

Confined Space Advisory Committee October 15, 2013

An advisory group met on October 15, 2013 to discuss the Oregon Confined Space rules and issues. Those in attendance include:

Michael Wood – Oregon OSHA	Jim Tyler – Vestas
Marilyn Schuster – Oregon OSHA	Scott Neufeld - SDAO
Mark Tobiasson – Coffman Exc.	Stan Thomas – Oregon OSHA
Peggy Munsell – Oregon OSHA	Maria Lemay – Intel
Dave McLaughlin – Oregon OSHA	Jim Salisbury – City of Newport
Bret Taylor – Cascade Shoring	Nathan Taylor – MEI Group
Greg McDonald – Public Works Supply	Tom Bozicevic – Oregon OSHA
Tony Barsotti – TCM	Chris Miller – AGC
Marylou Wilson – Wildish	Mark Hillyard – Mowat Construction
Ellen Ridgeway – Port of Portland	

Future meetings are scheduled for October 29, November 12, November 26, and December 10. All meetings are scheduled for 9 am to 12 pm, and will be held at PGE - Salem Service Center Conference Room - 4245 Kale Street NE, Salem, OR.

Michael Wood opened the meeting with introductions. Copies of documents Oregon OSHA received since the last meeting were made available to all attendees.

Issues collected at the last meeting were addressed as follows:

Rescue: Paragraph (9)

1. Should the requirement for a written agreement with third party rescue providers be retained?
(9)(b)(B)(x)(I)

Considerable discussion was generated regarding this issue. Some attendees stated that the written agreement was necessary, and others stated that there were difficulties in getting a written agreement due to legal and liability issues. The comment was made that fire departments should be the designated responder, another comment was made that Oregon OSHA cannot require that fire departments provide rescue services. Other attendees pointed out the problem when a rescue team is no longer available during an entry. The group consensus was that there must be a system in place before an entry is made to notify the designated rescue teams, they are aware when confined space operations are taking place, and the capabilities of both the employer and the rescue team have been assessed in advance.

2. Should all members of the rescue team be trained in CPR & 1st aid, and in both general industry and construction? If so, must that training be reflected in an up-to-date certification? **(9)(b)(A)(iii) non-entry rescue and (9)(b)(B)(ix) entry rescue**

There was some discussion regarding the confusion between first aid/CPR training and first aid/CPR certification. The group consensus was to replace the word “trained” with the word “knowledgeable” while keeping the requirement that at least one member of the rescue team is certified.

Oregon OSHA pointed out that the Washington rule (which applies to both general industry and construction) requires that responders are knowledgeable in first aid and CPR, along with at least one member being certified, and first aid and CPR trained rescue personnel. This requirement most likely will remain a requirement in the federal OSHA rule on confined spaces in construction.

3. Should we define what self rescue is or is it self explanatory?

The group consensus was to define the term but also make it clear that self-rescue is not a rescue plan.

4. Should we clear up the self-rescue language used in paragraph **(9)(a)**? *“Before employees enter a permit space, develop and implement procedures to remove entrants in the event of an emergency or when they are unable to self-rescue.”*

The group consensus was to define the term but also make it clear that self-rescue is not a rescue plan.

5. Does the size of rescue teams need to be defined or should it be up to the employer to determine their rescue size needs? **Examples given:** During turnarounds, what determines the size of rescue team? What about emergency situations?

Discussion centered on the idea that rescue is dependent on the nature of the space, the nature of the hazards, and the work to be performed, along with the number of employees performing that work. A solution may be to add context within the rule based on the hazards or based on a hazard assessment of the job.

6. When working in a space daily, why is an annual rescue practice needed? **(9)(b)(B)(vii)**

Being familiar with the space and space hazards is only one component of rescue. The other piece is being able to practice the rescue (includes use of equipment), evaluate how the rescue team responds, and the adequacy of the rescue plan. The entire group agreed that this requirement is necessary and no further action was needed.

Evaluation: Paragraph (4)

7. Should we look at this section of the rule related to evaluation of space; who needs to do it and how to deal with general or owner who doesn't do it. An attendee indicated that the rule language and use of evaluate and isolate needs to be reviewed.

Oregon OSHA reviewed the rule and did not find the inconsistencies that were brought up. We will look into this further and discuss this at a future meeting after further discussion regarding isolation.

8. Should we develop additional resources for small employers to evaluate spaces? If so, what kind of resources? Alternatively, should we require a “competent person” to identify confined spaces and evaluate permit space hazards?

There was discussion as to whether a “competent person” should be identified via the rule, although Oregon OSHA pointed out that this would add a new requirement to the rule, and we have already committed to not adding new requirements to this rule at this time.

Oregon OSHA will look into developing additional resources once we have addressed the issues brought up at these meetings.

Continuous systems:

Issues #9 and 10 were deferred to the next meeting.

9. Should we define what “positively isolate” means or should we remove the word “positively”? This language is used in the Oregon rule, *(10)Alternate Entry(b) Exception: Alternate entry cannot be used to enter a continuous system unless you can **positively isolate** the area to be entered from the rest of the space or can demonstrate and document that the conditions which caused the hazard no longer exist within the system during the entry.*

10. There was a suggestion that the definition of continuous system needed some help. Should this definition be changed.

Oregon OSHA received additional comments at the end of the day on the 14th and did not have a chance to review those comments or get them out to the stakeholders beforehand. Copies of the comments were provided to the attendees.

AGC submitted a comment suggesting replacing the word “you” with the word “employer” throughout the rule. See #9 as an example of the use of “you”). Oregon OSHA pointed out that usability tests conducted by Washington’s L&I demonstrated that “you” is clearer to end-user employers than “the employer.” Oregon OSHA will look through the regulation and see if there are any areas that require clarity since this regulation will have multiple users based on multiemployer worksites.

11. Blanking and blinding definition not in the rule, should we add or is it self-explanatory?

The consensus was to add this definition

12. **Question:** Is use of a “bladder” a method that can be used to isolate a newly constructed piping system connection to an existing sewer system? Can it be used in existing systems?

Oregon OSHA stated that we need industry’s input on the merits of this system.

Exceptions: Establishes in rule what standards do not apply to the Oregon confined space rule.

13. Entering a sewer pipe; does only the pipe entry apply to the confined space rule? Does entry into a trench stay under Subdivision P?

Exception (a) - “Construction work regulated by Division 3/P Excavations, except for existing sanitary sewers and new sanitary sewers when connected to an existing sanitary sewer.”

Should the effective exemption for excavation work apply to sewer only if no entry to the sewer pipe is made as part of the project *or* only to work outside the pipe regardless of whether an entry is made as part of the project?

AGC submitted a document with some language suggestions. Oregon OSHA will look at ways to clarify the rule language.

14. **Question:** What are the differences between confined space rule and telecommunication rule?

Exception (d) - “Manholes and vaults regulated by 1910.268(o) in Division 2/R Telecommunications, except when those provisions are insufficient to render the space safe to enter.”

Oregon OSHA will look at ways to clarify the differences between the confined space rule and paragraph (o) of the telecommunications rule.

Definitions or explanations:

15. Should we replace the terms “permit-required space” and “permit space” with a term (such as “regulated space”) that does not imply such a space always requires a permit?

Most of the comments suggested that changing the existing terminology, while it can be confusing, would be even more confusing, as the terms are used by other OSHA programs, as well as organizations that set industry standards, such as ANSL.

Issues to be addressed at the next meeting:

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10. There was a suggestion that the definition of continuous system needed some help. Should this definition be changed? **See related comment, #26.**

Definitions or explanations:

16. Should we define what limited access and egress means?

Miscellaneous/Comments:

17. Would it be helpful to provide more rule clarity for construction workers?
Should Oregon OSHA develop a pamphlet for the construction industry?

18. Division 2/L still references the Federal Rule. Does that need to be updated?

19. Under alternate entry can you do solo entries?

20. **Attendee comment:** There should be a separate section of the rule (or separate rule) specific to construction work, or to certain types of construction work?

21. **Question:** Do temporary isolation devices eliminate hazards?

Training: Paragraph (11)

22. Should awareness training (11)(c)requirements in the rule be changed? Who is the target group? A comment was made the ambiguities in rule should not have to be explained in a program directive, rule interpretation, or pamphlets.

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Additional Issues:

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Below is an additional comment submitted by AGC.

24. Definitions needed for fixed work place, mobile work place, and construction.

The following issues were submitted by Cummins, Goodman, Denley & Vickers, P.C.

25. **Inconsistent use of a defined term** – “Control” is defined in the context of controlling a hazard, but it is used throughout the rule also in the context of a regulated entity having “control” over a confined space. For example, in subsection (4)(a)(A)(ii)(IV), the rule contemplates controlling contractors or host employers “assum[ing] control” over confined spaces. What does that mean?¹ What “control” means in this latter context is never defined. (Even if it were, it would be preferable to use two different terms so that there is no confusion as to which definition would apply in a given circumstance.

26. Problem with “continuous system” definition and/or section (10)(b) “exception” to alternate entry

- “Continuous system” is defined in such a way that it is difficult to conceive of what could possibly be a “continuous system.” Why? By definition, a confined space is not part of a “continuous system” unless it meets all three of the following:
 - Part of, and contiguous with, a larger confined space;
 - Cannot be isolated from the larger confined space; and
 - Subject to a potential release from the larger confined space that can overwhelm control measures leading to an IDLH hazard.

In theory, all (or nearly all) spaces are capable of being isolated from larger spaces, even though it may be that they have not actually been isolated from the larger space. By definition, if a space is simply capable of being isolated (“can” be isolated), then it is not part of a continuous system. Since essentially all spaces can, at least in theory, be isolated, what “continuous systems” exist?

- The alternate entry “exception” in section (10)(b) highlights the fundamental flaw of the “continuous system” definition. The “exception” says that alternate entry cannot be used to enter a “continuous system” unless you can “positively isolate the area to be entered . . .” If you can “positively isolate” the area to be entered, then, by definition, the space is not part of a continuous system in the first place. In short, this exception can never apply because, by its own terms, it presumes that the space in question does not meet the definition for “continuous system.”

¹ And, as additional questions, when would a controlling contractor or host employer not have “control” over a confined space that is being built on its worksite? Who would have “control” in that case?

27. Vague/unclear language

- Subsection (4)(a)(A)(ii)(III) – What does it mean for an employer to be “responsible to” a controlling contractor or host employer?
- Subsection (4)(b) – The following language is not as clear as it could be:” “You must evaluate all of your confined spaces to determine if they are permit-required confined spaces. This evaluation must include:” Consider stating instead, “You must evaluate all confined spaces identified in your workplace to determine if they are permit-required confined spaces. In making a determination as to whether a space is a permit-required confined space, you must consider:” (leaving the list of (A) through (C) as is).
- Subsection (4)(c) – What does it mean for a mobile employee to be “exposed to confined spaces at their assigned work locations”? Presumably, entry is “expos[ure] to” a confined space, but what else is, if anything?
- Subsection (9)(b)(C)(ii) – As written, this provision is potentially confusing. It appears that what is intended is that the third-party rescue service is to use the entry permit to evaluate the space without entering it. If so, a re-write is recommended, such as the following: “When activated to perform a rescue, using the entry permit and without entering the space, evaluate the space to:” (As written, it could be interpreted that the rescue service is to do an evaluation “without . . . using the entry permit . . .”)

28. Provisions/language, the intent of which is unclear

- Subsection (2)(h): Why is there reference to “additional hazards that may be present”? It should go without saying that if there are other hazards present that would be addressed by other rules, those other rules would also apply. Is this language in here for some other reason than to reinforce that other rules may also apply to hazards that may exist in confined spaces?
- Subsections (9)(b)(A)(iv)(III) and (9)(b)(B)(vii)(III): How do these “exceptions” to the annual practice rescue provisions apply? Part (iii) of the exceptions provide that the rescuers must still “conduct practice rescue operations in accordance with (8)(b)(A)(iv)(II) or (8)(b)(B)(vii)(II), respectively.² Thus, it would seem that what the “exceptions” are really saying is that it is okay for a rescue services not to have a yearly practice rescue in every type of space in which they may perform rescues, provided that they practice rescue in spaces in which they are, in fact, being designated as non-entry rescuers for mobile workers. If that is that case, to reduce confusion and eliminate the circularity of the cross-referencing done in this “exception,” it would be better to re-write provision (iii) of the exception to state something along the lines of the following: “Have conducted a practice rescue within the last 12 months in the space to be entered or in a representative space with similar opening size, configuration, and accessibility issues as the space to be entered.”

²Note that there is a cross-referencing problem in both of these “exceptions.” Both exceptions, in part (iii), erroneously cross-reference a section (8) subsection. The proper cross-reference is to a section (9) subsection. However, as discussed, it is recommended that the cross-reference simply be removed in each instance.

29. Organization

Section (5) covers both the PRCS entry “program” and the permit process. Organizationally, it may be better to split this section into two, one to address the PRCS “program” and one to address entry-by-entry permitting.

- Subsections (5)(a), (b), (c), (d), (g), and (h) are most pertinent to the “program.” (Subsection (d) is included here because it is aimed at requiring a description in the program as to how permitting is to take place.)
- Subsections (5)(e) and (f) do not deal with broad program issues, but rather with specific entry-by-entry issues such as what information each specific entry’s permit must contain and who must have access to specific a specific entry’s permit. Subsections (5)(e) and (f) could be reworked so they fit into section (6), which governs permit entry.