



June 30, 2005

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Dear Mr. Vander Doelen:

**Re: Draft Confined Space Regulation for Industrial Establishments**

Thank you for the opportunity to be consulted on the June 1<sup>st</sup>, 2005 draft of the Regulation for Confined Spaces for Industrial Establishments. We are pleased that the Ministry continues to address our concerns with these drafts, and to request our input as this proposal takes shape. Our comments on this latest draft follow.

**Coordination Document (Section 119.3)**

1. *Sub-section (1) states: "This section applies if workers of more than one employer may perform work in the same confined space or related work with respect to the same confined space."*

We request that it be clarified that a coordination document is needed only if workers of more than one employer may perform work in the same confined space *at the same time*. If workers of one employer will be working in a confined space during a specific period of time, and that employer fulfills all the requirements of the regulation, and workers of another employer will work in the confined space at another (non overlapping period of time), and that employer fulfills all the requirements of the regulation, then a coordination document should not be required.

We suggest that this sub-section be worded (or similarly) as follows:

*"This section applies if workers of more than one employer may perform work during the same period of time in the same confined space or related work with respect to the same confined space."*

2. *Sub-section (6) states: "When the co-ordination document requires the principal or other employer to perform a duty referred to in subsection (2) on behalf of another employer,*
- (a) the other employer is not required to perform the duty, but shall take reasonable steps to determine that the duty is being performed adequately; and*
  - (b) if the other employer becomes aware that the duty is not being performed adequately, the other employer shall not permit the other employer's workers to enter the confined space or perform related work with respect to the confined space."*

The multiple use of the words "other employer" is confusing. If we are reading the above correctly, the "other employer" in the clauses (a) and (b) refers to the "another employer" not the "other employer" in the opening clause. We suggest that a way be found to make the meaning clear. An alternative way to word this section might be as follows:

- "When an employer is not required to perform a duty because the coordination document has assigned responsibility for that duty to another employer,*
- (a) the employer is not required to perform the duty, but shall take reasonable steps to determine that the duty is being performed adequately; and*
  - (b) if the employer becomes aware that the duty is not being performed adequately, the employer shall not permit their workers to enter the confined space or perform related work with respect to the confined space."*

### **Assessment. (Section 119.5)**

*Sub-section 119.5 (7) states: "The employer shall ensure that the assessment is adequate ....."*

Sub-section 119.5(5) requires the employer to appoint a person who has adequate knowledge, training and experience to carry out the assessment. Sub-section (7) seems to infer that the employer needs to be more expert than the person who has been appointed to carry out the assessment, and to have the ability to second guess this person's assessment. This is unrealistic. Presumably, the reason to appoint a knowledgeable person is to obtain the expertise to do an adequate assessment. We request the requirement for an employer to ensure that the assessment is adequate be deleted.

### **Prevention of Unauthorized Entry (Section 119.17)**

*Section 119.17 states: “If there is a possibility of unauthorized entry into a confined space, the employer shall ensure that each entrance to the confined space,*

- (a) is adequately secured against unauthorized entry; or*
- (b) has been provided with adequate barricades, adequate warning signs regarding unauthorized entry, or both.*

Due to the vagueness of the word “possibility” – anything is possible – the opening clause of this section is meaningless. The use of the words “adequately” and “adequate” also define a high standard – *sufficient for its intended and its actual use, and sufficient to protect a worker from occupational illness or occupational injury*. How are these to be interpreted? This section needs further amplification. There are many variations of confined spaces. We understand for example, that it is the Ministry’s thinking that sewer grates and manhole covers because of their weight constitute an adequate security against unauthorized entry. However, does this meet the standard of the above wording? What constitutes an “adequate warning sign”? If a person is aware of the warning sign and its intent, but chooses to ignore the sign, is that an “adequate” sign? Employers need assurance that the requirements are reasonable and that taking reasonable measures is sufficient.

### **“Workers who may perform work” - Several Sections**

We note that in this draft several sections eg 119.3 (2), 119.5 (1), 119.6 (1), 119.7 etc. have been changed to cite that the requirement applies to “workers who perform work” in confined spaces, but that there are several other instances in which the requirements apply to all workers who enter confined spaces. This seems to create two classes of entry: work and non work. Although this is not likely to affect most industrial establishment situations, it does seem to create an inconsistency in the regulation. What is the definition of “work”? If a worker enters a confined space to visit another worker or just to look around, do sections 119.3 (2), 119.5 (1) etc. apply to them?

### **Commencement**

To give adequate time for education and preparation for compliance to the new regulation, we request that 12 months be allowed from the date of filing for the new regulation to come into force.

### **Summary**

Again, as we have commented previously, the potential for serious injuries and fatalities is significant when working in confined spaces. Over all, the Ministry's proposed regulation provides appropriate processes for work to be carried out safely in confined spaces. Our concerns and issues primarily continue to be "fine tuning" the proposal for clarity of meaning and for maximum effectiveness in implementation.

We look forward to continuing to work with the Ministry on this important initiative.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ian Howcroft".

Ian Howcroft  
Vice-President  
Ontario Division

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