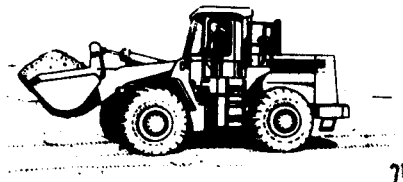
JONES FINE SAND CO.

Masonry Sand Hauled Anywhere at Reasonable Rates



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October 20, 2008

Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Blvd., Room 2350
Arlington, VA 22209-3939

Attn: Desk Officer for MSHA
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

Re: RIN 1219—AB41
MSHA Proposed Rules, Alcohol- and Drug-Free Mines

Dear Agencies:

I am writing this letter in opposition to the Mine Safety and Health Administration's ("MSHA") proposed regulations on Alcohol- and Drug-Free Mines which were proposed on September 8, 2008.

I am writing on behalf of Jones Fine Sand Company which was started by my father in 1962. While my father still is involved in the business, for a number of years I have been running it. We are a family business in Commerce City, Colorado. Our business involves processing, and, as requested, hauling masonry sand to our customers. Not counting my father and me, we have a total of six (6) employees, all of whom, other than our office manager, are involved in operating equipment or doing other work which would classify them as being in "safety-sensitive" jobs as that terminology is used in the proposed regulations. Each of our employees, other than our office manager, is subject to and receives drug testing pursuant to Department of Transportation regulations. We have never had an employee fail a drug test, nor have we had an employee quit rather than take a drug test when requested.

As a small, family-owned company, we are very concerned about the added expenses, paperwork and training required by the proposed rule. Drug and alcohol abuse issues have not been a problem in our workforce. If these rules are adopted, there should be an exemption for small mine operators, or at least for small sand and gravel operation such as Jones Fine Sand. Alternatively, small operators whose employees are subject to drug testing requirements of some other federal or state agency, such as the Department of Transportation in our case, should be exempted from the regulations. The addition of the proposed MSHA regulation will create added expense of comparing the two regulatory systems and being sure that we are in compliance with both. The DoT requirements have been very effective for us, and we should not have to deal with a second layer of regulations.

AB41-COMM-96

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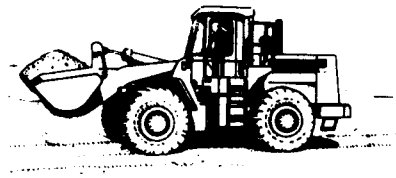

If there is no broad exemption for mine operators subject to other drug or alcohol testing requirements, I should add that I do have other, specific, concerns about the proposed rules which I hope will be corrected before the rules become final.

A first concern I have relates to the training provisions. We advise our employees of our drug and alcohol policies and testing requirements. Giving employees a copy of the pertinent policies and explaining the policy to them should be enough training. Conducting training of our employees using a person "knowledgeable about workplace substance abuse" will create significant added expense for Jones Fine Sand. Particularly for a small business such as that of my father and me, I fail to understand why it should be necessary to hire some expensive specialist in workplace substance abuse, or a less expensive person who has whatever certification MSHA chooses to require. Employees can be given the policy, advised that they can be tested randomly, or in the event of an accident or near accident, and that should be enough. Accordingly, we would request that proposed section 66.202(a)(3) be modified to exclude the requirement that training be done by "a competent person knowledgeable about workplace substance abuse." It should be sufficient to include distribution and discussion of the policy at the time it is issued, in annual refresher training and new or experienced miner training.

My most significant concern about the proposed rules relates to the provisions in Subpart E providing that a miner cannot be terminated for a first positive drug test if the miner undergoes assessment and follow-up with a Substance Abuse Professional ("SAP"). I have a number of concerns with this provision.

First, given the safety implications of drug or alcohol use (or being under the influence of either) in the workplace, and the uncertainties of the extent to which someone may be impaired with any evidence of drug or alcohol use in a test, any failure of a test should allow the mine operator to immediately terminate the individual. "Playing around" with such misconduct has no benefit and may get a fellow miner seriously injured or killed. A "one-bite-at-the-apple" approach can only encourage a miner who is uncertain about his limitations to show up at work and perhaps be in an accident. The rules should not encourage a miner to take such risks, either with himself or his fellow employees. The rule need not require a mine operator to terminate a miner's employment on a first offense, but that should be up to the particular mine operator, not dictated by MSHA in the rule. We have to remember that the person who fails the drug or alcohol test is the wrongdoer. We should not risk innocent fellow miners in any way by providing an incentive to the wrongdoer to come to work when he may be impaired because he knows if he is caught in a first offense he will not be fired.

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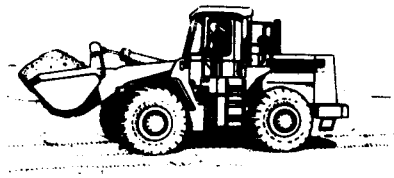

A second concern I have is that a small company such as mine cannot afford to keep a job open for someone who has failed a drug screen while that person undergoes evaluation, counseling and treatment. If the person returns to work quickly enough that no dislocation is caused to my business by the vacancy, then I would seriously question whether counseling and treatment had occurred to prevent repetition of a failed drug test and, potentially, a serious if not fatal accident in the meantime. On the other hand, if meaningful evaluation and counseling have occurred, enough time will be involved that in my small workforce I cannot keep a job open and certainly could not hire someone temporarily who would be told he would be let go as soon as the person involved returned to work. If an employee fails a drug or alcohol test, I should be able to terminate that employee and not be required to have the costs and difficulty in getting work done by keeping a position open for the wrongdoer during evaluation and counseling. In theory, the issue for small mine operators such as my father and I are could be addressed by only requiring re-employment if the mine operator has fewer than a certain number of employees, but determining where to draw that line in a broad rule is difficult. Clearly the better approach is just to remove the requirement that a mine operator to keep a job open for a miner who gets involved with an SAP after his first failed drug test.

A further problem arises from the current language. What is the sort of misconduct by a miner who has failed a drug or alcohol test, which would constitute a "separate terminable offense." If a miner is in an accident or near accident and is tested with a alcohol or drug violation being discovered, it would be easy for the mine operator to get sucked into litigation over what the central cause of the firing was – the negligent behavior or the drug/alcohol screen result. That should not be allowed and can be prevented by eliminating the requirement of a return to work after a first failed test.

Of equal concern is that the proposed regulations fail to make clear that the mine operator has no obligation to have any employee assistance program or to pay for any SAP evaluation and counseling. While there is reference to that in the introductory comments, if reinstatement is to be required, the rule should be modified to make absolutely clear that all expense associated with evaluation, counseling, etc., will be paid by the miner, unless the mine operator chooses to pay the cost.

Beyond the cost issue for SAP evaluation, I am quite concerned that someone whose primary goal may be rehabilitation rather than the safety of my employees can, in effect, reach a conclusion that someone has been treated and "reformed" thereby requiring that I bring the person back to work. There should be mechanisms in place to ensure that if an SAP says the miner can and should be returned to work, the SAP is aware of the nature and scope of work the miner is doing. The SAP should have to visit the mine in question and see the working conditions the miner will be in before certifying a return to work. Further, the required return should be specific enough so that the SAP will understand if the miner is certified to return there is some responsibility if the miner is not "clean" and causes an accident.

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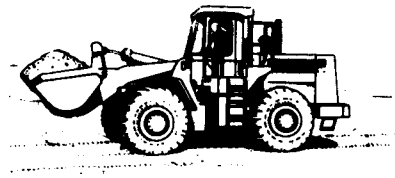

Also, once the person is brought back to work, there is the follow-up testing which costs in the vicinity of $50 per test. At a minimum, it should be made clear that the mine operator can also require the employee to pay for the follow-up testing if the employee returns to work.

These rules should not be adopted, or should be limited in their application to large mine operators who can more readily afford the added expense and administration of the proposed rules.

Respectfully submitted,

Daren Palizzi

Daren Palizzi, Vice President
Jones Fine Sand Company

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