



February 10, 2014

**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

**Comments on Proposed Rulemaking
29 CFR Parts 1910, 1915, and 1926
Occupational Exposure to Respirable Crystalline Silica
[Docket No. OSHA–2010–0034]**

The Distribution Contractors Association (DCA) represents contractors, suppliers and manufacturers who provide construction services including installation, replacement and rehabilitation of natural gas transmission and distribution pipelines, as well as water infrastructure, fiber optic and cable systems in communities across the country. DCA appreciates the opportunity to provide comments on Occupational Safety and Health Administration's (OSHA) proposed rule, entitled "Occupational Exposure to Respirable Crystalline Silica," issued on September 12, 2013.

Economic Impacts of the Shale Energy Boom

The shale energy phenomenon in this country is creating countless American jobs, generating significant economic activity and changing the way we look at energy policy. IHS Global Insight indicates that shale energy created 2.1 million American jobs in 2012, will create 3.3 million more jobs by 2020 and 3.9 million more by 2025. DCA members across the country work on critical gas pipeline projects every day, increasing effectiveness and enhancing safety through innovative practices such as horizontal directional drilling (HDD).

Economic benefits that come with gas pipeline infrastructure projects don't stop with job creation – economies at the local, state and national levels enjoy significant government revenue when these projects are underway. A 2013 IHS report indicates that natural gas and oil extracted and developed from shale resources contributed \$75 billion of tax revenues in 2012, a level that is expected to reach \$138 billion annually by 2025. Additionally, energy from shale resources is expected to contribute \$468 billion annually to America's gross domestic product by 2020.

Construction of mainline and distribution pipeline systems that deliver natural gas from the well to market is capital intensive and absolutely critical to ensure that capacity meets rising demand. There is an overwhelming amount of work to be done in our industry to meet projected natural gas infrastructure needs. In fact, IHS estimates that between now and 2025, 47,000 miles of new pipelines will be built across the country to connect shale energy to various end markets, and more than \$130 billion will be invested on midstream infrastructure alone in order to bring natural gas from unconventional shale plays to existing pipeline networks. Market potential from generating electricity and connecting liquefied natural gas to the national grid are also key drivers for additional investment.

The importance of shale energy development is undisputed, and clearly the pipeline construction industry has a lot on its plate. The work of DCA members plays an essential role in the nation’s continued economic recovery by hiring workers, purchasing equipment and materials, and improving the quality of life in communities across the country. Government agencies should do what they can to avoid obstructing key infrastructure improvements and the economic benefits that come with them. When government overreaches through proposed regulations, it should reevaluate and adjust its proposals accordingly.

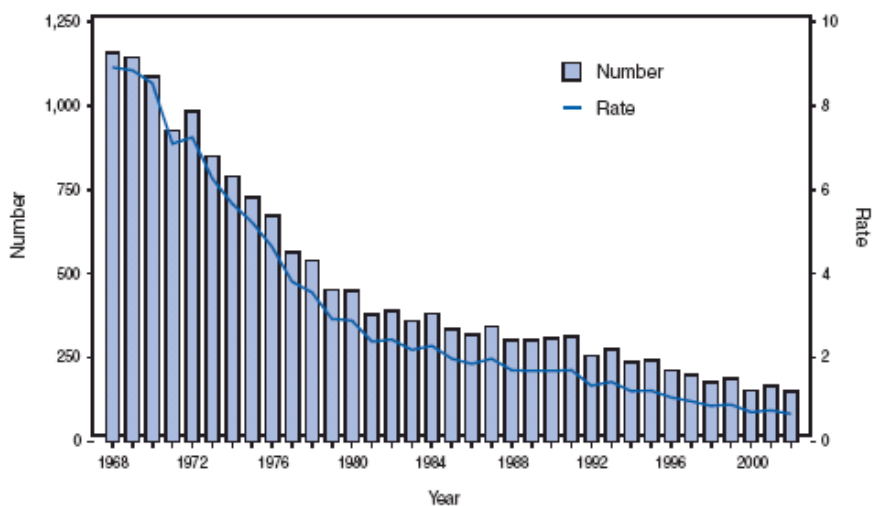
OSHA’s proposed rule on crystalline silica exposure is a prime example of such overreach. The proposal lacks solid evidence of a need to revamp current standards to control silica exposure and woefully underestimates the cost of compliance, especially with regard to the construction industry. Distribution contractors encounter crystalline silica in their everyday work, and while DCA recognizes that there are hazards related to overexposure to silica, current industry practices appropriately address these risks.

Solutions in Search of a Problem

The current permissible exposure limit (PEL) of airborne crystalline silica for general industry is 100 micrograms per cubic meter of air (m3) for general industry and 250/m3 for construction. OSHA’s proposed rule would reduce the PEL for workers in *all* industries to 50/m3 for workers on an 8-hour shift of a 40-hour week.

OSHA’s assumption that crystalline silica poses a significant risk in the workplace and that the controls proposed by the agency will substantially reduce that risk ignore repeated evidence that health problems related to silica exposure have declined significantly over the past 45 years. In fact, according to the Center for Disease Control, from 1968 to 2002, rates of silicosis have been reduced by more than 90 percent (see “Figure 1” below). Over time, continual improvements with regard to industrial practices and technological advancements have enhanced safety considerably at construction sites.

FIGURE 1. Number of silicosis deaths and age-adjusted mortality rate*, by year — National Occupational Respiratory Mortality System, United States, 1968–2002



* Per million persons aged ≥15 years.

Source: Center for Disease Control, April 2005

DCA believes that existing engineering and workplace controls used in construction such as ventilation systems, water or “wet methods” and other dust suppression tools, and use of personal protective equipment per discretion of the employer adequately control silica hazards with a potential to impact worker safety.

Points of Interest

The proposed rule would cover all forms of crystalline silica, and in addition to the lower PEL, includes extensive requirements related to exposure assessment and control, respiratory protection, medical surveillance, hazard communication, and recordkeeping. In addition to the reduced PEL, DCA is concerned with the prescriptive requirements that would force employers to:

- Conduct initial and periodic exposure assessments for crystalline silica;
- Conduct air sampling for each job classification, shift and work area, and retain credited laboratories to analyze these samples;
- Limit worker exposure by creating regulated areas with limited access or establishing written access-control plans;
- Use engineering and work practice controls to reduce crystalline silica below the PEL, unless the employer can demonstrate such methods are not feasible;
- Prohibit frequent rotation of employees to prevent exposure above the PEL;
- Provide respirators to workers to limit exposures to the PEL;
- Provide medical exams, including chest X-rays and lung function tests, every three years for workers exposed above the PEL for 30 or more days per year;
- Include silica-specific training in employers’ hazard communication program; and
- Retain records of air monitoring, medical surveillance, and other data.

Specific Concerns to Construction

The proposed rule calls for narrow, “one-size-fits-all” requirements that contradict existing safety practices and quality assurance measures currently used by a wide range of businesses and industries. While there is some overlap between general industry, maritime, and construction within OSHA’s proposed rule, the construction industry faces extensive challenges to comply with the rule as currently proposed. These challenges are significant and distinct from those in general industry or the maritime sector.

According to OSHA, the current PELs for silica are outdated and do not adequately reflect recent scientific evidence about risks associated with lung cancer and other silica-related illnesses. Crystalline silica is one of the most abundant minerals on Earth and is found almost everywhere as a component of rocks, sand, and soils. Needless to say, silica is ubiquitous on a construction site, where activities such as jackhammering, grinding, milling, rock crushing, earthmoving, sawing, drilling and other practices used in construction and HDD are common and do generate dust.

While the range of industry opposition is wide and deep, the new PEL proposed by OSHA may be impossible to comply within the construction industry. DCA recommends that OSHA reevaluate the costs, benefits and overall need for the PEL reduction, and for the entire regulation, for a variety of reasons.

Air Monitoring

Under the proposed rule, employers would be obligated to monitor the airborne concentration of silica in the workplace unless they can demonstrate there is no silica released above the “action level” of 25/m³. After the initial monitoring, employers could choose between retesting the air on a fixed schedule or use the so-called “performance” option, which calls for assessing exposure through a combination of air monitoring data or objective data sufficient to characterize employee exposure to silica.

The proposed rule offers “Table 1” as a way to meet the monitoring and methods of compliance for the construction industry. While OSHA attempted to recognize the unique nature of construction through Table 1, it will likely be unworkable for construction companies to implement.

For example, the engineering and work practice control section of Table 1 requires that “no visible dust” is emitted from a process after control methods have been installed. Regardless of which methods are employed and the extent employers attempt to control silica exposure, achieving no visible dust from certain construction activities next to impossible. The provisions in Table 1 as currently written would not be viable for compliance.

The proposal would also require employers to have their silica samples analyzed by laboratories that meet specified accreditation criteria. This overly burdensome provision would only exacerbate the enormous compliance costs associated with this rule. The two-year startup period proposed to give laboratories time to meet accreditation requirements will be a dream come true for the labs in demand for analysis, but it will be a nightmare for employers forced to pay for their services.

Silica Control Methods

Under the proposed rule, construction companies would be required to limit exposure under the new PEL by employing specific engineering and work-practice control techniques such as “wet” methods, vacuum, ventilation and others. While these controls are effective when used at the discretion of the employer, one-size-fits-all requirements are often ineffective and sometimes even impede safety. Use of water to control airborne dust, for example, is not always the best way to get the job done. Depending on the environment, water can cause safety hazards by creating slippery surfaces or generate mold that may not be recognized until long after a project is completed.

Traditional approaches for controlling silica exposure in general industry rely mainly on identifying workers that are more likely to be overexposed and monitoring them to ensure that they remain exposed at or below the PEL once engineering controls are implemented and personal protective equipment is provided by the employer. However, in the construction industry, silica exposure can significantly vary under different conditions. Workers perform a variety of job functions using different materials for varying lengths of time.

Outside forces also come into play. Weather conditions on construction sites are constantly changing. Wind speeds and direction can quickly impact the ability to monitor silica exposure as prescriptively required in the proposed rule. Safety is best served when employers call on a range of monitoring and control methods used at their discretion to meet the needs of their unique workplace environment.

Medical Surveillance

The proposed requirements regarding regular medical surveillance for workers exposed at or above the PEL for at least 30 days per year are of particular concern to many DCA members. Surveillance would include an initial “baseline” examination followed by a series of regular exams. Baseline evaluations would consist of reviews of medical and work history; physical examinations with special emphasis on the respiratory system; prescribed and specific chest X-rays; pulmonary function tests that meet certain criteria and administered by government-approved personnel; testing for latent tuberculosis (TB) infections; and other tests deemed appropriate by the physician or licensed health care professional.

Requirements for the proposed medical evaluations raise several concerns. First, review of medical and work history should be left to the physician’s discretion. *Requiring* employees to reveal their personal medical history unrelated to exposure to silica would be invasive and unnecessary. Physical exams with emphasis on the respiratory system should also be left to the discretion of the physician.

Chest X-rays and pulmonary function tests should not be required where there has been no recent exposure or future risk of overexposure to silica. The baseline evaluation should be conducted when significant exposure is expected to begin.

Cost of Compliance vs. Alleged Benefit

Compliance with OSHA’s proposed rule would be enormously costly. OSHA estimates the rule will result in approximately \$640 million in annual costs to the industry while generating \$3- 5 billion in alleged “benefits.” Industry estimates, meanwhile, indicate that the real costs will be \$1-2 billion with only \$700 million in benefits.

DCA respectfully suggests that OSHA has woefully underestimated the compliance costs associated with the proposed rule. Expenses related to air monitoring, engineering and workplace controls, retaining industrial hygienists, and a wide range of new training necessary to comply with the rule will be incredibly costly.

OSHA should consider conducting another panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Although OSHA held a SBREFA panel more than a decade ago, the information is unlikely to reflect present-day best practices used for silica control. Additionally, all industries are facing issues that raise serious questions about the economic feasibility of this rule. Therefore, a new SBREFA panel would likely provide OSHA needed counsel concerning the unique dynamics of small businesses in today’s construction industry.

Conclusion

OSHA has not validated the risks surrounding the need for this regulation nor has the agency demonstrated its technical or economic feasibility. The bottom line is OSHA has not adequately explained how lowering the PEL will reduce already low rates of silica-related illnesses in the workplace. In fact, a major problem construction employers continue to struggle with is with achieving compliance with the *current* PEL. At the same time, OSHA admittedly has not adequately enforced current PEL levels. These issues should be the focus of OSHA's efforts and would likely achieve the best results.

DCA believes OSHA should work with employers to develop feasible alternatives for compliance with a silica rule that appropriately addresses costs and provides consistency with existing federal regulations. Additionally, OSHA should recognize factors that are unique to construction as industry-specific tasks and activities vary regularly from design of a project through backfill.

OSHA has indicated that additional analysis is needed on how a new standard would impact the hydraulic fracturing industry (fracking). The agency estimated roughly 25,000 workers and 200 businesses involved in fracking would be affected by the proposed standard. While construction of mainline and distribution natural gas pipeline systems is considered “downstream” from fracking operations, DCA members certainly contribute to shale energy development and the impacts of this rulemaking on our industry should be fully considered by OSHA.

We hope that OSHA reconsiders the overall need for a revamped standard regarding silica exposure, and that, at minimum, the proposed rule is significantly amended. DCA members provide services that are critical to America’s energy future and put countless Americans to work in the process. Government agencies should work to enhance safety through partnership with industry and avoid blanket regulatory proposals that stifle entrepreneurialism and hamper economic growth.

Sincerely,

A handwritten signature in black ink, appearing to read 'RD', with a long horizontal flourish extending to the right.

Robert Darden
Executive Vice President