



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

SUBJECT: OH&S - PENALTIES POLICY NO.: OHS - 05
 BOARD APPROVAL: [Signature]
 APPROVAL DATE: 93-12-09
 BOARD ORDER NO.: _____
 EFFECTIVE DATE: 93-12-09

POLICY STATEMENT

Revised Oct. 1, 1996

SECTION
REFERENCE:

41, 43

POLICY:

47, 48

Occupational Health and Safety Act

PENALTIES

GENERAL INFORMATION

The philosophy of the Board regarding penalties is that most employers, supervisors or workers are in compliance with the Act and Regulations or will comply when orders are written noting violations. 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 worksite, issue an Administrative Penalty or recommend prosecution to the Director of Occupational Health and Safety.

POLICY

A. FACTORS IN THE APPLICATION OF PENALTIES

Safety officers must consider the gravity of the hazard created by the violation, the previous record of the firm and any evidence that the employer was aware 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. Orders will only be used in very serious and last resort situations and may have prosecution or Administrative Penalties applied.

(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 employer will be ordered, verbally and without delay, to remove the worker(s) from the hazard. If no supervisory personnel are available, the workers will be directed by the safety officer to stop work.

(ii) CLOSURE ORDER

The decision to close down all or part of a place of employment will be made by a safety officer upon observation of conditions or procedures creating imminent danger to workers. The safety officer will post a Closure Order which will 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 Court Order may be sought by safety officers to obtain evidence from an accident or 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, 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 and the person responsible for the worksite advises the safety officer that no changes will be made, the Director of Occupational Health and Safety may apply to a judge of the Supreme Court of the Yukon for an Injunction to stop any person from continuing such conduct.

(vi) ADMINISTRATIVE PENALTY

This penalty will be used as an alternative to prosecution in low and high risk situations. It will not be used in undue risk situations because in cases of serious, life-threatening incidents where an employer, supervisor or worker knowingly exposes other workers to such hazards, the Board feels that fines should reflect the seriousness of the situation. Prosecutors will be instructed in undue risk situations to ask the court to impose significant fines for serious violations.

Because this penalty is an alternative to prosecution, thorough investigation procedures and careful consideration of the guidelines will be taken by each safety officer.

The officer will have the authority to issue an Administrative Penalty.

(vii) PROSECUTION

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

A safety officer may present a report to the Director of Occupational Health and Safety recommending prosecution. Only the Director can institute the prosecution process.

C. GUIDELINES FOR ADMINISTRATIVE PENALTIES

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 the time specified; 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.

Guidelines for Administrative Penalty amounts may be as follows:

(i) Safety officers may levy a penalty within the following ranges for first offences:

	<u>Minimum</u>	<u>Maximum</u>
Workers	\$ 50	\$ 500
Supervisors	\$ 100	\$ 1,000
Employers	\$ 200	\$ 2,000

(ii) Safety officers may levy a penalty within the following ranges for second offences:

	<u>Minimum</u>	<u>Maximum</u>
Workers	\$ 100	\$ 1,000
Supervisors	\$ 200	\$ 2,000
Employers	\$ 400	\$ 4,000

An additional, penalty of up to \$500 may be levied by the safety officer for each day or part of a day during which the offence continues after the first day. Similarly, in the case of a second offence that continues, up to \$1,000 may be levied by the safety officer for each day or part of a day during which the offence continues after the first day.

The officer may recommend to the Director that a penalty amount exceed the ranges presented above and the Director may approve the recommendation to the maximum prescribed by the Act. The maximum amount for a first offence is \$5,000. For a second offence the maximum penalty is \$10,000.

D. NOTICES

The Notice of Levy is the official notice of an Administrative Penalty. This Notice will be served by a safety officer. The Notice does not need to be made under oath or laid before a justice.

The Notice of Levy must be served within 30 days after the day on which the offence is alleged to have been committed.

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. 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. Payments may not be used for the purpose of sentencing after conviction in court of an offence. Payments cannot be applied against penalties resulting from summary convictions.

F. APPEALS

A person receiving a Notice of Levy may start an appeal 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 directed by the Board.

REFERENCES

Workers' Compensation Health and Safety Board, Appeals Policy Statement, Occupational Health and Safety Act