

Meeting Minutes  
 Construction Underground Economy Advisory Committee (CUEAC)  
 May 24, 2016  
 10 a.m. – 12 p.m.  
 Tumwater, WA

Attendees: Debby Abe, Steve Beaty, Allison Drake, Stan Harris, Jan Himebaugh, Joe Kendo, Jim King, Tom Kwieciak, Melissa McBride, Lee Newgent, Scott Nielsen, Clarissa Oliva, Doric Olson, Alan Paja, José Rodriguez, Dean Simpson, Elizabeth Smith, Evan Sturtevant, Josh Swanson

Agenda Item	Discussion
Opening Remarks Introductions	<p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Welcome</li> </ul> <p><b>Allison Drake – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Safety Topic: Skin cancer prevention.</li> </ul>
Coordinated Enforcement Pilot Project	<p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• In the CUEAC meetings, an ongoing topic is how we find these significant bad actors, keep track of them, and give them consequences that fit the crimes being committed.</li> <li>• We looked at who the significant violators were in each area. When we looked for firms who were violators in all three major areas of law, a lot of the time they were construction contractors. Premium violations, safety violations and wage violations. After we looked at the firms, we tried to identify what we could do to take action against the violators.</li> <li>• The question we asked is: How do we organize ourselves as an agency to detect and enforce actions against significant violators?</li> <li>• The goal we have is identifying and taking significant actions (civil and criminal) against the worst violators of laws that L&amp;I enforces. We are working toward prosecuting or taking significant civil action against 25 serious violators by 2020.</li> <li>• We’re looking at contractors, but we’re also talking about employer and provider fraud for the later stages.</li> <li>• What we’ve found is we don’t have a comprehensive system that strategically identifies and refers bad actors for enforcement and follows up.</li> <li>• We will act in our individual silos, but we didn’t have a mechanism to combine those areas. To coordinate when you have a significant violator who was violating across all of the different areas.</li> <li>• We’re going to focus on detection. Have someone look across all of the data systems, bad actors across all of the data fields. From time to time, we came across these firms that would have significant concerns across all programs, but we didn’t have a system to respond to getting them on a list, and following up on them. Coordinating the conversations around compliance, and where they</li> </ul>

are popping back up again. How do we keep track and follow up to make sure they don't keep repeating?

- Scott's role is twofold: Doing the data analysis, and building those lists and doing the cross-matches.

**Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Association**

- Liz, this is coordinated across your silos. One of the things we've talked about is working across agencies. Have you talked with the other agencies about this? Employment Security Department (ESD), the Department of Revenue (DOR), etc.?

**Elizabeth Smith– L&I**

- The goal is to coordinate across agencies, but our first goal is to coordinate under our own roof. We share info with ESD and DOR regarding workers' compensation, but one of the things that we intend to do with this is develop a way to share it with the other agencies. This effort is in substantial partnership with the Attorney General's (AG) Office. The criminal division, which also files cases for ESD and DOR.
- The two ways we're going to be doing detection is actually working with the data, and the second is through human intelligence. Scott is going out to the regional offices and having conversations with staff about who the problem firms are. Scott's giving a presentation about this pilot project. He's asking staff to let him know if they see firms violating multiple areas of law so that he can put it on his radar and have a concerted effort across a statewide system.
- Another element is you, the stakeholders. You see these firms, and you spot what's going on. You can let us know about that. Scott's contact information is in the presentation, and you can contact him directly.

**Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Association**

- Another angle you might want to roll in is consumer protection complaints. If there's a consumer complaint, odds are they're cheating in other places as well.

**Elizabeth Smith– L&I**

- That's a significant element. Violations of our registration laws are secondary to violations of consumer protection laws. Figuring out how we document that, how we could use that to clue us into what's going, is it a new firm, etc. When we find out that those things are happening, it can help us lead towards digging in deeper.

**Tom Kwieciak – Building Industry Association of Washington**

- The session before last, we tried to get some additional staff for you guys. Did you get more staff?

**Elizabeth Smith– L&I**

- Most of the counties in the state, if you try to get them to prosecute a misdemeanor construction infraction, they don't have the resources to do it. What using the AG as a resource does is they can prosecute across multiple areas. So they're helping to fill that gap. We didn't more resources for compliance inspectors. We're trying to up the performance. What we spend our time and money on.

	<p>We're trying to find that balance.</p> <ul style="list-style-type: none"> <li>• Once we've identified a firm or entity as a problem, we're going to send them to one of two sources. In wage and hour, we didn't have a mechanism for doing companywide investigations. One of the things the AG's office can do is the companywide approach. If we have a firm that has been a repeat violator, it's undercutting other firms, and violating people's rights.</li> </ul> <p><b>Jim King – Washington State Heating, Ventilation, &amp; Air Conditioning Contractors Association</b></p> <ul style="list-style-type: none"> <li>• Is it occurring to you with this that where you have a systematic wage problem, they're probably cheating on workers' compensation as well?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• The elements we need in one investigation are often the elements we need in another investigation. When we have a firm that isn't paying their workers, it's probably likely that they aren't paying for those workers in other areas.</li> </ul> <p><b>Joe Kendo – Washington State Labor Council</b></p> <ul style="list-style-type: none"> <li>• Is it under the AG's authority that you're doing records subpoenas? Or is it being handed off?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• They have authority as our legal representative to do it on our behalf. They also have the authority to do their own subpoenas. They have an investigator that once we've found those firms, we give them the information so that they can look at it and determine if it needs civil or criminal resolution, and when they're violating other areas of law.</li> </ul> <p><b>Joe Kendo – Washington State Labor Council</b></p> <ul style="list-style-type: none"> <li>• So this is all getting investigated at the same time? It's not piece by piece?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• You have to coordinate on some level, for example to subpoena the records. We'll all sit down together and figure out what everyone needs and submit one request for records.</li> </ul> <p><b>Joe Kendo – Washington State Labor Council</b></p> <ul style="list-style-type: none"> <li>• Would you say that the AG is the coordinating authority?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Our auditors will coordinate with them where wage and hour is an issue. Where wage and hour isn't an issue, the agency staff usually takes the lead on coordination.</li> <li>• We'll also coordinate on communication. It's important for law-abiding firms to know that we're taking action against the firms that are cheating.</li> <li>• Our current accomplishments include: hiring an AG civil investigator, an AG criminal investigator, and a detection specialist; a planning meeting held in January to build structures and processes; development of communications for news release guidelines on coordinated enforcement efforts/cases; developmental job assignments for staff who want to participate in the coordinated enforcement; identification of 20 cases of potentially problematic employers; and working with the</li> </ul>
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	<p>AG on development of a criminal referral process (civil referral process is complete). Investigations have started, and four wage theft cases have been referred.</p> <ul style="list-style-type: none"> <li>• We are asking you to help us find these significant violators. They're very smart, and they know how to drop off the radar and pop back up as a new entity.</li> </ul> <p><b>Evan Sturtevant – Consumer Volunteer</b></p> <ul style="list-style-type: none"> <li>• Can you give a little more information on the 20 cases you're prioritizing? How did you narrow it down?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• We don't have hard and fast criteria on who gets our focus. We're looking for significant, intentional violators. We're going to develop and define the criteria right now. What I like to say is that you know it when you see it. It could be in any industry. This group is focused on construction, but it could be a restaurant, a trucking firm, anything with significant violations.</li> </ul> <p><b>Evan Sturtevant – Consumer Volunteer</b></p> <ul style="list-style-type: none"> <li>• So essentially the people that just don't respond to regular consequences?</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>• That's correct. For many of you who have been involved in this effort from the beginning, you'll see this as something that we've been talking about since day one. Our intent with this effort is to bridge that gap. It's a manifestation of our efforts around that goal. As we've developed the thoughts and concepts towards making it possible, your comments and advice have been significant drivers in how we make this work.</li> </ul>
Communications Update	<p><b>Debby Abe – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• We are working on three projects intended to help consumers hire registered contractors and licensed trade professionals: 2016 Protect My Home campaign, improved web presence for manufactured homes and new homeowners page.</li> <li>• Since 2013, L&amp;I has sponsored consumer campaigns. The first three years, the campaign featured a campaign spot with Mike Holmes.</li> <li>• Last year, we decided we might want to find new ways to target consumers, but we wanted research to help make our decision.</li> <li>• We found a couple in Washington State who were cheated and wanted to share their story to help other consumers not make the same mistake.</li> <li>• The target of the campaign was to figure out ways to communicate with homeowners why it's important to hire registered contractors. Our budget for the campaign was \$100K.</li> </ul> <p><b>Joe Kendo – Washington State Labor Council</b></p> <ul style="list-style-type: none"> <li>• Was there micro targeting done for who would receive it? What were some of the demographics?</li> </ul> <p><b>Debby Abe – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Yes. It was an older audience. I have the demographics, but not with me right now.</li> </ul>

**Jan Himebaugh – Building Industry Association of Washington**

- Is there are a reason you went with “unlicensed” contractor, when general contractors don’t usually require licensing?

**Elizabeth Smith – L&I**

- When we use the term “unregistered” contractor, people don’t understand what we’re talking about. They don’t understand what registered means. Consumers know the term licensed. We use that terminology in our marketing because we want them to understand what we’re targeting. We’re savvy to the term registered, but 99% of homeowners aren’t. Being word correct, they don’t get the message. What we went with is what’s going to protect the consumer. Licensed is the term that tested the best.

**Debby Abe – L&I**

- We go with the term that tests the best. Sometimes we use both terms in our news releases.

**Jan Himebaugh – Building Industry Association of Washington**

- But the terms do have technical differences, so I would caution you to be careful with the terms you use.

**Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Association**

- The news release is also educational, and that would be an opportunity to educate people on what it means to be unregistered. Trying to educate reporters, legislators, etc. that there are real differences in the words.

**Debby Abe – L&I**

- Instead of targeting the entire state for marketing, we targeted specific building industries. We didn’t spend more money on this because it was just an experiment, but it did drive 550 more views to our website.
- When you pay for digital advertising, there’s a minimum number of impressions you plan for. Our impressions were higher than the average for these types of communications.
- We spent \$30K more on the campaign this year than we did last year. In the packet, the Torch Talk that the Better Business Bureau published for us, that helped bring more traffic to the campaign. There are helpful tips for hiring contractors.
- The new source is in development. We’re developing this page, and it features the same information as the Protect My Home page, but the recommendations are specific to manufactured homes. We look for the site to go live in the next few months.
- The manufactured homes webpage is redesigned, but it is (and has been) live. We were previously using the term Factory-Assembled Structure (FAS), but people in the public weren’t using that term. It now divides the section by user, instead of topic. After the redesign, the score was 73 (the old page with the FAS term had a score of 29).
- There is an entirely new page for homeowners, which rounds up all of the links to our homeowner

	<p>related information. It's an easier and more direct way for homeowners to find the information they need.</p> <p><b>Evan Sturtevant – Consumer Volunteer</b></p> <ul style="list-style-type: none"> <li>• Congrats on what looks like a well-researched campaign. If you could make an asterisk in your notes about homeadvisor.com. I know of 10 families that got ripped off, and it started with a call to HomeAdvisor.com. I think that dishonest contractors do use this feature. It's when you don't have a good reputation that you use one of these lead generating companies. I've been going through their website, and they have limited ability to go through state records to check for offenses. I want to suggest that there might be a lot of traffic that goes there first instead of to you, so if there's any way you could get people to come to you first, that might help.</li> </ul> <p><b>Debby Abe – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• We've been thinking about how we can handle all of these online referral systems. We're looking at how to catch unregistered contractors. We're planning to produce more testimonial spots, so if you know of any fraud victims that might be willing to talk to us, please let me know.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Another thing in your packet is "On the Level." This hasn't been sent out, but this is our newsletter we send out three to four times per year.</li> </ul> <p><b>Tom Kweciak – Building Industry Association of Washington</b></p> <ul style="list-style-type: none"> <li>• Compared to when we started a couple years ago, the website is so much more improved. It's so much easier to find things now than it used to be.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• And we want you to know that those changes have been made in large part because of the recommendations you all have made to us.</li> </ul> <p><b>Tom Kweciak – Building Industry Association of Washington</b></p> <ul style="list-style-type: none"> <li>• When people look online for a how to video, is there a way that your videos could pop up?</li> </ul> <p><b>Debby Abe – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• It's an algorithm which is used to help determine when it pops up.</li> </ul> <p><b>Tim Church – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Between our contractors, our press releases and advertising contractors, we really are looking for the next best way to do this.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• All of our significant violator press releases are written by Debby.</li> </ul>
Annual Fraud Report – Overview	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• The report has a lot of data around workers' compensation audits, construction compliance, inspection, collections data, provider fraud, etc.</li> <li>• We've provided a copy of it for you. It's also available on the L&amp;I website.</li> </ul>

<p>Workers' Compensation Determination Unit</p>	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• I was in a meeting one time with a bookkeeper who said that they were trying to help keep their clients in compliance with the law, but they didn't know who to ask questions to. They asked who they could go to in order to figure out whether or not the business was operating inside or outside of the law. Realizing that she was correct, and it was too hard to get questions like that answered, we started the Workers' Compensation Determination Unit. It's a function like other regulatory agencies where you can ask questions, get the facts, and then abide by that answer. He's seen thousands of cases and applied the law, and there's no one better to head up this unit.</li> </ul> <p><b>Steve Beaty – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• I've been an auditor for 25 years. I have a strong background around the workers' compensation area.</li> <li>• We needed to establish a way for employers to be able to ask questions without fear of penalty or an audit.</li> <li>• We really haven't publicized the program much, other than reaching out to these groups to get their members to contact me. I've been working with Debby to try and get the information on the website.</li> <li>• Employers provide the scenario, and then we work with them to get their questions answered about whether or not people are covered workers. I would say that of the 110 that I've done, 85% have been found to be covered workers.</li> <li>• Surprisingly there haven't been as many in the construction industry.</li> <li>• Requests include, but are not limited to, any of the following: Is the independent contractor I'm hiring a covered worker? Are my workers reportable to Washington, or another jurisdiction? Are the individuals that volunteer to help my business covered workers?</li> <li>• We've had a number of questions around individuals who volunteer. We have developed some policies around that. There are a very limited number of times that we would consider a volunteer to be excluded. We don't usually consider a for-profit company to have volunteers.</li> <li>• When someone wants to come to me, there's an email they can send their request to. It brings the request directly to me, or they can give me a call. The vast majority have come on referral from an account manager.</li> <li>• One of the industries we've engaged with are the massage therapists who operate as independent contractors, but the massage salon controls their hours, schedules, etc. There is a handful that actually rent a booth and are independent contractors, but the vast majority are employees.</li> <li>• My next group I want to work with is the accountants and consultants.</li> <li>• It's more an education piece up front, instead of an audit later on. Being able to determine whether or not you should be reporting on these people, without the fear of getting fines and penalties.</li> </ul> <p><b>Tom Kweciak – Building Industry Association of Washington</b></p> <ul style="list-style-type: none"> <li>• If they get an answer they don't like, does it go in their file in case they get audited? So that the department can show that they already gave them the correct guidance?</li> </ul>
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**Steve Beaty – L&I**

- I'm keeping that information. If an audit were assigned later on, it would show that they've received this information already, and they made the choice of whether or not they wanted to start reporting.

**Tom Kwieciak – Building Industry Association of Washington**

- But you wouldn't direct an auditor to follow up with the assignment?

**Steve Beaty – L&I**

- No. This isn't resulting in audit referrals.

**Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Association**

- Gary Smith represents that WA Accountants Association, which is made up of accountants who are not certified public accountants. That might be a good group to reach out to.

**Steve Beaty – L&I**

- I'm also working with the Small Business Liaison Office internally. A lot of people don't realize that an independent contractor can still be considered a covered worker. You really need to look at them closely to determine if they're excluded or covered.

**Joe Kendo – Washington State Labor Council**

- Can a worker come to you if they think they're misclassified?

**Steve Beaty – L&I**

- They can come to me if they think they aren't classified properly. The problem with our system is that it depends on the arrangement at the time. We have to look at that specific individual.

**Elizabeth Smith – L&I**

- We can help answer their questions. We largely modeled this process off of the Department of Revenue.

**Stan Harris – Department of Revenue**

- We have the service available through taxpayer services. We provide guidance on whether or not they should be paying taxes, and that determination is binding.

**Elizabeth Smith – L&I**

- The concept behind this is that we're going to get better compliance through voluntary compliance instead of enforcement. This aligns with the department's Goal 3 to make it easier to do business with L&I.

**Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Association**

- From the small business point of view, this is another example of how we can turn to the agency and get advice without fear of penalty. We appreciate having places to turn in the department to help us with compliance.

**Doric Olson – L&I**

- We're making a really strong and concerted effort to try and make that differentiation. To try and help new businesses and educate owners.

	<p><b>Jim King – Washington State Heating, Ventilation, &amp; Air Conditioning Contractors Association</b></p> <ul style="list-style-type: none"> <li>You try to get people into compliance without hitting them with a hammer, which we appreciate.</li> </ul> <p><b>Josh Swanson – International Union of Operating Engineers, Local 302</b></p> <ul style="list-style-type: none"> <li>Do you get involved in questions related to administrative hearings at the federal level? Or Jones Act?</li> </ul> <p><b>Steve Beaty – L&amp;I</b></p> <ul style="list-style-type: none"> <li>If I’m getting something that’s out of my comfort zone, I bring in other divisions to help. I’ve gotten questions about longshore work and things like that, so I bring in staff from Employer Services to assist.</li> </ul> <p><b>Josh Swanson – International Union of Operating Engineers, Local 302</b></p> <ul style="list-style-type: none"> <li>Are you on the enforcement side?</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>We said, let’s look at it how an auditor would look at it. This is sort of like the Division of Occupational Safety and Health where they have consultation and compliance. It’s a compliance person looking at it with compliance eyes, but in a consultative function.</li> </ul> <p><b>Steve Beaty – L&amp;I</b></p> <ul style="list-style-type: none"> <li>We’re hoping to expand this program, and once we publicize it, if the numbers shoot up, I do have other staff I can go to for support. I try to get the determinations done within 10 days.</li> <li>If you have anyone who has a question, send them to me. It’s painless. They might not get the answer they like, but they’ll get the answer they need to hear.</li> </ul>
CUEAC Workshop Follow Up	<p><b>Doric Olson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>One of things we wanted to do was make sure that these meetings are a good use of everyone’s time. At one of our prior meetings, we did a brainstorming session and identified various ideas of what you wanted to focus on.</li> <li>There were four basic categories though that we found on the basis on your recommendations. communications, policy, enforcement and technology.</li> <li>On your way out, take a look at what’s up there, and just indicate for yourself what you think is most important for us to be working on as a group. And the things we can actually make progress on (items that are actionable).</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>No new legislation, no new budget allocation.</li> </ul> <p><b>Jim King – Washington State Heating, Ventilation, &amp; Air Conditioning Contractors Association</b></p> <ul style="list-style-type: none"> <li>We have seen a difference being made at L&amp;I, which we appreciate. We are seeing more of a willingness to have your needs considered by the legislature. But, we need to have more of our legislative friends play along.</li> </ul>

	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• A lot of it is internal change management. We talk a lot about escalation strategies, and how we work up to who those significant violators are. We are constantly looking at what we can do within our existing resources, and having a feedback mechanism so that we know what areas you would value us spending our discretionary resources.</li> </ul>
Closing Remarks	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>• Future topics for discussion?</li> <li>• Questions</li> </ul>