OCCUPATIONAL SAFETY
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NOTICE OF PROPOSED MODIFICATION TO CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 4, New Section 1530.1
of the Construction Safety Orders

Control of Employee Dust Exposure from Concrete and Masonry Operations

On December 13, 2007, the Standards Board held a Public Hearing to consider revisions to Title 8, New Section 1530.1 of the Construction Safety Orders.

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

Any written comments on these modifications must be received by June 17, 2008, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The standard will be scheduled for adoption at a future business meeting of the Standards Board.

A copy of the full text of the standard with the modifications clearly indicated is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to Marley Hart, Executive Officer, at (916) 274-5733.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Original signed by

Date: May 29, 2008

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
double underline wording for new language,
and bold, strikeout for deleted language.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Title 8, Construction Safety Orders to add a new Section 1530.1 to read:

§1530.1. Control of Employee Exposures from Dust-Generating Operations Conducted on ~~Masonry or~~ Concrete **or Masonry** Materials.
(a) Scope and Application. This section applies to the use of powered tools or equipment to cut, grind, core, or drill, concrete or masonry materials.
NOTE: This section does not preclude the application of other sections of Title 8 including, but not limited to, Sections 1509, 1530, 3203, 5141, 5143, 5144, 5155, and 5194.
EXCEPTION: This section does not apply to:
(1) Stucco, plastering material, or other similar products.
(2) Wall cladding, siding, or other similar products.
(3) Downward drilling.
(4) Jack-hammering or chipping when that work is incidental to the scope of work or planned operations of a plumbing or landscaping activity.
(5) Work with powder-actuated tools.
(6) Work incidental to the installation of concrete and masonry materials such as the drilling of holes for plumbing fixtures.
(7) Tile backer board when cut with **powered** shears or a dust reduction blade **having a dust containment device**.
(b) Definitions.
(1) Concrete or Masonry Material – A hard stone-like building material made of clay or made by mixing cement or a combination of cement, sand, gravel, broken stone, or other aggregate with water. Examples include brick, clay brick, concrete block, mortar, natural or manufactured stone, floor, wall, or counter top tile, and terra cotta. Unless otherwise indicated by evidence presented by the employer that the mixture does not include cement, sand, gravel, stone, clay, or aggregate material containing silica, material that is apparently stone-like in appearance and texture shall be presumed to be concrete or masonry material.
(2) Powered tools or equipment – Tools **or equipment for** ~~in~~ which the motive force that disrupts concrete or masonry materials is provided by a source other than human energy. Powered tools ~~and~~ **or** equipment include those powered by electrical, combustion, hydraulic, chemical, or pneumatic energy.
(3) **Dust containment device – A device attached to a power tool such as a pouch, bag, plastic container, or similar attachment which is intended to capture dust generated by the power tool. This device is not intended to be a dust reduction system as defined under this section.**
(4) Dust reduction system – Technology that utilizes the application of water or local exhaust ventilation to reduce airborne dust generated by the use of powered tools or equipment. Local exhaust ventilation may include vacuum systems, dust collection systems, and dust exhaust systems.

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

(c) Control of employee exposures to airborne particulate.
During operations in which powered tools or equipment are used to cut, grind, core, or drill, concrete or masonry materials, a dust reduction system shall be applied to effectively reduce airborne particulate.
EXCEPTION No 1: A dust-reduction system is not required if the operation**, without considering any protection provided by personal protective equipment,** does not result in employee exposure exceeding the Permissible Exposure Limits for applicable particulate**s** listed in Section 5155 including, but not limited to, crystalline silica, as demonstrated reliably by air sampling data applicable to the specific operation being performed.
EXCEPTION No. 2: A dust reduction system is not required for ~~**roofing**~~ **rooftop** operations with roofing tile, roofing pavers, or similar materials.
EXCEPTION No. 3: During the first 24 hours of an operation undertaken in response to an emergency, a dust reduction system is not required where it can reasonably be demonstrated or foreseen that use of a dust reduction system will materially impair the timely progress of the operation. For the purposes of this exception, "emergency" means an unexpected occurrence requiring immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes, but is not limited to, a fire, flood, earthquake or other soil or geologic movement, structural collapse, damage to a subsurface installation, terrorist act, or sabotage.
(d) Safety and effectiveness of dust reduction systems.
(1) Procedures shall be implemented to ensure that dust reduction systems maintain their effectiveness for dust reduction throughout the work shift.
(2) Dust reduction systems shall be installed, operated, and maintained in accordance with manufacturer recommendations to the extent they exist.
(3) Local exhaust ventilation systems shall be designed, tested, maintained, used, and the waste materials they collect disposed of, in compliance with applicable requirements of Sections 1530 and 5143 of these orders.
(4) Where electrical tools are used with water as a dust reduction system, this shall be done in accordance with applicable requirements of the Electrical Safety Orders.
(e) Training.
(~~5~~**1**) Employee training. An employer whose operations include using powered tools or equipment to cut, grind, core, or drill concrete or masonry materials shall provide training on the following topics to all employees prior to their assignment to jobs or work areas where the employer will be conducting these operations:
A) The potential health hazards of overexposure to airborne dust generated from concrete and masonry materials, including silicosis, lung cancer, chronic obstructive lung disease (COPD) and decreased lung function.

B) Methods used by the employer to control employee exposures to airborne dust from concrete and masonry materials, including wet cutting, local exhaust ventilation systems, and ~~**process**~~ isolation **of the process from the operator or other employees by means of distance, enclosure, or other method**, as applicable.
C) Proper use and maintenance of dust reduction systems, including the safe handling and disposal of waste materials collected in connection with their use.
D) The importance of good personal hygiene and housekeeping practices when working in proximity to dust from concrete and masonry materials including:
1. Not smoking tobacco products; appropriate methods of cleaning up before eating, and appropriate methods of cleaning clothes.
2. Avoiding, to the extent practical, activities that would contribute significantly to an employee's exposure to airborne dusts.
(2) Supervisor training. Prior to engaging in supervision of employees who will be cutting, grinding, drilling, or coring concrete or masonry materials takes place, supervisory employees shall be trained on the following topics:
A) The information required to be provided by subsection (e)(1) above.
B) Identification of tasks the employees will perform, which may result in employee exposure to concrete or masonry dust.
C) Procedures for implementation of the measures used by the employer to reduce the exposure to concrete or masonry dust.
(3) Periodic training. The employer shall conduct the training required by this section at least annually.
NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Nancy Moorhouse, Vice President and Director of Safety, Teichert Construction Teichert Materials, by letter dated November 14, 2007.

Comment #1:
The proposal as written ties controls to either wet methods or exhaust ventilation. The construction industry should be allowed to decide what controls are best based on the configuration of the workplace as long as no one on the site is exposed in excess of the PEL.

Response:
The Board thanks Ms. Moorhouse for her comment and has addressed it in the response to the written comment from Bo Bradley.

Comment #2:
With regard to Exception 4 to proposed subsection (a), definitions of plumbing and landscaping should be included in the standard. Also, there may be confusion regarding jack-hammering incidental to work involving asphaltic concrete or pavement being construed as masonry material.

Response:
The Division's primary concern when evaluating whether Exception 4 to subsection (a) could apply to a particular operation they are conducting is whether the operation is incidental to the extent that the exposure to crystalline silica or other dust would be expected to be well below the applicable PEL. For example, the unanticipated jack-hammering of a 1-foot square area of concrete as part of a residential plumbing or landscaping project, as such an operation would generally be recognized in those industries, could qualify for the Exception. By contrast, for example, an employer carrying out a contract that specified jack-hammering of a 10 square foot area of sidewalk would not qualify for the Exception. The main concern is whether the operation is truly incidental to the main operation in the sense that it is very unlikely to result in a PEL exceedance. Also it should be noted that asphaltic concrete can release airborne crystalline silica from the rock aggregate it contains. However, when this work is incidental to plumbing or landscaping activity, as discussed above, it would qualify for the Exception.

Comment #3:
The proposal will result in added training costs to employers for additional occupational exposure monitoring. Cal/OSHA standards already clearly require that if there is a potential for an exposure hazard, the employer is responsible to verify if the hazard is present or not.

Response:
The Board does not believe that the proposed standard will result in significantly increased costs for monitoring of employee exposures to crystalline silica and other particulate that can be associated with cutting, grinding, coring or drilling of concrete or masonry materials. The advisory committee for this standard discussed at length operations that should be excluded from coverage on the basis of a presumption that they do not generate significant levels of airborne dust. A specific example of this is Exception 3 to proposed subsection (a) for downward

drilling. There was extensive discussion of the potential of drilling operations to generate significant dust exposures and it was generally agreed that downward drilling specifically, as reflected by the Exception, would not be expected to generate such exposures in most cases. As the commenter notes, Cal/OSHA standards, specifically Title 8, Section 5155(e)(1), already require air monitoring of employee exposures when it is reasonable to suspect that employees may be exposed to concentrations of airborne contaminants in excess of the levels specified in Section 5155. The operations covered by the proposed standard are those with significant potential for creating hazardous airborne exposures for employees for which employers, if they are conducting them on anything more than an incidental basis, should already be conducting monitoring of employee exposures and implementing dust control and personal protective measures where the monitoring indicates excessive exposures may occur. The Board believes that while the requirements of the proposed standard will not significantly increase air monitoring costs as suggested by the commenter, the attention the standard brings to the problem it addresses may indeed prompt employers to re-assess the need in their operations to conduct the air monitoring that is already required by Section 5155.

Bo Bradley, Director Safety, Health & Regulatory Services, Associated General Contractors of California, by letter dated November 20, 2007.

Comment:
Ms. Bradley's letter asked that in proposed subsection (b)(3), the definition of "dust reduction system" be modified to include "other effective methods in accordance with 5141." Ms. Bradley's letter explains that making this modification to the definition of "dust reduction system" would allow for new technology or other effective methods to be utilized for control of employee dust exposures from operations covered by the proposed standard.

Response:
The Board appreciates the intent of Ms. Bradley's comment to see that the proposed standard not limit the technology that an employer may use to satisfy its requirement for use of a dust reduction system during the conduct of operations covered by the standard. However, Exception 1 to subsection (c) of the proposal allows an operation to be excepted from the requirement for use of a dust reduction systems where it can be reliably demonstrated not to exceed applicable PELs for particulate. This exception has the effect of satisfying the commenter's request for the proposed standard to allow for new technology or other effective methods to be utilized to control employee exposures to hazardous particulate from operations covered by the proposed standard.

The Board thanks Ms. Bradley for her comment and for her and her organization's participation throughout the rulemaking process for this standard.

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC), by letter dated December 11, 2007.

Letters and electronic mail expressing support for Mr. Wick's comments were received from:
Mark Bowman, Knack Construction Inc.
Bill Larson, Peterson Brothers Construction, Inc.
Randy Newhard, New Way Landscape & Tree Services
Jon Parry, Bemus Landscape, Inc.
Dan Smith, Town & Country Roofing

Victor Thibeault, PBC
Ben Viloria, Viloria Construction
Meredith Brownson, for Marne Construction
Meredith Brownson, for Jezowski & Markel Contractors, Inc.
Thomas Calhoun, Calhoun Construction, Inc.
Greg Colgate, Ancient Art, Inc.
Erin Dees, SelectBuild
Doug Grote, Just-Star Construction, Inc.
Mark Louvier, Trimco Finish
Julie Trost, California Conference of Mason Contractors Associations, Inc.
Kevin D. Bland, for California Framing Contractors Association

Comment #1:
In the first sentence of proposed subsection (c) following "or," the word "powered" should be added to modify the term "equipment" for clarity. Similarly, in subsection (a)(7) the word "powered" should be added before "shears" for clarity.

Response:
The term "powered tools or equipment" is specifically defined in proposed subsection (b)(2) and so the Board declines to modify this term as it appears in proposed subsection (c) because such a modification could detract from the clarity of the proposed standard as written. However, the Board believes adding the term "powered" before the word "shears" in proposed Exception 7 to subsection (a), would add clarity, and therefore, this change is made in the modified proposal.

Comment #2:
The Exception to subsection (a)(7) allowing a "dust reduction blade" should be modified to ensure that the blade is used with a dust containment device; therefore, the clause "with a containment device attached" should be added following the word "blade" in that sentence.

Response:
The Board appreciates the commenter suggesting a readily available approach that may provide additional assurance for protection of employees whose employers choose to operate under Exception 7 to subsection (a). The Division has clarified with Mr. Wick what is meant in the comment by a "containment device," and this is reflected in a definition for this term being added to the proposal.

Comment #3:
In proposed subsection (c), Exception 2 does not allow the employer to recommend, offer, or require N95 rated dust masks as an added measure or precaution; therefore, a sentence should be added to the end of that exception which reads: "When the employer offers, recommends, or requires an N95 rated dust mask, it shall be considered 'voluntary' under the requirement of Section 5144 of the General Industry Safety Orders."

Response:
The Board understands the commenter's desire to simplify the requirements for provision of filtering facepiece dust masks by roofing employers. However, the Board declines to make the requested change as it would conflict with significant substantive requirements of Section 5144 with respect to required use of respirators, including N95 filtering facepieces. The Board notes, as suggested in the comment, that Section 5144 already provides for more limited requirements

where respirators, including N95 filtering facepieces, are used on a voluntary basis as specifically detailed in that section.

The Board thanks Mr. Wick and his organization for this comment and for his and his organization's participation throughout the rulemaking process.

Danielle Lucido, Staff Attorney, Worksafe, by letter dated December 13, 2007

Comment #1:
In Exception 1 to proposed subsection (c), the language "demonstrated reliably by air sampling," is unduly vague. Without a protocol for air sampling, whether the exception applies to a particular operation is unclear and is likely to be difficult to enforce.

Response:
The language is consistent with the requirements of Section 5155(e) to monitor employee exposure and that the monitoring be done by someone competent in industrial hygiene practice. Such industrial hygiene practice is well understood by the regulated community and includes that monitoring of employee exposures be conducted during the specific operation it is intended to represent in order to reliably demonstrate the level of exposure by air sampling. Therefore, the Board declines to make any modifications to the proposal in response to this comment.

Comment #2:
As to Exception 1 to proposed subsection (c), it is unclear from the language of the proposed standard whether the exception applies to those operations that do not result in employee exposure exceeding the PELs listed in Section 5155 without administrative controls and/or personal protective equipment. Worksafe believes the Standards Board should clarify the application of this exception by explicitly stating that an operation is excepted only where "without administrative controls or personal protective equipment" it does not result in employee exposure exceeding the PELs for an applicable particulate listed in Section 5155. Unless the standard is clarified in this manner, it is in conflict with other regulations and the laws which require that worker protection follow a hierarchy of controls that begins with engineering controls as the preferable way to protect workers.

Response:
The Board agrees with the commenter that the Exception should be modified to make it clear that personal protective equipment is not to be considered in the exposure assessment, and this change is made in the proposal. However, the Board does not agree with the commenter that administrative controls should be excluded from the operation of the Exception. Title 8, Section 5141 allows for use of administrative controls for harmful exposures only when feasible engineering controls have been implemented but do not achieve full compliance with applicable exposure limits. The Board believes that Section 5141 adequately addresses the comment by its specified hierarchy of controls for addressing harmful exposures and further that reliance on Section 5141 does not undermine the intent of the proposal to encourage the use of dust reduction systems with dust-generating operations conducted on concrete or masonry.

Comment #3:
The term "process isolation" used in proposed subsection (e)(2) Training is not defined in the proposed standard. This term should be defined so that its intended meaning is clear to employers, employees, and others who use the standard.

Response:
The paragraph referred to in the comment is at proposed subsection (e)(1)(B). It was previously, in error, numbered in the original proposal as subsection (e)(5)(B) and may have caused some confusion for which the Board apologizes. In response to the comment, the Board has modified the original proposal by using the more easily understood phrase "isolation of the process," and then specifying that the phrase refers to the distance, enclosure or other method to physically remove the process from the immediate proximity of the operator or other employees. The Board believes that this modification will clarify the meaning of the originally proposed term "process isolation" as requested by the commenter.

Comment #4:
Proposed subsection (a) provides exceptions from the scope and application of the proposed standard for seven types of operations and materials. However, employers using these operations and materials are still required to comply with the requirements of Section 5141 for control of harmful employee exposures, including control of exposures to below applicable PELs found in Section 5155. To ensure that employers making use of the exceptions for certain operations and materials listed in proposed subsection (a) are complying with these standards, they should be required to send air sampling reports to Cal/OSHA.

Response:
The Board understands the concern underlying this comment. However, the Board does not believe the suggested modification of the proposal is warranted. The Division reviews air-sampling records for crystalline silica and other chemical hazards in the course of inspections of individual employers. Employers must be mindful that even though an operation or material may be among those excepted from coverage by the proposed standard, as clearly indicated by the Note in proposed subsection (a), other Title 8 requirements still apply which require controlling employee exposures below the PELs specified in Section 5155.

The Board thanks the commenter for her comments and for her and her organization's participation throughout the rulemaking process.

Teresa A. Harrison, Acting Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration by letter dated November 29, 2007.

Comment:
Fed OSHA has no specific dust reduction criteria during concrete and masonry activity, therefore, the proposed standard is more effective than the federal standard.

Response:
The Board thanks Ms. Harrison for her comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the December 13, 2007, Public Hearing in Sacramento, California

Comment:
Statements of support for the proposal were received from the following:

Julie Trost, California Conference of Mason Contractor Associations, Inc.
Kevin MacDonald, Townsend & Schmidt Masonry
Rick Smith, General Masonry, Inc.
Morgan Nolde, Roofers and Waterproofers Local 81
Dave Danner, Bricklayers, Tilelayers, and Allied Craftworkers Local 3

Response:
The Board thanks these individuals for their statements in support of the proposed standard.

Comment:
Statements of support for the written comments submitted by Bruce Wick of CALPASC were expressed by:

Dan Schuetz, for Associated General Contractors
Greg Peterson, Eagle Roofing Products
Joel Guth, Masonry Technology, Inc.
Kevin Bland, for Masonry Institute of America, California Framing Contractors Association, and Roofing Contractors Association
Wade Woodward, Old Country Roofing
Steve Johnson, Associated Roofing Contractors of the Bay Area Counties

Response:
The Board thanks these individuals for their participation in the rulemaking process.

Comment:
A statement of support for the written comment submitted by Bo Bradley of Associated General Contractors was made by Dan Schuetz for Associated General Contractors.

Response:
The Board thanks Mr. Schuetz for his participation in the rulemaking process.

Wilfrid "Buck" Cameron, Center for Construction Research and Training (CPWR)

Comment:
In Exception No. 1 to subsection (c), the language should be amended to clarify that the exception refers to the total generation of dust or the total exposure, meaning that if the work were divided among ten people, the permissible exposure would not be ten times the PEL.

Response:
The Board was not clear what was meant by the comment so staff called the commenter and his intent was to support the written comment about air sampling that Ms. Lucido submitted on the behalf of Worksafe. The Board therefore, refers the commenter to the response to Ms Lucido's written comment #1.

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors (CALPASC)

Comment:
Mr. Wick asked that the proposal be amended regarding roofing work. Roof work is done on a slanted surface at an elevated height, which creates a different set of issues than working on level ground without a fall hazard. He stated that although the data is unclear regarding the exposure level, the contractors are willing to work with the Division to find a solution, which has not yet been reached. The two primary issues are the use of saws or other cutting instruments on an elevated, slanted work surface and the reduction in visibility created by respirator use. Until such a solution is reached, roofing contractors are required to train as if the proposed standard were in place.

Response:
The Board was not clear what was meant by the comment so staff called the commenter. Mr. Wick indicated that the intent of his comment was to reiterate his group's concern with the potential safety issues posed by use of dust reduction systems and respirators in rooftop work, and their support for proposed Exception 2 to subsection (c) which would limit the requirements of the proposed standard for such operations to training of employees as detailed in proposed subsection (e). The Board is hopeful that ongoing discussions planned by the Division with roofing employers and others, including members of Mr. Wick's organization, will yield effective and practical solutions to the control of dust exposures in roofing operations which are not viewed by employers as unnecessarily burdensome or an added safety risk.

Board Member Frisch

Comment #1:
Dr. Frisch asked if Exception 2 to proposed subsection (c) applied solely to work on roof surfaces or whether employees working on the ground and transporting materials up to the roof would also be covered by the exception. Board Member Frisch expressed concern that the exception could apply to any roofing operation, regardless of whether it takes place on the roof or on the ground.

Response:
Exception 2 to proposed subsection (c) is intended to apply only to roofing operations with roofing tile, roofing pavers, or similar materials where such operations cannot be conducted safely. When employees work on scaffolds, on the ground, or on other surfaces on which dust control measures do not significantly increase physical safety risk, the exception is not warranted. The exception has been modified by substituting "rooftop" for "roofing." Employers must be mindful that even if they cannot feasibly conduct these operations on surfaces other than roof surfaces, they are still obligated by Section 5155 to control employee exposures to hazardous dusts.

Comment #2:
Board Member Frisch expressed concern with comments requesting modification of requirements for respiratory protection and he cautioned against a modification of the proposal to reduce the level of respiratory protection.

Response:

The comments Board Member Frisch refers to are addressed in the response to written comment # 3 from Mr. Wick.

Steve Johnson, Associated Roofing Contractors of the Bay Area Counties

Comment:
Mr. Johnson supported all three of the written comments submitted by Mr. Wick as noted above, and said specifically with regard to written comment # 3 that employers want to be able to provide respiratory protection for their employees without fear of being cited by the Division because they provide an N95 dust mask for their employees without a written respiratory protection program being in place.

Response:
The Board has addressed the comment in the responses above to written comments from Mr. Wick. The Board thanks Mr. Johnson for his comment and for his and his organization's participation throughout the rulemaking process on this standard.

Jim Bresnahan

Comment:
Mr. Bresnahan said that Exception 2 to proposed subsection (c) for roofing operations should not apply where materials covered by the exception can be cut on a scaffold, thus eliminating the competing fall risk of carrying materials up a ladder.

Response:
Mr. Bresnahan's concern is addressed in the response to the first verbal comment above of Board Member Frisch with regard to the intent of Exception 2 to proposed subsection (c), noting that the language of the exception has been modified to limit its application only to "rooftop" operations.

Comment:
Mr. Bresnahan asked that the term "process isolation" in proposed subsection (e)(1)(B) be defined in the standard.

Response:
The Board thanks Mr. Bresnahan for his comment which is addressed in the response to written comment #3 from Ms. Lucido.

The Board thanks Mr. Bresnahan for his comment and for his extensive participation throughout the rulemaking process.

Board Member Rank

Comment:
Board Member Rank requested a definition of the term "voluntary" as referred to in the written comments of Mr. Wick.

Response:
This comment is addressed in the response to written comment #3 of Mr. Wick.

Board Member Kastorff

Comment:
Board Member Kastorff asked whether Section (b)(1) was intended to include asphalt.

Response:
As suggested in the response to written comment #2 of Ms. Moorhouse, airborne crystalline silica can be released from the rock aggregate contained in asphaltic concrete and so the definition in proposed subsection (b)(1) is intended to include this material.

Board Member Jackson

Comment:
Mr. Jackson expressed concern as to whether the proposal meets the statutory requirement for necessity, stating that he was unable to find anything in the documentation that showed known exposures that exceed the PEL. He stated that, as drafted, the definition in subsection (b)(1) unnecessarily assumes that all concrete products contain high enough levels of silica that there will always be an overexposure and forces the employer into a defensive posture whether or not there actually is a problem, a result that seems contrary to our basic concepts of fairness and correct procedure. He went on to state his concern about the exception for roofers, indicating that if the hazard exists for bricklayers, it exists for roofers, and if the proposal is intended to protect employees from exposure, then it should protect all employees. Mr. Jackson also expressed concern that the proposal unnecessarily duplicates requirements that exist elsewhere, stating that the same types of training requirements already exist in Sections 1509 and 3203 and employers performing this work currently are already obligated to do appropriate training for employees and supervisors, and therefore, the Division has all of the enforcement tools needed to prevent this hazard.

Response:
With regard to necessity, in the course of the two advisory committees held in early 2007 on this proposal, the Division was provided with, and identified from its research, numerous laboratory and field studies documenting the potential for overexposures to respirable crystalline from the operations covered by the proposed standard. The one of these that was the most clear and comprehensive was included as a Document Relied Upon in the Initial Statement of Reasons. With regard to the comment regarding roofers, see the response above to Board Member Frisch's verbal comment. As noted in that response, the exception for roofers is based on safety risk related to dust control measures, not an absence of risk of exposure to respirable crystalline silica and other dust from covered operations in roofing. With regard to the comment on training, the proposed requirements were reviewed at two advisory meetings in early 2007 which were well attended by both labor and employer representatives. The proposed training requirements were modified in response to comments provided in that advisory process.