

December 22, 2010

“The Employer”

The Chief Compliance Officer is writing in response to the employer’s email dated April 9, 2010, in which the employer indicates that the employer is requesting a deviation from Section 266(1)(f) of 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 includes a diagram and has quoted WorkSafeNB’s interpretation on Confined Space:

### **Question 1**

*Our practice has been to have the Rescue Employee (referred in Section 266 (1) of 91-191) conducting additional tasks " in the area " either within visual / shouting distance of the Competent Standby Employee OR having radio communication with Competent/Standby Employee with the intention that he/she can respond to the Competent Standby Employee's call for assistance within 2 minutes at the latest. Does this practice meet the requirements of Section 266 (1) (f)?*

### **Response**

*The WHSCC interprets **immediate vicinity** for emergency purposes as persons being visible (in sight and within shouting distance) of the confined space (where there are no obstructions or barriers to overcome to reach the space) and therefore must not be in another room or in the parking lot, etc where the only way to reach them is by radio communication.*

*Employees who have been assigned rescue responsibilities (as required by 266 (1) and are located in the immediate vicinity as described above) are allowed to carry out other duties provided the work they perform does not impede their ability to carry out effectively their rescue duties (i.e. able to stop work immediately to carry out the rescue).*

### **Question 2**

*Can the rescue person referred to in Section 266 (1) (f) be the rescue person for*

*work being carried out in more than one confined space at a time?*

**Response**

*The WHSCC believes that the intent of Section 266 (1) (f) was to have one rescue person designated for work being carried out in one confined space only. Work being carried out simultaneously in other confined spaces would require their own dedicated rescue person.*

*However, employers wishing to have other alternative rescue plans (i.e. one rescue person overseeing rescue operations in more than one confined space) considered by the WHSCC can do so by applying for a deviation as required by Section 3 (3) of the Occupational Health and Safety Act.*

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

- The employer is requesting authority to deviate from the regulation while maintaining an alternative rescue plan affording protection for the health and safety of employees equal to or greater than the protection prescribed by regulation and within the scope and by the means specified in the attached work method titled, 'Confined Space Rescue In Coal Handling Transfer House Coal Chutes During Scheduled Outages'.
- The issues of concern are 'rescue person in *immediate vicinity of the confined space*' and '*one rescue person designated for work being carried out in one confined space only.*' The employer is proposing one standby rescue person be stationed in the vicinity of a confined space having two separate work areas in close proximity of each other. Whether the space is considered to have two work areas in one contiguous confined space or to be two separate confined spaces, an emergency in either of the two work areas would initiate a confined space emergency response. An alarm would be sounded in the service zone containing that confined space. All other confined spaces within the service zone would be vacated and the zone rescue person would join the standby rescue person in performing the rescue.

On April 13, 2010, a Health & Safety Officer visited the area and advised that an employee would be trained in the emergency procedure and would be in a position where they can see two entries. The distance between the two entries would be approximately 25' in most cases. The Health & Safety Officer also indicated that the emergency employee would have to move and could no longer see the entries to the confined space.

First, the Chief Compliance Officer believes it is important to point out that the provisions for confined space entry as set out in the General Regulations 91-191 are minimum requirements. As noted in the regulation, the responsibility for ensuring that the appropriate procedures, equipment and processes required for safe confined space entry are in place is the responsibility of the employer as well as the competent person who is appointed by the employer.

Upon further consideration of the employer's comments above, having two attendants for two separate entries on a confined space would likely be necessary to comply with Section 263 (5) and therefore not exceed the requirements of the regulations. In addition, this set-up would likely be required to meet the requirements of 266 (1) (b) and (c).

While the employer may meet the requirements of Section 263 (5) by having attendants immediately outside the two entries, by having only two vicinity persons designated to assist in a rescue while work is being simultaneously carried out in four separate confined spaces, from eight different points of entry, the employer has not been able to demonstrate that the proposed alternate procedure affords protection for the health and safety of employees equal to or greater than the protection prescribed by Regulation 91-191, section 266(1)(f).

Therefore, based on the above, the employer's request for a deviation from Section 266 9(1) is denied.

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

Yours truly,

Chief Compliance Officer