



**NEW MEXICO
ENVIRONMENT DEPARTMENT**



Michelle Lujan Grisham
Governor

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855
www.env.nm.gov

James C. Kenney
Cabinet Secretary

Howie C. Morales
Lt. Governor

Jennifer J. Pruett
Deputy Secretary

October 1, 2020

New Mexico Occupational Health and Safety Bureau (OHSB) Directive 21-04

Subject: State Emphasis Program (SEP) for Health and Safety Hazards Associated with Respirable Crystalline Silica (RCS) Exposures (NAICS 213, 221, 236, 237, 238, 324, 325, 327, 331, 332, 339 and 999).

- A. Purpose: This notice establishes an SEP for Health and Safety Hazards Associated with RCS Exposures (NAICS 213, 221, 236, 237, 238, 324, 325, 327, 331, 332, 339 and 999).
- B. Scope: This notice applies to the State of New Mexico OHSB.
- C. References: The following documents are referenced in or applicable to this instruction.
 1. New Mexico Field Operations Manual
 2. Federal Register, 81 FR 16285-16890, §§ 1910, 1915, 1926, *Occupational Exposure to Respirable Crystalline Silica*; Final Rule, March 25, 2016.
 3. OSHA Information System (OIS) *Modules for Enforcement, Consultation and Compliance Assistance*, current and subsequent versions.
 4. OSHA Instruction CPL 2-0.102.A, November 10, 1999, *Procedures for Approval of Local Emphasis Programs (LEP)*.
 5. OSHA Instruction CPL 2-00-051, February 23, 2005, *Exemptions and Limitations Under the Appropriations Act*, with current Appendix A.
 6. OSHA Instruction CPL 02-02-080, *Inspection Procedures for the Respirable Crystalline Silica Standards*, June 25, 2020.
 7. OSHA Instruction CPL 03-00-023, February 4, 2020, *National Emphasis Program – Respirable Crystalline Silica*.
- D. Cancellation: This notice cancels the New Mexico Occupational Health and Safety Bureau (OHSB) Directive 20-04 dated October 1, 2019.
- E. Expiration: This notice expires on September 30, 2021 but may be renewed as necessary.

- F. Action: OHSB personnel will ensure that the procedures contained in this notice are followed in conducting the inspections under this SEP for Health and Safety Hazards Associated with RCS Exposures.
- G. Background: The OHSB has numerous operations and activities within the State's jurisdiction that expose employees to the hazards associated with RCS. Exposure to RCS can occur in such operations as: concrete mixing/manufacturing, sand blasting operations, cinder/concrete block manufacturing, plastering, stone cutting, and other operations which disturb or release RCS.
- H. Compliance: In FY 2021, the OHSB will conduct approximately five (5) inspections involving RCS exposures in NAICS 213, 221, 236, 237, 238, 324, 325, 327, 331, 332, 339 and 999.
1. Establishments will be identified through visual observations, the New Mexico Business Directory, Qwestdex online phone directory, IMIS and OIS activity listings, the Business Library, and the Department of Transportation reports.
 2. Any fixed site establishment that has received a substantially complete inspection within the previous three years will be deleted from the current inspection cycle. All construction inspections conducted under the SEP will be initiated as Programmed Planned from Dodge Reports.
 3. Upon arrival at the worksite, and before initiating enforcement activities, the compliance officer will determine that Enforcement Exemptions and Limitations under the Appropriations Act do not prohibit the inspection. Certain employers are exempt from programmed safety inspections if they employ 10 or fewer employees currently and at all times during the previous 12 months.
 4. OHSB reserves the right to re-inspect any establishment that has a fatality, reportable injury or illness, receives a complaint or referral at any time during the period covered by this notice.
 5. Construction and general industry employers must comply with all the requirements of the standards. For hydraulic fracturing operations in the oil and gas industry, the obligations for engineering controls in paragraph (f)(1) of the general industry standard commence on June 23, 2021.
 6. Employers participating in cooperative programs may be exempt from programmed inspections. Applicable program procedures shall be referenced if an on-site consultation visit is in progress, or if the establishment is a participant in OHSB's Voluntary Protection Program (VPP), Strategic Construction Partnership Agreements, the Safety and Health Achievement Recognition Program (SHARP), or Pre-SHARP. If OHSB determines that an employer is exempt from a programmed inspection, OHSB should notify the employer in writing that they are required to comply with the RCS standards and provide a copy of the on-site consultation service pamphlet.

7. Whistleblower Protections. Workers requesting inspections, complaining of silica exposure, or reporting injuries or illnesses may be covered under one or more whistleblower statutes. Inform them of their protections from retaliation and refer them to <https://www.whistleblowers.gov/> for more information. Whistleblower complaints will be forwarded to the OHSB 11 C Officer.
8. OHSB compliance staff may utilize federal OSHA directives on crystalline silica as a reference when conducting enforcement activities.

I. Outreach: The Compliance Assistance Specialists should conduct a minimum of two (2) activities per year such as:

1. Conducting outreach activities at annual conventions for industry associations;
2. Developing and distributing outreach materials and publications;
3. Developing materials to include on the OHSB web page;
4. Conducting formal and informational presentations and training in collaboration with industry associations; and,
5. Providing technical assistance.

J. Consultation: The OHSB Consultants will conduct a minimum of three (3) activities per year such as:

1. Assigning a high priority to consultation requests involving silica exposure;
2. Conducting consultation visits;
3. Participating in industry association conventions to solicit consultation requests and to distribute outreach materials;
4. Creating and distributing mailings explaining compliance section focus on silica and availability of resources to include compliance assistance and consultation services;
5. Distributing electronically developed outreach materials;
6. Conducting formal and information presentations and training as requested; and,
7. Providing technical assistance.

K. OIS Recording: Information pertaining to this initiative shall be recorded in the OIS following current instructions in the each of the respective modules in the OIS User Guides. The identifier code will be "SILICA".

1. The identifier "SILICA" will be recorded in OIS for all SEP inspections.
2. The appropriate strategic plan code "SILICA" will also be coded in OIS, to link with the strategic plan.

- L. Evaluation: An evaluation of the effectiveness of this state emphasis program will be conducted at the end of each fiscal year. An evaluation report will be written and submitted to the Bureau Chief within 90 days of the end of each fiscal year. The evaluation report may be included as part of the New Mexico State OSHA Annual Report (SOAR). Elements to be considered in the evaluation include:
1. Effectiveness of the State Emphasis Program targeting system;
 2. Number of establishments and/or operations inspected under the program;
 3. Number of establishments and/or operations that appeared to be in violation of OHSB standards and/or general duty requirement of the OHS Act;
 4. Number of required silica programs implemented;
 5. Number of employees removed from risk; and
 6. Number of hazards abated.
 7. Number of activities conducted by Compliance Assistance; and,
 8. Number of activities conducted by Consultation Section.

By and Under the Authority of

Robert Genoway
Chief, Occupational Health and Safety Bureau