

## **06/08/2018 – 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)  
Institute of Neurotoxicology and Neurological Disorders (INND)  
British Petroleum United States Pipelines and Logistics (BP USPL)  
University of Washington (UW)  
City of Tacoma  
King County  
Seattle Public Utility  
National Shooting Sports Foundation (NSSF)  
Seattle Parks & Recreation  
Venture General Contracting  
Building Industry Association of Washington (BIAW)  
National Rifle Association (NRA)

### **WAC 296-857-300, Exposure Controls**

**Stakeholder Question/Comment:** Section (1) states that employers must “identify” exposure control areas. What is meant by this? Document, demarcate – what are employers specifically required to do?

**DOSH Response:** Under the draft, employers are required to post signs and control entry to lead areas. The intent is for employers to make it clear where these high exposure areas are and that additional protections are necessary within them.

**Stakeholder Question/Comment:** (1) and (2) are redundant and should be combined into a single requirement.

**Stakeholder Question/Comment:** Where in the standard does an exposure control plan exist for hand-to-mouth exposures, such as areas where brass polishing is performed?

**DOSH Response:** These types of exposures are addressed action levels stipulated in Table 4 – Material Content Criteria. Blood lead level (BLL) testing and a work area assessment would be required in addition to the requirement that employers provide hygiene facilities and appropriate personal protective equipment (PPE).

**Stakeholder Response:** Table 4 doesn't require a demarcated exposure control area when material is being disturbed. I suggest that the rule include a threshold for material disturbance (and not just elevated air lead levels) under the exposure control area requirements.

**Stakeholder Response:** Material content would make the entire facility a lead work area under the draft, so the concern raised here is already adequately addressed.

**Stakeholder Question/Comment:** Regarding the note at the bottom of page 18/top of page 19 and subsequent requirements, what would the employer be required to do in the event of an engineering failure?

**DOSH Response:** The purpose of the note is to convey that employers must clearly mark areas where artificial means, such as engineering controls, are used to reduce lead exposure so that workers understand potential risks and take proactive measures accordingly. Workers need to be aware, for instance, that just because a High Efficiency Particulate Air (HEPA) vacuum system is functioning it doesn't mean that there is no potential exposure.

### **WAC 296-857-30020, Exposure Control Plan**

**Stakeholder Question/Comment:** (2) should reference the training section so as to avoid creating duplicative requirements.

**Stakeholder Question/Comment:** (1) states "at or above" the airborne lead PEL, whereas (2) states simply "above." These should be consistent with one another.

**Stakeholder Question/Comment:** This section, much like the previous section, doesn't address material exposures and instead focuses exclusively on airborne lead. I would like to see material exposure addressed in these sections, as it is potentially a significant source of lead uptake in the body.

**DOSH Response:** We will consider these comments as we make further draft revisions.

**Stakeholder Question/Comment:** These requirements seem better suited to fixed site than construction work, which is done at various locations.

**DOSH Response:** Some of the language used in the draft came from the existing general industry rules. We will review the draft to see if we can provide better direction for those performing construction or other transitory work.

**Stakeholder Question/Comment:** (3)(g) and (3)(h) should instead be (i) and (ii) respectively under (3)(f) following the colon. This would then make what is now (3)(i) instead (3)(g), and so on.

**DOSH Response:** Yes, we will review and correct the formatting.

**Stakeholder Question/Comment:** For (3)(c), could representative data be used to fulfill this requirement instead of specific air monitoring data?

**DOSH Response:** We could consider allowing a detailed exposure control assessment to fulfill this requirement.

**Stakeholder Question/Comment:** (7) could potentially require employers to provide proprietary information about machines and system, which would be a step too far. Information pertinent to workers' safety and health should be made available to them, but not necessarily the general public.

**Stakeholder Question/Comment: Regarding** (7), the current rule gives employers a certain amount of time to comply. Please amend the language to allow employers a reasonable timeframe, perhaps 2 business days, to provide the exposure control plan.

**Stakeholder Question/Comment:** (8) uses the term "designated representatives" whereas the current rule uses the term "authorized representatives," which carries a well understood definition that is commonly used in federal rules as well. Please revert back to the term "authorized representatives" in order to avoid potentially opening a company's books to anyone an employee designates, such as a friend who happens to be a competitor.

### **WAC 296-857-30030, Exposure Controls**

**Stakeholder Question/Comment:** What's the difference between what is required under (1) [feasible controls and work practices] and (3) [all feasible controls for exposure]?

**DOSH Response:** At levels between 20  $\mu\text{g}/\text{m}^3$  and 50  $\mu\text{g}/\text{m}^3$  ongoing controls and major infrastructure improvements would not be required, while at 50  $\mu\text{g}/\text{m}^3$  or above all controls would be required.

**Stakeholder Response:** So the intent is to rely on PPE below 50  $\mu\text{g}/\text{m}^3$  and engineering controls above 50  $\mu\text{g}/\text{m}^3$ ?

**DOSH Response:** The engineering controls would be limited between the Permissible Exposure Limit (PEL) and the Secondary Permissible Exposure Limit (SPEL).

**Stakeholder Response:** What is the justification - economics?

**DOSH Response:** DOSH, like all state agencies, is statutorily bound to consider economic feasibility when conducting rulemaking, but additionally the expectation is that at the lower end of the range of air lead less comprehensive controls are necessary.

**Stakeholder Response:** From an industrial hygiene perspective, your approach departs from the traditional hierarchy of controls, where PPE would come *after* engineering controls, work practices and administrative controls. This is a step backward for Washington, and places economic feasibility over worker health. And to put the SPEL at 50  $\mu\text{g}/\text{m}^3$  it too high; 20  $\mu\text{g}/\text{m}^3$  is too high!

**DOSH Response:** 50  $\mu\text{g}/\text{m}^3$  is currently the PEL, so we consider the changes made in the draft to represent a significant improvement that will contribute greatly to better worker health. As previously mentioned, the statute that grants DOSH the authority to promulgate rules specifically requires that economic feasibility is considered, so we have to strike a balance. If we fail to do so, we risk legal challenges that could jeopardize the whole rulemaking project.

#### **WAC 296-857-30040, Showering, changing, and eating facilities**

**Stakeholder Question/Comment:** (3) requires employers to ensure employees have effectively decontaminate by showering and changing clothes. How are employers supposed to do this without inappropriately invading workers' privacy (monitoring showers, etc.)?

**DOSH Response:** We will review the language and consider making changes that will require employers to require their workers to shower, but make it clear that the expectation would not be for employers to monitor shower.

**Stakeholder Question/Comment:** What about religious exemptions for those whose beliefs prohibit them from appropriately using PPE, or whose beliefs require certain types of headdress that make decontamination difficult?

**DOSH Response:** This occasionally comes up for us when conducting rulemaking, and we'd probably have to defer to whatever legal precedents exists. To the extent that another equivalent job is available for a worker unable to comply with regulations due to religious convictions, offering them this option would probably be a good course of action.

**Stakeholder Question/Comment:** The note on page 22 refers to “employer controlled proactive measures.” What does this mean?

**DOSH Response:** The employer must have a documented system for workers leaving a lead work area.

### **WAC 296-857-30050, Protective clothing and equipment**

**Stakeholder Question/Comment:** (4) requires daily laundering at  $50\mu\text{g}/\text{m}^3$  whereas the current rule requires daily laundering at  $200\mu\text{g}/\text{m}^3$ . What is the rationale for this?

**DOSH Response:** This is a low-tech way to mitigate lead exposure and  $50\mu\text{g}/\text{m}^3$  is consistent with the SPEL.

**Stakeholder Question/Comment:** (6) requires a clean change room, which isn’t always feasible on a construction site. This again is an example of where the draft language needs to be reviewed to ensure that requirements are realistic for construction work.

**DOSH Response:** We will take a look at this and other areas you’ve mentioned regarding construction. At the very least, we’d want to ensure that there are requirements for appropriately donning/doffing clothing when dealing with lead at a construction site.

**Stakeholder Question/Comment:** The note at the bottom of page 23 has a couple of typos. It should read, “MAY CAUSE INFERTILITY OR HARM TO THE UNBORN CHILD.”

**DOSH Response:** Yes, we will correct this.

**Stakeholder Question/Comment:** The note should also include language regarding damage to the cardiovascular system in addition to the central nervous system.

**DOSH Response:** We will review, but we want to make sure that labelling is consistent both within the rule and with other rules, such as HazCom (296-901 WAC).

### **WAC 296-857-30060, Required Respirator Use**

**Stakeholder Question/Comment:** This section is difficult to track requirements. An “if/then” table might make things clearer.

**Stakeholder Question/Comment:** Am I correct that the same respirator would be acceptable anywhere in the range between  $200\mu\text{g}/\text{m}^3$  and  $500\mu\text{g}/\text{m}^3$ ?

**DOSH Response:** We'll review the respirator protection factor tables to ensure the rule aligns appropriately.

**Stakeholder Question/Comment:** Paragraph (1)(a)(i) should be clarified to be specific to lead related emergencies.

**Stakeholder Question/Comment:** What is the purpose of allowing employees to request PPE when it isn't required?

**DOSH Response:** Respirators are voluntary at  $10\mu\text{g}/\text{m}^3$  and required at  $20\mu\text{g}/\text{m}^3$  but as long as wearing a respirator doesn't create a greater hazard this allows workers who are particularly concerned about their exposure or possibly those with certain medical conditions to take more proactive measures to protect themselves.

**Stakeholder Question/Comment:** (3) uses the term "proper protection" whereas the current rule refers to "adequate protection." Is there a reason for this shift?

**DOSH Response:** This wasn't a deliberate shift, and the intent is that "proper" and "adequate" would be synonymous in this context.

#### **WAC 296-857-400 Characterizing and Tracking Worker Exposure**

##### **WAC 296-857-40010, Classifying exposure for workers covered by this rule**

**Stakeholder Question/Comment:** For clarity, it would be helpful define a term like "action level" at the beginning of the rule and then simply refer to that defined word throughout the rule rather than including the numeric range each time, which makes for cumbersome wording that is confusing to read.

**Stakeholder Question/Comment:** Could you consolidate air sampling requirements in one place in the rule. Currently they are spread throughout the rule.

**DOSH Response:** We will review to see if we can accommodate those requests.

**Stakeholder Question/Comment:** Why is 12 months used in (5)(b)(iv)?

**DOSH Response:** OSHA has defined "historical" data as anything within 12 months and anything beyond that would be considered "objective" data, keeping in mind that the burden of proof is greater using objective data.

##### **WAC 296-857-40020, Monitoring of worker exposure over time**

**Stakeholder Question/Comment:** Do all OSHA/DOSH standards require monitoring every 3 months? What is the purpose of this if nothing has changed?

**DOSH Response:** This is an interval of time commonly used because sometimes it might not be obvious that changes have occurred.

**Stakeholder Question/Comment:** (3) refers to WAC 296-857-40010(7), which doesn't exist. Check and update the reference.

**Stakeholder Question/Comment:** (4) isn't clear. It could be interpreted as allowing employers to reduce the frequency of monitoring to any arbitrary level.

**Stakeholder Question/Comment:** If an employer only performs work on annual basis, (2) [requiring monitoring every 6 months] would be impossible to comply. This needs to be addressed.

#### **WAC 296-857-40030, Notifying workers of exposure monitoring results**

**Stakeholder Question/Comment:** Material action levels should also be included in these notification requirements. Again, we shouldn't be focusing solely on lead in the air.

**Stakeholder Question/Comment:** (2)(a) and (2)(b) creates requirements for employers to provide documentation and explanation to employees regarding how they are reducing levels to  $20\mu\text{g}/\text{m}^3$  or below, but employers aren't required to reduce levels to or below  $20\mu\text{g}/\text{m}^3$ . This section needs to be reviewed taking the SPEL level of  $50\mu\text{g}/\text{m}^3$  into account.

**Stakeholder Question/Comment:** Does DOSH believe that there should be a surface contamination threshold?

**DOSH Response:** We will consider adding a surface contamination threshold and including it into the draft framework.

**Stakeholder Question/Comment:** It would be helpful for employers if the 5 day turnaround time for providing exposure monitoring results could be extended in cases where employees aren't exposed above the action level.

**Stakeholder Question/Comment:** The note on page 26 uses the term "corrective action" but (2)(a) uses simply "action." These should be consistent with one another.

#### **WAC 296-857-40040, Exposure records**

**Stakeholder Question/Comment:** (2)(a)(ii) requires employers to include “all workers” in the exposure record. The job classification should be included, but not individual employee information like social security numbers, etc.

**Stakeholder Question/Comment:** (1)(b) requires employers to document “evidence of the method’s accuracy.” Shouldn’t a copy of an accredited lab report, including the margin of error, suffice?

**Stakeholder Response:** Either way, DOSH should conduct some sort of outreach to the labs that perform these analyses. The increase in lead requirements could potentially overburden labs in the state.

### **WAC 296-857-500, Lead Sampling and Analysis**

#### **WAC 296-857-50010, Surface Sampling**

**Stakeholder Question/Comment:** This section should be in a non-mandatory appendix. (1) and (2) in particular, using phrases like, “the employer must” appear to be mandatory requirements.

**Stakeholder Question/Comment:** Are most labs capable of detecting lead at 2µg per sample?

**DOSH Response:** Yes, 2µg is fairly standard. Currently, we encounter questions arising from situations where much lower, miniscule levels have been detected and employers want to know how the rule applies to them.

### **WAC 296-857-600, Blood Lead Testing, Medical Monitoring, and Medial Removal**

#### **WAC 296-857-60010, Monitoring worker blood lead levels**

**Stakeholder Question/Comment:** (2) requires blood monitoring for workers who don’t fall under the rule.

**DOSH Response:** This section should be limited to those workers who work with lead, but fall under the Action Level.

**Stakeholder Response:** Isn’t the point of the Action Level to determine who is/isn’t required to be blood tested?

**DOSH Response:** No, this will be an increase in who is required to be blood tested, and more stringent requirements will apply at or above the Action Level.

**Stakeholder Question/Comment:** Testing everyone negates the point of an Action Level. This would require blood lead testing for everyone who works at Wal-Mart or Cabela's, for instance, because they carry ammunition and fishing equipment in their sporting goods section. We object to this increase in requirements.

**DOSH Response:** The current rule applies to all employers in Washington, whereas the draft sets limitations to who falls under the rule. Part of the trade-off is that more workers will require blood testing, but some safe harbor protections have been included for clean areas, and we will consider de minimis procedures for construction as well. Further, we will work to make it clear at the outset of the rule who is in/out.

**Stakeholder Question/Comment:** What if an employee refuses a blood test?

**DOSH Response:** The intent is that the employer will make the test available, but we certainly don't expect or advocate employers forcing workers to have their blood tested. We will add clarifying language. Employers may need to make sure employees who are not tested are not exposed to lead.

**Stakeholder Question/Comment:** A note should be added allowing employers to offer blood lead testing to families of workers.

**Stakeholder Question/Comment:** How much does testing cost?

**Stakeholder Response:** About \$65 per test.

**Stakeholder Question/Comment:** (10) needs to be consistent with Well Managed Blood Level recommendations at the top of page 56, which recommends monthly testing over 20µg/dL.