



AXLEY

Dust in the Wind: OSHA's New Silica Standard

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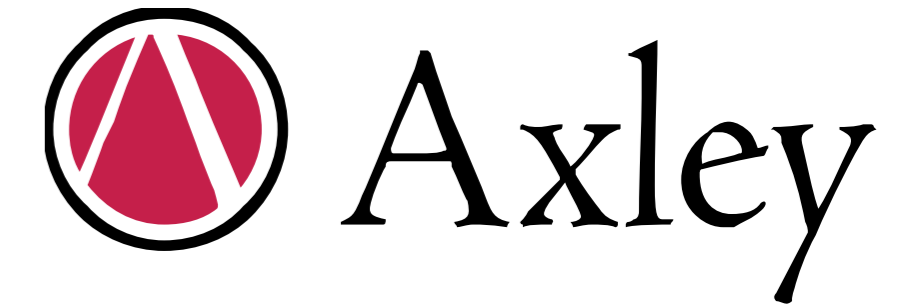
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History of Silica Regulation

It's been a concern for a long time



"[Silicosis] took all five years to kill him. And we got to watch. The toughest thing was watching him come home when he couldn't work no more and literally fell on the ground and cried. He says, 'I can't do it no more.'"

-Tom Ward

whose father died of silicosis at 39

- Government has been concerned about silica since the 1930s.
- The current PEL has been in place since 1971.
- OSHA concluded that the private markets failed to protect workers

What does the final rule say?

Bottom line: the PEL is cut by 80%

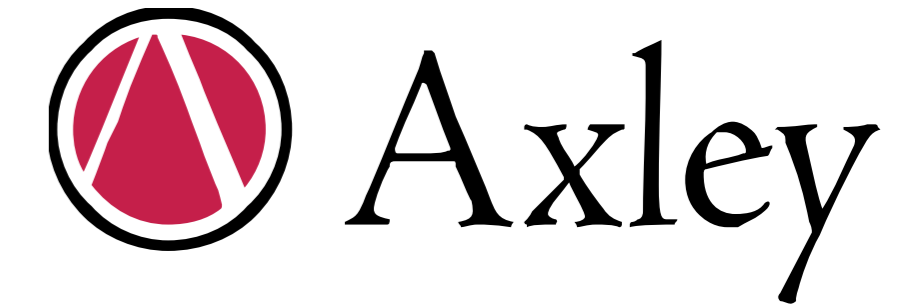


“The employer shall ensure that no employee is exposed to an airborne concentration of respirable crystalline silica in excess of $50 \mu\text{g}/\text{m}^3$, calculated as an 8-hour TWA.”

- This is a major reduction. Prior PEL is approximately $250 \mu\text{g}/\text{m}^3$
- New Action level is $25 \mu\text{g}/\text{m}^3$
- OSHA seriously considered an “alternate” PEL of $25 \mu\text{g}/\text{m}^3$
- Only thing that kept the new PEL at $50 \mu\text{g}/\text{m}^3$ is economic feasibility

What does OSHA expect this to cost?

OSHA's economic study leaves major questions



“The estimated costs . . . represent the *additional* costs necessary for employers to achieve full compliance.”

- First year costs estimated at more than **\$898 million**
- “Annualized” cost is \$659 million
- OSHA thinks it *overestimated* costs
- Yearly costs are likely in the billions
- Cost for exposure assessment:
 - \$2500 for initial
 - \$1250 for periodic
- Costs of engineering controls vary widely based on equipment

How do employers comply with the rule?

OSHA sets out standard in Table 1

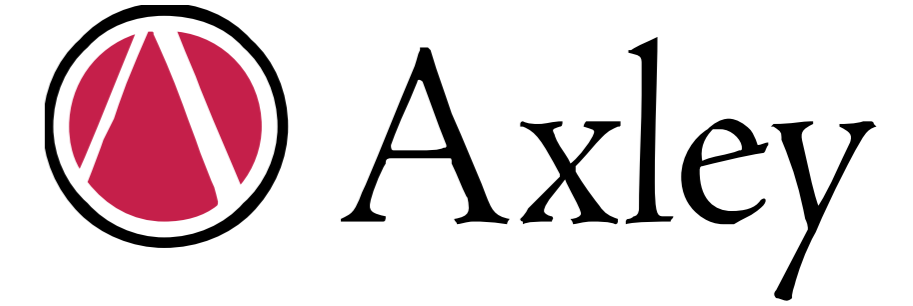


Table 1 identifies 18 different pieces of equipment/tasks in the construction industry

Basically, if a company “fully implements” the engineering and work practice controls in Table 1, the company is in compliance

If a task is not included, then the employer must use the “alternative exposure control methods,” which are same as general industry

Table 1



Understand how to use OSHA's "safe harbor"

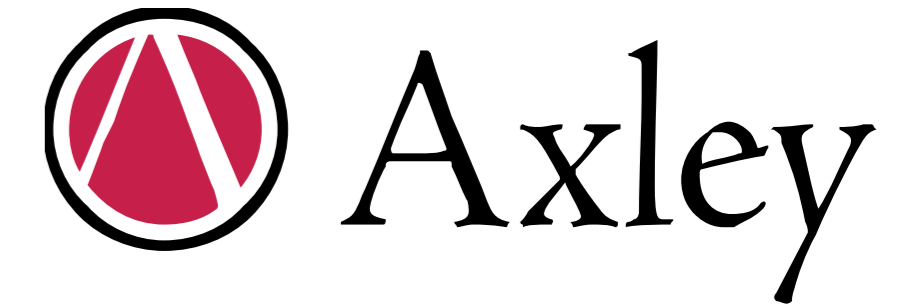
Example of Table 1 Entry

Equipment / Task	Engineering and Work Practice Control Methods	Required Respiratory Protection and Minimum APF	
		≤ 4 hr/shift	> 4 hr/shift
Handheld power saws (any blade diameter)	Use saw equipped with integrated water delivery system that continuously feeds water to the blade. Operate and maintain tool in accordance with manufacturers' instruction to minimize dust - When used outdoors - When used indoors or in an enclosed area	None APF 10	APF 10 APF 10

- Key is to “fully and properly implement” the controls
- Just having control methods in place or available isn't enough
- Controls must be in good working order and functioning up to specifications

What is in the written exposure control plan?

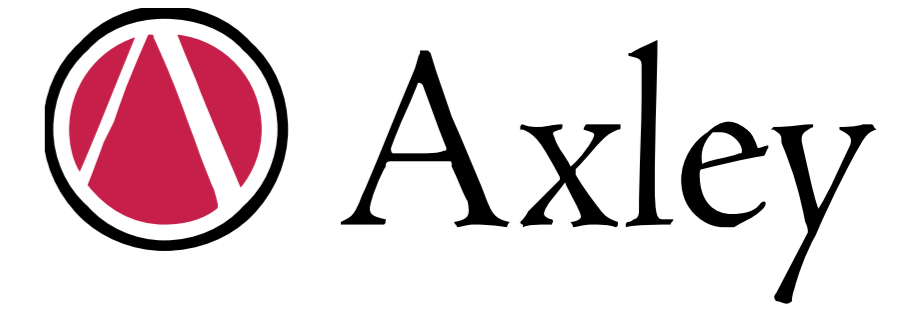
New rule has minimum requirements



- Description of each task that involves exposure
- Description of engineering and work practice controls to limit exposure for each task
- Description of housekeeping measures to limit exposure
- Must be reviewed and updated annually
- Must be available to any employee or representative
- Must be implemented by a competent person

What is a “Competent Person?”

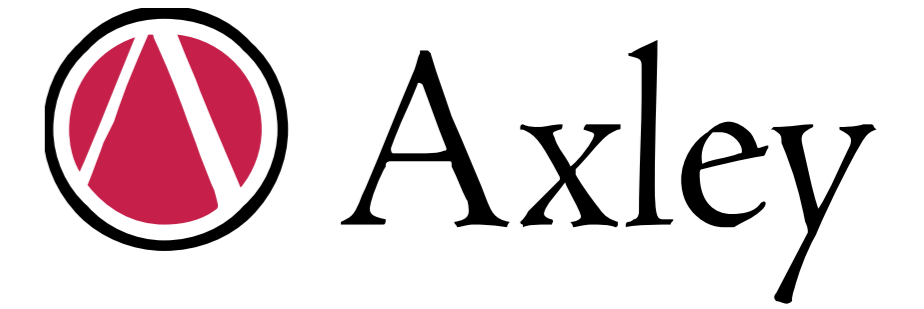
He/she is responsible for compliance



- A competent person is defined as someone who can identify silica hazards in the workplace
- Must be authorized to take corrective action
- Must have “knowledge and ability necessary” to implement written exposure control plan
- No specific training required and level of expertise depends on the type of work done

What about the frac sand industry?

Frac sand and aggregate industry are not part of construction



- Frac sand mines are not considered construction
- Covered by general industry standard and have to go through monitoring to assess exposure
- Same is true for aggregate industry – even though closely connected with construction
- Not just mining operations, but transportation, too

Compliance without Table 1

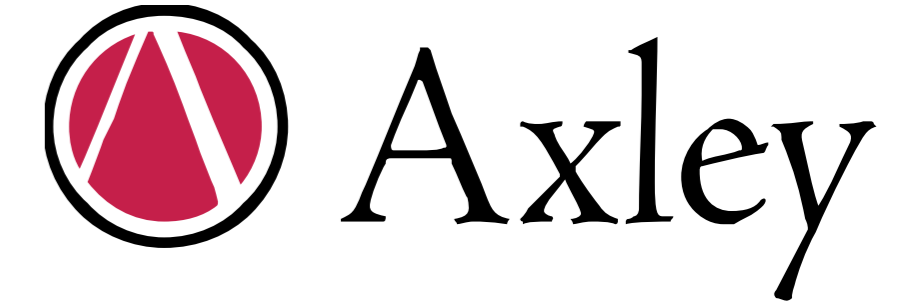
This is the process for any task not covered by Table 1



- This is the same process as general industry
- 3 Basic Steps:
 - Exposure assessment
 - Engineering and work practice controls
 - Respiratory protection

Methods of Compliance

Variety of methods available



- **Engineering controls:**

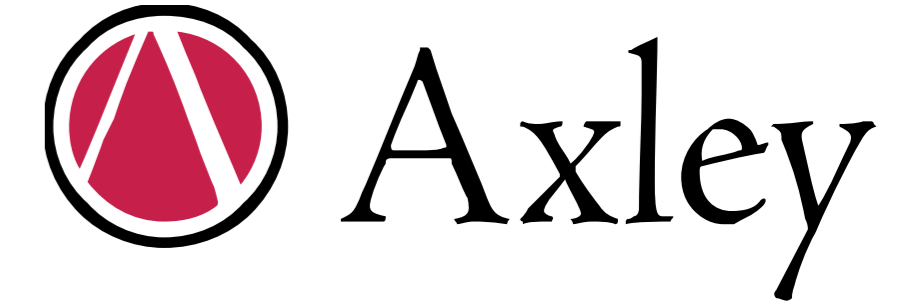
- Substitution
- Isolation
- Ventilation
- Dust suppression

- **Work practice controls**

- Modify how employees perform certain functions
- Meant to enhance engineering controls
- Requires training

Medical Surveillance

Required medical screening for exposed employees



- Requirement is for employees who need to wear respirator >30 days per year
- Employer must provide no charge medical exam that establishes baseline for respiratory health
- Follow-up exams are required every 3 years
- More often if required by the doctor

When do companies need to comply?

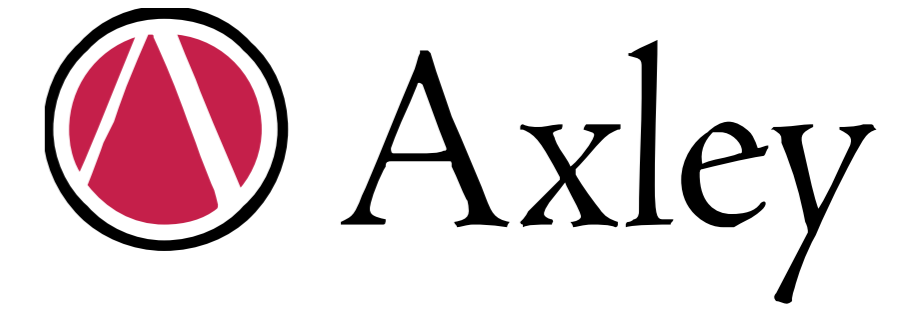
Final rule's timelines for compliance vary by industry



- Final rule took effect June 23, 2016
- Full compliance for construction: June 23, 2017
- Full compliance for general industry: June 23, 2018
- Compliance for end-user fracking industry:
 - Engineering controls: June 23, 2021
 - All other requirements: June 23, 2018

What happens next?

Rule is being challenged in court



“[OSHA’s] final permissible exposure limit is beyond the capacity of existing dust filtration and removal technology.”

-Stephen Sandherr, CEO of AGC

Several industry groups, including the national organizations of WTBA, AGC, and ABC, have challenged the rule in federal court. However, the legal challenge can take years. Construction companies don’t have that long.

Questions?



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