

REVIEW DECISION

Re: Review Reference #: R0329330
Board Decision under Review: August 30, 2024

Date: February 25, 2025

Review Officer: Sarah Frost

Introduction and Background

The employer is a municipality that was the prime contractor at a site where a project was being conducted to connect existing water pipes to a newly installed main stream. On August 27, 2024, there was an incident at the worksite involving a gas pipeline strike that resulted in the release of natural gas at the worksite.

An officer of the Workers' Compensation Board ("Board"), which operates as WorkSafeBC, attended the worksite. In an August 30, 2024 inspection report, the Board issued an order to the employer for a violation of section 20.79(1) of the *Occupational Health and Safety Regulation* ("Regulation").

The employer has requested a review of the Board's order. It is represented by the Employers' Advisers Office, and provided submissions in support of its request. These submissions were provided to the Board officer who issued the order for comment. As the Board officer was unavailable, a Board supervisor with knowledge of the incident provided comments. These comments were provided to the employer with an opportunity for rebuttal, and further submissions were received.

Section 20(3) of the *Workers Compensation Act* ("Act") gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Preliminary Matter

On review, the employer submits that the Board officer should have issued an order to its worker, Mr. M. My jurisdiction on review is limited to matters addressed in the order under review. The order under review did not consider whether to issue an order to Mr. M. Therefore, that is not a matter I can consider on this review. In any event, I note that there is nothing in the relevant policy suggesting that even in situations where an order has been issued to a worker, it could not also be appropriate to issue an order to the employer.

Issue

The issue on this review is the Board's order to the employer under section 20.79(1) of the *Regulation*.

Reasons and Decision

Section 84 of the *Act* gives the Board the authority to make orders for carrying out matters and things regulated, controlled or required by the *Act*. Section 84(2)(b) gives the Board the authority to make orders requiring persons to take measures to ensure compliance with the *Act* and the *Regulation*. Policy item P2-84-1, *OHS Compliance Orders*, states that when identifying violations at a workplace, the Board will ordinarily write orders.

Section 20.79 of the *Regulation* states that before excavating or drilling with powered tools and equipment, the location of all underground utility services in the area must be accurately determined, and any danger to workers from those utility services must be controlled.

In the August 30, 2024 inspection report, the Board officer wrote that the employer was undertaking a project involving connecting existing water pipes to a newly installed main stream. The work included an excavation to connect the water pipes. The employer was the prime contractor at the site, and therefore responsible for coordinating the activities of employers, workers, and other persons to ensure health and safety at the workplace. At the time of the inspection, there were 10 workers at the site, with 6 of the workers directly employed by the employer.

The Board officer explained that on August 27, 2024, the rear bucket of a backhoe loader struck a ¼ inch gas pipeline, resulting in damage to the pipeline. He said that in discussion with the employer's representative, it was confirmed that a BC One Call package had been obtained for the site. The representative further advised that electronic pipe locators were used to confirm the approximate location of the underground utility, and the area was marked on the ground. The representative noted that they were not receiving any signal beyond a boundary wall, located approximately 17 feet from a property wall, and so proceeded with the excavation.

By the time of the inspection, the damaged gas pipeline had already been repaired and the excavation backfilled. The employer representative stated that they had a hydro excavation truck on site to help determine the location of the underground utilities.

The Board officer determined that the employer failed to hand-dig to accurately determine the location of the underground utility prior to using mechanized

equipment to excavate the soil material. He found that this was in contravention of section 20.79(1) of the *Regulation*.

On review, the employer submits that an order to worker should have been issued its supervisor, Mr. M, instead of to the employer. The employer says that it exercised due diligence in this situation, and that the incident that brought about the order was a result of the independent action of Mr. M. The employer notes that a more senior supervisor, Mr. C, was the other trained crew member assigned to utility locate on site, and was not asked or informed of any issues related to locating the gas line.

The employer attached a number of documents to its submission in support of its request. These include the cover page of its Excavation Safe Work Practice and Site Preparation, its Safe Work Procedure for excavating grinding, the materials for its safety talk regarding excavation, its safety bulletin relating to the incident, minutes from subsequent meetings regarding the incident, a letter to Mr. M advising that he was being suspended for one day because of the incident, a letter of expectations for Mr. S, one of the its workers on site that day, training materials for the crew at the site that day, and a summary of its safety record and recognition.

In its submissions, the employer outlines Mr. M's responsibilities as site supervisor, and says that his conduct that day was unforeseeable and he should be held accountable.

As noted above, a Board supervisor provided comments. He wrote that it had been determined that the incident could have been prevented by multiple individuals, and said that this shows an overall systems or process failure of the employer and not any one individual.

In its rebuttal submission, the employer submits that Mr. M failed egregiously and should be held responsible, in particular due to its robust procedures. The employer says that this rare, one off event does not correlate with a systemic failure, and notes that it has had thousands of successful digs. The employer also submits that a cognitive bias existed among the crew, and in particular supervisor bias where impartiality should have been modelled.

The employer submits that it was duly diligent in taking all reasonable actions to prevent the violation from occurring. Due diligence is not a defence to section 20.79(1), which is a specific duty provision. While it would be relevant to whether a penalty should be issued, that is not a matter before me in this review.

Turning to the incident in question, there is no dispute that the incident in question occurred, and that none of the employer's supervisors, Mr. M or Mr. C, or Mr. S, ensured that the employer's workers followed the relevant safe work procedures in hand-digging to accurately determine the location of the

underground utility prior to using the backhoe for excavation. The employer's own internal investigation report, dated August 29, 2024, found that both Mr. M and Mr. S did not follow its safe work procedures and concluded that both exhibited a lapse in judgment, with further errors by Mr. M. For these reasons, I find that the evidence establishes that the employer was in violation of section 20.79(1) of the *Regulation* on August 30, 2024.

As a result, I deny the employer's request.

Conclusion

As a result of this review, I confirm the Board's August 30, 2024 decision.

Sarah Frost
Review Officer
Review Division