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"The Employer"

This is in reply to the employer's letter dated May 14, 2004 requesting a deviation from the wearing of hard hats while operating an asphalt spreader due to the extreme heat. As the employer is aware, Section 40 (1) from the General Regulation 91-191 requires that protective headwear (hard hats) that meet the requirements of the ANSI Standard Z89.1-1997 (or equivalent) be worn by employees carrying out work on a project site.

Section 40 (1) On a project site, an employee shall use Class E, Type 1 headwear that conforms to ANSI standard ANSI Z89.1-1997, "American National Standard for Industrial Head Protection" or a standard offering equivalent or better protection.

Project Site is defined as:

"project site" means any building, structure, premises, water or land where construction is carried on;

and Construction is defined as:

"construction" includes building, erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and any work in connection therewith;

The employer states in the employer's letter that the wearing of hard hats while operating the asphalt spreader adds to heat stress, leaving the employees at a higher risk of heat-related symptoms. It is the employer's opinion that as long as there is no apparent overhead danger, the employer believes that asphalt spreader operators should not have to wear a hard hat while operating the spreader.

Section 3 (3) of the *Occupational Health and Safety (OHS) Act* provides for the Chief Compliance Officer to a grant a deviation from the requirements of the Regulation if it can be demonstrated that the proposed alternative provides protection that is equal or better to that required by the Regulation.

3(3) *Where an employer applies, in writing, for an authorization to deviate from any provision of the regulations, the Chief Compliance Officer may give permission in writing for that deviation under such terms and conditions as he shall consider advisable*

(a) in accordance with the standards, if any, prescribed by regulation for granting such deviations, or

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(b) where no standards for granting deviations are prescribed by regulation, if he is satisfied that the deviation affords protection for the health and safety of employees equal to or greater than the protection prescribed by regulation.

Since not wearing a hard hat cannot be considered equal to wearing a hat, and conditions on project sites can change frequently resulting in hazardous conditions that could lead to a head injury (even for asphalt operators), the employer's request for a deviation from Section 40 (1) of the General regulation 91-191 for asphalt spreaders is not granted.

Regarding the concerns the employer raised about the possibility of heat induced illnesses while wearing a hard hat, the Chief Compliance Officer would like to bring to the employer's attention to other provisions in the regulation that address this issue. Outlined below are the provisions from 91-191 to deal with extreme heat conditions that could lead to heat related illnesses:

22 *Where an employee is exposed to work conditions that may present a hazard because of extreme heat or extreme cold, an employer shall ensure that*

(a) a competent person measures and records the thermal conditions at frequent intervals and makes the findings available to a committee, if any, and to an officer on request, and

(b) the threshold limit values for protection against heat stress and cold stress are followed as well as the work-rest regimen for heat and the work-warming regimen for cold and other advice found from pages 125 to 140 of the ACGIH publication "1997 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices".

23(1) *Where an employee is exposed to work conditions that may present a hazard because of excessive heat, an employer shall ensure that a competent person instructs the employee in the significance of symptoms of heat stress such as heat exhaustion, dehydration, heat cramps, prickly heat and heat stroke and in the precautions to be taken to avoid injury from heat stress.*

As indicated above, employers with employees who may be affected by heat stress are required to take measures to deal with this issue. The employer will note that by complying with the provisions of Section 22 and 23 of the General Regulation 91-191, and by following the instructions outlined in the attached documents (Risk Alerts), work-related illnesses that could be caused by employees wearing protective head gear and operating an asphalt spreader in hot weather conditions will be minimized.

By copy of this letter, the Chief Compliance Officer has advised the WHSCC staff of the decision.

Yours truly,

Chief Compliance Officer