

To: Ms. Tari Enos
Administrative Regulations Analyst
Division of Occupational Safety & Health
Washington Department of Labor and Industries
Transmitted Via Email to: psmcomments@lni.wa.gov

May 14, 2018

RE: L&I Revision of Chapter 296-67 WAC, Safety Standards for Process Safety Management of Highly Hazardous Chemicals, First Draft of Rules

Dear Ms. Enos,

On behalf of RE Sources for Sustainable Communities, thank you for taking the time to consider our comments on the first draft language of the revision of the Safety Standards for Process Safety Management of Highly Hazardous Chemicals, Chapter 296-67 WAC for refineries. We also thank the Washington Department of Labor and Industries for their facilitation of the stakeholder process and allowing the inclusion of groups like RE Sources who aim to protect local communities and environment. Limiting the scope of this rulemaking update to refineries will help ensure that not only will refinery employees be better protected, but also help to better protect Ferndale, Anacortes, and the surrounding environment, including sensitive and important habitats such as two Aquatic Reserves and a National Estuarine Research Reserve.

RE Sources for Sustainable Communities is a local organization in northwest Washington, founded in 1982. RE Sources works to build sustainable communities and protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our North Sound Baykeeper program is dedicated to protecting and enhancing the marine and nearshore habitats of northern Puget Sound and the Georgia Strait. Our chief focus is on preventing pollution from entering the North Sound and Strait, while helping our local citizenry better understand the complex connections between prosperity, society, environmental health, and individual wellbeing. Our North Sound Baykeeper is the 43rd member of the Waterkeeper Alliance, with over 300 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. RE Sources has over 20,000 members in Whatcom, Skagit, and San Juan counties, and we submit these comments on their behalf.

The newly adopted California language for Process Safety Management is strong having undergone a stakeholder consultation and review process with compromises made already. We hope to see the



California language retained as a starting place for Washington's updated PSM rules. Washington State has an opportunity to align with or even surpass California to lead the way for safer working conditions for refinery workers that save lives. As a supporting partner of the BlueGreen Alliance, RE Sources stands for the protection of workers, and we believe further that process safety standards will better protect our surrounding communities and environment. RE Sources urges Labor and Industries to continue moving this process ahead. We hope to see final adoption as quickly as possible. The sooner we can phase in higher safety standards, the more likely that we can prevent the next catastrophe.

Some of the overarching themes throughout the language we would like to generally comment on include:

- The use of the word "collaboration" is important, particularly instead of the use of "participation." Employee collaboration expands Stop Work Authority and better captures how the process should work.
- We would like to see an improvement in anonymously reporting hazards. Employees do not always have a safety culture that is encouraging to report hazards.
- Some of the problem terms seen throughout the rule that need clarity include: process, affected (employees/persons), effective, outages/turnaround.
- The adjective "effective" must be retained the rules for strength, though with clarity.
- The rules must maintain linkages among program elements. Repetition is good and sections throughout the rule should maintain references to other sections for clarity and strength.
- When possible, there should be room for adaptive feedback for improvements as we learn more lessons is important.
- We are looking forward to focus groups in hopes there will be some clarity on how this rule should treat union vs. nonunion and how contractors should be accounted for in these rules. We believe their inclusion is very important for eliminating hazards.
- While it is important to account for economic impacts, they must not trump worker or environmental safety.
- In the second set of draft rules, it may be helpful to give some examples behind intended language for clarification.
- Clarity should be given throughout rule on who is or is not included in particular sections. Some sections are not clear or leave room for ambiguity.
- Overall, we prefer the language "eliminate hazards" over "reduce" or "mitigate" hazards.

Below are our comments as they pertain to specific sections of the draft language.

Purpose/Scope: This section must be reworded so as to firmly state intent to prevent incidents. We recommend inclusion of language such as "This section contains requirements for petroleum refineries to prevent major incidents and eliminate or minimize process safety hazards to which employees may be exposed."

Definitions: This is a very important section as it clarifies language used throughout the rule. Clarification wherever possible on language and definitions can help strengthen this rule. We ask Labor and Industries to be careful with the use of normative terms that are left open for interpretation and to use this section to clarify the intended scope with definitions. Some of our other suggestions include:

- The definition of “Major incident” should clarify what serious physical harm means, but should not be changed to catastrophic as this leaves out some cases that should be covered here.
- The definition of “Process” is very important and sets the tone and intent of the entire rule. This should include anything, including utilities and process equipment that are part of the process and in the event of a failure or malfunction could potentially contribute to a major incident.
- The definition of “Process equipment” seems overly broad and may not be useful. We suggest language similar to the California language, “Equipment, including pressure vessels, rotating equipment, piping, instrumentation, process control, appurtenance, related to a process.”
- When using “potential for causing a major incident” in the definition of “Process Safety Hazard” the acceptable risk should be defined. The language “death, or serious physical harm” should be left in this definition.
- The definition of “Promptly” is too ambiguous. This is a normative term that can easily be left to interpretation on what “little to no delay” actually means.
- The definition of “Safeguard”, subsection (b) should recognize that a human response is required.
- Definition of Toxic should read “an acute or chronic exposure that causes unreasonable risk to health or the environment” because the inherent risks associated with chronic toxicity are too often overlooked. While the scope of Process Safety Management generally refers to catastrophic events that are acute in nature, catastrophic can also be defined as “extremely unfortunate or unsuccessful” thereby including chronic impacts that could equate to a catastrophe in the long term if risk is not eliminated in the short term.

Employee Collaboration:

- Section 1 (a-c): these subsections should remain in the language, but could use some clarity on their intent.
- Clarification on who is a “qualified” operator would be helpful.
- Regarding record keeping- it is completely fair and reasonable that the employer keep and maintain the records mentioned throughout the current draft language, these records may help illuminate lessons for adaptive management and feedback. In the age of electronics, this is also not a difficult task and so many other industries, businesses, and organizations do the same without problems.
- Section 5 should also include capturing requests for stop actions, not just those that do happen. This section should also include that a record of anonymous comments should be kept.

Process Safety Information:

- Subsection 1 (a) should maintain the language “chronic” as earlier discussed in the definitions section. Additionally, all toxicity information should be kept in one place for anyone with potential exposure to access.
- While we recognize that trade secrets are important for employers, protection of trade secrets should not supercede the safety of workers. Employees and other workers should have access to all information impacting their safety.

Process Hazard Analysis:

- In this section, please provide clarity on the intended definition of “process” and what is covered. Clarity may be gained through providing a list of examples for what is included or excluded. The

implementation timeline for what previously was not covered in the California regulation for 3 years seems reasonable here too.

- Section 3 (g) should include Chemical Safety Board and other findings as well- if the information is available, we should use it to improve safety where possible.
- Section 3 (i) should remain in this section. Even if it includes things that should be covered in the manufacturing process, these things should still be included in the process hazards analysis. More specifically, the analysis should include the specific risks of external events to the refineries specific location (i.e. what are the chances of a seismic event and to what magnitude for that specific refinery?).
- Section 4: it is important that the team works through a collaborative process and employees participating are able to freely speak without fear of losing their job.
- Section 15: should add in that employer must implement the changes after a new process hazard analysis is triggered.

Operating Procedures:

- Section 1 (a): startups/shutdowns were left out. We suggest considering adding these to this section.
- Section 3: suggest changing “and” to “or” so that it reads “...including changes that results from changes in process chemicals, technology, and equipment, or changes to facilities and personnel.”

Training:

- Section 5: we suggest that (if not already) the focus group in June 2018 help cover clarity on what an “effective training program” would look like.
- Section 5: contractors and vendors should be covered in this section where appropriate, though their training may look different than employees.
- Section 5: The California language for Process Safety Management gives timeframe to implement, we suggest WA do the same.

Contractors:

- Section 2: should intentionally keep language that also covers general health and safety.
- Section 2 (c): This section should have two commas added for grammatical integrity; one following the word “implement” and another after the word “presence”. Failure to use the Oxford comma has demonstrated results in weaker regulations in court due to ambiguity.
- Section 2 (d): clarity on what “periodically” means here would be appreciated.
- Section 3 (a): should add in “effectively” so that this reads “...ensure that each contract employee is effectively trained...”
- Section 2 (b): This could read stronger with changing a few words like “shall” and “ensure” to read, “The contract employer shall document and ensure that each contract employee has received and understood the training required by this subsection.”

Prestartup Safety Review:

- Section 1: This section needs clarity with the understood intent to avoid rushed prestartup safety reviews. Additionally, clarity should be given for cases where perhaps a smaller component is going back online and how these situations are dealt with.

- Section 2 (a): We suggest use of the Oxford comma again. This section may also want to address in-kind replacements.

Mechanical Integrity:

- Section 2: clarity on what it means to “maintain effective written procedures” such as if this means to keep, or also means to update written procedures as needed.
- Section 4 (c) (iv): We suggest changing “at least as” to “equal to” here for improved strength in language.
- Section 5 (a): The last sentence of this section is important to include “...or when a temporary repair fails one time, whichever occurs first.” Appropriate short term mitigation and proof of safety to operate should also be clarified here.
- Section 6 (e) (iii): Spare parts and maintenance materials were taken out of this section and should be placed back in.

Hot Work Permit:

- Section 4: As the Chemical Safety Board has stated during our stakeholder meetings, these permits have been extremely helpful for investigations in helping to understand what went wrong in the event of a major incident. Therefore, we ask that these permits be kept on file for one year as stated in the current draft language.

Management of Change:

- While some of this section may seem redundant of other sections, it is important to keep this redundancy to keep strength in the language.

Incident Investigation - Root Cause Determination:

- We suggest making “Cause” plural to suggest that there may be multiple causes and the investigation should not stop once just one root cause has been discovered.
- Section 4 (e): We suggest adding to the language “relevant documents including but not limited to” to read, “A list of any relevant documents including but not limited to DMR(s)...” and to keep the list of documents to help provide context.
- Section 4: We suggest that the inclusion of organizational change, safety culture, and a written report by the investigation team be added to this section under the subsections.
- Section 7: Employees should always be provided with and have access to the investigation report instead of having to request it.
- Section 8: We believe it is important that the employer consider all findings and are given a chance to implement recommendations.
- Section 10: It is important to keep incident investigation reports for the life of the process to help ensure the best improvements are made for safety.

Emergency Planning and Response:

- This section is important for mitigating risk when a major incident occurs and is important to keep.
- The availability of volunteer firefighters and other available local resources should be taken into account.
- Section 2: the last sentence of this section is important, but could be reworded to add strength.

Compliance Audits:

- Section 2: the employer should consult more than just the operators. Interviews in the results should remain anonymous for best and honest results.
- Section 5: Maintaining these compliance audit reports are important to measure performance and capture if something was not implemented/adopted that should have been.

Trade Secrets:

- While we recognize the importance, trade secret protection should not supercede safety of workers.

Damage Mechanism Review:

- While this section may be redundant of others, it still is important and can allow opportunities to identify and address risk better.
- While conducting reviews, the actual conditions should be looked at rather than assuming the conditions that should in theory be occurring. For example, a piece of equipment in theory may not be expected to be operating outside its temperature limits, but may in fact be.
- Employee discussions are important to help understand and learn. Report reviews should be encouraged, including room for being anonymous.
- Section 12: the report should be made available.

Hierarchy of Hazard Control Analysis:

- This section should consider not only implementation of safeguards that are effective, but also reliable.

Process Safety Culture Assessment:

- This section is extremely important. We recognize that there may be some adaptive management needed, but Process Safety Culture Assessment is an excellent way to ensure that refineries are instilling a true culture of safety.

Human Factors:

- Human Factors are important to keep in the language.
- Section 4 should also include evaluation of fatigue levels of staff.

Management of Organizational Change:

- Management of Organizational Change is another important section to leave in the language as it does pertain to Process Safety Management.

Implementation:

- Section 1 needs clarity.
- Economic feasibility should not supercede safety.
- Section 9: It is important that the employer promptly completes all corrective actions and complies with all completion dates required. Failure to promptly do so could lead to more accidents and injuries. What is meant by promptly may need clarification.

- Section 14: We ask that careful consideration is put into the use of “corrective action” and “recommended actions” as these may be seen as different. We believe that all recommended actions should be addressed.

Thank you for your time and consideration of our comments. This Process Safety Management rulemaking proposal by Washington Labor and Industries represents a landmark for refinery workers, their families, for the communities that live within the vicinity of any of the state’s refineries, and the vulnerable habitat and environment around the refineries as well. We look forward to strong draft language protecting refinery workers in the upcoming draft.

Sincerely,

Eleanor Hines
North Sound Baykeeper, Lead Scientist
RE Sources for Sustainable Communities