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April 21, 2004

"The Union"

The Chief Compliance Officer thanks the union for the letter dated March 1, 2004 on behalf of the asphalt workers. The union states in the union's letter that after discussions with union members and the Executive, the union believes that the work of asphalt patching should not be covered under Part VII-Section 40 (1) but rather Section 40 (2) of the General Regulation 91-191. It is the union's opinion that Section 40 (1) pertains to construction sites and Section 40 (2) relates to maintenance work.

In addition, the union indicates that the asphalt crew performs maintenance work that includes mostly (streets) patching small areas throughout, are paid strictly from the maintenance budget and when heavy equipment is required, the workers realize they must wear their protective head gear.

It is the union's belief that wearing (protective head gear) is a health and safety issue. Asphalt work is very hot and extensive manual labour that leads to a number of health related issues. The union gives as examples heat exhaustion, heat stroke, and dehydration, and state that any one of the above conditions can be caused by a combination of asphalt ranging in temperature between 270-325 degrees Fahrenheit, hot weather conditions and physical work. Based on the information provided, the union recommends that the Chief Compliance Officer reconsider the Chief Compliance Officer's decision dated September 19, 2001 and consider asphalt patching as maintenance and as a result, the provisions of Section 40 (2) of 91-191 would apply.

### **Conclusion**

Regarding the union's first point that the provision of Section 40 (1) refers to Construction work and that Section 40 (2) refers to maintenance work, the Chief Compliance Officer agrees with the union's first point regarding Section 40 (1) but wishes to clarify that Section 40 (2) refers to any work where an employee is exposed to a hazard that may injure the employee's head which could include maintenance work.

As indicated in the Chief Compliance Officer's September 21, 2003 letter, the Chief Compliance Officer continues to believe that asphalt patching and paving is included in the definition of Construction and therefore the provisions of Section 40 (1) would apply.

Finally, if the employees believe that the wearing of protective head gear while performing patching and paving work can lead to heat related illnesses, the Chief Compliance Officer wishes to point out that there are other provisions in the regulation that address this issue. Outlined below are the provisions from 91-191 to deal with extreme heat conditions that could lead to heat related illnesses:

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**22** *Where an employee is exposed to work conditions that may present a hazard because of extreme heat or extreme cold, an employer shall ensure that*

*(a) a competent person measures and records the thermal conditions at frequent intervals and makes the findings available to a committee, if any, and to an officer on request, and*

*(b) the threshold limit values for protection against heat stress and cold stress are followed as well as the work-rest regimen for heat and the work-warming regimen for cold and other advice found from pages 125 to 140 of the ACGIH publication "1997 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices".*

**23(1)** *Where an employee is exposed to work conditions that may present a hazard because of excessive heat, an employer shall ensure that a competent person instructs the employee in the significance of symptoms of heat stress such as heat exhaustion, dehydration, heat cramps, prickly heat and heat stroke and in the precautions to be taken to avoid injury from heat stress.*

As indicated above, employers with employees who may be affected by heat stress are required to take measures to deal with this issue. The union will note that by complying with the provisions of Section 22 and 23 of the General Regulation 91-191 and by following the instructions outlined in the attached documents (Risk Alerts), work-related illnesses that could be caused by performing patching and paving work and by employees wearing protective head gear will be minimized.

In closing, the Chief Compliance Officer wishes to advise the union that if the union continues to disagree with the Chief Compliance Officer's decision, the union can submit a request for a regulatory amendment where it will be given consideration by the WHSCC. The Chief Compliance Officer recently received such a suggestion from a management representative.

Yours truly,

Chief Compliance Officer