

## WorkSafe Services

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## Services de travail sécuritaire

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September 16, 2008

"The Employer"

The Chief Compliance Officer is writing in response to the employer's letter received September 3, 2008 requesting a deviation from Section 266(1)(f) and a follow up to the telephone conversation on September 5, 2008. Because of the urgency of the employer's request, the Chief Compliance Officer verbally advised the employer that the employer's request for deviation was denied. The Chief Compliance Officer indicated that the Chief Compliance Officer would be providing to the employer in writing with the rationale for the Chief Compliance Officer's decision, which was explained to the employer during the conversation.

The Chief Compliance Officer's understanding of the employer's request was to have two "vicinity persons" for work being carried out simultaneously in four separate confined spaces (instead of one for each of the four confined space) augmented by a rescue team as indicated below:

*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.*

*Specialized Rescue team members will be scheduled throughout the length of the outage day and night, 24 hours a day. They are assigned specifically to rescue and no other tasks. ( 2 on day shifts and 2 on night shifts).*

*Rescue team responsibilities are:*

- *Scheduled throughout the outage.*
- *Take air monitoring tests and re-tests.*
- *Tour the various floor levels on a regular basis.*
- *Suited up for immediate intervention if required.*
- *First aid and CPR trained.*
- *Radio and cellular contact with security officers at all times.*
- *Provide guidance for stand by persons assigned to all confined spaces. (Verification of rescue equipment).*

*Stand by persons shall be assigned to all confined spaces and they are all in compliance with the required competencies. Now each stand by person assigned to a confined space is equipped with a bag that contains all necessary items for intervention. ( Air horn included). Stand by persons follow the entry teams in all break times and lunch times.*

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Safety reps roles.

- *Department safety reps shall also be scheduled (one per shift) throughout the outage, they patrol the building floor levels and are aware of the regulation in immediately assisting any stand by persons calling for help while doing safety interventions with there co-workers.*

Medical department:

- *The medical department schedules additional hours of coverage on annual shutdown outages.*

As the employer is aware, the provisions for confined space work are found in Section 262 to 272 of the General Regulation 91-191 (a copy of these sections of the Regulation are attached). During the telephone conversation the Chief Compliance Officer indicated that the provisions outlined in the Regulations are the minimum requirements that one would be expected to comply with when conducting work in a confined space.

In addition, while not specifically stated in the Regulations, it is the Chief Compliance Officer's opinion that the current confined space Regulations were intended for work to be carried out in a single confined space and not configured to addressing the more complex current industry practices of work being carried out in multiple confined spaces.

While there are numerous provisions that require compliance for work to be carried out in a confined space, the Chief Compliance Officer would like to outline the following provisions that is likely to determine what action is required with respect to emergency preparedness to ensure the health and safety of workers conducting work in a confined space.

First, are the provisions of Section 263(1) which requires the employer to appoint a *competent person* which as summarized below has the following legislated responsibilities (Sections 263(1) to 263(3):

- Conduct tests;
- Secure means of disconnect for the fitting of blank flanges to prevent substances from flowing into the space;
- Where necessary bring machines at a zero energy state and ensure lockout;
- Evaluate the hazards of the confined space;
- Develop safe work procedures for employees entering into the space including addressing such matters as personal protective equipment any emergency equipment and procedures to be followed in the event of an emergency;

Second, as the employer has already eluded to, are the provisions found in Sections 266(1)(b) which requires that a *competent employee*, which is trained in the procedures required in Section 263(3), is in attendance (immediately) outside of the confined space and 266(1)(f) which requires an additional employee (vicinity person), who is trained in the emergency procedures as required by Section 263(3), be in the immediate vicinity of the confined space work and be prepared to assist in the event of an accident or other emergency. As the employer is aware, a legal interpretation prepared by the WHSCC states that

*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)....*

During the telephone conversation, the Chief Compliance Officer stated that while the scope of the emergency procedures (including size of rescue team, emergency equipment, etc;) is not specified in regulation, as required by Section 263 (3), the person responsible to establish an appropriate emergency procedure is the *competent person* appointed by the employer. Again, while not specified by regulation, one would expect that some of the factors that would be considered by the competent person in establishing an effective emergency procedure would include the number of confined spaces being accessed by workers, the potential emergencies anticipated while the work is being carried out and the number of workers in those spaces possibly requiring a (timely) rescue to ensure their health and safety.

It is the Chief Compliance Officer's opinion that the intent of the regulation (considering that both the requirement for an emergency procedure and a vicinity person are addressed in separate sections of the regulation) was that the "vicinity person" could complement the emergency procedures recommended by the competent person and not be subject to substitution by a rescue team or some other factors.

In a follow-up email dated September 5, the employer provided the Chief Compliance Officer with the following additional information:

*For the confined spaces entry teams:*

- *Bottom ash conveyor: There will be a total of 3 people, work to be done is welding and mechanical.*
- *ID fan damper: 1 person - welding. -*
- *Precipitator: 3 persons, mechanical and welding*
- *Cogen Boiler : entry on different levels, each entry point has it's own stand by person, work carried out simultaneously, up to 20 people doing mechanical and welding work.*

Considering the fact that the work that is being carried out involves multiple confined spaces with several workers conducting work in those spaces, and in a "worse case scenario" several workers could be subject to a timely rescue, it is the Chief Compliance Officer's opinion that reducing the number of "vicinity persons" from four to two (even with the comprehensive rescue plan proposed by the employer), does not provide protection equal to or better than what the regulation (and the legal interpretation) requires when only two vicinity persons are included in the plan. As a result, the employer's request was denied.

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

Yours truly,

Chief Compliance Officer