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# OSHA Update

# OSHA Enforcement at Historically High Levels

## ● From 2006-2010:

- Total number of inspections are up 6.2%
- Total programmed inspections are up 15.1%
- Total number of complaint inspections are up 8.8%
- Total violations are up 15.3%
- Total serious violations are up 22.1%
- Total willful violations are up 217.1%
- Total repeat violations are up 8.1%
- Total other than serious violations are down 10.4%

Cite: [http://www.osha.gov/dep/2010\\_enforcement\\_summary.html](http://www.osha.gov/dep/2010_enforcement_summary.html).

# OSHA Enforcement Initiatives

## National and Special Emphasis Programs:

- Combustible Dust
- **Hazardous Machinery**
- Hexavalent Chromium
- Lead
- Nursing and Residential Care Facilities
- Primary Metals Industries
- Process Safety Management
- Shipbreaking
- **Silica**
- **Trenching and Excavation**

# OSHA Enforcement Initiatives

(cont'd)

## Top 10 Most Frequently Cited Standards (FY 2012):

- Scaffolding
- Fall Protection
- Hazard Communication
- Respiratory Protection
- Lockout/tagout
- Electrical, Wiring Methods
- Powered Industrial Trucks
- Ladders
- Electrical, General Requirements
- Machine Guarding

# OSHA: Silica, Silica, Silica



# SILICA (QUARTZ)

- Crystalline silica is the second most abundant mineral in the Earth's crust (12%) and is ubiquitous in rocks, sand, and soils.
- Silica is the most common construction and manufacturing material in the world – Contained in sand, brick and concrete, as well as in gravel, rocks and soil. Silica is present during road building and construction and is released during farming.
- Silica is a key component of abrasives, paints, high tech equipment, glass, ceramics, thousands of consumer products. Silica is critical in the production of oil and gas.

# Silica Exposure: Background

- Silicosis is an occupational disease resulting from excessive inhalation of respirable silica dust (small dust particles that can reach the lungs). Silicosis has been identified as creating an increased risk of lung cancer.
- There has never been any evidence of silica-related disease in non-occupational settings (e.g. beach sand), and in the last 50 years, silica-related mortality has almost been eliminated in US occupational settings.
- According to the CDC, from 1968-2004, the silicosis mortality rate in the U.S. declined by 93% – falling from 1,157 cases in 1968 to about 150 cases in 2007, about the same number of deaths as are caused by lightning.
- Regardless of CDC data, OSHA estimates the rule will save **700 lives per year**.

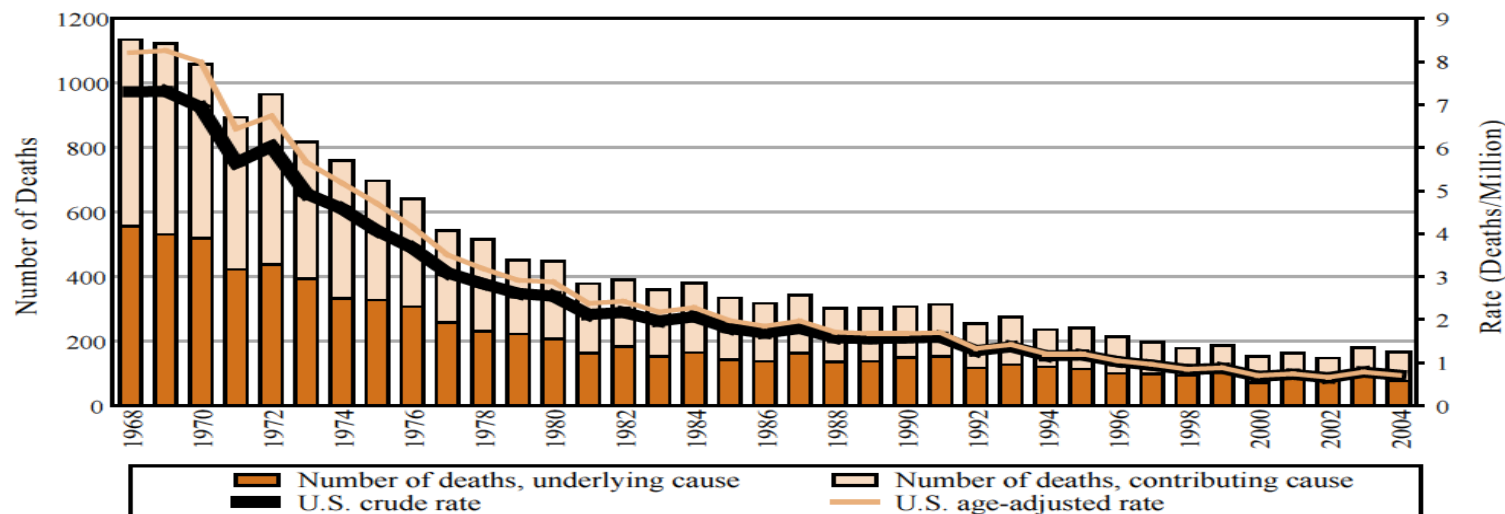


# OSHA's Justification for New Silica Rule?

CDC: Decline in Silicosis Mortality Rates (1968-2004)

## *Silicosis: Mortality*

**Figure 3-1. Silicosis: Number of deaths, crude and age-adjusted death rates, U.S. residents age 15 and over, 1968–2004**



NOTE: See selected limitations for general cautions regarding inferences based on small numbers of deaths, and see appendices for source description, methods, and ICD codes.

SOURCE: National Center for Health Statistics multiple cause-of-death data. Population estimates from U.S. Census Bureau.



# Industry Impact

- ❑ **OSHA estimate: 534,000 businesses impacted, employing 2.2 million workers**
- ❑ **OSHA estimates cost of Proposed Rule will be \$640 million annually for compliance, averaging \$1,242 per employer. The real cost is in the billions of dollars.**
- ❑ **Construction And Oil and Gas Production (hydraulic fracturing) are severely impacted (25,000 hydraulic fracturing employees and 1.85 million construction workers). Among the general industries most affected are:**
  - Foundries;
  - Metal and mineral production;
  - Industries with abrasive blasting operations (such as shipyards);
  - Paint manufacture;
  - Glass manufacture;
  - Brick making;
  - Concrete products manufacture;
  - China and pottery manufacture;
  - Plumbing fixture manufacture;
  - Structural clay and refractories;
  - Cut stone industries.

# OSHA's Current Silica PEL

- The current permissible exposure limit (“PEL”) for Construction is based on the number of dust particles (particle counting sampling), rather than the mass of respirable dust, per unit of volume of air. OSHA and NIOSH consider this approach to be obsolete.
- The current Construction Silica PEL, calculated as an 8-hour time-weighted average, is equivalent to 250 micrograms of respirable crystalline silica per cubic meter of air (250  $\mu\text{g}/\text{m}^3$ )

# Proposed Silica Rule: Key Definitions

- “Respirable Crystalline Silica” = airborne particles containing quartz, cristobalite and/or tridymite. NPR @ 693.
- “Action level (AL)” = 25  $\mu\text{g}/\text{m}^3$  – as an 8 hour time-weighted average (TWA). Triggers periodic exposure monitoring. NPR @ 692.
- “Permissible Exposure Limit (PEL)” = 50  $\mu\text{g}/\text{m}^3$  – as an 8 hour TWA. Triggers controls, medical exams, training and recordkeeping. NPR @ 693.
- “Regulated Area” = demarcated by employer, where an employee’s silica exposure exceeds or can be expected to exceed the PEL. NPR @ 693.
- “Objective data” = information such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance demonstrating employee exposure to silica associated with a product, material, process, operation, or activity. NPR @ 693.

# OSHA's Proposed Silica Rule: Key Provisions

- OSHA proposes reducing the PEL for construction (and all industries) to 50  $\mu\text{g}/\text{m}^3$  with an Action Level of 25  $\mu\text{g}/\text{m}^3$ .
- OSHA proposes engineering and work practice controls, such as the use of HEPA-vacuums, wet methods, and no dry sweeping.
- OSHA also proposed adopting ancillary provisions, such as exposure monitoring, respiratory protection, medical surveillance, protective clothing, regulated areas or access control plan, hazard communication, and recordkeeping.

# Proposed Silica PEL

- OSHA proposes reducing the PEL to  $50\mu\text{g}/\text{m}^3$  for general industry, shipyards and maritime.
- Over the course of any 8-hour work shift, the average exposure to respirable crystalline silica cannot exceed  $50\mu\text{g}/\text{m}^3$ .

# Regulatory Alternatives # 1 and # 2

- Regulatory Alternative # 1: PEL would be changed from  $50\mu\text{g}/\text{m}^3$  to  $100\mu\text{g}/\text{m}^3$  and the Action Level would be changed from  $25\mu\text{g}/\text{m}^3$  to  $50\mu\text{g}/\text{m}^3$ .
  - OSHA asserts that it cannot propose a PEL of  $100\mu\text{g}/\text{m}^3$  without violating its statutory obligations under the OSH Act because a PEL of  $50\mu\text{g}/\text{m}^3$  significantly reduces worker risk from silica exposure and is both technologically and economically feasible.
- Regulatory Alternative # 2: PEL would be lowered from  $50\mu\text{g}/\text{m}^3$  to  $25\mu\text{g}/\text{m}^3$  and the Action Level would remain at  $25\mu\text{g}/\text{m}^3$ .
  - OSHA asserts that it cannot propose a PEL of  $25\mu\text{g}/\text{m}^3$  without violating its statutory obligations because it is not technologically feasible.

# Engineering and Work Practice Controls



# Engineering and Work Practice Controls

- Employers must use engineering and work practice controls to reduce and maintain employee exposure to respirable crystalline silica to or below the PEL unless the employer can demonstrate that such controls are not feasible.
- Wherever such feasible engineering and work practice controls are not sufficient to reduce employee exposure to or below the PEL, the employer must use them to reduce employee exposure to the lowest feasible level and supplement with the use of respiratory protection.

# Engineering and Work Practice Controls Cont'd

- Adherence to hierarchy of controls: Engineering and work practice controls must be implemented before respirators.
- Types of Engineering Controls:
  - Substitution – replacement of toxic materials with another material that reduces or eliminates the harmful exposure
  - Isolation/enclosure – physical barrier normally surrounding the source of exposure and installed to contain a toxic substance
    - E.g., stationary saws placed inside ventilated enclosures
  - Ventilation – LEV and Dilution
    - E.g., Tool mounted LEV systems for hand-held equipment, enclosed cabs for equipment operators

# Engineering and Work Practice Controls Cont'd

- Dust suppression – (1) wet dust suppression, in which a liquid or foam is applied to the surface of the dust-generating material; (2) airborne capture, in which moisture is dispersed into a dust cloud, collides with particles, and causes them to drop from the air; and (3) stabilization, which holds down dust particles by physical or chemical means

# Engineering and Work Practice Controls Cont'd

- Employers shall ensure that accumulation of crystalline silica are cleaned by HEPA-filter vacuuming or wet methods where such accumulations could, if disturbed, contribute to employee exposure to silica that exceeds the PEL.
- Compressed air, dry sweeping, and dry brushing shall not be used to clean clothing or surfaces contaminated with crystalline silica where such activities could contribute to employee exposure to silica that exceeds the PEL.
- Employers shall not rotate employees to different jobs to achieve compliance with the PEL.

# Exposure Monitoring

# Exposure Assessment

- Initial Assessment: required for employees who are or are expected to be exposed above the AL, unless:
  - (A) monitoring occurred within 12 months of effective date under conditions similar to those currently prevailing, OR
  - (B) objective data shows that silica cannot be released at or above AL under any expected conditions of processing, use, or handling.
- Periodic Assessment:
  - (A) If initial sampling indicates exposures are below the AL, then may discontinue monitoring for those employees.
  - (B) If initial sampling indicates exposures are above AL but below PEL, then sample at least every 6 months.
  - (C) If initial sampling indicates exposures are above PEL, then sample at least every 3 months.
  - (D) Continue sampling until 2 consecutive measurements (at least 7 days apart) are below AL.

# Exposure Assessment Cont'd

- Additional Assessment: required when a change in production, process, control equipment, personnel, or work practices may result in exposure above AL.



# Employee Notification

- Notify employee of results within 15 days after receiving sampling results regardless of whether the exposure exceeded the Action Level or PEL.
- Must describe correction actions that will be taken to reduce exposure if exposure is over PEL.

# Observation

- Allow employees or their designated representative to observe monitoring of employees
- Must provide protective clothing & equipment to observers if necessary.

# Regulatory Alternative # 3

- As an alternative, the Action Level would be raised from  $25\mu\text{g}/\text{m}^3$  to  $50\mu\text{g}/\text{m}^3$  while keeping the PEL at  $50\mu\text{g}/\text{m}^3$ .
- As a result, exposure monitoring requirements would be triggered only if workers were exposed above the proposed PEL of  $50\mu\text{g}/\text{m}^3$ .
- This option would reduce the annualized cost of the proposed rule by about \$62 million, using a discount rate of either 3% or 7%.

# Regulated Areas or Control Access Plan

# Regulated Work Areas

- Establish “Regulated Areas” or a written access control plan when exposure is, or can reasonably be expected to be, in excess of the PEL.
  - Regulated areas should be marked and access limited to essential personnel.
  - Approved respirators shall be provided and required to be used in all regulated areas.
- Written access control plan:
  - Must include provisions for a competent person to identify the presence and location of any areas where respirable crystalline silica exposure are, or can reasonably be expected to be, in excess of the PEL.

# Regulated Work Areas Cont'd

- Describe how employees and other workers will be notified of the presence and location of exposed area and how the area will be demarcated.
- Describe procedures for limiting access to exposed areas and providing respirators.
- Must be reviewed and updated annually or when necessary.

# Protective Clothing

- Employers must provide either (1) protective work clothing where there is the potential for employees' work clothing to become grossly contaminated with crystalline silica; or (2) a means to remove excessive silica dust from contaminated clothing when exiting the regulated area.
  - Dry sweeping would not be acceptable.
- “Gross contamination” refers to a substantial accumulation of dust on clothing worn by an employee working in a regulated area such that movement by the individual results in the release of dust from the clothing.
- Dust would be plainly visible.



# Respiratory Protection

# Respiratory Protection

- Require employees to use employer provided respirators when:
  - (i) exposures exceed the PEL during period necessary to install engineering and work practice controls,
  - (ii) exposures exceed the PEL during work operations for which engineering controls are infeasible,
  - (iii) work operations where engineering and work place controls are not sufficient to reduce exposure to or below the PEL,
  - (iv) the employee is in the regulated area, and
  - (v) the employee is in an area where respirator use is required under an access control plan (i.e., when reasonably expected to exceed the PEL).

# Medical Surveillance

- Provide no-cost medical surveillance for any employee exposed above the PEL for 30 days per year.
- Initial medical exam within 30 days of initial assignment (according to listed requirements), unless employee received a similar medical exam in the last 3 years.
- Periodic exams at least every 3 years or as recommended by physician or licensed health care provider.
- Provide medical opinions to employer within 30 days of after examination and to employees no later than 45 days after examination.

# Medical Exam

- **Medical Exam** shall consist of –
  - (i) a medical and work history, with emphasis on present, past, and anticipated exposure to respirable crystalline silica and any history of respiratory dysfunction; history of TB; smoking;
  - (ii) a physical examination of the respiratory system;
  - (iii) chest x-ray, interpreted and classified according to ILO International Classification of Radiographs of Pneumoconioses by a NOISH-Certified “B” Reader;
  - (iv) pulmonary function test; and
  - (v) test for latent TB infection.
- **Additional Exams:** If the physician indicates that an employee should be examined by a pulmonary specialist, the employer shall make available a medical exam by a specialist within 30 days after receiving the physician’s written medical opinion.

# Recordkeeping

- Mandates recordkeeping and retention of air monitoring data and objective data on employee exposure.
  - Maintained for at least 30 years in accordance with 29 CFR 1910.1020(d)(1)(ii).
- Mandates the employer to establish and maintain an accurate record for each employee subject to medical surveillance.
  - Maintained for at least 30 years in accordance with 29 CFR 1910.1020(d)(1)(i).

# Hazard Communication and Training

- Silica must be included in the employer's HazCom program.
- Provide silica-specific initial and periodic training
  - Signs and symptoms of diseases - cancer, lung effects, immune system effects, and kidney effects
  - Specific operations that could result in exposure and specific procedures implemented to protect from exposure
  - Purpose and description of the medical surveillance program
- Employees must be able to demonstrate knowledge of training
  - E.g., discussion of the required training subjects, written tests, or oral quizzes.

# Sampling and Analysis Issues

- No confirmation of dust size collected (respirable = less than 10 microns).
- Known interferences by other minerals in silica ID
- Lab calibrations, variability, error rates, and round robin tests = inaccurate results. Lab certification at +/- 100%
- No feasible “accurate” results at PEL and AL.
- Definition of “accurate” is inaccurate (+/- 25%).



# Silica Rulemaking Deadlines

- **Extension of deadline for filing of notice of intent to testify is 30 days to December 12, 2013 (instead of November 12).**
- **Extension of comment period deadline is 47 days to January 27, 2014 (instead of December 11).**
- **Hearings to begin March 18, 2014 (instead of March 4).**
  - The duration of the hearings will be determined by the number of parties who request to appear.
  - The hearings are expected to continue for several weeks.

# New OSHA Guidance on Employee Representatives

- **Question # 1 – May one or more workers designate a person who is affiliated with a union without a collective bargaining agreement at their workplace or with a community organization to act as their "personal representative" for OSH Act purposes?**
- **Question # 2 — May workers at a worksite without a collective bargaining agreement designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative?**

# OSHA Enforcement Initiatives

## ● Memorandum on Employer Safety Incentive and Disincentive Policies and Practices:

- Employers who impose discipline against all employees injured on the job (regardless of fault) violate section 11(c) of the OSH Act
- Employers who impose discipline against employees who violate a company rule related to the time and manner of injury reporting may violate section 11(c) if the discipline is unreasonable
- Employers who impose discipline against an injured employee who also violates a work rule may also violate section 11(c) as the violation of the safety rule may just be a pretext for discriminatory conduct
- Employers who institute incentive programs that discourage injury reporting may also violate section 11(c)

# OSHA Enforcement Initiatives

## ● Memorandum on Protecting the Safety and Health of Temporary Workers:

- Issued April 29, 2013
- OSHA concerned that temporary workers not trained or protected to the same degree as other employees
- Employers have a duty to provide necessary safety and health training to all workers regarding workplace hazards. In order to determine whether employers are complying with their responsibilities under the Act, please direct CSHOs in your region to determine within the scope of their inspections whether any employees are temporary workers and whether any of the identified temporary employees are exposed to a violative condition. In addition, CSHOs should assess – using records review and interviews – whether those workers have in fact received required training in a language and vocabulary they understand. Recent inspections have indicated problems where temporary workers have not been trained and were not protected from serious workplace hazards due to lack of personal protective equipment when working with hazardous chemicals and lack of lockout/tagout protections, among others.

# A Second Term ...

- Continued focus on enforcement
- Regulatory initiatives:
  - I2P2-Injury & Illness Prevention Programs
    - NPRM – 1/2014
  - Walking-Working Surfaces
    - Final Rule – 11/2013
  - Combustible Dust
    - Initiate SBREFA – 11/2013

# A Second Term ... (cont'd)

- Crystalline Silica
- Recordkeeping Amputations and Catastrophic Events – Final
  - Updates exempt industries and NAICS codes
  - Requires affirmative reporting of amputations and overnight hospitalization of one employee
- Recordkeeping “Fix” or Updates– Employers have continuing obligation to maintain records
  - NPRM – 11/2013

# FY 2014 Budget Justification

## ● Enforcement

- “OSHA will continue its intensified commitment, and emphasis on the enforcement of occupational safety and health standards and regulations to improve compliance and deter employers who put their workers’ lives at risk.”
- In 2012 study published found enforcement results in “safer workplaces” and provides employers significant savings.
- **Study suggests inspections save employers “\$30 billion” each year.**
- Request of increase of \$5.7 million.



# FY 2014 Budget Justification (cont'd)

## ● Standards

- OSHA projects it will issue four Final Rules (Infectious Disease, Recordkeeping modernization, Beryllium, and Vertical Tandem Lifts)
- OSHA projects it will issue seven Notices of Proposed Rulemaking (Standards Improvement Project Phase IV, Infectious Disease, Injury and Illness Prevention Programs, Combustible Dust, Backover Protection, and two consensus standard update actions)
- OSHA projects it will initiate SBREFA for five rules (Combustible Dust, Backover Protection, one chemical standard, and “two other initiatives”)
- Request of increase of \$2.1 million



# FY 2014 Budget Justification (cont'd)

- Technical Support (emergency management support, NRTL program, medical services, maintenance of dockets, Salt Lake City laboratory)
  - Decrease of \$1 million
- Compliance Assistance through Federal programs
  - Decrease of \$1 million
- State consultation programs
  - Same amount requested
- Susan Harwood Training Grants
  - Same amount requested

# Steps to Protect your Company

- Understand OSHA's targets
- Follow-through on open action items
- Prepare for an OSHA inspection
- Train supervisors and employees

# Steps to Protect your Company (cont'd)

Understand OSHA's targets:

- KNOW YOUR DART RATE (Days Away, Restricted Duty and Transfer Rate)
- Review OSHA's site-specific targeting list
- Understand national, special, and local emphasis programs
- Keep up-to-date on industry alerts
- Know the OSHA "Top Ten" and how the standards are applicable to your establishments

# Steps to Protect your Company (cont'd)

## Managing Liability Requires Hazard Identification & Follow-through:

- OSHA is looking to make an example of companies-

### PUBLIC SHAMING

- Willful, repeat or egregious citations are result from a failure to address a hazard identified through:
  - (1) Near-misses
  - (2) Walkthroughs
  - (3) Safety Committee Meetings
  - (4) Employee Complaints

# Steps to Protect your Company (cont'd)

## Prepare for an OSHA Inspection:

- Develop company philosophy on how to handle an OSHA inspection
- Draft written procedures for handling an OSHA inspection:
  - Who will interface with OSHA?
  - What are your rights during an inspection?
  - What limitations exist on OSHA's inspection authority?
- Train your supervisors and employees on the written procedures

# Steps to Protect your Company (cont'd)

## Train Supervisors and Employees:

- During almost every inspection, OSHA will interview employees, and during the interview OSHA will ask about training
- Training needs to be more than on the job or experience
- Must keep documentation of training
- Must train employees on the training they have received

# QUESTIONS?



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