

VOSH PROGRAM DIRECTIVE: 06-016A

ISSUED: September 1, 1994

SUBJECT: Standard Interpretation: Applicability of Permit-Required Confined Space Standard for General Industry, §1910.146, to Insurance Companies Employing Boiler and Pressure Vessel Safety Inspectors

A. Purpose.

This directive transmits to field personnel VOSH Citation policy concerning the applicability of the Permit-Required Confined Spaces Standard for General Industry, §1910.146, to insurance companies employing boiler and pressure vessel safety inspectors.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel and specifically to occupational health enforcement personnel.

C. References.

VOSH Field Operations Manual (FOM), Chapter XIX, Section D., Multi-Employer Worksites

58 Fed. Reg. 4462 (January 14, 1993)

D. Cancellation.

VOSH Program Directive 06-016 (Nov. 14, 1988).

E. Action.

Directors and Supervisors shall assure that the procedures outlined below are adhered to by enforcement personnel when citing 1910.146 in instances involving boiler and pressure vessel safety inspectors for insurance companies.

F. Effective Date.

September 1, 1994

G. Expiration Date.

Not Applicable.

H. Background.

CHANGE I: At the request of representatives from the insurance industry and boiler and pressure vessel inspectors, a meeting was held on August 30, 1988, attended by representatives from the insurance industry, inspectors, and the Department. Members of the Safety and Health Codes Board attended as observers. As a result of the meeting the Commissioner has approved this standard interpretation which addresses the concerns of the interested groups and conforms to guidelines in the VOSH Field Operations Manual.

CHANGE II: On June 21, 1993, the Safety and Health Codes Board deleted applicability of the Virginia Confined Space Standard to general industry and adopted the federal identical Permit-Required Confined Spaces Standard, §1910.146.

I. Summary/ General Policy Guidelines.

1. The Department of Labor and Industry will recognize written contracts made between insurance companies and owner-users of boiler and pressure vessels regarding the provision of attendants and emergency equipment as required by 1910.146, when the procedures listed in K. are followed.
2. Although an employer cannot contract away safety and health responsibilities, the Department does recognize that those responsibilities may be met in a number of different ways on a multi-employer worksite.
3. The Department will enforce 1910.146 in situations involving owner-users of boiler and pressure vessels and insurance inspectors in the same manner that it enforces other standards on multi-employer worksites.

J. Scope of Interpretation. This interpretation covers only those entries where 1910.146 requires an attendant. A confined space is a space that:

1. Is large enough and so configured that an employee can bodily enter and perform assigned work; and

2. Has limited or restricted means for entry or exit; and
3. Is not designed for continuous employee occupancy.

The permit-required confined space means a confined space that has one of the following characteristics:

1. Contains or has a potential to contain a hazardous atmosphere;
2. Contains a material that has the potential for engulfing an entrant;
3. Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
4. Contains any other recognized serious safety or health hazard.

K. Citation Procedures on multi-employer worksites involving owner-users of boiler and pressure vessels and insurance inspectors.

1. Situations involving boiler and pressure vessels where one or more of the hazards mentioned in J. is present are usually both created and controlled by one employer (the owner-user) while an employee of another employer (the insurance company inspector) may become exposed to the hazard in the normal course of work (inspecting the boiler or pressure vessel).
2. In situations such as the one described in K.1., both employers have responsibility for the safety and health of their employees.
3. In a multi-employer worksite situation, the employer who neither creates or controls the hazard can avoid liability for a violation only by taking steps which are reasonable under the circumstances to protect their employees against the hazardous condition.

When a host employer arranges to have employees of another employer (contractor) perform work that involves permit space entry, the Permit-Required Confined Spaces standard requires the host employer to inform the contractor that the workplace contains permit spaces, elements of the hazards, necessary precautions or procedures the host has implemented and that permit space entry is allowed only through compliance with a permit space program. The host employer must also debrief the contractor at the conclusion regarding hazards confronted. Contractors also have a duty to obtain available information regarding permit space hazards and entry operations from the host employer and to coordinate entry operations with the host employer.

4. To encourage the correction or avoidance of hazards in a situation such as that described in K.1. (see also J.), the Department will recognize a written contractual arrangement between owner-users and insurance companies as a reasonable means of achieving compliance with 1910.146 (see J., Scope of Interpretation). The written contractual agreement shall be executed before the insurance inspector enters the boiler and pressure vessel.

5. The written contractual agreement must comply with the requirements of 1910.146 and must be rigidly adhered to by both parties. The insurance companies' actions, not the owner-users, will guide VOSH decisions regarding responsibility when an employee of the insurance company is exposed to the hazard. The same rule applies to the owner-user when an employee of the owner-user is exposed to the hazard.

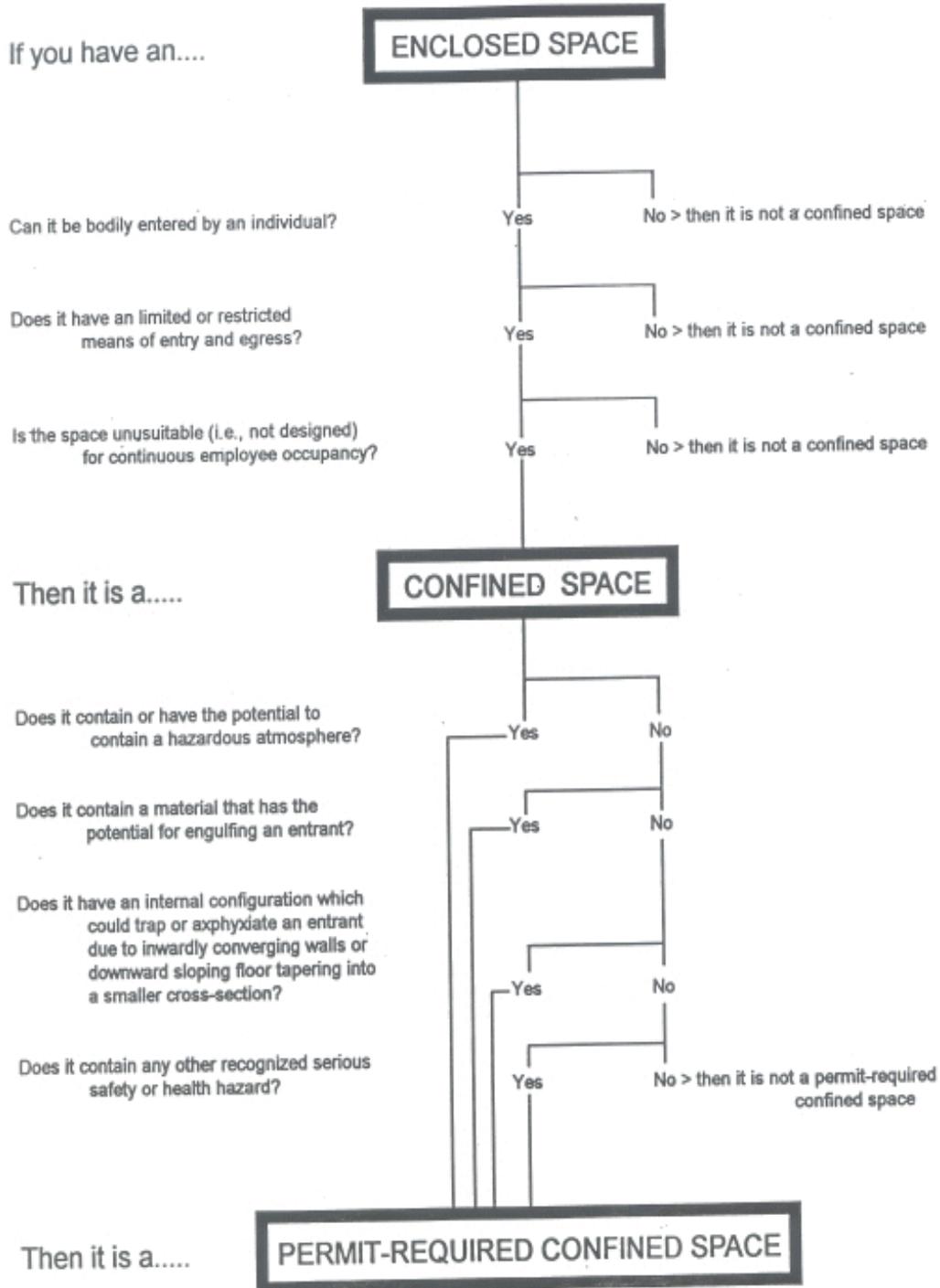
If the owner-user breaches the contract and fails to protect the insurance companies employees, it will be the insurance company's responsibility to assure that its employee refuses to conduct an inspection until the contract is followed (or provides satisfactory alternative means to protect the employee from the hazard as described in K. 3. above). Where the owner-user provides no attendants or rescue equipment, the inspector shall not enter the boiler or pressure vessel without first assuring the presence of a qualified attendant and emergency equipment.

Theron J. Bell
Commissioner

Attachments: Initial Determination Flowchart for §1910.146
Hazards on Multi-employer Worksites Checksheet for
Issuance of Citations

Distribution: Commissioner of Labor and Industry
Directors and Supervisors
Consultation Services Staff
Training Staff
OSHA Regional Administrator, Region III

INITIAL DETERMINATION FLOWCHART FOR §1910.146



Hazards on Multi-employer Worksites Checksheet for Issuance of Citations

	Yes	No
<p>On multi-employer worksites, citations normally are issued to employers whose employees are exposed to a hazard(s). In limited circumstances, an employer, though not having any of his own employees exposed to a hazard, may be cited if employees of another employer are exposed to a hazard. To determine whether or not an exposing employer may be cited complete the following checklist.</p>		
1. Has employer exposed his/her own employees to the hazard?	go to #2	go to #7
<p>However, prior to issuing citations to an exposing employer, it must first be determined whether or not that employer has a legitimate defense to the citation. If the exposing employer meets all requirements, that employer shall not be cited. Such a defense can be determined by completion of items 2-6 below.</p>		
2. Did the employer create the hazard?	cite employer	go to #3
3. Did the employer have the responsibility or the authority to have the hazard corrected.	cite employer	go to #4
4. Did the employer have the ability to correct or remove the hazard?	cite employer	go to #5
5. Did the employer fail to specifically notify the creating, the controlling and/or the correcting employers, as appropriate, of the hazards to which his/her employees are exposed?	cite employer	go to #6
6. Has the employer failed to instruct his/her employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it when the hazard was known or with the exercise of reasonable diligence could have been known?	cite employer	Do not cite employer
<p><i>Note:</i> Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; and When justified by extreme circumstances, the employer removed the employees from the job to avoid a citation.</p>		
7. Has employer created the hazard ?	cite employer	go to #8

	Yes	No
8. Is employer responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who has authority for ensuring that the hazardous condition is corrected (the correcting employer).	cite employer	go to #9
9. Does employer have responsibility for actually correcting the hazard?	cite employer	Do not cite employer

Note: CITING NON-EXPOSING EMPLOYERS

If all employers on the worksite with employees exposed to a hazard meet the five required legitimate defense conditions (items 2-6), then a citation shall be issued only to the employers who are responsible for creating the hazard and/or who are in the best position to correct the hazard or ensure its correction. In such circumstances the controlling employer and/or hazard creating employer shall be cited even though no employees of those employers are exposed to the violative condition.