

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

27.20

Traffic Control and Flagging Operations

Date: Dec. 30, 2004

I. Background

In 1999, the Legislature passed the “Kim Vendl Act” requiring the department to undertake rulemaking to improve the safety of flaggers. While engaged in that rulemaking effort, L&I heard concerns from members of the Construction Advisory Committee (CAC) suggesting that the scope of the rulemaking was too narrow and noting that flaggers were not the only employees exposed to motor vehicle hazards. Due to the time constraints in the new statute, the department was not able to incorporate the broader issues into the flagger rulemaking project. After the new flagger rules were adopted, the department began meeting with stakeholders to develop rules for the protection of all employees working in the near proximity to motor vehicles. Although the initial effort was withdrawn in 2002 because of concerns that it was too sweeping and cumbersome, L&I developed a narrower proposal focused on the areas of greatest concern. One portion of the proposal, related to the need to protect employees from dump trucks when the trucks are backing up, was adopted on an emergency basis to ensure that workers were protected during the 2004 construction season. On December 1, 2004, the department adopted permanent rules that addressed the dump truck issue and other rules that improved the protections for employees working in the near proximity to motor vehicles.

The standard has historically relied to varying degrees on the Manual of Uniform Traffic Control Devices (MUTCD). In discussing traffic control, the MUTCD uses the following headings: Standard, Guidance, Option and Support to convey different levels of guidance. They are defined by the MUTCD as follows:

Standard: A statement of required, mandatory, or specifically prohibited practice regarding a traffic control device. All standards are labeled, and text appears in bold large type. The verb shall is typically used. Standards are sometimes modified by options.

Guidance: A statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled and the text appears in large type. Guidance text is the same size as Standard text, but it is not bold. The verb should is typically used. Guidance statements are sometimes modified by Options.

Option: A statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. All Option statements are labeled, and the text appears in small type. The verb may is typically used.

Support: An informal statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in small type. The verbs shall, should and may are not used in Support statements.

One of the recurring questions raised in relation to the WISHA traffic control and flagging rules is how they relate to the MUTCD and the way in which employers are expected to treat these various MUTCD provisions. This directive describes the department's understanding of those relationships.

II. Scope and Application

This WISHA Regional Directive (WRD) provides guidance to WISHA enforcement and consultation staff when evaluating work zones where traffic control or flaggers are used. It will remain in place indefinitely, and replaces all other instructions on this issue, whether formal or informal.

III. Interpretive Guidance

A. What is the relationship between the Manual on Uniform Traffic Control Devices (MUTCD) and WAC 296-155-305, Signaling and Flagging?

When flaggers are used, employers are required to implement the requirements of WAC 296-155-305 and then supplement the requirements of the rule with the requirements and guidance in the MUTCD. If there is a conflict between the two, the requirements in the rule must be followed.

For all traffic control issues not addressed by the WISHA rule, whether or not a flagger is present, the employer is required to set up the work zone according to the requirements in the MUTCD. An employer's failure to implement appropriate traffic controls as required by the MUTCD is a violation of WAC 296-155-305(1)(a), with each individual omission an instance of the same violation.

B. What in the MUTCD is mandatory and what is recommended?

Employers are required to *implement* all applicable Standard statements related to the work zone (there are exceptions for Short Duration Work Zones (see Section III-D below)). Employers are required to *consider* Guidance statements and implement them when engineering judgment or study indicates they are appropriate. Options and Support statements are not required and the failure to implement an Option or a Support is not a violation of the rule.

C. Can an employer be cited for not implementing a Guidance statement?

Yes, an employer may be cited for not implementing a Guidance statement in the MUTCD. Employers are required to evaluate each Guidance statement that is applicable to the work

zone they are establishing and then make a determination as to why they will or why they will not implement the recommendation.

A simple statement by the employer that the Guidance statement is not mandatory, if not accompanied by an explanation as to how it was evaluated and why it was not implemented, is not sufficient reason to comply with the rule.

D. What are the exceptions for Short Duration Work Zones?

The MUTCD defines a Short Duration Work Zone as a work that occupies a location for up to 1 hour. It goes on to say in a Guidance statement that “Safety in short-duration or mobile operations should not be compromised by using fewer devices simply because the operation will frequently change location.”

The MUTCD provides for the use of fewer devices in short-duration work zones in the following Option Statement: “A reduction in the number of devices may be offset by the use of other more dominant devices such as rotating lights or strobe lights on work vehicles.”

The typicals in the MUTCD may provide guidance for short-duration work zones. Short-duration work zones will be evaluated using the criteria set out in III-C above.

E. When flaggers are used in short-duration work zones, is the employer allowed to eliminate some of the advance warning signs required by WAC 296-155-305?

No. When flaggers are used in short-duration work zones, an employer must not reduce the number of advanced warning signs. Independent of the provisions of the MUTCD, WAC 296-155-305 requires three or four advanced warning signs whenever a flagger is used. This is consistent with the legislative intent of the “Kim Vendl Act” in providing greater protections for flaggers.

IV. Special Enforcement and Consultation Protocols

A. How is a WISHA inspector or consultant expected to evaluate an employer’s implementation of MUTCD guidance statements or an employer’s practices in a short-duration work zone to determine if there is a violation of WAC 296-155-305(1)(a)?

In addressing an employer’s lack of implementation of a Guidance statement, including practices related to short-duration work zones, a WISHA inspector or consultant is expected to do with the following:

- Determine and document the employer’s reason for not implementing the control;
- Determine and document who made the determination not to implement the guidance statement and their level of training (for example, Traffic Control Supervisor, Registered Professional Engineer, etc.);
- Determine and document the feasibility of the control in question;
- Determine and document whether the control would provide a greater margin of safety for the exposed employee(s);

- B. What review requirements must be followed to issue a violation or hazard based on an employer's failure to follow an MUTCD Guidance statement?*

Any proposed violation for the failure to implement a Guidance statement must be reviewed by the Safety Program Manager in WISHA Policy and Technical Services.

Approved:

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WISHA Policy & Technical Services

For further information about this or other WISHA Regional Directives, you may contact DOSH Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 -- or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/Safety-health/>).