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"The Employer"

This is a reply to the employer's letter dated July 4, 2003 requesting a deviation from Section 220 (1) of the General Regulation 91-191 for three log loaders in the employer's wood yard operations. As the employer is aware, Section 220 (1) states that:

An employer shall ensure that powered mobile equipment manufactured on or after January 1, 1974 is equipped with a rollover protective structure that meets the minimum safety requirements of CSA standard B352-M1980, "Rollover Protective Structures (ROPS) for Agricultural, Construction, Earthmoving, Forestry, Industrial, and Mining Machines".

In the employer's letter, the employer states that the employer's equipment suppliers have advised the employer that this type of protection (ROPS) cannot be supplied on the type of equipment in question, thus the request for the deviation.

In a telephone conversation, the Chief Compliance Officer advised that the employer that the requirements for granting a deviation on ROPS were outlined in Section 220 (3) of 91-191 (see below):

220(3) Notwithstanding subsections (1) and (2), the Chief Compliance Officer may give permission in writing for a deviation, under such terms and conditions as he considers advisable, for powered mobile equipment to be used without a rollover protective structure if there is no significant chance of upset and

- (a) the equipment has a frame that is not capable of supporting the stresses introduced by a rollover protective structure during upset,*
- (b) the equipment has a low centre of gravity that makes upset unlikely, or*
- (c) the installation of a rollover protective structure constitutes an operating hazard in the circumstances in which the equipment is operating.*

As a result of the requirements of Section 220 (3) and the contents of the employer's request, the Chief Compliance Officer has indicated that before a deviation for the employer's loaders could be considered, a letter would be required from the manufactures stating that ROPS could not be installed on the equipment.

On December 4, 2003 the Chief Compliance Officer received a fax from the employer (including a copy of a letter from Atlantic CAT) stating that ROPS for the hydraulic excavators does not exist as a factory option and that there are no international standards for such equipment. In the employer's fax the employer also states that the employer is still waiting for a letter from the supplier of the Prentice loader equipment, that the third loader is presently not in service, and that the Tanguay for which the original order was written has since been permanently removed from service and is no longer on site.

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Based on the information the employer has provided, a deviation from Section 220 (1) is granted on the CAT log loader provided that the equipment is operated in such a way that there is no significant chance of upset (operate on level ground).

Once a letter from the supplier of the Prentice loader is received, a deviation from Section 220 (1) will be considered.

By copy of this letter, the Chief Compliance Officer has advised a Health and Safety Officer and the JHSC Co-chairs of the decision.

Yours truly,

Chief Compliance Officer