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Subject: CFR30 Part 66 comments - RIN 1219- AB41

Attached are the comments I presented yesterday during the Public Hearing on the Proposed Rule for Drug and Alcohol testing in mining.

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Do the Right Thing!

AB41-COMM-75

66.204 – Allows a miner to voluntarily admit the inappropriate use of drugs or alcohol prior to testing. As written, miners might never be in violation of the policy so long as they confess their inappropriate use each time prior to the test. Our policy does not excuse a person who self identifies once they have been selected for testing.

66.305 – the proposed regulation is unclear as to the length of time of the 10 percent quota. We suggest that a one year period be used although Thunder Basin tests approximately 50% of our employees each year. The 10% per year as a minimum might be a more workable number for contractors who will be implementing a new program.

66.307 – Reasonable suspicion testing – Mine operators must be allowed to test based on specific information given to them by a miners co-workers. In most cases, miners and their co-workers spend much more time together during a shift than supervisors and employees do. Co-workers are an important link in the information chain and should not be removed from the equation. Supervisors or other company officials' observations should not be the only method in identifying drug or alcohol use. Often times impaired miners have the ability to "straighten up" in the presence of a supervisor. Miners are much more likely to let down their guard, if you will, around their co-workers.

66.400 – Consequences to the miner for failing or refusing to test – Mine operators must have the ability to terminate employees for first time offenses. We should also have the flexibility to terminate an employee who refuses to participate in the testing process. Most drug and alcohol programs look upon a refusal the same as a positive test. Adulteration is the ultimate form of defiance and should be considered the same as falsification of a company document and result in immediate discharge.

Summary – Thunder Basin Coal Company's current policy has been in place since 2002. In that time period, we have had 99.59% of our tests show no drug or alcohol use. This demonstrates that our policies and practices have worked well at establishing and maintaining a drug and alcohol free workplace.

Members of the panel, please give the mine operators the flexibility to use multiple testing methods. Allow us to continue to deal effectively with first time offenders through termination. These steps are necessary for this industry to get to Zero Injuries.

Statement of Thunder Basin Coal Co MSHA's Proposed Regulation – 30CFR Part 66

Introduction - Members of the panel, my name is Tim McCreary. I am the Safety Manager at the Thunder Basin Coal Company in Wright WY. I want to thank you for the opportunity to address the panel concerning Thunder Basin's views on the proposed rule regarding drug and alcohol testing in mining.

Thunder Basin has had a drug and alcohol testing program since 1985. This program has evolved over this 32 year period with changes in technology and successes and failures within the program. We believe through this evolution we now have a very successful deterrent for the use of drugs and alcohol in our mining operations.

Safety is a core value at Thunder Basin Coal Company. We view the regulation as written, as a step backwards in our efforts to maintain a drug and alcohol free workplace. Mine operators must be given the flexibility to administer these tests with the best technology available and have the ability to determine the consequences according to those results.

Definitions – the regulation mentions in many instances that testing for drugs will be conducted through urine sampling. We generally use urine testing methods when conducting random sampling. However, we use hair follicle testing in most cases when conducting pre-employment testing. This gives us the ability to look further into the past for any drug use. There may be situations arise where a blood test may be the testing method of choice due to specific circumstances. Mine operators need the flexibility to conduct the appropriate test for the situation at hand.

Operators should also be permitted to test all work positions at the mine if they so desire. Personnel in non-safety sensitive positions at the mine may have influence on safety sensitive positioned miners.