



February 10, 2014

The Honorable David Michaels
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room S-2002
200 Constitution Ave., NW
Washington, DC 20210

Re: Comments to NPRM on Occupational Exposure to Crystalline Silica (Docket No. OSHA 2010-0034)

Dear Dr. Michaels:

The National Electrical Contractors Association (NECA) has significant concerns over the new proposed Silica rule which may be unenforceable for the agency and burdensome for construction contractors of all trades including those in electrical construction, which we represent. NECA does recognize that Silica exposure is a serious concern as it may cause health issues for those who come in contact with this natural substance. We do feel however that some construction industry advances have helped to educate and minimize some of this exposure in the workforce but by nature, there is always a potential for exposure in everyday life. The construction industry depends on a fairly large temporary or transient workforce. It is those workers having limited and often only intermittent exposure that make up the majority of this construction workforce.

It is also the position of NECA that this rule has not been given the full due process that regulation of this importance for the construction industry should have received. The fact that this comment period was additionally extended only an additional 15 days from the original 47 days, indicates that OSHA may have benefited more from granting the original 90-day comment period requested by all of those major organizations. Additionally, the impact of this rule and the requirements that are promulgated by it will have far reaching effects to individuals and companies that have only a minute exposure in today's workplace.

In this proposed rule, OSHA has not identified all job categories that would be affected; the sampling and actual exposure time for construction workers, the areas of a construction site and the environmental effects there, and how exposures on jobsites with multiple employers would actually be considered. NECA feels this is reason enough to warrant a much further review of this standard and how it could be rewritten to be practical in today's construction arena.

Understanding the exposure and action levels is fundamental in determining the economic impact this rule will have. Knowing that most construction employers lack both the expertise and resources to measure each intermittent exposure that occurs during the course of a normal workday, this new rule could prove to be burdensome enough to financially cripple all businesses

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found in the construction sector. Monitoring and physical evaluations alone could affect business by losing their competitive advantage in the marketplace. Without qualified companies and technicians to conduct the sampling and testing require by implementing this standard, delaying these task until a qualified person arrives may be economically infeasible.

By lowering the Permissible Exposure Levels (PEL) to 50 $\mu\text{g}/\text{m}^3$ for both General Industry and Construction, employers may make every effort to comply, but may still find themselves in violation. The engineering controls and work practices that are in place today to limit exposure to 100 $\mu\text{g}/\text{m}^3$ in General Industry and 250 $\mu\text{g}/\text{m}^3$ in Construction have proven to be cost effective and most importantly consistent with preventing many of the health related issues associated with silica. NECA feels that lowering the levels is unrealistic in the construction industry and in particularly the electrical industry. It would cause an undue burden on construction contractors to attempt to comply with these levels in a construction environment that is constantly changing based on conditions and task being performed.

Whether it is a small local company or a large national one, the recordkeeping aspect of this rule will inundate most businesses with paperwork that often will fall under Health Insurance Portability and Privacy Act, (HIPAA). Since many construction firms depend on transient and temporary workers, it would be an economic burden to employers in the construction industry to make medical evaluations with pre and post-employment screenings. Also, the fact that illnesses associated with silica may take years to develop, creating the possibility that most of today's workforce may mistakenly blame current employers for exposures that could have been pre-existing.

In reviewing the construction statistics related to silica exposure, history has shown a significant decrease in silica related illnesses. Therefore, the question of *significant risk* with relation to the *technical feasibility* and the *economic feasibility* specific to the construction industry must be fully addressed. With today's workforce being better educated about related issues, it is common for workers to take measures to protect themselves from intermittent exposure. The requirements in this proposed standard may be the "straw that broke the camel's back" in reference to small businesses trying to stay afloat and maintain financial stability in the today's tough construction market place.

The fact that this new rule is very complicated and difficult to understand, is another reason OSHA should table this standard and review, and analyze the document to streamline the information presented and rules promulgated by it. Another aspect is that small businesses are often not able to fully comprehend the magnitude of these new rules, let alone implement them effectively. With the short time frame in the comment stage and subsequent public hearings, some contractors have seen this as far too much for them to adequately prepare an appropriate comment.

Some of the language also seems to point to OSHA's own uncertainty of the actuals exposure levels. We have not seen proper statistics of actual tests and monitoring conducted on the tasks performed

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by many of the workers that would be affected by this rule. Requiring contractors and others to bear the cost of these initial tests and evaluation further demonstrates the lack of research and understanding about what the risks actually are.

Some of the electrical worker tasks that could be affected by the proposed rule are as follows:

- Overhead anchor drilling and installation
- Floor, Sidewalk and Asphalt Cutting
- Installation and demolition of concrete-encased electrical duct-banks
- Mixing, pouring and finishing of concrete pads for equipment and transformer
- Light Pole base installation
- Underground excavations in all types of soil where rock and dust are encountered
- Anchoring of equipment on poured-in-place concrete walls and block masonry walls
- Exposure to conveyors and equipment in production and manufacturing plants that use sand as raw materials for the finished product when maintenance and servicing is being performed
- Sand blasting equipment for renovations
- Cutting drywall and wall board for the installation of boxes and fixtures
- Core Drilling of concrete floors and walls for conduit penetrations
- Working adjacent to areas where concrete and wall finishers are sanding and grouting
- Working in surface and underground mines where raw material is extracted from the earth
- Working in underground tunnels
- Earthmoving equipment operations

This list does not include all electrical construction activities that may also result in exposures greater than OSHA proposed PEL limits. All of these tasks are usually performed on an intermittent basis. Employee exposure is minimal and with the right training, employees are qualified to protect themselves and those around them. Practical abatement methods consistent with current technologies are the reason the number of cases of silica related illnesses have declined over the years. We believe this is another example of how employers have already addressed the concerns proposed by this rule.

Adding additional requirements that offer no benefit could cripple the current market that has begun to expand since the low point of construction work after the economic recession this country faced and that greatly affected the construction industry. It is therefore in the best interest of keeping the economy moving forward that no additional rules should be created at this time. Putting in place the provisions of this rule would definitely add cost to the contractor's operations and possibly hinder the recovery that is currently going on.

With references to visible dust and inferences that silica exposure may be related as an underlying cause of autoimmune diseases, individuals now could claim damages and put a clear burden on our

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judicial system. Everyone that has had an exposure could now be inclined to seek damages for illnesses that they claimed were caused by silica exposure. All dust found on construction sites and other areas do not automatically contain silica. And if it does, those levels would probably fall far below the current PEL that have proven to be effective for today's construction workers.

There are jobs that do have a high potential for exposure to silica related particles, like those in the mining and production facilities that process silica containing particles continuously. Other workers that enter those areas may also be at an increased risk. For example, a railroad employee on a train that enters a mining operation for the loading of sand particles is one. While he is at the mine, the dust concentrations are higher than what they would be away in other areas. Today's safety orientations along with policies, procedures and training, make workers aware of these intermittent risks and help them take all necessary precautions as well.

In conclusion, NECA would like to see OSHA revisit this proposed rule and perform all the necessary research to conclude, beyond a reasonable doubt, that construction workers are at risk from intermittent exposure. NECA would also like to see a practical implementation of rules and assessments for contractors to follow according to any new standard adopted by the agency. The rule should ultimately be practical, easy to read and understand, and in the interests of the agency, one that is enforceable.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Johnston". The signature is written in a cursive style with a prominent initial "M".

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