

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

27.95

Underground Diesel-Powered Equipment

Date: April 11, 2005

I. Background

WISHA standards include specific requirements regarding underground construction (Part Q of Chapter 296-155 WAC).

WAC 296-155-730(15)(k)(i) prohibits the underground use of “internal combustion engines, except diesel-powered engines on mobile equipment.”

WAC 296-155-730(15)(k)(ii) requires that “mobile diesel-powered equipment used underground in atmospheres other than gassy operations” must either be approved by the Mine Safety and Health Administration (MSHA), or must be “demonstrated by the employer to be fully equivalent to such MSHA-approved equipment” and operated in accordance with the applicable MSHA requirements. The MSHA requirements (30 CFR part 32) referenced in WAC 296-155-730(15)(k)(ii) have been moved to 30 CFR part 36.

WAC 296-155-730(15)(k)(iii) provides for application to be made to the “mining/explosives” section of the department “for permission to use specified diesel equipment in a specified underground area.”

Historically, the application and approval process in WAC 296-155-730(15)(k)(iii) has been handled in a variety of ways. With the recent increase in actual and expected underground construction work, there is a need to clarify WISHA policy regarding the approval of diesel-powered engines on mobile equipment used underground.

II. Scope and Application

This WISHA Regional Directive (WRD), which remains in effect indefinitely, applies to all WISHA enforcement and consultation activities involving WAC 296-155-730(15)(k)(iii), part of the Underground Construction Standard (Part Q of Chapter 296-155 WAC).

III. Interpretive Guidance

A. *What are the requirements for prior approval of the operation of mobile diesel-powered equipment underground?*

The basic requirement for operating mobile diesel equipment underground is found in WAC 296-155-730(15)(k)(ii), which states that employers must use

mobile diesel equipment approved by MSHA in accordance with the provisions of 30 CFR Part 36 or that their equipment is fully equivalent to such MSHA-approved equipment. In addition, WAC 296-155-730(15)(k)(iii) requires employers to submit an application to the department and receive approval before diesel equipment can be used underground.

B. Will employers be cited for failing to obtain department approval to use equipment underground?

No, as a matter of enforcement discretion, the department will treat any violation of the requirement for prior department approval as a *de minimis* violation and therefore not cite it. The employer must still use equipment meeting MSHA requirements and document all information required by the standard (including the satisfactory surface test required by WAC 296-155-730(15)(k)(iii)(C) and the noxious gas requirements of WAC 296-155-730(15)(k)(iii)(E)).

C. Can an employer use diesel-powered engines on mobile equipment that does not meet the requirements of WAC 296-155-730(15)(k)?

If the employer intends to use equipment underground, that either does not meet 30 CFR part 36 requirements or does not pass the surface carbon monoxide test requirement, the employer must submit a variance application to obtain approval to use such equipment.

IV. Special Enforcement and Consultation Protocols

A. How should WISHA staff handle inquiries about the approval requirements of WAC 296-155-730(15)(k)(iii)?

WISHA enforcement and consultation staff are expected to advise inquiring employers that the department is not strictly enforcing the pre-approval requirements of WAC 296-155-730(15)(k)(iii), in accordance with the interpretive guidance above.

B. How should WISHA staff apply the standard during site visits?

The requirement for submitting an application to the department will not be cited. The other specific requirements of WAC 296-155-730(15)(k)(iii) will be cited if the employer has not met them.

WISHA consultation and enforcement staff are encouraged to contact the Industrial Hygiene Program Manager in WISHA Policy and Technical Services when faced with unusual applications of this standard or when considering requiring the employer to request a variance for their equipment.

Approved: _____
Mel James, Acting Senior Program Manager
WISHA Policy & Technical Services

For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648 or by telephone at (360) 902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/Safety-health/>).