



February 2, 2018

Joel Sacks
Director
Washington Department of Labor and Industry
P.O. Box 44000
Olympia, WA 98504-4000

Via email

Dear Director Sacks,

On behalf of our organizations and members, we are writing to offer suggestions related to the revision of the state's Process Safety Management (PSM) regulations for oil refineries. Our organizations have been following the PSM revision process closely because of a shared dedication to ensuring Washington State does its utmost to implement the highest possible safety standards for workers in, and communities surrounding, Washington's refineries. We are

writing today to (1) commend your department for promulgating a groundbreaking revision to the PSM regulations; (2) convey our dismay at the sharp turn this revision appears to be taking toward inefficiency and delay, as illustrated by the January 23 stakeholder meeting convened by DOSH; and (3) request direct involvement from your office in overseeing both the content and timeline of the proposed regulation.

First, we very much appreciate your leadership in moving this impressive document forward.

The Washington proposal is largely harmonized with the recently implemented California PSM regulation, and in some cases, it clarifies and strengthens California's approach. As we noted in our April 12, 2017 letter and Briefing Document to Governor Inslee, we believe this represents a sensible approach. Reports by the U.S. Chemical Safety and Hazard Investigation Board (CSB) illustrate that the safety problems of the refinery industry are essentially identical between California and Washington. It is reasonable that our respective regulations reflect this similarity.

California dedicated five years of effort and intensive stakeholder involvement to its PSM regulatory process, and they produced a regulation that reflects the industry's own best process safety engineering and management practices, as well as many recommendations made by the CSB and other safety experts. We will be happy to provide you with a listing of the multiple day-long meetings convened by the California Department of Industrial Relations (DIR) with labor and industry stakeholders to negotiate each of the 10,000+ words in the regulation. We would also be able to arrange for discussion with our technical experts on the California policy who could provide background and arguments in favor of the details of the California language, which could furnish information and arguments useful to all, including L&I staff, who want to explain and advocate for the proposed language drawn from California.

While the California language still has areas where it could be further strengthened, it is the strongest example yet developed in the United States. Through a combination of support from the Governor's Office, participation by USW California oil locals and International, along with the insights of a few forward-looking industry engineers, and actions taken by staffers at DIR, California produced a modern, comprehensive industrial safety regulation that is expected to bring about a genuine course correction for process safety in that state. There is every reason to follow California's lead in Washington.

While the Washington proposal represents a good first step, the draft language certainly contains a number of flaws. We have identified several areas that need to be clarified or strengthened. The proposal does not cover processes during partial or unplanned shutdowns, for example, and it contains language that could allow employers to broadly avoid implementing safety recommendations made by PSM teams. We have found a number of useful provisions from California's regulation that were inexplicably dropped from the Washington proposal. We will provide you with our recommendations to correct these problems in a separate communication.

Second, we are very concerned about the direction DOSH appears to be taking with the proposal.

At the January 23 stakeholder meeting, Washington DOSH personnel described an open-ended timeline that could last up to two years before the language is finalized. They seemed reluctant to offer an explanation for the underlying rationale and necessity of the proposed text when pressed by industry representatives. When the industry asked that DOSH terminate the meeting a half-hour early, DOSH complied without hesitation. Altogether, we found this to be an inauspicious beginning for the proposal. To succeed in the face of the imminent wave of industry resistance, DOSH will need a much greater sense of conviction regarding the legitimacy of the proposal and the need for a much shorter implementation timeline.

To that end, we believe that opening the California language for renegotiation with industry is unnecessary and will simply delay and weaken the resulting regulatory language. The California language is based on best practices as identified in the Center for Chemical Process Safety (CCPS) “red book”, Guidelines for Risk Based Process Safety. The language is not based on California issues, but in refinery safety throughout the industry. Refinery safety is the same in Washington State as it is in California. It does not make sense for DOSH to negotiate against itself in revisiting this language. The stakeholders involved in the California process are essentially the same as those in Washington; the employers and union participants have already worked to a consensus on the California language. The stakeholder process should instead focus only on those areas of the Washington proposal that differ from California. As noted above, in some cases the Washington text is clearer and more inclusive than California’s, and in some cases it is weaker. This is a legitimate area of discussion by stakeholders. Setting the California language as a baseline will markedly reduce DOSH’s anticipated timeline for implementation.

Finally, we are seeking direct involvement from your office in the PSM stakeholder process.

We do not fault the DOSH personnel for the problems we’ve noted here; they have a difficult job, and in this case, they are working to move a complicated regulatory proposal forward that will affect a well-resourced and powerful industry. On the other hand, we also believe that their job will become easier and their objectives more achievable if they have a clear understanding of the significance of this regulation to you and Governor Inslee.

We are therefore asking that you or a representative from your office participate directly in the stakeholder process. As part of this request, we would ask that (1) you or your representative attend the stakeholder meetings; (2) that your office communicates to DOSH and to stakeholders that all of the PSM language will be open for discussion with the exception of text that is harmonized precisely with California’s PSM regulation; and (3) that your office resets the timeline envisioned by DOSH to reflect a matter of months, rather than years.

Thank you again for your leadership in proposing a meaningful and achievable PSM proposal.

We support your efforts and stand ready to assist you and your department in meeting this important objective. We look forward to hearing back from you at your earliest convenience. Please contact Stephanie Celt of BlueGreen Alliance at stephaniec@bluegreenalliance.org.

Sincerely,

Charlotte Brody, VP for Health Initiatives	BlueGreen Alliance
Stephanie Celt, Washington State Director	BlueGreen Alliance
Walter Cleve, Tesoro Anacortes Safety Rep	United Steelworkers Local 12-591, AFL-CIO
Robin Everett, Organizing Manager	Sierra Club Washington State Chapter
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KC Golden, Senior Policy Advisor	Climate Solutions
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Eleanor Hines, Lead Scientist	Re Sources for Sustainable Communities
Mary Ruth Holder, Member	Evergreen Islands
Jeff Johnson, President	Washington State Labor Council, AFL-CIO
Becky Kelley, President	Washington Environmental Council
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cc: Paulette Avalos, Senior Policy Advisor, Governor's Policy Office
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