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**Testimony of Mark G. Ellis
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before the

Occupational Safety & Health Administration

regarding

**OSHA's Proposed Rule Regarding Occupational Exposure to
Respirable Crystalline Silica
Docket No. OSHA-2010-0034**

March 20, 2014

Good morning. I am Mark Ellis, and I am the President of NISA -- the National Industrial Sand Association. I am joined this morning by Andrew O'Brien, the Vice President of Safety and Health for Unimin Corporation, a NISA member company, and Jamie Conrad, the Principal of Conrad Law & Policy Counsel, who is NISA's counsel for this rulemaking. NISA is a nonprofit 501(c)(6) trade association representing the major North American producers and processors of industrial sand, sometimes called silica sand. NISA currently has 31 members and is the oldest and largest trade association representing the industrial sand industry in the United States and Canada.

Industrial sand companies produce essentially 100% pure crystalline silica. As a result, NISA members generally have longer histories of working with silica, and more direct contact with silica, than anyone else in industry. It is also why, beginning in the late 1970s, NISA and its member companies developed what has now become the NISA Silicosis Prevention Program, or SPP.

NISA members' workplaces are predominantly mining operations, and thus they are typically regulated by MSHA, not OSHA, for purposes of occupational safety & health. NISA has a substantial stake in the outcome of the OSHA crystalline silica rulemaking, however, for several reasons. The most important of those reasons is simple, however: NISA members strongly believe that the exposure monitoring and medical surveillance that they implement under the Silicosis Prevention Program are the right things to do to protect the health of their employees, and are good for their businesses' bottom line. They also believe that these two practices must be included in a comprehensive OSHA standard addressing crystalline silica.

NISA is pleased to offer a unique perspective on the issue of workplace exposure to crystalline silica – and an optimal solution to the challenge facing OSHA. As we explain in our comments, NISA strongly supports what has come to be termed the “NISA Solution”: a comprehensive standard that would require exposure monitoring and medical surveillance at an action level (AL) of 50 $\mu\text{g}/\text{m}^3$, while maintaining the current permissible exposure limit (PEL) of

100 $\mu\text{g}/\text{m}^3$. This is similar to OSHA's Alternative #1, and NISA commends OSHA for offering that alternative first and for stating that it "will strongly consider alternatives that would reduce the economic impact of the rule."

As our comments demonstrate, the NISA Solution would substantially reduce any risks of material health impairment from workplace exposure to crystalline silica arising from the stubbornly high level of noncompliance with the current PEL. The NISA Solution is also economically and technologically feasible.

The beauty of the NISA Solution lies in two concepts that OSHA itself has seen the extraordinary value of over the years: a potentially achievable action level and a substance-specific standard.

First, a potentially achievable action level drives companies that can meet it to lower their exposures to a level that removes them from the burden of complying with the regulation – altogether. We believe this positive enticement is more powerful motivation than the negative enticement of avoiding an OSHA citation. If the action level were to be set at 25 $\mu\text{g}/\text{m}^3$, few if any companies would be able to achieve that mark. Most would devote expenditures and resources sufficient just to comply with the PEL, and many would only spend enough not to violate it by much, or very often. A potentially achievable action level, however, will drive companies that can meet it to pay what you might call a "regulatory avoidance premium" to avoid having any further compliance obligations under the rule. A potentially achievable action level is paramount to making this rule successful.

Further, not enough has been said about the simple power of OSHA substance-specific standards, of which there are only around thirty. Once crystalline silica has a dedicated standard, a great deal more attention will be given to controlling what potential hazard this substance may present in the workplace – and this will occur no matter what exposure level is established.

The NISA Solution plays on the power of the action level and substance-specific standards and presents a pragmatic and cost-effective alternative that should be embraced by

labor, industry and OSHA.

NISA's principal witness today, Andrew O'Brien, is the Chair of NISA's Silica Health Effects Committee. He is thus ideally positioned to describe the NISA Silicosis Prevention Program and the extraordinary results that it has produced. That experience is what makes us so confident in saying that OSHA could retain the current PEL and still eradicate new cases of silicosis. The key is to include exposure monitoring and medical surveillance – triggered by an action level – in a comprehensive standard.

Mr. O'Brien will also discuss a silica epidemiology study that NISA is sponsoring, and that could have a profound effect on this rulemaking.

With that introduction, I will now turn things over to Mr. O'Brien.