

2008 SEP 22 P 12: 37

September 16, 2008

MSHA
Office of Standards, Regulations, and Variances
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939

Ref: RIN 1219-AB41

In accordance with our moral, ethical and legal obligation under the Mine Safety and Health Act of 1977, Headwaters Incorporated ("Headwaters") offers the following comments on proposed rule Alcohol and Drug Free Mines; Policy, Prohibitions, Testing, Training and Assistance, RIN 1219-AB41.

Comments:

1. Purpose. As stated, MSHA's purpose is to promote health and safety in the nation's mines and associated properties. It is our belief that the implementation of mandatory testing for drug and alcohol use/abuse is not consistent with the intent of the act nor will it achieve the anticipated or desired outcome. We all agree that drug and alcohol use/abuse cannot be tolerated in the work environment as it creates undue risk to the user and fellow workers. However, the hazard created by this use/abuse is not a risk specifically associated with the mining industry nor caused or influenced by the mining operator. Enacting regulations that create rigid guidelines by which operators will now be judged is unfair due to an employer's limited ability to affect change in the employee.
2. Effectiveness. The intent of the proposed rule is to identify employees using or abusing alcohol or drugs while in the work environment with a goal of reducing risk. In order to measure the anticipated effectiveness of such a rule, it must be assumed that one hour of initial education with 30 minutes of annual refresher and the threat of testing is going to persuade a sufficient number of users/abusers to refrain from utilizing these substances in the work environment. We question this logic based on the premise that most casual users are already wary of "getting caught" without a mandatory law and abusers/addicts have a medical deficiency that will not be influenced by a mandatory law or even the threat of losing their job. In the end, it is our belief that the number of persons affected positively by this rule would be minimal at best and yet the financial cost to the operator and the industry would be substantial.
3. Required Training. The proposed rule states that employee training will require a minimum of 60 minutes at initial hire and 30 minutes annual refresher. It clearly states that this will be in addition to the 24/8 already required under 30 CFR 48. So

essentially this will now become 25/9. Any required training that arises out of this proposed rule should be included in the time period stated in the current training standards.

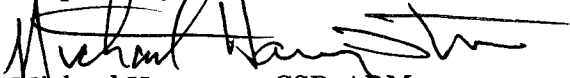
4. Operators with Programs. Many proactive organizations in the business world today have determined that it is simply not possible to manage risk effectively without a comprehensive drug and alcohol testing program within the organization. Several years ago Headwaters implemented a program that entails testing for drug and alcohol use (pre-employment, reasonable suspicion, post-accident and random), employee & supervisor education and access to a corporate sponsored Employee Assistance Plan (EAP). Like many employers, Headwaters has taken the initiative to act without government intervention because it is good business.

In addition, Headwaters currently has a Zero Tolerance Policy on drug and alcohol use in the workplace. The company is very willing to assist employees in need of rehabilitation when they come forward due to their own personal motivation. However, many organizations like Headwaters have established a Zero Tolerance for employees that use drugs and alcohol in the workplace due to the increased risk placed by their actions on fellow employees, our customers and the public. We take this very seriously and the proposed standard does not allow for a Zero Tolerance Policy and infringes on our right and obligation to implement a program that may be more strict than the proposed rule. Mandatory rehabilitation for a first offense should be an employer's option, not a requirement.

5. Nature of Enforcement. Drug and alcohol use/abuse is currently enforced through the establishment of laws and ordinances in the public domain. Every state has a statutory limit of .08 BAC or less and enforces this through the criminal justice system. Attempts to control drugs and other controlled substances have been enacted through governmental controls for many years and violations of same are enforced through the criminal justice system. We do not believe that adding another layer to enforcement for drug and alcohol use/abuse is consistent with the MSHA role in the mining industry and that this form of enforcement should be left in the public domain not forced on employers.

In summary, Headwaters operates in a safe and compliant manner and supports genuine efforts to improve safety in the American workplace. We do not believe that this rule as written adds value in an economical and meaningful way to our efforts to control risk in the workplace.

Respectfully submitted,



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Headwaters Incorporated