WASHINGTON STATE Board of Health
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Environmental Health & Safety

Primary and Secondary Schools––Chapter 246-366A WAC

School Rule Revision Team

Summary Meeting Notes – April 15, 2008

Facilitator: Greg Stack

Team members present:

Julie Awbrey	James Green	Craig McLaughlin	Robert Van Slyke
Peter Browning	Patricia Jatczak	Forrest Miller	Bob Wolpert
Eric Dickson	Gary Jefferis	Marilee Scarbrough	
Dave DeLong	Rod Leland	Mark Soltman	
Ed Foster	Mary Sue Linville	Jill Van Glubt	

James Green was introduced as a new team member representing parents.

General discussion:

Craig McLaughlin provided an update on several "Parking Lot" items from the April 4 meeting:

- The concept of establishing standing advisory committee to help the Department of Health (DOH) develop clarifying interpretations of the school rule to help with statewide uniformity is moving forward.
- Training mandates for local health inspectors will likely not be placed into the rule. The draft rule language has provisions that DOH provide training for local health and others.

020––Responsibilities – General:

Concern that the role of DOH is not clear. There is nothing in the rule about DOH responsibility to stay current, stay with science. Why doesn't the SBOH have responsibilities to make sure there is staffing and resources for implementation of the rule? Craig – SBOH has statutory responsibility for rule making, not implementation and funding. Parking Lot issue. If language is proposed, Craig will take it to SBOH. Return to this section later.

020(2)––Responsibilities – Local Health Officer (LHO):

Add a tie in between the LHO determining that there is an imminent health hazard and contacting school officials. There is currently an assumption that it would happen – put explicit provision in rule.

(2)(a)(i). LHO resources to conduct inspections annually and respond to issues – It will be difficult to do inspections annually. The Washington State Risk Management Pool does inspections every 3 years, they don't see much change year-to-year, but do see improvements after 3 years. Spokane Regional Health District (SRHD) has found annual complete inspections not needed after local health program became well established. That was not the case when they first began the program two decades ago. Inspections take 5 hours for a high school now – inspections took 1½ days for 2 people when they first started. SRHD has partial self-inspection program: Yr 1 – full routine inspection by SRHD, Yr 2 – targeted re-inspection by

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SRHD, Yr 3 – school staff re-inspects (if they have signed an agreement with the SRHD). Attendees noted that Pierce and Snohomish Counties inspect every 2 years. Local health and school official team members favor "at least every 2 years." An alternative might be to phase in inspections. Does data show that inspections every 2 years results in better compliance? LHOs and school officials would need resources. Unresolved. Parking Lot issue - Craig is not empowered to change the annual inspection requirement before consulting with SBOH members.

(2)(a)(i). Situations differ when LHO would notify school officials about imminent health hazards observed. Sometimes it is during the inspection and sometimes at an exit interview. Added wording.

(2)(a)(iii) & (iv). Comments about this being confusing. The intent is that LHO is to discuss final report with school officials within 60 days. Intention is to capture the concepts in appendix of K12 H&SG for school inspection process. Differences exist now between local health jurisdictions' inspection and report processes. Some give a report to school at end of inspection, others mail report after writing up in office. Consider revision of draft language – present draft report, then must finalize in 60 days. Would allow for time to review the initial report and develop an implementation schedule. Craig – trying to fix this now would be too time consuming. DOH/SBOH staff will continue to work on (iii) and (iv) – and bring it back to team. School maintenance directors want a partnership in the inspections – so the report reflects what has been agreed on.

(2)(a)(vi). Delete word "all" and determine record retention law requirements (7 years?). Clarify requirement on what records must be maintained by LHO. Craig – the record retention laws require that if you have it, you keep it, but you don't have to go out and get it.

(2)(b)(i). What is the intent of adding the term "designee' – how broad is the term? Does it have to be a school employee? They may have to have others conduct the inspections. Add "qualified" before designee. Draft doesn't require the LHO to allow this. This might create a contentious environment because the LHJs are making the choice of how extensive the program will be, resulting in inconsistency across the state. Assure the designee is trained to conduct inspections. School officials also want requirement that the LHJ inspector is competently trained. The draft requires [020(3)] DOH to provide training for local inspectors, but not that the LHJ inspectors must be trained. Maybe this is inverted – maybe reorder subsections starting with DOH, then LHJ, then school officials. Craig – training of local health inspectors was already in Parking Lot from April 4.

(2)(b)(iii). Don't need to require a "process" – just do it.

(2)(b)(iv). Is "process" needed? Craig – yes, this section is about establishing a procedure for doing certain things.

(2)(b)(v). Make it consistent on the "process" issue.

020(3)––Responsibilities – Department of Health (DOH):

(3)(a)(i). Why was change made in this draft requiring DOH to report to SBOH every 3 years instead of 2? Craig – from SBOH member comments; usually SBOH asks DOH to give rule status reports to SBOH about every 5 years.

(3)(a)(ii). This is the first time Educational Service Districts are mentioned in the rule – why? The intent is to ensure that ESD staff could participate in the DOH produced training.

(3)(a)(ii)(C). Is this an offer of state assistance to evaluate variance requests? The intent is that DOH will provide training on evaluating variances. Variance issues help to indicate possible need for changes in the rule.

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(3)(a)(iii) and (iv). Parking lot issues here from last meeting about DOH developing technical interpretations and forming an advisory committee to promote consistent statewide rule implementation. (Notes from April 4 meeting removed from draft language of rule until decided later.)

(3)(b). Who determines when DOH will assist LHO investigate incidents in schools? The intent is that the LHO would initiate a request for assistance. DOH does not charge LHO or schools for technical assistance.

BREAK

030––Site Assessment, review, and approval:

Discussion: School districts have difficulty putting enough property together to build a Jr H or HS because of all the land use requirements. School officials are OK with LHO helping determine any mitigation measures that might be needed, but don't want LHO to be able to deny purchase of property or use of a site. Many site issues can be mitigated for land that is less than ideal for development.

Discussion about whether LHO must approve purchase of land for school. The intent of the rule is that the real estate purchase step is not subject to LHO review and approval. Draft says "developing a school site" – so would not apply to building a bus barn.

Consider providing greater separation of rule provisions for new sites from provisions for existing school sites. The draft already has a two-tiered system – 030(1) is for new development or conversion from a non-school use, and (2) is for changes to an existing school. However, additional separation will be considered.

Would sites purchased in the past fit into subsection (1) or (2)? The intention is that site assessment requirements would apply at the time the school officials start to develop the property for a school facility, no matter how long the property has been owned by the school district.

Additions and "modernizations" – there was disagreement in discussion whether LHO should have an opportunity to deny site use. Scope of the approval is also an issue.

The scope of the site assessment needs to be clarified. Craig – intent is that school officials (or designee) must conduct site assessment using readily available public records and a site visit. Designee could include ESD employee or contractor. The intent is to limit site review and approval by LHO to environmental health issues. The intent of 030(3) is to outline what can substitute for a Phase I ESA. The discussion favored just requiring a Phase 1 ESA for new school sites, but want lesser alternative for an addition or replacement school on an existing school site

Parking Lot Issues: Consider limiting LHO responsibility to recommending mitigation, rather than approving or denying site use. Consider differences between assessment requirements for sites without existing schools and sites with existing schools.

Specific Rule Language Recommendations for 030:

030(2)(b). Do we want to put a dollar figure now on the size of an addition that triggers a site assessment – inflation will impact. Craig – Need recommendations to SBOH about a dollar amount, square footage, or percentage of replacement cost.

030(3)(c). Many questions on the extent of the investigation within ½ mile. SRDC recommended requiring a Phase 1 ESA. The intent was the owner would do the investigation as part of due diligence. Attempt here is to provide outline for something that would be less prescriptive than a Phase I ESA. The Phase 1 ESA has provisions for review of different distances (½ mile or 1 mile) from the site boundary, depending on the issue. The draft requirement has the lesser of those. Discussion that both LHO and school officials might

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have difficulty doing these assessments. Apparently, lenders of money for large land purchases almost always require a Phase 1 ESA be done. [ESA protocol requires expert to prepare assessment.]

How in depth must the assessment be? Does all of (c) apply – to (a)? Reminder to consider the whole section in context. Is a Phase 1 ESA limited to assessment of only adjacent properties or all property within specified radius? Some team members would prefer assessment be required only for adjacent properties. Would LHO be expected to conduct assessment? The intent is that school officials are responsible for assuring assessment is done and that LHO is responsible to review it. The costs of doing one is high (about $12,000), but not worth the risk to not have Phase 1. Requiring a Phase 1 ESA might be overly burdensome for existing school sites, additions, and small private schools. Predictability of requirements was the theme of concerns expressed.

030(3)(c)(i). Use phrase "current **and** past use."

LUNCH BREAK

Craig worked on concept for revision of section 030 over lunch.

- New school site – Require Phase 1 ESA
- Additions or replacement of building on existing school site – Flexible, based on LHO – K12 H&SG could provide guidance about assessments in these situations.

Non-traditional schools. Mead SD has an alternative school in a shopping mall. There is a trend toward store front schools and in other alternative places. Highline is planning a HS at the Museum of Flight. We need to keep in mind that the goal is that school children are in a safe environment, and parents can make informed decisions. Maybe the variance option could be used in these situations?

030(3)(d). Any sampling and analysis needed would be based on findings of the Phase 1 ESA.

030(3)(e). Question about whether there is overlap with L&I's law about noise standards. This requirement is unchanged from the existing SBOH rule.

030(5)(a). Notifying local health officer well in advance of starting project planning is basically a courtesy for staff scheduling.

030(5)(b). Concern this might require premature decisions on the scope of development. Why is this here? Intent is to force school officials and LHO to consult from the beginning. This should be a flexible cooperative relationship. The SRDC recommended early consultation to identify potential problems early. Language was changed to "throughout plan development phase."

General agreement on the wording of the rest of section.

040––Construction project review:

040(1)(c). Question here, like in 030, about threshold for LHO review of construction projects for additions and renovations ($250,000?).

040(3)(c). Clarify that LHO project review is for environmental health and safety issues.

040(3)(d). Would there be conflict with L&I requirements for shops and laboratories? Discussion about limiting requirement to portion of school facility for "use by students." Intent of draft language is to differentiate between maintenance shops and laboratory prep areas for staff use only and those for students. Wording not changed for now. Changes in use of rooms or outside areas could potentially trigger

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construction review. If K-12 guidance document is good, schools will know what issues need to be addressed. (Maryland has facility guidelines that address many of these issues.)

040(3)(e). Take out "any" in two places. Why is this draft changed from the second draft regarding design certification requirements? The intention is to retain the concept that LHO can ask for an engineer's certification for certain aspects of the project, without requiring it for the whole project. Concern was expressed that this change diminishes protection and should go back to second draft requirement of requiring an engineer's certification that design meets all requirements in this rule. Craig – one of the notions circulating is that there be a checklist where the architect or engineer can certify that requirements in the rule are addressed. This would help LHO review. This concept is not in this draft, but is an option to consider. Put in the Parking Lot.

If an architect engineer submits a check list certifying that all requirements in the rule are met, why would LHO need to see plans? Should school officials be required to do one or the other, but not both? Comment from local health: Requiring a checklist only for all construction review would gut the ability of the LHO to have any discussion with schools about EH&S and would result in the building coming on line with potential problems. An example is where hand wash sinks are located. However, some design elements need engineering evaluation, such as lighting design. The local health inspector's expertise is limited to checking the light readings with a meter after facility is built. Craig – put in Parking Lot.

040(4)(e). Consider changing this to specify that LHO provide recommendations to the permitting agency, rather than approving or denying construction plans. Other opinion: LHO could add value to the project by looking at intended activities and working directly with the school. It is cheaper to identify problems before facility is built. The LHO report could also go to the local building official (LBO). If requirement was that the LHO recommendations must be submitted to the LBO, the rules should say that the LBO must listen. The SBOH rule should address this gap – the permitting agency should be part of the process. Put in Parking Lot for further discussion.

What assurance is there that we will get back to the parking lot issues? Craig – we might not, that was not the original intent and commitment to the legislature – some will, others will go to the SBOH for review and consideration. Craig said he has no indication from the SBOH that they want to lessen current requirements.

050––Pre-Occupancy Inspection of construction projects:

050(1)(a). What does "substantial completion" mean? Under building contract terminology, substantial completion can occur long after occupancy. A better phrase might be "before being occupied." Should it be before allowing staff to occupy building – or students? Agreement was reached to a more general statement about before being occupied. Similar changes made in (2)(c).

050(2)(c). School officials would like to see a time limit in getting the pre-occupancy inspection done – they're always on a very tight timeline – can't afford to wait long. General agreement it is a mad rush at the end of construction, but there also is a LHO staffing issue. Consider adding provision that school officials give LHO notice in advance of need for the pre-occupancy inspection and LHO complete inspection within certain time. Maybe 5 business days. General agreement on concept, but will put in Parking Lot for further input.

It would help to post the parking lot issues and their status. This last one particularly needs predictability.

Why is there alteration of usage of words shall/may in 050(2)? Craig – this is intentional.

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050(2)(c)(i). It would be helpful for clarity to add that only the affected portion of the facility would have to be remediated/corrected prior to occupancy – that unaffected parts could be occupied. Change made in wording.

Is this section being driven by particular incidents? Some school people are very concerned. Relationship with the contractor is money. There have been districts that have had difficulties, including getting the letter needed for OSPI. Schools are very interested in working with the LHO well in advance. Relationship between two agencies, or a vendor and an agency, can be dicey. Joint training between school and LHJ people will greatly help this issue.

Next meeting: April 21 at Federal Way School District Board Room
~ Time change: 8:30 a.m. – 4:00 p.m. ~

Parking Lot:

020 – Add responsibilities for DOH and SBOH in the rule.

020(2)(a)(i) – Change inspection frequency to "at least every 2 years."

030(1) – Delete "approval" by LHO from requirements of site assessment.

- Especially for additions and replacing existing school on same site
- Consider mitigation requirement alternatives

040(3)(e) – Consider either requiring submittal of plans to LHO for review or checklist certified by architect or professional engineer, but not both plans and checklist certification.

040(4)(e) – Instead of requiring LHO approval, require submittal of recommendations of LHO to building permit agency.

050(2)(c) – Add a requirement for LHO to do pre-occupancy inspection within specific time after being notified by school official that facility is ready.

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