OSHA UP TO DATE®

www.nsc.org

VOL. 46, NO. 5 | MAY 2017

OSHA delays enforcement of silica standard for construction

OSHA is delaying enforcement of its updated standard on worker exposure to crystalline silica in the construction industry.

Enforcement was set to begin June 23 but at press time had been delayed to Sept. 23. The delay is necessary for OSHA "to conduct additional outreach and provide educational materials and guidance for employers," an April 6 press release from the agency states.

Despite the delay, OSHA said it expects employers in the construction industry to take steps toward implementing the standard's requirements.

The rule's new permissible exposure limit for respirable crystalline silica is 50 micrograms per cubic meter of air averaged during an 8-hour shift. The updated PEL, which NIOSH recommended more than four decades ago, is 5 times lower than the previous limit for construction.

Crystalline silica is a known carcinogen that is found in commonly used construction materials such as sand, concrete, brick, stone and mortar. It often surfaces during high-energy operations such as cutting, drilling or crushing rock.

Photo: kadmy/iStockphoto

Exposure to silica dust can lead to silicosis, a chronic disease that involves scarring of the lungs. OSHA estimates that 2.3 million workers are exposed to the dust, including 2 million construction workers.

'Significant impact'

The rule has drawn praise, criticism and legal challenges since OSHA published it March 25, 2016. At the time of the rule's publication, OSHA estimated it would save more than 600 lives and prevent more than 900 cases of silicosis every year.

In February, former OSHA administrator David Michaels, members of the American Industrial Hygiene Association and other experts participated in a congressional briefing on the final rule. During the nearly hour-long session, presenters highlighted several of the rule's potential benefits, including preventing the need to use a mask throughout an 8-hour shift.

During the briefing, AIHA past president Daniel Anna held up a full facepiece respirator. "For those of you who may not have worn something like this on the job, let me tell you, it's not a real fun thing," Anna said.

The updated standard further covers requirements such as engineering

– article continues on p. 4

Senate HELP Committee advances Acosta's nomination as head of DOL

At press time, Secretary of Labor nominee R. Alexander Acosta was nearing full Senate confirmation after the Senate Health, Education, Labor and Pensions Committee voted March 30 to advance his nomination.

President Donald Trump nominated Acosta to lead the Department of Labor after his first nominee, Andrew Puzder, withdrew his name from consideration. Acosta served in the Department of Justice during President George W. Bush's administration. He currently is dean of the law school at Florida International University.

Acosta emphasized the importance of worker safety during a March 22 hearing in front of the HELP Committee. He testified to committee members that "good jobs, safe jobs, should not be a partisan issue."

Sen. Lamar Alexander (R-TN), chairman of the committee, said Acosta had impressive credentials.

"He's been confirmed by the Senate three times – and I expect that we'll confirm him a fourth," Alexander said in a press release.

Acosta

Sen. Patty Murray (D-WA), ranking member of the committee, said she would vote "no" on Acosta.

"I continue to have serious concerns, given Mr. Acosta's professional history, about whether undue political pressure would impact decision-making at the Department should he be confirmed," Murray said in a press release. "My concerns were only heightened at our hearing, when Mr. Acosta deferred to the President and refused to take a strong stand on critical issues including … advocating for investments in job training and other key priorities of the Department of Labor."

The HELP Committee voted 12-11 to proceed with Acosta's nomination. The decision fell along party lines, with all 12 Republicans giving the green light to Acosta and all 11 Democrats voting against advancing his nomination. At press time, a full Senate vote had not been scheduled.

ASK THE EXPERT

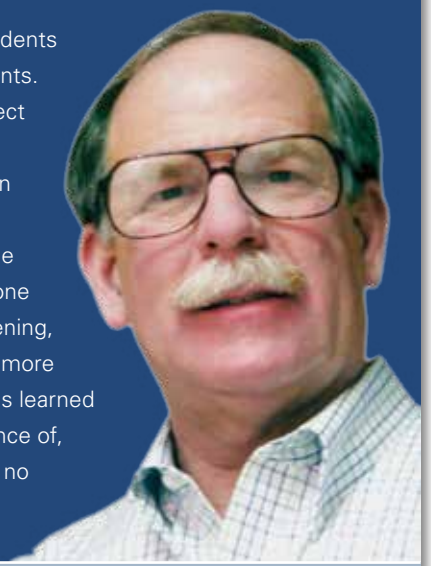
with Rick Kaletsky

Q: *Is there a danger in using the term "freak accident" when a workplace injury occurs?*

A: Absolutely. One dictionary defines "freak" as "a sudden and apparently causeless change or turn of events." Note the key word, "causeless." If the assumption of "causeless" is knee-jerk accepted upon hearing early, brief reports of what happened, the issue ends, as does any opportunity to prevent a similar incident. The "freak accident" conclusion is very often reached by an irresponsible person.

In many situations, I've heard "freak accident" used when explicit precipitating factors of the incident were easily discoverable. I refer to a rudimentary study – of the step-by-step sequence of actions and conditions leading to the injury – that could readily reveal the "fixable" causes, without even requiring highly sophisticated and profound technical examination.

To be fair, some injury-inducing incidents are the result of an unusual set of events. Maybe there was a tragic domino effect of things gone wrong. That's not the same as a "freak accident" that, when accepted as an excuse, means the incident was not foreseeable. If so, the next thought is that nothing can be done to avoid a similar situation from happening, and there's no purpose in conducting more than a cursory investigation. Nothing is learned to preclude, or greatly lessen the chance of, an employee again suffering because no solutions were brought to bear.



Former OSHA inspector turned consultant ***Rick Kaletsky*** *is a 46-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2nd edition, the book has been updated and expanded in 2016. Order a copy at* **www.nsc.org**, *and contact Kaletsky with safety questions at* **safehealth@nsc.org**.

In Other News…

Trump signs resolution to strike down 'Volks' recordkeeping rule

President Donald Trump has signed a Congressional Review Act resolution to repeal OSHA's "Volks" rule, which addressed employers' ongoing obligation to make and maintain accurate records of work-related injury and illness data.

Trump signed the measure (H.J. Res 83) into law April 4 following its passage in the House and Senate. Trump's signature nullifies the rule that gave OSHA the ability to enforce recordkeeping requirements for five-and-a-half years instead of six months. Employers still will be required to maintain injury and illness records, but OSHA's enforcement capabilities will be weakened.

OSHA published the rule Dec. 19.

Final rule on beryllium: OSHA delays effective date again

At press time, a final rule intended to protect workers from exposure to beryllium had been delayed a second time. The rule originally was scheduled to go into effect on Jan. 9 but was delayed until March 21. OSHA then pushed back the effective date again to May 20. However, the compliance dates for the final rule have not changed.

"The additional time will allow OSHA the opportunity for further review of the new Beryllium Final Rule, including review of concerns that commenters raised, and is consistent with the memorandum of Jan. 20, 2017, from the Assistant to the President and Chief of Staff, entitled 'Regulatory Freeze Pending Review,'" states a notice published in the March 21 *Federal Register*.

Exposure to beryllium can lead to chronic beryllium disease and lung cancer, according to OSHA.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Recording and Reporting Occupational Injuries and Illnesses

Standard: 1904.7(b)(4)
Date of response: Nov. 21, 2016

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. Specifically, you ask if the following scenario constitutes restricted work activity for OSHA recordkeeping purposes.
Scenario: An employee suffers a work-related laceration but is physically capable of performing all routine job functions. However, the employee is prevented from performing normal job duties in close proximity to the biological production area of the facility as a precaution against potential biocontamination of the output of its processes.

Response: Section 1904.7(a) of OSHA's recordkeeping regulation provides that employers must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in restricted work or transfer to another job. Restricted work occurs when, as the result of a work-related injury or illness, (a) an employer keeps the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or (b) a physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work. See, Section 1904.7(b)(4)(i).

Restricted work cases are those which involve restrictions that are imposed or recommended as the result of a work-related injury or illness. If an employee has a work-related injury or illness, and that employee's work is restricted by the employer to prevent exacerbation of, or to allow recuperation from, that injury or illness, the case is recordable as a restricted work case because the restriction was necessitated by the work-related injury or illness. Please note that if the employee's work-related illness or injury played any role in the restriction, OSHA considers the case to be a restricted work case. See, the preamble to the January 19, 2001, final rule revising OSHA's recordkeeping regulation at 66 *Federal Register* 5981.

In the scenario presented, the restriction was placed on the employee to protect the integrity of the product being produced rather than for preventing exacerbation of, or to allow recuperation from, that injury or illness. Accordingly, the case described above does not involve restricted work activity.

Sincerely,
Amanda Edens, Director
Directorate of Technical Support and Emergency Management

Excerpted from: ***www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31073***

OSHA
UP TO DATE

In This Issue

VOL. 46, NO. 5 | MAY 2017

OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States.

For single and bulk subscription prices, as well as mailing inquiries and address changes, contact NSC Customer Service at (800) 621-7619.

– continued from p. 1

controls, respirator availability and limited worker access.

"As we control these exposures, not only are we preventing [workers] from getting sick on the job, but there's a significant impact to off the job," Anna said. "Healthy workers are healthy citizens, and healthy citizens become more productive as members of their communities, as family members, and provide less of a burden onto the health care system."

Stakeholders and AIHA members have reported increasing employer comfort with the rule's exposure limits, Anna contended. "Once they recognize what controls are being requested and what technology is available that prevents those exposures, the implementation is nowhere near what they expected," he said.

OSHA presented the rule as separate standards – one for construction and one for general industry and maritime. At press time, general industry, maritime and hydraulic fracturing industries were expected to comply by June 23, 2018. Hydraulic fracturing will have until June 23, 2021, to meet engineering control requirements.

'Keep up the fight'

Michaels disputed the allegation that the final rule would strain employers and ultimately lead to job losses.

"This will not kill jobs," Michaels said. "But every time OSHA issues a standard, there's always the [retort], 'This is going to kill jobs, and we're not going to be able to work anymore.' Anyone here go to a dentist recently where they didn't use gloves?"

Michaels said that although the final rule would cost industry $1 billion per year, its annual net benefits were expected to range between $3.8 billion and $7.7 billion. "We're talking about people not dying of cancer and silicosis and having productive lives, and that's what the benefit is. The benefits are many times the cost," he said.

Reps. Joe Courtney (D-CT), Carol Shea-Porter (D-NH) and Darren Soto (D-FL) also were present at the briefing.

Shea-Porter admittedly brought a "personal interest" to the proceedings. A former factory worker once exposed to chemicals herself, Shea-Porter said her mother, a former shipyard worker, died from chronic obstructive pulmonary disease – although she noted that her mother's occupational exposure was not confirmed as the root cause. In addition, Shea-Porter said her mother-in-law died from lung disease.

"So when I think about workers who are unnecessarily exposed to this when there are ways to mitigate the impact and reduce the exposure, it just seems like a no-brainer," Shea-Porter said.

Added Courtney: "We look forward to using whatever record that you guys create here today to keep up the fight both in the committee and on the floor."