



# Cal/OSHA Standards Board Moves Forward on Silica Regulation

by Chris Lee, WACA Safety Consultant

In the spring 2016 edition of *The Quarterly*, I discussed action the federal OSHA took in March to revise its respirable crystalline silica standard and implications for state OSHA programs, such as Cal/OSHA.

The Cal/OSHA Standards Board met on August 18, 2016. Despite testimony from numerous construction association representatives that the current Cal/OSHA silica regulation was effective, the Board stated they will adopt the federal revisions at the next Board meeting this fall.

The following is an update on the status of this regulatory action.

## August 18, 2016 Board Meeting

The Board heard testimonies from a number of construction association representatives. They suggested the 2007-2008 Cal/OSHA silica regulation (Title 8, Construction Safety Orders §1530.1) was a successful byproduct of an advisory committee, comprised of construction industry representatives, and that it has been effective in protecting workers.

The representatives further argued that if the board proceeded to adopt the federal revisions, an advisory committee (similar to the one in 2007-2008) should convene to address issues of concern to California construction firms and employees. At the end of the meeting, board

Chairman Dave Thomas said that the Board would proceed to adopt the federal revisions, and agreed that an advisory committee should meet as soon as possible.

## Impact of the Federal Revision on California

California's adoption of the federal revisions would reduce the permissible exposure limit (PEL) to 50 micrograms per cubic meter ( $\mu\text{g}/\text{M}^3$ ) averaged over an eight-hour shift. There will be separate requirements for the construction industry (§1532.3) as well as for the general industry and maritime industries.

The new federal revisions also require employers to do the following:

- ✓ Use engineering controls (such as water or ventilation) to limit worker exposure to the PEL
- ✓ Provide respirators when engineering controls cannot adequately limit exposure
- ✓ Limit worker access to high exposure areas
- ✓ Develop a written exposure control plan
- ✓ Offer medical exams to highly exposed workers, and train workers on silica risks and how to limit exposures
- ✓ Provide medical exams to monitor highly exposed workers and give them information about their lung health



- ✓ Provide flexibility to help employers protect workers from silica exposure

## Significant Concerns

### *Wet Cutting Versus Dry/Vacuum Cutting*

One of the major concerns expressed by several speakers at the board meeting centered on the federal requirement for wet cutting of silica-containing materials. Many California contractors are using dry/vacuum cutting methods. There was strong support for California to allow both methods.

### *Compliance Table*

Another concern was a table prepared by federal OSHA that matches common construction tasks with dust control methods so employers know exactly what they need to do to limit worker exposures to silica. The dust control measures listed in the table include methods known to be effective, like using water to keep dust from getting into the air or using ventilation to capture dust. According to federal OSHA, if employers follow the table, they are not required to measure workers' exposure to silica and are not subject to the PEL. A number of commenters at the board meeting argued that the table is confusing and not as user-friendly as purported.

### *Economic Impact*

During the rule promulgation process at the federal level, serious concerns were raised about the economic impact of the proposed action. Federal OSHA estimated that the proposed regulation would cost the construction industry nationwide about \$511 million per year, while the Construction Industry Safety Coalition (CISC) estimated \$4.94 billion. The CISC number is approximately 10 times the federal estimate.

The Cal/OSHA Standards Board has estimated that the cost to the California construction industry would be \$86.9 million. The board must give careful consideration to the actual cost to the construction industry in California. It is unclear whether this estimate includes indirect costs in increased prices of construction materials and building products, when those manufacturers pass on part of their compliance cost to the general industry portion of the proposed regulation.

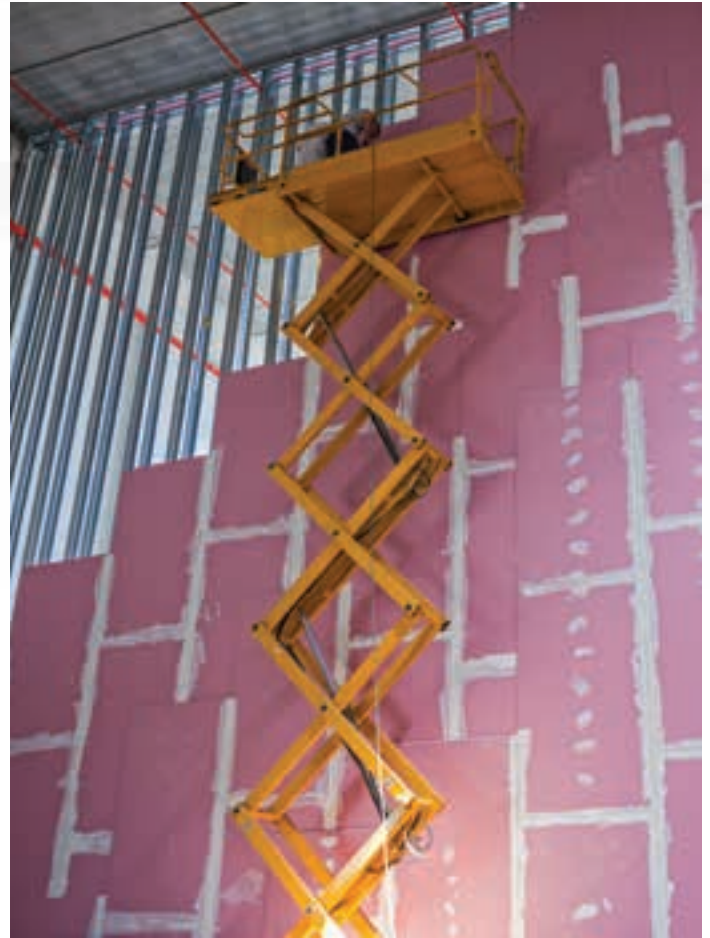
## Legal Challenge to Federal Regulation May Impact California's Efforts

The American Chemistry Council filed a lawsuit challenging the federal revisions. Its key arguments are that the PEL reduction is not necessary and that the current standard of 100 µg/M<sup>3</sup> has resulted in a notable reduction in cases of silicosis. In fact, the Centers for Disease Control and Prevention has noted a decline in cases from 1,200 in 1968 to 100 in 2007 — attributable to industry awareness, research, implementation of appropriate controls and education for workers.

## Specific Construction Sectors Affected by the Revision

The following construction sectors with their four-digit North American Industry Classification System (NAICS) codes will be affected:

- 2361 – Residential Building Construction
- 2362 – Non-Residential Building Construction
- 2371 – Utility System Construction
- 2372 – Land Subdivision
- 2373 – Highway, Street, and Bridge Construction
- 2379 – Other Heavy and Civil Engineering Construction
- 2381 – Foundation, Structure and Building Exterior Contractors
- 2382 – Building Equipment Contractors
- 2383 – Building Finishing Contractors
- 2389 – Other Specialty Trade Contractors
- 2211 – Electric Utilities



## Forming the Advisory Committee and Meeting Schedule

As safety consultant to WACA, I, along with other construction association representatives, met in early September with the Standards Board's executive officer Marley Hart to begin discussing forming the committee, what issues to address and action timelines.

## Compliance Timelines

Although the revised federal regulation was adopted on March 25, 2016, the effective date for compliance has been delayed until June 25, 2017, to allow for the industry to come into compliance.

Federal regulations affecting state OSHA programs require state response/adoption within six months of federal promulgation. The Cal/OSHA Standards Board met again on September 15, 2016 and adopted the federal changes. At that meeting it affirmed its earlier commitment to form an advisory committee to hear and consider alternative methods of compliance.

Construction association representatives will strongly advocate for the same 15-month delayed effective date for the final California action – which would establish a compliance date of December 25, 2017. Failing that effort, the effective date for the revised California regulation will likely be June 25, 2017.

*Look for updates on this issue on WACA's website ([www.wallandceilingalliance.org](http://www.wallandceilingalliance.org)) as developments occur.*