

September 1, 2023

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

Subject: Request for 60-Day Extension of Comment Period; Notice of Proposed Rulemaking; Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection
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 in the above- referenced rulemaking for an additional sixty (60) 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 appreciates the additional fifteen (15) days MSHA has granted to provide comment on its proposed rule, however, we believe that extension is wholly insufficient to allow SMI and other stakeholders to prepare and submit meaningful comment. All stakeholders require additional time to review the transcripts from the three Public Hearings held between August 3 and August 21, 2023. The transcript from the August 21st Hearing became available just two days ago. Beyond this, and more importantly, MSHA has included over 1,200 supporting documents in the rulemaking docket. Among these are MSHA's 254-page Review of the Health Effects Literature (Effects of Exposure to Crystalline Silica on the Health of Miners) and its 135-page Preliminary Risk Analysis document, with 760+ studies referenced in these critical documents. While SMI certainly could not carefully review the entirety of the risk-related material in the docket in even a year, it must be provided at least sufficient time to cull through the volumes of studies to find those relevant to the issues critical to its sorptive clay material, to review that material and provide MSHA with meaningful feedback and comment.

MSHA has had at least seven years to gather, review, and evaluate this risk data and literature; surely an additional sixty days for the regulated community to attempt to understand the basis for MSHA's risk assessment is an eminently reasonable request. Without this time, SMI may be precluded from any ability to provide useful information, and thoughtful and expert comment, on the basis MSHA purportedly has identified to support its inclusion of sorptive clays in this rulemaking.

An unreasonably short comment period preventing the development of meaningful stakeholder comment will harm the agency's regulators responsible for preparing a sound rule and potentially render the final standard vulnerable to legal challenge. This rushed rulemaking benefits no one, including the miners who ultimately will benefit greatly from a standard based on sound science and a well-supported risk assessment.

Further support for an extension comes from the fact that a surficial review of the references included in the Health Effects and Preliminary Risk Analysis materials indicates that, while MSHA has compiled and presumably reviewed an enormous amount of scientific work in the area of the toxicology of crystalline silica, it, seemingly, is unaware of and therefore has not reviewed a number of critically important recent studies related to the underlying mechanism responsible for causing quartz to become toxic in some instances.. These studies are fundamental to MSHA's understanding of the nature and toxicology of silica, and explain the adverse health causal element that has eluded much of the science on crystalline silica – the “how” of the risk analysis. At least as it applies to the occluded quartz in sorptive clays, without an understanding of these studies, MSHA cannot make a scientifically or legally sound decision about the propriety of regulating sorptive clays. And the final rule will not be based on the best available science on this matter.

Even with an additional 60-day extension, comments will be submitted to MSHA by early Fall. In the meantime, MSHA can begin reviewing the comments as they are submitted, 72 of which are already in the docket. Accordingly, the additional 60 days will not impose any hardship on the agency and will not materially delay the promulgation of a new silica standard. In fact, to the contrary, the additional extension will allow stakeholders to prepare more robust and useful comments that will assist MSHA in the development of a sound new silica standard.

On behalf of the SMI, I respectfully renew our request that MSHA extend the comment period and ask the agency to grant an additional sixty (60) day period for submission of comment.

We very much 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,



Kathryn McMahon

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