

05/09/2018 – Lead Rulemaking Stakeholder Meeting

Washington State Department of Labor & Industries
12806 Gateway Drive South
Tukwila, WA 98168

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

Battery Council International (BCI)
City of Tacoma
CenturyLink
King County Local Hazardous Waste Management Plan
King County
AT&T
Seattle Parks & Recreation
University of Washington (UW)
Associated General Contractors of Washington (AGCWA)
National Shooting Sports Foundation (NSSF)
Association of Washington Business (AWB)

WAC 296-857-10030, Multi-employer worksites

Stakeholder Question/Comment: Regarding subsection (2), what if a subcontractor doesn't follow requirements even after the host employer fulfilled their obligation to share information?

DOSH Response: We've codified our approach to dealing with violations at a multi-employer worksite based on settled case law in Washington. The host employer would be required to share information related to lead in the workplace, but ultimately they wouldn't be cited for their subcontractors' violations unless there was clear evidence that they were aware of violations and failed to do anything to ensure they were corrected.

WAC 296-857-10040, Determining work not covered by this rule

Stakeholder Question/Comment: The note at the bottom of page 5 is confusing, and duplicates information found in the table on page 2. The better approach would be to codify the exceptions to the rule instead of trying to include everything that would fall under the rule, then replace section (2)(f) with the note.

DOSH Response: The intent of the note on page 2 was to clarify what work isn't included in the rule at the outset. The note on page 5, however, falls under the section pertaining to work that isn't included, so we began by summarizing what work is included in the rule.

Stakeholder Question/Comment: The note should read, "working with any of the following materials is *potentially* covered..."

Stakeholder Question/Comment: Why require employers to provide documentation if there is no lead exposure?

Stakeholder Response: So we have to test the kick plates surrounding office rooms, computer mouse cords, and tear apart walls to test if there is lead in the pipes?

Stakeholder Response: This is a significant change in the scope of the rule. Currently, employers are only required to notify employees if a hazard above a particular threshold exists, but this draft requires assessment of *any* exposure.

Stakeholder Response: Now every employer in the state will be required to have a formal, documented lead program.

DOSH Response: This is similar to requirements in other rules, such as the asbestos rule, where employers are required to provide written response within 14 days. If there is no lead exposure, the employer's written response simply documents that they have exercised due diligence to assess lead hazards and nothing was found. Regarding lead pipes, an employer wouldn't be required to do this type of analysis unless workers would be performing work (plumbing, welding, etc.) on the pipes. An office exposure assessment might note that paint on the walls or computer electronics contain trace amounts of lead but that the exposure is minimal.

The intent here is to provide employees with knowledge to address potential exposure. We will review this section and possibly revise to clarify. Please feel free to provide suggested language.

Stakeholder Question/Comment: Regarding (2)(a), would this mean that an employer is required to translate lead information into any language an employee requested? It should be

noted that Labor & Industries (L&I) hasn't been able to accomplish this with its workers comp program despite years of attempting to do so.

Stakeholder Question/Comment: It would be preferable if the rule allowed employers to provide translated materials in writing, or explain it to workers orally (which is often more effective than giving workers something to read anyway). Please change rule language to "or" instead of "and."

DOSH Response: We can review the language and will likely change it to something like, "the employer must make information available to workers in manner that it is understood by the worker."

Stakeholder Response: L&I has translation/interpretation services and can provide written transcripts of telephone conversations.

Stakeholder Question/Comment: Regarding (2)(a), and throughout the rule, we would prefer that the rule uses the term "employees" instead of "workers."

DOSH Response: The change from the term "employer" to "worker" was intentional, and is consistent with the host employer requirements discussed previously.

Stakeholder Question/Comment: Regarding (2)(b), instead of using the subjective term "significant uptake of lead," the rule should stipulate that the assessment demonstrates the exposure is below limits threshold allowed in rule, and provide citation to exposure limit tables. Similarly, (2) should be changed from "...no hazard..." to "no exposure above minimum threshold."

Stakeholder Question/Comment: In section (2)(c), regarding the clearly convincing information, the rule should say, "including but not limited to..."

DOSH Response: What other types of information would employers use aside from objective data, professional engineering or industrial hygiene assessments, bulk sampling, air monitoring, and surface sampling?

Stakeholder Question/Comment: What "department" does (2)(d) refer to?

DOSH Response: L&I – we will add a definitions section as the rule is further refined and it will include this.

Stakeholder Question/Comment: In subsection (2)(f)(i) engineering controls should be "necessary" not "required" as "required" has a particular meaning within administrative regulations.

Stakeholder Question/Comment: So this whole section is basically a negative exposure assessment?

DOSH Response: Yes, but it goes beyond exposure to determine in/out of the rule.

Stakeholder Question/Comment: Is there a timeframe for how long employers have to update their assessment if activities change?

DOSH Response: Change in work is addressed later in the rule.

Stakeholder Question/Comment: Do these requirements duplicate what is required under HazCom?

DOSH Response: HazCom rules apply even if this rule doesn't.

WAC 296-857-10050, Initial classification of worker exposure

Stakeholder Question/Comment: (1) and (2) create the same obligations for employers, which could lead to duplicative citations.

DOSH Response: We will review the language and consider breaking into "(2)," "(2)(a)," etc.

Stakeholder Question/Comment: The lettered list under (5) should state either "and" or "or." Which applies?

DOSH Response: This should be "or."

Stakeholder Question/Comment: (6)(a)(ii) states that employers may rely on the presumed exposure level for short-term work or permanently." What do you mean by this; which is it – short term or permanent?

DOSH Response: The intent is to allow employers to operate under presumed exposure levels permanently under certain conditions. We're currently working on updating this section and explicit provisions will be included in the next draft.

Stakeholder Question/Comment: We shouldn't codify "typically feasible within 2 to 3 business days" under (6)(a)(i), as this could encourage labs to charge more for processing within this timeframe.

Table 5

DOSH Statement: Given that we are working on an updated version of this section time would best be spent moving to the next section. However, if anyone feels strongly that they'd like to comment now please do so.

Stakeholder Question/Comment: “Working with lead” should be changed to “altering or disturbing.”

WAC 296-857-200, Basic Rules

WAC 296-857-20010, Cleaning Practices

DOSH Statement: The main change in this section from the previous version is that the safe harbor provisions have been moved to a separate section.

Stakeholder Question/Comment: Why state that “four-sample surface testing *may* be used in section (3)?

DOSH Response: By using the word “may” we’re saying that this isn’t an explicit requirement. However, we wanted to include this information because this is how the Department would evaluate the effectiveness of an employer’s cleaning.

WAC 296-857-20020, Training

Stakeholder Question/Comment: How do the poster requirements work with exposure control areas under section 30010? Would there have to be a poster outside of every work station?

DOSH Response: The intent is to require employers to place the poster in an area where workers will readily have access to it, which generally is a break or lunch room.

Stakeholder Question/Comment: Will employers have to have the poster translated into any language requested by an employee?

DOSH Response: We’ll follow Department guidance, which stipulates that official L&I publications be translated into Spanish and five other most commonly used languages in Washington, and assist in providing translations upon request otherwise. The agency will provide these translated posters.

Stakeholder Question/Comment: How can we ensure that the training is effective for the particular workers in a given workplace?

DOSH Response: As previously mentioned, we will work to revise the language to stipulate training must be “understood by workers.”

Stakeholder Question/Comment: We're on board with training workers, but an employer should be responsible for training workers who aren't their employees. This also ties in with the previous "worker" vs. "employee" discussion.

DOSH Response: We will review the language to clarify responsibilities of host employer vs. sub, etc.

Stakeholder Question/Comment: Why is lead arsenate even included in section (5)? Hasn't this been illegal for many years?

DOSH Response: It is our understanding that this isn't used in agricultural applications any longer, but there may be other uses and exposure due to historical use.

WAC 296-857-20030, Hand and face washing

Stakeholder Question/Comment: (1) and (2) create duplicative requirements. Please consolidate into a single requirement.

DOSH Response: The intent is not to provide multiple citations for a single violation. We will revise language accordingly.

Stakeholder Question/Comment: Language in section (3) should be changed to "prior to clean area" rather than "outside control area" as a single washing facility before a clean area would be as effective as multiple washing facilities outside of each exposure control area.

Stakeholder Question/Comment: In section (5), the statement that, "objective wipe tests can be used," should be moved to a note since it is not an explicit requirement. And are wipe tests even used on hands?

DOSH Response: This was intended to be informational. We will review, and yes the colorimetric wipe tests can be effective at determining how well workers have washed hands.

Stakeholder Question/Comment: Would employers with workers at remote locations be permitted to use a hand sanitizer such as Purell temporarily until more adequate washing facilities are available?

DOSH Response: No, hand sanitizer is not effective at removing lead from skin. The intent of the handwashing requirements is for water and soap to be used, and there are relatively inexpensive, portable handwashing stations available that many employers use to fulfill the requirements of other rules already.

Stakeholder Question/Comment: Regarding section (6), what lead compounds may be absorbed through the skin?

DOSH Response: Tetraethyl lead can readily be absorbed through the skin. We can revise this language to be more specific.

Stakeholder Question/Comment: As a painting contractor, I can say definitively that gloves help reduce lead exposure but do not prevent it entirely.

DOSH Response: This is a good point, which is why handwashing and other housekeeping requirements still apply even when Personal Protective Equipment (PPE) like gloves are used.

WAC 296-857-20040, Voluntary Respirator Use

Stakeholder Question/Comment: Does voluntary respirator use exempt employers from fit-test requirements like it does in other rules?

DOSH Response: Yes.

Stakeholder Question/Comment: So employers can deny voluntary use of respirators below 10ug/m³?

DOSH Response: If an employer can demonstrate that the use of a respirator will create a greater hazard than not using one, they can deny voluntary use.

Poster

Stakeholder Question/Comment: Using the term “lead poisoning” in the title seems to border on fear mongering. “Prevent Lead Exposure at Work” would be a preferable title.

Stakeholder Question/Comment: Where would a painting contractor or similar business be expected to put these posters? We have an office but workers spend most of their time working offsite at various customer locations. It wouldn't be feasible to ask us to hang these posters up at the homes of customers who are having work done.

DOSH Response: We will review and likely use wording similar to that which is in the construction standard, which basically requires posters to be located in the same location where other safety posters are. In the case of contractors who typically work at

offsite locations, the intent would be for posters to be kept with other necessary documentation with the job foreman, in a work truck or similar arrangement.

Stakeholder Question/Comment: The poster contains too much information and people won't want to take the time to read it. We suggest consolidating the information, and provide links and references to training materials for those seeking more thorough information.

Stakeholder Question/Comment: It would be helpful to do usability testing on the poster.

DOSH Response: This is an early draft and we appreciate the constructive feedback. We plan to make significant revisions to the poster and will discuss this further after we've completed reviewing the draft.

We are considering adding QR codes to the poster given the ubiquity of smart phones these days, which could help us keep the information brief and impactful, while allowing those interested to find additional pertinent information.

Stakeholder Question/Comment: In the top left corner the poster states that, "sweeping and other actions scatter dust back into the air, creating more lead exposure." As has been mentioned elsewhere in the draft, this statement should be qualified to state, "...potentially creating more lead exposure."

Stakeholder Question/Comment: In the top right corner of the poster it states that stored lead causes damage to the body, but wouldn't it be more accurate to say that stored lead only potentially causes harm when released from the bones back into the body?

Stakeholder Response: From a medical perspective, that would be an accurate statement.

Stakeholder Question/Comment: Directly under that it states that permanent harm can start to occur before symptoms are noticed. Is this true in adults?

Stakeholder Response: The evidence suggests that permanent harm to the neurological, cardiovascular, and other bodily systems can occur in adults as a result of lead exposure.

Stakeholder Question/Comment: The poster should encourage pregnant women to discuss options with their employer. If the employer doesn't know about a worker's pregnancy status they can't do anything about it.

Stakeholder Question/Comment: While the poster includes information regarding pregnancy, it doesn't say anything about breast feeding. Given that there is evidence to support the understanding that lead can be passed on to a nursing baby, this should be included in the poster as well.

Stakeholder Question/Comment: Under “How to keep lead out of your body” it states, “minimize the time you spend in lead exposure areas.” Isn’t this somewhat in conflict with the 57 page draft explaining ways to increase time spent in exposure areas?

DOSH Response: One way to reduce exposure is to minimize time spent being exposed. We can review and potentially revise language to clarify intent.

Stakeholder Question/Comment: The poster should address employer requirement for providing information to those with limited English proficiency.

Stakeholder Response: In our experience, one of the primary factors in elevating blood levels is the combination of inadequate handwashing and smoking cigarettes. The poster should emphasize the importance of avoiding smoking with text and pictograms.