

**SUBMISSION
ON THE
PROPOSED AMENDMENTS TO
OCCUPATIONAL HEALTH AND SAFETY REGULATIONS
RELATING TO OCCUPATIONAL EXPOSURE LIMITS,
DUPLICATION AND REDUNDANCY AND
OCCUPATIONAL FIRST AID**

**SUBMITTED BY THE
BRITISH COLUMBIA AND YUKON TERRITORY
BUILDING AND CONSTRUCTION TRADES COUNCIL**

Submitted April 10, 2003
to the
Workers' Compensation Board of British Columbia
Policy and Regulation Development Bureau
E-Mail: regquery@wcb.bc.ca

British Columbia and Yukon Territory
Building and Construction Trades Council
#204 - 4333 Ledger Avenue, Burnaby, B.C. V5G 3T3
Tel: 604-291-9020 Fax: 604-291-9590
www.bcbuildingtrades.org



INTRODUCTION:

Doing away with safety regulations for first aid attendants and raising allowable exposure limits are a distressing move towards devolution at the WCB. Deregulation means that employers will have a freer hand in determining safety measures at the workplace. It means that safety will take a back seat to market forces as some employers economize on job safety to gain an edge in the ruthless competition to win tender bids.

This phenomenon is hardly new. The clash between markets, on the one hand, and occupational health and safety, on the other, dates back to before the enactment of the WCB in 1917.

This conflict has played out throughout the history of the WCB. It is worth remembering past horrors in order to avoid future blunders. The current proposals remind us of a story of times gone by. In the 1950's the clash between markets and safety reached a high point in the famous Zucco case. After stalling until the claimant died, the WCB was finally forced to accept a silicosis claim. The autopsy on Mr. Zucco corroborated the testimony by numerous specialists while the victim was alive; namely that lung damage was the result of exposure to silica dust contracted while at work in underground mines.¹ In this famous case a camp out by Mrs. Zucco and her four children on the steps of the legislature was a contributing factor in the downfall of the cabinet minister in charge of WCB. The Honourable Lyle Wicks was defeated in the 1959 general election.

In a prophetic note the labour lawyer involved in the Zucco case said, "a dollar not spent by the Board is a dollar saved for employers."² The latest proposals for deregulation show that employers are still willing to sacrifice jobsite safety for cuts to WCB premiums. With this mindset the WCB reaffirms the doctrine that led to the Zucco fiasco. The irony is that cuts to regulations and lowering exposure limits won't even save employers in the short term. The administrative costs to change course training and other systems will eat up any savings. Of course over the long haul employers will pay more to cover new claims to cover today's deregulation. Sadly, these future compensation benefits will never make-up for the lost lives and health of workers who have suffered needlessly because of today's cutbacks.

This submission is presented in three parts. First is a discussion of exposure limits, next are comments on the so-called "redundancy and duplication" or deregulation of safety practices. In the final section I conclude with a critique of the process followed in imposing the changes.

¹ The Compensation Board That Didn't – Chapter 14, **Never Say Die**, John Stanton, Steel Rail Publishing, 1987, p. 176.

² Ibid, p. 169.

The Building and Construction Trades Council fully endorses the submission by the BC Federation of Labour and its detailed arguments against the proposed cuts.

EXPOSURE LIMITS

Under the new proposals for exposure limits the WCB will move towards the ACGIH (American Conference of Government Industrial Hygienists) table. Generally these are higher exposure limits than currently allowed in BC. In the three cases where the ACGIH have lower exposure limits, the proposals will stick with the BC Table. This is a clear example of the Board's willingness to put workers at greater risk by allowing greater hazards at the workplace.

We should be tightening exposure limits rather than loosening up on them. Releases like the Thallium exposure at Cominco-Teck, a year and a half ago, will become more common under this new regime.

Why are we moving to higher exposure limits?

It is hard to answer this question. Even in the short term it will cost more to change course training and other systems. Again, we ask the question: Where is the benefit?

Of course in the long term it will cost more to cover the new claims made for illnesses related to higher exposures.

DUPLICATION AND REDUNDANCY - DEREGULATION

In what appears to be the first of several waves of cuts to regulations, the WCB is proposing to eliminate regulations in Part 33 (First Aid Measures).

Proposals call for an elimination of the action language from the current regulations. This means that specific directions on compliance with the regulations will be lost. As an example, "to be operated by qualified personnel" is the type of action phrase that is targeted for removal.

If the policy of eliminating action words becomes the norm for future cuts to regulations, ultimately we will see compliance language removed from safety regulations altogether (this may include fall arrest regulations among others).

Cross-references to other legislation (e.g. as required by the Mines Act, FTAA or other pieces of legislation) are also to be removed.

The new regulations will be performance-based. This means that regulations will no longer provide specific, prescriptive instructions. Language requiring employers to provide specified safety prevention measures will be gone. In the future regulations will be no more perfunctory than: "The employer is required to assess their workplace and apply appropriate First Aid as they determine."

The performance-based regulation model has been tried in Alberta. It hasn't worked.

It will be difficult, if not impossible, to ensure compliance when the standards are up to employers. It will only be after an accident has taken place, after someone dies, that the WCB will be able to say that the standards weren't met. What are the standards? Without specific regulations, the standards will remain undefined.

Safety regulations are in place to prevent accidents from happening in the first place. In an Orwellian twist, performance-based regulations have also been referred to as 'objective-based regulations.' 'Objective-based' is a euphemism that means wait until the accident happens, and then decide on the degree of compliance with safety regulations. 'Objective-based' regulations are a license to employers to set their own standards. WCB inspection and investigation officers will rely on employer judgements to measure and determine the appropriateness and compliance with safety practices. 'Objective-based' regulations are a prescription for more accidents and disasters at the workplace.

PROCESS

Workers, represented by their labour organizations, have had to fight the pendulum swings towards deregulation in the recent past; in 1982, 1989 and 1993. The difference is that in the past regulation documents were always vetted by a tri-partied committee. This is the first time that Labour has not been invited to participate in the drawing up of new regulations.

None of the new proposals have been through the tri-partied process. It's not even known who wrote the proposed new regulations.

The current proposed amendments have flagrantly relegated labour to the sidelines. This is a departure from the very foundation of the WCB. A tri-partied balance between business, labour and a neutral third party has always ruled Board processes. The current process for change is a challenge to this fundamental principle.

The standards and regulations that are in place today are the result of tri-partied round tables. A partnership of business, labour and a neutral government appointee have always worked together to develop safety regulations. Today's process imposed by the Board is a unilateral approach with only superficial and indifferent inclusion of labour representatives.

The notice of public hearing was received at our office on February 18, 2003. Normally stakeholders would have met beforehand to jointly review regulations. This joint review would have taken place long before the proposals would go to a public hearing.

CONCLUSION

In conclusion I want to re-iterate the opposition of the BC and Yukon Territory Building and Construction Trades Council to the process and intent of the proposed deregulation amendments. The safety regulations and practices in place today are the result of years of collaboration between business, labour and government. The current schedules and regulations have literally been written in workers' blood as a direct result of death, dismemberment and disability caused by accidents and exposures at work. Deregulation and increasing allowable exposure limits is an insult to the over 12,000 workers who have died from occupational accidents and toxic exposures since the WCB's inauguration in 1917.

I urge the government to re-evaluate the course they are taking and step back from dismantling a system with a progressive and standardized approach to preventing workplace accidents.