

DATE October 7, 2008 9:50 pm

FAX TRANSMITTAL

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FROM: BAILEY QUARRIES, INC.
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RIN 1219-AB41

AB41-COMM-53

Subject: RIN 1219-AB41

October 7, 2008

Bailey Quarries, Inc., P. O. Box 430, Republic, Missouri, 65738, does not object to having an alcohol and drug testing program, which includes a written policy, employee education, and supervisor training. We do, however, object to specific provisions in MSHA's proposed rule.

First, and most importantly, we object to the provision that requires a mine operator to keep an individual employed that has tested positive for drugs or alcohol. This effectively discontinues "zero tolerance" policies at a large number of operations where this is used as an effective method of keeping such substances out of the work place. To make matters worse, the rule stipulates that a miner be returned to a safety-sensitive job if he or she adheres to an education/treatment regimen and tests negative on all subsequent tests. This in effect gives miners a free pass for a first time offense, which is a dangerous policy when it involves any individual that is at risk for substance abuse.

We also object to being restricted to using breath testing for alcohol and urine testing for drugs at this time. Sampling of oral fluids is another viable test method. MSHA says its intent is to allow alternative test procedures that are approved by the Department of Health and Human Services in the future, but the timeliness of such approval is unknowable.

Further, MSHA specifies that only laboratories certified by the College of American Pathologists as well as the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration are qualified to conduct drug testing. There are, however, only six labs that meet these MSHA requirements. During a possible long wait time for test results due to lab backlogs, small mine operations are likely to have difficulty finding non-safety-sensitive duties for an employee tested under post-accident or reasonable suspicion circumstances. Any positive or false-positive test may result in the removal of the miner from the site where he or she would have to be replaced immediately by another miner. The operator should not be forced to find a non-safety-sensitive job and keep this individual employed that has tested positive for drugs or alcohol. When this miner is returned to a safety-sensitive job if he or she adheres to an education/treatment regimen and tests negative on all subsequent tests, then many operators including our operations will be forced to fire or terminate the employment of the "replacement" miner hired to fill in for the original miner in question. This termination would be after significant investments in safety training and potential benefits and relocation for the "replacement" miner are incurred.

We appreciate your consideration of these comments.

Sincerely,

Randall D. Bailey, Vice President

