

Occupational Health and Safety Council
Appeal Hearing
December 3, 2007

Decision upon Application By:

Waste Services Inc. – Appellant

And

Workplace Health and Safety – Respondent

Board Members

Judy Barry – Appeal Panel Chair, Worker Representative,
Occupational Health and Safety Council
Wendy Clark – Public Representative
Occupational Health and Safety Council
Peter Schaefer – Employer Representative
Occupational Health and Safety Council

Appearances:

For the appellant: Kathleen A. Ryan, Legal Council for Waste Services Inc.
Christian Villeneuve, Legal Council for Waste Services Inc.
Reg Sopka, Western Regional Safety Coordinator for Waste Services
Inc.
For the respondent: Shelley MacDonald, Legal Council for Workplace Health and Safety
Casey Leahey, Lead Investigator, Workplace Health and Safety

Alberta
Employment, Immigration
and Industry
Occupational Health and Safety Council

The Appeal Panel (the Panel) convened on December 3, 2007 to hear an appeal pursuant to Section 16 of the *Occupational Health and Safety (OH&S) Act. (Act)*

Section 16 of the *Act* reads:

- 16(1) *A person*
- (a) *to whom an order is issued under section 9, 10, 11, 12, 14, 25 or 33, or*
 - (b) *whose licence has been cancelled or suspended,*
may appeal the order, cancellation or suspension to the Council.
- (2) *An appeal under subsection (1) shall be commenced by serving a notice of the appeal on a Director of Inspection within 30 days from the date that the order being appealed from was served on the person making the appeal.*
- (3) *After considering the matter being appealed, the Council may by order*
- (a) *confirm, revoke or vary the order being appealed,*
 - (b) *confirm the cancellation or suspension,*
 - (c) *reinstate the cancelled licence, certificate or permit,*
 - (d) *substitute a suspension for a cancellation, or*
 - (e) *remove or vary a suspension.*
- (4) *When an appeal is made to the Council under subsection (1), the Council shall hear the appeal and render a decision as soon as practicable.*
- (5) *An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Court considers proper.*
- (6) *An appeal under subsection (5) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.*
- (7) *When an appeal is commenced under subsection (1), the commencement of that appeal does not operate as a stay of the order, cancellation or suspension being appealed from except insofar as the chair or a vice-chair of the Council so directs.*
- (8) *When an appeal is commenced under subsection (5), the commencement of that appeal does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.*

The specific reasons for appeal are:

- On September 28, 2007, Alberta Workplace Health and Safety Officer, Casey Leahey issued Order #2 (the "Order") as part of client contact report reference number CLEY-77GTQZ to Waste Services Inc. (WSI).
Hazard assessment, elimination and control-hazard assessment
Occupational Health and Safety Code 2006-7

The investigation into the above noted incident has determined that the task of bin transfers from truck/trailer combinations to roll-on trucks occurs by Waste Services (CA) Inc. ("WSI") workers. As a result, WSI is to develop and implement a hazard assessment for this SPECIFIC TASK. In addition, WSI is to ensure that all applicable workers are trained in the hazard assessment and its' control measures. Safety Alert #90/07-A does not identify all of the hazards in a truck/trailer combination to a roll-on truck, bin transfer. WSI must ensure that workers affected by the hazards identified in the hazard assessment are informed of the hazards and control measures before they begin this task. Section 7 of the Occupational Health and Safety Code states that.

The respondents contend that:

WSI is in non-compliance with Section 7 of the Code and must provide a specific hazard assessment for the task of a bin transfer from a truck/trailer combination to a roll-on truck.

The Issue to be Resolved:

Does the Job Safety Analysis utilized by WSI include the task of a bin transfer from a truck/trailer combination to a roll-on truck and therefore, is WSI in compliance with Part 2 section 7 of the Code?

Submissions Considered by the Appeal Panel

From the Appellant, Waste Services Inc.

- OHSC Appeal Questionnaire – completed by Kathleen A. Ryan
- Evidence presented by WSI
 - Statement of Opinion of John Tessier
 - Job Safety Analysis
 - Professional Safe Driving Manual
 - Safety Procedures for Drivers and Helpers Manual
 - CCR Order CLEY 779T5V

- Response to CCR Order CLEY 779T5V
- Notice of Compliance to CCR Order CLEY 779T5V
- CCR Order CLEY 77DPJL
- Response to CCR Order CLEY 77DPJL
- Notice of Compliance to CCR Order CLEY 77DPJL
- CCR Order CLEY 77GTQZ
- Response to CCR Order CLEY 77GTQZ
- Safety Alert dated November 30, 2007
- WSI's written submissions of appeal of order #2 CCR CLEY-77GTQZ

From the Respondent Workplace, Health and Safety (WH&S)

Package of information (Submission Binder from WHS) relating to the appeal obtained from both the Appellant and the Respondent including:

- 3 Scene photographs
- WH&S incident notification for the subject incident
- Client contact reports issued to WSI by WH&S as a result of the subject incident
- Lead investigator's notes
- Assistant investigator's notes
- Copy of responses from WSI to some of the orders issued as a result of the subject incident
- Evidence by Witness – Casey Leahey
- Written Submissions on behalf of Workplace Health and Safety

Facts:

The following is a list of facts agreed to by the parties and considered by the appeal panel:

- WSI has a Job Safety Analysis process in place that has the main components of a Hazard Assessment for general tasks performed by Roll-off drivers
- The Job Safety Analysis for Roll-off Drivers is dated December 4, 2002
- That work site means a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle and any mobile equipment used by a worker in an occupation
- WSI has in place preventative measures and controls that cover hazards identified in the Roll-off Driver JSA

Position of the Parties:

Appellant

- The WSI safety policies currently in place are a complete response to Order #2 of CCR CLEY-77GTQZ.
- The Code does not require a new hazard assessment for every work site. The hazard assessments contained in the WSI JSA address every hazard that face roll off workers, including the task in issue, with appropriate measures and controls.

Respondent

- WH&S submits that the Appellant's hazard assessment dated December 4, 2002 did not address or properly identify the unique hazards associated with the Specific Task.
- The Specific Task involves multiple workers and two vehicles that have the potential of becoming mobile.
- This involves elevated and different risks than those associated with the pick up of a static container by one vehicle.
- Therefore, the Appellant has failed to identify the "existing and potential hazards" as required by s.7(1) of the Code.

Remedy Requested

That Order #2 of CCR CLEY-77GTQZ against WSI be set aside

Decision:

The JSA dated December 4, 2002 provided by WSI as the complete hazard assessment for the job of Roll-off Driver is insufficient. The JSA does not identify all of the necessary tasks or possible hazards and controls associated with the SPECIFIC TASK of a bin transfer between a truck/trailer combination and a roll-off truck. Tasks clearly identified in other WSI publications are missing from the JSA provided for the job of Roll-off Driver.

Tasks such as

- > parking
- > on the job hazard assessment
- > planned communication

Therefore the decision of the Panel is to uphold Order #2 of CCR CLEY-77GTQZ.

Occupational Health and Safety Council Appeal Panel