

**WorkSafe Services**

PO Box 160  
Saint John NB E2L 3X9  
Phone 506 632-2200  
Toll free (Claims) 1 800 222-9775  
N.E. Regional Office 1 800 561-2524  
Web www.whscc.nb.ca

**Services de travail sécuritaire**

Case postale 160  
Saint John NB E2L 3X9  
Téléphone 506 632-2200  
Sans frais (Réclamations) 1 800 222-9775  
Bureau de la Région du N.-E. 1 800 561-2524  
Web www.whscc.nb.ca



July 4, 2006

"The Employer"

The Chief Compliance Officer is writing in response to the employer's email dated June 27, 2006 requesting a deviation in relation to the confined space regulation. The Section of the Regulation affected by this deviation is the *Occupational Health and Safety Act*, General Regulation 91-191, Section 266(1)(d) that states:

**266(1)** *An employer shall ensure that*

*d) where required under subsection 263(3), every employee entering into, exiting from and occupying the confined space wears a full body harness attached to a life line that is attached to a secure anchor outside the confined space and is controlled by the competent employee referred to in paragraph (b);*

The employer indicates in the employer's letter that the employer will be completing bridge maintenance within a confined space on a bridge crossing. The employer also states that there are obstructions along the interior of the beam due to its design, the use of a full body harness and lifeline would not benefit in the removal of an employee. The employer is requesting an exemption (Deviation) from the above-mentioned section of the confined space legislation and the Chief Compliance Officer's comments as to the contents of the employer's work plan.

As indicated above Section 266(1) makes reference to Section 263(3) of Regulation 91-191. The employer will note that this section allows for the employer appointed *Competent Person* to write a report which sets out among other things the requirements for emergency procedures as well as the protective equipment and emergency equipment to be used when an emergency rescue is required (Sections 263(d) and (e)).

Unless the *Competent Person* decides that employees shall wear full body harnesses and a lifeline as part of the emergency procedures when entering a confined space such equipment is not required and therefore a deviation is not necessary in this instance.

Regarding comments on the employer's work plan, as required by Section 263 the *Competent Person* appointed by the employer is responsible for the written confined space plan that will allow for safe entry and emergency procedures while work is being carried out on the bridge. The employer's obligations in this instance is to ensure that the *Competent Person* selected to write this plan has adequate knowledge to carry out the responsibilities set out in the Confined Space provisions in the Regulations.

**WorkSafe • Travail sécuritaire**

Regarding the emergency procedures for which the employer has requested a deviation, the potential hazards while work is being performed in the confined space will have to be assessed by the competent person. For example, if the *Competent Person* determines that oxygen deficiency could result while work is being performed (and he/she has decided that a harness and lifeline is not feasible to carry out a rescue) then the rescue plan will have to consider how to safely remove a person who may be unconscious without compromising the safety of the both the victim and the rescuer (s) if the rescuer (s) are required to enter the space to carry out a rescue. As this is only an example, there may be other hazards such as possible exposure to a hazardous chemical for consideration by the *Competent Person* when deciding on the required protective and emergency equipment and emergency procedure while work in a confined space is being carried out.

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

Yours truly,

Chief Compliance Officer