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September 7, 2023

S. Aromie Noe
Director, Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th Street South
Suite 401
Arlington, VA 22202-5450

Subject: Request for 30-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

Dear Ms. Noe:

On behalf of the AMI Silica LLC ("AMI"), 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 thirty (30) days, to provide AMI, 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.

On July 13, 2023, MSHA published a proposed rule entitled Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection. The agency provided a 45-day notice public comment period, which was initially set to expire on August 28, 2023 at midnight. After immediate comment from much of the regulated community that the 45-day comment period was not sufficient for the development and submission of substantive and meaningful comments on the numerous questions posed by MSHA in the proposed rule, the agency extended the comment period. On August 10, 2023, MSHA announced that the public comment period would be extended by 15-days, until September 11, 2023.

AMI 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 AMI and other stakeholders to prepare and submit meaningful comment. Further, during the August 21, 2023 public hearing held in Denver, CO, remarks were made that a potential significant and novel expansion on the language of the proposed rule was under consideration. In MSHA's opening remarks, MSHA Deputy Assistant for Operations Patricia Silvery stated:

"Further, if an operator's sample is above the proposed PEL, the mine operator would be required to take immediate corrective actions to reduce miners' exposure to below the PEL, make the record of the overexposure which would have to be posted and made available to miners' representatives and re-sampled to ensure that the corrective action is

effective and that miners' exposures are, in fact, reduced to at or below the PEL. And if the miners' exposures exceed the PEL, MSHA would issue a citation. MSHA has received comment on the recordkeeping requirement.

Some commenters recommend that exposure records be kept for longer than two years. At this point in the rulemaking process, MSHA is considering to require that when an operator's sample is over the PEL, that operator send the record of that overexposure to the MSHA district manager. This exposure data will allow MSHA to immediately take appropriate enforcement action and provide any necessary compliance assistance to operators.¹

Such a consideration represents a shift in reporting obligations for operators that was not previously included in the proposed rule, and could not be considered a logical outgrowth from the text of the proposed rule. If MSHA is truly considering such a substantive change to the operator reporting requirements, and most especially when the agency is stating that such reporting would be used to support the immediate issuance of enforcement against operators, stakeholders must be provided the opportunity to review and comment.

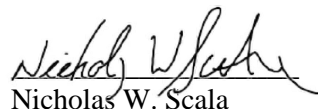
This would be an extraordinary departure from current practice and is not even mentioned in the proposed rule. Further, this consequential consideration was only mentioned during the August 21, 2023 Public Hearing, that is 39 days after the proposed rule was published and eleven days after the 15-day extension was announced. Moreover, the transcript of the Denver Hearing was not ultimately published for stakeholders to confirm these statements made by MSHA until September 1, 2023.² A mere ten days before the comment period deadline, which is insufficient to allow the regulated community to consider and prepare comments regarding this statement by the agency.

The regulated community needs additional time to inform itself about this consideration, evaluate it and prepare comments on it. This alone provides sufficient reason for MSHA to grant an additional 30-day extension to the comment period.

On behalf of the AMI, I request that MSHA extend the comment period and ask the agency to grant an additional thirty (30) day period for submission of comments.

We very much appreciate your serious consideration of this request. If you have any questions, please do not hesitate to contact me (nscala@connmaciel.com; 614.418.6048).

Sincerely,



Nicholas W. Scala

¹ MSHA's Denver Public Hearing Transcript, page 9, lines 6-11 (August 21, 2023)

² MSHA's Denver Public Hearing Transcript was originally posted to regulations.gov on August 27, 2023, but then subsequently withdrawn. A revised version was posted on September 1, 2023.