

## **REVIEW DECISION**

**Re:** Review Reference #: R0327496  
Board Decision under Review: July 23, 2024

**Date:** March 11, 2025

**Review Officer:** Kevin Rooney

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### **Introduction and Background**

The employer operates in the commercial construction industry. On July 9, 2024, an officer of the he Workers' Compensation Board ("Board"), operating as WorkSafeBC ("Board officer"), conducted an inspection of a multi-employer worksite involving a hospital expansion project that the employer was working on.

The Board officer attended the worksite following a report in regard to the suspected asbestos-containing cement water pipes being damaged in the ground between the main hospital building and another building.

The employer requests a review of the Board orders under sections 6.5, 6.6(3), and 6.59.1(2) of the *Regulation*. The employer submits that it was not the Prime Contractor of the project and it would be the responsibility of the Prime Contractor to identify, label, and pay for a third party to come onto the job site and identify asbestos that was not within the employer's work area.

At the request of the Review Division, the Board officer provided comments which were disclosed to the employer for a response. The employer did not provide a response to the Board's officer comments.

The employer requests a review of the Board's orders under section 6.16(1) of the *Regulation* and section 90(1) of the *Act*, and seeks to have the orders rescinded. At the request of the Review Division, the OSO provided comments in a July 24, 2024 memo, which was disclosed to the employer for response. The employer provided a response on August 6, 2024.

Section 20(3) of the *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.

### **Issue**

The issue under this review is the Board's decision to issue orders to the employer for contraventions of sections 6.5, 6.6(3), and 6.59.1(2) of the *Regulation*.

## **Preliminary Matter**

The employer did not request a review of the Board's order finding it was in contravention of section 7.29(1)(b) of the *Regulation*. Item A3.6.2 (b) of the Review Division's *Practices and Procedures* states that one Board decision will frequently address several issues, all of which may be the subject of a single request for review. However, the person who requested the review may not be disputing all of these issues. Review Officers will normally only address the issues that have been put into dispute by the parties.

Therefore, that order stands.

## **Reasons and Decision**

### Order #1 – Section 6.5 of the *Regulation*

Section 6.5 of the *Regulation* states that the employer and the owner must ensure that all asbestos-containing materials present in the workplace are identified by signs, labels, or when these are not practicable, other effective means.

The Board officer stated that the employer's workers were involved in exposing buried parts of the building, such as electrical connections, and performing work immediately adjacent to existing buildings. The employer did not ensure asbestos-containing materials on the exterior of the buildings were identified by signs, labels, or other effective means. The Board officer noted there was no mention of asbestos-containing materials in the tailgate meeting.

In the Inspection Report, the Board officer noted that a hazardous and regulated materials pre-renovation assessment report of July 21, 2020 identified asbestos in the exterior window putty. This putty could have been disrupted (made friable) by the vibration of digging near the building or by the placement of insulated panels within the window wells without controls for asbestos in place. The Board officer noted that exposure to friable asbestos materials without required controls can lead to threatening illness such as asbestosis.

The Board officer noted that during the site inspection, employer representatives reported that the site prime contractor provided pre-renovation hazardous material inspection reports for the site. When the representatives were asked about the possibility of asbestos and lead in the exterior building materials, the representatives were not sure to what extent, if any, hazardous building materials were present.

The employer representative stated that the break in the water pipe occurred approximately two weeks before the site visit. It was suggested that the vibration from nearby digging might have cracked the old underground pipe. The whole

area began to fill with water. The water to the pipes was isolated and the employer's workers dug up the pipe to expose the damage. Once exposed, the employer's workers arranged bulk asbestos samples to be taken and then reburied the pipe.

The Board officer advised that following the inspection, the Prime Contractor provided her with copies of the hazardous building materials inspection report for the site. The employer provided copies of its safe operating procedures. The Board officer noted that the employer's safe operating procedure included much of the regulatory content of the *Act* and *Regulation*; however, the employer had not implemented critical elements of the procedure at the hospital expansion project.

On its Request for Review document, the employer stated that it was not the Prime Contractor and did not feel it was their obligation to identify, label, and pay for a third party to come onto the job site and identify asbestos that was not within the employer's work area.

In comments provided on this review, the Board officer acknowledged that the employer was not the Prime Contractor; however, as an employer, it had an obligation to have confirmed the Prime Contractor had identified the materials in the workplace containing asbestos/lead. In addition, the Board stated the employer should have verified that the Prime Contractor had assessed the risk of exposure associated with the intended work and that the appropriate exposure control plans were implemented.

In the absence of the Prime Contractor meeting these requirements the employer was required to take steps to ensure those obligations were met prior to allowing its workers to proceed with work in the affected area. The Board officer noted that the employer, as a duty holder under the cited provisions, did not ensure these obligations were met.

In addition, the Board officer stated that the hazardous material inspection report for the building confirmed the asbestos-containing materials were present in the window putty and lead-containing coatings of the exterior walls of adjacent buildings. These materials should have been accessible to the employer's workers whose workplace was adjacent to the structures. The Board officer noted that pictures taken during the inspection demonstrated the work was performed in close proximity to the exterior of the building, and in the case of securing insulative panels, work was done directly on the exterior of the building.

The Board officer also stated that the putty on the adjacent building could be disturbed (made friable) by the vibration of mechanical digging near the building, or by the manual placement of insulation panels within the window wells. None of the applicant's workers onsite were aware of the asbestos/lead being present, so they would not know to be careful of any chips/fragments/debris from the

exterior putty and paint. Further, when securing the insulation panels, they would not have known that specific controls were required to minimize exposure.

After considering all of the evidence on file, including the submissions provided by the employer on this review, I have confirmed Order #1.

While I acknowledge the employer was not the Prime Contractor, section 6.5 of the *Regulation* sets out that the employer and the owner must ensure that all asbestos-containing materials present in the workplace are identified by signs, labels, or when these are not practical, other effective means. From my review of the evidence on file, including the photographs of the worksite taken by the Board officer at the time of the inspection, I am satisfied that the employer's workers were working immediately adjacent to a building which a pre-renovation assessment report identified as having asbestos-containing materials in the exterior window putty of the building. I accept the evidence of the Board officer that this putty could have been disturbed by the vibration of digging near the building or by the placement of insulated panels within the window wells without controls for asbestos being in place. Further, the employer does not dispute that the hazardous materials were not identified by signs, labels, or other effective means.

Consequently, I find the employer was in contravention of section 6.5 of the *Regulation*.

#### Order #2 – Section 6.6(3) of the *Regulation*

Section 6.6(3) sets out that before a work activity that involves working with or in proximity to asbestos-containing materials begins, the employer must ensure that a qualified person assess the work activity and classifies it as a low-risk work activity, a moderate risk work activity, or a high-risk work activity.

The Board officer stated that workers engaged in work adjacent to asbestos-containing material (exterior window putty) did not ensure that a qualified person assessed the work activity. As a result, workers may have been exposed to putty debris when digging next to the building to exposure electrical connections.

For reasons similar to those set out above, I have confirmed Order #2.

There is no dispute the employer's workers were engaged in work adjacent to asbestos-containing material. The employer has not disputed that it did not ensure a qualified person assess the work activity to assess whether it would be classified as low risk, moderate risk, or high-risk work activities.

As such, I agree with the Board officer that the employer was in contravention of section 6.6(3) of the *Regulation*.

### Order #3 – Section 6.59.1(2) of the *Regulation*

Section 6.59.1(2) sets out that an employer must not permit workers to engage in a work activity or lead process that may expose the worker to lead dust, fumes or mist unless a risk assessment has first been completed by a qualified person.

The Board officer found that the employer's workers were engaged in work adjacent to the lead-containing materials (exterior wall coatings) and did not ensure that a qualified person assessed the work activity. As a result, the workers may have unknowingly been exposed to lead paint debris when digging next to the building to expose electrical connection and to any other work that involves drilling into the exterior surface of the building. The Board officer stated that it was not clear whether there were any changes to the condition of the exterior paint since the original hazardous material inspection report was completed in July 2020. The Board officer noted that exposure to lead debris (inhalation/inadvertent ingestion) without appropriate controls can lead to life-threatening illness (cancer) and neurological dysfunction.

The evidence on file supports at the exterior of the building adjacent to where the workers were working was coated in lead-containing paint. The employer has not disputed that it did not have a qualified person assess that work activity. I agree with the Board officer that it would be unclear whether there were any changes to the condition of the exterior paint since the original hazardous material inspection report, which was completed four years prior.

Consequently, I find the employer was in contravention of section 6.59.1(2) of the *Regulation*.

### **Conclusion**

As a result of this review, I have confirmed Orders #1, #2, and #3.

Kevin Rooney  
Review Officer  
Review Division