March 16, 2016

The Honorable Paul Ryan  
U.S. House of Representatives  
Washington, DC 20515

Re: Sign On to Huizenga Letter to Block OSHA Proposed Rule on Crystalline Silica

Dear Representative Ryan:

Please sign on to Congressman Bill Huizenga’s letter urging House appropriators to insert language into the FY 2017 Labor-HHS-Education funding bill that would force the Occupational Safety & Health Administration (OSHA) to prove that their proposed rule to regulate the hazards of crystalline silica exposure is technologically and economically feasible prior to finalization, implementation or enforcement.

Crystalline silica is found in numerous building materials and a number of construction activities result in the release of a certain amount of crystalline silica. Silica can be found in concrete, brick, gravel, stone, tile, as well as many other construction materials. Essentially, construction cannot occur without materials that contain silica. Because of the ubiquitous nature of silica, nearly every employee who performs work on a construction worksite will work with or near a product that contains it. While safety is the number one priority for the construction industry, the approach OSHA has taken to regulate crystalline silica exposure in the construction industry could actually compromise safety rather than improve it.

OSHA has not demonstrated that the proposed rule is technologically and economically feasible. We further believe that OSHA has not taken the time to adequately answer numerous questions related to this proposed rule and its impact on the construction industry. OSHA’s proposal prescribes control methods that contradict existing safety practices and compliance with it will ultimately cost the construction industry nearly $5 billion dollars annually. The proposed rule will also drastically impact small businesses, which have not been given the opportunity to voice their concerns with this proposed rule.

OSHA last convened a small business advocacy review (SBAR) panel to consider an earlier proposed rule regulating crystalline silica in 2003. The 2003 panel recommendations resulted in OSHA withdrawing their original proposed silica rule. Since that time, the economy and the construction industry have changed drastically. In proposing this new rule regulating silica, OSHA has not only failed to convene a new small business advocacy review panel, but has also ignored the original 2003 panel recommendations.

OSHA’s proposed rule drastically cuts the Permissible Exposure Limit (PEL) for occupational silica exposure in construction from 250 micrograms per cubic meter of air to 50 micrograms. The rule also establishes an “action level” (with constant monitoring) of 25 micrograms. OSHA
has failed to explain how the drastically lower PEL and action level will effectively reduce the number of silica-related illnesses and deaths with the agency itself admitting to a failure to properly enforce existing standards. Additionally, the Centers for Disease Control (CDC) has reported a 93 percent drop in silica-related deaths between 1968 and 2007. Further reductions through 2010 under the current regulation are expected.

Additionally, laboratories that are responsible for analyzing air samples do not have the ability to measure exposures accurately below the current OSHA exposure limits. Independent studies, and even OSHA’s own testing, have shown that the laboratories that would be conducting the exposure testing are only able to determine within a margin of error of ± 50% what level of silica is present in the samples at the significantly lower exposure levels. This means that employers will not be able to reliably determine whether they have met the requirements of the standard.

The legislative provision will require a new small business review panel to consider the rule and require a study to be conducted by the National Academy of Sciences to address several key concerns that OSHA has not addressed. These questions are paramount in showing the technological feasibility, or lack thereof, of the current proposed rule. For these reasons, I urge you to support the letter from Congressman Huizenga and require OSHA to revise their proposed rule on crystalline silica by contacting Nathan Bult at Nathan.Bult@mail.house.gov.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs