



May 18, 2017

Cindy Ireland, Administrative Regulations Analyst (Cynthia.Ireland@lni.wa.gov)
Department of Labor and Industries
Division of Occupational Safety and Health
P.O. Box 44620
Olympia, Washington 98504-4620
Re: CR 102 Rule-Making Order – RCW 34.05.320

Re: Proposed Changes to the Washington Administrative Code WAC 296-32 – Safety Standards for Telecommunications

These comments are submitted on behalf of the Environmental, Health & Safety Communications Panel (“EHSCP”), previously known as the National Telecommunications Safety Panel (“NTSP”), in response to Washington’s CR 102 Rule-Making Order – RCW 34.05.320, Proposed changes the Washington Administrative Code (WAC) 296-32 Safety Standards for Telecommunications.

Introduction

The EHSCP is a consortium of environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry. The EHSCP strives to provide constructive input to the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues concern the communications industry. More information regarding the EHSCP can be found at <http://ehscp.org>.

The EHSCP believes that most of the proposed changes to WAC 296-32 are duplicative and unnecessary. If this rulemaking is to go forward, we recommend that the proposed tower portion of the standard be revised to be consistent with and should incorporate the standards of the American National Standards Institute (ANSI) and the Telecommunications Industry Association (TIA).

We believe that existing WAC 296-32 is adequate. The scope and application section already covers many of the proposed changes in other sections of WAC 296 and if added to WAC 296-32 it will only lead to confusion for the regulated industries and cause duplication of work for the Washington State Department of Labor and Industries (L&I). This also is not in line with the recent focus by L&I to simplify and make the WAC easier for the regulated public to follow. Again, we believe that WAC 296-32 already protects the safety and health of workers from risks unique to the telecommunications industry.

Comments

The EHSCP does not support the rule as proposed for the following reasons:

- The new requirements are unnecessary. WAC 296-32, if complied with already adequately protects safety and health of workers from risks unique to the telecommunications industry.
- Towers are used in many industries including electrical transmission, radio, and TV broadcasting as well as the cellular communications industry. Multiple industries often use the same tower. Wireless communications are only one use of the tower and the proposed requirements could disrupt or pose issues for other uses of the tower.
- ANSI and TIA standards, when followed, effectively address climbing safety concerns, and can more quickly address any new concerns or technology that comes. Requiring companies to follow a different standard when performing work in Washington State would make that work less safe rather than more.
- The Occupational Safety & Health Administration (OSHA) has been working with ANSI, and with representatives from labor and from the tower industry to improve tower safety standards and this effort may conflict with OSHA's efforts.
- Many of the items proposed to be added to WAC 296-32 have been duplicated from other sections of WAC 296. We believe that creating multiple copies of the same standards addressing the same risk in different industries is redundant, inefficient, confusing, and counterproductive. This is especially so if the language of the standards varies slightly from industry to industry.
- The proposed Scope and Application leads the regulated public from WAC 296-32 to other areas of regulation including WAC 296-24, 27, 45, 62, 155, and 800, making the need to recreate entire sections within WAC 296-32 duplicative and redundant.

Cost of the Proposed Rule

L&I's cost/benefit analysis (CBA) of the proposed rule includes a number of misconceptions or misrepresentations.

- The discussion of benefits begins with the statement that "workers engaged in telecommunications industry have significantly higher fatal as well as non-fatal injury rates than many other professions". It justifies that statement with data on tower construction and maintenance workers. Those workers are not typically telecommunications workers. They most commonly work for tower construction companies and perform similar work for different industries, often on the same tower.

In fact, according to the most recent US Bureau of Labor Statistics data, the telecommunications industry is safer on average, with an overall injury and illness rate of 2.2 incidents per 100 full time workers, versus the general private industry rate of 3.0. In Washington State, the difference is more pronounced, with the telecommunications industry rate at 1.8 versus 4.4 across all private industry. The wireless communications industry has such a good safety record that it has been designated by OSHA and L&I as a partially exempt industry under the recordkeeping standard due to low injury and illness rates.

- The CBA estimates benefits from reduction of nonfatal incidents on the presumption that “...rule changes analyzed in this report can reduce the injuries to affected telecommunications workers by 10% to 20%”. While the CBA claims this estimate to be based on a “review of the types, natures, sources of these incidents, as well as their connections with the proposed safety measures and standards”, it does not offer even a single example of a rule that would reduce any particular type of incident. This makes it impossible for anyone outside the department to validate or refute the 10-20% claim.

Most sections of the proposed rule simply cite or copy (and in many cases both cite and then repeat) existing standards. We and our member companies have consistently pointed out these redundancies throughout the development of the proposed standard. We find it difficult to believe that redundant copies, citations and rewrites of existing requirements will provide any reduction in incidents.

- In discussion of fatal incidents, the CBA estimates that in the past 10 years, one of three fatal falls from height may have been prevented by the proposed rule. That estimate is based simply on the fact that “fall protection is one of the major safety issues this proposal is addressing”. The CBA offers no connection or correlation between the cause of the falls and the requirements proposed.

As discussed above, we believe the proposal, as it diverges from efforts of the US OSHA and the tower industry and labor representatives, will cause confusion and will actually make tower work in Washington State less safe rather than more.

- The CBA concludes with a discussion of qualitative benefits in which it states “One tangible benefit is that compared to the current language, the proposed rules are easier to understand and follow due to improved clarity.” While those who drafted the proposed rules may believe them “easier to understand”, we find the proposed rules to be excessively long, redundant, and confusing.

If the actual costs and benefits of each requirement were considered during the development of this rule, we would expect significantly more specifics to be included in the CBA. In comparison to the complete rewrite of the telecommunications standard itself, the CBA appears to have been hastily assembled, after the fact, to justify the proposed rule as presented.

Summary

We understand that the proposed updates to WAC 296-32 were created largely to add needed focus on the work performed on and around towers. Communications is only a portion of the larger tower industry. Towers are used in many industries including electrical transmission, radio, and TV broadcasting as well as the telecommunications industry.

We believe that WAC 296-32 already adequately protects safety and health in our industry. Many of the items proposed to be added to WAC 296-32 that refer to tower work are already found in WAC 296-155, but the best way to ensure safety, in our industry as well as other industries involved in tower work, would be to use a common standard based on ANSI and TIA and not to add the proposed language to WAC 296-32.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan K. Stolte". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bryan K. Stolte, Ph.D., C.I.H., Chair
Environmental, Health & Safety Communications Panel