

May 23-26, 2016

NUCA Priority Issues Supplemental Material

Embassy Suites – Convention Center Washington, DC

NUCA, Representing Utility and Excavation Contractors

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**Annual Washington Summit • May 23-26, 2016 • Sponsored by NUCA’s National Partners**

**Embassy Suites Washington DC Convention Center • 900 10th St NW, Washington DC 20001**

**SCHEDULE**

**Pre-Summit Events**

**Monday, May 23**

Registration Open 8:00am – 9:00am Capital Ballroom Foyer

Strategic Planning Meeting (Board Of Dir. Only) 9:00am – 3:00pm Capital Ballroom A

**Summit Events**

**Tuesday, May 24**

Registration Open 7:30 am – 4:00 pm Capital Ballroom Foyer

Federal Issues Conference/Speakers 8:00 am – 11:45 am Capital Ballroom A

Former Congressman and BiPAC CEO Jim Gerlach

Election Discussion 9:00 am – 9:45 am

Brad Hammock of Jackson Lewis

Silica update and Litigation 10:00 am – 10:45 am

Congressman Sam Graves

Infrastructure Outlook in the House 11:00am – 11:45 am

Networking Luncheon 12:00 pm – 1:30 pm Capital Ballroom A

Afternoon Break 1:30 pm – 2:00 pm Capital Ballroom Foyer

NUCA Legislative Briefing 2:00 pm – 5:00 pm Capital Ballroom A

NUCA Happy Hour 5:30 pm – 6:30 pm Hotel Atrium

New York Mets VS Washington Nationals 7:00 pm – 10:00 pm Nationals Park

**Wednesday, May 25**

House and Senate Office Visits All Day

Capitol Hill Reception 5:30 pm – 7:30 pm 2167 Rayburn HOB

**Thursday, May 26**

Registration Open 7:30 am – 9:00 am Capital Ballroom Foyer

Executive Directors Council 8:00 am – 9:00 am Capital Ballroom A

Chapter Officer Council 8:00 am – 9:00 am Capital Ballroom B

Board of Directors Meeting (open to all) 9:30 am – 11:00 am Capital Ballroom A

2016 Summit Priority Issues

1. Invest in America’s Infrastructure.

* Support the Water Resources Development Act P.5
  + House (not yet introduced)
  + Senate (S. 2848)
  + Include: Water Infrastructure Bank (H.R. 4468)
* Support State Revolving Fund Reauthorization P.6
  + S. 2583- Firm, Unwavering National Dedication (FUND) Water Act
  + SRF White Paper P.7
* Support Lifting the Cap on Private Activity Bonds (PAB’s) for Water and Wastewater Projects P.9
  + H.R. 499/S.2606- Sustainable Water Infrastructure Investment Act of 2015

1. Promote Workforce Development and Training

* Encourage collaboration between employers and education/training institutions. P.10
  + H.R. 3362- The Workforce Development Investment Act
* Allow non-traditional and technical students access to federal student financing options P.11
  + H.R. 3964- Career and Technical Education Opportunity Act
  + Rep. Duckworth’s One-Pager P.12

1. Curtail Job-killing Regulations

* WOTUS P.13
  + Override President Obama’s Veto
* OSHA’s Silica Rule P.14
  + Prevent the rule from taking effect
  + Halt appropriations for implementing the rule.
  + NUCA’s OMB meeting prepared remarks P.15
  + Rep. Huizenga’s ‘Dear Colleague’ Letter P.18

Speaker Bios P.19

Suggested Questions for Speakers P.20

Talking points

These are the suggested points you repeatedly reiterate in your meetings. Repeating the same message as a group will help us drive our message home.

Invest in America’s Infrastructure

* Investing in infrastructure creates good-paying jobs.
* Significant water infrastructure investment is needed from all levels of government.
* Millions of miles of America’s water pipes have passed their intended life-cycle and are dangerously susceptible to breaking.
* An estimated 3-5 million miles of lead pipes are still used by communities.
* Federal investment in infrastructure generates local tax revenue that can make communities better able to finance their own projects.
* Water Infrastructure financing is a safe risk. Water Infrastructure projects default less than 1% of the time.

Promote Workforce Development and Training

* Strengthening the relationship between employers and education/training facilities will help promote the construction industry.
* With greater investment in infrastructure, demand for qualified workers will increase.
* Workforce Development and Training should reflect the true needs of the industry and provide skills relevant and needed in the workplace.

Curtail Job-killing regulations

* Regulations like WOTUS and Silica will have significant negative impacts on employers with very little intended benefit.
* The WOTUS and Silica regulations will saddle employers with significant costs that will cause businesses to close.
* NUCA supports regulations that have a measurable and science-backed benefit to the environment and worker safety.

Invest in America’s Infrastructure

Support the Water Resources Development Act (WRDA)

Bill: Senate (S. 2848), House (not yet introduced)

Sponsor(s): James Inhofe (R-OK)

Barbara Boxer (D-CA)

Action Taken:

Passed Senate EPW 19-1 (Deb Fischer (R-NE) cast the only dissenting vote)

Relevant Information:

The Water Resources Development Act of 2016 (WRDA) authorizes 25 critical Army Corps projects in 17 states. These projects, which have undergone Congressional scrutiny and have completed reports of the Chief of Engineers, will strengthen our nation’s infrastructure to protect lives and property, restore vital ecosystems to preserve our natural heritage, and maintain navigation routes for commerce and the movement of goods to keep us competitive in the global marketplace.

The bill provides critical investment in the country’s aging drinking water and wastewater infrastructure, assists poor and disadvantaged communities in meeting public health standards under the Clean Water Act and Safe Drinking Water Act, and promotes innovative technologies to address drought and other critical water resource needs. The bill also responds to the drinking water crisis in Flint, Michigan, by providing emergency assistance to Flint and other similar communities across the country facing drinking water contamination.

Highlights:

* Provides $70 million for credit subsidies to allow EPA to make secured loans for infrastructure investments under the WIFIA program. $70 million will support loans of up to $700 million.
* Provides $100 million in assistance to states with emergency drinking water situations through the Drinking Water SRF.
* Establishes a trust fund for water infrastructure, funded by fees collected for a voluntary labeling system, and to be used for capitalization grants for the Clean Water and Safe Drinking Water State Revolving Funds.
  + Water Infrastructure Bank (H.R. 4468) Introduced 2/4/2016
    - Rep Blumenauer, Earl (OR-3)- Sponsor
    - Rep Duncan, John J., Jr. (TN-2)
    - Rep Hanna, Richard L. (NY-22)
* Makes WIFIA a permanent program.
* Authorizes $300 million over five years, $60 million for each of fiscal years 2017- 2021 for a grant program for replacement of lead service lines, testing, planning, corrosion control, and education.

Invest in America’s Infrastructure

Support State Revolving Fund Reauthorization

Bill: S. 2583- Firm, Unwavering National Dedication (FUND) Water Act

Sponsor: Ben. Cardin (D-MD)

Action Taken:

Introduced and referred to Senate EPW

Relevant Information:

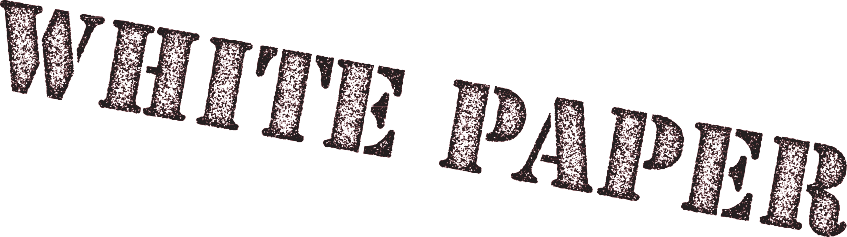
America’s water and wastewater systems are in desperate need of replacement. Depending on the source, economic studies estimate America needs to invest between $655 billion (EPA) and $3.2 trillion (ASCE) in our environmental infrastructure over the next twenty years just to keep up with growth. This comes to at least $32.75 billion per year, every year for 20 years, yet we are spending barely $2 billion combined on both the Drinking Water and Clean Water SRFs.

Appropriators are bound by programmatic authorization levels set by committees of jurisdiction. Authorization levels only dictate what appropriators can spend.

Highlights:

The proposed SRF funding authorization levels are:

|  |  |  |
| --- | --- | --- |
| Proposed Appropriation Authorization Levels | | |
| Fiscal  Year | Clean Water  SRF | Drinking Water  SRF |
| FY 2016 | $5.18 billion | $3.13 billion |
| FY 2017 | $5.96 billion | $3.6 billion |
| FY 2018 | $6.85 billion | $4.14 billion |
| FY 2019 | $7.88 billion | $4.8 billion |
| FY 2020 | $9.06 billion | $5.5 billion |



# The State Revolving Funds & Water Infrastructure

#### Background

The Environmental Protection Agency (EPA) administers two programs, the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) that provide low-interest loans for the construction, maintenance, and repair of water infrastructure projects. The CWSRF was created in 1987 under the Clean Water Act, and the DWSRF was created in 1996 under the Safe Water Drinking Act. Federally appropriated funds are dispersed to states in the form of grants to capitalize state CWSRF and DWSRF accounts based on the latest Needs Survey and Assessment, which EPA produces every four years. Every state must receive an allocation of at least 1% and every state must match 20% of allocated funds. Since inception, the CWSRF has provided more than $111 billion through more than 36,000 low interest loans to communities, and the DWSRF has provided more than $28 billion through more than 11,000 assistance agreements.

#### Needs

According to EPA, $271 billion is needed to maintain the nation’s wastewater infrastructure which includes wastewater treatment facilities, wastewater pipes, and water treatment technology. Separately, EPA estimates the need for $384 billion in investment for drinking water infrastructure for 73,400 water systems. Ignoring these needs has resulted in calamitous water infrastructure issues, such as in Flint, Michigan, where old, neglected infrastructure is delivering water to homes and businesses from an untreated water source with unsafe levels of lead. Ignoring this need only further increases the cost, scope, time, and reach of the needed repairs or replacements. It is impossible for states to adequately address this problem without federal involvement.

#### Benefits of Investment

Investing in water infrastructure through the SRFs has many benefits to all Americans. Access to reliable, clean water infrastructure is a part of American’s way of life.

* **Water infrastructure projects create an impressive return on investment.** Over twenty years, investing $1.00 in sewer systems and water infrastructure returns a full $2.03 in tax revenue to federal and state/local governments, of which $1.35 specifically accrues at the federal level. Greater investment will generate greater tax revenue that can be used to finance more infrastructure projects.
* **Water infrastructure projects are a safe use of taxpayer dollars.** Water projects default on less than 1% of loans.
* **Building water infrastructure creates jobs.** An estimated 26,000 jobs can be created from

$1 billion in water infrastructure investment. In addition to the construction and materials jobs directly related to water infrastructure investment, jobs are created across a number of sectors of the economy including finance, health care, manufacturing, food service, and energy. Additionally, every sector of the economy benefits from reliable and safe water infrastructure, and every sector suffers when water infrastructure is unreliable or unsafe.

* **Water infrastructure is a national security issue.** Our water infrastructure is enormously vulnerable to attack, which would threaten not only our defenses, but our health, economy, and food supply. Most of the country shares a small number of unprotected fresh water sources and our infrastructure is incapable of responding to contaminants in the water.
* **Maintaining and updating our water infrastructure helps the environment.** The EPA estimates our infrastructure loses 34 billion gallons of water per day. Old and neglected pipes and systems leak millions of pounds of pollutants and waste into the ground.

#### Past Appropriations

Since the American Recovery and Reinvestment Act (ARRA) in 2008 (FY 2009), annual appropriations for CWSRF and DWSRF have steadily declined, especially in fiscal year 2013 when sequestration took effect.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Clean Water SRF | | Drinking Water SRF | |
| Year | Presidential Budget | Actual Budget | Presidential Budget | Actual Budget |
| FY 2010 | $2.373 billion | $2.1 billion | $1.5 billion | $1.387 billion |
| FY 2011 | $2 billion | $1.522 billion | $1.287 billion | $ 963 million |
| FY 2012 | $1.55 billion | $1.466 billion | $990 million | $917 million |
| FY 2013 | $1.175 billion | $1.175 billion | $850 million | $861 million |
| FY 2014 | $1.095 billion | $1.44 billion | $817 million | $906 million |
| FY 2015 | $1.108 billion | $1.448 billion | $757 million | $906 million |
| FY 2016 | $1.116 billion | $1.393 billion | $1.186 billion | $863 million |
| FY 2017 | $979.5 million |  | $1.0205 billion |  |

#### Unspent Funds

In September 2015, the Associated Press (AP) reported that nearly $1.1 billion in previously appropriated DWSRF accounts remain unspent, half the $2.2 billion reported in 2011. Some spending delays are unavoidable with the complexity of projects and a careful approach that ensures money

is spent on worthy projects, but most funds remain unspent, not because of complexity or a lack of worthy projects, but instead because of unnecessary bureaucratic delays. Streamlining the bureaucracy surrounding SRF dollars, such as product requirements and environmental studies, would help to expedite project delivery and alleviate the backlog.

#### Conclusion

The CWSRF and DWSRF are federal programs, administered by the EPA, that provide low-cost financing to state and municipalities for the investment in water infrastructure projects. These funds are critical for the health and safety of our citizens, and essential for the foundation and growth of our economy. The SRF program invests in water infrastructure that has proven benefits including economic stimulation and job creation. Federal appropriations for the SRF programs have steadily declined despite obviously expanding needs. Unspent dollars in SRF accounts largely result from excessive bureaucratic requirements that, if eased, could provide increased efficiency and project delivery.

The SRF programs appropriations are made through the EPA title in the Interior, Environment, and Related Agencies Appropriations Act each year, and programmatic appropriations levels should be increased.

Invest in America’s Infrastructure

Support Lifting the Cap on Private Activity Bonds (PAB’s) for Water and Wastewater Projects

Bills: H.R. 499, S 2606- Sustainable Water Infrastructure Investment Act of 2015

Sponsor(s): House:

Jimmy Duncan Jr. (R-TN)

Lou Barletta (R-PA)

Earl Blumenauer (D-OR) Ryan Costello (R-PA) Rodney Davis (R-IL) Charles Dent (D-PA) Gene Green (D-TX) Richard Hanna (R-NY) Jared Hoffman (D-CA) Bill Pascrell (D-NJ)

Ted Poe (R-TX)

Jared Polis (D-CO)

Charles Rangel (D-NY)

Keith Rothfus (R-PA)

Bill Shuster (R-PA)

Senate:

Robert Menendez (D-NJ)

Mike Crapo (R-ID)

Relevant Information:

The IRS imposes a volume cap on the use of Private Activity Bonds (PABs) for the financing of quasi-public projects. Water and wastewater projects are subject to this cap and must compete with other project types to utilize PAB funding. As a result, water and wastewater projects receive a disproportionately small share of available PAB utilization. Solid waste projects, as an example, are not subject to the volume cap and have a much higher utilization of PABs.

Highlights:

The Sustainable Water Infrastructure Investment Act would amend the IRS rules to exempt water and wastewater projects from the PAB volume cap. Removing water and wastewater projects from beneath the volume cap would allow local communities to leverage private capital markets in combination with other finance mechanisms and provide an influx of low cost private capital to finance water infrastructure projects. This funding will create construction projects and jobs resulting from reliable infrastructure.

Promote Workforce Development and Training

Encourage Collaboration Between Employers and Education/Training Institutions.

Bills: H.R. 3362- The Workforce Development Investment Act

Sponsor(s): Ann Kuster (D-NH)

Relevant Information:

A 2013 American Institutes for Research study estimated approximately 52% of noncredit community college courses are occupational, vocational or technical in nature. This provides a meaningful opportunity for the construction industry to impact what students learn in order to improve training for the betterment of the industry. Improving the training potential employees receive will make them both more reliable and more promotable.

Highlights:

The Workforce Development Investment Act would amend the Internal Revenue Code to allow a business-related tax credit of up to $10,000 per year ($2,000 for each community college or other institution of higher education) for partnerships between employers and education/training institutions. To be eligible, employers that partner with community colleges or other institutions of higher education must improve workforce development for students by:

* Helping develop curriculum
* Assisting with instruction in the classroom
* Providing internships, apprenticeships, or other hands-on educational opportunities for students

Promote Workforce Development and Training

Allow non-traditional and technical students access to federal student financing options

Bill: H.R. 3964/S. 2064- Career and Technical Education Opportunity Act

Sponsor(s): House:

Tammy Duckworth (D-IL) primary

Ryan Costello (R-PA)

James Langevin (D-RI)

Glenn Thompson (R-PA)

Alcee Hastings (D-FL)

Mark Takano (D-CA)

Peter Welch (D-VT)

Michael Honda (D-CA)

Anna Eshoo (D-CA)

David Scott (D-GA)

Robin Kelly (D-IL)

Senate:

Tammy Baldwin (D-WI) primary

Sherrod Brown (D-OH)

Robert Casey Jr. (D-PA)

Tim Kaine (D-VA)

Relevant Information:

A 2013 American Institutes for Research study estimated 5 million Americans enrolled in noncredit coursework in 2009 alone, accounting for nearly 39 percent of all community college enrollees. Yet, under Title IV of the Higher Education Act, many students enrolled in CTE programs are not eligible for Federal student aid. Federal student aid is only available to students enrolled in postsecondary programs that stretch over 15 weeks and 600 hours.

Highlights:

The Career and Technical Education Opportunity Act will make it easier for non-traditional students taking non-traditional courses or training to receive financial aid. Students enrolled in programs that lead to an industry-recognized credential and feature at least 250 clock hours, offered during a minimum of 5 weeks of instruction will now be eligible to receive Federal financial aid.



**Career and Technical Education (CTE) Opportunity Act**

#### Background:

Community colleges and technical schools offer career and technical education (CTE) programs that deliver workforce development and occupational training services. CTE curriculums provide “ready to work” education that empowers students to learn new skills, train on new technologies and earn or maintain industry credentials, professional certificates and licenses. The demand for CTE is high. A 2013 American Institutes for Research estimated 5 million Americans enrolled in noncredit coursework in 2009 alone, accounting for nearly 39 percent of all community college enrollees. Furthermore, approximately 52 percent of noncredit courses offered by community colleges are occupational, vocational or technical in nature.

#### Problem:

Yet, despite CTE’s vital role in training the workers in Illinois and across the Nation, under Title IV of the Higher Education Act, many students enrolled in CTE programs are ***not*** eligible for Federal student aid. One size fits all eligibility requirements result in a status quo where Federal student aid is only available to students enrolled in postsecondary programs that stretch over 15 weeks and 600 clock hours.

#### Solution:

Representative Duckworth’s bipartisan CTE Opportunity Act opens the doors of opportunity for all CTE students by expanding Federal student loan eligibility under Title IV of the Higher Education Act to include students enrolled in short-term CTE programs. The bill will finally eliminate antiquated barriers that hinder Federal investments in “ready to work” education. Students enrolled in programs that lead to an industry-recognized credential and feature at least 250 clock hours, offered during a minimum of 5 weeks of instruction will now be eligible to receive Federal financial aid. The CTE Opportunity Act provides working students throughout America the opportunity to access CTE programs that will improve their skills and enable them to earn industry-recognized credentials that are frequently necessary to secure higher paying jobs.

*Representative Ryan Costello (R-PA) and the Co-Chairs of the bipartisan Congressional Career and Technical Education Caucus, Representatives Jim Langevin (D-RI) and Glenn “GT” Thompson (R-PA), are original cosponsors of CTE Opportunity Act. Senator Tammy Baldwin (D-WI), Co-Founder and Co-Chair of the bipartisan Senate CTE Caucus, introduced the companion measure in the Senate (S. 2064).*

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Curtail Job-killing Regulations

WOTUS

Action: Override President Obama’s Veto, Deny appropriations to EPA to implement the rule

Background:

In April of 2014, the Army Corps of Engineers and the Environmental Protection Agency (EPA) released a proposed rule (EPA–HQ– OW–2011–0880) that will change the definition of water as it relates to the Clean Water Act (CWA). As the basis for the rule, EPA is using a report entitled “Connectivity of Streams and Wetlands to Downstream Waters: A review and Synthesis of the Scientific Evidence,’’ which was first drafted in September 2013, and not finalized until January 2015, after the public comment period for the rule had been closed.

The rule would change and expand the definition of ‘wetlands’ under the CWA to include

non-contiguous waters like ponds, lakes, and ditches. The was finalized in May 2015, and by the end of the summer 27 states and a dozen nationwide organizations had filed legal challenges to the rule which went into effect in August of 2015. In October 2015, the U.S. Court of Appeals 6th District placed a nation-wide stay on the regulation until further court decisions are made. On January 13th the House passed a Senate measure to halt the WOTUS rule, sending the measure to President Obama who, shortly thereafter, vetoed the bill. The Senate was unable to bring the bill up for a veto-override vote.

Why Stop the Rule?

The WOTUS rule would expand, outside the original intent, the Clean Water Act definition of 'wetlands' to areas outside the generally understood jurisdiction of ‘navigable waters’. For underground and excavation contractors who operate around tributaries, marshes, or wetlands dependent on rainfall, this rule will create not only confusion, but significant burdens to businesses. If an area is determined to be under federal jurisdiction under the expanded definition of CWA, contractors would need CWA Section 404 permits and be subject to the entire regulatory burden of the CWA. This rule will make construction or development surrounding these landscapes more difficult and expensive.

Curtail Job-killing Regulations

OSHA’s Silica Rule

Action: Prevent the rule from taking effect, Support Rep. Huizenga’s attempt to halt appropriations for implementing the rule.

Background:

After several prior attempts spanning several years, on March 24, 2016, the Occupational Safety and Health Administration (OSHA) published its final rule for the regulation of crystalline silica.

In response to this rule, 23 national construction industry trade associations, including NUCA, filed a petition to challenge OSHA’s silica rule in the U.S. Court of Appeals. NUCA and these groups have significant concerns with the OSHA rule including its technical feasibility. Additionally, we believe OSHA’s final cost estimates for the implementation of this rule are significantly underestimated and unrealistic.

While NUCA supports initiatives to keep employees safe and healthy, OSHA’s rule fails to adequately show the existence of a problem. The Center for Disease Control (CDC) has published information showing the prevalence of health conditions that result from over- exposure to Silica dust has drastically declined. CDC estimates silica related deaths have dropped to below 100 individuals per year. On the other hand, OSHA, in their justification for this rule, claims the rule will save 600 lives, but does not explain the discrepancy with their data and the CDC’s, nor do they provide any data that links silica related health conditions and the construction industry.

Why Stop the Rule?

If allowed to go into effect, OSHA’s silica rule would add significant costs to both the jobsite and healthcare for employees. Up front compliance costs will likely include additional training, new equipment, retrofitting large equipment, and air quality monitoring. Construction firms would be responsible for measuring the air quality at the job site, even when jobsites move during the day, and training employees on mitigating their exposure to dust. If air quality levels exceed lowered levels, businesses become responsible for a barrage of healthcare and training costs for their employees.

This rule must be stopped.



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February 11, 2016 [www.nuca.com](http://www.nuca.com/)

NUCA Meeting with OMB

NUCA represents utility and excavation contractors and the manufacturers and suppliers who service the industry. NUCA members are concerned that this proposed rule is unreasonably burdensome and unnecessary because OSHA has not adequately demonstrated that changes to the standard and PEL are needed, reasonable, or technologically and economically feasible.

**Unnecessary**

* CDC reported that cases of silica related deaths have dropped from approximately 1,200 in 1968 to approximately 150 in 2002 to approximately 100 in 2007 and the downward trend continues.
* CDC has reported fewer than 100 silica related deaths per year, yet OSHA justifies this rule on the basis that it will save 600 deaths per year. OSHA has not explained how the rule will save six times the number of deaths per year than the CDC reports occur.
* OSHA has not identified how many of these deaths are construction related and in what segments of the construction industry they have been occurring.
* OSHA has identified neither what specific sectors or trades are reporting silica-related injuries or deaths nor how many workers are actually exposed to levels above the current or proposed PEL.
* OSHA has not provided any verifiable or current statistical evidence of reported construction related silica cases that have occurred in the construction industry in the last 5 years.

NUCA believes that OSHA has neglected its responsibility to present scientific evidence to verify the need for this regulation. OSHA has also neglected to statistically verify that the proposed rule would support the intended goal in a manner that justifies the cost, as it is required to do by law.

**Technologically Infeasible**

The utility and excavation construction industry is unique. Our operations are extremely mobile and, while our members take measures to control the dust, protect their workers, and comply with environmental regulations, the NPRM Table 1 is unworkable for our industry. Due to the mobility of utility construction, exposure monitoring would have to be performed daily or any time the operations move to ensure compliance with the proposed rule.

* OSHA did not take the time to thoroughly study different types of construction operations such as utility and excavation operations before issuing this burdensome and unachievable one-size-fits-all NPRM.
* Table 1 is not based on scientific evidence. OSHA has broadly assumed that all earth moving equipment and operators are exposed to silica, but has not proven this to be true

in the wide variety of landscapes and conditions in which NUCA members perform their services. The evidence OSHA cites is incomplete, limited, and inconclusive.

* Under the NPRM, a utility and excavation contractor could be required to perform exposure monitoring every day and multiple times a day. This would require hiring qualified individuals and delaying project progress. However, the number of safety professionals, industrial hygienists, and laboratory facilities that exist is monumentally insufficient to meet this requirement.
* OSHA has not clearly defined "heavy earthmoving equipment" nor considered the replacement or retrofitting of earthmoving equipment required for compliance with Table 1.
* OSHA has not taken into consideration the varied weather and climate conditions that exist in the U.S. and how they would affect compliance in different parts of the country.
* OSHA has not provided any reasonable method for contractors to track workers' potential exposure time as specified in Table 1. Without the ability to track exposure, it is impossible to determine if a worker must wear a respirator after 4 hours of exposure in order to comply.
* NUCA also believes that the 4-hour cutoff for requiring a respirator is arbitrary and OSHA has no data to support the cutoff s usefulness.
* OSHA says employers can follow Table 1 and be considered in compliance but it falls short of identifying and addressing many types of potential exposures. There is no way utility contractors could comply without providing daily exposure monitoring, enclosing all heavy equipment, providing medical evaluations of all field employees, implementing a respiratory protection program and administering employee training. The combination of these requirements would be unreasonable, unrealistic and infeasible.

**Economically Infeasible**

OSHA has not accurately or adequately considered the excessive cost of complying with the regulation. In order to adhere to the standard, contractors will face costs that exceed feasibility. OSHA has significantly under-estimated the cost of compliance in the NPRM. The costs associated with engineering controls, exposure assessments, medical surveillance, and training will exceed OSHA's annual estimate of approximately $500 to $1,000 per year per entity.

Example:

The average utility contractor employs approximately 30 people and owns approximately 12 pieces of heavy equipment including excavators, back hoes, front end loaders, and dozers. In order to comply with this rule this employer would have to spend the following to comply:

* For earthmoving equipment, the cost to seal and pressurize equipment with existing cabs to comply with Table 1 will be approximately $3,000 per unit. The cost to add sealed and pressurized cabins to equipment will be approximately $15,000 per unit. Assuming the average contractor has three pieces of equipment with cabs and nine pieces without cabs (our industry average), the cost to retrofit one contractor's equipment would be $144,000 (3 machines with cabs x $3,000 to retrofit + 9 machines without cabs x $15,000 to retrofit). Additionally, manufacturers have told NUCA members that equipment over 5 years old will probably not be able to be retrofitted with sealed enclosures; therefore new equipment would have to be purchased at prices ranging from $50,000 to $300,000 depending on the type of equipment.
* Jobsite exposure assessments cost $1,000 for hygienists and $500 per day for sample analysis. Utility contractors move their jobsites weekly and sometimes daily. The cost to hire an industrial hygienist is $50,000 to $100,000 per year.
* Assuming we exclude the office staff, medical evaluations for 75% of the employees or approximately 22 employees x $300 per person would costs $6,600.
* Implementing a respiratory protection program will require 4 hours of training at $30 for salary and benefits +fit testing at $15 for each field employee ( 4 hours x $30/hour + $15

= $135 in wages x 22 employees). This will cost one contracting company $2,970.

* A 4 hour silica training program for 22 field employees (4 hours x $30/hour x 22 employees) will cost $2,640.
* An estimated total of $147,000 plus $1,500 per job site for exposure assessments easily eclipses OSHA's cost estimate. NUCA believes OSHA neglected to perform realistic or diligent cost estimates in creating this rule.

NUCA believes the cost of compliance for NUCA's 600 utility and excavation contracting companies would exceed $100,000,000. This cost is based on actual costs incurred by NUCA members for services as stated above. OSHA has failed to take these costs into consideration.

Each of these costs exceeds OSHA estimate of $500 to $1,000 per entity by multiples of ten. These costs will dramatically increase the cost of doing business, will increase the cost of water, sewer, gas, and electric infrastructure projects that are already excessively expensive, and will result in the closing of small and medium-sized construction businesses.

NUCA is a member of the Construction Industry Safety Coalition and supports the cost estimates they have submitted. These cost estimates are much greater than originally proposed by OSHA. NUCA believes the proposed rule is unnecessary, technologically unattainable, and economically infeasible. NUCA submitted comments to the NPRM, testified at the silica hearing, and has taken every possible opportunity to provide OSHA with meaningful, accurate information. To date, OSHA has not responded to or taken into account any of NUCA or CISC's concerns or data, nor has it adequately proven the need for this rule or how it achieves a proposed goal or provides a feasible solution to an identified problem. These reasons warrant the withdrawal of this proposed rule or the exemption of the construction industry. NUCA believes OSHA that has failed to meet its statutory and fiduciary duty to prove this proposed rule is necessary, or technically or economically feasible.



Speaker Bios

**The Honorable Sam Graves, US House of Representatives**

Congressman Sam Graves is a lifelong resident of Missouri’s Sixth Congressional District. He has served in Congress since 200. As  a small businessman and a sixth-generation family farmer, Congressman Graves served as the Chairman of the House Small Business Committee from 2011-2015. Congressman Graves currently serves as Chairman of the House Subcommittee on Highways and Transit. This committee oversees the development of a national transportation policy and focuses on improving America’s highway system. When House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) relinquishes the gavel due to term limits, Congressman Graves is on the short list to take the chairmanship. Congressman Graves was born in Tarkio, Missouri and attended college at the University of Missouri-Columbia. Congressman Graves and his wife Lesley have three children. Congressman Graves will address NUCA’s 2016 summit attendees about the importance of transportation and infrastructure, and ways to promote American businesses and job creators.

**The Honorable Jim Gerlach, President & CEO Of BIPAC**

Former U.S. Congressman Jim Gerlach (R-PA) serves as the president and CEO of the Business-Industry Political Action Committee (BIPAC). Mr. Gerlach joined BIPAC after serving Pennsylvania’s Sixth Congressional District for 12 years.  In the 113th Congress he was asked be the lead Republican on the Ways and Means Committees, Manufacturing Work­ing Group. During his six terms in the House Rep. Gerlach served on the Ways and Means Committee, the Transportation and Infrastructure Committee, the Financial Services Committee, and the Small Business Committee. Prior to his tenure with the U.S. Congress, Rep. Gerlach also served four years in the Pennsylvania House of Representatives and eight years in the Pennsylvania Senate. This public service was preceded by 10 years of private law practice in the Commonwealth. Former Congressman Gerlach joins the 2016 NUCA Washington Summit to discuss the political landscape and how the election cycle will impact businesses and the infrastructure industry.

**Brad Hammock**

Brad Hammock is a Shareholder in the Washington, D.C. region office of Jackson Lewis and co-chairs their Workplace Safety and Health Practice Group.  His national practice focuses on all aspects of occupational safety and health law.  He assists employers in a preventive practice conducting safety and health compliance audits, reviewing/revising corporate safety and health policies, and conducting manager/supervisor training on employee safety and health.  He also represents employers throughout OSHA rulemaking proceedings, including OSHA’s informal public hearings on proposed rules and defends employers against OSHA enforcement actions.  Previously, he was an OSHA attorney within the Department of Labor. Brad will be joining NUCA’s Washington Summit to discuss OSHA’s Silica Rule, how employers can prepare for compliance, and what NUCA and our coalition partners are doing to combat OSHA’s infeasible rule.

**Suggested Questions for Speakers**

**Jim Gerlach**

1. What role do you foresee infrastructure playing in the policy debates at the Presidential Level?
2. Does Donald Trump’s nomination make it more or less likely for the Senate to remain in Republican control?
3. How would you suggest we elevate infrastructure to a primary campaign topic?
4. Ahead of the convention, do you see anything that could prevent Trump from being the Republican nominee? Do you see anything that could prevent Clinton from being the nominee?

**Brad Hammock**

1. Do you have an estimate of how much compliance with the rule will actually cost an employer?
2. How does OSHA justify the need for this rule?
3. How large is the suit against OSHA? I’m sure NUCA and CISC’s suit isn’t the only filing against OSHA.
4. Is there any chance this rule gets shot down in Congress or by any other means other than the court?
5. What are the odds a court stops or delays the implementation of this rule until a final decision, like what occurred with the Waters of the US Rule?

**Rep. Sam Graves**

1. Every year we come to Washington to advocate for water infrastructure. We don’t often run into anyone who thinks water infrastructure is bad, or that nothing needs to be done about it, yet action seems sparse. What can we do to get over the hump and incite real policies that will change how the government views water infrastructure?
2. How do you view the federal role in financing infrastructure?
3. I understand that transportation systems get a lot of attention because the public can see the end result. Water projects suffer from an out-of-site out-of-mind motivation problem. How would you suggest we address this point?
4. How do you feel about the EPA’s State Revolving Funds for clean water and drinking water?
5. If you’re the next chairman of the Transportation and Infrastructure Committee, can you tell us what role water infrastructure will play in your priorities?