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Approved: [Signature]
Secretary of State

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES
Office of the Secretary Assistant Secretary for Services
Hato Rey, Puerto Rico

R E S O L U T I O N

I, Aura L. González Rios, Puerto Rico Secretary of Labor and Human Resources, pursuant to the authority conferred by Section 8 of the Puerto Rico Occupational Safety and Health Act, Act Number 16 of August 5, 1975 as amended (29 LPRA 361 et.seq.), hereby amend the Puerto Rico Occupational Safety and Health Regulation, Number Four, (Part 1910) approved on February 1, 1978 and amended as of February 21, March 16, May 8, July 18, September 8, October 9, 1978; February 16, March 21, March 28, May, 31, September 30, 1979; June 23, October 24, November 13, 1980; May 29, 1981; February 4, June 11, 1982; March 23, May 31, June 14, September 30, 1983; March 29, May 11, November 26, 1984; May 1, June 4, July 10, August 29, November 25, 1985; March 24, May 2, September 18, 1986; April 28, September 14, 1987; March 31, October 4, 1988; March 7, May 23, July 21, 1989; January 18, March 9, April 25, May 11, May 29, June 29, 1990; January 10, December 16, 1991; June 11, August 25, October 6, 1992; March 10, April 14, September 30, December 9, 1993, March 23, June 21, September 29, November 23, 1994; January 18, May 30, November 13, December 13, 1995, February 21, November 13, 1996 and April 16, November 26, 1997, April 28 and July 30, 1998 and November 16, 1998 by adopting the following amendments:

Longshoring and Marine Terminals; Final Rule as published in the Federal Register, Vol. 62, No. 143 of July 25, 1997 (40142-40234)

Occupational Exposure to Asbestos, Tremolite, Antophyllite and Actinolite; Final Rule, corrections, as published in the Federal Register, Vol. 61, No. 165 of August 23, 1996 (43454-43459)

Powered Industrial Truck Operator Training; Final Rule as published in the Federal Register, Vol. 63, No. 230, of December 1, 1998 (66238-66274)

Permit-Required Confined Spaces; Final Rule, as published in the Federal Register, Vol. 63, No. 230 of December 1, 1998 (66018-66040)

The adoption of this amendments will be effective immediately.

Given at San Juan, Puerto Rico, on this 3 day of March 1999.



AURA L. GONZALEZ RIOS

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use In Animal Feeds; Melengestrol Acetate and Lasalocid; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending and clarifying the animal drug regulations concerning melengestrol acetate (MGA) and the special considerations related to making type B and C feeds and lasalocid type B liquid feed specifications used for making lasalocid/MGA type C heifer feed.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center For Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1638.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199, is sponsor of NADA's 39-402 and 140-288 that provide for combining separately approved melengestrol acetate (MGA) (dry and liquid) and lasalocid (dry and liquid) type A medicated articles to make lasalocid/MGA (dry and liquid) type B feeds. The type B feeds are used to make dry type C feeds for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat). The sponsor requested that § 558.342 (21 CFR 558.342) be amended to change the special considerations in paragraph (c)(1) to read "type B or C medicated feeds" and to change the limitations in paragraph (d)(3)(ii), by adding the specification "The liquid medicated feeds are required to be manufactured in accordance with § 558.311(d)." FDA concurs with the sponsor's request and extends the amendments to special considerations to include all type B or C feeds for clarity as originally intended. The regulations are amended in paragraph (c) of § 558.342 as requested.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.342 [Amended]

2. Section 558.342 *Melengestrol acetate* is amended in paragraph (c) after the phrase "Type B" each place it appears by adding the phrase "or C" and in paragraph (d)(3)(ii) by adding a sentence after the first sentence to read "The liquid medicated feeds are required to be manufactured in accordance with § 558.311(d)."

Dated: November 10, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98-31573 Filed 11-30-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-019A]

RIN 1218-AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the Occupational Safety and Health Administration (OSHA) standard on Permit-Required Confined Spaces (permit spaces) (29 CFR 1910.146) to provide for enhanced employee participation in the employer's permit space program, to provide authorized permit space entrants or their authorized representatives with the opportunity to observe any testing or monitoring of permit spaces, and to strengthen and clarify the criteria employers must satisfy when preparing for the timely rescue of incapacitated permit space entrants. The revisions being made to the final rule will substantially enhance the protections being provided to permit space entrants

and will additionally clarify a number of issues that have arisen since promulgation of the final Permit-Required Confined Spaces rule in 1993.

Specifically, OSHA is clarifying and strengthening the requirements in revised paragraphs (d), *Permit-required confined space program*, and (e), *Permit system*, to allow for greater employee participation in the permit-space program and for employee access to program information developed under the standard. The Agency is also revising paragraphs (c) and (d) to specify that employers must provide those employees who are authorized permit space entrants, or their authorized representatives, an opportunity to observe any testing of the space that is conducted prior to entry or subsequent to such entry. The Agency believes that these revisions are necessary to ensure that permit space entrants, whose work often requires entry into potentially life-threatening atmospheres, have the information necessary to protect themselves and their co-workers from confined space hazards. Allowing authorized entrants or their authorized representatives to observe the testing of the spaces they are required to enter will help to ensure that the testing has been done properly, that the respirators and other personal protective equipment being worn are appropriate, and that the entrants understand the nature of the hazards present in the space. In addition, paragraph (k) of the final rule, *Rescue and emergency services*, is being revised, to clarify the criteria employers must satisfy when selecting a rescue team or service to rescue incapacitated permit space entrants, and a new paragraph (l), *Employee participation*, is being added to the final rule to ensure employee involvement in permit space program development and implementation. A non-mandatory appendix is also being added to the standard to assist employers in selecting appropriately trained and equipped rescuers.

EFFECTIVE DATE: This final rule will become effective February 1, 1999.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647,

Washington, D.C. 20210, telephone (202) 693-1999.

SUPPLEMENTARY INFORMATION:

I. Background

On January 14, 1993, the Occupational Safety and Health Administration (OSHA) issued a general industry standard (29 CFR 1910.146) to require protection for employees who enter permit-required confined spaces (permit spaces). The permit space standard, which provides a comprehensive regulatory framework for the safe performance of entry operations in general industry workplaces, became effective on April 15, 1993.

The United Steelworkers of America (USWA), the American Gas Association, and the Edison Electric Institute sought judicial review of the standard. In particular, the USWA argued that paragraph (k)(2) of the standard, which addresses the use of off-site rescue services, was vague and ineffective. The USWA also stated that OSHA had inappropriately omitted from the final rule a provision allowing affected employees or their designated representatives to observe any required testing or monitoring of permit spaces and a provision granting affected employees access to permit space testing or monitoring results. All three petitions were subsequently withdrawn pursuant to settlement agreements.

Based on settlement discussions, with the USWA, OSHA agreed to initiate further rulemaking, and a notice of proposed rulemaking (NPRM) was accordingly issued on November 28, 1994. In the notice, the Agency specifically asked for public input on the USWA's suggestion that OSHA add provisions to the rule providing employees the opportunity to observe permit space monitoring or testing as well as granting them access to the results of such testing or monitoring. The notice also proposed changes to paragraph (k)(2) to clarify that host employers must ensure that rescue teams or services selected to perform permit space rescues at the host employer's facility have the capability to provide rescue in a timely manner, depending on the hazard(s) present in the permit spaces at the host employer's facility. In addition, on the basis of information received after the 1993 final rule was published, OSHA proposed to make the requirement for the point of attachment of a retrieval line more performance oriented by permitting any point of attachment to be used that enables the entrant's body to present the smallest possible profile during removal.

The NPRM set a 90-day comment period, ending on February 27, 1995, to receive written comments on the proposed revisions and the issues raised. OSHA received 51 written comments (Exs. 161-1 through 161-51). Several commenters (Exs. 161-21, 161-22, 161-38, 161-40, 161-44) requested that OSHA convene an informal public hearing to address their concerns.

OSHA published a notice of informal public hearing on August 2, 1995, scheduling a hearing for September 27, 1995, in Washington, D.C. In the hearing notice, OSHA also announced the extension, until September 13, 1995, of the public comment period to receive comments relating to the issues raised in the hearing notice. Twenty-seven additional comments (Exs. 161-52 through 161-78) were received as a result of the reopening of the record.

Twelve participants introduced testimony and evidence at the September 27 and 28 public hearing, which was presided over by Administrative Law Judge Joel Williams. At the conclusion of the hearing, Judge Williams set a post-hearing period for the submission of additional briefs, arguments and summations (ending on December 20, 1995). A total of 12 submissions (Exs. 178 through 189) were received during the post-hearing period. On February 14, 1996, the record for the rulemaking was closed and certified to OSHA. The record for this phase of the rulemaking contains a total of 90 submissions and more than 470 pages of hearing transcript. OSHA has carefully considered all of the materials submitted as part of this rulemaking in the drafting of this final rule. The materials submitted are available for review and copying in the OSHA Docket Office, Docket S-019A.

A few commenters appeared to believe that this revision constitutes an entirely new rulemaking proceeding (Exs. 161-33, 167). OSHA emphasizes, however, that this proceeding is properly viewed as a continuation of the rulemaking leading to the 1993 standard. Therefore, the Agency is not required to demonstrate that the relatively minor changes it is making to the PRCS standard are independently justified or that they, by themselves, effect a substantial reduction in significant risk. OSHA made that finding for the PRCS standard as a whole in 1993. In this case, the changes OSHA is making to paragraphs (c), (d), (e), and (k) essentially clarify what was always the Agency's intent with regard to employee representatives' access to information and employers' evaluation and selection of rescue services and

teams. Although it is OSHA's view that the employee participation revisions it is making to paragraphs (c) and (d), and the addition of paragraph (l), will in fact substantially reduce the risks faced by permit space entrants, the revisions are proper so long as they are rationally related to the purposes of the OSH Act and the standard as a whole, and are supported by the rulemaking record.

II. Summary and Explanation of the Final Rule

The revisions to the final rule make changes to several provisions of paragraphs (c), (d), (e), and (k) of OSHA's permit-space standard (29 CFR 1910.146), and add a new paragraph (l). These changes, and the Agency's rationale for making them, are described below. References to exhibits in the docket (Docket S-019A) are designated "Ex.," followed by the exhibit number. References to the continuously paginated transcript of the public hearing held on September 27 and 28, 1995 (Exs. 192X, 193X), are designated Tr., followed by the page number.

Paragraphs (c), General Requirements, (d), Permit-required confined space program, and (e), Permit system

A. Clarification of the Need To Provide Authorized Representatives With Information Required by the Standard

Paragraphs (c)(5)(i)(E), (c)(5)(ii)(H), and (c)(7)(iii) have been revised to specify that OSHA intends authorized representative(s) of employees to have access to any information provided to employees under the standard. These wording changes are meant to clarify what has been longstanding OSHA policy and practice, i.e., to recognize the right of authorized representatives of employees to receive the same information as employees receive under the Agency's standards. In recognition of that policy, the Permit Space standard promulgated in 1993 specifically provides, in paragraph (c)(4), that the written program, which contains the employer's procedures and policies for implementing that program, be available for inspection and copying "by employees and their authorized representatives." Thus, the changes being made to paragraphs (c)(5)(i)(E), (c)(5)(ii)(H), and (c)(7)(iii) in this revised rule merely provide additional clarification of the Agency's intent.

The need to clarify these provisions was discussed by the USWA, which noted (Ex. 161-38) that "The right of employees and their representatives to relevant information has been a regular feature of OSHA standards since the beginning." In the same exhibit, the

USWA points to several OSHA standards, including the Hazard Communication standard (29 CFR 1910.1200), the Employee Access to Exposure and Medical Records standard (29 CFR 1910.1020), and the Process Safety Management standard (29 CFR 1910.119) that "give employees and their representatives very broad rights to information." The USWA reiterated this view in post-hearing comments (Ex. 188). OSHA agrees that it was the intent of the Permit Space standard to provide both employees and their authorized representatives with access to the information addressed by these provisions of paragraph (c), and the changes made to the final rule reflect this position and bring the Permit Space standard into conformance with the language traditionally used in OSHA standards.

B. Employee Observation of Atmospheric Testing

Paragraphs (c)(5)(ii)(C) and (c)(5)(ii)(F) have been revised by adding a sentence to each of them that specifically requires employers whose employees enter permit spaces to give these employees, or their authorized representatives, an opportunity to observe the testing of the space during pre-entry (paragraph (c)(5)(ii)(C)) and during entry (paragraph (c)(5)(ii)(F)). In the NPRM, OSHA solicited comment (59 FR 60737) about revising 29 CFR 1910.146 to allow affected employees or their authorized representatives to observe the testing and evaluation of confined space conditions, prior to and during entry. Specifically, the proposal stated, "* * * the Agency is considering whether such a provision [one requiring affected employees or their designated representatives to be permitted to observe any testing conducted under the confined space standard] should be added to the permit space standard based on the concerns expressed and on the record developed as a result of this notice."

The USWA (Ex. 161-38), which requested a hearing on this and other matters, urged OSHA to incorporate such a provision into the standard both on the grounds that employee protections would be enhanced and that Section 8(c)(3) of the Act mandated the inclusion of such a provision:

The benefits of employee observation of monitoring are well established. Congress certainly thought employees should have the right to observe the monitoring for air contaminants to which they could be exposed * * *. We believe employee observation should be viewed as a matter of right. Employees now have the right to observe the monitoring of air contaminants

outside confined spaces, even when the potential health effects may not occur for many years. A worker entering a confined space risks sudden death if the monitoring was not done properly. Surely that worker should have the right to observe the monitoring. (Ex. 161-38).

Many commenters argued that it was not necessary or appropriate to add an observation of monitoring provision to the Permit Space standard (see, for example, Exs. 161-9, 161-14, 161-20, 161-49, 161-55, 161-78, 184, 187, Tr. 40, 127, 170, 207). The issues raised by these commenters centered on the following points:

- (1) That the existing standard is adequately protective and thus that no further changes are necessary;
- (2) That the Act does not, at Section 8(c)(3), mandate such a requirement for safety, as opposed to health, standards;
- (3) That allowing employees and their representatives to observe the testing of spaces would slow operations without adding to the safety of the entry and might actually increase risks; and
- (4) That such a provision has the potential for abuse and could become a labor-management issue.

These issues, and OSHA's responses to them, are addressed in turn below.

Several commenters were of the opinion that adding an observation of monitoring provision is unnecessary because the existing Permit Space standard already adequately provides for the sharing of relevant testing information with entrants. For example, the Pennzoil Company (Ex. 161-49) stated, "Existing requirements at Section 1910.146(d)(5) and (e)(3) already provide for adequate employee access to the results of testing and monitoring in permit spaces." Arguing along similar lines, Union Electric (Ex. 161-35) noted that the existing standard "already requires that the results of initial and periodic tests performed under 1910.146(d)(5) be entered on the entry permit, and 1910.146(e)(3) now requires that the permit be made available to all authorized entrants at the time of entry. As a practical matter, affected employees are usually briefed on the results of the exposure monitoring during the pre-job briefing and before entry into the space."

OSHA is pleased to learn that some employers have taken the additional safety precaution of providing entrants with a pre-entry briefing that includes a report on the results of the monitoring of the space, and the Agency is also aware that the existing standard contains a number of provisions requiring employers to provide information on the results of testing to those employees who are entering a

permit space. However, OSHA concludes that these provisions, although essential to the safety and health of entrants, are not a substitute for the observation of monitoring provisions being added to the standard, for the following reasons.

Having access to the entry permit will not prevent the kinds of errors that could be detected by having employees or their representatives observe the actual testing of the space. For example, evidence in the rulemaking record shows that monitoring errors, such as using the wrong monitor, monitoring for the wrong substance, or failing to test the space thoroughly, contribute to a number of confined space accidents (Tr. 286, 317). And if the evaluation or testing of the space is improperly performed, inaccurate information will unknowingly be recorded on the entry permit, and entrants relying on this inaccurate information could be placed at risk of sudden death or serious injury. In situations such as these, the presence of authorized employees or their representatives could well have detected the error and remedied the problem.

The record contains reports of several incidents where employees who observed improperly performed atmospheric tests were able to bring the errors to the attention of the testers before an accident occurred. For example, in one case, the person doing the atmospheric testing calibrated the testing instrument inside the confined space. The entrant pointed out this error and it was corrected (Ex. 161-38, Tr. 332-333). In other cases in the record, employee observation of testing and monitoring might have prevented an accident. The International Chemical Workers Union described an incident involving a vessel that had been tested by a poorly trained evaluator who had apparently failed to detect a flammable atmosphere. The vessel later exploded, killing several workers. There are a number of other dangerous situations that could arise that employee observation of monitoring could avert. For example, authorized employees and their representatives are often aware that significant changes may have occurred in conditions within the space, e.g., that the employer is considering reclassifying the space based on new monitoring data and can be expected to take extra precautions as a result. Observing the testing process would also permit employees or their representatives to detect human errors, such as the inadvertent recording of inaccurate data. In addition, OSHA believes that employees who directly observe the monitoring are likely to gain

an enhanced appreciation for the hazards they face.

Thus, OSHA believes that providing employees or their representatives with the opportunity to observe the testing and monitoring of permit spaces will have the same kinds of benefits that such observation has had in the context of OSHA's health standards: knowledgeable employees who are given the opportunity to participate actively in protecting their own safety and health and that of their co-workers often identify potentially serious problems and help to solve them as well. Accordingly, paragraph (c)(5)(ii)(C) has been revised by adding the sentence "Any employee who enters the space, or that employee's authorized representative, shall be provided an opportunity to observe the pre-entry testing required by this paragraph." Similarly, the language of paragraph (c)(5)(ii)(F) has been revised to add the following sentence: "Any employee who enters the space, or that employee's authorized representative, shall be provided with an opportunity to observe the periodic testing required by this paragraph."

A number of commenters (see, e.g., Exs. 161-26, 161-35, 161-37, 161-48, 161-56, 161-72, 161-60, 187, Tr. 127, 170) expressed disagreement with the USWA's view that Section 8(c)(3) of the Act mandated such observation in the case of safety standards such as the permit space standard. Section 8(c)(3) of the Act directs OSHA to issue regulations requiring employers to maintain records of employee exposure to potentially toxic materials or harmful physical agents and providing employees or their representatives with "an opportunity to observe such monitoring or measuring, and to have access to the records thereof." This section of the Act provides the basis for the observation of monitoring provisions in virtually all of OSHA's health standards (see, for example, the asbestos, benzene, cadmium, lead, methylenedianiline, methylene chloride, and butadiene standards). Typical of these comments was one submitted by the Dow Chemical Company (Ex. 161-20):

Section 8(c)(3) requires OSHA to promulgate regulations which provide employees, and their designated representatives, with the opportunity to observe the monitoring and measuring of, and have access to, employee exposure records (emphasis in the original). The atmospheric tests and space evaluations required under the Confined Space Standard are not the type of employee exposure monitoring that is envisioned by the Act.

In fact, OSHA stated in the NPRM its position that section 8(c)(3) does not require inclusion of a requirement for employee observation of monitoring in safety standards (59 FR 60737). Instead, the proposal explained that any decision to add an employee observation provision to the standard would be based on the record developed in this proceeding, including the concerns expressed about the original standard. OSHA does note, however, that the fact that Congress included a requirement that observation of monitoring be allowed for toxic substance standards indicates a Congressional preference for well-informed and involved employees. And as explained elsewhere in this section, OSHA has determined that the record in this rulemaking shows that employee observation can have substantial benefits for employee safety and health.

OSHA believes that this safety benefit adequately justifies any minimal slowing of operations caused by the employee observation requirement. In any event, as shown by other evidence in the record, the employees assigned to enter the permit space are often already in the area, waiting to enter it, while the space is being tested and monitored (Ex. 161-25). Indeed, in a great many cases, it is the permit space entrants themselves who perform the testing and monitoring (Ex. 161-09, Tr. 186-187, 190). Moreover, as with all of the employee participation provisions being added in this revision, the record shows that this practice is already fairly common and indicates that it has not caused any production problems (Exs. 161-57, 172, Tr. 202).

A few commenters suggested that employee observation could actually decrease employee safety, for example when monitoring must take place in a hazardous environment, such as an elevated location or one containing a toxic atmosphere (Exs. 161-56, 161-74, 167, 181). But the standard does not require employees to observe all monitoring or testing, it merely offers them the opportunity to do so. The employees and their representatives are less likely to take advantage of that opportunity in particularly hazardous situations. Moreover, even having an entrant or representative close by observing the actions of the person testing the atmosphere, and checking the instruments after the tests are complete could provide safety benefits. Employees already have extensive rights to observe monitoring under OSHA's health standards. OSHA has seen no evidence, and none was presented in this rulemaking, that this observation creates safety hazards (Tr. 92-93).

OSHA does not believe that the final rule's requirements that employers provide affected employees with an opportunity for employee observation, or those requiring employee participation in paragraph (l), are particularly subject to abuse or constitute an unwarranted infringement on labor-management relations. OSHA standards frequently require that work be performed in a particular way or by specific employees. For example, the Lockout/Tagout (LO/TO) standard, 29 CFR 1910.147(c)(8), requires that locks and tags be affixed by the workers who will be performing the service or maintenance covered by the standard and, as discussed above, numerous toxic substance standards provide affected employees and their representatives with the right to observe hazardous substance monitoring. The requirement that employees who are to enter hazardous confined spaces be allowed to observe the required monitoring of those spaces is analogous to these provisions. Like the LO/TO requirement, it recognizes that the employees whose lives could be endangered by inadequate completion of these preliminary safeguards have the strongest incentive to see that they are performed properly (see Tr. 333).

OSHA also is not persuaded that the monitoring observation requirement is especially subject to employee abuse. Some commenters suggested that during periods of labor management discord, employees could abuse the observation right to slow down or disrupt production (see, e.g., Exs. 161-12, 161-25). Others expressed concern that the provision could cause what one called a "logistical nightmare" if all of the employees and representatives insisted on observing each instance of testing and monitoring (see, e.g., Exs. 161-12, 161-26, 161-35, 161-78). But again, there was no evidence that this type of disruption is caused by the employee observation provisions in OSHA's health standards. The standard allows the opportunity for observation by an entrant or his authorized representative, not by every employee and representative at the workplace. Moreover, some employers, either contractually or otherwise, already provide employees with the right to observe monitoring and testing of confined space atmospheres (Exs. 161-57, 173-B, Tr. 184-185, 202). One witness pointed out that, even in those plants, confined space entrants did not always choose to observe the monitoring (Tr. 202). And of course nothing in this standard interferes with an employer's existing power to direct and control its