

ASSOCIATED GENERAL CONTRACTORS FILES SUIT TO BLOCK ADMINISTRATION'S MISGUIDED SILICA RULE



April 4, 2016

Association's Louisiana Chapter Petitions Fifth Circuit to Challenge OSHA's Crystalline Silica Rule, Citing Fact Rule Is Not Feasible Given Limitations of Current Dust Removal Technology

The Louisiana chapter of the Associated General Contractors of America today filed a challenge to the Occupational Safety and Health Administration's (OSHA) final respirable crystalline silica rule in the U.S. Court of Appeals for the Fifth Circuit. In doing so, the chapter joined a number of local industry partners who are also concerned about the impact of the rule on the construction industry.

"Our members are deeply committed to taking every possible step to reducing silica exposure on your worksites," said Stephen E. Sandherr, the national association's chief executive officer. "However, we have significant concerns about whether this new rule is technically feasible, given that the agency's final permissible exposure limit is beyond the capacity of existing dust filtration and removal technology."

Sandherr added that while the administration did make a number of the changes to the final rule, including dropping requirements for contractors to establish regulated areas that would block access to parts of construction sites where dust is being generated, the association continues to feel that this final rule is not acceptable.

He added that the association has long urged federal officials to craft measures that would allow the roughly 25 percent of firms not meeting the prior standard to comply. Given the tremendous reductions in silicosis within the construction industry that has taken place since that standard was put in place, even more lives could be saved by getting greater compliance with that standard, the association executive noted.

Filing the petition today starts what is likely to be a lengthy legal challenge to this measure, Sandherr added. But he cautioned that as flawed as the new Silica rule is, victory in court is far from certain. That is why he said the association would continue to work with Congress and the next presidential administration to seek measures to improve this flawed rule in a way that truly benefits the health and safety of our workforce.

UNITED STATES COURT OF APPEALS
FOR FIFTH CIRCUIT

ASSOCIATED MASONRY
CONTRACTORS OF TEXAS DBA
TEXAS MASONRY COUNCIL;
ASSOCIATED SUBCONTRACTORS
ASSOCIATION OF TEXAS, INC.;
DISTRIBUTION CONTRACTORS
ASSOCIATION; LOUISIANA
ASSOCIATED GENERAL
CONTRACTORS, INC.;
MECHANICAL CONTRACTORS
ASSOCIATION OF TEXAS, INC.;
MISSISSIPPI ROAD BUILDERS'
ASSOCIATION; PELICAN
CHAPTER, ASSOCIATED
BUILDERS AND CONTRACTORS,
INC.; AND TEXAS ASSOCIATION
OF BUILDERS,

Petitioners,

v.

OCCUPATIONAL SAFETY &
HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT
OF LABOR, and THOMAS PEREZ,
SECRETARY, UNITED STATES
DEPARTMENT OF LABOR,

Respondents.

Civil No. 16 -

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and
Section 6(f) of the Occupational Safety and Health Act OF 1970, 29 U.S.C. §

655(f), Petitioners Associated Masonry Contractors of Texas DBA Texas Masonry Council; Associated Subcontractors Association of Texas, Inc.; Distribution Contractors Association; Louisiana Associated General Contractors, Inc.; Mechanical Contractors Association of Texas, Inc.; Mississippi Road Builders' Association; Pelican Chapter, Associated Builders and Contractors, Inc.; and Texas Association of Builders ("Petitioners")¹ hereby petition the United States Court of Appeals for the Fifth Circuit for review of a final rule promulgated by the U.S. Occupational Safety and Health Administration ("OSHA") on March 25, 2016, set forth in the document entitled "29 CFR Parts 1910, 1915, and 1926, Occupational Exposure to Respirable Crystalline Silica," Docket No. OSHA-2010-0034, RIN 1218-AB70, published by the Occupational Safety and Health Administration, United States Department of Labor. 81 Fed. Reg. 16285 (March 25, 2016). The Final Rule is attached hereto as Exhibit A.

¹ Associated Masonry Contractors of Texas DBA Texas Masonry Council; Associated Subcontractors Association of Texas, Inc.; Distribution Contractors Association; Louisiana Associated General Contractors, Inc.; Mechanical Contractors Association of Texas, Inc.; Mississippi Road Builders' Association; Pelican Chapter, Associated Builders and Contractors, Inc.; and Texas Association of Builders are associations with headquarters and members located in the Fifth Circuit who are adversely affected by the OSHA Occupational Exposure to Respirable Crystalline Silica rule.

Dated: April 4, 2016.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Bradford T. Hammock

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of April 2016, I submitted for filing, via CM/EFC, the forgoing Petition for Review of Petitioners Associated Masonry Contractors of Texas DBA Texas Masonry Council; Associated Subcontractors Association of Texas, Inc.; Distribution Contractors Association; Louisiana Associated General Contractors, Inc.; Mechanical Contractors Association of Texas, Inc.; Mississippi Road Builders' Association; Pelican Chapter, Associated Builders and Contractors, Inc.; and Texas Association of Builders with the United States Court of Appeals for the Fifth Circuit, with service on April 4, 2016, of same via hand-delivery on the following:

Ann S. Rosenthal
Associate Solicitor of Labor
Occupational Safety and Health
Office of the Solicitor, Room S-4004
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

/s/ Carol Drayton

Carol Drayton, Paralegal