

UNITED STATES OF AMERICA  
MINE SAFETY AND HEALTH ADMINISTRATION

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PUBLIC MEETING TO DISCUSS  
USE OF OR IMPAIRMENT FROM ALCOHOL  
OR OTHER DRUGS ON MINE PROPERTY

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MONDAY, OCTOBER 31, 2005

Sheraton Suites, Lexington  
2601 Richmond Road  
Lexington, Kentucky 40502

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The above-entitled public meeting convened, pursuant to notice, at 9:03 a.m., EDWARD J. SEXAUER, Chief, Regulatory Branch, Office of Standards, Regulations and Variances, MSHA, presiding.

PRESENT:

GENE AUTIO, Metal/Nonmetal Division,  
MSHA,  
BILL BAUGHMAN, Regulatory Specialist,  
Office of Standards, Regulations, and  
Variances, MSHA,  
ELENA CARR, Drug Policy Coordinator,  
Department of Labor Drug Policy,  
BILL CROCCO, Accident Investigation  
Program Manager, Coal Mine Safety and  
Health, MSHA,  
JENNIFER HONOR, Attorney, Solicitor's  
Office, Department of Labor,  
TOM MACLEOD, Directorate of Educational  
Policy and Development, MSHA.

**Received OSRV/MSHA 11/08/05 AB41-HEAR-4**

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1 P-R-O-C-E-E-D-I-N-G-S

2 (6:59 p.m.)

3 MR. SEXAUER: Good morning, my name is Ed  
4 Sexauer, I'm the Chief of the Regulations Development  
5 Division in the Office of Standards, Regulations, and  
6 Variances for the Mine Safety and Health  
7 Administration. On behalf of David Dye, the Acting  
8 Assistant Secretary of Labor for Mine Safety and  
9 Health, I welcome you to this public meeting.

10 This meeting provides an opportunity for  
11 you to comment on the topic of the use of or  
12 impairment from alcohol or other drugs on mine  
13 property.

14 With me this morning are other individuals  
15 from the Department of Labor.

16 On my left is Elena Carr. Elena is with  
17 the Department of Labor Drug Policy -- well, she is  
18 the Drug Policy Coordinator for the Department of  
19 Labor and directs the DOL Working Partners for an  
20 Alcohol and Drug-Free Workplace program.

21 To her left is Tom MacLeod, who is with  
22 the Directorate of Educational Policy and Development,  
23 Mine Safety and Health Administration.

24 And, to his -- well, Bill's not up at the

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1 table yet. Bill's at the back of the room but will be  
2 coming up shortly. Bill Baughman, who is a Regulatory  
3 Specialist with the Office of Standards, Regulations,  
4 and Variances for MSHA.

5 On my immediate right is Bill Crocco, who  
6 is the Accident Investigation Program Manager for Coal  
7 Mine Safety and Health, for MSHA.

8 On his right is Gene Autio, Industrial  
9 Hygienist in the Metal/Nonmetal Health Division.

10 And, to Gene's right is Jennifer Honor, an  
11 Attorney with the Solicitor's Office, Department of  
12 Labor.

13 This group at the panel will be following  
14 up at this meeting and developing whatever options or  
15 recommendations, regulations, and so on ensue as a  
16 result of -- if any, as a result of these meetings.

17 This is the fourth of seven public  
18 meetings. These meetings were announced in an  
19 Advanced Notice of Proposed Rulemaking, published in  
20 the Federal Register on October 4, 2005. We held  
21 meetings last week in Salt Lake City, Utah, St. Louis,  
22 Missouri, and Birmingham, Alabama. We will hold other  
23 meetings this week in Charleston, West Virginia and  
24 Pittsburgh, Pennsylvania, and we'll follow up with our

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1 final meeting in Arlington, Virginia next week.

2 The Federal Register document has detailed  
3 information about the dates and exact locations for  
4 the meetings, and it also discusses MSHA's reasoning  
5 behind the ANPRM. There are extra copies of the  
6 document in the -- at the table in the back of the  
7 room.

8 The purpose of these meetings is to gather  
9 information about the use or impairment from alcohol  
10 and other drugs on mine property. We will use this  
11 information and any written comments that you or  
12 others may submit to help us make decisions about  
13 whether we need to change our existing regulations,  
14 develop new regulations, or provide training or other  
15 assistance to the mining community.

16 We believe there may be a variety of  
17 approaches to addressing problems of alcohol and other  
18 drugs, and we're seeking information relating to both  
19 regulatory and nonregulatory solutions. The  
20 information we obtain from these public meetings and  
21 written comments will help us to develop a more  
22 informed understanding of the problem and it's  
23 solutions.

24 Our preliminary review of our fatal and

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1 nonfatal mine accident records revealed a number of  
2 instances in which alcohol or other drugs, or drug  
3 paraphernalia, were found or reported, or in which the  
4 post-accident toxicology screen revealed the presence  
5 of alcohol or other drugs; however, our accident  
6 investigations do not routinely include an inquiry  
7 into the use of alcohol or other drugs as a  
8 contributing factor. Consequently, there may be many  
9 instances in which alcohol or other drugs were  
10 involved in accidents, and either are not reported to  
11 us or we do not uncover them during investigations.

12 Because we are concerned that alcohol and  
13 other drugs can created risks to miner safety, we have  
14 initiated a number of education and outreach efforts  
15 to raise awareness in the mining industry of the  
16 safety hazard stemming from the use of alcohol and  
17 other drugs. They include alliances with four  
18 international labor unions, production of awareness  
19 videos on the hazards of alcohol and other drugs,  
20 monetary grants to States to provide substance abuse  
21 training, and stakeholder meetings at the local level  
22 to discuss these issues and raise awareness of the  
23 problems.

24 Additionally, during a one-day summit we

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1 conducted with the States of Kentucky, Virginia, and  
2 West Virginia, in 2004, several coal mine operators  
3 described the effectiveness of their drug-free  
4 workplace programs and expressed their concern that  
5 such programs were not universal in the industry.

6 The significance of the problem of alcohol  
7 and other drugs in the workplace has been recognized  
8 by the federal government. A number of programs have  
9 been implemented and various statutes enacted with the  
10 goal of reducing the use of alcohol and other drugs in  
11 the workplace. For example, the Anti-Drug Abuse Act  
12 of 1986 allows the Secretary of Labor to initiate  
13 efforts to address this issue. The Omnibus  
14 Transportation Employee Testing Act of 1991 requires  
15 the transportation industry employers to conduct drug  
16 and alcohol testing for employees in safety-sensitive  
17 positions. The Drug-Free Workplace Act of 1998  
18 establishes grant programs that assist small  
19 businesses in developing drug-free workplace programs.

20 And, DOL's Working Partners for an Alcohol and Drug-  
21 Free Workplace, of which we are a partner, is a public  
22 outreach campaign, raising awareness and assisting  
23 employers to implement these programs.

24 On the regulatory side of the issue, we

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1 currently have a safety standard for metal and  
2 nonmetal mines that addresses the use of alcohol and  
3 narcotics at these mines. The language is the same  
4 for both surface and underground metal and nonmetal  
5 mines, and simply states, "Intoxicating beverages and  
6 narcotics shall not be permitted or used in or around  
7 mines. Persons under the influence of alcohol or  
8 narcotics shall not be permitted on the job." Between  
9 January 1, 2000, and June 30, 2005, we issued 75  
10 violations of the metal/nonmetal surface standard and  
11 three violations of the metal/nonmetal underground  
12 standard. We do not have a similar standard for coal  
13 mines.

14 Using drugs or alcohol in a mine can  
15 impair a miner's judgment significantly at a time when  
16 a miner needs to be alert and aware. Even  
17 prescription medications can affect a worker's  
18 perception and reaction time. Mining is complicated  
19 and a hazardous occupation, and a clear focus on the  
20 work at hand is a crucial component of workplace  
21 safety, therefore, through these public meetings and  
22 written comments, we're seeking data and information  
23 about six general topics that we've outlined in our  
24 Register notice. They are as follows:

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1           A, the nature, extent, and impact of  
2 substance abuse at the workplace, including how to  
3 measure the extent of the problem;

4           B, the types of prohibited substances in  
5 use and the problems they present;

6           C, the impact of effective training to  
7 address substance abuse;

8           D, how our investigation of accidents  
9 could address alcohol and other drugs;

10          E, the aspects of a drug-free workplace  
11 program and how well they work; and,

12          F, the costs and benefits of addressing  
13 substance abuse at mines.

14           The Federal Register document poses  
15 several questions about each of these issues that I  
16 just mentioned, and we encourage you to respond to  
17 these questions specifically, either in written  
18 comments or today, if you'd like.

19           The procedures for each of these public  
20 meetings is the same. Those who have notified us in  
21 advance of their intent to speak, or who have signed  
22 up today, will make their presentations first. After  
23 all scheduled speakers have finished, others are free  
24 to speak. We'll conclude this public meeting when the

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1 last speaker has finished.

2 This meeting will be conducted in an  
3 informal manner and formal rules of evidence will not  
4 apply. The panel may ask questions to clarify  
5 statements for the record, but there will be no cross-  
6 examination of the speaker.

7 If you wish to present any written  
8 statements or information today, please clearly  
9 identify your material and give it to me before the  
10 conclusion of the meeting, and then I will identify  
11 the material for the record by the title that you've  
12 submitted, and you may also submit comments following  
13 the meeting, but you must submit them by November 27,  
14 which is the close of the comment period. You may  
15 submit comments to us by electronic mail, fax, or  
16 regular mail at the addresses listed in the Federal  
17 Register notice, again, at the back of the room. A  
18 transcript of this meeting will be made available on  
19 our website within several days.

20 Thank you for your patience and attention  
21 to these introductory remarks. We will now begin with  
22 persons who have requested to speak.

23 To ensure an accurate record, please state  
24 your name and organization clearly, and then spell

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1 your name.

2 Our first speaker this morning will be  
3 Elaine.

4 MS. OZMENT: I was hoping to go later.

5 MR. SEXAUER: Welcome.

6 MS. OZMENT: Thank you. My name is Elaine  
7 Ozment, E-L-A-I-N-E O-Z-M-E-N-T. I'm with Prevention  
8 Research Institute, here in Lexington.

9 Looking over your paper, it was  
10 interesting that item E is drug-free workplace  
11 programs, because I'm going to talk to you about  
12 education, which also starts with an E.

13 When I was -- first heard about the  
14 problems in Kentucky, I was familiar, a little bit,  
15 with the problems, because I worked for the railroad.

16 The transportation industry, the mining industry, and  
17 the construction industry all seem to have an  
18 environment where alcohol and drugs are extremely  
19 prevalent, so to address this issue, I think that we -  
20 - the kind of education that we are preventing is not  
21 meeting the need.

22 In this statement, it says that a lot of  
23 the education evolves around awareness, raising  
24 awareness, and that's good, but raising awareness is

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1 not necessarily going to motivate a person to make  
2 changes in their personal alcohol or drug use, so I'm  
3 suggesting a kind of education that will help miners,  
4 their families, and the community, and eventually,  
5 hopefully the entire work environment, to make low  
6 risk choices when it comes to alcohol and drugs.

7           If a person's going to operate heavy  
8 mining equipment, they're very carefully trained, and  
9 they're qualified on that machinery before they can  
10 operate it, because safety is a primary concern.  
11 People are not given education about how to use  
12 alcohol and drugs, and as a result of that, they make  
13 very high risk choices and the environment in which  
14 they work is very unsafe.

15           I have -- the Prevention Research  
16 Institute has developed a curriculum called Prime for  
17 Life, and Prime for Life is a lifetime risk reduction  
18 model that addresses all of the issues that would be  
19 involved in your needs, so I would just like to ask  
20 you to rec -- consider having a kind of education  
21 where the person can make choices that will make them  
22 safer employees and have better consequences for  
23 themselves, for their lives. Thank you.

24           MR. SEXAUER: Wait a second, don't go away

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1 yet.

2 MS. OZMENT: Okay.

3 MR. SEXAUER: Does anyone -- Tom, do you  
4 have a question?

5 MR. MACLEOD: First, thank you for coming,  
6 we do appreciate that. In looking at the issue of  
7 education, do you have any statistics that would  
8 suggest that training, in and of itself, is a  
9 significant deterrent?

10 In context to my question, what we've  
11 heard in the last week or so is that, essentially,  
12 various forms of drug testing seem to be the -- you  
13 know, the more important methodology for controlling  
14 and keeping people from doing drugs, and I'm hearing  
15 you talk a little bit about training.

16 Can you talk a little bit more about maybe  
17 what research has been done to show that this type of  
18 training, actually is, you know, producing a positive  
19 effect, in terms of people not utilizing drugs?

20 MS. OZMENT: Probably, the best way to do  
21 that would be to look at DUI recidivism rates, and  
22 there's quite a bit of statistics involved. We have,  
23 just in our company, Georgia, Iowa, Tennessee, South  
24 Carolina, Ohio, who have been using Prime for Life in

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1 their DUI programs. The five-year recidivism rate for  
2 the people who have completed Prime for Life was 13.5  
3 percent.

4 So, we know that if you want long-term  
5 results, people have to make this decision internally,  
6 and they have to understand that the things they  
7 value, they can protect and it becomes a lifestyle in  
8 which they make low-risk choices.

9 In Nashville, three-year recidivism rates  
10 for first-time offenders using Prime for Life, they  
11 had a 7.78 percent rearrest rate and a 4.47 rearrest  
12 rate for DUI, so recidivism can be reduced, which  
13 means -- this is the population, you know, most people  
14 who get DUIs are also employed, so that means that  
15 this would directly relate to your workers that you're  
16 trying to address.

17 MR. MACLEOD: Is this program connected in  
18 any way to, like, the Workers' Comp rules and  
19 regulations of Kentucky? In other words, if you were  
20 to use Prime for Life, are you given, you know, 10  
21 percent, 15 percent off your Workers' Comp? I mean,  
22 is there a nexus between those two?

23 MS. OZMENT: Not yet, but it's a good  
24 idea.

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1 MR. MACLEOD: I was just wondering. Thank  
2 you.

3 MR. SEXAUER: Do you want to --

4 MS. CARR: The prime for Life program,  
5 could you describe, in terms of intensity, is this a  
6 multi-day type of thing? One of the issues,  
7 certainly, in training miners is that they -- there  
8 are a lot of things they have to be trained on, so  
9 time is of the essence. Is this program -- is this  
10 something that would be -- parts of it, appropriate  
11 for all miners, or is it targeted, specifically, to  
12 high-risk populations? And, how long in duration is  
13 it?

14 MS. OZMENT: It can be adapted. It can be  
15 a six-hour program, it can be -- an eight-hour program  
16 would be the most effective for the training you're  
17 talking about, because what we do is prevention and  
18 intervention, and it's also used as pre-treatment.

19 The program shows people what they value,  
20 how they protect the things that they value, and it  
21 also shows the four stages that progress people from  
22 what you would call a social drinker up to addiction.

23 So, there are four phases of this addiction, and the  
24 program shows them those four phases, and a person is

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1 allowed, then, the opportunity to see, then, where  
2 they are and make a self-assessment, and in making  
3 that self-assessment, that's part of the process where  
4 real change occurs and behavior does change.

5 MS. CARR: So, it sounds like though it's  
6 for targeted high-risk populations, primarily?

7 MS. OZMENT: We've also used it, though,  
8 with nursing programs and with people who work with  
9 addicts or people who work in recovery. I've heard  
10 many people in recovery say that they wish they had  
11 had this sooner so that they could help friends and  
12 family members. There is a biological factor to  
13 addiction, and so, many times, the person that is  
14 caught with the DUI, for instance, is coming out of an  
15 environment, a family environment where there's a lot  
16 of high-risk, either alcohol or drugs, so this program  
17 can be adapted to peer prevention and it can be used  
18 for -- like I said, it's used in Kentucky for the  
19 under-21 program, and so it can be used in prevention,  
20 it can be used for intervention, and there is a 20-  
21 hour intensive program, and that's what, in Kentucky,  
22 the DUI offenders go through, a 20-hour program, and  
23 Prime for Life is one of those programs that we use,  
24 one of the two programs we use in Kentucky.

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1 MR. SEXAUER: Do you have any written  
2 material you could submit to us that could describe  
3 the program --

4 MS. OZMENT: Yes.

5 MR. SEXAUER: -- in some detail?

6 MS. OZMENT: Certainly. In fact, I have a  
7 packet I'd be glad to leave with you. I have three of  
8 them, so I would like for Elena to have one too,  
9 anyone else, and I would be glad to send you more.

10 MR. SEXAUER: Great, could I -- could you  
11 let me have that right now, and I will just get it  
12 into the record? Thank you.

13 This is a document entitled Prime for  
14 Life, developed by --

15 MS. OZMENT: Prevention Research  
16 Institute.

17 MR. SEXAUER: -- Prevention Research  
18 Institute. Okay, thank you.

19 Okay, our next speaker is Ed Elliott.

20 MR. ELLIOTT: My name is Ed Elliott and  
21 I'm the Director of Safety and Health for Rogers  
22 Group, Incorporated, and that's, of course, E-D E-L-  
23 L-I-O-T-T.

24 Rogers Group is a mining and construction

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1 company. We've been in business since 1908 and it is  
2 a privately held company, and it's still held by the  
3 family members, the direct descendants of Ralph  
4 Rogers, the founder of Rogers Group.

5 Give you a little bit of background about  
6 Rogers Group to kind-of tell you where I'm coming  
7 from, we have approximately 1,500 employees and we're  
8 in five different states. Our corporate headquarters  
9 is in Nashville, Tennessee. Many of our operations  
10 will be somewhere in the neighborhood of anywhere as  
11 few as three people at an operation to as many as 50,  
12 but in most instances, it will be a very small  
13 operation that will be somewhere between three and 20  
14 employees, and of course, the government looks at  
15 small businesses a little different than it does at  
16 MSHA and the mining industry.

17 But, I wanted to, if I could, to take just  
18 a few minutes and use the document that you put out,  
19 and I would like to kind-of go through that document  
20 and comment on some points.

21 First of all, about the State grants  
22 program and the money that is provided to that State  
23 grants program for training and education. I use  
24 every opportunity for the forum that I can, that the

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1 Mine Act provided for a certain amount of money for  
2 funding of the State grants program and that money has  
3 never been fully funded -- has never been fully  
4 requested by MSHA to be fully funded, and in my  
5 estimation, one of the most critical parts of any  
6 substance abuse program is education, and funding  
7 needs to be put in the State grants program and have  
8 it to be mandatory that that money be utilized for  
9 substance abuse education, similar to the programs --  
10 there are many great programs out there already. It's  
11 not something that has to be reinvented, but I think  
12 that's an important aspect of -- the Department of  
13 Labor needs to see that that State grants program is  
14 fully funded.

15 Another aspect, under item 4, talk about  
16 issues, about helping to evaluate whether there's a  
17 need for additional federal action to address safety  
18 risks stemming from alcohol and other drug use by  
19 miners, and if so, whether this should involve  
20 rulemaking and what that regulation should include,  
21 and I'll talk a little bit more about that as I go  
22 through my presentation, but it is -- it's important  
23 that -- I don't what regulation that's produced by the  
24 government, that's not going to make the difference.

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1 It has to be people that make a firm commitment,  
2 because it's the right thing to do. We are, in my  
3 estimation, in a struggle, societally, to address the  
4 substance abuse issues, and if we don't make a  
5 commitment, each individual company, because it's the  
6 morally right thing to do, then regardless of the  
7 number of regulations, you're not going to be able to  
8 prevent this from happening.

9 So, that's important to consider, that any  
10 regulation that be put forth can't be something that  
11 is all-encompassing, because it's just not practical,  
12 but there are some fundamental concepts, I think, to  
13 reinforce the need for companies to provide some forms  
14 of substance abuse prevention in their companies, and  
15 I'll talk about that in just a little bit later.

16 But, as far as the nature and extent of  
17 the impact and the problem, the first question, "What  
18 specific substances are most prevalent and pose the  
19 greatest threats to mine safety and health?" And, I  
20 think that's basically what we have found, it's  
21 marijuana and cocaine. You have a number of other  
22 substances, and I'll talk a bit about those later, but  
23 those are the two that seem to be the most prevalent  
24 problem.

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1           Then, second, "Based on your experience  
2 and knowledge of the industry, how widespread is the  
3 use or misuse of alcohol or to her drugs in the mining  
4 workplace?" And, I'll tell you a little bit, to start  
5 with, about my personal background. I've been in the  
6 metal/nonmetal mining industry with Rogers Group for  
7 20 years. Prior to that, I worked five years in a  
8 surface coal mine in Indiana. So, I have little bit  
9 of a background of 25 years of looking into this  
10 issue, and I think you've -- we've seen a gradual  
11 movement, more and more, toward -- alcohol used to be  
12 the thing.

13           I can remember, there were some operations  
14 that Rogers Group has had the good fortune to make an  
15 acquisition, and we went into the operation and  
16 surprisingly, when we tested, and I know this will --  
17 it shocked me, but we tell the operation that we're  
18 going to test and we have an orientation meeting where  
19 we bring everyone in. It was on a Saturday -- brought  
20 everyone in and go through training, talk about what  
21 we do and they even brought -- some of them brought  
22 their families with them, and then, we tested for  
23 alcohol, and then, other substances, through  
24 urinalysis at the end of that meeting. Everybody knew

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1 we were going to do that, and it was amazing to me  
2 that one of the employees came back legally  
3 intoxicated for alcohol, and it's quite amazing,  
4 because we had to ask that person, of course, to leave  
5 and they wouldn't be hired, but they brought their  
6 wife and teenage daughter with them.

7 That just tells you where the problem is  
8 pretty pervasive, and some people, we found in this  
9 operation, that actually, at lunch time, it was not  
10 uncommon for them to shut down, come down to the  
11 office, and the owner of the place and the people that  
12 wanted to, they'd have a few beers at lunch time and  
13 then go back to work, and then one of the employees  
14 told us that actually -- he operated the plant, the  
15 primary crusher, and he said that generally speaking,  
16 he brought two or three beers with him every day to  
17 have in the afternoon to kind-of make the day go by.

18 So, it's out there. And, that regulation,  
19 as you rightly pointed out, has been in nonmetal --  
20 metal/nonmetal mining for a number of years, but it  
21 goes back to the core beliefs of the operators,  
22 themselves.

23 It is widespread, but I don't think it's  
24 any more widespread than the general population. I

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1 think it would stand that statistics, there have been  
2 a lot of studies that have come out, but about 75  
3 percent of the people that use drugs work -- are in  
4 the workplace. They're working to maintain that  
5 habit, and I think you'll find a positivity rate, in  
6 general instances, of about 15 percent in most  
7 workforces. I don't think it's any -- it's really any  
8 different in the mining community.

9 "How severe a risk does the use or misuse  
10 of alcohol and other drugs pose to miner safety?" I  
11 think it is significant not only for the user, but  
12 unfortunately, for the people that that user may  
13 impact during the workday, and one very significant  
14 aspect concerning alcohol use is not just the fact  
15 that the person might be drinking on the job or would  
16 be legally intoxicated, but the sickness coming from a  
17 hangover can dramatically affect a worker's  
18 performance. So, you have a number of different  
19 factors that are in place there.

20 "What accidents or injuries at your mine  
21 in the last five years have involved alcohol or other  
22 drugs?" Honestly, we have a very, very low positivity  
23 rate. One of the reasons for that is because, since  
24 we have been instituting a drug-free workplace program

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1 since 1989.

2 It has evolved, and I will tell you, in  
3 1989, there were not that many people in the mining  
4 industry that had any kind of program, and we had the  
5 debate, yes we did. This is going to cost us a lot of  
6 money. We don't have that many people that use drugs.

7 But, I will guarantee you that I don't  
8 care how any expert that you see, they will not be  
9 able to tell you who is using drugs and who isn't.  
10 You can look at the person and they can be a person in  
11 a suit and a tie, they can be someone that's just a  
12 person in a t-shirt and a pair of jeans. You can't  
13 tell. You cannot tell, and the only way to determine  
14 that is through testing, and that's critical.

15 But, it's -- we have -- right now, we did  
16 1,076 tests so far this calendar year, and that's  
17 through October -- excuse me, through September, and  
18 in those tests, we had 54 positives, and 90 percent of  
19 those were post-offer, or new hire.

20 And, I think the biggest -- one of the  
21 most important reasons that people will stay off drugs  
22 or not use drugs is because they know you test, and  
23 they need that job. People need the job, and they  
24 don't want to lose their job. It's amazing that

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1 people will -- a lot of things they may consider  
2 losing in their life, as far as material things, but  
3 when it gets down to it, they don't want to lose that  
4 job because they need that to continue living.

5 The next section, prohibited substances  
6 and impaired miners, "Should we revise the existing  
7 metal/nonmetal standard and establish a standard for  
8 coal mines? If so, how?" And, I honestly believe  
9 that it's -- it's no different in coal mining or in  
10 metal/nonmetal mining. The material we mine is a  
11 different color, but the people that are in that  
12 mining operations, they are all basically the same  
13 kind of people, and I think there should be some type  
14 of rulemaking that provides a standard that a coal  
15 operator could use as a fundamental basis for why they  
16 need to test, if they had no other reasoning behind  
17 it.

18 But, I also believe that it is very  
19 important that if you look at the circumstances, I  
20 think, surrounding the DOT testing, the DOT testing  
21 levels today are, I believe, antiquated in that they  
22 miss, somewhere around, I would say, 10 to 12 percent  
23 of regular drug users through the DOT tests. The DOT  
24 test is a five-panel test. It was an initial stab at

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1 doing this, and I know that it was tremendous  
2 resistance when it came to many quarters with respect  
3 to establishing standards for testing.

4           Rogers Group, and I will provide you a  
5 little bit later on, our -- a copy of our substance  
6 abuse policy and procedures, which give the levels  
7 that we test at. We use low-standard testing, which  
8 is significantly lower than DOT, but it meets all of  
9 the forensic requirements and legal standing, and it  
10 is a -- it does catch approximately 10 percent  
11 additional people that are in that range between where  
12 the low-tolerance standard is and where the DOT  
13 standard is.

14           And, drug users, today, are much more  
15 sophisticated than the drug users of 15, 20, 25 years  
16 ago, and you can go out on the internet and find --  
17 you can purchase urine, you can purchase all sorts of  
18 adulterants that can be used, you can purchase, at  
19 many of the local health stores in -- around any  
20 locality, materials that will clean your system, and  
21 they will double your money back guarantee that if you  
22 take this, then you will pass a standard, or DOT, drug  
23 test.

24           So, the desperation and the technology has

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1 been keeping up with it, but I think those standards -  
2 - as I say, those initial standards, the DOT  
3 standards, although excellent at the time, are  
4 probably a little antiquated today, and we have found  
5 -- I can't quote any statistics here today, but we  
6 have found a number of people that, as I say, would  
7 have passed the DOT test, but would not pass our low-  
8 tolerance testing procedures.

9 "What substances should be prohibited?  
10 Please include comments on controlled substances,  
11 alcohol --" and that, I think it's pretty common, when  
12 you look at the five-panel test, of course, and  
13 alcohol -- or, you have marijuana, cocaine, opiates,  
14 amphetamine, and phencyclidine, but also, think  
15 barbiturates and benzodiazepines, the seven-panel  
16 test, should be recommended. It will catch more  
17 drugs, not only the drugs that I mentioned, the most  
18 prevalent marijuana and cocaine, but also prescription  
19 drugs, and that is coming into the forefront and  
20 becoming more popular for people using those in an  
21 illegal fashion, and we have a section in our policy  
22 that addresses improper use of prescription drugs, and  
23 I'll refer to that just a little bit later.

24 "How should impairment be determined, and

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1 who should make the determination?" And, when we talk  
2 about the impairment, there should be some automatic  
3 triggers for impairment, and those, generally  
4 speaking, are going to be those levels that I've  
5 mentioned to you.

6 Of course, when I think the levels that  
7 are in the DOT, we use a -- an alcohol level of .08.  
8 I know there are triggers lower than that in the DOT,  
9 .04, and I think those, though, are in circumstances  
10 where someone is in a position to where they would  
11 just be removed, and I -- I'm not going to quote it  
12 directly, but in general terms, they would be removed  
13 from service for a period of time and then could go  
14 right back to work.

15 What we do if a person tests at these  
16 levels of .08, then there are much more severe actions  
17 that take place to address that, and then I mentioned  
18 to you, concerning our low-tolerance standard tests,  
19 and I will provide you those numbers of what we use as  
20 the cutoffs, which are somewhat different from -- or,  
21 significantly lower than the DOT standards.

22 "What actions should operators be required  
23 to take once an impaired miner is identified?" And,  
24 this is something that -- I think you have to look at

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1 it from two perspectives.

2 One, you have to look at it prior to test  
3 results. If you consider the possibility of a  
4 circumstance where an individual might be under the  
5 influence, we have approached it two different ways.  
6 A person can either be suspended, pending the outcome  
7 of the investigation, and a part of that investigation  
8 would be a substance abuse test, or we have taken the  
9 tack of suspending people with pay. It would depend  
10 on the circumstances of the event, the severity of the  
11 event, the investigation, and whether it would appear  
12 to be something that is directly related to substance  
13 abuse.

14 For instance, if you found, let's say, a  
15 truck driver in a haul truck, property damage, a  
16 pretty significant incident, and the person, you found  
17 a bottle of beer in the cab of the equipment, I think  
18 our approach would be, we would suspend them without  
19 pay, pending the outcome of the investigation. There  
20 could be other circumstances where there was nothing  
21 seen, the person had an excellent performance record,  
22 good attendance, and there was nothing that would  
23 cause us to suspend them without pay, but then, in  
24 turn, we might -- depending on the circumstances,

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1 suspend them with pay.

2           It's just -- each instance, you have to  
3 take on it's own merits. But, the manager of the  
4 location has to be able to articulate the reasons for  
5 the approach that they would take. We would not, at  
6 that instant, terminate someone, because most cases,  
7 you do something based on the emotion of the moment,  
8 chances are, it's probably wrong. So, we try to do a  
9 thorough investigation and look at all the factors.

10           "What policy or procedures do you have  
11 regarding employees who are using legally and properly  
12 prescribed drugs that may cause impairment?" And, I  
13 will read directly from our policy: Prescription  
14 drugs may be taken only under the direction of and  
15 personal prescription by a Physician. It is the  
16 responsibility of the employee to discuss with the  
17 prescribing Physician and understand the potential  
18 side effects of medication. Any potential impairment  
19 of the safe and efficient performance of assigned  
20 duties caused by the medication must be discussed with  
21 supervision prior to beginning work.

22           First of all, the prescription, we're not  
23 talking about something that is Workers' Comp related,  
24 now, we're speaking of something that is not work-

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1 related requirement for prescription. That is your  
2 own personal business. That is nobody else's business  
3 what prescriptions you are taking, but we make sure  
4 that we convey to our employees, in annual refresher  
5 training and at other opportunities, that if they are  
6 taking prescription drugs, it is their responsibility  
7 to discuss that and what their work requirements are  
8 with their personal Physician, to determine how they  
9 may be affected in the workplace by taking that  
10 prescription.

11 We would say to our supervisors, in  
12 supervisory training, "If an employee comes to you and  
13 says to you, 'The Doctor said I need to take this  
14 medication for the next two weeks and an hour after I  
15 take it, I'm not supposed to be able to drive a  
16 truck,' and that person's assignment may be operating  
17 a truck," well, we tell our supervisors that, "it's  
18 your responsibility to make sure that that person (1)  
19 doesn't drive a truck during that time, but give them  
20 some other activity to perform."

21 There's always something that could be done.

22 Our objective here is not to put the  
23 employee in a position to where they would take a  
24 prescription drug and feel like they can't tell us

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1 about it because we would send them home. You've got  
2 to treat that person like you would want to be  
3 treated. Now, if the individual came to you and said,  
4 "The Doctor said I cannot operate my truck at all for  
5 the next two weeks," I think you'd look at  
6 circumstances in that case and determine whether you  
7 can provide work over that period of time, or whether  
8 the employee could go back and say, "Okay, if you  
9 can't drive a truck, can you do this task? Can you  
10 clear that with your Physician?"

11 But, we try to place the primary  
12 responsibility with respect to prescription -- excuse  
13 me, prescription drugs on the employee themselves to  
14 discuss with the Physician -- with their Physician,  
15 and then, to discuss with their supervisor if there  
16 needs to be any accommodations made.

17 Now, I want to say, there are  
18 circumstances that we have had employees tested, and  
19 they will come back positive for a prescription drug,  
20 and we ask them to provide documentation of that  
21 prescription, and they're unable to do so, and we say,  
22 "If they are not able to provide the prescription,  
23 that is an illegal drug." It's -- there's no two ways  
24 about it.

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1           There are circumstances to where they may  
2 say, "Well, my wife went to the Doctor and had this  
3 drug prescribed for her, and then I just took it  
4 because it was the same problem that my wife had."  
5 Well, we can understand the circumstances that may  
6 dictate that. I would venture to guess that many of  
7 us sitting here, and those of us in this room, have  
8 maybe done that at some point in time. What we would  
9 do is require that person to provide a copy of that  
10 prescription, and we would also require that person to  
11 go to their personal Physician and dictate -- or,  
12 indicate to the Physician what they had done, and  
13 would the Physician have potentially prescribed this  
14 drug for them to use in this circumstance?

15           And, in that case, depending on what the  
16 Physician would say, or -- and the reasoning behind  
17 it, and the degree to which the person was using an  
18 improper -- a prescription in a proper manner, we  
19 would address that on a case-by-case basis, but  
20 there's no question, that is just as much a violation  
21 of our substance abuse policy as it is, using any  
22 other illegal drug.

23           Talking about training, "Should our  
24 regulations address training and the prevention of

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1 alcohol and other drug misuse? If so, how?" If you  
2 want to talk about changing regulations, in my  
3 estimation, part 48 that the coal industry is under is  
4 ridiculously antiquated. Fortunately, the  
5 metal/nonmetal mining industry, several years ago,  
6 developed what is now known as part 46, which allows a  
7 significant amount of flexibility in what can be used  
8 in training, and in my estimation, the coal industry  
9 should have the similar flexibility.

10 There's no question there should be  
11 recommended subjects that should be in any -- whether  
12 it be part 48, 46, or whatever other number you would  
13 want to call it, but it is very restrictive under part  
14 48 as to what the operator can use in their training,  
15 and any modification, whatsoever, in their training  
16 plan has to be approved by the District Manager.

17 So, if a mine operator, working hard,  
18 they've sent in a training plan and it fits, they've  
19 got to say, "Hey, I can't change, I can't deviate from  
20 this training plan, or I'm going to have to go all  
21 sorts of -- through approval processes. We just do  
22 whatever's on our plan," and I think it is a roadblock  
23 to allowing operators to be more flexible in their  
24 plans, and I would encourage the Agency to look at

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1 that as a possible rulemaking in the future that could  
2 indirectly help address this issue as well.

3 "Who should receive this training?" It's  
4 obvious. Everyone -- every person, and you would  
5 receive a little bit different types of training. I  
6 think it's important that hourly employees receive  
7 general training about substance abuse, and also,  
8 supervisors need to receive training, that same  
9 training, but also some additional training in dealing  
10 with the recognition of the problem and how to deal  
11 with it, and that is tough. When you're in a  
12 workplace and you suspect an employee that works for  
13 you, that may be under the influence, it's not always  
14 easy to go up to them and say, "Hey, I want you to go  
15 for a drug test." So, giving supervisors some  
16 additional training on that, and also giving the  
17 supervisors an opportunity to be able to go to some  
18 other person to assist them within a company.

19 For instance, the supervisor may go to the  
20 Mine Manager, or they might go to the Human Resources  
21 Department, depending on how large their company is,  
22 or maybe to the safety person, to help them do the  
23 right things when it comes to that.

24 "What topics should be included in the

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1 training?" And, I've mentioned some of those. EAP,  
2 your substance abuse policy, about the drug hazards,  
3 and there's tons of educational information, so I'm  
4 not going to go back over that again.

5 "What training do you provide to address  
6 alcohol and other drug misuse?" New hire training, we  
7 go over -- that's a part of it, and our annual  
8 refresher training, we cover it each year. We also  
9 emphasize our Employee Assistance Program, the EAP,  
10 and I think you can't have a substance abuse policy  
11 without an EAP program, and that EAP program needs to  
12 be administered by a professional organization, and  
13 it's not that expensive.

14 There are many of them out there today  
15 that will help you for a nominal fee, but I think  
16 that's an important part of making sure the employees  
17 know that that information, also, is confidential.  
18 The -- in our company, there is one person that has  
19 knowledge with respect to what goes on within our EAP  
20 program and how it's accessed, because there are  
21 circumstances in our policy where if a person were to  
22 need some type of lengthy counseling or lengthy time  
23 away from work, you have to make a provision for their  
24 leaving work, so you have to know that they may be

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1 involved in the EAP program. You don't have to know,  
2 specifically, what for, but we would work that -- tell  
3 the supervisor this individual is in the EAP program,  
4 they are excused from work for a period of time, and  
5 so forth, but any access to the EAP needs to be  
6 confidential with the employee and the EAP provider.

7 Talking about investigations, and I won't  
8 go into the section as you list in those things that  
9 are required in an investigation on -- I think that's  
10 mostly coming from the -- what is it, 7001 form that  
11 must be filled out on any reportable injury, but in  
12 the second part, here, it says, "What type of alcohol  
13 and other drug use inquiries should be made after  
14 accidents?" And, I think there ought to be a  
15 requirement for an immediate test, and that test could  
16 be required through regulation, although it would be  
17 better that the test be required by the company  
18 itself.

19 "What degree of accident or injury should  
20 trigger an inquiry?" In my estimation, a person  
21 should be tested for any reportable injury, not just  
22 an accident as MSHA defines it, but for any reportable  
23 injury.

24 We have a tendency, I think, in the -- in

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1 this industry to look at fatalities, and that's the --  
2 there are really not as many fatalities today --  
3 there's not enough of a statistical measure to tell  
4 you what kind of problem might be out there, but I  
5 think if you did reportable injuries and people knew  
6 that if they had a reportable injury, that they were  
7 going to be tested for drugs, and there would be other  
8 implications if they were positive, I think that will  
9 cause people a deterrent factor.

10 "How should the information collected in  
11 the inquiry be used, and by whom?" I think first and  
12 foremost, if a company has a policy, then I think that  
13 policy, they would have the information, and then,  
14 that information should then be shared in an  
15 appropriate way, even just the -- maybe just the  
16 specific results, with the Mine Safety and Health  
17 Administration, Department of Labor.

18 And, I know this is -- this may sound a  
19 bit controversial, but I am going to say, I think,  
20 similar to smoking in mining, I believe that if an  
21 employee has a reportable injury and tests positive, I  
22 believe that employee should be cited. They are cited  
23 with respect to use of tobacco products in/around  
24 explosives or in underground mining, and in my

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1 estimation, the individual employee should also be  
2 subject to a citation for use of illegal drugs or  
3 alcohols to levels which would make that -- it illegal  
4 use.

5 Also, you have aspects of this that have  
6 to be considered, then. There may be a person who is  
7 actually under the influence of drugs may not be  
8 injured. They may be the person that inflicted injury  
9 upon someone else, and that's where you would  
10 potentially look at if a company were to not have a  
11 policy, then I think that should be an administrative  
12 violation. I think there should be a requirement to  
13 have a -- whether you call it a substance abuse policy  
14 or drug-free workplace policy, I think there should be  
15 a requirement that they have some type of a policy.

16 Then, you get into the drug-free workplace  
17 programs. We do have a drug-free workplace policy,  
18 and I -- as I mentioned earlier, I will share that  
19 with you for -- you can peruse that at your leisure  
20 and make copies of it, or -- and can include it  
21 verbatim in the record, as far as that's concerned.

22 We've shared this with any number of  
23 people, and one of the things, when any company tries  
24 to develop a drug-free workplace program, it sounds

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1 easy and there are a lot of boilerplate ones out there  
2 that put together, and I want to give a little bit of  
3 a plug, here, to the NSSGA/MSHA alliance, the core  
4 principles of a safety program. This is something  
5 that is being -- it has been approved by both the  
6 National Stone, Sand, and Gravel Association and the  
7 Mine Safety and Health Administration, and I'm sure  
8 all of those here that work or know the Agency, to get  
9 something like this approved, there are so many hoops,  
10 including the Solicitor's Office that it has to go  
11 through, it's a pretty monumental undertaking, but one  
12 of the parts of core principles of a safety program is  
13 a substance abuse prevention program, and this is  
14 going to be available to all mine operators, and it  
15 would be available regardless of this applies, whether  
16 it's coal or metal/nonmetal, but this is being printed  
17 and is going to be distributed in the very near  
18 future, both by enforcement personnel and  
19 metal/nonmetal, and I think it should be the same with  
20 the coal.

21 I don't think, even though the -- we look  
22 at coal as being on the dark side sometimes, we won't  
23 -- but that's a -- it's something that's out there for  
24 the boilerplate programs, but it takes years to really

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1 develop the nuances of your program to fit the culture  
2 of your organization, and our substance abuse policy  
3 has gone under a myriad of changes over those -- now,  
4 almost 16 years that we've had it in place. As a  
5 matter of fact, we had a minor change just in the last  
6 few months to try to make it more effective.

7           And, the thing -- in our company, it's a -  
8 - it's kind-of interesting, generationally speaking.  
9 If you get people that are in the baby boom  
10 generation, it was kind-of the philosophy, if  
11 somebody's using marijuana or cocaine, you know, kill  
12 them all and let God sort them out-kind of approach to  
13 things. If they're on it, fire them. Now, alcohol,  
14 that's a different story. That's just kind-of the  
15 thing. It was more of an accepted trait in mining  
16 that people, you know, drank alcohol.

17           So, it's something that we have had to  
18 work through, and in my estimation, people will --  
19 well, I know, statistically speaking, and I've  
20 mentioned this earlier, people will do almost anything  
21 to keep their jobs, and telling them they have to get  
22 off drugs, it's a good thing, and most people will do  
23 whatever they have to do to get off drugs or stay off  
24 drugs and not be tempted by them, because they know

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1 they're going to be tested.

2 But, what we have done is instituted a  
3 program where if someone does test positive and has  
4 been with Rogers Group for a given period of time,  
5 then they get an opportunity for a second chance.  
6 Now, the second chance, it's not three strikes you're  
7 out, two strikes, you're out. But, they do give that  
8 second chance, and there are people that will argue  
9 that the rate of recidivism is significantly high, but  
10 we heard some statistics this morning, through proper  
11 education, then, that can be greatly reduced, and  
12 we've had about a 50 percent rate of recidivism when a  
13 person has tested positive and gone through an EAP  
14 program, which we do mandate, that they must go  
15 through the EAP program.

16 So, this is a part of a drug-free  
17 workplace program. I continue to emphasize the EAP  
18 program, and that's an important part of it.

19 And, every -- and something also, too, I  
20 think it's important that any kind of substance abuse  
21 program you have must apply to every employee in your  
22 company, and that includes the president and CEO  
23 through to the newest-hired person, and there can not  
24 be any compromise in that.

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1 I won't go over the components of the  
2 program, because they're in this document.

3 "What program's components do you feel are  
4 most critical and are affective?" Testing is an  
5 important part. That's the most important part. You  
6 can give all the education and training, that's a  
7 critical part, you can't take anyone out of context,  
8 but if you have all the training in the world and no  
9 testing, it won't work, and you have to have some  
10 teeth behind that testing, and I think it's important  
11 that you have to do testing at a low-tolerance level  
12 and not just a DOT level.

13 "Have you been able to document any  
14 improvement as a result of your program?" We first  
15 started this in '89. We were getting about 15 percent  
16 for positives, and today, as I mentioned to you, we're  
17 probably getting about, maybe, four percent, five  
18 percent, and the majority of those are new hires.

19 It is amazing how the sophistication of  
20 people that you hire today. We tell them upfront  
21 we're going to test, and we tell them we have a low-  
22 tolerance test, and we say, "Don't waste our time."  
23 And they say, "Well, you know, I don't use drugs," and  
24 then, invariably, they -- we still have a fairly high

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1 rate of new hires that will test positive.

2 "Please provide any data to demonstrate  
3 the extent of the problem at your mine," and I've  
4 touched on that just a moment ago.

5 "What issues or problems have you  
6 encountered in implementing your program, and how have  
7 you resolved them?" People will say that what I do  
8 off the job is my business. It's just what I do on  
9 the job that you should be concerned with. Well,  
10 we've heard that, time and time again, but our concern  
11 is the effect of what you have done off the job and if  
12 it affects on-the-job performance, then that is our  
13 responsibility to address that.

14 So, we've gone through that aspect of it,  
15 we've also gone through where there were some unions  
16 that did not want to use our low-tolerance testing  
17 standards, and most of them today have agreed to go  
18 along with it, because we've been able to demonstrate  
19 and show to them why we are doing it and what we try  
20 to do. We try to provide a second chance for people,  
21 we want to give them -- help them with EAP, we want to  
22 get them off any kind of drugs that they may be using,  
23 so, most cases, people have -- unions have gone along  
24 with us.

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1           "What actions are taken for miners who  
2 violate the terms of the policy?" And, I'll just  
3 touch on that just for a minute. I'll tell you what  
4 the -- fundamentally, what we do as far as our policy  
5 is concerned, when we have somebody to test positive.

6       A positive test result for illegal drugs or alcohol  
7 impairment, according to testing levels in this  
8 policy, or refusal to follow applicable provisions of  
9 this policy, if a first-time offense, after the first  
10 180 days of employment, will result in a 15-day  
11 suspension without pay. If prior to the first 180  
12 days of employment, the employee will be terminated,  
13 and, if in otherwise good standing, allowed to reapply  
14 after 60 days. So, if a person has been with us 180  
15 days, we give them suspension without pay for 15 days,  
16 then they can return if they are clean. If they are  
17 not clean, the suspension would be extended. They  
18 must test clean when they come back. And then, there  
19 are other aspects that they must comply with an EAP  
20 program.

21           The following situations will result in  
22 immediate discharge: possession, use, or sale of  
23 illegal drugs, or possession of drug paraphernalia, or  
24 possession, use, or sale of unauthorized alcohol on or

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1 in company property, or at company-sponsored events.  
2 If a -- I am fortunate enough to have a company  
3 vehicle, and that company vehicle is subject to search  
4 at any time, 24 hours a day, because that's company  
5 property. And, if I am operating that vehicle and I  
6 am stopped and found in violation of this policy, it  
7 could be by police test or something of that nature,  
8 the provisions of the policy would apply.

9 Non-employees violating this policy will  
10 be denied further access to company property for a  
11 period of 60 calendar days. We subject any contractor  
12 that comes on our property to our substance abuse  
13 policy. You can not, as Ms. Honor will tell us, I --  
14 we can not force them to take a substance abuse test,  
15 but we can deny them access to our property, which we  
16 would do, and we have tested contractors and -- in the  
17 past, not recently, and found them to be positive, and  
18 have removed them from the site and not allowed them  
19 to continue work.

20 So, those are just some fundamental things  
21 we went from initially, our policy in 1989, if they  
22 tested positive, they were fired with no chance for  
23 rehire. Then, we went through an evolution to where  
24 we've fired them, and then gave them a chance, after

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1 so long, to be rehired. Then, we've kind-of evolved  
2 to where we are today.

3 And, I think it -- in all honesty, if you  
4 really care about your employees, you want to give  
5 them a chance, and I think that's a morally right  
6 thing to do, but it's also -- from a business  
7 perspective, it's the right thing to do, because  
8 today, you invest a tremendous amount of money in  
9 training and giving them -- the people, you know, the  
10 benefits, and all the time that you've spent with  
11 them, and they've become a part of your family, and  
12 then, just to throw them out, I think you're -- that's  
13 -- it's not a good business decision, either, because  
14 you've got to retrain people.

15 I mentioned about supervisory training and  
16 we probably don't do as much of this as we should, to  
17 educate supervisors on how to recognize substance  
18 abuse, but we do, on an annual basis, cover this in  
19 refresher training, but probably not as much as it  
20 should be, and we do have an Employee Assistance  
21 Program, and that Employee Assistance Program, I  
22 think, is -- it's not just for substance abuse. It's  
23 used more for other things than it is, substance  
24 abuse, but it can also be used for a supervisor if

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1 they're not sure how to handle an employee, they can  
2 call the EAP and say, "Listen, I suspect my employee  
3 is under the influence of drugs. How should I  
4 approach that?" And, they will provide them that kind  
5 of training, so it's not something that's just a life  
6 ring you throw to somebody if they're using drugs, it  
7 can be very helpful in supplementing your entire  
8 program.

9 Talking about costs and benefits, this is  
10 probably -- "What costs have you incurred from your  
11 efforts to reduce or eliminate drugs or alcohol from  
12 the workplace? Please provide the costs by type,  
13 personnel, training, equipment." I can't tell you --  
14 I can't go into a lot of stuff as far as -- just  
15 because I don't have the information on the amount of  
16 training that we provide with this, but we look at it  
17 as a part of our overall comprehensive system-safety  
18 training. That's a -- it's just a part of good  
19 business, whether it be safety or productivity, but I  
20 found, it was quite fascinating that the Navy has done  
21 some pretty good studies over the year about the  
22 costs, and they have estimated that a cost of an  
23 abusing employee is about \$6,600.00 annually.

24 Now, if you take the national average of

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1 the people that are using drugs and you're in a  
2 company and you do not have any kind of substance  
3 abuse program, let's say, 15 percent, and you have  
4 maybe 100 people working for you, that means that 15  
5 of them are substance abusers and they are costing you  
6 a bout \$7,000.00 a year. So, it's costing you  
7 \$100,000.00 a year in productivity through that.

8 So, I think it's a -- when you -- we have  
9 a system now, with our testing procedures, that we  
10 have a laboratory that we work with that has both the  
11 collection, they have -- it's included in the cost,  
12 the collection, the analysis, the potential for it to  
13 have a secondary analysis, a gas chromatograph  
14 confirmation test, and also a MRO, a Medical Review  
15 Officer, and it costs us about \$40.00 to \$45.00 per  
16 test. That includes collection, analysis, and MRO,  
17 and in that case, it's really pretty inexpensive when  
18 you think about it. Now, each company would be a  
19 little bit different, but there are laboratories that  
20 will do that.

21 Another thing in our business that is  
22 tough, we may be in a very remote -- a very small  
23 location and we do not do the sampling ourselves, we  
24 do not collect the sample, the people at the

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1 operations. That can be done -- people can be trained  
2 very easily and very simply to do the collections on-  
3 site, and then the things can be -- the chain of  
4 custody maintained. They can be overnight delivered  
5 to wherever the laboratory is, and then it can be  
6 handled that way, but we've -- have different  
7 facilities that we will take our employees to for the  
8 collections of the tests, so -- but, as far as the  
9 costs are concerned, we feel that it is a very cost-  
10 effective way to improve efficiency and productivity  
11 when you eliminate, or at least, attempt to eliminate  
12 the substance abuse policy -- or, substance abuse  
13 problems through your policy.

14 And, I mentioned, there, about what these  
15 costs -- about this developing an EAP program, and  
16 also, a substance abuse/drug-free workplace program,  
17 would it be borne disproportionately by small mines,  
18 and I don't really see that -- it's going to be a  
19 little bit more difficult, because you have a person,  
20 maybe, that is -- has multiple tasks, but there are so  
21 many programs available today that are boilerplate  
22 programs. I mentioned this one has a good one in it,  
23 and there are also many of them out there, the  
24 government provides you tons of them that you could

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1 put together a program pretty easily. Now, going out  
2 and finding the laboratory, that would take some up-  
3 front work, but today, there are many laboratories  
4 throughout the United States that can handle that, and  
5 the EAP programs, I think it's the same way. Any  
6 association -- the National Stone, Sand, and Gravel  
7 Associations, many of the State associations would  
8 have -- Kentucky Crushed Stone Association, and I'm  
9 sure there's a coal association -- they would have  
10 people that could provide names for mines to be  
11 involved with a program and be able to provide you  
12 names to use if you were a small mine operator.

13 But, I've pretty well gone through the  
14 things. I would like to just touch on a few other  
15 little minor points, and I think what's going to  
16 happen, there is an evolution in the industry. The  
17 larger companies do testing. The smaller companies  
18 don't. Now, there are exceptions to that, but the  
19 smaller companies have a tendency to maybe not feel  
20 like they have the funds or don't need to, or whatever  
21 the case may be, and what we find is that the employee  
22 that doesn't come to work for us goes to work for  
23 someone down the road. They are going to find work to  
24 support their habit. If the operators test, the

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1 chances are, they know they're going to have to get  
2 off to keep a job, so they may -- they will do that.

3           The -- it was interesting, too, the U.S.  
4 Postal Service, they did a study and they said users  
5 were 55 percent more likely to have accidents, or 85  
6 percent more likely to have on-the-job injuries, and  
7 had a 78 percent higher rate of absenteeism, and when  
8 we look at some of the factors that not only does it  
9 affect directly with -- through injuries and  
10 absenteeism, but if you have secondary benefits for  
11 employees, that they are -- drug users are three times  
12 more likely to access the health insurance than  
13 nonusers. So, there is a significant ripple effect  
14 throughout an organization that's not always  
15 considered.

16           Turnover, typically, users -- there was a  
17 study where 37 percent of the users were three or --  
18 had three or more jobs in the last year. Fifty-three  
19 percent had two or more jobs in the last year. So, if  
20 you hire somebody that is using, you're likely to have  
21 -- that person's not going to stay with you very long,  
22 probably, because their absenteeism rate goes up and  
23 something happens on the job, and either they may be  
24 run off or they just decide they don't want the

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1       hassle, and -- or, they hear somebody's going to test.

2               Users are one-third less productive, so a  
3       person you think you're going to hire -- and just  
4       because you hire them, if they're a drug user, they're  
5       going to be less productive.

6               And, many studies have shown that a person  
7       that is a substance abuser or user of illegal drugs or  
8       alcohol, they're going to be three to four times more  
9       likely to be involved in a workplace accident, and I  
10       want to emphasize "be involved," not necessarily, be  
11       the person injured, but they may be the one to cause  
12       another to be injured, so that's important.

13               In -- and I just -- in closing, I'd like  
14       to say that this is a difficult problem in the mining  
15       industry, overall, and MSHA should be credited for  
16       being willing to look into this and address this, and  
17       I want to thank the Agency for doing that, and the --  
18       both the coal industry and the metal/nonmetal  
19       industry, all the mines in the United States are vital  
20       suppliers of the products that are necessary to drive  
21       our economy and to drive the engine of this country,  
22       and the coal industry, I know, where I live in  
23       Indiana, is projected to almost double the employment  
24       in the next few years, but we have to send the message

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1 to people, whether they be in coal or metal/nonmetal,  
2 that we want drug-free people to work in this  
3 industry.

4 If every industry in the United States, if  
5 every company in the United States tested and were  
6 aggressive in testing and had appropriate disciplinary  
7 action for positive tests, I think we would,  
8 basically, eliminate the drug problem in this country,  
9 but there's still a lot of places that don't do it.

10 But, I think I'm always hesitant to want  
11 the government to get involved and to regulate  
12 industry, because invariably, the honorable intentions  
13 of a group that puts together a regulation, at one  
14 point in time, it's amazing how the interpretation  
15 down the road can be changed and it's used to almost,  
16 in some cases, looked at as punishment to the  
17 operators, because it's tough out there, what's going  
18 on, and so trying to find a way through education and  
19 training, I think if there were requirements in  
20 training, that would be an important way to go,  
21 requiring operators to -- that mandate that they have  
22 to have substance abuse training, I think that's a  
23 very productive way to do it, but having a lot of  
24 additional regulations wouldn't be.

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1           One aspect you have to consider, if you  
2 were, too, to have a regulation to where operators and  
3 operators did test, in many States, if an employee is  
4 found to be under the influence of drugs, illegal  
5 drugs, or alcohol, Workers' Comp does not pay for it,  
6 health insurance does not pay for it. That employee  
7 would be responsible for paying for it.

8           So, I think a little more education about  
9 things like that can make a difference, also, but the  
10 idea I want to emphasize about the potential for there  
11 to be a citation to the individual employee should be  
12 considered, just like it would be for smoking.

13           Okay, now I've talked way too long, and I  
14 haven't -- I've been afraid to look back and see how  
15 many people are asleep, so --

16           MR. SEXAUER: Actually, several have come  
17 in since you started.

18           MR. ELLIOTT: I know I haven't heard too  
19 many people fall, so I figured they -- but any  
20 questions you might have?

21           MR. SEXAUER: Ed, you've provided a lot of  
22 specific and good information. Let me just see if I  
23 can wrap my hands around what you've said.

24           You've indicated that drug programs can be

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1 effective, that it's better that if -- that mining  
2 companies can develop these programs and implement  
3 them on their own, but if the federal government  
4 determines that it should be involved, then it should  
5 have a program that's flexible and that's not a  
6 gotcha, and the program would include training, it  
7 would include something that addresses an Employee  
8 Assistance Program, and include testing.

9           You did not talk, specifically, about  
10 random drug testing. We've heard at the earlier  
11 meetings, some strong advocates that favored random  
12 drug testing as being effective. I wondered whether  
13 you might say something about your view of random drug  
14 testing?

15           MR. ELLIOTT: I think that is a critical  
16 component of testing, and in our program, we do have  
17 that, and we will run somewhere probably around 30  
18 percent of our population, annually, in random  
19 testing, and we have a computer program that generates  
20 that. We don't -- it's not an individual that does  
21 it, and even in our random testing, and usually, we'll  
22 do pretty large quantities. We may do 100 to 150 at a  
23 time will be selected for random testing, and it will  
24 still be five percent or less, is basically what we

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1 will find in those positives.

2 MR. SEXAUER: In terms of costs, we've  
3 heard some -- I guess an association that represents  
4 small mine operators indicates that it would be costly  
5 for small mine companies to do random drug testing.  
6 Following the meeting, as I was walking out the door,  
7 someone grabbed me and says, "Well, couldn't they do a  
8 consortium, where a number of small individual  
9 companies get together and shared the costs of a  
10 random drug test, which would also spread the testing  
11 among a number of companies?" And I wondered whether  
12 you have any view on that, or whether anyone in the  
13 audience has any comment on that?

14 MR. ELLIOTT: Well, I would think there  
15 should be. If there were a number of small operators,  
16 just as you said, an association could select a  
17 vendor, a laboratory, and go through the process of  
18 establishing that, and quite honestly, other than it  
19 being somewhat -- sometimes people is a little bit  
20 uncomfortable if they had to get a sample or collect a  
21 sample from an individual, but in all honesty, it is  
22 very easy to do, and the operator could, themselves,  
23 be trained very easily to take that collection, and  
24 what it amounts to at that point, you would be sending

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1 an overnight package to a laboratory, and then,  
2 whatever the cost of that laboratory analysis, and  
3 they would fax back to you the results of it. So, I  
4 wouldn't think -- you would probably be talking about  
5 somewhere, \$50.00, \$60.00 a person, but if you suspect  
6 that someone might be using it, well, the DOT requires  
7 you, I think it's 50 percent of your total population  
8 that come under DOT have to be tested, that number,  
9 annually, and so I think that's -- sometimes, it's a  
10 part of doing business, but if you don't test and that  
11 person could be costing you, basically, \$6,000.00 or  
12 \$7,000.00 a year, you're just throwing money out the  
13 window, so I would agree, it should be done, and it  
14 could be done that way.

15 MR. SEXAUER: You've mentioned the DOT  
16 program. This has come up at other meetings as well,  
17 and some in the audience, who are not familiar with  
18 the DOT programs, so just for general information, I  
19 think what we'll do is, we'll take the DOT program and  
20 put it onto our webpage with a link, probably, in --  
21 where we do the rulemakings, we have a section for  
22 comments, and we'll probably refer to it somewhere in  
23 there, so if anyone is interested in looking at the  
24 DOT program, they can find it through our webpage in

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1 some fashion.

2 I think there are some other comments up  
3 here?

4 MS. CARR: Yes, Mr. Elliott, as someone  
5 that spends a lot of time preparing educational  
6 materials and policy advice for employers, I  
7 appreciate the detail into which you went.

8 And, particularly, I'm interested in the  
9 evolution of your program. You confirmed some  
10 theories I had that programs start out one way and  
11 they do evolve based on your responsiveness.

12 I'm particularly interested in what you  
13 said to open up with, you know, that these programs  
14 should be done because it's the right thing to do, but  
15 you did indicate that there might be a role for  
16 federal regulation in this area.

17 So, kind-of two questions to that. In  
18 1989, when Rogers implemented their program, did the  
19 existing standard -- and quite frankly, I don't even  
20 know whether it was in effect at the time, but did the  
21 metal/nonmetal standard on this have something to do  
22 with your implementing the program, and if not, what  
23 did compel you to consider it? Two, you mentioned the  
24 decrease in the testing positives. Have you also been

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1 able to notice any decrease in accidents that -- or  
2 injuries that you might attribute to the program? And  
3 then, finally, given all of that, what would you  
4 recommend that might help encourage employers to do  
5 the right thing?

6 MR. ELLIOTT: Well, several things, and if  
7 you'll refresh my memory if I don't touch on all of  
8 them, but what drove us, initially, it really had  
9 nothing to do with the regulation, and it had nothing  
10 to do with the regulation at all, but I think when the  
11 -- I can't recall the exact date of the Drug-Free  
12 Workplace Act, or whenever it was --

13 MS. CARR: I think, 1988, yeah.

14 MR. ELLIOTT: Just right in that time, and  
15 I think our -- we are self-insured, and we have a  
16 certain level that, once we get over a certain amount,  
17 then the insurance company kicks in, but it's several  
18 million dollars, whatever the case may be, but we try  
19 to communicate with our insurance brokers and our  
20 carriers and look at, okay, what are things that make  
21 your company more attractive to insurance brokers and  
22 people that want to sell you Workers' Comp insurance?

23 Well, one of the things was to have a  
24 good, strong substance abuse policy and procedures, as

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1 well as an EAP, and what happens with that, it's --  
2 and, the small operators would find themselves the  
3 same way, they would -- the insurance companies know,  
4 they know that, I think, if I've got one -- the  
5 National Counsel on Compensation Insurance reported  
6 that an estimate of 50 percent of all Workers' Comp  
7 claims involve substance abuse.

8 Well, they would say, if there's a company  
9 that does a good job with substance abuse and testing,  
10 then there's going to be a direct correlation to  
11 reduction of injuries and accidents, and not just the  
12 injury accidents, but property damage and so forth,  
13 and so they would look upon us -- they looked upon us  
14 as being kind-of groundbreaking in our area of what we  
15 were doing, and it was -- I think it had a very  
16 positive effect.

17 As far as injuries are concerned, we've  
18 had a gradual decline in injuries over the years. I  
19 don't think that's attributable directly to our  
20 substance abuse program, but it certainly adds to it,  
21 because there's a reduction in the number of people  
22 that are likely to have injuries, but our injury rate  
23 right now, as a corporation, is, like, I think, 1.35,  
24 as it would be calculated by MSHA, and that includes

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1 our construction industry and aggregate industry.  
2 We're just about the same in both of them, of the  
3 number of injuries we have, so that number is fairly  
4 low. Our objective is to try to get below 1.00 this  
5 year, and we've been -- last year, we ended up at  
6 1.43. The year before, 1.37. And so, we've done a  
7 number of other things to improve that, but this is a  
8 part of it as well.

9 And, I did not -- did I cover the -- was  
10 there more -- anything --

11 MS. CARR: I guess, just the final one  
12 was, you know, given all that, and you've given, you  
13 know, a lot of detailed information, what do you  
14 think, like, the single most important thing that MSHA  
15 could do to encourage businesses to do the right  
16 thing?

17 MR. ELLIOTT: That's an interesting  
18 question. I think there are a number of things.  
19 Going to -- one thing that I found about the  
20 government, they usually have a tremendous amount of  
21 information and data. Getting that information out to  
22 the different national associations, putting out  
23 communications and national publications that deal  
24 with the industry, people read those magazines that

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1 come to their operations, and there needs to be as  
2 much information as possible in those, and I think,  
3 also, contacting the different major insurance  
4 carriers in the United States and some of the major  
5 brokers and educate them in this issue and try to  
6 solicit a multi-front approach that, if the brokers  
7 were to say, "If you put together a program, then  
8 we'll reduce your Workers' Comp insurance X amount of  
9 money," it's a win-win situation. It's a win for the  
10 operators, it's a win for the companies, the insurance  
11 companies.

12 Also, in the different meetings that would  
13 go on, I know in metal/nonmetal -- I'm not sure if  
14 they do this in the -- in coal or not, but we have  
15 what's called the Spring Thaw meetings that try to  
16 bring operators together. I think having this as a  
17 subject and trying to outline the issues, and then  
18 also, national associations that they meet, the NSSGA,  
19 I know they have meetings, and the NMA, I'm sure there  
20 are other large meetings, and to have presentations at  
21 those meetings.

22 So, I'm saying, get the message out, get  
23 the word out, give people as many options as you can,  
24 both in written and electronic form, and I think it'll

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1 just show them, it's a lot easier. Also, if it would  
2 be a way for the training, under part 48, that the  
3 operations side of MSHA could say, "Hey, this is --  
4 we're automatically going to require this as a part of  
5 -- in your training plan, and we'll give you the  
6 amended little part that you need to plug into your  
7 training plan, that you need to put this in, and it  
8 deals with substance abuse, and provide them the  
9 information." To me, that's going to do more to make  
10 a change and for companies to feel like it's the right  
11 thing, because until people see it as a problem,  
12 they're not going to do anything about it, and I think  
13 the average company, they don't think it's a problem.

14 So, that's how -- that's what I would do  
15 first and foremost, and it could be done in the short-  
16 term, quite honestly, without a heck of a lot of  
17 adversarial relationship between the government and --  
18 I know in the sense -- Dave Lauriski, the former  
19 Assistant Secretary, and now, David Dye, who is the  
20 Acting, and I think is the Deputy now, he will be --  
21 he's done a good job. I think this has changed the  
22 approach a little bit, to more educate the operators.

23 I think that will be the quickest change, will get  
24 the attitude changing in the industry about trying to

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1 do the right thing.

2 MS. CARR: Thank you.

3 MR. MACLEOD: Just a follow-up on the part  
4 48 issue, you mentioned adding, maybe, a requirement  
5 to cover drugs within the existing part 48 framework.

6 A question that has come up on occasion is that the  
7 Agency may be putting more stuff in an existing bag,  
8 as they say euphemistically. Do you see a problem  
9 with taking -- I'll use the annual refresher, the  
10 existing eight hours, and requiring some amount of  
11 time, maybe not defined, but at least defined by topic  
12 or subject, that that would leave less time for other  
13 important subjects that are already mandated by that  
14 particular rule?

15 MR. ELLIOTT: It could, but I think there  
16 are -- some of the things that are in the part 48  
17 refresher training requirements that, of course,  
18 specific time requirements and that type of thing,  
19 that could be amended, and if a company's really doing  
20 the job, you can't train somebody eight hours, once a  
21 year, and think -- I was an educator. I graduated  
22 from -- it's a plug for my alma mater, Eastern  
23 Illinois University, Charleston, Illinois, with a  
24 Bachelor of Science in Education, and I went out and

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1 taught for a while, and my wife still teaches, as a  
2 matter of fact, and you just can't -- it's not  
3 something you can stop them, open it up, pour down  
4 their head, you know, and it's going to stay in there.

5 You've got to have a multi-faceted approach to  
6 training, but in my estimation, you look at a priority  
7 of importance, and I think there are some things under  
8 part 48 that some of the operators are going to be  
9 doing on a daily basis, at how they approach mine  
10 emergencies and communication, and some of the stuff  
11 that you talk about going over in refresher training  
12 is so redundant, I think you could diminish the amount  
13 of time spent on it and indicate there should be -- it  
14 should be covered in normal procedures that are done  
15 throughout the year, and then you could plug something  
16 that is of significant issue like this substance  
17 abuse.

18 But, part 46 -- it's -- I'm sure you're  
19 familiar with it, but it requires two things in  
20 refresher training by regulation. One is the history,  
21 the accident history of the mine over the past year,  
22 and the second is, any change that has occurred at the  
23 mine in the last year. Those are the two things, and  
24 then it allows the operator the flexibility to

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1 establish what things need to be covered. If you're  
2 in a mine that has a problem with roof falls, then you  
3 want to emphasize that a lot more than you do -- if  
4 you have a mine that has a problem with methane, then  
5 you want to emphasize that. So, it just depends on  
6 the circumstances, but in part 48, there's just no  
7 flexibility. There's no flexibility that is provided  
8 in 46, and I think the -- today, also, the mining  
9 industry is changing.

10 When I first came in the business, people  
11 lived to work. Today, they work to live. You get the  
12 younger people in the mining industry, and those  
13 people, they don't want to get hurt. They want to  
14 learn things a little differently than people of my  
15 generation, but we've got to provide the mine  
16 operators flexibility, and to me, it should be -- this  
17 is an important enough issue, they should have the  
18 flexibility. Something else could be reduced and this  
19 plugged in.

20 MR. MACLEOD: Thank you.

21 MR. CROCCO: Could I ask a question?

22 MR. ELLIOTT: yes, sir.

23 MR. CROCCO: On the contractors, you  
24 mentioned denying access, I think, to contractors, and

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1 could you say something about that? Would that be for  
2 suspicion, or in response to an incident, or how would  
3 that work?

4 MR. ELLIOTT: Well, we could, in some  
5 circumstances, if we're having a -- we will  
6 occasionally do a site-random test, where we'll test  
7 everybody at the site. Well, if anybody is working  
8 under contract, and now, I'm not talking about the  
9 person delivering to the pop machine, okay, they  
10 deliver the pop machine and they're gone, but we're  
11 talking of someone that has a contract with us or a  
12 purchase order with us to do work at the mine, and if  
13 they are there at the time, we require -- we test  
14 them, just along with all of our own employees.

15 No one is ever forced to take the test.  
16 We don't say, "Up against the wall, you know, you're  
17 going to give this urine or else," you -- I'm not  
18 going to do that, and that's -- I think that denies  
19 their basic right. They can refuse that, but if they  
20 do, then it's treated the same as if it were a  
21 positive.

22 So, a contractor, we would contact and  
23 their supervisor, and they would be required to submit  
24 to the test just like our employees. If they refused,

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1 then we would have them withdraw, and they could not  
2 continue working, whoever refused. Then, if they were  
3 positive, it would be the same way.

4 Now, in our purchase order, we go over  
5 with the contractor, it indicates in there that they  
6 must be willing to comply with our substance abuse  
7 policy.

8 MR. CROCCO: Thank you.

9 MR. SEXAUER: Okay, Ed, thank you very  
10 much.

11 MR. ELLIOTT: Thank you.

12 MR. SEXAUER: Okay, I've just received a  
13 copy of a document I'd like to put into the record.  
14 Rogers Group, Inc. and Affiliates Substance Abuse  
15 policy and procedures, updated October, 2005.

16 We have no other speakers that have  
17 requested to speak. I'd like to open it up at this  
18 time to anybody in the audience that would like to  
19 address us on any of these issues.

20 MR. DITTY: Good morning.

21 MR. CROCCO: Good morning.

22 MR. DITTY: My name is Stanley Ditty, I'm  
23 the owner/operator of a coal business in Harlan,  
24 Kentucky. That's D-I-T-T-Y, that's S-T-A-N-L-E-Y.

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1 The business is in Harlan. The name of the company is  
2 Sequoia Energy. That's S-E-Q-U-O-I-A Energy.

3 I've heard both speakers speak this  
4 morning. It's very important to know that education  
5 in the business that we're in is very important, but  
6 until MSHA and the State Department comes back out and  
7 puts a bite behind us as operators that wants to  
8 instill a drug policy and to affect -- into our  
9 companies that we have, it doesn't make any difference  
10 if we send somebody down the road to have a drug test.

11 It costs me \$450.00 to have a person drug tested.  
12 That's a grade seven. That's at the Harlan  
13 Appalachian Regional Hospital, or the Middlesboro  
14 Hospital in Middlesboro.

15 When we come back out and we have these  
16 people tested, if they test positive, we terminate.  
17 We terminate. The people that we are hiring today in  
18 the mining industry is probably people that we  
19 normally wouldn't have taken applications from,  
20 probably, I'm going to say, five years ago, because  
21 the demand is there for the people in this business  
22 that we have today, there's a greater demand for  
23 people that's in the industry.

24 When we come back out here and we take

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1 somebody down for a drug test or they refuse to take  
2 the drug test, they say, "Well, I don't want to take  
3 the drug test," as the gentleman said, from Rogers,  
4 you assume that guy -- or, that person, is positive.  
5 Well, you terminate that employee.

6 If he's a good employee -- I'll give you a  
7 prime example of a company over in Whitesburg that  
8 tested two groups of people on two sections. There  
9 was 42 people on those sections. Thirty-nine of those  
10 people, they were foremen, electricians, and  
11 experienced miners. Thirty-nine of those people  
12 flunked the test. When these people flunk the test,  
13 where do they go back out and find 39 people that have  
14 the experience to come back out and replace these  
15 people? These people just went down the road and  
16 found another job.

17 Until the Agency -- you all can say that  
18 you all want to put all the responsibility back on us  
19 as operators until you turn blue in the face. Until  
20 you come back out and put a bite behind it, until you  
21 come back out here and say, "We're going to pull that  
22 person's card, that mining card from the State,"  
23 because MSHA doesn't have a card -- until you pull  
24 that State -- man's card, where he's able to mine or

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1 be able to work in the mining industry, in the coal  
2 mining industry -- I'm not speaking about nonmetal and  
3 metal, because that doesn't affect me, I don't know  
4 anything about that part of the law, I just -- I've  
5 been in this business for 38 years. But, until the  
6 Agency comes back out and works with the State and  
7 where -- if it's in Virginia, West Virginia,  
8 Tennessee, Kentucky, I'm speaking for Kentucky, and I  
9 worked in Tennessee, Kentucky, and Virginia. And,  
10 until this Agency comes back out and puts an  
11 enforcement behind something, to put a bite behind it,  
12 that you're going to pull that man's card -- or,  
13 person's card a minimum of a year's time, not six  
14 months, not three months, pull it for a year, until  
15 that Agency -- until this Agency comes back out here  
16 and does it, all the training in the world is not  
17 going to help.

18 I'm not against training by any means.  
19 I'm for training, but we have to put a bite behind it.

20 I went in front of KEMI the week before last and told  
21 them the same thing I'm telling you ladies and  
22 gentlemen here today. We do have --

23 MR. SEXAUER: Excuse me, KEMI, for the  
24 record? KEMI is --

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1                   MR. DITTY: That's the Kentucky Employment  
2 Mutual Insurance Agency. There's two people that will  
3 actually write Workers' Comp in the State of Kentucky.

4                   That's AIG and KEMI. Those are the -- really, the  
5 only two people that you can come back out here and  
6 get Workers' Comp from in the State of Kentucky for  
7 coal miners.

8                   For that being said, if -- until -- we can  
9 say that we want to train, we want to do all these  
10 different things, and I'm not against training, I'm  
11 very much for that, we just got through doing our  
12 annual one course of our training this past Saturday.

13                   You come back out here and you can say the  
14 drug problems that we have out here, these people that  
15 we're hiring, it's not alcohol-related. It all goes  
16 back to narcotics, drugs that's coming from Doctors,  
17 and as the lady said, and the gentleman from Rogers  
18 says, you can't tell when these people are on drugs.  
19 You can't tell. You can look them in the eye.

20                   If they're on alcohol, you can smell it,  
21 they can take lozenges, or whatever, being -- but you  
22 can -- they'll talk with a slur. These people that  
23 are on Oxycontin or whatever drug that they're on, you  
24 just can't tell until you send them for a drug test.

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1 Well, when we send them for a drug test, if they  
2 refuse to take the drug test, "Well, I don't want to  
3 take the drug test," well, only thing that they're  
4 going to do is just go right down the road, if they're  
5 electrician, if they're a mine foreman, they -- if  
6 they're a good miner operator, they're demand for them  
7 all over out there. But, until somebody comes back  
8 out here and says that once you take that person and  
9 you pull them and do a drug test -- them -- and if you  
10 want to make it mandatory for all of us to come back  
11 out here and drug test every person that's on that --  
12 but if they flunk it -- they flunk that test, pull  
13 that card. Pull that miner's card for a year. Then,  
14 we'll get some results from this. But, we can sit  
15 here and play games, beat this thing around the bush,  
16 train, train, train. Until you put a bite behind it,  
17 we're everyone -- wasting our time.

18 Like I said, I've been in this business  
19 for 38 years. I've worked hard at it all my life.  
20 I'm a Christian. I love God better than anything.  
21 He's the number one person in my life. But until we  
22 come back out here and do something to put a bite --  
23 to make these people that are infesting our workforce  
24 -- do something to them to make them pay -- because

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1 they know, even though that you have a drug policy  
2 enforceable at the time that you hire them -- you take  
3 them and do a drug test on them, they go down to the  
4 drugstore and buy something to pass it. You came back  
5 out here and you pull a random test on out here, they  
6 know that you're going to come back out here and do  
7 it. If you don't do it right dead on the spot with  
8 them, there, they're going to take something that they  
9 carried in their dinner bucket and they're going to  
10 take it. So, but if you come back out here and you  
11 take each person and they become positive in it,  
12 that's going to show them that the Agency means  
13 business -- but, for what that's -- what's happening  
14 here.

15 We're not going to correct this problem by  
16 just coming back out here and doing training without a  
17 bite. You've got to put -- you've got to have a bite  
18 behind it. They have to pay the consequences for  
19 doing something that they know is wrong.

20 We can sit here and talk about it, beat it  
21 to death with a briar stick, if you want to, switch  
22 them with their legs out there, come back out there  
23 and send them home for three days. They're not going  
24 to go home for three days. They're not going to do

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1 that. They have to be able to work to come back out  
2 here to feed the habit.

3 I didn't prepare anything out here on this  
4 thing. The -- had surgery on my hand this past  
5 Wednesday, out here, and I forgot, even about the  
6 meeting on here, but it's so imperative that we come  
7 back out here as operators -- and the guy -- and you  
8 said to do the right thing.

9 It's very important, in every decision  
10 that I make at the company -- I'm a hands-on person.  
11 I live here in Lexington. I drive 360 miles a day to  
12 the job. I'm there every day. I'm a hands-on  
13 person. Those four gentlemen in the back, back there,  
14 that work for me, they've been with me for 20 years.  
15 They'll tell you, I'm a hands-on person. There's  
16 nothing that happens on that job that I don't know  
17 about.

18 I just fought this Agency, here, for five  
19 years. I take that on, and you know it's out there,  
20 and not bring up to an issue that I had problems with  
21 issues with MSHA over on the instance that we had,  
22 they tried to get me to plead guilty for something I  
23 didn't do. It was a misdemeanor charge. But, that  
24 has no relevance on why I was here, but I took this

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1 Agency to court. It took us five years to win that  
2 case, but it cost me \$500,000.00 to win it. But, it's  
3 about doing the right thing.

4 It's always -- in my life, no matter what  
5 I do, I want to be always -- whenever I stand in front  
6 of God, that I come back out here and say that I did  
7 the right thing. I don't want to come back out and  
8 say, "I know you not, sir."

9 MR. SEXAUER: Stanley, can I ask you a  
10 question?

11 MR. DITTY: You can ask me anything, sir.

12 MR. SEXAUER: In the back of my mind,  
13 since you started talking, I keep coming back to this  
14 incident that you started off with, where you  
15 indicated, if I heard you right, 39 out of 42 miners -  
16 -

17 MR. DITTY: Thirty-nine out of 42, yes.

18 MR. SEXAUER: -- indicated some evidence of  
19 some kind of presence of alcohol or drugs in their  
20 system?

21 MR. DITTY: It was all drugs.

22 MR. SEXAUER: All drugs? You know, we  
23 here stories back at the Agency, or we hear stories at  
24 some of these meetings that are anecdotal, you know,

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1 but it's always somebody else's mine where this  
2 happened. It's never someone's own mine, so we're not  
3 sure -- I mean, what you said is scary, but I don't  
4 know how much credence to give it. I'd be more than  
5 happy to discuss it with you off the record, outside  
6 the meeting, if you'd like to, but, you know,  
7 something like that shouldn't go past without a  
8 remark. I mean, our Agency is certainly mindful, but  
9 that's -- if that's a situation out there, then it  
10 needs to be addressed, but I would like to hear  
11 whatever you care to tell me about it afterward.

12 MR. DITTY: The company that -- the  
13 majority of the people, not speaking of the company I  
14 have been -- and I'll tell you that we do terminate  
15 people from our job. I don't give them a second  
16 chance like the Rogers Group does. If you come back  
17 out and you fail that test on it, I terminate you,  
18 because we go in telling them that we don't allow  
19 drugs on that, we don't allow it. I don't smoke, I  
20 don't drink, and I don't chew, and I don't run women,  
21 and I don't allow it -- if they run women, that's  
22 fine, but drugs, drinking, that's up to them.

23 I just -- we just don't allow it. I don't  
24 give it a second chance. That's a cardinal sin in my

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1 book, and three cardinal sins, and you're out, and you  
2 know, it's just -- one cardinal sin of flunking their  
3 drug test, or refusing the drug test, and we let you  
4 go.

5 MR. SEXAUER: Okay.

6 MR. DITTY: But, you know -- but, until  
7 this Agency comes back and gets with the State,  
8 because you all won't have anything in your affect  
9 that comes back out and says -- just, other than the  
10 retraining, you all don't even require us to have a  
11 card, as this Agency. It does through the State, it  
12 mandates it through the State. So, MSHA doesn't.

13 So, you know, until MSHA wants to come  
14 back out and put into the policy out here that you're  
15 going to have an MSHA card, that's fine and dandy too,  
16 but until you put a bite behind what you all are  
17 trying to get done out here, instead of coming back  
18 out here and saying the operators are going to have to  
19 do something with it themselves -- we can't do  
20 anything with it, because you have -- you had no  
21 recourse to go by, to do anything with it.

22 I appreciate your all's time.

23 MR. SEXAUER: Okay.

24 MS. CARR: I just have one clarification

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1 question.

2 MR. DITTY: Yes, ma'am?

3 MS. CARR: If I understood correctly, you  
4 had mentioned \$450.00 for a drug test? Is that --

5 MR. DITTY: That's correct.

6 MS. CARR: -- what you're currently  
7 paying?

8 MR. DITTY: That's a grade seven.

9 MS. CARR: What -- is that the cost of the  
10 person's time, or just the drug test itself?

11 MR. DITTY: The drug test itself.

12 MS. CARR: And, what do you mean by a  
13 grade seven? I'm not familiar with --

14 MR. DITTY: That's the grade seven, that's  
15 what we test -- that's what we --

16 MS. CARR: Seven drugs?

17 MR. DITTY: No, there's seven different  
18 parts of that that goes through that, and whenever --  
19 if it comes back positive from each one of these  
20 hospitals, it's sent from there to Bethesda Hospital,  
21 in Maryland, to verify that, and it takes us almost  
22 three to four days, back and -- before -- they come  
23 back and tell us it's positive, then they tell us what  
24 it's for, then they go ahead and send it off again to

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1 make sure that they're -- that it's validated, what  
2 they said.

3 MS. CARR: Yeah, I was just -- because the  
4 gentleman that spoke before, mentioned a \$40.00 per  
5 test, and that's quite a --

6 MR. DITTY: That's not what we operate --

7 MS. CARR: -- discrepancy.

8 MR. DITTY: If you'd like, I can furnish  
9 you the bills and show them to you.

10 MS. CARR: I'm not sure that will be  
11 necessary, but, you know, it just seems that, you  
12 know, in terms of considering the costs and benefits  
13 of it, you know, \$40.00 per test, the burden on  
14 employers and small employers, versus --

15 MR. DITTY: That might be urinating in a  
16 cup, but urination into the cup is not going to be --

17 MS. CARR: So, you're talking about the  
18 review by the Medical Officer and various  
19 confirmations?

20 MR. DITTY: That's -- yes.

21 MS. CARR: Okay.

22 MR. SEXAUER: Okay, let me just note that  
23 the individual who furnished the \$40.00 figure just  
24 stepped out for a second. We may be able to get that

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1 information from him, later.

2 MR. BAUGHMAN: You're talking about a  
3 blood test?

4 MR. DITTY: No.

5 MR. BAUGHMAN: It is also a urine test?

6 MR. DITTY: It's urine, but it's urine  
7 that they go through.

8 MR. BAUGHMAN: Right.

9 MR. DITTY: Okay, thank you.

10 MR. SEXAUER: Great, thank you.

11 MR. DITTY: Thank you for your time.

12 MR. SEXAUER: Would anyone else like to  
13 address the panel? Okay, if not, then let me ask --  
14 those of you who came in after the meeting started and  
15 have not signed in on the attendance sheet in the back  
16 of the room, I might ask if you wouldn't mind if you  
17 could just put your name on the list so we have an  
18 idea as to everyone who's been here.

19 I'm going to take a break for -- let's  
20 say, until 11:30. We'll come back on the record at  
21 11:30 and see if there's any additional speakers.  
22 And, if not, we'll adjourn at that time. So, we'll go  
23 off the record now, recessed until 11:30.

24 (Whereupon, the proceedings in the

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1 foregoing matter went off the record for approximately  
2 one hour.

3 MR. SEXAUER: Okay, we'll go back on the  
4 record. Is there anyone in the audience who would  
5 like to speak?

6 MR. NEASON: Good morning.

7 MR. SEXAUER: Good morning.

8 MR. NEASON: I'm Mike Neason. I work with  
9 Hanson Aggregates, based out of Louisville, Kentucky.  
10 I'm the Safety Manager for Kentucky, part of Southern  
11 Indiana, and Southern Ohio operations.

12 MR. SEXAUER: Could you spell your name,  
13 please?

14 MR. NEASON: N-E-A-S-O-N.

15 MR. SEXAUER: Okay.

16 MR. NEASON: I -- you know, first off, I  
17 just -- I want to get it out, as long as we're going  
18 to be on the record. I wanted to get out and thank  
19 you guys for coming to Kentucky to talk about this.  
20 This is a pretty big issue for us and we've got a lot  
21 of folks that have kind-of passionately gone over this  
22 for the past year or so, in trying to look at some of  
23 the problems, and I guess a lot of that has come out  
24 of some of the Eastern Kentucky operations, but it's a

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1 problem that doesn't just exist in one part of this  
2 State, or any State, or any one industry. It's a  
3 cultural problem that is affecting everybody.

4 I guess I sat in the back of the room and  
5 listened to Ed talk this morning. Ed Elliott and I  
6 kind-of do about the same sort of thing. We've known  
7 each other for a good while, and what he said, you  
8 know, I could -- I was thinking about all the things I  
9 was planning to say as I was driving in from  
10 Louisville say. I heard him talk, and I said, "Well,  
11 you know, that's what I was going to say," so --

12 MR. ELLIOTT: You can pay me after.

13 MR. NEASON: I want that on the record,  
14 too.

15 But, you know, what he said is pretty  
16 typical. When a business begins to move toward this  
17 culture, it's something that happens because somebody  
18 makes a business decision that says it's important for  
19 us -- if -- to be a kind of an organization that's  
20 going to make this an important thing, and so, they  
21 make the move, and they institute a program, and like  
22 you said when you responded to him, it's exactly  
23 something that has to kind-of work in over time. I  
24 mean, when you put it out and your intentions are to

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1 do one thing, it becomes obvious that, well, it looks  
2 like we should make X move or Y move or Z move, which  
3 is kind-of how a lot of companies begin to personalize  
4 what their things are, and I think we're in just about  
5 the same shape.

6 We do, obviously, test people post-offer.

7 We do, obviously, test people post-accident. We do,  
8 obviously, do random testing on people. We have a  
9 supervisor training plan where it helps the  
10 supervisors identify people who have the problem so  
11 that they're able to institute a for-cause test, and  
12 we have a procedure outlined for that.

13 I would say that in the beginning, when we  
14 began this, we were finding far more positives than we  
15 are now. I don't have any numbers to show you where  
16 that is, but I can say that where -- when I was doing  
17 this job, you know, in the early 90s, it was a pretty  
18 common thing for me to go and have that talk with  
19 employees that were testing positive at something. I  
20 rarely do, now, so I see that as a positive thing,  
21 and, I think what's borne that is that over time,  
22 we've made it pretty clear to the employees that this  
23 is an organization that's going to run itself in this  
24 way, and we're the kind of an organization that's

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1 going to take substance abuse seriously. We will take  
2 action for employees, and if you're going to live in  
3 that culture, you're not going to work here.

4 I think, over time, that bears out.  
5 That's not something that changes overnight, but  
6 reinforcement is the key to that one.

7 In looking over this rule, I think I was  
8 surprised, more than anything, to see that coal  
9 doesn't have anything at all in their standard. I  
10 think that's something that I would have expected. I  
11 saw the rule that we've got on the metal/nonmetal  
12 side, and it's not really been anything that's really  
13 driven us, per-se, to do anything different than we  
14 would have ever done it before, but I guess I was just  
15 surprised to look down the coal side and see that  
16 there's never been any action taken from MSHA to  
17 address this for that group of people, and I look at  
18 this as a positive step, that you guys are looking  
19 into doing this and exploring the options to it.

20 But, you know, I -- more than anything, I  
21 wanted to come down and thank you guys for coming here  
22 and addressing this, and I've -- sitting in the same  
23 position that a lot of operators are, so, if you guys  
24 have any questions for me, I'm happy to answer them.

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1 MR. SEXAUER: Mike, which drugs are the  
2 most -- are the biggest source of problems?

3 MR. NEASON: It -- looking for which drugs  
4 are the problems, you've kind-of got to look for where  
5 you are. I think, generationally, alcohol seems to be  
6 more of a problem with older workers, people older  
7 than me, and I'm 35, for the record -- but, I think  
8 that --

9 PARTICIPANT: You're under oath.

10 MR. NEASON: Thirty-five and a half, but  
11 anyway --

12 MR. SEXAUER: You're not under oath.

13 MR. NEASON: People older than me, alcohol  
14 seems to be the main thing. Regionally, there's also  
15 a big effect. East Kentucky has got a pronounced  
16 problem with Oxycontin. The Governor, a couple of  
17 years ago -- Governor Patton made a pretty big push  
18 that said that that's one of the things that he was  
19 going to target and move towards, and that's become a  
20 pretty big deal.

21 And, that's a prescription drug that  
22 somehow gets over-put out, and I guess what's  
23 typically done with that is that they take this really  
24 high potent time-release thing and crush it up so that

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1 you lose the time-release portion of it, and employees  
2 are just taking it, and it's -- getting a pretty big  
3 kick out of it.

4 But, that's a big deal in Kentucky.  
5 Crystal meth is a big deal. Here recently, we had --  
6 one of our association meetings, we had a State  
7 Trooper come in and explain how drugs have changed in  
8 this region over time, and he was saying that a while  
9 ago, cocaine was a big deal, and now, cocaine has  
10 kind-of shifted away, because of drug -- crystal meth  
11 does just about the same kind of release for a whole  
12 lot less money, and it's a whole lot more of a high,  
13 and all of a sudden, that's become their new problem.

14 So, I think the law enforcement people can tell you  
15 just as much as anybody can tell you.

16 MR. MACLEOD: Mike, I'm pretty sure that  
17 Hanson has a corporate policy for dealing with drugs  
18 and alcohol abuse. If, in fact, you do have such a  
19 policy, could you provide that to us on the record?  
20 We would be interested to see what, actually, Hanson  
21 is doing, if that's not proprietary.

22 MR. NEASON: And, that -- yeah, that's  
23 actually going to be done. We've -- Hanson has been  
24 preparing comments for this that they're going to have

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1 submitted before the comment period ends, and,  
2 included in that written comment will be our program.

3 MR. MACLEOD: All right, thank you.

4 MR. AUTIO: Mike, can you --

5 MR. NEASON: Yes?

6 MR. AUTIO: -- do you have any linkage  
7 between absenteeism and accident rates with -- since  
8 you've had your drug policy in place? Do you have any  
9 numbers, or --

10 MR. NEASON: That are going to be specific  
11 to our company, no, and Ed pointed out, a lot of these  
12 studies that have been done, but this is, by no means,  
13 something that doesn't get looked at a whole bunch,  
14 and what drives people to take action is more of that  
15 business decision that's based on loss, that's based  
16 on accidents, that's based on absenteeism, that's  
17 based on productivity.

18 You know, most of the bigger companies,  
19 when they look at that, can kind-of sit back from a  
20 30,000 foot view and say, "We really have got to take  
21 an aggressive stance about this, as it's such a big  
22 factor of what goes on." So, bigger companies focus  
23 more on that.

24 A smaller company may focus more on a

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1 regulatory requirement that comes out. If the federal  
2 government was to come forward and say, "We would like  
3 to make a rule that says that everybody has to begin  
4 doing some sort of testing or put together some sort  
5 of program," then that's going to affect somebody who  
6 may only have, you know, five employees and a smaller  
7 operation.

8           You know, I think, one of the biggest  
9 groups that jumped out of when this came forward was  
10 just thinking about the small mines office that MSHA  
11 has. That group is probably poised like nobody else  
12 to be able to drill down to some of these operators  
13 who probably don't have as aggressive programs, or, at  
14 least, as together programs, and help them to  
15 understand how they can put something together to move  
16 forward. I think that's -- that was a great  
17 initiative when that started, and I think they're  
18 exactly poised to deal with this problem.

19           MR. CROCCO: Could you say something about  
20 your post-accident testing, what selection criteria  
21 you use for who would be tested, or -- are -- do you  
22 test for injury accidents only, or serious property  
23 damage accidents?

24           MR. NEASON: Well, that's a good question,

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1 because, I mean, that speaks to the equality of it. A  
2 lot of times, what you don't want to end up with is,  
3 Billy tore up a pickup truck, and Jimmy tore up a haul  
4 truck, and I don't like Billy, so Billy's going to go  
5 in there and get tested. You know, you don't want a  
6 supervisor put in a position where he has to make too  
7 many of those judgment calls. It becomes divisive on  
8 any one group of employees, and, you know, in this  
9 business, that's horrible.

10 So, generally, what we do, any injury  
11 accident that any -- that's going to require medical  
12 treatment, be that reportable, be that not, if we take  
13 somebody to the Doctor to go get something checked out  
14 just to make sure, that person is tested. Any kind of  
15 property damage that results in \$250.00 worth of loss  
16 -- which, we set that number kind-of low because  
17 that's easy for anybody who just passively goes by,  
18 and says, "Well, I guess, if you tore that up, that's  
19 probably close."

20 But, you want to have -- and throughout  
21 these kinds of policies, you want to have so much  
22 standardization that takes it so much out of  
23 everybody's hands so that you don't end up with a  
24 supervisor using this as a tool for disciplining his

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1 people and weeding out folks that he may not want  
2 there.

3 I mean, this is something that has to be  
4 held above and beyond all that you're doing. It has  
5 to kind-of go without reproach that this is a policy,  
6 and we're going to stand behind this policy, and it  
7 has nothing to do with personal stuff, and it's not me  
8 and you, it's just this piece of paper.

9 MS. CARR: So, as I understand it,  
10 following a -- an accident of certain descriptions,  
11 the injured person gets tested. Do you have any way  
12 of determining whether or not that person caused the  
13 accident? Is anyone else tested on the site?

14 MR. NEASON: Yeah, and that's -- and, you  
15 know, I should have said that, and when we send you  
16 the policy, it will say this, but yeah. Whoever's  
17 involved in the accident goes. If two trucks hit each  
18 other, both of those guys will go. You know, if one  
19 guy is holding a pin and another guy swings a hammer  
20 and one of them busts a thumb, both of those guys need  
21 to go.

22 MS. CARR: Oh, okay.

23 MR. NEASON: And, it's just for that  
24 reason. It's so much easier if it's an -- everybody's

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1 policy, if it includes supervisors, if it includes  
2 whoever on the site. You know, there's no room for  
3 anyone to sit back and say that we're just aiming or  
4 targeting this at any one person or any one group.

5 MS. CARR: So, as your company does it,  
6 drug testing is a part of an accident investigation?

7 MR. NEASON: Yes.

8 MS. CARR: One of the questions that we're  
9 asking about is, is there -- I guess, basically,  
10 should there be -- how do you feel about that being a  
11 standard part of accident investigations? Should that  
12 be something that every operator includes?

13 MR. NEASON: If I'm talking to another  
14 operator, I'm going to tell the other operator that  
15 this is a big deal, that substance abuse is a huge  
16 factor in these accidents, and you have to bear this  
17 out, and you need to institute a program. It's  
18 critical. And, whenever we, you know, acquire a new  
19 operation, this is the first thing we -- this is step  
20 one. Day one, before you do anything else with us as  
21 the new owner of your group, this is what we do,  
22 because this is, fundamentally, part of who we want to  
23 be.

24 So, yeah, if I'm looking at an operator,

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1 I=m going to tell an operator, "That's what you need  
2 to do." Do I believe that the federal government  
3 should come in and mandate the testing and have the  
4 testing, at some point, available so that they can  
5 verify that the testing was done and the testing was  
6 up to whatever standard it would need to be? My fear  
7 is that once you begin to head down that road, it's  
8 just a slope that falls of pretty quick, and I don't  
9 know where -- I don't know how you draw that in to  
10 make that part of something that you can regulate  
11 without building such a huge structure for it, that it  
12 becomes overly burdensome on somebody who doesn't have  
13 the ability to naturally do that.

14 So, talking to an operator, I think it's  
15 critical, and we work through our associations to do  
16 that, and we work through just talking to other folks,  
17 and we work with just making sure that as operators,  
18 we're doing what we're supposed to do.

19 It becomes an entirely different deal when  
20 I say, "does somebody else need to step in and do it?"  
21 because, I=m not sure if the influence it would take  
22 to manage that sector with a regulatory means would  
23 not hurt all the folks that have set up these  
24 programs, and we established them with this in mind,

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1 and yet, if you come in and go, "No, it has to look  
2 like this," well, then you've taken all the people who  
3 were being responsible and doing what they're having  
4 to do, and go back and restructure the program to fit  
5 whatever mold that would be, while, you know, it's  
6 about 80 percent would hit, and the 20 percent group  
7 would just kind-of have to deal with what they have  
8 after that.

9 So, that's a huge answer to a question  
10 that you really didn't even ask, but --

11 MS. CARR: No, no, I think that is what I  
12 was asking. My sense is -- what I'm hearing is that  
13 it should be part of an accident investigation, but it  
14 should be an operator decision, and that the current  
15 requirement to do some type of accident investigation  
16 is sufficient, and maybe some education and awareness.

17 MR. NEASON: Exactly. I think it's very  
18 fair to say that -- like I said, I was surprised that  
19 there was nothing on the books at all on the coal  
20 side. I think that what we have on the books on the  
21 metal/nonmetal side, though it may benefit from some  
22 rewording, you know, years after it was put together,  
23 it may help it a lot, you know, to go back through and  
24 see if, maybe, something a little more detailed could

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1 be put out.

2 But, I wouldn't want to put any huge,  
3 burdensome regulation on a group that would have to  
4 sit back and look back and say, "Well, how do we  
5 manage all of these parts?" I mean, what stands out  
6 most is that, you know, we've got a ready-mix  
7 division, and so all these guys are under DOT, you  
8 know, rules, and so we've got such a huge program, and  
9 there are so many rules involved in how you have to do  
10 each and every step of the guys that are drivers,  
11 who's -- their work actions affect public safety.

12 I understand how big of a deal that is and  
13 how important it is that we have something that  
14 pervasive. When I look at that and say, "Well, how  
15 are you going to put it on --" you know, I've got a  
16 sand plant that has two guys and a supervisor. One's  
17 in the loader, one guy's out there on the dredge, and  
18 then there's the boss who weighs trucks.

19 You know, you go and you look at that  
20 place, and you go, "Well, how can you lay this kind of  
21 regulation on those folks and expect them to be able  
22 to benefit from it the way this other group would?"

23 So, I kind-of like the way that it was  
24 addressed in the metal/nonmetal side. I would like to

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1 -- you know, I don't have an interest in the coal  
2 world, so, you know, other than staying warm and  
3 having electricity, but, you know, I don't want to  
4 talk for them, but you know, I think giving it some  
5 bite, like that gentleman said earlier, from that  
6 perspective, would probably benefit everybody.

7 MR. SEXAUER: I guess I've heard at other  
8 meetings that people were maybe suggesting that the  
9 way the language was worded in the existing rule puts  
10 the burden on the mine operator rather than the miner.

11 Now, I'm not suggesting that we're going to do  
12 anything to put the burden on the minder, but I'm --  
13 you're actually coming down in support of the existing  
14 language on the metal/nonmetal rule. Is that correct?

15 MR. NEASON: Sure.

16 MR. SEXAUER: Okay, that's what I wanted  
17 to verify.

18 MR. CROCCO: Would you have any idea what  
19 it costs to have one of your tests analyzed, or how  
20 many your company has analyzed per year?

21 MR. NEASON: Well, it's -- I could guess  
22 at how many my company has -- and when I say I could  
23 guess, we're a nationwide company. We're the third  
24 largest aggregate group, so while the group I deal

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1 with day in and day out is kind-of about the same size  
2 as Ed's, what Hanson does, nationwide, I don't know,  
3 and I would be guessing at a number.

4 I will tell you that a big factor in the  
5 cost of all of that has to do with what kind of  
6 testing that you're having done, how specific that  
7 you're having that test analyzed, and how many  
8 controls are put on it to make sure that you're  
9 getting what you're supposed to be getting.

10 If you hear something like our cost, which  
11 would be around \$30.00 or \$40.00 for the way that we  
12 have ours set up, ours matches DOT's perfectly. You  
13 know, our goal was, let's follow the DOT example, that  
14 way, it's pretty well understood, all the labs already  
15 know this, there's no extra setup that goes into it.  
16 It's just, follow what the DOT set and we'll hit those  
17 rules together.

18 But, if you move over and you say, "Well,  
19 I want to test for some extra drugs and I want it sent  
20 to several different laboratories for double-blind  
21 checks and send it to somebody else to get it  
22 reverified, then we'll have a Review Officer that does  
23 --" these are all great things to do, and if you were  
24 going to go in and say, "I want to have it -- all my

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1 bases covered," you know, I could understand wanting  
2 to buy something on the end of \$100.00, \$150.00,  
3 \$200.00. But, you know, just to follow what the DOT  
4 says, usually, it's a \$50.00 test if you just follow  
5 that program, which is what we've done.

6 MR. SEXAUER: Thank you.

7 MR. NEASON: Sure.

8 MR. SEXAUER: Before I ask if there's any  
9 other speakers, Jennifer, on the panel here, mentioned  
10 to me during the break that she wanted to ask a  
11 question of Mr. Elliott.

12 MS. HONOR: It was just a follow-up  
13 question to a couple of the studies that you had  
14 mentioned, and I think I may have overheard you  
15 speaking to Bill Baughman about that, so --

16 MR. ELLIOTT: Postal Service and the Navy.

17 MS. HONOR: And then, you -- toward the  
18 end of your remarks, you mentioned a study that  
19 discussed the high turnover rate of users and abusers,  
20 and I was wondering, was that part of the USPS study  
21 as well? And, if not --

22 MR. ELLIOTT: I'll verify that and I'll --  
23 I'm going to provide that to you.

24 MS. HONOR: Wonderful, okay, great. Thank

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1 you.

2 MR. SEXAUER: Thank you. Okay, is there  
3 anyone else who would like to address us? Okay, there  
4 are no other speakers, so this meeting is adjourned.

5 (Whereupon, at 11:51 a.m., the proceedings  
6 in the foregoing matter were concluded.)

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