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November 7, 2008

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

RE: Notice of Proposed Rulemaking – Alcohol and Drug Free Mines
Published September 8, 2008
Docket, MSHA-2008-0011
RIN 1219-AB41

Dear Ms. Silvey,

The Virginia Transportation Construction Alliance (VTCA) is pleased to offer the following comments concerning the Mine Safety and Health Administration's Proposed Rule on Alcohol and Drug Free Mines, published on September 8, 2008 in 73 Fed. Reg. 52136. VTCA is the state trade association that represents the metal/non-metal industry in the State. Our membership covers the majority of the mining companies in Virginia and this letter represents the viewpoints of our membership. VTCA is concerned about the impact this proposal will have on it's membership.

While we can accept many of the provisions of this proposed rule, there are a number that need major work due to impracticality or because they conflict with current established company policies. Many of our members currently have policies in place that call for "zero tolerance" for first time offenders. Passing of the proposed MSHA rule would likely be seen by many as a watering down of their disciplinary options, which should include the option of termination for those who test positive for drugs and/or alcohol on the first offense.

We feel that the mandatory reinstatement provision actually stands to not only weaken existing programs, but encourage drug and alcohol use by making mines a "safe harbor" for users, at least for the first positive test. We simply cannot accept this.

Concerning training, we have concerns regarding the amount and type of training that is proposed by the rule. In it's current state, the proposed rule calls for additional training

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beyond the current MSHA requirement of 8 hours annually. We feel that the training should be allowed to be combined within the current 8 hour framework. In many instances, substance abuse training is already being provided. Additionally, there are some concerns that supervisors are going to be put in a tenuous position in terms of being asked to determine when an employee is deemed unable to perform his duties due to alcohol or drug abuse. This creates a potential liability for supervisors who may not be effectively trained to recognize those dangers.

In the area of testing, we feel that the proposed rule of mandating a 10-panel test is unnecessary and conflicts with the current DOT "five-panel" criteria for testing. If an employer wishes to do additional testing, they should be allowed to do so, not mandated to do so. There is also the concern of having enough testing laboratories available to handle the volume of tests that would be required through the pre-hire, random, post-accident return to duty as well as follow up testing, now proposed to be six in a 12 month time period. Cost considerations as well as the backlog of testing this will create can only hinder the effectiveness of the proposed program and we cannot support that without changes. Finally, we question whether MSHA should be authorized to order drug testing of any employee it believes could have contributed to the accident. We feel that this post accident decision making should be left to the employer in its pursuit of the root cause of any accident.

In conclusion, while VTCA applauds MSHA's attempt to create a safer mining work environment concerning the use and abuse of alcohol and drugs of all kinds, we ask that MSHA take a serious look at the proposed rule as it stands now. Additional work is needed as well as hearings/comments to discuss the needed changes. VTCA is willing to partner with MSHA, and other mining associations around the County, to frame a rule that is both fair to industry and protecting of miner's rights.

Thank you for the opportunity to provide comment on this proposed rule.

Respectfully Submitted,



Sam L. Hollins

Aggregates Program Manager, VTCA