

REVIEW DECISION

Re: Review Reference #: R0330572
Board Decision under Review: August 16, 2024

Date: April 11, 2025

Review Officer: Alice Edwards

Introduction and Background

The employer is a construction firm carrying out asbestos abatement activities and is registered with the Workers' Compensation Board ("Board"), which operates as WorkSafeBC. On January 5, 2024, the employer submitted an Asbestos Abatement Licence ("Licence") Application to the Board. The employer indicated that it would not be performing building surveys, although this might change in the future.

In an April 24, 2024 decision letter, the Board issued the employer a Licence. The Board imposed two terms and conditions on the Licence. Term and condition #1 requires the employer to conduct workplace inspections at intervals that will prevent the development of unsafe working conditions, document corrective actions taken when deficiencies are found, and include observations of work methods and practices. Term and condition #1 also requires that the employer provide the Board with the inspection records within two business days, on request. Term and condition #2 excludes the employer from performing asbestos surveys in relation to buildings for the purpose of asbestos abatement.

The employer did not request a review of the April 24, 2024 decision. On July 8, 2024, the employer's principal emailed the Board to advise that it would like to perform asbestos abatement surveys and requested the removal of term and condition #2.

In the August 16, 2024 decision letter that is the subject of this review, the Board issued the employer an amended Licence. The Board imposed terms and conditions #1 and #3, and rescinded term and condition #2. Term and condition #1 was unchanged from the April 24, 2024 decision.

Term and condition #3 requires the employer to notify the Board's Licensing Services, in writing, at least 48 hours in advance of starting an inspection for asbestos-containing materials and to provide certain information.

Section 268(1)(d)(i) of the *Workers Compensation Act* ("Act") allows a review to be requested of a Board decision respecting an imposition or variation of a term or condition on a licence under section 59.05(4) or (5).

The employer requests a review of the Board's decision to impose terms and conditions on the Licence, seeking to have term and condition #3 rescinded or to be in effect for only a predetermined and reasonable amount of time.

Because the decision under review concerns only the employer's Licence and the terms and conditions applied to it, there are no other parties to this review.

In the course of this review, the Review Division requested comments from the Board officer who made the decision under review. These comments were disclosed to the employer, along with the opportunity to provide additional submissions. No additional submissions were forthcoming.

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.

Preliminary Matter

The employer's submissions included comments regarding the past actions of Board officers. As a Review Officer, my jurisdiction is limited to the matters determined in the decision letter which is under review. To the extent that the employer has issues with the conduct of Board officers, those matters are outside of the scope of the review process and I will not address them further.

Issue

The issue on this review is whether the Board appropriately imposed term and condition #3 on the employer's License.

Reasons and Decision

On January 1, 2024, amendments to the *Act* came into force that create a requirement for asbestos abatement licensing. Section 59.03 of the *Act* states that an asbestos abatement contractor must not carry out or offer to carry out asbestos abatement work unless the asbestos abatement contractor holds a valid licence or is in a class of asbestos abatement contractors that is exempted.

Section 59.05(1) of the *Act* states that on application in accordance with section 59.04, the Board may issue a licence authorizing a person to offer to carry out, and carry out, asbestos abatement work. Subsection 59.05(4) allows the Board to impose any terms or conditions it considers appropriate in the circumstances

on a specific license it issues. Subsection 59.05(5) allows the Board to vary or rescind a term or condition imposed under subsection (4).

Policy Item P2-59.03-1, *Asbestos Abatement Licensing*, supports the framework for asbestos abatement licensing that became mandatory for asbestos abatement contractors, effective January 1, 2024. Part (f) of policy Item P2-59.03-1 states that, for the purposes of determining whether to issue, renew, suspend, or cancel a licence, the Board will consider whether there has been a contravention which places workers and others at potential or actual risk of serious injury, illness, or death. The Board may also consider whether there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or *Occupational Health and Safety Regulation* ("*Regulation*"). The policy Item further states that these considerations may also apply when the Board determines whether to impose, vary, or rescind a term or condition on a specific licence.

Policy Item P2-59.03-1 states that contraventions the Board will consider include, but are not limited to:

- conducting asbestos abatement work with workers who do not hold a valid asbestos abatement certificate;
- conducting asbestos abatement work without a valid licence;
- violation of section 73 of the *Act* (claim suppression);
- violation of section 79 of the *Act* (obstruction);
- violation of a stop work, stop use, or stop operations order or injunction;
- conviction by a court of a violation of the *Act* or *Regulation*; or
- having amounts owing to the Board.

Term and condition #3 disputed by the employer reads as follows:

Whenever [the employer] performs asbestos surveys in relation to a building for the purpose of asbestos abatement, and for the duration of this licence, [the employer] must notify Licensing Services, in writing, at least 48 hours in advance of starting an inspection for asbestos-containing materials, including the following information:

- Date(s) of the inspection
- Address(es) of where the inspection will take place
- Name(s) and contact information of the building owner, prime contractor, or hiring contractor or agent

- Type of survey (i.e. pre-demolition, pre-renovation, or other (please specify))
- Name and certificate number of qualified person conducting the asbestos survey

As noted in policy Item P2-59.03-1, when deciding to impose a term or condition in a license, the Board will consider whether there has been a contravention which places workers and others at potential or actual risk of serious injury, illness, or death [emphasis added]. The policy Item also specifically lists a violation involving obstruction as the type of contravention that the Board will consider. The policy Item also states that the Board may consider whether there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or *Regulation*.

In making the decision under review, the Board officer noted that the director of the employer is also a director of company E and, as such, company E is an associated firm. The Board officer considered both the employer's and company E's history of contraventions. Company E was the subject of 34 Board inspections since January 2019 and it had been issued 30 orders. Most of the orders related to violations of sections of part 6 of the *Regulation* addressing asbestos and section 20.112 of the *Regulation*, which addresses hazardous materials, including asbestos. There were also violations of sections 21 and 79 of the *Act*, including for a failure to cooperate with and refusal to provide information to officers of the Board. The Board officer also advised that company E had been issued three administrative penalties since January 2019.

In particular, the Board officer commented on company E's repeat violations of section 20.112(3)(a) of the *Regulation*. Section 20.112(3)(a) requires that, in conducting an inspection and identifying the hazardous materials, if any, under subsection (2), a qualified person must collect representative samples of the material that may be hazardous material. The Board issued orders to company E for violations of section 20.112(3)(a) on April 4, 2019, May 16, 2019, September 22, 2020, April 23, 2021, and August 27, 2021. The April 23, 2021 violation was the subject of a July 12, 2021 administrative penalty. A multiplier was applied to the basic penalty amount due to the high risk nature of the violation. The Board officer noted that this administrative penalty was the subject of an appeal at the Workers' Compensation Appeal Tribunal at the time of the August 16, 2024 decision. A decision on that appeal remains pending at the time of this review. The Board officer noted that company E's work performing asbestos surveys was not inspected after August 2021.

The Board officer further commented on orders issued to company E on September 14, 2020 for violations of sections 79(2)(b) and 21(2)(h) of the *Act*. Section 79(2)(b) requires that a person must not knowingly provide an officer with false information, or neglect or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's duties

or functions under the OHS [occupational health and safety] provisions or the regulations. Section 21(2)(h) requires that an employer must cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS provisions or the regulations. In the August 16, 2024 decision, the Board officer explained that on September 14, 2020, company E failed to cooperate with the Board officer and refused to provide information to the Board officer when asked to confirm the locations of where company E had collected bulk samples of material. Company E also refused to answer any questions related to a hazardous materials survey. The Board officer noted that an administrative penalty was imposed on company E on November 30, 2020 in relation to these violations.

The employer does not dispute that company E is an associated firm. I have considered the employer's compliance history, including company E's compliance history. The employer's principal noted that some of the initial orders and administrative penalties were cancelled on review or appeal. For clarity, I have summarized the 2019 to 2022 orders to company E under section 20.112(3) of the *Regulation* and section 79 of the *Act*, associated administrative penalties, and related decisions on review and appeal.

- April 4, 2019 – The Board issued an order to company E for a violation of section 20.112(3)(a), related to a failure to collect representative samples of materials that might contain asbestos.
- May 16, 2019 - The Board issued an order to company E for a violation of section 20.112(3)(a), related to a failure to collect representative samples of materials that might contain asbestos.
- September 17, 2020 - The Board issued orders to company E for violations of sections 79(2)(b) and 21(2)(h) of the *Act*. The Board imposed an administrative penalty related to these violations in a November 30, 2020 decision. In a July 11, 2022 decision, the Workers' Compensation Appeal Tribunal confirmed the orders and penalty, finding that company E had intentionally obstructed the Board.
- September 22, 2020 - The Board issued orders to company E for violations of sections 20.112(3)(a) and 20.112(3)(e)(iv). In a May 26, 2021 decision, a Review Officer confirmed the order under section 20.112(3)(a), finding that the employer had not taken sufficient representative samples of material that might contain asbestos. The Review Officer cancelled the order under section 20.112(3)(e)(iv). The Review Officer cancelled the administrative penalty for the violation under section 20.112(3)(a), noting that the employer was receiving a significant penalty for the associated violations of sections 21(2)(h) and 79(2)(b) in relation to the September 17, 2020 orders.

- December 17, 2020 - The Board issued orders to company E for violations of sections 20.112(3)(e)(i) and 20.112(3)(e)(iv). In a June 29, 2021 decision, a Review Officer confirmed both orders.
- April 23, 2021 - The Board issued orders to company E for violations of sections 20.112(3) and 79(1). The Board imposed an administrative penalty related to these violations in a July 12, 2021 decision. In a June 23, 2022 decision, a Review Officer determined that the employer had failed to identify that an incorrect laboratory report was attached to its hazardous materials report. The Review Officer confirmed the violation order under section 20.112(3). In terms of the order under section 79(1), the Review Officer cancelled this order. The Review Officer determined that an administrative penalty was appropriate in relation to the violation of section 20.112(3), which she found was a high risk violation. The employer said that the Review Division decision is currently under appeal at the Workers' Compensation Appeal Tribunal.
- August 27, 2021 - The Board issued orders to company E for violations of sections 5.53(4) and 20.112(3)(a) of the *Regulation*. The Board imposed an administrative penalty related to these violations in a November 3, 2021. In a May 6, 2022 decision, a Review Officer cancelled the order under section 5.53(4) and confirmed the order under section 20.112(3)(a). The Review Officer cancelled the administrative penalty. The employer said that the Review Division decision is currently under appeal at the Workers' Compensation Appeal Tribunal.

Having considered this evidence, I acknowledge that some of the orders and administrative penalties were cancelled in previous Review Division decisions. However, I find it significant that the orders that were not reviewed and those that were confirmed on review and appeal include five violations of section 20.112(3) between 2019 and 2021, as well as a violation of section 79 in 2020.

I also acknowledge that the April 23, 2021 and August 27, 2021 orders are being appealed. However, even if I did not take these orders into account, I find that there would still be sufficient grounds to impose term and condition #3. As well, in regards to whether I should give weight to orders and administrative penalties that are the subject of current appeals at the Workers' Compensation Appeal Tribunal, I note that section 292 of the *Act* provides that the filing of a notice of appeal does not operate as a stay or affect the operation of the decision or order under appeal.

Pursuant to policy Item P2-59.03-1, I have considered whether there has been a contravention which places workers and others at potential or actual risk of serious injury, illness, or death, and I find there was.

One of the orders issued to company E was for a violation of section 79 of the *Act*. Policy Item P2-59.03-1 specifically lists a violation of section 79 as the type of contravention that the Board will consider. As a result, I am satisfied that the employer's obstruction of the Board under section 79 is a contravention, as outlined in Item P2-59.03-1.

Policy Item P2-59.03-1 states that the Board's consideration of whether there has been a contravention which places workers and others at potential or actual risk of serious injury, illness, or death may include whether the violation is high risk and the magnitude of that risk. The Board may also consider whether there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or *Regulation*.

I note that in the June 23, 2022 Review Division decision, the Review Officer determined that the employer's violation under section 20.112(3) was a high risk violation, as workers were performing asbestos abatement activities without proper precautions and the work was partly performed on the basis of the incorrect hazardous materials report. In my view, this is also a contravention that placed workers and others at potential or actual risk of serious injury, illness, or death because the employer caused work disturbing asbestos-containing material to be performed without necessary precautions to protect workers due to an incorrect hazardous materials report. Additionally, I note that the five other violations of section 20.112(3) between 2019 and 2021 are consistent with a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or *Regulation*.

Accordingly, I find that it was appropriate for the Board to impose terms and conditions on the employer's Licence, pursuant to policy Item P2-59.03-1.

The employer submitted that only violations since 2020 should be taken into account, as a five-year history is considered and it is now 2025. I note that the applicable law and policy do not specify any timeframe when considering the employer's compliance history. While an employer's compliance history may be of less relevance or significance the older it is, this is a matter of judgment on the specific facts. I find that, in this case, the Board appropriately considered the employer's compliance history back to 2019.

The employer's principal submitted that many of the orders are "miniscule" and said that the Board should have taken the nature of the violations into account. He also noted that only one of the orders under section 79 of the *Act* was confirmed by the Review Division, and said that this showed that the employer did not have a history of repeating "serious" violations.

In regards to this submission, I note that violations related to the safe handling of asbestos-containing materials are not miniscule. Asbestos is a hazardous

material with significant exposure risks, and violations of safe work practices related to asbestos are among the Board's designated high risk violations.

The employer's principal further submitted that I should also consider his history of court cases against the Board. In particular, he cites a BC Supreme Court decision from February 2019, saying that this decision acquitted him of all of the Board's allegations. The employer's principal submitted that this court decision showed that the Board was issuing unnecessary violation orders and administrative penalties to him.

I have read the February 2019 BC Supreme Court decision. This decision related to a 2012 court order to the employer's principal and others not to expose people to asbestos or put people at risk of exposure to asbestos. The Board sought a decision that the employer's principal and others were in breach of this order. The Board also sought to have the employer's principal and others restrained from carrying on business in the asbestos abatement industry, including inspections for the presence of asbestos.

Among other matters, the BC Supreme Court decision considered 14 counts alleged against the employer's principal concerning events transpiring at a total of ten worksites between 2013 and 2016. The decision found that the employer's principal was not in contempt of the 2012 order in relation to these events, although he had breached section 20.112(3)(e) in one event. The employer's principal was not restrained from carrying on business in the asbestos abatement industry, including inspections for the presence of asbestos.

I note that the February 2019 BC Supreme Court decision pre-dates the orders I have considered in this review. Therefore, this decision does not impact the compliance history I have outlined above. The BC Supreme Court decision noted that there had been over a dozen court decisions on legal battles between the Board and the respondents, including the employer's principal, since the 2012 order. While I acknowledge that there is an extensive history of legal proceedings between the employer's principal and the Board, I have summarized the most relevant court decision above. I do not find that it is necessary to address the other legal proceedings in this decision, as they do not relate to the employer's compliance history as I have outlined it above and they are not a factor in my consideration of whether the term and condition at issue is appropriate.

The employer's principal noted that the Board had acknowledged in the August 16, 2024 decision that the company E had shown some capacity to improve its work practice. I acknowledge that the Board summarized company E's compliance history in the decision under review, documenting that it had agreed to improve its work practices to include all structures in site floor plans, mark spots where samples were taken, and identify sample references directly on maps or drawings. The Board considered the floor plans in three hazardous

materials inspection reports completed by company E in 2023, and noted that the structures on site were documented and references were included as to where samples were collected. However, I find it significant that the Board had not had the opportunity since 2021 to inspect company E's work performing asbestos surveys in particular.

I have considered the specific nature of the term and condition #3 that the Board imposed. The Board's ability to apply terms and conditions to Licences is found in section 59.05(4) of the *Act*, which states that the Board may impose on a specific licence issued under subsection (1) any terms or conditions the Board considers appropriate in the circumstances.

In this case, the Board imposed a term and condition requiring the employer to notify Licensing Services in advance of starting an inspection for asbestos-containing materials. In my view, this term and condition is appropriate. In reaching this conclusion, I find it significant that a number of the violations were related to the employer not accurately documenting the site plan and the sample locations in testing for asbestos. The employer also had a violation for intentionally obstructing the Board when it refused to answer a Board officer's questions about what locations in a building samples had been taken to test for asbestos.

In the August 16, 2024 decision, the Board noted the importance of following the requirements of the *Regulation* when completing inspections for asbestos-containing materials, as failures in this respect can significantly affect the exposure risk of workers and others at the worksite and during the transport and disposal of the materials. The Board noted that company E's work performing asbestos surveys had not been inspected since 2021, and that advance notice of when a survey was to be completed would provide visibility as to when and where the employer would be performing this work.

The employer's principal submitted that providing this advance notice would permit Board officers to inspect his work at any given time, leaving him susceptible to excessive amounts of inspections and allowing for unwanted persecution.

After considering the evidence, I find that term and condition #3 applied by the Board to the employer's Licence is appropriate. As noted above, the employer's history includes violations related to properly documenting asbestos surveys, particularly regarding accurately documenting site structures and sample locations. In my view, the requirement for the employer to provide advance notice of its work performing asbestos surveys is appropriate in the circumstances. It is because of the employer's history of non-compliance and the nature of the violations that closer monitoring is necessary in order to ensure that the employer is meeting the requirements of the *Act* and *Regulation* and doing work related to asbestos abatement safely.

The employer's principal further submitted that the Board had "cherry-picked" certain companies over others in issuing Licences, as the Board had issued Licences without terms and conditions to employers with substantially larger amounts of orders than the employer.

My jurisdiction on this review is limited to the matter determined in the August 16, 2024 decision letter, which is applicable only to the employer. What I must determine on this review is whether term and condition #3 was appropriately imposed on the employer's Licence, based on the employer's circumstances. It is not relevant what the Board may have decided with respect to another employer.

The employer submitted that term and condition #3 should be rescinded or in effect for a predetermined amount of time. I find that the evidence does not support that this term and condition should be rescinded, as I find it was appropriately applied by the Board to the employer's Licence. I further find that it would not be appropriate for me to impose a predetermined amount of time in which this term and condition should remain in effect. It is up to the Board to consider whether the employer has demonstrated compliance with the *Act* and *Regulation* in relation to this term and condition at some future point, such that the term and condition is no longer necessary.

In summary, I find term and condition #3 applied by the Board to the Licence is appropriate in the circumstances.

Accordingly, I deny the employer's request on this review.

Conclusion

As a result, I confirm the Board's decision dated August 16, 2024.

Alice Edwards
Review Officer
Review Division