REVIEW DECISION

Re: **Review Reference #: R0327920**
Board Decision under Review: July 29, 2024

Date: **March 20, 2025**

Review Officer: **Kevin Rooney**

Introduction and Background

The employer operates within the oil and gas industry. On May 1, 2024, three Officers of the Workers' Compensation Board ("Board"), operating as WorkSafeBC, attended a worksite of the employer. At the time of the inspection, the employer was in the process of having confined space entry maintenance work performed. This involved having a subcontractor enter a confined space on the inside of a vessel.

Due to concerns over the work being performed in an unventilated confined space, incomplete hazard assessment, and lack of written procedures, the Board officer issued a stop work order for the confined space. Following the inspection, the Board officer issued an Inspection Report to the employer finding it was in contravention of sections 9.10, 9.9(1)(a), and 9.30 of the *Occupational Health and Safety Regulation* ("*Regulation*").

On July 29, 2024, the Board imposed an administrative penalty of $8,597.75 against the employer for contraventions of sections 9.1, 9.9(1)(a), and 9.30 of the *Regulation*. The employer requested a review of the penalty order and has provided a written submission in support of its request. The employer's representative requested the Board penalty be cancelled on the basis the employer acted with due diligence. At the request of the Review Division, the Board officer provided comments. The comments were disclosed to the employer, which provided rebuttal comments.

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.

Issue

The issue on this review is the Board's decision to impose an administrative penalty of $8,597.75, on the employer.

Reasons and Decision

Under section 95(1) of the *Workers Compensation Act* (the "*Act*"), the Board has the authority to impose a penalty on an employer when the employer failed to take precautions to prevent the injury, failed to comply with the *Regulation* or the *Act*, or has made an unsafe workplace.

The Violations

The Board issued the administrative penalty under review as a result of the employer's contraventions of section 9.1, 9.9(1)(a), and 9.30 of the *Regulation*.

The employer did not request a review of the initiating contravention orders. Therefore, I do not have jurisdiction to decide whether those orders should be cancelled. However, to determine if a penalty is warranted, I must first consider whether the underlying facts provide a basis for imposing a penalty.

Section 9.10 of the *Regulation* sets out that written procedures specifying a means to eliminate or minimize all hazards likely to prevail must be developed, based on the hazard assessment required by section 9.9.

Section 9.9(1)(a) sets out that a hazard assessment must be conducted for each confined space, or each group of confined spaces which share a similar characteristic.

Section 9.30 sets out that confined spaces must be ventilated continuously while a worker is inside the space, except in (a) an atmosphere intentionally inerted in accordance with section 9.29, (b) a low hazard atmosphere controlled in accordance with section 9.31(2), or (c) an emergency rescue if ventilation is not practicable.

Confined space is defined in this section as follows:

"confined space," except as otherwise determined by the Board, means an area, other than an underground working, that

(a) is enclosed or partially enclosed,
(b) is not designed or intended for continuous human occupancy,
(c) has limited or restricted means for entry or exit that may complicate the provision of first aid, evacuation, rescue or other emergency response service, and
(d) is large enough and so configured that a worker could enter to perform assigned work.

Guideline G9.9-1, *Hazard assessment*, is also relevant to this review. It provides that the hazard assessment required by section 9.9 of the *Regulation* must be

performed by a “qualified person,” as defined under section 9.11. Once an assessment has been done for a specific activity within a particular space or group of spaces, it may provide for the basis or procedures for every occasion when workers enter those spaces. On each such occasion, the circumstances of the proposed job should be considered beforehand by the supervisor (who need not be a “qualified person” under section 9.11) to ensure that the criteria or conditions upon which the hazard assessment is based remain substantially the same. If circumstances are different in a way that might affect the outcome of the hazard assessment previously done by a qualified person, then the circumstances should be reviewed and entry procedures revised as necessary by a “qualified person.” The assessment of a qualified person cannot be changed without the concurrence of another qualified person.

In the summary of facts contained in the request for administrative penalty, the Board officer stated that he completed an inspection at the employer’s worksite on May 1, 2024. The Board officer noted that the employer was an oil and gas company that was conducting turnaround maintenance at that work location. It was in the process of having confined space entry maintenance work being performed in a flare knockout vessel.

This involved a subcontractor entering the flare knockout and applying a two-part paint process, which is a known skin sensitizer and also designated substance, on the inside of the vessel. The Board officer advised that the flare knockout is used in normal operations to have fluids drop out of the gas stream, so no fluid is carried over and out of the flare stack. Products that could be entrained in the fluid left inside the flare knockout vessel could be hydrocarbon, H2S, and benzene. Combustible dust as well as H2S and benzenes could also be released when grinding or buffing inside the vessel after cleaning. The Board officer noted that at the time of the inspection, the flare knockout had been cleaned prior to the Contractor entering.

The Board officer stated that he met with M, the Operation Lead, and C, a Field Safety Advisor for the employer, to discuss the work being conducted at the site. The Board officer asked M for the confined space entry hazard assessment and written procedure developed for the flare knockout. M provided a one-page confined entry space hazard assessment for flare knockout created by an employee in 2020. The document did not identify any hazard, although it referenced multiple occupational health and safety documents. M and C were unable to provide any written procedures for confined space entry.

The Board officer went on to state that when he attended the worksite, he observed a worker exiting the flare knockout. The Board officer asked a number of workers at the worksite if they had received a hazard assessment or written procedure for the confined space from the employer. None of the other workers had anything on flare knockout other than the hazard assessment created in 2020. Two of the Subcontractors stated they had done their own field level

hazard assessment on site at the time of inspection; however, neither was able to provide an opinion as to the hazard level of the space. C stated that the hazard level of the space would be low on the basis that atmospheric testing had been conducted and the “LEL” and oxygen level were within acceptable levels. C stated that as the space was a low hazard atmosphere, it did not require mechanical ventilation.

The Board officer noted that these tests were done prior to the activities of painting or buffing inside the space and that no testing had been done afterwards. The Board officer also noted that the painting inside the space produced volatile organic compounds as well as vapour, which caused respiratory sensitization. As a result of the unventilated confined space, incomplete hazard assessment, and lack of written procedures, the Board officer issued a stop work of the confined space work being conducted. The Board officer noted that the paint process being used inside the space changed the hazard rating to moderate, as was confirmed by the employer, after they completed their hazard assessment following the stop work order being issued.

On review, the employer’s representative notes that the Board officer was invited to attend the employer’s worksite in February 2024, to evaluate the employer’s planned shutdown. At that time, two Board officers attended the worksite and discussed with the employer issues involving working at heights, including the use of ladders, scaffolding, and a boom lift, as well as a number of other issues. The employer stated that discussion with respect to confined space entry, if any, was limited to scaffolding access for entry ways as part of the working at heights discussions. The employer does not recall the Board discussing confined space entry hazard assessments, written procedures with respect to CSC hazard control, or continuous ventilation. As such, the employer submits the February 21, 2024 meeting was an improper basis for the administrative penalty.

On review, the employer’s representative confirmed that the employer was the owner and Prime Contractor at the worksite. The employer stated it subcontracted confined space entry maintenance work with respect to the flare knockout vessel to a Subcontractor. The Subcontractor was to enter the flare knockout vessel (which had been fully cleaned and naturally ventilated) to repair a very small area (1” diameter) on the inside of the vessel with grout, light sanding, and an epoxy coating.

TS, another Subcontractor, was also on site and contracted by the employer to perform CSC supervision, monitoring, and rescue. On the date of the inspection, one of the Subcontractors was performing work under the supervision/monitoring of two workers from TS. No other work was scheduled for that day. None of the employer’s workers were involved in the work, but there were employer’s workers on site coordinating turnaround maintenance.

The employer's representative notes that the work being performed was highly specialized and required expertise and equipment that most oil exploration and production companies, including the employer, do not have. Therefore, like most oil exploration and production companies, the employer contracted the work to a Subcontractor. The Subcontractor was specialized in providing corrosion protection services, including internal tank and vessel lining/coating, since 1997.

The employer also noted that the Subcontractor's workers are trained in CSC. The employer noted that the Subcontractor and TS, another subcontractor, were specifically required to have safety targets and objectives, paying particular attention to identifying potential hazards, assessing risks, and preventing incidents. Further, they had written action plans that clearly indicated how safety objectives would be achieved, and a system in place to appraise risk in problem areas and to ensure the overall safety program was being carried out and complied with.

The employer's representative submits that the imposition of a penalty is not necessary, and is inappropriate in the circumstances, considering the significant proactive efforts the employer has undertaken both before the date of the inspection and after to adhere to the *Act* and the *Regulation* and to maintain a safe workplace.

The employer's representative noted that in early 2024 the employer voluntarily invited the Board to the worksite to evaluate its planned shutdown and subsequently invited the Board to a quarterly safety meeting. This was evidence of the employer's motivation to comply with the *Act* and the *Regulation* and that there was no need for a penalty. In addition, the employer's representative states that a penalty would be a disproportionate measure given the context of this non-injurious and low risk violation.

The employer's representative notes that as an owner and Prime Contractor at the worksite, the employer was responsible for coordination of the work and overseeing the occupational health and safety of the worksite. However, the representative states the employer did not have the expertise to assess the hazards specific to the work, to train or supervise the Subcontractor performing the work, or to instruct that Subcontractor on how the work ought to be done. The representative notes that if the employer had such expertise, there would have been no need to contract the work.

The employer's representative submits that it was relying on TS to control access into the confined space to ensure that personnel were protected from harm. TS was the entry Supervisor and Early Attendant. Therefore, the representative states that the employer reasonably relied on TS to define the scope of work and the equipment to be used; be aware of the hazards related to the entry and work; and to identify and record on the job safety analysis any potential hazards, required hazard mitigation measures and controls, and the identified method of

working; effectively implement the identified hazard control measures prior to entry taking place; and to verify the identified control measures were maintained during entry. The representative also states that it reasonably expected CO, the Subcontractor, be aware of the hazards of the work and hazard control measures to be implemented, and to attend pre-task safety brief during which the scope of the task, associated hazards, and mitigation measures were discussed. Further, the employer expected CO to exit the confined space if symptoms of exposure to hazardous materials were recognized.

The employer's representative states that the employer, as Prime Contractor, ensured the activities of the employers, workers, and other persons at the workplace relating to the occupational health and safety were coordinated and did everything that was reasonably practical to establish and maintain a system or process that would ensure compliance. The representative noted the employer's efforts included:

- Ensuring all workers were certified in Energy Safety Canada's Common Safety Orientation;

- Issuing a permit to work to TS, which recognized confined space as a hazard and identified several hazard mitigation measures and additional protective equipment;

- Holding daily pre-job meetings with all personnel on location prior to commencing work, including May 1, 2024;

- Providing the employer's CSC hazard assessment to TS;

- Ensuring CO and TS completed a pre-shift job site analysis ("JSA") which identified several site-specific hazards associated with CSC and the required controls;

- Placing an employer Person in Charge ("PIC") on site to ensure safety.

The employer's representative states the PIC confirmed that a hazard assessment had been completed, potential hazards were identified, and relevant hazard control measures were implemented such as isolation, gas monitoring, and a rescue plan. A pre-shift job site analysis for entry and work was documented; a PTW was correctly authorized for the tasks to be performed during entry; personnel performing and monitoring CSC were trained and competent; control measures were established to ensure only authorized entrants were entered into the confined space; and the required personal protective equipment ("PPE") were available and functional. The PIC issued the PTW and reviewed the JSA to determine conformance with the planned arrangement.

With respect to section 9.9(1)(a) of the *Regulation*, the employer notes the work was a result of scheduled routine inspection and the employer completed a CSC hazard assessment of the knockouts regarding inspection of the pressure vessels for preventative maintenance, isolation/lockout/tagout was completed, and all documentations were completed. The employer's representative states that the employer was under the impression that it met the documentation required for CSC work and all documents were on site and accessible to all personnel for review.

The employer's representative submits that the employer issued a PTW to TS. The PTW issued to TS identified several hazards, including confined space, benzene/VOC, chemical hazards, flammable substances, and toxic vapours. Additionally, on May 1, 2024, CO and TS carried out a hazard assessment in relation to the scope of work, confined space to be entered, and job site. The JSA explicitly recognized the following site-specific confined space hazards: entrapment, breathing, hot work, and atmospheric conditions.

With respect to the painting and coating, the JSA also identified the following hazards: falling, chemical exposure, hot work, abrasions, slips, trips, and falls, equipment failure, and compressed air. The JSA was reviewed and signed by the CO Supervisor, the worker actually performing the work, as well as two TS workers. The employer noted that the hazard assessment was reviewed with all workers and all atmospheric testing was completed prior to entry.

Further, on May 1, 2024, after the employer became aware of the Board's concerns regarding the employer's CSC documentation, it promptly took significant action to ensure it met and exceeded the documentation required for CSC work. The employer received notice of compliance six days later on May 7, 2024.

With respect to section 9.10 of the *Regulation*, the employer's representative noted that the employer voluntarily invited the Board to the worksite in advance of the April 25 to May 12, 2024 shutdown. The Board accepted the invitation, and two Board officers attended the worksite on February 21, 2024. During this visit, approximately four to six of the employer's workers and two Board officers reviewed the turnaround job scope, vessel entry, and isolation lockout documentation. The employer had all related documentation on site for the Board to review. The representative noted that the Board officers reviewed the site-specific energy isolation and CSC plan and did not raise any concerns regarding CSC. The officers did raise concerns regarding working from heights, and, therefore, the employer modified isolation work execution in response to their concerns. The employer noted that this inspection lasted approximately 2½ hours and that the Board officers were subsequently invited to attend a quarterly safety meeting on March 20, 2024.

With respect to section 9.30, the employer states that at the time the work was conducted, it was the employer's understanding the work was being conducted in a low hazard atmosphere controlled in accordance with section 9.31(2)(a) and that, therefore, no mechanical ventilation was required. The employer now understands that once the epoxy was introduced, the atmosphere was no longer low hazard and, therefore, mechanical ventilation was required. The employer submits that it reasonably deferred to TS' job site analysis as the subject matter expert on the confined space and CO subject matter expert on coating products/application.

In comments provided on this review, the Board officer advised that he did not recall reviewing any written materials about confined space training February 21, 2024 and agreed with the employer that the discussion during that site visit was broad and covered a number of various issues.

The Board officer noted that the employer stated that TS, a Subcontractor, was hired as the Entry Supervisor and Entry Attendant (safety watch). The Board officer confirmed that he was informed that TS was hired to provide safe confined space rescue, air bottle watch, and safety watch. However, the Board officer advised that the employer has not suggested that TS or any other Subcontractor was hired to produce or review confined space entry level hazard assessments and procedures.

The Board officer stated that he was prompted to inspect the employer's confined space work due to an action request concerning confined space entries being carried out at this employer's worksites that were on outages. Based on the information in the action request, the Board officer would have expected the employer to have also been aware of concerns about his confined spaces and to have considered its confined space entry procedures across all worksites.

The Board officer also noted that the employer was also acting as a Prime Contractor and that the confined space entry work was being done on the employer's equipment at its operations for its benefit and that the employer had its own workers on site. The employer was not just the Prime Contractor, but was also an owner and employer at the workplace. The Board officer noted that he also found that CO committed violations regarding confined space entry and that enforcement actions were taken against it.

The Board officer stated that during the inspection, the employer's workers expressed that they felt the employer's confined space hazard assessment and procedures were adequate. One of the workers commented at the time that this is as we have always done it. One of the employer's workers also commented that the applicable guidelines were not regulation. The Board officer noted that confined space hazard assessments and procedures are generally not interchangeable with field level hazard assessments. A confined space hazard assessment must be specific to the confined space (or group of similar confined

spaces), whereas a field level hazard assessment usually relates to any other hazards at the workplace at that point in time.

After considering all the evidence on file, I find that a factual basis for issuing a penalty has been established. In reaching this conclusion, In addition, I am satisfied that the confined space entry hazard assessment, which was completed in April 2020 by a previous employee of the employer, was inadequate. That document did not identify any hazard. I also find there is no dispute that there was written procedure for the confined space entry being conducted by workers of CO.

Consequently, I am satisfied the employer did not complete a hazard assessment for the confined space as set out in section 9.9(1)(a) of the *Regulation*. I am further satisfied the employer did not create written procedures specifying the means to eliminate or minimize all hazards likely to prevail based on the hazard assessment required by section 9.9. Further, there is no dispute that the employer did not ensure the confined space was ventilated continuously while a worker was inside the space.

In reaching this conclusion, I acknowledge the employer's argument that as a Prime Contractor, it ensured the activities of the employers, workers, and other persons at the workplace relating to occupational health and safety were coordinated and that it did everything reasonably practical to establish and maintain a system or process that would ensure compliance. I further acknowledge the employer's argument that it did not possess the expertise to carry out the work and, therefore, contracted these responsibilities to CO and TS.

However, I agree with the Board officer that the employer was not just a Prime Contractor at the worksite. Rather, the employer was both the owner and an employer of workers at the worksite. As such, its responsibilities were not limited to coordinating the activities of other employers at the site.

In reaching this conclusion, I note that subsection 9.9(1)(a) does not limit the requirement for doing a hazard assessment to the party doing the work, which means that any employer is potentially responsible for a violation if they have a degree of control over the activities to which the section applies. As outlined in Guideline G9.9-2, the process of identifying confined spaces, assessing hazards, and developing work procedures in a workplace is the responsibility of the employer who operates the business carried out at the workplace. I am satisfied that the employer, as prime contractor, was directing the work overall and did have a degree of control over ensuring that a hazard assessment had been completed. While the Guideline notes that the subcontractor would also have responsibilities, it contemplates the subcontractor developing a hazard assessment in conjunction with the owner or other party in control of the worksite, which in this case was the employer.

I also note that the employer did provide a copy of the 2020 hazard assessment to TS and CO. Therefore, the employer has acknowledged that it did have some responsibility for, and a degree of control over, ensuring that there was a hazard assessment. I have already determined that the 2020 hazard assessment was inadequate and there is no dispute the employer did not obtain a hazard assessment from the Subcontractor prior to the work taking place. Therefore, I find that the order to the employer under subsection 9.9(1)(a) was appropriate.

Based on this evidence, I am satisfied that the employer was in contravention of sections 9.1, 9.9(1)(a), and 9.30 of the *Regulation* and these contraventions form the basis of issuing a penalty.

The next question before me is whether the administrative penalty was appropriate and, if so, the amount.

Whether a penalty should be imposed.

Under section 196(1) of the *Act*, the Board has the authority to impose a penalty where the employer has failed to comply with the *Regulation*. As explained by policy item D12-196-1, *Criteria for Imposing OHS Penalties*, the Board must consider a penalty where at least one of a number of factors apply, including:

- The violation resulted in a high risk of serious injury, serious illness, or death;
- The employer previously violated the same, or substantially similar, sections of the *Act* or *Regulation*, or the violation involves failure to comply with a previous order within a reasonable time;
- The employer intentionally committed the violation; or
- The Board considers that the circumstances warrant a penalty.

Policy item D12-196-2, *High Risk Violations*, explains that certain violations are automatically designated high risk because they regularly result in fatalities, serious injuries, and serious illnesses.

The Board officer found the violations initiating the penalty were high risk. The Board officer reached this conclusion on the basis that the hazard assessment and procedure for the confined space entry had not been completed by the employer to ensure all hazards had been identified and controls were put in place.

The Board officer stated that this put workers at risk inside the confined space being worked in. The Board officer noted the situation presented an increased

risk of exposure, but was not considered immediately dangerous to life and health. However, the Board officer advised that the space, at times, would have hazards such as benzene, hydrogen sulfide, carbon monoxide, explosive atmosphere, NORMs, and combustible titanium dioxide, which was a known carcinogen and a designated substance. Without providing the hazard assessment and procedures, the workers in the confined space could be exposed to serious health effects, illness, or death.

On review, the employer's representative submits that while the employer recognizes that CSC involves hazards and can result in injury if proper safety procedures are not followed; however, the employer had controls in place to fully address these hazards. The exposure to hazards within the confined space were controlled by cleaning, purging, and ventilating the space prior to entry. Pre-atmospheric testing and continuous monitoring were also in place and completed. Furthermore, the worker involved in the work was using respiratory protection and the confined space was physically isolated from all potential sources of hazardous energy, gas testing for oxygen, flammable and toxic vapours were carried out prior to the PTW being issued. Gas tests necessary to confirm the atmosphere at the job site and in the confined space were performed immediately prior to entry and continuous gas monitoring was in place.

Further, the employer's representative notes that only one worker was exposed to the potential hazard and that worker was wearing a full mask respirator with organic vapour cartridges. The worker was also wearing full Tyvek and rubber gloves were also being used. Further, the amount of epoxy coating that the worker applied was approximately the size of a quarter. As the vessel had been previously cleaned and atmospherically ventilated, only the hazards created by the epoxy would have been present at the time of the work stoppage. The hazard assessment of both TS and CO deemed the work as low risk.

In addition, the employer had in place equipment such as confined space rescue equipment and a spill kit, which were present on site, and a technical rescue plan and emergency response plan were in place. Given the small volume of product at issue and the PPE in place, the employer submits that in the unlikely circumstances where an incident occurred, any resulting injury was not likely to be serious or fatal. The employer argued that based on the duration of the entry, it was more likely for the worker to injure himself either climbing in or out of the vessel as opposed to the unsafe atmospheric condition.

On review, the Board officer noted that the fact the Subcontractor donned a respirator to enter the space should have raised questions for other workers present, including the employer's worker who was present, about the hazard level of the confined space.

Based on the evidence on file, including the submissions provided by the employer's representative on this review, I find the violations in question were not

high risk. In reaching this conclusion, I find it significant that the confined space was isolated and that workers had been assigned to limit entry to the space. Further, the only worker authorized to enter the worksite was the worker performing/applying the epoxy. That worker was wearing a full-face respirator as well as other PPE.

Consequently, I am satisfied that, in this case, the potential seriousness of the risk of the violations was low. The likely risk of any injury was low and the likely seriousness of any injury was also low. I also note that the employer has not previously violated the same, or a substantially similar section of the *Act* or *Regulation*.

Consequently, having determined that the factors set out under section 196(1) of the *Act* and policy item D12-196-1 have not been met, I have cancelled this penalty.

Conclusion

As a result of this review, I vary the Board's decision of July 29, 2024 and cancel the penalty.

Kevin Rooney
Review Officer
Review Division