



**Trench Rescue and Excavation Plan Rulemaking
Chapter 296-155 WAC, Safety standards for construction work
Part N, Excavation, trenching, and shoring**

**Public Stakeholder Meeting Summary
April 20, 2023 @ 9:30am**

L&I Tukwila Office
12806 Gateway Dr S
Tukwila, WA 98168
and
via Zoom

Washington State Department of Labor & Industries (L&I) Staff present:

Erich Smith, DOSH Construction Technical Specialist
Kevin Walder, DOSH Administrative Regulations Analyst/Project Manager
A.J. Wagner, DOSH Administrative Regulations Analyst
David Gaw, DOSH Management Analyst
Marcy Schmidt, DOSH Technical Services
Teri Neely, DOSH Technical Services Safety Program Manager

Attendees:

163 Pre-registered attendees with an average of 122 attendees present.

Summary:

Meeting called to order at 9:32 a.m.

DOSH staff provided introductions for presenting panelists and other staff, general hybrid meeting procedures and etiquette.

Presentations: Overview, Current Status, and Next Steps – Kevin Walder; Draft Rule – Erich Smith; Trenching Workplan Template – Michael Lynch

Following the presentations, DOSH staff answered questions submitted by attendees both in-person and virtually.

Question and answer session:

Question: *Since you've compared the trenching work plan strategy to fall protection work plan requirements, do you have data to show that the fall protection work plan is effective at preventing injuries and fatalities?*

DOSH Response: We do not have data readily available but we can look into that and get back to you.

Follow up question: So if you don't have data what makes you think that this will work?

DOSH Response: We can always debate whether a rule under consideration will produce the results we're seeking but the idea here was to try to find a simple way to encourage thinking ahead and planning, since our accident investigations have revealed that overwhelmingly when things go wrong it's almost always the result of something that could have easily been avoided by following the *current* regulations. We're essentially not asking employers to do anything new here, except to *document* how they're complying – the written documentation is the only new part - and most people we've heard from in the industry have not found this to be an egregious request.

Question: *I like the exception but if you're going to allow for type "c" at 1 ½ to 1 why not also allow type "b" at 1 to 1 or type "a" at ¾ to 1?*

DOSH Response: The point is to effectively mitigate the hazard, so we will take that under consideration.

Question: *Will there be a criteria for a rescue plan? What is the requirement for due diligence, some criteria I need to meet? Is it just the honor system? I want to know exactly what to do.*

DOSH Response: We will have to think about it. There is no specific form requirement. It simply says you have to have a plan.

Question: *Because trenching work can move every day does the work plan need to be revised every day?*

DOSH Response: Maybe. It would depend on whether the soil is the same, whether other hazards such as utilities are present, etc. If conditions change, the work plan should reflect that.

Question: *What if 9-1-1 takes 30 minutes or longer?*

DOSH Response: That is what the note at the bottom of the draft rule pertains to. The expectation currently is that you have to contact rescue services before work commences to determine if they have the capability and capacity to respond promptly in the event of an emergency. If not, you need to develop a different approach or don't do the work.

Question: *So if we can't rely on the fire department or other emergency medical services do we have to train our staff in advanced rescue procedures?*

DOSH Response: If you are not relying on an outside source such as EMS/FD assistance then you would have to develop a plan and train your staff to that plan.

Question: *Is there a specific depth at which rescue services are required like Confined Space?*

DOSH Response: This would apply to any trench 4 feet or deeper and the rescue plan would of course be more involved in a deeper trench. There would have to be communication and planning in advance.

Question: *We've run into situations where EMS couldn't perform rescue and said the specialty contractor is more knowledgeable and better equipped to handle it. Calling 9-1-1 may not be adequate.*

DOSH Response: Exactly.

Follow up Comment: I'm not sure that most guys digging in the dirt have greater expertise than the fire department.

DOSH Response: This is exactly why we're stressing communication in advance. In some cases a specialty contractor may have greater expertise and better rescue equipment but in other cases the reverse could be true. The idea is to figure it out before you begin work.

Comment: *We could keep trench boxes and excavators on hand at the site.*

DOSH Response: Yes, thank you.

Question: *Chapter 296-155-809 Confined Space includes information regarding rescue teams in an appendix. Have you considered adding something like that in this rule?*

DOSH Response: We will look into that, thank you.

Question: *What criteria will the agency use for citations? "Calling 9-1-1" as your plan would have to be taken on the honor system.*

DOSH Response: There are ways to evaluate whether due diligence was performed.

Question: *For this regulation specifically how would you define "prompt"? How much time does a person have in a caved-in trench to be rescued before it's too late?*

DOSH Response: Quickly without delay. Not that rescue must be there immediately, but you can put your plan in place and action can be taken immediately.

Question: *Is this heading toward a permit system similar to Confined Space? Seems like that is what is desired.*

DOSH Response: There has been no conversation on this.

Question: *As a members of a local technical rescue team is there an expectation, above our department procedures, to complete this worksheet prior to the team initiating a rescue plan? Similar to confined space requirements.*

DOSH Response: Good point to clarify. Much of this is in the fire fighter standard, but we will make a note.

Question: *Can the employer modify the Excavation Work Plan template to include more than 1 Competent Person's name / signature?*

DOSH Response: There is no specific signature requirement.

Question: *What do you consider to be rescue equipment/training for contractors for trench rescue if emergency responders are not available or qualified? For confined spaces there are multiple options for retrieval and rescue, but that does not exist for trench cave in rescue.*

DOSH Response: Each situation is different, this can be looked at.

Question: *Can the sloping exception also include the use of benching (assuming the wording is changed to include all soil types)?*

DOSH Response: Right now we're just considering the exception for sloping but we can look into that.

Question: *If there is a cave and you want us to have a way to rescue in our plan for this. But that puts others at risk if they attempt to use the plan we put in place. Most of the time cave-ins are usually a recovery. There is special training for this and only fire fighters get this kind of training. So would L&I explain what their expectations are for this?*

DOSH Response: The rule as it currently exists prevents unauthorized persons from responding.

Question: *Also, for rescue services do we not need to verify availability and response time?*

DOSH Response: This is difficult to verify, currently not a requirement we're considering.

Question: *Where is the assumption this is going to save lives coming from? Are there many fatalities that are a result of 911 NOT being called?*

DOSH Response: Yes. There are times where 911 is not called or people fled.

Question: *Please provide an example of a failure of an engineered protective system to address #11 in the Trench work plan draft. Thank you.*

DOSH Response: Don't have one on hand but, we can show examples.

Question: *NFPA 350 introduces Tiered response to Confined Space incidents and puts a definitive time to response based on hazard conditions. Has this been discussed for 911 response in trench incidents, placing a time. 911 often might be "available" that day but could be on another call and be severely limited in response time. 350 is putting a time standard on response regardless of who is performing the rescue. Has this been discussed?*

DOSH Response: No, we have not considered that for this standard.

Question: *Do you have data on how many trench rescues have been performed in the State of Washington in the last 5 years? If so, Of these rescues how many were rescues vs recovery?*

DOSH Response: Two of our most recent investigations included one where the rescuer was the fatality and the other where the rescuer was injured.

Question: *Where is the assumption this is going to save lives coming from? Are there many fatalities that are a result of 911 NOT being called? Yes, you mention the locked fence, etc. but in any of these cases could the life actually have been saved. Or were they already dead.*

DOSH Response: Stakeholders.

Question: *I am concerned about the "prompt safe rescue" language. When someone is fully buried 4% is the rate of survival after 30 minutes. After that it's essentially a recovery. Can we get clear black and white language around time frames and definitions, given the likely outcome?*

DOSH Response: Again, ensuring prompt safe removal is and has been a requirement for a long time.

Question: *Do you anticipate that there may be a requirement for certain equipment on site? (tools, oxygen, etc.)*

DOSH Response: No discussion yet, if an employer opts to do its own rescue then obviously there would need to be the tools. That said, given current rules, an employer should already have shoveling, etc.

Question: In most cases trench cave in lead to recovery not rescue. Is this a correct assumption?

DOSH Response: We're not making assumptions.

Question: *What source can you recommend that employers can utilize to get adequate rescue training?*

DOSH Response: We have not sourced recommendations.

Question: *So where would one get training on this? Again this is done for the fire department and I've asked if they would do training for contractors and they said no. So one has to be fully competent on making certain knots in ropes and every other rescue material. So will L&I provide a facility where contractors can send their crews to get this kind of hands on training?*

DOSH Response: Not as of yet.

Question: *It feels like we are giving people an out with this language "here's my plan I called 911" that's it. We need on site rescue plans OR we are relying on 911. One of the two.*

DOSH Response: As previously discussed, just calling 9-1-1 without a conversation and planning would not be considered adequate.

Comment: *The definition of emergency is vague, perhaps change it. A "blackberry bush is dangerous"*

DOSH Response: It is copied from Chapter 296-155-809 WAC.

Stakeholder Response: An occurrence is an act whereas a blackberry bush is a thing

Comment: *Add the city utility to your emergency contact because they could have a vac truck closer to a site and remove material prior to EMS being on site.*

If a trench is legal and safe, we will not need to "rescue" anyone. The rescue component of this plan seems like a moot point and overly complicated. Rescue plans are critical for fall protection work plans because you can follow all the rules and still end up with a worker suspended and in need of rescue - these are not the same.

DOSH Response: Thank you.

Question: *If we are already doing a JHA that includes soil testing/typing, analyzing and selecting a protection method, and considering other hazards (atmospheric, dewatering, etc.) - will that meet the intent of the proposed work planning?*

DOSH Response: It may, you just need to be sure you're addressing each element of the rule.

Question: *In regards to contacting rescue services in the area, my company works out of town a lot and I do call the emergency responders for every site and every time they tell me to just call 911 instead. Most of our employees live out of town for that job so when they call 911 it goes to their home town. How can i remedy this?*

DOSH Response: Good point. Cell phones with differing area codes may not reach to correct rescue services. This is something that should be addressed in advance in your plan.

Question: *Will a sample (completed) Trench / Excavation Work Plan be available for reference purposes to help guide employers through the creation process of their Work Plan?*

DOSH Response: DOSH Education & Outreach is working on this as well as training modules.

Question: *As a members of a local technical rescue team is there an expectation, above our department procedures, to complete this worksheet prior to the team initiating a rescue plan? Similar to confined space requirements.*

DOSH Response: The work plan is to be completed by the employer prior to work but we can look at clarifying this.

Question: *Can the employer modify the Excavation Work Plan template to include more than 1 Competent Person's name / signature?*

DOSH Response: There is currently no signature requirement being considered.

Comment: *To make a comment about "contacting rescue services" there is a requirement that all fire departments are trained to the "awareness level" for trench rescue incidents. This level of training does not allow for rescuers to enter a trench to perform a rescue. Only to initiate assistance in self rescue and isolate the incident area. There are only a few departments in Washington that are trained to a higher level. (Operations and Technician level). NFPA 1006 defines this.*

DOSH Response: Thank you.

Question: *I think the question/comment being repeated, in many different ways, is "how do you codified what is an appropriate plan and appropriate equipment" when each site and each job is different? And isn't the requirement of having a work plan mean that*

each job and each site must determine that for the variables of their site? Isn't this why you are required to have a competent person? From the comments, it seems that the language as proposed shifts responsibility to the workers. My comment would be to write the language so the responsibility stays with the competent person for determining what is appropriate for each site.

DOSH Response: Thank you.

Following the Question and Answer session DOSH staff thanked the attendees for their participation today. We value the exchange of ideas/comments from stakeholders.

Meeting adjourned at 11:18 a.m.