

September 30, 2011

The Honorable Cass R. Sunstein
Administrator, Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: OSHA's Proposed Crystalline Silica Rule

Dear Administrator Sunstein:

We write to register our organizations' opposition to a proposed rule of the Occupational Safety and Health Administration (OSHA) that is expected to reduce by half the existing permissible exposure limit (PEL) for crystalline silica and mandate extensive and costly engineering controls, as well as exposure monitoring, medical surveillance, work area restrictions, clean rooms, and recordkeeping requirements applicable to as many as two million American jobs. The costs of this proposal could far exceed its benefits. We believe the pending proposal is unnecessary and is particularly ill-advised in the current economic climate, where any regulatory action with the potential to destroy a substantial number of jobs and hinder efforts at economic recovery must be viewed skeptically.

Crystalline silica is the second most abundant mineral in the Earth's crust (12%) and is found almost everywhere as a component of rocks, sand, and soils. As a result, silica is released during agricultural, construction, road building, mining, quarrying, and other activities in which rocks, sand, and soils are disturbed. In addition, silica is perhaps the most common construction and manufacturing material in the world; it is a critical component in many manufacturing, construction, transportation, defense, and high-tech industries and is present in thousands of consumer products. Consequently, workplace exposures to crystalline silica are widespread, and efforts to control silica exposures are costly. Nevertheless, over the last 40 years, significant progress has been made in preventing silica-related disease under existing regulations – coinciding with the adoption of the current PEL for silica in the early 1970s and concomitant improvements in industrial practices. Thus, the Centers for Disease Control and Prevention reports a 93% reduction in silicosis mortality from 1968 to 2002 and an 83% reduction in silicosis-related discharges from short-stay, non-federal hospitals from 1970 to 2004.

While cases of silicosis still occur in the U.S., they are most likely attributable to the higher silica exposures that were prevalent three and four decades ago and to continuing widespread overexposures compared with the existing PEL. Year after year, about 30% of the silica samples taken by OSHA's compliance officers show overexposures as measured with reference to the current PEL—many by large margins. This failure to achieve compliance with the current PEL appears to be the real problem; correcting that failure should be the focus of OSHA's efforts.

Cutting the PEL in half is not the way to eliminate overexposure to silica. Yet it would likely be enormously costly. A recent analysis by engineering and economic consultants that was provided to OIRA estimated that the anticipated OSHA proposal would impose \$5.5 billion in annualized compliance costs on affected industries and result in the loss of 17,000 person-years of employment and \$3.1 billion of economic output every year the proposed regulation is in effect. Moreover, we anticipate that a reduced PEL could lead to increased efforts to block new or continued permit-dependent projects or operations due to “Not In My Backyard” (NIMBY) sentiment, even though we believe there is no basis for public health concern. These NIMBY costs are difficult to quantify and were not incorporated in the foregoing economic analysis.

Measurability issues also are a concern. To determine compliance with the OSHA PEL, employers generally submit their employee exposure samples to commercial laboratories for analysis, while OSHA uses its own lab. However, because of technical issues related to analytical methodologies for silica, there is no assurance that the labs can perform accurate and reliable analyses when silica levels are below the level of the current PEL.

No one questions the importance of taking appropriate steps to protect workers against unreasonable risks to their health and safety. But OSHA’s current proposal, we believe, is not necessary to achieve that goal; yet it could cost thousands of American jobs and billions of dollars of economic output annually, thereby significantly retarding U.S. efforts to reinvigorate a stagnating economy.

For these reasons, we urge you to return the proposal to OSHA for further evaluation of costs, benefits and risks—and for consideration of alternatives that can protect worker health, such as ensuring universal compliance with the current PEL, without jeopardizing our fragile economic recovery.

Thank you very much for your consideration of this letter. We invite you to contact us directly with any questions you may have.

Sincerely,

National Association of Manufacturers
National Federation of Independent Business
The Associated General Contractors of America
American Road & Transportation Builders Association
Steel Manufacturers Association
Portland Cement Association
Precast/Prestressed Concrete Institute
California Construction and Industrial Materials Association
American Concrete Pavement Association
National Ready Mixed Concrete Association
American Chemistry Council Crystalline Silica Panel (Member List Attached)

cc: Bill Daley, White House Chief of Staff