

K & E Excavating, Inc.
3871 Langley St. SE
Salem, OR 97317

September 11th, 2023

S. Aromie Noe,
Director Office of Standards,
Regulations, and Variances Mine Safety and Health Administration (MSHA)
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5450

Re: RIN 1219-AB36, Docket Number: MSHA-2023-0001

Dear Director Noe:

K&E Excavating, Inc. is opposed to a new silica rule, when there is no evidence of silicosis or other symptoms are happening on the Metal/Non-Metal side of mining. K&E Excavating respectfully requests a 120-day extension to the comment period provided in MSHA's proposed RIN 1219-AB36, Lowering Miners' Exposure: Respirable Crystalline Silica and Improving Respiratory Protection, as published in the Federal Register on July 13, 2023. MSHA has requested comments in 43 specific areas within a 45-day comment period. That timeframe is insufficient to provide thoughtful and meaningful comments on all 43 sections. Question number 8 has consumed much of our time realizing how devastating the cost to our small company will be.

Data revealed in the meeting with the Small Business Advocacy Roundtable showed that the MSHA Data Retrieval System only had twenty 7000-1 forms filed for Silicosis. Of those twenty, only a few showed that a doctor diagnosed Silicosis, and none of the cases listed showed symptoms. Our company feels this is a coal mining issue, not a Metal/Non-Metal MSHA problem. We care about our miners as many are family and friends, but we cannot bear the cost

for something that isn't an issue in our mining sector. Lowering exposure levels will not change exposure when our people aren't exposed to life changing levels. We have been tested for Respirable dust several times with no dust found.

The company has been tested as follows:

Mine Name: K&E Rock Products ID # 35-03869:

02/24/2023 Shovel Operator Respirable Dust <.1mg Concentration 0 PEL 0

09/18/2019 Truck Driver Respirable Dust <.1mg Concentration 0 PEL 0

09/18/2019 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

Mine Name: Portable 1 ID # 35-03947

NO DATA

Mine Name: Portable 2 ID # 35-03948

05/18/2023 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

The final rulemaking process will be better served by providing sufficient time to review each of the 43 sections to find out how our company will be affected by all these changes. K & E Excavating, Inc. requests that MSHA extend the comment period for 120 days.

The company would also like to comment on the following: Exemption for small jobs.

K & E Excavating, Inc. is made up of different pieces of equipment making up the crushing plant for different jobs. The company crushes rock for different tree farms and clients in and around the State of Oregon. The company also crushes rock in a pit that is controlled by K & E Excavating, Inc.

K & E Excavating requests an exemption from testing when in portable mode. Many of the rock crushing jobs are small in nature. The company moves in the equipment and within 4 to 10 days they will be done crushing and will be moving out of that pit to go to another job. It will take any lab 21-45 days to return results from testing. These locations could be 30-200 miles away from each other. The next time the tree farm will require someone to crush in that location could be years or decades. We ask for an exemption because after sampling for one day and sending the samples to be tested, the crushing will be completed in that location. Our company will have left that site, possibly never to return. Any data collected would be mute as we don't own the site and may never return to work there ever again. We are not asking for exemptions to any pit we return to regularly or those locations we control. The data we collect in those locations would be acted upon if the numbers exceeded the action level.

Initial Regulatory Flexibility Analysis

8. As summarized in Section X. Initial Regulatory Flexibility Analysis of this preamble, MSHA examined the impact of the proposed rule on small mines in accordance with the Regulatory Flexibility Act. MSHA estimated that small-entity controllers would be expected to incur, on average, additional regulatory costs equaling approximately 0.122 percent of their revenues (or

\$1,220 for every \$1 million in revenues). MSHA is interested in how the proposed rule would affect small mines, including their ability to comply with the proposed requirements. Please provide information and data that supports your response. If you operate a small mine, please provide any projected impacts of the proposal on your mine, including the specific rationale supporting your projections.

It's been estimated that the cost of IH sampling (SEG Development, IH Plan) will cost \$7500.00.

Lab fees to run the Initial samples will be \$650.00 and \$1950.00 per year after that.

It costs \$1000.00 for one truck of water. Costs will increase significantly because the action level for silica is dropping dramatically which will require 4 times the water use today to stay below the .25 ug/m³ where at current levels one load a shift may be sufficient.

Mag chloride will cost \$1,400.00 - \$2200.00 per 275-gallon tote, with the price expected to rise as demand goes up. This price has gone up \$600.00 a tote since I was researching 3 weeks ago. 1 tote will cover 27 square feet per gallon. Estimated cost to mag a road 1 mile long 22 feet long \$52,363.63 using the Dustgard formula. To put Mag chloride into the roads and work areas requires the ground have the water put down first to penetrate the ground 3-4 inches requiring thousands of dollars in water to achieve this.

Cost per person for medical surveillance

Silica Exam = \$150.00

Silica Questionnaire = \$35.00

Spirometry Pulmonary function test = \$50.00

Fit testing = \$40.00

Chest x-ray/ "B" reader = \$100.00

Number of employees 17 x \$375.00 = \$6,375.00

Average cost per hour for employees' wages.

Cabin Air filters Cost \$65.00 to \$125.00 dollars apiece depending on the machine. These filters must be checked every 50 hours of running time to determine if they need replaced.

The company has:

- 10 - Cat Excavators
- 4- Cat 966 Loaders
- 2- Cat 980 Loaders
- 2- Cat 972 Loaders
- 2- D8 Cats

- A full crushing unit

We also have 7 trucks available to haul and one lowboy.

Respirators will cost from \$37.00 to \$48.00 x 12 = +/- \$525.00 with tax with a possible replacement every year - two years.

[North Full-Face and Half-Mask Respirator Cartridges](#)

\$39.30 - \$55.00 USD / PKG OF 2 X 12 = \$600.00 REPLACED EVERY 6 MONTHS

Air conditioning in machinery, which is usually considered more of a luxury, will be required to keep the cabs positive pressure.

Citations that have never been issued to this company for Silica or dust, but because the action level has been lowered 25 micrograms per cubic meter, our company will undoubtedly start to receive citations we have never been exposed to.

Our costs for drilling will go up because the drilling companies will have to meet new criteria which will cost them more money.

There are costs we probably haven't thought of as we have been given very little time to figure out all the way our company will be impacted. There is no evidence that this change in the standards will change anything in mining other than coal. We don't know anybody in our industry that has silicosis, or anything associated with it. The cost that our company will incur to prevent nothing is beyond ridiculous. We already take many steps to keep dust levels down to protect our miners and the environment.

We appreciate your thoughtful consideration of these comments.
Sincerely,

K & E Excavating, Inc.
Kerry Kuenzi

Owner