



**WORKPLACE HEALTH AND SAFETY  
SERIOUS INCIDENT REPORTING AND INVESTIGATION GUIDELINE**

**A Best Practice of the  
Construction Owners Association of Alberta**

**May 2011**

This Best Practice guideline ("guideline") was developed through a consensus development process approved by COAA. This process brings together volunteers representing varied viewpoints and interests to achieve a reasonable consensus to develop a general guideline for industry use. The content of this guideline does not represent the views of any particular committee member. This document is a general guideline and COAA strongly recommends legal and other professional advice being obtained to complement and clarify this guideline. This guideline is also subject to periodic review and readers should ensure they are referencing the most current version of this guideline. Suggestions for improving this guideline are welcome and can be submitted directly to COAA.

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# **WORKPLACE HEALTH AND SAFETY SERIOUS INCIDENT REPORTING AND INVESTIGATION GUIDELINE**

## **A Best Practice of the Construction Owners Association of Alberta**

### **1.0 OVERVIEW**

#### **1.1 Introduction**

A series of events is put in motion when an “accident” or “near-miss” occurs in the workplace. If such incidents cause, or have the potential to cause, serious injury to a worker the company may be required at law to conduct an internal investigation into the incident and prepare a written report summarizing the circumstances of the incident and, if appropriate, preventive measures taken. If the seriousness of the incident meets certain criteria defined in the legislation (see section 5.3), then the company may also be required to notify the responsible government agency. The agency in turn, may conduct it’s a separate investigation into the incident including assuming control over the accident scene, interviewing witnesses, collecting documents, and seizing physical evidence. As a result of their investigation, the government investigators may recommend the company and/or individuals involved be prosecuted. This recommendation can include criminal charges—although criminal charges resulting from a workplace incident are rare in Canada.

A proper internal investigation will not only help your company understand the incident and how to prevent a recurrence, but it will also aid in the collection and preservation of reliable due-diligence evidence regarding steps taken to create an injury-free workplace. For these reasons, any investigation into a workplace incident should be approached rigorously. This guideline has been prepared to assist those tasked with such an assignment.

In this Best Practice “incident” includes accident (injury or property damage) and near miss which are sufficiently serious to trigger an internal company investigation and/or an Occupational Health and Safety investigation.

#### **1.2 Background**

The Construction Owners Association of Alberta (COAA) has recognized the need to enhance understanding relating to the investigation process for workplace incidents. COAA saw an urgent need to inform industry stakeholders of their roles and responsibilities so they could participate more fully and effectively in the investigative process.

In March 2008, COAA brought together a group of industry stakeholder representatives to develop a “Best Practice” that would enhance understanding of the incident investigation process. Committee members included industry construction owners and major contractors, legal and safety professionals. Through collaboration, including consultation with government representatives, and the extensive sharing of information, this group developed a guideline—this Best Practice—that informs stakeholders of their specific responsibilities and helps them manage the investigation process more effectively.

Although created specifically for ventures within the large industrial construction sector in Alberta, we hope that other industries in the Province may also find this material relevant and valuable.

#### **1.3 Objective**

This Best Practice is intended to be a user’s guide to help industry personnel understand what may occur and help guide their actions during an industrial incident investigation involving government officials. Since every situation is different, the guidelines will not likely apply in their entirety to every investigation.

**NOTE**

This Best Practice does not replace the *Occupational Health and Safety legislation, which comprises three parts:*

- *Occupational Health and Safety Act*
- *Occupational Health and Safety Regulations*
- *Occupational Health and Safety Code*

Nothing herein should be interpreted as exempting company personnel from their responsibilities under the legislation. It is intended to assist in understanding best practices for working with government investigators during an OHS investigation.

**1.4 Benefits**

The intended benefits of this Best Practice are:

- clarifying the Occupational Health and Safety (OHS) investigation process
- clarifying the general roles and responsibilities of common participants
- enhancing understanding of the purpose and use of information collected, including documents, witness statements, materials and equipment
- facilitating effective and efficient OHS investigations by enabling:
  - increased understanding of industry's obligations under the legislation
  - accurate and timely collection of information for the determination of cause
  - effective preservation of evidence
  - greater respect and care for persons involved
  - timely return to normal operations
- effective resolution of workplace hazards

**1.5 Scope**

The focus of this Best Practice is on the process steps that occur once an OHS reportable incident happens, up to and including the completion of the government investigation. The emphasis is on the essential interface between government and industry representatives throughout that process. Information in the form of Best Practice tips is provided to help guide participants in that process.

**Best Practice Tip**

A determination should be made at the start of the company's internal investigation, or shortly afterwards, as to whether legal privilege should be invoked. If legal privilege is claimed over the investigation, then company personnel must be educated on how to assert and protect legal privilege over the investigation.

**NOTE**

This Best Practice may not be applicable or appropriate when a criminal investigation is commenced. Keeping in mind that OHS has broad powers of access to industrial worksites under the legislation, in all cases where the government is making an appearance at your site it is a good practice to seek specific advice from your legal counsel. This consultation does not affect the ability of OHS officers to access your site but will allow you to best manage the company's interests while complying with legislation.

## 2.0 INCIDENT INVESTIGATIONS

Separate investigations may be conducted: an “internal” investigation conducted by the Prime Contractor responsible for the work site, and an “external” investigation conducted by OHS officers.

### 2.1 Requirements

#### (1) Internal Investigation

When an incident occurs at a work site governed by provincial legislation and causes or has the potential of causing serious injury, then the prime contractor, or if there is no prime contractor, the contractor or employer responsible for the work site, at law must carry out their own internal investigation into the circumstances of the incident and prepare a report to outline those circumstances and the corrective actions taken to prevent recurrence – if any are taken.

OHS will generally order the company to produce (make available to the OHS officer) a copy of the report. It should further be discussed with your legal counsel whether the entire internal investigation, including witness statements, photographs and other data collected need be made available as this information may be beyond their jurisdiction or may be protected by legal privilege. In addition, this report comes with its own limited immunity protection and cannot be used as evidence against a company or individual except for the purposes of attacking individual credibility that is whether a witness has knowingly given a false statement or knowingly provided false information.

#### (2) External Investigation

OHS may also conduct their own, separate investigation in to the incident. OHS will likely not share the results of their investigation, including key evidence and statements taken from witnesses until such time that a decision has been reached whether or not to lay charges.

OHS has recently (November, 2009) published on their website guidelines the OHS Operational Procedures. This is useful information and worthwhile for Company and Prime Contractor Safety professionals to familiarize themselves with these documents.

To quote from the Alberta OHS document:

“The purpose of this operational procedure is to provide an overview of the investigation process utilized when Officers investigate an incident and prepare an incident report. This procedure is the first of four procedures dealing with incident investigations:

- F009a – (Incident Investigation - General) deals with incident notification requirements, communication protocol and criteria for the types of incidents and injuries where an investigation will normally be undertaken by OHS;
- F009b – (Incident Investigation - The Investigation) outlines the procedure and provides guidance for Officers when undertaking an investigation;
- F009c – (Incident Investigation - The Report) provides information and guidance regarding the content and format for completing an investigation report; and
- F009d – (Incident Investigation - Review Process) outlines the department’s review process regarding the investigation report.”

Following are links to the documents:

- [www.employment.alberta.ca/documents/WHS/WHS-OHS\\_OP\\_F009a.pdf](http://www.employment.alberta.ca/documents/WHS/WHS-OHS_OP_F009a.pdf)
- [www.employment.alberta.ca/documents/WHS/WHS-OHS\\_OP\\_F009b.pdf](http://www.employment.alberta.ca/documents/WHS/WHS-OHS_OP_F009b.pdf)
- [www.employment.alberta.ca/documents/WHS/WHS-OHS\\_OP\\_F009c.pdf](http://www.employment.alberta.ca/documents/WHS/WHS-OHS_OP_F009c.pdf)
- [www.employment.alberta.ca/documents/WHS/WHS-OHS\\_OP\\_F009d.pdf](http://www.employment.alberta.ca/documents/WHS/WHS-OHS_OP_F009d.pdf)

## 2.2 Purposes of an Investigation

There are three main purposes to an internal incident investigation:

- (1) Explicatory: to determine what happened, and what caused the incident.
- (2) Defensive: to collect and preserve relevant evidence of the due diligence or reasonable care taken by the company and/or individuals to prevent the incident
- (3) Preventive: to identify and implement effective measures to prevent a recurrence.

An internal investigation should encompass these purposes, and in addition to determining what went wrong should also focus on what steps were taken to prevent the incident, or in other words, what due diligence was taken.

### NOTE

**It is not the function of government investigators to collect due-diligence evidence. This type of evidence is best known and understood by the company and it should not be assumed that government investigators will be able to recognize or collect this evidence as fully and effectively as internal investigators.**

An internal investigation should address any systemic deficiencies in the health and safety management system that may have led to the incident and help determine effective measures that will prevent a recurrence.

When a serious incident occurs on a worksite and government investigators determine it is necessary, they will attend at that site and make whatever inquiries they consider necessary to determine the cause of the incident and the circumstances related to it.

An owner can expect that the government's objective in conducting such an investigation will be to determine whether there are any violations or non-compliance with OHS legislation. Where government investigators find evidence of violations or non-compliance with the law, the findings from their investigation are usually provided to Crown Prosecutors at Alberta Justice who then assesses whether charges under the legislation are warranted. Before any charges are laid, Alberta Justice will determine whether there is a reasonable likelihood of conviction and whether it is in the public interest to prosecute.

## 2.3 Authority of Government Investigators

### Jurisdiction

The authority of any OHS government investigator comes from the legislation governing the workplace in question. The powers of OHS government investigators are detailed within the governing legislation itself. In the area of OHS, there are both federal and provincial OHS laws which potentially govern a work site in Alberta. Only one of them will apply to a particular work site. Determining which set of laws apply depends on the circumstances of the incident and the type of work being performed and is usually straightforward.

As a general rule, federal projects or undertakings are governed by federal OHS law, and the remaining work sites, if not specifically exempt, are governed by provincial legislation. While there are exceptions, airport, inter-provincial trucking, and banking facilities are examples of work sites governed exclusively by federal OHS legislation. Most members of COAA, and the work performed at their industrial sites within Alberta, will be governed by provincial OHS legislation. Accordingly, this Best Practice Guideline does not address federal OHS laws.

### Best Practice Tip

The owner should seek a legal opinion if there is any doubt about which OHS laws, federal or provincial, apply to the workplace incident. There are important differences in the legislative requirements between these two jurisdictions. This guideline only addresses provincial requirements.

## **Provincial OHS Investigators**

The Alberta *Occupational Health and Safety Act* ("OHS Act") grants broad inspection and investigation powers to OHS officers. Those powers are listed in the sections below. Where interpretation of these provisions is required, you should contact your legal counsel for guidance.

### **Powers of Inspection**

In keeping with the objective of preventing workplace incidents, OHS officers are given broad powers to inspect work sites and issue orders before any incident has occurred. Sections 8 to 12 of the OHS Act contain most of the inspection powers of OHS officers:

#### **"Inspection**

- 8(1) *For the purposes of this Act, an officer may*
- a) *at any reasonable hour enter into or on any work site and inspect that work site;*
  - b) *subject to subsection (2), require the production of any records, books, plans or other documents that relate to the health or safety of workers and may examine them, make copies of them or remove them temporarily for the purpose of making copies;*
  - c) *inspect, seize or take samples of any material, product, tool, appliance or equipment being produced, used or found in or on the work site that is being inspected;*
  - d) *make tests and take photographs or recordings in respect of any work site;*
  - e) *interview and obtain statements from persons at the work site;*
- (2) *Only a Director of Medical Services or a person authorized in writing by the Director may require the production of, or examine and make copies of, medical reports or records or remove them temporarily for the purpose of making copies.*
- (3) *When an officer*
- (a) *removes any records, books, plans or other documents under subsection (1)(b), the officer shall*
    - (i) *give to the person from whom those items were taken a receipt for them, and*
    - (ii) *forthwith make copies of, take photographs of or otherwise record those items and forthwith return them to the person to whom the receipt was given,*
- or*
- (b) *seizes or takes samples of any material, product, tool, appliance or equipment under subsection (1)(c), the officer shall*
    - (i) *give to the person from whom those items were seized or taken a receipt for them, and*
    - (ii) *on that person's request, return those items to that person when they have served the purposes for which they were seized or taken.*
- (4) *If a person refuses to allow an officer to exercise any powers under subsection (1) or interferes or attempts to interfere with the officer in the exercise of those powers, a Director of Inspection may apply to the Court of Queen's Bench by way of originating notice for an order restraining that person from preventing or interfering in any manner with the officer in the exercise of those powers.*
- (5) *A statement given under this section is not admissible in evidence for any purpose in a trial, public inquiry under the Fatality Inquiries Act or other proceeding except to prove*
- a) *non-compliance with this section, or*
  - b) *a contravention of section 41(3)*
- in an action or proceeding under this Act.*

#### **Order to remedy unhealthy or unsafe conditions**

- 9(1) *When an officer is of the opinion that work is being carried out in a manner that is unhealthy or unsafe to the workers engaged in the work or present where the work is being carried out, the officer may in writing order the person responsible for the work being carried out*
- a) *to stop the work that is specified in the order, and*
  - b) *to take measures as specified in the order that are, in the opinion of the officer, necessary to ensure that the work will be carried out in a healthy and safe manner, or either of them, within the time limits specified in the order.*

- (2) *When an officer is of the opinion that a person is not complying with this Act, the regulations or the adopted code, the officer may in writing order that person to take such measures, within the time limits specified in the order, as the officer considers necessary to ensure such compliance and specifies in the order.*
- (3) *Measures specified in the order referred to in subsection (2), where the order is made in respect of the failure by a person to comply with section 31(5) or 36, may require one or more of the following:*
- a) *that the disciplinary action cease;*
  - b) *reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;*
  - c) *payment to the worker of money not more than the equivalent of wages that the worker would have earned if the worker had not been dismissed or had not received disciplinary action;*
  - d) *removal of any reprimand or other reference to the matter from the worker's employment records.*
- (4) *If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, those wages earned elsewhere shall be deducted from the amount payable to the worker under subsection (3)(c),*

***Danger to persons on work site***

- 10(1) *When an officer is of the opinion that a danger to the health or safety of a worker exists in respect of that worker's employment, the officer may at any time enter into or on any work site and do any or all of the following:*
- a) *order the work or any part of it that is taking place to be stopped forthwith;*
  - b) *order any worker or other person present to leave the work site forthwith;*
  - c) *in writing order the prime contractor, the contractor or the employer to take measures specified by the officer that the officer considers necessary for the purpose of removing the source of the danger or to protect any person from the danger.*
- (2) *No person shall interfere with an officer in the performance of the officer's duties under this section.*
- (3) *When requested to do so by an officer, a peace officer shall assist the officer in carrying out the officer's duties under this section.*

***Order stopping the use of unsafe tools, appliances, etc.***

- 11(1) *When an officer is of the opinion that a tool, appliance or equipment being used or that may be used by a worker*
- a) *is not in safe operating condition, or*
  - b) *does not comply with the adopted code,*
- The officer may in writing order the worker to stop using or to refrain from using that tool, appliance or equipment.*
- (2) *When an officer is of the opinion that a supplier is supplying a tool, appliance or equipment that*
- a) *is not in safe operating condition, or*
  - b) *does not comply with the adopted code,*
- The officer may in writing order the supplier to stop supplying that tool, appliance or equipment for use by any worker.*
- (3) *If an officer makes an order under this section, the officer may rescind that order on being satisfied that the tool, appliance or equipment in respect of which the order was made*
- a) *has been repaired or modified so that it is in safe operating condition, or*
  - b) *has been made to comply with the adopted code,*
- As the case may be.*

### **Improper storage and handling**

- 12(1) *When an officer is of the opinion that the storage, handling or use of a substance or material does not comply with the adopted code, the officer may in writing order the person responsible for the storage, handling or use of the substance or material to take the measures specified in the order that are, in the opinion of the officer, necessary to ensure that the code is complied with.*
- (2) *When an officer is of the opinion that a supplier is supplying any substance or material that does not comply with the adopted code, the officer may in writing order the supplier to stop supplying that substance or material.*
- (3) *If an officer makes an order under this section, the officer may in writing rescind that order on being satisfied that the material or substance is being supplied, stored, handled or used in compliance with the adopted code."*

### **Powers of Investigation**

OHS officers are also given powers to investigate workplace incidents under their jurisdiction. Section 19(1) establishes this broad power of investigation:

*"19(1) If an accident occurs at a work site, an officer may attend at the scene of the accident and may make any inquiries that the officer considers necessary to determine the cause of the accident and the circumstances relating to the accident."*

### **Duty to Notify Government**

Section 18(2) of the OHS Act identifies the kinds of workplace accidents which require notification to the Alberta government:

- "18(2) The injuries and accidents to be reported under subsection (1) are*
- (a) an injury or accident that results in death,*
  - (b) an injury or accident that results in a worker's being admitted to a hospital for more than 2 days,*
  - (c) an unplanned or uncontrolled explosion, fire or flood that causes a serious injury or that has the potential of causing a serious injury,*
  - (d) the collapse or upset of a crane, derrick or hoist, or*
  - (e) the collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure."*

It is a serious offence under the OHS legislation to fail to notify the government of a reportable workplace incident as defined by section 18(2) of the OHS Act. If reportable, as soon as possible contact the OHS Contact Centre at 866-415-8690 (toll free within Alberta) or 780-415-8690 (Edmonton and surrounding area). The initial notification should include: the time, place and nature (severity) of the incident.

### **Obligation to "Co-Operate" with OHS Officers**

The OHS Act also establishes a requirement to provide relevant information about a workplace incident at the request of an OHS officer. This requirement is akin to a "duty to cooperate." Section 19(2) of the OHS Act establishes this duty in the following terms:

*"19(2) Every person present at an accident when it occurred or who has information relating to the accident shall, on the request of an officer, provide to the officer any information respecting the accident that the officer requests."*

It is an offence under the OHS Act to refuse to provide the information or knowingly give false information to the OHS officer. A person, if convicted of these offences, could be fined and/or jailed as a result.

Witnesses can take some comfort in knowing that their statements cannot be used as formal evidence against them in a prosecution under the OHS Act, even if the statement is self-incriminating. The statements can only be used as formal evidence against a witness if the witness refuses to provide the information or knowingly gives false information. The "limited uses" of the statement are identified in section 19(5) of the OHS Act:

*“19(5) A statement given under this section is not admissible in evidence for any purpose in a trial, public inquiry under the Fatality Inquiries Act or other proceeding except to prove  
(a) non-compliance with this section, or  
(b) a contravention of section 41(3)”*

For these reasons, any written or oral statement given to an OHS officer investigating a workplace incident should be a clear, accurate, unbiased, and non-speculative account of the factual events of the incident. The witness should, therefore, listen carefully to the questions, make sure each question is understood before any answer is provided, ask the OHS officer to clarify a question if need be, and tell the truth in a clear and straightforward fashion.

A guide to help prepare workers for providing written or oral statements is provided in section 6.3.

### **The Duty Not to Disturb the Scene of the Incident**

Section 18(6) of the OHS Act specifies that no one may disturb the scene of a reportable workplace incident as defined under section 18(2) unless tending to persons injured or killed, preventing further injuries, or protecting property that is endangered as a result of the incident.

The attending OHS officers usually have full investigatory control of the work site during the course of their investigation, subject to safety considerations, compliance with site rules, and competing jurisdiction with police officers and other government regulators. It is important that no one else is injured at the incident scene. This includes police officers investigating the incident, OHS officers, internal investigators, and any third parties brought to the incident scene to assist with the investigation. All safety rules relating to the workplace should be strictly enforced to ensure no one else is harmed. OHS officers are not exempt from following the safety rules of the work site and they have the right, like any other worker, of knowing the hazards associated with the work site and the measures adopted to eliminate or control those hazards.

Where inherent hazards exist, company officials and OHS officers must work together to ensure that the investigation is able to proceed without putting officers or other personnel in an environment of unacceptable health or safety risk.

For example, this might entail educating OHS officers on the requirements for the use of specific personal protective equipment in certain areas, equipment isolation or de-energizing, confined space entry or the need for caution due to potentially high-risk operating conditions that persist during an investigation, and ensuring the officers' compliance in safe practices. For their part, OHS officers will also work with the prime contractor or site owner to facilitate the safe continuation of business operations, if possible, and to meet the needs of any personnel involved in the incident.

#### **Best Practice Tip**

Consideration should be given to accompanying the OHS officers while on the work site to ensure compliance with measures to ensure their safety. This also provides the opportunity to take photographs and address evidence matters in a manner similar to the OHS officer.

## **2.4 Roles and Responsibilities**

This document is a guideline for owner companies, prime contractors, contractors and workers conducting an internal investigation into a workplace incident and responding to requests for information from OHS officers. It is also a tool designed to help you better understand the external investigation process. The OHS officers are governed by their own formal “Operational Procedures,” but they may deviate from those procedures depending on the circumstances of each case.

Those operational procedures are available for review at the web links listed in section 2.1(2).

## A. OHS Officers

One of the key functions of OHS officers during an investigation is to determine whether the companies and/or individuals involved in the workplace incident complied with the OHS legislation. In addition to this function, and the statutory powers discussed above in section 2.2, the powers or responsibilities of the OHS officers may be summarized as follows:

- stop all work to prevent further injury from happening
- impose conditions on parties at the work site to comply with OHS legislation
- request parties to provide any information relevant to the incident
- provide receipts for all physical evidence and documents collected and removed from the site or elsewhere during an investigation
- determine the direct and contributing causes of the incident
- inform workers involved in the incident or their families of the investigation findings
- inform other stakeholders of investigation outcomes, as required
- refer the investigation to Alberta Justice where a breach of the legislation has occurred
- inform industry and Albertans generally of circumstances that led to the incident and any preventative measures that should be taken to ensure another incident of a similar nature does not occur

## B. Owners and Prime Contractors

A prime contractor is required whenever there are two or more employers involved in work at a work site at the same time. The owner is the prime contractor by default if there is no agreement assigning a third party to the role of prime contractor. The general duty of the prime contractor is to ensure, as far as reasonably practicable, that the OHS Act and other regulations are complied with in respect of the work site.

In addition to many other specific duties, prime contractors also have the responsibility to notify the government of any reportable workplace incidents occurring at their work sites. A reportable incident is defined in section 18(2) of the OHS Act (see section 5.3).

If there is no prime contractor for a work site, then the employer or contractor responsible for that work site must notify the government.

### Best Practice Tip

Prime contractors should notify the government directly of any reportable incident. Prime contractors should not rely on other companies to notify the government.

The details of the notification should be recorded in writing, including:

- who telephoned the Contact Centre
- when the call was made
- what information was provided
- the name of the government representative who took the information
- any directions given by the government representative to the company

## C. Witnesses

Any person who is present when a reportable incident injury occurs at a work site, or who has information related to that event, is obliged under Section 19 of the OHS Act to provide any relevant information requested by an OHS officer investigating that incident. Additionally, it is critical that witnesses provide complete and accurate information to the officers, based on their first-hand knowledge and without bias or speculation. Knowingly making a false statement or giving false information to an officer during an investigation is an offence under Section 41(3) of the OHS Act with penalties including fines, imprisonment, or both.

## D. Suppliers

A supplier of a tool, appliance, equipment, designated substance or hazardous material to a work site must ensure that it is in safe operating condition and that it complies with OHS legislation. During an investigation, OHS officers may issue orders to the supplier if infractions are observed.

### 3.0 BEST PRACTICES FOR COORDINATING AND COMMUNICATING WITH OHS INVESTIGATORS

#### 3.1 Site Contact Person

A single point of contact for each company involved in the incident should be established for the OHS officers during their investigation. This provides for a consistent interface with the OHS officers and allows each company involved to carefully oversee and document all information or evidence that is requested by the OHS officers. For the attending OHS officers, having a single-point contact person in place will help to streamline the gathering and tracking of information. For the company, the appointment will ensure there is a solid process in place to identify exactly what information was provided to the officer and taken from the site.

##### **Best Practice Tip**

Create a company incident management team including, general management, senior site technical personnel, Safety, Health and Environment protection personnel, legal and operations personnel, that will meet daily to track the course of the investigation and provide any required or missing information to the OHS officers.

#### 3.2 Witness Management

Gathering information from witnesses to a workplace incident can be difficult depending on the mental and emotional condition of a witness at the time of interview. Most people, especially eyewitnesses to traumatic workplace incidents, are significantly affected by the incident. Some witnesses may suffer from heightened psychological conditions including post-traumatic stress disorder, shock, anxiety, depression, grief or any combination thereof. Accordingly, it is important to continually assess the condition and to be sensitive to the needs of every witness. Some witnesses may require specialized counseling and the interviewer may, in that case, delay the interview until the witness is in a sufficient state to give reliable information.

In general, it is good practice to apply the following rules when interviewing witnesses.

- Separate witnesses as soon as possible after the incident to avoid internal discussion that may influence or taint an individual's independent recollection of the events. Witnesses will often want to discuss the incident with other witnesses and may adjust their evidence. In extreme cases, they may unknowingly create false memories of the incident. This undermines the reliability of the evidence.
- Interview one witness at a time—separate and apart from any other witnesses.
- Subject to the well-being of the witness, the interview process can begin immediately. This is done to capture and preserve critical information while still fresh in people's minds. Internal investigators do not have to delay their interviews of witnesses; however, the OHS officers may want to be the first to question the witness. If they are not the first to interview the witness then they may request copies of any statement and/or notes taken by company personnel. These records could be required to be turned over to OHS officers if solicitor-client privilege is not established. Furthermore, there are no evidentiary rules to protect witnesses when giving statements to company investigators. That is, if there is no legal privilege over the interview then the statement given to internal investigators can be used against the witness. There are some evidentiary rules to protect witnesses who give statements to OHS officers. For more details, see the discussion in section 2.2.
- It is important at the start of the interview to let witnesses tell the story in their own words and not to lead their narrative. An interviewer can undermine the reliability of the information provided by a witness with questions that lead to the interviewer's expected answer. Eventually, the interviewer may have to ask leading questions to clarify critical points on information freely provided by a witness; however, this should be done towards the end of the interview.
- Interviews may be audio-recorded and a transcript prepared. If audio recording is to be used, you must inform the interviewee. A recording and transcript provides an accurate and reliable version of what was said during the interview. It may also allow more information to be collected in a shorter time-frame, and may ultimately preserve information which turns out later to be critical to understanding the incident.

### 3.3 Documenting the Scene

Position evidence—that is, various physical elements and their relative locations at an incident scene that may help determine what occurred—can be very easily disturbed during response to an incident. Although incident response is the first priority, preservation of position evidence should be dealt with as soon as possible once the emergency response activities are complete. Don't disturb the scene unless it is absolutely required for emergency response purposes, as set out in Section 18(6) of the OHS Act. Be aware of and keep a full and precise log of all changes made to the scene in responding to the emergency so the investigators know exactly what has changed.

Some considerations in preserving position evidence are:

- Obtain maps, drawings or schematics of the area and any relevant equipment involved.
- Thoroughly videotape or photograph the incident scene without disturbing it and keep a written log of all images. Ensure film is sent to qualified studios for developing if using 35mm or download digital photographs to a computer and make a backup copy to ensure unaltered images can be produced later.
- Draw a sketch of the area complete with measurements to objects from fixed reference points. Include measurements of the scene, position of parts and people, elevation measurements (e.g. height of flame, flame patterns), valve positions, switch positions, gear shift position, location of any broken items (e.g. wood, fabric, spilled liquids, wires), every feature of the scene that comes to your attention, whether you believe it at the time to be important or not.

#### **Best Practice Tip**

Restrict taking of pictures to authorized personnel only. Unauthorized images may be used in a variety of inappropriate ways and are difficult to control.

### 3.4 Seizure of Samples

Under Section 19 of the OHS Act, OHS officers are empowered to “seize or take samples of any substance, material, product, tool, appliance, or equipment that was present at, involved in or related to the accident.” When such samples or information are collected and removed by OHS officers, a receipt must be provided for those items. For the company, the receipts become critical documents, which need to be properly catalogued and stored to ensure all documents are returned at the end of the process.

#### **Best Practice Tip**

It is good practice to document in a log all items provided to the officers and attach the receipts to the log. This also provides a record for internal investigators the relevant materials collected by OHS officers.

It is recommended that the site contact person discuss the use of the samples or equipment with the OHS officers to better understand whether the analysis or testing will alter or destroy the item in question. Where equipment or material is essential to the business operation or the internal investigation, use of it by the OHS officers should be clearly established and understood up front so that all parties understand its importance. This conversation should include a discussion of the planned course of testing, whether the subject equipment will be returned and in what form, and whether test results will be shared with the relevant company.

According to the Workplace Hazardous Materials Information System (WHMIS) under the federal *Hazardous Products Act*, the manufacturer of a chemical is responsible for Material Safety Data Sheets (MSDS) and proper labeling of all hazardous materials and substances. OHS compliance investigations use this federal legislation and certain Alberta OHS officers are designated as inspectors under the federal *Hazardous Products Act* and thus have authorization under that legislation. An OHS officer has the right to collect a sample, and the process must

ensure that the safety of the officer and the public are protected. The owner is responsible for providing the sample in a safe manner—for example, with proper packaging and disclosure of hazards. The owner has a further responsibility to ensure the recipient is competent to handle the sample in a safe manner.

### 3.5 Document Information

The site contact person should create a document log of all information requests from OHS officers. It is important to document all requests whether verbal or written. This provides a good reference in the event information initially unknown or unavailable is later discovered and provided to OHS officers after they have released and vacated the site. (See section 6.4, Tools, for an example log.)

Important information that exists in the form of documents might include:

- health and safety policy statements
- health and safety manuals
- orientation records
- operating manuals
- safety meeting minutes
- operating and maintenance procedures
- training records or training program documents
- logs from control panels, operators, maintenance personnel, or supervisors
- maintenance service and repair records
- reports of similar internal incidents
- computer data
- site internal radio tapes/transcripts (in, out and within site)
- inspection records, specifications, histories, or alarm journals
- all applicable permits—safe work permits, operating and inspection permits, government issue and company issue permits, etc.
- previous safety audits

#### **Best Practice Tip**

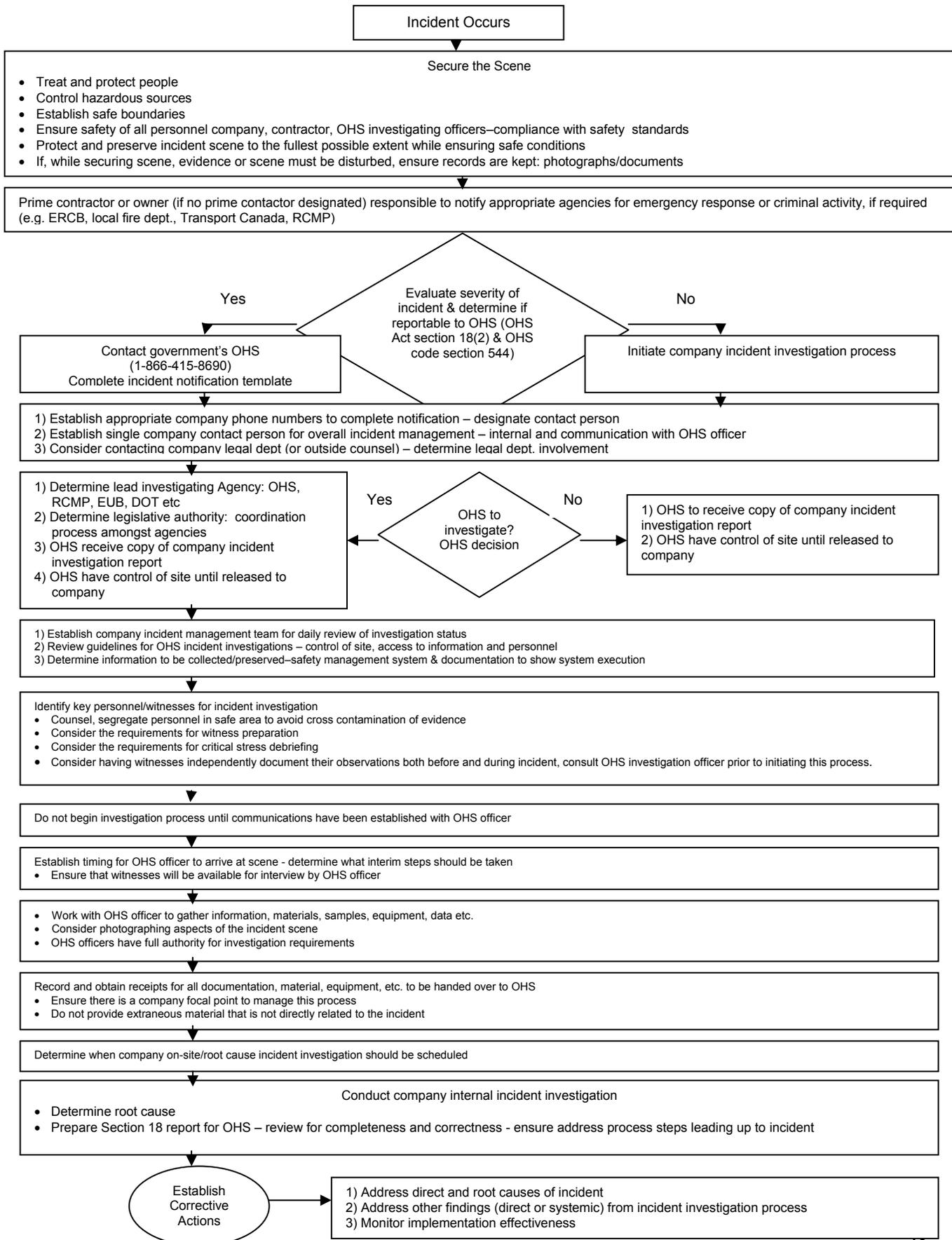
If it is clear that the investigators are missing key due-diligence information, it may improve the investigation to either provide it to them directly or discuss with them the relevance of such information.

### 3.6 Internal Investigations

Under section 18(3) of the OHS Act, if a reportable incident occurs or if there is any other serious injury or any other incident that has the potential of causing a serious injury to a person at a work site, the prime contractor or, where there is no prime contractor, the responsible party, must conduct an investigation. This means that even in situations where OHS has been notified and has decided it will not investigate the reported incident, the responsible party must immediately conduct an internal investigation into the event to determine what happened and what corrective actions are needed to prevent a recurrence. A report must also be prepared in respect of the circumstances and preventive measures adopted, if any. The report must be made available to OHS, upon their request.

Also, in situations where OHS does conduct a site investigation into the event, the responsible party is still obliged to investigate the incident itself. For more details see sections 2.1 and 2.2 above.

## 4.0 GENERAL INCIDENT INVESTIGATION PROCESS FLOW



## 5.0 SEQUENTIAL STEPS FOR INCIDENT RESPONSE

### 5.1 Emergency Response

When a serious incident, or one that has the potential of causing a serious injury to a person at a work site occurs, emergency response is always the first priority for site owners, prime contractors, employers, or other contractors in attendance at a work site. This usually entails attending the scene with available emergency response personnel to assess the exact nature of the event and determine immediate steps required to respond to loss already suffered, and to reduce further injury or loss to people, property, or the environment. Depending on what first responders find, the first priority is to take control of the situation.

### 5.2 Secure and Preserve the Scene

Once all injured personnel are cared for and the incident scene is being brought under control, the responsible party must ensure that access to the incident site is restricted and that all evidence related to the event is properly preserved.

There will always be some level of activity that will disturb the incident scene as the first consideration in emergency response will be to tend to and remove any injured persons. Also, depending on the nature of the incident, further disruption of the incident scene may be necessary to ensure that the worksite is safe. This may include work to contain a spill, leak, fire or other type of immediate threat to people, property, or the environment. Care must be taken during these activities as disturbing the scene of a workplace incident without just cause or authorization from an OHS officer or a peace officer is an offence under Section 18(6) of the OHS Act. Essential emergency response activities are appropriate reasons for disturbing evidence at a scene, but care must be taken to minimize the disturbance as much as possible.

The following are examples of when it may be appropriate to disturb the scene of a reportable incident:

- you have been given permission to do so by an OHS Officer or a peace officer.
- you have to attend to someone who has been injured or killed.
- you have to prevent further injuries.
- you have to protect property that is endangered as a result of the incident.

Outside of immediate emergency response, the prime contractor or other responsible party must work to ensure, to the greatest extent possible, that no potential evidence is disturbed or removed before the appropriate government officials have officially inspected and released it. This involves allowing site access only to authorized personnel. It requires protecting the scene during inclement weather. You may have to assign someone to “guard” the incident scene so that any physical evidence is not tampered with.

#### **Best Practice Tip**

Control of the incident scene passes to OHS officers when initial notification has been made, even though officers may not yet be at the scene.

Require all personnel entering the incident scene to sign in on a log created specifically for this purpose. This may discourage unnecessary visits to and help preserve the integrity of the incident scene.

The police may be the first investigative agency to arrive at the incident scene and take priority over the OHS officers. The police function is to investigate the incident for evidence of a crime. Usually their investigation is completed within hours and they turn the incident scene over to the OHS officers who then assume control over the incident scene. The company safety rules apply in all situations.

### 5.3 Report the Incident to Authorities

When an incident occurs, it is critical to understand when it must be reported to OHS. According to Section 18(2) of the OHS Act, incidents have to be reported if they:

- result in a death
- cause a worker to be admitted to hospital for more than two days (48 hours)
- involve an unplanned or uncontrolled explosion, fire or flood that causes or has the potential to cause a serious injury
- involve the collapse or upset of a crane, derrick, or hoist
- involve the collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure

Part 36, sections 544(1) and (2), of the OHS Code details additional dangerous occurrences that must be reported to OHS in relation to mining operations.

The responsible party at the work site must call the OHS contact centre hotline (866-415-8690) to report the incident. The Contact Centre is able to handle calls 24 hours a day, 365 days a year. The initial contact with OHS is vital to ensuring not only that a thorough investigation will be conducted by OHS but also that immediate instructions from the investigating OHS officer are properly relayed. These instructions will guide the prime contractor's or responsible party's actions appropriately. This conversation may include a discussion about scene isolation, weather or other conditions that may affect evidence, and a projected arrival time at the site for the investigating officers.

During the initial contact telephone call, or follow-up call, the OHS officer will usually request the following kinds of information:

- company name and location
- when the incident occurred
- contact name and numbers for call back
- general details of what happened
- location of incident
- site contact person's name, job title, and phone number(s)
- employer's relationship to the worksite (owner, prime contractor, contractor or supplier)
- injured worker's name, date of birth, and job title (if applicable)
- name and location of hospital the worker was taken to (if applicable)

In all cases, provide only information as requested and only insofar as you have specific knowledge; you can follow up as appropriate if additional information becomes available relevant to the questions asked.

Often the Contact Centre personnel you speak with will not be OHS officers. OHS officers will generally identify themselves as such. You may request to speak directly with an officer at any time.

In many circumstances, there will be multiple reporting requirements that a site owner or other responsible party must meet under various legislation. This Best Practice deals specifically with those incidents required to be reported to OHS only, but it is imperative that any other requirements are well understood and followed when incidents occur.

#### **Best Practice Tip**

If there is a suspicion that criminal activity has contributed to an incident, you should also contact the RCMP or local authorities. Examples of where this might be the case include violent acts between employees, sabotage, a fatality, or a discovery of illegal substances in relation to the incident scene.

Once an incident is reported, OHS officers may respond in a variety of ways.

- The OHS Contact Centre may assign an OHS officer to conduct an investigation into the incident.
- The responding OHS officer may phone the site contact designated by the owner or prime contractor or other responsible party in the initial incident report to the Contact Centre.
- The OHS officer may ask more specific questions than the Contact Centre operator and determine whether OHS staff will be attending the site.
- The OHS officer usually reviews the next steps and timeline with the site contact including timing for the officer to arrive on site. This might vary depending on the site location, current weather, or site access circumstances.

The OHS officer has the same authority on the phone as that officer does in person. For example, the officer can mandate scene preservation, access to witnesses, and access to operating data.

OHS officers are available at all hours.

#### 5.4 Preliminary Activities

The responsible party should immediately identify witnesses to the incident. There are various levels of witnesses who may have information relevant to the incident:

- **Primary witnesses**—commonly known as eye witnesses, someone who visually experienced what happened and has firsthand knowledge. Primary witnesses should always be interviewed first, followed by secondary witnesses.
- **Secondary witnesses**—someone who was in close proximity and did not actually see the event, but was close enough to experience it with their other senses.
- **Tertiary witnesses**—those who were not at the scene but possess knowledge regarding the general circumstances and can contribute background or historical knowledge. For example, these could be workers on a different shift who operate the equipment or technical experts.

Make sure that someone authorized by the responsible party is taking photographs/video at the scene. Prohibit photos taken by any unauthorized personnel. While emergency response personnel are not primarily concerned with preserving the scene they are trained observers and will offer a potential wealth of information.

##### **Best Practice Tip**

Obtain a complete list of all emergency response personnel who responded to the incident as these individuals will have observed the scene in its least disturbed state. Take statements if possible to capture their recollections of what aspects of the scene were affected by response efforts.

It is a good idea to initially segregate any witnesses present when the event occurred and have each write out a statement in their own words of what they saw, heard or felt at the time of the incident. Witnesses should remain separated at a safe area at the job site and not allowed to disperse (return home) or congregate together if at all possible. If that is not possible, ensure that witnesses understand the importance of not discussing the events. Appoint a knowledgeable company representative to speak with witnesses about expectations in this regard.

##### **Best Practice Tip**

See section 6.4, Tools, for an example template for an Incident Observation Report, which can be used when collecting initial statements from direct witnesses to the incident.

Once OHS has been advised of the incident, the prime contractor's site contact will be required to meet with the OHS officer upon the officer's arrival at the site. This will generally involve providing access to the site while ensuring the officer's safety. Providing access to witnesses and any relevant documents that are requested will be another essential responsibility for the site contact person.

**Best Practice Tip**

If your site or company has a policy respecting reasonable cause and/or post-incident alcohol and drug testing, be sure to follow that policy.

**Best Practice Tip**

Witnesses should be advised that they may ask for a break during interviews by OHS officers, to address any matters of personal anxiety or to consult with a company or personal lawyer. The OHS officer is not required to grant such a request, but past experience indicates that such requests will not be unreasonably denied.

Company personnel should debrief witnesses after they are interviewed by OHS officers, to assist the witnesses in addressing levels of anxiety. Inform them of further counseling resources available to them.

**5.5 OHS Outcomes**

When the OHS officers have satisfied themselves that they have collected the necessary information from the incident scene they will formally release the incident scene back to the prime contractor or other responsible party. During this release the OHS officer may issue orders to the prime contractor or other responsible person(s) outlining deficiencies that need to be corrected. It may be the case that the OHS officer will issue a "Stop-Use" or "Stop-Work" order associated with the incident scene work-in-process until corrective actions have been implemented. These orders are issued on items that pose a possible imminent danger for workers. It is at this point that the prime contractor must be ready to conduct whatever site restoration work is necessary to return to operations.

You can expect the OHS officers to compile and analyze the collected evidence to determine the direct cause of the incident. The OHS officer may issue new orders based on this review of the evidence. You can also expect OHS officers to prepare a report that outlines basic information about the incident. It may contain, but not be limited to, data on the location of the incident, what equipment was involved, the nature of the incident, analysis of the incident (direct cause and contributing factors), and follow-up on actions taken by various parties.

During the officer's review process, OHS may determine if a general information bulletin needs to be developed to inform all industry members about a potential hazard. The bulletin may be produced by OHS or by industry representatives under the guidance of OHS.

There are two potential outcomes of the investigation.

- 1) The file is reviewed and a determination is made that no court action will be sought.

A report is offered to all parties including the injured worker/next of kin, the principal parties, and the medical examiner when the incident investigation involves a deceased worker.

- 2) The OHS officers refer the investigation to the Crown Prosecutor's office to decide whether charges will be laid. The Crown Prosecutor's office assesses the evidence collected by the OHS officers to determine whether there is a reasonable likelihood of securing a conviction, and if so, whether the prosecution is in the public interest. The Crown Prosecutor's office decides who is charged and what charges are laid. This may include criminal charges. Alberta Justice has two years less a day from the date of the incident to lay charges under the OHS Act. There is no limitation period with respect to serious criminal code offences.

If charges are laid, all of the evidence collected by the OHS officers, including their investigative report, must be disclosed to those companies and/or individuals charged with offences.

## **6.0 OWNERS AND EMPLOYERS GUIDE**

### **6.1 Information for Contact Centre on Section 18 OHS Act Notification**

OHS officers may request a variety of information including:

- maintenance records
- test results
- equipment operating manuals and procedures
- training records
- work permits
- inspection reports
- risk assessments
- job or task hazard assessments
- safety management system documents
- safety management system assessments
- internal company stewardship documents
- incident records and analysis
- unit log books
- individual's notebooks

### **6.2 Internal Incident Investigation Process Checklist**

#### **Notification:**

- Note the time, date of notification and reference or case number if assigned
- Note when regulatory personnel arrived on site

Regulatory Agencies:

- OHS
- RCMP/Police
- Transport Canada
- Other

Company:

- Local site
- Head Office
- Solicitor - Client Privilege established

#### **Media:**

- Company contact person established, contact information available

#### **Incident Management:**

- Management committee established – onsite and / or at head office
- Witnesses segregated, statements taken
- Critical Stress Debriefing set up for those in need
- Records kept of all documents, materials, etc. requested / turned over to regulatory authorities

#### **Care for Injured Parties:**

- Name of first Aid attendant on site
- First aid provided
- Transporter to Medical facility
- Name of facility (hospital or other) and Licensed Medical Practitioner attending
- Name of person who accompany IP to medical facility

**Control of Scene:**

- Control established – barriers / tape put up
- Site access controlled
- Diagram made / Measurements taken
- Photos taken – start at approach and move to location
- Hazards identified and controlled

**Drug & Alcohol Policy:**

- Testing of Injured party and any related personnel

**Injured Parties:**

- Name, Age, Years of experience (Total and that position) – Industry & with Company & on that Site
- Orientation & Training records acquired – all of Trade, Industry, Company, Site
- Nature of injuries
- PPE worn

**Supervision:**

- Name, Age, Years of experience (Total and that position) – Industry & with Company & on that Site
- Orientation & Training records acquired – all of Trade, Industry, Company, Site, Supervisory accreditation
- Location at time of incident
- Interviewed – Experience in the work, Knowledge of specific equipment & task

**Other Parties present or with information:**

- Relevant parties identified
  - Other personnel onsite, technical, supervisory / leadership, etc.
- Interviewed – Experience in the work, Knowledge of specific equipment & task
- Knowledge and relationship to the work and work crew and specific IP

**Work Management – Planning:**

- Copy of Pre-job documents – Hazard or Risk Assessments at BU, Project, Job or task level
- Field Level Hazard Assessment document  
Permit to Work documents
- Copies of Procedures, Safe Work Practices, Tailgate meetings, recent Safety meetings

**Equipment:**

- Inspection reports
- Maintenance reports
- Specific on equipment – make, model, age, manufacturer, modifications, suitable for the work, layout and operation, general condition, considered a “Critical” piece of equipment
- Taken – in whole or part for testing, determination of mode of failure

**Site:**

- Inspection reports
- General condition
- Weather – wind, temperature, precipitation, terrain, lighting, noise or other exposure

**SubContractor:**

- Name and address of head office
- Key Operations and HSE contact personnel
- Copy of Safety Management System
- Copy of any contractor evaluation, appraisal or HSE interface meeting minutes

### **6.3 Witness Preparation**

When preparing witnesses to participate in a formal interview with government investigators it is appropriate to discuss the interview process with those witnesses and prepare them for the nature of the questions they are likely to be asked. Additionally, it may be helpful to remind them of some key “Do’s and Don’ts” for answering investigation questions. The following information may assist company personnel in preparing witnesses for such interviews.

#### **A. Tell the truth**

- Be both truthful and accurate.
- It is an offence under the OHS Act to knowingly provide false information to an OHS officer or to refuse to provide information to that officer.

#### **B. Make sure you understand the question asked to ensure a quality answer**

- Do not answer unless you fully understand the question.
- Listen to the entire question before answering; take time and think through your answer before articulating it; never rush; always finish the answer (even if interrupted/sidetracked, return to your answer before proceeding to the next question).
- If the question is long, complicated, or confusing, ask for clarification.
- Do not concern yourself with where the questioning is leading; concentrate on the question asked and provide an accurate and complete answer to that question.

#### **C. Do not guess or speculate in order to answer a question**

- Do not guess at the meaning of a question.
- If you do not know the answer, say “I do not know”; if asked to estimate something, only do so if you have the required knowledge/information. If your estimate would still be a guess, answer that you are unable to estimate.
- If you cannot remember or do not know, say “I do not remember” or “I do not know”; it is extremely risky to answer questions based upon assumption rather than memory or knowledge.

#### **D. Focus your answer on the question asked and answer it succinctly**

- Answer the question asked and none other; give a complete answer, but in order to avoid any misperception, do not discuss any information not required by the question.
- If the question can be answered with a simple “yes” or “no,” do so unless a “yes” or “no” would result in a misperception.

#### **E. Be polite but firm**

- Don’t be sarcastic or lose your temper and always be professional.

#### **F. Documents** (practice the following to ensure only accurate information is provided)

- Do not independently offer to provide documents; refer any requests for documents to the appropriate company representatives or counsel.
- Do not answer questions about a document unless it is before you and you have been given a full opportunity to read it; obtain a complete copy of the document, not selected parts.
- If provided with a document, read it carefully before answering questions about it; take your time, read at whatever speed is comfortable for you; keep the document in your hand and refer to it as necessary while answering questions about it.
- If the interviewer suggests that the document states a certain fact, always check first to see whether it, in fact, does before you answer.
- If you are not qualified to comment on a document or to answer a specific question, do not attempt to do so.

#### **G. Breaks/consultation**

- Anytime you wish to take a break, simply ask for one.
- Should you require some form of counsel during an interview you may make a request to take a break in order to seek that counsel.

## 6.4 Tools

### A. Incident Observation Template

Observation Sheet For:		Incident Date:
Report Date:	Name:	Company:
Where were you at the time of the incident (use rosette map)		
Was anyone else involved or present?		
What did you see?	Time/Date	How much? e.g., a lot, trace
What did you hear?		
What did you smell?		
What did you feel?		
What did you taste?		
Any other thoughts or comments you want to pass along?		

**B. Incident Notification to Occupational Health and Safety Contact Centre**

Item	Brief Description	Additional Details
Location of incident or injury:		
Site contact person:	Name and Title:	Phone number(s):
What occurred?		
Date and Time of Incident:		
Employer involved:	Name:	Address:
Relation of Employer to Site (owner, prime contractor etc.):		
Injured person:  Name  Date of birth  Job title		
Hospital transported to (if applicable):	Name:	Address:

**C. Incident Investigation Photograph Log**

This log is intended to record details for each photograph taken at the incident scene.

To be useful, the pictures must provide sufficient reference material to be able to accurately describe the scene to others at a later date. The photographs support the other scene documentation and graphically depict the condition of the scene. They also act as a positional reference tool once physical evidence is removed.

Always include a frame of reference in the photograph and the direction of north.

Company Name:		
Date:		
Time of Day:		
Incident Description:		
Name of Photographer:		
Type of Camera:		
Format (e.g. 35 mm. digital):		
Photograph reference number  For film begin roll number and exposure number  For digital use the reference number assigned by the camera	Description of the scene  Include direction and details of the scene, distance from the scene	Comments





## 7.0 GLOSSARY

**Contractor**—under the OHS Act, means a person, partnership, or group of persons who, through a contract, an agreement, or ownership, directs the activities of one or more employers involved in work at a work site.

**Director**—under the OHS Act, means a Director of Inspection, a Director of Medical Services, or a Director of Occupational Hygiene.

**Employer**—under the OHS Act, means

- (i) a person who is self-employed in an occupation,
- (ii) a person who employs one or more workers,
- (iii) a person designated by an employer as the employer's representative, or
- (iv) a director or officer of a corporation who oversees the occupational health and safety of the workers employed by the corporation.

**Prime contractor**—under the OHS Act, means the prime contractor for a work site referred to in section 3 of the OHS Act. Section 3 stipulates that:

- (1) Every work site must have a prime contractor if there are 2 or more employers involved in work at the work site at the same time.
- (2) The prime contractor for a work site is
  - (a) the contractor, employer or other person who enters into an agreement with the owner of the work site to be the prime contractor, or
  - (b) if no agreement has been made or if no agreement is in force, the owner of the work site.

**OHS officer**—an Alberta Occupational Health and Safety officer is a person designated as an officer by the director of inspection under the authority of the OHS Act (section 5) to carry out the administration of the OHS Act.

**Owner**—under the OHS Act, in respect of a work site, means the person in legal possession of the work site or, if the person in legal possession does not request the work, the person with an ownership interest in the work site who requests that the work be done.

**Reportable incident**—there are several categories:

- an injury or accident described in section 18(2) of the OHS Act that must be reported to the OHS contact centre
- an injury or accident that results in death
- an injury or accident that results in a worker being admitted to a hospital for more than 2 days
- an unplanned or uncontrolled explosion, fire or flood that causes a serious injury or has the potential of causing a serious injury
- the collapse or upset of a crane, derrick or hoist
- the collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure

**Incident** (or Serious Incident)—in this Best Practice, an accident (injury or property damage) or near miss which is sufficiently serious to warrant an internal company investigation and/or an Occupational Health and Safety investigation.

**Responsible party**—in this Best Practice, refers to the entity accountable for the site. It may be the prime contractor if one has been designated or the employer, contractor, or owner responsible where a prime contractor has not been designated under section 3 of the OHS Act.

**Worker**—under the OHS Act, means a person engaged in an occupation.

**Work site**—under the OHS Act, means a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation.

## 8.0 FREQUENTLY ASKED QUESTIONS

The following frequently asked questions are intended to provide clarity and guidance for those involved in an incident investigation. As each situation and investigation are different, this information is a general guideline only, developed to help enhance understanding among stakeholders.

### Process and procedures

Q. What triggers an investigation? How do I know when to call Alberta Occupational Health and Safety (OHS)?

A. See section 5.3 Report the Incident to Authorities.

Q. What is the transition between an RCMP investigation and an OHS investigation if the RCMP is the first responder?

A. You can expect the police services at the scene to make a determination if the incident could be a criminal matter. The OHS officers will usually wait for the police to finish their investigation of the incident scene. If it is not deemed a criminal matter, the police will usually transfer the incident scene to the OHS officer(s). If it is a criminal matter, under the jurisdiction of the police services, the scene will not be handed over to an OHS officer. OHS will usually not investigate an incident that is deemed to be a criminal matter. The OHS investigation may result in criminal charges depending on the instructions from the Crown Prosecutor's office.

Q. What are my responsibilities concerning incident scene control prior to OHS or the RCMP arriving on the scene? What actions do I take to secure the scene?

A. See section 5.2: Secure and Preserve the Scene.

Q. Why is it important to keep witnesses apart from each other until the OHS officer can conduct witness interviews?

A. See section 3.2: Witness Management and 5.4: Preliminary Activities.

Q. Why is it important to name a single point of contact at the site to act as a representative for the owner/employer?

A. See section 3.1: Site Contact Person.

Q. What should I do if a government official arrives unannounced and wishes to enter the work site? What do I do if I cannot reach a plant manager or the company's counsel?

A. Under the legislation, OHS has the authority to enter your site at any reasonable hour. Once OHS personnel have entered the site, it is the prime contractor's responsibility to ensure their safety on that site.

Q. Do I get to review the OHS report before it is issued?

A. No.

### Interviews and statements

Q. As the owner and/or employer, do I have the right to have legal counsel present during interviews with witnesses?

A. The OHS officers will likely request an interview of witnesses without legal counsel present. This issue has not been resolved by the courts in Alberta. If a witness refuses to be interviewed without his or her lawyer present, then the witness runs the risk of being charged with refusing to provide information under s. 19(2) of the OHS Act.

Q. What are the consequences for my company if an individual refuses to provide a statement?

A. The person refusing to provide the information could be charged under the OHS Act, and if convicted could go to jail. A company or person who "aids or abets" such a refusal could also be convicted as a party to the offence. A person who counsels a refusal can go to jail. A corporation cannot be imprisoned but can be fined.

Q. Can the company obtain a copy of witness statements?

A. The OHS officers will not release copies of any statements until such time as a decision has been made with respect to charges. If no charges are laid, then the OHS officers may provide copies of statements. If charges are laid, then the defendants are entitled to full and complete disclosure which includes copies of all statements provided by witnesses.

### **Rights and obligations**

Q. As the employer, do I have the obligation, in appropriate cases, to test for alcohol and drugs before OHS gets on the scene?

A. The answer depends on a variety of factors including the circumstances of the incident and the governing drug and alcohol testing policy existing at the time.

Q. Will the OHS officer want copies of employer witness statements?

A. Generally, it is the practice of OHS officers to rely on witness statements they have directly taken. However, they may request access to statements taken by the employer. In this case, you may wish to consult with your lawyer regarding provision of such statements.

Q. Once an OHS investigation is underway, who is in control of the site?

A. See section 2.2: Authority of OHS.

Q. What are my responsibilities and obligations if an OHS officer requests entry into a hazardous area?

A. See sections 2.2 and 2.3: Authority of OHS Officers.

### **Internal investigations**

Q. As the owner, am I supposed to conduct my own internal investigation? Or, do I leave it up to OHS?

A. See Section 3.6: Internal Investigations.

Q. As the owner, am I allowed to start my investigation before the officer gets there? What about witnesses: Can I begin to take statements from the witnesses?

A. See section 3.2: Witness Management, 5.4: Preliminary Activities, and Section 2.3: D. Roles and Responsibilities of Witnesses.

### **Information collection and gathering**

Q. When will information collected be returned to the owner of the information?

A. The OHS officer is required to provide a receipt for any item removed and to return the item upon request once it has served its purpose. If the item is required for evidentiary purposes, it could be years before the item is returned. Company representatives should identify to OHS officers any sensitive documents or equipment integral to the work process in order to allow business to continue.

### **FAQs for witnesses**

Q. As a witness, what can I expect during the initial steps of an investigation?

A. See section 3.2: Witness Management and 5.4: Preliminary Activities.

Q. Can OHS compel workers to give statements? If yes, where does this obligation arise?

A. See section 2.3: D. Roles and Responsibilities of Witnesses and Section 2.3: F. Roles and Responsibilities of Workers.