

New Construction Regulations for “Confined Spaces” and What They Mean to You

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Introduction

The Occupational Safety and Health Administration (OSHA) recently issued its new regulations pertaining to “confined spaces.” Although the regulations were supposed to take effect on August 3, 2015, OSHA postponed enforcement of the heightened regulations until just recently, March 8, 2016.

Previously, OSHA had one simple provision requiring basic training. The new regulations have a number of comprehensive requirements for both employers and workers alike performing construction work. In general, the new regulations require employers to determine:

- 1) What kinds of spaces their workers are in;
- 2) What hazards exist;
- 3) How those hazards should be made safe;
- 4) What training workers should receive; and
- 5) How to rescue those workers if anything should go wrong.

According to the Assistant Secretary of Labor for OSHA, Dr. David Michaels:

This rule will save lives of construction workers. Unlike most general industry worksites, construction sites are continually

evolving, with the number and characteristics of confined spaces changing as work progresses. This rule emphasizes training, continuous worksite evaluation and communication requirements to further protect workers' safety and health.

What exactly is a “confined space”?

A confined space means a space that: (1) is large enough and so configured that an employee can bodily enter it; (2) has limited or restricted means for entry and exit; and (3) is not designed for continuous employee occupancy.

Common examples include bins, boilers, pits, manholes, tanks, incinerators, scrubbers, concrete pier columns, sewers, transformer vaults, heating, ventilation, and air-conditioning (HVAC) ducts, storm drains, water mains, precast concrete and other pre-formed manhole units, drilled shafts, enclosed beams, vessels, digesters, lift stations, silos, turbines, chillers, and mixers/reactors.

When do the regulations apply?

The rules sets forth requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces.

What are the primary new requirements?

There are eight main differences between the construction rule and the general industry standard followed in the past:

- 1) Requiring coordinated activities when there are multiple employers at the worksite. This will ensure hazards are not introduced into a confined space by workers performing tasks outside the space. An example would be a generator running near the entrance of a confined space causing a buildup of carbon monoxide within the space.
- 2) Requiring a competent person to evaluate the work site and identify confined spaces, including permit spaces.
- 3) Requiring continuous atmospheric monitoring whenever possible.
- 4) Requiring continuous monitoring of engulfment hazards. For example, when workers are performing work in a storm sewer, a storm upstream from the workers could cause flash flooding. An electronic sensor or observer posted upstream from the work site could alert workers in the space at the first sign of the hazard, giving the workers time to evacuate the space safely.
- 5) Allowing for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions list on the permit or an unexpected event

requiring evacuation of the space. The space must be returned to the entry conditions listed on the permit before re-entry.

- 6) Requiring employers directing workers to enter a space without using a complete permit system prevent workers' exposure to physical hazards through elimination of the hazard or isolation methods such as lockout/tagout.
- 7) Requiring employers relying on local emergency services for emergency services arrange for responders to give the employer advance notice if they will be unable to respond for a period of time.
- 8) Requiring employers to provide training in a language and vocabulary the worker actually understands.

What are the new key regulatory definitions?

The 30 pages of new regulations use a number of terms of art, including the following:

- *“Controlling contractor”* is the employer with overall responsibility for construction at the worksite. If the controlling contractor owns or manages the property, then it is both a controlling employer and a host employer.
- *“Host employer”* means the employer that owns or manages the property where the construction work is taking place.
- *“Entry employer”* means any employer who decides an employee it directs will enter a permit space.

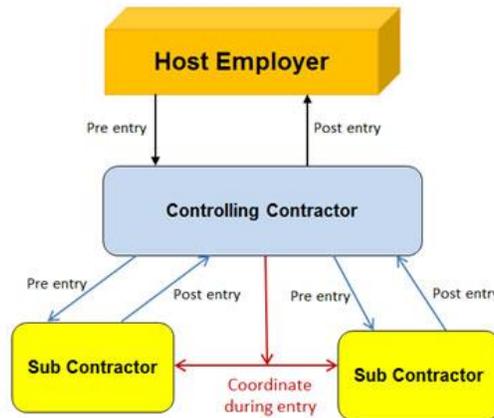
Do the regulations impose agency responsibility?

Yes. The regulations impose agency responsibility and sharing of information. If an employer hires a contractor or subcontractor it will also have responsibility to comply with the regulations.

Controlling contractors (i.e. general contractors) and host employers (i.e. property owners and managers) must discuss spaces on the site and their hazards with entry employers (i.e. subcontractors) and each other before and after entry. The controlling contractor is the primary point of contact for information about permit spaces at the work site.

The host employer must provide information it has about permit spaces at the work site to the controlling contractor, who then passes it on to the employers whose employees will enter the spaces.

Likewise, entry employers must give the controlling contractor information about their entry program and hazards they encounter in the space, and the controlling contractor passes that information on to other entry employers and back to the host.



Do employers need to have a written protocol?

Yes. Employers must have a written confined space protocol in place if workers will be entering a confined space. The written program must be made available prior to and during entry operations for inspection by employees and their authorized representatives.

Conclusion

The new confined space OSHA regulations are being enforced as of March 8, 2016. Whether you are a property owner, manager, general contractor, subcontractor, and others involved in the construction industry, you need to familiarize yourself with the new standards. Failure to comply with OSHA regulations can result in stiff penalties or fines and violations may even be used in court.

More information can be found at <https://www.osha.gov/confinedspaces/index.html>.

Andrew L. Smith is a sixth-year associate attorney in the Cincinnati, Ohio office of Smith, Rolfes & Skavdahl Company, LPA who concentrates his practice in the areas of construction law and general litigation. Andrew has extensive experience in state and federal court handling complex civil litigation matters and counseling business of all shapes and sizes. He is also the co-host of BearcatsSportsRadio.com and an avid UC Bearcats follower.

