

Lead Rulemaking Stakeholder Meeting 6.10.16

WAC 296-62-07521 (General Industry)

WAC 296-155-176 – 17654 (Construction)

Division of Occupational Safety and Health (DOSH) Staff:

Kevin Walder, Administrative Regulations Analyst

Cheryl Christian – Industrial Hygienist/Lead Technical Specialist

Jeff Killip – Industrial Hygiene Program Manager

Chris Miller – Standards Program Manager

Attendees:

Al Audette – Building Industry Association of WA (BIAW)

Sherry Baron – King County

Todd Schoonover – WA State Dept of Labor & Industries (L&I)

Steve Whittaker – Public Health - Seattle & King County (PHSKC)

Steven Gilbert – Institute of Neurotoxicology and Neurological Disorders (INND)

Bob Battles – Association for Washington Business (AWB)

Marty Cohen – University of Washington

Matt Rolf – Andersen Construction

Brian Judy – National Rifle Association (NRA)

Welcome/Brief Overview – Kevin Walder welcomed attendees and provided a brief presentation. He explained the history behind the agency’s decision to engage in rulemaking in response to public petition and advised that the preproposal (CR-101) had been filed on April 19, 2016.

He also highlighted some ideas that the agency felt would be good “starting points” to be discussed later in greater detail as part of the group discussion. These include the following:

- Restructuring rule to emphasize and clarify housekeeping aspects
- Add section at beginning that clearly indicates prohibited activities (e.g., compressed air, dry sweeping, etc.)
- Clear rule writing to make requirements for employers and employees easier to understand
- Add flow charts where it is unclear when and to whom rules apply
- Appendices will be reviewed for content and any mandatory information currently contained in appendices will be incorporated into body of rule
- DOSH would prefer a single rule that applies to all industries

- The rule should ensure that employers can readily answer the following questions from their employees:
 - Is there lead in my workplace?
 - Where is it located?
 - What can I do to protect myself?

Kevin advised that nothing is “off the table at this point” but that the agency is considering leaving PELs, Action Levels, and BLLs as they are for now, pending additional data/research.

Lastly, he advised the group that DOSH is recruiting a temporary Lead Technical Specialist whose primary responsibility will be this rulemaking project and to serve as an agency resource on lead-related issues. No definitive timeline has been established but DOSH aims to have someone in the position this summer. In the meantime, the group will take a hiatus while the new staff member is brought on board and up to speed, which will include reviewing previous stalled lead rulemaking effort. DOSH will continue to seek stakeholder input during this time.

Review of DOSH Jurisdiction – Jeff Killip reminded the group that DOSH’s jurisdiction limits the reach of the rulemaking effort to employers and employees, and advised that DOSH cannot legally carve out exceptions for specific demographic groups such as pregnant women. He referred the group to a previous presentation provided by Alan Lundeen, DOSH Standards & Technical Services Program Manager, which is available at the agency’s Lead Safety page (https://lni.wa.gov/safety-health/safety-topics/search-by-topic?index=Safety_Topics&query=lead).

Proposed Strategy and Technical Issues – Cheryl Christian

1. DOSH proposes one hazard based lead standard that addresses all industries. DOSH would reorganize the standard like moving the requirements that apply to all employers and prohibited practices to the front sections of the standard.
2. DOSH proposes starting the rule rewriting effort by reviewing and evaluating of previous plain language lead standard *as a starting place* to have one lead standard. It addressed construction specific requirements like presumed levels of exposure (aka “trigger tasks”), worker protection during exposure evaluation along with general industry requirements and information.
 - a. However, stakeholders have expressed a concern regarding the removal of the lead standard from the actual construction chapter WAC 296-155. It may compromise compliance with the standard.
 - b. Exposure evaluation and PEL
3. DOSH prefers to continue the focus on prevention of lead exposure and retaining the existing PEL at this time. DOSH will continue to monitor CaOSHA’s experience. Currently, DOSH proposes considering the following additions or clarifications:
 - a. Airborne Exposures.
 - i. Written APP requirement for employers with exposure between the action level (AL) and PEL as part of an employer’s APP. To ensure maintenance and use of worker exposure controls like ventilation and

work practices that in their absence could contribute to increasing worker exposure. Focus on those things employer has in place to maintain worker exposures lower than the PEL.

- ii. Short duration high exposure tasks and exposures in general industry like Construction activities at facilities with lead regulated areas like gun ranges, remodels, cleanup operations.
 - iii. ACGIH – (American Conference of Industrial Hygienist). <http://www.acgih.org/>
 1. Currently TLV (Threshold Limit Value) no change currently recommended of 50 ug/m³. Continue to monitor CaOSHA's approach
 - a. Current lead TLV documentation is available here. <https://www.acgih.org/?s=lead+TLV+documentation>
 - b. For local individuals, may view the ACGIH documentation at the Technical Library located at the Tumwater location of Department of Labor and Industries.
 - c. The OSHA preamble to the existing lead standards also contains background information regarding the development of the PEL. These preambles are available at OSHA.gov.
 2. BEI (Biological Exposure Index) Blood lead level
 - a. Currently on the ACGIH list of intended changes for 2016.
 - b. *Draft* documentation for the BEI change is available here. <https://www.acgih.org/?s=lead+TLV+documentation>
 3. *ACGIH has a presentation developed for the 2006 national conference regarding their process of developing professional guidelines (TLVs) It's available*
<https://www.acgih.org/?s=lead+TLV+documentation>
- b. Information sharing at multi-employer worksites regarding lead containing materials prior to exposure. DOSH representatives advised that certain rules, such as Asbestos, specifically require employers to have a survey that provides information regarding asbestos hazards. Demolition requires a hazardous materials survey. However, it's currently silent regarding content. Currently, the lead standards do not have a specific requirement to share information. Global Harmonization (previously HazComm) does not address information regarding existing building materials.
- DOSH would consider mechanisms to address information sharing between employers at a multiple employer worksites in the revised rule(s). The group generally expressed agreement that some uniform system for information exchange would be beneficial. Examples of rules that information sharing would be the Confined Standard and Asbestos

- c. Housekeeping/surface contamination assessment procedure for information. Consider providing example procedures to provide guidance to employers. Explicitly address HEPA filtered vacuums.
- d. Personal Hygiene
 - i. Clarify requirements. Employers ensuring washing
 - ii. Clarify construction and shower feasibility
 - iii. Consider adding showering to the list of items during the exposure assessment period.
 - iv. Clarify -no contaminated PPE leaves the job site
- e. Regular and frequent inspections by employer's to ensure compliance with the standard.
- f. Medical surveillance
 - i. Update blood lead monitoring frequency parity with construction.
 - ii. Evaluate medical removal levels, current background level and data to support reduction. Preambles indicate compliance with the existing standards should result in blood lead levels well below current medical removal levels.
 - iii. Allow licensed healthcare professional supervised by doctors a role e.g. respiratory protection standard.
- g. Update the technical appendices
- h. There may be additional issues that arise out of the rule drafting process.

Group Discussion –

1. Stakeholders had concerns regarding the current DOSH proposal to clarify/enhance housekeeping requirements.
 - a. Definitions of “lead containing material” and “lead free” were discussed. Ultimately, as DOSH must remain as effective as OSHA, DOSH advised it may not be able to change these.
 - b. Existing requirements require the removing surface contamination “as free as practicable of accumulations”. Stakeholders would like additional definition. Stakeholders like definition of “clean”, or the adoption of a specific level (like HUD). Some stakeholders like the “performance standard” and considered it necessary because some industries/businesses would never be able to meet certain specific requirements (like HUD).
The standard as written requires employers to be as stringent as practical to remove surface contamination. It requires them to analyze their efforts and encourages continuous improvement.
 - c. Additional regulations might not be the best way to encourage safe behaviors. Stakeholders would like DOSH to consider this when drafting new rule language. A related concern was examples becoming the required standard of care.
 - d. Concerns by stakeholders regarding cross industry and employer information sharing like effective lead removal and housekeeping practices.

DOSH would like to encourage effective information sharing between industries

and employers. Sharing of information between industries can be helpful to assist employers with procedure development to enable effective housekeeping measures in the workplace (as an example). A specific example from the past: DOSH shared a US Navy document guide on indoor firing range industrial hygiene. This document developed by the US Navy that includes a comprehensive housekeeping procedure for the Navy's indoor firing ranges. Note on the discussion: employers still have to implement the actual housekeeping procedures in the actual workplaces, and the work practices still have to meet the actual requirements of the standard. DOSH will need to evaluate the most effective mechanism for any potential information sharing. DOSH agrees that procedures need to be labeled as "examples".

2. Stakeholders had concerns regarding the "new hire industrial hygienist." One recommendation was that the new industrial hygienist (Lead) complete a thorough review of CalOSHA's rule proposal. A "redlined" version is available at their website allowing viewers to see specifically what changes are being proposed.

DOSH is early in the process of hiring another industrial hygienist in Technical Services to provide support to the lead rulemaking. Once the person is hired DOSH will provide the background to the project.

3. Concerns regarding DOSH jurisdiction, compliance staffing, enforcement and other agencies. A stakeholder mentioned that various public health agencies (local, municipal, state, etc.) don't all have the same level of authority, and as a result of a highly publicized lead exposure incident a couple of years ago at a gun range in the area they learned that they essentially have no jurisdiction in such cases.

DOSH response. DOSH jurisdiction covers workers in an employee/employer relationship.

DOSH has limited enforcement resources including industrial hygiene staff. Enforcement staff investigated the specific companies involved and issued "Citation and Notice" for non-compliance instances of the respective lead standards.

Public health agencies currently have an ability to take action within their jurisdiction. However, these agencies tend to have a different mechanism than DOSH to enforce those things within the scope of their jurisdiction like childhood lead exposures. Gaps may exist in their regulations that may affect their ability to respond to clusters of lead exposure in children.

4. Concerns were expressed regarding lead exposure in pregnant women and children. A stakeholder asked specifically about protecting the most vulnerable workers, which he

posited were women of child bearing age. The stakeholder said that lead substitutes for calcium, which means that a women with elevated BLL will incorporate lead into bone and it is released during pregnancy, exposing the developing child to lead. If a women worker becomes pregnant while being exposed to lead she will absorb about 50% she is exposed to. So, the stakeholder suggested that regulatory standards should be set to protect the most vulnerable, thus a recommendation not to exceed 5 ug/dl.

Because DOSH jurisdiction covers workers in an employee/employer relationship, lead exposure involving children generally falls outside of DOSH jurisdiction. However, DOSH and the existing standards recognize the importance and impact to families of “take home lead exposures”. Both standards have existing requirements that require employers to address “take home lead exposures” to both the worker and their families to ensure the lead remains at work.

5. A stakeholder stated that current DOSH rules are based on data that is at least 30 years old, and current scientific consensus indicates that blood lead levels (BLLs) of 40 to 50 micrograms per deciliter are in fact dangerous and should be lowered accordingly.

DOSH Data indicates large percentage of lead poisoning incidents in the state have resulted from employers who were not in compliance with current standards, and not following appropriate housekeeping procedures, which is why this seems to be a good area to begin focus.

Business advocates responded stating that this is evidence the lowering PELs/BLLs would not make a difference. Clarifying current requirements via “clear rule writing” would be a good idea but reluctant to agree to other changes at this time.

6. Stakeholder suggested that a “one-size fits all” approach is not necessary and pointed to the fact that CalOSHA’s rule carves out exception for battery industry.
7. Stakeholders had concerns about delays in lead rulemaking. Recognizing that OSHA has indicated they will be taking up the issue of lead “sometime in the future” those advocating rule changes expressed their hope that DOSH does not wait to see what comes of OSHA’s efforts before acting.
DOSH responded by stating that they are committed to rulemaking now and are not waiting for OSHA to take action.

8. Stakeholder wanted additional time at a future meeting regarding the background and basis of the current PEL and TLV.

DOSH will work with new hire and possibly additional resources such as the ACGIH subcommittee on lead to develop a presentation once the stakeholder meetings resume.

Action Items –

- Make previous lead rulemaking draft, small business economic impact statement (SBEIS) and related documents available to group (lead rulemaking website)
- Post Cheryl Christian's list of focus topics available to group (lead rulemaking website) or in the meeting minutes.
- Provide link to American Conference of Governmental Industrial Hygienists (ACGIH) petition information (lead rulemaking website)
- Post detailed meeting minutes (lead rulemaking website)
- Consider inviting other scientific experts to speak/present regarding the effects of lead in the workplace and related opinions – so far we've heard from just one
- Going forward, when DOSH has developed a "comparison document" that shows the current rule language alongside proposed changes, the group would like DOSH to include notation in areas where changes aren't being proposed as well so that the rationale for not making changes will be just as clear as that supporting changes