

# Through the looking glass

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

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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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