Grant County
PUBLIC UTILITY DISTRICT

DOUGLAS COUNTY P.U.D.

September 28, 2017

Ms. Anne Soiza, Assistant Director
Division of Occupational Safety and Health
Washington State Department of Labor & Industries
P.O. Box 44000
Olympia, WA 98504-4000

BY EMAIL: alan.lundeen@lni.wa.gov; kevin.walder@lni.wa.gov

RE: Draft Revised Washington Workplace Lead Regulations

Dear Ms. Soiza:

We appreciate the opportunity to participate in the Washington Department of Labor and Industries' ("L&I") Division of Occupational Safety and Health's ("DOSH") review of occupational lead standards. Because this inquiry could have dramatic effects on Washington workers and the electric power generating industry, we encourage L&I to proceed cautiously with the best scientific, economic and real-world information.

We share L&I's goal of providing a safe and healthy work environment for employees. However, we have concerns about portions of L&I's first "discussion draft." The attached comments describe the key concerns we have identified and provides suggestions for addressing those concerns.

We understand that L&I plans to release a revised discussion draft in the coming months and that another series of stakeholder engagement meetings will be convened. We appreciate that L&I is taking the time to engage stakeholders and recommend that a rulemaking of this importance not be rushed and be conducted in a deliberate manner.

Thank you for your consideration. If you have any questions regarding our comments, please contact us or Cliff Sears, Senior Policy Analyst at Grant PUD, at CSears@gcpud.org or (509) 754-6612.

Sincerely,

Gary Ivory
General Manager, Douglas PUD

Kevin Nordt
General Manager, Grant PUD

cc: George Caan, WPUDA

Suggestions to Reduce the Scope of the Proposed Draft Rule on Airborne Lead Levels

- The rule should identify work practices that are not likely to result in airborne concentrations of lead, such as, removal of lead coatings with high pressure water, wet cleaning, or vacuuming. The Department should not assume airborne lead levels for similar types of work practices. These should be exempt from the rule or covered by basic practices.
- The requirement for clearly convincing information of exempt lead work under WAC 296-857-10040(2)(e) is overly restrictive (e.g. exempting only work below 1.5 ug/m^3 airborne concentration – where lead first becomes measureable). L & I has not made available the science that is directing this rigorous of a standard for the protection of workers.
- The new rule combines the general industry lead standard with the construction standard. By combining these two standards, assumptions of continuous exposure embedded within the general industry standard do not apply equally to intermittent and short term construction projects. Significantly more time should be spent on developing standard work practices, including PPE and hygiene practices, for short term construction projects that involve only incidental lead exposure and that do not contain the same air lead and blood lead level monitoring requirements.
- Model Exposure Control Plans and Task and Industry Specific Compliance Protocols (WAC 296-857-900, 90010) should be developed for projects lasting less than 5 days particularly when there is substantial experience indicating that exposures can be controlled or moderated through standard controls and work practices (WAC 296-857-40010(7)(c)). Additionally, WAC 296-857-900 is incomplete at p. 42.
- For example, the rule should clarify when incidental lead disturbance may occur, such as when bolts are broken loose and lead paint is disturbed. Such incidental lead disturbance may involve a job that lasts only for a few hours or less and there is substantial experience indicating that exposures can be controlled or moderated through standard controls and work practices. (WAC 296-857-40010(7)(c)). There is no need to assume that the exposure is continuous for 8 hours for these projects.
- The requirement for developing a site specific exposure control plan under WAC 296-857-30020 should be limited to projects lasting longer than 5 days or when there is substantial experience indicating that exposures cannot be controlled or moderated through standard controls and work practices.

Suggestions to Reduce Quantitative Wipe Sampling

- Section 296-857-50010 of the discussion draft would require employers to conduct expensive and unnecessary quantitative sampling for lead on surfaces. This approach has several critical flaws and should be eliminated. First, quantitative wipe sampling is expensive and cumbersome and provides no useful information to employers beyond what is readily observable through less onerous qualitative methods or reasonable deduction. Employers and employees know and understand that surfaces in lead-work areas are likely to bear measurable amounts of lead. This is why employers already require employees to take appropriate precautions in those areas – such as wearing gloves and washing hands when work tasks are complete. Determining the exact amount of lead on those surfaces would not result in any new or different protective measures, but would impose significant costs on employers.
- Second, for surfaces where lead should not be present above de minimis levels, such as break rooms, qualitative testing using colorimetric methods would provide significantly better results at a lower cost. This is because such testing provides instantaneous feedback to employers and housekeepers. This, in turn, provides rapid identification of poor cleaning habits and prompts re-cleaning. In contrast, quantitative testing requires samples to be sent

to a laboratory and returned—often consuming a period of several days—during which nothing is known to correct surface contact exposures and providing untimely and poor feedback on specific cleaning practices. Requiring quantitative sampling will lead to poorer outcomes, but at a higher cost. But even colorimetric sampling, while a useful tool, is not always the best option for every situation. For example, wipe sampling of all types can return false-positives for lead dust when used on materials with lead content such as certain plastics. L&I's regulations should not require specific sampling methods, but rather should empower employers to choose the tools best suited for their situations to confirm the effectiveness of their housekeeping measures.

- Wipe sampling of inaccessible surfaces also makes little sense. Inaccessible surfaces in known lead exposure areas already are assumed to bear lead, and appropriate precautions already are taken. Further, many inaccessible surfaces are made inaccessible because accessing them is hazardous due to crush, fall, or electrical hazards. Requiring frequent surface sampling of all them would unnecessarily put sampling workers at risk for no benefit. Finally, L&I staff's stated concerns about theoretical exposures caused by surface dust releases during earthquakes can be more efficiently and better addressed through appropriate emergency response plans for such rare situations.
- Finally, even if quantitative sampling were appropriate, the "clean" targets suggested in the discussion draft have no relevance to workplaces for working adults with lead-exposure training. L&I staff have stated that the targets were copied from the U.S. Department of Health and Urban Development limits for household lead. But those limits are intended to protect the health of children expected to be exposed to lead via routine and frequent ingestion and direct dermal contact exposure routes. There are no children in lead exposed workplaces, and the assumed exposure routes are not relevant to adults. The HUD limits should not be included in any revised regulation.

Areas of Potentially Significant Cost Impacts to Employers

- The reduced PEL (from 50 ug/m^3 to 20 ug/m^3) will require more environmental monitoring, record keeping, and more frequent implementation of site specific exposure control plans. In the past, initial PPE requirements were assigned based upon the Class of the work as defined in WAC 296-155-176. The current regulation goes away from this approach to a more data driven set of controls that do not provide improved worker safety by themselves but will add significantly to the management costs and project overhead.
- The boundary of work areas will need to be monitored to determine if lead exposures employees may encounter are at or above 10 ug/m^3. The amount of additional monitoring will become more complex where multiple employers may be working within the same general work area. Additional demarcation of the work areas, signage and monitoring will significantly increase the costs of contracted lead removal work.
- Additionally, while the costs for contracted lead removal work will increase, there is no safe harbor for employers particularly in multiple employer work areas where the work is organized and performed by independent contractors. There should be.
- Under the current rule, a company's de-leading manual was used to assess the risks of a de-leading project and identify the engineering controls and PPE required by the current WAC standard. It used to take a few hours to fully assess a project. Now, the requirements of the current rule for collecting more data will require more extensive review probably by a Certified Industrial Hygienist (CIH) even for small, short term projects involving only incidental lead exposure.

- Because of significant changes to the rules, basic training is required for employees exposed to "any amount of lead." WAC 296-857-20020(3). Training will apply to other individuals who may accidentally enter a monitoring zone with a potential exposure to lead above at or above 10 ug/ m^3 no matter how long, even though signage might be adequate. WAC 296-857-20020(4). Additional training of staff on maintenance of monitoring equipment will be required. While the rule extensively adds new training requirements, L & I assumes there will be limited benefit because there is no correlation to reduced employer requirements in the rule. We believe the regulations should be revised to reduce air monitoring and BLL testing when additional education, PPE and personal hygiene can address the employee risks.
- An OSHA certified competent person for de-leading will need to be trained and assigned to most de-leading projects. The lower PEL, monitoring level, action level and BLL testing requirements will require greater attention to data which a competent person needs to be assigned. Because of this, employers will need multiple individuals to complete the competent person 40 hour training with 8 hour annual refresher training.
- The voluntary use of respirators is confusing. WAC 296-857-20040(1) and (2) both provide for voluntary use of respirators by employees at 10 ug/dL and 20 ug/dL. However, employers may require use of respirators at any level of exposure. When respirators are used for short term projects at concentrations at or below the PEL, L & I should consider eliminating air monitoring and BLL testing for these projects.
- The reduction of the PEL affects the respiratory protection program. In the current lead rule, the calculated protection of a given respirator is determined by multiplying the PEL by the respirator's Assigned Protection Factor (APF). The effect of reducing the PEL also reduces the protection afforded by respirators. For example, using the current PEL of 50 and an APF of 10 – the maximum airborne lead content this respirator could be used in would be 50 x 10 = 500 ppm. With the new rule it would be 20 x 10 = 200 ppm. The actual protection afforded by the respirator has not changed, but the new rule would require more robust protection factors.
- L & I should provide evidence that the current respirator protection factors, work place standards and personal hygiene practices are insufficient to achieve L & I's desired blood lead levels, particularly at very low concentrations of lead in the air that this rule proposes to regulate. Such analysis may reveal a less restrictive and burdensome standard can be developed when proper PPE and personal hygiene practices are used.
- More frequent testing (primarily for Blood Lead Levels) will be required due to the reduced BLL for which a worker is removed from a task involving lead exposure. The new rule also implements an Advisory Level at 5 ug/dL, Action Level at 10 ug/dL under which the employer must intervene to determine the cause of rising BLL and to keep the employee from reaching the removal level; Action Shift if there is an increase of 5 ug/dL within any 12 month period that requires an employer response that is similar to the Action Level; Chronic removal if 2 or more test results are above 20 ug/dL and Acute removal if any test shows BLL is at 30 ug/dL or higher.
- The Department should reevaluate the need for the Advisory Level and Action Shift Levels in the proposed rule. Both of these rules appear to create confusing regulatory requirements at very low blood lead levels. The Action Shift level appears to change the "Action Level" from 10 ug/dL to 5 ug/dL to 9.99 ug/dL because both impose the same response on the employer.
- L & I should consider the cost to employers from additional record keeping, biological testing and medical examinations at BLL levels at the lower ranges (5 ug/dL or increase in 5 ug/dL, or the Action Level of 10 ug/dL). A change in 5 ug/dL is subject to margins of error that could necessitate further testing. The Advisory level of 5 ug/dL will likely cause employers to take

additional baseline BLL tests (WAC 296-857-60010(6)) prior to the start of work to limit an employer's potential liability for work related injuries.

- The mandatory reporting of every BLL test is unnecessary. WAC 296-857-60020(1). Information on BLL is currently reported to the Department of Health and it is not necessary to report the same information to L & I or raise concerns with handling protected healthcare information simply to fill in the gaps on inter-agency data sharing.
- We are concerned that the return-to-work blood lead level suggested by Section 296-857-60070(3)(a) is unnecessarily low. We believe that a return-to-work level of 15 μg/dL (confirmed by two consecutive tests) is protective of worker health, and those returned workers would continue to be monitored and the employer would continue to work with them to further reduce their blood lead levels.
- The cost of contracted labor for lead abatement projects will increase because companies will not be able to manage the more complex aspects of this rule.
- Because of the complexities of the rule and the absence of standard protocols for short term projects, companies will be required to hire a CIH to implement and oversee the lead abatement projects. Current staff cannot accomplish their current duties as well as the additional duties that will occur if the new rule is implemented without exclusion for short term projects with only incidental lead exposure.
- Until this proposed new rule came about, the changes to regulations were few and updates were minor. The proposed new rule has different and added metrics as well as a different WAC number. As a result, every employer de-leading program will need to be re-written. L & I should consider the impact on employers, limit the number of sections to those that must be changed and limit the scope of the rewrite as much as possible.

Administrative Procedure Act Compliance

The Department should comply with the following requirements of the Administrative Procedure Act for discussion during the next round of the proposed rulemaking effort:

- An explanation or justification should be performed explaining why Washington should adopt a rule significantly more stringent than the OSHA lead rule and other state rules. See RCW 34.05.328(1)(h).
- A cost-benefit analysis and financial impact analysis should be performed. RCW 34.05.328(1)(d).
- An alternatives analysis and explanation should be performed to explain whether the proposed rule is the least burdensome of alternatives considered. RCW 34.05.328(1)(e).
- Given the magnitude of the rule, L & I should develop an implementation plan under RCW 34.05.328(3) to consider a phased in timeline to prevent significant immediate cost impacts to employers.