

January 15, 2009

"The Employer"

The Chief Compliance Officer is writing in response to the employer's letter dated March 4, 2008 in which the employer requests a deviation from *Occupational Health and Safety Act* General Regulation 91-191 section 85(a) that states:

85 *An employee who uses a portable power-operated hand tool shall*

(a) keep guards on the tool in place while using it,

In the employer's letter the employer indicates the following:

1. The employer wanted to modify the configuration of the shield to make the operation safer;
2. The grinder presently has a shield that is 180 degrees which is designed for operating on horizontal surfaces, for example grinding a plate or on working on tabletop;
3. The employer's operation requires the employer to work outside a pipe, grinding vertically and with the current configuration, the grindings will bounce off the pipe, striking the face shield and possibly flying to the back of the worker's neck, causing burns. The cuttings also hang up on the hardware of the face shield and when the worker flips the shield, the cuttings fall down onto the worker's face;
4. In order to avoid this, the employer proposed to cut the 180-degree semi-circular shield to a 120-degree angle. When the grinder is equipped with this type of configuration, the grindings will be directed downwards and away from the worker avoiding potential burns from the grindings;
5. The deviation is standard practice in the employer's premises in all other provinces that the employer works under;

The employer provided a sketch to illustrate the changes the employer is requesting.

The following information was requested of the employer during a telephone conversation on March 5th, 2008. The information was again requested of the employer during a telephone conversation on March 18th, 2008:

1. Copies of the deviances received from other jurisdictions,
2. Name of the manufacturer of the hand-held grinders, and
3. Direction of the blade rotation.

The same information was requested in an email to the employer on March 19th, 2008. The employer replied to the email on the same day and provided the following information:

1. The manufacturer of the hand-held grinder is Makita, the model used is 9005B
2. The rotation of the blade is clockwise at 10 000 rpm.

A letter used to request a deviation in other jurisdictions was also attached. The Chief Compliance Officer responded, by email, that the letter requested was not the one used to make the request for deviation but rather the letter granting the deviation.

On March 28th, 2008 the employer provided six "request for deviation" letters sent to other jurisdictions. No copies of their responses were provided. A request for the responses to the request for deviations from other jurisdictions was made by email on April 4th, 2008.

In a reply dated April 18th, 2008, the employer stated that copies of the letters granting the deviations could not be found. In the email the employer attached an extract from the Hand-Guide to Alberta's OH & S Act, Regulation and Code, which stated:

375(2) An employer must ensure that the guard of a hand held grinder covers the area of the grinder accessory contained within an arc of at least 120 degrees of the circumference.

On May 20th, 2008, the Chief Compliance Officer met with the employer and requested the following information.

1. A letter from the manufacturer stating that the proposed modification to the guard would not compromise the safety of the user.

On August 8, 2008 the Chief Compliance Officer followed up with the employer by telephone advising that the information the Chief Compliance Officer had requested at the meeting still had not been provided and was advised by the employer that if the information had not been provided by the employer that this deviation may no longer be required.

Since the Chief Compliance Officer has not received the information requested from the employer the Chief Compliance Officer is now closing this file.

Yours truly,

Chief Compliance Officer