

entrant overcome by a hazardous atmosphere, trapped by an engulfing liquid or solid, or critically injured by some other confined space hazard. We also pointed out that the standard imposes a number of requirements on on-site rescue services, but not on off-site services, thus giving employers an unwarranted incentive to choose off-site services.

Subsequent discussions with employers and professional rescue services, along with comments submitted to this docket [S-019A] by other parties, have caused us to modify that position. We remain skeptical that an off-site service can respond rapidly enough in most circumstances. We are, however, willing to admit the possibility. In addition, the mere fact that a rescue service is maintained on site is no guarantee that the service will reach the scene of an emergency on time, especially in a very large plant. Accordingly, we would support a performance-based approach to this issue, so long as the desired performance was spelled out with sufficient specificity, and so long as it applied to both on-site and off-site rescue services.

A number of commenters (Exs. 161-1, 161-14, 161-20, and 161-29) suggested that the Agency drop the proposed revisions to § 1910.146(k). For example, a commenter (Ex. 161-35) stated that the proposed revision "places the host employer in an unenviable position of being held accountable for the performance of specified employee activities over which the host employer has no control." In addition, a commenter (Ex. 161-20) indicated that the rationale behind the proposed revisions failed to take into account the application of the requirements in existing § 1910.146(k)(1) to all employers (except some public sector employers) who send employees into permit spaces to perform rescues. That commenter also stated as follows:

Many employers will use off-site services because they do not have the specialized rescue training and experience of these organizations. If a host employer is utilizing the outside rescuer because it does not have the expertise to maintain a team in-house, how can the host determine, let alone be held accountable as to whether that expertise is "functioning appropriately"? [emphasis in original]

Other commenters (Ex. 161-26, 161-37, 161-42, 161-46) suggested that any revision of existing § 1910.146(k) be limited to providing clear guidance regarding how to assess the relative merits of on-site and off-site options, and set performance criteria that would apply to *all* rescue services. These commenters were primarily concerned that the Agency apply the same criteria to all rescuers, whether on-site or off-site.

For example, several commenters (Exs. 161-23, 161-30, 161-38 and 161-45) asked that the Agency indicate clearly what constitutes "timely" response to a rescue summons. Some commenters (Exs. 161-2, 161-6, 161-7 and 161-26) noted that rescuer proficiency was as important as the response time and suggested that OSHA set performance criteria for assessing the timeliness of response. Another commenter (Ex. 161-38) suggested that employers be required to have rescuers arrive within *four* minutes of summons where entrant has been exposed to atmospheric or engulfment hazards, and within *10* minutes otherwise.

One commenter (Ex. 161-25) stated as follows:

Even with well trained rescue personnel on-site, extracting an incapacitated person from a confined space while attempting to administer first aid is not a quick process. Therefore, the fact that rescue capability happens to be off-site and perhaps is unfamiliar with the site's confined spaces may have little impact on the ultimate outcome of such an incident.

Another commenter (Ex. 161-39) recognized that a rescue service which responds to a permit space accident within four minutes will still need time to prepare for entry, making it "impossible for an outside rescue service to \* \* \* have oxygen to the patient within four minutes." However, that commenter stated "if the rescuers can get to the patient close to this four-minute time frame, then a rescue may still be possible."

Other commenters (Exs. 161-14, 161-20, 161-28 and 161-33) stated that OSHA should not attempt to specify what constitutes "timeliness" because the existing standard provides sufficient guidance regarding how to assess the adequacy of rescuer response in a specific situation. For example, a commenter (Ex. 161-33) stated as follows:

After careful deliberation, the Agency properly rejected any attempt to incorporate a timeliness requirement into the standard. Rather than adopting a timeliness requirement which would be infeasible, would encourage conduct likely to endanger rescuers, and inevitably would be subject to inconsistent enforcement through subjective (if not arbitrary) 20-20 hindsight, the Agency concluded "that prevention of emergencies in permit spaces is the most effective approach to this problem." 58 FR 4527/1.

The Agency recognizes that permit space hazards vary in their capacity to kill or permanently injure employees and that what constitutes "timely" rescue will vary accordingly. A commenter (Ex. 161-6) has indicated that immediate rescue is not always

imperative, because a slightly hypoxic environment may disable an entrant without creating a risk of permanent brain damage. Another commenter (Ex. 161-38) took issue with that comment, stating that OSHA must require rescue within the first few minutes, because the Agency cannot assume an environment is only slightly hypoxic.

Some atmospheric hazards can cause death or permanent injury within four to six minutes. However, rescuers responding from outside of the immediate area of the entry space would usually not be able to begin a rescue in four to six minutes. Therefore, the only way rescuers could successfully retrieve entrants under such circumstances would be to have personnel present and prepared to initiate rescue throughout the period of entry operations. One commenter (Ex. 161-33) has stated that the proposed rule appears to require "a rescue team to be standing by immediately outside every space during every entry." The commenter indicated that such a measure would be inappropriate where there was "non-emergency entry into a permit space."

As stated both in the NPRM and elsewhere in this notice, OSHA intended this rulemaking simply to clarify the existing requirements of § 1910.146(k)(2). In particular, the Agency has attempted to indicate clearly that an employer who retains an off-site rescue and emergency service must ensure that the designated service has the equipment, training and overall ability to respond in a timely fashion when summoned to rescue a permit space entrant. OSHA does not thereby intend to require that host employers "guarantee" the performance of off-site services, to make compliance more burdensome for off-site services than for on-site services, or to prevent the use of off-site services. The Agency has consistently maintained that the purpose of § 1910.146(k) is to require that employers' provisions for rescue, by whatever means, are adequate. The proposed amendment to § 1910.146(k)(2) (59 FR 60735) was intended solely to clarify the original intent of that paragraph.

As amended, paragraph (k)(2) would read as follows:

(2) When an employer (host employer) arranges to have persons other than the host employer's employees (outside rescuer) perform permit space rescue, the host employer shall ensure that:

(i) The outside rescuer can effectively respond in a timely manner to a rescue summons.

(ii) The outside rescuer is equipped, trained and capable of functioning appropriately to perform permit space rescues at the host employer's facility.