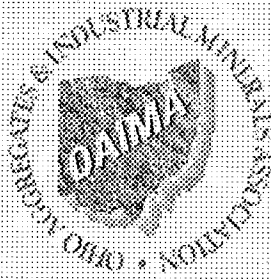

From: Patrick Jacomet [mailto:patj@oaima.org]
Sent: Thursday, November 06, 2008 2:15 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: Pat Jacomet
Subject: RIN 1219-AB41

<<...>>

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AB41-comm-127



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November 4, 2008

Patricia W. Silvey, Director
Mine Safety and Health Administration
Office of Standards, Regulations and Variances
U.S. Department of Labor
Mine Safety & Health Administration
1100 Wilson Blvd., Room 2350
Arlington, VA 22209-3939

Subject: RIN 1219-AB41, OAIMA Comments on Proposed Rule for Alcohol and Drug Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

The following comments are offered on behalf of the Ohio Aggregates & Industrial Minerals Association (OAIMA), concerning the Mine Safety and Health Administration's (MSHA) proposed rules on Alcohol and Drug Free Mines.

The OAIMA represents 94 producers of construction aggregate and industrial minerals mined in Ohio. These include limestone; sand and gravel, clay, shale, industrial sands and salt representing over 480 active surface mine sites. OAIMA represents approximately 90% of the 150 million tons of industrial minerals mined each year in Ohio with a value exceeding \$1.2 Billion. Our industry employs more than 5,500 personnel in well paying jobs (averaging over \$42,000 annual salary) and supports another 40,000 employees such as mechanics, electricians, truck drivers and equipment manufacturers and suppliers. Ohio ranks in the top ten in the production of lime, salt, sand and gravel, clay and limestone.

The OAIMA and the industry in Ohio take safety seriously. Our employees are our number-one assets and in many cases are family members, friends and long-time acquaintances. Indeed, our members are essentially an extension of our families and we take their safety and well being very seriously. We work closely with MSHA, the Ohio Department of Natural Resources Division of Minerals Resources Management, the Ohio Bureau of Workers Compensation and many other safety professionals to provide our members with the resources, training and materials they need to promote a safe work environment.

Given the above, the comments presented here are made with the intent of promoting safety, enhancing safe practices and providing the tools and training necessary to prevent accidents.

Two-Strikes - A common concern among many of our members is the "two-strikes" provision of the proposed rules. Many companies employ a "zero tolerance" policy. The requirement that a mine operator retain an employee that has tested positive for drugs or alcohol is a step backwards for companies with this policy. Compounding this matter is the provision that requires that a miner found in violation must be provided job security and be assigned to duties that are not safety sensitive. These provisions conflict with the Zero-Tolerance Policies currently employed by many operators. In addition, these provisions likely conflict with many of our producer members' current labor agreements.

Also an issue with the "two-strikes" provision is the requirement that the offending miner be reinstated and allowed to perform safety-sensitive job duties upon completion of the requirements outlined in §66.405 and § 66.406. Again, this provision conflicts with Zero-Tolerance policies already in place and may conflict with many existing labor agreements.

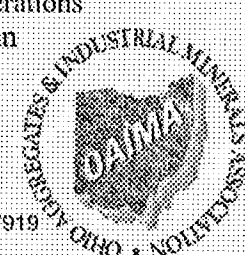
Additionally, many companies in Ohio already participate in the "Drug Free Workplace" (DFWP) program through the Ohio Bureau of Workers Compensation. This program provides incentives upon the adoption of what is deemed a very successful program here in Ohio. Many of the provisions included in the MSHA proposed rules negate, conflict with and compound the paperwork and documentation of this extremely successful program. Again, this program provides incentives to the employer for the adoption of a Drug Free Workplace, while the MSHA proposed rules penalize the employer by placing all financial, recordkeeping, testing and rehabilitation burdens directly on the employer.

Conflicting Testing Methodologies- Many miners currently fall under DOT regulations that require a 5-panel drug test. The proposed MSHA rules specify a 10-panel test. Operators would therefore need to maintain two separate random pools. This creates paperwork and scheduling nightmare for the operator, with no discernable safety benefit to the workers.

Instant Testing Not an Option- Many OAIMA members utilize "Instant Tests" to conform to DOT testing requirements. This type of testing minimizes downtime and lost productivity. This type of testing does not appear to be allowed under the proposed rules.

Financial Responsibility for SAP- OAIMA believes it should be left to the discretion of the employer as to the financial responsibility for treatment, if any.

Small Mines at Disadvantage- Many OAIMA members are small, often family owned and operated companies with minimal resources and minimal workforces. The costs associated with the proposed rules will severely and negatively impact many operations that, especially under the present economic conditions, are struggling to remain in business.



Contractor Responsibility - OAIMA is unclear as to the responsibilities for contractors should the aforementioned rules be adopted.

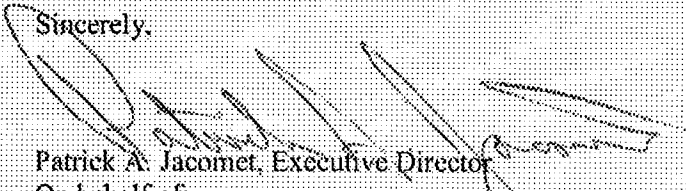
Reportability - It is unclear in the proposed rules whether or not the triggers for drug and alcohol testing also trigger the reporting requirements, since the miner, having been tested (randomly or otherwise), must be re-assigned to non-safety sensitive duty pending testing verification. This reassignment, either as the result of random testing, post-accident testing, refusal to consent to testing, or pending positive test verification, would trigger reporting under NFDL.

Recommendations- The OAIMA suggests that MSHA withdraw the aforementioned rules package and instead allow employers the flexibility to draft their own policies using the five elements suggested in Subpart C. Those are:

1. A written policy
2. An education and awareness program for non-supervisory miners.
3. A training program for supervisors
4. Alcohol and Drug Testing
5. Referrals for assistance for miners who violate these rules (unless the employer has a Zero-Tolerance Policy)

Thank you for your consideration of OAIMA's perspective and proposal regarding these proposed rules. Please let us know if we can provide any additional information.

Sincerely,



Patrick A. Jacomet, Executive Director
On behalf of:
Ohio Aggregates & Industrial Minerals Association
patj@oaima.org

cc: OAIMA Safety Committee
OAIMA Board of Directors

*With 176 member companies, OAIMA producers account for nearly 150 million tons of limestone, sand and gravel aggregates, salt, clay and other minerals mined in Ohio each year. Aggregates and industrial minerals mined in Ohio include: limestone and sand and gravel for roads, bridges, asphalt and concrete; clay and shale for brick and block; gypsum for wallboards; industrial sand for drinking water and wastewater treatment; and salt for melting ice in the winter and softening our water at home. Agricultural lime, also from mining, allows farmers to enhance their soils, increase production, and decrease the dependence on fertilizers and pesticides, leading to a cleaner environment. Each Ohio resident requires over 11 tons (about a dump truck load) per year of minerals mined locally in Ohio. One-half of all aggregates are paid for with tax dollars.
If it can't be grown, it has to be mined!*

