



**Jessica Spiegel**  
Regional Director

March 19, 2019

Emailed to: [sacj235@lni.wa.gov](mailto:sacj235@lni.wa.gov)

Mr. Joel Sacks  
Director  
Washington State Department of Labor & Industries  
P.O. Box 44620  
Olympia, WA 98504

Re: Feedback on PSM Rulemaking Effort to Date

Dear Joel:

As you are aware, the Western States Petroleum Association (WSPA) has been actively involved in the pre-regulatory efforts of the Washington State Department of Labor & Industries (L&I) regarding the Process Safety Management Amended Rulemaking, (Chapter 296-67 WAC, Safety Standards for Process Safety Management of Highly Hazardous Chemicals). To date, L&I staff has released two Discussion Drafts which have been subject to several stakeholder meetings over the past year. WSPA has provided extensive comments on the 1<sup>st</sup> and 2<sup>nd</sup> Discussion Drafts and has actively participated in the stakeholder process. We commend L&I staff for this outreach effort which has allowed WSPA and others to provide direct input. It is anticipated that the formal rulemaking process will commence shortly. Before that happens, WSPA would like to give you critical feedback on the currently available language.

WSPA appreciates that the 2<sup>nd</sup> Discussion Draft reflects some of the proposed changes suggested by WSPA in response to the 1<sup>st</sup> Discussion Draft. Although WSPA believes those changes are a positive first step, there are a number of other key revisions set forth in our comments on the 2<sup>nd</sup> Discussion Draft that have yet to be addressed (currently under review by L&I staff).

With the shared commitment to reduce the risk of accidental releases and to support process safety management improvements, WSPA and its members have remaining concerns with the scope and language of the 2<sup>nd</sup> Discussion Draft that hopefully will be addressed in the formal rulemaking process. Specifically, the 2<sup>nd</sup> Discussion Draft as written today:

- Loses focus on Process Safety and goes beyond California Regulation
- Adopts California Regulation provisions that are not working well in California
- Dramatically shifts from Performance-Based Standards to Prescriptive Standards

## **Loses focus on Process Safety and goes beyond California Regulation**

The scope of the proposed regulation as presented in the 2<sup>nd</sup> Discussion Draft is substantially different than the current rule through broadening the scope of the rule with respect to processes in facilities that are covered. This broadening is due to a lack of differentiating between “managing the business” and “managing process safety” which results in a low-value workload increase. Consequently, the focus on prevention of process safety events is blurred with the incorporation of prescriptive activity for topics already effectively managed in other ways. Under the proposed regulation, differentiating between the important Process Safety work and the low value administrative requirements will be complicated for employers, contractors and employees, and may lead to losing focus on the most critical work that prevents loss of containment and personnel exposure events.

Despite L&I’s indication that the California rule was used as a starting point in order to align with familiar regulations, the proposed regulation as presented in the 2<sup>nd</sup> Discussion Draft includes language and additional sub-clauses and includes all chemicals (undefined), hazardous or not, with no weight limits. In addition, the 2<sup>nd</sup> Discussion Draft expands to the fence line which means that other systems or activities that occur onsite would trigger PSM (i.e., water systems, small spills unrelated to refining processes). The 2<sup>nd</sup> Discussion Draft includes consideration of not just activities that might lead to major incidents or major changes but virtually everything from conceptual events and near misses without a process safety impact to incidents.

Further, the draft language introduces ambiguity, undefined terms, phrases and wording changes along with intertwined definitions that change and confuse the intent. L&I should ensure this regulation is written clearly so as not to introduce confusion for employers or inspectors ensuring that the intent of the regulation is clear.

## **Adopts California Regulation provisions that are not working well in California**

Several of the California Regulation provisions were problematic and, by design, left unresolved until implementation. These provisions include the definition of Major Change, Major Incident, and Employee Participation. L&I is well aware of the issues with these provisions, having visited both the regulators and refinery representatives in California. Yet, the 2<sup>nd</sup> Discussion Draft is following the same path, at times with broader definitions, that will create the same problems or worse in Washington.

## **Dramatic shifts from Performance-Based Standards to Prescriptive Standards**

There is a long PSM history to show that Performance-Based Standards are the best method to implement process safety and to encourage constant improvement and high performance. The use of prescriptive requirements reduces flexibility, may not work for all situations, distracts resources from more important work, and inhibits innovation for improved process safety methods that have been developed by industry. Originally, the federal PSM rule was intended to be a performance-based standard. The preamble from the 1992 final federal regulation stated that prescriptive requirements may freeze

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technology. The 2<sup>nd</sup> Discussion Draft is clearly going in that direction with prescriptive requirements which are inexplicably duplicative.

We look forward to meeting with you as we prepare for the formal rulemaking phase of this important regulation. Please contact me if you have any immediate questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Sacks". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

cc: Tom Umenhofer, WSPA  
Liz Smith, L&I