

## Construction Industry Safety Coalition (CISC)

### Talking points for Silica Conversation with Secretary of Labor Alexander Acosta

September 19, 2017

- Thank you, Mr. Secretary, for taking the time to speak with me.
- As you know, one of the most important issues to the construction industry is OSHA's crystalline silica rule. Since the rule was promulgated, the industry been working hard to try to get into compliance, but for several reasons the rule is simply unworkable. Equipment manufacturers have not developed the range of compliant tools, there is very little objective data available demonstrating that tools can comply, and Table 1 – OSHA's preferred method of compliance for construction employers – is only of limited utility.
- The Construction Industry Safety Coalition (CISC), made up of 25 trade associations representing all sectors of the construction industry, have been meeting with Department of Labor (DOL) career staff to work through these issues and we thought that they had a general agreement on a path forward to resolve their concerns consistent with OSHA's rulemaking authority, which included a Request for Information and a flexible enforcement policy to provide employers some relief from citations if they are demonstrating good faith in trying to comply with the standard, as OSHA did with its Confined Spaces rule.
- The CISC just learned that aspects of this agreement are not now on the table, including a flexible enforcement policy. This is of tremendous concern to the construction industry who cannot comply with the rule as written and are now facing the prospect of significant citations from OSHA. Note that OSHA initially delayed enforcement by 90 days to provide additional outreach and guidance to employers. The construction industry has not seen any new guidance material issued by the Agency in the last 90 days that would help employers be in compliance with this rule. OSHA has also not published enforcement guidance to compliance officers on how to enforce the rule at least that they are aware of, which would be of value to the regulated community.
- The CISC has worked very hard with DOL career staff to come up with a path to move forward to protect workers, but to do so in a way that is workable in construction. After believing the CISC had a path forward, it is very discouraging and they are concerned that just four days out from the compliance deadline they are hearing that a flexible enforcement policy is off the table.
- The CISC has been hearing that the building trades union is behind the Department's decision not to grant the construction industry additional time to come into compliance with the silica rule. This make little sense for two reasons: first, the manufacturing industry sector has been provided two years to come into compliance, while the construction industry, with its wide variability of tasks and exposures, was given only one; and second, the union membership rate for the entire construction industry is only 13%, but it is the construction employers that are responsible for implementing OSHA's unworkable rule.
- In case there is any confusion, this is a critical issue for the construction industry and this latest development is of great concern. The CISC remains committed to working with you and the DOL career staff – as they have done to date – but feel that their concerns are not being heard by the Department. ***I would respectfully ask that you reconsider the decision not to provide some enforcement relief to the construction industry.***