



Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

VIA EMAIL

February 13, 2018

(via email to sacj235@lni.wa.gov)

Joel Sacks, Director
Department of Labor and Industries
PO Box 44000
Olympia WA 98504-4000

Re: Process Safety Management Amended Rulemaking, (Chapter 296-67 WAC, Safety Standards for Process Safety Management of Highly Hazardous Chemicals)

Dear Mr. Sacks:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide some observations to the Department of Labor and Industries (L&I) on the current process for the proposed replacement of Chapter 296-67 WAC. Our member companies are key stakeholders in the Process Safety Management (PSM) rulemaking process, which specifically focuses on petroleum refineries. WSPA is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in five western states, including Washington.

Per our meeting with you and your staff on January 16, 2018, you indicated that we should inform you if concerns relative to the PSM rulemaking process should arise. WSPA believes that the principles that L&I established were appropriate for achieving an optimal and defensible rulemaking outcome. Those principles included the following:

- The goal of the rulemaking process overall should reflect a collaborative process, with robust discussion by all parties;
- L&I had been thoughtful about the rule, and was prepared to discuss the decisions made to adopt the varied elements;
- The process is intended to allow for the necessary time to do a good job, so long as stakeholders are productive and advancing forward;
- The process is meant to be transparent with clear communication; and
- Concerns about the process are to be vetted as the process advanced forward.

WSPA has the following observations from the January 24, 2018 and February 7, 2018 meetings:

- All of the participating stakeholders expressed support for the goal of maintaining a safety focused workplace for employees. WSPA believes this should include all employees that work in facilities that are currently subject to PSM practices. However, some participants continue to disparage our organization and members' commitment to this shared goal. Given that many of those present in the

meetings have spent their careers in safety with the intention of providing and maintaining a safe work place, we feel such comments were, and are, detrimental to a collaborative process.

- Our members believe that it are important to have a threshold discussion regarding an appropriate starting point for this rulemaking. That is, there are two possible approaches. First, L&I could start with the existing rule, discuss areas where improvements need to be made, and then make appropriate strategic decisions as to the best approach to achieve the necessary improvements. Alternatively, L&I could discard the existing PSM Standard and essentially start with a different approach. That threshold question needs to be thoroughly examined. Our members had hoped that important question would have been addressed and discussed thoroughly in the meetings.
- Although the purpose of the meetings is to discuss the substantive provisions of the discussion draft, L&I staff are not providing information related to how or why decisions were made. A frequent statement made in the meetings by L&I is “comment noted” – without providing our members with L&I’s underlying rationale for the various draft provisions. In our prior rulemaking experience, including with L&I, agencies have provided feedback about decisions, analysis of why the changes should be made versus the existing rule, and contributed thoughts and general commentary – even when in disagreement. Regrettably, open discussion is simply not occurring about the various departures from the existing rule that L&I is proposing, about L&I’s reasons and rationale for wishing to make changes, or about the intent of the language that L&I is proposing. Nor is L&I providing any general commentary. We are hopeful that this process will be included going forward to assure an optimal outcome.
- L&I created a process to air grievances and determine if that process was advancing forward – a separate meeting and discussion between L&I and the two key stakeholders. We are concerned that L&I may have departed from this process during the meeting on February 7, 2018. WSPA was not aware of this planned change in process, which raised two concerns:
 - First, L&I did not object to use of the rule forum by certain stakeholders to air grievances – but did stop WSPA from objecting to such statements in order to allow those stakeholders to make a fully prepared opening statement.
 - Second, L&I rejected a timing piece that WSPA made, aspects of which had been verbally agreed to. This was during the meeting, so no changes could be made to accommodate the rejection of the proposed timing and process.

In the future, it’s our hope that we will work together and share information regarding the purpose and scope of meetings so that WSPA members may adequately prepare and assist L&I in the rulemaking process in a positive, substantive manner.

- It has been commented, several times in the rule forum, on the necessity to complete this process expeditiously. It is important to note that the WSPA member representatives that volunteer to participate in this process have full time jobs that focus on the health and safety of the employees at the refineries, and have decades of knowledge and experience to share. This knowledge will significantly contribute to a productive outcome of enhancing process safety. A deliberate review of L&I’s draft regulation (which appears to have been, largely, cut and pasted from Californias PSM rule- htough it does contain some significant changes) is warranted given that L&I and the state of California both acknowledge that the California PSM rule has room for improvement.

- Not only is L&I not participating in the discussion, but now a court reporter has been added to the forum. Thus, the meeting is 'for the record' and encourages a literal reading into the record of the proffered thoughts, with minimal actual and valuable discussion during the meeting. Further, participants must pay for the privilege of receiving notes through a third party (i.e., the court reporter), and those minutes are not available prior to the next meeting.

Thank you for your consideration of WSPA's observations. We welcome an in-person meeting to clarify the conversation on January 16, 2018, as there appear to be significant discrepancies in our shared understandings of the intent and goals of L&I in this process. In the interest of WSPA and all parties being able to fully participate and bring the experience of the industry and stakeholders to the table, we feel it is important to discuss these concerns before any additional meetings occur.

Thank you for your consideration of WSPA's comments. We welcome any questions or comments you might have. Please contact me at this office or Jessica Spiegel of my staff at (360) 918.2178 or email Jessica@wspa.org.

Sincerely,



Catherine Reheis-Boyd

cc: Tom Umenhofer, WSPA
Jessica Spiegel, WSPA
Ann Soiza, L&I
Maggie Leland, L&I