

**Confined Space Advisory Committee  
October 29, 2013**

An advisory group met on October 29, 2013 to discuss the Oregon Confined Space rules and issues. Those in attendance include:

Michael Wood – Oregon OSHA	Dennis Winn – Iberdrola Renewables
Chris Poindexter - PGE	Stephanie Carey – Iberdrola Renewables
Mark Goldberg – Liberty Mutual	Barry Moreland –NIETC
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
Doug Jenkin - PGE	Mark Veeley – Apollo Environmental
Dave Olson – TCB Inc.	Justin Guy – Suzlon Wind
Steve Eversmeyer – Port of Portland	Ian Chase – Slayden Construction
Marylou Wilson - Wildish	Mike Jacobs – TVWD
Jim Anderson - Cummins, Goodman, Denley & Vickers, P.C.	Ken Semore – NW Natural <a href="#"><u>Mark McGuire - EWEB</u></a>

Minutes from previous meeting were covered and request for input was made

Oregon OSHA was asked if the Program Directive will be reviewed. We will review the Program Directive after the draft rule is complete.

Oregon OSHA was asked if the concern regarding a written agreement for rescue resolved. Answer was that it is not resolved yet and we are continuing to consider input.

No other questions or comments regarding the minutes

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**Topic 1:** A suggestion was made to change the term “ensure” throughout the rule. There was some discussion around this topic with Oregon OSHA’s Administrator. The end result was that the Administrator felt the word “ensure” is what Oregon OSHA intends and that an employer cannot contract away their responsibility to protect the safety of their employees.

The Administrator said we would note the suggestion and also note that Oregon OSHA does not plan to change the term “ensure” in the regulation.

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**Topic 2:** A question was asked about the evaluation process and who is responsible to evaluate the space, as it would relate to construction. Example – If the owner points out the confined space to the GC and tells the GC the need a CS program the GC would have to evaluate the space.

Additional discussion centered around the idea that if the GC hires a consultant to do an evaluation and it is a bad evaluation is the GC on the hook for the consultants work. Oregon OSHA responded that the employer is not allowed to transfer the authority and responsibility for those hazards to other people. You would be held accountable for the work your hired consultants performed.

A question was asked about what OSHA means in paragraph (4)(a)(A)(ii)(III) (this language is in regards to who is responsible for the initial determination and states, “*Employees of an employer responsible to that controlling contractor or host employer enter that space.*”

Oregon OSHA responded that this section was intended to cover multi-employer work sites, and that we would revisit this section and will clarify

A comment was made that the wording would be difficult and could not cover every scenario.

Another attendee mentioned that the issue is clarified in the OSHA side by side document.

Another attendee felt current language was clear

Oregon OSHA reiterated that we will re-word this section 4(a)(A)(ii)(III)

**Topic 3:** A comment was made regarding sections (4)(c) & (d) – Mobile workers – wondering if the employer is required to evaluate all confined spaces on a site or just the ones they are exposed to and what are the parameters to determine exposures.

Oregon OSHA clarified that it was only spaces in areas they are working, and a question was asked what would the threshold be. How close do they have to be to the space.

An attendee felt that the awareness level training should cover this piece.

Oregon OSHA will continue to look into the concern

**Topic 4:** Continuous Systems

Should OSHA define “positively isolate”

A comment was made that when reading definition of continuous system he had a hard time of thinking of a situation where you cannot isolate a space. And felt there would be some conflict when you are comparing it to alternate entry procedures.

A question was asked if you are required to control the hazards in the whole system or just in the work area.

Discussion of sewer plugs being an industry standard to control sewer flow.

Should we begin to focus more on engineered systems. If an engineered system fails you would have other issues that you would address rather than a confined space issue. Such as, was it installed properly, was it maintained.

A continuous system has to be large enough to bodily enter and do work for it to fall under these requirements.

A question was asked of how can we make engineered systems part of positive isolation?

| An example was provided of how they use plugs and air-dams-negative or positive pressure ventilation to control a hazardous atmospheres in work areas.

Questions arose about what constitutes “serious physical harm.” ~~Oregon OSHA~~ The definition from the rule was reviewed with the group, the terms in the definition section of the regulation. All agreed that ~~they were~~ it is a good definitions.

An attendee felt that if a company used forced air ventilation, plugs and monitored the space (sewers) then they should be able to enter under alternate conditions. Oregon OSHA asked the group if anyone felt the scenario provided would take care of the hazards and would be OK. All agreed.

Issue of any changes my need to compare federal standard and our standard for “as effective as”

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**Topic 5:** Define access/egress

Oregon OSHA brought up Appendix A of the rule, but was deferred. The issue was brought up by AGC and we need to have AGC present for the discussion.

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**Topic 6 (previously #17):** Would it be helpful to provide more rule clarity for construction workers? Should Oregon OSHA develop a pamphlet for the construction industry?

Oregon OSHA will look at ways for outreach to the construction industry.

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**Topic 7 (previously #18):** 2/L still refers to the 1910.146 standard. This was part of the original rule adoption, but hadn’t been updated in the final version of 2/L on the web. The correct version should be up on the website soon.

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**Topic 8 (previously #19):** Are solo entries allowed under alternate procedures – Yes

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**Topic 9:** There was discussion regarding fall hazards.

One area of concern was whether a fall hazard, in and of itself, is a hazard that would make a confined space a permit space. Oregon OSHA (and federal OSHA) has a letter of interpretation that makes it clear that if the only hazard associated with a confined space is a fall hazard, it is not covered by the confined space rule. It is addressed via the fall protection standard. The preamble to the Oregon confined space standard also clarifies this issue. However, if the space contains other hazards that make it a permit space, the fall hazard would need to be addressed with the permit.

Another discussion centered around a reference in Appendix B of the rule that refers to falls of 5 feet or more. The 5 foot reference will be removed.

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**Topic 10 (previously #24):** Definitions needed for fixed work place, mobile work place, and construction.

– Hold off on issue until an AGC representative is in meeting

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**Topic 11 (previously #25):** The word “control” is defined in the rule as a method of dealing with hazards, but it is also used in different contexts. An attendee asked to use a different word other than “control” for those other contexts, since the defined term does not match the context in which it is used.

A question was asked if there was any confusion, given the context of the term is fairly clear.

Oregon OSHA said that depending on the context the word “control” has different meanings. We could possible define both meanings and note that it is based on the context. Oregon OSHA will look into this further.

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**Topic 12 (previously # 26):** Continuous Systems

A representative of the original commentor felt that this subject has already been addressed.

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**Topic 13 (previously #27):** 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).

A question was asked about the need to then define “workplace” as it relates to this issue and earlier conversations about proximity of work to a confined space.

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**Topic 14:** 3<sup>rd</sup> Party Rescue – Using entry permit for rescue evaluation

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 . . .”)

Confusion as to which entry permit the rescue party would be using. The one in place during the failed confined space operation or the one the rescue part fills out. A question was asked if an entry rescue team would be required to complete a permit before entry.

Oregon OSHA explained that an entry rescue team has always needed to do a permit to enter the space. They are performing an entry and need to re-evaluate the hazards.

Two questions:

Which entry permit are we talking about in the regulation?

Does the rescue party need to fill out an additional permit?

Oregon OSHA suggested that we come back to this discussion at the next meeting and this meeting be adjourned.

## **Issues to be addressed at the next meeting**

1. Definition of access/egress.
2. Definitions needed for fixed work place, mobile work place, and construction.
3. 3<sup>rd</sup> Party Rescue – Using entry permit for rescue evaluation.
  - a. Which entry permit are we talking about in the regulation?
  - b. Does the rescue party need to fill out an additional permit?
4. 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?
5. 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.” 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.”

Note 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.

Next meeting on November 12<sup>th</sup> same location.