



Construction Safety Regulators Ramp Up Silica Rule Enforcement

By Bruce Rolfsen

Posted Nov. 5, 2018, 2:37 PM

- 640 violations cited since enforcement began
- OSHA could ask for more recommended changes to rule

One year into new federal requirements protecting construction workers from inhaling silica dust, safety inspectors found 640 violations, a Bloomberg Law analysis of enforcement reports shows.

While far less than the 7,270 construction fall protection violations cited by federal authorities in fiscal year 2017, the silica violations show the federal Occupational Safety and Health Administration and state agencies expect contractors to adhere to OSHA's newest construction mandate.

The construction silica rule and related regulations for other industries should annually prevent 642 deaths and 918 moderate to severe lung disease cases, OSHA predicted when it released the rule in March 2016. The agency estimated the annual cost of implementing the rule at \$1.03 billion. However, safety consultants and employer representatives said OSHA underestimated the compliance costs by as much as tenfold.

Additions Coming

And while enforcement continues, the Occupational Safety and Health Administration is considering revising which methods are acceptable for reducing exposure to the potentially toxic dust. Inhaling silica dust can scar lungs, making it difficult for exposed workers to breathe, and could lead to death. The agency might ask for suggestions as early as December for additions to its instructions, called Table 1 (RIN:1218-AD18).

“Associated Builders and Contractors looks forward to OSHA issuing a request for information on Table 1, as there are still challenges to the use of the Table in a number of construction activities performed by ABC members,” Greg Sizemore, vice president of health and safety for the group, told Bloomberg Law.

In particular, contractors want OSHA to expand the types of acceptable methods for reducing dust, Sizemore said. Many of the currently listed methods involve using water for limiting the spread of dust and often aren’t practical.

Inspectors began issuing citations in September 2017. Contractors had 18 months to prepare for the rule following its release in March 2016.

To comply, contractors had to reduce permissible amounts of airborne silica exposure by 80 percent of the prior mandate.

To meet that goal, OSHA expected employers to use vacuums mounted on saws and drills tools, use water to wet surface stone and concrete surfaces while cutting was going on, and measure airborne silica amounts to learn if the precautions were effective.

Not Measuring Up

Federal OSHA and state agencies enforcing the same set of rules issued citations for 640 violations since the enforcement began.

The most frequently cited part of the silica rule was employers failing to measure airborne silica levels to determine if workers were endangered, enforcement data show. Inspectors cited 144 violations of the sampling requirement (29 C.F.R. 1926.1153 (d)(2)(i)).

Nearly as many violations—141—were found of the mandate for employers to follow OSHA’s instructions on using construction techniques intended to reduce how much silica is released into the air (29 C.F.R. 1926.1153 (c)(1)).

The lack of a written silica exposure prevention plan led to citations for 125 violations (29 C.F.R. 1926.1153 (g)(1)). The plan is expected to explain how contractors will protect workers at their construction sites.

Of the other silica protection requirements, an employer failing to educate workers about the hazards of silica exposure was a commonly cited issue, leading to citations for 55 violations (29 C.F.R. 1926.1153 (i)(1)).

Mostly Serious

Violations labeled “serious” because there was a “substantial probability that death or serious physical harm” could come from the exposure accounted for 77 percent of problems cited by inspectors.

All but three of remaining violations were classified as other-than-serious, meaning the hazard wasn’t likely to harm a worker.

Three willful violations were cited, alleging an employer showed either an intentional disregard for the rule’s requirement or indifference to employee safety and health.

The trio of willful violations all came from Virginia’s Occupational Safety and Health Program against a highway construction contractor and carried a proposed fine of \$96,000 each, the most costly sanction sought for silica violations. The company, Lanford Brothers Co. of Roanoke, Va., is contesting the violations.

To contact the reporter on this story: Bruce Rolfsen in Washington at brolfsen@bloombergenvironment.com

To contact the editors responsible for this story: Cynthia Harasty at charasty@bloomberglaw.com; Terence Hyland at thyland@bloomberglaw.com

Related Articles

Silica Dust Safety Violations Lead to Possible Record Fine
(Aug. 30, 2018, 10:18 AM)

Silica Safety Enforcement Ramps Up at Construction Sites
(April 24, 2018, 7:06 AM)

D.C. Circuit Rejects Industry Challenges to Silica Rule
(Dec. 22, 2017, 11:17 AM)