**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**

**June 29, 2022 @ 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

David Gaw, DOSH Management Analyst

Carmyn Shute, DOSH Administrative Regulations Analyst

Teri Neely, DOSH Technical Services Safety Program Manager

Chris Miller, DOSH Standards Program Manager

**Attendees:**

144 Pre-registered attendees with an average of 120 attendees present.

**Summary:**

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

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

**Presentation: Upcoming changes to Trench Rescue and Excavation Safety Standard, Erich Smith.**

**Discussion:**

DOSH safety and health specialist provided an overview of the discussion draft; including the purpose, rationale, and development of the draft language. The presentation included sources for language, including corresponding federal regulations or Washington Administrative Code.

Following the presentation of the discussion draft, the DOSH safety and health specialist answered the questions submitted by attendees both in-person and virtually.

**Question and answer session:**

**Question: *Is there ever going to be a time when we start LNI meetings on time?***

**DOSH Response:** We are doing our best to ensure a quality meeting and that everyone can participate. Thank you for sharing this feedback.

**Question: *Is there an expectation that each plan is unique to each trench & are you able to provide an example plan/template?***

**DOSH Response:** The intent is for the plan to be site specific and adequately address all existing requirements for any trench at that site. You could use the same plan for multiple trenches at a given site assuming that they are essentially identical, but remember that soil conditions, underground utilities or other features could be different, in which case those would need to be addressed separately.

**Question: *Would you be able to provide a filled out sample of Excavation Plan so we can see what it should look like?***

**DOSH Response:** We are working with our Education and Outreach team to develop a template for contractors to use.

**Question: *Does a pre job Tailboard constitute a work plan if this information is covered?***

**DOSH Response:** A tailboard would work as long as the information shared is documented, and there must be a written plan on-site.

**Question: *Will daily inspections by competent persons be documented in writing?***

**DOSH Response:** The current or proposed WAC do not require inspections to be documented.

**Question: *Are these rules available on the website?***

**DOSH Response:** Information regarding this rulemaking can be found on our website: https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/trenching

**Question: *What kind of documentation will be required that training on the specific work plan was conducted?***

**DOSH Response:** You would be required to have written plan on site and document who was there when training occurred.

**Question: *Will L&I notify when the template is available?***

**DOSH Response:** Yes, we will ensure communication regarding these resources are shared on our GovDelivery notification system once the rule has become final. Thank you.

**Question: *Section 14(c): Are you requiring excavation contractors to become proficient in rescue services? If not, will the hiring of specially trained rescue providers be needed for every excavation… and have them on-site, standing by??? (for remote sites, outside range of 911 providers).***

**DOSH Response:** No. The current rule requires that you “plan for and provide.” If no rescue services are available then you must find another way to do it.

**Question: *Isn’t that what the JSA and Tailboard meetings are intended to accomplish? As long as they are documented?***

**DOSH Response:** Yes, thank you.

**Question: *Is L&I going to grade a contractor on the rescue? The success of the rescue?***

**DOSH Response:** The intent of the plan is to adequately think through what you would do in the event that something goes wrong and plan accordingly based on what specifically you’re doing, where you are, etc. We’re not looking at the success of your rescue efforts exactly, we’re looking at the plan, whether you had one, was it adequate, did you adhere to it, etc. If you plan ahead, you’re likely to have a better outcome.

**Question: *How are you expecting to roll this out to all contractors in WA State and there isn’t enough enforcement? How are you going to approach that? From the supplier side you have an issue.***

**DOSH Response:** We would approach this like any other rule, notifying the public broadly about rule changes using GovDelivery email notification, sending letters to effected employers, and providing consultation services upon request. And as mentioned, we are working with our Education and Outreach program to put together a template, and will consider other means of outreach as well.

**Question: *For trench rescue, or excavation, are we to include rescue procedures in our SSWP?***

**DOSH Response:** You could incorporate your trench work plan into SSWP as long as you are addressing all the required elements, and if you plan to perform rescue yourself it would be appropriate to include relevant rescue procedures.

**Question: *Would be nice to have the DOSH shape sheet once the rule takes affect? And do you anticipate DOSH directives changing.***

**DOSH Response:** Most of these are currently in the WAC already, the only thing that is new is training on plan and sub-plan. [DOSH Directive 27.30](https://lni.wa.gov/dA/6cb53ab247/DD2730.pdf) will most likely be updated based on the outcome of this rulemaking.

**Question: *Is a work plan only required during a trench and not in an excavation?***

**DOSH Response:** Understand that all trenches are excavations but not all excavations are trenches.In the draft rule under section (14), the work plan requirements are specific to a trench because of the proximity to the hazard and ability to escape. In a more open excavation, particularly when shoring and other methods are used, you can escape.

**Question: *I have 12 years in confined space rescue. What certification requirements for rescue services would the state require for use in trench rescue?***

**DOSH Response:** There are no certification requirements, there just needs to be a written plan and training.

**Question: *Has after hour emergency work for power outages been taken into account? And would a blanket template suffice?***

**DOSH Response:** Yes, outages can happen at any hour and if trenching is involved there would need to be a plan in place. Any template or example we develop would be instructive, but you would need to complete the information based on the specifics of the work you’re doing.

**Question*: I do agree that this could open up a greater risks for contractors to approach self-rescue plans and put more inexperienced workers at a higher risk from secondary collapses.***

**DOSH Response:** Thank you for your comment. The idea behind a work plan requirement is specifically to avoid that through proper planning and training workers accordingly.

**Question: *You reference "CPWR Report – Recent Trenching Fatalities: Causes and Ways to Reduce". How does this plan work to follow the guidelines that report suggests would help reduce trenching fatalities? For reference, their suggestion of a permit system like California. The benefit of permit system is that permit issuers will be able to make sure those applying for the permit know what they are doing.***

**DOSH Response:** That’s come up before. In Washington, that would require legislation and that is not feasible at this time. All we are addressing at this time is to plan and train, that doesn’t require legislation.

**Question: *For reference, a crane or excavator cannot be used to hoist personnel. However, a crane or excavator can be used as a sufficient anchor in the event of a rescue.***

**DOSH Response:** Yes, it could be, would be up to the employer to determine the best option.

**Question: *What about multi-employer projects will they be required to communicate among all contractors or will each work independently with their own rescue plan?***

**DOSH Response:** Only the people exposed to the hazard will need to be trained on the elements in the work plan.

**Question: *The fire department (trained in rescue) will not attempt to rescue anyone from a cave-in unless proper protection is in place, thus turning it into a body recovery. Are we now asking the company that didn’t provide proper protection in the first place to now attempt to rescue employees from a cave-in. Shouldn't 911 be the only contingency plan?***

**DOSH Response:** No, the current rule requires that you “plan for and provide” or “ensure” rescue. This has been in place since the 1970s and has not changed.

**Question: *Per 296-32-22525 you need to have a "record" of employees, correct?***

**DOSH Response:** The referenced WAC requires training records but that is specific to chapter 32. The excavation work plan does not require employee signatures..

**Question: *It was asked at the March meeting - Did California see a reduction in trench fatalities after implementing the permit system? Did you look into that answer?***

**DOSH Response:** We did reach out to Cal-OSHA and have not heard back.

**Question: *Beyond compliance, what are your measures of success for this rule change?***

**DOSH Response:** The point is to eliminate, or at least significantly reduce, fatalities and injuries.

**Question: *When doing retrieval,* *PPE requirements for inside trenches are dictated by JSA, SSWP. Would the State look at Harnesses being a requirement while working in a trench, or company policy?***

**DOSH Response:** Retrieval is only addressed in Chapter 155-655(7) WAC Excavations with hazardous atmospheres. Outside of this, there are no general retrieval requirements.

**Question: *Follow up to my question about the CPWR report. You didn't answer my question so let me put it a different way - The current work plan criteria does not address any of the suggestions the report made to make trenches safer.***

**DOSH Response:** We would have to disagree. The rule changes we’re considering address planning and training, which were specifically cited.

**Question: *Will written answers to these questions be provided, sorry the audio is muffled.***

**DOSH Response:** Yes, a meeting summary will be posted on the website within the next couple of weeks.

**Question: *It seems using the term “rescue” is problematic. Maybe change to response?***

**DOSH Response:** We can certainly look into that, thank you.

**Question: *I believe we need more clarification on Rescue. 911 is not always feasible when needed. There has been occasions the Fire Department or other first responders are not properly trained to rescue someone on a project. I also train my employees on First Aid, CPR, and AED. But will not take full liability in attempting to teach rescue when I am not qualified to do so.***

**DOSH Response:** We are not asking you to perform a rescue, we are asking to have a written plan in place and have the employees trained on it. Again, the existing requirement is that you “plan for and provide” or “ensure” rescue and it has been this way for decades.

**Question: *The small contractors were specifically identified in the report as being the problem. How does asking small contractors to fill out paperwork when they aren't following the rules at all even help?***

**DOSH Response:** Thank you for your response.

**Comment**: **As a registered professional engineer with a lot of relevant experience, I think we can simplify this. OSHA CFR 190(14)(f) says that you must train workers when a cave-in is foreseeable. There are different levels of training: 1) Awareness, 2) Rescue, and 3) Technical Rescue. In this case, all DOSH is looking for is Awareness training. Statistics show that about 75% of those who jump into a trench to rescue another person end up dying in the process. The whole point of training is just as much to know what not to do, basically not to make matters worse. They’re not asking employers to train their crews to EMS rescue standards.**

**DOSH Response:** Thank you for your comments.

**Question: *What if your SSWP covers the use of the fire department for rescue, but as you make the call for a rescue, they are unable to respond due to a house fire? Back-up plan?***

**DOSH Response:** This is why it is important to call and have that conversation with the local fire department in advance; are they adequately trained in rescue, how big is their crew, etc.? The more you plan and train, hopefully the less you’ll need a back-up plan.

**Question: *If like you say this new work plan is going to be effective because it is increasing the planning process, why would it not be just as effective as a guidance document that you can use as outreach? Do you foresee a scenario where a contractor is cited for not having this plan filled out but their trench meets the regulatory standard?***

**DOSH Response:** The expectation is to have a site specific plan, if they don’t have that then yes, they could be cited but if there is no exposure to a hazard present, it could be a general violation.

**Question: *An emergency response plan may be the better approach to this requirement. To the point earlier, there are a lot of things to educate contractors on of "what to do and what not to do." One big mistake is to only rely on 911 and failing to mention there has been a trench collapse so that the correct emergency personnel can be dispatched to the scene.***

**DOSH Response:** Exactly, thank you for your comment.

**Question: *Last question, is a response time mentioned under the rule for a trench? Under confined space, response time is under 15 minutes, or if IDLH, rescue personnel are staged at the site.***

**DOSH Response:** It is expected that if there was a cave-in, the written plan would be put into place. There is no specific time frame.

**Question: *Is there way to have a rescue plan that meets the standard without a rescue protective system onsite waiting to deploy? Assuming a local fire department is not available. If so, please describe how this is possible.***

**DOSH Response:** There are several options available, the standard addresses many types of protective systems. It’s going to be based on the site that you are working at.

**Question: *We have some of our employees enter a contractor’s trench to work. Would we be required to review their plan prior to entry or would we need to produce our own?***

**DOSH Response:** You would be responsible for your employee, so yes, you would need your own plan.

**Question: *So the sloping, stepping and/or shoring used in the act of excavation are taken into account as "Rescue" in the rescue plan?***

**DOSH Response:** Yes, it is part of the plan.

**Question: *Is the problem we are trying to address that contractors know what they are doing and have no plan? Or is the problem that contractors don't know what they are doing?***

**DOSH Response:** The problem is no plan. We all know with planning ahead the risk lowers.

**Question: *Is a plan the best way to educate those contractors?***

**DOSH Response:** Yes, you can’t rely on someone else to protect your employees.

**Question: *This is not a question: I found this reference in the Federal Register, relative to 1903.14(f) (link): https://www.osha.gov/laws-regs/federalregister/1994-12-27 "...... It is not OSHA's policy to interfere with or to regulate every decision by a worker to place himself at risk to save another individual. Nor is it OSHA's policy to issue citations to employers whose employees voluntarily undertake acts of heroism to save another individual from imminent harm, where rescue operations are not part of the employee's job responsibilities and the likelihood that a rescue may become necessary is not reasonably foreseeable.
At the same time, employers who have employees working in environments where the possibility of life-threatening accidents is reasonably foreseeable are required by various OSHA standards and the general duty clause to take appropriate precautions to assure that the rescuers themselves do not become victims....."***

**DOSH Response:** Thank you for your comment.

**Question: *Thanks for the invitation, appreciate your voice and giving a chance to comment.***

**DOSH Response:** Thank you for your comment.

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 11:26 a.m***.***