



P.O. Box 2939  
Eugene, OR 97402

800.551.8763  
Fax: 541.746.2940

[www.d2000safety.com](http://www.d2000safety.com)

September 27, 2011

Dave McLaughlin  
Department of Consumer and Business Services/Oregon OSHA  
350 Winter Street NE  
Salem OR 97301-3882

Dear Mr. McLaughlin:

The purpose of this letter is to offer comments on OROSHA's proposed rules regarding confined spaces 437-002-0146.

As you may know, D2000 Safety has been providing confined space training since the initial Federal regulations were issued. We offer train-the-trainer programs and our training materials are used by scores of facilities throughout the country. We also provide industrial rescue training.

Although I hate to use the term, 'expert' I do feel as though I have a good understanding of the issues associated with confined spaces. That being said, I would like to offer some comments regarding the proposed rule changes. I also plan to attend the October 7 meeting in Eugene. My main concerns are as follows:

**Page 6; Definitions, Note under third bullet.**

This states that if a fall hazard is the only hazard within a confined space, then this hazard alone would not cause a confined space to become a permit space. In the Federal letter of interpretation (02/23/1999 - Applicability of 1910.146 to fall hazards into pits) Federal OSHA determined that climbing down a ladder would not trigger the PRCS definition, but the proposed OROSHA wording takes this a step further and states that *any* fall hazard anywhere in the space would not trigger the PRCS requirements. Therefore if you had a confined space with a fall hazard deep within the space (not simply when entering the space), it would be possible for someone to enter the space all alone, fall, and not be able to self-rescue. A fall in a remote location like a confined space is potentially much more serious than a fall on the shop floor given that the faller may not be discovered for a period of time. In our classes we tell all the students that *any hazard that prevents self-rescue converts a confined space into a permit space*. This mirrors the Federal OSHA wording in CPL 2.100. I would urge OROSHA to remove this note since it goes against the intent of the standard.

**Page 17: 8. Rescue (B) (ix).** This states that rescuers must have the same training as entrants, attendants, and entry supervisors. This implies that workers trained to these levels can perform a rescue. While this may be true for non-entry rescue, workers conducting entry rescues must have additional training. The next section (X) references additional medical training. In our experience rescue teams should be able to perform basic spinal immobilization when packaging patients who may have fallen.

## Page 19: (9) Alternate entry.

This attempt to clarify alternate entry seems very problematic. Under the 1910.146 using (c)(5) or (7) means the employer is exempt from all requirements of the standard except for training. The wording in the proposed OROSHA regulation only exempts employers from needing a permit and does not define 'Alternate Entry' in a meaningful way. The flow chart in Appendix A, Part II tries to clarify this but this is non-mandatory. The proposed regulation also combines the requirements in 1910.146 (c)(5) and (7) which is a complete refutation of the Federal Letter of Interpretation 10/12/1995 - *Compliance Policy Concerning 29 CFR 1910.146*. To quote from that letter:

In relatively straight forward and uncomplicated situations, a case might be made that the use of a "elimination/(c)(5) hybrid procedure" is feasible and might not compromise the safety of an entrant. However, the Agency's recognition and approval of a procedure **not provided for in the standard** (*emphasis in original*) would sow further confusion in the regulated community and could have disastrous consequences for entrants in abused or misapplied, especially for situations where multiple hazards are present.

I agree with that assessment. Under the proposed OROSHA regulation, virtually all spaces can be entered under alternate procedures which implies that an employer could send a single worker out to space with atmospheric and physical hazards without the benefit of an attendant, a permit, an entry supervisor, or rescue services.

This problem is further compounded by OROSHA's omission of specificity in what constitutes hazard elimination. The Federal rules are very precise regarding hazard elimination for flowables. On page 27 of the proposed rules OROSHA implies that locking out flowables eliminates the hazard. Adoption of this would be a major step back in protecting workers since it means that locking a valve shut eliminates the potential for that valve to leak and endanger entrants. The Federal rules are very specific in this regard and should be reflected in this proposed standard.

## Page 25: 3-Not designed for continuous occupancy.

In this paragraph OROSHA says that in order for a space to be designed for continuous occupancy (therefore not a confined space), the space must be designed for someone to be 'permanently assigned to perform work there.' Any spaces entered intermittently would not meet this criteria since no one is permanently assigned to work there.

This paragraph implies that lift stations and enclosed areas equipped with lights and powered ventilation would have to be classified as confined spaces since no one is assigned there permanently. The duration of the assignment, or whether the job is permanent or temporary, should have no bearing on the efficacy of engineering controls. Either the hazards have been eliminated and/or managed through the use of engineering measures or they haven't. If it's safe to enter for five minutes, it should be safe for eight-hours.

Federal OSHA addresses this in their letter: 10/27/1995 - *Determining whether certain spaces meet the definition of a "confined space" according to the Permit-Required Confined Spaces standard*. To quote from this letter:

The third component in the definition is very clear for those spaces where a known or suspect hazard is considered and eliminated or controlled in the design of a workplace. When hazards are eliminated and/or managed through the application of engineering

controls for the safety and health of the humans who will be occupying the space, the employee protective measures, intended by the standard, have been met.

During our classes and seminars students have little problem grasping the reasoning behind this letter. To introduce OROSHA's 'enhanced interpretation' will only create confusion and will force employers to have to re-classify as confined spaces many spaces that are pose no hazards to entrants.

## **Page 26: Part II**

On this flow chart the employer must answer the question, "Can the [hazards] be controlled or eliminated?" If the answer is yes, the employer can use alternate procedures. If the answer is no, a permit must be used.

Is it truly OROSHA's belief that workers can be sent into any work location, much less a confined space, when all the hazards have not been controlled or eliminated? The flow chart seems to say that if there are uncontrolled hazards, all you need to do is to issue a permit and follow the requirements in the box immediately below the line. I have to assume that the wording on this flow chart is a mistake. I would expect the agency to classify as 'serious' any exposure to hazards in a confined space.

There are other issues with the proposed regulations but these were the ones that seemed most important. I was disappointed that OROSHA didn't address several shortcomings in the existing regulations. Among these I would list partial entry and prohibitions against bringing large quantities of hazardous materials into a permit space.

I look forward to the public hearing in Eugene on October 7, and since I may not be able to raise all these issues in that forum, I would appreciate having these comments entered into the public record. If you will be in attendance at that meeting, I look forward to meeting you.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Johnson  
CEO  
D2000 Safety, Inc.