



FRED WEBER INC.

November 10, 2008

Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939
zzMSHA-comments@dol.gov

Re: RIN 1219-AB41

Proposed Rule, Alcohol and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance

Headquartered in Maryland Heights, Missouri, Fred Weber, Inc. is the St. Louis area's premier industry leader in heavy and highway construction projects and the region's largest materials supplier, specializing in full-service concrete and asphalt-paving projects. Fred Weber, Inc. is regulated by MSHA at eleven (11) limestone quarries, six (6) sand facilities and one (1) trap rock quarry. For over 80 years Fred Weber, Inc. has operated as a full-service, self supplied contractor able to self perform 100% of the work activities.

The Fred Weber, Inc. Alcohol and Substance Abuse Policy was implemented over 10 years ago. The Policy is evaluated annually to ensure its continued effectiveness. Fred Weber, Inc. is proud of its policy and consider it to be the most effective of its kind. We fully agree with alcohol and substance abuse testing for the mining industry, but there are several key areas in the proposed rule that we believe would have a negative impact on our current program.

POINT OF COLLECTION

Fred Weber, Inc. utilizes an in-house onsite collection and results method or "instant testing." The instant testing provides an immediate result, in the event of a non-negative result the standard USDOT procedures are followed with the sample being sent to a certified lab. Availability of USDOT collection sites are limited in many of areas that Fred Weber, Inc. operates which results in a delay of testing. Additionally, after an accident we want our on-site supervision to focus on the investigation and corrective measures rather than the transportation of a miner to a collection facility.

The administration of instant results testing, by properly trained individuals using acceptable drug testing methods, allows alcohol and drug-free miners to immediately return to work. In the event of an incident meeting the proposed reporting criteria it is foreseeable that an entire crew such as a loading crew or a blasting crew that contributed to an incident be removed from their safety sensitive position for extended periods of time while waiting for the analytical results thus allowing the opportunity for less experienced and less skilled miners to perform their tasks.

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A proposed solution, as viewed in some of the other comments submitted, is to mirror the USDOT testing requirements. Fred Weber, Inc. has other areas of the company that are regulated by the USDOT and therefore we have extensive knowledge of their alcohol and drug testing requirements. It's our opinion, that the "instant result tests" is as effective as the laboratory testing without being as large a burden on the operator and the individual miner. Please thoroughly review this as an option. Perhaps if this technology was available when the USDOT drug and alcohol testing was proposed it would be have been included in the rule.

RETURN TO WORK POLICY

Fred Weber, Inc. strongly believes alcohol and drug abuse is a serious threat to miners and mine operators. The proposed rule provides all miners the right to return to work after their first violation of the policy. This sends a message that it is acceptable to violate the policy one time, just don't let it happen again.

It's our opinion that the effectiveness of our program would take a step backwards with the proposed rule and may invite alcohol and drug users to test the system knowing that their job will still be available. All employers should have the option to terminate on the first occurrence.

TRAINING REQUIREMENTS

The training requirement of 60 minutes of training for new employees and 30 minutes for annual refresher is excessive. Training time can be utilized for more important issues. To require an operator to train a new miner for 60 minutes and each employee 30 minutes annually on drug issues and effects can be better utilized by training on hazards associated with mining operations, not personal choices.

OUTSIDE CONTRACTORS

Will the operator be required to ensure all outside contractors meet the proposed rule? If so, to what degree? The proposed rule exceeds the USDOT rule in post incident testing by requiring those that could have contributed to be tested, will outside trucking companies be required to follow MSHA policy although already regulated by USDOT regulations.

As a strong member of the mining community and a proactive, aggressive advocate for the safety and health of all workers, I thank you for you reviewing and considering these comments.

Sincerely,



Jason G. Bish
Vice President - Safety