

WorkSafe Services

PO Box 160
Saint John NB E2L 3X9
Phone 506 632-2200
Toll free (Claims) 1 800 222-9775
N.E. Regional Office 1 800 561-2524
Web www.whscc.nb.ca

Services de travail sécuritaire

Case postale 160
Saint John NB E2L 3X9
Téléphone 506 632-2200
Sans frais (Réclamations) 1 800 222-9775
Bureau de la Région du N.-E. 1 800 561-2524
Web www.whscc.nb.ca



June 10, 2005

"The Employer"

The Chief Compliance Officer is writing in response to the employer's letter dated June 6, 2005, in which the employer requests a deviation to the *Occupational Health and Safety Act*, General Regulation 91-191, Section 51(1)(a) that states:

Where an employee is exposed to a risk of drowning, the employee shall use a lifejacket or buoyancy device that conforms to CGSB standard CAN/CGSB-65.7-M88, "Life Jackets, Inherently Buoyant Type".

The employer's letter indicates that the employer is requesting autonomy regarding the application of Section 51(1)(a). The employer is requesting the allowance of personal flotation devices (PFDs) with restrictions, in addition to lifejackets.

The primary rationale for applying for the deviation is for the enhanced safety, health and well-being of the employees. It is the employer's feeling that by limiting employees to using only lifejackets, it is restricting access to more comfortable and, in some cases, better lifesaving-capable PPE. The employer feels that personal flotation devices such as Mustang floater (work) suits and coats protect the wearer from hypothermia and yet provide flotation capabilities. The hypothermia issue is not adequately addressed in the regulations for water operations and can be a real risk for the employees. The employer also indicates that automatic inflatable PFDs that inflate upon contact with the water are a better fit for the employer's type of work.

The employer has also stated that the employer feels that the specific type of lifejacket referenced in Section 51(1)(a) is not readily available and can be unknowingly mistaken for a similar styled personal flotation device and thus not meet the intent of the Regulation. Although they provide a level of protection, these types of lifejackets are bulky and restrict movement when the employees must carry out the diverse and strenuous activities while working over or near water. The employer notes that if a piece of PPE is not comfortable, then the employee is most likely not going to readily wear it. It is the employer's feeling that by allowing the use of lifejackets and PFDs, and by having restrictions when one type must be worn over the other, would provide better security to the employees. Some of the limitations that the employer would apply include:

- If the employee is working alone or the conditions are such that a quick and effective rescue is hampered, the employee shall use the lifejacket.
- The shell of both the lifejackets and PFDs shall be bright orange, yellow or red to improve visibility when the wearer is in the water. They shall also have reflective material on surfaces normally above the water surface, to aid visibility in low light conditions.
- The automatically inflatable personal flotation device shall be inspected and maintained in accordance to the manufacturers instructions and recommendations. In addition, records of these inspections and maintenance will be maintained.

The employer closes by stating that for some of the employer's operations, allowing the use of PFDs will align better with the requirements of the Canadian Coast Guard safe boating regulations that have permitted their use for a number of years.

The employer wants the employees to be safe. The employer feels that the use of PFDs with restrictions in addition to lifejackets will enhance employee safety and wellness, and not compromise it. The employer looks forward to the opportunity to discuss this deviation request and clarify any related issues that WHSCC may have.

After reviewing the information the employer has provided, the Chief Compliance Officer is prepared to grant the employer a deviation from Section 51 (5) of 91-191 provided that the PFDs conform to the *CGSB Standard CAN/CGSB-65.11-M88 "Personal Flotation Devices*. The Chief Compliance Officer would like to receive, for the Chief Compliance Officer's files, the documentation that lays out how the appropriate buoyancy devices are selected for use.

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

Regards,

Chief Compliance Officer