation report, and the interim corrective action report. The policy also sets out the circumstances in which WorkSafeBC may consider that an employer is not able to identify all of the unsafe conditions, acts or procedures that significantly contributed to the incident.

Purpose of guideline

The purpose of this guideline is to provide guidance to employers around preliminary incident investigations, interim corrective actions and associated reports.

Purpose of the preliminary incident investigation

The purpose of the preliminary incident investigation is to

1. Identify any unsafe conditions, acts, or procedures that significantly contributed to the incident; and
2. Determine corrective action to be implemented to prevent similar incidents from occurring during the course of the full incident investigation.

When is a preliminary incident investigation required?

[Section 173](#) of the *Act* specifies which incidents must be investigated by an employer. These include any incident that involves the following:

- Serious injury to or death to a worker
- Major structural failure or collapse
- Major release of hazardous substances
- Fire or explosion that had a potential for causing serious injury to a worker
- Blasting accident causing personal injury
- Dangerous incident involving explosives, whether or not there is personal injury
- Diving incident, as defined by regulation
- Injury requiring medical treatment
- Minor injury or no injury but had potential for causing serious injury

A serious injury is any injury that can reasonably be expected at the time of the incident to endanger life or cause permanent injury. Serious injuries include both traumatic injuries that are life threatening or that result in a loss of consciousness, and incidents such as chemical exposures, heat stress, and cold stress which are likely to result in a life-threatening condition, cause permanent injury, or significant physical impairment. [Guideline G-D10-172-1 WorkSafeBC notification of serious injuries](#) provides further guidance around the types of injuries that WorkSafeBC consider to be serious.

A major release of a hazardous substance means not only a considerable quantity, or the peculiar nature of the release, such as a gas or volatile liquid, but, more importantly, the seriousness of the risk to the health of workers. Factors which determine the seriousness of the risk include the degree of preparedness of the employer to respond to the release, the necessity of working in close proximity to the release, the atmospheric conditions at the time of the release, and the nature of the substance. [Prevention Policy Item D10-172-1](#) provides additional guidance around what constitutes a major release of a hazardous substance.

The term medical treatment is not defined in the *Act* or *OHS Regulation* ("*Regulation*"). For the purpose of this guideline, medical treatment means services rendered by a medical practitioner. Medical treatment usually involves treatment above and beyond that provided at the workplace by a first aid attendant.

An injury requiring medical treatment includes any injury for which:

- A worker has sought or received medical treatment
- Medical treatment is obviously required
- A worker states an intention to seek medical treatment
- A first aid attendant has referred a worker for medical treatment, even if the worker does not subsequently attend for medical treatment

Incidents that resulted in minor or no injury, but had the potential for causing serious injury, are sometimes called "close calls" or "near misses." These incidents must be investigated, as they are evidence of conditions or practices that, if allowed to continue, may result in serious injury to or the death of a worker.

The following incidents are required by *Regulation* to be investigated, and require a preliminary incident investigation:

- [Section 21.3](#) blasting accident causing personal injury or any other dangerous incident involving explosives, whether or not there is personal injury
- [Section 24.34](#) diving incidents, including:
 - Injury or death
 - Convulsions or serious impairment of consciousness during or after a dive
 - Decompression illness
 - Lung overpressurization
 - Any serious mishap or a series of events which render equipment or procedures suspect, before, during, or after the diving operation.

Investigation participants

The preliminary incident investigation must be carried out by people who are knowledgeable about the work being performed in the area where the incident occurred. The employer, or a representative of the employer, and a worker representative must participate in the investigation if they are reasonably available. Participating in the investigation includes:

- Viewing the scene of the incident with the person who is conducting the preliminary incident investigation.
- Providing advice on the investigation scope and methods.
- Assisting the persons carrying out the investigation with: gathering information relating to the investigation, analyzing the information gathered during the investigation, and identifying any corrective actions necessary to prevent recurrence of similar incidents.

Elements of the preliminary investigation report

The preliminary investigation report must include the full name and job title of all individuals involved in, or having knowledge specific to the incident. This includes any workers injured or killed in the incident, witnesses to the incident, the people who carried out the investigation, and any other people whose presence might be necessary for a proper investigation of the incident.

[Section 174](#) of the *Act* requires that an employer record the names, addresses, and telephone numbers of witnesses and others involved in the investigation. An employer may wish to record this information at the same time as it is conducting an investigation; however, the employer should only record personal information relevant to the investigation on the incident investigation report form.

All investigation reports and corrective action reports must be provided to the joint committee or worker health and safety representative, as applicable. If there is no joint committee or worker health and safety representative, the reports must be posted at the workplace. In preparing the incident investigation report and corrective action report, an employer should be mindful of the personal privacy of individuals involved in the incident.

Reasonable efforts should be made to safeguard personal information that is collected in the course of an investigation, while also ensuring the reports contain all the required information. Examples of personal information may include an individual's home phone number, home address, or details of an individual's pre-existing medical condition.

The preliminary investigation report must include a statement of the sequence of events that preceded the incident. The sequence of events is a list of actions, events, or decisions that happened before and after the incident. The sequence of events is listed in order from earliest to latest, and can help to understand what happened and in what order. The sequence of events should then be analyzed to identify unsafe conditions, acts, or procedures that significantly contributed to the incident.

A preliminary incident investigation report must be completed within 48 hours of the occurrence of the incident, regardless of how far along the employer is in the incident investigation process. An employer should make every effort to identify unsafe conditions, acts, or procedures, recognizing that the circumstances surrounding the incident may limit the employer's ability to immediately access the workplace or speak with the people involved. The employer should be mindful of the goal of preventing similar incidents from occurring during the course of the full incident investigation, and should implement interim corrective actions accordingly.

The preliminary investigation report must include information about corrective actions that have been identified and taken. This includes information about corrective actions identified as required to prevent a recurrence of similar incidents during the course of the full investigation, interim action taken and corrective action that has been identified but not yet taken.

The written report of a dangerous incident involving explosives must contain information specified in [section 21.3\(2\)](#) of the Regulation, including information about the blasters involved and the types of explosives used. These reporting requirements are in addition to the elements of the preliminary incident investigation report. Consult the *Regulation* and Guideline [G21.3 Dangerous incident reports](#) for more information about dangerous blasting incident reports. Reports may be combined as long as all of the requirements have been met and the reports are completed within the required time.

WorkSafeBC incident response and investigations

A WorkSafeBC officer may attend the scene of an incident, make inquiries, or conduct an investigation. WorkSafeBC's decision to conduct an incident investigation does not relieve an employer from the obligation to conduct its own investigation into the cause(s) of the incident.

Reporting incidents for OHS and compensation purposes

Employers are required to report [section 172](#) incidents to WorkSafeBC Prevention Services immediately by phoning 1 888 621-SAFE (7233) (during regular business hours) or toll-free 1 866 WCB-HELP (922-4357) (outside of regular business hours).

The requirement to immediately report section 172 incidents is separate from the requirement to report injuries to WorkSafeBC for the purpose of initiating a claim for compensation. An employer must complete [Employer's Report of Injury or Occupational Disease \(form 7\)](#) to report an

injury to WorkSafeBC Compensation Services (the claims department). Submitting a Form 7 will not satisfy the obligation to immediately report a section 172 incident, nor does it take the place of a preliminary incident investigation report.

Forms and additional resources

WorkSafeBC has developed a variety of incident investigation and corrective action reporting forms. These forms are available as Microsoft Word documents and as dynamic PDF forms, and can be found online at WorkSafeBC.com, under [Forms & Resources](#). Additional employer resources for conducting an incident investigation are available on WorkSafeBC.com, under Health & Safety > Create & manage a healthy & safe workplace > Incident investigations.

G-D10-176-1 Full incident investigation, report, and follow-up actions

Issued January 1, 2016

Regulatory excerpts

Section 176 of the *Workers Compensation Act* ("Act") states:

- (1) An employer must, immediately after completing a preliminary investigation under section 175, undertake a full investigation to, as far as possible,
 - (a) determine the cause or causes of the incident investigated under section 175,
 - (b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
 - (c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.
- (2) The employer must ensure that a report of the full investigation is
 - (a) prepared in accordance with the policies of the board of directors,
 - (b) submitted to the Board within 30 days of the occurrence of the incident, and,
 - (c) within 30 days of the occurrence of the incident, either,
 - (i) provided to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2)(b) or (c).
- (4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(c).
- (5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must
 - (a) prepare a report of the action taken, and
 - (b) either
 - (i) provide the report to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

[Prevention Policy D10-176-1](#) sets out the elements of a full investigation report and corrective action report. The policy also provides examples of situations where WorkSafeBC may consider it appropriate to grant extensions for submitting the full investigation report.

Purpose of guideline

The purpose of this guideline is to provide guidance to employers around full incident investigations, corrective action following the full investigation, and associated reports.

Purpose of a full incident investigation

The purpose of a full incident investigation is to

1. Determine the cause or causes of the incident.
2. Identify any unsafe conditions, acts, or procedures that significantly contributed to the incident.
3. Determine corrective action to be implemented to prevent similar incidents from occurring in the future.

When is a full incident investigation required?

A full investigation is required for any incident requiring a preliminary investigation, and must be undertaken immediately following the preliminary investigation. Within 30 days of the occurrence of the incident, a full investigation report must

- Be submitted to WorkSafeBC
- Be provided to the joint committee or worker health and safety representative, as applicable, or if there is no joint committee or worker health and safety representative, posted at the workplace

WorkSafeBC may extend the period for submitting the full investigation report.

Elements of the full investigation report

The full investigation report must include the employer's full legal name, as well as any trade name or operating name under which the firm is doing business. Full contact information for the firm must also be provided, including the firm's address, phone number, and WorkSafeBC account number.

The full name and job title of all individuals involved in, or having knowledge specific to the incident or accident, must be provided in the full investigation report. This includes the name and job title of any workers injured or killed in the incident, witnesses to the incident, the people who carried out the investigation, and any other people whose presence might be necessary for a proper investigation of the incident.

Depending on the nature of the workplace, there may be other people, such as a prime contractor or property owner, who have duties or responsibilities for workplace safety. The full investigation report must identify these people as well as any other relevant workplace parties who were actively involved in the incident or who are implementing the corrective action following the full investigation.

The full investigation report must include a description of the incident and statement of the sequence of events that preceded the incident, and must identify any unsafe conditions, acts, or procedures that significantly contributed to the incident. These may build on the information provided in the preliminary investigation report, but must include any additional information identified in the course of the full investigation.

The full investigation report must include a determination of the cause(s) of the incident. To establish the cause, analyze the facts and circumstances of the incident to identify the underlying factors that led to the incident. Consider the underlying factors that made the unsafe conditions, acts, or procedures possible.

The full investigation report must include information about corrective actions that have been identified and taken. This includes information about corrective actions identified as required to prevent a recurrence of similar incidents, corrective action that has been taken and corrective action that has been identified but not yet taken.

Corrective action

During the course of the full investigation the employer may identify additional unsafe conditions, acts, or procedures that significantly contributed to the incident. The employer may also decide that different or additional corrective action will be more effective than the interim corrective action originally undertaken.

The full incident investigation report must include the corrective action the employer has identified to prevent the recurrence of similar incidents. This includes corrective actions that have been taken as well as corrective actions that will be taken in the future.

The corrective action report following the full investigation must set out the action taken to prevent the recurrence of similar incidents. If corrective action is expected to take more than 30 days to implement, the interim corrective action report may be updated and revised until such time as all corrective action has been implemented. Examples of corrective action that may take more than 30 days include shipment of new equipment, completion of training course, or construction of updated facilities.

The corrective action report, and all updated reports must, as soon as reasonably possible, be provided to the joint committee or worker health and safety representative, as applicable. If there is no joint committee or worker health and safety representative, the reports must be posted at the workplace.

Combining reports

Depending on the complexity of the incident investigation it may be possible to complete the full investigation report and resulting corrective action within 48 hours. Occasionally, it may be possible to determine the cause or causes of an incident immediately, or shortly after the incident. In these limited cases, where an employer has fulfilled the objectives of a full incident investigation within 48 hours of the incident, the employer may complete and submit a full investigation report within 48 hours. A report of any corrective action taken must also be prepared and distributed as soon as reasonably possible after completing the full investigation report. Details on what to do when the incident investigation and resulting corrective action are completed within 48 hours are set out in Prevention Policy D10-176-1.

Extensions for submitting the full investigation report

The full investigation report must be submitted to WorkSafeBC within 30 days of the incident. The full investigation report must also, within 30 days, be provided to the joint committee or worker health and safety representative, or if there is no joint committee or worker health and safety representative, be posted in the workplace. This time may be extended when WorkSafeBC considers it appropriate to do so.

Where an employer is unable to complete the full investigation for reasons outside of its control, the employer may make a request to WorkSafeBC for an extension. The request for an extension should be made as soon as possible, but no later than 30 days after the incident.

[Policy D10-176-1.4](#) provides examples of situations where WorkSafeBC may consider it appropriate to grant an extension. These include situations where

- Remoteness of the location of the incident creates delays in an employer's investigation
- Technical aspects of the investigation cannot be evaluated within 30 days of the accident or incident
- Third party reports related to the full investigation are pending
- An investigation by WorkSafeBC, the police, or another agency restricts the employer's ability to investigate the cause(s) of the incident
- An employer does not know about an accident or incident that resulted in injury to a worker, because there is a delay in the worker seeking the related medical treatment.

WorkSafeBC does not consider it appropriate to extend the time period for submitting an employer's full investigation report on the sole basis that WorkSafeBC's own investigation report has not yet been disclosed.

Forms and additional resources

WorkSafeBC has developed a variety of incident investigation and corrective action reporting forms. These forms are available as Microsoft Word documents and as dynamic PDF forms, and can be found online at [WorkSafeBC.com](#), under [Forms & Resources](#).

Additional employer resources for conducting an incident investigation are available on [WorkSafeBC.com](#), under Health & Safety > Create & manage a healthy & safe workplace > Incident investigations.

G-D11-179-1 Advance notice of inspections

Issued October 27, 2004; Revised April 27, 2016

Regulatory excerpts

Section 179(1) and (2) of the *Workers Compensation Act* states:

- (1) An officer of the Board may enter a place, including a vehicle, vessel or mobile equipment, and conduct an inspection for the purpose of
 - (a) preventing work related accidents, injuries or illnesses,
 - (b) ascertaining the cause and particulars of a work related accident, injury or illness or of an incident that had the potential to cause a work related accident, injury or illness,
 - (c) investigating a complaint concerning health, safety or occupational environment matters at a workplace, or
 - (d) determining whether there is compliance with this Part, the regulations or an order.
- (2) An inspection may be conducted
 - (a) at a reasonable hour of the day or night, or
 - (b) at any other time if the officer has reasonable grounds for believing that a situation exists that is or may be hazardous to workers.

[Section 181](#) establishes restrictions on access to private residences.

[Section 182\(1\)](#) of the *Act* provides that the employer, or a representative of the employer, and a worker representative, may accompany the officer on an inspection.

[Section 182\(5\)](#) of the *Act* states that "nothing in this section requires the Board or an officer to give advance notice of an inspection."

Purpose of guideline

The purpose of this guideline is to describe situations where a WorkSafeBC prevention officer may determine it is appropriate to give advance notice of an inspection.

Background

An inspection is a visit to a workplace in order to:

- Determine compliance with the *Act*, *OHS Regulation* ("*Regulation*"), or an order
- Observe work practices and conditions at the workplace
- Investigate incidents and complaints around occupational health and safety

A prevention officer may conduct an inspection of any workplace, at any time or place work is being done.

Inspections may be made with no prior notice to any employer, union official, or any other person. Typically inspections are conducted without notice, as the purpose of most inspections is to review conditions at the workplace during the normal course of business. A prevention officer may however give advance notice of an inspection where the prevention officer determines that doing so is necessary for the proper completion of the inspection. The following are examples of situations where a prevention officer may give advance notice of an inspection.

1. Where a union official or other worker makes a specific complaint, and asks to personally show a prevention officer the subject of the complaint. In this situation, a prevention officer may make an appointment with that person for that purpose. Generally, no other person will be informed of the intended inspection; however, another regulatory body may be advised when coordinated involvement is required.
2. Where an employer requests an inspection, it may be arranged by appointment with the employer. In this situation, the worker representative should also be informed.
3. Where a prevention officer regards it as necessary for the proper completion of an inspection that a particular employer representative, worker representative, or other person should be present during the inspection, the prevention officer may arrange an inspection by appointment. In that case, the appointment will be arranged with the appropriate employer representative or worker representative. Advance notice will generally not be given for any subsequent inspections at that workplace.
4. Prevention officers may attend a workplace in response to a complaint of workplace bullying and harassment. Given the sensitivity surrounding allegations of workplace bullying and harassment, the prevention officer may contact the employer before attending the workplace. Advance notice will also ensure the appropriate employer and worker representatives are present.
5. Where the workplace is occupied as a private residence, advance notice may be required as set out in section 181(1)(b) of the *Act*.

An employer may request that a prevention officer consult with them and provide education on matters relating to workplace health and safety. If, during the course of an employer-initiated inspection, violations of the *Act* or *Regulation* are observed, the prevention officer may issue orders or enter into a compliance agreement with the employer.

G-D11-179-2 Commencement of an inspection

Issued October 27, 2004; Editorial Revision November 1, 2017

When starting an inspection, a Board prevention officer will inform the employer and worker representative, if any, as to the nature of the inspection; that is safety or hygiene, occupational environment, medical, or a combination of any two or more. Although an inspection is made for a specific purpose, for example safety, other observed violations will be addressed.

There are special procedures for initiating certain types of inspections, for example, federal WHMIS inspections conducted on behalf of Employment and Social Development Canada (EDSC). The officers doing those inspections will be trained in those procedures.

Where a prevention officer attends at a place of work for a purpose other than an inspection, the employer and the appropriate workers' representative should be notified that the officer has not come for an inspection, although immediate hazards observed by the prevention officer will be addressed.

A prevention officer will only cross a picket line, legally established or otherwise, to carry out Board duties when so directed by a Manager or Director and when the union organizing the line agrees. If the union does not agree, the prevention officer will report the circumstances to the Manager or Director for instructions.

For the right of the employer and workers to have a representative accompany the officer during an inspection, see sections [140](#) and [182](#) of the *Act* and Policy [D4-140-1](#).

G-D11-179-3 Follow up inspections

Guideline withdrawn, no longer required — August 29, 2016

G-D11-179-4 Use of equipment during inspections

Issued October 27, 2004; Revised August 29, 2016

Regulatory excerpt

Section 179 of the *Workers Compensation Act* ("*Act*") reads, in part, as follows:

- (1) An officer of the Board may enter a place, including a vehicle, vessel or mobile equipment, and conduct an inspection for the purpose of
 - (a) preventing work related accidents, injuries or illnesses,
 - (b) ascertaining the cause and particulars of a work related accident, injury or illness or of an incident that had the potential to cause a work related accident, injury or illness,
 - (c) investigating a complaint concerning health, safety or occupational environment matters at a workplace, or
 - (d) determining whether there is compliance with this Part, the regulations or an order.
- (2) An inspection may be conducted

(a) at a reasonable hour of the day or night, or

(b) at any other time if the officer has reasonable grounds for believing that a situation exists that is or may be hazardous to workers.

(3) An officer may do one or more of the following for the purposes of an inspection under this Division:

(a) bring along any equipment or materials required for the inspection and be accompanied and assisted by a person who has special, expert or professional knowledge of a matter relevant to the inspection;

...

(c) take samples and conduct tests of materials, products, tools, equipment, machines, devices or other things being produced, used or found at the place, including tests in which a sample is destroyed;

...

(i) take photographs or recordings of the workplace and activities taking place in the workplace;

...

(4) The authority to conduct an inspection under this Division is not limited by any other provision of this Part or the regulations giving specific authority in relation to the inspection.

...

Purpose of guideline

The purpose of this guideline is to provide guidance around the use of equipment or materials required for an inspection, and to set out the procedure to be followed where an employer has a concern around the safety of a piece of equipment.

Sampling, measurement, recording, and testing equipment

A WorkSafeBC prevention officer may enter a place to conduct an inspection, investigate an incident, or make inquiries. The prevention officer may bring along any equipment or materials required, including sampling, measurement, recording, photographic, and testing equipment.

An inspection may be conducted at a reasonable hour of the day or night, or at any other time an officer has reasonable grounds to believe that a situation exists that is hazardous to workers. Access to a place is generally not dependent on obtaining permission from the property owner or any employer. If however a workplace is also occupied as a private residence, access may be restricted, as set out in [section 181\(1\)\(b\)](#) of the *Act*.

An employer may request that certain equipment not be used or introduced into the workplace where the use of the equipment could endanger workers. For example, the use of certain equipment may be restricted in an atmosphere that is likely to have high concentrations of flammable gases or vapours. Prevention officers should ensure that any equipment or materials used during an inspection, investigation, or inquiry does not endanger workers or others present in the workplace.

Where an employer or other person at the workplace objects to the use of certain equipment on safety grounds, the prevention officer will consider the concern and may gather additional information or expert opinions as required. Depending on the circumstances, the prevention officer may proceed to use the equipment, consult with his or her manager, or take whatever other steps seem appropriate.

G-D11-179-5 Incident Investigations

Issued: September 28, 2005; Revised February 6, 2006; Retired September 21, 2012

G-D11-179(1) WorkSafeBC Authority on a Public Road

Issued August 16, 2000; Editorial Revision October 2004

Section 179(1) of the *Workers Compensation Act* ("Act") states:

(1) An officer of the Board may enter a place, including a vehicle, vessel or mobile equipment, and conduct an inspection for the purpose of

(a) preventing work related accidents, injuries or illnesses,

(b) ascertaining the cause and particulars of a work related accident, injury or illness or of an incident that had the potential to cause a work related accident, injury or illness,

(c) investigating a complaint concerning health, safety or occupational environment matters at a workplace, or

(d) determining whether there is compliance with this Part, the regulations or an order.

Note section 178 of the *Act* sets out that the authority under section 179 to conduct inspections also applies to investigations and inquiries.

Officers of the Board have not traditionally investigated vehicle accidents occurring on highways or other public roads. The practice was in part based on Policy 6.04 of the *Occupational Safety and Health Division Policy and Procedure Manual*, which discusses the investigation of log truck accidents. Policy 6.04 states that the Board's inspection jurisdiction is limited to "landings, dumpsites, sorting yards, wharves, and other areas

involving loading or unloading equipment on an industrial road"; it does not extend to other portions of industrial roads nor to public highways. The policy also states that the Board must be notified of accidents involving injuries on public highways or any portion of an industrial road in all cases, and in some situations the Board may investigate those accidents. This policy is based on a 1982 letter from the Superintendent of Motor Vehicles.

A recent court decision (Regina vs. H.M.C. Services Inc) and changes to the *Workers Compensation Act* have made Policy 6.04 no longer valid. In the referenced court case the Board initiated a prosecution as a result of a vehicle accident occurring on a public highway in 1998. The case involved a road sweeper unit being operated on a public road without any traffic control in place. The employer brought a preliminary challenge to the Board's jurisdiction to investigate an accident on a public highway. The court ruled that the Board has jurisdiction to inspect where a worker or employer is involved.

In addition to the above referenced court decision, the following discussion looks at some other applicable principles.

1. Section 108(1)(b) of the *Workers Compensation Act* states that the Board's prevention jurisdiction extends to "every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government". Section 108(2) of the *Act* excludes certain industries from the Board's jurisdiction under Part 3 of the *Act*, notably mines and railways, but does not generally exclude vehicle accidents or highways. Certain operations on highways, such as inter-provincial trucking, fall within federal jurisdiction and are therefore excluded from the Board's jurisdiction by the Constitution of Canada. Apart from these exceptions, the Board has jurisdiction over all work activities on highways in BC.

2. If the Board has prevention jurisdiction over a particular industry, location, activity or other circumstance, all the relevant prevention provisions of the *Act* and regulations apply. This includes the obligation of the employer to notify the Board of accidents, and the Board's powers to inspect and investigate accidents. It is not possible, for example, for there to be an obligation to notify the Board without there being a right to inspect and investigate.

3. There are several other provincial statutes regulating activities on public roads. These include the *Commercial Transport Act*, the *Forest Practice Code of British Columbia Act*, the *Highway Act*, the *Industrial Transportation Act*, the *Motor Vehicle Act*, and the *Motor Carrier Act*. These *Acts* do not remove the Board's general jurisdiction over activities on highways. Generally speaking, persons on highways must comply with all the relevant provisions of the applicable acts and regulations. If, for example, there are *Motor Vehicle Act* regulations and *Workers Compensation Act* regulations governing their activities, they must follow both.

4. If there is an inconsistency between two *Acts* or their regulations, the one that is most specific to the particular circumstance will govern. This means that generally speaking the special provincial acts relating to highways listed in item 3 above would override any contrary provision in the Board's regulations. This is reflected in the note to section 16.2 of the *OHS Regulation*, which states "Mobile equipment required to meet the requirements of the *Motor Vehicle Act* or the *Industrial Transportation Act* is subject to this Regulation for matters not specifically governed by those Acts and the regulations under them."

5. It is not the role of officers of the Board to enforce other provincial acts and regulations relating to activities on public roads. Inspections and investigations by officers of the Board should generally be confined to matters covered by the *Workers Compensation Act* and regulations. Violations of other acts and regulations would typically be drawn to the attention of the other appropriate jurisdictional authority.

Policy 6.04 was retired effective October 1, 2001.

Officers of the Board should inspect and investigate occurrences on highways on the basis of the same criteria that they apply with respect to other workplaces. This means they should **not** inspect or investigate if:

1. activities of the employer are subject to the specific exceptions in section 108(2) of the *Act* or to federal jurisdiction,
2. the circumstances involve an issue where the governing statutory or regulatory provision is under an act other than the *Workers Compensation Act*, for example, an accident resulting from a violation of the rules of the road laid down under the *Motor Vehicle Act*.

Federal jurisdiction over motor vehicles can generally be determined by looking at or inquiring on three criteria. First is the way the company or operation is chartered or governed. For example, operations of the federal government are in this group, as well as activities of airlines, telecommunication and broadcast (radio, television and cable TV) operations. Second is how the labour relations of the operation are governed. If the Canada Labour Code is the applicable law, it is federal jurisdiction. If the BC Labour Code applies, it is provincial jurisdiction and the WCB likely has inspection and investigation authority. And third, if the company is a transportation operation regularly transferring items to or from locations outside of BC, it is likely a federal jurisdiction. Note the Board generally administers work-related injuries or occupational disease claims from the federal jurisdiction, but this aspect is not an indicator of the Board's jurisdiction to inspect or investigate for prevention purposes at a particular operation or activity in the federal jurisdiction.

An officer of the Board should not exercise the Board's authority to inspect or investigate work activity involving vehicle operation on a public road by flagging down and stopping a moving vehicle, unless such activity is being done jointly with another jurisdiction authorized and equipped to do so. Police or inspectors operating under the authority of the *Motor Vehicle Act* are examples of other jurisdictions that have such authority and the relevant equipment.

If a vehicle is stopped on a public road, an officer of the Board needs to exercise good judgement in determining whether it is reasonably safe to carry out an inspection or investigation at that time. This involves consideration of traffic volume on the road, sight lines for other vehicle operators to see and safely react to the stopped vehicle's location, and if other traffic can safely pass the stopped vehicle. If necessary, the officer should ask the driver to move the vehicle to another location on the road nearby or elsewhere so the inspection may be safely conducted.

If an inspection/investigation is taking place at the scene of a vehicle accident, an officer of the Board should only proceed with onsite activity if the scene is effectively controlled as necessary to make it safe from other road traffic. The officer should also make sure the vehicle(s) involved are not presenting a hazard through instability or the release of a hazardous material.

G-D11-179(3)(c) Use of *Legal Sample Bags* for samples collected by WorkSafeBC officers

Issued April 27, 2000; Editorial Revision October 2004

Section 179 (3) (c) of the *Workers Compensation Act* states that an "officer may ...for the purposes of an inspection under this Division ...take samples and conduct tests of materials, products, tools, equipment, machines, devices or other things being produced, used or found at the place, including tests in which a sample is destroyed;..."

Effective January 1, 2000, the Prevention Division initiated a "*Preservation of Sample*" program for all samples collected by a Board officer for submission to Occupational Disease Prevention Services for laboratory analysis. This is to ensure continuity of evidence and establish that tampering has not occurred during the conveyance of the sample (in a *Legal Sample Bag*) from the officer to Occupational Disease Prevention Services representative. This procedure is consistent with the generally accepted practices followed by other enforcement agencies for the seizure of items related to criminal investigations.

Each sample is to be sealed individually into a *Legal Sample Bag* at the time the sample is taken. This applies to all samples, whether a bulk sample or an air monitoring cassette or similar sample collection device. Bulk samples, such as asbestos-containing material, should be placed in a glass Teflon vial or other sealed enclosure before being placed in the *Legal Sample Bag*. Officers are to use sampling supplies and shipping containers as provided by Occupational Disease Prevention Services. The officer must fill out the required information indicated on the label attached to the legal sample bag. Ensure the bag is effectively sealed using the label fold-over tab. Ship the samples in accordance with the Occupational Disease Prevention Services "Field Officer Sampling Guide" along with a completed Analytical Request form.

Upon receipt of each sample bag at the laboratory, a laboratory representative will check the integrity of the sample bag. If the bag appears to be properly sealed and in good condition, the laboratory representative will indicate this by signing the sample bag label and forwarding the sample for the required analysis. If the sample bag appears to have been improperly sealed, tampered with, or has been opened, the officer who submitted the sample will be contacted by the laboratory representative to discuss why this may have occurred, and to make a decision on analysis and use of the sample results.

Requests for supplies of *Legal Sample Bag* and other sampling equipment and collection devices should be made to the Occupational Disease Prevention Services. For further information on the collection and shipment of samples, refer to the current "Field Officer Sampling Guide" issued by Occupational Disease Prevention Services.

G-D12-186.1-1 Compliance agreements

Issued September 15, 2015; Revised January 1, 2016

Regulatory excerpt

Section 186.1 of the *Workers Compensation Act* ("Act") states:

- (1) The Board may enter into an agreement with an employer if the Board considers that
 - (a) the employer has contravened, or failed to comply with, a provision of this Part or the regulations,
 - (b) the employer has not contravened, or not failed to comply with, the same provision described in paragraph (a) within the 12 month period immediately preceding the contravention or failure as set out in that paragraph,
 - (c) the health or safety of workers, for which the employer has responsibilities under this Act, is not at immediate risk, and
 - (d) entering into the agreement is appropriate in the circumstances.
- (2) An agreement entered into under subsection (1)
 - (a) must be in writing,
 - (b) must describe one or more actions the employer agrees to take, which may include one or more expenditures the employer agrees to make, to remedy the employer's contravention or failure as set out in subsection (1)(a) or the adverse effects that resulted from that contravention or failure,
 - (c) must set out the time frame within which the employer, with respect to each action described under paragraph (b) of this subsection, agrees to
 - (i) take the action, and
 - (ii) report to the Board on the action taken,

(d) must specify the date the agreement ends,

(e) must set out the required manner, form and content of the report referred to in paragraph (c)(ii) of this subsection, and

(f) may, subject to subsection (4), be amended if agreed to by the Board and the employer.

(3) The employer must, as soon as practicable after

(a) entering into an agreement under subsection (1),

(i) provide a copy of the agreement to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post a copy of the agreement at the workplace, and

(b) reporting to the Board under subsection (2) (c) (ii),

(i) provide a copy of the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post a copy of the report at the workplace.

(4) The Board must rescind an agreement entered into under subsection (1) if the Board considers that

(a) the employer has failed to

(i) take any of the actions described under subsection (2) (b) within the time frame set out for the action in subsection (2)(c)(i), or

(ii) report to the Board within the time frame set out in subsection (2)(c)(ii),

(b) the employer intentionally provided false or misleading information in relation to the agreement, or

(c) the health or safety of workers is at immediate risk, based on information received by the Board after the agreement was entered into.

(5) The Board may rescind an agreement entered into under subsection (1) if the Board considers that the agreement no longer adequately protects the health or safety of workers.

(6) A rescission of an agreement under subsection (4) or (5) takes effect immediately despite the employer not having received notice.

(7) As soon as practicable after rescinding an agreement under subsection (4) or (5), the Board must

(a) make reasonable efforts to provide verbal notice of the rescission to the employer, and

(b) send written notice of the rescission to the employer.

(8) Section 221 (4) to (6) does not apply to the sending of written notice under subsection (7)(b).

(9) The employer must, as soon as practicable after receiving written notice under subsection (7)(b),

(a) provide a copy of the written notice to the joint committee or worker health and safety representative, as applicable, or

(b) if there is no joint committee or worker health and safety representative, post a copy of the written notice at the workplace.

Purpose of guideline

The purpose of this guideline is to provide guidance on the issuance of compliance agreements under section 186.1 of the *Act*.

Background

Division 12 of Part 3 of the *Act* sets out WorkSafeBC's authority to use a variety of tools to ensure compliance with the *Act* and *OHS Regulation* ("*Regulation*"). One of those tools is the compliance agreement. Instead of issuing an order, WorkSafeBC may, in certain circumstances, enter into a compliance agreement in which a responsive employer voluntarily agrees to correct occupational health and safety ("OHS") violations within a short specified timeframe, and report back by a particular date. While the violations documented in a compliance agreement form part of the employer's compliance history, the successful completion of compliance agreements may contribute to a positive evaluation of an employer's overall compliance with OHS requirements.

Some examples of violations that may be appropriately addressed by a compliance agreement, depending on the circumstances, include failure to ensure that:

- Safety data sheets are up to date.
- Joint committee meeting reports and member names are posted.
- Minor deficiencies in equipment or a first aid kit are addressed.
- Housekeeping issues are addressed.

When a compliance agreement will not be offered

Not all violations can be appropriately addressed by a compliance agreement. Policy Item D12-186.1-1 ("the Policy") provides that WorkSafeBC will not enter into a compliance agreement with an employer under the following circumstances:

- The violation puts worker health or safety at immediate risk (in other words, it creates a likelihood of injury, illness, or death if not immediately remedied).
- The violation is high risk as defined in [Policy Item D12-196-2](#).
- The employer has violated, within the last 12 months, the same provision of the *Act* or *Regulation* at any location or workplace. For example, if the employer violated the same provision of the *Regulation* on December 2 in its Prince George location and then again on October 12 of the following year in its Vancouver location, no compliance agreement would be offered for the October violation.
- A previous compliance agreement with the employer (under the same or a different provision of the *Act* or *Regulation*) was cancelled in the last three years due to the fault of the employer. When determining whether the cancellation was due to the employer's fault, the WorkSafeBC prevention officer will consider all relevant circumstances, including whether the employer did everything reasonably possible within its control to comply with the agreement.

When a compliance agreement may be appropriate

The compliance agreement is not an automatic first step in the enforcement process. As stated in the Policy, WorkSafeBC enters into compliance agreements at its own discretion, after considering the likelihood of an incident or exposure occurring because of the violation and the likely seriousness of any injury or illness that could result. Also, a compliance agreement can only be considered if WorkSafeBC believes that it is appropriate in the circumstances and the employer will likely fulfill its obligations under the agreement.

Some of the factors that must be considered when deciding whether a compliance agreement is appropriate in the circumstances include the following:

- *The employer's compliance history:* This includes the nature, number, and frequency of past violations.
- *The effectiveness of the employer's overall approach to managing OHS:* The employer must have an effective program for preventing OHS violations. If the employer displays a general lack of commitment to OHS, a compliance agreement will not be the appropriate tool. For example, if during the inspection the prevention officer observes one or more violations that may qualify for a compliance agreement and one high-risk violation, no compliance agreement will be offered to remedy the qualifying violation(s) due to the presence of a high-risk violation.
- *The employer's willingness to enter into the agreement:* Employers enter into compliance agreements voluntarily. An employer may express an unwillingness to enter into a compliance agreement in a number of ways. For example, the employer may inform the prevention officer that they are not willing to do so. Alternatively, the employer may claim an inability to comply because of lack of knowledge, economics (such as saying they cannot afford to comply), impracticality of compliance, or related arguments. If the employer is not willing to enter into the agreement, the prevention officer will issue an order where appropriate.
- *Information provided by workers and union representatives:* This information will be weighed together with information received from the employer, as well as the prevention officer's own observations.

Requirements of compliance agreements

The Policy outlines the requirements of a compliance agreement. It must:

- Be between WorkSafeBC and an employer. Compliance agreements cannot be entered into with workers, independent operators, or other persons.
- Be in writing.
- Be signed by an appropriate employer representative who has the necessary authority to enter into agreements on behalf of the employer. It is the employer's responsibility to identify the appropriate authorized representative. An electronic signature in the form of an emailed response is acceptable provided the identity and job title of the person signing is known, and the electronic signature is attached to, or associated with, the compliance agreement.
- Describe the corrective actions the employer agrees to take.
- Provide the action deadline, report deadline, and the date the agreement ends (refer to "Compliance agreement deadlines" for more information).

In addition, the compliance agreement will describe the following:

- The violation(s) that will be addressed by the compliance agreement.
- Where applicable, interim measures that will be taken until compliance is achieved.
- The manner, format, and content of the compliance agreement report.
- The posting and distribution requirements.

Compliance agreement deadlines

The action deadline is the date by which the employer must complete its corrective action(s). This timeframe will be mutually agreed upon by WorkSafeBC and the employer, and it must be reasonable. Generally, 14 days from the date of the violation will be considered to be reasonable, but the prevention officer will take into account all relevant factors. For example, if one of the corrective actions entails installing new equipment, the time it takes to supply the equipment will be taken into consideration. On the other hand, if a violation can reasonably be corrected within a shorter timeframe (e.g., seven days), the action deadline will be agreed upon accordingly. The corrective actions contained in a compliance agreement are intended to be completed as soon as reasonably possible.

The report deadline is a reasonable, mutually agreed-upon date by which the employer must report back to WorkSafeBC on corrective actions taken. It will typically be seven days following the action deadline. The prevention officer's assessment of whether the agreement has been complied with may include a review of documentation provided by the employer and/or a site inspection; this will be documented in writing.

The agreement end date will typically be the same date as the report deadline.

It is the employer's sole responsibility to meet the action and report deadlines. Failure to meet these deadlines will result in cancellation of the compliance agreement.

Amending a compliance agreement

While the compliance agreement is still in effect (i.e., it has not ended or been cancelled), WorkSafeBC and the employer can agree to an amendment in writing. No signature by the employer's representative is required on an amendment.

As stated in the Policy, when determining whether an amendment is appropriate, the prevention officer will consider a number of factors on a case-by-case basis, including the employer's progress towards compliance.

In many cases, an amendment may simply consist of an extension of the action and/or report deadlines. These deadlines may be extended provided the request for an extension is made prior to the expiry of that particular deadline. WorkSafeBC does not have the discretion to extend a deadline that has been missed. Extensions of time must be reasonable and documented through an amended compliance agreement.

Cancelling a compliance agreement

The Policy provides that a compliance agreement will be cancelled by WorkSafeBC if:

- The agreement no longer adequately protects the health and safety of workers.
- The employer fails to complete its required actions by the action deadline.
- The employer fails to meet its reporting obligations by the report deadline.
- The employer intentionally provides false or misleading information in relation to the agreement.
- The health and safety of workers is at immediate risk based on information received by WorkSafeBC after the agreement was entered into (in other words, there is a likelihood of injury, illness, or death if the situation is not immediately remedied).

While the cancellation takes effect immediately whether or not the employer receives notice, the prevention officer will send written notice to the employer and will also make reasonable efforts to provide verbal notice.

It should be noted that the cancellation of a compliance agreement due to the employer's fault will not result in the cancellation of other compliance agreements that may already be in effect.

Posting requirements

Compliance agreements require employers to post the following documents at the workplace:

- Compliance agreements between the employer and WorkSafeBC.
- Amended compliance agreements between the employer and WorkSafeBC.
- Compliance agreement reports completed by the employer.
- Notices of cancellation of compliance agreements provided by WorkSafeBC.

These documents will be posted for the period of time stipulated in the compliance agreement. The employer must also provide copies of the above documents to the joint health and safety committee or worker health and safety representative, if applicable, and to the union if the compliance agreement relates to a workplace where workers of the employer are represented by a union.

Issuance of orders

As set out in the Policy, if a compliance agreement is entered into, WorkSafeBC will not issue an order for any violation specifically described in it while that specific compliance agreement is in effect. Orders may be issued, however, on violations not described in the agreement even if they are under the same provision of the Act or Regulation. For example, if WorkSafeBC and the employer enter into a compliance agreement to have the tool rests on a particular bench grinder adjusted as required, that does not preclude the issuance of an order regarding the adjustment of the tool rests on any other bench grinders at the workplace, unless the scope of the compliance agreement specifies the other equipment.

If the employer satisfactorily completes the compliance agreement, WorkSafeBC will not retroactively issue an order for violations addressed by the agreement.

When a compliance agreement is cancelled for any of the reasons set out above, WorkSafeBC will, except in exceptional circumstances, issue orders for any of the outstanding violations specifically described in the agreement. An example of an exceptional circumstance may be where an employer has been unable to submit the report by the report deadline due to a power outage.

If a compliance agreement has been cancelled, but the violations are not outstanding (e.g., the report was submitted late but the violations have been corrected), orders will not be issued.

Review of a decision to issue a compliance agreement

A prevention officer's decision to enter into a compliance agreement, rather than issue an order, is a decision to not issue an order. Certain persons (such as, for example, a worker or union) who are affected by a decision may request a review of a decision not to issue an order. However, the

Policy provides that once a compliance agreement has been entered into and is in effect, WorkSafeBC will not issue orders for any violations specifically described in the agreement. Similarly, once a compliance agreement has been satisfactorily completed by an employer, an order cannot be retroactively issued, including by the Review Division.

G-D12-187-1 Worker orders

Withdrawn September 30, 2009 (please refer to [G-D3-116](#) Orders to workers)

G-D12-187-2 Order(s) when there is no violation

Issued June 26, 2003; Editorial Revision June 2005; Revised April 25, 2012

This guideline discusses the authority for and the circumstances where an officer of the Board may issue an order on a person or employer, even though there has been no violation of the *Workers Compensation Act* ("Act") or the regulations.

Section 187 of the *Act* states:

- (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.
- (2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:
 - (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work related accidents, injuries and illnesses;
 - (b) requiring a person to take measures to ensure compliance with this *Act* and the regulations or specifying measures that a person must take in order to ensure compliance with this *Act* and the regulations;
 - (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 161;
 - (d) requiring an employer, at the employer's expense, to obtain test or assessment results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the Board, and to provide that information to the Board;
 - (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
 - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
 - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under this Part;
 - (h) doing anything that is contemplated by this Part to be done by order;
 - (i) doing any other thing that the Board considers necessary for the prevention of work related accidents, injuries and illnesses.
- (3) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another provision of this Part.

All orders made by WorkSafeBC are issued under the authority of section 187, which allows orders for past violations as well as orders to prevent future violations.

Section 188(4) of the *Act* states:

An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

Generally, prevention officers will only issue compliance orders if non-compliance with the *Act* or the regulations is observed or determined during a workplace inspection, inquiry, or investigation. However, there may be occasions when a prevention officer will issue compliance order(s) even when no violation of the *Act* or the regulations has occurred. Policy on the authority of a prevention officer to make orders under sections 187 and 188 of the *Act* are set out in *Prevention Manual* Items [D12-187-1](#) and [D12-188-1](#). OHS Guideline [G-D12-188\(4\)](#) is related to this topic. There is no published restriction or condition that limits the authority of a prevention officer of WorkSafeBC to issue an order only in the circumstances where a violation is occurring or has occurred.

A prevention officer may make an order to an employer even though no violation of the *Act* or regulations has occurred. Such orders will not be issued routinely, but rather will be issued if the officer has evidence that the person subject to the order does not intend to comply in the future. Mere lack of knowledge about the *Act* or regulations is not sufficient to show an intention not to comply. Lack of knowledge (without additional evidence of intention not to comply) can and should be the subject of discussion between the officer and the employer representative or other relevant party, and the officer will document such discussion in the inspection text of an inspection report (IR) or consultation record (CR).

Express or implied intent not to comply

In order for an officer to issue an order where there is no violation of the *Act* or the regulations, the prevention officer must identify (and support with evidence) an express or implied intention not to comply by the person subject to the order. Where a person expressly informs the prevention officer that he or she will not comply with the requirements of the *Act* or the regulations, the prevention officer may issue an order requiring that person to take the appropriate steps to achieve compliance. A person may express an intention not to comply in a number of ways. For example, he or she may claim an inability to comply because of lack of knowledge, economics (such as saying they can't afford to comply), impracticality of compliance, or related arguments. In this case, the officer should explore with the person his or her intention to address any impediments to compliance. If the person is unwilling or unable to address impediments to compliance, the officer may issue an order requiring that person to take the appropriate steps to achieve compliance. However, if the person agrees to address the impediments to compliance he or she has raised, then the prevention officer should not write an order. The prevention officer must record the particulars of this discussion in the inspection text of the IR or on a CR.

There may be occasions when a prevention officer receives information from other individuals at a workplace that a person has no intention of complying with the *Act* or the regulations. In this instance, the prevention officer will need to inquire directly of that person with regard to his or her intention regarding compliance. Statements from third parties, without further investigation, are not sufficient to establish an intention not to comply.

An implied intent not to comply is determined by examining the circumstances that indicate that the person will not comply. Some key elements that should be present are:

1. the person would have to take reasonable steps prior to a work activity in order to comply with the *Act* or the regulations, and
2. the person who is subject to the order has not taken, in a timely fashion, the reasonable steps required in order to comply.

For example, consider the situation if some friable asbestos insulation on a pipe elbow has been hit and damaged, resulting in asbestos contamination of a small area of a plant. The employer has response procedures for such an event, and the crew implements them immediately. The affected area is barricaded and signs are posted to keep workers clear of the danger area. The emergency repair crew is summoned to patch the damaged area and clean up the asbestos debris. A prevention officer inspecting the workplace arrives on the scene just as the supervisor and repair crew start to put on their protective clothing prior to entry into the hazard area. The prevention officer notices one of the crew is not clean-shaven where the respirator will need to seal against the worker's face. Section 8.39(2) of the *OHS Regulation* ("*Regulation*") applies. The prevention officer questions the supervisor and the worker regarding their intentions. Both the supervisor and the worker are aware of the requirements of section 8.39(2). But since this is a "small job" and they do not have any shaving equipment readily available, they want to get on with the repair and cleanup, rather than wait for the worker to shave. The prevention officer intervenes and issues an order that the worker is not to put on a respirator and enter the danger area until he is clean-shaven where the respirator seals with his face. Note at this point there has been no violation of section 8.39(2), so the text of the order does not indicate a violation has occurred. The order could be worded as follows:

A worker (John Doe) assigned to repair and cleanup work in an asbestos contaminated area was about to don a respirator and enter the asbestos contaminated area and was not clean-shaven where the respirator is required to seal with his face. Section 8.39(2) of the *Regulation* applies. A worker required to use a respirator that requires an effective seal with the face for proper functioning must be clean-shaven where the respirator seals with the face. Ensure any worker required to use such a respirator is clean-shaven where the respirator seals with the worker's face before donning the respirator and entering the hazard area.

Orders of this type will normally be issued only when there is a significant risk to workers should the work proceed without compliance. Note the order does not reference section 187 of the *Act*. That section provides the authority for the officer to issue the order. There is no violation of section 187. However, to allow WorkSafeBC to locate and review these types of orders, the prevention officer will include reference to "WCA 187(2)" in the "Regulations Referenced" field for the order, in addition to any other sections of the *Act* or regulations referenced in the order.

Absence of express or implied intent not to comply

In the absence of an express or implied intent not to comply with the *Act* or the regulations, a prevention officer should not write an order. Lack of knowledge by the person is not sufficient for a finding of a lack of intention to comply. If the person displays lack of knowledge, the prevention officer should point out the applicable sections of the *Act* and/or the regulations regarding the work activity. The discussion is to be recorded in the inspection text portion of the IR, or as a CR. This inspection text or CR may be referenced to provide evidence of prior knowledge if any future violations are identified.

There may be some situations where an order is necessary to ensure an employer or other person takes specific steps to address a hazard, even though there is no express or implied intent not to comply with the *Act* or the regulations. In such circumstances, the order may only be issued with the approval of the Vice President, Prevention Services.

G-D12-187-3 Protection of privacy in inspection reports

Issued December 21, 2009

Regulatory excerpts

See Sections [156](#) and [187](#) of the *Workers Compensation Act* ("*Act*").

Purpose of guideline

The purpose of this guideline is to advise about the correct approach to including information in an inspection report ("IR") which is subject to the *Freedom of Information and Protection of Privacy Act* ("*FIPPA*").

Background

FIPPA came into force in October 1993 and applies to all provincial ministries, Crown corporations, agencies, commissions, and boards, including WorkSafeBC. *FIPPA* governs how WorkSafeBC collects, uses, and discloses information. In particular, *FIPPA* compels WorkSafeBC to protect personal information.

Personal information in IRs

The name or other identifying personal information about a worker should not be included in an IR or in any other records that are available to the public upon request to WorkSafeBC (Prevention Records). Personal information is any recorded information about an identifiable individual other than business contact information. The following are some examples of personal information that should not be disclosed in an IR about an identifiable individual:

- Personal contact information (business contact information, including the person's job title, may be disclosed)
- Age
- Date of birth
- Employment, occupational, or educational history
- Medical information
- Details about a worker's injury
- Claim number or any other claim information
- Driver's licence number, social insurance number, or any other similar personal identifier
- Racial or ethnic origin
- Sexual orientation
- Marital status
- Religious beliefs

Examples of how to include personal information when needed

There may be a small number of cases where an IR will need to contain some personal information in order to support the WorkSafeBC prevention officer's decision. Only information that is absolutely necessary to exercise WorkSafeBC's mandate should be included. In those situations, an attempt should be made to present the information in a way that minimizes its personal nature, and if possible, documented in a consultation record ("CR") linked to the IR.

Worker names:

The name of individuals should not be disclosed in an IR. If it is necessary to document the actions of more than one worker in an IR, the prevention officer may refer to them as "worker A," "worker B," etc.

The name of individuals accompanying the prevention officer as worker and employer representatives will be included in an IR in the field provided in FirmFile. The name of the representative should not be included in the IR text if an observed violation relates directly to that individual. If a violation does relate directly to a representative, the IR text will simply refer to "a worker". For example: "a worker was not wearing adequate hearing protection". The IR should not contain any additional personal information about that individual.

Age and employment experience:

In cases where the age or employment experience of a worker is relevant to the orders or observations in an IR, that information should be expressed as a range. For example, if the inspection relates to the orientation and training provided to a "young worker," the IR may state that the individual is under 25 years of age, rather than specifying the worker's exact age.

Where it is relevant to document that a particular worker has extensive experience in a particular occupation, the IR may note that the worker has "more than 20 years of experience," or simply "substantial years of experience." Similarly, in the case of a "new worker," the IR should not specify the exact amount of time the worker has been employed.

Medical information:

There are some situations where medical information will be relevant to the inspection or order. For example, impairment may have been a factor in an incident or affected the safety of a worksite. In that case, it would be appropriate for the IR to state that the worker was impaired. However, the IR should not reference specific toxicology results or what has caused the impairment (drugs, alcohol, medication, etc). Similarly, in cases where a worker is exposed to a contagion or blood-borne pathogen such as Hepatitis C or HIV, the IR should state that the worker was exposed to a "blood-borne pathogen" or an "immune compromising condition." However, the IR should not disclose that the exposure resulted in the worker being diagnosed with a specific medical condition.

Personal opinions:

Workers' personal opinions about their employers or health and safety matters should not be included in an IR. These matters should instead be documented in a CR.

Confidential business information in IRs

In addition to personal information, *FIPPA* also protects information that would reveal trade secrets, or commercial, financial, labour relations, scientific, or technical information. If that information is provided in confidence and disclosing it would harm the business interests of a firm, it should not be included in an IR.

Orders to workers

As stated in OHS Guideline [G-D3-116](#), where an order to worker ("OtW") is issued as the result of a prevention officer's findings on an

inspection, the applicable IR issued to the employer should reference the number of the OtW report. However, the name and other personal information about the worker related to the OtW should not be included in the IR.

G-D12-188(4)-1 Extension of implementation period

Issued May 15, 2002; Revised January 1, 2004; Editorial Revision October 14, 2004

Section 188(4) of the *Workers Compensation Act* ("Act") states:

An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

Under Policy Item [D2-111-1](#) of the *Prevention Manual*, the President and Chief Executive Officer has assigned to the Vice President, Worker and Employer Services Division, the authority to exercise WorkSafeBC's power under section 188(4) to establish restrictions and conditions on the making of orders under Part 3 of the *Act*.

The *Occupational Health and Safety (OHSR)* took effect on April 15, 1998. Many new requirements were enacted under the *OHSR*, and therefore, a period of one year was granted to comply with the new requirements. The initial one-year period was extended by the Vice President for some sections where there were practical difficulties with compliance by the affected industries. A number of these extensions were due to expire on December 31, 2003.

Where the Vice President has issued a directive to continue the extension for one or more sections of the *OHSR*, an OHS Guideline has been issued for the relevant sections.

Conditions and restrictions of directives

The following conditions and restrictions apply to the authority of prevention officers of WorkSafeBC to make orders under those directives in addition to any specific conditions or restrictions named in the guideline:

1. Prevention officers will not issue an order for a violation of a section of the *OHSR* that is the subject of a directive to extend the implementation period.
2. Orders may be issued for violations under other sections of the *OHSR* which may apply – including the other sections noted in some of the directives – and under Part 3 of the *Act* - including the general duties of employers, workers, supervisors, prime contractors, owners, and suppliers.
3. These conditions and restrictions apply to all WorkSafeBC occupational health and safety related officers conducting inspections or investigations as well as to prevention officers and management personnel considering orders and administrative penalties made pursuant to inspections or accident investigations.

G-D12-188(4)-2 Approvals, acceptances, authorizations, or permissions under the *OHS Regulation*

Issued June 1, 2006; Revised January 20, 2012; Revised January 1, 2016; Revised February 1, 2016

Regulatory excerpt

The *Workers Compensation Act* ("Act") states as follows:

82(3) The board of directors may

(c) delegate in writing a power or duty of the board of directors to the president of the Board, or another officer of the Board, and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

84.1(5) The president may delegate in writing any of the president's powers and duties to another officer of the Board or another person and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

188(4) An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

Purpose of guideline

The purpose of this guideline is to describe the assignment of duties and authorities under the *OHS Regulation* ("*Regulation*") to designated positions within the Worker and Employer Services Division ("*WES Division*"), in particular those relating to approvals, acceptances, authorizations, or permissions required in the *Regulation*.

Introduction

There are many provisions of Part 3 of the *Act* and the *Regulation* that provide for actions to be carried out or decisions to be made by WorkSafeBC or by prevention officers of WorkSafeBC. These include specific types of decisions mandated by the *Act*, such as deciding on applications for variances from the *Regulation*, or deciding issues relating to discriminatory action, and also include decisions required in the *Regulation* where something must be approved, accepted, authorized, or permitted by WorkSafeBC.

The Board of Directors has provided the President/Chief Executive Officer (CEO) the authority to exercise the powers and responsibilities described in Part 3 (other than those reserved to the Board of Directors), and has also provided the President/CEO the authority to assign these

powers and responsibilities to other divisions, departments, categories of officers, or individual officers of WorkSafeBC. The President/CEO in turn has delegated a number of these powers and responsibilities to the Senior Vice President, Operations.

The Senior Vice President Operations has in turn issued a Delegation of Authority which sets out who within the WES Division may exercise a number of those authorities. The Delegation of Authority also sets out how decisions to approve, accept, authorize, or permit things on behalf of WorkSafeBC are to be made.

Where this document refers to an "officer," that term means persons appointed as officers whose functions primarily involve conducting inquiries, investigations, or inspections, or making decisions or exercising powers under Part 3 of the *Act*. "Officers" include WES Division vice presidents, directors, assistant directors and managers.

Decisions in Part 3 of the *Act*:

The following table sets out the delegation of decision-making authorities under Part 3 of the *Act*, in accordance with the President's Assignment of Authority and the Senior Vice President Operations' Assignment of Authority:

Section of <i>Act</i>	Decision	By whom
113(2)–(2.3)	Varying or cancelling orders	The person who made the order, or a person authorized to make that type of decision or order
113(5)	Charging of costs	President/CEO or in accordance with existing WorkSafeBC policy
114(1)	Interjurisdictional Agreements	Senior Vice President, Operations
150–153	Discriminatory Actions	General Counsel or delegate
155	Health and Safety Summaries	Vice President, Prevention Services or delegate
156(3)	Disclosure in Public Interest	Senior Vice President, Operations or Senior Vice President, Corporate Services and Human Resources
159, 163, 195	Establishing fees	President/CEO
159, 163, 195	Certification, other than establishing fees	Director, Prevention Practices and Quality or delegate
164–170	Variances	Director, Prevention Practices and Quality or delegate
180	Issuing Officer Credentials	President/CEO
188(4)	Restrictions on an officer's authority to issue orders	Senior Vice President, Operations
191(1.2) and (4)	Confirmation of Stop Work Order and approval of "Stop Operations" Order	Senior Vice President, Operations or Vice President, Prevention Services, or delegate
160, 196, 196.1, 73	Special Rates of Assessment, Administrative Penalties, OHS Citations, and Claims Costs Levies	Any officer
198	Approval of Application for Court Injunctions	President/CEO
214(2)	Approval of laying of information in respect of an offence	President/CEO

The *Act* provides direct authority to conduct inspections, investigations, and enquiries, and to undertake a number of enforcement actions to "officers." Which officers may exercise that authority in specific contexts is subject to management direction in accordance with section 188(4) of the *Act*.

Decisions in the *Regulation*:

In addition to the decisions under the *Act* above, there are numerous provisions in the *Regulation* which require "WorkSafeBC" approve, accept, authorize, or permit something.

The ability to make those decisions rests with WorkSafeBC officers. However, the ability of an officer to make a decision approving, accepting, authorizing, or permitting something is restricted by the Delegation of Authority by the Senior Vice President, Operations, issued under the authority of section 188(4) of the *Act*. This document sets out which officer may make which types of decisions.

There are five basic categories of "officers" who may make decisions with respect to approvals, acceptances, authorizations, or permissions under the *Regulation*. These are:

1. Director of Prevention Practices and Quality or designated alternate
2. Director of Prevention Practices and Quality, who has described compliance in a guideline, and compliance may then be evaluated by a WorkSafeBC prevention officer
3. WES Prevention regional managers and prevention officers
4. Director of the Risk Analysis Unit or designated alternate
5. Director of Prevention Practices and Quality or Manager of Certification Services, or their respective designated alternates

These are further described below.

1. Authority under the *Regulation* that may be exercised only by the Director of Prevention Practices and Quality or their designated alternate

The Director of Prevention Practices and Quality has designated the position of Senior Prevention Advisor, Prevention Practices and Quality, to exercise authority in the areas listed below. The decision will be issued in a decision letter. Workplace parties must request and obtain a decision letter for the following decisions before proceeding:

General	Grant approval, acceptance, authorization, or permission except as otherwise specified in this guideline
4.4(2)	Determine alternative publications, codes, standards, practices, procedures, or rules acceptable to WorkSafeBC except as otherwise specified in this guideline
7.18(2)	Apply Division 3 (or parts thereof) to medical or dental radiation received by a patient, or to natural background radiation
7.22	Exempt an employer from the requirements of monitoring exposure to ionizing radiation (providing and ensuring workers' proper use of personal dosimeters)
9.1	Determine excluded confined spaces (in conjunction with WorkSafeBC exclusions committee)
14.14(h)	Specify other hoisting equipment requiring records of inspection and maintenance
16.13(6)	Exempt mobile equipment from braking requirements and specify any necessary conditions

This authority is in addition to the authority to issue variance decisions under sections [164](#) through [170](#), as described above.

As noted under "General," unless this guideline sets out otherwise, all decisions relating to approvals, acceptances, authorizations, or permissions must be decided in advance by the Director of Prevention Practices and Quality, or designated alternate.

2. Authority under the *Regulation* that may be exercised by the Director of Prevention Practices and Quality, who has described compliance in a guideline

In some situations, the Director of Prevention Practices and Quality will have determined that issuing specific decisions relating to approvals, acceptances, authorizations, or permissions is not required by that department. In such situations, the Director of Prevention Practices and Quality may issue a guideline setting out what is acceptable, and what workplace parties must do in order to be compliant. A prevention officer may then evaluate compliance with the elements set out in the guideline during a routine workplace inspection.

For example, a guideline may specify, "what elements safe work procedures must have in order to be "acceptable to WorkSafeBC." That is, WorkSafeBC accepts the alternative safe work procedures if they meet the criteria described in the guideline, and an employer that implements safe work procedures in accordance with the terms of the guideline may proceed without getting prior permission from WorkSafeBC. However, if criteria other than specified or referenced in a guideline are to be used, a request and submission to the Director of Prevention Practices and Quality will be necessary.

This scenario only relates to where the *Regulation* requires that something be acceptable, approved, or determined (or other similar language) by WorkSafeBC, and does not relate to situations where guidelines are simply issued as guidance documents to assist in evaluating compliance.

The Director of Prevention Practices and Quality has issued guidelines describing acceptable compliance for the following sections:

5.53(4)	Accept occupational hygiene methods for workplace exposure monitoring and assessment (refer to G5.53-4)
6.8(2)	Accept procedures for control, handling, or use of asbestos (refer to G6.8)
6.27	Accept means of asbestos cleanup (refer to G6.27)
6.67	Accept manner of implementation of an effective health protection program in the handling of lead (refer to G6.67)
6.68(b)	Accept manner of maintenance of health monitoring records in the handling of lead (refer to G6.68)
6.79	Accept manner of maintenance of health monitoring records in the handling of pesticides (refer to G6.79)
6.113	Accept a dust suppression system for a rock drill (refer to G6.113)
7.22	Accept a personal dosimeter for monitoring exposure to ionizing radiation (refer to G7.22)
7.29(1)(a)	Accept measures and methods for heat stress assessment (refer to G7.29-2 , G7.29-3 , and G7.29.4)
7.30(2)(a)	Accept heat stress administrative controls (refer to G7.30-2)
7.34(a)	Accept measures and methods for cold stress assessment (refer to G7.34-1)
10.4(6)	Approve effective means of lockout (refer to G10.4(6))
11.2(5)	Where a fall arrest system is not practicable, accept work procedures (refer to G11.2(5)-1)
11.7(c)	Accept manner of design, installation, and use of temporary horizontal lifeline system (refer to G11.7)

- 12.78 Accept manner of testing and inspection of automotive lifts (refer to [G12.78](#))
- 13.29(2.1) Accept work procedures when lower limit travel devices are not practicable (refer to [G13.29](#))
- 14.48(2) Accept standards of design, installation, operation, and maintenance of audio and video communication systems used in a hoisting operation (refer to [G14.48\(2\)](#))
- 16.18(1) Accept standard for operating controls for mobile equipment (refer to [G16.18](#))
- 17.10(1)(a) Accept design and construction of vehicles (refer to [G17.10](#))
- 19.16(2)(a) Accept written safe work procedures if it is not practicable to completely isolate high voltage electrical equipment (refer to [G19.16-1](#))
- 19.27(1)(b) Determine whether re-routing, de-energizing, or guarding is practicable when working close to energized high voltage equipment and conductors (refer to [G19.27](#))
- 19.34(5) Accept insulated tools when tree pruning or falling near energized conductors (refer to [G19.34\(5\)](#))
- 20.13(3.1) Accept control measures re loads on thrust-out crane loading platforms (refer to [G20.13\(3.1\)](#))
- 26.16(4)(b) Accept written safe work procedures re use of logging equipment on steep slopes (refer to [G26.16](#))
- 26.41(1)(b) Accept manner of positioning guylines for a mobile yarder (refer to [G26.41](#))
- 26.65(4)(b) Accept manner of installation of logging truck barrier (refer to [G26.65\(4\)\(b\)](#))

3. Authority under *Regulation* that may be exercised by regional prevention managers and prevention officers

Regional prevention managers and prevention officers may exercise authority for determinations under the following sections. The prevention officer will consult with other subject matter experts as necessary and will consult any guidelines and other WorkSafeBC publications necessary for assistance with the decision-making process. The prevention officer will record the decision in the inspection text of an inspection report.

- 9.22(1) Accept alternative measures under section 9.22(1) for municipal sewage systems (refer to [G9.22-2](#))
- 9.29(2) Prescribe any additional precautions regarding inerting a confined space (refer to [G9.29](#))

This authority is in addition to the authority connected to undertaking inspections and investigations and undertaking enforcement actions under sections [179](#), [187](#), [190](#), and [191](#), and related sections of the *Act*.

In the event that the regional prevention manager or prevention officer is unable to exercise the authority due to extraordinary circumstances (because the issue has province-wide implications or the matter is unusually complex), the Director of Prevention Practices and Quality or designate will exercise the authority.

4. Authority under the *Regulation* that may be exercised only by the Director Risk Analysis Unit, or their designated alternate

- 7.3(2)(a) Determine acceptable alternative standards for noise exposure measurement
- 7.7(1)(c) Determine acceptable alternative types or standards of hearing protection
- 7.8(2) Determine who is authorized to conduct hearing tests

5. Authority under the *Regulation* that may be exercised only by the Director of Prevention Practices and Quality or the Manager of Certification Services, or their respective designated alternates

- General Determine the courses or programs of instruction, education, or training (or training standards) that are acceptable to, or approved by, WorkSafeBC where exercise of such authority is referenced in the *Regulation*
- 3.16(1.1) Determine ambulance service acceptable to WorkSafeBC under [Schedule 3-A](#)
- 14.34.1(a) Determine who is a person acceptable to WorkSafeBC to issue crane operator's certificates
- 21.25(b)(v) Grant prior permission regarding attendance at explosive and detonator containers (refer to [G21.25](#))
- 21.63 Accept an instrument for testing electrical circuits
- 21.69(2),(3) Determine appropriate circumstances and acceptable alternative procedures (alternative warning procedures in blasting)
- 21.85(1) Accept work procedures for placing explosive charges
- 21.85(4) Approve changes to blasting procedures
- 22.73(1) Approve the underground storage of explosives
- 22.75(b) Provide approval for the use of explosives (if not Fume Class 1 rating) in underground workings
- 24.26(3)(b) Provide written authorization to use mixed gases other than nitrox in diving operations

The Manager of Certification Services may communicate acceptable training by including his/her decision in a guideline. For example, guideline [G18.4\(1\)](#) describes the manner of training acceptable to WorkSafeBC for traffic control persons; guideline [G26.21/26.22](#) describes the

acceptable training standard for fallers; and guideline [G24.26](#) describes training courses to achieve nitrox diving training to an acceptable standard. This authority is in addition to the authority to issue decisions under sections [159](#), [163](#), and [195](#) of the *Act*, as described above.

G-D12-190 Orders to stop using or supplying unsafe equipment, etc.

Issued June 26, 2003; Editorial Revision June 2005; Editorial Revision April 9, 2009; Revised March 18, 2016

Regulatory excerpt

Section 190 of the *Workers Compensation Act* ("*Act*") states:

- (1) If the Board has reasonable grounds for believing that a thing that is being used or that may be used by a worker
 - (a) is not in safe operating condition, or
 - (b) does not comply with this Part or the regulations,the Board may order that the thing is not to be used until the order is cancelled by the Board.
- (2) If the Board has reasonable grounds for believing that a supplier is supplying a thing that
 - (a) is not in safe operating condition, or
 - (b) does not comply with this Part or the regulations,the Board may order that supplier to stop supplying the thing until the order is cancelled by the Board.
- (3) Despite section 188(1), an order under this section may only be made in writing.
- (4) The Board may cancel an order under this section only if it is satisfied that the thing in respect of which the order was made is safe and complies with this Part and the regulations.

Purpose of guideline

The purpose of this guideline is to discuss when WorkSafeBC will issue orders under sections 190(1) and 190(2) of the *Act*, referred to as "stop use" and "stop supply" orders respectively.

Application

Stop use and stop supply orders each apply to a "thing" that is either unsafe or does not comply with the *Act* or the *OHS Regulation* ("*Regulation*"). This includes tools, equipment, machinery, personal protective equipment, rigging, mobile equipment, or any other physical item that is used in a workplace.

Stop use orders

Stop use orders under section 190(1) may be written where an item that is being used in a workplace is not in safe operating condition or is not in compliance with the *Act* or the *Regulation*.

In many situations, non-compliance involving an item in the workplace will be addressed through compliance orders written under an applicable section of the *Regulation*. For example, where a required guardrail, while providing some protection, is only 100 cm above the workspace rather than the required minimum of 102 cm, a compliance order under section 4.55 of the *Regulation* may be sufficient to address the safety concern. In that scenario, a stop use order would be unnecessary.

In other situations, a compliance order alone will be insufficient to address the safety issue posed by the condition or non-compliance of the item. This would be the case where the continued use of the item would present a high risk of serious injury, illness, or death to a worker, meaning a compliance order alone would be insufficient to ensure that workers are not exposed to such risks. For example, equipment such as a table saw lacking a point of operation guard would pose a high risk of serious injury, illness, or death if used. In this situation, a stop use order may be necessary to ensure that the equipment is removed from use until a guard is installed.

For further information on when a violation is high risk, refer to Policy Item [D12-196-2](#) RE: High Risk Violations.

A stop use order may also be appropriate where past efforts to correct the non-compliance or unsafe condition have proven ineffective. This may arise where an employer has received repeated compliance orders for a particular item or type of item, and the employer's past efforts to correct the non-compliance have proven temporary or ineffective. In that case, a stop use order may be appropriate to ensure the particular item is removed from use until a more permanent solution is implemented.

A stop use order may have the effect of shutting down work at a worksite. Where this is the case, a WorkSafeBC prevention officer will consider issuing the order as a stop work order under section 191 rather than a stop use order under section 190.

Stop supply orders

Like stop use orders an order to stop supply under section 190(2) may be written where a particular item that is not in safe operating condition or is not in compliance with the *Act* or the *Regulation*. Unlike stop use orders, a stop supply order can apply to things that are not yet in the

possession of the end-user. This includes items that are currently being manufactured, distributed, leased, installed, or erected.

Stop supply orders prevent unsafe and non-conforming items from being introduced into workplaces. Accordingly, stop supply orders may be issued to a supplier even where safety concerns associated with the particular item do not amount to a high risk of serious injury. This ensures that items that will cause ongoing safety and compliance issues are not permitted to be supplied to workplaces.

Cancelling stop use/supply orders

Unlike a stop work order issued under section 191, stop use and stop supply orders do not require a written confirmation to prevent expiry after 72 hours. Instead, stop use and stop supply orders remain in effect until cancelled by WorkSafeBC in accordance with section 190(4).

A stop use or stop supply order will only be cancelled if WorkSafeBC is satisfied that the item that was subject to the order is safe and complies with the *Act* and the *Regulation*. The decision to cancel such an order must be made by a prevention officer once the prevention officer has determined these conditions have been met.

G-D12-196.1-1 OHS Citations

Issued February 1, 2016

Regulatory excerpt

Section 196.1 of the *Workers Compensation Act* ("*Act*") states:

196.1 Administrative penalties — lower maximum amount

- (1) The Board may, by order, impose on an employer an administrative penalty prescribed by a regulation of the Board, which penalty must not be more than \$1 000, if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of this Part, or the regulations, as specified by a regulation of the Board.
- (2) If an employer requests under section 96.2 a review of a decision made under subsection (1) of this section, the employer must
 - (a) post a copy of the request for review at the workplace to which the administrative penalty relates,
 - (b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and
 - (c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.
- (3) An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (4) If an administrative penalty under this section is reduced or cancelled by a Board decision, or on a review requested under section 96.2, the Board must refund the required amount to the employer out of the accident fund.

The *Lower Maximum Administrative Penalties Regulation* ("*OHS Citation Regulation*") states:

1 Definition

In this regulation, "**Act**" means the *Workers Compensation Act*.

2 Administrative penalties

(1) In this section:

"*comply*" means comply with a provision of Part 3 of the Act, or the regulations, as specified in section 3 of this regulation;

"*non-compliance date*" means the date the Board, under section 196.1(1) of the Act, is satisfied an employer has failed to comply;

"*penalty date*" means the date of the order by which the Board imposes an administrative penalty under section 196.1(1) of the Act.

(2) The following administrative penalties are prescribed for the purposes of section 196.1(1) of the Act:

- (a) a penalty that is half of the maximum amount allowable for an administrative penalty under section 196.1(1) of the Act, if, under that section, the Board is satisfied that an employer has failed to comply;
- (b) a penalty that is the maximum amount allowable for an administrative penalty under section 196.1(1) of the Act, if, respecting an employer,
 - (i) the Board is satisfied the employer has failed to comply,
 - (ii) the non-compliance date of the failure to comply referred to in subparagraph (i) is within 3 years after the non-compliance date of a previous failure to comply by the employer, and

(iii) the penalty date of the previous failure to comply referred to in subparagraph (ii) is earlier than the penalty date of the failure to comply referred to in subparagraph (i).

3 Specified provisions

The following provisions are specified for the purposes of section 196.1(1) of the Act:

- (a) section 115(1)(b) of the Act, as it pertains to orders;
- (b) section 194(2), (3) or (4) of the Act if
 - (i) as set out in subsection (1) of that section, an order includes a requirement for compliance reports, and
 - (ii) in the case of subsection (4)(d) of that section, the Board requires the employer to send a copy of the compliance reports to the Board;
- (c) section 2.4 of the Occupational Health and Safety Regulation, as it pertains to orders.

Section 115(1)(b) of the *Act* states:

- (1) Every employer must
 - (b) comply with this Part, the regulations and any applicable orders.

Section 194 of the *Act* states:

- (1) An order may include a requirement for compliance reports in accordance with this section.
- (2) The employer or other person directed by an order under subsection (1) must prepare a compliance report that specifies
 - (a) what has been done to comply with the order, and
 - (b) if compliance has not been achieved at the time of the report, a plan of what will be done to comply and when compliance will be achieved.
- (3) If a compliance report includes a plan under subsection (2)(b), the employer or other person must also prepare a follow-up compliance report when compliance is achieved.
- (4) In the case of compliance reports prepared by an employer, the employer must
 - (a) post a copy of the original report and any follow-up compliance reports at the workplace in the places where the order to which it relates are posted,
 - (b) provide a copy of the reports to the joint committee or worker health and safety representative, as applicable,
 - (c) if the reports relate to a workplace where workers of the employer are represented by a union, send a copy to the union, and
 - (d) if required by the Board, send a copy of the reports to the Board.

Section 2.4 of the *OHS Regulation* ("*Regulation*") states:

Every person to whom an order or directive is issued by the Board must comply promptly or by the time set out in the order or directive.

Purpose of guideline

The purpose of this guideline is to provide guidance on the issuance of OHS citations pursuant to section 196.1 of the *Act* and the *OHS Citation Regulation*.

About OHS citations

Employers are required to comply with the *Act* and *Regulation* at all times. WorkSafeBC conducts inspections to verify compliance and issues orders to address any violations of the *Act* or *Regulation*. Orders must be complied with promptly, or within any time specified in the order. Compliance with orders is essential to ensure that workplaces are safe.

While most employers do comply promptly, when there is a failure to comply, WorkSafeBC will follow up to ensure compliance is achieved. An OHS citation is a tool a prevention officer may use to address an employer's non-compliance with an order. It may also be used where there has been a failure to prepare, send, or distribute a compliance report. As an OHS citation is only available in these circumstances, employers will never be issued an OHS citation if they comply with orders in a timely manner.

An OHS citation is issued in the form of an order under section 196.1 of the *Act* and follows different rules than an administrative penalty ("OHS penalty") issued under section 196 of the *Act*. Like OHS penalties, OHS citations may only be issued on employers (not workers or independent

operators).

When an OHS citation may be issued

Unlike OHS penalties imposed pursuant to section 196 of the *Act*, OHS citations may only be issued in circumstances that are not high risk (refer to Policy [D12-196-2](#) for information on how to determine whether violations are high risk). An OHS citation may be issued as an alternative to an OHS penalty when an employer has failed to comply. This includes the following circumstances:

- Failure to comply with an order as required by section [115\(1\)\(b\)](#) of the *Act*
- Failure to prepare or send a compliance report to WorkSafeBC, or meet other requirements under section [194\(2\)](#), [194\(3\)](#) or [194\(4\)](#) of the *Act*
- Failure to comply promptly with any order or directive issued by WorkSafeBC, as required by [section 2.4](#) of the *Regulation*

In this guideline, this will be referred to collectively as failure to comply.

When an OHS citation will not be issued

OHS citations will not be issued in circumstances that are high risk, or when an OHS penalty or an OHS penalty warning letter has already been imposed either for the same failure to comply or for the underlying violation.

Citation warning

Prior to issuing an OHS citation, WorkSafeBC will warn the employer in writing that further failure to comply may result in an OHS citation or OHS penalty. Except in exceptional circumstances, if the employer fails to comply following the written warning, WorkSafeBC will issue an OHS citation or OHS penalty. An example of an exceptional circumstance may be where the employer has decided to discontinue the part of the business or decommission the piece of equipment in question, thus eliminating the risk.

OHS citation amount

For a first instance of non-compliance, the OHS citation is \$500 (half the statutory maximum). For any subsequent instance of non-compliance within three years relating to any provision of the *Act* or *Regulation*, the OHS citation is \$1000 (the statutory maximum). Both amounts are current as of January 1, 2016 and will be adjusted annually pursuant to the consumer price index.

If an OHS citation has been issued at half the statutory maximum and the employer continues to not comply with the original order, then an OHS citation at the statutory maximum may be issued. If the employer continues to not comply after an OHS citation at the statutory maximum has been issued, and further enforcement is required, an OHS penalty or other enforcement will be considered.

Example 1: subsequent instance of non-compliance within three years

On March 1, 2016, a prevention officer issues an order to an employer under section 16.7(j) of the *Regulation* as the workers authorized to operate lift trucks have not been trained to the applicable standard.

On April 5, 2016, the prevention officer conducts a follow-up inspection and finds that the employer has not made any arrangements to have the required training provided for the workers that are authorized to operate lift trucks. The prevention officer then issues a follow-up inspection report citing the employer for continued non-compliance and providing a written OHS citation/penalty warning.

On April 26, 2016, the prevention officer conducts a second follow-up inspection and finds that the employer has not yet complied with the order. The prevention officer then issues a second follow-up inspection report issuing an OHS citation for \$500 and warning the employer that failure to comply could result in further enforcement action. The employer pays the \$500 OHS citation.

On May 6, 2016, the prevention officer receives confirmation that the employer has complied with the order.

On January 1, 2019, a prevention officer conducts an inspection of a different workplace of the same employer and observes that ready access to an electrical breaker panel is blocked by materials stored directly in front of it. An order is issued under section 19.7(1) of the *Regulation*.

On February 4, 2019, the prevention officer conducts a follow-up inspection and finds that the electrical panel continues to be blocked. The prevention officer then issues a follow-up inspection report citing the employer for continued non-compliance and providing a written OHS citation/penalty warning.

On February 25, 2019, the prevention officer conducts a second follow-up inspection and finds that the employer has not yet complied with the order. The prevention officer then issues a second follow-up inspection report issuing an OHS citation for \$1000 (second instance of non-compliance within three years). The prevention officer also includes a written warning to the employer that failure to comply could result in further enforcement action. The employer pays the \$1000 OHS citation.

On March 6, 2019, the prevention officer receives confirmation that the employer has complied with the order.

		Inspection cycle #1				Inspection cycle #2	
		Non-compliance date				Second non-compliance date within three years of the previous failure to comply	
Date	March 1, 2016	April 5, 2016	April 26, 2016	May 6, 2016	January 1, 2019	February 4, 2019	February 25, 2019

Violation	Order for non-compliance	Failure to comply	Continued non-compliance	Employer complies with the order	Order for non-compliance	Failure to comply	Continued non-compliance
Enforcement activity	Order	OHS citation and OHS penalty warning	\$500 OHS citation		Order	OHS citation and OHS penalty warning	\$1000 OHS citation

Example 2: continued failure to comply despite multiple warnings

On June 1, 2016, a prevention officer issues an order to an employer under section 3.16(1)(a) of the *Regulation* for a failure to provide a complete first aid kit at the workplace.

On July 6, 2016, the prevention officer conducts a follow-up inspection and finds that the employer has not complied with the order. The prevention officer then issues a follow-up inspection report citing the employer for continued non-compliance and providing a written OHS citation/penalty warning.

On July 27, 2016, the prevention officer conducts a second follow-up inspection and finds that the employer has not yet complied with the order. The prevention officer then issues a second follow-up inspection report issuing an OHS citation for \$500 and warning the employer that failure to comply could result in further enforcement action. The employer pays the \$500 OHS citation.

On August 6, 2016, the prevention officer conducts a third follow-up inspection and finds that the employer has not yet complied with the order. The prevention officer then issues a third follow-up inspection report issuing an OHS citation for \$1000 and warning the employer that failure to comply could result in further enforcement action. The employer pays the \$1000 OHS citation.

On August 16 2016, the prevention officer conducts a fourth follow-up inspection and finds that the employer has not yet complied with the order. The prevention officer then issues a fourth follow-up inspection report and considers whether an OHS penalty under section 196 of the *Act* is appropriate.

Inspection cycle #1					
		Non-compliance date			
Date	June 1, 2016	July 6, 2016	July 27, 2016	August 6, 2016	August 16, 2016
Violation	Order for non-compliance	Failure to comply	Continued non-compliance	Continued non-compliance	Continued non-compliance
Enforcement activity	Order	OHS citation and penalty warning	\$500 OHS citation	\$1000 OHS citation	Consideration of OHS penalty

Multiple OHS citations

Because OHS citations are issued for each violation (order cited) in an inspection report, multiple OHS citations may be issued if more than one violation is observed during a single inspection. For example, if an employer fails to comply with three orders in a single inspection report, three OHS citations may be issued.

Review of OHS citations

If an employer requests a review of a decision respecting an OHS citation, a copy of the request for review must be posted in the workplace, provided to the joint committee or worker health and safety representative, and provided to any union represented workers at the workplace. An OHS citation and an OHS penalty cannot be substituted for each other on review or appeal.

G-D12-196-2 High risk violations

Issued December 1, 2014; Editorial Revision consequential to August 4, 2015 Regulatory Amendment; Editorial Revision March 18, 2016

Regulatory excerpt

Section 196(1) of the *Workers Compensation Act* ("*Act*") states:

- (1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that
 - (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
 - (b) the employer has not complied with this Part, the regulations or an applicable order, or
 - (c) the employer's workplace or working conditions are not safe.

Prevention Policy D12-196-2 states:

For ease of reference, in this policy:

1. "high risk" refers to high risk of serious injury, serious illness or death; and
2. "Regulation" refers to the Occupational Health and Safety Regulation.

This policy sets out how high risk is determined for the policies regarding occupational health and safety related penalties and warning letters. Violations in the six circumstances on the list of Designated High Risk Violations (A) are high risk. Determining whether other violations are high risk will depend on the High Risk Criteria (B).

A. Designated High Risk Violations

Violations of the *Act* or Regulation relating to the following circumstances are high risk:

1. Entry into an excavation over 1.2 m (4 feet) deep contrary to the requirements of the Regulation.
2. Work at over 3m (10 feet) without an effective fall protection system.
3. Entry into a confined space without pre-entry testing and inspection to verify that the required precautions have been effective at controlling the identified hazards.
4. Causing work disturbing material containing asbestos, or potentially containing asbestos, to be performed without necessary precautions to protect workers.
5. Hand falling or bucking without necessary precautions to protect workers from the tree that is being felled or bucked, or other affected trees.
Explanatory note: OHS Guideline [G-D12-196-2](#) includes examples of circumstances where this would apply.
6. Work in the vicinity of potentially combustible dust without the necessary precautions to protect workers.

B. High Risk Criteria

When violations have occurred in circumstances that are not listed in A above, WorkSafeBC will determine whether the circumstances are high risk in each case on the basis of the available evidence concerning:

1. the likelihood of an incident or exposure occurring; and
2. the likely seriousness of any injury or illness that could result if that incident or exposure occurs.

Explanatory note: OHS Guideline [G-D12-196-2](#) provides a list of violations that are likely to be high risk when applying the high risk criteria. Even though a violation is on that list, it must still be analyzed using the High Risk Criteria (B) in this policy, since not every instance will be high risk.

Purpose of guideline

The purpose of this guideline is to provide information on the application of the Prevention Policy [D12-196-2](#) ("Policy") and specific examples to assist in clarifying WorkSafeBC's approach to determining whether a violation is high risk.

Background

High risk violations are those violations of the *Act* or *OHS Regulation* ("Regulation") which present a high risk of serious injury, serious illness, or death. The Policy provides for two categories of high risk violations. The first category contains six "designated high risk violations". These high risk violations are those that regularly result in fatalities, serious injuries, or serious illness and give a worker little or no opportunity to avoid or minimize severe injury, death, or occupational disease. The second category comprises other violations that are not on the list of designated high risk violations but may also present a high risk of serious injury, serious illness, or death based on criteria set out in the Policy.

Applying the high risk policy

To determine whether a violation is considered high risk, first determine whether it is on the list of designated high risk violations (A) in the Policy.

If the violation is not a designated high risk violation, then apply the high risk criteria in (B) to determine whether the violation would be considered high risk.

Designated high risk violations (A): Hand falling or bucking

The six designated high risk violations are listed in the Policy excerpt above. Item 5 in that list is hand falling or bucking practices without necessary precautions to protect workers from the tree that is being felled or bucked, or other affected trees. The following are examples of hand falling and bucking violations which would be considered to be high risk violations (the applicable section of the *Regulation* is provided in brackets):

- (a) Failing to prepare a safe escape route before falling or bucking begins [section [26.24\(2\)](#)]
- (b) Failing to move to a predetermined position, at least 3 m (10 feet) away from the base of the tree where possible, and take cover, when the tree starts to fall [section [26.24\(7\)](#)]
- (c) Failing to use the following proper falling procedures [section [26.24\(5\)](#)]

- (i) Sufficient undercut
- (ii) Undercut must be complete and cleaned out
- (iii) Sufficient holding wood
- (iv) Backcut must be higher than undercut to provide step on the stump
- (v) Wedging tools must be immediately available and unless the tree has a pronounced favourable lean, wedges must be set
- (d) Failing to fall dangerous trees before performing work in the area made hazardous by the dangerous tree [section [26.11](#), section [26.26\(4\)](#)]
- (e) Using a tree to cause another partially cut tree to fall in succession, except to overcome a specific falling difficulty and done in accordance with the *Regulation* [section [26.24\(6\)](#)]
- (f) Leaving partially cut trees, unless done in accordance with the *Regulation* [section [26.25](#)]
- (g) Brushing of standing trees where brushing can be avoided [section [26.24\(5.1\)](#)]

Section 26.23(1) of the *Regulation* states, in part:

"brushing" means the striking of a standing tree by a tree being felled if the strike is a direct blow or a glancing blow of sufficient force to cause one or more branches to break at or near the stem of the standing tree

- (h) Working within a 2 tree-length radius of a tree being felled [section [26.24\(1\)](#)]

The above list is not exhaustive and there may be additional hand falling and bucking violations, not listed, that are also high risk violations.

The [BC Faller Training Standard](#) provides additional information on best practices for complying with several of the requirements listed above.

Applying the high risk criteria (B)

Where a violation is not on the list of designated high risk violations (A), the Policy sets out two criteria for determining whether a violation is high risk, as follows:

1. The likelihood of an incident or exposure occurring; and
2. The likely seriousness of any injury or illness that could result if the incident or exposure occurs

When considering the *likelihood of an incident or exposure occurring*, some of the factors that may be considered are

- The number of workers exposed
- The potential hazards that are present in the particular work or task being performed
- Whether the hazard has been effectively controlled (ineffective controls usually result in one or more violation orders under the *Regulation* or *Act*)
- The circumstances that increase the likelihood of a worker coming into contact with the hazard

When considering the *likely seriousness of any injury or illness*, some of the factors that may be considered are

- Whether, in circumstances where an incident or exposure occurs, any resulting injury or illness is likely to be serious, or even fatal, due to the nature of the violation.
- Additional conditions or circumstances at the workplace that would increase the potential outcome of a serious injury, serious illness, or death once the worker is exposed to the hazard.

Examples of violations that would likely be determined high risk

The Policy refers to the following list which contains violations that will likely be considered to be high risk when applying the two high risk criteria in (B) set out above. Even though an item is on this list, it must be analyzed using the two high risk criteria in the Policy, as not every instance of the following violations will be high risk, depending on the circumstances. The list is provided to assist workers, employers, and WorkSafeBC prevention officers in identifying potential high risk violations but is not an exhaustive list.

- (a) Exposure to electrocution hazards (including violations related to the limits of approach)
- (b) Failure to adequately identify, assess, and control the risk of violence in the workplace where the failure presents a high likelihood of serious injury or death
- (c) Unsafe use, handling, or storage of flammable or combustible, oxidizing substances
- (d) Unsafe explosives handling and blasting practices
- (e) Ineffective de-energization, lockout, or safeguarding

- (f) Exposure, without effective protection, to:
 - (i) substances designated as ACGIH A1 or A2 carcinogen, or IARC 1 or 2A carcinogen
 - (ii) biohazards and infectious diseases (hazardous substances Risk Group 3 and 4 (section [5.1.1](#) of the *Regulation*))
 - (iii) ACGIH reproductive toxins and ACGIH sensitizers
 - (iv) ionizing radiation (e.g., x-rays) and Class 4 lasers
 - (v) the following items classified under the Workplace Hazardous Materials Information System (WHMIS) as:
 - (1) Acute Toxicity (Categories 1, 2 and 3 -- Inhalation)
 - (2) Specific Target Organ Toxicity -- Single Exposure (Category 1)
 - (3) Specific Target Organ Toxicity -- Repeated Exposure (Category 1)
 - (4) Reproductive Toxicity (Category 1)
 - (5) Carcinogenicity (Category 1)
 - (6) Germ cell mutagenicity (Category 1)
 - (7) Respiratory sensitization (Category 1)
 - (8) Corrosive to Metal
 - (9) Skin Corrosion/Irritation (Category 1)
 - (10) Serious Eye Damage/Irritation (Category 1)

For any of items i to v above, where IDLH (Immediately Dangerous to Life or Health) concentrations have been established, "exposure" refers to exposure at or above the IDLH concentration. Where ALARA (As Low as Reasonably Achievable) principles apply, "exposure" refers to exposure at or above the exposure limit provided for by the <i>Regulation</i> .
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- (g) Lack of operator protective structures on mobile equipment (e.g., ROPS and FOPS)
- (h) Exposure to the risk of being struck by or crushed by material, objects, or mobile equipment
- (i) Unsafe transportation of workers