

**TESTIMONY OF SCOTT SCHNEIDER,
DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
LABORERS' HEALTH AND SAFETY FUND OF NORTH AMERICA
PUBLIC HEARING ON THE PROPOSED SILICA IN CONSTRUCTION RULE
APRIL 4, 2014**

Good afternoon. My name is Scott Schneider. I am the Director of Occupational Safety and Health for the Laborers' Health and Safety Fund of North America (LHSFNA). The Health and Safety Fund is a joint labor-management trust fund affiliated with the Laborers' International Union of North America (LIUNA). LIUNA represents approximately 500,000 workers in the U.S. and Canada, most of whom do construction work. The Health and Safety Fund was created 26 years ago to help LIUNA's members improve their health off the job and to help signatory contractors improve safety performance on their construction sites. I have been the Director of the Occupational Safety and Health Division for almost 16 years and have worked in occupational safety and health for various Unions for the past 32 years. I have participated in numerous OSHA rulemakings starting with the asbestos hearings in 1984. I have been a member of the OSHA Advisory Committee for Construction Safety and Health (ACCSH) and the NIOSH Board of Scientific Counselors. I am a Certified Industrial Hygienist. I am also a fellow member of the American Industrial Hygiene Association and was awarded the William Steiger Award by the American Conference of Industrial Hygienists (ACGIH) in 2010. I have published numerous peer-reviewed scientific papers and book chapters on a variety of topics such as occupational epidemiology, construction ergonomics and noise.

We greatly appreciate the opportunity to testify at this hearing. Laborers have some of the highest exposures to silica among the construction trades because of the nature of their work. Laborers use jackhammers to break up concrete. They cut concrete, brick and block. They do demolition work, highway work, building construction and pipeline work as well as renovation. They also do cleanup work, which involves sweeping dust that has been generated by uncontrolled processes. They often work adjacent to dust-generating operations.

We have long been concerned about the hazards of silica and have been disturbed by the long delays in promulgating this standard. NIOSH proposed a comprehensive standard 40 years ago and OSHA published a Federal Register notice that same year requesting feedback on whether the permissible exposure limit (PEL) should be reduced to 50 micrograms per cubic meter. No actions were taken until the late 1990s when OSHA began working on a comprehensive standard. In the past 40 years, our knowledge about the dangers of silica and ways to control it has grown tremendously. Recent studies show a clear danger from exposures at the current PEL. Studies in Holland (which were submitted to the record) showed early signs of silicosis among 10 percent of 1,339 construction workers screened who had only 19 years of exposure and an average age of 42. Among these construction workers, 2.9 percent had 1/1 X-rays. The Dutch exposure limit is only 75 micrograms per cubic meter. These studies showed a clear dose-response curve. While we might be sympathetic to those willing to institute all the other provisions of the standard and leave the PEL at 100, the data show a disturbing risk at that level, making that position untenable.

This isn't some theoretical or hypothetical problem; it is a very real one. Despite all the claims that silicosis is disappearing in this country, the only reason that appears to be the case is that we haven't looked for it. We have no real surveillance system in this country for occupational lung disease. Construction workers who change jobs frequently certainly are not being screened for it. I was disturbed to hear at these hearings last week that a company which seemed to be doing all it could to protect its workers, including giving them medical exams, failed to give them chest X-rays as part of those exams. A few years from now, should workers from that company discover they have silicosis, they are going to wonder why it was not identified earlier. I suspect there might be some liability at that point, as well as some regret.

The employer associations who have testified at this hearing who are convinced that silicosis is a thing of the past have been deceived by the silicosis mortality data. They haven't looked at all of the data, which tells a very different story. This is before we even go into the evidence on lung cancer, renal disease, etc.

Likewise, they have been convinced that a 25 microgram action level is unmeasurable. Yet for years, the ACGIH has had a 25 microgram limit as have some jurisdictions (e.g., Alberta) The 50 microgram standard is easily measured using current 1.7 liter pumps. 4.2 liter pumps are widely available. They draw over twice as much air per minute and consequently can easily measure half the 50 microgram level. It is simple math.

Industry claims the standard is economically infeasible, but the benefits vastly outweigh the costs even if OSHA's estimates are low. The arguments made by industry to try and inflate the costs have been almost laughable. To suggest that OSHA has to consider the costs incurred by 2.5 million self-employed workers in construction just doesn't hold water. Just about every OSHA standard which has had a "look back" has shown the costs to be greatly overestimated as industry has innovated to meet the new standard. These claims should probably be considered just that – claims, with little to support them.

So the issue boils down to technological feasibility. We have reviewed the data in the record carefully. From our reading, we are convinced that most operations can meet the 50 microgram standard most of the time. This is particularly true as many of these tasks are not performed for a full day. OSHA acknowledged that in Table 1 by allowing for the use of controls without respiratory protection for many operations of four hours or less. We believe a new OSHA standard with a lowered PEL will spur innovation in the construction industry to meet the challenge. We have already seen how industry can partner with labor and manufacturers to reduce exposures successfully in NAPA's testimony on the asphalt milling partnership. Could other sectors duplicate this effort? Absolutely. Every month, we see trade magazines touting new tools with dust-collecting equipment to "help employers comply with a proposed OSHA rule." This will only increase. With a lax standard and little enforcement, many uncontrolled operations are exposing thousands of construction workers every day to dangerous clouds of silica. This standard will help shift the industry to controlling exposures as the norm and simultaneously change the culture from a lack of regard for worker health to concern and

attention to it. Right now, workers are suffering the impact of this neglect. By changing the culture through a new standard, we can preserve worker health, help construction workers lead longer and healthier lives and, based on much of the testimony to date, likely make work more productive in the process.

We fully support this effort. We also support the comments from the Building and Construction Trades Department and the AFL-CIO, both of which we worked closely with in developing their comments.

We would also like to echo the comments of the International Union of Operating Engineers about the need to reconsider how demolition work is approached and how it might be covered in Table 1. Demolition by its nature involves the crushing of construction materials which contain silica. Operators can be, and should be, protected in air-conditioned cabs with filtered air. Laborers who assist operators on the ground may have higher exposures. In addition, LIUNA's members are involved in shotcreting and guniting operations where concrete is basically sprayed onto surfaces. These operations are generally done in closed or confined spaces so, even though these are wet operations, there is the potential for high exposures. These operations need to be reviewed by OSHA before the final rule is promulgated.

Now I would like to introduce the rest of our panel who will address specific elements of the proposal.

Walter Jones from the LHSFNA will discuss control technology.

Travis Parsons from the LHSFNA will discuss competent person requirements.

Dr. Jim Melius from the NYS Laborers' Health and Safety Fund and the LHSFNA will discuss the medical surveillance requirements.

Eddie Mallon, Laborers' Local 147, New York City, will discuss his experiences as a sandhog.

Ken Hoffner from the New Jersey Laborers' Health and Safety Fund will discuss the work of the Silica Partnership in New Jersey.

Tom Nunziata from the LIUNA Training and Education Fund will discuss the training requirements.

**TESTIMONY OF WALTER JONES,
ASSOCIATE DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH
LABORERS' HEALTH AND SAFETY FUND OF NORTH AMERICA
PUBLIC HEARING ON THE PROPOSED SILICA IN CONSTRUCTION RULE
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Hi, my name is Walter Jones and I am the Associate Director of the Occupational Safety and Health Division of the Laborers' Health and Safety Fund of North America (LHSFNA) and a Certified Industrial Hygienist. For six plus years, spanning two administrations, I have served as an employee representative on OSHA's Advisory Committee on Construction Safety and Health (ACCSH). I have co-chaired ACCSH's Silica Workgroup with Matt Gillen, NIOSH and various ACCSH employer representatives. Most of our early work focused on the development of a task-based approach to controlling exposure to silica and the use of objective data as a substitute for sampling. Our Workgroup meetings were heavily attended by construction industry stakeholders, many of whom are in this room today. Although the rules did not require it, the Workgroup not only reached a consensus among ACCSH members, but also sought out the "sense of the room" – non-binding votes of all in attendance before we advanced any topic. It was clear to all ACCSH stakeholders that the current IH exposure assessment model was not an efficient method for controlling construction exposures. ACCSH members and other construction industry stakeholders all agreed that it would be more effective and efficient to tie silica control to worker tasks and activities. The 2003 OSHA Small Business Regulatory Enforcement Fairness Act (SBREFA), Georgia Tech OSHA Consultation Program, ASTM Silica Standard and silica control matrix supplied by the LHSFNA all led the ACCSH to recommend that OSHA include a similar compliance alternative for construction in the proposed rule.

At the December 2009 ACCSH meeting, an OSHA Directorate of Standards and Guidance (DSG) panel (Director Dorothy Dougherty, Deputy Director Bill Perry and David O'Connor) provided a PowerPoint presentation describing OSHA's most current thinking on the requirements currently under consideration for the proposed silica standard, with an emphasis on areas of change from the version previously prepared for the SBREFA review. After the presentation, I moved for (1) the ACCSH to support an expanded concept of Table 1 in the 2003 SBREFA draft; (2) the inclusion of a competent person requirement into the proposal; and (3) the exemption of employers from monitoring requirements if they implement specific controls from Table 1. All passed unanimously.

As we look out across the country, we see that states and municipalities are passing laws to protect their citizens and workers from silica containing dust. The states of California and New Jersey and the cities of Boston and Chicago prohibit dry cutting/pulverizing without ventilation or wet methods and respirators. Many more require the control of all fugitive dusts.

On a project at the Harvard Fogg Museum in Boston where we looked at silica controls and smoking cessation efforts, the workers reported that dust control use was based on whether the project was within the city limits. At the CPWR Silica Control Workgroup meeting in Chicago, researchers documented the unusual prevalence of dust control use in the city of

Chicago. Recently, I toured the Bay Bridge demolition project in San Francisco where it is required that all forms of dust be captured, controlled and not allowed to fall into the Bay, neighboring properties or onto the ground below the bridge. I also recently toured the new 49ers stadium project in Santa Clara. On that project, subcontractors reported that dust control efforts, whether environmental or occupational, are commonplace and were treated equally. Dust control on construction projects is already an important responsibility of contractors and not a new concept. As matter of fact, we can only expect efforts to intensify in the future. Therefore, it is time to even the playing field and hold all parties to the same standard – whether we are talking about non-compliant contractors, rural communities or workers' health.

Many localities have rejected the idea that contractors are not responsible for the dust plumes created during construction activities. Contractors are not allowed to let dust plumes blow into neighboring yards, streams or sewers. I cannot impress upon you the concern expressed by signatory contractors and affiliates throughout the years because silica dust plumes have rained down on cars or the fear expressed when it was realized that pedestrians may have to walk through such plumes. Whenever I have helped on a project to abate these environmental concerns, worker exposures were never brought up. It was up to me to make the case for controlling dust at the source through ventilation and water instead of opting to the default position of enclosure. How many times do we see that the response to these environmental concerns is to button up the project into a plastic balloon to protect nearby cars and pedestrians? Often, this only increases worker exposures.

The beauty of Table 1 is in its ability to be both pragmatic and forward-leaning. Occupational dust control is as much an art as it is science. For example, exposures can easily go from compliant to hazardous based solely on the operator, contractor, experience or maintenance level of equipment. It is vitally important that OSHA not only automatically require control activities for every task and tool, but also enforce the notes section of Table 1 to prevent uneven application of compliance activities that may easily turn hazardous. Table 1 not only makes compliance easier to determine, enforce and teach, but it also assures an acceptable level of healthfulness. At its core, the proposal is a technology -forcing standard without which we would be stuck listening to the flat-earthers tell us that the hierarchy of controls is outdated and the future of worker health is with respirators. To them I say, "I got a bridge in Brooklyn for sale."

Our brothers and sisters on the environmental side do not have to deal with such lack of concern about a problem. Environmentalists did not have to ask Americans to wear respirators because it was infeasible for industry to remove lead from gasoline and because it would cost America jobs. Instead, they fought to have lead removed from gasoline, which became one of the greatest public health successes of our lifetime. Around the globe, other rich industrialized countries chose to side with the infeasibility argument, which forces their citizens to walk around with respirators through murky clouds of dust, particulate matter and pollution.

OSHA's forward-leaning proposal will create an environment wherein equipment manufacturers can aggressively develop and promote existing new control technology. As Ken

mentioned, we have worked to develop a jackhammer dust control protocol and in spite of what I testified to today, the equipment manufactures tell us that there is no market for it. There has always seemed to be a tacit compact between equipment manufacturers and for that matter the entire construction industry, of not using "worker health and safety" to a competitive advantage. I'm often told by equipment manufacturers that the demand does not exist for safer equipment or that they do not want to assume some perceived "liability" if abatement does not work as advertised; to which I reply that those same manufacturers have never been to a health food store where every product promises strength, vitality and long life. Imagine that. Earlier this week, the MCAA reported here that diamond blade saw suppliers are declaring that that water used to keep their products maintained has nothing to do with dust control. They are afraid to even acknowledge the positive ancillary worker health benefits associated with the proper use of the equipment. Equipment manufactures seem fearful of breaking the silent compact on worker safety and willing to continue to wait on the sidelines for OSHA to require their participation. When equipment manufacturers do start fully participating, it will be for OSHA compliance purposes only. That is why it is imperative that OSHA move forward with the standard. I am convinced that the dust capture and control market will take off with a little prodding. Can you imagine if the free market just applied 10 percent of the technology used in my phone to dust control to make products more responsive, companionable and comfortable? Greater production, use and protection would be ensured.

**TESTIMONY OF TRAVIS PARSONS,
SENIOR SAFETY & HEALTH SPECIALIST
LABORERS' HEALTH AND SAFETY FUND OF NORTH AMERICA
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Introduction

Hello, I am Travis Parsons, the Senior Safety & Health Specialist at the Laborers' Health & Safety Fund of North America (LHSFNA). I have worked as a safety and health professional at the LHSFNA for 12 years. I provide an array of safety and health services to the members and signatory contractors of the Laborers' International Union of North America (LIUNA) on issues concerning workplace safety and health on a multitude of worksites throughout the United States and Canada. I would first like to thank OSHA for the opportunity to testify today and commend the Agency on moving forward on a very **important** standard for LIUNA's members and the construction industry. I have participated in OSHA's rulemakings on Chromium (VI), Cranes and Derricks in Construction and Confined Spaces in Construction. I am also an OSHA Master Instructor for OSHA 500/502 courses in the construction industry. I have been on many worksites and seen first-hand that many construction workers are repeatedly exposed to excessive amounts of toxic silica dust, which is a known human carcinogen. In a statement to the Center for Public Integrity, OSHA itself called silica one of the most pervasive hazards found in the workplace. In my testimony, I am going to focus on question #35 from OSHA's identified issues with the proposed rule:

***Competent person:** OSHA has proposed limited duties for a **competent person** relating to establishment of an access control plan. The Agency did not propose specific requirements for training of a **competent person**. Is this approach appropriate? Should OSHA include a **competent person** provision? If so, should the Agency add to, modify or delete any of the duties of a **competent person** as described in the proposed standard? Provide the basis for your recommendations.*

Competent Persons

To me, including **competent person** provisions in the new rule are a no brainer. Almost every organization that I have heard testify over the past three weeks has mentioned something about the variability in the construction industry and the transient nature of the workforce. This alone **exemplifies** the need for stronger **competent person** requirements in a silica standard for the construction industry. OSHA defines a **competent person** as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them" [[29 CFR 1926.32\(f\)](#)]. By way of training and/or experience, a **competent person** is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation and has the authority to correct them. Some standards add additional requirements which must be met by the **competent**

person. When it comes to silica, a **competent person** is needed to ensure that controls are working properly to protect workers. **Competent person** requirements are especially useful for health standards because of the unique training and knowledge a person will need to be a suitable **competent person**. Furthermore, if contractors rely on Table 1 for compliance, there may be a need for respirators as a last means of defense. This is another reason to have a capable **competent person** on site that can make the appropriate decisions to protect their fellow workers. A **competent person** is also a powerful tool to reduce exposures in environments that are especially hazardous, such as in abrasive blasting and regulated areas. A 2013 white paper published by the American Industrial Hygiene Association (AIHA), titled *Recommended Skills and Capabilities for Silica **Competent Persons***, states that a key component in preventing overexposure to silica and subsequent disease is to have at least **one individual** on the worksite who is capable of recognizing and evaluating situations where overexposure may be occurring, who knows how to evaluate the exposure potential and who can make an initial recommendation on how to control that exposure. This is a **competent person**. In a 2009 meeting, OSHA's own Advisory Committee for Construction Safety and Health (ACCSH) recommended that OSHA utilize a **competent person** approach for silica. **Competent person** provisions were also in the original 2003 proposed standard and should be included in the final rule.

Summary

As I previously mentioned, construction work is fluid, it changes on a daily basis and from worksite to worksite. Numerous OSHA regulations (19) account for this by investing power and authority in a **competent person** and the silica standard for construction should be no different. The use of a **competent person** has been a longstanding staple of safety and health construction standards, and is commonly used by conscientious contractors, OSHA and the American National Standards Institute (ANSI) for construction regulations and best practices. **Competent persons** can ensure controls are being used effectively and know when to call in a qualified person (e.g., an industrial hygienist) for more complex or unusual scenarios. The use of a **competent person** is also a way to ensure that workers with potential exposures to silica dust are trained to protect themselves. As the silica proposal rightly places a heavy emphasis on the proper use of controls, and exposures can vary greatly if controls are not used properly, a **competent person** is essential to ensure these controls are used properly. The **competent person** can monitor water flow rates, the functionality of local exhaust ventilation and other controls used. We recommend that OSHA include and strengthen the **competent person** provisions in the final rule. We believe the **competent person** is one of OSHA's most vital and effective safety and health tools in the construction industry and must be a part of the new rule.

**TESTIMONY OF JAMES MELIUS, MD, DrPH,
ADMINISTRATOR
NEW YORK STATE LABORERS HEALTH AND SAFETY TRUST FUND
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As mentioned in previous comments, our Union members are exposed to silica in a variety of types of construction work, and, as a result of this exposure, they have an increased risk of developing silicosis and other illnesses.

The proposed OSHA silica standard includes provisions for medical surveillance. Given the risk of serious lung disease and cancer among silica-exposed workers, medical surveillance is an important element of the proposed standard. This is a major improvement over the current situation and will benefit many of our members who are at risk of respiratory disease because of their silica exposure. Although we support the major elements of the medical surveillance provisions in the proposed standard, there are a number of issues with the proposed medical surveillance provisions that need to be addressed:

1. Trigger – Given the structure of the proposed construction standard, utilizing the proposed PEL to trigger medical surveillance is the most practical approach. However, given the widespread nature of silica exposures in the construction industry, the frequent employer and job rotation and the difficulty of documenting individual silica exposures in construction, a 30 day requirement (above the PEL) will be difficult to administer in construction. We suggest either eliminating this requirement for construction workers or providing clear guidance on the 30 day requirement, including a presumption that 30 days of work in tasks that could lead to substantial exposures to silica is sufficient to trigger the medical surveillance or some alternative approach. In addition, the standard needs to account for the cumulative effects of silica exposure and the delayed onset of many manifestations of silica exposure.
2. Frequency of exams – We support the provisions requiring an initial exam within 30 days and then once every three years. However, in certain circumstances, the examination should be more frequent, including when recommended by the examining health care provider, when the employee has abnormal pulmonary function testing or when the employee's reports indicate he or she may have a silica-related illness. If ignored and permitted to follow the proposed three year schedule, the employee with a more rapid clinical course for their silicosis may be at risk for not having their illness detected in a timely fashion.

Construction workers frequently change employers and may have multiple employers within a single year. In order to avoid unnecessary examinations, the standard should include provisions that encourage arrangements where contractors could pool resources to provide examinations for a group of workers who may rotate among these employers. Such programs have been successfully implemented by union contractor

associations for respirator fitness, drug testing and other required medical examinations and would also be useful and cost effective for silica surveillance. At the same time, they would eliminate unnecessary X-rays and other examinations for silica-exposed construction workers.

3. Content of examinations – We support the proposed content of the medical surveillance examinations. However, there needs to be clear provisions for ensuring that the pulmonary function testing is done properly in order to appropriately detect changes over time. The spirometry should be required to meet American Thoracic Society or similar guidelines, and there should be guidelines for evaluating changes in an individual’s pulmonary function over time.

Silica-exposed workers are also at risk of developing lung cancer. There is now good scientific evidence supporting the use of low-dose CT scans for the early detection of lung cancer. This should be added as a required part of the silica medical surveillance. The U.S. Preventive Services Task Force has recently made a recommendation for this screening in the general population. Although their guidelines do not include detailed recommendations on occupational lung cancer risk, the basic justification for this screening would also apply to occupational exposures. As the specific guidelines for this testing are still being developed, the standard should provide for the adoption of newer guidelines as they become available.

4. Confidentiality – The confidentiality provisions of the proposed standard are inadequate and would place our members at significant risk of being discriminated against in hiring and job retention. We also see a growing trend of our members being denied work based on poorly justified fitness guidelines which have no basis in sound medical science. The current provisions of this standard would only aggravate this situation by providing personal medical information to the employer, which some employers might use as a rationale for not hiring a worker or not retaining their current employment.

We believe that all individual medical information should only be shared with the employee being examined (similar to the provisions in the Black lung rules). The examining physician should only provide the employer with information as to the employee’s ability to wear a respirator. The standard must also include language prohibiting any retaliation against the employee based on the results of the medical program, their participation in the program or their decision on what personal medical information (if any) to share with the employer.

**TESTIMONY OF JAMES MELIUS, MD, DrPH,
ADMINISTRATOR
NEW YORK STATE LABORERS HEALTH AND SAFETY TRUST FUND
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Tunnel Construction:

As mentioned in previous comments, our union members are exposed to silica in various types of construction work. These include asphalt pavement milling where I would like to indicate that we also endorse the recommendations from NAPA regarding protection for people doing this type of work.

Some of the potential for our most severe exposures are in tunnel work where the confined nature of the work, the often limited ventilation and the ability of tunnel boring machines and other tunnel equipment to generate dust from excavating large amounts of material can lead to substantial silica exposures for our members. The varying silica content of the ground being tunneled can cause substantial changes in silica exposures as the tunnel boring progresses.

Many members of our local union in New York City that performs only tunnel work have developed silicosis and have received compensation for this work-related illness. A recent small medical screening of thirteen members of this union (median job duration: eight years) found that five had findings of silicosis on CT scan. The screening was conducted by the occupational health clinic at a large university medical center.

I have with me today Eddie Mallon, a long time member of our New York City tunnel workers local who will testify about his experiences with tunnel work and silicosis.

**TESTIMONY OF EDDIE MALLON,
MEMBER
LABORERS' LOCAL #147
PUBLIC HEARING ON THE PROPOSED SILICA IN CONSTRUCTION RULE
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My name is Eddie Mallon. I am 70- years- old and have been a member of the New York City Sandhogs Local 147 for 50 years. Our local union only does tunnel construction work. For the first 44 years, I worked as a sandhog. Six years ago, I started working as a business agent for the local monitoring job sites and doing other Union work.

Last year, my doctor advised me to stop work. He had diagnosed me with silicosis and advised me to avoid job sites where I could be exposed to silica and other environmental hazards which could further damage my lungs. Therefore, I retired.

In my 40- plus years of working underground, I experienced many hazards including very dusty environments and exposure to silica. Concrete burns from exposures to cement were also a problem. In my experience, the work environment has gotten more dangerous in recent years. Exposures to dust and silica are more extensive because of the use of larger drilling equipment. The dust controls used by contractors today do not keep up with the amount of dust generated and need to be improved. I am very concerned that the young workers coming into our business today will have more respiratory health problems than even we experienced unless these exposures are better controlled.

I strongly believe that OSHA needs to implement a strong silica standard that will prevent further exposures that jeopardize the health of sandhogs and other construction workers. It may be too late to prevent my illness, but my fellow sandhogs and young workers who are just starting to do tunnel construction deserve better protection than what was provided for me.

**TESTIMONY OF KEN HOFFNER, MSPH, CIH, CSP,
ASSISTANT DIRECTOR
NEW JERSEY LABORERS' HEALTH AND SAFETY FUND
PUBLIC HEARING ON THE PROPOSED SILICA IN CONSTRUCTION RULE
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My name is Ken Hoffner and I am the Assistant Director of the New Jersey Laborers' Union Health and Safety Fund (NJLHSF). For over 15 years, the NJLHSF has been involved in a partnership to reduce construction silica exposures in New Jersey. The partnership emerged from a Rutgers University Work Zone Safety and Health task force to reduce fatalities, injuries and illnesses in road construction work. The New Jersey Silica Partnership includes participants from academia, labor, road construction contractors, contractor associations and state, federal and local transportation and safety officials. In 2006, the partnership signed an agreement with OSHA to become known as the New Jersey Silica Outreach and Research Alliance.

From the outset, our silica partnership has worked together to identify, evaluate and control crystalline silica hazards on road construction sites in New Jersey. Over the years, we have sampled crystalline silica exposures for road construction workers and collaborated to reduce these exposures. In some specific operations listed in Table 1, we have identified existing controls that achieve compliance with the proposed PEL (e.g., wet saws) and in other operations we have worked together to develop new controls that can be easily implemented. One such example is the jackhammer water spray control we developed that reduced respirable dust levels by 90%. Our work corroborates that the application of wet controls and respiratory protection for the jackhammer and impact drilling activities listed in Table 1 will achieve compliance with the recommended PEL.

We know wet controls for concrete and masonry saws are so effective in reducing silica exposures below the proposed PEL that in 2004 the New Jersey Laborers' Health and Safety Fund joined with other stakeholders in getting a law passed in New Jersey that prohibits the dry cutting of brick, block and other silica-containing building materials (NJSA 34.5-182). Since that time, the majority of construction contractors around the state have purchased and routinely use wet saws to cut masonry materials, virtually eliminating those activities as a source of silica exposure to workers. Many contractors have dealt with the usual concerns about what to do in the winter by wrapping gutter heat tape around 55 gallon drums to make sure the water stays liquid in freezing temperatures.

The proposed OSHA silica standard is extremely important to our Laborers' Union members. A few months ago I received a call from a Laborers Local 77 member who I'll call by the initials SB. SB is an immigrant worker who was employed by a contractor at a university construction site to use a handheld disc grinder to remove the raised seams in the concrete left by the formwork. In the five and a half months he did this work, SB reported there were no local exhaust ventilation controls used in the grinding, nor was he required to use a respirator by his employer. Even obtaining half-face disposable respirators for voluntary use at the jobsite was difficult for SB. He reported that the concrete grinding dust levels were so high in his work that

he began to have problems with his eyes and respiratory system. After leaving the jobsite, he sought medical attention from his own doctors (he was unaware of the workers' compensation system) and subsequently had to have eye surgery because, according to his doctors, the high dust levels he was exposed to blocked his tear ducts. He is currently being evaluated for potential damages to his respiratory system, including silicosis. There are thousands of workers every day in the U.S. exposed to similar conditions on the job, and we need this new standard to offer better protection to these men and women for silica exposures in construction.

Through our participation in the silica partnership for over 15 years, the NJLHSF concludes that adequately controlling crystalline silica in construction is just not that difficult with the three Ws: Water (sprays), Wind (local exhaust ventilation) and a Will to act. What has been mostly lacking is the will and motivation to control exposures, and we believe the proposed standard will provide an impetus for employers to implement the simple controls and work practices necessary to greatly reduce exposures. One thing we know about the construction industry is that our workers and contractors are creative, innovative and clever when confronted with the need to overcome a problem, including crystalline silica exposures in construction. The NJLHSF does not believe the proposed construction standard presents any insurmountable obstacles to reducing worker exposures to the proposed PEL and below, and we urge OSHA to quickly publish a final rule on silica. Thank you.

**TESTIMONY OF TOM NUNZIATA,
LIUNA TRAINING AND EDUCATION FUND
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Good Afternoon. My name is Tom Nunziata and I am a Curriculum Developer, Training Coordinator, and Master Instructor for LIUNA Training and Education Fund (LIUNA Training). LIUNA Training is a 501(c)(3) labor/management training trust fund and the training arm of the Laborers' International Union of North America (LIUNA). Established in 1969, LIUNA Training's mission is to provide its affiliated training funds with products and services designed to improve the lives of LIUNA apprentices and journey workers and the competitive position of LIUNA and its signatory employers.

LIUNA Training develops and provides up-to-date and innovative curriculum, instructor training and certification, professional consultation, technical support and direct training assistance to more than 70 affiliated training sites across North America. Each year, approximately 120,000 LIUNA journey workers and apprentices employed in commercial and residential construction, heavy and highway construction, environmental remediation, demolition, deconstruction, and restoration projects, and construction supervision receive training developed by LIUNA Training through its network of affiliate training sites. LIUNA Training's construction craft laborer (CCL) training is learner centered, activity based and designed to enhance job skills, keep workers up to date on new technologies, increase job opportunities and most importantly provide information on job site hazards so they may work safely.

LIUNA Training is pleased to be here today and to express our strong support for OSHA's effort to promulgate a final standard designed to protect workers from crystalline silica in the construction industry. As with all OSHA construction standards the silica standard is being developed with one primary goal in mind: to protect the American construction worker from known hazards on the job site. And like other OSHA standards, proper worker training and education on the hazards they face on the job is a vital component in seeing OSHA's goal is reached. Today I would like to express LIUNA Training's position in regards to the training component of the proposed silica standard.

As drafted, OSHA's proposed Silica in Construction standard, which includes a communication of hazards and training component, is a good start. Providing information and training to workers on the hazards to which they are exposed on the job goes a long way in protecting a worker's health. However, other OSHA standards, which address harmful substances such as asbestos and lead include more detailed training requirements that employers must follow in order to keep their employees safe. So too it must be with the Silica in Construction standard as it has been well documented that exposure to crystalline silica causes respiratory distress and disease, affects the immune and renal systems, and most importantly is a known human carcinogen.

OSHA's proposed Silica in Construction standard should take a stronger stance in providing the training and information workers need in order to perform their jobs safely. The training proposed by OSHA first references the Hazard Communication standard and includes a number of provisions so that workers understand what types of operations may cause exposures above the Permissible Exposure Limit (PEL), procedures the employer has implemented to protect workers including work practices and use of Personal Protective Equipment (PPE) and respiratory protection, the content of the standard, and the purpose and description of the medical surveillance program. Although this is a good starting point, the pervasiveness of silica on construction sites and its significant health risks mandates that training must be more substantial as the effectiveness of engineering controls used to limit silica exposure is heavily dependent upon how the controls are used and the care and skill exercised by the worker. Therefore it is imperative that workers directly engaged in dust-generating operations receive task and equipment specific training. It is LIUNA Training's experience that the best approach to training a worker in the proper operation of a tool and associated engineering controls is through hands-on training. This assures an individual is proficient in performing an operation safely by demonstrating their ability to use the tool and engineering controls correctly. Therefore LIUNA Training supports the idea that each worker directly engaged in silica dust producing tasks receives hands-on training on the engineering controls and work practices associated with the specific task an employee is performing.

With regards to training of the competent person, OSHA should mandate the training include at a minimum the same level of training for those workers performing silica dust generating tasks including the hands-on training addressing the safe operating of tools and associated engineering controls. Because by definition the competent person is one who is capable of identifying existing and predictable respirable crystalline silica hazards in the surroundings or working conditions and has the authorization to take prompt corrective measures to eliminate them, it is imperative they have a detailed knowledge in the safe operation of the tools and engineering controls being employed on the job and be capable of identifying when the controls are not functioning or being employed properly.

Workers on site, who are not directly conducting a silica dust producing operation but are potentially exposed simply by being in the area of the silica generating operation, should receive training so they may recognize and avoid exposure. Although this training need not be as extensive as training for workers directly involved in silica dust generating tasks or include a hands-on component, it should at a minimum identify the specific tasks in the workplace that could result in exposure to respirable crystalline silica, the procedures the employer has implemented to protect employees from exposure, including engineering controls and appropriate work practices that will be used on the job and use of personal protective equipment such as respirators and protective clothing. This training should also address the employer's silica exposure assessment and written exposure control plan including identification of the competent person on the project.

As with other OSHA standards addressing hazardous substances LIUNA Training feels it is important that training be provided prior to or at the time of initial job assignment, require

annual refresher training and additional training when modification of tasks or work procedures or new tasks or work procedures are implemented.

In conclusion, LIUNA Training feels that by implementing a strong training component within the Silica in Construction standard, OSHA will provide lasting and effective protections to American construction workers who have been exposed to this deadly substance far too long.