

April 28, 2009

INTERNATIONAL
SAFETY EQUIPMENT
ASSOCIATION



Jordan Barab
Acting Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Ave., NW
Washington, DC 20210

RE: Petition for Expedited Rulemaking to Amend Regulations at 29 CFR 1910.94

Dear Mr. Barab:

The International Safety Equipment Association (ISEA) and the Risk and Insurance Management Society (RIMS) pursuant to subsection 553(e) of the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* and section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. § 655 hereby jointly petition the Occupational Safety & Health Administration (OSHA) to conduct rulemaking, on an expedited basis, to amend administration regulations at 29 CFR 1910.94, regarding the use of silica sand in abrasive blasting to the effect that use of silica sand in abrasive blasting would be rendered a "prohibited practice."

There are several important reasons for OSHA to act expeditiously in this matter:

- 1.) First of all, sandblasting continues to be one of the areas of greatest exposure to respirable crystalline silica, a potentially hazardous substance.
- 2.) The U.S. Government has promulgated standards for such other hazardous substances as lead, asbestos, cadmium, benzene, ethylene oxide and other toxins, but not for silica. OSHA has acknowledged that the Permissible Exposure Limit (PEL) for crystalline silica is seriously outdated, as is OSHA's abrasive blasting standard. The issue of a standard for quartz has been on OSHA's regulatory agenda since 1974 when NIOSH recommended the standard be updated, but, as you know, action on a "complete" health standard is slow. Thus, we suggest that OSHA act now to declare the use of silica sand in abrasive blasting a "prohibited practice."
- 3.) It is a fundamental tenet of industrial hygiene that, whenever possible, the employer should rid the atmosphere of toxic substances in lieu of relying upon personal protective equipment such as respirators. This principle of industrial hygiene is, in fact, incorporated into the OSHA regulations at 1910.134 and 1910.1000. Silica containing abrasives need to be removed from the workplace, if not voluntarily, then by law.
- 4.) Many countries have banned the use of silica sand in abrasive blasting including Great Britain (in 1949), Germany, Sweden and Belgium. These countries have demonstrated their concern for safety and health and have paved the way for safer work practices. These industrialized nations have also demonstrated that the abrasive blasting process can be carried on effectively without the use of sand. The U.S. Navy, the Air Force, the U.S. Coast Guard and twenty-three State Departments of Transportation have banned the use of silica in abrasive blasting. State DOT's that have banned the use of silica include: CT, GA, IA, IL, MA, MI, MS, NH, OH, OK, PA, SC, VA, WA and WI. State

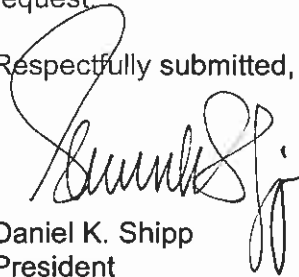
DOT's that have banned silica with some exemptions include: AK, MO, NJ, TX, VT and WY. In total, twenty-one states have recognized the hazards associated with silica sand in abrasive blasting. NIOSH has recommended banning the use of silica in abrasive blasting since 1974 (NIOSH Criteria Documents-Criteria for a Recommended Standard: Occupational Exposure to Crystalline Silica, 1974, DHHS (NIOSH) Publication No. 75-120, Chapter 1, p.10).

- 5.) There are numerous alternatives that are less dangerous and more economical for abrasive blasting than using silica sand. Steel shot, for example, though costing more than an equal quantity of sand, can be used and re-used for up to 1,800 different passes, making it not only safer, but much more economical as a blast agent in the long term. The abrasive blast industry should not be negatively affected by a ban on the use of silica sand.
- 6.) In addition, the costs associated with the litigation resulting from claims of silica exposure must be considered. Thousands of lawsuits in which workers are claiming illness from exposure to silica during abrasive blasting are currently pending. More than 30,000 workers have filed a lawsuit since 2002, each claiming illness from exposure to silica sand. The vast majority have been filed in Texas and Mississippi. Historically, there are dozens of defendants in these cases. While there has been evidence in recent years that many of these claims are baseless, the financial and other costs associated with defending these lawsuits for the entire industry are staggering.
- 7.) Finally, and most importantly, the Department of Labor has been charged with the responsibility to protect American workers. OSHA should act now to fulfill its mandate to all American workers by declaring the use of silica sand as a prohibited practice.

Accordingly, Petitioners respectfully request that OSHA grant this expedited Petition for Rulemaking and proceed to promulgation of the changes recommended herein as expeditiously as possible. We appreciate the opportunity to present this Petition and our organizations will gladly provide any information and other assistance that OSHA may require in considering this request.

Respectfully submitted,

Daniel K. Shipp
President



The Risk and Insurance Management Society, Inc. (RIMS) supports the **Petition for Expedited Rulemaking to Amend Regulations at 29 CFR 1910.94** to the effect that the use of silica sand in abrasive blasting would be rendered a “prohibited practice.”

The Risk and Insurance Management Society, Inc. (RIMS) is a not-for-profit organization dedicated to advancing the practice of risk management. Founded in 1950, RIMS represents more than 4,000 industrial, service, nonprofit, charitable and governmental entities. The Society serves more than 10,500 risk management professionals around the world.

By Mark Prysock General Counsel 3/19/09
Mark Prysock Title Date