

Chapter 28: WorkSafeBC

Introduction and Brief History of WorkSafeBC

WorkSafeBC administers the Workers Compensation Act (WCA) for the B.C. Ministry of Labour and Citizens' Services. The Act gives WorkSafeBC legal authority to:

- Set and enforce occupational health and safety standards.
- Assist injured or disabled workers and their dependants.
- Assess employers and collect funds to operate WorkSafeBC.

The first Workers' Compensation Act was passed in British Columbia in 1917. The outcome of this legislation formed the foundation of the Worker's Compensation Board (WCB) now called WorkSafeBC today.

With the introduction of the WCA, workers gave up their right to sue their employers when they were injured at work. In return, workers gained insurance protection against income loss due to workplace accidents and occupational disease based on contributions paid into the fund by employers.

WorkSafeBC insurance is based on a "no-fault" system. A worker does not have to prove that the employer's negligence caused the accident and injury. All that must be shown is that the accident and injury were caused by the work and at the workplace. Compensation for the injured worker is for the duration of the injury.

The WorkSafeBC website focusing on forestry operations can be found at: <http://www2.WorkSafeBC.com/Portals/Forestry/Home.asp>

WorkSafeBC Funding

Employers fund 100% of WorkSafeBC including prevention and workers compensation benefits. All employers are required to have coverage under WorkSafeBC as part of a collective liability. WorkSafeBC insurance is a compulsory insurance system for employers in BC.

The Province of BC is an employer and is self insured. As such, it does not pay direct premiums to WorkSafeBC. The Province does however, participate with WorkSafeBC programs and carries responsibilities similar to any other employer. Instead of premiums, WorkSafeBC charges the Province the full cost of any payments it makes to provide service or benefits to provincial government employees plus an administration fee each year.

Workers Compensation Board Act, OH &S Regulations, Policies and Guidelines

The Workers Compensation Act (WCA)

The WCA is similar to all other legislation in British Columbia and changes to the legislation are at the will of the government and legislature. The WCA gives specific authorities to the Lieutenant Governor in Council and the Board of WorkSafeBC to make regulations to support direction provided in the WCA.

The WCA Occupational Health and Safety Regulation

The Board of WorkSafeBC may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment. These regulations can be fully enforced and are administered by WorkSafeBC officials and Board officers.

WorkSafeBC Board Policies

Section 82 of the WCA states that the Board of Directors of the Workers' Compensation Board shall set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety (or prevention).

The policies of the Board of Directors are required to be applied by all decision-makers in the workers' compensation system.

WorkSafeBC Guidelines

Guidelines approved by the Board are non binding on decision makers. Decision makers are expected to utilise the guidelines in forming their decisions and have rationales why they may not follow guidelines.

Several guidelines applicable to forestry operations are posted on the WorkSafeBC website.

Agreements between WorkSafeBC and the Ministry of Forests and Range

The BC Forest Safety Task Force in 2004 and various other reviews of forest safety have stressed the need for government agencies and WorkSafeBC to work together to among other things do the following:

- To work on cooperative and complimentary ways of resolving regulatory overlap and underlap.
- Demonstrate support for worker health and safety by making this part of the criteria checklist used to develop or modify provincial regulations.
- Assist in providing clarity on the roles and responsibilities of owners and employers on harvesting licences and road use on public lands.

From time to time memorandums of understanding and other agreements will be signed between BCTS, MOFR and WorkSafeBC to further promote co-operation on improving forest sector safety.

One such agreement is in place at this time and included in Appendix 1X and is titled “Collaboration and Information Sharing among WorkSafeBC, the Ministry of Forest and Range and BC Timber Sales”.

WorkSafeBC Provincial Organisation

WorkSafeBC have their provincial headquarters in Richmond BC. Additional offices are located in many communities throughout BC.

A Board of Directors (currently 7 members including the chair) is appointed to guide the organisation. A CEO (President) is in charge of the operations of WorkSafeBC. Several Divisions of WorkSafeBC are set up with vice presidents in charge of division operations.

BC Timber Sales staff will most often deal with Board officers in the Worker and Employer Services Division. Timber Sales managers should contact their local WorkSafeBC offices and get up to date organisational charts the Worksafe offices and regions which they work in.

When Must WorkSafeBC be Immediately Notified of an Incident or Accident?

There are circumstances when the Board must be notified immediately/directly by the employer. These include:

- An accident resulting in serious injury/death of a worker.
- A major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system, excavation.
- The major release of a hazardous substance.
- A diving accident.
- An unresolved worker refusal to perform unsafe work.

Other circumstances which must be reported to WorkSafeBC are described in the regulations.

Summary of BCTS Responsibilities when Dealing with WorkSafeBC

Individual Timber Sales managers and headquarters directors are responsible for the implementation of safety programs and for dealing with WorkSafeBC officials as follows:

- Ensuring access is provided and worker and employer representatives are available to participate with Board officers on any inspection.
- Ensuring immediate action is taken to mitigate any conditions or practices noted by WorkSafeBC officers during an inspection.
- Conducting or having an appropriate management representative conduct the post inspection interview with the Board officer.
- Posting notices and other documents as required by the WCA.
- Notifying senior BCTS management, provincial safety co-ordinator and passing on copies of Inspections or Orders received related to BCTS bsuienss and advising on any issues arising from WorkSafeBC inspections or Orders on BCTS workplaces.
- Taking action and producing required notices of compliances as required in any orders or inspection reports.
- Recommending any requests for review or for appeal on any orders or penalties which the BCTS manager does not agree with.
- Taking the lead on any requests for review or appeals that BCTS agrees to support and move forward with to the appropriate body.
- Looking for opportunities for collaborative learning, discussion, and prevention strategies to improve overall forest sector safety with officials and officers from WorkSafeBC.

Scope and Authority of Board Officers

Sections 178-198 of the WCA, gives the Board extensive enforcement authority to conduct inspections, investigations, inquiries, write orders, stop work, and administer penalties.

Section 179 authorizes a Board Officer to conduct "inspections" (including investigation/inquiry). Under the Act, inspections can be carried out at any reasonable hour, day or night of/in any workplace that is under the scope of the Act in order to:

- Prevent work related injuries/illness.
- Determine the cause and particulars of an accident/injury/illness or "near miss" incident.
- Investigate an OH&S workplace complaint.
- Determine whether there is compliance with the regulations and/or the WC Act.

The WCA permits a Board Officer to inspect all aspects of the work/worksite including works, materials, products, tools equipment machines, devices or other things including records, and may take samples, conduct tests of anything found at the workplace.

The officer has the authority to:

- Require that a workplace not be disturbed for a reasonable period of time.
- Inspect or take (with some limitations) relevant records.
- Require a person to produce records in a person's possession or control within a reasonable period of time.
- Question persons with respect to relevant matters.
- Require persons to attend to answer questions, and that questions be answered under oath or affirmation.
- Take photographs or recordings of the workplace and activities taking place in the workplace.
- Attend relevant training programs of the employer.

A Board Officer must produce credentials on request if the officer is exercising or seeking to exercise any powers conferred on the officer.

Note: A Board Officer is not a "peace officer" (i.e. cannot arrest a person). However, if necessary, the officer may request the assistance of a peace officer to carry out his/her duties/functions.

What is a Ministry "Workplace", When Would a Board Officer Inspect a Ministry Workplace, and What Would an Inspection Look Like?

Generally an inspection could be conducted at any place where ministry work is carried out or is likely to be carried out by ministry workers and/or a contractor(s) hired by the ministry to perform ministry work.

An inspection is a visit to a workplace by a Board officer to assess compliance with the regulations and/or to observe work procedures, tools or equipment and conditions at the site.

Sometimes an inspection by a WCB Officer actually becomes an investigation as a result of a worker complaint and/or under section 3.10 of the Regulation where an unsafe or harmful act/condition has been observed by a worker and reported to the employer/supervisor at the worksite and the employer/supervisor has not promptly/effectively investigated and taken corrective actions. If a worker or union makes a complaint directly to the WCB about an unsafe condition/act, the officer must investigate. No other person will be informed of the intended inspection. This situation can have serious consequences to the employer.

Similarly the officer must inspect/investigate if a worker has refused to perform "unsafe work" (3.12 of the regulation) and after an investigation by the employer, the issue is still not resolved and the worker still continues to refuse (section 144 - 145 of the WC Act). This situation can have serious consequences to the employer.

How Can BCTS Staff Be Ready For An Inspection By WorkSafeBC?

Have all your records readily available. Records that should be available could include:

- Written safety program.
- Records of tool box/safety committee meetings and management meeting where safety issues have been routinely discussed/resolved (last 5 years).
- Risk assessments where required for your operation.
- Training records/training standards.
- Written safe work procedures for safety program elements specific to your operation (i.e. working alone).
- Workplace inspections, including corrective actions.
- First aid treatment records (available from the first aid attendant).
- Evacuation/transportation of injured workers procedures/plans.
- Findings from any previous audits or investigations.

What Happens During an "Inspection"?

An inspection is a visit to a worksite by a Board officer to assess compliance with the regulations or to observe work procedures and conditions at the site. There are three distinct components to an inspection:

- Establishing the terms of reference for the inspection. WCB policy expects a Board officer to notify the employer when the officer arrives and before an inspection takes place at a worksite.
- The inspection tour.
- The post inspection conference.

At the conclusion of every inspection the officer must complete a standard Inspection Report. However, if there are "no violations" the officer should write on the Inspection Report "No Violations Observed". Where orders for "observed violations" are written on the Inspection Report, the officer must hold a post-inspection conference with the management and union/worker.

Suggestions for BCTS Staff During the Inspection:

Inspection Start-up

- Conduct of BCTS staff towards the officer should be professional, polite, co-operative, and informed.
- If a BCTS worker is doing business on a site under the control of another employer, then the BCTS worker should not get involved in the inspection unless what is being inspected pertains to the work of the BCTS worker. If asked questions about the worksite/process, the ministry worker should direct the officer to the employer's representative/prime contractor at the site.
- Ask the Board officer for his/her business card or credentials.
- Ask the officer to clarify the details of the inspection. An inspection is an enforcement action.
- Determine if the Board officer is responding to a complaint about something in the workplace. The Officer must tell you if there has been a complaint (made under 3.10 of the regulation), however, the officer cannot tell you who made the complaint.
- To ensure that the WCB officer receives the appropriate assistance and co-operation at the worksite, the employer should issue "standing directions" to all workers to politely direct, and if possible, to escort any WCB officer on the worksite directly to the site manager. In the event there is no manager at the site, to the person in charge of the worksite, i.e. to the site supervisor or Prime Contractor.
- In the event there is no manager present (i.e. working in the field), it is OK for the worker to contact his/her manager by phone and inform the manager of the inspection and if possible, the reason(s) for the inspection and how long the Board officer feels the inspection will take. This call must not unreasonably delay the officer's inspection.
- If the inspection is already in progress, the manager at the site should discuss why the inspection commenced without the notification of the employer, the intent/duration of the inspection and if there was a complaint. The manager should take note of the officer's answer. Legitimate reasons for the officer to start without the employer being present are:
 - The issue being inspected was/could be immediately dangerous to the life and health of a worker or;
 - The area to be inspected was in the process of being physically altered and in doing so would prevent the officer from conducting a proper investigation.

Participation in the Inspection

- The officer has the right to have a worker present during the inspection, usually chosen by the workers at the site. If warranted by the situation, the employer/manager has the right of one refusal of any worker chosen to accompany the officer (a key person to the operation) or for reasons of production (i.e. all work would stop at the site).
- Within reason, the manager/employer has the right to accompany the officer during the inspection and before the officer commences an inspection. This may not be possible in the field.
- The manager should consider bringing another worker/manager to accompany the manager during this inspection. This will help in the event that immediate correction of any minor condition is needed, and to act as another observer/resource. Take a notebook, cell phone/hand-held two-way radio if available, camera, lock out /do not operate tags, barricade tape.

Conducting the Inspection

- Before you start the inspection, whether in the field or at the office, first ask the Board officer to inform you if he/she sees a violation/problem as it is encountered.
- Never attempt to hinder, obstruct or interfere with a Board officer during an inspection (or investigation).
- It is OK for you to ask questions about what the officer is concerned with/looking for/at? If during the inspection, the officer stops to take notes/a picture, feel free to ask the officer "What is it that you are noting/taking a picture of? Is that a concern?" or "Is something wrong? What have you written down?" If the officer says that there is something wrong, then feel free to ask "What regulation applies to this situation?" In this situation, it is important for you to ask/know what "compliance" looks like. The officer should be able to and be pleased to tell you that. Document what the officer says.
- If the officer takes a picture of something, then you should also take a picture of the same item. Note: officers only take pictures to document a condition of practice. This way you have the same visual "evidence".
- If during the inspection, the officer describes something that is a violation, then, if possible, ask the officer to show you the regulation. Look up the regulation and read it word for word and determine if the condition observed and the officer's interpretation of 'compliance' is consistent with what is stated in the regulation. If necessary, briefly discuss, and write down what the officer says. If you don't agree or understand, politely tell the officer you don't understand this interpretation as the regulation seems to say something else/different, or is not very clear. However, this is not the time to argue if you disagree or if you simply do not like what the officer has found/or is saying.

- If the officer says that there is a violation or a problem (whether you agree or not) and it is practicable to do so, you should take immediate steps to fix the problem right away during the inspection, or if it can't be fixed right away, then immediately "lock it out", or restrict access with barricade tape i.e. call over a worker and if safe to do so, direct the corrective action(s) to be done Immediately/NOW.

Note: Sometimes if the 'problem' is minor and can be fixed immediately or before the inspection is complete, the Officer will usually not write an order. In operations where co-operation and compliance are generally present and only minor low hazard violations are observed, the officers may issue verbal orders at their discretion to correct a situation but will check to ensure compliance before they leave the site.

Post-Inspection

After the worksite inspection, the officer will prepare an Inspection Report. The officer may delay the completion of a report until any other required investigation is completed (i.e. searching company records, obtaining statements).

WCB policy requires that where possible, the officer must hold a post-inspection conference with management (if reasonably available) having responsibility and authority to comply with the orders. The purpose of this conference is to ensure that the parties understand the content of the report and any orders. The worker representative who accompanied the inspection will be invited, as may other parties involved.

This meeting is the first opportunity for management to formally discuss the details and correct any facts and/or challenge/request reconsideration of any facts or orders written. If you feel that any order issued is unwarranted/not appropriate then this is your first opportunity to challenge the order. The grounds for any challenge are:

- The order is contrary to law (not what the regulation states).
- The order is contrary to Board policy.
- There is an error in fact in the order (i.e. an MSDS sheet or written work procedures were available when the report says they were not).

If the Board Officer fails to conduct a post-inspection conference with the employer (where reasonably available) or the employer's representative on site, there may be grounds for the employer to appeal the content of the inspection report.

What is an Order?

Section 187 of the WC Act describes that

"the board may make orders for the carrying out of any matter or thing regulated, controlled or required by this part of the regulations and may require that the order be carried out immediately or within the time specified in the order".

The practice of the board is and has been to identify health and safety issues to an employer through the use of orders with reference to particular sections of the Act or Regulation.

There are other communications to employers, which are used for the same purposes, such as

- Contact reports, comments in the inspection text.
- Administrative notes portion of the inspection reports.
- References on the face of the inspection reports which are considered administrative in nature.

The administrative portion of the inspection report and the comments in the inspection text do not constitute an order of the board.

Except where a regulation gives no choice, the officer is not permitted to specify the manner in which a violation has to be remedied. The officer may refer the employer to published practice guides or other responses regarding what compliance looks like. However, the officer should be able to describe to the employer, what compliance would generally 'look like'.

Reviewing the Inspection Report

When the officer presents you with the Inspection Report (IR) read it carefully. The Inspection Report should describe the job site/the place inspected, the name of the "principal contractor" and if any violations were observed

Determine if the information contained in this part of the inspection report is factually correct. If necessary, ask the officer to explain the source of any suspect information in the report and how it was obtained/determined. For example, if the Inspection Report lists the ministry as the 'employer' or 'principal contractor' and you know/feel the ministry is not, then politely ask the officer to explain to you how this was determined. Take notes of the Officer's explanation. If you are able to clarify the facts and correct this misinformation, then do so at this time. If not, keep good notes for later.

Three key areas to look for are:

- Description of the infraction (what was observed).
- What regulation was not complied with? Is this consistent with the infraction?
- What do you have to do to comply? What does compliance look like? Make note of this.

In particular, note and attempt to correct any information in an Inspection Report that does not represent the material facts (error in fact). For example: this site is not a ministry worksite, the ministry is not the employer, the work activities in question were not being performed under ministry control, the ministry is not the 'principal contractor', there was a qualified first aid attendant on duty, the trench was not greater than 4 feet deep, or an MSDS was available.

Take good notes of what the Officer said to you with respect to the above and at the end of the interview, review your notes of what the officer said with the officer to make sure you (both) agree as to what was said. If in doing so, the Officer attempts to correct something that he said, take note of that 'correction' but do not delete your original notes as these may be relevant in the event the ministry requests a review or appeals.

If you don't have the legal authority/control to correct the problem (i.e. the infraction involves another person's workers, or it is private property, the worksite belongs to the licensee and you do not have the authority to enforce the WCB Regulations on these people) then tell the Officer you don't have the legal authority to take immediate action. Provide any evidence you may have to that effect and request the officer to document your objections/any facts provided in the appropriate place in the text (Administrative Notes).

Compliance with Orders

Orders must be complied with without delay. Even if you feel they are incorrect you should take whatever steps you can to initiate corrective actions that are under your control (as an employer/owner). However, if the situation is not under your control, you should immediately notify the local WorkSafeBC Manager.

Immediately following receiving an Inspection Report, it is advisable for the timber sales manager or representative to contact the provincial co-ordinator and your HR Consultant for advice/referral to an OHS Specialist. There may be grounds for these orders to be investigated and if warranted initiate the review/appeal processes. Any review/appeal is 'time sensitive' and must be initiated within a time period (90 days) of the order being written. 'Note: under the WCA any person affected by the order may 'appeal' if an order is not written as a result of an inspection (WC Act, part 3, division 13, 199 (b)).

If appropriate, (you are directed to take a specific set of actions to correct a certain situation that is under your control) ask the Board Officer for timelines and for a Notice of Compliance form. Take steps to set a reasonable/achievable set of actions or a plan for compliance. Don't set compliance targets for yourself (actions/methods/time frames) that are not possible to meet. Note: If during the post inspection conference you were unable to get the Officer to write in the inspection text what 'compliance looks like', and later you are still not sure what 'compliance looks like', then you may have the option to write on the Notice of Compliance, "complied with" and send it in. This would prompt the WCB to determine what 'compliance' looks like.

Inspection Reports must be posted immediately at the workplace to which it relates and a copy provided to the Joint Occupational Health and Safety Committee.

Inspection Order Reviews

Business areas should investigate every order written against them by WorkSafeBC. The intent of the investigation is to identify and correct safety concerns. If the business area determines that the orders were unwarranted, they must immediately contact the Provincial co-Ordinator to assist in initiating a review.

Definitions

Observation Report - a notice of non-compliance with the WCB Regulation or Act issued to an individual worker by a WCB Officer

Inspection Report - a notice of non-compliance with the WCB Regulation or Act issued against the "employer" by a WCB Officer

Review - request for rescinding of an order based on error of fact, error of law, or contravention of a published policy. Must be initiated within 60 days of receiving the order.

Types of Decisions

These following types of WCB decisions can be reviewed:

- Inspection Orders
- Observation Orders
- WCB's refusal to write an order
- WCB's cancellation of an order
- Discriminatory action or failure to pay wages charges

Procedures

The Ministry, employee, supplier, union or other person aggrieved by the inspection decision may request a review of the decision.

An application for a review should be made in writing identifying the reasons for which the review is requested, state the basis on which the application is made, and the outcome requested (WCB Notice of Appeal by Employer in Non-Claims Matters form).

Application for a review on the above types of decisions must be received within 90 days from the date of receiving the report. The time frame of 90 days to register the application for review is final.

The timber sales manager or headquarters director manager should initiate reviews. The Agencies Occupational Health and Safety specialists can assist in assessing these decisions, advising on grounds for review and assist in preparing written submissions.

A request for a review does not operate as a stay. This means that the officer's directions must be carried out as stated.

Notice to Others

A notice of application for review from the Ministry, an employee or the union must be posted at the workplace where the inspection orders arose. The Joint Health and Safety Committee or Worker Health and Safety Representative and Union must also be notified.

All WCB Reviewing Officer decisions are to be posted at the workplace and forwarded to the local Joint Health and Safety Committee.

Decision on Review

A decision from the WCB Reviewing Officer should be available within 150 days, after the Board receives the request for review, for most reviews unless they are considered complex.

The WCB Reviewing Officer may confirm, vary or cancel the decision under review or substitute his own decision. These decisions by the WCB Reviewing Officer are final and are not open to review in court. Some further appeals are allowed under Division 14 of the WC Amendment Act.

Administrative Penalty and Appeals

If a letter notifying the ministry of a WCB Administration Penalty is received, BCTS should contact their BC Public Service Agency contact and the provincial safety co-ordinator . The Agency will assist BCTS in conducting the appeal.

It is important that BCTS collects and forwards any information relating to a penalty assessment to the Agency HR Consultant for the Region in which the alleged non-compliance originated.

Definitions

Appeal - request for rescinding of a penalty assessment based on error of fact, error of law or demonstrated "due diligence" by the employer. Must be initiated within 30 days of receiving the Notice of Penalty Assessment.

Due Diligence - WCB defines due diligence as taking all reasonable care in the circumstances of the workplace to protect the health and safety of all employees.

Reasonable - this is the industry standard expected for this work activity or of an individual of a given occupation.

Types of Decisions

These following decisions can be appealed to the appeal tribunal:

- Administrative penalty orders.
- Cancellation of an administrative penalty order.
- A decision not to impose an administrative order after issuing a penalty notice.
- A decision from the Review Under Division 13 related to the Prohibition Against Discriminatory Action (Section 153).
- A decision from the Review Under Division 13 related to the Suspension or cancellation of a certificate (Section 195).

Who May Appeal?

The Ministry may appeal any administrative penalty decision.

An employee or union representing the employee or any other person aggrieved by the decision may appeal.

The Ministry, employee or union affected by the decision under Section 153 Prohibition against Discriminatory Action may appeal the Reviewing Officer's decision.

The person subject to the order under Section 195 related to the Suspension or cancellation of a certificate may appeal the decision.

Local Procedures

None

Forms and Checklists

Appendix 28-1 Memorandum of Understanding