



November 26, 2005

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Office of Standards, Regulations and Variances  
Mine Safety & Health Administration  
1100 Wilson Boulevard  
Room 2350  
Arlington, VA 22209-3939

Received 11/28/05  
MSHA/OSRV

Re: RIN 1219-AB41

Dear Rebecca:

The following comments are submitted on behalf of International Coal Group, Inc. (ICG) in response to the Advanced Notice of Proposed Rulemaking (ANPRM) that was published on October 4, 2005, 70 FR 57808, which requests information on regulatory and non-regulatory approaches to address the risks of impairment from alcohol and drugs in the workplace. ICG recognizes the importance of this initiative that focuses on the risk that miners and mine operators encounter due to the use of illegal and legal substances in the workplace.

**General Comments:**

ICG has embraced this industry problem and has implemented a Drug and Alcohol Testing program that includes pre-employment, for cause or suspicious behavior, post accident and random testing. In some locations, ICG has conducted blanket tests which included 100% of the employees. ICG maintains a strict policy of termination for employees who test positive or refuse to participate in a test. Similar to other companies, ICG offers assistance to the employee if the substance abuse problem is identified prior to being selected for a drug and alcohol test.

Representatives from ICG participated in the MSHA conference on Drugs in the Work Place conducted in Hazard, Kentucky in 2004. Presently, ICG has individuals involved in the Tri-State Drug Task Force, the Kentucky Coal Association Safety Committee, and the West Virginia Coal Association Safety Committee on substance abuse in the mining industry.

**Specific Comments to a Proposed Rule:**

ICG operates coal mining facilities in West Virginia, Maryland, Pennsylvania, Kentucky, Illinois, Colorado and Wyoming that include over 1,980 employees. Recognizing that the substance abuse problems in the mining industry are not isolated to one state and that miners today are very mobile in employment, ICG contends that the overall solution must take into account the problem of employees moving to a new location of employment after being terminated due to a positive test. There has been a case where employees have been discharged on day shift and have been employed at a new company by evening shift

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that same day. The Tri-State Drug Task Force which involves West Virginia, Kentucky and Virginia is currently discussing this issue. We believe that this issue needs further examination to insure that the solution will include all mining states.

International Coal Group, Inc. suggest that MSHA convene a panel of mine operators, state officials and federal officials knowledgeable about all aspects of substance abuse, education, testing and prevention programs to provide the agency the necessary guidance during the crafting of the regulatory framework.

## **Comments in Response to ANPRM:**

### **Nature, Extent, and Impact of the Problem**

A1. We have no information that would single out an individual controlled substance.

A2. We have no data related to the mining industry.

A3. We believe that the abuse of a controlled substance creates a very serious risk to the health and safety of all miners. The individual places themselves and others around them in a dangerous situation. Allowing an individual to work in an environment under the influence of a control substance could affect the safe operation of machinery and the sound judgment needed to make critical decisions in performing all work task in a safe manner.

A4. No post accident test has indicated the use of a substance to date.

### **Prohibited Substances and Impaired Miners**

B1. The Metal/Non-Metal standard prohibiting substance abuse in the work place has failed to correct this problem. We believe that a rule similar to the “smoking materials prohibition” should be established that would place some responsibility directly on the individual miner.

B2. It is our understanding that each company has, in consultation with their program administrator, developed a list of prohibited substances and that these vary across the industry. At a minimum, the list should include alcohol, controlled substances or illegal drugs, or the metabolites of any controlled substance or illegal drug. We are also aware that some companies have established threshold levels for classes of prescribed medications such as: amphetamines, barbiturates, opiates, oxycodone, etc. It is imperative that each program be afforded the flexibility to modify its program requirements to accommodate changed testing procedures and detection levels.

B3. We believe that impairment determination should be decided by the company program Medical Review Officer (MRO).

B4. We believe that once the individual has been removed from the workplace and the risk to other miners has been eliminated the company should have the ability to make the necessary decisions regarding disciplinary action as per company policy.

B5. ICG maintains a policy to terminate individuals who are tested positive for substance. Impairment is determined by the program Medical Review Officer MRO.

### **Training**

C1. Training on the prevention and hazards of substance abuse should be included in the miners annual retraining.

C2. All employees who are required to receive annual retraining.

C3. The company Substance Abuse Prevention Policy and the hazards associated with the use of a controlled substance.

C4. We provide training in our annual retraining on the hazards of substance abuse.

### **Inquires Following Accidents**

D1. International Coal Group is not prepared to suggest specific regulatory language; however, we believe the authority provided in 30 CFR 50.11 should be expanded to provide operators the specific authority to include, as a part of their investigation, the contribution of alcohol and/or drug use in the accident. It is vitally important that care be given to carefully construct the circumstances where consideration of such factors is appropriate.

D2. We believe the Post Accident Testing will provide the same information. It will be important to identify at what level of an accident that testing will be required and who will be tested. ICG tests individuals who are injured in an accident related to the operation of mining equipment, as well as individuals who may have operated equipment that was involved in an injury.

D3. See response in D1.

D4. Privacy concerns necessitate that the information be limited to only those authorized within the company to maintain such information and to the authorized representative of the Secretary, if requested.

D5. See response in B5.

### **Drug Free Workplace Programs**

E1. ICG maintains a Work Place Drug Prevention program.

E2. See general comments.

E3. N/A

E4. ICG uses an outside drug testing/educational services to conduct training for supervisors.

E5. N/A.

### **Cost and Benefits**

F1. ICG incurs the full cost of all substance abuse testing with the exception of some post accident testing which is paid by workers' compensation in limited situations.

F2. We feel the cost of the Substance Abuse Prevention program is an investment in our safety and health program, as well as our overall business strategy to be a successful organization.

F3. We believe the ICG Substance Abuse Prevention program has been partly responsible for a reduction in accidents and employee absenteeism.

If you have any questions, please contact me at 606-920-7746 or at [tmartin@intlcoal.com](mailto:tmartin@intlcoal.com).

Sincerely,

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