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Q&A: OSHA RULE FOR CONFINED SPACES IN CONSTRUCTION

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After many years of anticipation, OSHA has released the final rule for 29 CFR 1926.1200 known as subpart AA, or more simply, "Confined Spaces in Construction". The rule took effect August 3, 2015. There has been a long debate regarding how this would affect those working in the sewer services industry with many questions arising. Let's try and tackle a few now that the final rule is published:

Does sewer work require compliance with the new CFR 29 1926 subpart AA? – Confined Spaces in Construction?

In most cases, yes. The definition in 1926.32(g) states "For the purposes of this section "Construction Work" means work for the construction, alteration, and/or repair, including painting and decorating." Clarification can be found in an OSHA letter of interpretation dated 11/18/03 which explains that maintenance (which would be covered under the general industry standard) involves "keeping equipment working in its existing state, i.e. preventing its failure or decline. Also, note that painting, which is a coating, is considered construction. Hence, simple jetting or TV inspection

would likely fall under the general industry standard. Grouting, lining, manhole rehabilitation coatings, short line repairs will be interpreted as "construction" and would fall under the new standard.

If crews are alternately performing maintenance and construction tasks which standard must we follow? OSHA has issued an interpretation that states that if workers are engaged in both construction and general industry work in confined spaces, employers will be considered in compliance in both instances if they meet the requirements of the new construction standard.

Have there been changes to the training requirements? The employer must certify that training has been presented to each employee who is affected by the new construction standard and each employee must demonstrate understanding and proficiency. Of particular interest is a requirement which has been added that training shall be presented in both a language and vocabulary that the employee can understand. If an employer has a multilingual workforce, training in each employee's language will be required.

Also, the confined space supervisor is now defined as a "qualified person" which by definition is a "person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project". This implies the entry supervisor is expected to have greater knowledge and higher degree of understanding regarding confined space procedures.

Are there changes to atmospheric monitoring requirements? It is now specifically required that the atmosphere be tested for acceptable conditions before changes to the space's natural ventilation are made with measurements documented on the entry permit. The atmosphere must be monitored continuously unless the employer can demonstrate that periodic monitoring is sufficient which is unlikely in a sewer environment.

Do we have any obligations if confined space entry is performed by any subcontractors? OSHA has defined the "host employer" (owner) and the "controlling contractor" (overall responsibility for the work being performed). If neither one is present at the worksite, the employer who arranges to have another employer perform confined space work must fulfil the general requirements of 1926.1203. Essentially, this means you must insure the subcontractor is competent and following proper procedures as set forth in the standard.

Are there any other "need to know" changes?

- Early warning system – An early warning system that continuously monitors for engulfment hazards upstream must be provided. There is no exception at this time for small diameter sewer pipes which would be unlikely to surcharge quickly.
- Fall protection – When entrance covers are removed accidental falls must be prevented by railing, temporary cover, or barricade.
- External hazards - As sewer work is generally performed in the street, proper work zone set up consistent with the M.U.T.C.D. will be necessary to protect workers from traffic hazards.

OSHA has issued a "Temporary Enforcement Policy" for the rule postponing full enforcement for 60 days or October 3, 2015. Until then they will accept a "good faith effort to comply".

More resources and links can be found at <https://www.osha.gov/confinedspaces/>