

13. Paragraph 17. Attendant

Clause 17.(1) should be revised to read: "The employer shall assign a 'competent' attendant". Competent shall mean an individual who has been trained to perform the task as described in this paragraph. The regulation or the plan should indicate that the attendant is neither to perform a rescue nor to enter the confined space for any reason.

Clause 17.(3). PEO suggests if the attendant leaves the workers in the space, the workers must have a suitable means for summoning assistance.

14. Paragraph 18 Means for Entering and Exiting

PEO suggests that this statement is vague. If the workers do not have an "adequate means for entering", it is unclear how they will get into the confined space. If the statement is intended to mean that the means for entering and exiting shall be an opening greater than or equal to a specified size, and that there shall be access either from the floor, a ladder or using ropes, and that it shall not have a freely swinging door that can lock, etc., this paragraph should specifically mention these requirements.

15. Appendix 1. Confined Space Guideline–Key Topics

Sentence 9. This description of emergency equipment should include specification of equipment test requirements and qualification of the inspectors.

Sentence 18. This sentence should include roles and responsibilities for the work group supervisor, inspectors and the worker.

Sentence 18. Roles and responsibilities for "qualified person" and "competent person" should be suitably defined so that employers, workers and others can unambiguously determine whether a particular individual is qualified or competent. This can be achieved by reliance on licences, certification or proven completion of specific training courses.

PEO hopes these comments are useful to the further development of the draft Regulation, and we welcome the opportunity to remain involved in advising the Ministry of Labour in areas relating to the licensing of professional engineers and the practice of professional engineering.

Should you have any questions about this submission, please contact Bernard Ennis, P.Eng., Manager, Professional Practice, at (416) 224-9528, ext. 499.

Yours sincerely,



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President

8. Paragraph 9. Emergency Equipment

Clause 9.(5). This clause should be revised to indicate that inspection records can also be stored in secure electronic form.

PEO suggests the addition of the following: (6) "The employer shall ensure that the persons trained in the use of the rescue equipment are readily available to the work site."

9. Paragraph 12. Warning Signs and Barricades

This should include installation of signs in all areas (adjacent or remote) where unrelated work may be done that could affect the confined space.

10. Paragraph 13 Atmospheric Testing

Clause 13.(1). This clause makes reference to a qualified person but fails to define the necessary qualifications. At the least, this clause should define the tasks required to perform a pre-entry test and the skills required for competence in performing these tasks.

Clause 13.(2). The definition of a new entry could be onerous, e.g. where there is one worker in the space. It requires a full atmospheric test every time he comes out for any reason. It is also less necessary in mechanically ventilated spaces.

11. Paragraph 14. Ventilation and Purging

Clause 14.(5) seems to be misplaced. The inspection of safety equipment is covered in section 9.

12. Paragraph 15. Explosive or Flammable Substances

Clause 15.(3)(b) stipulates that a qualified person must develop the protective procedures but fails to distinguish the requirements for qualification. At least this clause should define the tasks required to perform the pre-entry test and the skills required to competently perform these tasks.

Clause 15.(3)(c) uses the words "hot work permit". However, it is unclear where hot work permit is defined and there is no description of the procedures for completing it.

Clause 5.(4). The employer must ensure that the worker is competent to perform duties related to the confined space.

Clause 5.(5). This clause should be revised to read: "The employers shall ensure that the plan is reviewed, signed and dated by a professional engineer as often as is necessary and at least once a year to ensure that it is adequate."

5. Paragraph 6. Continuing Responsibility

PEO recommends that a clause stipulating the following be added: "The employer should ensure that work related to the confined space is stopped immediately upon identification of a change that could affect the confined space until the change is covered by the plan."

6. Paragraph 7. Training

Clause 7.(1) indicates that the worker is not the "qualified person" however throughout this regulation the term "qualified person" is used too loosely. There should be different categories of persons such as worker, supervisor, trainer, etc. defined. The U.S. Department of Labour's regulation OSHA 1910.146 (b) provides definitions of this kind.

Clause 7.(3) should be revised to indicate that training records can also be stored in secure electronic form.

7. Paragraph 8. Entry Permit System

Clause 8.(1). This clause is not clear. PEO assumes that the entry permit system is intended to control entry into the confined space, rather than the workplace. However, this clause as drafted might be incorrectly interpreted.

Clause 8.(3). PEO suggests that this clause add another item: a requirement to record the responsible work supervisor's name and signature on the entry permit. The regulation or the plan should provide a procedure for cancellation of permits during the validity period.

Clause 8.(3), part 9. PEO suggests that it might not be possible for **all** persons to verify that **all** requirements have been met in a complex long-term job where people leave, are reassigned, or are otherwise unable to verify the requirements. The regulation should clarify what to do if not all persons can verify the requirements, for example whether a class of persons (i.e. supervisor) is required to verify rather than a particular individual.

Clause 8.(3). PEO suggests the addition of a new sub-item: "A listing of all sources of materials, fluids, gases, and energy that can enter the confined space and a confirmation that they have been prevented from entering."

work, it does not fall within the practice of professional engineering and, as a result, a professional engineer must not affix his or her seal to the document. According to the *Professional Engineers Act*, a professional engineer's seal is to be used only on documents that are works of professional engineering.

If the intention of this clause is for the "qualified person" to declare his or her competence to prepare the assessment it is not clear how this is accomplished for the case of those other than professional engineers. There is no indication that the "qualified person's" knowledge, training and experience are evaluated. On the hand, if the definition of "qualified person" is restricted to licenced individuals then the Ministry can rely on the evaluation of an individual's knowledge, training and experience that is done by licencing bodies.

Clause 4.(5). This clause should be revised to read: "The employer shall ensure that the assessment is reviewed, signed and dated by a professional engineer, as often as is necessary, and at least once a year to ensure that the corresponding plan is adequate."

PEO recommends that the plan be reviewed to ascertain whether any changes to facility or procedures will affect the plan. Where a professional engineer is responsible for preparing the original plan, all subsequent assessments and modifications of such work would also fall within the practice of professional engineering and therefore must be done by professional engineers.

4. Paragraph 5. Plan

Clause 5.(1). There is no indication of who should be responsible for preparing the plan. Clearly, in the absence of a prescriptive methodology for plan development or any Ministry appraisal of either the "qualified person" or the plan, it is necessary that the "qualified person" should be an individual accountable to the public through a legislated regulatory body for his or her actions. PEO contends that, as with pre-start health and safety reviews, the plan development, which involves professional judgement, should be assumed by professional engineers.

This clause should clearly indicate that the plan is to define measures to minimize any hazard risks before the plan to control hazards is considered.

The plan should be site specific, not a generic plan used for multiple sites, and therefore the Ministry should rely on an accountable individual to ensure that the employer complies with this requirement.

The employer must have an effective method for identifying changes that may affect the confined space before the program can be reviewed. PEO recommends that this method must be more clearly defined, since it can be a complex task in an industrial setting such as a power station.

Clause 5.(2). PEO recommends that this clause indicate that the procedures for controlling hazards must minimize risk.

then the regulation must define “qualified person” in terms of the necessary level of public accountability to assume such responsibility. Clearly this can be best achieved by equating, where appropriate for the task, qualified persons with licenced individuals. Since the public accountability of licensed individuals is backed by their regulatory bodies’ delegated authority to license and regulate specific practices on behalf of the government of Ontario, the Ministry can achieve an acceptable level of responsibility for worker protection through this framework. PEO also suggests that defining “qualified persons” through existing legislative instruments and frameworks will avoid creating additional administrative burden for practitioners or the government.

2. Paragraph 3. Program

Clause 3.(1). There is no indication of who should be responsible for preparing the plan. Clearly, an accountable professional with a commitment to health and safety considerations should be entrusted with this responsibility. PEO contends that, as with pre-start health and safety reviews, the plan development should be the responsibility of professional engineers.

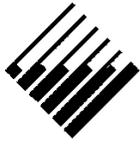
The employer must have an effective method for identifying changes that may affect the confined space before the program can be reviewed. PEO recommends that this method must be more clearly defined, since it can be a complex task in an industrial setting such as a power station.

3. Paragraph 4. Assessment

Clause 4.(1). There is no indication of what qualifications are required for a person designated as a “qualified person” for the purpose of carrying out this assessment. Clearly, a primary qualification should be that a “qualified person” be an accountable to the public for his or her actions in regards to health and safety considerations. Though the *Occupational Health and Safety Act* imposes penalties on individuals who fail to comply with the Act or its regulations there is no accountability for incompetent or negligent actions taken under the Act. For this reason PEO contends that, as with pre-start health and safety reviews, the plan development should be the responsibility of professional engineers who, as licenced members of a self-regulating profession are subject to discipline, remain accountable for *how* they fulfill their duties as well as for *what* they do or fail to do.

Clause 4.(4). This clause, since it allows for the possibility that both professional engineers and non-engineers can be responsible for the same work, is not consistent with the *Professional Engineers Act*. If the assessment is judged to be within the practice of professional engineering, a professional engineer must take responsibility for it. If others can take responsibility for this

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Re: Confined Space Regulation

Dear Mr. Vander Doelen:

Professional Engineers Ontario (PEO), the licensing and regulating body for professional engineers and engineering in Ontario, appreciates the opportunity to comment on the proposed Confined Space Regulation under the *Occupational Health and Safety Act*, which has been reviewed by members of our Professional Practice Committee.

Comments

1. Paragraph 1. Definitions

Regarding the definition of "atmospheric hazards" in subsection (c). The definition should also include contaminants that are known to have long-term detrimental health effects. The regulation does not appear to address or raise the issue of engulfment hazards such as water and other liquids or flowable solids.

Regarding the definition of "confined space" in subsection (b). PEO suggests that the definition be revised to read "work that is done in it or near it".

The definition of "qualified person" does not provide an adequate standard for determining whether a particular individual is qualified for specific tasks described in this regulation. Without clearly defined qualification standards for various tasks, an employer or individual with limited knowledge and experience may be overly optimistic in evaluation of the individual's qualifications. If the Ministry's aim in this important public policy initiative is to achieve responsibility for activities vital to the public welfare

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