

GENERIC LETTER TO PRESIDENTS OF BC FORESTRY COMPANIES

[Inside Address]

Dear _____:

I am writing to you regarding the unacceptable number of serious injuries and fatalities in British Columbia's forestry sector. Each year, more than 200 workers are seriously injured and more than 20 workers die in the forests. In this year alone, there have been 40 fatalities and 193 serious injuries which impact untold numbers of family and community members.

WorkSafeBC recognizes that BC's forest industry has undergone significant structural change in recent years, including the outsourcing of falling operations to small, independent contractors. Of the approximately 7,000 firms registered in forestry in the province, about 6,500 of them are small operators or independent contractors who do not have the same level of health and safety resources available to them as large companies. WorkSafeBC believes that every workplace party shares responsibility for safety in the forests, and that each party can play a key role in reducing, and ultimately eliminating, serious injuries and fatalities in the forest sector.

I am advised that some parties may not be aware of their duties under the *Workers Compensation Act* (the "Act"). I also understand that some parties may believe that contracting work out also entails a contracting out of health and safety duties and accountabilities, which is not the case.

As a result, I would like to take this opportunity to advise you of the roles of several workplace parties with regard to occupational health and safety, and some of the steps WorkSafeBC will be taking to assist workplace parties achieve the common goal of making health and safety the first priority in our forests.

Owners

An "owner" is defined very broadly under Section 106 of the Act and includes not only the traditional definition of an owner, but also a tenant, lessee, licensee, occupier and a person who acts for or on behalf of an owner as an agent or delegate. There can be more than one owner in any given workplace.

An owner must provide and maintain its land and premises being used as a workplace in a manner that ensures the health and safety of persons at or near that workplace, and must

give the employer or contractor information known to the owner that is necessary to identify and eliminate or control hazards at the workplace.

WorkSafeBC will carefully investigate the roles of each owner in a serious workplace injury or fatality, and may consider each of the following parties to be owners in the forestry sector:

Ministry of Forests and Range (MOFR)

Compliance of the MOFR with Section 119 of the Act will be shaped by the terms of the forest licenses granted by the MOFR and the activities engaged in by MOFR. The following actions of the MOFR may be found to be violations of Section 119 of the Act depending on the circumstances:

- Failure to adequately construct, modify or maintain forest service roads.
- Failure to ensure licensees construct forest roads to safe road design criteria.
- Inadequate road use policy.
- Failure to communicate information regarding safety hazards (such as degraded roads, washouts, obscured or inadequate signage, or unsafe practices) which the MOFR knew of or ought to have known of through inspections.

BC Timber Sales

BC Timber Sales, as an agent of the MOFR, meets the definition of "owner" under the Act.

Licensees

Licensees may be considered owners and be held responsible for:

- Inadequate maintenance of forest roads that the licensee should be aware of under their tenure.
- Inadequate communication of specific forest road hazards (such as steep grades, dangerous curves or washouts) the licensee knew of or should have known of.

Employers

Employers have a wide range of duties under Section 115 of the Act. Fundamentally, employers must ensure the health and safety their own workers and any other workers present at their workplace. Employers are subject to administrative penalties of over \$500,000 for violations of their duties.

WorkSafeBC may consider the following parties to be employers under the Act:

MOFR

The MOFR will be considered an employer when their own staff is engaged in forestry operations.

Licensees

Licensees will be held accountable as employers depending on the degree of control over the contractor. WorkSafeBC would expect appropriate monitoring activities ranging from receiving safety reports through to direct inspections, depending on the circumstances.

Contractors

Contractors may be held accountable as employers with obligations towards workers of subcontractors. Their scope of responsibility may depend on whether the contractor knew or should have known about workplace hazards, and if it would be reasonable in the circumstances to expect the contractor to have undertaken safety precautions. WorkSafeBC would expect the following depending on the role of the contractor:

- Direct responsibility for ensuring compliance of workers.
- Monitoring performance and programs of the falling contractor.
- Monitoring and addressing compliance activities of phase contractors.
- Establishing safety programs, inspections and joint committees.

Prime Contractors

Prime contractors have responsibilities under Section 118 the Act to coordinate activities of workplace parties and to do everything practicable to establish a system to ensure compliance with the Act and OHS Regulation.

MOFR

The MOFR may be a prime contractor in limited circumstances, such as small business sales and road construction, shake block contractors, silviculture operations, First Nation joint ventures, and road maintenance.

BC Timber Sales

BC Timber Sales may act as a prime contractor in limited circumstances such as contracting for the construction of roads, bridges and landings.

Licensees and Contractors

The Licensee will be the prime contractor unless there is a specific agreement designating another person or contractor as prime contractor. Licensees or contractors are expected to engage in high-level coordination of safety activities of subcontractors over a potentially large geographic region, such as an entire-cutting permit or tenure area. Coordination will also extend to logistical matters such as performing risk assessments, determining measures to address hazards, and establishing systems to ensure health and safety.

Workers

Workers (which, may include independent operators) have a number of responsibilities under Section 116 of the Act, including:

- Taking reasonable care to protect the worker's health and safety, and the health and safety of others who may be affected by the worker's actions.
- Carrying out his or her work in accordance with the Act and OHS Regulation.
- Reporting any contravention of the Act and OHS Regulation or any hazard.

Workers also have a number of specific responsibilities in the OHS Regulation. WorkSafeBC expects workers and owner/operators to be aware of their obligations and comply with their responsibilities at the workplace.

Management of a Forestry Operation

Section 26.2 of the *Occupational Health and Safety Regulation* ("OHSR") requires management of forestry operations to plan and conduct operations in a manner consistent with the OHSR, and with recognized safe work practices.

Licenses will be considered management in forestry operations in most circumstances. WorkSafeBC expects an evaluation and subsequent monitoring of the risks that contractors at one workplace within the licensee area will impose on workers at another workplace, and coordination of contractor activities.

Directors, Officers and Agents

Under Section 121 of the Act, every director and every officer of a corporation must ensure that the corporation complies with Part 3 of the Act, the OHSR and any applicable orders. In conducting inspections our officers may be asking for evidence that directors and officers have discharged this important statutory requirement and determining if systems are in place to ensure compliance in this regard.

Non-compliance by a corporation could result in the prosecution of that corporation's directors, officers or agents who authorized, permitted or acquiesced in the contravention of the Act.

Criminal Code Amendment: Bill C45

Although not enforced directly by WorkSafeBC, Bill C45 (effective March 31, 2004), introduced new levels of responsibilities for occupational health and safety, and criminal liability for failure to meet those responsibilities.

Bill C45 creates a legal duty for everyone who undertakes, or has the authority, to direct how another person does work, to take reasonable steps to prevent bodily harm to that person, or any other person. Failure to do so could lead to charges of criminal negligence.

WorkSafeBC is negotiating a Memorandum of Understanding with the BC Association of Police Chiefs to establish joint investigation protocols to facilitate criminal referrals where warranted with regard to serious workplace injuries and fatalities.

Conclusion

I firmly believe that all forest industry stakeholders share common concerns about the state of occupational health and safety in our forests. Significant steps have been taken to address injuries and fatalities, including the establishment of the Forest Safety Council. WorkSafeBC continues to support this important initiative and, in addition, we will be enhancing our enforcement efforts in forestry beginning next month by adding new prevention officers and improving our inspection protocols.

I trust you have found this letter useful and I hope you will discuss its contents with your senior staff, and other key personnel responsible for occupational health and safety. If you wish to discuss your responsibilities in detail, I can arrange for a member of our prevention team to contact you.

Yours truly,

Douglas J. Enns, FCA, C.Dir.
Chair, Board of Directors