

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



September 16, 2021

MEMORANDUM FOR: CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM: JAMES S. FREDERICK
Acting Assistant Secretary

A handwritten signature in blue ink, appearing to read "J. Frederick", is placed over a horizontal line.

SUBJECT: Response to Office of Inspector General's Draft Report No. 02-21-003-10-105: *OSHA'S Diminished Enforcement Left More Workers At Risk For Exposure To Silica*

This memorandum is in the response to your transmittal on August 26, 2021 of the Office of Inspector General's (OIG) draft report No. 02-21-003-10-105: *OSHA'S Diminished Enforcement Left More Workers At Risk For Exposure To Silica*. OSHA appreciates the opportunity to provide a response to the draft report.

There are four main points OSHA would like to address related to the conclusions expressed in the report:

Prioritizing Resources

OSHA does not believe it is appropriate for the OIG to provide recommendations nor draw conclusions regarding how OSHA as an agency chooses to prioritize its resources. Prioritizing resources is within the discretion of the Agency, Department and Administration in order to respond to the needs of workers and their commensurate risks of safety and health hazards. OSHA does not believe it is appropriate for another agency to define the level of OSHA resources that should be committed to address a particular hazard. Part of OSHA's mission is to evaluate hazards and create prioritization schemes to manage those hazards the American workforce faces. Evaluating the most pressing workplace dangers, and where the Agency should focus its efforts, is a major undertaking of OSHA's safety and health professionals, as well as the Administration leadership, each year.

There are many competing priorities for the Agency at any given time. For example, the current COVID-19 pandemic required the Agency to reallocate resources throughout OSHA. The Agency also needs to carefully balance resources between programmed inspections, as entailed in the silica enforcement NEP, and other similar initiatives, with unprogrammed inspections, which come about due to fatalities, catastrophes, complaints or similar events.

In addition, OSHA believes that not meeting an inspection goal does not equate to not prioritizing nor reducing hazards. The number of inspections alone does not predict whether employers are controlling exposures to health hazards, including those related to silica. Over

exposures, citations, abatement methods, and compliance with the new standards and PELs are more predictive indicators in determining that employees are protected against health (silica) hazards.

Delay in Rollout of the National Emphasis Program

As part of its rulemaking efforts, OSHA standards-setting policies generally evaluate an appropriate time between a rule being effective and fully enforced to allow affected employers time to implement controls required by the standard(s). OSHA deems it appropriate to give employers time to adjust to new mandates including, but not limited to financial as well as human resource considerations such as training. This gives employers an opportunity to perform their own gap analyses between their current processes and the requirements created by new standards. OSHA recognizes that employers need this time to prepare their workplaces for new safety and health requirements.

During the interval between the silica NEP rollout and full enforcement of the new silica standards, employers were given an appropriate time to comply with the new standards, including implementing engineering controls to control silica exposures. OSHA believes that during this period there were fewer employee complaints (and thus fewer inspections) as employers began coming into compliance with the new standards. As part of its rollout strategy, the Agency typically allows employers time to implement safety and health controls. It would not be practical to implement an NEP targeting employers when those same employers are allotted time to implement controls to come into compliance with the new standards.

Characterizing Outreach Efforts

OSHA agrees that establishing real and meaningful metrics for evaluating outreach conducted pursuant to issuance of new standards is important, and would be a recommendation worthy of OSHA's consideration. We do not, however, accept the OIG's contention that OSHA's silica standard-related outreach should be evaluated in terms of whether it reaches all workers that may face exposures to silica annually. This metric is not only unrealistic, it is misinformed. While OSHA conducts significant, proactive outreach to a variety of stakeholders, including workers and their representatives (e.g., unions and worker centers), outreach to employers and employer representatives (e.g., trade associations), is vitally important and should not be discounted. After all, OSHA's silica standards are focused on the obligations of employers, who have control over and the responsibility for workplace safety and health, and who are legally obligated to comply with the requirements of OSHA standards and provide a workplace free of recognized hazards.

OIG's draft report mischaracterizes both the audience and scope of OSHA's silica standards outreach. The report states that OSHA provided data indicating that 1.3 million workers attended outreach events in the approximately 4 years between March 25, 2016 and March 31, 2020. In fact, OSHA's data indicates that 1.3 million people (as opposed to workers) were directly impacted by OSHA's outreach activities during that time. As stated above, OSHA conducts outreach to a variety of stakeholders, and in many instances, those individuals are employers or employer representatives. Many more people are likely reached via the trickle-down effects of OSHA's efforts than can be reasonably quantified by the Agency. In addition, the number noted does not include estimates of the substantial outreach that OSHA conducted through the other activities OIG lists in its report (e.g., downloads of silica-focused guidance materials developed

by OSHA and responses to silica-related questions received via OSHA's 1-800 number, eCorrespondence options and other mechanisms).

Quantifying the number of people truly reached by OSHA's outreach activities, as well as the true impact of these activities (e.g., the number of injuries they prevent) is an ongoing challenge not only for OSHA, but for all agencies and entities engaged in these outreach and compliance assistance activities. However, OSHA is committed to creating a mechanism to establish goals and measures to assess whether OSHA's outreach efforts related to new or revised regulations reach the specific industries, employers, and workers covered by those standards.

Providing Access to the OSHA Information System

OSHA does not anticipate that time will be saved or any benefit would be gained from providing the OIG with access to the OSHA Information System (OIS). As the OIG points out, the data is complex. Understanding the data or even what data are available typically requires extensive explanation. OSHA has several analysts who specialize in understanding and interpreting the available data, and has involved them in translating data responsive to the OIG's requests to a format that the OIG can utilize. When assisting the OIG with extracting data, OSHA analysts define the scope of inquiry for obtaining data, including identifying relevant codes, appropriate exclusions and a series of other tasks. While the time to run a query is relatively brief, a significant amount of time is spent defining the set of relevant criteria to avoid misunderstanding regarding the data. OSHA's coding procedures evolve over time in response to new needs and requirements, and it is imperative that users understand what the data does and does not capture for any given time period.

OSHA has successfully explained the data available in its systems, including what those data represent, how OSHA collects data, and what data is not available, to OIG in a number of audits. However, because of the complexity of the Agency's systems and the changing nature of the coding procedures, among other things, translating the available data for OIG's data experts' use (and explaining why specific data is not available) sometimes requires more than one discussion. Moreover, the inevitable learning curve is further complicated by the fact that the OIG analysts assigned to OSHA audits change depending on the needs of the OIG. Thus, even where OSHA has previously explained its systems to OIG, changes in the assigned analysts, the data system, coding, or other factors often mean that even the most expert audit team outside of OSHA could easily misunderstand OSHA's data or be unable to produce the specific data needed for the audit.

In addition, the OIS database does not include records originally entered into Integrated Management Information System (IMIS), OSHA's legacy database. Consequently, data requests which go beyond the scope of OIS (which includes data beginning in FY 2013 for Federal OSHA and as late as FY 2016 for some State Plans) would still require a separate query of the OSHA Legacy Database and a reconciliation of the two data systems. This is the reason that OSHA recommends that OIG use the public enforcement data catalogue, which already combines records in IMIS and OIS in a simpler, more user-friendly format.