



**INTEROFFICE MEMORANDUM**  
**Oregon Occupational Safety & Health Division**

November 10, 2008

**TO:** All OSHA  
**FROM:** Marilyn Schuster  
**SUBJECT:** Application of Confined Space Standard

Recently, questions have been raised regarding the application of the Confined Space Standard. Specifically, questions have been raised as to whether a permit required confined space that initially contains both atmospheric and other hazards can be entered using one of the options for permit entry.

These questions and answers are intended to clarify those issues.

*Can a space with atmospheric hazards be entered using the provisions of [1910.146\(c\)\(5\)](#) if the non-atmospheric hazards have been “eliminated” in accordance with 1910.146(c)(7)?*

No. The alternate entry procedures of C5 are available only when the space initially contains only atmospheric hazards. The rule does not allow alternate entry when both atmospheric hazards and non-atmospheric hazards must be addressed.

The rule itself states in 1910.146(c)(5)(i)(A) that alternate entry is available only when the employer “can demonstrate that the only hazard posed by the permit space is an actual or potential hazardous atmosphere .” The federal OSHA preamble discusses the restriction as follows:

The first condition, set out in paragraph (c)(5)(i)(A) of the final rule, is that the employer must be able to demonstrate that the *only hazard* posed by the permit space is an actual or potential hazardous atmosphere. The procedures required under paragraph (c)(5)(ii) are only appropriate for atmospheric hazards, and the spaces for which these procedures can be used pose only this type of hazard. If the space poses other hazards as well, either *all the hazards must be eliminated*, under paragraph (c)(7) of the final rule, or the space may only be entered following the full permit space procedures set out in paragraphs (d) through (k). [emphasis added]

The rule and federal preamble clearly limit the application of 1910.146(c)(5) to spaces containing only atmospheric hazards. Otherwise, either all hazards (including the atmospheric hazards) must be eliminated or the full permit space procedures must be followed.

*But if the non-atmospheric hazards have been eliminated under (c)(7) and the atmospheric hazards are controlled under (c)(5), shouldn't any violation of the permit space procedures be considered de minimis?*

No. It is not appropriate to treat a violation as *de minimis* when the hazard remains present, although controlled. Atmospheric hazards are not eliminated by (c)(5), and the permit space procedures (including the attendant and rescue) provide meaningful protection to workers. In addition, the likely inherent complexity of any system with multiple hazard types justifies treating situations with such multiple hazard types more cautiously than systems where the only hazards present are atmospheric.

*Does this mean that an employer with multiple hazard types can never avoid the full permit space procedures?*

No, it does not. In contrast to some common misunderstandings of the rule, employers can take advantage of 1910.146(c)(7) to address *both* atmospheric and non-atmospheric hazards.

The rule states at 1910.146(c)(7)(i), "If the permit space poses no actual or potential atmospheric hazards and if all hazards within the space are eliminated without entry into the space, the permit space may be reclassified as a non-permit confined space for as long as the non-atmospheric hazards remain eliminated."

This effectively requires two things: the absence (or elimination) of any actual or potential atmospheric hazards *and* the elimination of any other hazards. This reading of the rule is supported by the specific language in the note to (c)(7)(ii), which reads "Control of atmospheric hazards through forced air ventilation does not constitute elimination of the hazards. Paragraph (c)(5) covers permit space entry where the employer can demonstrate that forced air ventilation alone will control all hazards in the space." The distinction in the note would be unnecessary if the standard completely precluded the possibility of atmospheric hazards being eliminated by other means.

In addition, the preamble contains the following statements when discussing (c)(5):

For spaces with atmospheric hazards and for spaces with non-atmospheric hazards that can only be eliminated through entry into the space, the permit space can first be entered following all the requirements spelled out in paragraphs (d) through (k) of the final rule; and, after the employer certifies that the hazards have been eliminated, the space can be reclassified as a non-permit confined space.

. . . . .

OSHA believes that the approach taken in paragraphs (c)(5) and (c)(7) of the final rule is consistent with that taken in ANSI Z117.1-1989. The major difference is that the consensus standard treats all non-permit required confined spaces alike, whereas the OSHA standard separates them into two categories - permit spaces with atmospheric hazards controlled by means of ventilation alone and permit spaces that have been reclassified as non-permit confined spaces because the hazards have been eliminated.

Further, in its discussion of (c)(7) itself, the federal OSHA preamble includes the following clear statements acknowledging that atmospheric hazards might be eliminated, rather than simply controlled:

Permit spaces that contain or have the potential to contain hazardous atmospheres may also be reclassified as non-permit spaces, under paragraph (c)(7)(ii) of the final rule. The Agency believes that these spaces need to be treated the same as any space that must be entered in order to eliminate hazards. After this type of space is isolated, purged, and ventilated from outside, it must be entered to test the atmosphere and inspect conditions within the space in order to ensure that the hazards have indeed been eliminated. (Once again, control of a hazardous atmosphere is not the same as its elimination.)

In summary, if a space initially includes both atmospheric and non-atmospheric hazards, the space can be entered using one of two methods: reclassification following the elimination of all of the hazards, or entry using the full permit procedures. Alternate entry under 1910.146(c)(5) is *not* an option.