

October 29, 2008

"The Employer"

The Chief Compliance Officer is writing in response to the employer's email dated September 9, 2008 requesting a deviation from Section 266(1)(a)(iii) of the General Regulation 91-191 which states:

266(1) *An employer shall ensure that*

(a) all protective equipment and emergency equipment identified under subsection 263(3)

...

(iii) are at the entrance to the confined space before an employee enters the confined space;

The employer indicates in the employer's request that on September 12, 2006 that the topic was discussed of having emergency equipment at each confined space entrance versus storing the emergency equipment on emergency response vehicles that are ready to be deployed when an alarm is sounded. The result of that discussion led the employer to believe that storing the emergency equipment on the employer's emergency response vehicles was equal to or better than the Regulation for this site.

The employer advises that on September 9, 2008 concerns were voiced to the employer. According to the regulation, all emergency equipment is required to be at the entrance to a confined space.

The employer provides the following information in the employer's request:

An alternate placement of the emergency equipment required for work in confined spaces at the employer's premises.

Emergency equipment can be stored in emergency response vehicles that are ready for deployment at any time.

The reasoning for this is:

- The equipment is always clean, dry and ready for use
- The employer's premises has trained medical responders and fire fighters around the clock to respond to an emergency
- The emergency equipment can arrive on scene in a matter of minutes and arrives when the emergency responders do
- More equipment is available on an emergency response vehicle than may normally be required at a confined space entrance therefore there are more options for rescue

On October 24, 2008 the Chief Compliance Officer met with the employer to review the employer's request. During the meeting the following points were raised:

- WorkSafeNB believes that an effective emergency procedure must prevent harm from occurring to those employees carrying out work in a confined space should an event that could bring harm to them occurs and a rescue is necessary;
- As required by the Regulation, the employer is responsible for appointing a competent person to establish the testing, PPE and emergency equipment and procedures required when work is being carried in a confined space.
- Before every entry to a confined space to carry out work, it was confirmed that the employer appoints a competent person to carry out the requirements as outlined in Section 263(3) of the Regulation including identifying the personal protective equipment and emergency equipment that is required at the entrance of a confined space;
- It was correctly pointed out on September 9, 2008 that all of the required emergency equipment be at the entrance to a confined space. However, as the identified hazards will vary depending on where (nature of confined space) and the types of work being carried out (i.e. hot work), the required personal protective equipment and emergency equipment at the entrance of the confined space will vary. This could range from providing a rescue harness to workers, using a tripod for removing workers from the confined space or having the necessary equipment to execute an in-hole entry to stabilize a victim and minimize harm until the victim can be removed from the confined space for further medical attention if required. The responsibility to identify the emergency equipment required at the entrance of the confined space is the responsibility of the competent person appointed;
- Two examples of confined space entry rescue procedures were provided during the meeting. They include provisions for supplementary PPE and emergency rescue equipment (which according the employer are not required at the entrance of the confined space to ensure a safe rescue) but are located in the MRT Van and the Scene Incident Command Van. In addition, MRT personnel which are located in the plant are available to provide assistance if required.

Since no work was being carried out in confined spaces during the meeting for the Chief Compliance Officer's consideration for a deviation, and it is difficult for the employer and WorkSafeNB to anticipate what the PPE and emergency equipment requirement will be for work planned in the future, a deviation cannot be considered at this time.

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

Yours truly,

Chief Compliance Officer