May 15, 2023 |

Briefs

Submission to WCB on proposed policy amendments, Part 6, Policy P2-59.03-1, Asbestos abatement licensing

A pdf of the complete submission can be found here(370 KB).

The BC Federation of Labour (BCFED) represents more than 500,000 unionized workers in all industries across BC. The BCFED is recognized as being the voice for all workers in the province. The BCFED has a history of working with our affiliates, the Canadian Labour Congress and community advocacy groups to lobby all levels of governments to implement effective measures to ensure workers, the public and the environment are protected from asbestos exposures.

The BCFED is pleased the government introduced Bill 5 in 2022 requiring asbestos abatement employers to be licensed and all workers to be certified. The BC Ministry of Labour's working group made these recommendations in their 2018 report, *Keeping Workers, The Public and The Environment Safe from Asbestos*. BC is now the only jurisdiction in Canada to require licensing for asbestos abatement employers.

Asbestos exposures are the leading cause of worker deaths in British Columbia. According to the Workers' Compensation Board (WCB, Board) 2021 statistical report, in the ten-year period from 2012 to 2021, 594 workers died from asbestos exposure related diseases.[1]

The WCB was required by government to implement the Bill 5 requirements and we are pleased with the opportunity to provide comments and recommendations on the proposed amendments to Part 6, Substance Specific Requirements, Sections 6.1 - 6.2.3, Asbestos.

This submission is done in consultation with our affiliated unions.

Introduction

The dangers of asbestos have been known for a long, long time. Roman historian Pliny reported that working with asbestos led to difficulty breathing and respiratory illness. A British government report published in 1898 warned that inhaling asbestos dust was killing workers. In 1918, the Prudential Life Insurance Company stated, “In the practice of American and Canadian life insurance companies, asbestos workers are generally declined on account of the assumed health-injurious conditions of the industry.” The first lawsuits against asbestos manufacturers were filed in 1929.[2]

Belgium was the first country to ban the use of asbestos in 1972. The ban included the use of asbestos for thermal and noise insulation and waterproofing. In 1973, the United States banned the use of spray-applied asbestos-containing material (ACMs) for fireproofing and insulating purposes. From the 1970s through the 1980s, 1990s and 2000s, many countries including those from the third world introduced legislation banning the use, export and import of asbestos and ACMs.[3]

While many countries were banning asbestos, Canada was using tax-payer dollars to fund the Asbestos Institute and its successor the Chrysotile Institute to promote the asbestos industry. This was all in the effort to protect the last remaining asbestos mine in Quebec.

The Rotterdam Convention is a multilateral treaty to promote shared responsibilities in relation to importation of hazardous chemicals. In 2011, the federal government, as it had done twice previously, successfully blocked asbestos from appearing on the international list of hazardous chemicals, meaning that Canada could continue to export the carcinogenic fibres to developing countries without any warning about the health dangers of asbestos.[4]

Not until 2016 did the Liberal government agree to put asbestos on the Rotterdam list; and finally on December 31, 2018, asbestos was banned in Canada. Exposure to asbestos is the number one killer of workers in Canada and in British Columbia. Mesothelioma, lung, laryngeal and ovarian cancer and asbestosis are occupational diseases and illnesses caused by asbestos exposure.

Carex Canada has estimated approximately 1,900 lung cancers and 430 mesotheliomas are attributed to asbestos exposure each year, based on 2011 cancer statistics. The economic burden of these newly diagnosed lung cancer and mesothelioma cases was $2.35 billion. Costs are for loss of quality of life, loss of earning capacity, compensation, medical and other support services. Carex estimates that each year 152,000 workers in Canada are exposed to asbestos, mainly in manufacturing, construction and automotive repair.·[5]

Submission

Section 6.1 Definitions

“asbestos certificate” means a certificate, issued by a person acceptable to the Board, for the purposes of carrying out asbestos abatement work

The BCFED opines there will be a plethora of training providers offering certification as a result of the asbestos certificate definition as one “issued by a person” acceptable to the Board.

In their document, *Proposed Asbestos Licensing and Certification Frame, Section 2.2, Worksafebc training providers,* the WCB describes who a “person” may be: an independent third-party, employer, union, trade association or health and safety association who will set their own course schedules, course fees and course length.

The BCFED is concerned this is too broad a brush and may mean that anyone can potentially hang out their shingle. Therefore, the WCB must set a high standard of requirements for training providers to ensure a consistent and thorough approach to the training.

We have other models to look to in Canada, both Alberta and Ontario have asbestos certification requirements.

The Alberta government-approved training providers offer a 14-hour basic health and safety component while the knowledge and skills for actual abatement are unfortunately done through a supervised on-the-job training program over an indetermined length of time based on a worker's competency.[6]

Alberta does require instructor qualifications:

a. Must have taken the worker certification course.
b. Taught with a qualified instructor.
c. Completed the instructor training course.

The Ontario model of asbestos training for workers is approved by the Ministry of Colleges and Universities (MTCU). Much of the training is done by the college system and MTCU issues the certificates.[7]

We strongly support our affiliated unions who have been offering asbestos abatement training to their members for over 30 years to continue their work. The International Union of Painters and Allied Trades District 38 (DC38) and their Finishing Trades Institute have developed a comprehensive eight-day, in-person training program covering the core competencies. They will be providing their materials in their submission.

The BC Insulators 118 union also run a hands-on asbestos abatement training program for their members.

The BCFED makes the following recommendations strongly believing these will ensure the model for training providers is accessible, effective and sustainable.

a. The WCB must implement a robust quality assurance and auditing process. A complaint-based system is inadequate. We urge the WCB to provide funding for this work.

b. To ensure accessibility, the providers must develop the training using a GBA+ analysis and with consideration of diversity, equity and inclusion. There is no evidence this approach is being considered.
c. Many asbestos abatement workers are from immigrant and migrant communities and English may be an additional language, therefore, consideration must be given to offering the asbestos abatement certification training in languages that meet the needs of all participants. In a meeting with WCB certification services and some of the providers, a poll asked providers about their availability of training in other languages, the responses were very low with Spanish being the language most available. That was at 27%. The BCFED is very concerned about other language availability and urges the WCB to require better language access from providers going forward.
d. The training must be available throughout the province with particular attention paid to small rural communities. We understand there is availability across the province.
e. WCB must set standards to ensure providers have qualified instructors similar to the Alberta model previously mentioned. The WCB is leaving it up to the providers to determine qualifications for instructors. The BCFED continues to make this recommendation.
f. If providers offer a hybrid-model of learning, virtual options must have a qualified instructor and cover the health and safety component only. It appears options for delivery are being left up to the providers to decide. The BCFED disagrees and continues to support this recommendation.
g. All abatement work training must be in-person with a qualified instructor.
h. The WCB must designate a single certification body to standardize the system. This body will issue the asbestos certificate. The BCFED is pleased the WCB will set exam requirements and issue certificates.
i. The WCB will set length of course times. Each core competency should have a set minimum amount of time. Each provider will set the length of course times, the WCB is recommending three to four days. The BCFED believes to provide consistency the WCB should determine length of courses.

j. The WCB must set the course fees and ideally the fees should be paid by employers. We agree with the BC Building Trades that fees should not be a barrier for workers to take the training and the WCB should provide funding for the first five years of the program to cover the training fees for workers, thereby reducing barriers for both workers and employers. It is noted that employers will not have to pay for licensing, but workers will have to pay for their certification. For workers whose employers will not pay this creates enormous inequity. BCFED strongly encourages the WCB to ensure that certification is provided free of fees for workers.

k. The BCFED recommends the WCB quickly determine if qualified persons under the current Part 6 will be required to be certified. And we would support that the certification requirements be applied on top of the current qualifications required for a qualified person. This will ensure that all levels of training for asbestos abatement workers will be standardized.

Asbestos certification and licensing

Sections 6.1.2 and 6.2.2 describe requirements for certification only, therefore, we recommend removing the word *licensing* and applying it to Section 6.2.3 only, to provide clarity.

Section 6.2.1 (1) Asbestos certificate required

A person must not carry out asbestos abatement work unless the person holds a valid asbestos certificate for that type of asbestos abatement work.

The *type of asbestos work* generated questions at the pre-consultation meeting regarding the types of certificates that are being contemplated by the WCB. The WCB has released their proposed plan for Asbestos Certification Levels and Asbestos Abatement Training. These are draft proposals and we would welcome the opportunity to participate in further consultation on the details.

The BCFED concurs with the four levels proposed and we have already recommended each level must include in addition to the core competencies a section on the history of asbestos use, the dangers of exposures to asbestos and the diseases that kill workers, their families and the public. Abatement workers need to have a clear understanding of why this training is so important. The BCFED is pleased this has been added to the course content for Level 1 certification.

The BCFED has also recommended to Certification Services that an overview of the requirements of Part 6 is included in the asbestos certificate training for all levels. It is important for workers to understand the relationship between the current Part 6 requirements and the new licensing and certification programs. We are also pleased to see exposure control plans, hazardous materials surveys and safe work procedures are included.

Noticeably missing from all levels in the foundational awareness section of the *Workers Compensation Act (*WCA) and the *Occupational Health and Safety Regulation* (OHSR) is the involvement of the joint health and safety committee and workers in the work of asbestos abatement. This is not included although content on the general duties of employers, workers and supervisors has been included. Joint committees are required by legislation and play an important role in ensuring better health and safety in workplaces.

We recommend this important requirement be added.

BCFED recommends the WCB further amend Part 6 to include the employment standards requirement that workers must be 18 years of age to do work in which a worker is or may be exposed to potentially harmful levels of asbestos.[8] The WCB must ensure that asbestos abatement training providers are confirming the age of applicants.

Section 6.2.1 (2)

This section requires a person to carry out asbestos abatement work in accordance with the conditions of their certificate and they must produce a certificate to a WCB Prevention Officer for inspection.

The WCB has confirmed various options for producing the certificate in addition to the physical type such as digital, available on-line or via an app are being considered.

The BCFED supports consideration of these options.

Section 6.2.2 (1) Employer to ensure competence, certification and compliance

The BCFED agrees with the proposed requirement for the employer to confirm prior to a person carrying out asbestos abatement work, that the person is capable and competent to carry out the work, taking into account the type of asbestos work and the circumstances of the workplace. They must also confirm they have a valid certificate.

We agree with the explanatory notes that this section places responsibility on the employer to ensure that a worker's skills are maintained over time and the person is made aware of site-specific hazards and site-specific procedures and equipment. There must be a continuum of learning and improving skills, post certification training.

Section 6.2.2 (2)

The employer is required to record the details of the asbestos certificate of each person who carries out asbestos abatement work at the workplace.

The BCFED recommends the section be amended to add a requirement for the list to be made readily available to workers and to the joint health and safety committee or worker representative.

Section 6.2.3 Duty of owner and prime contractor

The BCFED agrees with the proposed requirement for owners and prime contractors to ensure that asbestos abatement contractors they hire have a license. This section re-enforces the owner and prime contractor obligations specifically to the new asbestos licensing requirements. These obligations are established in the WCA, Part 2, Division 4, General Duties of Employers, Workers and Others, Sections 24 and 25.[9]

Independent asbestos abatement contractors

The BCFED shares the deep concern of the BC Building Trades that independent asbestos abatement operators will not be required by the legislation to be licensed. This failure leaves the industry vulnerable to the continuation of high levels of non-compliance. We believe this gap also disadvantages the many vulnerable workers in the industry--workers from the immigrant and migrant communities. We urge the government and the WCB to work together to ensure the independent

asbestos abatement operators will be required to be licensed.

Conclusion

The BCFED is concerned the proposed Part 6 amendments for asbestos certification do not address the following training standards: Expiry of certificates, renewal process, reciprocity, terms and conditions, suspension and cancellation and certificate holder database.

We believe these important parts of the training standard must be embedded in the regulation to give full authority afforded regulations. Regulations set out clear requirements that can be better understood by employers, workers and prevention officers.

The BCFED is pleased to have the opportunity to provide our comments and recommendations on the proposed policy amendments regarding Part 6 – Asbestos abatement licensing.

We appreciate the enormity of this project for all stakeholders and commit to continuing to work with the WCB and employers. We urge the WCB to seriously consider our recommendations and further amend the regulation.

We urge the WCB Board of Directors to ensure appropriate funding is made available to staff to effectively develop, implement and enforce the new requirements for asbestos certification and licensing.

Comments on policy for licensing

2.(a) Scope - What is asbestos abatement work

This section is a list of the activities defined in the WCA that are considered asbestos abatement work. The section summarizes the definition in the WCA and the BCFED recommends, to provide clarity and consistency to Section 2(a), it read exactly as the WCA, Section 1(a-f).

2. (b) Application

The BCFED recommends the application for licensing should be available in multiple languages to reduce barriers for applicants.

The WCB may establish a minimum fee for licensing, but they will not charge a fee. We agree but there should not be a fee for workers to get their certification. There should be no cost for workers where the employer is refusing to pay for the certification. The BCFED is concerned this will create a barrier for some workers.

2. (c) Issuing or refusing to issue a license

This section sets out the framework for issuing or refusing to issue a license.

Section (f) lays out the short list of violations under the WCA and the health and safety regulations to which the WCB have accessible information.

The BCFED is concerned about the availability of information from other jurisdictions.

The BCFED recommends the WCB develop a plan to ensure they can access this information.

2. (f) Making a licensing decision

This section lists the contraventions the WCB will consider in making a decision to issue, renew, suspend or cancel a license. They are not limited to the items on this list.

Curiously there are some serious violations not included in the current list.

For example:

- Violations of WCA Part 2, Division 4 General Duties of employers (often where orders are written)
- Violations of WCA Part 2, Division 6 Prohibited action
- Violations of WCA Part 2, Division 10 Investigations (failure to investigate)

The BCFED recommends the WCB consider revisiting this list and adding other sections of the WCA. And we assume they will consider violations of the OHSR as well.

2. (g) Changing a licensing decision

The BCFED agrees with the limitation on the appeal of a licensing decision to the Review Division.

[1] https://www.worksafebc.com/en/about-us/shared-data/facts-and-figures/statistical-reports

[2] https://ottawacitizen.com/opinion/columnists/amos-and-boyd-learn-from-asbestos-and-do- more-to-protect-canadians

[3] http://ibasecretariat.org/chron_ban_list.php

[4] http://www.greenstreamenvironmental.ca/blog/2011/06/canadian-government-blocks- asbestos-from-hazard-list-at-rotterdam-convention-again/

[5] https://www.carexcanada.ca/cdn/CAREX_OCRC_Burden_of_Occupational_Cancer_Asbestos_factsheet.pdf

[6] https://ohs-pubstore.labour.alberta.ca/cg001

[7] https://www.ontario.ca/document/guide-regulation-respecting-asbestos-construction-projects-and-buildings-and-repair-11

[8] https://news.gov.bc.ca/releases/2022LBR0068-001912#:~:text=Amendments%20to%20the%20Employment%20Standards,exposure%20to%20certain%20h

[9] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/workers-compensation-act/part-2-occupational-health-and-safety#SectionNumber:Part2Div4Sec24