

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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FRIDAY, NOVEMBER 4, 2005

Earhart Rooms A & B
Hyatt Regency Pittsburgh
1111 Airport Road
Pittsburgh, Pennsylvania

+ + + + +

9:00 a.m.

MSHA Panel Members:

Ed Saxauer, Chairman
Chief, Regulatory Development Division

Bill Crocco, Chief
Accident Investigation Division

Gene Autio, Representative
Metal and Non-metal Program

Tom MacLeod
Education and Training Division

Bill Baughman, Regulation Specialist
Office of Standards

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

2 (9:03 a.m.)

3 MR. SAXAUER: Good morning. My name is
4 Ed Saxauer. I'm the chief of the regulatory
5 development division for the Office of Standards,
6 Regulations, and Variances of the Mine Safety and
7 Health Administration.

8 On behalf of David Dye, the acting
9 Assistant Secretary of Labor for Mine Safety and
10 Health, I welcome you to this public meeting. This
11 meeting provides an opportunity for you to comment on
12 the topic of the use of or impairment from alcohol or
13 other drugs at mine property.

14 Also with me this morning are other
15 individuals from the Mine Safety and Health
16 Administration. On my right is Bill Crocco, who is
17 the chief of the coal accident investigation
18 division; Gene Autio, who is representing the metal
19 and non-metal program. On my left is Tom MacLeod, on
20 my immediate left is Tom MacLeod of the education and
21 training division, and Bill Baughman, who is a
22 regulation specialist with the Office of Standards.

23 This is the sixth of seven public
24 meetings. These meetings were announced in our

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1 advanced notice of proposed rulemaking, or ANPRM. We
2 published this in the Federal Register on October the
3 4th, 2005.

4 We held meetings last week in Salt Lake
5 City, St. Louis, and Birmingham, and earlier this
6 week in Lexington and Charleston, West Virginia. We
7 will hold our final meeting in Arlington, Virginia,
8 on Tuesday of next week.

9 The Federal Register document has
10 detailed information about the dates and exact
11 locations for the meetings, as well as a discussion
12 of MSHA's reasoning behind the ANPRM. There are
13 extra copies of that document on the table just
14 outside the room.

15 Let me go off the record here for a
16 second.

17 (Off the record.)

18 MR. SAXAUER: I've asked Bill Baughman if
19 he would distribute a copy to everyone in the
20 audience.

21 The purpose of these meetings is to
22 obtain information about the use of or impairment
23 from alcohol and other drugs on mine property. We
24 will use the information you provide at these

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1 meetings, as well as your written comments, to help
2 us make decisions about whether we need to change our
3 existing rules, develop new rules, or provide
4 training or other assistance to the mining community
5 on these issues.

6 Because there can be a variety of
7 approaches to address the problems of alcohol and
8 other drugs, we are seeking information relating to
9 both regulatory and non-regulatory approaches. The
10 information we obtain from these meetings and
11 comments will help us develop a more informed
12 understanding of the problem and solutions.

13 Our preliminary review of our fatal and
14 non-fatal mine accident records revealed a number of
15 instances in which alcohol, or other drugs, or drug
16 paraphernalia were found or were reported, or in
17 which the post accident toxicology screen revealed
18 the presence of alcohol or other drugs. However, our
19 accident investigations do not routinely include an
20 inquiry into the use of alcohol or other drugs as a
21 contributing factor. There may be instances in which
22 alcohol or other drugs were involved in accidents and
23 either are not reported to us or we do not uncover
24 them during investigations.

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1 We are concerned that alcohol and other
2 drugs can create risks to miner safety. We have
3 initiated a number of education and outreach efforts
4 to raise awareness in the mining industry of the
5 safety hazards stemming from the use of alcohol and
6 other drugs. They include alliances with four
7 international labor unions, production of awareness
8 videos on the hazards of alcohol and other drugs,
9 monetary grants to states to provide substance abuse
10 training, and stakeholder meetings at the local level
11 to discuss these issues and raise awareness of the
12 problems.

13 Additionally, during a one-day summit we
14 conducted with the states of Kentucky, Virginia, and
15 West Virginia, in 2004, several coal mine operators
16 described the effectiveness of a drug-free workplace
17 program and expressed their concern that such
18 programs were not universal in the industry.

19 The significance of the problem of
20 alcohol and other drugs in the workplace has been
21 recognized by the federal government, and a number of
22 programs have been implemented and various statutes
23 enacted with the goal of reducing the use of alcohol
24 and other drugs in the workplace.

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1 For example, the Anti-drug Abuse Act of
2 1986 allows the Secretary of Labor to initiate
3 efforts to address the issue. The Omnibus
4 Transportation Employee Testing Act of 1991 requires
5 the transportation industry employers to conduct drug
6 and alcohol testing for employees in, quote, "safety
7 sensitive," positions.

8 The Drug-free Workplace Act of 1998
9 establishes grant programs that assist small
10 businesses in developing drug-free workplace
11 programs. And DOL's Working Partners for an Alcohol
12 and Drug-free Workplace, of which we are a partner,
13 is a public outreach campaign raising awareness and
14 assisting employers to implement these programs.

15 On a regulatory side of the issue, we
16 currently have a safety standard for metal and non-
17 metal mines that addresses the use of alcohol and
18 narcotics at these mines. The rule language is the
19 same for both surface and underground metal and non-
20 metal mines. And the language simply states, quote,
21 "Intoxicating beverages and narcotics shall not be
22 permitted or used in or around mines. Persons under
23 the influence of alcohol or narcotics shall not be
24 permitted on the job."

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1 Between January 1, 2000, and June 30,
2 2005, we issued 75 violations of the metal and non-
3 metal surface rule, and 3 violations of the metal and
4 non-metal underground rule. We do not have a similar
5 standard for coal mines.

6 Using drugs or alcohol in a mine can
7 impair a miner's judgment significantly at a time
8 when a miner needs to be alert and aware. Even
9 prescription medicines can affect a workers
10 perception and reaction time. Mining is a
11 complicated and hazardous occupation, and a clear
12 focus on the work at hand is a critical component of
13 workplace safety.

14 Therefore, through these public meetings
15 and written comments, we are seeking data and
16 information about six general topics that are
17 outlined in the Federal Register notice. They are as
18 follows:

19 A. The nature, extent, and impact of
20 substance abuse at the workplace, including how to
21 measure the extent of the problem.

22 B. The types of prohibited substances in
23 use and the problems they present.

24 C. The impact of effective training to

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1 address substance abuse.

2 D. How our investigation of accidents
3 could address alcohol and other drugs.

4 E. The aspects of a drug-free workplace
5 program, how they work, and how well they work.

6 F. The cost and benefits of addressing
7 substance abuse at mines.

8 The Federal Register document poses
9 several questions about each of these issues and you
10 are encouraged to respond to these questions
11 specifically.

12 The procedure for each of our public
13 meetings is the same. Those who have notified us in
14 advance of their intent to speak or who have signed
15 up today will make their presentations first. After
16 the scheduled speakers are finished, others are free
17 to speak. We will conclude this public meeting when
18 the last speaker has finished.

19 This meeting will be conducted in an
20 informal manner and rules of evidence will not apply.

21 The MSHA panel may ask questions to clarify
22 statements for the record, but there will be no
23 cross-examination of the speaker.

24 If you wish to present any written

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1 statements or information today, please clearly
2 identify your material and give them to me before the
3 conclusion of the meeting. I will identify the
4 material for the record, according to the title as
5 you submitted it. You may also submit comments
6 following the meeting, but you must submit those by
7 November 27th, which is the close of the comment
8 period. You may submit comments to us by electronic
9 mail, fax, or regular mail at the addresses listed in
10 the Federal Register notice.

11 A transcript of this meeting will be made
12 available on our website within several days. Thank
13 you for your patience and attention to these
14 introductory remarks.

15 We will now begin with persons who have
16 requested to speak. To ensure an accurate record,
17 please state your name and organization clearly, and
18 then spell your name. Our first speaker is George
19 Hespodar?

20 MR. HOSPODAR: Hospodar.

21 MR. SAXAUER: Hospodar, excuse me.

22 MR. HOSPODAR: Good morning.

23 MR. SAXAUER: Good morning.

24 MR. HOSPODAR: My name is George

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1 Hospodar, it's H-O-S-P-O-D-A-R. I'm with Rinker
2 Materials in Miami.

3 I won't keep you gentlemen too long. I
4 just, it's been I've been, my term in Safety has gone
5 from 1974 to present. Most of my time has been
6 either in the steel industry or in mining. And I've
7 seen the results first-hand of drug and alcohol
8 abuse, early on more alcohol abuse but in the last 30
9 years drugs have come on pretty strong. And they
10 tear up our people, they tear up their families, add
11 undue costs to the cost of doing business.

12 And, unfortunately, from what I've seen,
13 even with an active drug-testing program, unless the
14 individuals involved want to be helped, you really
15 can't help them. I'd like to see that change, but,
16 in my experience, that's what it's been.

17 Some of the things that I think that MSHA
18 could do, well, everybody, there continues to be a
19 problem even for companies who have active drug and
20 alcohol testing programs.

21 Consistency with testing, I mean, if you
22 get a guy injured and you can't get him to the drug
23 test before he gets to the hospital, there's a lot of
24 hospitals don't want to get involved or do the test.

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1 And I think that's information in an accident
2 investigation you really need to have.

3 And we've lowered our drug test positive
4 rates, we're down under one percent. We test 30
5 percent of the division every year and we're down to
6 less than 1 positive a year, which to me is
7 phenomenal. But still a lot of the new drugs that
8 are coming out, unless you test specifically for
9 them, you'll never know. You do a standard five-
10 pound drug test and these will slip right through the
11 cracks, and even if you do a ten-pound, some of them
12 slip right through the cracks.

13 And drugs and alcohol are incompatible
14 with running a safe mining operation. The equipment
15 is too big. Things happen too fast. You guys have
16 seen the mines and you've been on a lot of the haul
17 roads. You know, coming down off a mountain and you
18 lose control of your haul truck just because you're a
19 little too high, that's about the only chance you
20 get.

21 Testing is only a minor part of the
22 program. Education, counseling, EAP performance is
23 major and should be part of all these programs.

24 We conducted a confidential survey

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1 amongst our work group, I'm with the cement division,
2 but also through our aggregate group, asking our
3 employees if they wanted a drug and alcohol testing
4 program. And the positive responses were amazing how
5 many guys actually wanted a drug and alcohol testing
6 program, because they didn't want to be working next
7 to somebody in a high hazard area who could be
8 affected by drugs or alcohol. It seemed like only
9 the people who were also affected by drug and alcohol
10 voted against it, but I mean that's only from reading
11 confidential responses.

12 But I know in dealing through our safety
13 committees and that, that it's been a registered
14 complaint constantly, not only for our own employees
15 to be tested, but for outside contractors to be
16 tested on the same regularity as our employees. And
17 we try to do that with regularity. And like I said,
18 in the last few years, our biggest amount positives
19 have been in the contractors and they are gone off
20 the property before the ink dries on the paper.

21 I think MSHA could have a big influence
22 on this issue in two or three ways. I know they do
23 have a drug and alcohol education and training
24 program, but I think that needs to be strengthened.

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1 Include drug and alcohol as part of the root cause
2 investigation of fatalities. I think this is
3 information that really needs to be know. Provide
4 better interpretation and consistency on 56.2, 20001.

5 I know a lot of states have gotten to the
6 point where if you fail a drug test, you're accident
7 is non-compensable. I don't know if things like that
8 need to be done, but I do think that this is a
9 regulation that has to be personal to the individual,
10 not the company, such as taking smoking in a no
11 smoking area, or taking flammable materials down in a
12 coal mine. You know, the individual is held
13 responsible for that. To me, how could you hold a
14 company responsible for that. And if a company is
15 going out of its way to do drug testing and is
16 running a good program, to me the regulation has to
17 be for the individual, because it's an individual
18 decision that this guy makes. Or especially if
19 someone who is involved in an accident, heaven
20 forbid, the offending party is fine and a gentleman
21 was injured or killed, had nothing to do with the
22 alcohol or drug abuse, is just in the wrong place at
23 the wrong time.

24 That's about all I have to say, unless

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1 you have some questions?

2 MR. AUTIO: Do you do any testing after
3 accidents or incidents?

4 MR. HOSPODAR: Oh, yes. We do, we do
5 pre-employment. And I did make a mistake. It's
6 amazing to me how many pre-employment tests we get
7 that are positive. People know they are coming in
8 for a drug test and they fail anyway. To me it makes
9 no sense. We do post accident. We do random
10 testing. We do reasonable cause.

11 In the last five years, of the three
12 reasonable cause testings that we did, we turned one
13 positive. The other two were basically because the
14 guys were diabetic and were going into a low sugar
15 attack, which caused everybody to think they've got a
16 problem.

17 But we do, do that and post accident.
18 But like I said, one of the biggest problems with the
19 post accident is you can't get a drug-testing company
20 into the hospital to do the test. A lot of hospitals
21 just don't want to get involved. It's like throwing
22 up a wall, it's your problem, it's not ours, we're
23 here just to treat this individual. But we've had
24 success with having companies come in while employees

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1 are in the hospital to do the test. But at that, you
2 lose your time frame of reference --

3 MR. AUTIO: Can you attribute any
4 benefits to your accident rates or absenteeism or
5 anything for your drug program?

6 MR. HOSPODAR: It would be pretty hard to
7 do that. Although, our accident rate is, I just
8 looked at our divisional PRI for the other day and
9 it's 1.5. So I think we do a pretty good job of
10 holding down recordable injuries. And I just think
11 that the drug-testing program is part of the process
12 to hold that down.

13 We have had, like I said, we've been
14 doing testing since the time I've been with Rinker,
15 and we've seen our positive results drop like a rock
16 over the last two, three years. They were never real
17 high. But if I kept a record of how many, how many
18 pre-employments were bad, that would probably be the
19 highest number over all of them. But, you know, I
20 get people coming to me on a monthly basis and say,
21 you know, I think maybe we've got a problem here. So
22 you watch and, if you do, you test.

23 And to me our work force is real in tune
24 to that, making sure that everybody is on the up and

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1 up, who is on the work force, who could have input in
2 causing them harm, especially during a kiln down
3 (ph.) or a major rebuild situation where we have
4 contractors climbing over the place like ants. And,
5 like I said, we hold our contractors to the same
6 standard.

7 MR. SAXAUER: Let me just follow up on
8 that issue with the contractors. How do you actually
9 handle the contractor situation when someone comes,
10 when a contractor comes in, how do you deal with the
11 contractor?

12 MR. HOSPODAR: Number one, we meet with
13 every contractor before they start work. And this is
14 part of the contract, we run a drug-free workplace
15 here, anybody that is, anyone who has been injured
16 will be drug tested. And if you find a positive drug
17 test at that point in time, you know, it's up to them
18 on how they want to handle it with their worker's
19 comp, but that employee is off the property now. And
20 if we turn too many, the entire contractor will be
21 off the property.

22 MR. SAXAUER: What are the, what's the
23 size of your operations?

24 MR. HOSPODAR: What?

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1 MR. SAXAUER: What are the size of your
2 operations?

3 MR. HOSPODAR: Okay. At the cement mill
4 in Miami, we have about 130 employees. The entire
5 division, cement division has about 320 in two mills
6 and two ports, two ocean-going ports. And where I
7 expected to see more was on the longshoring end, in
8 the ports, but we don't, which is fabulous, because
9 longshoremen could be, it's a whole different ball
10 ground.

11 MR. SAXAUER: Well, in your opinion, is
12 there any one aspect of your program that's more
13 responsible for reducing the positive rate? Or what,
14 what portions of your program do you think are most
15 effective in that regard?

16 MR. HOSPODAR: Well, one part of the
17 corporate, we're part of an overall corporate program
18 and corporate set the standard for rehabilitation.
19 For you to be eligible for rehab, you have to come
20 in, and literally turn yourself in and ask for help.

21 If you get caught on a random drug test or the day
22 you get told it's time to go for your test, you can't
23 throw your hands up and go I need help.

24 There's been a lot of discussion back and

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1 forth on that point, but that part of it has got a
2 lot of teeth in it. And we have had people come to
3 us and say I need help, who probably -- the success
4 rate on a rehab may be two percent, but you've got to
5 say, well, you've got to give the guy a chance.

6 MR. SAXAUER: You mentioned that in your
7 survey a number of your employees indicated they
8 wanted a drug-testing program or some, some kind of a
9 drug program.

10 MR. HOSPODAR: Some form, right.

11 MR. SAXAUER: Do you have an idea or
12 would this be most of your employees that wanted that
13 or --

14 MR. HOSPODAR: It was in the high, it was
15 in the low 90 percentile.

16 MR. SAXAUER: Okay.

17 MR. CROCCO: On your post-accident
18 testing, you mentioned that the victim would be
19 tested routinely. Is anybody else included in that
20 testing? I mean if a, if a guy were operating a
21 machine or a truck and run over somebody, obviously
22 the victim there may have been innocent. So --

23 MR. HOSPODAR: The operator would have
24 been tested.

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1 MR. CROCCO: So do you test everybody
2 directly involved in the accident routinely?

3 MR. HOSPODAR: If we have a vehicle
4 accident involved with a pedestrian, of course, the
5 pedestrian is going to have a worse accident of
6 anybody. And it's just part of the deal, if you're
7 going to the doctor, you're going to supply a drug,
8 but, in that case, the operator would definitely be
9 tested.

10 If they were moving a crane, they had a
11 spotter for the crane, the spotter would go, too.
12 It's you'd have to sit down and look at every
13 individual accident to see how many types of people,
14 how many people who were involved that you would
15 test. But we have had situations we have sent out as
16 many as five people for one operation. And it was
17 really just a major close call, someone could have
18 died in.

19 MR. SAXAUER: If I may, do you have
20 objective criteria or, as you suggested, you handle
21 this on a subjective, a case by case basis?

22 MR. HOSPODAR: Multiple people involved
23 in a single accident, yes. It's not spelled out.
24 You review the accident with the supervisor or the

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1 department head and, in some cases, even a union
2 representative. Guys will get a drug test, some of
3 these people, this is what happened, this is who got
4 hurt, if anyone, this is where the shortfalls were,
5 we need to come up with a list, you know, which
6 people involved in this had some actions that were
7 questionable and should be brought to test, when we
8 can.

9 MR. CROCCO: We've heard a pretty wide
10 range of costs to have drug tests analyzed. Do you
11 have any idea how much one of your analyses costs?

12 MR. HOSPODAR: Ours is \$35 bucks.

13 MR. CROCCO: \$35 bucks?

14 MR. HOSPODAR: Yeah.

15 MR. CROCCO: Okay.

16 MR. BAUGHMAN: Can you elaborate on that
17 a little bit, if that's for the screening and then if
18 it comes up in --

19 MR. HOSPODAR: That's for the collection
20 and the screening.

21 MR. BAUGHMAN: Collection and screening.

22 And then if it comes up indicated that there might
23 be further testing needed, is there additional cost?

24 MR. HOSPODAR: We have an additional

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1 cost.

2 MR. BAUGHMAN: Inclusive.

3 MR. HOSPODAR: So, yeah, for, you know,
4 Miami's got 4 million people in two county areas, so
5 a lot of people doing drug tests, and so there's a
6 lot, for a lot of good reasons. But it costs. Even
7 when I worked back here in Pittsburgh, it was not
8 much more than \$35. And we got our results quick as
9 you can imagine. Usually when you don't, you have a
10 problem.

11 MR. BAUGHMAN: Did you mention that you
12 had an employee assistance program?

13 MR. HOSPODAR: Yes.

14 MR. BAUGHMAN: And what about general
15 medical care program for your employees?

16 MR. HOSPODAR: Oh, yeah, you know,
17 someone comes to us, they'll walk up, I'm trying to
18 work this problem out on my own, I don't have a
19 chance here, can I get help? Our EAP, not a problem,
20 get them into a problem. I'd say probably 90 percent
21 of the cost is picked up by their EAP program.

22 MR. BAUGHMAN: And the testing, the
23 random testing, is that part of the EAP or is that a
24 separate --

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1 MR. HOSPODAR: Yeah, well, your EAP
2 program, you're tested at my whim for the next year.

3 And then you, and then for the next ten days, you go
4 for a ten-day test, one, just till your first year is
5 up, and then you're back on a normal schedule with
6 everybody else.

7 MR. BAUGHMAN: But as far as just a
8 general random testing, you said you test about 30
9 employees per year?

10 MR. HOSPODAR: No, we test --

11 MR. BAUGHMAN: Thirty percent?

12 MR. HOSPODAR: -- 30 percent.

13 MR. BAUGHMAN: Thirty percent.

14 MR. HOSPODAR: Of the division, yeah, so
15 we'll get well over 100 employees out of the 330-man
16 division.

17 MR. BAUGHMAN: And that --

18 MR. HOSPODAR: Roughly 12 a month.

19 MR. BAUGHMAN: How do you randomize?

20 MR. HOSPODAR: We have a randomized
21 program. The secretary sits in there and pushes a
22 button, and it kicks them out on a list.

23 MR. BAUGHMAN: And that testing is part,
24 not part of the EAP system, general --

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1 MR. HOSPODAR: That's just the general
2 random drug testing program.

3 MR. BAUGHMAN: That you, you work with a
4 contractor for the sampling and --

5 MR. HOSPODAR: We have a group. We just
6 started a new group, yesterday, coming to the plant.

7 And we'll try to pick up as many of them as we can
8 that day, at the plant. Somebody is on vacation,
9 when they come in, we take them to the plant, the
10 next week for their test.

11 MR. BAUGHMAN: Yeah, okay. That's one
12 part I guess I wasn't very clear. To administer the
13 random drug testing, do you do on-site collection or
14 do you send them to a site?

15 MR. HOSPODAR: We try to do on-site
16 collection, get as many as we can every month,
17 because it's simpler for everybody. But if I've got
18 a guy on vacation, on a day off, when I call these
19 people into do it, the next day they came in or the
20 next week, someone will take them to the clinic to
21 have a test drawn.

22 MR. BAUGHMAN: I see.

23 MR. HOSPODAR: So --

24 MR. SAXAUER: I have just one more

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1 question. As far as the employees that we would
2 consider, you know, miners under our Act, would you
3 have any numbers as far as what the percentage was at
4 the onset of your program and what the percentage of
5 positives are currently?

6 MR. HOSPODAR: Our current range of
7 positives is under one percent. Our guess to when we
8 started was probably a three percent guess. That
9 guess was based on testing that the corporation would
10 do. They would come on an operation and walk the
11 whole operation down, just test the whole operation
12 one day. And anybody that came in, if I worked for
13 another division and you walk into the cement plant,
14 you're going that day. They were run. But the worst
15 they ever got was in one of the offices. But we were
16 running in the operations about three percent. And
17 you're talking only about a two percent drop, but
18 that holds real consistently.

19 But like I said, what I worry about are
20 the drugs that slip through on a normal five-drug
21 count.

22 MR. SAXAUER: So you tested the employees
23 in the office, as well, so --

24 MR. HOSPODAR: Oh, yes.

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1 MR. SAXAUER: -- you test everybody?

2 MR. HOSPODAR: Everybody in the division
3 is part of that random sample, even the president of
4 the division, as it should be. And I've had to call
5 Eddie a couple of times and say it's time for you to
6 go. But we get no pushback from any of the corporate
7 folks that are in our division or for the, you know,
8 like I said, the president of the division, the vice
9 president of the division. You know, usually, it's
10 like, damn, I've got to be, and you've got 24 hours,
11 go, okay. But it's worked for a while.

12 MR. SAXAUER: Okay. Bill?

13 MR. BAUGHMAN: Yeah. Have you had any
14 incidences where somebody that has tested positive
15 has come back and challenged --

16 MR. HOSPODAR: Oh, yeah.

17 MR. BAUGHMAN: -- the results or the
18 actions?

19 MR. HOSPODAR: I've had two people do
20 that, two people here, probably ten total in my
21 career, and none of them has ever passed the test,
22 because they'll resample the same --

23 MR. BAUGHMAN: Has there been very many
24 costs associated with that type of activity --

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1 MR. HOSPODAR: The cost usually, well, I
2 can tell you, in all the cases I was involved in, if
3 you're challenging the results, you pay for the next
4 test. And if the test comes up negative, I'll pay
5 for the test. But if it comes out positive, you've
6 already paid for the test, you've lost your money.
7 But I've never had one come back.

8 MR. BAUGHMAN: All right.

9 MR. SAXAUER: Okay, thank you very much.

10 MR. HOSPODAR: Thank you.

11 MR. SAXAUER: Our next speaker is John
12 Matsko, III.

13 MR. MATSKO: Good morning, gentlemen.

14 ALL: Good morning.

15 MR. MATSKO: My name is John Matsko, III.

16 I am the director of training, excuse me, the
17 director of safety, personnel, and environmental
18 matters for PBS Coal Company located in Somerset
19 County, Pennsylvania.

20 I agree with, with all of you that drugs
21 and alcohol has definitely been a problem. It's been
22 a problem since the beginning of my start in the
23 mining industry, which is June of 1969. In June of
24 '69, through the years, I've found, because I was

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1 actually in the work force working side by side with
2 miners, that alcohol was a big problem. After the
3 Vietnam war, it turned into marijuana, cocaine,
4 hashish, and those types of drugs. It changed
5 because our society was changing, just as it is,
6 today. It's changing inside the mining industry like
7 it is out here. Drugs become more easier to get.
8 The heroins and those type of drugs have become
9 easier because the cost of them. It's a bigger
10 problem than what a lot of people understand or even
11 know. I'm speaking from personal experience, because
12 my son is a heroin addict. I know many of the young
13 men in the area that have got addicted to the heroin.

14 How danger is it, dangerous? It's like giving a six
15 year old an automatic weapon with one round chambered
16 and the safe off.

17 We do testing at PBS Coals. In my 20
18 years as manager, I have disciplined, let me say it
19 this way, I have discharged two individuals because
20 of alcohol and drug use. I've been doing this for 20
21 years in the industry. I became aware of it a long
22 time ago, as I told you.

23 We like to think we're ahead of many of
24 the companies in the industry. We do pre-employment,

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1 post accident. And when I say accident, all people
2 that are injured on-site must be transported by
3 ambulance. If they refuse, they are disciplined up
4 to and including termination. They are transported
5 to a medical facility. We have an agreement with the
6 local hospitals, a letter has been sent to them, and
7 all individuals transported are drug tested.

8 We also drug test those individuals who
9 have accidents that are property damage or equipment
10 damage. They are also transported by ambulance and
11 tested.

12 The pre-employment, I've had two
13 individuals fail their drug test. We have zero
14 tolerance. One strike and you're out. We do afford
15 the individuals to come to us, if they have a problem
16 with drugs or alcohol, for rehabilitation at no cost
17 to them. And as our last speaker said, if the don't
18 come to us and we do test them, they are discharged.

19 They are terminated.

20 My thoughts are this, if they don't go
21 for drug testing, they refuse to go in the ambulance,
22 it becomes a legal matter, so be it. It'll be at
23 their expense.

24 Your turn.

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1 MR. CROCCO: You mentioned you do pre-
2 employment and post accident. You don't do any kind
3 of random testing on an ongoing basis?

4 MR. MATSKO: We do if an employee shows
5 the signs where we may do, may do the testing, such
6 as being late on a regular basis, not cooperating
7 with the other employees, not getting his work tasks
8 done, leaving work early on a regular basis, those
9 type of things, we do a random testing at that point.
10 We do not, per se, go through 30 percent, 10 percent
11 of our work force for testing.

12 One of the most important parts of this
13 is, is education. We've been doing drug and alcohol
14 testing for a number of years in our annual refresher
15 training class. We are assisted in training with
16 Penn State University and DEP.

17 The one big thing is hiring of these, of
18 your employees is very important. You've got to
19 start right there. And what I mean is you've got to
20 do screening, background checks, etc. It can't be I
21 need a man tomorrow, how soon can you get him in for
22 a physical, and get him trained in the classroom, and
23 get him to work. No, no. You've got to understand
24 this is going to take some period of time. It may

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1 take up to three weeks, four weeks till you can
2 initially clear this gentleman.

3 Some people use the word nepotism, but I
4 find it works. We're in a small mining area. And
5 I'm going to say this, of the 350 employees that are
6 employed at PBS, I know each one's first name, last
7 name, what shift, what piece of equipment and what
8 job he's on. We've become very close. I've become
9 very close to my men. Nepotism, it works.

10 If we have a problem with anyone of drug
11 or alcohol abuse, the employees would be the first to
12 know. I'd be the second. They are that close with
13 us in the company. They will come and report if
14 they're having problems with so and so on the job of
15 arguing, fighting, not performing his work. I
16 recently asked my two superintendents, my general
17 superintendent of the service, and general
18 superintendent of the plant did we have a problem.
19 Their answer was no, and I believe them, because the
20 same people they're dealing with everyday, I know
21 them also. I know them in their social life. That's
22 the advantage that I have, being in a small area.
23 Being in a small community, word of mouth goes a long
24 way when you're hiring. You know, I never use the

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1 three references that are on that application. Those
2 are the last three I'd want to use.

3 MR. SAXAUER: If you were going to give
4 us some advice on what we can do as a federal agency
5 to deal with the drug problem on mine properties,
6 what would you recommend to us?

7 MR. MATSKO: I'm going to recommend,
8 because there are so many small operations, just the
9 other day, to give you an example, I stopped for
10 lunch on the road and there was a two-man band at one
11 mine and another man they have five employees. I
12 think earlier they were saying in the back that a lot
13 of people didn't know the seminar was today, okay,
14 that we were having this today. One of them don't
15 have the access to computers, because they're just
16 little mom-and-pop coal mines, a lot of places. But
17 we need and I'm a firm believer in this, I've always
18 been, because I trained, was an instructor for Penn
19 State University working with Donald Conrad. Tom, I
20 think you know Donald, okay. Don and I go way back.
21 That education and training of managers, safety
22 directors, first line supervisors, and then into the
23 work force. I think it's a big education process.
24 It's a difficult one, because this problem we have,

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1 you know, is not just in our industry. It's been
2 here for many years.

3 I can just imagine how many deaths that
4 were caused by drug and alcohol in the past that we
5 did not do testing or recognize in the earlier days.

6 So it's not something new. It's something new that
7 people are recognizing. So education and training
8 would be my answer.

9 MR. SAXAUER: Let me just clarify. When
10 I spoke to you guys in the back of the room before
11 the meeting, I didn't mean to suggest that people
12 didn't know that there was a meeting today. I guess
13 what I really was talking about was that in another
14 meeting a speaker mentioned that she was, I guess,
15 sort of surprised that we didn't have a proposed rule
16 at this stage. And really this is our effort to try
17 to elicit input to help us decide whether we are
18 going to develop a rule and, if so, what the nature
19 of that rule would be. So I might as well clarify
20 that again for this audience. So we are looking for
21 your input and your help to enable us to determine
22 the best possible way to proceed with this. Okay.

23 MR. CROCCO: Can I ask you a question
24 about following up on the education and training

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1 aspect, how do you handle that at your company, is
2 that something you do during annual retraining or do
3 you handle that during safety meetings, or at other
4 times to, to get that educational aspect out to the
5 employees?

6 MR. MATSKO: Okay. Originally, we began
7 in the annual refresher training class. And then, of
8 course, with the supervisors, with their additional
9 training they're required every year, we began some
10 time ago giving a little bit, a little bit, a little
11 bit, feeding, feeding them, nurturing them along very
12 slowly to where we are today. But it happens in the
13 annual refresher and supervisor training.

14 Now we do speak about it at our safety
15 talks, when accidents occur, as they in the past were
16 suspected on drug and alcohols, okay, from reading
17 the fatal grams, we bring that to their attention.
18 Well, we also have a monthly newspaper that we, it's
19 called The Bulletin, that we issue to each family.
20 We send it to their homes. And we always, it always,
21 almost 100 percent of it basically covers safety on
22 the job, for the family to read. So that also, that
23 information is going to the home from us also.

24 MR. MacLEOD: If I could ask a question

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1 along the lines of the education and training. If
2 you were to tell or recommend to MSHA in terms of
3 education and training, what would you visualize that
4 an education and training program dealing with the
5 issue of drugs? We've heard some people talk about
6 their training is just talking about their policy,
7 you know, not anything further beyond that. I'm just
8 curious where you think, you know, the training ought
9 to go beyond just a discussion of, in your case, the
10 policies that you have in place?

11 MR. MATSKO: Okay. Well, some, what
12 we've done to help educate everyone is that they
13 recognize the signs and symptoms of a team member
14 that may be using drugs or alcohol. We use the fatal
15 grams or highway statistics. We use all available
16 information that we can. I mean we, we trying to
17 paint it very black, very black with a red outline of
18 blood. We educate them to the point, Tom, where we,
19 they know we're not playing games. We have zero
20 tolerance. So we need, we need to, you know, train
21 them, educate them, not only the effects of drugs, of
22 drug and alcohol on the site, but at home, where
23 families are torn apart. In fact, where murders, a
24 lot of robberies turn into murders, we paint it as

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1 black as we can to show them the severity of it.
2 You're asking me for a course outline. It's one of
3 those things, Tom, where you just start rolling when
4 you're in class as an instructor.

5 MR. MacLEOD: Thanks.

6 MR. AUTIO: Do you do any specialized
7 testing for your supervisors, managers on the
8 symptoms beyond for the regular miners, for them to
9 recognize them, someone's maybe under the influence
10 of drugs or alcohol?

11 MR. MATSKO: We basically, it's the
12 courses we've done with the state, and with DEP, and
13 Penn State, when our foremen come through their
14 yearly training, they're in with the crews, okay. So
15 they're getting the same training in that eight
16 hours. And then when the supervisors come in,
17 they're getting a little more advanced, more
18 information on drugs and alcohols, of recognizing the
19 signs and symptoms of abusing it or abusing it, I
20 should say.

21 MR. AUTIO: And then for the testing that
22 you're, you're doing, would you be able to give us an
23 idea of the costs for your testing and how many? Do
24 you do a five panel screen or do you do more than

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1 that?

2 MR. MATSKO: We do a five panel. Our
3 cost also around, I'm going to say somewhere of \$40,
4 \$40 to \$45. If you're looking for percents of people
5 that I have pre-employment, which most recently
6 happened. We had two candidates failed a pre-
7 employment test. And one thing about drug screening,
8 we were speaking back in the back room earlier, some
9 of these guys are as slick as professional ball
10 players, when it comes to drug testing. There's all
11 type of disguise agents they can take to disguise the
12 drug they're taking. It's kind of like a steroid
13 with the ball players. As fast as they detect what
14 the steroid is, they're masking it with something
15 else. So it's an ongoing game.

16 The two fellows that I had, their samples
17 came up negative but diluted, which means they
18 altered the sample in some means by adding another
19 contaminant, another drug, or by digesting, digesting
20 a lot of water, okay. If you give them any kind of
21 time period, you can say, hey, I want you there
22 tomorrow morning at 8:00, they're going to go home
23 and drink or do whatever, as much water as they can.
24 It'll dilute the sample. And a lot of places will

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1 test, it'll come up negative. Ours, they're, they're
2 checking it and it'll come up. It won't tell you the
3 drug, but it'll tell you it's diluted.

4 MR. SAXAUER: Do you treat that as a
5 positive?

6 MR. MATSKO: Yes. Yes. Yes, we do. In
7 my history there of a little over 21 years, it's
8 been, with this company, our percent of detection has
9 been about .6 percent, .06 percent, less than 1
10 percent.

11 MR. SAXAUER: That's the pre-employment
12 or the --

13 MR. MATSKO: That's pre-employment and
14 post accident. Our absent rate, we're, the PBS Coals
15 has one of the lowest incident rates in the United
16 States for an operation of its size. We're honored
17 every year or almost every other year by the National
18 Home Safety Association. And myself being president
19 of the Somerset Council, we've had guest speakers
20 come into our council and do presentations of drug
21 and alcohol abuse.

22 And once again, at those meetings, we're
23 open to, our Homes meeting, on those occasions, the
24 families come in. If you have a son or a daughter,

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1 you can bring them into that meeting, or your wife,
2 at that particular meeting.

3 MR. SAXAUER: Anything else?

4 MR. AUTIO: You did say you have, did you
5 have any DEP program or are you, you have an employee
6 assistance program, you said, if they come to you
7 before they test positive?

8 MR. MATSKO: Yes, yes. And this is one
9 of the things we cover in the annual refresher
10 training. We've done it for years. The team members
11 are made aware that if they have a drug or alcohol
12 problem, or a member of their families, we would
13 assist them confidentially in giving them the help
14 that they need or their family members need. We try
15 to give them the proper guidance to counseling
16 organizations, church, medical, psychological,
17 whatever it may be. But if they do not come forward
18 to us and we suspect or they have an accident and
19 they become positive, they are terminated.

20 MR. AUTIO: Have you had some successes
21 with people going into programs and coming back, and
22 continuing to be good, good workers, miners?

23 MR. MATSKO: You know, I've only had, and
24 this was about ten years ago, I had one miner go into

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1 a, he actually, at that time, we were handling things
2 he didn't have a choice, you know -- yeah, he did.
3 It was either go into counseling, go into the ward,
4 or be terminated. And he lasted two days in
5 counseling, in a ward, in a professional ward, and he
6 walked out. And I haven't seen him since.

7 MR. SAXAUER: Thanks. Any other
8 questions? John, thank you.

9 MR. MATSKO: Yes. Thank you, gentlemen.

10 MR. SAXAUER: Are there any other
11 speakers, at this time? Okay, no one has indicated
12 an interest in speaking.

13 What I'm going to do is go off the record
14 for about ten minutes, we'll take a little break,
15 then we'll come back and we'll ask the same question,
16 and see if we can elicit any different response in
17 terms of speakers. Okay, we're off the record now.

18 (Off the record.)

19 MR. SAXAUER: Back on the record. Is
20 there anyone in the audience who cares to address us?

21 If not, then we'll just adjourn the meeting. Thank
22 you.

23 (Whereupon, at 10:07 a.m., the hearing
24 closed.)

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