



New Mexico Coal
San Juan Coal Co.
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Mine Safety & Health Administration
Office of Standards, Variance & Regulations
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

RE: RIN 1219-AB41

Dear Director:

San Juan Coal Company has completed our review of ANPRM regarding Drug and Alcohol Testing for coal mines and is submitting the following comments for the consideration of the Agency in determining the content of a Proposed Rule. Those comments and our answers to the questions contained in the ANPRM are as follows:

A1. Response: As reported by Dr. Eric Goplerud on November 8, 2005. "Without question, the mining industry faces a significant problem," said Dr. Goplerud, director of Ensuring Solutions to Alcohol Problems, a project of the GWU Medical Center. "The prevalence of alcohol problems in mining is more than 60 percent higher than in other industries."

"Industries with a high proportion of male employees tend to have higher rates of alcohol problems. Nearly nine out of ten miners are men." According to Dr. Goplerud, mining employees are 70 percent more likely to drive drunk and significantly more likely to binge drink. "Recent toxicology reports from mining accidents indicate the presence of drugs or alcohol in some of the victims. Use or abuse of alcohol or drugs in the mining environment can significantly impair a miner's ability to focus on the task at hand and avoid the kinds of hazards that can maim or kill workers."

History suggests that illegal drugs such as marijuana, methamphetamines and cocaine have been a huge problem for all industry. Coal mining would be no exception. In addition to these illegal drugs, the abuse of prescription medication is a growing concern. Mines that do not participate in pre-employment screening, screening for cause, random screening and post accident screening are helping to enable this generation of drug users. A rule imposed by MSHA would be a welcome step as an intervention and deterrent rather than the current enabling situation that exists in some states.

A2. Response: According to the National Institute on Drug Abuse (NIDA), employed drug abusers cost their employers about twice as much in medical and worker compensation claims as their drug-free coworkers. Another factor related to the answer to this question depends upon the community in which the mine is located. If the overall business environment is one that includes testing in most sectors of the local economy, it is much different than one in which the problem is being ignored. If it is understood that testing is a part of any employment opportunity, there is some deterrent to drug use. If that is not the case, any company that is not engaged in pre-employment, random and for cause testing is simply trying to bury its collective head in the sand. The scope of the problem is reduced by those organizations that carry out regular testing. The problem doesn't go away though. In spite of the risk of being caught, some miners will accept the risk and use illegal drugs or misuse prescription medications. They are betting that they will not get caught. The scope of the problem is much larger at those mines that do not test because there are no perceived negative consequences.

A3. Response: The hazards posed by mining are not conducive to impaired persons working. There must be an absolute intolerance of this behavior by mine operators, miners and the regulatory agencies. All parties need to join together and build such a culture in mining. If this step isn't taken some areas of the country will continue to enable miners to use drugs and bring an unnecessary risk to the mines in which they work and fellow miners with whom they work.

What are the costs of drug abuse to society according to NIDA?

It is estimated that in 2002 illegal drug use cost America close to \$181 billion:

- \$129 billion in lost productivity
- \$16 billion in healthcare costs
- \$36 billion in other costs, such as efforts to stem the flow of drugs.

For more details on the economic cost of drug abuse, visit

http://www.whitehousedrugpolicy.gov/publications/economic_costs/.

Beyond the raw numbers are other costs to society:

- spread of infectious diseases such as HIV/AIDS and hepatitis C either through sharing of drug paraphernalia or unprotected sex

- deaths due to overdose or other complications from drug use
- effects on unborn children of pregnant drug users
- other effects such as crime and homelessness.

The Center for Substance Abuse Prevention reports that substance abuse costs are huge.

- A study of 1992 data estimates the socioeconomic effects of substance abuse at \$246 billion for that year. Lost productivity due to alcohol abuse accounted for two-thirds of these costs; drug related crime accounted for over half.
- Alcoholism alone accounts for 500 million lost work days each year. Casual drinkers account for far more incidents of absenteeism, tardiness, and poor quality of work than those regarded as alcohol dependent.
- Between 20 and 40% of all general hospital patients are admitted for complications related to alcoholism and other forms of substance abuse.
- The associated costs to individuals, families, and communities are incalculable.

Substance Abuse Is a Workplace Problem

- Today, almost 73% of all current drug users ages 18 to 49 are full or part-time employees – more than 8.3 million workers.
- Approximately 7% of full-time workers use illicit drugs (6.3m), and about 7% are heavy drinkers.
- Approximately 1.2 million full-time workers abuse illicit drugs and are heavy alcohol users.
- The highest rate of illicit drug abuse and heavy alcohol use is among 18 to 25 year old male, Caucasians, and those with less than a high school education.

In a survey of five worksites, 18 percent of employees who abused alcohol and 12% who abused drugs reported that their work performance had Government studies reveal that 1 in 6 workers has a drug problem and show the drug abusers on average:

- Cost an employer \$7,000 - \$10,000 per employee annually
- Cost companies 300% more in medical costs and benefits.
- Are absent 16 times more often.
- Are 1/3 less productive

In surveys of drug abusers themselves:

- 44% admitted selling drugs to co-workers.

- 18% admitted to stealing from employers. declined due to this abuse.

A4. Response: Post accident testing has revealed one injury where the employee tested positive for illegal drugs. There have been half a dozen other incidents of employees testing positive during random sampling and sampling for cause. These employees knew that this testing might take place yet still accepted the risk. Two employees identified through post accident, random or for cause tests became subject to testing at any time. Knowing this they were still willing to accept the risk and use the drugs or come to work under the influence of alcohol.

- If we were not conducting this testing it is reasonable to believe the problem would be much greater.

B1. Response: There absolutely should be a similar standard. Not establishing such a standard helps to enable persons to use these substances. When this rule for coal mines is developed it must also contain an element of responsibility and accountability for the miner, not just the mine operator. Similar to the risk posed by smoking in mines, miners reporting to work in an impaired state place themselves and their co-workers at risk. There must be penalties for the miner in this situation, not just the mine operator.

B2. Response: At a bare minimum the rule should address the same 5-panel screen as is required under the DOT regulations. The use of those substances cannot be tolerated in this industry. The rule should also address the misuse of prescription drugs. The rule should address the use of medications prescribed for persons other than the employee and also the use of these medications in doses higher than the prescribed level. Impairment levels should be left to the expertise of those medical providers that may be administering the programs. The specifics of this should be left to the mine operator. Many will find it necessary to negotiate what those components must be.

B3. Response: Impairment is something that needs to be left to the various medical providers that will manage the testing programs. MSHA or mine operators do not have the expertise to determine what those impairment levels are with regard to the substances that are subject to testing. The medical director will have that expertise.

B4. Response: The regulation should require the impaired miner to be removed from the work environment. If impairment is validated through accredited testing protocols, there needs to be some form of reporting to MSHA so that the miner can be issued a personal violation such as those issued for smoker's articles violations.

Actions beyond eliminating that immediate hazard and arranging for testing to determine the level of impairment, if any, need to be left for the various mines to determine. This would allow the appropriate response at a given mine site. Some

organizations will need the flexibility to negotiate the specifics of these actions. Others can simply establish them. Those specific actions need to be left to the organizations not the agency.

B5. Response: Our organization has negotiated with the IUOE to establish our Fit For Duty I policy. A copy has been attached. This policy addresses the specific procedures associated with Drug and Alcohol Testing. In addition the contract for underground miners has incorporated a memorandum of agreement that provides for post accident screening. Company and labor representatives agree that the mining environment cannot tolerate those persons who might be willing to accept the risk of using drugs and trying to work in that environment.

C1. Response: There should be no effort to clutter the training regulations with drug abuse training. The effort to eliminate the conditions that enable this behavior should be enough. Consuming the training time of all miners in an attempt to dissuade those who might wish to continue their habits is not something that should be legislated. The training regarding the number and variety of hazards associated with mining should not be diluted by requiring uninvolved miners to sit through drug abuse training. If this topic must be addressed, it should only be with regard to the effects of drug abuse and accident prevention. Employee Assistance Programs can be used for this purpose if the organization determines that is appropriate. Training of supervisors in recognition of impairment should be recognized as training that meets the intent of supervisory training regulations. No new training plan requirements should be included in this rule.

C2. Response: Supervisory training with regard to recognition of impairment would be very useful. Operations that have drug testing policies will likely already be doing that type of training. Other training might be suitable if it were in regard to employee assistance programs an organization might make available. The miners should also be trained in the company specific procedures related to the drug testing policy and this regulation. MSHA must use extreme care in crafting the training rule so that a federal requirement doesn't perpetuate the problem by absolving the miner of their personal responsibility. They need to be expected to understand that the use of these illegal substances will not be tolerated. Failure to comply must include an element of personal accountability/penalty for the miner that chooses not to comply. Training with regard to this rule could be included in the Mandatory Health & Safety Standards portion of the training curriculum. No new training plan requirements should be included in this rule.

C3. Response: As previously stated, training need only address the components of the Fit for Duty or drug testing policies at a given mine and the regulation itself. No new training plan requirements should be included in this rule.

C4.

Response: We provide regular training regarding our Fit for Duty Policies. This training includes reviews of how to seek out assistance through our EAP

processes. We also regularly convene a Fit for Duty committee made up of company and labor representatives to review how the policies are being applied.

D1. Response: Accident investigation is the responsibility of the operator. In many instances, personnel limitations prevent MSHA from participating in the initial investigation. An additional concern is that the Agency might propose a requirement that would extract inspection resources to conduct accident investigations and not be able to conduct the inspections to help prevent the accidents in the first place. Another concern is that not all MSHA Inspectors are effective accident investigators. Many have not received the training necessary to do this work. MSHA could lose additional inspection resources while this training is conducted. There is one topic that should be considered in the Part 50 section. That is a requirement to report a confirmed positive test so that the miner can be issued their personal violation.

D2. Response: Our current memorandum of agreement with the IUOE calls for a post accident drug screen for involved employees. That screen is performed by a third party and the results of the screen are only communicated when the employee has union representation present. There is no need for a new regulation to address this issue other than to allow an operator to require post accident screening.

D3. Response: This is an area that should be left to the mine operator to develop at their individual mine. Many must negotiate the components of their programs. For example, our memorandum of agreement with the IUOE provides that any injury that results in the need for professional medical evaluation also results in a post accident drug screen. Most are not even MSHA Reportable injuries. In addition the MOA includes a provision for testing 'for cause'. A drug & alcohol test that is dependent on some level of severity would create too many problems. In some instances it might be a matter of hours before a determination is made that an employee might lose work time or even that an injury is MSHA reportable. That could be sufficient time for an alcohol test to be invalid. There might also be medications provided that would confound the test results. Requiring each operator to establish their program to assure their miners are fit for duty is as far as the regulation should go.

D4. Response: The rule should include the need for reporting of confirmed positive tests for enforcement purposes. MSHA would then use the test result for evidence that the miner had violated the rule. This evidence should result in a personal citation being issued to the miner.

D5. Response: If a miner has reported to work at the mine and through the result of an accident, testing for cause, or testing through random programs, that miner should be issued a personal violation similar to the violations for smoker's article infractions.

Actions beyond issuing a citation should be left to the mines. Some will need to negotiate those actions and others may be able to impose them. The regulation should simply allow an operator to develop those programs.

E1. Response: Our organization does have such a program and a copy of the most current version is enclosed. The program has been negotiated with the IUOE and is subject to future negotiations.

E2 - a. Response: Employee perception surveys conveyed a concern that there was a drug and/or alcohol problem. The specifics of the program were developed by a cross-functional team of company and labor representatives. Much of the content is based on the requirements used by the Department of Transportation.

E2 - b. Response: Our program includes pre-employment screening, screening for cause, random screening and post accident screening. In addition the program details the specific actions with regard to the sample results. This includes referrals to EAP, compensation issues, etc. A confirmed positive results in the employee being subject to testing at any time afterward. In the case of at least two employees, the threat of a test at any time was not a deterrent. When tested at a later date, they tested positive a second time and were terminated.

E2 - c. Response: It is the collective approach that helps make this system effective. For example, an injury accident occurred in the past and the injured miner was tested. The test result was a confirmed positive for cocaine. The employee was held out of service and was enrolled in our EAP program. This EAP program involved an evaluation by a substance abuse professional and included some counseling.

The employee was able to return some time later when a negative test was achieved. Later that same year the employee was subjected to another test following an extended period of days off. This employee again tested positive for cocaine and was subsequently terminated. The important lesson here is that the known potential for having to be tested did not prevent the employee from using illegal drugs and reporting to work. If the follow up testing hadn't been done, the employee might have continued to work under the influence of such drugs, endangering themselves and their coworkers. That is likely happening every day at mines across the country.

E2 - d.

Response: We do have employees who at one point tested positive for illegal drug use, have been enrolled in our EAP and have remained clean since that time. Those should be considered successes or improvements. We have had three that are no longer working in this environment because they could not stay clean. Not having them here and increasing the risk to the rest of our miners should also be considered an improvement.

E2-e. Response: It is difficult to quantify the effect on safety unless you have an accident that has illegal drug use as a contributing factor. You can really only measure the failures. Measuring the preventions is difficult. Accident rates continue to trend downward due to the overall safety processes here at San Juan Coal Company. The Fit for Duty policy is an element of that process. Our random program tests 5% of the work force each quarter. The vast majority of those tests are negative. Testing for cause has been limited to alcohol suspicion. Testing post accident has resulted in one positive result out of over a hundred tests.

E2-f. Response: The main issue is with the competency of persons collecting the samples. Samples for cause are collected by Security personnel. The need for this sampling is not frequent so it has been a challenge to retain people who are competent in the testing protocols. Training and regular practice is the only solution we have been able to find.

E2-g. Response: Those actions are spelled out in detail in the enclosed Fit for Duty policy. In summary, for a first offense the employee is held out of service pending evaluation by EAP. If the EAP professional feels the employee should be in a rehab program, inpatient or outpatient, they make that call. Depending on that decision, the employee may return to work when the EAP professional signs off and the employee provides a negative sample. A second chance is then offered. A second positive sample results in termination.

E3. No response required. Policy is still in place.

E4. Response: We have used a variety of instructors for providing this training. Some training was provided by in-house personnel, some by the EAP professionals and other training methods such as videos, lectures, etc.

One means of getting a more consistent evaluation of this issue is through the use of a checklist that has been developed by the Fit for Duty Committee. This checklist is used in determining the need for a test for cause. Use of the checklist is also included in the memorandum of agreement. A copy of that checklist is also included. On this checklist there are lists of questions for a supervisor to answer. If a sufficient number of answers are yes in the various sections on the list and the answers are verified by two or more supervisory employees, a test is requested.

E5. Response: We do have an employee assistance program. Over the past 5 years approximately a dozen employees have used this service for drug or alcohol issues. Three of these employees were unable to resolve their problems successfully and have subsequently terminated their employment.

F1. Response: The costs of a confirmed positive test have been in the range of \$100 for the test itself. Costs of implementing the program involved a 1 hr rollout of the policy to all employees. Training for supervisors has added approximately 4 hrs per year to the regularly scheduled supervisory training. There can be manpower costs associated to some tests. Our process is to use a quick screen first. If that test is positive the employee is held out of service pending verification by a laboratory. If the quick screen is a false positive, the employee is paid for the time off. That has not yet happened but could. The equipment involved are some prepackaged test kits available commercially. We have also purchased a breathalyzer for alcohol tests. There are individual sampling alternatives now that are less expensive.

F2-a. I don't know what the cost of maintaining the EAP is. It is utilized for a variety of issues, not just drug and alcohol problems.

F2-b. Response: The only disproportionate cost issue would be in relation to the percentage of employees that might test positive. A random sampling program at a small mine would involve testing far fewer employees than a larger mine. Small mines could purchase individual test kits on an as needed basis.

F3. Response: As stated above it is difficult to quantify the benefit beyond the satisfaction that comes from knowing you didn't hire someone who you know is using illegal drugs. You can really only measure the failures. Measuring the preventions is difficult. Accident rates continue to trend downward due to the overall safety processes here at San Juan Coal Company. The Fit for Duty policy is an element of that process and the sampling program it contains is contributing to our overall performance improvement.

We recognize that the problem exists in the local area. Doing nothing to identify its presence within our workforce would simply be putting our heads in the sand.

The management of San Juan Coal Company is pleased to provide these comments with regard to the drug and alcohol issue and look forward to reviewing the content of a proposed rule. We encourage MSHA to move forward with this issue.

Sincerely,

David Hales
Underground Safety Coordinator
San Juan Coal Company

**BHP – New Mexico Coal
Drug & Alcohol Testing Program**

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PART 1 – BHP PROGRAM ON DRUG & ALCOHOL TESTING

SUBPART 1 – GENERAL

1.1.1 General Policy

It is the Policy of BHP New Mexico Coal (herein after “BHP NMC”) to provide a safe work environment and to protect its employees from unsafe conditions. Employees covered by this Policy who are under the influence of drugs or alcohol on the job pose serious safety and health risks not only to the user but also to all co-workers. Accordingly, BHP NMC requires a safe work environment that is free from the use, possession, sale or distribution of illegal drugs and alcohol and from the misuse of legal drugs on Company premises. Such possession or use of illegal drugs is a criminal offense and cannot be tolerated.

1.1.2 Scope

The provisions of this Drug and Alcohol Testing Program apply to all BHP NMC employees, while on company premises, as defined herein, except where specific exceptions are made. This BHP NMC Drug and Alcohol Testing Program is effective March 1, 1999, and supersedes all previous BHP NMC policies and procedures regarding the use and/or possession of drugs and alcohol on BHP NMC premises.

This policy and program only addresses fitness for duty issues related to drugs and alcohol and does not attempt to address other fitness for duty issues.

Should either party desire to amend this policy, the parties shall meet to address any amendment.

BHP NMC will create a separate drug/alcohol testing policy for contractors.

1.1.3 Program Objective

The objective of this program is to establish and implement an effective Drug and Alcohol Program within the BHP NMC workplace.

The aims of this program are:

- A. To create a safe and healthy work environment free from the hazards associated with drugs and alcohol for BHP employees, business associates and the general public.
- B. To provide education and awareness training to employees to overcome the inappropriate use of drugs or alcohol.
- C. To ensure access to confidential treatment and rehabilitation for employees with a drug and/or alcohol problem.
- D. To foster an attitude among all employees that it is not acceptable to come to work under the influence of alcohol or any other drug that will prevent them from performing their duties in a safe manner.

1.1.3 Program Objective – Cont.

- E. To initiate a fair and equitable Drug and Alcohol Testing Program for all employees with respect to providing a safe working environment for employees, business associates and the general public.
- F. To give support to the ill or injured employee or, in the event of a serious accident, to the employee's family through education and the rehabilitation process.

These Program objectives are consistent with this Memorandum of Agreement between the Company and Union as follows:

MEMORANDUM OF AGREEMENT FITNESS FOR DUTY

Management and the Union will work together to develop and implement programs to address "Fitness for Duty" and "Substance Abuse" issues no later than January 1, 1999. The objective for both programs will be corrective and not punitive. Confidentiality and respect for individual rights and beliefs, consistent with a safe work environment, are of the utmost importance. The Substance Abuse Program may include but may not be limited to rehabilitation, testing for cause and testing following an accident.

The Fitness for Duty program may include but may not be limited to medical issues, physical fitness with respect to job assignment, lifestyles and corrective action.

The Employee Assistance Program or alternative rehabilitation/education programs mutually agreed to by the Union and Company will be utilized for these purposes.

Neither program will limit an employee's right to access to the grievance procedure or the employer's right to discipline for just cause. The Company will not abuse or intimidate employees with threats or use of tests under these programs for any other purposes.

1.1.4 Drug and Alcohol Testing Program

- A. In order to effectively meet the objective of this program, BHP NMC recognizes the need to implement a Drug and Alcohol Testing Program throughout all work locations.
- B. BHP NMC will not employ or contract for the use of any person as an employee who is subject to mandatory Federal Department of Transportation drug and alcohol testing regulations unless that person participates in a drug and alcohol testing program which is DOT-compliant as a condition of continued employment. In the event the person is not subject to DOT regulations, the person or contractor must be compliant with BHP's corporate Contractor Safety Policy and BHP NMC's drug/alcohol testing policy for contractors.

1.1.4 Drug and Alcohol Testing Program – Cont.

- C. BHP NMC will provide education and materials that explain the Drug and Alcohol Testing Program. Prior to the implementation of the Drug and Alcohol Testing Program or as part of a hiring orientation process, each employee will receive a summary and overview document, be provided with the opportunity to ask questions, and be informed where and how to obtain a copy of the entire Program. In addition, BHP NMC shall provide information concerning the following:
1. The effects of drug use and alcohol misuse on an individual's health, work and personal life.
 2. Signs and symptoms of an alcohol and/or drug problem.
 3. Ways to evaluate and resolve problems associated with the use of drugs or misuse of alcohol, including intervention when an alcohol or drug problem is suspected or confronted.
 4. The self-referral process for individuals for BHP NMC's Employee Assistance Program (EAP); and/or the method of referring a problem to management or a union representative.
 5. Additional BHP NMC policies which could be triggered as a result of time off associated with this Program, as well as consequences for an employee who fails an alcohol or drug test that is conducted under BHP NMC's Program.

SUBPART 2 - COUNSELING & REHABILITATION

1.2.1 EAP and Rehabilitation Opportunities

As a condition of continued employment, an employee who tests positive as a result of any required drug or alcohol test may be required to complete a drug or alcohol rehabilitation program prescribed by the Employee Assistance Program (EAP), Substance Abuse Professional (SAP), Consultant or support group approved by the Company designee.

Those employees who test positive but are determined by the EAP/SAP as not needing assistance in resolving problems of drug use or alcohol misuse may be returned to work after obtaining a confirmed negative result on a return to work test.

1.2.2 Insurance Coverage for Rehabilitation

Payment for drug and alcohol rehabilitation programs will be based on the current level of benefits provided by the current insurance plan. Any costs not covered by the insurance plan will be the responsibility of the individual employee.

SUBPART 3 – CORRECTIVE ACTION – DRUG USE AND/OR ALCOHOL MISUSE

1.3.1 Corrective Action Opportunity -- when an employee voluntarily comes forward with a potential problem.

- A. The use of drugs or alcohol by an employee on the job endangers not only the user, but fellow employees and the general public as well. For this reason, any employee shall have broad discretion to recommend an employee to the EAP for corrective action for such drug or alcohol use.
- B. The following describes how BHP NMC will aid and assist in a confidential manner any of its employees who are prepared to devote themselves to recognized detoxification, rehabilitation and counseling programs. We are also aware of the devastating cost that impact industry, community and family structures as a result of alcohol and substance abuse. With that knowledge, the following will apply:
 - 1. If any employee refers himself/herself to the designated SAP and expresses a need for help with a drug or alcohol use/misuse problem, in addition to prescribing a course of therapy, the designated SAP will evaluate the individual to determine if he/she presents a safety risk to himself/herself or to co-workers. If the designated SAP determines that there is an immediate safety risk, then the designated SAP will notify the appropriate BHP NMC supervisor and the individual will be held out of service. If the designated SAP determines that there is no immediate safety risk, then the self-referral remains confidential between the designated SAP and the employee. Pay for time missed from work would be covered by existing benefit provisions.
 - 2. During the first six month period following the effective date of this policy, people who voluntarily refer and miss work while in residential treatment will be paid for time missed using their accrued sick leave first and if necessary additional missed days will be paid and excused.
 - 3. The confidentiality and privacy of an individual will be respected to the extent reasonable.
 - 4. If an outpatient treatment program takes place while the individual continues to work, BHP NMC and the Union will provide support as recommended by the SAP.
 - 5. If any recommended program requires residential treatment, cost for treatment will be covered by applicable benefits provisions. This voluntary corrective action opportunity is available to an employee for one time and will have no other consequences or effect under the Drug and Alcohol Testing Program. On return to work, the employee will be subject to the Drug and Alcohol Testing Program as are all other employees. Pursuing the corrective action opportunity does not give an employee special status relative to the Drug and Alcohol Testing Program on return to work.
- C. If an employee requests help with a drug/alcohol use problem after being notified of an impending drug or alcohol test, these provisions shall not apply.

1.3.2 Consequences for Confirmed Positive Test Results

- A. First confirmed positive - Under the BHP NMC Drug and Alcohol Testing Program, the following will apply after an employee's first confirmed positive drug and/or alcohol test result for any reason:
1. On receipt of a confirmed positive result, management will place the employee on unpaid unexcused leave and see that the employee is taken home. If any employee refuses to be taken home, appropriate authorities will be notified.
 2. The employee will be compensated for time actually worked. Salaried employees will be compensated per existing benefit provisions.
 3. It is the responsibility of the employee to immediately make arrangements to see an approved Substance Abuse Professional for evaluation.
 4. One day of unpaid unexcused absence is charged while pending evaluation. Existing benefits would apply.
 5. A written return-to-work release by the designated SAP and documentation of a confirmed negative drug or alcohol test are minimum requirements for returning to work.
 6. If the designated SAP determines that a follow-up program is not needed, the employee may return to work with only a confirmed negative drug or alcohol test result and a written release from the designated SAP.
 7. If the approved SAP determines that a follow-up program is needed, the employee must provide the designated SAP with a written document detailing the required follow-up procedures. If an outpatient treatment program takes place while the employee continues to work, BHP NMC and the Union will provide support as recommended by both the designated and approved SAP.
 8. If any recommended program requires residential treatment, cost for treatment will be covered by applicable benefits provisions. Return to work after completing a residential treatment program must be accompanied with a written release from the designated SAP and a confirmed negative result on a drug or alcohol test. Any continued follow-up program must be documented by the designated SAP. BHP NMC and the Union will provide support as recommended by either SAP
 9. Under the BHP NMC Drug and Alcohol Testing Program, if an employee willfully refuses evaluation and/or does not complete any prescribed treatment following the first confirmed positive drug and/or alcohol test result, the employee will be subject to discipline up to and including termination.
- B. Second Confirmed Positive - Under the BHP NMC Drug and Alcohol Testing Program, if an employee receives a second confirmed positive drug and/or alcohol test result after any period of time, the individual will be terminated.

1.3.3 Leave Pending Confirmed Results

- A. If the employee receives a positive result on an immediate-response drug screen for a post-accident or reasonable suspicion drug test, the employee will be placed on excused leave until the laboratory drug test result is available. The screening test shall have no consequence for an employee other than to quickly determine a negative result for return to work.
- B. If the laboratory drug test result is negative, the employee shall be returned to work immediately after the confirmed negative result is available, and the employee shall be kept whole for time missed from work.
- C. If the laboratory drug test result is positive, the employee must follow the procedures set out in 1.3.2 above for action following a confirmed positive result.

1.3.4 Willful Refusal or Failure to Test

BHP NMC deems it necessary to achieve the purposes and objectives of this Program and in order to do so, employees must cooperate fully in the testing process. Any employee, who willfully refuses to test, fails to test or refuses to submit or cooperate in any drug or alcohol test required by this Program shall be subject to discipline up to and including termination.

1.3.5 Grounds for Termination

Subject to the specific provisions of this Program, the following may be considered grounds for termination:

- A. The use or possession of illegal drugs or alcohol while employee is on the job on BHP NMC premises or in Company-owned vehicles.
- B. Having a second positive test for drugs or alcohol as defined in this Program.
- C. Failure to complete a program of rehabilitation prescribed by an approved Substance Abuse Professional.
- D. Refusal to test or failure to willfully cooperate in the administration of any test required by this Program.
- E. Willful refusal to cooperate fully with the collection process including refusal to provide a complete specimen or breath sample, complete any paperwork, initial or sign any paperwork associated with the collection process, and refusal or failure to provide photographic identification. If necessary, Company will establish a program to provide photographic identification. The employee will not be required to sign any waiver or Release of Liability unless agreed to by employee and company.

1.3.5 Grounds for Termination – Cont.

- F. Any tampering with or adulteration of any urine sample or with the collection, sampling or testing procedure in any way.
- G. Causing an injury accident or property damage or significant near miss while under the influence of drugs and/or alcohol.

1.3.6 Second Residential Treatment

A second residential treatment program, if recommended by the designated SAP, may be approved and paid for provided that the first program was completed five or more years prior to the effective date of this original policy.

SUBPART 4 – INDIVIDUAL RESPONSIBILITIES

1.4.1 Individual Responsibilities Upon Selection for Testing

A. Reasonable Suspicion Tests

1. If any employee has a reasonable suspicion that a fellow employee is unfit to work due to the influence of drugs or alcohol, that employee has the responsibility to initiate a reasonable suspicion process which may result in the employee under suspicion being required to undergo a drug and/or alcohol test.
2. It is the responsibility of BHP-NMC to insure that employees do not abuse or intimidate other employees with the “reasonable suspicion” test. Employees who abuse this provision are subject to discipline, up to and including termination.
3. All employees will have a right to have another employee present at the reasonable suspicion discussion if they so desire.
4. The Reasonable Suspicion Process can be initiated as follows:
 - a) If a supervisor suspects an employee of being unfit to work due to the influence of drugs or alcohol, he/she should immediately notify another supervisor present at the mine or on-call safety personnel.
 - b) If an employee suspects a supervisor of being unfit to work due to the influence of drugs or alcohol, he/she should immediately notify another supervisor present at the mine or on-call safety personnel.
 - c) If a supervisor suspects another supervisor of being unfit to work due to the influence of drugs or alcohol, he/she should immediately notify that supervisor’s department manager or on-call safety personnel.
 - d) If an hourly employee suspects that another hourly employee is under the influence of drugs or alcohol, he/she should immediately notify his/her supervisor or on-call safety professional.

1.4.1 Individual Responsibilities Upon Selection for Testing – Cont.

e) If a salaried employee suspects that another salaried employee is under the influence of drugs or alcohol, he/she should immediately notify his/her supervisor or on-call safety personnel.

1. The reasonable suspicion process to be followed is set out in the attached procedures in Part 2, SubPart 2 at 2.2.1D.

B. Post-accident Tests

1. A drug and alcohol test shall be conducted after an accident at the discretion of BHP NMC, the Union, or an employee based upon reasonable suspicion. If the decision is to test, the Supervisor and Union Representative will verbally inform the employee that he/she will be tested, and the Supervisor and Union Representative will take the employee to the collection or testing facility. Testing may be requested by individuals involved in the accident.
2. The Supervisor will arrange to have the employee taken home under the following circumstances:
 - a) The employee tests positive for alcohol with a quick-response screening device, and a confirmatory result was obtained or is in process.
 - b) The employee tests positive for drugs with a quick-response screening device, and a confirmatory result is in process.
3. The Supervisor will notify the Drug and Alcohol Testing Administrator that a test was performed and advise whether it was a screening and/or confirmatory test. The consequences for a positive screening or confirmatory test result are set out in 1.3.2 above.

C. Random Testing

1. The Supervisor will notify the employee to be tested and instruct him/her to report to the designated collection or testing facility. The employee will be allowed reasonable time, plus travel time, to report to the designated collection or testing facility. The employee shall return to work after the test is performed.
2. If the drug or alcohol test is confirmed positive, appropriate corrective action under Subpart 3 Drug and Alcohol Testing Corrective Action will be followed.

D. Voluntary Self-Testing

1. To increase employee awareness of drug use or alcohol misuse, which may put the employee above the established cut-off levels, self-testing supplies, materials, tools and facilities will be made available to allow the employee to test himself/herself. Employees will be educated and encouraged to take appropriate action to insure their safety.

1.4.2 Leave and Pay Consequences to Employee

- A. Employees with confirmed negative test results shall be allowed to return to work with no loss of pay consistent with Collective Bargaining Agreement.
- B. The compensation of an employee with a confirmed positive test will be addressed in accordance with Part 1, Subpart 3.
- C. In the event an employee voluntarily elects to undergo an approved program of drug or alcohol rehabilitation; he/she will be compensated accordance to Section 1.3.1 .

SUBPART 5 - OTHER POLICIES REGARDING DRUGS AND ALCOHOL

1.5.1 On-the-job (Prescribed Medication)

If an employee is taking any prescribed drug, the individual shall consult the prescribing medical professional to determine whether the drug may impair his or her ability to safely perform duties on the job.

If the effects of the prescribed medication could pose a danger or could affect the employee's judgment or job performance, the individual shall make his or her supervisor aware of this condition. The individual will be relieved of his or her duties until such time as full, effective and safe activities can be resumed. Failure to do so may result in disciplinary action, up to and including termination.

PART 2 – DRUG & ALCOHOL TESTING PROCEDURES

SUBPART I – DEFINITIONS

2.1.1 Definitions

- A. Accident: For BHP purposes, an unplanned event resulting in property damage or injury.
- B. Administrator: The individual responsible for administering BHP NMC Drug and Alcohol Testing Program.
- C. Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol.
- D. Approved SAP: An individual who qualifies as a SAP as herein defined and who is approved by the BHP designated SAP to provide treatment to employees covered under this policy.
- E. Breath Alcohol Concentration (BAC): The amount of alcohol in a breath sample in terms of grams per 210 Liters.

Definitions – Cont.

- F. Breath Alcohol Technician (BAT): A certified individual trained in the operation of the EBT.
- G. Collection Site: A place designated by BHP NMC where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or where a BAT will conduct an alcohol test.
- H. Designated SAP: An individual selected by BHP-NMC who qualifies as a SAP as herein defined and who is the gatekeeper for use of other SAP's. Also evaluates an individual's progress and fitness to return to work.
- I. DOT Commercial Driver: An individual who is licensed to operate a DOT covered Commercial Motor Vehicle (as further defined in DOT regulations)(m)
- J. Company Premises: All areas in which BHP NMC operates, including but not limited to the following:
- Lands and property owned or leased for use by BHP NMC.
 - Equipment owned or leased by BHP NMC.
 - BHP NMC lockers, desks, equipment, work space and storage facilities.
 - BHP NMC job sites.
- K. Confirmatory Test: A second test performed to confirm the results of the initial screening test. For controlled substance this shall be a GC/MS test. For alcohol testing this test shall be performed on an EBT device and conducted between 15 and 30 minutes after the initial screening test.
- L. Controlled Substance: This term, used interchangeably with the term "drugs", means any of those substances identified in 21 USC 802 and 21 CFR Part 1308 and classified by the Drug Enforcement Agency as Schedules I through V.
- M. Cut-off Levels: See Levels of Consequence
- N. DOT: U.S. Department of Transportation
- O. DOT-Covered Employees: Employees who are required to have a commercial driver's license and are assigned and/or operate a commercial motor vehicle or who perform safety-sensitive functions as defined by 49 CFR Part 382.
- P. Drugs: See Controlled Substances.
- Q. Employee Assistance Program (EAP) Consultant: The consultant employed by BHP NMC to provide confidential employee assistance services to BHP NMC employees.
- R. Evidential Breath Testing Device (EBT): A device to measure BAC, which appears on the National Highway Transportation Safety Administration's Conforming Products List.
- S. GC/MS: Gas chromatography/mass spectrometry, the technology used for confirmatory drug testing.
- T. Initial Test: See screening tests.
- U. Levels of Consequence: The detection of the following named drugs at SAMHSA specified limits or alcohol at the designated limits will result in a positive test result:

<u>Substance</u>	<u>Initial Test</u>	<u>Confirmatory</u>
Phencyclidine (PCP)	25ng/ml	25 ng/ml
Marijuana (THC)	50 ng/ml	15 ng/ml
Cocaine	300 ng/ml	150 ng/ml
Opiates	2000 ng/ml	2000 ng/ml (plus 6Am)
Amphetamine	1000 ng/ml	500 ng/ml
Alcohol	0.04 BAC	0.04 BAC

- V. Medical Review Officer (MRO): A certified licensed physician (medical doctor or doctor of osteopathy) designated by BHP-NMC who is responsible for receiving all laboratory results generated by BHP NMC's drug testing program and who has knowledge of substance abuse disorders. The MRO will interpret and evaluate an individual's confirmed positive test using the results data and whatever information the donor chooses to provide to the MRO. The MRO also reviews all negative laboratory tests for BHP NMC.
- W. Positive Test: Drug testing having levels of a controlled substance that have been confirmed with a GC/MS test that shows concentration greater than the acceptable levels as set by SAMHSA. For alcohol, a concentration greater than 0.040 on the confirmation test. BAC between .02 and .039 results in an individual being held out of service with an unexcused absence and is not considered a positive result for the purposes of this program
- X. Reasonable Cause, Reasonable Suspicion: The actions, appearance or conduct of an employee on BHP-NMC premises that indicates use/misuse of drugs or alcohol.
- Y. Saliva Test Technician (STT): A certified individual trained in the use of the saliva swab alcohol screening test.
- Z. SAMHSA: Substance Abuse Mental Health Services Administration.

2.1.1 Definitions – Cont.

- AA. Screening Test: The initial test to identify “negative” tests. In drug testing this shall be an immunoassay test. It can either be a laboratory test or an immediate response test. For alcohol the test shall be conducted using a DOT-approved screening device or using an EBT by a certified BAT.
- BB. Split Specimen: A collection, testing, and storage procedure wherein the specimen is directly placed into two specimens bottles from a single void. This procedure shall insure that the primary container has a minimum of 30 ml and the split portion has a minimum of 15 ml.
- CC. Substance Abuse Professional (SAP): A licensed physician, or licensed or certified psychologist, social worker, employee assistance professional or an addictions counselor with a CACII (certified by the national Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and experience in the diagnosis of drug and alcohol related disorders.
- DD. Trained Employee: Any employee who has received training as specified by BHP-NMC.

SUBPART 2 – TESTING CIRCUMSTANCES

2.2.1 The following are the instances that drug and alcohol testing shall be performed:

- A. Pre-employment: The prospective employee will undergo a drug-screening test consistent with BHP NMC management pre-employment requirements.
- B. Post Accident: In the event that an employee, during the performance of duties, is involved in an accident as defined by BHP NMC Program, and if reasonable suspicion is present, the employee must be tested consistent with Program Part 1 Subpart 4 Section 1 B (1.4.1 B).
 - 1. It is anticipated that these tests will be conducted within two (2) hours after the employee notifies the appropriate supervisor of the accident. If this is not possible, the reason will be documented. In the event that tests cannot be performed for medical or personal injury reasons, the following times apply: breath alcohol testing within eight (8) hours, controlled substance testing within twenty-four (24) hours. The employee’s supervisor will document why such tests could not be conducted.
 - 2. It will be the employee’s responsibility to immediately report any accident to his or her supervisor and to remain readily available for drug/alcohol testing. Mandatory time spent remaining readily available for drug/alcohol testing will be paid as work time. The appropriate supervisor will initiate the testing process. In the event that an employee fails to contact the appropriate parties within the required time frame, it will be considered a refusal to take the tests unless injuries prevent the employee from contacting a supervisor.

2.2.1 The following are the instances that drug and alcohol testing shall be performed – Cont.

- C. Random Tests: Initially, will be conducted quarterly at an annual rate of 20%. Random testing shall be unannounced and based on a scientifically valid method that ensures each employee shall have an equal chance of being selected each time selections are made. Employees on their scheduled days off, or vacation, or other approved absences shall not be required to report for testing.
- D. Reasonable Suspicion: If any employee has a reasonable suspicion that a fellow employee is unfit to work due to the influence of drugs or alcohol, that employee has the responsibility to initiate a reasonable suspicion process which may result in the employee under suspicion being required to undergo a drug and/or alcohol test. If a trained employee, along with a witness, believes that an employee may be impaired on the job, a reasonable suspicion test shall be conducted within two (2) hours from the time of filing of the report. It is anticipated that alcohol tests will be conducted within two hours and drug tests within 24 hours.
- E. Return to Duty: A confirmed negative test and a release from a Substance Abuse Professional are required for return to work.
- F. Follow-up Tests: Follow up tests will be conducted as ordered by the Substance Abuse Professional. The number and frequency of these tests will be determined by the SAP.

SUBPART 3 - ALCOHOL TESTING METHODOLOGY

2.3.1 Devices Used for Testing

- A. A DOT-approved screening device or an EBT will be used for alcohol testing. Either test must be administered by a certified technician (STT or BAT).
- B. In the case of the evidentiary device, the BAT is responsible for maintaining accuracy checks and proper maintenance of the device. The BAT must maintain records to show competence in the operation of the device and shall maintain continuing education in the event of changes or updates to the device or regulations. The EBT must appear on the National Highway Transportation Safety Administration (NHTSA) product list in order to be used as a confirming device.
- C. The evidentiary alcohol-testing device must be capable of assigning a unique number that cannot be controlled by the BAT. The device must also be capable of distinguishing alcohol and acetone at the 0.02 level. If the device is to be used for confirming tests, it must be capable of printing out three (3) copies of the results.

2.3.2 Quality Assurance

- A. Compliance with the manufacturer's quality assurance program shall be documented by every collection site. The device must be calibrated according to the manufacturer's Quality Assurance Program.
- B. A device shall be removed from service if any of the conditions as outlined in the accompanying Quality Assurance Program (QAP) are met. See Appendices.

2.3.3 Breath Alcohol Testing Site

- A. The alcohol test shall be conducted in a place that offers both visual and aural privacy to

prevent any unauthorized individual from seeing or hearing the results. No unauthorized person shall be permitted access to the testing site when the EBT remains unsecured, to prevent such person from hearing or seeing the test results.

- B. In unusual circumstances, which must be justified and documented by the BAT or STT, a test may be conducted at a location that does not provide the above mentioned privacy. In this case the BAT and the employer shall provide the best aural and visual privacy that the situation will allow.

2.3.4 Alcohol Testing Procedures - EBT

- A. Prior to the start of testing the employee will provide positive identification to the BAT. If no identification is available, an employer representative may verify the identity of the person. The BAT shall provide identification to the employee. The BAT will then explain the procedures and pertinent information about the EBT to the employee.
- B. Documentation of the Breath Alcohol Test shall be on a three-page form. The form is completed as follows: the first section is completed by the BAT; the second section is filled out by the employee and signed; the third section contains the results; the fourth section is the employee's acknowledgment. The employee's willful refusal to sign the second section will be considered a refusal to submit to the test. The distribution of copies is as follows: the original shall go to the employer's designated representative, the second copy to the employee, and the third copy to the BAT. (Forms included in Appendix).
- C. An individually sealed mouthpiece will be given to the employee by the BAT and attached to the device in accordance to the manufacturer's instructions. The BAT and the employee will verify the test number. The BAT will then instruct the employee to blow into the mouthpiece forcefully for at least six (6) seconds or until the device or BAT signals an adequate amount of breath has been obtained.
- D. The employee will then be shown the results. The device shall produce three printed results that are identical. Each printed copy shall include the results, the device's serial number, and the date and time. The BAT shall complete the form, and the results are recorded or attached to the form in a manner that will prevent tampering. The employee shall sign Step 4 of the form. In the event that the employee fails to or refuses to sign Step 4, the test shall still be valid if all required documentation is completed by the BAT.
- E. In the case of an alcohol concentration of 0.02 or greater, a confirmation test will be performed. This test will be conducted no sooner than fifteen (15) minutes, nor longer than thirty (30) minutes, after the screening test. If the time is greater than thirty (30) minutes, the confirmation test will continue, but the BAT shall remark in the comment section the reason for the delay.

2.3.3 Alcohol Testing Procedures – EBT – Cont.

- F. The BAT will provide a new mouthpiece and perform an air blank on the EBT prior to the test. The purpose for the waiting period is to allow any mouth alcohol to dissipate. During this time the employee should not eat or drink, place anything into her/his mouth, and avoid belching. This is for the employee's benefit, to record an accurate confirmation test. The test will be performed as above with a new sequential number assigned. After the test, the device will produce three printed results that are identical. Each printed result shall include the results, the device's serial number, and the date and time. The BAT will then affix a printed copy of the report to the back of all three copies of the form in a manner that will be tamperproof. If a person attempts to tamper with the test, it will be deemed to be a refusal to take the test.

2.3.5 Willful Refusal

In the event that the employee willfully refuses to or cannot provide an adequate amount of breath, the appropriate management and union representatives will be notified. If the employee can produce a written statement from a medical practitioner as to a medical reason for the inability to produce an adequate amount of breath, the test will not be held as a refusal; otherwise the test will be regarded as a refusal, and the employee shall be subject to discipline up to and including termination.

2.3.6 Invalid tests occur when:

- A. The next external calibration check reveals a result that differs more than the amount of tolerance as directed in the Quality Assurance Program. In this case, all tests with results of 0.02 or greater since the last check are invalid.
- B. The BAT does not observe the required fifteen (15) minutes between tests.
- C. The BAT does not sign the forms as required.
- D. The BAT fails to note that the employee did not sign the form in Step 4.
- E. The BAT fails to perform a valid air blank prior to administering a confirming test.
- F. The EBT fails to print the confirming test results.
- G. The printer and EBT show different sequential numbers or different results.

2.3.7 Conflicting Results

If confirming and screening test results are different, the confirming test result rules.

SUBPART 4 - DRUG TESTING

2.4.1 Drug Testing Methodology

- A. The initial tests of all specimens will use an immunoassay analysis that will detect the following controlled substances; Marijuana, Cocaine, Opiates, Phencyclidine, Amphetamines at current Substance Abuse Mental Health Services Administration (SAMHSA) standards.
- B. The screening test may be either a laboratory or an immediate response on-site test. In the event of an initial positive test result, a confirmatory test shall be conducted,
- C. The confirmatory test shall use a gas chromatography/mass spectrometry technique conducted by SAMHSA-certified laboratory. The levels for the confirmation tests to result in a positive reading will be set by current SAMHSA levels for: Marijuana, Cocaine, Opiates, Phencyclidine and Amphetamines.
- D. The collection will use a split sample protocol. The purpose of a split sample is in the event of a positive result, a set aside amount will then be made available to the employee for retesting at a facility of his/her choosing and expense. In the event of a positive result the Medical Review Officer (MRO) will contact the employee directly, or a message will be left for the employee to contact the MRO within seventy-two (72) hours, to discuss the results and to advise the employee on the steps to retest the split portion.
- E. The employee must contact the MRO within the seventy-two (72) hour period or provide a reason as to why this could not be done or further tests will not be performed. The results will be forwarded to the employee and the employer.

2.4.2 Collection Site

The location will be one of convenience for the employer that affords privacy and security. The site must be secured in that only the person being tested has access. The collector shall have control over all entrances of the location at all times. The location shall have the water in the toilet blue to prevent tampering. Any other available water must be secured. An inspection of the entire facility must be conducted to assure control of the testing procedure. The location must be able to afford individual privacy unless the collector documents a reasonable suspicion that the sample may be switched and/or tampered.

2.4.3 Specimen Collection Procedures

- A. Urine specimen collection shall occur at the designated location.
 - 1. A split sample collection procedure using industry-standard (DOT) protocol will be used for laboratory tests.
 - 2. For on-site screening tests, an adequate amount of urine will be poured into a container for testing in front of the donor, and the remainder will be reserved in the event it must be packaged and documented for laboratory confirmation.

2.4.3 Specimen Collection Procedures – Cont.

B. Collection Procedure for a Laboratory Testing Process:

1. The documentation provided shall be uniquely numbered with the custody form number matching the number on the security seals for the containers. The specimens shall be sealed using the security seals provided.
2. The outer box shall be sealed by a method that allows recognition of tampering. The testing control form shall have seven (7) copies to be distributed as follows: 1-3 shall be sent to the lab with the sample, 4 will be sent directly to the Medical Review Officer, 5 will be given to the employee, 6 will be held by the collector, 7 will be forwarded to the employer.
3. These forms shall contain a detailed chain of custody in which all who handle the specimen shall document such in the chain of custody area. At any time the possession of the specimen is transferred to another party, it shall be documented and a signature of the recipient so noted. During the testing, only those authorized shall have access to the facility.
4. In the event of a positive result, the split sample will be made available for the employee to have retested at the SAMHSA certified laboratory of his/her choosing, at his/her expense

2.4.4 Direct Observation Collections

A. A direct observation by a collector of the same gender will be required for collections in any of the following circumstances:

1. The sample presented does not fall within the acceptable temperature range (90°-100° F);
2. The employee refuses to allow a measurement of oral temperature;
3. Oral body temperature differs by more than 1.8°F from the temperature of the sample;
4. The last previously tested sample of the employee was determined by the laboratory to have had a specific gravity less than 1.003 and a creatinine concentration below .2g/L;
5. The collector has observed an attempt to switch or alter the sample;
6. The employee has previously tested positive for use of a controlled substance that was not prescribed by a medical practitioner.

2.4.4 Direct Observation Collections – Cont.

- B. In the event that the collector documents a reasonable suspicion that a sample might have been altered or substituted, the sample shall be sent to the laboratory for testing, and a second sample shall be taken as soon as possible under direct observation. This shall be noted in the comment section of both tests. Should the laboratory confirm that evidence exists of an alteration, the tests will be treated as a positive result. All results from the laboratory shall be forwarded to the Medical Review Officer for final review and assessment.

2.4.5 Drug Tests Results

- A. All results will be reviewed by the Medical Review Officer (MRO). Prior to the MRO determining that the results are positive, the MRO will attempt to contact the employee directly in a confidential manner using the phone number listed on the collection documentation. The employee's copy and the MRO copies are the only two that will have this information.
- B. The MRO will consider all facts as possible reasons for the positive result including any medical records that the employee releases to the MRO. In the case of a positive result, the MRO shall inform the employee that he/she has 72 hours in which to request the split portion be retested. All cost of testing the split portion shall be at the employee's expense.
- C. If the analysis of the split specimen fails to produce the same positive results, or there is an inadequate amount of specimen for testing, or the specimen is untestable, or the split sample cannot be produced, the MRO shall nullify the test and report the reasons for the nullification to the employee and the employer.

2.4.6 Willful Refusal

A willful refusal shall be the refusal to sign required documentation, excluding any waivers or releases, or to provide a specimen as required. In the event of failure to provide a specimen the employee shall be referred to the MRO to determine if a medical condition would explain the inability to provide a specimen.

SUBPART 5 -- CONFIDENTIALITY AND RECORDKEEPING

2.5.1 General Procedure

All records are confidential and all precautions will be taken to ensure that only authorized personnel have access. The Medical Review Officer shall be responsible for maintaining the individual records of verified positive tests. No one shall have access to these records without first obtaining written authorization from the employee. This, however, will not prevent the employer or its agent from obtaining the results. The employer or its agent shall not divulge any information obtained to any person unless authorized in writing by the tested employee or required by legal authority of competent jurisdiction.

Guideline for FFD I, Drug & Alcohol (D&A) Checklist

1. Ensure that any possible medical condition is addressed prior to evaluation for D & A.
2. Document the observed behavior using the Fitness for Duty I Checklist, preferably with another supervisor.
3. In private, discuss with the individual about the observed behavior. Relay your concerns that the individual seems impaired.
4. Allow the individual representation:
 - a. All employees will have a right to have another employee present at the reasonable suspicion discussion if they so desire. (see 1.4.1 a.3) A union representative shall be deemed to be a union steward. If a steward is not on shift, a designated union representative shall be a member of the JSC, a Miners Rep., or a union officer. If none of these people are available on shift, then another union member will be provided.
 - b. Time frame to test refer to Testing Circumstances Subpart2, 2.2.1 B & D
5. If it is determined the individual needs to be tested, and the results are confirmed positive, refer to 1.3.2 of the Fitness for Duty I policy.
6. If the test is negative, refer to 1.3.2 #6 of the Fitness for Duty I policy.

Trained supervisors are responsible for taking appropriate action when an employee demonstrates unusual behavior. Training should be up-dated annually. Only trained supervisors are allowed to fill out the checklist.

November 6, 2001



Fitness for Duty I Underground D & A Checklist

Employee: _____ Date ____/____/____ Time _____
Supervisor: _____ Department: _____
2nd Supervisor: _____ Union/employee Rep: _____

NOTE: Ensure that any possible medical condition is addressed prior to evaluation for Drug & Alcohol.

I. Are concerns about the individual’s behavior based on (check those that apply):

- ____ Reasonable suspicion
- ____ Post-accident based on reasonable suspicion:
-in accordance to 1.4.1 A & B of the Fitness for Duty Drug & Alcohol Policy

II. Employee Behavior: (If- 2 or more “Yes” responses...administer test)

1. Does individual seem dazed, confused or disoriented?
Yes _____ No _____ Describe _____
2. Have you observed the individual to have difficulty with movement, balance or coordination (loss of balance, stumbling or staggering, jerky movement, lean on objects for balance)?
Yes _____ No _____ Describe _____
3. Is there a concern about the individual’s speech, content of speech, pace of speech or slurring of words?
Yes _____ No _____ Describe _____
4. Is there any concern about a change in physical appearance (e.g.- eyes red, glossy, or unkempt)?
Yes _____ No _____ Describe _____
5. Have there been concerns/reports about this individual in regards to any unusual behavior today?
Yes _____ No _____ Describe _____
6. Has this individual made a “judgment error” and/or deviated from operating rules and procedures?
Yes _____ No _____ Describe _____

III. Evidence of possible alcohol/drug use at work: (If- “Yes” to any...administer test)

1. Is there odor of alcohol on individual’s breath?
Yes _____ No _____
2. Have you observed or discovered the individual to have any possession of alcohol, possession of other drugs, or paraphernalia on the job?
Yes _____ No _____
3. Have you witnessed this individual’s consumption of alcohol or other drug today?
Yes _____ No _____
4. Has someone else reported this individual’s consumption of alcohol or other drug today?
Yes _____ No _____

IV. Test: Was the test result? (Check one) Positive _____ Negative _____ *Not Given _____

If the result is positive- this document will only be placed in a confidential folder by the Medical Review Officer (MRO) in accordance with 2.5.1 of FFD I Policy.

If the result is negative, this document will not be copied or filed, but will be given to the individual at their own discretion.

*If test was not given describe why _____

V. Signature: _____ Supervisor (submitting report)