January 16, 2024 |

Briefs

Submission to the WCB on Part 5, Emergency planning; Part 20, Washroom facilities; and Part 14, Tower cranes and notice of project

A pdf of the complete submission can be found here(294 KB).

The BC Federation of Labour

The BC Federation of Labour (“BCFED,” “Federation”) represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy.

The BCFED advocates for improved health and safety and compensation for all workers in BC.

The Federation is recognized by the Workers’ Compensation Board ("WCB”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their surviving dependents.

This submission was done in consultation with the BCFED’s affiliated unions.

Part 5, Chemical agents and biological agents, Sections 5.97-5.104

On October 17, 2017, three workers lost their lives while performing maintenance on ice-making equipment at the Fernie Memorial hockey and curling arena.

Lloyd Smith, Wayne Hornquist and Jason Podloski died from ammonia exposure while trying to fix the Fernie Memorial hockey and curling arena's ice-making equipment.

Smith was Fernie's director of leisure services, Hornquist was the city's chief facility operator and Podloski was a refrigeration technician with contractor CIMCO Refrigeration.

The WCB investigation report determined the following factors contributed to the tragedy:

> As part of its investigation, WorkSafeBC analyzed the health and safety programs being used by both the City of Fernie and CIMCO at the time of the incident and determined key elements of both were "either absent or ineffectively utilized."
>
> The report says the city's written emergency response plans for ammonia leaks hadn't been reviewed for five years, and no evacuation test or drills had been held for three years.
>
> "Poor communication and inconsistent attention to internal auditing, inspections, incident investigation and emergency practice drills allowed for the development of hazardous workplace conditions," the report says.
>
> "A lack of adherence to the employer's own safe work procedures at the senior management level removed the benefit of interdepartmental oversight and resources."[1]

In response to the Fernie incident, the WCB conducted inspections in 181 arenas in British Columbia, issuing over a thousand orders.

Since this tragic event, there have been several more ammonia releases, including a May 26, 2022, release at Artic Glacier in Kamloops which killed one worker.[2]

The Technical BC investigation identified factors related to organizational changes, unclear communication and incorrect assessments contributed to the ammonia not being removed prior to the disassembly.

In June 2022, an ammonia release from a vent on the roof of a Vancouver arena exposed 13 people to the gas and prompted the precautionary evacuation of a nearby high school.[3]

And in April 2023, there was a chlorine gas leak at a Vancouver Island community recreation centre.[4]

And these are just a few incidents of hazardous substance exposures in BC. Given the continued frequency of these emergency events involving the release of hazardous substances, the WCB's proposed amendments to update and strengthen the requirements for emergency planning are long overdue.

The purpose of this review is to update the current requirements and to ensure they are effective and the risk of exposure of workers and other persons to hazardous substances is minimized.

Submission

We are pleased to see some of our recommendations from the pre-consultation and the public consultation submission have been added to the proposed amendments. This is very encouraging.

Section 5.98 Worker participation

Up front in the proposed amendments as we recommended, is re-enforcing the requirement for employers to consult with the joint committee or worker representative and if these are not available, the workers in general.

As previously mentioned in this submission, the WBC investigation report into the Fernie incident identified fundamental health and safety practices were not followed: poor communication, lack of inspections and investigations and emergency drills. These are responsibilities mandated by the *Workers Compensation Act* ("WCA") to the joint committees and worker representatives and to workers if there is no committee work worker representative.

The amendment is pivotal to achieving the WCB's Board of Directors commitment to a worker-centred approach to the prevention of workplace injuries.

We strongly believe and we recommended at the public hearing that the Policy Regulatory and Research Division ("PRRD") consider this model in all regulatory reviews going forward.

Section 5.98 was also amended to include records to be made available to the joint committee or worker health and safety representative. This was formerly Section 105.

Section 5.99 Inventory of hazardous substances

Section 5.99 now requires the employer to prepare and maintain an inventory of hazardous substances. Addition of maintaining the records is important to ensure the inventory is kept up to date.

Sections 5.100 to 5.104, Risk assessment

Sections 5.100(1)(b), 5.100(2)(a), 5.104(1) as recommended by the BCFED were amended by removing the requirement for "reasonably foreseeable" and the addition of "all known or reasonably foreseeable" to be consistent with Sections 21 and 23 of the WCA.

The BCFED recommends this language should be used in all regulatory amendments when applicable.

Section 5.100(f)(g)

These sections refer to the requirement to assess existing and planned control measures and to assess methods for verifying and maintaining the effectiveness of the control measures.

We believe our next hill to climb in regulatory reviews is to have the hierarchy of controls specifically referenced in regulations when there is a section on controls.

The hierarchy of controls is a fundamental practice/principle of occupational health and safety and must be consistently included in regulatory reviews where control measures are referenced.

And it is very easy to do in this regulation review by further amending regulation to reference the language in Part 5, Section 5.55 which specifically sets out very clearly the requirements to follow the hierarchy of controls.

The amendment will provide clarity and consistency with Part 5.

Part 20 Washroom Facilities Sections 20.3.1-20.3.2 with amendments to 4.85 washroom facilities

The BC Building Trades unions have been calling for improved washroom facilities in construction for decades.

During the COVID-19 pandemic, their calls became more urgent, and the BC Building Trades made several submissions to the WCB.

And the BCFED agrees construction workers deserve clean, well-lit, temperature-controlled and clean washroom facilities with hand washing stations.

Last fall the government announced that washroom facilities would be required on all construction worksites with more than 25 workers.

Unfortunately, the implementation date of May 1, 2024, did not allow the WCB to conduct the normal pre-consultation with stakeholders and a public consultation, which are important opportunities to ensure the stakeholders were properly consulted on the proposed amendments.

The BCFED generally supports the proposed amendments, but we believe further amendments are necessary to ensure the health and safety of workers.

Definitions

Section 23.3.1 Non-plumbed washroom facilities

The proposed definition for non-plumbed washroom facilities could include the current “porta-potties.”

The BCFED recommends a further amendment to ensure porta-potties are not the first choice of washrooms for construction worksites with 25 or more workers.

Section 23.3.2(3)

We believe this section allows for porta-potties where it is “not practicable” for the employer to provide plumbed or non-plumbed washroom facilities.

The proposed amendment states that “the employer must ensure a sufficient number of ‘another type of washroom facility’ is readily available for workers at the construction site.”

The WCB fails to define “another type of washroom facility” in the explanatory notes.

We are left to assume this is porta-potties.

The WCB consistently uses the word “practicable” which is defined very vaguely in the health and safety regulation as “meaning that which is reasonably capable of being done.”

We have heard from employers their concerns with the lack of plumbed and non-plumbed washroom facilities and the costs that will be added to their projects.

In the initial stages of implementation, they can rightly say that it is not practicable to transition to new washroom facilities because of lack of supply.

Sections 20.3.2 (1-3) offer the employers three options and Subsections (2) and (3) undermine the intent of Subsection (1) and provide exemptions based on the practicability of ensuring plumbed or non-plumbed washrooms.

Regarding the practicality of flush washrooms at vertical projects identified by some contractors at the public hearing, we agree with the BCBT’s supplemental submission that employers have the option of providing additional porta-potty toilets at heights if they have sufficient flush toilet facilities at ground level for all workers at the construction site.

There is no requirement in the proposed regulation for the involvement of the joint health and safety committee, and any worksite with more than 20 workers requires a joint committee.

The committee should be consulted on:

1. the “practicability” of the employer providing plumbed washroom facilities;
2. the design of the washroom;
3. the number of washrooms needed beyond the 25 workers;
4. the installation and cleaning schedules;
5. the location of washrooms on the worksite;
6. confirming the number of workers on-site at any one time given the fluid nature of construction work; and
7. consideration of the diverse workforce, for example, gendered and non-gendered workers.

Ideally these requirements would be included in the regulation, and at a minimum, must be in the guidelines.

The BCFED supports the requirements for employers to provide plumbed washroom facilities on construction sites with more than 25 workers.

This is a first step, and we recommend the WBC conduct a review of Part 4, Section 4.98, Washroom facilities.

Thousands of workers in BC work in workplaces where they are using porta potties or are without any washroom facilities provided by the employer--workers in transportation, traffic control, agriculture, forestry, highway maintenance, city parks maintenance, firefighters, to name a few.

All these workers deserve the dignity and respect of proper plumbed or non-plumbed washrooms.

Part 4, Section 4.85, Washroom facilities applies to any workplace outside of construction and therefore the BCFED recommends a regulatory review to improve washroom facilities for all workers.

The BCFED supports the supplemental submission from the BC Building Trades addressing some of the issues identified at the public hearings.

Part 14 Cranes and hoists, Notice of project tower cranes

We thank our affiliate the International Union of Operating Engineers (“IUOE”) for their assistance with these amendments.

On July 12, 2021, a tower crane collapsed in downtown Kelowna killing five workers: Cailen Vilness, Jared Zook, Eric Stemmer, Patrick Stemmer and Brad Zawislak.

The BCFED and IOUE called for immediate improvements to the regulation for tower cranes to prevent future catastrophic events.

The BCFED generally supports the proposed amendments requiring notice of project and the changes that have been made to the amendments since the public consultation, including consideration for self-erecting cranes in Section 14.73.3 (5). And in addition, the requirement for the employer to post an updated notice with new information gathered in relation to Subsection 3(a-g).

Although the notice of project is a significant change to the tower crane regulation, there is much more to do.

The WCB announced in spring of 2023 they would not be releasing the results of their investigation until the RCMP has concluded their criminal investigation, so as to not jeopardize the RCMP investigation.

Although the WCB was not publicly releasing their investigation, they were incorporating key learnings about tower crane assembly, disassembly or repositions into ongoing crane safety initiatives.

But these key findings have not been shared with the employers and workers in the industry, nor with the families of the workers who died.

Along with the IUOE and the United Steelworkers unions, the BCFED has publicly called on the WCB to release their investigation, and then the important work of continuing this regulation review can begin.

We join the IUOE in asking for the WCB to mandate employer licensing and certification for workers who assemble, erect, climb, reposition or dismantle tower cranes.

Conclusion

We thank the WCB for their work on these three substantive regulatory amendments.

We urge the WCB Board of Directors to provide the appropriate resources for employers and workers for the implementation of the regulatory amendments, and to ensure prevention officers are properly resourced to conduct inspections and enforce the new requirements.

[1] https://www.worksafebc.com/en/resources/health-safety/incident-investigation-report-summaries/unexpected-ammonia-release-fernie-memorial-arena?lang=en

[2] https://www.cbc.ca/news/canada/british-columbia/ammonia-leak-rcmp-investigations-1.6468594

[3] https://bc.ctvnews.ca/13-people-taken-to-hospital-high-school-evacuated-after-ammonia-exposure-vancouver-fire-official-1.5931350

[4] https://vancouverisland.ctvnews.ca/no-injuries-after-chlorine-leak-at-saanich-commonwealth-place-1.6349131