

October 30, 2008

Hasina E. Squires
Government Affairs director
Special Districts Association of Oregon
P.O. Box 1745
Lake Oswego, OR 97035

Dear Ms. Squires:

At the October 21st meeting of the Fire Fighters Confined Space Rules Advisory Committee I understand that the issue of employer responsibility during emergency situations continued to be a focus of discussion. You asked in your subsequent e-mail for an agency interpretation on the issue. Oregon Rules for Fire fighters at 437-002-0182(5) (b) (A) provides:

“It shall be the responsibility of the employer to establish and supervise a safe and healthful working environment, as it applies to non-emergency conditions or to emergency conditions at the scene after the incident has been terminated by the office in charge. ...”

Although this standard has been referred to by some in the industry as a “get out of jail free card,” that is not and was never the intent. The purpose in adopting this standard was to clarify that the agency recognizes that an employer’s general duty to provide a working environment that is safe and healthy must be understood differently when the employer does not have actual control of the worksite on a daily basis and is responding to an emergency. For a fire service that means that the employer must provide a safe and healthy working environment beyond even what is specified in particular rules for the fire station, for live fire training activities and for a fire scene after the emergency incident is terminated. During the actual emergency an employer could not be expected to have the knowledge or control of the environment to make it safe and healthy to the extent that they could in a normal worksite, particularly in the case of a burning structure.

What the fire service employer is expected to do is provide (and enforce) the policies, training, and PPE to firefighters that will make their work – including their work during emergency response – as safe and healthy as possible given the inherent risks. Although Oregon OSHA will not (and cannot reasonably) expect a fire department to eliminate those inherent risks, it was never the rule’s intention to suggest that “anything goes” when it comes to an emergency response. Rather, the contrary is true. If this standard were indeed meant to be a complete exemption for all activities during emergency operations it would not include provisions such as those for incident commander responsibilities and incident management systems.

Sincerely,

Marilyn K. Schuster
Policy Manager
Oregon OSHA
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