

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

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PUBLIC MEETING ON THE USE OF OR IMPAIRMENT FROM
ALCOHOL AND OTHER DRUGS ON MINE PROPERTY

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October 24, 2005

Little America Hotel

500 South Main Street

Salt Lake City, Utah

The above-entitled public meeting convened, pursuant to notice, at 9:00 a.m., REBECCA J. SMITH, Acting Director, Office of Standards, Regulations and Variances, MSHA, presiding.

ALSO PRESENT:

EDWARD SEXAUER, Chief, Regulatory Branch,
Office of Standards, Regulations and
Variances
TOM McCLOUD, Training Policy Organization,
MSHA
GENE AUDIO, Metal and Non-metal Division,
MSHA

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

(time not provided)

MS. SMITH: Good morning. My name is Becky Smith. I am the Acting Director of the MSHA Office of Standards, Regulations and Variances. And on behalf of David Dye, who is the Acting Assistant Secretary for Mine Safety and Health, I'd like to welcome you all to this public meeting today.

The purpose of this meeting is to discuss -- have you discuss with us the use of, or impairment from, alcohol and other drugs on mine property.

I'd like to also introduce others who are with the panel here today. On my right is Ed Sexauer. Ed is the Chief of MSHA's Regulatory Development Division, and he is the -- leading this effort for the agency. On my left is Tom McCloud. Tom is with MSHA's training policy organization, and on his left is Gene Audio, who is with MSHA's metal and non-metal organization.

This is the first of seven of these public meetings, and these meetings were announced in the advance notice of proposed rulemaking, which was published in the Federal Register on October 4, 2005.

The other meetings will be held in St. Louis, Missouri; Birmingham, Alabama; Lexington, Kentucky;

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1 Charleston, West Virginia; Pittsburgh, Pennsylvania;
2 and Arlington, Virginia.

3 The Federal Register document lists the
4 dates and exact locations for the remaining meetings,
5 and there are extra copies in the back if you'd like
6 to have an extra copy.

7 The purpose of these meetings is to obtain
8 information about the use of, or impairment from,
9 alcohol and other drugs on mine property. We'll use
10 the information from these public meetings and from
11 written comments to help us make decisions about
12 whether we need to change our existing rules, develop
13 new rules, or provide training or other assistance to
14 the mining community on these issues.

15 Because we believe there may be a variety
16 of approaches to address the problems of alcohol and
17 other drugs on mine property, we are seeking
18 information to -- related to both regulatory and non-
19 regulatory solutions. The data and factual
20 information we obtain from these public meetings and
21 from written comments will help us to develop a more
22 informed understanding of the problem and its
23 solutions.

24 Our preliminary review of our fatal and
25 non-fatal mine accident records revealed a number of

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1 instances in which alcohol and other drugs or drug
2 paraphernalia were found or reported or in which the
3 post-accident toxicology screen revealed the presence
4 of alcohol or other drugs.

5 However, our accident investigations do
6 not routinely include an inquiry into the use of
7 alcohol or other drugs as a contributing factor.
8 There may be instances in which alcohol or other drugs
9 were involved in accidents and either are not reported
10 to us or we do not uncover during our investigations.

11 Because we are concerned that alcohol and
12 other drugs can create risks to minor safety, we have
13 initiated a number of education and outreach efforts
14 to raise awareness in the mining industry of the
15 hazards stemming from the use of alcohol and other
16 drugs.

17 These efforts 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 these
23 problems.

24 Additionally, during a one-day summit we
25 conducted with the states of Kentucky, Virginia, and

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

5 The significance of the problem of alcohol
6 and other drugs in the workplace has been recognized
7 by the Federal Government, and a number of programs
8 have been implemented and various statutes enacted
9 with the goal of reducing the use of alcohol and other
10 drugs in the workplace.

11 For example, the Anti-drug Abuse Act of
12 1986 allows the Secretary of Labor to initiate efforts
13 to address these issues. The Omnibus Transportation
14 Employee Testing Act of 1991 requires the
15 transportation industry employers to conduct drug and
16 alcohol testing for employees in safety-sensitive
17 positions.

18 The Drug-Free Workplace Act of 1998
19 establishes grant programs that assist small business
20 in developing drug-free workplace programs, and the
21 Department of Labor's working partners for an alcohol-
22 and drug-free workplace, of which we are a partner, is
23 a public outreach campaign raising awareness and
24 assisting employers to implement these programs.

25 On the regulatory side of this issue, MSHA

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1 currently has a safety standard for metal and non-
2 metal mines that addresses the use of alcohol and
3 narcotics at these mines. The rule language is the
4 same for both surface and underground metal and non-
5 metal mines, and the rule language states as follows,
6 and I quote, "Intoxicating beverages and narcotics
7 shall not be permitted or used in or around mines.
8 Persons under the influence of alcohol or narcotics
9 shall be -- shall not be permitted on the job."

10 Between January 2000 and June 2005, we
11 issued 75 violations of the metal and non-metal
12 surface regulation and three violations of the metal
13 and non-metal underground regulation. But currently
14 we don't have a similar regulation for coal mines.

15 Using drugs or alcohol at a mine site can
16 impair a miner's judgment significantly at a time when
17 a miner needs to be alert and aware. Even
18 prescription medications can affect a worker's
19 perception and reaction time.

20 Mining is a complicated and hazardous
21 occupation, and a clear focus on the work at hand is a
22 critical component of workplace safety. Therefore,
23 through these public meetings and written comments, we
24 are seeking data and information about six general
25 topics that are outlined in the Federal Register

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1 notice, and these six topics are as follows.

2 Number 1, the nature, extent, and the
3 impact of substance abuse at the workplace, including
4 how to measure the extent of the problem.

5 Number 2, the types of prohibited
6 substance and use and the problems they present.

7 Number 3, the impact of effective training
8 to address substance abuse.

9 Number 4, how our investigations of
10 accidents could address alcohol and other drugs.

11 Number 5, the components of a drug-free
12 workplace program and how well they work.

13 And, number 6, the costs and benefits of
14 addressing substance abuse at mines.

15 The Federal Register document poses
16 several questions about each of these six issues, and
17 you're encouraged to respond to these questions
18 specifically as they relate to the mining community.

19 The procedure for each of these public
20 meetings will be the same. Those who have notified us
21 in advance of their intent to speak or have signed up
22 today will make their presentations first. After all
23 scheduled speakers have finished, others are free to
24 speak, and we will conclude this public meeting when
25 the last speaker has finished.

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

6 If you want to present any written
7 statements or information today, please clearly
8 identify those and give them to me before the
9 conclusion of this meeting. I will identify the
10 material for the record by the title as you have
11 submitted it.

12 You may also submit comments following
13 this meeting, but you must submit them by
14 November 27th, which is the close of the comment
15 period. You may submit comments to us by electronic
16 mail, fax, or regular mail at the addresses listed in
17 the Federal Register notice.

18 A transcript of this meeting is being
19 made, as I've mentioned, and will be available on our
20 website within a few days. If you want a personal
21 copy of this transcript, you can make those
22 arrangements with the Court Reporter today.

23 Thanks for your patience to these
24 introductory remarks, and we will now begin with those
25 who have requested to speak. To ensure that we get an

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1 accurate record, if you could say and spell your name
2 and your organization for the record, please.

3 Our first speaker will be Steven Rex.
4 Good morning. Please.

5 MR. REX: Good morning. Again, my name is
6 Steven Rex. Steven with a V, R-E-X is the last name.

7 I work for Pittsburgh and Midway Coal Mining Company
8 at the Kemmer, Wyoming, Kemmer mine. And I do not
9 have any lengthy prepared statements. I do hope to be
10 able to submit something in writing, but would like to
11 thank you for the privilege of being able to just say
12 a word or two at this hearing.

13 We, at our mine -- I think we're universal
14 in our concern to preserve and create the safest
15 environment possible for our coal miners there. We
16 have some of the programs that you have mentioned in
17 the document that you just read from, and we probably
18 are on the way to establishing a little bit more.

19 Throughout our company, our different
20 mines -- we have a mine in New Mexico and a mine in
21 Alabama as well -- and I won't try and speak for them,
22 because I expect that they may well want to have input
23 perhaps when you conduct your hearings over in that
24 state.

25 However, I do know that at the mine in

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1 Alabama that they have a very comprehensive anti-drug
2 and alcohol program, and they do also in New Mexico.

3 At our mine, we are probably not quite as
4 comprehensive, but we do have many of the components,
5 and we have just begun random testing among salaried
6 employees. And we're looking at some point in the
7 future to be able to extend that to all of our miners.

8 I don't have any hard evidence as to -- as
9 to the extent of usage. Obviously, there are the
10 comments and questions that employees have, but you
11 mentioned the study that was done by the Health and
12 Human Services people in your document, and we don't
13 have any evidence that would indicate that we're any
14 better than what that study has revealed.

15 Therefore, it is a concern to us, and we
16 feel that we would like to do a little bit more, and
17 also we encourage any cooperation that can be put
18 together between government and industry and labor and
19 safety organizations in order to improve the safety
20 regarding the potential use of drug and alcohol in
21 mining operations in our country.

22 It is my personal belief that if
23 additional regulatory action is looked at that we need
24 to take a real hard look at the behavior side and make
25 a very personal -- and I guess the one little analogy

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1 that I would use is while I'm driving home this
2 afternoon and I get pulled over for going 90 miles an
3 hour, and when the patrolman asks me for my driver's
4 license I say, "Oh no, you don't write that to me.
5 You write it to the company." That probably won't be
6 a whole lot of deterrent on my part for me to be
7 careful in the future.

8 I guess what I'm saying is, as an
9 individual, I would expect to be held accountable a
10 little bit more for my personal behaviors regarding
11 safety in this regard. I believe that would be
12 something that we ought to look at.

13 I don't know exactly what that would look
14 like or how it would be implemented, but I think it's
15 something that should be considered, especially in
16 light of the fact that the bulk of the incidents that
17 occur are behavior-based, somewhere between 85 and 95
18 percent, and not based on conditions.

19 And I think that's an area that we could
20 look at to kind of maybe help get us to the next level
21 in safety, and any work that's done in this area
22 should consider that element. There may well be other
23 elements also.

24 That's really all I have to say today, but
25 just appreciate the opportunity to be here and

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1 appreciate the focus and the attention. I know that
2 not only in MSHA but also in our communities there is
3 a lot of attention on this.

4 Even in our school, I have just learned
5 this past week that our school, for their sports
6 programs, have gone to a random testing program. And
7 in the public hearing that they held it was probably
8 about 90 percent in favor and 10 percent against
9 amongst the parents of these children who participate
10 in high school athletics and other activities. So I
11 applaud that. I applaud that effort and hope to see
12 something that will help us be better. We need to do
13 a little better than we're doing.

14 And that's all I have to say.

15 MS. SMITH: Thank you, Mr. Rex. We would
16 appreciate any information you care to submit for the
17 record. And, again, the close of the comment period
18 is November 27th. Experiences from your participate
19 mine about your program would be helpful to us.

20 MR. REX: Very good.

21 MS. SMITH: If you care to share.

22 MR. REX: You bet. We'll share what we
23 have.

24 MS. SMITH: Cost information, implementing
25 a program, data about accident injury rates, all of

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1 that kind of information --

2 MR. REX: Okay.

3 MS. SMITH: -- would be very helpful to
4 us. If you care to share that, that would be --

5 MR. REX: Okay. And we started trying to
6 put that together, but just -- we didn't -- I
7 personally didn't have time to get it all together to
8 bring today.

9 MS. SMITH: No, that's fine. But we would
10 appreciate that kind of information. If you are
11 willing to share that with us for the record, that
12 would be great.

13 MR. REX: Okay.

14 MS. SMITH: Thank you very much.

15 MR. REX: Thank you.

16 MS. SMITH: Do the panel members have any
17 questions for Mr. Rex or anything you'd like to
18 mention?

19 PARTICIPANT: There's a lot of information
20 I know that's out there, and you shared information
21 with us this morning. I'm looking forward to getting
22 your submittal, your written submittal.

23 MR. REX: Okay.

24 PARTICIPANT: And I appreciate your coming
25 to speak this morning.

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1 MR. REX: Okay. Thank you.

2 PARTICIPANT: Thank you.

3 MS. SMITH: Thank you.

4 We currently don't have any other speakers
5 signed up to speak this morning. Is there anyone in
6 the audience who would like to make a few remarks at
7 this point in time? Please.

8 MR. COOPER: Yes. My name is Mike Cooper,
9 C-O-O-P-E-R. I'm Health and Safety Director of
10 Skyline mine here in Utah. My concern, and I do agree
11 with the following gentleman on behavior of employees,
12 we -- we have randomly drug tested for many years now.
13 We have caught one or two. But our sister mines, one
14 in particular, has had recent problems where they
15 thought they were doing very well, and come to find
16 out they weren't.

17 So my point is is we need -- I think we
18 need more help and better training from MSHA. We can
19 see that there is so much available to the employees
20 and to those who are -- the employees that are drug
21 users to hide, to cover up their drug use. I myself
22 have always been quite leery of the phrase that an
23 employee -- or an employer or a supervisor/foreman
24 should have known.

25 When you are dealing with somebody that's

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1 an alcoholic or a drug user, they know how to hide it.

2 They know how to lie very well, know when to use,
3 when not to use. Part of the area that I would think
4 we need help on is on how to, you know, do random drug
5 tests properly, what are -- what laws say we -- how
6 far we can go, can we use something like a locker or
7 lockdown where we have professionals come in and help
8 us locate drugs.

9 Or I guess I'm just saying the employer is
10 in, you know, a negative position where drug users can
11 hide and can be very sneaky, and we need help on how
12 to -- to combat that. That's my concern, that we need
13 help in that way. That's the comments I have.

14 MS. SMITH: Thanks. Thank you, Mr.
15 Cooper. Do you plan to submit written comments on
16 behalf --

17 MR. COOPER: Yes.

18 MS. SMITH: -- of your organization?
19 Okay.

20 MR. COOPER: Yes, I do.

21 MS. SMITH: That would be great. We would
22 appreciate whatever questions you'd like to pose of us
23 that you would like for us to solve in this as we move
24 forward. That would be helpful.

25 Thank you, Mr. Cooper.

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1 MR. COOPER: Thank you.

2 MS. SMITH: Anyone else who would like to
3 offer comments at this time?

4 PARTICIPANT: Can we go off the record
5 just for a minute, please?

6 (Whereupon, the proceedings in the
7 foregoing matter went off the record
8 briefly.)

9 MS. SMITH: What we're going to do at this
10 point in time, since we have no other speakers at this
11 point, we're going to go off the record for about an
12 hour, until about 10:30, see if we have late arrivals
13 who have an interest in offering some comments, and
14 we'll come back on the record and check at that point
15 in time to see if we have additional interest.

16 Yes, sir. Before we go off the record,
17 you have something you want to say?

18 MR. ADAIR: I guess.

19 MS. SMITH: Okay.

20 (Laughter.)

21 We're still on the record.

22 MR. ADAIR: My name is Laine Adair. I'm
23 with Andalex, L-A-I-N-E, A-D-A-I-R, and the company is
24 Andalex, A-N-D-A-L-E-X, Resources Incorporated.

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1 operations. We run three mine companies down in
2 Carbon-Emery County, and we use pretty much the NIDA
3 guidelines for limits on narcotics and things of that
4 nature.

5 For alcohol, we use a .02 cutoff limit for
6 considering under the influence. We do preemployment
7 drug screens. When we transfer people from one mine
8 to another, we do drug screens. We do post-accident
9 drug screens, and we have done random drug screens,
10 but I have found between transfers of people and post-
11 accident and for cause -- this last two years we have
12 randomly tested over 33 percent of our workforce, and
13 we found 2.6 percent of that to be positive.

14 That amounted to about 16 people. About
15 half of that was marijuana, there was one alcohol, and
16 the rest were methamphetamines and cocaine.

17 We've had one of those 16 was a post-
18 accident. The rest of them were either from transfers
19 or -- we get an awful lot of anonymous phone calls
20 from employees. Typically, it's a wife, says she's
21 concerned about somebody that works with her husband.

22 And we act on anonymous phone calls, and we take the
23 people down and drug screen them. The next time they
24 show up for work, we take them down and drug screen
25 them at the hospital.

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1 We have found that the anonymous phone
2 calls, the people policing the workforce themselves,
3 is because 80 to 90 percent of those anonymous phone
4 calls have been positive on the drug screens, which
5 was a big concern to us whether to act on the -- you
6 know, the -- I've actually had a probation officer
7 call me anonymously.

8 (Laughter.)

9 Later he caught me on the street and said,
10 "I'm sure glad you acted on that." I said, "Why in
11 the hell didn't you tell me your name?"

12 But it's -- we pay the people when they're
13 off until the results of the drug screen comes back.
14 So on your accident program, if you have an accident
15 and you send a person down for a drug screen, you
16 might be up to three days. And typically it's one day
17 turnaround the data.

18 But if it's positive, we send it to a -- a
19 different lab for the chromatograph testing, for a
20 confirmation, and then it goes to a medical review
21 officer who tests all the results, and then he comes
22 back, he usually contacts the person and comes up with
23 the -- you know, the positive or the negative on it.

24 Over the years, I've had one employee who
25 tried to sue us over it, got a lawyer. And, you know,

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1 we got out of that pretty easy, but other than that
2 we've had no outside legal problems.

3 I think that, you know, we're all after a
4 safer workforce, and drugs and alcohol are a real
5 problem. The alcohol -- you know, the .02 cutoff
6 limit, about .01 is about the limit of their ability
7 to really test for alcohol, and .02 is double that,
8 and there's a lot of literature out there that at .02
9 your reflex times are slowing down and things of that
10 nature. So our zero tolerance, we use the .02 and
11 have been successful with that.

12 We've not had much alcohol problem,
13 because with the smell of alcohol, any smell at all,
14 .02 -- if you drink a beer, you -- if you work on
15 night shift, you'd better not drink a beer when you
16 get out of bed in the morning, because it'll still be
17 with you at 3:00 in the afternoon. And we've not had
18 much trouble with alcohol, but the other drugs are a
19 problem.

20 I think our main concern is regulation is
21 great for regulators, but we don't want to get to
22 where, you know, typically we see MSHA citing the
23 operator. And a lot of this activity by these people
24 is off the job. Some -- it has been amazing to us
25 some of the people that have come up positive on these

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1 drugs. You had had no idea, other than they were
2 caught on a random.

3 We've had people bring other people's
4 urine. We've had people with drugs that they mix in
5 with the tests when they go down to the lab, you know,
6 and they keep these on their bodies all the time, so
7 they're ready for this. So it's pretty hard for the
8 operator to be totally responsible for this.

9 And, you know, my comment, more than
10 anything, is that this regulation needs to be aimed
11 towards the people. It's a national problem, and to
12 be -- what I see out of this is MSHA just writing us
13 another citation, because somebody was using drugs on
14 our property. And we have a real -- what I consider a
15 -- you know, with our preemployment, we've actually
16 tested over 75 percent of our people in this last two
17 years, with those types of drug screens.

18 So we've been very positive about this,
19 but yet we're still getting -- we're finding positive
20 results, and there's -- I know right now there's more
21 people at our mines who are using drugs that we
22 haven't caught. And -- but anyway, I'm just not
23 looking for more citations from MSHA.

24 MS. SMITH: Does Andalex have a written
25 program?

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1 MR. ADAIR: Yes, we do.

2 MS. SMITH: It is written. If you would
3 like to share that with us, we would love to see it.

4 MR. ADAIR: I think that any other
5 comments we might make would be through the Utah Mine
6 Association. That's what our plan is.

7 MS. SMITH: How does your post-accident
8 drug screening program work? Do you -- the injured
9 individual obviously is tested. Are others working
10 with that individual tested also?

11 MR. ADAIR: We've got in the policy that
12 we can test anybody that we suspect. So like if a guy
13 driving a piece of machinery hurts another person, we
14 can test both the injured person plus the person
15 driving the piece of machinery, you know, as a result
16 of your investigation.

17 MS. SMITH: We have a lady in the audience
18 who is from the Department of Labor's Working Partners
19 for a Drug-Free Workplace. Ms. Carr would like to ask
20 a question if you don't mind.

21 MS. CARR: I just would be interested in
22 hearing about what happens based on a positive? Is
23 that person terminated, or are they referred for
24 treatment?

25 MR. ADAIR: We have a zero tolerance. One

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1 time and you're out, and we terminate. We've done a
2 lot of study, and we find that one or two out of a
3 hundred -- 1 or 2 percent of people in programs with
4 vocational rehab or these other federal agencies and
5 stuff -- one or two people out of a hundred turn it
6 around.

7 And we don't -- for us to bring that
8 person back into the workforce and take that risk, we
9 had -- I've had kids you can't believe what they'll do
10 to sneak through this. And once we catch them, we
11 don't -- that's it, and they understand that.

12 MS. SMITH: Okay. Thank you.

13 PARTICIPANT: I'm curious about the
14 anonymous phone calls you get. Is that part of a
15 program, or is that something that just evolved by
16 happenstance?

17 MR. ADAIR: It has just evolved. Our
18 workforce wants a safe workplace. We've had gas
19 station attendants call us that such-and-such just
20 left here on his way to the mine drinking a beer.

21 PARTICIPANT: So it just started, and then
22 you obviously embraced it, because you've had profound
23 success in the testing from that.

24 MR. ADAIR: Obviously, we had real
25 concerns about that in the beginning, you know, with

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1 -- you know, with -- but we've only had a couple tat
2 were what we considered just nuisance or somebody --
3 the guy always says, "Well, it's just my ex-wife
4 getting mad at me." But then he turns up positive.
5 So maybe she should have been mad.

6 (Laughter.)

7 PARTICIPANT: Have you more formalized
8 that program? Is there like a specific number that
9 people call, or is it still a random --

10 MR. ADAIR: No.

11 PARTICIPANT: Okay. Thank you.

12 PARTICIPANT: One more question. You
13 refer to some NIDA guidelines.

14 MR. ADAIR: Well, it's just federal
15 guidelines -- the highway department, transportation,
16 things of that nature.

17 PARTICIPANT: Okay.

18 MS. SMITH: Thank you very much. We
19 appreciate your comments.

20 Others? Please.

21 MR. CHILDS: My name is Don Childs, C-H-I-
22 L-D-S. I'm with the Energy West Mining Company, a
23 subsidiary of Pacific Corps.

24 We have a policy in place presently. We
25 do not do random testing, but we do for cause and

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1 post-accident testing. We -- and it's interesting, we
2 have had -- over the last few years we've had a number
3 of random calls to that. It seems to be something
4 that occurs with other companies as well, and
5 obviously we act on those people, too.

6 We haven't found anyone that has been
7 positive in those situations. I think we just have
8 had ex-wives in our situations apparently, but --

9 MS. SMITH: Let's not blame all of this on
10 ex-wives now.

11 (Laughter.)

12 MR. CHILDS: They were the ones that
13 called, so -- a couple of I guess concerns or comments
14 that I would make is that we have found -- or I guess
15 the concern that we have as much as alcohol and
16 illegal drugs -- would be prescription medication.
17 That's an area that I think we have as much concern
18 about as other type of drugs -- marijuana, cocaine,
19 those type of things.

20 And, you know, we have -- we have found a
21 couple of instances where we have had positive tests.

22 A couple of things have occurred where an individual
23 has -- they're taking more than what the prescription
24 calls for or they -- we found a couple of instances
25 where they have been taking their wives'

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1 prescriptions. And, you know, we have considered
2 those as positive and dealt with them accordingly.

3 Our policy does provide, if we do find
4 someone positive, that we do give them a one-time
5 opportunity for rehabilitation, and they go through
6 that. They have to complete that successfully, and --
7 but if they are positive, then they would remain on a
8 random test for a couple of years after that. And if
9 they are positive a second time, then they would be --
10 they would be terminated at that point.

11 The other area that we maybe would like to
12 address or I have a concern about has to do with the
13 collection. Someone goes down for an accident, a test
14 is completed, either at the clinic or at the emergency
15 room, and sometimes if it goes in for confirmation
16 we're looking at, you know, two to three days to get
17 that result back.

18 And, obviously, if it's -- if it's
19 negative, then there is a potential of an employee
20 missing, you know, several days of work, which
21 obviously is a problem.

22 We have had a concern in the past about,
23 you know, being accurate with the testing, but it
24 would be real good to be able to do testing onsite, or
25 at least the collection onsite potentially if it meant

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1 all of the, you know, right legal criteria to do that,
2 and that would eliminate the -- possibly the time, at
3 least the initial testing. And if it was positive,
4 then it would obviously go in for confirmation.

5 But I guess the one area that we would
6 maybe have more concern about, or as much, would be,
7 again, the prescription drug area. That's something
8 that needs to be addressed as much as just the alcohol
9 and other drugs.

10 MS. SMITH: Has Energy West looked into
11 the legality of onsite collection authority in any
12 way?

13 MR. CHILDS: No. I can't say that we
14 have. Now, we -- we are doing that. We have an
15 individual that comes onsite and makes a collection
16 when we do -- some of our employees are involved with
17 the DOT regulations, and, of course, and we do random
18 testing with those individuals. And we do that
19 onsite, as a collection at least onsite. The testing
20 is not done, but the collection is done onsite.

21 And so -- and as far as we know, that is
22 something that is, you know, legal to proceed that
23 way.

24 MS. SMITH: Does Energy West have a
25 written program?

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1 MR. CHILDS: Yes, we do.

2 MS. SMITH: It would be great -- if you
3 would like to share that with us, we'd like to see it.

4 MR. CHILDS: We can do it.

5 MS. SMITH: Does the policy have -- make
6 distinctions between prescription drug use and any
7 kind of manner that the employee would be dealt
8 with --

9 MR. CHILDS: No.

10 MS. SMITH: -- in terms of --

11 MR. CHILDS: There's no difference. If it
12 is felt by -- if they're reviewed by the MRO, the
13 medical review officer, if it is out of line, then it
14 would be considered a positive screen, and they would
15 go through a rehab program, irregardless of it being
16 prescription or otherwise.

17 PARTICIPANT: Do you have a preemployment
18 drug testing program?

19 MR. CHILDS: Yes, we do. I have also
20 preemployment, as they say, for cause and accident
21 testing. We do not have a random, other than for
22 individuals that are positive the first time.

23 PARTICIPANT: What's your experience
24 generally, or maybe someone else would like to address
25 this, with preemployment? And do you find with

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1 initial screening that you do eliminate a number of
2 individuals?

3 MR. CHILDS: I can't say a number. We
4 haven't, you know, been hiring an awful lot of folks
5 the last little while. But I would say over the last,
6 oh, probably three years, I would say 5 percent maybe,
7 somewhere in that that we have eliminated as a
8 potential applicant.

9 PARTICIPANT: Okay.

10 MR. CHILDS: Not a lot, but there are, you
11 know, certainly a few. And that's a positive thing,
12 because it -- you know, that they would be eliminated
13 from the potential as an employee. And if that can be
14 done, that's a good thing.

15 MS. SMITH: Ms. Carr has a question of
16 you.

17 MS. CARR: Just a point of clarification.
18 In terms of your concern with prescription drugs, it
19 sounds like as long as someone is taking a
20 prescription according to the doctor's requirement,
21 that's not your concern. It's only the abuse or
22 misuse of prescription drugs?

23 MR. CHILDS: Yes. That would be correct.
24 We would also -- you know, we would obviously have a
25 concern if they are taking a prescription drug that

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1 would be harmful to them as far as operating the
2 equipment, that type of thing. That's information
3 that we would like to know, but primarily those that
4 are abusing that, or using someone else's
5 prescription, those would be the concern.

6 MS. CARR: In terms of the appropriate use
7 that might affect your ability to operate safely, how
8 do you pose that in your --

9 MR. CHILDS: Well, actually, I don't think
10 that we have really addressed that as far as -- I
11 don't think we have that information as far as from
12 our employees, that they would provide information,
13 that that would be a deterrent for them. But I think
14 it is a concern, something that we would like to
15 address.

16 MS. SMITH: Thank you, Mr. Childs.

17 MR. CHILDS: Thank you.

18 MS. SMITH: We appreciate it.

19 Do we have anyone else who would like to
20 offer comments?

21 All right. I think what we'll do is we'll
22 go off the record for about an hour, until, say, about
23 quarter 'til 11:00, and we'll come back on the record
24 at that time and check to see if we have anyone else
25 who has come in who'd like to offer comments then.

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1 Thank you.

2 (Whereupon, the proceedings in the
3 foregoing matter went off the record for
4 approximately one hour.)

5 MS. SMITH: All right. We're back on the
6 record.

7 I'd like to ask if there is anyone who
8 would like to give any additional statements or
9 testimony this morning. No one?

10 All right. Thank you. With that, we will
11 close the record on this public meeting, and we
12 appreciate all of the comments and input, and remind
13 all of you again that if you are going to submit
14 written comments for the records, materials/
15 information that would help us, we would appreciate
16 those by November 27th, which is the close of the
17 record.

18 And thank you all for coming.

19 (Whereupon, the proceedings in the
20 foregoing matter were concluded.)

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