

## **8/31/2017 – 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):**

Northwest Laborers-Employers Training Trust Fund (NWLETT)  
Local Hazardous Waste Management Plan – King County  
Washington State Dept. of Transportation (WashDOT)  
Northwest Laborers  
International Lead Association (ILA)  
Building Industry Association of Washington (BIAW)  
National Rifle Association (NRA)  
Association of Washington Business (AWB)  
Battery Council International (BCI)  
Dyno Battery  
King County  
Alliance for Gun Responsibility  
Archbright  
Valley Electric  
City of Seattle  
Associated Builders and Contractors (ABC) – Western Washington  
National Electrical Contractors Association (NECA) - Puget Sound Chapter  
Vigilant  
City of Tacoma  
Public Health – Seattle & King County  
University of Washington  
Labor & Industries - Safety and Health Assessment & Research for Prevention (SHARP)  
Labor & Industries – Adult Blood Lead Epidemiology & Surveillance (ABLES)  
Walker Specialty Construction, Inc.  
Association of Washington Cities  
Grant County Public Utility District (PUD)  
CenturyLink  
Battery Council International (BCI)  
Seattle City Light  
Washington Refuse and Recycling Association (WRRRA)  
Boeing  
Seattle Parks and Recreation  
Washington State Department of Health (DOH)  
Oregon OSHA  
California Department of Public Health – Occupational Lead Poisoning Prevention Program

**WAC 296-857-60080, Medical removal benefits**

**Stakeholder Question/Comment:** Regarding (3)(c), is the concept of “risk of permanent material impairment” new, or does this exist in the current rule?

**DOSH Response:** This exists in the current rule.

**Stakeholder Question/Comment:** This section should reference previous sections in the rule that address conflicting opinions of medical providers.

**DOSH Response:** This is intended to be a requirement that applies to a final, conclusive determination.

**Stakeholder Question/Comment:** Section (3)(d) is too vague. It should specify “any other health concern *related to lead exposure.*”

**Stakeholder Question/Comment:** Would this apply in cases where employees requested voluntary removal?

**DOSH Response:** The point of this section is to give employers the option to electively place employees on medical removal even when blood lead levels (BLLs) do not exceed the permitted threshold. If the employer chooses to do so, then the medical removal requirements would apply.

**Stakeholder Follow-up:** As written, this section would provide too great of an opportunity for employees to abuse the protections provided. It is not appropriate to ask employers to pay for up to 18 months of leave simply because an employee is afraid of lead.

**Stakeholder Question/Comment:** Section (4) should stipulate that employees can return to work upon receiving two consecutive tests below 15 µg/dL rather than 10 µg/dL. This is a protective level, employees would still be monitored, and subject to personal protective equipment (PPE) requirements.

**Stakeholder Response:** No, 10 µg/dL is actually too high. Lead is toxic and unsafe at any level and the purpose of this rule is to protect workers and their families.

**Stakeholder Question/Comment:** Is it necessary to include section (3)(d) since employers already have the right to voluntarily remove employees?

**DOSH Response:** Again, this is included because if an employer elects to voluntarily remove an employee, then they would have to comply with medical removal requirements in the rule.

**Stakeholder Question/Comment:** Some version of this provision already exists in the rule, correct?

**DOSH Response:** Yes, and we will review the language to ensure clarity.

**Stakeholder Question/Comment:** This section of the rule could be modeled on similar rules relating to respirators, where if an employer elects to provide respirators in cases where they are not required to, they then must adhere to aspects of the rule relating to how the respirators must be fitted, etc.

**DOSH Response:** Yes, that might be a good model to use here. Thank you.

**Stakeholder Question/Comment:** The comparable section in the current rule is titled “Employer options pending medical diagnosis.” This more clearly describes the intent of the section and should be used going forward.

**Stakeholder Question/Comment:** I would like to see take-home exposure addressed more explicitly here. The risk associated with tracking lead into the home, particular when small children whose bodies absorb lead more readily than adults, are present.

#### **WAC 296-857-60090, Medical records**

**Stakeholder Question/Comment:** Are there significant differences in this section from the existing standard?

**DOSH Response:** No, certainly nothing intentional. DOSH has made an effort over the past several years to make medical record requirements consistent across all of its rules, so any changes from the existing rule found in the discussion draft are simply an effort to continue in this manner.

**Stakeholder Question/Comment:** Section (2)(c) states “50 µg/dL” – it should be 30 µg/dL for acute removal level or 20 µg/dL for chronic removal level, consistent with the rest of the rule.

**Stakeholder Question/Comment:** Is it the medical provider’s responsibility or the employer’s to maintain these medical records?

**DOSH Response:** Because health records contain confidential information the records should be maintained by the medical provider, but it is the responsibility of the employer to ensure that this taking place.

#### **WAC 296-857-700, Lead Information**

**DOSH Statement:** We’re working on a poster or handout that employers can post in the workplace or provide to employees that contains the information in this section.

**Stakeholder Question/Comment:** The information included in this section is good, but it would be more helpful if in included more graphics rather than words. Even as “plain language” many workers would have a difficult time understanding some of the information. Also, it is important that this section and any related poster/handout be not only translated, but “trans-created” for workers of different linguistic and demographic groups to ensure cultural appropriateness.

**Stakeholder Question/Comment:** This section should be expanded to address women specifically given that hazards that lead poses to children in the womb. Information about how children’s bodies absorb lead as calcium and related information on the harm that it causes should be included as well. This, again, is why there should be greater emphasis on the importance of mitigating take-home exposure.

**Stakeholder Question/Comment:** The level of concern should be 5 µg/dL, not 10 µg/dL.

**Stakeholder Question/Comment:** The CDC figure of 5 µg/dL is statistically derived and has no medical relevance. It is based on a very small percentage of children between one and six years old, which of course isn't representative of the worker population.

**Stakeholder Response:** The CDC also is careful to state that there is no safe level of lead.

**Stakeholder Response:** The CDC actually states that its research shows evidence of renal failure, hypertension and other health concerns at the 5 µg/dL benchmark, and it does apply to adults as well as children. I would argue that this is medically relevant.

**Stakeholder Question/Comment:** DOSH needs to make it clearer that this section is informational, not citeable.

**Stakeholder Question/Comment:** Where are the training requirements in this section?

**DOSH Response:** This is the general information section. Training requirements are included elsewhere in the draft.

**Stakeholder Question/Comment:** The language at the bottom of page 37 stating, "...it can kill you in a matter of days," is inflammatory and open to misunderstanding. More context should be provided.

**DOSH Response:** This section refers to very high, short-term exposures and states that these cases are extremely unusual. However, we will review the language based on this feedback and made changes if appropriate.

**Stakeholder Question/Comment:** As a contractor with extensive experience performing lead abatement work, I can say confidently that we typically find BLLs of between 5 and 10 µg/dL during entrance exams. The levels in this draft rule are too low and would make it difficult to find workers to perform this work, which in turn would create a public health crisis if no one is able to perform lead abatement. The real issue is hygiene, which we can't always control – the employee has to take some responsibility for this.

**Stakeholder Response:** I agree with this assessment.

**DOSH Response:** To be clear, we're talking about the general information section right now.

**Stakeholder Question/Comment:** There needs to be acknowledgement in this section regarding the importance of particle size and solubility. There also needs to be acknowledgement that the effects of lead at lower levels are considered reversible.

**DOSH Statement:** We appreciate the comments. Regarding educational materials, posters, etc., we're open to any examples you or ideas you might have.

### **WAC 296-857-800, Medical Protocols**

**Stakeholder Question/Comment:** The removal level should be 10 µg/dL, not 30 µg/dL, which is far too high. Adverse effects are evidenced well below 30 µg/dL.

**Stakeholder Question/Comment:** It might be advisable to review the new OSHA silica rule and other newer rules, as they include comprehensive medical protocols that are quite helpful for medical providers.

**Stakeholder Question/Comment:** We are concerned that this section includes some of the same requirements as elsewhere in the rule, which could open employers to multiple citations for the same infraction. It needs to be clear that information sections of the rule are not citable.

**Stakeholder Question/Comment:** The section titled “Employer Responsibilities” includes requirements for medical providers. The title should be changed, or another section should be added.

**Stakeholder Question/Comment:** Are there provisions to protect employers in cases where lead exposure was not related to occupation? Employers shouldn’t be on the hook for exposures resulting from personal hobbies that employees engage in during their own time.

**DOSH Response:** The initial testing requirements in the draft are intended to address this concern.

**Stakeholder Follow-up:** DOSH should consider a questionnaire similar to what is used when assessing occupational hearing loss.

**Stakeholder Question/Comment:** Education and hygiene are the most important factors in protecting workers

#### **WAC 296-857-900, Task and Industry Specific Compliance Protocols**

#### **WAC 296-857-90010, Incidental Lead Paint in Construction/RRP Work**

#### **WAC 296-857-90020, Gun Range Work**

**DOSH Statement:** This section is intended to provide a streamlined process in keeping with the “safe harbor” concept. Essentially, if an employer elects to do certain things then they are exempt from other requirements. We are open to feedback.

**Stakeholder Question/Comment:** It is not clear that this section is voluntary. This should be made more explicit. It is also unclear specifically how following these protocols affect compliance requirements with other sections of the rule.

**Stakeholder Question/Comment:** Please define “disturb” in this section.

**DOSH Response:** We intend to include a definitions section in the next draft. One of the things we’ve focused on with this discussion draft has been which words and concepts are unclear to stakeholders, which will inform what is included in the definitions section.

“Disturb” in this section would refer to disturbing the material matrix, releasing lead particles. For instance, prying off trim painted with lead from a building wouldn’t constitute “disturbing” but sanding the same trim material would.

**Stakeholder Question/Comment:** The RRP derived from HUD doesn't address worker protection.

**DOSH Response:** The idea here was to fill in the gaps that exist with the RRP. The EPA/HUD intended to apply to this to low-level exposure, not abatement work. This would essentially limit employee exposure.

### Additional Comments

**Stakeholder Question/Comment:** Thank you for providing the bibliography. Could you provide more detail regarding which references were used to inform specific sections?

**DOSH Response:** In drafting the discussion draft, we've looked at a broad spectrum of studies and will continue to add to the list. When we make the next draft available we should be able to provide some more specific detail regarding which studies informed our decision making process for certain sections. Our primary intent with the discussion draft has been to determine where consensus exist and where there are significant differences in opinion in order to focus our effort going forward as efficiently as possible.

**Stakeholder Question/Comment:** You've indicated that the quantitative thresholds included in the section pertaining to surface wipe sampling were derived from EPA/HUD levels. What resources support this?

**DOSH Response:** There aren't specific studies that we can point to. We recognize that there is a difference between areas that are supposed to be clean (free of lead) and work areas where there is known lead and we've learned from the response to the addition of this section that there are limitations to surface sampling that need to be taken into consideration in preparing the second draft.

**Stakeholder Question/Comment:** If the current standard is working, then why make regulations more stringent? This rule will only punish those who follow the rules while others will simply not comply. Efforts should be focused on enforcement of existing rules rather than writing new ones.

**Stakeholder Response:** We do not agree that current standards are working, which is why the agency was petitioned in the first place. Many responsible employers follow existing rules and still end up with workers whose BLLs exceed current permitted thresholds.

The current standards are based on outdated science and public background BLLs that were significantly higher than today's averages.

**Stakeholder Question/Comment:** The conclusion that BLLs can't be lowered while otherwise keeping the rest of the rule the same is false. If you tell employers what BLL to meet, within reason, they can meet it without all of the additional requirements that this draft will impose.

**Stakeholder Question/Comment:** In some cases new terminology is used in the draft to describe things that have previously been commonly understood ('action level' etc.) This could create confusion,

especially for contractors who have employees across that country that may be in Washington on a single job, or infrequently.

**DOSH Response:** Generally, DOSH tries to take this into consideration given that many of our rules are different than OSHA rules. In this draft, for instance, since the “PEL” is a commonly understood term it has been used here, whereas the “action level” concept differs somewhat so new terminology has been employed.

**Stakeholder Question/Comment:** We need to keep in mind how we got here. Lead paint was banned in Europe in the 1920s while it took until the 1970s for America to do the same despite years of medical consensus that would support doing so. This is a real opportunity for us to lead the way in protecting workers and their families, which is something that I think we all can agree is important.