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January 19, 2005

"The Employer"

Re: New Brunswick Occupational Health and Safety Act 91-191 subsection 220(3), Requirements for Rollover Protection and regulations 96-105 under the same 91-191, subsection 50(1) and 50(2) Notification to Use Diesel Engines Underground

This is in response to the employer's letter dated November 23, 2004 informing that the employer plans to operate a ST-8B Wagner scooptram in the employer's premises on the 1000m level. This production scooptram is a remanufactured scooptram.

The diesel engine for this Scooptram is a 325-horsepower Detroit Diesel. The after treatment exhaust device for this engine is a CATTRAP, Catalyzed Particulate Filter. Certification for this diesel engine is through MSHA.

The employer is requesting a deviation to subsection 220(3) of Regulation 91-191, Occupational Health and Safety Act for this scooptram. The employer indicates that the employer has reviewed mining, mucking and tramping processes to which this vehicle will be repetitively exposed on 1000/1125m levels, including access ramps, according to stipulations 1 and 2 of a letter dated July 23, 1997 from WHSCC. As previously stated, operations are carried out in drifts where there are minimal grade differences and/or embankments.

The employer's request for a deviation is based on previous letters that have documented case studies that clearly illustrate that the addition of rollover protective structures on production equipment of this size is not physically possible. The vehicle design and application of this vehicle within the employer's premises poses no risk to rollover, thus the element of risk from rollover as a result of the mining process or drift design is minimal. Also, as per stipulation 3 of the aforementioned letter dated July 23, 1997, the employer has attached a copy of the Joint Health and Safety Committee's recommendation. This letter is signed by the joint co-chairs and indicates that the Joint Health and Safety Committee agrees with the deviation request and acknowledges the operating conditions and limitations in which this vehicle will be applied.

Based on the information the employer has provided, a deviation from 220(3) is granted.

By copy of this letter, the Chief Compliance Officer has advised WHSCC staff and the JHSC Co-chairs of the decision.

Yours truly,

Chief Compliance Officer

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