

CSDA Working to Repel OSHA's Proposed Silica Rule

On September 12, 2013, the Occupational Safety and Health Administration (OSHA) announced that the notice of proposed rule-making for respirable crystalline silica had been published in the Federal Register. OSHA invited the public to participate in the process of developing a final rule through written comments and participation in public hearings.

OVERVIEW OF THE PROPOSED RULE

The proposed standard for construction includes provisions for employers to:

- Measure the amount of silica that workers are exposed to if it may be at or above an action level of $25 \mu\text{g}/\text{m}^3$ (micrograms of silica per cubic meter of air), averaged over an eight-hour day
- Protect workers from respirable crystalline silica exposures above the Permissible Exposure Limit (PEL) of $50 \mu\text{g}/\text{m}^3$, averaged over an eight-hour day
- Limit workers' access to areas where they could be exposed to amounts above the PEL
- Use dust controls to protect workers from silica exposures to amounts above the PEL
- Provide respirators to workers when dust controls cannot limit exposures to the PEL
- Offer medical exams—including chest X-rays and lung function tests—every three years for workers exposed to amounts above the PEL for 30 or more days per year
- Train workers on work operations that result in silica exposure and ways to limit exposure
- Keep records of workers' silica exposure and medical exams

Basically, the proposed rule would halve the current PEL from $100 \mu\text{g}/\text{m}^3$ to $50 \mu\text{g}/\text{m}^3$ and implement an action level of $25 \mu\text{g}/\text{m}^3$. To meet these levels, a burden of laborious, costly and overly-complicated procedures will be placed on business owners.

According to OSHA, about 1.85 million workers are currently exposed to respirable crystalline silica in construction workplaces and over 640,000 of these workers are estimated to be exposed to silica levels that exceed the current proposed PEL of $100 \mu\text{g}/\text{m}^3$. It is claimed the proposed rule will save over 560 lives in the construction industry and prevent about 1,080 cases of silicosis among construction workers each year.

However, historical data from the U.S. Centers for Disease Control and Prevention (CDC) and the National Institute of Occupational Safety and Health (NIOSH) show that in 1968, silica was a contributing factor in just under 1,200 deaths nationwide. By 1999, the number had dropped to less than 200. Most recently, figures released by the U.S. Bureau of Labor Statistics show that there were just 102 deaths in the construction industry during 2012 as a result of "exposure to harmful substances or environments." As this category includes many types of harmful substances and environments, not just silica, it is reasonable to suggest that only a fraction of this number can be attributed to silicosis. It seems strange that OSHA would want to push for new exposure limits when the number of deaths attributable to silica have dropped so dramatically. Furthermore, the industry has developed its own standards and regulations to protect construction workers, no doubt contributing to this dramatic decrease in silica-related deaths.

Obviously, it would be a great achievement if the number of annual silica-related deaths could be reduced to zero, but the proposed rule put forth by OSHA is not a feasible way for the industry to meet this goal. The fear is that this number could be achieved, but at the expense



of tens of thousands of contractors going out of business because of the overly-burdensome processes and costs associated with implementing the rule.

PREVIOUS RESPONSES TO PROPOSED OSHA RULES

It was almost 10 years ago that OSHA first proposed new regulations on respirable silica, aiming to reduce the PEL. The proposal was largely based on OSHA's experience in the manufacturing sector, but showed a lack of understanding regarding the construction industry. Cutting contractors can be on 3-5 different jobsites in one day—quite different from a manufacturing plant that operates with consistent processes at a fixed location.

Back then, the proposed standard required construction companies to initiate many new procedures. An industrial hygienist would have been required to provide sampling services on each jobsite. The contractor would have had to designate a "competent person" to identify and evaluate silica exposure hazards and establish

a regulated workspace, perimeter and constantly monitor the quality of the air. Respirators and Tyvek clothing would have had to have been made available to workers as well as anyone entering the jobsite, including trades working in adjacent areas. In addition, medical screening and exam costs for employees would have skyrocketed.

These changes would have severely impacted the ability of cutting contractors to earn their living, so CSDA took action. The CSDA Vice-President at the time, Susan Hollingsworth, calculated that the proposed standard would cost her company of 21 operators upwards of \$3 million—a far cry from OSHA's estimate of up to \$12,000 per small business. Susan and the CSDA Safety Committee developed a simple chart that operators could use on the jobsite to determine if respiratory protection was needed and, if so, what type of protection was recommended. NIOSH was invited to attend CSDA training classes at St. Petersburg College in Florida, and recognized that the use of water during cutting operations produced very little silica exposure problems for contractors in the industry. The chart has simplified procedures and helped to protect workers at the same time.

The CSDA Silica Data Analysis Chart

is based on extremely thorough data collection from member jobsites and from NIOSH, and has been used by the membership since 2005.

It is available to anyone in the industry via CSDA. Call 727-577-5004 or email info@csda.org for a copy.

CSDA POSITION NOW

In response to the latest proposed rule, CSDA has formed a Silica Sub-Committee to review the contents and has provided a response to OSHA based on how the rule will affect the concrete sawing, drilling and polishing industry. Kellie Vazquez of CSDA member Holes Incorporated in Houston, Texas—a Board member, former Safety Committee chair and daughter of Susan Hollingsworth—was nominated to lead the group.

“It is generally agreed that exceptional jobsite safety and health practices are inherently good for business. However, OSHA's proposed silica rule is potentially the most far-reaching regulatory initiative the Administration has ever proposed for the construction industry,” says Vazquez. “Silica is found in various building materials and can easily be disturbed by a number of tasks on a typical jobsite. The proposed rule uses an overly-complicated structure to control crystalline silica in a construction environment. It is hoped that we can help the Administration under-

stand that this material cannot be completely separated out of daily tasks or totally avoided on the jobsite.”

While it is appreciated that OSHA has now attempted to recognize the unique nature of specialty contractors in the construction industry through its proposed rule, it ultimately would be unworkable for many concrete cutters and polishers to implement. Under the “engineering and work practice control methods” section of the rule, OSHA states there must be “no visible dust” emitted from a process after the introduction of engineering control methods.

Even through the use of wet cutting methods or engineering controls, rarely—if ever—will there be no visible dust emitted from cutting activities. Therefore, it would be near-impossible for contractors to reach compliance on many jobsites. It is generally accepted that the collection of measurements for a PEL of 50 µg/m³ cannot be accurately achieved, so how would a PEL action level of 25 µg/m³ be accurately measured and enforced? How can a rule be imposed if the technology to accurately measure at these levels does not exist?

As the CSDA Silica Sub-Committee has been planning its response to the latest proposal, so too have other trade associations with members that would be adversely affected by it. To provide a stronger, more unified response to OSHA, CSDA and 23 other associations have joined forces to form the Construction Industry Safety Coalition (CISC). This new Coalition has hired legal representation to help state its case to the U.S. Department of Labor. An initial deadline of December 11, 2013 was set for the submission of written comments on the proposed rule, but in response to letters from several parties (including CSDA) requesting that more time be given to thoroughly review and provide a detailed response to the rule, the deadline was extended to January 27, 2014.

It is the hope of CSDA and the Coalition that OSHA will withdraw its burdensome proposal. It must instead demonstrate a rule that is realistically attainable and necessary for the industry. OSHA is encouraged to work with the construction industry to ensure that there is a continued reduction in silicosis-related illnesses and fatalities. However, this reduction must continue without bringing many small businesses to their knees, or worse, trying to meet unnecessary levels of regulation.

Hearings on the proposed silica rule are scheduled to begin on March 18, 2014 at the Department of Labor in Washington, DC. For more information about OSHA's proposed rule, or about CSDA's continuing efforts to represent and protect the industry, call 727-577-5004 or email info@csda.org.

The Construction Industry Safety Coalition

CSDA joined the CISC to provide a unified voice from the construction industry on OSHA's Proposed Rule on Occupational Exposure to Crystalline Silica. CISC is comprised of 24 trade associations representing virtually every aspect of the construction industry. CSDA was responsible for a good number of these associations joining CISC through its involvement with another industry group called the Concrete and Masonry Related Associations (CAMRA).

The members of the CISC are as follows:

- Road and Transportation Builders Association
- American Society of Concrete Contractors
- American Subcontractors Association
- Associated Builders and Contractors
- Associated General Contractors
- Association of the Wall and Ceiling Industry
- Building Stone Institute
- Concrete Sawing & Drilling Association
- Construction & Demolition Recycling Association
- Interlocking Concrete Pavement Institute
- International Council of Employers of Bricklayers and Allied Craftworkers
- Leading Builders of America
- Marble Institute of America
- Mason Contractors Association of America
- Mechanical Contractors Association of America
- National Association of Home Builders
- National Association of the Remodeling Industry
- National Demolition Association
- National Electrical Contractors Association
- National Roofing Contractors Association
- National Utility Contractors Association
- Natural Stone Council
- The Association of Union Constructors
- Tile Roofing Institute

For more information about the CISC, call 727-577-5004 or email info@csda.org.

A copy of the proposed rule can be viewed via www.osha.gov/silica.