

December 11, 2009

“The Employer”

The Chief Compliance Officer is writing in response to the employer’s email dated November 16, 2009, in which the employer requests a deviation from *Occupational Health and Safety Act* General Regulation 91-191 Section 97(1) and 97(2) that states:

- 97(1)** *A guardrail shall be made of a material prescribed in subsection (2) and shall*
- (a) *be of sufficient strength and rigidity to support loads which may be imposed on it,*
 - (b) *have a height of not less than 900 mm or more than 1.07 m from the floor level,*
 - (c) *have vertical supporting posts not more than 2.4 m apart along its entire length,*
 - (d) *have a top rail with an intermediate rail between the top rail and the floor level and have the top rail fastened to the top or inside of the vertical supporting posts and the intermediate rail fastened to the inside of the vertical supporting posts midway between the top rail and the floor level, and*
 - (e) *have a toeboard*
 - (i) *at least 127 mm high,*
 - (ii) *fastened to the inside of the vertical supporting posts, and*
 - (iii) *with a space not more than 6 mm between the bottom of the toeboard and the floor.*
- 97(2)** *A guardrail shall be made of wood, metal pipe, angle iron or wire rope and*
- (a) *if made of wood, the top rail, vertical supporting posts and intermediate rail shall be constructed of at least 50 mm × 100 mm No. 1 grade or better spruce or fir;*
 - (b) *if made of metal pipe,*
 - (i) *the top rail and vertical supporting posts shall be at least 40 mm in diameter, and*
 - (ii) *the intermediate rail shall be at least 25 mm in diameter;*
 - (c) *if made of angle iron,*
 - (i) *the top rail and vertical supporting posts shall be at least 40 mm × 40 mm × 5 mm, and*
 - (ii) *the intermediate rail shall be at least 32 mm × 32 mm × 3 mm; or*
 - (d) *if made of wire rope,*
 - (i) *the vertical supporting posts shall be made of steel at least 40 mm in diameter or of a material of equivalent strength, and*
 - (ii) *the top rail and intermediate rail shall be at least 10 mm in diameter, be attached to a welded fastening on the vertical supporting posts with metal clips to prevent unnecessary sagging and be easily distinguishable from the background.*

In the employer’s request the employer indicated the following:

- In the last months the employer has been trying to find a solution for the employer’s hot-pond, which is located in the back of the employer’s premises
- The employer has not arrived at a sustainable solution.
- The employer seriously believes that the employer has something in place that is nonetheless adequate for the safety of the employees.
- The employer has considered many options but none seem to work.

During a site visit on December 2, 2009, the Chief Compliance Officer met with the employer. A Health and Safety Office with WorkSafeNB was present during the site visit where the following was observed:

- The employer's premises has a machine shop and is capable of doing fabrication.
- The guardrails for the catwalk surrounding the hot-pond are inadequate as:
 - A link chain is used as the top rail, and
 - No mid rail was installed at the time of the site visit.
- The guardrails need to be removed twice a day in order to facilitate the cleaning of the hot-pond with the log loader.
- The handrails for the stairs providing access from side to side of the hot-pond are inadequate as:
 - A link chain is used as the top rail, and
 - No mid rail was installed at the time of the site visit.

The employer has also indicated that various options have been considered but given the need to remove the guardrails twice a day and the challenges brought on by snow and ice during winter operations, the employer feels the present installation provides adequate safety for employees.

Considering the information the employer provided to the Chief Compliance Officer, it was the opinion that the guard rails as observed during the site visit does not afford protection for the health and safety of employees equal to or greater than the protection prescribed by regulation. The employer's request for a deviation is therefore denied.

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

Yours truly,

Chief Compliance Officer