

February 27, 2008

The Honorable Edwin G. Foulke, Jr., Assistant Secretary
c/o Docket Office (via fax 202-693-1648)
Occupational Safety and Health Administration
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: **Comments to Proposed Rule on Confined Spaces in Construction
OSHA Docket No. OSHA-2007-0026**

Dear Assistant Secretary:

On behalf of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA), we hereby submit the following comments for the Occupational Safety and Health Administration (“OSHA”) Proposed Rule on Confined Spaces in Construction – OSHA Docket No. OSHA-2007-0026.

SMACNA is an international trade association representing 4,500 contributing contractor firms, and is dedicated to promoting safety, quality and excellence in the sheet metal and heating, ventilation, and air conditioning (HVAC) industry. SMACNA has national offices in Chantilly, VA, outside of Washington, D.C.

Summary Position Statement

SMACNA’s interest in this proposed standard and our concerns with the proposed confined space classifications are unique, in that, our member companies and their employees must approach the topic of confined spaces on two fronts. Our members perform work in their own fabrication shops, as well as other industries when working on client manufacturing sites (General Industry), and on construction project sites (Construction). Due to this fact, many SMACNA members have been applying the OSHA general industry standard for confined spaces in many applications and situations. **It is for this reason that we ask that OSHA reconsider the proposed confined space classifications and revise or adapt them so they are more in-line with existing general industry standard definitions and applications.**

Most SMACNA contractors, as well as thousands of other similar contractors in the United States, who have worked in confined spaces on construction sites have applied the existing requirements of the general industry standard. This important familiarity will be lost if OSHA continues with the proposed rule. That “familiarity” includes many hours and dollars spent training employees, buying equipment, and generally complying with the general industry standard requirements.

Because these contractors are already familiar with the general industry standard for confined spaces and its requirements, it is only logical that the standard should be the basis for any additional requirements deemed necessary in a construction setting.

As an example, contractors often conduct construction related work on client general industry sites (host employers on large industrial or manufacturing facilities). These client sites have existing general industry confined space procedures in place and it would be much more practicable to adhere to the client's requirements for confined space entry if both organizations have confined space programs that were similar. In this scenario, and applying the proposed standard for construction along with the existing general industry standard, the two organizations (the contractor and the host employer) would have two very different approaches and incompatible definitions to safely address procedural requirements of confined spaces.

Small Business Advocacy Review Panel

SMACNA agrees with the comments from members of the Small Business Advocacy Review Panel (Small Entity Representatives-SERs) during the Small Business Regulatory Enforcement Fairness Act (SBREFA) review process, as detailed in the preamble to the proposed rule. They believe that the basic provisions of the general industry standard are already being utilized and they are knowledgeable with those requirements, as stated:

"Most SERs indicated a preference for using the general industry standard for construction work, as opposed to the draft proposed standard."

OSHA needs to re-visit the suggestion of the SBREFA panel when they discuss the difficulty in reading the proposed regulation and understanding the various classifications:

"Almost all of the SERs found the draft proposed standard difficult to follow. The SERs stated that they currently were using the general industry standard and were familiar with it."

OSHA obviously saw the need to retain the existing requirements when they state:

"OSHA has adopted many of the general industry provisions, and adjusted them for use on a construction worksite."

Unfortunately, OSHA did not go far enough in retaining the provisions of the general industry standard because the proposed standard is still needlessly complex. The compliance efforts required for our member companies, and many other small businesses, would be very complicated and costly due to the many revisions to existing programs that will have to be made, with very little added benefit to the safety and health of workers.

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Indeed, OSHA should be applauded for deleting the classification for “hazardous-enclosed spaces” as recommended by the SBREFA panel, and attempting to address several issues including work conducted in manholes and sewer lines (continuous systems). However, these issues can thoroughly be addressed with modifications to the existing general industry standard with particular issues addressed through changes to entry permits and related terminology, and additional instructions in appendices.

Modify Entry Permits

The general industry standard for confined spaces emphasizes the use of entry permits as a way to analyze the space (a hazard assessment tool) and provide pre-entry instructions. This form of “checklist” is a very reliable way to address hazards, and construction supervisors and foreman are very familiar with checklists as an appropriate means of hazard assessment. The entry permit is important to a confined space program and should be used as a tool to capture the variations in confined spaces, instead of creating new classifications, as proposed.

For example, instead of having a separate classification for “Controlled Atmosphere Confined Spaces”, as proposed, we suggest that OSHA simply modify the entry permit to reflect requirements for this lesser degree of permit-required space. OSHA already sees that these spaces do not result in the same degree of hazards, so why not allow for this in the entry permit, versus a whole new category of confined space?

SMACNA agrees with OSHA regarding the need for additional attention focused on “continuous confined spaces” such as sewers and tunnels. However, rather than giving these permit-required confined spaces a separate classification, the entry permit (and instructions) should be modified to address the additional hazards and abatement issues involved with these spaces, as outlined in proposed Section 1926.1215 (i.e., early warning systems). This same logic applies to “Isolated Hazard Confined Spaces”, as proposed.

Other Alternatives

We strongly suggest that OSHA keep the existing (general industry) definitions of confined space and permit-required confined space with additional language revisions to address the issues in the construction industry, while keeping the flexibility to classify confined spaces based on the conditions or circumstances of individual work environments.

SMACNA suggests that OSHA look at successful state OSHA agency rules such as the State of Washington standard on confined spaces that is applicable to ALL industries. It is concise enough to provide adequate worker protection, yet flexible enough to pertain to a variety of work situations and industries. It is based on the two classification system – confined space or permit confined space. Yet there is a helpful tool that addresses “sewer system entry” (continuous systems).

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This proposed rule imposes a requirement to have a copy of the standard or a written program on site at all times. OSHA standards are generally not appropriate reference tools for construction sites. The proposed standard, like many OSHA standards, is difficult to read for individuals unfamiliar with the format and very vague as it relates to certain requirements. OSHA should provide an easy to read, understandable, model written program that can be modified as necessary, and kept on-site and applied as needed.

One specific issue that certainly needs further clarification is the concept of hazards that are “near” a confined space, as first mentioned in the scope of the proposed standard and used extensively throughout the proposed standard. OSHA has not provided a clear definition for “near” and this is very vague. Hazards outside of confined spaces are covered by other OSHA standards.

The general industry standard addresses “...the hazards of entry into permit-required confined spaces.” There is no mention of application to hazards that are “near” confined spaces in general industry. OSHA should provide clarification on how and why hazards near a confined space affect this proposed standard.

SMACNA requests that OSHA revise the proposed rule to reflect requirements that are more closely tied to the general industry standard. This would simply involve enhancing the existing general industry standard to encompass hazards peculiar to the construction industry. We will continue to encourage our members to provide adequate safety and health measures when dealing with confined spaces.

Sincerely,

Michael A. McCullion, CSP, ARM
Director of Safety and Health
SMACNA

cc: OSHA Docket Office