

-----Original Message-----

From: Jim Cooper [mailto:Jim.Cooper@OXBOW.COM]
Sent: Tuesday, October 28, 2008 3:30 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: Comments to RIN 1219-AB41

Ladies and Gentlemen:

Please accept the attached document for consideration regarding RIN 1219-AB41.

Hard copy to follow

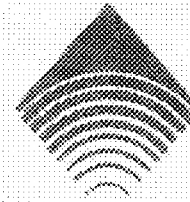
Jim

-----Original Message-----

From: Digital Sender Elk Creek Mine [mailto:digital.sender@oxbow.com]
Sent: Tuesday, October 28, 2008 1:25 PM
To: Jim Cooper
Subject:

This document was digitally sent to you using an HP Digital Sending device from Oxbow Mining, LLC. If you have trouble opening the attached file, please call (970)-929-5122.

AB41-COMM-103



October 28, 2008

Attn: **RIN 1219-AB41**
Mine Safety & Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, VA 22209-3939

RE: Regulation Identification Number 1219-AB41: Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance

Ladies and Gentlemen:

The following comprises my written comments as an official of Oxbow Mining, LLC ("OMLLC") brought forth by proposed rulemaking **RIN 1219-AB41: Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance**.

OMLLC opposes Mine Safety and Health Administration's ("MSHA") regulatory approach to the use and abuse of alcohol and other drugs as detailed in the proposed rule identified above.

OMLLC has a "zero tolerance" Drug-Free Workplace Policy. Our policy requirements are as follows:

- Pre-employment testing
- Reasonable suspicion
- Post accident (including incidents of equipment damage)
- Random testing
- Return to Duty or Follow-Up Testing

Prohibited substances include alcohol, illegal or controlled drugs and the illegal use of legal drugs. OMLLC has no duties for an employee that tests positive for prohibited substances. OMLLC has no "non-safety-sensitive" duties. OMLLC's policy includes an EAP and its use is strictly confidential.

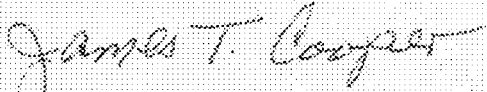
OMLLC's principle objections to MSHA's proposed rule are:

- Requiring mine operators to retain employees that have violated such policies is contradictory to OMLLC's policy and to most well established corrective action policies.
- Requiring mine operators to retain employees that violate a Drug and Alcohol Free Workplace Policy is detrimental to the safety of coal miners.
- There are no "non-sensitive safety" responsibilities in the underground coal industry.
- MSHA's proposed regulation holds the mine operator liable for personal action taken by an individual miner

- These proposed regulations hold the mine operator liable for the possession and/or use of drugs or alcohol on company property by an individual; hold the individual responsible. The possession could be in personal property such as the individual's vehicle.
- MSHA should not assume the authority to define a violation of a company's policy.
- Reasonable suspicion can be justified in other ways than through the observation. The mine operator should determine reasonable suspicion and when to test based on reasonable suspicion.
- Mine operators should not be responsible for an individual's pay for violations of company policy.
- MSHA should not dictate what company employee personnel file should retain.
- A mine operator has neither duties nor responsibilities to an applicant as relates to company policy since the applicant at that time is not duty bonded to company policy.
- Federal, State and Local laws exist that prohibit the use of illegal drugs and the abuse of alcohol and legal drugs.

In summary, MSHA should retract this proposed regulation. MSHA could outline a basic drug and alcohol program and require mine operators to file their program for a zero tolerance policy.

Respectfully submitted,



James T. Cooper
President