

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Environmental LAW

OSHA's new silica dust rule

Crystalline silica is a mineral found in many building materials such as sand, stone, concrete, brick and mortar. Tiny particles of silica can be released into the air during construction and manufacturing activities.

If workers are exposed to respirable silica it can cause silicosis, other respiratory diseases like obstructive pulmonary disease, kidney disease and sometimes fatal lung disease. The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) estimates that 2.3 million people are exposed to silica in the workplace.

OSHA issued a final regulation limiting worker's exposure to crystalline silica on March 24, 2016, which becomes effective on June 23, 2016. Although OSHA had put in place permissible exposure limits on silica in the 1970s, based on recent research the agency determined that the standards were not adequately protective. The new rule establishes two distinct standards, namely: for the construction industry which becomes effective on June 23, 2017, and for the general and maritime industry that requires compliance by June 23, 2018.

The new rule reduces the permissible exposure limit (PEL) from 250 to 50 micrograms per cubic meter of air averaged over an eight-hour period for both types of workplaces. OSHA has determined that a significant risk remains at the new PEL, but believes that the PEL of 50mg/m³ is the lowest level that can be reasonably attained through work practices and engineering controls. Aside from this significant reduction in exposure limits, there are additional requirements with the rule including: requiring employers to use engineering controls (e.g., water or ventilation) to limit exposure to the PEL;



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providing respirators when engineering controls cannot adequately limit exposure; limiting worker access to high exposure areas; developing a written exposure control plan; and providing medical exams to monitor highly exposed workers and providing them information about their lung health.

OSHA estimates that about 670,000 workplaces will be affected by the new rule. The affected jobs covered by the rule are quite extensive, including: construction, glass manufacturing, concrete products, foundries, paintings and coatings, read-mix concrete, cut stone and stone products, abrasive blasting in construction, maritime and general industry, and oil and gas operations.

In the case of the construction rule, OSHA has developed a table of standard practice which, if followed, will relieve the need for measuring workers' exposure to silica. Basically OSHA has determined that if specific dust control measures are followed, such as using water to reduce dust, employers are not required to measure exposure. Construction employers would be well served to analyze OSHA's Table 1 and determine the specific practices that can be implemented.

As with all new regulations, there are conflicting estimates of the costs and benefits. OSHA estimates that the new silica rule will save 600 lives annually and prevent 900 new cases of silicosis per year once implemented, providing benefits of \$7.7 billion annually. OSHA believes that

the annual cost will be slightly more than \$1 billion annually, with an average workplace cost of \$1,524. Employers with less than 20 employees are estimated to cost less, at about \$560 per employer.

In sharp contrast, industry groups are opposed to the significantly reduced standards imposed by the rule. Among others, the National Association of Manufacturers has stated that the rule significantly understates the costs and impact that the rule will have on manufacturers and is not feasible. Industry is very concerned about the cost of implementation and lack of flexibility.

The National Federation of Independent Business has estimated that the rule will cost the economy \$7.2 billion a year and about 27,000 jobs over 10 years. Industry groups have asserted that the agency failed to seek and respond to business input and concerns. Although OSHA has referenced the number of days of public hearings and volume of comments, as with recent regulatory enactments from the Obama administration, one wonders the true extent to which business concerns were heard and actually addressed for in the process.

Having been adopted in 1971, it is fair to say that the prior crystalline silica rule merited review and updating. However, prior to implementation, it is hard to predict whether the significant reductions in exposure limits and additional business workplace and engineering requirements can be fully absorbed without business disruption and losses.

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