

# Submission to the WCB

Proposed regulatory amendments  
to Part 5,

Chemical agents and Biological  
agents

Emergency Planning

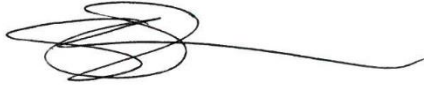
June 2023




## Authority

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This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 unionized workers belonging to our affiliated unions from across the province of British Columbia.



**Sussanne Skidmore**  
President

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## Submission Part 5: Chemical agents and Biological agents

### Proposed amendments to Emergency Planning, Sections 5.97 – 5.105

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The BC Federation of Labour (“Federation,” “BCFED”) appreciates the opportunity to provide our recommendations with respect to the proposed amendments for Part 5, Emergency Planning for chemical and biological agents as required in Part 5.

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,” “Board”) 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 we are especially pleased to participate when our recommendations made in the public consultations are reflected in the proposed amendments.

For example, we are pleased to see the inclusion of the joint health and safety committee or the worker health and safety representative in Section 5.98. The employer is required to consult in the implementation, review and update the emergency response plan, including inventory, risk assessment, emergency procedures and program for training and drills.

Section 5.98 reaffirms the role of the health and safety committee, the worker representative and workers in workplaces where there is no committee to participate in workplace health and safety as determined by the *Workers Compensation Act* (WCA), Part 2 Division 4.

We urge the Board of Directors to seriously consider our recommendations so we meet our goal to ensure that BC health and safety regulations set standards that will prevent workers from injury and death.

This submission was prepared in consultation with our affiliates.

We will address those sections of the regulation we believe require further amendments.

## Introduction

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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."<sup>1</sup>

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.<sup>2</sup>

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

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

<sup>2</sup> <https://www.cbc.ca/news/canada/british-columbia/ammonia-leak-rcmp-investigations-1.6468594>

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.<sup>3</sup>

And in April 2023, there was a chlorine gas leak at a Vancouver Island community recreation centre.<sup>4</sup>

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.

## Submission

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### Definitions and Application Section 5.97 (1)

The definition of emergency included in Section 5.96.1 of the original document of proposed amendments has been removed.

“Section 5.96.1

‘emergency’ means an emergency arising within or outside a workplace.”

We believe there needs to be a proper definition of “emergency” rather than using the word to define itself which is not a definition.

The definition was used originally to explain these incidents may arise within or outside a workplace.

The worker representatives at the pre-consultation meeting recommended further direction be provided in the regulation particularly on incidents arising from outside the workplace.

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

<sup>4</sup> <https://vancouverisland.ctvnews.ca/no-injuries-after-chlorine-leak-at-saanich-commonwealth-place-1.6349131>

For example, would the regulation apply in matters such as seasonal wildfire smoke, the opioid crisis and government emergency declarations.

Oxford dictionary defines emergency as: “a serious, unexpected, and often dangerous situation requiring immediate action.”

## Recommendation

To provide greater clarity and detail, the BCFED recommends further amending Section 5.96.1 by adding a definition of emergency to describe what it is, that it requires immediate action and can arise within or outside the workplace.

And the BCFED also recommends providing guidance and examples in the guidelines on the types of events both inside and outside the workplace.

## Section 5.98 Worker participation

The BCFED is pleased the participation of workers is placed at the beginning of the regulation as previously stated in this submission.

We believe Section 5.105 Availability of Records, should be included in Section 5.98 as subsection (2) as this section also pertains to worker participation.

Consolidation of the two sections will provide clarity and reenforce workers’ involvement at the beginning of the regulation.

The BCFED believes Section 5.105 should be amended by removing “if applicable.”

According to Section 5.98, the joint committee, worker representative and workers at the workplace must be consulted on the inventory, the risk assessment, the emergency response plan and emergency procedures, and therefore, must have access to all of these records.

The following records in relation to a workplace must be readily available to workers and, if applicable, the joint committee or worker health and safety representative:

(a) the inventory;

- (b) the risk assessment;
- (c) the emergency response plan;
- (d) the emergency procedures;
- (e) a record prepared under section 5.104(4).

## Recommendation

The BCFED recommends Section 5.105 availability of records be amended by removing “if applicable” and Section 5.98 be amended to add Section 5.105.

## Section 5.99 Inventory of hazardous substances

This section requires the employer to prepare in writing an inventory of all hazardous substances present at the workplace. In Subsection (a) they must identify the hazardous substance in the quantity that may endanger a person in an emergency.

We are concerned about the “quantity” factor. We believe the inventory should apply to all hazardous substances regardless of quantity, given that an emergency has the potential to destabilize substances even if they are in small amounts.

The WCB acknowledges in the explanatory notes the quantity threshold will vary depending on the specific substance and the workplace circumstances and suggests there will need to be further guidance on how to determine quantity.

The BCFED opines the requirement to determine quantity of each hazardous substance may be more onerous for employers and workers than including all hazardous substances in the inventory.

The BCFED agrees with Sub-section (b)(iv) requiring an employer to identify the “maximum quantity” of the hazardous substance at the workplace and the “maximum capacity” of containers used to store the hazardous substance at the workplace.

## Recommendation

Therefore, we recommend Section 5.99 (a) be further amended to require all hazardous substances at a workplace must be included in the inventory regardless of quantity.

The inventory of hazardous substances can vary daily in many dynamic workplaces, with deliveries and new products from suppliers and customers a constant coming and going. And we are curious as to why there is no requirement to update the inventory.

## Recommendation

Therefore, we recommend Section 5.99 be further amended by adding Subsection (c) to require employers to regularly update and ensure the inventory of hazardous substances is accurate at all times.

## Section 5.100 Risk assessment

This section requires the employer to conduct a risk assessment. Subsection (1) clarifies the hazardous substance that must be considered in the risk assessment.

- a) a risk posed in an emergency by any hazardous substance identified in the inventory for the workplace,
- b) a risk posed by any other hazardous substance if it is *reasonably foreseeable* that the hazardous substance could enter the workplace because of the emergency,
- c) a risk posed by any other hazardous substance if it is *reasonably foreseeable* that the hazardous substance could be generated at the workplace and, for greater certainty, cause or aggravate the effects of an emergency.

Above in Section 1 Subsections (b) and (c) and in Section 2(e) “Any reasonably foreseeable cause of an emergency”, the WCB has inserted the term “reasonably foreseeable” in relation to conducting a risk assessment.

To our knowledge the only other reference to “reasonably foreseeable” is found in the WCA Part 2 Section 21 (2) (b) (ii) General Duties of the Employer,

(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,<sup>5</sup>

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<sup>5</sup> <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/workers-compensation-act/part-2-occupational-health-and-safety>



and Section 23 General Duties of the Supervisor.

(a) ensure that the workers under the supervisor's direct supervision

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

However, it pertains to ensuring that workers are made aware of all known or reasonably foreseeable health and safety hazards to which they are likely to be exposed by their work and not to the requirements for conducting a risk assessment.

To our knowledge the Occupational Health and Safety Regulation (OHSR) requirements for risk assessment do not use the term “reasonably foreseeable” hazards.

The WCB explains their use of the term “reasonably foreseeable” on Page 7 of the explanatory notes, saying that if it is reasonable to anticipate those hazardous substances to either enter the workplace or be generated at the workplace, they need to be included in the risk assessment.

The BCFED strongly believes this term undermines the foundational principle of due diligence as defined by the WCB,

Due diligence requires taking all reasonable steps to protect workers from harm. "All reasonable steps" is based on the level of judgment and care that a person would reasonably be expected to do under the circumstances. An organization that actively manages health and safety and takes all reasonable steps to protect workers from harm is being duly diligent.<sup>6</sup>

In this definition, “reasonable” applies to taking all reasonable steps to protect workers from harm as opposed to only from reasonably foreseeable hazards.

The WCB advises employers to ensure due diligence by “Understanding the risks in your workplace by identifying the hazards and assessing the level of risk associated with each.”<sup>7</sup>

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<sup>6</sup> <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/due-diligence>

<sup>7</sup> <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/due-diligence>

## Recommendation

The BCFED strongly recommends Section 5.100, subsections (b)(c) and (e) be further amended by adding “if it is known or reasonably foreseeable”, the language used in Part 2 of the WCA.

We believe this change strengthens the risk assessment requirements for hazardous substances and provides improved safety for workers.

## Section 5.100 1(c)

The BCFED recommends amending to remove “and for greater certainty” to simplify language and avoid confusion.

For “greater certainty” serves no purpose in this context and again is not language normally found in the OHSR.

## Section 5.100 2(g)

### Recommendations

The BCED makes the following recommendations to Section 2(g)

This section refers to the effectiveness of controls measures to minimize the risk.

Further amend section by adding reference to the hierarchy of controls and require employers to implement control measures according to the hierarchy as required in Part 5, Section 5.55 Controls,

(1) If there is a risk to a worker from exposure to a hazardous substance by any route of exposure, the employer must eliminate the exposure, or otherwise control it below harmful levels and below the applicable exposure limit established under section 5.48 by

- (a) substitution,
- (b) engineering control,
- (c) administrative control, or
- (d) personal protective equipment.

(2) When selecting a suitable substitute, the employer must ensure that the hazards of the substitute are known, and that the risk to workers is reduced by its use.

(3) The use of personal protective equipment as the primary means to control exposure is permitted only when

(a) substitution, or engineering or administrative controls are not practicable, or

(b) additional protection is required because engineering or administrative controls are insufficient to reduce exposure below the applicable exposure limits, or

(c) the exposure results from temporary or emergency conditions only.

#### Section 2(g)(i)

applicable manufacturer instructions, good engineering practice and accepted industry standards<sup>8</sup>

Applicable manufacturer instructions are a common reference in the OHSR, but it is unclear which good engineering practices and industry standards are acceptable. Unless there is specific reference to engineering practices and industry standards, the reference here is simply confusing. This information could be provided in the guidelines.

The BCFED believes Section (i) should be amended to read applicable Safety Data Sheets and manufacturer instructions.

#### Section 2(g)(ii)

The compatibility of the measures with work activities and process and with the workers who will be required to employ those measures.

We have to say we are very confused by this section. The “compatibility” of a control measure is a term we have not seen used in the context of implementing control measures.

The BCFED opines this is another way of saying that employers are required to implement control measures “where practicable.” Employers need to eliminate a risk and if that is not

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<sup>8</sup> <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-05-chemical-and-biological-substances#SectionNumber:5.55>

possible, then minimize the risk.

The BCFED recommends this section be removed to avoid confusion:

“Section 2(j)

Any other relevant matters.”

The BCFED believes there should be more information on what other “relevant matters” the WCB is contemplating, and these matters must be clearly stated in Section 2.

### Section 5.103 Emergency procedures-safe work

This section sets out the employer requirements for establishing written procedures for carrying out any of these activities in a safe and effective manner: investigating a spill or release of a hazardous substance, controlling a release clean up and remedial action, disposing of the substance and evaluating safety of the workplace for re-entry.

Many employers would hire a contractor or expert to clean up and dispose of hazardous substances post emergency. This will be a course of action particularly common for smaller employers. Employers are required to supply appropriate PPE, materials and equipment under other regulations. But they may not need to have the procedures required in Section 5.103.

The explanatory notes say that a third party or contractor is not obligated to follow the employer’s procedures and can rely upon their own.

The BCFED strongly agrees there is a need for guidelines to provide guidance on investigating a release and evaluating re-entry. There must be clarification on the coordination of procedures being developed by the employer and the third party.

### Section 5.104 Training and drills

#### Recommendations

The BCFED recommends amending Sub-section (1) to add “all known or reasonably foreseeable emergencies.”

## Conclusion

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The BCFED strongly urges the WCB Board of Directors to seriously consider our proposed amendments.

We are generally pleased with the work on these proposed amendments to Part 5 and appreciate the efforts of the PRRD.

We encourage the WCB to implement an effective implementation strategy ensuring that all workers and employers are properly informed and supported to effectively practice these new requirements.

The implementation strategy must be designed to consider the diversity of workplaces and workers to which these regulation amendments are applicable.

We urge the WCB Board of Directors to provide the necessary resources to ensure effective implementation, ongoing inspections and enforcement.