



## D. C. Circuit Court Decides Silica Rule With More to Come

By Michael R. Peelish, Esq.

For Christmas, the D.C. Circuit Court of Appeals put “coal” in the construction industry’s stocking. The Court issued its opinion to the industry’s challenge to the Silica rule dismissing all of the industry’s claims. To add injury to insult, the Court remanded the case to the Occupational Safety and Health Administration (OSHA) claiming it was arbitrary and capricious in how it dismissed the need for a “medical removal” provision.

The industry challenged the Silica rule on 5 grounds claiming that OSHA did not provide “substantial evidence” that the rule:

- 1) would reduce a “significant risk of material impairment of harm”;
- 2) is technologically feasible for the foundry, hydraulic fracturing, and construction industries;
- 3) is economically feasible for the foundry, hydraulic fracturing and construction industries;
- 4) allows a worker who undergoes medical examinations to keep the results from their employer and prohibits housekeeping methods that cause silica exposure, such as dry sweeping or using compressed air; and
- 5) Industry also claimed the Silica rule violated the Administrative Procedures Act by not allowing adequate time for public comment on data in the record.

The Court panel, led by Judge M. Garland, rejected all industry claims and accepted OSHA’s argument that a “significant risk of material impairment” could result in silicosis or non-malignant respiratory disease (such

as chronic obstructive pulmonary disease (COPD), emphysema, and chronic bronchitis), lung cancer, and silicosis morbidity. The Court remanded the Silica rule to OSHA at the Union’s request for consideration of the “medical removal” provision which is based upon a medical professional’s opinion under three scenarios.

### Technical Feasibility

This part of the Industry’s challenge focused on foundries, hydraulic fracturing, and construction. To establish technical feasibility, OSHA, after consulting the ‘best available evidence,’ must prove ‘a reasonable possibility that the typical firm will be able to develop and install engineering and work practice controls that can meet the [standard] in most of its operations.’”

For foundries, the industry challenged Feasibility on two grounds: that variability in exposure levels makes compliance infeasible; and that OSHA did not rely on the best available evidence. For hydraulic fracturing, the Court relied on the “technology forcing nature of the OSH Act.” In construction, the industry argued that the inconsistent application for respiratory protection and the occasional situations where wet methods are infeasible causes the Silica rule to be technically infeasible. The Court rejected all these claims and found that “compliance is feasible for the typical firm in most operations.”

### Economic Feasibility

The Court cites its decision in *United Steelworkers of America v. Marshall* (Lead I) (D.C. Circuit 1980), stating that “[a] rule is economically feasible in a particular industry so long as it does not “threaten massive dislocation to, or imperil the existence of, the industry.”

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## Silica Rule, cont.

Thus, “[a] standard is not infeasible simply because it is financially burdensome or even because it threatens the survival of some companies within an industry.” OSHA explained that “while there is no hard and fast rule,” it “generally considers a standard to be economically feasible” for an industry where annualized costs of compliance are less than 1% of revenue or 10% of profit.”

### Medical Removal Provision

The Court remanded the Silica rule to OSHA to explain why it did not include a medical removal provision based on a medical professional’s opinion as it has in 6 other rules, including its lead standard, and its recently promulgated beryllium standard. This remand could prove onerous to the industry if OSHA cannot support with “substantial evidence” its position or if OSHA decides to change its position to include a medical removal provision.

### Summary

From the exposure assessment work our firm has done over the past 18 months, it appears employers in affected industries recognized the rule was here to stay and began seeking ways to implement the standard. Through the exposure assessments our firm has conducted, we have created many written exposure control plans that incorporate engineering controls and work practice controls to assist employers. What we have found is that high-minded, technically simple solutions are available that don’t always require expenditures. The world of silica changed, and it appears that the affected industries are changing as well.

## BLS Target Opioids & Violence as Factor in Workplace Fatalities

By Adele L. Abrams, Esq., CMSP

In late December, the Occupational Safety & Health Administration (OSHA) responded to a hike in workplace fatalities that were drug-related by joining in the government’s efforts to address opioid addiction as a national public health emergency. A recent National Safety Council study confirmed that 70 percent of employers are impacted by employees’ prescription drug use. Issues include:

- Absenteeism or missed work – 39%
- Using prescription pain relievers at work – 39%
- Positive drug test – 32%

- Impaired or decreased job performance – 29%
- Family member of employee affected – 29%
- Complaints to HR & negative impact on employee morale – 22%
- Near miss or injury – 15%
- Borrowing or selling drugs at work – 14%
- Arrest (on or off job) – 10%
- Overdose (on or off job) – 10%

The Bureau of Labor Statistics (BLS) issued its report analyzing 2016 calendar year data, and revealed a 32 percent annual increase in workplace overdose fatalities, as well as a 7 percent overall increase in fatalities. In total, 5,190 workers died on the job in 2016, which is the highest number of fatalities since 2008. The fatal injury rate also rose to 3.6 per 100,000 full-time equivalent workers, which is the highest rate since 2010. Foreign-born workers made up about 20 percent of total fatal work injuries, and 37 percent of those were born in Mexico, followed by 19 percent from Asian countries. Asian worker fatalities were up 40 percent in 2016, compared with the previous year, while Hispanic worker fatalities decreased by 3 percent during the same period.

More workers lost their lives in transportation incidents than any other event in 2016, accounting for about two out of every five fatal injuries. However, OSHA normally does not exercise jurisdiction nor require injuries occurring on public roadways to be reported to the agency, except for those occurring in construction work zones.

Falls were a significant contributor to workplace deaths, increasing 6 percent in 2016, overall, but rising by 25 percent for roofers, carpenters, tree trimmers, and heavy or tractor-trailer truck drivers. OSHA’s new general industry standard to prevent falls on walking and working surfaces took effect on January 17, 2017, outside the period measured by BLS.

There was also a spike in worker deaths among those in the 55+ age bracket, BLS reported. The highest rate of injuries outside of those involving motor vehicles occurred in the logging industry, while deaths in the mining, quarrying, and oil/gas extraction sectors fell by 26 percent.

Labor proponents quickly noted that, currently, OSHA has fewer than 800 inspectors, which means that each workplace theoretically could be inspected only once every 159 years. Of course, in practice, many businesses go through their entire life cycle uninspected while others are subject to more regular scrutiny because of being in a high-hazard sector, subject to an OSHA emphasis

## BLS Target Opioids & Violence, cont.

program, or targeted due to employee complaints or severe injuries and fatal accidents that must be immediately reported to OSHA. The proposed House FY 2018 appropriations measure for OSHA would further reduce funding by \$20 million, a 4 percent reduction from current levels that carried over from FY 2017 under a continuing resolution.

Acting Assistant Secretary of OSHA, Loren Sweatt, noted that the opioid crisis impacts Americans both at home and, increasingly, on the job. “The Department of Labor will work with public and private stakeholders to help eradicate the opioid crisis as a deadly and growing workplace issue,” she said. Overdose fatalities in the workplace have increased by at least 25 percent annually since 2012. OSHA has authority under its General Duty Clause (Section 5(a)(1) of the Occupational Safety & Health Act of 1970) to issue citations to employers who fail to eliminate “recognized hazards” in the workplace that could cause death or serious harm to its employees. Where an employer has reason to know that a worker is impaired by drugs or alcohol in the workplace, and fails to intervene in order to prevent an accident, penalties can now reach \$129,336 per violation.

The BLS report also attributed a rise in fatalities to workplace violence, noting a 23 percent increase that made workplace violence the second-most common fatal event in 2016. OSHA has previously issued guidance to employers in high-hazard sectors, such as late-night retail operations, on methods of improving workplace security to prevent violence to workers. Moreover, in the last months of the Obama administration, OSHA launched an initiative to address workplace violence in the health care and social services sectors, via a request for information (RFI). The comment period is now closed.

The workplace violence RFI was in response to a petition for rulemaking by labor organizations representing workers in the health care and social service sectors. Any future rule would likely include prevention programs as well as procedures for assessing and correcting hazards, but the rulemaking initiative has been placed on the side burner according to the December 2017 regulatory agenda.

For more information on best practices in risk assessment and hazard reduction for OSHA and MSHA regulated workplaces, contact the Law Office at [www.safety-law.com](http://www.safety-law.com).

## Attorney Joshua Schultz Receives “Mine Safety Institute Recognition of Excellence” Award



Joshua Schultz, Esq. accepted the 2017 Mine Safety Institute Recognition of Excellence Award from the Colorado Stone, Sand and Gravel Association (CSSGA) on November 17, 2017.

Attorney Schultz chaired the CSSGA Safety Committee from 2015 – 2017 and has been an integral member of the development team for the Mine Safety Institute’s Learning Management System (LMS). The LMS provides on-demand, Part 46 New Miner Training, required by the Mine Safety and Health Administration. The website hosting the Mine Safety Institute’s LMS will be launched this month.

### Safety in the Office By Gary L. Visscher, Esq.

During the first session of an undergraduate course I teach on occupational safety and health policy and practice, I generally ask students to talk about their own work experiences and the safety issues they’ve encountered and the safety instructions they’ve received. Students who have worked in any manufacturing settings can quickly identify issues and training.

Similarly, students who have worked in health care settings generally are aware of safety issues and have received hazard awareness instruction and safety training on issues in the workplace. Students who work or have worked in retail recall hazard awareness instruction or training a little less often. And seldom do students whose work experience has been in office settings volunteer examples of having received hazard awareness instruction or safety training - which, as a recent publication on Office Safety ([www.ehssdb.com/office-safety.php](http://www.ehssdb.com/office-safety.php)) makes clear, is not to say that office environments are free of real or

## BLS Reports on Workplace, cont.

potential hazards.

Two of the most common hazards are filing cabinets and extension cords - filing cabinets because employees leave drawers open, and extension cords if used or left where they can create a tripping hazard.

It was not many years ago that a discussion of office health and safety inevitably started with describing proper and improper body posture and chair and desk configuration for “computer work stations,” to avoid shoulder, neck, arm and wrist strain while working at computers. I almost always ask the students in my classes, who have obviously grown up with computers and use them every day, if they’ve ever had such instruction at any point in school or at work. Besides having to explain what a “computer work station” refers to, I’ve found that few students have ever received instruction on avoiding musculoskeletal strain or injury from computer use. So don’t assume that just because younger (or older) workers routinely use computers, that they are familiar with work practices for avoiding or minimizing strains from repeated or prolonged computer use.

Other common office safety hazards are falls (for example, when an employee decides to “just grab a chair” to step on) and back or shoulder injuries from lifting or moving a heavy object. According to Liberty Mutual’s Annual “Workplace Safety Index,” injuries caused by overexertion account, by far, for the largest share – 23% – of the \$60 billion in direct costs to employers from workplace injuries. Office workers may be less prepared, physically and technique-wise, for lifting or moving such objects than are employees whose jobs more regularly involve such tasks.

Finally, every office should have, and train their employees on, emergency procedures. The procedures should include being prepared not only for fires and natural emergencies, but also for threats or instances of workplace violence, whether by an employee or an outsider.

### **NAS Report on Occupational Health Surveillance Needs** By Adele L. Abrams, Esq., CMSP

On January 9, 2018, the National Academies of Sciences (NAS) released a report stressing the need for federal and state agencies to build systems for compiling data on work-related injuries, illnesses and hazardous

exposures, with an eye toward prevention and recognition of the changing face of the U.S. workforce. The report, *A Smarter National Surveillance System for Occupational Safety and Health in the 21st Century*, is the first review of the issue in three decades, since the last report on surveillance by the National Research Council.

In releasing the report, NAS Committee chair Edward Shortliffe stated: “Ensuring and improving worker safety and health is a serious commitment, and federal and state agencies along with other stakeholders should diligently act upon it . . . We are experiencing rapid changes in the nature of work, and with new risks developing, the nation is in dire need of a smarter surveillance system that tracks occupational injuries, illnesses, and exposures.” The NAS committee that prepared the 2018 report represents a cross-section of public health researchers, state officials, union and management participants – including Scott Mugno, who is currently the pending nominee to head OSHA in the Trump Administration, and Peg Seminario of the AFL-CIO.

The NAS urged OSHA to work with the Bureau of Labor Statistics (BLS) and the National Institute for Occupational Safety & Health (NIOSH) to collect more complete, accurate and robust information, to identify the extent, distribution, and characteristics of work-related injuries and illnesses. The report examined not only U.S. surveillance systems, but also compared them unfavorably with systems used internationally that tend to capture more incidents than the American approach (typically limited to reviewing reports of fatalities, in-patient hospitalizations, amputations and eye-loss cases).

The NAS called upon OSHA to maximize and expand its existing injury-reporting requirements, collect more data on injured employees, and develop a publicly available and searchable database on occupational injuries and illnesses. Non-standard work arrangements (temporary workers and those in the “gig” economy) also need greater surveillance.

In particular, NAS faulted current surveillance systems for not including adequate information on work-related diseases. It suggested that NIOSH should work with the states to develop systems for surveillance of occupational diseases using multiple data sources. Acute and chronic health conditions should also be scrutinized and prevented via better data collection, NAS said. However, OSHA’s infectious disease rulemaking has been shelved, according to the December 2017 regulatory agenda, and the agency’s request for information on control of chemical air contaminant hazards in the workplace closed without further action.

## NAS Report, cont.

OSHA's new e-recordkeeping rule does have enhanced reporting requirements, which required submission of injury/illness Form 300A by employers who met the criteria effective December 31, 2017 (for CY 2016 data). All worksites with 250 or more workers, and worksites with 20-249 workers in selected high-hazard NAICS sectors, are covered by the new data reporting rule. Seven state-plan states -- CA, MD, MN, SC, UT, WA and WY -- did not adopt the final rule in time for the 2016 data reporting to apply to worksites in those jurisdictions.

The OSHA rule is still embroiled in litigation (although the court did not stay implementation), and OSHA also indicated it will reopen the rule and consider relaxing some requirements and also keeping data submissions confidential, instead of allowing public access as envisioned in the final rule. The new NAS report may make it more difficult for OSHA to justify any lessening of data collection and other surveillance by the agency via rulemaking, in the event that the court upholds the final rule.

For example, while OSHA may look to scale back information collection, the NAS report urges expansion of data requests to include information on injured workers' race, ethnicity and employment arrangement (e.g., employee, temporary worker, contingent or day laborer, or independent contractor). NAS has even proposed adding "household surveys" to capture injuries that occur to those who are self-employed or whose data are not otherwise reported by employers.

The NAS report makes 17 recommendations for improvements to the U.S. occupational health and safety surveillance system, in the following four broad areas: (1) prioritize and coordinate OSH surveillance; (2) improve data collection; (3) expand biomedical informatics use and capabilities; and (4) strengthen data analysis and information dissemination for prevention. The more specific recommendations include:

- BLS and OSHA should collaborate to enhance injury and illness recording to achieve more complete, accurate and robust information on the extent, distribution, and characteristics of work-related injuries and illnesses and affected workers for use at the worksite and at national and state levels.
- NIOSH, working with the state occupational safety and health surveillance programs and cross divisions within the agency, should
  - develop a methodology and coordinated system for surveillance of both fatal and nonfatal occupational disease using multiple data sources.
  - NIOSH should lead a collaborative effort with BLS, OSHA, the states, and other relevant federal agencies to establish and strengthen state-based OSH surveillance programs.
  - BLS should place priority on implementing its plan for a household survey of nonfatal occupational injuries and illnesses.
  - OSHA, in conjunction with BLS, NIOSH, state agencies and other stakeholders, should develop plans to maximize the effectiveness and utility of OSHA's new electronic reporting initiative for surveillance.
  - NIOSH, with assistance from OSHA, should explore and promote the expanded use of workers' compensation data for occupational injury and illness surveillance and the development of surveillance for consequences of injury and illness outcomes, including return to work and disability.
  - HHS should designate industry and occupation as core demographic variables collected in federal health surveys, and foster collaboration between NIOSH and other CDC centers in maximizing surveillance benefits of including industry and occupational in surveys and surveillance systems.
  - NIOSH, in consultation with OSHA, should place priority on developing a comprehensive approach for exposure surveillance.
  - NIOSH should coordinate with OSHA, BLS, and other relevant agencies, to measure and report on a regular basis, the economic and health burdens of occupational injury and disease at the national level.
  - NIOSH should build and maintain a robust internal capacity in biomedical informatics applied to OSH surveillance.
  - NIOSH should work with the National Library of Medicine to incorporate core OSH surveillance terminologies (including industry and occupation) into the Unified Medical Language System.
  - NIOSH should lead efforts to establish data standards and software tools for coding and using occupational data in electronic health records.
  - NIOSH and BLS, working with other relevant

## NAS Report, cont.

agencies, academic centers, and other stakeholders, should coordinate and consolidate efforts to develop and evaluate state of the art tools for processing free-text data found in all types of OSH surveillance records.

- NIOSH should develop and implement a plan for routine, coordinated, rapid analysis of case-level OSH data collected by different surveillance systems, followed by timely sharing of the findings.
- NIOSH should establish a coordinated strategy and mechanism for timely dissemination of surveillance information.
- NIOSH, OSHA and BLS should work together to encourage education and training of the surveillance workforce in disciplines necessary for developing and using surveillance systems, including epidemiology, biomedical informatics, and biostatistics.

The Secretary of Health & Human Services, with the support of the Secretary of Labor, should direct NIOSH to form and lead a coordinating entity in partnership with OSHA, BLS and other relevant agencies to develop a national strategic surveillance plan, publish a report on the plan's progress at least every five years, and engage partners such as state agencies with OSH responsibilities, and stakeholders.

Although the NAS report recommendations are non-binding because NAS lacks enforcement authority, when evaluating changes to the e-recordkeeping final rule, OSHA cannot take action that would lessen worker protections. While OSHA's e-recordkeeping rule is a regulation, and not a safety or health standard, it can be argued that identification of incident trends and emergent hazards through robust surveillance protects workers by allowing proactive interventions.

### **OSHRC Holds Oral Argument on Section 6(a) Case By Gary Visscher, Esq.**

The Occupational Safety and Health Review Commission has, at least in recent years, rarely allowed oral argument in cases before the Commission. That was due in part to the fact that the Commission has not consistently had 3 members.

With the Commission now at full membership, last week it held oral argument in one of the oldest cases pending before the Commission, *Secretary of Labor v. Kiewit Power Constructors*.

The case involves a section 6(a) standard. When the OSH Act was passed in 1970, Congress provided a two-year period in which OSHA was to "promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees." Standards adopted under section 6(a) were exempted from notice and comment requirements of the Administrative Procedures Act.

The reason for giving OSHA this authority was to "establish as rapidly as possible national occupational safety and health standards" for OSHA to enforce. But OSHA's implementation of 6(a) authority was hasty, and created or contributed to numerous legal as well as "image" problems for OSHA (reference the "split toilet seat" issue). On the other hand, many of the standards in 1910, 1915, and 1926 which OSHA still enforces were adopted under the 6(a) authority.

Kiewit Power involves a citation issued by OSHA in August 2011 for an alleged violation of 29 C.F.R. 1926.50(g). The standard requires a quick drenching or flushing facility be available at the workplace where a worker's eyes or body may be exposed to injurious corrosive materials. The genesis of 1926.50(g) was a standard issued under the Walsh Healey Act prior to the effective date of the OSH Act and adopted as an occupational safety and health standard under section 6(a).

The Walsh Healey Act, however, covered federal contracts "for the manufacture or furnishing of materials, supplies, articles, and equipment." A separate law, the Contract Work Hours and Safety Standards Act, applied to federal construction contracts. In adopting "established federal standards" under section 6(a), OSHA initially published a regulation which stated that the standards would apply to the same "plants, factories, buildings, or other places of employment" that they did under the preexisting law, except without the requirement of a federal contract. Later, but still within the 2-year period from the OSH Act's effective date, and citing specifically its authority under section 6(a), OSHA revoked that limitation "so that standards adopted [as established federal standards]

## Section 6(a) Case, cont.

may apply to every employment and place of employment exposed to the hazards covered by the standard.” Subsequently, in 1979, when OSHA identified which standards applied to construction work, the list included the requirement for a quick drench or flushing facility. In 1993, when OSHA compiled the construction standards as a separate set of standards in Part 1926, OSHA included the standard on quick drenching or flushing facility as 1926.50 (g).

Kiewit Power argued, however, that the standard as applied to construction was invalid from the beginning because expanding the scope was outside the authority that Congress gave to OSHA in section 6(a). Kiewit argued that expanding the scope of the “quick drenching” requirement from the types of operations covered as a Walsh Healey standard to construction required notice and comment rulemaking, which was not done.

On the other hand, the Secretary argued that Congress’ grant of authority in section 6(a) was intended to be broad, and that the Secretary was within his authority in 1972 in not limiting the substantive protections of the standard only to manufacturing and industries to which they applied as a Walsh Healey standard. The Administrative Law Judge ruled in favor of Kiewit Power, and dismissed the alleged violation. Historically the Commission has been reluctant to overturn OSHA’s authority and the actions taken by the Secretary under section 6(a), but based on the oral argument, the Commission may do so in this case.

### Supreme Court Decides That Challenges to the Waters of the US Rule Must Be Heard in District Court

By Tina Stanczewski, Esq.

For years, those impacted by the Obama-era “Clean Waters Rule” have been awaiting guidance as to where challenges should be heard. On January 22, 2018, the Supreme Court has ruled that the federal District Court is the correct forum. Over 100 parties have challenged the controversial rule that developed in response to what the Environmental Protection Agency felt was unclear guidance on what constituted a “water of the US.” Although seemingly straightforward, this definition is critical within the EPA permitting process and impacts farmers, mines, and a multitude of other businesses. Although long awaited, the decision only dictates the

forum for challenges, the actual challenges to the rule now have to be heard, which may take even longer.

Presently, the Waters of the US (WOTUS) rule is stayed due a ruling by the Sixth Circuit concerning whether it was the appropriate forum to hear the merits of the case. Cases are already pending in the district courts. The U.S. District Court for the District of Minnesota has a case pending and other district courts had issued decisions that may be appealed since the correct forum has been established. Now that the Supreme Court has determined the forum, the stay may be lifted. Another court may issue a stay, but the Trump Administration already implemented actions in 2017. On July 27, 2017, the EPA issued a proposed rule to rescind the WOTUS Rule. But late last year, in November 2017, the EPA proposed a second rule to delay the effective date for the rule for two years.

For more information on the rule, please contact the Law Office.

### Maryland Passes Paid Sick Leave Law

By: Diana Schroeder, Esq.

On January 12, 2018, Maryland’s General Assembly overrode Governor Hogan’s veto of the sick leave law that passed last March. The law will become effective on February 11, 2018, although a bill to delay the effective date was taken up last week, at the urging of industry groups. If the delay bill passes, enforcement will be delayed until April 12, 2018.

The new law will impact all Maryland employers. Maryland employers with 15 or more employees must provide *paid* sick and safe leave. Maryland employers with less than 15 employees must provide *unpaid* sick and safe leave. Employers must offer leave accrual at the rate of 1 hour for every 30 hours worked. Employers are not required to allow an employee to earn or carry over more than 40 hours of earned leave in a year. Employers may cap the use of earned leave at 64 hours per year, cap the accrual of leave at 64 hours total.

All employees are covered, except employees working under 12 hours a week; construction workers covered by a collective bargaining agreement; health care workers who are providing services on an “as-needed” basis; licensed real estate sales personnel; certain employees of temporary staffing agencies; and certain employment agency employees providing limited services.

### MD Paid Sick Leave, cont.

Under the Maryland law, an employer must allow employees to use accrued sick and safe leave for the following reasons:

- to care for or treat the physical or mental health of the employee;
- to care for a family member with a physical or mental health condition;
- to take maternity or paternity leave; or
- to obtain relief due to domestic violence, sexual assault or stalking of the employee or a family member.

The law requires Maryland employers to provide their employees certain notice, including their accrued leave.

This law preempts any local paid sick leave law passed from January 1, 2017 forward. The result is that Maryland's Montgomery County paid sick leave law, with more requirements for employers, remains in force.

Ten states including the District of Columbia now mandate paid sick leave – Arizona, California, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, Vermont, Washington, and Washington, D.C. Because the effective date has not been delayed, employers should review their leave policies to ensure compliance with the new paid sick and safe leave law. Please contact the Firm for a copy of the law, or additional guidance.

## 2018 OSHA & MSHA PENALTY INCREASES

### OSHA Civil Penalties

Willful/Repeat: maximum increases from **\$126,749 to \$129,336**

Mandatory Minimum for willful/repeat: increase from **\$9,054 to \$9,239**

Serious/OTS: maximum increases from **\$12,749 to \$12,934**

### MSHA Civil Penalties

Regular assessment range increases to **\$132-\$70,834** (based on penalty point system)

Flagrant violations: maximum increases from **\$254,530 to \$259,725**

Failure to timely report injury/death: mandatory minimum increases from **\$5,785 to \$5,903**

Mandatory minimum for 104(d)(1) "unwarrantable failure" Violations increases from **\$2,314 to \$2,361**

Mandatory minimum for 104(d)(2) orders increases from **\$4,627 to \$4,721**

Failure to abate orders under 104(b) increases from **\$7,570 to \$7,673**



## 2018 SPEAKING SCHEDULE

### ADELE ABRAMS

- 02/01/18: Progressive Business Conferences, webinar on OSHA Temporary Worker Safety
- 02/07/18: National Utility Contractors Assn, Webinar on OSHA E-Recordkeeping Rule
- 02/13/18: Northwest Safety Conference, OSHA documentation presentation, and ADA, OSHA and Medical Marijuana presentation, Minneapolis, MN
- 02/14/18: Business 21, Webinar on Legally Effective Incident Investigation
- 02/15/18: BLR, Webinar on Temporary and Contractor Safety
- 02/21/18: North Dakota Safety Conference, Bismarck, ND, presentations on mine safety and enforcement
- 02/23/18: Oregon Independent Aggregates Assn., Wilsonville, OR AGC, half-day workshop OSHA's crystalline silica rule compliance
- 02/27/18: Society of Mining Engineers, presentation on OSHA's Crystalline Silica Rule & Impact on Mining, Minneapolis, MN
- 03/02/18, United Group, presentation on Crystalline Silica rule compliance, Fort Worth, TX
- 03/06/18: AGG-1 Conference, presentation on substance abuse programs and medical marijuana, Houston, TX
- 03/12/18-03/13/18: Oregon Independent Aggregates Assn, Part 46 Annual Refresher Training, Roseburg & Albany, OR (Michael Peelish and Josh Schultz)
- 03/13/18: Business 21, webinar on Independent Contractor Safety
- 03/14/18: Indiana Safety Conference, presentation on Safety Documents: Sword or Shield, Indianapolis, IN
- 03/17/18-03/18/18: Environmental Information Association, Workshops on Crystalline Silica (Adele Abrams & Michael Peelish), San Diego, CA
- 03/20/18: IMA-NA Technical Workshop, Orlando, FL, presentation on MSHA's Workplace Examination Standard
- 03/22/18: Energy & Mineral Law Foundation, Mine Safety & Health Law Institute, panel presentation on MSHA Flagrant Violations & Pattern of Violations, Washington, DC
- 03/23/18: ClearLaw Institute, webinar on OSHA Injury/Illness Reporting Requirements
- 03/26/18-03/29/18: South Central Mine Safety & Health Conference, presentation on Crystalline Silica & Mining (Adele Abrams & Josh Schultz)

### MICHAEL PEELISH

- 01/30/18: Chesapeake Regional Safety Council Competent Person Silica Training, Richmond, VA
- 02/22/18: PACA Safety Conference, Legally Sound Accident Investigation, Penn State, PA
- 02/23/18-02/24/18: The Precast Show, National Precast Concrete Association, Denver, CO
- 02/26/18-02/27/18: North American Frac Sand Conference, OSHA/ MSHA Legislative Update, Houston, TX.
- 03/12/18-03/13/18: Oregon Independent Aggregates Assn, Part 46 Annual Refresher Training, Roseburg & Albany, OR (Michael Peelish and Josh Schultz)

### JOSHUA SCHULTZ

- 02/27/18 CalCIMA Spring Thaw, Workplace Exams, Ontario, CA
- 03/12/18-03/13/18: Oregon Independent Aggregates Assn, Part 46 Annual Refresher Training, Roseburg & Albany, OR (Michael Peelish and Josh Schultz)
- 03/26/18-03/29/18: South Central Mine Safety & Health Conference, presentation on Crystalline Silica & Mining (Adele Abrams & Josh Schultz)

### TINA STANCZEWSKI

- 05/22/18-05/24/18: N.C. Mine Safety & Health Law School, Morganton, NC
- 09/18-20/18: N.C. Mine Safety & Health Law School, Castle Hayne, NC