

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



August 8, 2008

"The Employer"

The Chief Compliance Officer is writing in response to the employer's letter dated July 4, 2008, in which the employer requests a deviation from Section 266(1)(f) Regulation 91-191, which states:

266(1) *An employer shall ensure that*

....

(f) an employee who is trained in the emergency procedures referred to in subsection 263(3) and who is fully informed of the hazards in the confined space is in the immediate vicinity of the confined space to assist in the event of an accident or other emergency.

In the employer's request the employer indicates the following:

The employer operates an 800 tonne per day (700 tpd bleached sulfite and 100 tpd bleached ground wood) on the employer's premises that includes a recovery boiler, two additional boilers and a cogeneration boiler. The facility is situated on approximately 15 hectares of land and is composed of five large buildings with multiple floors each containing numerous confined spaces.

That confined space entries occur at the employer's facility either as a singular event during routine maintenance/operation or as multiple events occurring simultaneously during shutdown at the employer's premises or turn-a-rounds, and the employer has ensured that all individuals who are deemed to be competent (immediate Supervisor, Air Tester, Standby Person) for the purposes of compliance with the Regulation have attended the employer's Advanced Confined Space training program that includes information on rescue. The employer has included a copy of the employer's Advanced Confined Space Training program for the Chief Compliance Officer's review.

The employer has a twenty-four member First Responder Team, twelve of whom who specialize in emergency rescue, that is composed of both regular schedule (days) and tour (12 hour day/night shift) employees. All first responder team members are assigned pagers that are used exclusively for summoning the members, on or off-site, when required. In addition, the employer also has a security department that maintains 24-hour coverage with a minimum of two individuals present at the facility per shift. Security officers have been trained in confined space rescue techniques.

In the event of a confined space emergency, the employer's current practice is have the Standby Person contact the employer's security department by a hand-held portable radio. The security department will then page the members of the rescue team. Once security has been contacted, the Standby person will then attempt to rescue the person from outside the confined space while they await the arrival of rescue team members.

During shutdowns and turn-a-rounds when multiple confined space entries are scheduled, the rescue team members are removed from their usual roles or duties within the employer's premises and are used as competent individuals for the purpose of confined space entry testing and for rescue if required.

The employer's facility is composed of five large buildings each with multiple floors. Several of the employer's large confined spaces (boilers) span several floors. The employer believes that the legislative interpretation provided by the WHSCC dated June 9, 2004 is tenable only for employers with facilities with a small square footage, are on the same grade or level and that do not conduct simultaneous multiple confined space entries.

The employer would like to continue using the employer's current practice of summoning the rescue team in the event of an accident or other emergency in a confined space. The employer will ensure that a minimum of two members of the employer's first responder team are always present onsite during work within confined space.

The employer believes that having a standby person who is capable of initiating external rescue and a rescue team that has specialized training and equipment and practices on a regular basis is more effective and provides a greater level of safety than providing a single employee within earshot to assist in the event of an accident or other emergency.

On August 5th 2008, the Chief Compliance Officer met with the JHSC co-chair, employer representative, the JHSC co-chair, employee representative, the Fire Chief and E.R.O / Safety Officer – Contractors, the Industrial Hygienist, and the JHSC co-chair, employee representative – maintenance, to review the employer's request.

During the meeting the following additional information was provided:

- It is possible for multiple confined space entries to occur at the facility during normal operation.
- During normal operation, some First Responders and / or Emergency Rescue team members (i.e. boiler operators) cannot leave their post.
- Members of the First Responder Team who received specialized emergency rescue have been trained in "High Angle Confined Space Rescue".
- Pagers provided to First Responders and Emergency Rescue team members are alphanumeric. Multiple people can be paged at once through a computerized system.
- The employer has indicated that response time for these employees are:
 - o Two to three minutes when on-site
 - o Eight to ten minutes when off-site.
 This time does not include time to suit-up and deploy.
- Confined space attendants (Standby Person) can summon help by using air-horns in the event that the two-way radio fails.
- Radio checks are done when they are picked-up at the main gate. The confined space attendant (standby person) then radios the security department to confirm that they are at the confined space.

Further to the meeting, the following documents were received in an email dated August 7, 2008.

- Confined space entry procedure
- Confined space atmospheric hazard assessment list
- Confined space checklist
- Confined space lockout/blind list for entry into the recovery scrubber
- Completed copy of a confined space entry permit into the scrubber

While significant planning and training by the employer has occurred with respect to this work (and for this the Chief Compliance Officer wishes to acknowledge both the employer and the employees for their effort), there remains many unknowns (e.g. how would this plan be successfully executed should an emergency occur and emergency team members not be able to leave their positions) as to whether less than required rescues would suffice in an emergency.

Based on the above, the employer's request for a deviation from Section 266(1)(f) is denied.

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

Yours truly,

Chief Compliance Officer