

May 14, 2021- Trenching Rescue & Excavation Plan Rulemaking Stakeholder Meeting (held virtually via Zoom webinar)

Attendees included those representing the following organizations (in no particular order):

Benton County Public Utility Department
Holt Homes
Associated Builders and Contractors of Western Washington
Wood PLC
Building Industry Association of Washington
Shell Global
M&L Construction, Inc.
James W. Fowler Co.
City of Tacoma
Construction Systems Management Incorporated
NuStar Energy
The Integrated Group

1. Will notes/minutes of the meeting be distributed to attendees?

Yes, we will share a meeting summary with all participants and stakeholders.

2. Has there been a Federal OSHA change that has prompted this DOSH rulemaking?

No, there has been no change at the federal level.

3. Is the Administrative Procedures Act, APA, a federal or state rule?

For our purposes, we must adhere to Washington State's Administrative Procedures Act (Chapter 34.05 RCW).

4. How are you planning to notify all affected employers about new rule? Please explain the notification process that is effective in practice and not just in theory.

We are starting with informational meetings like what we're doing today, having sent notification to subscribers via our GovDelivery notification system and relying on further word of mouth. As we move closer to any rule changes we may look to our business records and do some sort of more targeted outreach to potentially affected businesses based on how they are classified under the North American Industry Classification System (NAICS).

5. Will the discussion draft for the rulemaking be made available to attendees after the meeting or do we need to wait until it is posted to the LNI website?

If we cannot add it through Zoom, we will provide contact information at the end of the meeting and we will be happy to send it to you. It will also be on the website when official rulemaking begins.

6. Will the emphasis be on preventing the need for trench/excavation rescue since actual rescues are rarely successful? In other words, emphasis on having a program or plan.

Yes.

7. If OSHA has not changed their Trenching/Excavation Plan rules then what has caused DOSH to initiate the proposed changes? (If it's not broke, why fix it?)

We're considering rulemaking due to DOSH enforcement data over the last few years (2016-2020 in particular) which includes multiple fatalities.

8. This could be better addressed through licensing requirements and continuing education much like hairdressers, plumbers, and electricians. We work throughout the region and all of the surrounding states, including Idaho, Oregon, and California all require licensing for this type of work, yet Washington doesn't.

While we don't necessarily disagree that licensing could be part of a holistic approach to improving trench-related safety, licensing is beyond the scope of what DOSH has authority to do currently, as licensing would require legislation. We would recommend that you contact your local legislators if you feel strongly about this.

9. How often do you see contractors treating trenches as permit required confined spaces in Washington and taking the required precautions?

We typically see where they are not doing this by initiating inspection after a referral or complaint from employee.

10. Describe the method for prompt, safe removal of workers, ---what do you want to see in this section of the plan?

It really depends on the type of excavation, which is why we need to be careful about how prescriptive this rule is to be. In some areas with rescue services readily available, a rescue plan may simply entail calling the fire department ahead of work, whereas in remote locations a great deal more planning would be required.

11. It would be very helpful to provide details around 13(b)(xi) of the discussion draft. Maybe a non-mandatory guide or tool so that companies understand the expectations? Otherwise, they will continue to interpret it to just mean "call 911".

Thank you for the comment; this is an iterative process and your feedback will help create a better final product.

12. If licensing does not ensure competency, then why do we license plumbers, electricians, hairdressers, fire control, etc.?

You make a good point, but as we answered before, this is beyond the purview of what DOSH can currently do.

13. This is being driven by fatalities and injuries, but the fatalities and injuries appear to be resulting from the lack or improper use of protective systems. So how would a checklist prevent contractors from disregarding protective systems? The checklist would be a burden on the contractors that are being diligent and others would just disregard. The solution is not rulemaking but better education and enforcement.

Research shows that checklists help to ensure that critical aspects of a job aren't missed, and in this case it could be an additional tool to aid and assist employers and employees to ensure the requirements in the WAC are met.

14. Is this going to be monitored and if so how?

There is a plan requirement for fall protection so DOSH may take a similar approach to monitoring excavation work plan requirements via inspections, both Consultation and Compliance visits.

15. If these 12 steps of the excavation work plan are included in a "tail-board" form, documented and on site, would this be acceptable?

As long as it's specific to each job and it addresses all of the elements in the rule it would be acceptable.

16. A tool and a rule are two different things. A tool is mostly always welcomed, not so much for a rule.

The idea is to have a blend; given how different any rescue situation may be we didn't want to create a big, prescriptive rescue section, which could be a rule by itself. Our intent is to assist employers with a simplified plan containing elements that are already required.

17. Will the lack of an excavation plan be cited as a general or serious violation?

Just like with the fall protection work plan, it would be General if there are no other related serious aspects.

18. Trenching is (technically) a "confined space". Rules already exist for this condition. Your proposal is redundant. Perhaps adding reference to existing rules may be more helpful...rather than adding additional language.

A trench can be a confined space, but not necessarily so; they are two different things and we have to be careful not to automatically conflate them.

19. In Skookumchuck, one issue was site access of rescuers. Had they coordinated with rescuer prior to incident, the outcome may have been different.

Good point. All this goes back to planning.

20. You've shown us "the idea" of the rule itself. But you talk about a tool, Does L&I actually intend to create a real tool for use? Could this include an electronic tool also? This could be something that could be easily used on a smart-phone or laptop, and with appropriate software, this could be something that also could be verified/reviewed by an L&I inspector on-site during inspection. Is this something L&I would consider?

The idea has to be in place before the tool. As we refine our ideas and the rule language then perhaps we could coordinate with our Education and Outreach staff to see if something along those lines might be feasible.

21. Is this plan required to any excavations 4 feet or deeper?

Looking at the existing rule, it would apply to all excavations, with two exceptions; 1) it wouldn't be required if the excavation is dug in stable rock, or 2) if the excavation is less than four feet and a competent person has determined there is no potential for cave-in.

22. How come I have seen serious violations of basic shoring violations on WSDOT and City and County projects with no repercussions?

If DOSH has found violations, citations have had to be issued. With inspections with serious violations, there are repercussions.

23. Can DOSH reach out to upper level L&I or the Legislature to request a licensing requirement?

Your feedback today will be shared with L&I management, and it is possible that this could lead to conversations with legislators, but we can't speak for L&I management or the Legislature today. As we responded previously, we recommend that if you feel strongly about licensing please reach out to your local legislators as a member of the public; it's their job to consider your suggestions and often this is what drives desired changes in governance.

Regardless, while licensing is beyond the scope of this rulemaking project, we can improve the rules that haven't been updated in decades, and we believe that this will significantly improve safety.

24. Does the excavation plan have to be stand alone or could it be part of the already required Accident Prevention Plan?

Yes, it could be included as part of your required Accident Prevention Plan (APP). However, the APP is a general plan that is not site-specific or required to be at each worksite, so some modifications would likely be necessary and care would have to be exercised to ensure that the elements of each rule are adhered to.

25. Focus your efforts on education and reaching out to excavation contractors. A new rule will have no impact for the majority who won't even know there's a new rule. The cited fatalities and violation history do not support this proposed change...they were not following existing rules, why would a new rule change that? I like the checklist...make it a non-mandatory tool and not a new rule. You could post it on the website tomorrow and shift focus to education.

Thank you for your comment. Based on experience doing excavation inspections, we've seen some instances where the competent person was not even aware of certain aspects of the rule. There will always be those that choose to disregard rules but the changes we're discussing could be a minimally burdensome way to improve awareness, create a safety mindset before work begins, and ultimately reduce the catastrophic consequences we've seen when appropriate actions weren't taken ahead of time.

26. For rescue would a Rescue Team Evaluation form need to be filled out, similar to Permit Required Confined Space rescue team requirements?

Today we are just having a discussion. This is a good point which we will need to address in the future.

27. Seldom is a trench NOT a confined space. A trench is a confined space when it meets the definition of a confined space and a trench almost always meets that definition.

Thank you. Please refer to the previous response regarding trenching and confined space.

28. Not all fire departments are trained in trench rescue; this is a specialty with very few doing it in the state and not all counties have one. Placing the burden on rescuers and the fire department is not a good thing.

Thank you for your comment. We have heard from at least one fire department that has advocated for better advanced communication from those performing excavation work but we would like to hear from others as well to get the perspective of the rescuers in these situations.