

January 27, 2010

"The Employer"

The Chief Compliance Officer is writing in response to the employer's email dated January 12, 2010 and the meeting on January 22, 2010, in which the employer indicated 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 included several photos and indicated the following:

The first photo is of the area at the top of the reactors. The second photo is of the bottom of the same vessels. During turnaround of these vessels the elbows visible in the photos will be removed and the employer will have entry on these vessels, possibly from the top and from the bottom. Since the area is very close, the employer would propose using one vicinity person for the top and one for the bottom. The employer would adhere to all other requirements of confined space entry including man watch for each entry point as outlined in the regulations.

On January 22, 2009 the Chief Compliance Officer met with the employer to review the employer's request.

During the meeting, the following additional information was provided:

- Confined space entries are scheduled for four reactors
- Each reactor is a separate confined space.
- The elevation from the ground pad to the bottom of the reactors is approximately 8 feet.
- The top of the reactor will be accessed from the work platform.
- Access will be gained by removing the elbows at both the top and bottom of the reactors.
- A visual inspection will be done from outside the reactors prior to any entry.
- Confined space entry into the reactors could be done from the bottom or the top of the reactor, simultaneously or independently.
- If entry into the vessels is required for further inspection or repair, access scaffolding will be erected inside the reactor.
- As an employer, the employer requires that a competent person be present at every point of entry, in order to witness the entrants of the confined space signing the written report required by section 263(3) of Regulation 91-191.
- A diagram of the Reactors.
- The employer proposes to have a competent employee in attendance outside every entry point of the confined spaces as required by section 266(1)(b).

- There was no indication that the competent employee in attendance outside every point of the confined space is trained in the emergency procedures to be followed in the event of an accident or other emergency in or near the confined space.
- The employer proposes to have one employee in the vicinity of the confined space at the top of the reactors and one at the bottom of the reactors.

It was noted during the meeting that, as a minimum, the employer could assign a competent employee at one entry point while the vicinity person would be assigned to the other confined space entry point. This option was discounted, as the employer would not be able to meet the employer's internal Health and Safety Instruction of having a competent person in attendance at every entry point to the confined space. This internal Health and Safety Instruction provides the steps to be followed in order to meet the requirements of Regulation 91-191 section 263(5), which state:

263(5) An employer shall ensure that the written report referred to in subsection (3) and any procedures set out in the report are explained to an employee who is about to enter into the confined space or who may undertake a rescue operation in the confined space and the employee shall read the report and acknowledge that the report and the procedures were explained to the employee by signing a dated copy of the report.

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