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August 18, 2011

The Honorable David Michaels, PhD
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Dr. Michaels:

For more than two years the Occupational Safety and Health Administration (OSHA) has worked to finalize a regulatory proposal to alter existing crystalline silica standards. A flawed process has created uncertainty and concerns among the public and industry. To provide employers and the American people the certainty and transparency they deserve, OSHA should immediately make public the regulatory changes it is considering and give ample opportunity for stakeholders to provide input.

In 2003, OSHA proposed and engaged a small business panel to review a new silica standard.¹ At that time, the small business panel estimated the cost of the proposal to be "between \$3-5 billion per year, if not higher." Various small business representatives urged the agency to abandon its effort to craft a new standard and rely instead on greater compliance assistance and strengthened enforcement of existing standards.²

The conclusions of the small business panel are increasingly alarming in light of today's difficult economy and the agency's recent regulatory activity. OSHA has been working to rewrite current silica standards since May 2009, and the Office of Management and Budget (OMB) has been reviewing the proposal for more than five months.

On July 11, 2011, OSHA officials held a web-chat regarding the agency's regulatory agenda, in which outside participants posed questions surrounding the silica regulation. In response to one question, an agency official stated:

The silica rulemaking is a scientifically complex effort that potentially affects a large number of workers and employers. It is among the largest health rulemakings undertaken by OSHA. Although publication of the proposed rule is taking longer than expected, OSHA continues to work diligently with OMB and is confident that the proposed rule will be published soon.³

Another participant asked whether the agency was considering separate standards for general industry and the construction industry. In response, an official noted the agency has made "no final decision on the scope of a

¹ *Report of the Small Business Advocacy Review Panel on the Draft OSHA Standards for Silica*, December 19, 2003.

² *Ibid.* p. 54.

³ See OSHA Webchat July 11, 1011 <http://www.dol.gov/regulations/chat-osha-201107.htm>.

proposed rule," a startling omission considering the agency's proposal was submitted for OMB review more than five months ago.


Finally, an agency official admitted the current silica standard is not being adequately enforced, stating: "OSHA continues to find that non-compliance with existing exposure limits is frequent." This comment suggests OSHA remains unable to enforce current standards, a concern expressed by small businesses eight years ago. It also raises questions about the agency's ability to enforce a new standard that will presumably be more complex and require more technical control.

The agency's acknowledgement of the complexity of this issue and its failure to determine the full scope of the proposal creates a great deal of uncertainty and raises serious questions regarding the proposal's effects on employers and workers.


To address these concerns, we urge you to immediately publish an advanced notice of proposed rulemaking to publicly disclose any changes being contemplated to the silica standard. Further, we ask you to provide the Committee with the following: 1) A description of the specific changes OSHA is considering to the silica standard; 2) What scientific data the agency is relying on to set the standard; 3) What economic and technologic feasibility concerns have arisen during the development of the new standard; and finally 4) How the agency expects employers to implement the proposed changes.

A new notice of the proposal will help the public fully evaluate and understand the agency's proposed changes to the silica standard. Additionally, it will help us reach our shared goal of promoting worker safety in the most effective and efficient manner possible.

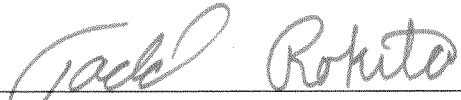
Sincerely,




JOHN KLINE
Chairman
Committee on Education and the Workforce



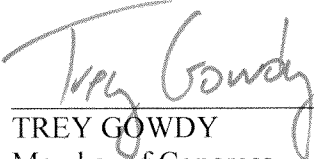
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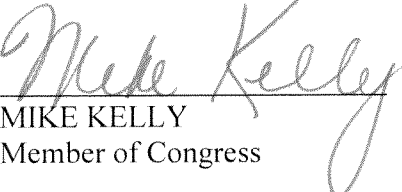
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cc: The Honorable Jacob Lew, Director, Office of Management and Budget