January 7, 2021 |

Briefs

Proposed amendments to Occupational Health & Safety Regulations Parts 6, 8, 16, 18, and 21

Read the full submission here.

Introduction

The BC Federation of Labour (“Federation”, “BCFED”) appreciates the opportunity to provide our submission with respect to the proposed amendments for the following regulations:

Part 6: Substance Specific Requirements: Pesticides, Sections 6.89-6.90: Restricted entry intervals; consequential amendments to other sections within the same part

Part 8: Personal Protective Clothing and Equipment: Section 8.24, High visibility and distinguishing apparel

Part 8: Personal Protective Clothing and Equipment: Section 8.11 Safety Headgear

Part 16: Mobile Equipment

Part 18: Traffic Control

Part 21: Blasting

The 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 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.

This submission was prepared in consultation with our affiliates.

Submission:

Part 6: Consultation on proposed amendments to regulation on Pesticides, Sections 6.89-6.90: Restricted entry intervals (REIs)

According to the explanatory notes, the restricted entry levels (REIs)refers to the length of time that must lapse after the application of a pesticide, before an unprotected worker may be authorized to enter the treated area.

The purpose of the proposed amendments is to align the Occupational Health and Safety Regulation ("OHSR") with Canada's Pest Control Products Act ("PCPA") and Regulation ("PCRP") as well as the *BC Integrated Pest Management Act* ("IPMA") and Regulations ("IPMR"). The amendments will clarify the conditions under which the REIs would default to the provisions currently outlined in Part 6: Pesticides.

The Regulatory Framework for Pesticides In BC

Federal

Health Canada's Pest Management Regulatory Agency (PMRA), under the authority of the PCPA regulates pesticides in Canada.

Provincial

Provincially, the Ministry of the Environment and Climate Change's (MECCS*) Integrated Pest Management Act and Regulation* regulates the sale, use and handling of pesticides in BC. They rely on the PCPA and the PMRA of Health Canada to evaluate and determine acceptable uses for pesticides registered for sale in BC. MECCS is responsible for the certification of pesticide applicators.

Municipal

Municipalities may establish bylaws for pesticide use on residential and municipal lands. These bylaws apply only to pesticides used to maintain outdoor trees, shrubs, flowers, other ornamental plants and turf. Municipalities do not have the authority to develop bylaws restricting the application of pesticides in the following situations:

- for the management of pests that transmit human diseases;
- on the residential areas of farms;
- to buildings or inside buildings; or
- on land used for agriculture, forestry, transportation, public utilities or pipelines unless the public utility or pipeline is vested in the municipality.

Workers' Compensation Board

The WCB Occupational Health and Safety Regulation (OHSR) Part 6: Pesticides sets out the requirements for the safe application of pesticides to ensure the health and safety of workers.

Part 6 Sections 6.89 and 6.90 contain the requirements for REIs. At the time these sections were developed there was little information on REIs and it was determined that the safest reasonable duration was applied in the OHSR based on the toxicity of the pesticide; 24 hours and 48 hours.

Section 6.70 Definitions

The BCFED supports the new definitions for labels, treated area and toxic. The previously used definition of toxic as "slightly toxic" "moderately toxic" and "very toxic" has been amended to add the values of Lethal dose 50% or LD50 values to be consistent with the PMRA. The BCFED would like to

have clarification on whether or not the Lethal Dose value is included on the pesticide label.

Section 6.73 Signs for treated materials

The BCFED recommends this section be changed from “placards and signs are provided” to placards and signs must be posted and contain the following information (a-c). This will ensure that workers have improved access to the information.

Section 6.76 Informing workers

The BCFED is pleased the WCB implemented our recommendation and added subsection (a.1) to ensure that workers occupying or who may access, a treated area where a pesticide is to be applied are informed of the name and type of pesticide to be used.

Section 6.77 Mixing, loading and applying pesticides

Qualifications

These are the work activities that account for the greatest risk of exposure to the pesticide.

Section 6.77 (2) has been amended to clarify that assistant applicators are exempt from the qualification requirements set out in Section 6.77(1) providing they are acting in accordance with the IPMR.

Recommendation

The BCFED recommends a further amendment be added to describe the IPMR requirements for the supervision of assistant applicators.

- must not be more than 500m from each assistant applicator;
- must maintain continuous visual or auditory contact with each assistant applicator;
- must review the recode kept by the authorization holder for each assistant applicator; and
- must not permit an assistant applicator to apply a pesticide unless satisfied that the assistant applicator has completed the course required by the Ministry of Environment and Climate

Change.

Section 6.89 Restricted entry intervals

The BCFED is very concerned about the requirements for pesticide labels. As noted in the pre-consultation session there are some gaps: the lethal dose value is not required; some older pesticide labels do not have REIs; and some pesticides will not have the REIs on their label if they have not been evaluated by PMRA. Workers rely on the labels for important information.

Unfortunately, pesticides in Canada are excluded from WHMIS due to a successful lobby by manufacturers and end-use industries. Some countries, including the European Union, Australia and Turkey have adopted the Global Harmonization System (GHS) for pesticides. The advantage of adopting GHS for pesticides will be in standardizing pesticide classification and product labelling. The current GHS model for industrial chemicals will require some modifications especially for labelling such as instructions for use, re-entry intervals and specific first-aid requirements. [1]

The greatest advantage for workers in having a single system for industrial chemicals and pesticides is the clear obligation of the employer under Part 5, Chemical and biological Agents Section 5.3 to 5.18, to have a WHMIS program, provide worker education and training, and ensure access to legal SDS.

Although this is not in the mandate of the WCB, the BCFED believes that the WCB has a responsibility to work with the federal government to have pesticides included in WHMIS thereby providing better protection for workers.

Pesticides have Safety Data Sheets (SDS) but employers are not required to provide them to workers as per WHMIS. Health Canada advises they should be made available. The BCFED strongly agrees the SDS should be available to workers.

Section 6.89 (2)(a) sets out the requirements when the label does not state the REI on the label but the pesticide is listed on Schedule 2 of the IPMR, there is no restricted entry interval. Section 6.89 2(b) If the label does not state the REI and the pesticide is not listed on Schedule 2 of the IPMR then

the REIs are:

i. 24 hours if the pesticide is classified as slightly toxic; or (ii) 48 hours if the pesticide is classified as moderately or very toxic or is part of a mixture in which a moderately or very toxic pesticide is present.

No information is provided in the Explanatory Notes on how the 24-hour and 48-hour requirements became the default REIs. Indeed, a statement was made at the pre-consultation meeting that “they were pulled out of the sky” and have no scientific basis.

The BCFED is concerned about a scenario in which a pesticide has not been evaluated by PMRA, there is no REI on the label, the 24-hour and 48-hour REIs apply and once the pesticide is evaluated the REI is longer, for example, seven days. In this scenario workers have been exposed to a vey toxic pesticide.

Recommendation

The BCFED strongly believes the requirements of Section 6.89(b) do not provide workers with the highest level of protection for REIs and we recommend the WCB review and amend the regulation with REIs that are science-based to better protect workers.

The BCFED recommends that Schedule 2 or the IPMR be made available in the guideline G6.89 to ensure ease of access for employers, workers and WCB officers.

Section 6.90 Authorization to enter before restricted entry interval expires

This section sets out the employer’s obligations when a worker is authorized to enter a treated area before the restricted entry interval expires and during an emergency before the restricted entry interval expires.

Section 6.90 (1) (c) included in the definition of an emergency is a set of circumstances “that requires a worker to enter a treated area during a restricted entry interval because no alternative practices would prevent or mitigate”

(i) injury to persons, or

(ii) a substantial economic loss due to crop loss or property loss.

The BCFED is concerned about the implications of considering crop and property loss as emergencies. This requirement may increase pressure on workers to respond to a situation that falls into the employer's domain.

Recommendation

The BCFED strongly disagrees with a worker's life being at risk to prevent crop and property loss and recommend this section be amended to remove (ii).

Section 6.90 (2)(f) specifies the rescue provisions if a worker becomes incapacitated after entry must meet the requirements of Section 6.80.

Section 6.80 sets out the requirements for rescue when a worker may be incapacitated during the application or prior to the expiry of the REI. "The work must be done in such a manner that a rescue can be effected by another worker equipped and able to do so."

We think these requirements are not prescriptive enough, what does "equipped mean?" There is no link to the first aid requirements as set out in OHSR Part 3, Occupational First Aid, Section3.14-3.21. Are the workers first aid qualified? Has the employer completed a risk assessment? Are there written procedures? And workers must have the option of calling 911.

The mushroom farm accident comes to mind, where workers were sent by their employer to rescue their co-workers and died or were seriously injured.

Recommendation

The BCFED recommends further amendments be considered for Section 6.80 and Section 6.90 2(f) to, at a minimum, reference the requirements of the Occupational First Aid regulation.

Sections 6.80 2 (b) and (c) require a “qualified person” to assess the hazards to the worker and to evaluate the ventilation of the treated area. In the guideline G.6.90, the pesticide applicator is considered “qualified.”

> *The qualified person who performs the hazard assessment under section 6.90(1)(a) of the Regulation will need to be able to read, understand, and implement all information and instructions provided on the pesticide label. This includes the hazards involved with entering the area where the pesticide has been applied, first aid, required PPE, and re-entry procedures.*

A person with a valid pesticide applicator certificate will typically meet this requirement.

Recommendation

The BCFED recommends this section be amended to identify the qualified person as the certified pesticide applicator to provide clarity and consistency.

Section 6.90 (2) (c) requires the treated area to be effectively ventilated using either natural or mechanical means, and

i. the atmosphere has been tested, if practicable; or
ii. evaluated by a qualified person and declared safe to enter.

Recommendation

The BCFED believes that atmosphere testing and an evaluation must be done prior to a worker being required to go into a treated area before the REI has ended and therefore recommend removal of the word “practicable” and “or.”

Section 6.90.1 (a-c) sets out the requirements for the employer to ensure there is a record completed within 24 hours of a worker entering a treated area before the REI expires. The employer must record if there was an emergency, the date and location, the time the emergency started and ended, and the description of the emergency including an estimate of the amount or type of injury that would have occurred without the early re-entry. The name of the worker and the REI that applies under Section

6.89(2) must also be recorded.

Recommendation

The BCFED recommends the name of the pesticide must also be recorded to ensure possible health effects can be identified.

Section 6.90.(2) required the employer to keep records for 10 years.

The BCFED is concerned that keeping records for 10 years does not account for the latency period of some occupational illnesses. For example, the latency period for cancer is defined as the amount of time that elapses between the initial exposure to a carcinogen (cancer causing substance) and the diagnosis of cancer. Workers may be exposed in their early working years and not develop the cancer until later in life.

The US Occupational Safety and Health Administration recommends that exposure records be kept for a minimum of 30 years.

Recommendation

The BCFED recommends amending Section 6.90(2) to keep records for at least 30 years.

Section 6.91 lists the exemptions from Sections 6.85 to 6.90.1 of structural pesticide application. The employer is exempted if the application is:

- *a spot treatment for small amounts of slightly toxic pesticides;*
- *crack and crevice treatment of moderately toxic pesticides; and*
- *the handling and distribution of biocides and slimicides.*

A qualified person is required to conduct risk assessments to ensure workers are not at risk of exposure when doing a spot treatment; and for a crack and crevice application to notify persons occupying the treated area before the application of any entry precautions and to inspect the treated

area after application.

The BCFED supports the proposed amendments for exemptions.

Conclusion

The BCFED is concerned without the amendments that we have recommended throughout the consultation process many vulnerable workers will not be provided the highest level of protection regarding restricted entry levels. The explanatory notes list of cancers that are presumed to be associated with occupational pesticide exposure and pathologies.

We urge the WCB to consider our proposed recommendations in the interest of providing workers with better protections.

Part 8: Personal protective clothing and equipment

Section 8.24 High visibility and distinguishing apparel

The WCB is proposing further amendments to Section 8.24 resulting from concerns raised at the public hearings in 2019. These concerns were raised by representatives of firefighters, the police and paramedics and were centred on concerns the requirements of the CSA Z97-15 did not permit the use of acceptable alternate high visibility apparel.

The BCFED supports the proposed amendments to Section 8.24 Subsection (3) (a, b and c) to permit modifications to the CSA Z97-15 to allow emergency response personnel to use alternate high visibility apparel and the amendment to subsection 3(a) to allow the firefighters to wear a protective coat that meets the requirements of the 2007, 2013 or 2018 edition of the NFPA, Standard on Protective Ensembles for Structural Firefighting and Proximity Fire Fighting.

The BCFED also supports the proposed amendments to Subsection 8.24 (4) to modify the requirements for Class 2 apparel. The Explanatory notes provide no rational for these proposed amendments but we support them in the belief these modifications set a standard requirement leaving less room for creative license.

While the BCFED supports the new amendments, we resubmit our previous submission and urge the WCB to consider our recommendations.

Section 8.24 of the Occupational Health and Safety Regulations (OHSR) sets out the requirements for a worker to wear high visibility and distinguishing safety apparel when they are exposed to the hazards of vehicles or mobile equipment.

The current requirements follow the WCB Standard Personal Protective Equipment Standard 21997, High Visibility Garment. This standard was developed before the Canadian Standards Association (CSA) CSA Z96 was issued.

The proposed amendments in Section 8.24 (1) and (2) are intended to adopt the high visibility requirements of CSA Z97-15.

The WCB proposed amendment includes reference to both vehicles and mobile equipment to avoid confusion if mobile equipment is a subset classification of vehicle.

The BCFED agrees with this clarification as many workers are working in the vicinity of mobile equipment.

In Section 8.24 (1) speeds in excess of 30 kilometres per hour remain unchanged as the determination for the use of Class 2 or Class 3 apparel according to CSA Z96-15.

Section 8.24 (2) establishes 30 kilometres as the upper limit for determining the use of Class 1 apparel.

The WCB has maintained the current 30-kilometre limit and not adopted the 40-kilometre requirement from CSA Z96-15.

The BCFED believes the reliance on the single criteria of speed to determine the appropriate high visibility apparel will not provide the best protection for workers from vehicles

and mobile equipment. The BCFED agrees with the requirement of the CSA standard that a risk assessment must be done. A risk assessment will consider factors other than vehicle speed that must be analysed in determining the appropriate high visibility apparel.

The CSA Z96-15 recommends the following to be considered in conducting a risk assessment:

The CSA Standard recommends that a hazard assessment be carried out on each job site to evaluate the workplace or work site for known or potential hazards a worker can encounter while performing a job or task. This assessment helps determine the risk to workers of being hit by moving vehicles and the environmental conditions under which work is performed.

When doing a hazard assessment where high visibility safety apparel might be required, be sure to consider:

- *The type and nature of the work being carried out - including the tasks of both the HVSA wearer and any drivers.*
- *Whether workers will be exposed to heat and/or flames (if so, flame-resistant HVSA would be required).*
- *Work conditions, such as indoor or outdoor work, temperature, work rates, traffic flow, traffic volume, visibility, etc.*
- *The workplace environment and the background workers must be seen in (e.g., is the visual area behind the workers simple, complex, urban, rural, highway, filled with equipment, cluttered).*
- *How long the worker is exposed to various traffic hazards, including traffic speeds.*
- *Lighting conditions and how the natural light might be affected by changing weather (sunlight, overcast sky, fog, rain, or snow).*
- *Factors that affect warning distances and times, such as the volume of traffic, the size of vehicles, their potential speeds, the ability to stop quickly, and surface conditions.*

- *If there are any engineering and administrative hazard controls already in place (e.g., barriers that separate the workers from traffic).*
- *Any distractions that could draw workers attention away from hazards.*
- *The sightlines of vehicle operators, especially when vehicles are operated in* reverse.
- *If certain jobs, or the function being done, need to be "visually" identifiable from other workers in the area.*

Once a hazard assessment is complete, the employer can select appropriate controls. The first line of defence for workers' safety would be to control the design of the workplace and reduce the exposure of workers to moving vehicles (e.g., through the use of physical barriers and other engineering and administrative controls).

Using high-visibility apparel would be the last line of defence against accidents by providing more warning to vehicle operators that workers are on foot in the area.

A further reason for not using speed to determine appropriate high visibility apparel is the fact that any speed puts a worker at risk of injury or death.

The 1999, US Department of Transportation, National Highway Traffic Safety Administration literature review on vehicle travel speeds and pedestrian injuries found: [2]

The idea that the faster a striking vehicle is traveling, the more damage is done to a struck pedestrian, is almost too obvious to require proof. Yet the relationship has been documented in a number of studies. Pasanen (1992) reviewed three studies relating collision speeds and pedestrian injury severity, finding their results quite consistent and that the probability of pedestrian death reached nearly 100% for speeds over 80 km/h (50 mph). Modeling the data from Ashton (1982), Pasanen estimated that about 5 percent of pedestrians would die when struck by a vehicle traveling 20 mph. The pedestrian fatality percentage would rise to about 40 percent for vehicles traveling 30 mph, (emphasis) about 80 percent for vehicles traveling 40 mph, and nearly 100 percent for speeds over 50 mph.

Numbers comparable to these are cited in other references. For example, in the UK Department of Transport Traffic Advisory Leaflet 7/93 (TAU,1993), figures quoted are, for 20 mph impact speeds: 5 percent death, 65 percent injured, and 30 percent uninjured; for 30 mph impact speeds: 45 percent death, 50 percent injured, and 5 percent uninjured; for 40 mph impact speeds: 85 percent death and 15 percent injured. **[3]**

Workers, like pedestrians have a large risk of severe injury when colliding with a motor vehicle.

The difference in mass is huge and the collision energy is mainly absorbed by the lighter “object.” In addition, workers are completely unprotected: no iron framework, no seatbelts, and no airbags to absorb part of the energy.[4]

The BCFED disagrees that the proposed amendments go far enough to provide the most effective protection for workers who work in and around vehicles and mobile equipment.

Recommendations

To prevent fatalities and injuries for the thousands of workers in BC who are exposed to vehicles or mobile equipment, the BCFED strongly recommends the proposed changes in Section 8.24 (1)(2) are amended to include the requirement for employers to conduct a hazard identification and risk assessment process as recommended by CSA Z96-15.

The BCFED also recommends the requirements of Section 8.24 be updated at such time as CSA Z9615 is reviewed.

Part 8, Personal Protective Clothing and Equipment- Safety Headgear

Introduction

The BC Federation of Labour (“Federation,” “BCFED”) appreciates the opportunity to provide our submission with respect to the proposed amendments to: Part 8: Personal Protective Clothing and Equipment, Safety Headgear, Section 8.11 General Requirement.

The 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 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 prepared in consultation with our affiliates.

The proposed amendments to Part 8, Personal Protective Clothing and Equipment, Safety Headgear Section 8.11 General Requirement

According to the Explanatory Notes attached to the proposed amendments to Section 8.11 Safety Headgear, General Requirements, the purpose of this section is to require safety headgear be worn by a worker where there is a danger of head injury from falling, flying or thrown objects, or other harmful contacts.

The request for an amendment to this regulation came from the Ministry of Labour (MOL) on behalf of the Sikh community who have raised concerns some employers are effectively applying this section as a blanket requirement at workplaces, resulting in turban-wearing Sikhs workers not being able to fully participate in the workforce. The Explanatory Notes explain the MOL asked the WCB to consider amending Section 8.11 to continue to protect the health and safety of turban-wearing Sikhs, while providing accommodation where there is no risk of head injury.

It is unclear from the above comment whether the MOL expects the WCB to provide accommodation where there is no risk of head injury. The WCB is mandated to ensure the health and safety of workers but has no jurisdiction or responsibility for the duty to accommodate. There is no requirement in either the *Workers Compensation Act* (WCA) or the Occupational Health and Safety Regulation

(OHSR). Currently in BC, the duty to accommodate falls under human rights legislation and is the employer's obligation to accommodate in consultation with workers and their union.

Background

The issue at hand is whether workers who are of the Sikh faith and wear a turban should be required to wear a hard hat at their workplace. The WCB has provided no background information on this issue in the very brief Explanatory Notes. The BCFED believes it is important to provide an overview of the some of the important decisions and cases for the benefit of those who will read our submission. Given the very short time frame the WCB has given stakeholders to provide a submission this is not an exhaustive list.

The issue presents some complexity with the intersection of religious freedoms under the federal and provincial human rights legislation and the rights and obligations for employers and workers under occupational health and safety laws.

We can go back to the 1985 Supreme Court of Canada (SCC) in Canadian National Railway Co (CNR). v. Bhinder, in which Mr. Bhinder a Sikh turban wearing worker was fired for refusing to wear a hard hat.[5] In this case the SCC ruled in favour of CNR, saying the hard hat was a bona fide occupational requirement. (BFOR)

In 1999, the SCC in the Meiorin case established a test for determining if a workplace policy or rule is a bona fide occupational requirement.[6] The three-step test, using the hard hat as an example:

1. Was the rule about hard hats adopted for safety purposes that are rationally connected to the required job?
2. Was the hard hat rule adopted in an honest and good faith belief that the standard is necessary for the fulfillment of that legitimate purpose of safety?
3. Was the hard hat requirement reasonably necessary to accomplish that legitimate purpose? And can the employer accommodate individual workers without imposing undue hardship on the employer?

These requirements meant that employers could no longer have a blanket requirement that all workers must wear a hard hat. On the face of it, this rule may seem neutral, with no intent to discriminate against workers because of religious beliefs; however, there may be an adverse effect for turban-wearing Sikhs.

Before employers make a blanket rule that all workers on a worksite must wear protective headgear, they must show they have done their due diligence in meeting the three-steps of the Meiorin decision.

There have been several legal decisions in Canada regarding turbans and hard hats. Most recently in 2019, the highest court in the province of Quebec ruled workplace safety comes before religious beliefs. The ruling concerns Sikh truckdrivers who challenged a requirement to wear hard hats when leaving their trucks during loading and unloading in the Port of Montreal. The Port has a blanket rule requiring hard hats for all workers on its property. The rule was adopted by the private truck company. The court ruled Quebec's *Charter of Human Rights and Freedoms* did apply but the temporary infringement was justified by the helmet's safety benefits. In British Columbia, a similar case in 2006 failed and the Sikh longshore workers were assigned to areas where the hard hat was not required. In 2008, two BC mill workers who challenged the hard hat requirement were assigned to a less dangerous part of the mill.

Currently the issue for turban-wearing Sikhs is perhaps best described by the World Sikh Organization:

> *The right of Sikhs to wear religious headgear, the turban, is protected under human rights legislation, subject to the tests for bona fide occupational requirements and the undue hardship standard.*
>
> *Employers are to accommodate and assess health and safety risks against the undue hardship standard where an employee is requesting an exemption from a hard-hat requirement to wear a Turban.*
>
> *Employers must avoid attempts to restrict the wearing of religious headgear based on uniform requirements or concerns about image or customer preference.*

Hard hat requirements may be bona fide occupational requirements however every attempt must be made to ensure that accommodation is provided-whether that means an alternative work placement or an exemption where the risk is de minimus and borne exclusively by the Sikh requesting accommodation.[7]

The BCFED is concerned about the perception that all turban-wearing Sikhs are men and we think it is important to understand that women of the Sikh faith also wear turbans. For example, Palwinder Kaur Shergill, was the first turbaned Sikh judge appointed to the BC Supreme Court.[8]

Section 8.11 General Requirement Safety Headgear

The