

October 18, 2011

The Employer:

I am writing in response to your email dated September 28, 2011, in which you are requesting two deviations, one from Section 266(1)(d) and one from Section 266(2) of General Regulation 91-191. Sections 266 (1) (d) and 266(2) state:

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

*266 (1) (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);*

**266(2) An employer shall ensure that the full body harness referred to in paragraph (1)(d) meets the requirements for Group E harnesses in CSA standard CAN/CSAZ259.10-M90, "Full Body Harness".**

In addition, Section 263(3) requires that:

*The competent person referred to in subsection (1) shall in a written report*

*(a) set out*

*(i) the results of the tests made under subsection (1), and  
(ii) an evaluation of the hazards of the confined space,*

*(b) set out the procedures to be followed by an employee entering into, exiting from or occupying the confined space,*

*(c) identify the protective equipment that is to be used by every employee entering the confined space,*

*(d) set out the emergency procedures to be followed in the event of an accident or other emergency in or near the confined space, including immediate evacuation of the confined space when an alarm is activated or there is any significant change in the concentration, level or percentage referred to in subsection (1), and*

*(e) identify the protective equipment and emergency equipment to be used by an employee who undertakes rescue operations in the event of an accident or other emergency.*

In your letter you indicate that "the spaces at your facility, with the exception of the four pulpers and five pits, are all horizontal entry. The shoulder "D" rings are not used and your facility does not have a Confined Space that would facilitate the use of shoulder "D" Rings. The rescue of an individual would not be impeded by the use of a Group "A" harness using the dorsal D ring for the top entry pulpers or pits where as they are not enclosed." You also report that with respect to the requirements of 266 (1) (d) during entry into your Yankee Dryers, "wearing of the harness itself makes it difficult for the entrant to get through the small opening in the Yankee and the harness is of no use to the individual while inside of the Yankee. Due to the internal configuration of the Yankee a lifeline is hazardous to the

entrant entering the space. Should a rescue be necessary, it would have to be an entry rescue and the individual placed on a Sked to be extracted through the opening which they would have to be lifted up to from the inside of the Yankee Dryer."

I mentioned to you in my email dated September 30, 20111, that a deviation from these sections is not required. The information below provides the rationale for this decision:

1. Section 263 (1) requires that the employer appoint a *competent person* to coordinate confined space activities; the responsibilities of the competent person are outlined in Section 263 (3) and include conducting air quality tests and to set out procedures for entry into the confined space and to respond to emergencies as well as identify the required PPE for the work to be carried out;
2. As indicated above Section 266(1) makes reference to Section 263(3) of Regulation 91-191 and as previously mentioned, 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 (c) (d) and (e)).
3. If the *competent person* decides that employees are not required to wear full body harnesses and a life line as PPE to carry out safely work in the confined space and be available in the event of an emergency, compliance with Sections 266 (1) (d) and 266 (2) is not required and therefore, a deviation is not necessary to carry out the work.

By copy of this letter, I have advised WorkSafeNB staff of my decision.

Please do not hesitate to contact me should you have any questions regarding this decision

Yours truly,

Chief Compliance Officer