



Jessica Spiegel  
NW Regional Director

January 28, 2020

Ms. Tari Enos  
Mr. Nathan Skuza  
Division of Occupational Safety & Health  
Washington State Department of Labor & Industries  
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via e-mail at: [Nathan.skuza@lni.wa.gov](mailto:Nathan.skuza@lni.wa.gov)

Re: PSM Economic Survey Request for Delay

Dear Ms. Enos and Mr. Skuza:

I am writing to you today on behalf of our member companies to share understandings and concerns, and to make specific requests related to the rulemaking process currently underway regarding the Washington State Department of Labor & Industries (L&I) Process Safety Management (PSM) regulations, WAC 296-67 (PSM Rule).

WSPA is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the five western states, including Washington.

Our member companies have received the L&I PSM Economic Survey form to complete. As part of its rulemaking efforts, it is our understanding L&I has the obligation to confirm that it conducts an adequate cost-benefits analysis on any proposed revisions. This necessarily includes considering WSPA members' past cost data, considerations of practicability of new regulations, and projected costs to comply. WSPA, therefore, appreciates that L&I has requested information to learn what additional costs each new regulatory revision and addition would impose, and what cost estimates are reasonable.

Further, it is our understanding the cost estimates to comply with the proposed regulations will necessarily include money and resources being spent to: (1) gather and analyze past data and develop and train workers on new company-specific procedures and policies, (2) implement new company procedures/policies necessary to comply with the revised regulations, and (3) complete the corrective actions required to come into compliance with the new regulations, e.g., equipment and technology replacements and upgrades.

WSPA has participated in L&I's formal meetings and informal discussions during the rulemaking process. However, we are concerned that to date, L&I has not regularly engaged with its stakeholders on various issues raised during this process. Going forward, as part of the survey submissions on costs specifically, WSPA respectfully requests L&I respond to stakeholder input and engage in discussions regarding the information being shared by stakeholders. Underscoring this request is our belief that accurate understanding of costs is essential when objectively comparing quantifiable safety benefits.

Many provisions in L&I's survey require stakeholders to analyze complex safety programs and their associated costs. The original notification to stakeholders, however, allows only thirty (30)

days for a response. Our concern is this time limit is insufficient for the necessary information to be collected, aggregated, and produced to L&I by February 13, 2020. To illustrate this concern, refineries do not commonly track costs per PHA or MOC, as requested by L&I. Fulfilling this request will require new data review and compilation. Consequently, WSPA, on behalf of its member survey recipients, respectfully requests that the response deadline be extended by thirty (30) days, to March 16, 2020. This extension will allow our members to provide L&I with more accurate, representative information on which the agency can make an informed and objective cost-benefits analysis.

WSPA also requests that L&I consider the proprietary and security concerns raised by the current survey format. The survey requests information from individual refineries on specific engineering processes and operational systems. However, given the small number of affected facilities and the fact that information submitted in response to the survey would generally be subject to disclosure under the Washington Public Records Act, Wash. Rev. Code § 42.56 et seq., individual information submittals create proprietary risks and potential security concerns.

Although some proprietary information submitted may be exempted from disclosure by regulation, L&I cannot assure that all proprietary company information will be adequately protected. Similarly, records and documentation of analyses requested by the survey create security risks for individual facilities by making site-specific information publicly available. Those records arguably do not satisfy the relevant regulatory exemption under RCW 42.56.270. Consequently, WSPA intends to aggregate the data of its members and submit relevant average cost estimates to L&I for its review and use.

Additionally, the survey appears to be asking recipients for information relating to current performance and costs of non-defined, non-obligatory process safety elements. For instance, HCA and DMR are not defined terms or commonly accepted practices throughout the industry. As such, there is not “apples to apples” information available on such yet-to-be-accepted practices. It is recognized that PSM is a performance-based standard that allows companies flexibility in how to develop and implement safety programs. It also allows them to continually evolve their safety management systems. And some companies have adopted versions of some of the elements that L&I is proposing, but it is practically infeasible to collect information on how a refinery allocates costs to activities that are currently non-compliance and not commonly accepted. It would result in an “apples to oranges to bananas” comparison that would not assist L&I in conducting an equitable cost-benefit analysis.

Finally, WSPA will provide to L&I additional costs that it may have been overlooked but that would be necessary to implement the proposed regulatory additions, such as estimates of the costs of familiarizing additional labor categories with the regulations, e.g., production staff, auditors, attorneys, engineers, and advisors: many such individuals are necessary for implementation but do not reside at the refineries. In addition, in some cases, such as the expanded definition of RAGAGEP to include CCPS, WSPA may point out factors to be considered in estimate development, instead of providing an estimate.

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January 28, 2020  
Page 3

We look forward to further engagement with L&I as it proceeds through this very important rulemaking process. Please advise us as soon as possible regarding our request to lengthen the extension to the survey deadline as respondents are working hard to meet the proposed March 16, 2020 deadline. Thank you in advance for understanding this request for additional time and of the understanding and concerns expressed above in this correspondence. If you have any immediate questions, please contact me via e-mail at [jspiegel@wspa.org](mailto:jspiegel@wspa.org) or (360) 352-4512.

Sincerely,

A handwritten signature in blue ink, appearing to read "J Sacks".

cc: Joel Sacks, Director Department of Labor and Industries  
Liz Smith, Deputy Director Department of Labor and Industries  
Anne Soiza, Assistant Director Department of Labor and Industries  
Alan Lundeen, Senior Program Manager Standards Department of Labor and Industries  
Bob Poole, Director Northwest Technical & Regulatory Affairs WSPA  
Tom Umenhofer, Vice-President Technical & Regulatory Affairs WSPA