



Honorable Joseph Alioto, Jr., Chair
Occupational Safety and Health Standards Board
California Department of Industrial Relations
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**RE: Proposed Permanent Regulations for Occupational Exposures to Respirable Crystalline Silica –
OPPOSE UNLESS AMENDED**

Dear Chair Alioto,

Thank you for all your work and collaboration with the surface fabrication industry on regulations that will protect workers from a preventable illness – silicosis. This unprecedented partnership promises to achieve our common goal of reducing and possibly eliminating cases of silicosis through industrywide workplace safety practices.

We are down to the final minutes of drafting what will be very strong regulations governing the surface fabrication industry at every level. We all want to make sure we are doing the right thing for workers, the industry and consumers.

As we evaluate remaining adjustments to the final regulations before they transition from the Emergency Temporary Standard (ETS), we need to focus on three major criteria:

1. Will the final regulations effectively protect workers?
2. Will the industry voluntarily comply with the regulations?
3. Finally, are the regulations a common-sense solution?

Background

Various industry and Public Health research has shown that cases of silicosis are originating in shops that were not complying with existing Federal OSHA 2016 regulations. They already had much higher levels of respirable crystalline silica (RCS) than the action level (AL) and permissible exposure limit (PEL). These shops all had visible DUST that was not being controlled. Some of the noncompliance was due to ignorance and some was due to disregard of the law entirely. The existing regulations were burdensome for enforcement because they allowed for procedures that were guaranteed to contribute to silicosis, without the enforcement agent being able to stop these practices easily. This set the wheels of the ETS in motion. Industry collaborators showed that **completely eliminating ALL dry methods of fabrication and cleanup** would give enforcement an “easy button” to halt operations in the biggest offenders immediately. These offenders were also knowingly operating illegally in other areas of their business and did not have concern for their employees or following the law.



Industry associations and Public Health formed an extensive, multi-language, education outreach campaign to reach operators and employees who were unaware of the danger of not following the existing regulations or best practices for controlling RCS dust. This outreach has been VERY successful in informing operators and employees of the need for engineering controls and elimination of **ALL dry methods of fabrication and cleanup**. Cal/OSHA has since worked to make the old regulations and ETS permanent and even more restrictive.

1. Will the final regulations effectively protect workers?

The federal OSHA 2016 regulations, if properly followed, can effectively protect workers from silicosis. Some of Cal/OSHA and industry's additions through the ETS increase safety for employees even further and data confirms it. Taking a reasonable approach and following proven safe methods of countertop fabrication will continue to provide safe and well-paying jobs to the many thousands of workers employed in the industry. Overburdening the industry with regulations will not have the desired result of protecting workers. Much like wearing two seat belts does not protect another person who is not wearing a seatbelt from injury in a vehicle accident, our goal should be to increase awareness of the need to wear a seatbelt by those not wearing one. This includes employers and employees. Many employers spend their time trying to keep their business operating and their employees paid, and do not have the resources to keep track of all the regulations and laws governing their businesses. The seriousness and publicity of the silicosis issue has made the topic something that can no longer be ignored. Industry and Public Health must unite with effective outreach that will provide needed safety information for employers and benefit all workers.

2. Will the industry voluntarily comply with the regulations?

Cal/OHSA and Public Health frequently estimate the number of countertop shops in California, of any size, to be about 860. Material and tool supplier's customer lists put the estimate at over 3,000. This not only changes the percentages of silicosis case data, but also shows that there are a lot more employers taking safety precautions than previously noted. Continuing the education outreach, simplifying the permanent regulations to encourage voluntary compliance, increasing enforcement efforts, and avoiding new onerous regulations on shops complying with the AL and PEL will do more to prevent silicosis than implementing stricter regulations that will strangle previously compliant shops. The vast majority of operators our industry wants to do the right thing for their employees and customers. They need to be recognized and rewarded – not penalized – for their efforts.

Many aspects of the proposed permanent regulations are unnecessary for shops with air readings below the PEL and especially the AL. Required respirators, constructing a designated area, using only Certified Industrial Hygienists (CIH) for air monitoring and frequent mandatory medical screening, among other requirements, would burden shops of every size with tens of thousands of dollars in new compliance-related costs.

Just requiring a CIH to do every air sampling test every six months will cost even the smallest shops \$3,000-8,000 every year when they can self-test every six months with a certified lab for a few hundred dollars a year and require



a CIH once every three years as a control. Businesses already perform self-testing that requires training. An example is Lead Renovator certification.

Providing reasonable and optional (employees must voluntarily opt in) medical testing every three years would prove that air monitoring is accurate – no cases of silicosis would show compliance with best practices.

The initial costs of respirators can range from \$50 each to over \$2,000 each. The least expensive filter replacements run over \$30 a set and can be soiled in minutes and at best need to be changed every week. Replacement cartridges alone can average \$1,200 a week for a medium-sized shop and even higher for larger shops – even if air monitoring shows below the PEL or even the AL.

Making the permanent regulations simple, cost-effective, and providing a tiered incentive for compliance instead of being overly onerous, *will* encourage and result in a high level of voluntary compliance.

3. Is it a common-sense solution?

Reported cases of silicosis are coming from shops above the AL and PEL. As stated many times, these shops are not following existing regulations through either ignorance or defiance. Increasing regulations on compliant shops will not help employees working at non-compliant shops. There are many unintended consequences of added restrictions on compliant shops. We have seen employees leave shops that are requiring respirators (because of the ETS) to go work for shops that do not require respirators (non-compliant and defiant operators). They leave because the respirators are uncomfortable, hot and sweaty to wear, and they restrict vision to the point of increasing trip and fall incidents.

Requiring a designated area restricts office workers from using the restroom without a respirator in most cases. The five-minute incidental exposure limit over eight hours in a designated area doesn't even allow for travel between the office and restroom for a normal amount of bathroom breaks in a day.

We know where the cases of silicosis come from – shops that were not even complying with the federal OSHA 2016 standards. Cal/OSHA now has an “easy button” for enforcement to identify the biggest threat to workers –

ANY dry fabrication method! Industry associations and Public Health have extensive educational outreach programs that didn't exist until recently. All of this, combined with sensible tiered regulations, will provide the best opportunity for protecting all workers from silicosis.

Cal/OSHA reported about 60 enforcement inspections this year. Using the state's estimate of 860 shops, it would take nearly 15 years to inspect every shop. If the number is closer to our estimate of over 3,000 shops, it would take 50 years to inspect every shop. Some operators will risk the odds of inspection against the cost of compliance and losing employees. THIS WILL NOT HELP CONTAIN THE CASES OF SILICOSIS.



Placing additional onerous regulations on the shops that already comply with the 2016 standards and have no current cases of silicosis will also NOT contain the cases of silicosis. It will only force them to close or leave the state, reducing the number of safe options for the workers in this industry to be employed. This will have another unintended consequence: Higher unemployment levels among workers and families who depend on the fabrication industry, thereby creating additional financial burden for the state.

Conclusion

Silicosis is a serious but preventable illness. The recent increase in cases is caused by shops that have not been following responsible and required safety practices. Most often they are violating other mandatory business requirements like providing workers compensation insurance and misclassifying employees as independent contractors to reap a bigger profit and operate cheaper than companies who are following regulations and laws.

Implementing common-sense regulations will help good operators protect their employees without unnecessary hardships. Saddling good operators with additional or unnecessary regulations will not have the desired result of preventing silicosis and may actually increase cases as employees leave to work at non-compliant unsafe shops.

Having strong enforcement of common-sense regulations will help weed out bad operators that are neglecting employee safety. But the key to real change and real results in the fight against silicosis in the industry will come with changes to the supply chain, specifically a licensing program for fabricators. Fabricators that follow safe practices would be licensed and suppliers/manufacturers would only be able to sell to licensed fabricators.

It's not feasible for Cal/OSHA to inspect all the fabricators where silicosis is occurring, but we can make it so unsafe shops cannot buy material to operate. We will continue to work with state legislators to accomplish this.

Regards,

A handwritten signature in black ink that reads 'Marissa Bankert'. The signature is written in a cursive, flowing style.

Marissa Bankert

CEO

International Surface Fabricators Association