June 3, 2014

OSHA Docket Office
Docket No. OSHA—2010-0034
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, D.C. 20210


Dear Sir or Madam:

The National Stone, Sand & Gravel Association (NSSGA) submits the following post-hearing additional information and data relevant to the Occupational Safety and Health Administration’s proposed rule (proposal) on occupational exposure to respirable crystalline silica (silica).1,2

The bases for our participation in this rulemaking were described in our previous correspondence with OSHA: Many of our vertically integrated company members incorporate aggregates into concrete using Portland cement or asphalt cement. OSHA’s proposal thus directly impacts many of our members’ operations and

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2 NSSGA on Dec. 12, 2013 timely filed a written Notice of Intention to Appear to Provide Testimony at the Informal Public Hearing on silica rulemaking. NSSGA also timely submitted written comments with OSHA on Feb. 11, 2014, and on March 27, 2014 provided oral testimony during the public hearing (Hearing Exhibit 73; Hearing Transcript pp. 2285-2324). NSSGA intends to file a final brief with OSHA by July 18, 2014; however, we continue to assert that the volume and complexity of the OSHA proposal and its supporting information have rendered it impossible for NSSGA to deliver a complete and meaningful response to the rulemaking record.
virtually all of their customers’ operations. Moreover, the majority of aggregates facilities are regulated by the Mine Safety and Health Administration (MSHA), which intends to initiate silica rulemaking for the mining industry and will largely rely on OSHA’s regulatory analysis to do so.3

NSSGA is a member of the American Chemistry Council’s (ACC’s) Crystalline Silica Panel (CSP), which has been in existence for 25 years. The CSP consists of 17 trade associations and individual companies with a substantial interest in silica and silica rulemaking. The CSP is submitting post-hearing comments to OSHA on the proposed rule, particularly relating to silica health effects, the technical and economic feasibility of the proposed standard, silica measurability, and other issues. NSSGA endorses and adopts the CSP’s post-hearing comments and its attachments.

Our comments today correct and clarify specific elements in our pre-hearing written comments and selected transcripts of the silica public hearing conducted by OSHA between March 18, 2014 and April 4, 2014. We earlier submitted a document that OSHA requested from NSSGA during the public hearing.

NSSGA’s Pre-Hearing Written Comments: Corrections and Clarifications

Subsequent to filing pre-hearing comments4 with OSHA, we discovered errors and various statements in the comments for which clarification will benefit the record:

1. Page 2, last paragraph. NSSGA began to recommend the Occupational Health Program (OHP) no later than 1996; however, some NSSGA members had established occupational health programs as early as the 1970s.

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3 U.S. Department of Labor, Semiannual Agenda of Regulations, Nov. 26, 2013, pp. 48-49. MSHA’s Regulatory Plan states, in part, “MSHA intends to use OSHA’s work on the health effects and risk assessment, adapting it as necessary for the mining industry.” The most recent Semiannual Regulatory Agenda, published May 23, 2014, deletes the June, 2014 date by which MSHA anticipated publishing an NPRM for respirable crystalline silica.

2. Page 2, footnote 3. Continuing the downward trend, the 2012 rate was 2.17 and the 2013 rate was 2.11.

3. Page 3, first paragraph. The OHP elements include the following:
   - Management Commitment
   - Communication and Training
   - Sampling
   - Exposure Control Program
   - Medical Surveillance
   - Smoking Cessation
   - Program Evaluation
   - Appendices (exposure monitoring forms, specifications for medical testing devices, forms for medical/personal history and exposure history, OSHA respirator medical questionnaire, employee notification forms, and notice to employees regarding the *Occupational Health Program*).

NSSGA supplemented the OHP in 2012 with a 40-page module titled *Silica and Dust Control*. The contents of the module include: Background: What is Silica & How is it Harmful?; General Approaches to Silica Exposure Control; Engineering Controls; Work Task Controls; Administrative Controls; Personal Protective Equipment; and Web and Print Resources.\(^5\)

4. Page 6, first paragraph. Our statement that “no such allowance is afforded to the regulated community” was intended to mean that OSHA has provided no evidence that it would afford employers a compliance catch-up period equivalent to that proposed for analytical laboratories following publication of a final silica rule.

5. Page 8, first paragraph (response to Question 11). With respect to the trend of increasing automation in aggregates facilities, the more modern conveying and screening equipment includes designs to reduce maintenance requirements in general and the time it takes to perform maintenance operations. These

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\(^5\) NSSGA submitted a copy of the *Occupational Health Program* (with *Silica & Dust Control* module) to the OSHA docket office on June 2, 2014.
improvements reduce the opportunity for dust exposures among maintenance and other plant employees.

6. Page 11, fourth paragraph (response to Question 25). In our response, the reference “(e)(ii)(C)” should read “(e)(3)(ii)(C)” and “(i)” should read “(e)(2)(i).”

7. Page 17 (response to Question 42). Our intent was to say that all provisions of the standard should be triggered at exposures in excess of the current PEL, except for initial monitoring and monitoring after significant changes in processes and equipment that reasonably would be expected to increase exposures above the current PEL. (However, that statement should not be interpreted as NSSGA’s endorsement or support of every provision or partial provision of the proposed standard.)

8. Page 20 (response to Question 49). In the first sentence, “controls” should read “control”.

9. Page 24 (response to Question 71). Our response should read, “The PHLCP’s opinion that is provided to the employer, should be restricted . . .”

Hearing Transcript Corrections and Clarifications

A variety of errors or misinterpretations occur in the public hearing transcripts provided by OSHA. We focus here on testimony provided by NSSGA, and on questions we directed to representatives of the American Industrial Hygiene Association Laboratory Accreditation Program and AIHA Proficiency Analytical Testing program during their oral testimony.

NSSGA Oral Testimony (March 27, 2014)

10. Page 2299, line 9. The word “proposal” was intended specifically to refer to the proposed PEL and AL.

11. Page 2300, line 14 (response to Ms. Trahan). The hearing transcript should read “operations and asphalt plants.”
12. Page 2300, line 24 (response to Ms. Trahan). The word “outsources” should read “outsourced”.

13. Page 2302, lines 22-23 (response to Ms. Trahan). A primary means of communication among operators and contractors is through the hazard communication program, including the exchange of relevant MSDSs (SDSs). However, NSSGA does not collect that information from its members.

14. Page 2314, line 25, through p. 2315, line 1 (response to Ms. Iannucci). The actual speaker was Mr. Drysdale. In accordance with OSHA’s request, NSSGA has submitted a DVD copy of the Occupational Health Program (with Silica & Dust Control module) to the OSHA silica docket.

15. Page 2315, lines 14-16 (response to Ms. Iannucci). NSSGA emphasizes the necessity for employers to continue to receive information from employee medical surveillance exams. It is vital for at least two reasons when an examined employee is suspected of or diagnosed with an occupationally related condition. First, the information allows the employer to schedule follow-up medical exams or retesting. Second, the medical provider’s information may suggest the degree, if any, to which an employer’s workplace may affect the employee’s condition, thereby enabling the employer to investigate the workplace and make any appropriate changes.

16. Page 2316, lines 11-15 (response to Ms. Iannucci). Our intent was to describe by example the type of practical information that employers need from the medical provider following an employee’s medical surveillance exam. For our example, an employer should know the recommended limitations on respirator use by the examined employee; and the medical provider, rather than sending the employer a copy of the examined employee’s medical record, might simply state, “The [examined] employee should not use a negative-pressure respirator for more than [x] hours per work shift.”

17. Page 2317, line 2 (response to Ms. Iannucci). The hearing transcript should read, “. . . we’ll get to you when we can. . .”
18. Page 2323, lines 13-23 (response to Mr. Ryder). The OHP specifies a baseline medical evaluation for new employees, periodic medical evaluations, and follow-up diagnostic examinations if indicated. Evaluations include medical, personal, and exposure histories, chest x-ray, PFT, and audiometric testing. The OHP does not specify the frequency of periodic exams, which is typically established in consultation with a medical professional and may vary for a number of reasons. Follow-up diagnostic examinations are specified when an abnormality is revealed by the employee’s baseline or periodic evaluation.

AIHA LAP and AIHA PAT Oral Testimony (April 1, 2014)

19. Page 3294, line 18. The word “comment” should read “commend”.

20. Page 3294, lines 21-22. Our reference to “one of the experts” is Mr. Paul K. Scott, of Cardno ChemRisk, LLC. Mr. Scott testified on Mar. 26, 2014, with the relevant testimony including but not limited to pp. 1975-1978 of the hearing transcript.

21. Page 3295, lines 15-16. Given the central and critical nature of the AIHA-LAP and AIHA-PAT (“LAP/PAT”) program integrity to the silica rulemaking, we reiterate our request that LAP/PAT provide to the rulemaking record information that is responsive to our stated request. A comprehensive response that is intended to clarify the record would include a full description of the winsorizing processes to which LAP/PAT referred in their oral testimony (e.g., hearing transcript pp. 3295-3296); other statistical processes that LAP/PAT uses or used to reduce the presence or effect of data outliers, including the reasons for their use; the basis for LAP/PAT selection of the reported 20% criterion for truncating RSDs and any other data-truncating criteria; and pre-winsorized values (with lab identifiers censored) for at least the most recent year that LAP/PAT data were winsorized.

22. Page 3296, line 7. Our reference to “this study” means the “Statistical Assessment of Performance Tests for the Analysis of Respirable Crystalline Silica (Quartz) by Commercial Laboratories Using XRD,” by Tony Cox, dated Aug 16, 2013, submitted to the OSHA silica rulemaking docket on Feb. 11,
2014 (as Attachment 14 to the written comments submitted to OSHA by the CSP), and subsequently posted on the OSHA silica docket website. The CSP representative whose testimony we referenced was Mr. Kelly F. Bailey, CSP chair, supported by testimony from Dr. Richard J. Lee (both on March 26, 2014), with relevant testimony including but not limited to pp. 1987-1998 and 2042-2098 of the hearing transcript.

23. Page 3298, line 17. The question should read, “. . . to perhaps do better . . .”

24. Page 3299, line 25, through p. 3300, line 5. Given the central and critical nature of the AIHA-LAP and AIHA-PAT (“LAP/PAT”) program integrity to the silica rulemaking, we request that LAP/PAT provide to the rulemaking record information that supports the statement made by Mr. Walsh:

“. . . site assessors are very sensitive to how PAT samples are processed in the lab. It’s a specific area that’s examined, and if the samples are processed in any way other than a normal sample, the laboratory is cited as a deficiency.”

A comprehensive response that is intended to clarify the record would include details of the LAP/PAT site assessors’ process for making this specific determination (i.e., if the PAT samples are processed in any way other than a normal sample), particularly as referenced in or originating from ISO/IEC 17025:2005, ISO 17043:2010, and ISO 17011; and the number of labs, if any, that have been cited by LAP/PAT site assessors for this specific deficiency.6

Document Submitted by NSSGA in Response to OSHA’s Request during the Public Hearing

NSSGA submitted a DVD copy of the Occupational Health Program (with Silica & Dust Control module) to the OSHA docket office on June 2, 2014.

6 We may refer in our final brief to documents from the AIHA LAB and PAT Programs websites including “AIHA PAT Programs Participation Policies” (revised Sept 21, 2012), “Policy Module 3—Accreditation, Maintenance And Reaccreditation Processes” (revised March 14, 2014); and to ISO/IEC 17025:2005, ISO 17043:2010, and ISO 17011.
NSSGA appreciates the opportunity to offer these corrections, clarifications, and submissions to the rulemaking record. Please send any correspondence on this matter to my attention.

Sincerely,

[Signature]

NATIONAL STONE, SAND AND GRAVEL ASSOCIATION

Michael W. Johnson
President and CEO