

**Chapter 296-155 WAC, Safety standards for construction
Part N, Excavation, Trenching, and Shoring
Meeting Summary November 12, 2021
Via Zoom**

Division of Occupational Safety and Health (DOSH) Staff Present:

Kevin Walder, DOSH Administrative Regulations Analyst
Erich Smith, DOSH Safety and Health Specialist
Teri Neely, DOSH Technical Services Safety Program Manager
David Gaw, DOSH Management Analyst
Cathy Coates, DOSH Administrative Regulations Analyst

Organizations represented (in no particular order):

Crawford Advantage Solutions, Inc.	Associated General Contractors (AGC) of Washington
International Union of Operating Engineers Local 612	Washington State University
True Bearing Safety Solutions, LLC	1 st Line 1 st Aid, Inc.
Western Refinery Services	WAECO Construction
Brice Civil Constructors	Approach Management Services
Absher Construction Company	Tunista Construction, LLC
Waste Connections	Avista Corp.
NPL Construction Co.	Foushé
Cowlitz County PUD	Culbert Construction, Inc.
City of Seattle	Employer Resources Northwest
Parker, Smith & Feek Insurance, LLC	Snohomish County
Phillips 66	Unions-America
Holt Homes	Skagit County
DPR Construction	Construction Systems Management Incorporated
Sound Transit	Northwest Edison
Pacific Pile & Marine	PacifiCorp
Central Washington University	Omega Morgan
Bouten Construction Company	Building Industry Association of Washington (BIAW)
Chelan County PUD	Associated Builders and Contractors (ABC) of Western Washington
OZZ Electric	King County
Grant County PUD	Kitsap County
D.P. Nicoli	Boeing
Washington State Parks	South County Fire
JR Hayes Corporation	The Integrated Group
Legacy 6, Inc.	Washington State Department of Corrections
Atkinson Construction	Port of Seattle
BAI Environmental Services	Schmitt Electric, Inc.
City of Tacoma	Roto-Rooter
Sacramento Drilling, Inc.	MidMountain Contractors, Inc.
City of Lacey	
University of Washington	

Site Response, Inc.
NW Natural
Marpac Construction
City of Renton
Energy Northwest
Inland Power and Light Company
City of Vancouver
NAES Corporation
City of Ellensburg
GeoEngineers
N.A. Degerstrom, Inc.
Bill Benham Consulting, LLC
City of Marysville
British Petroleum (BP)
Garco
Veterans Northwest Construction, LLC
Mercer Ranches, Inc.
BN Builders
Washington State Department of Transportation
Centauri Group, Inc.
Red Diamond Construction, Inc.
VECA Electric & Technologies
Jacobs

PACCAR Inc.
City of Pullman
City of Everett
Associated General Contractors (AGC) Inland
Northwest Chapter
Shell Puget Sound Refinery
Lewis County PUD
Washington Fruit & Produce Co.
Conco
McCallum Rock Drilling
Archbright
Washington Building Trades
Schweitzer Engineering Laboratories
Washington and Northern Idaho District Council
of Laborers
Blox Construction
Skanska
Divcon, Inc.
Goodfellows Bros.
Zipty Fiber
Clark County
Grays Harbor PUD
Sellen Construction

Preparatory:

Attendees provided electronic copies of the meeting materials via GovDelivery.

Summary:

Mr. Walder, DOSH Administrative Regulations Analyst, called the meeting to order at 10:00 am.

Mr. Walder provided a summary of the rulemaking to date; and, summary of the rulemaking process. The project began in spring, 2021. The department met with stakeholders to solicit feedback in relation to possible changes. The department conducted an analysis of fatalities. Trenching fatalities are preventable. Goal is to provide simple, effective requirements that are not overly burdensome.

Mr. Smith, DOSH Safety and Health Specialist, reviewed the draft language with attendees. Attendees submitted questions electronically.

Draft language is on the web-age. Green shading reflects new changes. Mr. Smith noted, he believes there should be consistency between standards; and, reused or copied definitions and terms from other standards.

Added the definition of emergency from chapter 296 155-305 WAC, Signaling and flaggers. After discussion with stakeholders, believe the definition will not work in this context. In this context, the term emergency, is an exception from standard flagging procedures, when you can use an alternate. Don't have to have a valid flagger card.

The definition currently in the draft is from WAC 296-155-305(6). Mr. Smith discussed RCW 19.122.020, Underground Utilities, also known as the Dig Law. The department is concerned with worker safety, not property.

Mr. Smith reviewed the draft with attendees; and, answered attendee questions.

Question from Jim Breidenbach

Will L&I be crafting & providing an Excavation Workplan template...and posting on the L&I.wa.gov website. This would be helpful, similar to other templates already provided so excavators have consistency with what's expected/required?

DOSH Response:

This is not something this part of DOSH will do. Education and Outreach may, however. Employers could take a copy of the requirements and paste into a Word document and create.

In relation to excavation plan, employers may develop work plan, similar to the check list in Unified Fall Protection (chapter 296-880 WAC). This will ensure employers doing what already asked to do.

Question from Jim Breidenbach

Why isn't the term, confined space included in the definitions within WAC 296-155-650? The three criteria identified in this definition are applicable to trenching. (WAC 296-155-20301)?

DOSH Response:

Yes and no. OSHA 1926, Confined Space rule, for construction, OSHA exempts their confined space if regulated by Subpart P, (doesn't apply to excavations). Washington has Chapter 296-809 Confined Space, and Dosh Directive 27-30, Excavation Operations. Excavations can be a confined space. However, must meet the definition of confined space and have hazards not addressed by excavation standard (cave in, atmosphere addressed in chapter 296-155, Part N, in order to cite WAC 296-809. This is a bit different than federal OSHA.

James Vasileff provided the following comment in relation to the definition of emergency.

sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

Question from Doug Buman

What about life, health, and/or property?

Question from William Benham

Why couldn't you use the Dig Law in its entirety?

DOSH Response:

The Dig Law is intended to protect utility and customers. Chapter 296-155 WAC, Safety standards for construction, Part N provides protection to workers performing excavation. They are looking at different things. The department could only use part of RCW 19.122.020, Underground Utilities.

Suggested definition of emergency from Tanner Thomas

Emergency, a serious, unexpected, and often dangerous situation requiring immediate action.

Question from Peter Paradiso

Would this plan be required for all excavations, or only ones that require protective systems?

DOSH Response:

As written now, it would only be required where a protective system is required under WAC 296-155-657(1)(a), for excavations of four feet or more.

Suggested definition/comment from Pete Johnson

Common Ground Alliance definition of Emergency: Emergency: A sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities that requires immediate action.

DOSH Response:

While utilities are obviously important, DOSH is not necessarily concerned with continuation of customer service. Our jurisdiction is limited to worker protection, not continuity of utility services.

Question from Anonymous Attendee

Confined Space (809) requires an evaluation of a rescue service to determine adequacy. Emergency services may or may not be equipped to do this, simply calling 911 may not be adequate as you mentioned. Is an evaluation of rescue services expected with 13 b xiii? If so, it would be helpful so state that.

DOSH Response:

The evaluation would be part of the emergency rescue services. Should make contact with (emergency services). Good point, may have to dig deeper, good point.

Question from Dominic Urbano

Providing necessary emergency services is different than ensuring... As written I am wondering if the employer would feel obligated to provide EMS etc. as opposed to ensuring site access?

DOSH Response:

It would be dependent on the site. If in Seattle, emergency services are readily available, and the fire department tends to be trained for this type of rescue. In more rural areas, such as Oso, will you get the same thing? Employer will need to determine availability and figure out how they will effectively deal with an emergency should it arise based on the unique circumstances of their worksite. Limited cell service, emergency services, etc. must be taken into consideration.

Question from Peter Paradiso

Would it be acceptable to use a company JHA as an excavation plan?

DOSH Response:

Certainly no requirement for employer to use this page. If the department develops a template, no requirement to use. No different than Fall Protection work plan, don't have to use our template, as long as requirements are addressed somewhere. A checklist typically makes this easier for employers. The minimum is to identify and describe emergency operations. Employer may go above and beyond.

Comment from William Benham

We should be concerned with the utility. Especially if you are working near a hospital or other infrastructure.

DOSH Response:

Certainly. If you hit a power line that puts a hospital out, that is an issue. DOSH is concerned with employee exposure to high voltage. We are looking at the worker in the excavation/exposure to hazards.

Question from William Benham

Is the training part that you showed earlier already in N. 296-155, in N?

DOSH Response:

No, training isn't in chapter 296-155 WAC, Safety standards for construction, Part N. Training is in WAC 296-155-110, Part B1 and applies to entire chapter. Accident prevention fall under management responsibility and is in WAC 296-155-100, training to increase knowledge and skills of employees.

Question from Anonymous Attendee

Would you have to require someone on-site to be first aid qualified due to the emergency services not being readily available- less than 3-4 minutes away?

DOSH Response:

Chapter 296-155-140 has first aid requirements, which includes all foreman and members of crew, but this is only first aid; it doesn't go beyond into requirements that these workers undergo extensive medical training.

Question from Marcus Small

The need for rescue is due to a lack of, or improper shielding/shoring protective system. How is this issue being addressed to prevent the need of a rescue being needed in the first place?

DOSH Response:

True, following the WAC should eliminate the need for a rescue but even so things happen beyond anyone's control. The issue is that we often find that workers in excavation are not adequately protected, and all too often rescue wasn't even considered or addressed prior to beginning work. In a lot of the cases that I saw as a Compliance inspector, the employer or competent person didn't even know these requirements, even though they have been in place since 1981. It's a lot for anyone to remember. The idea here is to make rescue a part plan and mindset, and this rule change would likely help in that regard. If all the requirements are already met, then this rule change would constitute a very minimal change; simply checking off that you've done what you're supposed to. The idea of sections "i" through "xiii" is to address rescue and provide a way for the employer to ensure these provisions are met.

Question from Anonymous Attendee

*Has the department done any work to understand how many emergency services (fire departments) in the state have a trained excavation or trench rescue team? See response below.**

Question from Drew Endrody

We have a Confined Space Entry Permit....now we will have an Excavation Entry Permit...correct?

DOSH Response:

No, this is not a permit. Requirement for planning; for example, soil types, etc. It isn't a permit or license, it is a plan. Similar to fall protection. The intent is to demonstrate how you are going to protect workers. We know there are a lot of excavations, NA is an option. If no adjacent structures, NA, etc. This is not a permit, it is a planning requirement.

Question from Shawn Ringo

Appendix H in the confined space rule provides guidance for evaluating a rescue team's qualification, excavations are different from confined spaces in that a lifeline is likely not a good retrieval solution. Rescue could or may likely result from a control system failure, which imparts some challenging rescue solutions, could we provide similar rescue team evaluation guidance for the trenching and shoring rule?

DOSH Response:

We can take a look at that, good point. This could be especially valuable if an employer opts to perform rescues themselves rather than outsourcing. Depth, whether the fire department is involved would be considerations. Fantastic point.

Question from Oleg Sassa (phone):

Regarding section B, all that stuff is great, the 13 part-removal, so if you do first, the emergency shouldn't exist, so 13 isn't needed. If you have to write something, means you didn't do something in sections 1-12. I don't see a point in having. If you did everything right, emergency removal shouldn't exist; should prevent emergency removal.

DOSH Response:

If an employee is protected according to chapter 296-155 WAC, Safety standards for construct work, Part N, the risk should be mitigated, yes. However; there are occasions where something may happen. Part 13 addresses those unforeseen situations when something goes wrong. Just like with confined space, if something goes wrong, how do you get employees out? Something can go wrong. May not be a violation, however, there is a potential there, think and plan about how to handle.

Question from Oleg Sassa (phone):

Once L&I shows up, would be a violation, if going same as Fall Protection, will be a serious violation. If have 70 people, how many employers involved in excavations in Washington. What if LNI shows up, didn't employers did not know new rule, how would department cite? In past, only cite accident plan first time. Any thoughts on first time, hope not serious citation.

DOSH Response:

Look at how we address Fall Protection work plans. If we go to a site, and all is as it should be and the employer doesn't have a Fall Protection plan, it gets cited as general because no hazard is present. If, on the other hand, we visit a work site and find workers on a roof not tied off and no plan, it is serious. The DOSH Compliance Manual clarifies a lot of what determines a General versus Serious violation.

Outreach will be important in getting the word out about these new requirements.

Comment from Weldon Barker

I know this was brought up already but I wanted to note it would be VERY helpful for contractors if LNI can provide a fully baked template for the Excavation Work Plan with a checklist, to ensure nothing is missed. Thank you.

Question from Anonymous Attendee

Has the department done any work to understand how many fire departments in the state have a trained excavation or trench rescue team?

***DOSH Response:**

Mr. Walder-The department has not performed an in depth analysis. Based on what we've heard anecdotally from fire departments across the state, this sort of specific rescue training is pretty limited and is more prevalent in some areas than others.

Mr. Smith agreed.

Comment from Anonymous Attendee

You can never plan for the unexpected such as an earthquake or other natural disasters.

DOSH Response:

Exactly. If workers in excavations all day long, earthquake is not something you can anticipate. Hurricane could have avoided. Earthquake truly unforeseen.

Question from Fred Merrill

What would be some examples of approved xii?

DOSH Response:

Safe egress--provision from WAC 296-155-655(3), requires employer to provide safe egress from excavation, ladder every 25 feet, trench excavation.

Question from Anonymous Attendee

What about requirements for the rescuer? Those without proper rescue training may cause further injury to those needing aid, and may not have the knowledge to perform the rescue.

DOSH Response:

Right. If employer plan is to have workers to attempt rescue, the employer must train employees on how to do so safely.

Question from Peter Paradiso

Are we sure that we have exhausted education on excavation safety? Does a rule change really provide the added safety factor we are looking for? Are we placing a piece of paper in front of changing worker behavior?

DOSH Response:

The WAC has been in place since 1991 and we see violations pretty commonly, plus the recent fatalities. We believe this will help the employer but will it solve every potential issue? No. It is up to the employer to ensure that everyone is thinking appropriately about safety, and this is intended as a simple way to facilitate that mindset. The employer is responsible to have disciplinary program,

train employees on what you want them to do make, evaluate, make corrections, and discipline if necessary.

Comment from Anonymous Attendee

That can be a concern if you are writing a policy stating that you need the emergency services but they are not trained to do a rescue such as a volunteer department.

DOSH Response:

Certainly. Needs to be discussed. Note, simply writing call 9-1-1, may not be adequate. Employer needs to know if 9-1-1 is adequate. An excavation that is 7 feet is very different than say 25 feet, and different way to get to the worker need to be considered before putting someone in that position. What would happen based on how deep, type of soil, location, remote areas etc.? Can 9-1-1 perform a rescue where you are? Emergency services could be 45 minutes away and comprised only of volunteers who don't have adequate training.

Question from Anonymous Attendee

So companies that perform excavations will need to have annual certification for rescuers?

DOSH Response:

No, there is no requirement for that. If an employer uses workers to do part of rescue, workers must be trained. If it can be done safely and in accordance with chapter 296-155 WAC, Safety standards for construction work, Part N, nothing prevents an employer from doing so.

Comment from Fred Merrill

The comment had been made that there are limited trench rescue services available in the state. If that is the case, then how can an employer meet the requirement of providing adequate rescue services? I'm not opposed to the idea of providing rescue services, but there needs to be some training, basic requirements we can use to evaluate these rescue services.

DOSH Response:

Good point. You are correct. If we think about that within the context of this discussion draft, with all the excavations we have that are likely open currently, how many employers have contacted 9-1-1 to see if they could perform a rescue? This intent of the existing rule is that an employer should already be doing this.

Comment from William Benham

If 911 could not perform a rescue then a company would either need to train their personnel, or hire a third party training company.

DOSH Response:

Yes, the onus to comply with the rule [which again, is really the intent of WAC 296-155-034(9), which says that "you must ensure prompt and safe removal of injured employees from elevated work locations, trenches and excavations prior to commencement of work"]. If we have a worker in excavation 20 feet deep, how are we going to get them out today? The hazard is already there. There needs to be training to get them out safely. Train personnel or hire a third party. 9-1-1 or a 3rd party contractor may be too far away.

Comment from Anonymous Attendee

Your local Fire Dept. has, as a general rule, a trench rescue Division. They would be glad to provide minimal training for rescue and offer various types of rescue options.

DOSH Response:

Fantastic. Contact local your local fire department and find out what is offered.

Comment from Tanner Thomas

Site-Response.com. Standby rescue.

Comment from Chris Honan

I think a valuable option is transfer liability and contract out this work if rescue is a major concern because of logistics.

DOSH Response:

We would require it be in place. However, contracts would be outside of DOSH's scope and we'd look primarily at the employer.

Comment from Jim Breidenbach

Rescuing requirements exist in fall-protection rules. This seems like a logical progression of care for workers.

DOSH Response:

Excellent point. Correct, Fall Protection, must plan for and provide prompt.....much of what is covered under subsection 13 of this draft is already in chapter 296-155 WAC, Safety standards for construction work, Part A. Part A already applies. Just applying specifically into chapter 296-155 WAC, Safety standards for construction work, Part N. Chapter 296-155 WAC, Safety standards for construction work, Part A and chapter 296-155 WAC, Safety standards for construction work, Part B1 apply to all. The intent is to put all in one area to make it clearer what we are asking for related to these operations.

Question from Anonymous Attendee

Would that count as a training for rescue if the fire department does it for you? Would that training then need to be documented somewhere?

DOSH Response:

If your plan is to rely on the fire department and they have provided training then that would be in keeping with what our intent is here. It is always in your best interest to keep records of training, including who, what, when, etc.

Comment from Doug Buman

Oh hell, or just go union! LOL!

Question from John Price

Can training be done in house? This doesn't require certification does it?

DOSH Response:

Training can be done by a fire department, employer, or a third party. There are no certification requirements currently under consideration. If you look at chapter 296-155 WAC, Safety standards

for construction work, Part C; if worksites are different, then you would need to train on what is different. Just like roofers, steep pitch, low pitch, doesn't require specific training every time. If there are changes from initial training, yes, additional training is required.

Question from Anonymous Attendee

Do the fire departments that contractors are relying on for rescue, keep track of how many contractors are currently relying on them to make sure everyone is covered in the event of simultaneous rescue needs?

DOSH Response:

Don't know, that is a question for the individual fire department, could vary on city, county, whether manned by volunteers etc. The important thing would be that you have a conversation with them to determine their capacity to assist you, and if what they are capable isn't adequate you'd have to resort to another plan.

Comment from Anonymous Attendee

But it is the responsibility of the employer to validate the effectiveness of the training and to refresher training annually when required.

DOSH Response:

The employer would always need to validate the effectiveness of any training. If an employer trains employees on how to use fall arrest system on a steep roof, and then a worker is doing something on a retractable, the training would not be effective as it didn't address the system used. Basically, the idea is that the training employers provide needs to match what employees are asked to do.

Question from Anonymous Attendee

So if I think I know how to rescue someone, I can show my guys what I think would work, document that, and that training would be adequate?

DOSH Response:

Depends on the situation. Do you know how to rescue someone at 5 feet versus 25 feet, whether there is a potential for further cave-ins or not, etc.? There are a lot of variables. What we want to avoid with the Workplan is for other employees to jump in, exposing more workers to that hazard. We've all heard about cases of further harm to other workers/would be rescuers.

Question from Anonymous Attendee

You may have already answered - when testing the atmospheric conditions due to known or concerned hazards, does the trench become a permit CS and if so, then you would comply with all CS regs including CS trained rescue?

DOSH Response:

In order it for to be classified as confined space, it must meet 3 elements and have atmospheric hazards not addressed in chapter 296-155 WAC, Safety standards for construction work, Part N, and still wouldn't be a confined space if just a trench.

Comment from Anonymous Attendee

Each project would have to be evaluated on a case by case basis. Am I going to rescue, is emergency services going to do it, or a third party. And the site specific plan would need to include it. That goes to confined and fall protection both go into excavation.

DOSH Response:

Good point, fantastic.

Following the question and answer session, Mr. Walder thanked attendees for attending the meeting. Mr. Walder provided contact information for DOSH staff involved in this rulemaking. Mr. Walder summarized the potential rulemaking timeline. Mr. Walder shared with attendees that it is possible the department may file a CR-102, or, Proposal, in the spring.