



P. O. Box 30603
Raleigh, NC 27622
Representing Producers and Suppliers in the Aggregates Industry

October 6, 2008

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

Subject: Alcohol and Drug Free Mines: Policy, Prohibitions, Testing, Training, & Assistance
RIN 1219-AB41

To Whom It May Concern:

In reviewing the proposed policy change, it should be noted that metal/nonmetal mines already have an existing standard (56.20001), which mandates drug and alcohol free mine sites. There is no logical reason why this standard cannot be applied to coal mines as well. What is the purpose of creating a new standard that materially weakens mine operators' ability to eliminate workplace substance abuse as it is discovered? The best deterrent is the zero tolerance policy – if a miner fails a drug test, he or she is terminated for cause. There can be no second chances – substance abuse and providing a safe working environment for miners are mutually exclusive.

What is the operator's liability exposure since the miner can't be terminated? Under the proposed policy change, mine operators will be required to accept MSHA's position that drug or alcohol abusers will have a second chance. As stated in the proposed rule: "However, <Insert company name> has no intention of interfering with the private lives of its employees unless involvement with alcohol and other drugs off the job affects job performance or worksite safety." Most mine operators require employees to adhere to strict substance abuse policies, particularly the use of illegal drugs, on or off the job. As written, this rule would have the unintended consequence of comprising the safety of all employees at a mine site for the sake of a few. Although that is not the intent, the wording suggests that MSHA now condones the use of illegal drugs, as long as it does not affect job performance.

The proposed standard requires that all employees must comply with this policy. Furthermore, under this policy, those miners who perform safety-sensitive job duties and their supervisors will be

Suite 210 – Caswell Building – Glenwood Place
Phone (919) 782-7055 * FAX (919) 782-7060
Email ncaa@ncaggregates.org * Web Site www.ncaggregates.org

AB41-COMM-47

subject to alcohol and drug-testing. Who determines the definition of a "safety-sensitive job?" Does this apply to managers, administrative assistants, board of directors, or just to operators and laborers?

Substance Abuse Programs (SAPs) are normally offered *only* to employees who seek help BEFORE random or post-accident testing. Under MSHA's proposed standard, an employer can only remove the miner from a safety-sensitive job after a positive test, and then must enroll the miner in a SAP. This proposed rule will allow MSHA to coerce operators into adopting a plan that is less stringent than their existing policy.

MSHA's congressional mandate is to ensure a safe (workplace) for the miners, but there is no legal mandate that gives MSHA the power to dictate the implementation of personnel substance abuse policies. If MSHA is going to require that a substance-abusing miner attend a SAP, is MSHA willing to provide the funding to pay for this program? Will the operator be forced to hire an additional miner to fill a position while a miner is attending the SAP? If so, the operator will now be paying two miners for one position and the additional cost of the SAP.

In conclusion, our members have a zero tolerance policy when it comes to substance abuse. Anything less than this is a huge step backwards in protecting our employees. We firmly believe MSHA has no legal authority to dictate how companies respond to Human Resource issues and consider this an infringement on our ability to provide a safe workplace environment. In an attempt to solve the serious problem of workplace substance abuse, the proposed standard not only exceeds MSHA's role, but also sends a mix message to miners that those with substance abuse problems will be given as many chances as possible to clean themselves up, even at the expense of everyone else's safety. Statistics and research clearly show this assumption to be fatally flawed.

Sincerely,



Jasper G. Stem, Jr., P.E.