



June 4, 2019

Mr. Alan Lundeen
 Senior Program Manager
 Division of Occupational Safety & Health
 Washington Dept of Labor and Industries

Via email: psmcomments@lni.wa.gov

Clarification on our Final Comments on the Second Draft of Revisions to Chapter 296-XX WAC, *Process Safety Requirements for Petroleum Refineries*

Dear Mr. Lundeen,

On behalf of our organizations and members, we are writing to clarify a key point in the WA PSM proposal regarding the definition of “*process safety incident*.” As part of our continuing assessment of the ways in which this definition is applied in the PSM proposal, including its use in the definition of “*process safety hazard*,” we are recommending that L&I harmonize the definition of “*process safety incident*” in the WA proposal with the California definition of “*major incident*,” as follows:

Current WA text for “Process Safety Incident”	Current CA text for “Major Incident”	Recommended WA text for “Process Safety Incident.”
<p><i>“A near miss, unplanned release, process equipment failure, or other event within or affecting a process that could cause a fire, explosion, or release of a hazardous chemical or material.”</i></p>	<p><i>“An event within or affecting a process that causes a fire, explosion or release of a highly hazardous material and has the potential to result in death or serious physical harm.”</i></p>	<p><i>“An event within or affecting a process that causes a fire, explosion or release of a highly hazardous material and has the potential to result in death or serious physical harm.”</i></p>

The WA proposal uses the term “*process safety incident*” throughout the last draft of the text, including in the PHA, HCA, and Incident Investigation sections; however, WA also inadvertently retained the term “*major incident*” in the PHA and Incident Investigation sections. Because there is no definition for “*major incident*” in the proposal, the proper term throughout the proposal is “*process safety incident*.” L&I should replace the term “*major incident*” with the term, “*process safety incident*,” with its amended definition.

With this amendment to the definition for “*process safety incident*,” the current definition for “*process safety hazard*” can be retained in the WA proposal, because it is already harmonized with the “*process safety hazard*” definition in the CA regulation.

Because the terms “*process safety incident*” and “*process safety hazard*” appear in at least 10 sections of the WA proposal, our recommended change significantly improves the alignment of the WA proposal with the CA PSM regulation.

We are submitting this clarification after a thorough assessment of these terms as they are applied throughout the WA proposal. In some cases, we found that the terms as they appeared in the draft introduced a double-conditional requirement, which we are concerned may be problematic for the industry to implement and for L&I to enforce.

To be clear, this language was problematic in the previous PSM draft, and it is possible L&I has already corrected it. In any case, we want to make sure L&I is aware of this important clarification.

Our intent in submitting this clarification is to ensure that the WA PSM regulation is practical, meaningful and legally enforceable. This clarification also resolves the great majority of concerns submitted by WSPA regarding the costs of implementing the new rule.

Please contact Stephanie Celt of the BlueGreen Alliance at stephaniec@bluegreenalliance.org if you have any questions.

Thank you again for your work in advancing the WA PSM proposal.

Sincerely,

Charlotte Brody, Vice President, Health Initiatives	BlueGreen Alliance
Stephanie Celt, Washington Policy Coordinator	BlueGreen Alliance
Walter Cleve, Tesoro Anacortes Safety Rep	USW Local 12-591, AFL-CIO
Steve Garey, Washington Steering Committee	BlueGreen Alliance
Eleanor Hines, Lead Scientist, Clean Water Program	REsources for Sustainable Communities
Mary Ruth Holder, Representative	Evergreen Islands
Kim Nibarger, Chair, National Oil Bargaining Program	USW International, AFL-CIO
Mike Wilson, Director, Health Initiatives	BlueGreen Alliance

cc. Caitlyn Jekel, Senior Policy Advisor, Governor’s Office
Elizabeth Smith, Deputy Director, Department of Labor and Industries
Anne Soiza, Assistant Director, Department of Labor and Industries
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