



SAFETY CODES COUNCIL

#1000, 10665 Jasper Avenue N.W., Edmonton, Alberta, Canada, T5J 389
Tel: 780-413-0099 / 1-888-413-0099 • Fax: 780-424-5134 / 1-888-424-5134
www.safetycodes.ab.ca

COUNCIL ORDER No. 0015431

**BEFORE THE BUILDING TECHNICAL COUNCIL
On April 3, 2013**

IN THE MATTER OF the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order dated January 2, 2013 issued by Municipal Affairs (Respondent) against a Manufacturing Company (Appellant).

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **REVOKED**.

Issue:

1. The Appeal concerns the attachment of a retractable temporary step to a relocatable industrial accommodation (module) manufactured by the Appellant and whether the step is compliant with the Alberta Building Code 2006. (ABC 2006)

The Record:

2. The Appeal Panel considered, or had available for reference, the following documentation:
 - (a) Written Brief of the Appellants, a six-tabbed document including an overview, conclusion and photographs.
 - (b) Written Notification of Appeal Hearing – Change of Date, dated February 13, 2013.
 - (c) Written Notification of Appeal Hearing dated January 23, 2013.
 - (d) Appeal Hearing Brief Preparation Guide.
 - (e) Stay Letter dated January 21, 2013.
 - (f) Acknowledgement Letter dated January 16, 2013.
 - (g) Copy of Notice of Appeal dated January 11, 2013.
 - (h) Twelve (12) Photos from the Appellant.
 - (i) A Copy of the Order issued January 2, 2013.

Position of the Parties

Appellant

3. The Appellant's position is that:

- (a) The retractable/tuck away base-type step is not contrary to the Alberta Building Code. It is intended to provide a temporary step and allows the end user to install the appropriate stairs or landings once on site. There is no way to know at the manufacturing stage what the terrain or ground conditions will ultimately be at a site selected by an end user, and this is particularly the case, given that these units are intended to be capable of moving from site to site.
- (b) The Appellant has been unfairly singled out by the Respondent. The temporary step is used industry wide. The Appellant is one of several manufacturers who attach a temporary step.
- (c) Complying with the order will not provide an increase in safety. The directives of the order are draconian and would cause bankruptcy for the Appellant. The end users want the temporary step and will simply take their business to one of the several other manufacturers who attach a temporary step to their modules.
- (d) The Appellant has manufactured modules with an attached temporary step for several years. The previous inspections by safety codes officers have not cited the temporary steps to be non-compliant with the ABC 2006. There have been no recent design changes to trigger a change in the treatment of these units or these temporary steps.

Respondent

4. The Respondent's position is that:

- (a) Modules or buildings produced in factories are not required to have exterior stairs and landings until they are occupied on site. If the manufacturer attaches permanent exterior landings or stairs then they must comply with the ABC 2006.
- (b) The attachment of prefabricated metal non-compliant stairs/landings creates a situation on site where owner/occupants will probably use the non-compliant stair/landings rather than construct a Code-compliant landing/stair configuration.
- (c) The ABC 2006 requires a landing where an exit door opens onto a stair. If anything is factory attached in this location that could be construed as a step or landing, then a factory attached complying landing must be provided.
- (d) Landings are to have minimum dimensions of 900 mm (width and length) in accordance with Division B Article 9.8.6.3. of the ABC 2006. The length of the attached prefabricated metal on the Appellant's module is less than 900 mm.

Provisions of the Safety Codes Act:

5. The Safety Codes Act provides:

Council considers appeal

52(2) The Council may by order

- (a) Confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act

Provisions of the Alberta Building Code 2006 (ABC 2006):

6. The applicable and current code is the Alberta Building Code 2006 (ABC 2006). The appellant manufactures relocatable industrial accommodations under the current code.

7. The Alberta Building Code 2006 provides:

Division B

Part 9 Housing and Small Buildings

9.8.6. Landings

9.8.6.2. Required Landings

1) Except as provided in Sentences (2) to (4) and Sentence 9.9.6.6.(2), a landing shall be provided...

- c) where a doorway opens onto a stair or ramp,

Summary of the Hearing:

8. Appearing for the Appellant, the Appeal Panel heard from the legal representative for the Appellant, from employees of the manufacturing company, and from an engineer.

9. Appearing for the Respondent, the Appeal Panel heard from the Safety Codes Officer for Alberta Municipal Affairs.

10. At the commencement of the hearing, the Appellant and the Respondent each confirmed their agreement that there were no objections to any members of the hearing panel, and that the Safety Codes Council and the hearing panel had the jurisdiction to hear and decide the appeal.

11. The Chair of the panel listed the written material before the panel as set out in paragraph 2 above, and the Appellant and the Respondent each confirmed that there were no objections to any of the written material before the panel, and that neither had any additional documentation to be submitted.

The Appeal Panel heard from the Appellant:

12. The Appellant is a manufacturer of relocatable industrial accommodation (modules) primarily used at oil drill sites and construction sites. The Appellant leases and sells the modules to end users.
13. The Appellant attaches a retractable, tuck-away base type accessory on their modules which may be used as a temporary step.
14. All manufacturers, that the Appellant is aware of, attach a temporary step to their modules. The Appeal Panel heard from an employee of the Appellant who has worked in the industry for 20 years for other manufacturers of modules and currently for the Appellant. The employee indicated that the Appellant and all previous employers attach a temporary step to their modules.
15. The Appellant indicated that the provision of a temporary step has existed in some form, without much change, over 20 years, and that in those 20 years the Appellant has (until now) never been told by a safety codes officer that the temporary step was not code compliant.
16. The Appellant indicated that if required to comply with the order that it will cause the Appellant to lose all of their business to competing manufacturers who do attach a temporary step to their modules.
17. The Appellant does not set up the modules at the end users site. The modules are sold and leased from the Appellant's location. Customers pick up or arrange for the pick-up of the modules from the Appellant's yard.
18. The Appellant indicated that it does not attach a permanent step nor to its knowledge do other manufacturers. The manufacturer does not know the land conditions of where the modules are placed and the safety of the site where the modules are placed is the responsibility of the end user.
19. The end user determines whether to use the temporary step or not. It is expected that the on-site safety officer determines what type of step, stair, landing or ramp is used.
20. When questioned by the Appeal Panel about reports of injury, the Appellant indicated that it is not aware of any complaints, lawsuits, or workplace safety reports, as a result of a person falling or tripping because of the temporary step.
21. When asked by the Appeal Panel why the Appellant attaches a temporary step, the Appellant indicated that the step is there to aid in the set-up of the module.
22. When asked by the Appeal Panel if the end user is informed by the Appellant that the step attached by the Appellant is temporary and that it is the end user's responsibility to install safe and code-compliant stairs, landings or ramps, the Appellant indicated that it does not so advise the end user. The Appellant indicated that its clients are typically oil industry companies and all of the end users have safety officers who are responsible for ensuring work site safety for their

workers and would be expected to be aware of codes and compliance concerns. And further, the Appellant indicated that the ABC 2006 does not require the Appellant to notify the end users of their responsibilities regarding using the module on site.

23. When asked if the Appellant was aware, prior to the Respondent's order, that the temporary step might be non-compliant with the ABC 2006, the Appellant indicated that only relatively recently some time before the issuance of the order under appeal, had the Respondent made brief mention of some concern with "pull-outs" (retractable temporary step) and that the next indication was the order issued by the Respondent.
24. With regards to the order, the Appellant's witness, an engineer, indicated that he is familiar with the ABC 2006 and in reviewing the sections indicated on the order, could not find any code or reference that states "If anything is factory attached in this location that could be construed as a step or landing, then a factory attached complying landing must be provided".
25. The Appellant indicated that if they manufactured and attached permanent steps, the steps may not be suitable for the work site, as the modules are temporary and could be moved to another site every few days.
26. The Appellant further indicated that there is not a clause or section anywhere in the ABC 2006 that requires an end user to comply with code requirements, with regards to temporary steps, immediately during transit and set-up.

The Appeal Panel heard from the Respondent:

27. The Respondent's representative, the Safety Codes Officer, indicated that he is aware that other manufacturers also attach a temporary step to their modules.
28. The Respondent agreed with the Appellant that there has to be a level playing field with regards to the temporary steps. If one manufacturer must remove the temporary steps then all of the manufacturers are required to.
29. When asked by the Appeal Panel, it was indicated that the Respondent did not serve any other orders to other manufacturers on this issue. The Respondent indicated that it did not want to issue 50 orders and wanted to get an interpretation from the Appeal Panel on this issue first.
30. The Respondent's representative indicated that similar units manufactured by some, (but by no means all) other manufacturers in the industry, had made some changes to their units-such as decreasing the height of the step, thus rendering them, in his view, code compliant.
31. The Respondent indicated that a Standata is needed to ensure compliance and address code compliance with regards to the installation and use of temporary steps.
32. The Respondent indicated a need to have an interpretation on whether the temporary steps are code compliant.

33. The Respondent was advised by the Appeal Panel that the issue on appeal is the order issued by the Respondent. That the Appeal Panel is given authority from the Safety Codes Act to Confirm, Revoke or Vary the Respondent's order and that the decision provided by the Appeal Panel would pertain to the Respondent's order only.
34. The Respondent agreed that it is the responsibility of end users to comply with the code, and submitted that without notice documentation from the Appellant, the end users might not know that it is their responsibility.
35. The Respondent indicated that the ABC 2006 does not define a "step" by reference to a particular height and offered his own interpretation or definition.
36. The Respondent testified that the Appeal Panel ought to look at the Occupational Health and Safety Regulations with regards to steps/stairs/landings.
37. The Respondent indicated that it did not inspect the Appellant's modules after they were set-up on site by the end users.

The Appeal Panel heard evidence of agreement from the Appellant and Respondent on several points:

38. Testimony from the Appellant and Respondent was consistent in indicating that the Appellant is one of several manufacturers in Alberta who attaches a retractable step to their modules. Pictures provided by the Appellant show the Appellant's and other manufacturers' modules with an attached accessory and the Appellant confirmed that the index in its written brief accurately identified the manufacturers of the modules depicted under each tab in the brief. (The Record 3(a) and 3(h))
39. Testimony from the Appellant and the Respondent indicated that where a temporary step is not provided the end user might use items found on the site such as a log to gain temporary access to a module, until such time as a more stable accessory is constructed.
40. The Appellant and Respondent testified that the Appellant is the only manufacturer to receive an order on this issue from the Respondent.
41. The Appellant and Respondent agreed that the manufacturers of relocatable industrial accommodations have been attaching a temporary step or landing to their modules for several years.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel finds the following:

42. The Appeal Panel finds that there is nothing in the ABC 2006 prohibiting the use of a temporary step in these circumstances.

43. The retractable/tuck away base type accessory is a step installed for temporary use for access into the module during set-up and preparation to float over any inconsistency on the ground site.
44. The Appeal Panel finds that the Appellant's temporary step is not a landing or stairs and the provisions of Division B, Subsection 9.8.6. do not apply. Subsection 9.8.6 does not refer to a step.
45. The step is installed for temporary use during set-up and is installed for the convenience and safety of the end users. The temporary step provides a safe accessory for the end user, if they choose to use it, until they can construct a landing, ramp, stairs, (means of access and egress) compliant with the code and appropriate for the land characteristics of the site.
46. The temporary step is not intended to replace the required, code-compliant, stairs, ramps or landings as indicated in the ABC 2006.
47. In interpreting the *Safety Codes Act* and the Alberta Building Code the legislative objective must be borne in mind. The object of the legislation is to address safety. With this overall objective in mind, the appeal panel finds that the temporary step provides a reasonable level of safety for access and egress and is a preferred temporary method to some of the examples provided in testimony such as; rocks, a log or tree stump, shipping pallet, or a bundle of sticks.
48. With regards to the Respondent's request for a Standata on the issue of the attachment of temporary steps to a module, the Appeal Panel does not issue Standata. The issuance of Standata is developed jointly by Alberta Municipal Affairs and the Safety Codes Council and may be issued under the authority of a code, standard, or the *Safety Codes Act* as province-wide variances or interpretations. A decision of an Appeal Panel of the Safety Codes Council is issued in the form of a Council Order, not in the form of a Standata.
49. The Appeal Panel does not find any foundation for the directives as stated on the Safety Codes Officer's Order under appeal. In deliberations, the Appeal Panel questioned whether there is jurisdiction to support the directions contained in the Safety Codes Officer's order, such as directing the Appellant to contact secondary owners of modules sold previously and to order the Appellant to offer to remove existing landings and provide a complying landing within 90 days at no cost to the first or current owner. The appeal panel finds that neither the Safety Codes Officer's nor the appeal panel has jurisdiction to order the appellant to access and alter a thing that is no longer within their control, or to assume or alter obligations between parties that may be governed by contract.
50. With regards to the Respondent's suggestion that the Appeal Panel consider the Occupational Health and Safety Regulations in their deliberations, the Appeal Panel finds that its authority for this appeal comes from the ABC 2006 and the Safety Codes Act and Regulations.

The Appeal Panel's jurisdiction is to hear an appeal of the Respondent's order and render a decision to confirm, revoke or vary the Respondent's order, based on its interpretation and application of the ABC 2006 and the Safety Codes Act. In this instance the appeal panel does not find it of assistance to refer to Occupational Health and Safety Regulations.

Dated at Edmonton, Alberta this 29th day of April 2013

Chair, Building Technical Council Appeal Panel