

# Through the looking glass

## *A view into the new — and sometimes hostile — Regulatory Wonderland*

BY LARRY COFFMAN

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**F**or several years a regulatory volcano has been rumbling. On Jan. 13 the volcano erupted unnoticed amid the fanfare of the Presidential Inauguration, with publication of OSHA's Final Rule covering Confined Space Entry.

Like the volcanic eruptions in the Philippines last year, which scientists tell us is changing the global climate, the Regulatory Volcano will change the regulatory climate during the "Administration of Change." Through our looking glass we see many "seismic" events approaching and among the magma we see the OSHA Reform Act approaching the surface, which will criminalize noncompliance which results in death or serious injury.

It has taken so long for OSHA to finalize its Confined Spaces Regulation, we have become immunized to the expectation of its ever happening and now that it is a reality, it may be going unnoticed, while the effective date (April 5, 1993) is rapidly approaching.

Are you aware that discovery of non-compliance by the effective date of an applicable rule even some time later is a failure to comply? Here is a chance to avoid what appears to be a certain regulatory distress. Take the first steps toward compliance now.

Confined Spaces are not what our minds tell us they should be, the way this rule is written. We think of confined spaces as sewers and tanks and the like. Not so!

The new definition of a confined space is:

(a) any space on the workplace premises which is not designed for continuous employee occupancy

(b) where there is limited or restricted means of entry and exit

(c) where an employee can bodily enter and perform a work task

A Hazardous Confined Space is a confined space where there is or may be a hazardous atmosphere (actual or potential), and/or any other actual or potentially serious safety or health hazard. Lose an argument with OSHA over the word *potential* and you could be looking through bars instead of the looking glass because this is the basis of this new regulation.

Imagination plays an important role in "Regulatory Wonderland." You must try to imagine any potential which could classify a confined space as a Permit Required Confined Space subject to regulatory enforcement. Permit is the magic word. If you don't take imagination seriously, you can't imagine the problems you will be forced to deal with.

If a confined space has any actual or potential hazards associated with it, you must designate the space as a regulated space and post a sign reading: "Danger-Permit Required Confined Space. Do not enter."

Now comes the tough part. You have to "develop and implement" a written compliance program describing in specific detail how you will comply with the many requirements of this new regulation, unless you are classified as an Agricultural, Construction, or Maritime employer. Agricultural Services is not an exempt category, however.

If you have been conforming to the requirements of Florida Administrative Code Rule Chapter 38I-20, forget it. The new regulation preempted State Rules.

OSHA gives you a choice to permit your employees to enter a regulated confined space or to prohibit them from entering and resorting to outside contractors. Don't think this provides you with a way to avoid having to develop and implement a written program, however,

because construction contractors are exempt so you will be holding the bag. Any confined space entry on your premises requires that you have a written program to coordinate activities in accordance with your program. Gut wrenching, isn't it!

Time is running out. You'd better get started and list any location on your workplace premises which fits the confined space definition — then evaluate each of them for their potential for being regulated under this new rule. Document your survey and your determinations and your reason for making those determinations. If you decide that you have a confined space which is or could be classified as a regulated space, put up a sign, inform your employees to stay out (or else), and get started on your written program, and for heavens sake, don't let somebody convince you that their idea of a fill-in-the-blanks program is going to give you an E Ticket Ride in Regulatory Wonderland. They haven't looked through the looking glass and seen the "changes" to realize that the regulatory volcano is erupting.

Be careful of those who give advice about something they know little about — particularly where they haven't sat across the table from OSHA in resolution conferences. This new rule and those which are about to follow is expected to bring many unemployed and unqualified so-called consultants out of the woodwork looking for a gratuity. Check with Florida Administrative Code Rule Chapter 38I-10 to assure those who may advise you are "qualified to consult." The telephone number for the Florida Division of Safety is 800-367-4378. Ask OSHA to send you a copy of the new regulation. It is 29 CFR 1910.146. Your call won't trigger an inspection.

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**From the twin towers of the Department of the Environmental Revolution to the Governor's office, this has become one of the most complexing problems yet to be addressed.**

# Who's water is it — anyway?

BY  
TOM BENEFIELD  
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Some months ago I wrote for the *Florida Green* an article about how the water management districts were starting the process of forcing the waste water re-use issue through rule implementations in their water use permits. I spoke at the time on the merits of re-use water and how utilities under pressure from the water districts were developing their re-use plans. This article is a follow up to the one previously printed. For the next few minutes, I will share with you the current status of this resource impacting issue.

First off, let me point out one of the more positive aspects of the re-use problem. It has brought the water management districts closer together in terms of their rules. There is a big push from the capitol to have all of the five districts operate under the same rules and criteria. They have been meeting on a monthly basis discussing the theories and concepts behind their local rules. I believe we will see one set of rules come out of this process which will be adopted by all five districts. After reviewing the rules from all five districts, I have no doubt that the fairest and best set of rules of any of the districts is the rules from the South Florida Water Management District.

The main focus now is the problem of who is going to pay to implement the rules the water districts have written. The plans and programs the utilities have developed will begin shortly with some already in motion. As you see the next 24 months roll by, you will notice an increase in activity by these companies as they attempt to sell you not only on the idea of re-use but also on your paying for the cost of "implementing their programs."

Every one of the utility companies will come to you with the same pitch: that you should pay for this water because you are the beneficiary. However, we all know that there is a far greater beneficiary than us, the "urban population and its environment." By re-using their waste product which they are paying to have dumped either in the ocean

or their deep well system, we are providing them a desirable alternative benefiting both them and nature. I don't believe that anyone should have to pay to dispose of someone else's waste.

I live in Martin County where we have a creative (this is what the commissioners call it) garbage re-use program. We separate our glass, paper, and aluminum from the rest of our garbage and set it out for weekly pickup. We do not get paid to do this, quite the contrary, we pay them. Yes, imagine that we pay someone to dispose of our "recyclable waste" just like we pay them to buy the rest of our garbage. And my friend, waste is waste whether it is a solid, liquid or gas.

But yet, the utility companies, which include a lot of elected officials since all of the public utilities are operated in essence by the county or city commissioners via the various directors, feel that in the case of their wastewater the rules should be different. They like to ignore the basic facts of the issue and are working feverishly to legalize their own agendas which are full of "political ambitions" with no solid, concrete, rational or logical information to support their position. The old political feasibility game is the only tune they can play, looking at the short-term, never in terms of what is really best for the people. Sometimes the best medicine to take is the most bitter.

This issue of who is going to pay for implementing these re-use programs has drawn attention in Tallahassee. From the twin towers of the Department of the Environmental Revolution to the Governor's office, this has become one of the most complexing problems yet to be addressed. It has become so complex the different agencies in the capitol, as well as the water management districts, have asked the Public Service Commission to investigate the possibility of taking over statewide responsibility of rate-making for the cost of this "commodity."

Not only have they been asked to look at wastewater pricing (if any) but they have also been asked to determine if there is a need



## *This utility is telling golf courses in their area that “every golf course within one mile of their treatment plant must use wastewater, that it is the law.”*

for them to oversee the rate-making of both potable water and sewage charges of the utilities. This, my friend, is big news. News that the utility companies do not want to hear. All these local municipal governments and their crony lawyers and consultants rolling around deckside like loose cannons on a ship do not want anyone to look over their shoulder and tell them what they can and can't do.

There was a meeting recently at the district headquarters of the SFWMD in West Palm Beach. At this meeting was the legal staff of the PSC, district staff, just about every lawyer and high paid consultant in 16 counties and David Demmery and myself. One utility representative after another got to speak their piece on the affects of the PSC looking over their operations. Every single one of them said the same thing, “We don't want or need your help.” They believe it would cause a duplication of services and higher costs to them and the PSC is too far removed from the “local” situation to make a fair evaluation.

It is easy to see why they do not want a “big brother.” The very first thing PSC involvement would do is have people of the community asking their elected officials why they need these high-powered overpriced lawyers and consultants. If the PSC is going to set the rates, there would be little need for these other people.

I mean why do you need someone for court action if the PSC settles all disputes? Why do you need someone to tell what to set your rates at if the PSC does it for you? The only duplication of effort would be when the municipalities go out and hire someone to do a service which will already be provided to them free of charge. The big problem with this proposal is not the PSC but yet the “good ol' boy” network of lawyers and consultants and the inept ability of the local governmental officials both elected and appointed. The breaking up of this “pork chop” style of conducting business is at the heart of the matter.

Case in point is the meeting itself. Sixteen counties plus numerous utility companies were represented at the meeting but 80 percent of their representatives were either consultants or lawyers. The majority of the counties and utilities had no elected official or department head there at all. Here was a meeting where you would think that maybe, just maybe, the utility director or county commissioner might want to attend. But they were too busy. Besides, they could “pay” their consultant to come — wasting more of our money. And the consultants and lawyers? Well, it is in their best interest to have things unsettled, to create havoc and controversy. If the matter were settled, then their services would no longer be needed. As long as our local officials are taking their cues from these types of people, we will never progress from our present condition.

I listened carefully that afternoon taking in what each of the speakers had to say, then I took my turn. I told the panel from the PSC that there was a definite need for them to become involved. I told them of the high-handed tactics the utility companies were using. I told them of the “lies” which were being spread by the very people in that room. As I spoke, I could tell the panel was paying close attention and was writing down the issues I spoke of.

One of the things I told them was how a local utility was telling golf course owners blatant lies about the re-use issue. This utility is telling golf courses in their area that “every golf course within one mile of their treatment plant must use wastewater, that it is the law.” Well, it just so seems that there is no law of this nature. As a matter of fact, the water management staff were quite concerned at this news in that they are the only agency in the state which can create water policy and rules to implement their policy. The utility is spreading outright lies and using a tactic of fear and intimidation to get the golf courses to sign agreements on their

terms. And, of course, this utility is paying a huge chunk of taxpayers' money to its high-priced consultant.

There was one county represented at the table only by their utility director. He spoke about his re-use program which is the oldest in the state if not the country. His program also is the most efficient and reuses more wastewater than any in the eastern United States. What was the key to this seemingly perfect plan? What were they doing that the other utilities were not proposing? Why were they so successful?

The key to their success was very simple, really. They had determined long ago where the financial burden was to be placed. They took the time to look at the facts of who was creating it, who was not, who was available to offer large acreages of land and the circumstances around why they had to implement a re-use plan.

The reasons from they went to re-use was no different than the reasons all the other utilities in the state are having to go to re-use: the DER and water management districts are telling them they have to. They are not telling them to go to these programs because there is a golf course or orange grove down the street that they want to use. Not quite, simply these agencies are sick and tired of seeing this resource thrown away when it could and should be reused.

And the key to the great success of this number one re-use program in the southeast is also very simple. They don't charge one red cent for the wastewater. They pass all of the cost associated with the re-use program back to the people who created the problem in the first place. They made a practical, rational decision, not a political one. And as the county has grown, they have continued on this same track. As the utility director said “why fix it if it ain't broke.” The big fear that this official had was the PSC might attempt to make him charge for the wastewater and result in a cutback on the amount used. For he understands that the more he puts



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back into the ground, the more he can take out to expand his customer base.

I also told the PSC about financial and moral responsibility for the ultimate disposal of this wastewater. It truly is a clear-cut issue if you examine the facts. The only ones muddying up the waters are the "experts." It seems ironic that the individuals who market themselves as "experts" are the ones who are most afraid of the PSC oversight proposal.

This issue of PSC oversight has not been decided on yet. They will be gathering more information over the next ten months before the legal staff makes a recommendation to the PSC commissioners and the governor's office. After that, there will be a tough battle in the legislature to enact it into law. I feel that this is our best hope to get a statewide rate program which can apply to everyone. The cost-free program, such as the one in Orange County, is the one I press for every time I have the opportunity to speak

to any agency. But more needs to be done.

On the local scene, you need to inform your club president, greens chairman and members. You need to educate them on the high-handed practices of the utilities. You need to reach out to your water management districts and bring in a staffer who knows what is going on and let him speak to your members. Most of all, you should hold off on signing any contract with a utility unless there is no charge or the fee is less than five cents per thousand gallons and it is long-term with automatic renewal clauses. It is very important that members realize they are not the only ones they will affect if they sign a contract.

The utility will use it as proof that not only can we afford to pay but are most agreeable to paying. They must realize there are others not quite so fortunate as they may be when it comes to finances

and are unable to pay what they might be willing to pay.

It has been a long struggle. From August of 1990 where we received notices of 80% reductions in our water use permits to force us to wastewater to today. Today we have gotten our message to all the state agencies and even the governor's office. We have started them thinking about our side of the story. We have won over some valuable allies but have still more to convert.

We have gotten a reprieve on the 80% reduction rule. We have bought ourselves some time. Time which we should not waste. Time where our efforts in this area should be increased. Time where the educating of our members is as important as educating the PSC and DER.

Let's not waste it, if we do we will only have ourselves to blame for the untimely demise of the future of golf in our great state.

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# A failure to communicate!

**F**or trivia buffs, those fateful words in the title of this column were uttered by the sheriff in the Paul Newman movie, *Cool Hand Luke*. They might as well have been spoken by a golf course superintendent in the course of any given day, judging by recent events.

My esteemed colleagues, Mark Jarrell and Tom Benefield, have already commented thoroughly in *The Green Sheet* on the GCSAA's failure to communicate accurately on member sentiments surrounding the soundly-defeated bylaws changes. There are other after-the-fact communications coming out of headquarters that have many members concerned about how things are being run. We are hoping for better information sharing from the new Board.

But my point is the failure to communicate within our own golf operations! We have all been victims of the surprise shotgun tournament that gets sprung on us at the last minute. What in the world is going on in the clubhouse anyhow? Besides telling the pro shop staff and the food and beverage department, what other department or person might need to know about an 8 a.m., 144-man, shotgun start tournament on a Monday morning? Hmmm?

You know Mondays: they're like Wednesdays, and Fridays when the golf course maintenance staff (only for the last millennium) sets cups, mows greens, tees, collars, and fairways plus any other bunker raking and rough mowing routine. And Tuesdays and Thursdays when we park the tee and collar mowers to flymow bunkers or apply some fertilizer or work on a project. These schedules aren't set in concrete. We can accommodate any special function. It is our job! We just need to know about it!

It is also our job to prepare and present the best playing conditions possible. Since golf courses are operated on an economic calendar instead of an agronomic calendar, we need to know what days or even half-days that we can't have the golf course for normal operations. We do our best to squeeze the agronomy in between the first tee times at sunrise, twilight play, Men's Days, Ladies' Days, group functions, and any other special event where no one wants the maintenance staff to "be in the way"!

This communication problem isn't just a Central Florida phenomenon. I just read the Wisconsin GCSA newsletter, *The Grass Roots*, wherein a group of superintendents detail a list of their communication horror stories: surprise shotgun starts, "nite lite" golf outings that get drenched by

the night-time irrigation, a special group function that finds the aerifier, not a mower, preparing the greens, and so on! All examples of the inexcusable failure of the tournament coordinator, club manager, convention sales staff, golf professional, starter's office, etc. to communicate with those who need to know!

Why do these communication failures continue week after week, month after month, year after year? The superintendents in Wisconsin had several fuzzy organizational reasons, but Monroe Miller hit the nail on the head when he said, "somehow we scramble around and make things right." There it is! We jump through the hoop and perform the tricks that cover up the lack of attention to detail by others. That kind of performance would get a superintendent called on the carpet or fired if he persistently ignored communicating with the clubhouse!

Wouldn't it be interesting to hear the comments from the golfers after a very special event was played on unmowed or freshly aerified greens with no attempt to correct somebody else's mistake. Professional pride and a strong survival instinct prevents most of us from letting some of these potential disasters from unfolding. Because, in some twisted way, we feel it will be construed as being our fault if the course isn't ready. Even, if we only had last-minute notice of an event! It may be a good defensive tactic for the superintendent to call every day to find out what's on the schedule, or if the published schedule has changed. But, trust me, even that is not foolproof!

Doesn't it just seem logical, responsible, and professional that the person, who has first-hand knowledge of information that will affect how the club serves its members or guests, should be the person to insure that communications reach all those who need to know. Of course, I'm being selfish here to include the superintendent as one of those who needs to know.

Hasn't it occurred to everyone associated with golf that it is the condition of the course that makes or breaks an event and generates repeat business or memberships? With all the answering machines, fax machines, and voice mail features available there just isn't any excuse for springing a surprise on the staff anymore.

Now that I have practically accused all of the tournament sales people, golf pros, and club managers of dereliction of duty and malfeasance in office, let me say, I know you are really human just like me so, put down your sticks and stones and just pick up the cotton-picking phone!

## Green Side Up



Joel D. Jackson, CGCS