

November 23, 2009

"The Employer"

Re: Deviation request from - subsection 220(3) of Reg. 91-191, Requirements for Rollover Protective Structures

The Chief Compliance Officer is writing to acknowledge receipt of the employer's letter dated November 10, 2009, requesting a deviation from subsection 220(3) of Regulation 91-191, *Occupational Health and Safety Act*.

In the employer's request the employer indicates the following:

- A contractor working for the employer has presented a written letter requesting on their behalf that the employer apply for this deviation. The letter was submitted with statements relating to the operation of this vehicle with the roll over protective structure posing more of an operating hazard than the risk of operating the electric hydraulic jumbo without a roll over protective structure (a copy of that letter was provided to the Chief Compliance Officer in the employer's request);
- This ROPS/FOPS is a hydraulically operated canopy that can be lifted once the drill was set up in the development heading, and in turn it can be lowered for tramming purposes;
- On Tuesday, November 10, 2009, a Worker Health & Safety Representative inspected the Electric Hydraulic Jumbo, AQ6159, which was introduced into the employer's premises in September 2006, without prior arrangement or notice. The observations were:
 1. It was found parked on the 425 Level;
 2. The ROPS/FOPS canopy was found in a tramming position;
 3. There are no pins; a pre set position identified to determine a safe tramming height. None provided from date of manufacture;
 4. The height from the operator's compartment deck floor to the lowest inside part of the ROPS/FOPS was 55 ¾ . Subsection 220(2) of Regulation 91-191 states a minimum of 1,320 mm or 52" is required from the deck and the roll over protective access;
 5. The distance from the top of the operator's seat to the inside of the ROPS/FOPS was 36";
 6. The height from the drift floor to the top of the ROPS/FOPS canopy was 103";
- Item number five states the unsafe condition. This 36" clearance is not adequate for an average person to sit erect in the drivers seat without having to bend his/her head. This 36" was attained by being three inches higher than the minimum requirement of 52"
- In Regulation 96-105, subsection 34(3) states: "*that an employer shall ensure that in no case is the clearance less than 1.2 meters from the driver's seat to the roof (of the haulage way)*", in this case the roof is the inside of the canopy;
- In this same subsection, if you take item No 6, the physical height of the ROPS/FOPS canopy being 103" plus the requirement of three hundred mm as per subsection 34(3) the total height requirement is 114 inches or 2.91 meters. There is visual evidence that the ROPS/FOPS canopy has experienced physical damage both on the sides and on top. The vehicle is too high for safe passage and as a result the operators are forced to bend and retract the canopy so as to manoeuvre through the employer's premises.

- The vehicle has been operating in the employer's premises since September 2006 without incident of roll over or near roll over condition. Based on the review that was conducted by the contractor, the observation made during the November 10th inspection, the employer wishes to apply for an exemption to the requirement of 91-191 subsection 220(1) and apply for a deviation to subsection 220(1) and apply for a deviation to subsection 220(3)(1)(c) the installation of ROPS constitutes an operating hazard as described in this letter.

Based on the information the employer has provided and the fact that the contractor owns this piece of equipment, a deviation from 220(3) is granted to contractor.

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

Yours truly,

Chief Compliance Officer