 <p>Yukon Workers' Compensation Health and Safety Board</p>	Part:	General and Corporate		
	Board Approval:	<i>Original Signed by Chair</i>	Effective Date:	July 1, 2008
	Number:	GN-07	Last Revised:	
	Board Order:		Review Date:	

NEGLIGENCE COST TRANSFER

GENERAL INFORMATION

Prior to each investigation involving negligence allegations, the Yukon Workers' Compensation Health and Safety Board (YWCHSB) will review the situation for evidence of negligence and materiality. For those cases where negligence is to be determined, the Investigations Unit will be consulted to determine whether an investigation into the incident is warranted. All parties likely to be affected by the determination will be given an opportunity to review the available evidence and make representations to the YWCHSB about the application of subsection 71(2) of the *Workers' Compensation Act* S.Y. 2008 (the "Act").

Where more than one employer (including the injured worker's employer) is found to be negligent in a particular case, the past and future injury costs of the claim will be apportioned among the negligent employers' cost histories based on degree of negligence. Where the YWCHSB is satisfied that the injury or death of a worker is due to the negligence of more than one employer, and degrees of negligence cannot be determined, the costs of the injury will be charged equally to the cost history of the employers involved.

PURPOSE

This policy provides direction in determining when an employer (and/or his/her worker(s)) has been negligent and has thereby caused an injury or death to a worker(s) of another employer. Where negligence has been determined, this policy provides direction on how costs are transferred.

DEFINITIONS

- 1. Causation:** means that it can be established that the alleged negligent employer and/or his or her worker caused, partly or wholly, an injury to the worker of another employer.
- 2. Duty of Care:** means that the alleged negligent employer and/or his or her worker had a responsibility to the injured person to avoid causing his/her harm.

3. **Negligence:** is defined, for the purpose of this policy, through the establishment of a duty of care, standard of care and a breach of either that has caused injury or death.
4. **Standard of Care:** there is a duty in pursuing an activity to take reasonable care to avoid harm to others. The level of the standard of care varies with the activity.

POLICY STATEMENT

Negligence will be determined by the YWCHSB upon the request of the injured/deceased worker's employer or where deemed appropriate by the YWCHSB. Although the YWCHSB will attempt to identify cases where there is the potential of applying subsection 71(2) of the *Act*, the primary responsibility rests with the injured/deceased worker's employer to request a determination. Requests from the worker's employer must be received within twenty four (24) months of the date the injury.

ROLES AND RESPONSIBILITIES

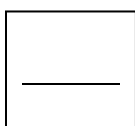
Employers have a duty under the *Occupational Health and Safety Act*, sections 3-11 to:

- a) take appropriate measures to ensure that the workplace, machinery, equipment, and processes under the employer's control are safe and without risk to health; and
- b) ensure that workers are aware of workplace hazards and that appropriate measures are taken to prevent or reduce the risk of occupational illness or injury.

Workers have a duty to participate in activities to ensure their own health and safety and that of any other person in the workplace.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy, "Merits & Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.



APPEALS

Reconsideration of a decision regarding a person’s status may be made by submitting a request for review to the Director of Assessments. Decisions made by the YWCHSB under this policy, can be appealed directly in writing to the Board of Directors of the YWCHSB in accordance with subsection 85(1) of the *Act*.

ACT REFERENCES

Sections 71 and 85
Occupational Health and Safety Act

POLICY REFERENCES

EN-02, “Merits and Justice of the Case”

HISTORY

GC-15, “Negligence Cost Transfer”, effective January 1, 2008, revoked July 1, 2008.

