



**Decision upon Application By:**

**Courtney Berg Industries Ltd. – Appellant**

**and**

**Alberta Occupational Health and Safety – Respondent**

**Hearing: May 27, 2013**

**Decision: July 10, 2013**

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**Occupational Health and Safety Council Appeal Hearing Panel Members:**

Nina Novak – Appeal Panel Chair  
Janice Peterson  
Peter Bowal

**Appearances:**

For the appellant: Scott Christmas, Safety Coordinator for Courtney Berg Industries Ltd.

**Jurisdiction:**

The Appellant, Courtney Berg Industries Ltd. (CBI), operates a metal fabrication business in Linden, Alberta. On February 14, 2013, the Respondent issued two Orders to the Appellant. Compliance to the first order (Code section 245 – RPE Code of Practice) was achieved within 11 days (February 25, 2013); the second order related to Noise was extended by the safety officer on March 7, 2013 to a compliance date of April 26, 2013 due to the audiometric testing scheduling for March 14, 2013 (no documentation was provided indicating that the Code section 221 order was complied as of the date the Appeal submission package was prepared, March 20, 2013). A Notice to Produce was issued February 22, 2013 requesting respirator fit test records that could not be located at the time of the site inspection (complied on February 22, 2013). The Appellant, properly within the 30-day time set out in the *Occupational Health and Safety Act (OH&S)*, section 16(2), filed an appeal to the Occupational Health and Safety Council, citing errors against these two Orders.

The Appeal Panel (the Panel) convened on May 27, 2013 in Calgary, Alberta to hear the appeal pursuant to section 16(1) of the *Occupational Health and Safety (OH&S) Act*.

**Appellant’s position and requested remedy:**

- CBI is appealing Orders one and two issued February 14, 2013 (Code section 245 regarding a respiratory protective equipment Code of Practice; and Code section 221 regarding a noise management program). CBI requests that these orders are rescinded).

**Respondent’s position:**

- Orders were issued by the safety officer based on the information provided and present at the work site at the time of the site inspection, as compared to the legislated requirements specified in the *Occupational Health and Safety (OH&S)Code* (the Code) and any identified deficiencies.

**The Issue to be Resolved:**

Was there sufficient material presented to the safety officer at the time of their site inspection to satisfy the requests for a Respiratory Protective Equipment (RPE) Code of Practice and a Noise Management Program at the facility? Specifically regarding the first order, was there sufficient information summarized, readily accessible, and presented to site workers to ensure they understood the inhalation hazards of their work activities necessitating the need for respiratory protective equipment, the basis of the selection for the specific respirators, and their associated proper maintenance and use. Specifically regarding the second order, was there a noise management program in place and accessible to the workers that met the seven Code-specified requirements.

**Facts:**

**Order #1** – This order is made under the authority of Section 9 of the Alberta Occupational Health & Safety Act.

The order issued February 14, 2013 stated that “The employer must prepare a code of practice governing the selection, maintenance and use of respiratory protective equipment for the work site.”

This order was issued under the following applicable legislation:

**Personal Protective Equipment – Respiratory Protective Equipment – Code of Practice**

**OHS Code 2009**

**245**

245(1) If respiratory protective equipment is used at a work site, an employer must prepare a code of practice governing the selection, maintenance and use of respiratory protective equipment.

CBI contends that practices it had in place at the time of the site inspection met the requirements that the safety officer was requesting. They believe that they had the necessary material but acknowledge that it was not collated in one document, as specified in the Guideline. Mr. Christmas indicated that he “just wrote down that they were doing” when he prepared the Code of Practice that he submitted and achieved order compliance with. Material submitted during the hearing presented sample blank forms that were said to be in use during the site inspection.

On the Contact Report OHS-025301-E78EF-CCR-05A, the safety officer stated that “The employer has identified in the work site hazard assessments that half face respirators are required for welding activities and full face respirators for the painting activities. Respirators were observed in use by workers in the welding shop. The employer indicated that they had not developed a respiratory code of practice for the work site.”

The safety officer provided a copy of the “Guideline for developing a code of practice for respiratory protective equipment” and also a publication on “Respiratory protective equipment”. The safety officer indicated that at that time Scott Christmas said he was currently working on the RPE Code of Practice and would have it completed within a week.

The Workplace Health and Safety Bulletin (PPE004 – Breathing Apparatus Revised July 2009) that had been provided by the safety officer to the CBI safety coordinator provides guidance to employers to the required content of a RPE Code of Practice, along with an example template. The template was utilized by CBI to create the documentation used to comply this order and was prepared February 17, 2013 by Scott Christmas.

A number of emails were sent by CBI to the Respondent’s safety manager, including a concern that CBI felt that safety officers should not always write orders, but rather work with employers. The Respondent’s safety manager advised CBI that partial paperwork had been produced, and that supplementary information was provided after the site inspection was completed. During a meeting March 6, 2013 to review CBI’s concerns regarding the two orders, CBI’s safety lead admitted that he did not produce all of the documentation. On March 7, CBI informed the Respondent’s safety manager that they would be proceeding with the appeal of the two orders.

**Order #2** – This order is made under the authority of Section 9 of the Alberta Occupational Health & Safety Act.

The order issued stated that “The employer must develop and implement a noise management program that includes policies and procedures in accordance with Section 221 of the OH&S Code.”

This order was issued under the following applicable legislation:

**Noise Exposure – Noise Management Program**  
**OHS Code 2009**  
**221**

221(1) If a noise exposure assessment confirms that workers are exposed to excess noise at the work site, the employer must develop and implement a noise management program that includes policies and procedures.

(2) The employer must ensure that the noise management program includes the following:

(a) a plan to educate workers in the hazards of exposure to excess noise and train workers in the correct use of control measures and hearing protection;

(b) the methods and procedures to be used when measuring or monitoring worker exposure to noise;

(c) the posting of suitable warning signs in any work area where the noise level exceeds 85 dBA;

(d) the methods of noise control to be used;

(e) the selection, use and maintenance of hearing protection devices to be worn by workers;

(f) requirements for audiometric testing and the maintenance of test records;

(g) an annual review of the policies and procedures to address

(i) the effectiveness of the education and training plan,

(ii) the need for further noise measurement, and

(iii) the adequacy of noise control measures.

CBI's safety coordinator presented testimony that CBI does not believe it was given credit for the work that was done. They did not agree with the safety officer's comment on the CCR that "The employer indicated that a noise management program had not been developed or implemented.", interpreting that comment to suggest that there were no control features in place. CBI admitted that it did not meet the requirements of OHS Code section 221 (2) (f), regarding the audiometric testing. Mr. Christmas believes the safety officer's wording does not give credit to the control measures that were in place. Concerns were also raised about a perceived attitude from the safety officer to the CBI request to rewrite the order.

On the Contact Report OHS-05301-E78EF-CCR-05A, the safety officer stated that "The employer provided a noise exposure assessment report conducted on May 11, 2007 by Pro Safety Services. The report indicated that workers are exposed to excess noise at the work site. The employer has posted signs in the welding shop indicating areas where sound levels are above the occupational exposure limit. The employer indicated that a noise management program had not been developed or implemented." The safety officer provided reference publications – "Noise at the worksite" and "Audiometric testing – information for employers".

### **Decision:**

In order to make a determination as to whether the subject orders are to be confirmed, varied, or revoked, the Panel considered the information available and provided by CBI to the safety officer at the time of their requests during their site inspection, and the specific requirements as presented in the *Occupational Health and Safety* legislation. Guidance documentation and publications presented to the employer are also considered as clarifications of the expectations to meet compliance.

The Panel acknowledges that some components of the legislated requirements were in place at the time, but the requirements of the cited Code sections were not met in their entirety. This supports the issuance of the orders under each applicable section.

Specifically, the Panel finds that the material prepared by CBI to comply the respiratory protective equipment order provided a summary of specific respirator models and cartridges needed for specific work site tasks – information that was not available at the time the orders were issued. Regarding the order related to the noise management program, CBI acknowledged that they did not meet the requirements for audiometric testing and the maintenance of test records (Code section 221 section (2) subsection (f)).

The Panel would like to reinforce that the *Occupational Health and Safety* legislated requirements are established to ensure safe work sites for workers and it is important that required information is provided in a complete format accessible to the workers for their easy reference at any time at the worksite.

**Conclusion:**

For the reasons given above, with respect to Courtney Berg Industries Ltd. OHS Appeal Request File Reference OHS-025301-E78EF-CCR-05A, Orders #1 and #2 are confirmed.

**Occupational Health and Safety Council Appeal Panel**

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Nina Novak, Appeal Panel Chair

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Janice Peterson

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Peter Bowal

**APPENDIX:**

**A. Submissions Considered by the Appeal Panel:**

*From the Appellant, Courtney Berg Industries Ltd.*

- Oral evidence presented by Scott Christmas, CBI Safety Coordinator, at the appeal hearing.

- Submission binder produced by Scott Christmas at the appeal hearing containing: Contact Report OHS-05301-E78EF-CCR-05A Order 1; documentation alleged to have been presented to safety officer at time of inspection (PPE Policy SM-04 rev 0; Respiratory Protective Equipment Data Sheet MR-44 rev 0; Respiratory Fit Testing Form MF-45 rev 1; Respiratory Protective Equipment Maintenance Check List QF-75 rev 0); evidence used to comply order 1 (Respiratory Protective Equipment Code of Practice SM-13 rev 0; Respiratory Screening and Fit Testing Record QF-02 rev 0): Contact Report OHS-025301-E78-CCR-05A Order 2; Pro Safety May 11, 2007 Noise Level Assessment; PPE Policy SM-04 rev 0; Safety Rules SM-05 rev 0; Hazard Assessment and Analysis Policy SM-02 rev 0; Hazard Assessment Job Inventory QM-10 rev 0; Hazard Assessments HAA-04, HAA-5, HAA-62; photographs of noise warning signs shown to the safety officer at the time of inspection; Safety Training Policy SM-06 rev 0; notes used during last training for the proper care and use of PPE; training records of proper care and use of PPE from Nov 2012; evidence used to comply order 2 (Noise Management Policy QM-16 rev 0; summary of audiometric test results dated March 14, 2013).

In consideration of the Decision, the Appeal Panel reviewed all the submitted material in the decision.

***From the Respondent, Alberta Occupational Health and Safety***

Package of information relating to the orders being appealed, include:

- Submission binder prepared March 20, 2013 by Occupational Health and Safety containing: Employer address and names of representatives; chronological history of OHS officer contact with employer; chronological history of OHS Manager contact with employer; contact reports issued to employer as of February 14, 2013; order summary; appeal documentation submitted by employer; documentation produced by employer to safety officer on February 14, 2013 regarding request to see employers Respiratory Code of Practice; documentation produced by employer on February 14, 2013 in response to safety officer's request to see employers Noise Management Program; and documentation of a Respiratory Code of Practice the employer emailed the safety officer on February 25, 2013 resulting in the compliance of the section 245 order.