



June 23, 2023

**VIA EMAIL:** [OHSReqFeedback@worksafebc.com](mailto:OHSReqFeedback@worksafebc.com)

Policy, Regulation and Research Department  
WorkSafeBC  
P.O. Box 5350 Station Terminal  
Vancouver, BC V6B 5L5

Dear Policy, Regulation and Research Division,

**Re Consultation on proposed amendments to Part 5 of the Occupational Health and Safety Regulation, Chemical Agents and Biological Agents, sections 5.97 to 5.105 - Emergency Procedures**

### **Introduction**

The BC General Employees' Union (BCGEU) represents more than 85,000 workers in over 550 bargaining units in every area of the province. Our diverse membership includes direct provincial government employees, and workers throughout the broader public and private sectors.

The proposed changes to Part 5 of the OHS regulation are of significant interest to the BCGEU. In most BCGEU workplaces, some hazardous products that could cause or aggravate an emergency are stored or used – for example, things like cleaning products and propane tanks are common. Many BCGEU workplaces also regularly have quantities of hazardous products that pose even more serious risks in the event of an emergency, including laboratories, highway maintenance yards and workshops, wildfire fighting bases, trades training facilities, municipal facilities and healthcare facilities.

As such, the BCGEU is broadly concerned with ensuring that workplaces appropriately assess potential risks and prepare for emergencies - both in general and in relation to hazardous products. This concern is not theoretical. Rather, our past experience has demonstrated that not being ready for an emergency can have devastating consequences for our members and the people they serve. For example, a lack of

#### **BCGEU headquarters**

4911 Canada Way, Burnaby, BC V5G 3W3  
Phone: (604) 291-9611 / 1-800-663-1674  
Fax: (604) 291-6030 / 1-800-946-0244

We are located on the unceded and shared traditional territory of the xʷməθkʷəyəm (Musqueam), Skwxú7mesh (Squamish) & Səlil̓ lwətaʔ (Tseil-Waututh) peoples.

emergency preparedness led to the deaths of two tenants, several injured workers and the total destruction of Atira's Winter's building by fire last spring in Vancouver.<sup>1</sup>

Given the importance of this issue, we appreciate the opportunity to provide our comments on the proposed regulatory amendments.

### **Overall Comments**

Overall, the BCGEU supports the proposed changes, and we believe that, in general, the changes serve to strengthen the OHS regulation. By including additional detail and more prescriptive requirements for workplaces, the changes offer more clarity for workers and employers and are likely to improve enforceability. We are also pleased to see the inclusion of a comprehensive requirement for worker participation proposed at the beginning of this section of the regulation.

#### **5.98 - Worker Participation**

The proposed language in this section establishes a comprehensive requirement for worker involvement in all steps of the development, implementation and review of an emergency response plan. The BCGEU strongly supports the proposed language. In our experience, without an explicit requirement to consult workers, joint committees and worker health and safety representatives are regularly left out of the process and only informed about risk assessments or the development of procedures after the fact. Given this experience, we are pleased that the proposed language is clear in requiring the consultation of workers throughout all steps, and that this requirement is included at the beginning of this section of the regulation.

#### **5.99 - Inventory of hazardous substances**

The proposed language adds detail to the existing requirements for employers to prepare an inventory of hazardous substances at the workplace. The BCGEU supports the inclusion of clearer, more explicit requirements for the information required to be included in an inventory, and for the inventory to be in writing.

In particular, the proposed language under 5.99(b)(iv) & (v) says employers must include information about the "maximum quantity" of a substance that may be at the workplace and the "maximum capacity of any container or system" in which the substances might be stored or used. This ensures employers are required to identify the highest amounts of substances that may be at the workplaces rather than the "approximate" quantities required under the existing language. We support this language, as it is clearer, and requires contemplating the highest potential risk from a hazardous substance. Because of this, we believe it supports more protective measures for workers.

However, the proposed language requires employers to "prepare" an inventory and does not include a clear obligation to keep the inventory current. In contrast, the existing language in 5.98(1) requires employers to "maintain" an inventory. We are concerned that the proposed change in wording could lead some employers to see the "preparation" of an inventory as a one-time-only activity. We recommend that

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<sup>1</sup> "Winters Hotel fire one year later: Safety changes made but SRO hazards remain" Vancouver Sun, April 10, 2023: <https://vancouversun.com/news/local-news/a-year-after-fatal-winters-hotel-fire-safety-changes-made-but-sro-hazards-remain>

the Board keep the existing requirement for employers to "maintain" an inventory of hazardous substances. Further, we recommend that the Board add clear language requiring employers to regularly review and update their inventory.

Currently, section 5.98(1) includes a list of examples of hazardous products that are to be included in the inventory. It reads: "...including hazardous products covered by WHMIS, explosives, pesticides, radioactive materials, hazardous wastes, and consumer products." However, this sub-list is not included in the proposed changes to Part 5.

We think the existing list is helpful to users of the OHSR. Providing the list offers more clarity and helps prevent the exclusion of some hazardous products from emergency planning. However, we also think it is important to be clear that the list is not exhaustive. As such, we recommend that the existing list in 5.98(1) be maintained, but with the addition of the phrase "*including, but not limited to...*"

### **5.100 - Risk Assessment**

In this section, the Board proposes significant added detail about the nature of the risks that are to be assessed, and about specific matters that must be considered in the risk assessment. Overall, we strongly support the added detail in this section. In particular, we support the clear requirement for employers to consider not only the risks posed by substances present in the worksite, but also potential hazards that could be generated or enter into the worksite in an emergency situation. We also support the specific requirement for the assessment to be in writing.

The proposed section 5.100(2)(e) requires employers to consider "*any reasonably foreseeable cause of an emergency*" in the risk assessment. Here, we feel there is an opportunity to strengthen and clarify the language. We recommend replacing "*reasonably foreseeable*" with "*known and reasonably foreseeable*" to make the language consistent with the Act. We also recommend removing the phrase "*for greater certainty*" from section 5.100 (1)(c) to simplify the language and avoid confusion through the use of unnecessary legal words.

There are other parts of this section we believe can be strengthened. To maintain consistency in approach, we recommend including an explicit reference to the hierarchy of controls to the proposed language of 5.100(2)(g). This would direct employers to implement control measures that follow the hierarchy and, if at all possible, eliminate hazards before invoking additional control measures that still require working with the hazard. We are also concerned that the language "*good engineering practice and accepted industry standards*" does not have an agreed upon definition. We recommend more specificity to clarify the intent of the passage.

Finally, we are very concerned about the proposed language in 5.100(2)(g)(ii) regarding control measures. Here, the proposed language requires employers to consider "*the compatibility of the measures with work activities and processes and with the workers who will be required to employ those measures.*"

In this case, the proposed language appears to be a novel way of saying that employers must only implement measures "*where practicable.*" The term "*compatible*" is used elsewhere in the regulation to refer to proper connections between equipment, but not in relation to work processes or workers. In this context, the term does not have an agreed upon definition and could potentially be applied quite broadly. Without additional clarifying language, the worst-case scenario could result in employers removing safety measures due to arbitrary or undefined reasons, offering the justification that they are "incompatible" with the work activity. Instead, we recommend that the Board consider language that is consistent with

other parts of the regulation. In our view, employers should be directed to implement measures to eliminate risk, and where that is not feasible, minimize the risk to the greatest extent possible.

#### **5.101 - Emergency response plan**

We support the proposed language in this section that requires employers to create an overall written plan that includes not only evacuation procedures, but also procedures for clean-up and re-entry, as well as training and drills. Further, we support the proposed requirement in 5.101(3) for employers to review and update the plan "*at least annually.*" We support this approach, as it encourages employers to instill a cycle of continued improvement.

#### **5.103 - Emergency procedures - safe work**

We strongly support the requirement in this section for employers to develop written procedures for work that may occur in the wake of an emergency. It is critical that workers are clear about exactly what to do, and that procedures are in place to ensure workers' safety following an emergency involving hazardous substances.

However, the proposed language in this section is confusing and potentially problematic. In the context of investigating, controlling the release, cleaning up and disposing of hazardous substances, many employers will plan to rely on first responders or engage a contractor/expert to conduct these activities. In this case, the explanatory notes supporting this section say that a third party or a contractor is not obligated to follow an employer's procedures, but instead may rely on their own.

It is questionable for an employer to develop detailed procedures for work for which they do not have expertise and would never plan to conduct themselves. Instead, it is most important for employers to plan ahead and ensure effective coordination and information exchange with third parties. Along with the BC Federation of Labour, we urge the Board to develop guidelines to ensure the requirement to prepare written safe work procedures is established, but also to clearly accommodate the reality that these situations are likely to involve third parties.

#### **5.104 - Training and drills**

The BCGEU strongly supports the additional requirements for training and drills included in the proposed language. However, we recommend removing the phrase "*reasonably foreseeable*" from this section, as workers need to be trained in all the relevant emergency procedures.

#### **5.105 - Availability of records**

The BCGEU strongly supports the addition of this section to make explicit the records required to be readily available to workers and the JOHS committee or worker health and safety representative. We recommend moving this requirement to the beginning of this section, and possibly incorporating it as part of the proposed section.

#### **5.98 - Worker participation**

In addition to the comments and recommendations above, the BCGEU would like to register its full support for the BC Federation of Labour's submission on the proposed amendments. And we echo the

Federation's call for the Board to develop an effective implementation strategy supported by adequate resources.

Again, we appreciate the opportunity to provide our comments on the proposed amendments, and we urge the Board to adopt our recommendations.

Sincerely,



Stephanie Smith  
President

MS/JG  
MoveUP

cc: Sheila Moir, Director of Occupation Health & Safety – BC Federation of Labour