Virginia Regulatory Town Hall

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Periodic Review / Retain Regulation
Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16 VAC 25-70-10 et seq.
Regulation title	Virginia Confines Space Standard for the Telecommunications Industry
Document preparation date	March 16, 2009

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The Federal Occupational Safety and Health Administration (OSHA) mandates that State Plan states be at least as effective as Federal OSHA. Also, section 40.1-22(5) of the Code of Virginia mandates that the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity and the standards be at least as stringent as the standards promulgated by Federal OSHA. Thus, Virginia's Confined Space Standard for the Telecommunications Industry must be identical to federal OSHA's 29 CFR 1910.268 (o) to be considered to be at least as effective as the federal standard.

16 VAC 25-70-10 *et seq.* provide minimum protection for workers against exposure to hazardous chemicals and hazardous atmospheres when working in the telecommunications areas defined as confined spaces. Among other things, the standard requires atmospheric testing of confined spaces prior to entry, the use of personal protective equipment, where necessary, and requires ventilation of the space to prevent accumulation of toxic atmopheres. Federal OSHA does have

a similar standard (§1910.268(o)) that regulates entry into telecommunications confined spaces, but has determined that the Virginia regulation is at least as effective as the federal standard.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical confined space standard for telecommunications. During a previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. A subcommittee of employer and employee representatives from Bell Atlantic was established and the panel deferred the final recommendation to the subcommittee. This subcommittee did not agree on a final recommendation. Based on the analysis of this report, the Department recommended to the Safety and Health Codes Board that the regulation be repealed; however, after review by the Safety and Health Codes Board, the Board rejected that recommendation, finding that employees would not be adequately protected if this regulation were repealed. It is the determination of the Department that the current regulation is the least burdensome alternative for the protection of employees in the Telecommunications Industry.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

No public comments were received on this regulation during the public comment period which began on January 5, 2009, and ended on January 26, 2009. The agency and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation has three goals:

1. Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.

2. Provide protection to telecommunication workers equal to that provided to workers in other industries.

3. Protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The primary goal of this regulation is to prevent injuries and deaths of telecommunications workers that are required to enter confined spaces. As part of the inspection of any company in the telecommunications industry, the Department reviews compliance with this regulation to ensure that atmospheric testing is being conducted, spaces are ventilated to prevent accumulation of toxic atmospheres, and all necessary personal protective equipment is provided. Since the promulgation of this regulation, compliance with these requirements has increased and there have been no fatalities or serious injuries as a result of entry into telecommunication confined spaces.

The regulation is clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Labor and Industry and the Safety and Health Codes Board recommend retaining the regulation without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation has no impact on the institution of the family or family stability.