Results of consultation on proposal for a Workplace Exposure Limit for Respirable Crystalline Silica (Consultative Document 203)

Section 1: Respondents to Consultation Exercise

Association of Chief Police Officers In Scotland*
EEF Sheffield
Institute Of Directors*
The Royal Environmental Health Institute of Scotland*
The Society and the Faculty Of Occupational Medicine
Stephen Hill, Stoke-on-Trent College
UK Cleaning Products Industry Association
Moore International Services
Scottish Agricultural College
Burlington Slate Ltd
Silica & Moulding Sands Association (SAMSA)
Hire Association Europe
The British Occupational Hygiene Society (BOHS)
The Transport and General Workers' Union (TGWU)
The British Coatings Federation (BCF)
British Ceramic Confederation (BCC)
UCATT
CBI (The Voice of Business)
Confederation of UK Coal Producers
Banks Mining
British Glass
European Association of Silica Producers (EUROSIL)
Amicus
The Mining Association of the United Kingdom
The National Union of Marine Aviation Shipping Transport Officers' (NUMAST)
Chemical Industries Association (CIA)
Quarry Products Association (QPA)
Industrial Health Control Ltd
Network Rail Infrastructure Limited
Transport for London (TfL)
British Aggregates Association

***Nil responses**

Section 2: Summary of comments received on Consultative Document 203 and recommendations for action

Questions posed in the CD	**Summary of main comments** (numbers of respondents to each question will not necessarily add up to 28 because of nil responses)	**Recommendations for action**
Q1. Do you agree with the proposal for a WEL for respirable crystalline silica of 0.1 mg.m $^{-3}$ (8-hour TWA)? If you disagree, please explain why.	**The majority (22) of respondents agreed with the proposal for a WEL for respirable crystalline silica of 0.1 mg.m $^{-3}$** (EEF Sheffield, The Society and the Faculty of Occupational Medicine, Stephen Hill, UK Cleaning Products Industry Association, Scottish Agricultural College, Burlington Slate Ltd, SAMSA, BOHS, TGWU, BCF, UCATT, CBI, Confederation of UK Coal Producers, Banks Mining, British Glass, EUROSIL, The Mining Association of the United Kingdom, NUMAST, CIA, QPA, TfL, British Aggregates Association). Of these, some respondents noted that it is essential that measurement issues are resolved as soon as possible and that, once that is achieved, the WEL should be reviewed with a view to lowering it to 0.05 mg.m $^{-3}$. A similar number felt that further tightening of the WEL to less than 0.1 mg.m^{-3} would not be justifiable. CBI noted that it is essential that sector specific guidance defining good practice be available in good time to help businesses to comply with the WEL otherwise implementation of the WEL should be delayed. Guidance should be relevant, taking account of the variable potency of RCS and the range of exposures that can be encountered. **5 respondents disagreed with the proposal** (Moore International Services, BCC, Amicus, Industrial Health Control Ltd, Network Rail Infrastructure Limited). Main reasons for disagreement were that: • variable potency of RCS exposures have been adequately demonstrated thus making a "one size fits all" risk control measure inappropriate; • workers involved in seasonal work are exposed to silica for shorter periods of time	To implement the new WEL of 0.1 mg.m $^{-3}$ To launch sector specific Silica Essentials sheets in summer 2006 before implementation of the new WEL. Reasons for disagreement have been considered. Overall at the present time, there is not enough evidence to support any specified degree of relaxation in the proposed WEL. It should also be noted that the scientific evidence underpinning the WEL proposal was evaluated by WATCH. Ultimately, the new WEL proposal carries with it the requirement to

	making the risk more difficult to quantify and the expense harder to justify. In the absence of good guidance on how to control dust the result may be the long-term wearing of respiratory protection, which will be uncomfortable and difficult to enforce whilst maintaining good employer/employee relationships; • the RIA was based on a "worse case" scenario and is not representative of all sectors/industries; • the DWP silicosis incidence data used in RIA refers not to silicosis claims specifically but to pneumoconiosis, of which silicosis is but one form. Also the data falls under the category of "other agents" which presumably includes dusts other than silica; • the CD not only exaggerates the difficulties of monitoring at an exposure level of 0.05 mg/m^3 but also exaggerates the costs of complying with such a limit. It was suggested that: • an alternative approach would be to place a strict requirement on industry to prove its case for derogation where a reduced risk can be conclusively demonstrated; • a WEL limit should initially be at the lowest detectable level whilst more reliable measurement tools are developed, at which point a lower level could be introduced; • HSE should encourage business to operate as low as reasonably practical especially in terms of respirable dusts. Although not disagreeing with the proposal, a general observation was made by EEF Sheffield that, with the introduction of WELs, the need to reduce exposure as low as reasonably practicable was lost.	control according to the principles of good occupational hygiene practice, and here there is scope for flexibility, because "good practice" will take account of the nature of the task and what is reasonably practical. COSHH (Reg 7) requires controlling exposure by means that are proportionate to health risk ie if there is a risk of silicosis at the WEL, employers would be expected to continue to reduce exposure taking account of the risks and costs.
Q2. In your workplace (please describe), do you consider it would be reasonably practicable to comply with a WEL	**16 respondents considered it would be reasonably practicable to comply with a WEL of 0.1.mg.m^{-3} in their workplace** (UK Cleaning Products Industry Association, Scottish Agricultural College, Burlington Slate Ltd, SAMSA, BOHS, TGWU, BCF, CBI, British Glass, EUROSIL, The Mining Association Of The United Kingdom, NUMAST, CIA, TfL, Amicus, Industrial Health Control Ltd). Of these, some were wary of any further reduction in the WEL, noting that:	Comments relating to any further reduction of the WEL have been noted. The decision to propose 0.1 mg.m^{-3} as a WEL value is a balanced judgement that takes

of 0.1.mg.m^{-3} (8-hour TWA)?	• it would prove challenging to achieve and monitor, and extremely costly to implement particularly in some processes (eg milling and packaging of silica flour products, coal mining); • current evidence indicates that the health benefits of any further reduction are minimal and the cost of achieving any further improvements may prove prohibitive; • there is a voluntary agreement in DG Social Affairs – Social Dialogue – Extractive Industries Committee for a level of 0.1mg.m^{-3} and a monitoring procedure. The social dialogue committee is a tripartite body of the Industry, Unions and the European Commission therefore such agreements should be taken into account when reviewing WELs. Others believed that a WEL of 0.05mgm-3 should be established, and if necessary, special measures adopted to assist the quarrying industry in achieving the lowest level of exposure to silica dust that is possible. Whilst agreeing that it would be possible to comply with the proposed WEL, the Scottish Agricultural College, noted that an evaluation of the best and most cost effective ways to control silica would be useful in assuring farmers about effective control measures, and offered their support in this work. Network Rail Infrastructure Limited **did not consider it reasonably practicable to comply** in respect of activities involving the handling and dropping of railway ballast. Studies have shown that short-term exposure in these activities can approach and briefly exceed the existing WEL and options for mitigation via PPE are relatively limited and expensive given that workers also need to be able to communicate with each other. These activities are not generally carried out on a daily basis therefore it may be reasonably practicable to apply the proposed WEL if the TWA could be averaged over a week in a similar way to that permitted by the Control of Noise at Work Regulations 2005. The BCF also suggested weekly averaging.	account of the need to protect health, but also the costs and practicalities involved. Subject to Disease Reduction Programme resources, to liaise with the Scottish Agricultural College about effective control measures. Weekly averaging has been considered but rejected as impractical. Consideration to be given to further guidance on this point. To ensure guidance recognises the potential need for PPE as a last resort where effective control cannot be achieved by other means. To liaise with EA/SEPA over plans to charge for use of

	Of those who did not specifically agree/disagree: The Society and the Faculty of Occupational Medicine considered that there would be considerable costs to achieving the 0.1mg/m^3 and that personal protection should still feature in advice. Moore International Services and BCC felt that the proposal did not adequately address the issue of variable potency. The QPA noted that at sites involving the milling and packaging of silica flour products, substantial investment in new plant and equipment would be a requirement and even the implementation of all reasonably practicable measures might not consistently ensure compliance with a WEL of 0.1 mg.m^3. The Confederation of UK Coal Producers and Banks Mining noted that, whilst feasible, additional dust control measures would be costly and may result in closure of some marginal operations. In addition, plans by the Environment Agency and Scottish Environmental Protection Agency to charge operators for use of groundwater/surface water supplies threaten dust suppression from water bowsers. In a similar vein, the British Aggregates Association noted that the additional suppression of dusts would incur additional costs.	groundwater/surface water supplies. COSHH doesn't apply to dust underground. In addition to the WEL for silica, COSSH states that respirable dusts not otherwise subject to specific regulation should be regarded as hazardous to health at 4mg.m^{-3}. Hence, general duty for dust suppression stil applies. The proportion of RCS in the dust will vary according to local conditions.
Q3. Which version of the RIA have you read – the summary or the full RIA?	**6 respondents had requested and read the full RIA** (British Glass, CIA, SAMSA, Scottish Agricultural College, EUROSIL, Amicus), the remainder had either read the summary or did not clearly indicate which version they had read.	
Q4. Do you agree with the exposure information presented in the RIA?	**16 organisations agreed with the exposure information presented in the RIA** (British Aggregates Association, TfL, QPA, CIA, EUROSIL, Banks Mining, Confederation of UK Coal Producers, CBI, UCATT, BCF, BOHS, Burlington Slate Ltd, SAC, UK Cleaning Products Industry Association, The Society and the Faculty of Occupational Medicine, SAMSA). **4 did not** (Network Rail Infrastructure Ltd, British Glass, BCC, Moore International Services).	Concerns considered and decision made not to revise RIA at this stage. The annual number of predicted cases of radiological

If you disagree, or can provide further information concerning the levels of exposure that can be reasonably achieved in your industry sector, then please provide the relevant evidence.	Of those who did not, main concerns were that the RIA: • did not provide conclusive data; • is based on a "worse case" scenario with silicosis risk estimates that are unreasonably high; • makes little or no reference to the rail industry, where there is no known record of occupational ill health due to RCS. The Hire Association of Europe felt that the RIA did not sufficiently assess the impact on the construction industry and called for a lead-in period so that the construction industry and suppliers have sufficient planning time to adapt to the WEL. SAMSA believe that the industrial hygiene (dust sampling) protocol of IMA Europe will soon provide a far more representative body of exposure data that will be suitable for use in future epidemiology studies on RCS. Although CIA members involved in the manufacture and use of crystalline silica agreed with the exposure information presented in the RIA, it was noted that small volume applications such as filler in rubber/elastomer formulations and filter aid in chemical manufacturing processes had not been considered.	silicosis is close to the average annual numbers diagnosed in the industrial injuries scheme over the last 13 years, suggesting that the RIA is not "worst-case" as claimed. Data is not available to provide industry-specific breakdowns. RIA to be reviewed before any further reduction in WEL. The WEL will not be implemented until October, effectively giving all sectors a lead-in period.
Q5. In your view how well does this consultation document represent the different policy issues involved in this matter?	Very well: 1 / Well: 13 / Not well: 1 / Poorly: 1 Comments included: • the CD is well balanced, making good use of the available scientific evidence whilst also taking on board actual exposure and economic data from the industries concerned; • the TGWU stated that they would expect rigorous enforcement of the WEL by inspectors, and the resources to be made immediately available for effective enforcement; • the BCC considered the whole logic on which the CD was based to be flawed. It	Enforcement initiative to target the high-risk industry sectors to begin this year with stonemasons, and to be followed later by brickmakers and quarry workers.

	suggested an alternative approach would have been to follow up the welcome acknowledgment of variable potency with a strict requirement placed on the Industry to prove its case for derogation where a reduced risk can be conclusively demonstrated; • Industrial Health Control Ltd suggested that the CD exaggerated the difficulties of monitoring at an exposure level of 0.05 mg/m3. It also appeared to exaggerate the costs of complying with such a limit.	
Q6. Is there anything you particularly liked or disliked about this consultation?	Comments were: • responding would have been much easier if the form was provided in Word format for easy completion and return; • the consultation had been carried out professionally (SAMSA); • appreciation of the way consultations are conducted as a matter of rule (EUROSIL); • the CD was well structured and presented its arguments for reducing the WEL in an appropriate scientific manner (CIA); • welcomed the fact that the document appeared to have been submitted to consultees involved in all relevant industry sectors (CIA); • employers must comply with their legal duty to inform, and consult with, workplace safety representatives on all issues relating to respirable silica, and this should be highlighted in any guidance that is provided (TGWU); • the CD overstated the measurement problems and the response form oversimplified the issues (AMICUS); • regret that the HSE quoted the unrealistic recommendations of the SCOEL but did not refer to the European draft “Social Dialogue Agreement” (SDA) on RCS, despite the fact that HSE were official observers to the SDA process. The SDA does not itself set limits, instead referring throughout to national limits set by Member States (QPA); • disappointment with the apparent failure to consider the position of the rail industry, including a complete absence of rail industries from the list of consultees (Network Rail Infrastructure Limited); • RIA ignored fact that costs are disproportionate to benefits, and underestimated the costs to the railway industry (Network Rail Infrastructure Limited).	Comment relating to response form to be passed to CDS. To ensure all guidance makes specific and adequate reference to the legal duty to inform and consult with safety representatives. Interest of the rail industry has been noted.