

The ABMA's Challenge to The OSHA Beryllium Regulations: January 2018

We are pleased to report that substantial progress has been made with regard to the ABMA's challenge to OSHA's January 9, 2017 beryllium regulations. (82 FR 2470 *et seq.*)

Timeline of Events

- **January 9, 2017** – OSHA published its new beryllium regulations
 - Three new sets of rules were issued, one set for General Industry, one for Shipyards, and one for Construction (See 29 CFR 1910.1024, 1915.1024, and 1926.1124)
 - New PEL adopted: 0.2 ug/m³ (micrograms per cubic meter)
 - New STEL adopted: 2.0 ug/m³
 - Numerous, extensive and onerous requirements were placed on abrasive blasting operations as well as on many other industries and work activities. OSHA refers to these requirements as the “ancillary provisions” although the vast majority are really new regulations and not ancillary at all.
- **January 19, 2017** - ABMA members filed a petition in court challenging the new OSHA beryllium regulations noting, among other things: (1) the new rules are not supported by sound science, (2) exposure to Beryllium from abrasive blasting is extremely low, (3) abrasive blasting is already highly regulated, (4) employees engaged in abrasive blasting are already well protected by these pre-existing extensive regulations and have no history of illness from beryllium and (5) for all of these reasons, no additional regulations are needed or appropriate. Other industries also filed petitions challenging the new regulations
- **January 30, 2017** – All the petitions were consolidated in the 8th Circuit Federal Court of Appeals, Docket No. 17-1124.
- **June 27, 2017** – After the ABMA and others presented their arguments to OSHA, the following took place:
 - OSHA issued a new proposed rulemaking to eliminate **all** of the “ancillary provisions” from the Construction and Shipyard industries.
 - OSHA agreed **not** to enforce the “ancillary provisions” for the Construction and Shipyard sectors adopted in 2017 “without further notice”. No such further notice has been provided.
- **September 11, 2017** – the ABMA Petitioners and OSHA agreed to put the ABMA petition to the 8th Circuit Court of Appeals on hold pending the outcome of the new proposed rulemaking and the Court upheld this agreement.

- **March 12, 2018** – The following is decided:
 - The new PEL and STEL are scheduled to become effective. *Important note: this date may get delayed so keep an eye out for developments.*
 - **All other rules (the “ancillary provisions”) will not go into effect for Construction and Shipyards (including abrasive blasting in those industries) without further notice from OSHA.**
 - All of the other OSHA regulations governing abrasive blasting that existed prior to January 9, 2017, will remain in effect and need to be followed.

What to Expect in 2018 and beyond

- There are petitions in the 8th Circuit by other companies and organizations that have not been placed on hold. These petitions primarily challenge the General Industry beryllium regulations. We expect further developments in those challenges.
- We are hopeful that OSHA will adopt the language of its proposed new rulemaking for Construction and Shipyards sometime in 2018.
- For those of you with operations in State OSHA Plan States please note that some have developed beryllium rules that track the January 9, 2017 Fed/OSHA rules. Further action will be needed in these states even if Fed/OSHA eliminates its “ancillary provisions”.

If you have any question as to whether the new PEL or STEL may be exceeded during your abrasive blasting operations, we recommend that you have air sampling conducted by a qualified industrial hygienist. It is ABMA’s understanding, that abrasive blasting operations will be able to meet the new PEL and STEL by following the pre-existing OSHA regulations that existed prior to January 9, 2017 but you should confirm this with your own qualified industrial hygienist.

All of the statements above apply no matter what type of abrasive blasting material you may utilize.

If you would like to assist the ABMA in its challenge to the new federal and state OSHA beryllium rules, please contact info@theabma.com. Thank you!