

## New OSHA Confined Space Standard for the Construction Industry

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Construction Confined Space Standard – This standard has been in the works for several years. The standard was finally published as a final rule on May 4, 2015 with an effective date of August 3, 2015. Recently OSHA issued a stay of enforcement until October 2, 2015. During this period OSHA will not issue citations to employers making a good faith effort to comply with the new standard as long as the employer is in compliance with the training requirements for a competent person under Section 1926.21(b)(6)(i) or those found in Section 1926.1207. During this 60-day period employers not in compliance with either of these standards may be cited for a violation of Section 1926.1207(a). While this rule is being touted as very similar to the General Industry Confined Space Standard, it does contain some nuances that are unique to it and to the construction industry.

The first thing we need to look at in this standard is the definition of confined space. The standard defines a confined space as any space which is either:

1. 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 occupancy.

As you can see, even someone who thought the confined space standard could have little impact on them, such as a roofing contractor, could have employees who might encounter a confined space during their normal work activities. This definition could well encompass attic areas or any other area that meets the definition stated above. So, since the possibility of encountering a confined space exists for just about anyone in the construction trades at any time what obligations do you have as the employer?

The first basic requirement can be found in Section 1926.1203(a) of the new standard. This section requires “Before it begins work at a worksite, *each* employer must *ensure* that a *competent* person *identifies all confined spaces* in which one or more of the employees it directs may work; *and* identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary.” I have highlighted the critical language in this section to emphasize the responsibility on every employer. Some feel that the controlling contractor on the site has the responsibility to make the determinations regarding confined space and permit confined space, but I believe that the language of this section is clearly much broader than that. Take another look at the language; the standard refers to “each” employer. So, while it does address the controlling employer,

you cannot escape the basic obligation for each employer. And, as we all know, you, as an employer, have the obligation to ensure your employees have a **safe place to work**.

In light of the above, you as a contractor should have a competent person for confined space on each job site. On each jobsite that individual should consider all locations in which your employees may find themselves. To the extent he/she determines that a permit confined space may be entered by any employee all of the steps that are required to be taken for permit confined spaces need to be implemented.

A permit confined space is defined in section 1926.1202 as having one or more of the following:

1. Contains or has a potential to contain a hazardous substance.
2. Contains material that has the potential for engulfing an entrant
3. Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls; or
4. Contains any other recognized safety or health hazard (this includes such things as a high heat index environment).

If the competent person identifies a permit space the employer is required to:

1. Inform exposed employees by posting danger signs or by any other equally effective means; and
2. Inform, in a timely manner and in a manner other than posting it, employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space;

In your permit-required confined space program each entry employer must implement any means necessary to prevent unauthorized entry; identify and evaluate the hazards of permit spaces before employees enter them; and develop and implement the means, practices and procedures necessary for safe entry operations.

So, what are you to do as a construction contractor? Well, the first thing you have to establish is that if there are any confined spaces (within the definition in the standard) on or in your jobsite. According to the new standard this determination must be made by a competent person. While this same standard adopts the definition of competent person found in Section 1926.20(b)(2), the competent person needs to have the training and knowledge necessary to identify confined spaces and permit confined spaces. Understand that the standard provides definitions for host employer and controlling contractor. The host employer owns and/or manages the property on which the construction is occurring. The controlling contractor is the employer with overall responsibility for construction at the worksite. While these terms are used in the standard, Section 1926.1203(a) is very clear that **each employer** shall have a competent person identify all confined spaces in which one or more of its employees may work. Following this the competent person shall identify each space that is a permit space.

If you are an employer on a site in which a permit space has been identified and your employees have not been authorized to enter that space you must take effective steps to prevent your employees from entering that space. On the other hand, if you decide to permit your employees to enter the permit space, you must have a permit space program that complies with the requirements of Section 1926.1204.

There is an alternate procedure that can be adopted by an employer if certain conditions are met. These conditions require that you can demonstrate that all physical hazards within the space have been eliminated or isolated through engineering controls so the only remaining hazard would arise from a hazardous atmosphere. You must also demonstrate that continuous forced air ventilation alone is sufficient to maintain that the permit space is safe for entry. You must also develop monitoring and inspection data that confirms compliance with the requirements regarding how you addressed any physical hazards. The preceding determinations must be documented and made available to any employee who is to enter the space.

If permit spaces are identified the employer must have in place a permit-required confined space program. This program includes, at a minimum: (1) implementing measures necessary to prevent unauthorized entry; (2) identifying and evaluating the hazards of the permit spaces; and (3) developing and implementing the procedures and practices necessary to safely enter the permit space. In addition the permit space must be evaluated when entry operations are conducted and certain specified equipment must be provided. This includes testing and monitoring equipment. Finally, when entry is made one attendant must be provided for the permit space.

The permitting process is quite detailed. An entry supervisor must monitor the entry and be prepared to terminate the entry under certain conditions. The entry permit, once completed, must be made available at the time of entry to all authorized entrants or their authorized representatives.

The standard has a significant training obligation for the employer. Training must be provided to each employee whose work is regulated by this standard at no cost to the employee. You, the employer must ensure that the employee possesses the understanding, knowledge and skills necessary for the safe performance of the duties assigned under the standard. Retraining must be provided whenever there is a change in permit space entry operations that represents a hazard about which the employee has not been previously trained.

The attendant has specified duties. One interesting requirement is that the attendant may have no duties that “might” interfere with his/her primary duty to assess and protect the authorized entrants. For those familiar with the requirements for a safety monitor in a low-sloped roof fall protection program using safety monitors and warning lines – the safety monitor may have no responsibilities that might interfere with his duties as a safety monitor. In confined space the requirement does not seem as onerous. The standard itself implies that the attendant may have other duties, but

reminds us that his/her primary duty is as attendant. So, while the safety monitor in the low-slope roof situation may have no other duties (he/she may not even use a cell phone), the permit confined space attendant may be permitted some other duties within the parameters of the standard. The attendant must remain outside the confined space until he/she is relieved.

In addition the attendant, among other duties, must be familiar with the hazards that might be face during entry, be aware of any possible behavioral effects of hazard exposure in authorized entrants, consistently maintain an accurate count of authorized entrants in the space, and perform not-entry rescues as specified by the employer's rescue procedures. The attendant is also required to summon rescue and other emergency services as soon as he/she determines that the authorized entrants may need assistance to escape from permit space hazards. There are several more requirements, but the preceding are probably the most important.

This standard also has a requirement for a permit confined space entry supervisor. This individual has duties similar to the attendant, only more in a supervisory role. He/she, among other duties, is to be familiar with and understand the hazards of the permit confined space, verify that appropriate entries have been made on the permit, and verifies that rescue services are available, and remove unauthorized individuals. The supervisor also is authorized to terminate the entry and cancel or suspend the permit as required by Section 1926.1205(e).

As an employer who is going to rely on outside rescue services in case of an emergency you have several responsibilities. First, you are required to evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner. This is an interesting requirement, which actually depends on the kind of hazard(s) in the confined space. For example, Section 1926.103 requires that whenever employees are wearing respirators and are working in an atmosphere that is immediately dangerous to life or health (IDLH) there must be at least one rescuer immediately outside that area who is equipped with the necessary respiratory protection to perform a rescue if necessary. I suggest that each time you evaluate the capabilities of whomever you intend to rely upon for rescue that you document your evaluation and conclusions drawn. You must also provide the agency selected access to all permit confined spaces so that they can develop an appropriate rescue plan for each such space. There are several other requirements for the employer who chooses to use an outside agency to provide rescue services.

For the employer who chooses to use its own employees to perform a rescue there is a separate set of requirements. These include in addition to providing each member of your rescue team with all of the necessary PPE, to training each affected employee to perform his/her assigned rescue duties. Each affected employee must also be trained in CPR and first aid. If you are going to organize and rely on your won rescue team you are required by this standard to have the team practice making permit spaces rescues. At least one time every twelve (12) months these teams must practice making

a simulated rescue using manikins, dummies or actual persons from actual confined spaces similar to those which might be encountered in an actual rescue operation.

The first consideration in rescue operations is that non-entry rescue is the preferred means of rescue. Non-entry rescue is to be used: “unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant;” Section 1926.1211(c). This decision must be made before any one enters the permit space because if non-entry rescue is designated the employer must designate an entry rescue service using either its own employees or an outside agency.

This article is intended to cover the high points of the new standard. There are many more details to the standard that mandate a close reading before and while developing your confined space program. The employer is cautioned to keep complete and accurate records. I suggest maintaining a complete record of the competent person’s evaluation of all confined spaces on **all** job sites. The record should also include the evaluation of each confined space and the reason(s) it was determined to be or not to be a permit confined space. For each permit confined space a record of compliance of all of the procedures required by the standard should be maintained along with all entry permits. Remember if you are inspected between August 3, 2015 and October 2, 2015, you will not be cited for a violation of the construction confined space standard if you are making a good faith effort to comply with the new standard and you are in compliance with the training requirements of either 1926.1207 or 1926.21(b)(6)(i).