

Mason Contractor Association of America
Office of Management and Budget
February 29, 2016

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Slide 1

My name is Joseph Bonifate and I am the Vice-President of Arch Masonry, Inc. Arch Masonry Inc. is a small business which operates out of Pittsburgh, Pennsylvania and employs approximately 100 workers. 90% of our employees are exposed to respirable crystalline silica on a regular, if not daily basis. The Health and welfare of our employees is of great concern to us.

I am also an active member of the MCAA. I attend the two annual conferences and the D.C. trip each year. In my participation I have meet and befriended many masonry contractors from all over the country and I assure that the information I am providing is representative of the feelings and cost impact of my associates all across the United States.

Slide 2:

The key points I wish to speak on now are as follows:

- I. Cost of Compliance
- II. Cost of Non-Compliance

III. Current Non-Compliance

IV. Loss of Jobs

Slide 3

I. Cost of Compliance

In regards to the cost of compliance I do not think OSHA is being realistic in estimating the cost impact on construction.

If the proposed rule was current law in 2013, our company would have spent about \$174,500.00 in compliance cost. Due to the lower allowable limits all employees would have had to answer the questionnaire and do the respiratory fit test. This would have also been a part of new hire orientation.

This total cost would increase our company's overhead by 18%. Even if the rule was passed and technology was created to minimize the cost I would expect an overhead increase in the range of 10%-15%. In today's market this is not a cost that can be absorbed by any contractor. This cost must be passed on to the client and/or end user. Basically if I cannot include the cost of the new rule and continue to make sales then how financially feasible is the rule?

Slowly go through slides and discuss briefly

Slide 4: OSHA Estimate Cost Impact

OSHA is only estimating a cost of 432 – 2013 Dollars in first year compliance

Slide 5: Arch 2013 Estimated Cost: Medical Examinations

Arch Masonry's actual cost for medical examinations alone would have been \$410 in 2013

Slide 6

A quote for Medical Services

Slide 7: Arch 2013 Estimated Cost: Air Quality Testing

Arch Masonry's actual cost of Air Quality Testing in 2013 would have been \$703 per employee.

Slide 8

A quote for Air Monitoring

Slide 9: Arch 2013 Total Estimated Cost: Impact of Compliance

The total, actual cost of compliance per employee in 2013 for Arch Masonry, Inc. would have been \$1,113

Slide 10: Total Economic Impact per Employee

As you can see the cost of compliance per employee as estimated by OSHA falls short by 60%

II. Cost of Non-Compliance

I think it is important to compare the cost of non-compliance to the cost of compliance when considering the feasibility of any rule. Especially when it comes to silicosis related illness. The reason being that this illness typically appears later in life and cannot be brought back to any individual firm. Therefore, illness from silica exposure will most never become a worker's comp claim and will not impact healthcare cost renewal rates. That's because it is so rare that anyone is diagnosed with the illness during active employment. Therefore, the only cost to be weighed and measure by the contractor when considering non-compliance is the cost of penalties and legal fees.

Slide 11:

According to penalty guidelines found on OSHA's website the highest expected first time penalty could be up to \$7,000.00. I personally would suspect this is rare. I know of two penalties and they were both under this amount. There are also reduction rates based on number of employees. A contractor would have to employ over 250 workers in order to not receive a reduction in penalty cost. However, with 250 employees a \$7,000.00 penalty is \$28 per employee.

Slide 12:

According to the same document a contractor can expect an increase in penalty for any offense repeated in a 3-5 year time frame. Even if the penalty doubled that would be a maximum of \$14,000.00. This is also rare, but if it occurred a contractor could expect two penalties within a year totaling \$21,000.00. Still a far cry from

the cost of compliance. If a contractor decided that they wanted representation and wanted to fight the penalties or file a harassment claim against the agency they could expect legal bills ranging from 10 to 20 thousand annually. Bottom line is if I budgeted \$50,000.00 a year for cost associated with non-compliance I could expect an annual savings of 71%. You may recall I previously mentioned that the cost of compliance for 160 workers was \$174,500.00 at a rate of \$1,090.63 per employee. Compared with an annual budget of \$50,000.00 for penalties and legal with an employee count of 160 the rate is \$312.50 per employee. That is an annual savings of \$124,500.80.

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III. Current Non-Compliance

To demonstrate that non-compliance is a reasonable alternative I would like to look at some evidence that there is significant current non-compliance. There is a great number of employers that do not comply with many if not all current OSHA standards. There are many small contractors that do not have the resources or knowledge for complete compliance. These contractors tend to use a lot of sub-contractors and have few if any employees. Although this makes up a great deal of the American workforce these contractors are typically looked over and fly under the radar. Perhaps that is because large penalties would put them out of business which is not the agencies objective, nor will it benefit the agency financially. When these contractors are cited it is typically a violation in which there is immediate danger and threat of harm. Silicosis is not a forefront issue in these cases. There are also larger contractors that have already figured out that the cost of compliance in

many cases is cost prohibitive. Many of these firms have in house legal and only focus their safety issues on items that may impact their insurance rates. Again silicosis is not a forefront issue for them.

Slide 14

Another point to look at is the rate at which OSHA enforces standards that pertain to silica. I would suspect most if not all silica elated citations in the construction industry would go to masonry contractors. A study of citations issued to masonry contractors found that only 2.7% of citations issued to those contractors involved standards pertaining to silica. I would imagine that across all trade this translates to less than 1% of all construction industry citations.

You may be thinking that there are few citations because there are few violations. I assure you that is not the case. In fact, one of the biggest points we made during the public comment and hearing process was that there is a great deal of evidence which supports our argument that the current rule is more than adequate and all support of the new rule comes from parties that do not seem to understand the current as all testimony and evidence given depicts environments which are not in compliance with the current rule. Based on the testimony in support of the new rule I would say that a majority of the industries masonry contractors are not in compliance with the current rule. Much of the testimony included statements such as “we often see workers operating in a cloud of dust with no respiratory protection or safety measures” (Gerry Scarano, Executive Vice President, International Union of Bricklayers and Allied Craftworkers).

Bottom line is, yes the current rule needs work. It needs enforcement and maybe even simplified so that it is easier for employers and employees to understand and follow. However, a new more stringent rule is not needed, not

feasible, and will only punish contractors that currently strive for compliance. Any contractor that includes the cost of the new rule in their bids will be put out of business by their many non-compliant competitors.

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IV. Loss of Jobs

Also I believe the proposed rule will have an economic impact greater than just the cost of compliance. For years now the masonry industry has seen a reduction in market share. During the construction boom of the 1990's there was a brief worker shortage. This has led to the continued use and growth of construction methods that involve less on site labor. I am talking about pre-fabricated building made of wood, concrete, and steel. These buildings are primarily built in a location outside the local community, outside the state, and/or outside the country. The buildings are quickly assembled on site with a handful of workers in a fraction of the time. Often these workers are migrant and travel with the contracts.

In comparison when a construction project uses masonry there will be several local workers on that project for a good length of time. Not only are these workers tax paying citizens but they patronize local businesses on a daily basis. Most of the materials will come from local manufacturing facilities that employ local workers and ship their products with local drivers. These manufacturing facilities often buy raw materials such as sand and other aggregates from local quarries that also employ local workers and local drivers.

Slide 16: Masonry vs Prefabricated

This data is an accurate depiction of the local economic impact felt when buildings are prefabricated. Although we chose not to name the fitness company, I assure these buildings are very similar. As you can see when this building was prefabricated the local economy lost 360 working man days and 59 loads of product from local suppliers.

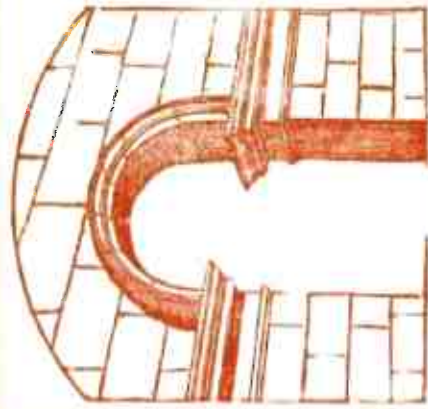
I do believe that there are many large general contractors, developers, and owners that prioritize OSHA compliance. Citations are a smudge on your record and are looked at by many industry organizations and most insurance companies. There is a genuine concern that as these contractors and owners are planning future projects they will continue to use techniques which lower labor cost and minimize the use of silica related products all the more due to the new rule not being feasible. This will greatly advance the market loss being felt by the masonry industry and have a significant impact on the local economy.

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Masonry products not only create many local jobs but they build great structures that bring integrity to our communities. In our current economic and employment crisis the government of The United States of America should pass initiatives that bolster building trades such as masonry. I firmly believe that the current proposed silica rule will unnecessarily put good people out of business and expose workers to greater harm.

Pause

At this time I would be glad to field any questions



**AIR-CIH
MASONRY, INC**

PITTSBURGH, PA

Prospective/Response to OSHA's Proposed Standard on Crystalline Silica

Presented by:

Joseph Bonifate

Vice President

Discussion Points

- I. Cost of Compliance
- II. Cost of Non-Compliance
- III. Current Non-Compliance
- IV. Loss of Jobs

I. Cost of Compliance



I. Cost of Compliance

- ▣ According to Table 1 of Summary Rule Costs, provided by ERG, OSHA Estimates that the total first year compliance cost for the construction industry would be \$736 million in 2009
- ▣ After adjusting for inflation, this is equal to \$799 million in 2013
- ▣ OSHA also estimate that there are 1.85 million workers in the construction industry
- ▣ This means that if OSHA's estimated economic impact is accurate, the cost per worker or employee would be \$432.00 in 2013

I. Cost of Compliance

Proposed Control Expenses	Company A
OSHA Questionnaire	\$44.50
Respirator Fit Test	\$45.50
Chest X-Ray (1 Sided)	\$113.00
Tuberculosis Test	\$30.00
Pulmonary Function Test	\$52.50
Cost of Labor	\$102.00*
Cost per Employee	\$387.50
Total Cost (160 Employees)	\$62,000.00

*Cost of Labor calculated by Avg. Employee Cost (\$34) x Time Involved (3 Hrs.)

I. Cost of Compliance

January 27, 2014

Christopher Cavendish
Arch Midway
1035 Boyce Rd.
Pittsburgh, PA 15241

Christopher,

As requested below are the market prices for the services you would like to have added to your protocol within your account:

OSHA Questionnaire \$44.50
Respirator Fit Test \$45.50
PFT (Pulmonary Function Test) \$52.50
Respirator Physical \$72.50

As we discussed before we are able to provide occupational medicine expertise and our physicians understand and have extensive knowledge regarding OSHA requirements. Please let me know your thoughts and I will get you set up correctly and appropriately to accommodate your new company policy regarding these components as well as any job specific requirements.

I hope this helps. I will look forward to hearing back from you. Thank you for your time and consideration.

Sincerely,

Improving America's health, one patient at a time.

I. Cost of Compliance

Air Quality Testing	
Proposed Control Expenses (2013)	Company C
Air Quality Testing Quote	\$3,750.00
Air Quality Test per job site	\$1,250.00
Number of Jobs (2013)	90
Total Cost of Air Testing	\$112,500.00

IV. Economic Impact - Arch Masonry, Inc. 2013

②



December 27, 2013

Mr. Connor O'Hara
Arch Masonry, Inc.
Bayview Plaza One
2021 Bayview Road, Suite 205
Pittsburgh, PA 15241

Proposal: Occupational Exposure Monitoring for Respirable Crystalline Silica

Dear Mr. O'Hara:

[Redacted] is pleased to present this proposal for occupational exposure monitoring for respirable crystalline silica at locations in Bradnock, Mr. Cullins Consulting and Fox Chapel, PA.

One (1) personal sample will be obtained in the breathing zone of an employee during grinding of mortar joints at the Bradnock shop and analyzed for respirable crystalline silica. Two (2) personal samples will be obtained in the breathing zone of the saw man and the mixer man at Mr. Cullins Consulting and analyzed for respirable crystalline silica. One (1) personal sample will be obtained in the breathing zone of an employee at a residential site in Fox Chapel. A blank sample will be submitted as a quality control measure.

At the completion of sampling a final report will be prepared that will include observations made during the survey, laboratory analysis reports, and recommendations for further action if necessary. The final report will be provided within three weeks of the last survey.

The total estimated cost for the monitoring including labor, equipment, laboratory analysis (includes blanks), and incidental expenses is as follows:

Site Visits (3)	(24 hours x \$90.00/hour)	\$2,160.00
Travel Time	(2.5 hours x \$45.00/hour)	\$ 112.50
Air Sampling Pumps	(4 pumps x \$15.00/each)	\$ 60.00
Crystalline Silica Analysis	(3 samples x \$90.00/sample)	\$ 270.00
Final Report	(1 report x \$90.00/hour)	\$ 90.00
Clerical	(4 hours x \$20.00/hour)	\$ 80.00
Mileage (3 sites)	(90 miles x \$0.55/mile)	\$ 49.50
Incidental Expenses	(Index of supplies, media, tolls)	\$ 100.00
Total Estimated Cost		\$3,772.50

I. Cost of Compliance

Employee Medical Exam + Fit Testing Breakdown	
Proposed Control Expenses 2013	
OSHA Questionnaire	\$44.50
Respirator Fit Test	\$45.50
Chest X-Ray (1 Sided)	\$113.00
Tuberculosis Test	\$30.00
Pulmonary Function Test	\$52.50
Cost of Labor	\$102.00*
Cost per Employee	\$387.50
Total Cost (160 Employees) Medical Exam	\$62,000.00

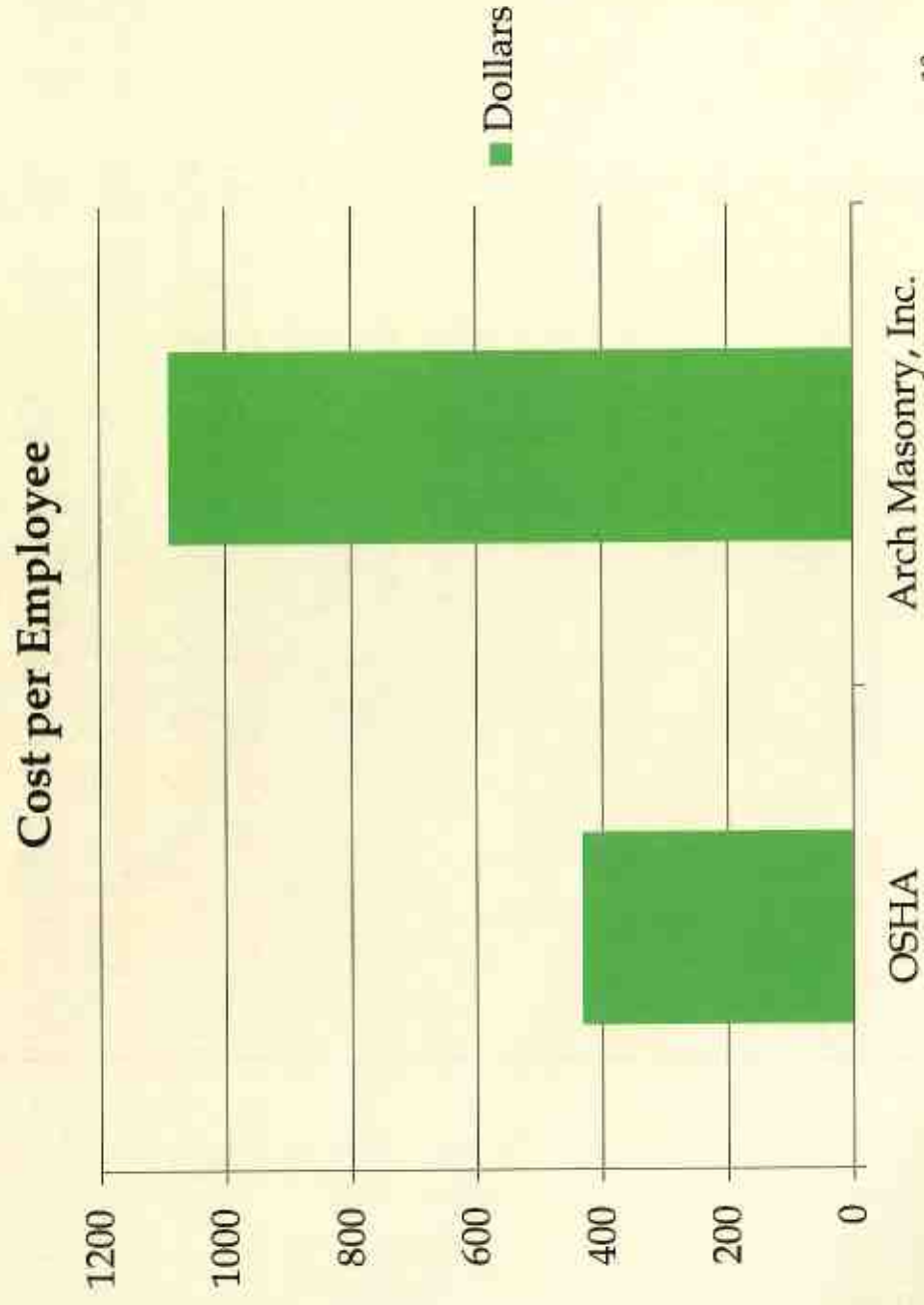
*Calculated by Avg. Employee Wage (\$34) x Time Involved (3 Hrs.)

Air Quality Testing	
Proposed Control Expenses 2013	Company A
Air Quality Testing Quote	\$3,750.00
Air Quality Test per Job	\$1,250.00
Number of Jobs	\$90.00
Total Cost for Air Testing	\$112,500.00

Total Annual Cost for OSHA Compliance	
Medical Exam + Fit Testing	\$62,000.00
Air Testing	\$112,500.00
Total Cost (2013)	\$174,500.00
Total Cost Per (160) Worker	\$1,090.63

I. Cost of Compliance

- According to OSHA's estimate, the cost impact per employee would be \$432.00 in 2013
- According to Arch Masonry's estimated cost of \$174,500 for a total of 160 employees, the cost impact is \$1,090.00 per employee



II. Cost of Non-Compliance

Gravity-Based Penalty (GBP)

OSHA has adopted a gravity-based penalty determination that provides for a gravity-based penalty between \$3,000 and \$7,000, as described below.

Severity	Probability	GBP	Gravity
High	Greater	\$7,000	High
Medium	Greater	\$6,000	Moderate
Low	Greater	\$5,000	Moderate
High	Lesser	\$5,000	Moderate
Medium	Lesser	\$4,000	Moderate
Low	Lesser	\$3,000	Low

Size Reduction

The penalty reduction structure for size is illustrated below, allowing for penalty reduction between 10 and 60% for employers with 250 employees or less. No size reduction will be applied for employers with 251 or more employees.

Employees	Percent Reduction
1-25*	60
26-100	30
101-250	10
251 or more	None

II. Cost of Non-Compliance

History Reduction

The time frame for considering an employer's history of violations has expanded from three years to five years. An employer who has been inspected by OSHA within the previous five years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10% reduction for history.

History Increase

An employer that has been cited by OSHA for any high gravity serious, willful, repeat or failure-to-abate violation within the previous five years will receive a 10% increase in their penalty, up to the statutory maximum.

Employers who have not been inspected and employers who have received citations for serious violations that were not high gravity will receive neither a reduction, nor an increase based on their OSHA inspection history.

Repeat Violations

The time period to consider for repeated violations has increased from three years to five years. Area Directors may continue to apply a size reduction to the penalty, as appropriate, after considering the need for a deterrent effect.

III. Current Non-Compliance



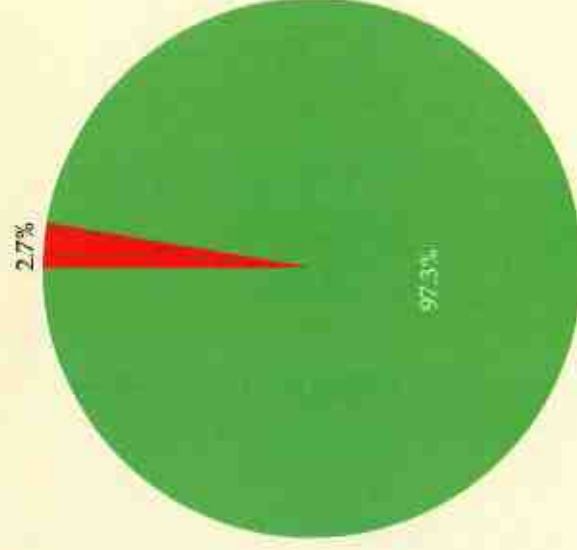
Current Non-Compliance

▣ In 2013, OSHA conducted 887 inspections involving companies with the word "masonry" in their name

▣ The result was 1774 citations handed out, of which only 48 were related to respiratory protection

OSHA CITATIONS - JANUARY 1, 2013 - DECEMBER 31, 2013

■ Silica Citations ■ Other Citations



IV. Loss of Jobs



IV. Loss of Jobs

Fitness Center Structure	Precast	Masonry
Work Days	10	30
Local workers per day	0	12
Migrant workers per day	5	0
Material deliveries from local manufacturers	1	60
Material deliveries from outside manufacturers	30	2

- ▣ Based on rough estimates from two like buildings in which Arch Masonry, Inc. worked
 - 2011 – Fitness Center - North Hills, Pittsburgh, PA – Masonry Structure
 - 2012 – Fitness Center - Greensburg, PA – Pre-Cast Structure





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August 18, 2014

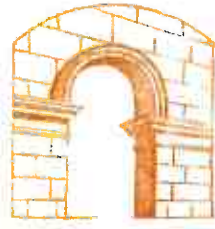
OSHA Docket Office
Technical Data Center
Room N-2625, OSHA
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

POST HEARING BRIEF SUBMISSIONS

REF: Docket ID# OSHA-2010-0034

I offer the following submission in response to the Informal Public Hearings for the Proposed Rule on Occupational Exposure to Respirable Crystalline Silica.

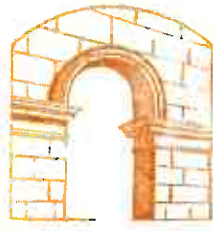
- I. First I want to respond to Mr. O'Connor's request that I would specify the source of data provided by OSHA with regard to characterizing exposure. There are two documents provided by OSHA that we have used to identify exposure levels and protect our workers.
 - First is the Small Entity Compliance Guide for the Respiratory Protection Standard. This document was used to help create our written respirator program and it also aided us in respirator selection.
 - The second document in which we found information that helped us estimate exposure levels was Controlling Silica Exposures in Construction. I will now list some excerpts from this document which we used to determine average exposure levels for particular task.
 - Page seven gives estimated exposure levels for wet cutting masonry based on results gather by OSHA and NIOSH at five construction sites.
 - Page eight gives the average exposure for dry cutting outdoors.
 - Page eleven indicates the reduced exposure to be expected when using a vacuum dust collection system.



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- Page fourteen gives an estimated exposure reduction rate when switching from dry to wet cutting methods.
 - Page sixteen list expected exposure reduction rates when cutting indoors using a wet methods or VDC systems.
 - Page nineteen gives the estimated exposure levels during intensive grinding of concrete outdoors.
 - Page thirty gives the common exposure levels during tuck-pointing without controls.
- II. I will expand on how this information was used within our company to achieve what we believe to be compliance with the current rule. It is our understanding that under the current OSHA Standard's every employer is responsible for determining what, if any hazards their employees are exposed to and then offering the employees adequate training and protection from those hazards.
- Silica is an undisputed hazard and employers must provide protection to any and all exposed workers.
 - In order to be protected from respirable hazards employees must be trained in the proper use of respirators. In our company this included fit-testing and medical questionnaires for the use of N-95 paper. In addition to this, pulmonary exams are needed for task that require a half-mask.
 - Employees must also know how to select the appropriate respirator for the assigned task. This would require the employees to have an understanding of the exposure levels associated with the task and the limitations of the protection offered by each type of respirator.
 - Employees must also understand the required medical evaluations needed for safe use of each type of respirator so as to not wear a respirator that is beyond their limitations. There may be cases in which the exposure levels are beyond what the employee is equipped for and the employee must have the training to identify this and bring it to the supervisors' attention.
 - With the above mentioned items being understood as current rule our company used the information found in Controlling Silica Exposures in Construction to determine the exposure levels of our most commonly performed task. Once the exposure levels were determined the required protection for each task was identified.



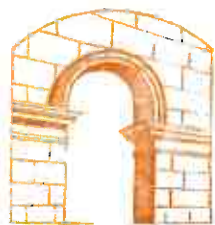
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- Once the exposure levels and required protection were determined our safety committee put together a chart for easy use in the field. The chart listed the most common task and the required protection.
- We also put most of our employees through the required respirator training and testing. Once completed we issued the employee a card or certificate that signifies they are able to use respiratory protection. Much like a scaffold or forklift card this aids our supervisors in assigning task.
- We have since done some air sampling of our own and intend to use the data to revise our plan. In the mean time we continue to use the information provided by OSHA.

III. After illustrating how an employer should interpret and comply with the current rule it becomes clear that much of the testimony presented in these hearings depicts conditions of non-compliance. I intend to point out several examples of such testimony given through these proceedings. Before I begin my response to some of the testimony given I wish to make a few points.

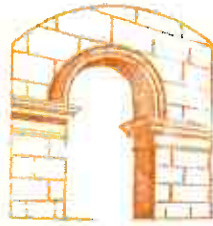
- I do not condone any of the working conditions I heard described during these proceedings. In fact I found many of the conditions described to be reprehensible.
- My point is simply that I did not hear any testimony of working conditions which describe an environment that is compliant with the current rule.



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- Punishing compliant employers based on the actions of non-compliant employers will not change working conditions in a non-compliant environment.
- Much of the testimony given in support of the proposed rule indicates a lack of understanding of the current rule by the witness, hence the plea for a new rule and not a plea for enforcement of the current rule.
- Many of the witnesses expressed an understanding of the current rule as they make mention of conditions which they state do not meet the current standard.
- The following excerpts are just a few examples of testimony given which illustrate a lack of enforcement of the current rule. I did not feel it was necessary to go over every single statement given which illustrates this point.
 - On March 25, 2014 Gerry Scarano, the Executive Vice President of the International Union of Bricklayers and Allied Craftworkers gave testimony in support of the proposed rule. During this testimony Mr. Scarano quotes a trade magazines article which states “we often see workers operating in a cloud of dust with no respiratory protection or safety measures”. It should be known that the conditions explained in Mr. Scarano’s testimony do not depict an environment of current compliance and should be seen as evidence for the needed enforcement of the current rule.
 - On March 26, 2014 many representatives of the UAW gave testimony. With my limited knowledge in regards to foundry work it is clear to me that much of the testimony depicts conditions that are not compliant with the current rule. For example Mr. Wafford states “There’s dust always flying. You come out looking like they said before, like raccoons or worse.” “No dust mask. There ain’t no hood or nothing.”
 - On March 27, 2014 testimony was given by representatives of New Labor. During this testimony MS. Casillas-Pabellon explains that the workers of New Labor are often time assigned to work with a contractor for just a few days and that they are sometimes paid in cash or personal checks that tend to bounce. This would indicate that these contractors are noncompliant with many government regulations and there is no reason to consider this testimony as to a need for a new rule.



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- Also at this day and time there was testimony given by members of FE Y Justicia in which Mr. Granados describes breathing poisonous dust and fumes from melting caulking with no protection. Then Mr. Armendariz stated that things in the company for which he worked only changed after a visit by OSHA in January of this year. This testimony is a great example of the needed enforcement and its effectiveness.
- On March 28, 2014 Mr. White gave testimony on behalf of the USW. Mr. White stated that they would only cleanup the work area when a visitor was anticipated and that the clean up would take a week. This indicated a very dirty environment. He also said that if overcome by dust during work they were taught to "go outside and get some air and come back when we feel better." Mr. White also stated that he was disciplined "for wearing breathing protection."
- On March 31, 2014 Joel Guth of IQ Power Tools a manufacturer of VDC equipment gave testimony. Mt. Guth stated the he "had the opportunity to personally speak face-to-face with over 5,000 workers in the last six months." He also stated that while most of the workers have heard of OSHA "less than one percent even know what a silica PEL is or have even heard about it." That would lead me to conclude that of the 5,000 workers Mr. Guth spoke with less than one percent work in an environment of current compliance.
- In the afternoon of March 31, 2014 several members of the International Union of Bricklayers and Allied Craftworkers gave testimony. During this testimony Mr. Dale McNabb stated that as recently as 2008 he spent two or maybe three weeks on a grinder everyday removing a silica-based thin set material. During this time he had to purchase his own paper masks to try to protect himself. Also there was testimony from Mr. Tommy Todd a 62-year-old bricklayer who described working as an apprentice forty years ago. He recalled working indoors and said "the quarters were tight and the rooms filled with the dust". Then we heard from Mr. Dennis Cahill a bricklayer from Arizona who said "I'm here to tell you that construction sites today are far dustier, dirtier, and vastly more dangerous than they were when I started in this trade."



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- On April 1, 2014 testimony was given on behalf of the National Council for Occupational Safety and Health /Equality State Policy Center/ LaborSafe. During this testimony Mr. Peter Dooley presented images of a workplace that he described as having "deplorable health and safety conditions including silica dust." He also states that "many workers are not made aware of silica hazards" and "Many workers have not been given sort of the most fundamental tools on the jobs to protect themselves such as the right kind of respirators, any kind of training or fit testing for respirators". Then there was testimony from a long time construction worker Mr. Garcia Hernandez who said he sees "very little enforcement". Mr. Garcia described cutting concrete pipes in a confined space such as a trench with no respiratory protection. At the end of his testimony he became emotional and said "As a construction worker, I can honestly tell you not only here in Washington, Philadelphia, I lived in Seattle for many years. You go to a construction site, and you will see that most employers are not following the standard.
- Later that day April 1, 2014 there was testimony given on behalf of the Wisconsin Coalition for Occupational Safety and Health. I was present for this testimony and I could see by the images in their presentation that the work environment was not compliant with the current standard. Most alarming to me was the personal testimony of Mr. Allen Shultz. He said "They had warned me. Stay away from the machine, but it was so dusty you couldn't see the machine even though you were only a foot and a half away from it. You could only hear it." To me that describes a work environment that is intolerable, frightening, extremely dangerous, and not in compliance with the current rule.
- The current rule must be enforced. The testimony given in these hearings makes that clear.

IV. I offer the following comments in regards to some of the professional testimony and scientific data used during these proceedings. I would like to pre-face this by stating that I have only selected a few excerpts from the hearings which I believe highlight some of the errors being reported as factual evidence.

- On March 18, 2014 OSHA began the hearings with an opening statement by William Perry. In the statement Mr. Perry said that "From 2006 through 2010, silicosis was listed as the underlying death on over 600 death certificates in the United States, including 101 workers who died in 2010". From 2006 through 2009 our research shows a confirmed 518 deaths this makes a five year total of



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direct and indirect deaths of just over 1,118. This is unacceptable but as I said in my testimony it is a representation of noncompliance and it would appear to be less than one percent of the work force. What I would like to point out is that shortly after making this statement Mr. Perry goes on to state that "At the current construction and shipyard PELs, the estimated mortality and morbidity risks are even greater:" he goes on to say that there will be "17 to 22 deaths per 1,000 workers from silicosis" that number is much higher than the actual rate of death we have seen in the last decade. It would appear that the projections are not based on reality and overstated in order to persuade the panel.

- On March 19, 2014 Dr. Jonathan Borak offered testimony in which he references a study which "included workers who had been exposed for at least one year, working between '72 and '74". However the current rule was not in place at this time. He also stated "there is significant evidence from OSHA and others that there is and has been extremely widespread overexposure to silica" and that "The NIOSH scientists, commenting upon the persistence, said that despite the existence of enforceable limits on worker exposure to respirable crystalline silica, substantial exposure continues to occur in the U.S. That's in 2008".
- On March 21, 2014 Dr. Franklin Mirer gave testimony in support of the proposed rule. Despite the fact that since 1997 there has not been one year with as many as 200 deaths from silicosis the Dr. advised the panel that this year another 688 workers will die. The Dr. also concluded that due to OSHA's inability to calculate actual cost in the past demonstrates that they have over estimated the cost as it pertains to the proposed rule. The only thing I am sure of is the inability of the agency to accurately predict cost.
- On March 25, 2014 Ms. Trahan gave testimony in favor of the proposed rule. Ms. Trahan starts by stating "Number one, silica causes cancer. That's beyond dispute". However I could not find this fact listed with any reputable source. According to Centers for Disease Control and Prevention silica causes silicosis which is a terrible lung disease for which we have no cure. The closest I came is NIOSH stated that silica may cause cancer and that is based on a high rate of cancer in occupations that involve silica. However those occupations likely involve many harmful substances. My point is simply that such a statement discredits the witness and there is no need to intimidate the panel with the use of the "C word". All decisions should be made on actual documented facts.



- On April 3, 2014 Matthew Shudtz testified in support of the proposed rule on behalf of the Center for Progressive Reform. In his testimony Mr. Shudtz states that "Enforcing the current standard won't lead to the medical surveillance, training, or other ancillary provisions to ensure employers are protecting workers to the extent feasible." Mr. Shudtz is completely wrong in this statement for all the reasons I mentioned beforehand in regards to the current requirements. These statements illustrate Mr. Shudtz lack of understanding and should discredit his entire testimony.
- Also on April 3, 2014 there was testimony offered by Charles Gordon. Mr. Gordon states that the proposed limit has a risk of 97 deaths per 1,000 workers. This is a much higher rate of death than what we are seeing with the current limit and with limited compliance at best. These finding are not based on sound facts.

V. I will now expand on my response to the question posed by Mr. O'Connor as to why we could not count on Table 1 for exposure assessment.

- The table does not allow for dry cutting masonry units. It would appear that OSHA simply believes it can simply outlaw dry cutting and the industry will embrace this. This is not the case in fact the opposite is true. No one in the industry likes the need for dry cutting but it is a need that cannot be denied. The very reason dry cutting technology was developed was in order to respond to industry demand.
- First of all masonry units cannot be laid wet. Wet cutting is ideal and often times still used on large project in which vast amounts of predictable cuts are required. However in today's fast paced, design build atmosphere the required cuts are often times not identified until the time of placement. This prohibits the use of wet cutting equipment as the unit is laid in the wall only moments after being cut.
- Another aspect is the continued cold weather work our industry is facing. Perhaps winters are not as harsh as they once were or perhaps our technology has improved. Whatever the reason is I know firsthand that in North East city's such as Pittsburgh our industry now struggles through the winter months and years ago things would simply shut down. Many supporters of the proposed rule claim that if it is too cold to wet cut then it is too cold to work. That is absolutely not true. We can work down to 25 degrees just by heating the water we use to mix mortar and covering the walls at the day's end with insulated tarps. However 25 degrees is well



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past the point of being able to run wet cutting equipment. Even if the cut area was enclosed and heated it would not be able to contain the cut units for drying. The units would be exposed to the elements and then freeze.

- Table 1 is far too brief and does not cover the wide range of materials, controls, and conditions required in the construction industry today. There will always be something that does not fit neatly into the table, creating much gray area. Gray area is exactly what the silica issue does not need any more of.
- As I mentioned before Table 1 is especially no good if the PEL is lowered as it does not address the needs of workers whom fall into unallowable limits simply by working in close proximity to silica producing task. This is apparently due to the fact that the agency seems to believe that the proposed rule will simply outlaw any activity which produces silica and cannot be controlled with a wet method.
- I would like to point out once again as I did in my testimony that there has been no economic study done on the impact of substitution. I am referencing the substitution of masonry with pre-manufactured products. This is a reality already being felt by our industry and impacting local communities. One of the few things which helps keep masonry materials in the building process is the flexibility to change details as the walls are being built. This is aided by the ability to dry cut units and immediately place them in the wall. Masonry would lose this desired feature if Table 1 became law.
- I made mention of the impact substitution has on the local economy but I have failed to mention the environmental impact of substitution. As Mr. Gordon said in his testimony on April 3, 2014 "crystalline silica often does not come in bags and boxes. In fact, it usually does on dump trucks or in the dirt on the land." He is correct in that. Materials that contain silica are not trucked for hundreds of miles to reach the end user and they do not require vast amounts of forest depletion. Many supporters of the proposed rule state that industry will find a way to comply at a lower cost than estimated. I would agree that the construction industry will find ways to meet the requirements at a low cost. Unfortunately these methods most likely will involve limited use of masonry materials. The end result of Table 1 will be a much larger environmental and economic impact on local communities than anyone would guess.