

**Congress of the United States**  
**Washington, DC 20515**

March 13, 2017

The Honorable Mick Mulvaney  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, D.C. 20503

Mr. Edward Hugler  
Acting Secretary of Labor  
U.S. Department of Labor  
Office of the Secretary  
200 Constitution Ave., NW  
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Nicholas C. Geale, Esq.  
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Dear Director Mulvaney, Acting Secretary Hugler, and Acting Solicitor Geale:

We are writing to request your assistance in remedying an instance of agency overreach that creates an environmental and worker health concern in an industry sector that is a key contributor to America's manufacturing base. The abrasive blasting industry directly employs more than 400,000 workers and supports industries that provide stable American jobs, like construction and shipbuilding. Annually, manufacturing abrasives diverts more than one million tons of slag or other co-product, which would otherwise be destined for landfills, to productive use.<sup>1</sup> This important industry is in jeopardy as a result of a midnight rule by the Occupational Safety and Health Administration (OSHA) in the final days of the Obama Administration. OSHA's "Occupation Exposure to Beryllium and Beryllium Compounds" rule amended the standards for occupational exposure to beryllium and beryllium compounds for the general industry, shipyard, and construction sectors.<sup>2</sup>

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<sup>1</sup> See Abrasive Blasting Mfrs. Alliance (ABMA), Comments to Proposed Rule: Occupation Exposure to Beryllium and Beryllium Compounds (Nov. 4, 2015).

<sup>2</sup> See OSHA, Occupational Exposure to Beryllium; Final Rule, 82 Fed. Reg. 2470 (Jan. 9, 2017).

We request the Administration take immediate steps to indefinitely delay the effective date of the beryllium rule and concurrently reissue the 2015 proposed beryllium exposure rule. The 2015 proposal was the product of years of work by OSHA, labor, and industry, and did not apply to the construction and shipyard sectors. OSHA has provided no scientific evidence that occupational exposure to beryllium in the construction and shipyard context presents an identifiable or measurable health risk, given the miniscule amounts of workplace beryllium exposure in these industries. Most garden soils contain more than three times the amount of beryllium found in abrasives.<sup>3</sup> While we strongly support OSHA's mandate to protect our nation's workforce, stakeholders assert there have been no documented cases of beryllium-related sensitivity or illness in the 80-year history of the abrasive blasting industry.<sup>4</sup>

An indefinite delay of this rule would be consistent with the Administration's policy of eliminating burdensome regulations. That policy was furthered on February 24, 2017, when President Trump issued Executive Order (EO) 13777, *Enforcing the Regulatory Reform Agenda*. The EO directed federal agencies to immediately identify and begin repealing, replacing, or modifying any regulations that eliminate jobs or inhibit job creation, are unnecessary or ineffective, or impose costs that exceed benefits. The beryllium rule, as it applies to the construction and shipyard industries, imposes extremely onerous requirements, is unnecessary, and could jeopardize the health of workers who are already protected against the targeted risks.

OSHA has already acknowledged the applicability of the President's regulatory freeze directive to the beryllium rule, and the agency has twice delayed the effective date, first to March 21, 2017, and again to May 20, 2017.<sup>5</sup> But OSHA must do more than delay the effective date of this misguided rule; the agency must swiftly rein in the impermissible overreach by reopening the rulemaking and properly amending the scope of the rule, subject to a meaningful notice, and comment period that complies with the *Administrative Procedure Act* (APA).

We are particularly concerned about the potential unintended consequences to the environment and worker health stemming from substitute products. According to comments submitted by the Abrasive Blasting Manufacturers Alliance, silica-based abrasives could become more prevalent, in direct contravention to OSHA's own recommendations. To quote:

There are also significant unintended consequences of regulating trace amounts of beryllium in abrasive-blasting in construction and shipyards. One will be a greater likelihood that silica-based blasting agents will be utilized despite OSHA's longstanding recommendation of substitution for silica-based materials.<sup>6</sup>

The lack of medical and scientific support for the expansion of the beryllium rule to the construction and shipyard industries is troubling. Equally troubling is the impermissible breakdown in the notice and comment process as required by the APA, which would have

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<sup>3</sup> See U.S. Envl. Prot. Agency, Office of Solid Waste and Emergency Response, SW-874, Hazardous Waste Land Treatment 273 (Apr. 1983).

<sup>4</sup> See ABMA, Comments to Proposed Rule: Occupation Exposure to Beryllium and Beryllium Compounds. Abrasive Blasting Manufacturers Alliance 14 (Nov. 4, 2015).

<sup>5</sup> See OSHA, Occupational Exposure to Beryllium: Proposed Delay of Effective Date, 82 Fed. Reg. 12318 (Mar 2, 2017).

<sup>6</sup> *Ibid.*



provided stakeholders with ample opportunity to explain the unintended consequences of a proposed agency action. None of the proposed rules applied to the construction or shipyard sectors. In fact, in the proposed rule published in August of 2015, OSHA determined that it would not include construction and shipyards because it had limited information regarding beryllium exposures outside of general industry. Additionally, OSHA stated employees in the abrasive blasting industry are already subject to a host of workplace protections, including use of engineering and work practice controls, as well as respiratory protection.<sup>7</sup> Nonetheless, OSHA promulgated a final rule applying to the construction and shipyard industry sectors without providing the public any meaningful opportunity to debate the basis for the requirements applicable to those sectors, or whether they are economically and technologically feasible.

Every worker deserves safe and healthy working conditions, and it is incumbent on OSHA to collaborate with employers to address gaps in safety. However, with the surprise expansion of the final rule to the construction and shipyard industries, OSHA ignored the APA and rewrote federal law while doing nothing to improve worker health and safety. Ironically, the agency's actions put at risk the very jobs and health of those workers it is bound to protect.

Accordingly, we again request the administration indefinitely delay the effective date of the beryllium rule and concurrently reissue a beryllium exposure rule that is in harmony with the 2015 proposed rule, which had overwhelming support of labor and industry. Thank you for your prompt attention to this issue of critical importance to our constituents and to the health and safety of American workers.

Sincerely,



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Bradley Byrne  
Chairman  
Subcommittee on Workforce Protections

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<sup>7</sup> OSHA, Occupational Exposure to Beryllium and Beryllium Compounds; Proposed Rule, 80 Fed. Reg. 47565, 47774-47775 (Aug. 7, 2015).