Pennsylvania Aggregates and Concrete Association

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Submitted via https://www.regulations.gov

S. Aromie Noe
Director, Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th St S
Suite 401
Arlington, VA 22202

Re: Docket No. MSHA-2023-0001 RIN 1219-AB36
Lowering Miners' Exposure to Respirable Crystalline Silica (RCS)
And Improving Respiratory Protection

The Mine Safety and Health Administration (MSHA) published the above proposed rule on July 13, 2023. We respectfully submit the following comments on this proposed rule.

The Pennsylvania Aggregates and Concrete Association (PACA) is the trade organization for the aggregates (crushed stone, sand and gravel), ready mixed concrete and cement companies in Pennsylvania. Nearly 200 member companies, of all sizes and types, are involved in the production of the above commodities or provide support products and services to the construction materials manufacturing companies.

The aggregates industry is the foundation of the country's infrastructure and is a significant contributor to the economic well-being of Pennsylvania. In 2022, Pennsylvania quarries produced 103,644,960 tons of construction aggregates, allowing us once again to be in the leading states of total annual output for 2022.

Our members' facilities produce aggregates for critical infrastructure projects, such as roads, bridges, schools, churches, stadiums, and factories. Once the quarries no longer have reserves of appropriate materials, we find other ways to utilize them such as for drinking water storage.

We appreciate the opportunity to comment and support the National Stone Sand & Gravel Association's comments on this proposed rulemaking. Like NSSGA, we believe MSHA's proposed rule is overly prescriptive, does not take into consideration industrial hygiene best practices, and targets limited resources to areas where they are not necessary. We highlight the following points:

We strongly recommend MSHA adopt a standard similar to OSHA's silica standard. OSHA's silica standard includes a performance-based option for exposure assessment, a less prescriptive scheduled monitoring option, and bases medical surveillance on a worker's actual exposures or lack of exposures. OSHA's approach would offer increased flexibility for operators, as well as protect workers' health. Furthermore, this approach will not overtax the resources of accredited labs, medical facilities, or B-readers, and will not drive small operations out of business.

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Labs ability to measure low concentrations of silica. We have concerns with current sampling practices and labs' ability to measure low concentrations of silica consistently and accurately at 25 µg/m3. We do not believe the literature concerning silica health effects supports the conclusion that a material risk of adverse health effects exists at exposures below 25 ug/m3.

MSHA should adopt the OSHA provision which requires sampling after changes that may affect exposures, in lieu of the periodic sampling and qualitative assessment provisions in the proposed rule. The introduction of four new categories of sampling is confusing and unnecessary. Many operators and workers are already familiar with the OSHA silica standard because of their vertical integration (i.e., asphalt, ready mix concrete, construction, etc. as part of their business) or having aggregate sales yards. Adopting the OSHA standard would protect worker health and simplify work for many employees who often go back and forth between OSHA and MSHA regulated sites. It would also simplify sampling and medical surveillance requirements for these employees.

MSHA should make medical surveillance risk based. MSHA should adopt a provision like the OSHA medical surveillance provision, which requires employers to offer medical surveillance to workers exposed to RCS at or above the action level for 30 or more working days a year. We believe that medical surveillance should be offered to workers who exceed a threshold level of silica exposure, rather than requiring operators to offer it to every miner. We believe this should apply to voluntary and mandatory medical surveillance.

MSHA should change the required initial medical exams to be completed within 30 days of hire. The 30-day requirement in the proposal is not necessary to protect worker health given the exposures that exist, and an initial medical exam taken after 30 days provides an adequate baseline for future comparisons for the same reason. Additionally, this will be a huge workload for already stressed labs. Furthermore, many operators have probationary periods and many workers new to the industry nowadays quit after a few months. MSHA should take this into consideration relating to the medical surveillance date.

Operators should have flexibility on how to run medical surveillance programs. While we understand the components of the proposed medical surveillance, the proposed rule is too prescriptive regarding medical conduct of surveillance. It should clarify operators may do more extensive testing, clarify operators can make medical surveillance mandatory, and should allow operators to get limited and pertinent test results.

MSHA should allow employee rotation as an administrative control as OSHA does in its silica standard. We support the implementation of the hierarchy of controls where feasible engineering controls are primary and administrative controls supplementary. Worker rotation is a proven and effective administrative control that protects workers from overexposure to silica. Furthermore, worker rotation is a NIOSH-recommended and industrial hygiene-supported best practice administrative control. The elimination of employe rotation to limit the number of workers exposed to silica contradicts MSHA's assumptions stated throughout the preamble that all workers

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are exposed to some levels of silica. Eliminating worker rotation to limit the number of workers exposed, contradicts the existence of a Permissible Exposure Limit and its calculation as a time weighted average.

MSHA should allow temporary respirator use for compliance including 95 and 99 respirators. We agree with MSHA that respirators should not be relied upon as a primary method for controlling exposure to respirable crystalline silica. However, MSHA noted, there are times where engineering and administrative controls are not feasible and respirators are the only way to keep an employee from being overexposed. In these limited and temporary circumstances, respirators should explicitly be allowed for compliance. In addition to maintenance activities, which often by their nature cannot be controlled through engineering and are temporary, there are other short-term tasks for which respirators should be permitted for compliance, e.g., short-term seasonal bagging operations, which only occur a couple of weeks or a month in a year. MSHA could require operators to outline in their proposed respiratory protection plan, their process for determining when respirators will be used.

Furthermore, both 95 and 99 series respirators should be allowed. With respect to non-powered air purifying respirators, MSHA's proposed standard only allows for the use of 100 series respirators. However, for non-powered air purifying respirators, 95 and 99 series respirators are protective of worker health and should also be allowed.

MSHA should extend the effective date of this proposed rulemaking for M/NM operations to 24 months after publication in the *Federal Register*, which would provide time for M/NM operations to come into compliance with the new provisions. The implementation period of 120 days is insufficient for all operators to comply. Even with the additional 180 days until sampling is proposed to go into effect is insufficient, especially for M/NM operators new to sampling and medical surveillance.

Additionally, the proposed compliance date does not consider the demand and backlog for industrial hygienists, labs, medical facilities, and B-readers. Nor does it consider time for operators to plan, purchase, and implement engineering controls or that there could be a surge in demand for various components that puts additional demand on an already strained supply chain. There is no silicosis crisis in M/NM and providing 24 months for compliance will not negatively affect miners' health, but it is essential for compliance.

Contractors and unique circumstances in M/NM operations need to be taken into consideration. MSHA's proposed standard does not discuss contractors, take into consideration challenges faced by the numerous M/NM operations that have employees going back and forth between OSHA and MSHA regulated sites, nor does it address unique challenges that would be faced by portable operations. MSHA should adopt a silica standard similar to OSHA's which will address the numerous challenges for contractors, facilities with employees under both MSHA and OSHA, and portable operations.

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Again, we support NSSGA's comments and appreciate the opportunity to comment. If you have any questions, don't hesitate to contact me.

Sincerely,

Peter T. Vlahos
President & CEO

Cc: John Stefanko, PA DEP
Kevin Abel, MSHA Warrendale