



**YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD**

SUBJECT: PENALTIES

POLICY NO.: OHS - 05

BOARD APPROVAL: _____

APPROVAL DATE: 09/10/96

BOARD ORDER NO.: _____

EFFECTIVE DATE: 10/01/96

REVOKED

JUL 12 2005

POLICY STATEMENT

SECTION **41, 43**

REFERENCE: **47, 48**

Occupational Health and Safety Act

POLICY:

PENALTIES

GENERAL INFORMATION

The philosophy of the Board regarding penalties is that most employers, supervisors or workers are in compliance with the Occupational Health and Safety Act (the Act) and Regulations or will comply when orders identifying violations are written up. However, when the following situations occur:

- (i) very serious violations of the Act or Regulations;
- (ii) where education, discussion and persuasion have not changed the compliance behaviour of an employer, supervisor or worker; or
- (iii) where there is continuing non-compliance to minor violations,

safety officers of the board have the authority to issue orders, close down all or part of a work site, issue a warning letter, issue an Administrative Penalty or recommend prosecution to the Director of Occupational Health and Safety Branch.

POLICY

A. FACTORS IN THE APPLICATION OF PENALTIES

Safety officers shall consider the gravity of the hazard created by the violation, the previous record of the firm and any evidence that the employer was aware that workers were exposed to a hazard.

B. APPLICATION OF LEGISLATED OPTIONS

When compliance is not achieved through discussion and persuasion or where there are serious violations, safety officers may use or recommend the use of legislated options. Stop work orders or closure orders shall only be used in very serious and/or last resort situations and may have prosecution or Administrative Penalties attached.

(i) STOP WORK ORDER

A Stop Work Order may be issued by a safety officer in situations where continuation of work may keep or place workers in undue risk.

Where conditions involving undue risk are encountered, the safety officer shall order the employer, verbally and without delay, to remove the worker(s) from the hazardous situation. If supervisory personnel are not available, the safety officer shall order the worker(s) to stop work.

(ii) CLOSURE ORDER

The safety officer shall, when they observe conditions or procedures creating imminent danger to workers, close down all or part of a place of employment. The safety officer shall post a Closure Order which shall state the circumstances and the extent of the closure.

(iii) WARRANT

If a safety officer is denied entry to a worksite for an investigation, a Warrant may be obtained authorizing the safety officer to enter the worksite.

(iv) COURT ORDER

A safety officer may seek a Court Order to obtain evidence from an accident site, to enter a worksite for an investigation or to prevent the continuing contravention of the Act or Regulations.

If an employer refuses to comply with a request or demand from a safety officer for production of documents or evidence from an accident site, the safety officer may apply for a court order.

(v) INJUNCTION

In cases where a safety officer knows a serious contravention of the Act and Regulations is taking place or is about to take place and if in the opinion of the safety officer, the person responsible for the work site refrains from correcting the situation, the safety officer shall notify the Director of Occupational Health and Safety Branch. The Director of Occupational Health and Safety Branch may subsequently apply to a judge of the Supreme Court of the Yukon for an Injunction to direct any person to cease conduct that is, or may be, in contravention of the Act.

(vi) ADMINISTRATIVE PENALTY

The administrative penalty shall be used as an alternative to prosecution in low to high risk situations. The penalty shall not be used in undue risk situations. The Board takes the position that in cases of serious, life-threatening incidents where an employer, supervisor or worker knowingly expose other workers to such hazards, fines should reflect the seriousness of the situation. In cases of undue risk in the workplace, prosecutors are instructed to ask the court to impose significant fines for serious violations.

Because this penalty is an alternative to prosecution, thorough investigation procedures and careful adherence to Yukon Workers' Compensation Health and Safety Board policy, directives and procedures shall be taken by each safety officer.

The safety officer is authorized to issue an Administrative Penalty.

(vii) PROSECUTION

In the case of very serious violations of the Act or Regulations, prosecution may be considered. An employer, supervisor, worker or any combination of the persons named may be prosecuted.

A safety officer may present a report to the Director of Occupational Health and Safety Branch recommending prosecution. The final decision to institute the prosecution process rests with the Director of Occupational Health and Safety Branch.

C. GUIDELINES FOR ADMINISTRATIVE PENALTIES

The maximum amount prescribed by the Act for a first offence is five thousand dollars (\$5,000). For a second offence, the maximum penalty is ten thousand dollars (\$10,000).

No prosecution of the alleged offender will be initiated if:

- (i) the Administrative Penalty is paid within the time specified;
- (ii) the penalty is successfully appealed;
- (iii) the alleged offender is unsuccessful in the appeal, and the penalty is paid within 21 days or such extended time as the Director agrees to; or
- (iv) the alleged offender is issued a certificate which may result in a judgement of the Supreme Court of the Yukon.

Administrative Penalties may be appealed to the Yukon Workers' Compensation, Health and Safety Board.

D. NOTICES

The Notice of Levy is the official notice of an Administrative Penalty. The Notice shall be served in the same way as the Summary Convictions Act authorizes a ticket to be served. The Notice does not need to be made under oath or laid before a judge or justice of the peace.

The Notice of Levy shall be served within 60 days of the day on which the offence first came to the knowledge of the Board.

E. PAYMENT

An Administrative Penalty shall be made payable to the Workers' Compensation Health and Safety Board and directed to the Director of Occupational Health and Safety Branch. The payment of an Administrative Penalty or an admission of liability to pay it may be used as a factor for safety officers or the Board in considering amounts in a subsequent Administrative Penalty.

F. APPEALS

A person receiving a Notice of Levy may appeal a levy by writing to the Yukon Workers' Compensation, Health and Safety Board within 21 days of the Notice.

The Board may revoke the levy, decrease the levy or confirm the levy. If the levy is not revoked, the person named must pay within 21 days of the Board's decision or within such extended time as may be directed by the Director of Occupational Health and Safety.

REFERENCES

Workers' Compensation Health and Safety Board:
Appeals Policy Statement

Occupational Health and Safety Act
Summary Convictions Act

HISTORY

1. Policy, Penalties Policy Statement, effective December 9, 1993.
2. Policy, Penalties Policy Statement, amended September 10, 1996, effective October 1, 1996.