



National Association of Home Builders

Overview NAHB-OSHA Confined Spaces Rule Settlement – May 2016

The National Association of Home Builders (“NAHB”) has reached a settlement with the Occupational Safety and Health Administration (“OSHA”), resolving NAHB’s legal challenge to OSHA’s [Confined Spaces in Construction final rule](#), issued May 4, 2015. NAHB filed a Petition for Review of the rule in the U.S. Court of Appeals for the Fifth Circuit.

The settlement, reached after months of negotiations with the Agency, clarifies that the rule has a very limited application in the residential homebuilding industry. OSHA has published a lengthy set of “Questions and Answers” (“Qs and As”) that describe application of the rule to common spaces in the residential homebuilding environment, such as attics, basements, and crawl spaces. The entire Qs and As are published here: <https://www.osha.gov/confinedspaces/>.

The Qs and As define “residential home building” or “residential home construction” as work on any residence being built using traditional wood frame construction materials, methods, and procedures that are typical to single-family home or townhouse construction. Traditional wood frame construction materials and methods include (1) framing materials – wood (or equivalent cold-formed sheet metal stud) framing (not steel or concrete), wooden floor joists and roof structures; (2) exterior wall structure – wood (or equivalent cold-formed sheet metal stud) framing or masonry brick or block; and (3) methods – traditional wood frame construction techniques. Work on multi-family residences may also be considered “residential home building” or “residential home construction” provided that the work similarly meets this criteria.

Application of the Rule Limited in Residential Home Building

The Qs and As clarify that the vast majority of the rule’s requirements only apply to permit-required confined spaces; attics, basements, and crawl spaces in a residential home will **not typically trigger these requirements**. They also clarify that the mere presence of physical hazards (such as electrical equipment and mechanical hazards) in a space in a residential home would not make the space a permit-required confined space under the rule. The presence of physical hazards would only make a space a permit-required confined space if an entrant has exposure to a serious hazard *and* the exposure could impede the entrant’s ability to exit the space without assistance.

Attics will Rarely Be Considered Permit-Required Confined Spaces

In guidance material issued by OSHA shortly after the rule was published, OSHA suggested that attics in residential homes could regularly be considered permit-required confined spaces. The Agency has since withdrawn the OSHA Fact Sheet on “Confined Spaces in Construction: Crawl Spaces and Attics.” Instead, the Q and As now clarify that attics will rarely be permit-required confined spaces as they typically do not contain the types of hazards or potential hazards that make a confined space a permit-required confined space. OSHA also clarifies that the performance of duties outside of an attic would rarely turn a “confined space” into a “permit-required confined space” because that work is unlikely to create a hazardous atmosphere or physical hazard in the attic that could impede the ability of an entrant to safely exit the space without assistance. The Qs and As also state definitively that the presence of asbestos in a confined space in a residential home would not trigger the permit-required confined space requirements.

Initial Evaluation of Space Does not Require a Physical Survey

The rule requires an employer to conduct an initial evaluation of a confined space to determine if it is a permit-required confined space as defined by the rule. OSHA clarifies in the Qs and As that this evaluation does not require a physical survey of the space. Instead, the evaluation requirement may be met through existing experience and knowledge of the space, provided this information is adequate to make the determination required by the rule.

Multi-employer Communication Provisions Limited

Paragraph (h) of the final rule includes requirements that host employers, controlling contractors, and entry employers communicate with each other regarding the presence of hazards in permit-required confined spaces. The Qs and As also clarify the limited nature of these communication provisions. The rule only requires a host employer to communicate the information in paragraph (h) if it is known by the host employer and does not require the host employer to perform a separate assessment to gather the information. In addition, the communication provisions only require host employers to convey information to a controlling contractor through reasonable means. There is no requirement in the standard for the host employer to verify that the information has been received by the controlling contractor or transmitted to entry employers by the controlling contractor. If the controlling contractor (i.e., general contractor) owns or manages the property, then it is both a controlling employer and a host employer.

The Qs and As also make clear that multiple communications of the information in paragraph (h) between employers on a residential home building site (whether at a single home building site or a site with multiple homes being constructed) are unnecessary where the potential hazards of confined spaces remain the same or substantially the same, as long as any minor differences between the spaces are not relevant to which provisions of the standard apply.

With this settlement, OSHA has agreed to provide the Qs and As to its Regional Offices, to the State Plan Programs, and to publish it on its webpage. OSHA will also incorporate the Qs and As into its compliance directive for the rule.

For more information, visit NAHB's [Confined Spaces in Construction Toolkit](#).

If you should have any questions about OSHA's Confined Space rule or the Qs and As, please feel free to contact the National Association of Home Builders (NAHB) Labor, Safety and Health Policy staff: Rob Matuga at 202-266-8507 / rmatuga@nahb.org or Chelsea Vetick at 202-266-8590 / cvetick@nahb.org.