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VIA ELECTRONIC MAIL

The California Occupational Safety and Health Standards Board
RS@dir.ca.gov

Re: Comments on the October 22, 2026 Revised Discussion Draft for Proposed New Section § 5204.1 "Prohibition of the Manufacture and Fabrication of Artificial Stone Slabs or Panels Containing 1.0% or More Crystalline Silica."

Dear Board Members:

I write to submit comments on the revised discussion draft of § 5204.1, "Prohibition of the Manufacture and Fabrication of Artificial Stone Slabs or Panels Containing 1.0% or More Crystalline Silica," issued by the California Occupational Safety and Health Standards Board (the "Standards Board") on October 22, 2026. I am a specialist toxic tort and product liability attorney with over 25 years of experience, including as counsel for companies that manufacture, sell, import, and distribute silica-containing products. I have advised companies on silica regulatory matters relating to product compliance issues encompassing compliance and enforcement. I regularly work with experts in the fields of industrial hygiene, toxicology, epidemiology, and exposure science related to silica and silica-containing products.

At a fundamental level, the regulations as currently written are unworkable and unduly burdensome for employers,[1] manufacturers, distributors, importers, and suppliers of artificial stone. Furthermore, the drafted § 5204.1 regulations and changes to other related regulations put extraneous and unnecessary costs on California businesses, businesses that, despite their best efforts, will be unable to comply with the new proposed standard. The regulations as presently drafted will increase the cost of doing business for companies in the construction industry in California up and down the supply chain, which will have ripple effects that reduce the pace of new construction and availability of housing. These issues will accordingly only exacerbate the cost of living and affordability crisis in the State.

[1] Throughout the proposed regulation, the revised discussion draft and related changes refer to "employers." Certain sections of the regulation and related changes would also apply to manufacturers, distributors, importers, and suppliers. This letter accordingly refers to all these entities in addition to "employers" throughout.

Based on my experience and in consideration of the above overarching problems with the presently drafted standard, I discuss below recommended changes to the October 22, 2026 revised discussion draft silica regulation and related changes proposed by the Standards Board.

I. Requiring Documentation of Product Contents Based on Metric Such as Color Where Same Formulation Covers Multiple SKUs

The October 22, 2026 revised discussion draft of § 5204.1 contemplates required documentation of product contents for artificial stone slabs and panels, including Safety Data Sheets ("SDS") and product testing, as excerpted below.

(g) Recordkeeping

(1) Documentation of product contents.

(A) The employer shall maintain documentation sufficient to demonstrate that a material contains less than 1.0% crystalline silica by weight; or that the material is not artificial stone.

(B) Documentation shall include:

1. A Safety Data Sheet (SDS) in accordance with section 5194 for each Stock-Keeping Unit (SKU); and

2. A laboratory analysis for each SKU using X-ray Diffraction from a laboratory accredited in accordance with section 5204 Appendix A provided by the importer, manufacturer, distributor, supplier, or other source.

Manufacturers, distributors, and suppliers of artificial stone slabs and panels often utilize the same product formulation for more than one SKU. Further, product formulations typically vary based on the color of the artificial stone. For example, artificial stone suppliers will use the same formulation for a specific color that involves multiple, separate SKUs based on thickness and/or finish (e.g., 2 cm Polished; 3 cm Polished; 2 cm Brushed; and, 3 cm Brushed).

It would accordingly be redundant and excessive to require manufacturers, distributors, and suppliers of artificial stone slabs and panels to prepare separate SDSs for each SKU that utilizes the same product formulation. Such SDSs would provide identical product composition and information on ingredients, potentially increasing confusion among employers and others reviewing the SDSs. Furthermore, California's Hazard Communication standard permits manufacturers, importers, and employers to prepare one SDS to apply to complex mixtures that have similar hazards and contents (i.e., where the chemical ingredients are essentially the same but the specific overall composition varies from mixture to mixture). See 8 C.C.R. § 5194(g)(4). This provision mirrors the federal OSHA Hazard Communication Standard. See 29 C.F.R. § 1910.1200(g)(4). California's standard governing SDSs therefore already contemplates the use of one SDS to cover multiple individual products with essentially the same composition.

Similarly, it would be redundant and unduly burdensome on manufacturers, distributors, and suppliers of artificial stone slabs and panels to submit each SKU for testing to an accredited laboratory to determine if the products contain less than 1.0% crystalline silica where the same product formulation with the same content is used for multiple SKUs.

I encourage the Standards Board to modify the revised discussion draft of § 5204.1 to permit employers, manufacturers, distributors, importers, and suppliers of artificial stone slabs and panels to prepare SDSs and obtain testing reflecting crystalline silica content for each distinct product formulation, using a metric such as color, rather than for each SKU. Where multiple SKUs use the same product formulation, only one SDS and one testing analysis should be required. SDSs could add information to include reference to the SKUs that are encompassed by a particular SDS. In addition and with regard to testing, it is my understanding that Australia enacted a similar scheme whereby testing is not done at a SKU level, but instead at the level of a product or good. See generally, Australian Border Force, Prohibited Goods, Engineered Stone (https://www.abf.gov.au/prohibited-goods-subsite/Pages/engineered-stone.aspx, last visited October 27, 2026).

II. SDSs Alone are Sufficient to Demonstrate a Material is Not Artificial Stone

Revised discussion draft § 5204.1(g)(1)(A), Recordkeeping, (see excerpt in Section I, above) requires employers to maintain documentation to demonstrate that a material is not artificial stone. There is no difference in mandated documentation compared to that which is required to demonstrate a material contains less than 1.0% crystalline silica by weight.

This would seemingly require employers, manufacturers, suppliers, importers, and distributors to prepare and/or obtain SDSs and obtain prescribed laboratory analyses for every product SKU they sell or handle in order to demonstrate that such products are not artificial stone. This would amount to requiring companies to prove a negative (i.e., that a material is not artificial stone) rather than simply requiring them to affirmatively prove that artificial stone material contains less than 1.0% crystalline silica. As currently drafted, the proposed regulation is therefore unduly burdensome on employers, manufacturers, suppliers, importers, and distributors.

I urge the Standards Board to change the documentation requirement for non-artificial stone products, including but not limited to natural stone, porcelain, ceramic, and glass. Rather than mandate SDSs and testing for every SKU, it should be sufficient for an employer, manufacturer, importer, distributor, or supplier to show via an SDS that an individual product and/or product type is not artificial stone. For example, an employer, manufacturer, distributor, importer, or supplier could maintain an SDS covering marble slabs that provides the product composition and information on ingredients. The composition of natural stone products, such as marble, is well studied in industry publications and scientific studies, including but not limited to the U.S. Geological Survey, Natural Stone Institute, and multiple state-level and university geologic surveys. These and other reliable sources provide commonly understood criteria for the composition of non-artificial stone materials that can serve as the basis for an SDS. Laboratory testing should also therefore not be required to determine that a product is not artificial stone.

III. Section 5204.1 Cites to the Wrong Standard for Requiring Bulk Content Testing of Samples to Demonstrate Less Than 1.0% Crystalline Silica by Weight

As noted in Section I, above, the revised discussion draft of § 5204.1 requires laboratory analysis, using X-ray Diffraction from a laboratory accredited in accordance with § 5204 Appendix A, to demonstrate that a material contains less than 1.0% crystalline silica by weight. See October 22, 2026 revised discussion draft § 5204.1(g)(1)(A)-(B)(2). The plain purpose of the laboratory testing is to determine the **bulk content** of crystalline silica present in artificial stone slabs or panels. Yet § 5204 Appendix A is the Cal/OSHA standard that outlines testing required for analyzing **air samples** for **respirable** crystalline silica. This is the amount of crystalline silica that could be released from artificial stone and, of that released amount, the amount that is actually capable of being inhaled and brought into the lungs. Appendix A to § 5204 lists as one of the specified testing methods NMAM 7500. NMAM 7500 is a NIOSH test method that utilizes the following steps: (1) a sample is pulverized and passed through a sieve that filters particles smaller than 75 micrometers; (2) the resulting material is passed through a second sieve that filters particles smaller than 10 micrometers; and, (3) the remaining material is analyzed for crystalline silica particles that are now of a size comparable to respirable particle size. This is not the bulk content test that is called for based on the plain language of the revised discussion draft at § 5204.1(g)(1)(A)-(B)(2). Appendix A to § 5204 is therefore not the correct testing standard for § 5204.1 to cite to for laboratory analysis of bulk content samples to determine whether a material contains less than 1.0% crystalline silica by weight.

IV. No Rationale for Proposed "Artificial Stone Action Level" and No Indication that Proposed Threshold is Workable or Feasible

The newly proposed "Artificial Stone Action Level" in the revised discussion draft of related changes to § 5204 is provided without any rationale for how the 10 $\mu g/m^3$ threshold concentration of airborne respirable crystalline silica as an 8-hour Time Weighted Average was determined. This new proposed threshold is less than half of the current Action Level for respirable crystalline silica of 25 $\mu g/m^3$, which Action Level is not product-specific and is operative under federal OSHA silica standards and Cal/OSHA's silica standard. The proposed "Artificial Stone Action Level" is accordingly arbitrary and without basis.

There is furthermore no indication from the Standards Board that employers who manufacture, fabricate, and install artificial stone slabs or panels (or a mix of artificial stone slabs or panels and other silica-containing products, such as natural stone) are currently able or will be capable of operating below the proposed "Artificial Stone Action Level."

The Standards Board should maintain the current, operative Action Level of 25 $\mu g/m^3$ in the regulations and convene a Silica Science subcommittee to study whether this proposed "Artificial Stone Action Level" is feasible and workable for employers who manufacture, fabricate, and install artificial stone slabs or panels and other silica-containing products in the industry. If the "Artificial Stone Action Level" is a workable threshold, the Standards Board should provide information on how employers can meet the threshold and provide sufficient time for such employers to implement such tools, equipment, and practices as necessary to comply.

V. Greater Conformity and Consistency is Required Between and Among the Proposed § 5204.1 and Related Changes, and the Operative Silica Standard

There are numerous inconsistencies in the revised discussion draft of § 5204.1 and related changes, and among and between the revised discussion draft and currently operative § 5204 silica standard. These inconsistences render the applicable regulations unworkable and will generate confusion among employers, manufacturers, distributors, importers, and suppliers.

For example, neither the definition of "artificial stone" in the revised discussion draft of § 5204.1 nor the definition in the operative § 5204 silica standard indicates the proposed threshold for content of crystalline silica. The definition in both sections should be clarified to specify artificial stone containing less than 1.0% crystalline silica by weight.

Similarly, the definition for "high-exposure trigger task" in the operative § 5204 silica standard refers to artificial stone containing more than 0.1% crystalline silica by weight. This should be conformed with the proposed new § 5204.1 to refer to artificial stone containing less than 1.0% crystalline silica by weight.

The timeframes for compliance and effective dates are also inconsistent throughout the revised discussion draft of § 5204.1, including but not limited to: the effective date of the prohibition on manufacturing and fabricating artificial stone slabs or panels containing 1.0% or more crystalline silica by weight; the exception providing a six-month grace period for such products already in the stream of commerce, in employers' possession, or contracted to be purchased; and, the effective date for the prohibition on installation of artificial stone slabs or panels containing 1.0% or more crystalline silica. See Sections VII and IX, below, for further details and comments.

The Standards Board should accordingly conform the requirements of the proposed regulation prohibiting the manufacture, fabrication, and installation of artificial stone containing 1.0% or more crystalline silica by weight so they work consistently across the board with the operative § 5204 standard including, but not limited to, definitions and effective dates. The Standards Board should submit the reworked proposed regulations and related changes for public review and comment.

VI. As Currently Written, Exception #2 is Unclear and Therefore Impossible for Employers, Manufacturers, Distributors, Importers, and Suppliers to Comply With

Revised discussion draft § 5204.1 adds an exception to the section, which reads as follows:

(h) Exceptions to section 5204.1.

...

(2) EXCEPTION 2 to section 5204.1: Sampling and analysis to identify a product or material and its contents is not prohibited.

As currently written, this exception is unclear and accordingly impractical or impossible for employers, manufacturers, distributors, importers, and suppliers to comply with. It should therefore be rewritten.

If the purpose of the exception is to permit employers to engage in fabrication tasks (defined by § 5204.1(c)(4) to include processing, modifying, or altering artificial stone slabs or panels through cutting, grinding, drilling, etc.) in order to produce smaller pieces of material from larger slabs or panels to determine product content for compliance with the rest of § 5204.1, it is too vague and unclear as presently written to effectively communicate this purpose.

To better communicate such a purpose, I recommend the Standards Board rewrite and clarify the exception using the proposed language below, or some other similar language.

(h) Exceptions to section 5204.1.

...

(2) EXCEPTION 2 to section 5204.1: Employers or third parties are not prohibited from fabricating artificial stone slabs or panels as "fabrication" is defined by this section in order to produce samples for analysis to identify a product or material and its contents for purposes of complying with the rest of this section.

If the Standards Board intended some other purpose for the referenced exception in the revised discussion draft of § 5204.1, the Standards Board should rewrite the currently drafted exception, and provide opportunity for public comment on the revision, to make such a purpose clear and so as to avoid confusion.

VII. Grace Period in Exception #1 Should Extend to Distributors and Resellers, Not Just Employers Manufacturing and Fabricating Artificial Stone Slabs or Panels

Exception #1 to the revised discussion draft should be expanded to encompass distributors and resellers that have purchased, contracted to purchase, or otherwise have in their possession prior to the effective date of the "emergency regulation" artificial stone slabs or panels with 1.0% or more crystalline silica.

As currently drafted, exception #1 permits a six-month (180 day) grace period only for employers that manufacture and fabricate artificial stone slabs or panels with 1.0% or more crystalline silica that are already in that employer's possession or have already been purchased or contracted to purchase. See October 22, 2026 revised discussion draft § 5204.1(h)(1).

Within this same grace period, manufacturers, distributors, resellers, importers, and suppliers should be allowed to sell and supply the same products that employers are permitted to fabricate: artificial stone slabs or panels with 1.0% or more crystalline silica by weight. The exception already contemplates a cut off after which no such artificial stone slabs or panels can be manufactured or fabricated, so it can also include the sale or supply of those same products.

Accordingly, the Standards Board should rewrite exception #1, and provide opportunity for public comment on the revision, using the proposed language below, or some other similar language.

(h) Exceptions to section 5204.1.

> *(1) EXCEPTION 1 to section 5204.1: Employers may continue to manufacture or fabricate, and distributors and resellers may continue to sell or otherwise supply, artificial stone containing 1.0% or more crystalline silica by weight that the employer, distributor, or reseller purchased, entered into a binding supply or purchase agreement for, contracted for, or had in its possession prior to [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION]. However, no manufacturing, fabrication, or sale of any kind may occur after [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION PLUS 180 DAYS]. This exception applies only to employers that fully comply with section 5204.*

VIII. Retention of SDSs and Laboratory Testing Analyses on Crystalline Silica Content Should Align with Typical Business Records Retention Period of Seven Years

Section (g), Recordkeeping, of the § 5204.1 revised discussion draft requires documentation mandated by the section to be maintained (i.e., SDSs and laboratory testing analysis), as excerpted below.

(g) Recordkeeping

...

> *(3) Records and documentation required by this section shall be maintained in accordance with section 3204, be provided to the Division upon request, and be provided to employees and employee designated representatives in accordance with section 3204.*

Section 3204 governs access to employee exposure and medical records for occupational exposures and diseases. This section covers medical and employment questionnaires and histories, the results of medical examinations and medical laboratory tests, records relating to medical diagnoses and treatment, environmental workplace exposure monitoring and sampling data, and personal workplace exposure monitoring results, among other similar records. The thirty-year retention period for such records is meant for employers to maintain documents relating to employees' medical monitoring and area and personal exposure results.

The documents at issue purported to be maintained in accordance with § 3204 in the revised discussion draft of § 5204.1 are SDSs and laboratory testing reflecting crystalline silica product content. With regard to SDSs, § 3204 directs employers to retain SDSs "as necessary to comply" with California's Hazard Communication standard, § 5194. See § 3204(d)(B)(2). The

Hazard Communication standard does not have a specific document retention period, including for SDSs.[2] See 8 C.C.R. § 1594.

Laboratory testing demonstrating crystalline silica content is not the sort of record encompassed by § 3204 based on a plain reading of the standard. The "employee exposure records" enumerated in this section include environmental and personal workplace exposure monitoring, sampling, and measuring, or records revealing the identity of a toxic substance and where and when such substance was used. There is no reference to or mention of laboratory content testing of products in the records listed in this section.[3] See § 3204(c)(5)(A).

For the purposes of the proposed § 5204.1 and with regard to SDSs and laboratory testing demonstrating the content of relevant products, the Standards Board should bring the records retention requirement of § 3204 in line with a standard of seven years, rather than thirty years. This would align with document retention periods for business records common in the stone industry and other industries, such as those governing general accounting practices.

IX. Expand the Effective Date for the New Standard and Related Changes to One Year to Allow for Compliance with Requirements

The revised discussion draft of § 5204.1 contemplates a near-immediate effective date for the prohibition on the manufacture, fabrication, and installation of artificial stone slabs or panels containing 1.0% or more crystalline silica by weight. The regulation comes into permanent effect sixty days after the "emergency regulation" is finalized. See October 22, 2026 revised discussion draft § 5204.1(b).[4]

Two months is insufficient time for employers, manufacturers, suppliers, importers, and distributors to build out the necessary frameworks and internal processes to be in full compliance with the standard as currently drafted.

Additional time will be needed to allow employers, manufacturers, suppliers, importers, and distributors to move to the new standard and comply with all of the requirements of the new standard and related changes. At a minimum, under the current revised discussion draft of § 5204.1, the following non-exhaustive list of tasks would need to be completed to come into compliance:

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[2] In the absence of SDSs, § 3204 requires employers to maintain for thirty years only "some record" of the identity of the hazardous substance or agent, where it was used, and when it was used. See 8 C.C.R. § 3204(d)(B)(2). This mirrors the federal OSHA standard for access to employee exposure and medical records. See 29 C.F.R. § 1910.1020(d)(1)(ii)(B).

[3] Section 3204 identifies SDSs as a record related to "employee exposure" but SDSs themselves provide product composition and information on ingredients as governed by the Hazard Communication standard. See 8 C.C.R. § 3204(c)(5)(A)(C); 8 C.C.R. § 5194(g)(2).

[4] The regulation allows a limited exception of a six-month grace period for the manufacture and fabrication of artificial stone containing 1.0% or more crystalline silica that is in the stream of commerce or in employers' possession prior to the effective date of the "emergency regulation," but only for those employers "that fully comply with section 5204." See October 22, 2026 revised discussion draft § 5204.1(h)(1). The exception does not apply to employers preparing and obtaining required SDSs and laboratory testing analyses as currently written. See id.

1. Locate a laboratory accredited in accordance with § 5204 Appendix A;

2. Prepare appropriate product samples to demonstrate that materials contain less than 1.0% crystalline silica by weight, or that materials are not artificial stone;

3. Ship or otherwise transport samples to the accredited laboratory for testing;

4. Complete laboratory testing as directed by § 5204 Appendix A;

    a. Laboratory capacity would likely be impacted by the large volume of samples required to be tested if testing must be performed at the SKU level as currently directed in the revised discussion draft, including an anticipated increase in wait times for processing, testing, analyzing, and reporting results for samples.

5. Use up or otherwise resolve current inventory in stock;

6. Update computer systems for new required documentation and record retention, including websites;

7. Prepare required paperwork, including but not limited to prescribed signage, testing results, SDSs, employee notifications, exposure control plans, respiratory protection plans, and training materials;

8. Review SDSs for all products for compliance with § 5194, the Hazard Communication standard;

9. Communicate with manufacturers, distributors, importers, and suppliers of all products on provision of SDSs and/or updated SDSs for each SKU;

10. Prepare updated SDSs for all product SKUs in accordance with § 5194;

11. Update product labeling and associated practices and implement for impacted products;

12. Locate credentialed third-party testing entity to perform air monitoring and an exposure assessment sufficient to determine whether manufacture, fabrication, and installation of artificial stone and/or a mix of artificial stone and non-artificial stone materials is below the "Artificial Stone Action Level" (see October 22, 2026 revised discussion draft § 5204(b)(3));

13. Identify, purchase materials for, train employees, and implement necessary engineering and administrative controls, personal protective equipment, and other practices to bring exposures below the "Artificial Stone Action Level" (See id.); and,

14. Ensure an available and sufficient supply of artificial stone slabs or panels containing less than 1.0% crystalline silica that comply with the standard.

    a. Manufacturers, distributors, importers, and suppliers of artificial stone will need time to develop, produce, and provide products that meet the standard, but these products cannot be developed, produced, or provided until the final regulations under the new standard are published so companies know what the rules are.

The Standards Board should accordingly grant employers, manufacturers, suppliers, importers, and distributors additional time to comply with the requirements of the new standard. The revised discussion draft of § 5204.1 and related changes should permit a period of one year (365 days) before the new standard and related changes come into effect.

In fact, the revised discussion draft provides essentially this exact timeframe for the prohibition on the installation of artificial stone slabs or panels containing 1.0% or more crystalline silica; such a prohibition comes into effect 360 days after the effective date of the "emergency regulation." See October 22, 2026 revised discussion draft § 1532.3(a)(3). It would therefore not be difficult to align the two effective dates for § 5204.1 and § 1532.3 to a period of one year (365 days) from the date of the "emergency regulation."

X. Conclusion

For all of the reasons outlined above, including primarily that the revised discussion draft of § 5204.1 and related changes are unworkable, unduly burdensome, and cannot be complied with in the timeframe contemplated in the regulations as currently drafted, the Standards Board should consider and implement the above comments to the standard for further public review.

Thank you for your consideration and attention to this matter.

Very truly yours,



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