

# **SAFE Companies Report**

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## Introduction

In 2008/2009, a significant number of the inquiries received by the Office of the Ombudsman were related to the SAFE Companies Program (SCP). Several issues were identified by contractors, sub-contractors and owner-operators. This presents a serious challenge because the SCP is at the core of the work being undertaken by the BC Forest Safety Council (Council).

Introducing a program as complex as the SCP in an industry as diverse as the forest sector is no small task. While good progress has been made in the implementation of the SCP, some areas can be improved.

As requested by the Council's Board of Directors in February 2009, this report makes seven recommendations to the Council that aim to strengthen the SCP.

## Recommendations

### Recommendation 1:

**The Council needs to implement a customer outreach program to better assist companies and individuals that require clarification of Council programs and initiatives.**

Many inquiries in 2008 were direct referrals from Council staff. These inquiries often led to meetings with a collection of contractors/owner-operators where the majority of the time was spent explaining the SAFE Companies (SC) certification process and the roles and requirements of the different regulatory agencies.

Upon reflection, these meetings fall outside the mandate and original intent of the Ombudsman's office. While the office has created a channel where Council customers can have their issues heard, program specific issues are best managed by Council staff.

### Recommendation 2:

**The Council and WSBC need to clearly differentiate themselves and their roles with regards to the SCP.**

Presently, Council customers are confused about the roles and responsibilities that both the Council and WSBC play in the SCP.

In this relationship, customers need to have a clear understanding of who is the certifying agency and responsible for policing the standards.

**Recommendation 3:**

**The Council and WSBC must work to find better alignment between the SCP and WSBC regulations in a way that enables both organizations to meet their goals.**

Currently, the absence of a certification review process allows companies to manage their businesses without fear of losing or damaging their SC status. As a result, some companies do only the bare minimum required to pass their audit. Consequently, the program goal of having companies integrate safety into their business processes isn't being fully realized.

For example, on-site visits by WSBC officers to SAFE Certified companies continue to identify violations of WSBC regulations. This has led to some WSBC officers questioning the merit of the SCP and its ability to ensure proper safety systems are in place. Furthermore, there have been instances of SAFE Certified companies being fined for violations weeks after achieving SC certification. Both of these scenarios damage the credibility and reputation of the SCP.

Having a credible SCP is vital if the program is to succeed. One step towards improving that credibility is ensuring the relationship between the certifying body and enforcement agency are clear and transparent. Issues of de-certification, on-going compliance, inspections, and mutually agreed upon standards are all components of this relationship.

**Recommendation 4:**

**The Council should review the current "number of employee's formula" which determines the audit type a company must submit.**

The SCP has clearly defined break points designed to identify which audit type (BASE, SEBASE or IOO) a company must pass in order to achieve SC certification. Issues with the "number of employee's formula" have been brought forward in two arguments:

- *The current break points are inflexible.* There is a significant difference between the scale and scope of a company that has two employees and a company that has 19 employees. There is also a significant difference in the scale and scope of an operation with 20 employees

and one with over 100 employees. These discrepancies are creating inequities in the forest sector that has the potential to put some companies at a competitive disadvantage due to the relative costs of meeting different audit requirements.

- *Council efforts to streamline SC for IOO's and small companies has resulted in a process that does not do enough to improve safety and build effective safety systems.* The simplification of the IOO and SEBASE audits has resulted in a process increasingly viewed as only a "paper exercise" in safety.

**For consideration:**

1. Establish a new category for small companies with five or fewer employees.
2. Introduce flexibility into the employee break points to provide options for companies that have a fluctuating workforce due to the seasonality of their operations.

**Recommendation 5:**

**WSBC and the Council need to capture the safety implications of logging truck cycle-times in the SCP.**

The current economic climate has companies looking to find innovative ways to cut costs in order to stay in business. Unfortunately, cycle-time has been one area that companies have adjusted to reduce costs. This has led to two scenarios:

**Scenario 1:**

Cycle-times are being arbitrarily reduced to levels that cannot be met without truck drivers operating unsafely. A reduction in cycle-time can lead to unsafe work practices such as fewer brake and wrapper checks, speeding and driver fatigue.

**Scenario 2:**

Companies are paying truck drivers to haul overweight loads. This is not only unsafe; in many cases it is illegal.

Unfortunately, both scenarios currently have no impact on a company's SAFE certification status. This issue reinforces the need for a certification review process.

**For consideration:**

1. The SCP should include a clear and transparent method for the posting of all cycle-times.
2. There must be a posted, understood and communicated appeal process for cycle-time calculations.
3. Cycle-time calculations must ensure that there is enough money left over for truck drivers after the many tiers of contractors have taken their cut.
4. There needs to be a process in place that allows owner-operators, sub-contractors and contractors to provide input to licensees and mill management before calculating cycle-times.

The recently released *Truck Compliance Advisory Panel Report (section attached as Appendix A)* identifies “Shipper Responsibility” as an area where the general trucking industry is also experiencing safety-related challenges. Issues of “Shipper Responsibility” mirror many of the cycle-time challenges in the forest sector. The recommendations from this report and included in the appendix should be considered in the context of the forest sector.

**Recommendation 6:**

**The Council needs to put requirements on any company/agency that is SAFE Certified to ensure that any contractors/sub-contractors/owner operators working on their behalf are also part of the SCP.**

Many issues were raised around the scope of the SCP and how far it extends into other sectors. The following two examples highlight a few areas that have caused confusion:

1. Currently, many companies deliver supplies, materials and equipment to forest operations. There is no requirement for these companies to be in the SCP despite working on forest roads and in forestry conditions.
2. There is inconsistency within the Ministry of Forests and Range (MoFR) between BC Timber Sales (BCTS) and the Compliance Division. While BCTS requires all contractors to be SAFE Certified before they can bid on timber, the Compliance Division does not make SAFE certification a requirement.

### **Recommendation 7:**

#### **The Council must establish a clear certification review process.**

There are currently no guidelines whereby companies can be de-certified. In order for the SCP to be successful it must have a clear and concise certification review process that is communicated to all program participants.

### **Final Comments**

While a number of contractors have identified the cost of meeting the requirements of the SCP as a major issue, it is the ongoing cost of running the safety programs that is causing the most concern. Many companies have expressed concern that the break points within the SCP are creating uneven economic playing fields. These beliefs must be dispelled or disproven in order for the SCP to be successful.

Another concern that should be monitored closely is the downloading of costs and responsibilities to contractors by licensees. This practice must be monitored closely to prevent any abuse of SCP policies.

## **Appendix A: Truck Compliance Advisory Panel – Shipper Responsibility (p. 13)**

### ***Rationale***

Drivers can be fined and vehicles can be placed out of service (OOS) if their load is overweight or not properly secured. However, loading of heavy commercial vehicles (HCVs) sometimes performed by shippers with little or no involvement of carriers and drivers.

Similarly, drivers can be placed OOS for exceeding their allowed Hours of Service (driving longer than the regulations permit) but shippers control delivery deadlines that may impact drivers' ability to fully conform to Hours of Service rules or other safety-related regulations.

The intent of shipper responsibility initiatives is to promote awareness of the joint accountabilities which exist throughout the supply chain. This should help lower OOS rates by deterring shipper practices that contribute to vehicles or drivers being placed OOS.

During Roadcheck 2008, load-related OOS violations accounted for 16.9 per cent of B.C.'s OOS violations.

### ***Review of Experience Elsewhere***

Several jurisdictions in Canada and the US have measures in place to penalize shippers for overloading or improperly loading vehicles. Depending on the jurisdiction, shippers may share liability with carriers and drivers, or shippers may be liable on their own for infractions.

Jurisdictions with shipper liability report that the trucking industry is generally supportive of these measures, although intervention is infrequent. In those jurisdictions, proving that shippers knowingly required carriers or drivers to contravene regulations has been challenging.

Gathering evidence may require that drivers or carriers come forward with information. As carriers and shippers are involved in a business relationship, coming forward may have a negative economic impact for carriers.

### **Example – Alberta**

In Alberta, legislation has been in place since the early 1980s that apportions liability to shippers for contraventions of transportation regulations. While few charges have been laid, this measure is seen as a tool which, coupled with education, has improved compliance.

Example – Saskatchewan

Saskatchewan has legislation similar to Alberta's, limited to over-weight and over-dimensional loads. The driver retains responsibility for the vehicle but the shipper can also be found liable for loading infractions.

Example – Manitoba

Manitoba has broad provisions which hold shippers liable for transportation offences, for a range of contraventions of the *Highway Traffic Act* or regulations. A shipper may be liable for offences for which a carrier or driver may be liable, regardless of whether or not the carrier or driver has been prosecuted. Although few charges have been laid, the risk of potential charges appears to have led to improved compliance.

Example - Ontario

Ontario has provisions that hold shippers accountable for transportation related offences. Currently, Ontario is contemplating changes to broaden the scope of the regulations to include audits and investigations.

***Program Considerations for B.C.***

Currently in B.C., shippers cannot be held legally responsible for overloading or improperly loading vehicles under the *Commercial Transport Act, Motor Vehicle Act* or regulations created under those statutes. Responsibility rests with carriers and drivers to operate with compliant vehicles and loads.

The only liability that can currently accrue to a shipper is under section 37.12 of the Motor Vehicle Act Regulations, which indicates nobody shall cause a driver to exceed the hours of service permitted.

In consultations with members of the trucking industry, concerns were raised regarding shipper behaviour aimed at reducing costs. The most common concerns were that some shippers knowingly overload vehicles, load cargo insecurely or pressure drivers or carriers to exceed maximum load limits and hours of service.

In these situations, carriers are faced with difficult business decisions. They must either agree to shipper demands or refuse and perhaps lose the contract with the shipper.



**Shipper responsibility should extend into the following primary areas:**

Over-Weight and Over-Dimensional Loads

Shippers often have control over the weight and dimensions of HCV loads. By overloading trucks, a contractor (shipper) may save both time and money by reducing the number of trips required to move a given amount of material. However, overloaded vehicles have impaired handling and longer stopping distances. In addition to posing safety hazards, overloaded vehicles also accelerate wear and tear or damage to the vehicles themselves and to public roads.

When drivers are tasked with operating overloaded vehicles, it places them in a difficult situation. Drivers may not be aware that trucks are overweight but are liable for offences if they are caught operating an overweight vehicle.

When drivers are aware of overweight loads, they often have difficulty refusing shipper demands to carry them. Economically, it may be in the interest of carriers and drivers to accept the risks of carrying overweight loads. However, along with fines, carriers are also penalized for non-compliant behaviour through points on their NSC carrier profiles, which negatively affect their carrier safety rating.

Cargo Securement

In an initial consultation with industry, issues were raised regarding shipper responsibility for cargo securement. Although drivers are liable for cargo securement, shippers often load their own cargo into trailers or containers and seal them to ensure goods are not tampered with, in order to reduce losses. However, shippers may not always ensure that cargo is properly secured. Heavy cargo that shifts during transport can affect the operability of the vehicle combination, and pose a significant risk to road safety. Improperly secured loads also contribute to OOS rates and to risks of collisions.

Hours of Service and Delivery Times

Industry has raised concerns around shippers requiring drivers to contravene driving regulations. For instance, shippers may schedule routes and delivery times which may be difficult for drivers to maintain within the Hours of Service requirements.

While authority exists in B.C. for holding shippers liable for contraventions of Hours of Service requirements, it is difficult to gather evidence required to prove intent.

***Potential Benefits, Costs and Risks***

Provisions for shipper responsibility could be a useful tool to enable the trucking industry to work with shippers to ensure compliant loads and appropriate travel times. This, plus consideration by shippers of the potential costs of noncompliance, might contribute to reduced OOS rates.

It is possible that imposing shipper responsibility could lead to increased costs for shippers. Shippers may also become more conscious of the safety records of carriers if they are to bear a portion of the costs of offences. This potentially could have the effect of increasing the value of the premium carrier program. Information from other jurisdictions indicates that the legislation is difficult to enforce, but the existence of shipper liability may deter actions by shippers that lead to higher OOS rates.

More information is required to determine the impact shippers have on the OOS rates. A review of legislation and enforcement in other jurisdictions has indicated these measures may have improved shippers' practices, but the information is not conclusive. Before making recommendations for a legislative approach, additional information regarding shipper involvement in OOS rates should be reviewed. Where patterns and trends are evident, appropriate action is necessary to address the role of the shipper.

***Recommended Next Steps***

It is recommended that the Province:

- Educate shippers about their responsibility for highway safety
- Collect shipper information during roadside enforcement activities
- Immediately initiate intervention and enforcement activities where patterns or trends indicate a lack of shipper support for compliance with trucking regulations
- If positive trends are not evident, consider legislation to make shippers responsible for their actions relating to vehicles leaving their facilities