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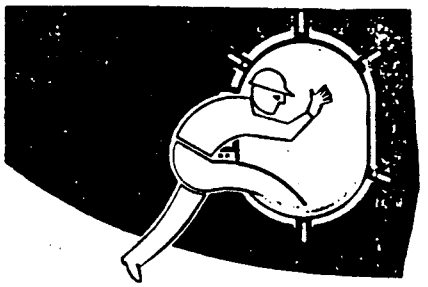

PUBLIC EMPLOYER SAFETY ALERT # 4

ADOPTION OF FEDERAL STANDARD FOR CONFINED SPACE

ATTENTION: ALL PUBLIC EMPLOYERS

FEBRUARY 1997

The Public Employee's Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. as amended on July 25, 1995, provides that the Commissioner of Labor shall adopt all applicable OSHA safety and health standards. Accordingly, on August 5, 1996 the Commissioner of Labor adopted the OSHA Confined Space standard, 29 CFR 1910.146. Previously, this critical safety matter had been regulated by a State adopted PEOSHA standard (N.J.A.C. 12:100-9 et seq.) Given the statutory directive, the Office of Public Employee Safety is now enforcing the OSHA standard.

To assist you in your safety compliance efforts, the complete OSHA standard is attached for your reference. Further, the critical elements which distinguish the OSHA standard from the PEOSHA regulation previously enforced are highlighted on page 2. To avoid any confusion, the New Jersey Department of Labor will, in the near future, put forward a proposal to repeal N.J.A.C. 12:100-9 et seq. as it does not appear to contain any provisions which are more effective than the OSHA standard.

CONFINED SPACE: "COMPARATIVE ANALYSIS"

1. **Definitions** - The definition in N.J.A.C. 12:100-9 is less specific than 29 CFR 1910.146 in that it does not address the physical hazards such as entrapment or engulfment, nor does it make any mention of "other safety or health hazards." Therefore, the 29 CFR 1910.146 definition is stronger than N.J.A.C. 12:100-9.

2. **Entry** - The 29 CFR 1910.146 standard states that entry means the action by which a person passes through the opening into a permit required confined space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space. In N.J.A.C. 12: 100-9, entry means any action resulting in any part of the face of the employee breaking the plane of the confined space and includes any ensuing work inside the confined space. The 29 CFR 1910.146 standard provides a more comprehensive definition and takes into account the fact that a person could be affected by fumes or gases rising out of a confined space entrance.

3. **Non-permit confined space** - The 29 CFR 1910.146 standard goes beyond the PEOSHA regulation as it addresses all hazards, not solely atmospheric hazards. The N.J.A.C. 12:100-9 regulation does not reference this area.

4. **Permit-required confined space written program** - The 29 CFR 1910.146 standard defines this as the employers overall program for controlling and, where appropriate, for protecting employees from permit space hazards and for regulating employee entry into permit spaces. N.J.A.C. 12:100-9 does not specifically direct that a written program be established.

FINAL CONCLUSION:

Overall 29 CFR 1910.146 appears to be at least as strong as N.J.A.C. 12:100-9, and in some instances provides more comprehensive requirements for the protection of employees.