CEMENT CONCRETE & AGGREGATES AUSTRALIA

CCAA MEMBERS ADVOCACY ALERT

5 April 2024

TITLE: Government and Regulators agree to best-practice industry RCS risk-based management approach

THE HEADLINES

- CCAA has worked closely with Safe Work Australia and WHS Ministers to secure agreement on a risk-based approach to managing exposure to Respirable Crystaline Silica (RSC) that separates the product from the process.

- While the Workplace Exposure Standard (WES) for RCS is on a downward trajectory, CCAA advocacy has delayed this to allow industry to invest in targeted and improved controls for those workers at greatest risk.

- Working closely with the regulators in all jurisdictions, CCAA has ensured our guidance material is recognised as best-practice. helping industry and regulators to agree on an implementation of appropriate controls.

- Further advocacy is now required to ensure the RCS regulations developed by SWA for the model laws reflect the commitments reached by WHS Ministers on 22 March'24.

- The reputation of our industry remains at risk if it is in any way linked to the engineered stone sector.

THE DETAIL

Silica occurs in crystalline and non-crystalline (amorphous) forms. Crystalline silica is an aggressive, lung damaging dust when it is able to penetrate deep into the lung in sufficient quantity, whereas the non-crystalline form does not cause such lung damage.

Respirable crystalline silica or "RCS" is the respirable dust fraction of crystalline silica that can penetrate deep into the lungs. Respirable dusts are defined as being less than 10 microns with a mean diameter of 4.25 microns and are often referred to as "invisible dusts" because they are too small to be seen with the naked eye.

It is worth noting, that RCS is not present in every quarry and the nature of the risk will depend on the rock source, processing methods and how the site is designed and operated.

CCAA have agreed to advocate for a risk-based approach to managing RCS using the hierarchy of controls based on the rock source, processing methods and job roles for the specific site.

While a reduction in the Workplace Exposure Standard WES for RCS by government would appear to improve the safety of workers on site, it is only part of the solution and will be ineffective if a risk-based approach to managing RCS is not imbedded in the operation's SMS with appropriate monitoring.

There are four areas of risk associated with this issue that require CCAA advocacy and management on behalf of members:

Slow the transition of the Workplace Exposure Standard (WES) to lower levels to match industry and regulator capability to measure and manage controls.

- In Oct'19 Safe Work Australia (SWA) implemented a 50% reduction in the WES for RCS of 0.05 mg/m3.
- In March'23 SWA proposed moving to a TWA of 0.02 mg/m3 with support from unions and Ministers. However, given long-held concerns about the ability to accurately measure data below the present WES and extensive debate, SWA members only agreed to adopt a revised TWA of **0.025 mg/m^3** conditionally on a three-year transition plan which clearly identifies how difficulties with measurability could be allayed.
- In June'23 SWA sort to rapidly introduce this without a Regulatory Impact Assessment (RIA) but was halted by CCAA advocacy via ACCI in Sep'23.
- **An impact assessment will now be required that is likely to delay but not stop a move from 0.05 to 0.025 mg/m^3.**

Deliver risk-based model WHS regulations for RCS that recognises the hierarchy of controls and separates the silica containing product from the processing of it.

- On 28 February 2023 SWA released the *Decision Regulation Impact Statement (DRIS) – Managing the Risks of Respirable Crystalline Silica at Work.*
- This DRIS is principally focussed on engineered stone use but nonetheless covers all materials and processes that contain silica including quarries and construction. The recommended options in the DRIS are supporting a national awareness campaign, stronger regulations and prohibition of use of engineered stone.
- The increased regulation Option 5a in the Silica Decision RIS was decided by SWA. It included proposed definitions for *crystalline silica substance* (CSS), *crystalline silica process* (CSP) and *high-risk crystalline silica process* (HRCSP), and additional requirements for persons conducting a business or undertaking (PCBUs) carrying out a *high-risk crystalline silica process* (HRCSP).
- The Silica Decision RIS noted further work in consultation with SWA Members would be undertaken to refine the definitions to minimise any unintended consequences.
- On 17 November 2023 SWA proposed highly problematic definitions such that work with any product containing at least 1% silica would be considered high risk work (regardless of controls) triggering health monitoring and reporting, compliance training etc.
- **CCAA advocacy via ACCI has been actively promoting the separation of the product from the process and the application of a risk assessment approach using controls to achieve compliance** (similar to the VIC regulations).
- Following the WHS Minister's communiqué on 22 March, **CCAA advocacy via ACCI has been successful in re-introducing a risk assessment approach with controls.**
- Ministers agreed that all crystalline silica processes are to be considered high risk unless determined otherwise by a person conducting a business or undertaking through a risk assessment, and for minimum requirements in relation to risk assessments be set out in these regulations. These minimum requirements will include an assessment of whether the airborne concentration of respirable crystalline silica is reasonably likely to exceed half the workplace exposure standard.

Challenge the exposure definition and validity of RPE in the hierarchy of controls.

- A critical case that puts at risk the exposure definition and use of RPE: *Boral Resources (NSW) Pty Limited v Andrew McColm (Resources Regulator)* has now been resolved.
- The definition adopted by the Magistrate in the Local Court was that "exposure" meant that it was sufficient to simply *"be in the presence of" an airborne concentration of a substance at or*

above the level prescribed in WES and that it was immaterial as to whether workers were wearing any type of respiratory protective equipment (RPE)".

- **CCAA Council agreed that if this definition is allowed to form a precedent it would have far reaching negative impacts for the whole industry. Council supported a CCAA intervention into the case at no cost to CCAA with indemnification.**
- **The decision has been successfully annulled and the exposure definition and use of RPE upheld following the intervention.**

Manage our industry reputation in the face of the engineered stone ban (to take effect 1 July 2024)

- A decision was made by WHS Minister on 13 December 2023 to ban the use of engineered stone products from 1 July 2024.
- Definitions of what constitutes 'engineered stone' have been debated fiercely but **it is pleasing that our advocacy via ACCI has ensured concrete and cement products are explicitly excluded.**
- SWA has agreed to develop a product exemption process consistent with the National Exemption Framework that was considered at the WHS Minister's meeting in March 2023.
- Legacy products: Victoria strongly advised against a licensing scheme (following the costly and time intensive experience) and it is likely only 'notification' will be required if continuing to work with any legacy engineered stone products.
- There is an ongoing risk of this approach and conflation of the issues for the quarry and construction industry and our products.

NEXT STEPS

- An impact assessment will now be required that is likely to delay but not stop a move from 0.05 to 0.025 mg/m3. Industry will need to invest appropriately in high-risk crystalline silica processes (HRCSP) and associated controls to continue to operate in a silica constrained work environment.
- Sustained work and advocacy is needed to ensure a risk-based approach as agreed is embedded as the silica regulations are drafted in coming months.
- Ongoing education, promotion of guidance and championing of our industry as a safe environment in which to work will be crucial to ensuring our reputation is not impacted by happenings in the engineered stone sector.
- **A CCAA RCS working group will be established under the guidance of the National Industry Committee** to guide our ongoing work in this area.