

Mine Safety and Health Administration
Office of Standards, Regulations and Variances
201 12th Street South
Suite 4E401
Arlington, VA 22202-5450

Subject: Request for Extension of Comment and Public Hearings Deadline; Notice of Proposed Rulemaking; Respirable Crystalline Silica
RIN 1219-AB36; Docket Id. No. MSHA-2023-0001

To Whom It May Concern:

On behalf of the Sorptive Minerals Institute (SMI or “the Institute”), I am writing to request the Mine Safety and Health Administration (“MSHA” or “the agency”) extend the deadline for submission of comments and continue the dates of the public hearings scheduled in the above-referenced rulemaking for 180 days, to provide SMI members, as well as the entire regulated community, covered employees and interested stakeholders an opportunity to prepare and submit meaningful comment to MSHA on this important rulemaking.

SMI is uniquely situated in this rulemaking. Since its inception, SMI has served as a leader in scientific research and evaluation of the potential for health effects associated with occupational exposures to sorptive mineral clays, which contain both the amorphous form of silica not subject to MSHA’s rulemaking as well as a specific type of crystalline silica. In fact, SMI has been heavily involved in crystalline silica research for over 28 years. During that time, SMI has produced a large body of research that has been presented at scientific conferences in the United States, Europe, and South Africa, and has been published in well-respected peer-reviewed scientific journals. SMI has worked cooperatively with regulatory bodies to assist government agencies in developing an understanding of the relevant scientific data necessary to assess inhalation exposure issues related to sorptive clay products.

The Institute needs additional time to review MSHA’s proposal to determine the basis for MSHA’s inclusion of the sorptive clay industry in its proposed silica standard, even though OSHA, after a thorough and extensive risk assessment, determined that this industry should be excepted from coverage of OSHA’s silica standard. On its face, there does not seem to be a sound basis for this preliminary determination; providing sufficient time to sort through this issue prior to promulgation of the standard is imperative.

Additionally, since its submission of information to the OSHA silica rulemaking docket, SMI has continued its study of the type of silica to which employees working in the industry may be exposed – amorphous or crystalline with occluded surfaces -- and is on the precipice of publishing a new peer-reviewed study that provides important new data and analysis to the already fairly robust body of research demonstrating the distinct and critical differences between

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the silica material in sorptive clays and other forms of crystalline silica. This study provides additional information associating the specific surface characteristics of silica that can affect toxicity with occupational exposure situations and potential health risks to workers. It will provide critical information to MSHA that will inform the agency on whether it should deviate from OSHA in its regulation of crystalline silica; the study, however, will not be published until later this year or early 2024. Thus, additional time to provide MSHA with the information it needs to make a sound regulatory decision regarding the scope of coverage of the standard is necessary for the sorptive clays industry.

Beyond this, and presumably relevant to all stakeholders, MSHA's proposal solicits information and feedback on virtually every aspect of the proposed standard. The proposal is supported by over 829 supporting studies, reports or other important background material or information that MSHA has included in the rulemaking docket. Providing MSHA with accurate, *meaningful* feedback will require a substantial time investment to analyze and digest the proposal and background material, and to collect and compile information in a way that will be useful to the agency. Extension of the comment deadline will allow employers and employees the time necessary to gather and review data and information that will assist MSHA in determining the appropriate scope of the silica standard as well as the feasibility and propriety of the permissible exposure limit ("PEL") and other aspects of the standard, and the necessary timeline for employers to develop and implement engineering controls for regulated operations and equipment.

Without sufficient time to gather relevant data and information and prepare clear and thoughtful comment, the agency and the regulated community will be ill-served. This is particularly true if the rule is finalized in a manner that results in significant litigation challenges. It thus will serve the interests of all, including the employees who will be covered by this standard, to provide sufficient time for interested stakeholders to prepare useful comments. MSHA has been seriously considering adoption of a comprehensive silica standard at least since OSHA's promulgation of its standard in 2016; an additional 180-day comment period at this juncture would not meaningfully delay promulgation of the standard, but likely would allow for the development of a sounder standard.

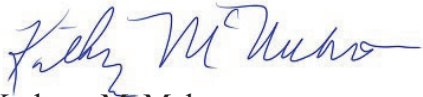
In addition to the reasons set forth above, the current date for public hearings and the deadline for written comment all fall in the middle of summer months, which is the time of year when many of the personnel necessary to review this proposal and develop comments have planned non-work travel and scheduled summer vacations. From a practical standpoint, this timing considerably shortens the time available to the regulated community to prepare comments. Further, numerous parts of the country that have mining operations, including specifically SMI processing and mining operations, which already have experienced significant weather events over the last weeks that will further interfere with their ability to focus on this rulemaking in the short window provided by MSHA.

Accordingly, on behalf of the SMI, I respectfully request that MSHA extend the comment period by an additional one hundred eighty (180) days so that its members, all interested stakeholders, and the public have sufficient time to give meaningful review to the proposed rule and associated

background material, to gather and compile relevant information and data, and to prepare meaningful comment on the silica proposed rule.

We appreciate your serious consideration of this request. If you have any questions, please do not hesitate to contact me (kmcmahon@connmaciel.com; 202.909.2733).

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathy McMahon", with a stylized flourish at the end.

Kathryn McMahon

cc: Bryan Nicholson, Richard Brown, Glenn McDonell and Richard O'Neill