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Sent: Monday, September 22, 2008 3:08 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: [Docket No: 1219-AB41];[FR Doc: E8-20561];[Page 52135-52163]; Alcohol- and Drug- Free Mines; Policy, Prohibitions, Testing, Training, and Assistance

Attached is my comments and questions on "RIN 1219-AB41" for your consideration.

AB41-COMM-17

Comments and Questions
RIN 1219-AB41
September 8, 2008
“Alcohol- and Drug-Free Mines; Policy, Prohibitions, Testing, Training
and Assistance”

Page 52157, 30 CFR 66.2(b):

Comment: Limiting testing only to employees in safety sensitive job duties would diminish safety at our mines. All employees need to be tested due to all job duties on a MSHA I.D. have the potential of an accident occurring when performing those duties.

Page #52157, 30 CFR Part 66.3:

Comment: This section seems to indicate that MSHA is limiting the operator what they can test for in the definition of “prohibited substances” and this would not enhance safety at our mines. The operator should be able to test for any controlled substance not just what the secretary designates. Drug abuse in different parts of the country is different and the operator should have flexibility in testing to ensure that no abuse of any drug is tolerated.

Page #52158, 30 CFR 66.3

Comment: I believe that this section would indicate that all employees that are on an active MSHA I.D. would be considered having safety-sensitive job duties. A lapse of critical concentration could cause any employee to get run over by a coal truck or the employee may run over someone with their own vehicle while traveling to and from work.

Question: Would an employee driving to the mine be considered to be in a safety sensitive job if he was a clerical worker when he arrived at the mine?

Page #52159, 30 CFR Part 66.204(b):

Comments: The Company that I work for will currently rehabilitate an employee that seeks assistance for substance or alcohol abuse prior to being tested at the operator's expense. If a miner receives a positive test result after the operator has paid good money to rehabilitate a miner then the operator should have the option of firing an employee if they deem necessary to enhance safety at the mine.

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Page #52160, 30 CFR Part 66.303:

Question: If we conduct pre-employment drug testing and the miner tested positive do we have to rehabilitate the employee or hire the employee?

If not do we have to report him to MSHA so that this test will be his first positive test to track when employed by another company?

Page #52160, 30 CFR Part 66.304(b):

Question: Did this section implicate that we have to hire a person as an employee prior to conducting a drug test?

Page #52160, 30 CFR Part 66.304(f):

Question: Are we required to hire an employee that tested positive in a pre-employment drug test after he has been rehabilitated?

Page #52160, 30 CFR Part 66.304(g):

Comment: We currently have a good drug and alcohol testing program in place and test all miners.

Question: Does this mean that all miners that are currently working in safety sensitive positions would be required to be re-tested even though we currently are conducting sampling?

Page #52160, 30 CFR Part 66.305(b):

Comment: If a miner is on leave or absent from work when a random test is collected he should be able to be tested during the next scheduled random drug test conducted at that particular mine.

Page #52160, 30 CFR Part 66.305(d):

Question: Will testing groups such as shifts or sections at a mine be considered as random testing?

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Page #52160, 30 CFR Part 66.305(e):

Comment: We currently conduct the random samples prior to miners starting work or after their shift ends.

Question: If the drug testing personnel shows up at the mine prior to the shift ending will we have to withdraw the miners from the mine immediately that have been selected for random testing or will we be able for them to complete their shift underground and sample them after the end of the shift when they arrive outside?

Page #52160, part 66.306(a)(2):

Comment: This section is not practical and would put an undue burden on the mine operator due to if a employee was loading conveyor belt stands into a scoop bucket with another miner and his finger was accidently pinched between the scoop bucket and the conveyor belt stand and only received a minor injury to his pinkie finger and asked to go to the doctor the mine operator would have to bring the other miner out of the mine also to have him drug tested. This type of test should be allowed at the end of the shift for the employee that was helping the victim load the belt stands.

Page #52161, 30 CFR Part 66.307(b):

Comment: The operator should not be limited from information that can be obtained to trigger a reasonable suspension drug test. Reliable information has been given to me in the past by state inspectors, employees and other reliable sources. The information that was received from these sources have resulted in me conducting drug testing on the employees that were reported to me and positive test have been collected and the employee terminated. By utilizing these resources the company I work for has removed the employees that tested positive from our mines, they were reported to the state agency and in some cases lost their miners certification. By utilizing these resources' we have made our mines a safer place to work and it would be a tragedy if we could not continue to do so. No regulatory agency should be able to dictate what sources we utilize to make our mines a safer place to work.

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Page #52160, part 66.307(c):

Comment: Our company policy states that we conduct sampling on any employee that we observe under the influence of drugs or alcohol or any employee that we receive information on from a credible source that is using drugs or alcohol at work or prior to coming to work. We feel that MSHA should not limit who may give credible evidence that may trigger a drug or alcohol test.

Comment: We believe that the observations should not be limited to during, immediately preceding, or just after a shift to trigger a reasonable suspension drug test. We may receive credible evidence from local law enforcement personnel, state inspectors, community members or employees. The suspect employee may have been arrested for possession of a controlled substance and we as a mine operator believe that it is our duty for the safety and well being of all our employees to be able to conduct sampling under these circumstances.

Comment: Limiting testing to miners with safety-sensitive job duties and not all miners would be an unjust act to all our employees and is unspeakable.

Page #52160, part 66.307(d):

Comment: This type of testing should not be limited to a time frame due to we may receive credible evidence that an employee is abusing alcohol 12 hours prior to showing up for work, the source may also state that the employee is also drinking prior to showing up for work everyday and when we check him he or she may seem ok and no smell of alcohol is present. We believe that as an operator that we have a responsibility to the safety and well being of all our employees to conduct sampling under these circumstances or similar circumstances.

Page #52160, part 66.307(e):

Comment: This type of testing should not be limited to a time frame due to we may receive credible evidence that an employee is abusing drugs 36 hours prior to showing up for work, the source may also state that the employee is also using drugs prior to showing up for work everyday and when we check him he or she may seem ok and no evidence is found that the employee is using drugs at this time. We believe that as an operator that we have a responsibility to the

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safety and well being of all our employees to conduct sampling under these circumstances or similar circumstances.

Page #52160, part 66.307(g):

Question: If an employee finishes his shift and states that he is willing to be sampled but states that the only way that he will be transported to the collection site is to drive himself to the site how would MSHA want the operator to handle this type of situation?

Question: If an employee is sampled and has a positive test result and refuses to be took home by the operator and states that he is going to drive himself home how would MSHA want the operator to handle this situation?

Page #52161, part 66.400(b):

Comment: Our company drug testing program allows for us to terminate a employee after testing positive on the 1st offense and it is horrifying to even suggest that we as a company can't terminate a employee that has not come forward and asked for help prior to testing positive for drugs and alcohol. An employee that has been working under the influence of drugs and alcohol has put themselves and their coworker's in great danger and he or she could have contributed to a serious injury or even a fatality. Also by giving an employee a second chance we are encouraging them not to come forward and ask for help to get off drugs or alcohol due to they know that they will not be terminated by testing positive on the 1st offense. We are also encouraging employees that have quit using drugs and alcohol to start back due to they know that they will not be terminated on the 1st offense. This section of the proposed rule will make our coal mine a more dangerous place to work and I ask that this section be reconsidered to allow for termination after an employee tested positive the 1st time.

Page #52161, part 66.403(a):

Comment: The mine operator should have an option to terminate an employee or refer a miner to a qualified SAP if the employee tested positive or had a verified adulterated test or substituted drug test. MSHA should not have the authority to dictate a mine operator's drug testing policies.

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Page #52163, part 66.500(a)(1):

Comment: Kentucky state law requires for us to report an employee after refusing to be tested or testing positive for alcohol or drugs and being terminated by the company. They also post their names on a web site so that everyone in the industry knows the miners status and this prevents other companies from hiring an employee with a drug problem.