

February 11, 2016

## NUCA Meeting with OMB

NUCA represents utility and excavation contractors and the manufacturers and suppliers who service the industry. NUCA members are concerned that this proposed rule is unreasonably burdensome and unnecessary because OSHA has not adequately demonstrated that changes to the standard and PEL are needed, reasonable, or technologically and economically feasible.

### Unnecessary

- CDC reported that cases of silica related deaths have dropped from approximately 1,200 in 1968 to approximately 150 in 2002 to approximately 100 in 2007 and the downward trend continues.
- CDC has reported fewer than 100 silica related deaths per year, yet OSHA justifies this rule on the basis that it will save 600 deaths per year. OSHA has not explained how the rule will save six times the number of deaths per year than the CDC reports occur.
- OSHA has not identified how many of these deaths are construction related and in what segments of the construction industry they have been occurring.
- OSHA has identified neither what specific sectors or trades are reporting silica-related injuries or deaths nor how many workers are actually exposed to levels above the current or proposed PEL.
- OSHA has not provided any verifiable or current statistical evidence of reported construction related silica cases that have occurred in the construction industry in the last 5 years.

NUCA believes that OSHA has neglected its responsibility to present scientific evidence to verify the need for this regulation. OSHA has also neglected to statistically verify that the proposed rule would support the intended goal in a manner that justifies the cost, as it is required to do by law.

### Technologically Infeasible

The utility and excavation construction industry is unique. Our operations are extremely mobile and, while our members take measures to control the dust, protect their workers, and comply with environmental regulations, the NPRM Table 1 is unworkable for our industry. Due to the mobility of utility construction, exposure monitoring would have to be performed daily or any time the operations move to ensure compliance with the proposed rule.

- OSHA did not take the time to thoroughly study different types of construction operations such as utility and excavation operations before issuing this burdensome and unachievable one-size-fits-all NPRM.
- Table 1 is not based on scientific evidence. OSHA has broadly assumed that all earth moving equipment and operators are exposed to silica, but has not proven this to be true

in the wide variety of landscapes and conditions in which NUCA members perform their services. The evidence OSHA cites is incomplete, limited, and inconclusive.

- Under the NPRM, a utility and excavation contractor could be required to perform exposure monitoring every day and multiple times a day. This would require hiring qualified individuals and delaying project progress. However, the number of safety professionals, industrial hygienists, and laboratory facilities that exist is monumentally insufficient to meet this requirement.
- OSHA has not clearly defined "heavy earthmoving equipment" nor considered the replacement or retrofitting of earthmoving equipment required for compliance with Table 1.
- OSHA has not taken into consideration the varied weather and climate conditions that exist in the U.S. and how they would affect compliance in different parts of the country.
- OSHA has not provided any reasonable method for contractors to track workers' potential exposure time as specified in Table 1. Without the ability to track exposure, it is impossible to determine if a worker must wear a respirator after 4 hours of exposure in order to comply.
- NUCA also believes that the 4-hour cutoff for requiring a respirator is arbitrary and OSHA has no data to support the cutoff's usefulness.
- OSHA says employers can follow Table 1 and be considered in compliance but it falls short of identifying and addressing many types of potential exposures. There is no way utility contractors could comply without providing daily exposure monitoring, enclosing all heavy equipment, providing medical evaluations of all field employees, implementing a respiratory protection program and administering employee training. The combination of these requirements would be unreasonable, unrealistic and infeasible.

### **Economically Infeasible**

OSHA has not accurately or adequately considered the excessive cost of complying with the regulation. In order to adhere to the standard, contractors will face costs that exceed feasibility. OSHA has significantly under-estimated the cost of compliance in the NPRM. The costs associated with engineering controls, exposure assessments, medical surveillance, and training will exceed OSHA's annual estimate of approximately \$500 to \$1,000 per year per entity.

#### **Example:**

The average utility contractor employs approximately 30 people and owns approximately 12 pieces of heavy equipment including excavators, back hoes, front end loaders, and dozers. In order to comply with this rule this employer would have to spend the following to comply:

- For earthmoving equipment, the cost to seal and pressurize equipment with existing cabs to comply with Table 1 will be approximately \$3,000 per unit. The cost to add sealed and pressurized cabins to equipment will be approximately \$15,000 per unit. Assuming the average contractor has three pieces of equipment with cabs and nine pieces without cabs (our industry average), the cost to retrofit one contractor's equipment would be \$144,000 (3 machines with cabs x \$3,000 to retrofit + 9 machines without cabs x \$15,000 to retrofit). Additionally, manufacturers have told NUCA members that equipment over 5 years old will probably not be able to be retrofitted with sealed enclosures; therefore new

equipment would have to be purchased at prices ranging from \$50,000 to \$300,000 depending on the type of equipment.

- Jobsite exposure assessments cost \$1,000 for hygienists and \$500 per day for sample analysis. Utility contractors move their jobsites weekly and sometimes daily. The cost to hire an industrial hygienist is \$50,000 to \$100,000 per year.
- Assuming we exclude the office staff, medical evaluations for 75% of the employees or approximately 22 employees x \$300 per person would cost \$6,600.
- Implementing a respiratory protection program will require 4 hours of training at \$30 for salary and benefits + fit testing at \$15 for each field employee ( 4 hours x \$30/hour + \$15 = \$135 in wages x 22 employees). This will cost one contracting company \$2,970.
- A 4 hour silica training program for 22 field employees ( 4 hours x \$30/hour x 22 employees) will cost \$2,640.
- An estimated total of \$147,000 plus \$1,500 per job site for exposure assessments easily eclipses OSHA's cost estimate. NUCA believes OSHA neglected to perform realistic or diligent cost estimates in creating this rule.

NUCA believes the cost of compliance for NUCA's 600 utility and excavation contracting companies would exceed \$100,000,000. This cost is based on actual costs incurred by NUCA members for services as stated above. OSHA has failed to take these costs into consideration.

Each of these costs exceeds OSHA estimate of \$500 to \$1,000 per entity by multiples of ten. These costs will dramatically increase the cost of doing business, will increase the cost of water, sewer, gas, and electric infrastructure projects that are already excessively expensive, and will result in the closing of small and medium-sized construction businesses.

NUCA is a member of the Construction Industry Safety Coalition and supports the cost estimates they have submitted. These cost estimates are much greater than originally proposed by OSHA. NUCA believes the proposed rule is unnecessary, technologically unattainable, and economically infeasible. NUCA submitted comments to the NPRM, testified at the silica hearing, and has taken every possible opportunity to provide OSHA with meaningful, accurate information. To date, OSHA has not responded to or taken into account any of NUCA or CISC's concerns or data, nor has it adequately proven the need for this rule or how it achieves a proposed goal or provides a feasible solution to an identified problem. These reasons warrant the withdrawal of this proposed rule or the exemption of the construction industry. NUCA believes OSHA that has failed to meet its statutory and fiduciary duty to prove this proposed rule is necessary, or technically or economically feasible.