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Washington State Department of Labor and Industries
Department of Occupational Safety and Health
VIA EMAIL
Cynthia Ireland, Cynthia.Ireland@Lni.wa.gov

July 6, 2023

RE: WILDFIRE SMOKE RULEMAKING COMMENTS

Ms. Ireland:

The Building Industry Association of Washington (BIAW) represents 8,000 businesses across Washington committed to building attainable and affordable housing for Washington residents. Washington state is experiencing a housing crisis. The summer season is critical to ensuring Washington increases its housing supply, furthermore, predictable and consistent rules are critical in homebuilders' ability to provide affordable home ownership opportunities.

On behalf of BIAW, please accept the following comments regarding the Department of Labor and Industries' Wildfire Smoke permanent rulemaking:

1. BIAW takes issue with the rule itself: it is out of line with your own data. AQI that is unhealthy for "sensitive groups" is, according to your own charts AQI 101. What is the justification for allowing masks at AQI of 69 when 69 is in the "moderate" range, and, according to your charts, 101 is the AQI threshold which is "unhealthy for sensitive groups"? What good are the scientifically developed charts you are using if you are ignoring them and adopting arbitrary and unscientific new thresholds in the proposed rule?

We question the threshold of AQI of 101 for mandatory provision of respirators for voluntary use. Again, **according to the L&I provided charts, AQI of 101 is only unhealthy for "sensitive groups," NOT for average healthy individuals**, which is what the general rules should always be based upon, rather than the "least common denominator" approach, as it appears that this threshold is based upon.

To address those considered "sensitive groups," we recommend that any employee that self-identifies as being in the "sensitive group" must notify the employer in advance, and if notified in advance, the employer then must provide a respirator at AQI of 101 for those employees. For all other "non-sensitive group" or normal, healthy employees, the provision of respirators for voluntary use should be at the "unhealthy" level of 151 rather than unnecessarily requiring the provision of respirators for healthy individuals at an AQI that is not considered unhealthy for them – this is again, according to your own science.

The Department needs to adhere to the AQI data in their own data and charts, rather than adopting the arbitrary new ranges as currently proposed (i.e. AQI of 69 rather than the supposedly scientifically developed threshold of 101 for sensitive groups, and AQI of 101 as the threshold for respirators for normal healthy individuals when the same charts show that 151 is the standard for unhealthy AQI for those people).

2. In the new proposed rule, L&I requires monitoring air quality. The proposed air quality requirements are ambiguous and a cause for compliance concern for the following reasons:
 - a. How accurate is it?
 - b. Is there a system where an alert would be sent if the air quality reached a risky threshold?
 - c. How often does the air quality need to be checked?
 - d. What location should be used to determine air quality; is this to be done on a jobsite specific basis?

3. Additionally, the new proposed rule requires training regarding wildfire smoke before work potentially exposing a worker commences. Additionally, training must occur annually. There is confusion regarding training practices:
 - a. When and how often must the training be conducted? Every time the AQI reaches 69 or more?
 - b. What information is required to be shared during the training?
 - c. What if employees have taken the training somewhere else? Does that transfer?

Unfortunately, the way the rule is drafted, it is highly probable that under these scenarios many employers will need to send employees home early, resulting in lost wages and delayed timelines for more homes to be built in Washington state. BIAW and its members want employees to be safe, but the rules add unnecessary obligations for both employers and employees that do not match the science.

Thank you for the opportunity to comment on the proposed rule. We would be happy to meet with staff to further discuss and/or clarify our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Himebaugh", with a long horizontal flourish extending to the right.

Jan Himebaugh
Managing Director of External Affairs