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Docket: MSHA-2008-0014
Alcohol-and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

Comment On: MSHA-2008-0014-0001
Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

Document: MSHA-2008-0014-DRAFT-0054
Comment from Chris Kearnes, The Frazier Quarry, Inc.

Submitter Information

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General Comment

See attachment for general comments.

Attachments

MSHA-2008-0014-DRAFT-0054.1: Comment from Chris Kearnes, The Frazier Quarry, Inc.

AB41-COMM-80

The Frazier Quarry, Inc. opposes the Proposed rule on Alcohol and Drug Free Mines as presented in the September 8, 2008 Federal Register document Vol. 73 No. 174. Reasons are below:

- On page 52141 of the document it is stated that the current standard only applies to Metal Non-Metal and not coal. At this time no standard exists for coal mines. Rather than blanketing industry as a whole, why not implement a simple “prohibition” standard for coal mines to begin with?
- On page 52145 training is outlined. It is stated that under the proposed rule, Drug and Alcohol training must be conducted in the amount of 60 minutes for new hires and 30 minutes annually for all non-supervisory personnel. It is also stated that this time would be added to the already 8 hours of annual refresher required. Additionally, the training time for supervisors would be 2 hours at a minimum initially and 1 hour annually.
 - Why set time minimums? Why not simply state that training must be provided on this topic as is the case with HAZCOM, etc.?
- On page 52148 a floor rate for testing in an annual period is proposed. Why not simply require that testing be conducted and leave the floor rate up to operators?
- On page 52149, post accident and post mortem testing is discussed. Most operators with a policy in effect will conduct post accident testing. If post mortem testing is required, it should be up to MSHA to request it directly to the family of the victim and not from the operator. It is solely the right of the family of the deceased to permit the testing.
- On page 52150, it is proposed that job security be provided to the employee violating the alcohol and drug free mine policy. This is not up to MSHA to determine. It is the right of the mine operator to govern how it chooses to implement employment policies based upon existing federal and state law. Under certain circumstances, termination may be warranted and the best course of action.

General Comments:

In general, MSHA personnel it appears would be able to view the drug testing records. These records are protected by HIPAA (Health Insurance Portability and Accountability Act) and therefore should not be viewed by an Inspector who is not trained or qualified to handle personnel issues pertaining to employment practices. In addition, if a positive test is found and an inspector is able to view these records regardless of whether an accident occurred or not, it is our concern that the determination by the inspector is that the mine operator willingly let a person under the influence of a controlled substance on the job when in fact they may not have known and had no suspicion to test until the trigger event (ie. Post accident test or Random test).

It would serve industry and MSHA as an agency well to carefully evaluate the intentions of this proposed rule and start a more simple and less technical and intrusive standard prior to imposing a strict and burdensome standard on mine operators whom are already enforcing a Drug and Alcohol Free workplace.