

# Consultation on Improving Occupational Health Protections for Ontario Construction Workers

## Summary of Proposal

The Ministry of Labour (MOL) is seeking input on three regulatory proposals to improve worker protection from hazardous exposures to noise, biological and chemical agents and carbon monoxide released from internal combustion engines. An outline of the ministry's proposed changes is provided in the "[Details of Proposals](#)" section below. The proposed regulatory amendments, if approved, would take effect six (6) months after the amending regulation is made.

The ministry would appreciate receiving feedback on the proposed regulatory amendments by December 29, 2014. For more information on how to submit your comments please see the "[How to participate](#)" section at the end of this document.

## Background

The MOL is acting on three recommendations put forward by the construction industry's Provincial Labour Management Health and Safety Committee (PLMHSC). The PLMHSC is an advisory committee to the Minister of Labour that is established under Section 21 of the Occupational Health and Safety Act (OHSA) to provide advice on health and safety concerns in the construction industry. The PLMHSC recommended the ministry:

1. introduce noise protection requirements to Ontario's construction industry;
2. expand the application of the [Control of Exposure to Biological and Chemical Agents Regulation](#) (Regulation 833) to construction employers and their workers; and
3. improve protections provided by section 47 of the [Construction Projects Regulation](#) relating to carbon monoxide exposure from internal combustion engines.

## Details of Proposals

### ***New Noise Protection Requirement***

Hazardous exposures to noise above a time-weighted exposure level of 85 decibels for an eight-hour work day is commonly encountered on construction projects. It is a leading cause of occupational disease in the construction sector. According to the Workplace Safety and Insurance Board, the annual costs for noise induced hearing loss claims for this sector averaged over the last 5 years exceeded \$7 million dollars per year.

Unlike key sector regulations under the OHS Act for industrial establishments ([Regulation 851](#)) mines and mining plants ([Regulation 854](#)) and oil and gas – offshore ([Regulation 855](#)), Ontario's [Construction Projects Regulation](#) (O. Reg. 213/91) does not have specific regulatory requirements addressing worker exposure to noise. To better protect construction workers, the PLMHSC, following extensive consultation within its network of trade and regional labour-management subcommittees, recommended to the Minister of Labour the addition of new noise protection requirements to the [Construction Projects Regulation](#). The ministry supports these changes.

The ministry proposes to add new requirements to the [Construction Projects Regulation](#) that would provide the same level of noise protection to construction workers as is currently provided to workers in other sector regulations under the OHS Act. The proposed regulatory amendment, if approved, would mirror the noise requirements in the regulations for industrial establishments ([Regulation 851](#), Section 139), mines and mining plants ([Regulation 854](#), Section 293.1), and offshore oil and gas facilities ([Regulation 855](#), Section 41). The proposed requirements include:

1. Establishing an exposure limit for noise (i.e., 85 dBA,  $L_{ex,8}$  – based on 8-hour time-weighted average exposure).
2. Requiring employers to take all measures reasonably necessary in the circumstances to protect workers from exposure to hazardous sound levels, which would be time-weighted exposures that exceed the recommended sound exposure limit of 85 dBA,  $L_{ex,8}$ .
3. Clarifying an employer's obligation to protect workers from hazardous noise exposures without requiring workers to use personal protective equipment unless certain specified circumstances apply (e.g., engineering controls are not feasible because of the duration or frequency of exposure or because of the nature of the process, operation or work). In practice, it is expected that a large number of noise sources in construction would qualify for the wearing of personal protective equipment by workers under this exception.

### ***Application of the Control of Exposure to Biological or Chemical Agents Regulation (Regulation 833) to construction employers and their workers***

The [Control of Exposure to Biological or Chemical Agents Regulation](#) ([Regulation 833](#)) is the main regulation under the OHS Act addressing worker exposure to hazardous chemical and biological substances. Key provisions in this Regulation include the setting of occupational exposure limits for over 725 hazardous substances that restrict both the amount and time workers can work while exposed to those substances. Currently, this Regulation does not apply to construction workers at a construction project.

The PLMHSC recommended that the ministry remove the exemption provided by Section 2(1) of this Regulation so that construction workers are afforded the same protection provided to other Ontario workers under [Regulation 833](#) from exposure to hazardous substances. The ministry supports these changes.

*Current Regulatory Requirement – Section 2(1)*

2. (1) This Regulation does not apply, at a project,
  - (a) to an employer who engages in construction; or
  - (b) to workers of an employer described in clause (a) who are engaged in construction.

*Proposed Regulatory Requirement*

The ministry proposes to extend the application of [Regulation 833](#) to an employer who engages in construction and their workers by removing the exemption provided by subsection 2(1). The proposal would better protect the health of Ontario's construction workers from occupational illnesses and disease by reducing workplace exposure to hazardous substances.

***Proposed changes to Section 47 of the Construction Projects Regulation***

The operation of internal combustion engines in enclosed workplaces on construction projects can lead to occupational exposure to carbon monoxide for construction workers. The PLMHSC recommended changes to Section 47 of the [Construction Projects Regulation](#) to emphasize the importance of maintaining and servicing combustion engines, and require workplace testing to prevent overexposures to carbon monoxide. These changes are supported by the ministry.

*Current Regulatory Requirement – Section 47*

47. No internal combustion engine shall be operated,
  - (a) in an excavation unless provision is made to ensure that exhaust gases and fumes will not accumulate in the excavation; or
  - (b) in a building or other enclosed structure,
    - (i) unless the exhaust gases and fumes from the engine are discharged directly outside the building or structure to a point sufficiently remote to prevent the return of the gases and fumes, or
    - (ii) unless there is an adequate supply of air for combustion and adequate natural or mechanical ventilation to ensure exhaust gases and fumes will not accumulate.

*Proposed Regulatory Change*

The ministry proposes to revise Section 47 to better protect workers from exposure to hazardous exhaust gases, such as carbon monoxide, released by internal combustion engines. Proposed changes would:

- Add a new subsection to clarify that Section 47 does not apply to an internal combustion engine operated in a tunnel. Part IV of the [Construction Projects Regulation](#) currently addresses the use of internal combustion engines in tunnels. The operation of an internal combustion engine in a tunnel will continue to be addressed under Section 316 of the Regulation, which requires the consent of a Ministry of Labour Director prior to its use.
- Revise the current clauses (a) and (b) of Section 47 in a new subsection to provide greater clarity on the intent of the requirements, which is to ensure the control of exhaust gases and fumes that are generated from internal combustion engines.
- Create new requirements that would:
  - reinforce the need for an internal combustion engine to be serviced and maintained so as not to endanger a worker (i.e., engines must be maintained so they burn the fuel cleanly and discharge minimal amounts of carbon monoxide);
  - require excavations, buildings or structures in which engines are operating to be tested for airborne concentrations of carbon monoxide to ensure hazardous concentrations are not reached; and
  - require testing for airborne concentrations of carbon monoxide to be carried out in accordance with a written testing strategy developed in consultation with a health and safety representative or the joint health and safety committee, if any.

### **How to participate**

The consultation period ends on December 29, 2014.

#### ***Send us your comments:***

Email: [WebHSpolicy@ontario.ca](mailto:WebHSpolicy@ontario.ca)

Fax: 416-326-7650

#### ***Write to us:***

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### **Notice to Consultation Participants**

Submissions provided to the Ministry of Labour ("ministry") in the context of this consultation are intended to facilitate the development of, and amendments to,

regulations under the Occupational Health and Safety Act. This process may involve the ministry publishing your submissions or summaries of submissions (in hard copy and on the internet). In addition, the ministry may disclose your submissions to third parties as part of the consultation process or where required by law.

If you identify yourself or other individuals in the body of the submission, this identifying information may be published or otherwise disclosed to the public. Any name and contact information provided outside of the body of the submission will not be disclosed by the ministry unless required by law. Any individual who provides a submission and indicates an affiliation with an organization will be considered a representative of that organization and his or her name and other identifying information may be published or otherwise disclosed.

Personal information collected during this consultation is under the authority of Section 70 of the Occupational Health and Safety Act and is in compliance with Section 38 (2) of the Freedom of Information and Protection of Privacy Act.

If you have any questions regarding privacy matters, you may contact the ministry's Freedom of Information and Privacy Office at 416-326-7786.