

CONFINED SPACES, AGAIN?



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In the January/February 2015 issue of the *Concrete Repair Bulletin*, the Safety Solutions article titled “Confined Spaces” outlined a company’s responsibilities as it pertained to employee entry into a confined space in the concrete repair industry. Lo and behold, on May 4, 2015, the Occupational Safety and Health Administration (OSHA) released Federal Register Volume 80, Number 85, “Confined Spaces in Construction, Final Rule,” which publishes the new Confined Spaces in Construction standard (29CFR 1926 subpart AA) that went into effect on August 4, 2015. The new standard, based largely on the General Industry standard (29CFR 1910.146), changes a company’s responsibilities regarding employee entry into a confined space in construction—albeit a slight change.

On May 1, 2015, Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, spoke at a teleconference outlining some of the changes to the standard, which include:

- A “competent person” must conduct the initial jobsite evaluation in the final rule. The OSHA standard that applies to the manufacturing and general industry standard does not specify who has to conduct the evaluation. The competent person approach is common in construction industry rules;
- Information exchange requirements in the final rule inform employers what discussions must be conducted and when during confined space entry;
- Air contaminant and engulfment hazard monitoring must be done continuously, as the technology is readily available for most hazards. For substances where continuous monitoring technology is not available, periodic monitoring is required;
- The construction rule explicitly requires employers to coordinate emergency services before workers enter the confined space; and
- During “controlled atmosphere” entry, employers may isolate physical hazards rather than eliminate all of them (such as using lock-out/tag-out, blocking off access to struck-by hazards, and so on). This is not inconsistent with interpretations issued for the General Industry rule, but is clarified in the final rule for construction.

An OSHA memo released in July 2015 provides guidance for OSHA’s temporary enforcement strategy. Numerous requests for an extension of the effective date (August 3, 2015) have caused OSHA to provide a 60-day period in which they would not cite construction companies making a good faith effort to comply with the new standard, as long as the employer is in compliance with either the training requirements of the new standard (29 CFR 1926.1207) or the training requirements found in former 29 CFR 1926.21(b)(6)(i), as outlined in the following:

All employees required to enter into confined or enclosed spaces shall be instructed as to the nature of the hazards involved, the necessary precautions to be taken, and the use of protective and emergency equipment required. The employer shall comply with any specific regulations that apply to work in dangerous or potentially dangerous areas.

Employers who fail to train their employees consistent with either 29 CFR 1926.1207 or 1926.21(b)(6)(i) would properly be cited for violation of 1926.1207(a). Factors that OSHA will consider when evaluating whether an employer is engaged in good faith efforts to comply with the new standard include:

- If the employer has not trained its employees as required under the new standard, whether the employer has scheduled such training;
- If the employer does not have the equipment required for compliance with the new standard, including personal protective equipment, whether the employer has ordered or otherwise arranged to obtain such equipment required for compliance and is taking alternative measures to protect employees from confined space hazards; and
- Whether the employer has engaged in any additional efforts to educate workers about confined space hazards and protect workers from those hazards.

Because of the changes, it would be prudent for any employer that either controls or owns confined spaces, or requires their employees to enter confined spaces as part of their assigned duties, to review the new standard (29CFR 1926 subpart AA) to ensure their compliance. If an employer is already in compliance with the General Industry standard, they are mostly in compliance with the new standard. More information can be found on OSHA’s website (www.osha.gov/confinedspaces).

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