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November 4, 2008

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

Re: Proposed Rule Alcohol and Drug Free Mines: Policy, Prohibitions, Testing,
Training, and Assistance

RIN: 1219-AB41

Dear MSHA:

This letter is the Commentary of Greer Industries, Inc. to the above-mentioned Proposed Rule. It is our fervent hope that MSHA will give serious consideration to these comments in the spirit that they are intended. Our Company's number one priority has always been a strong commitment to miner safety and health, however we see no increases in safety and health to the mining community with this newest proposed rule. As a matter of fact, this new rule contradicts existing federal law.

The proposed rule seeks the prohibition of ten controlled substances that go beyond the five currently considered illicit drugs by the Department of Transportation. The DOT only tests for amphetamines-methamphetamines, marijuana, cocaine, opiates, and phencyclidine, or PCP. MSHA wants to include barbiturates, benzodiazepines, methadone, propoxyphene, and synthetic opioids. Barbiturates and benzodiazepines are commonly used by general practitioners to treat many conditions including various sleep, nervous, and depressive disorders. General practitioners and pain management physicians also commonly use propoxyphene and synthetic opioids to treat various pain conditions. It is totally unnecessary to force an individual being treated for one of the above conditions to be forced to take a drug test and then have to "jump through hoops" to prove that he/she has a valid prescription for the drug. This could cause tremendous heartache and additional undue stress on a miner who needs confidentiality to help them through a difficult life experience, or condition. The new rule proposes that the individual will have to prove that he/she has a valid prescription and is using it in accordance with the prescription. Otherwise the miner will unjustly be labeled a "drug abuser." This requirement in itself is just plain wrong and forces an individual to share confidential information with their employer that is unnecessary.

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An addition, the new rule requires miners to have a blood alcohol test with a blood alcohol concentration of less than 0.04 percent to perform a safety sensitive job. That means in most, if not all states, a miner could legally drive to work (below 0.08 for a DUI conviction) and then get tested at work due to a random drug/alcohol sample and be found unfit for duty at 0.04. If a miner is deemed unimpaired with a blood alcohol concentration below 0.08 to drive an automobile, he/she should not be labeled "impaired" at 0.04.

Furthermore, miner drug and alcohol education is already a part of most mine operators Part 48 and 46 Training Programs. It usually is discussed in the health section of the program and works well with other health issues such as dust and noise exposure. Requiring miners to undergo additional training annually on the effects of drugs and alcohol is excessive and simply is not needed. There is no justification by MSHA to require mine operators to spend more money every year for more training on a subject that is already covered in Part 48 or 46 Training Programs.

Likewise, there's no justification for requiring mine operators to cover the costs of additional testing. Like many other industries in the state of West Virginia, random testing and pre-employment drug and alcohol testing should be the employer's choice. Drug and alcohol testing cost money, and there is no justification for testing unless the employer has a "reasonable suspicion" that an employee is working while under the influence of drugs or alcohol.

The requirement for testing after an accident regardless of the cause is again unnecessary and unjustified. Employers are in the best position to determine whether alcohol use or drug use caused an accident. Minor accidents, such as debris in the eye, trip and fall, or slip on winter ice should not result in removing an employee from their job until results of testing shows no impairment. In addition, roof falls clearly are not caused by substance impairment, and any testing after roof falls would be futile. The proposed rule as written is illogical.

MSHA is proposing that mine operators relieve employees from their jobs who test positive for drugs or alcohol and then send them for an unspecified treatment program. Although removing drug and/or alcohol-impaired employees from their safety sensitive position is imperative (and a position all employers should take), the additional requirement of holding the position open for an unspecified time period until the employee successfully completes a treatment program puts undo hardship on many mining companies due to lack of manpower on the jobsite.

As the proposed rule is written, an employer may not terminate an employee who is discovered taking illegal drugs while at work. Current drug use is not protected under the American's With Disability Act or the West Virginia Human Rights Act. The proposed rule as written is in direct contrast with these laws. Consequently, Greer strongly objects to the proposed rule's prohibition of zero tolerance policies for a first positive drug test. To be clear, such rule would make mines less safe, rather than safer. It is our position that miners found to be under the influence of drugs and/or alcohol

while at work should be terminated. A zero tolerance policy, like Greer's, sends the message that no miner can just take his chances until a first positive test, and in fact encourages miners with a drug or alcohol problem to seek help before failing a test. MSHA should not require operators with strong drug and alcohol policies to replace them with less stringent rules. That will not enhance safety.

As stated above MSHA's record keeping requirements unreasonably require the employer to obtain patient confidential information. This proposed rule requires the mine operator to keep records of drug and alcohol tests, and it states that these records will be between the miner and the mine operator. A miner's prescription medication should be between he/she and the doctor.

Lastly, this newest proposal by MSHA is simply not the answer to improved safety and health in America's mines. However, it does appear to be a proposal more driven by policy objectives than actuality. Creating nonsensical and onerous rules do not enhance miner's health and safety. There is simply no evidence that such proposed rule is needed. Miners simply are not drug and alcohol abusers. They are hardworking individuals who provide our nation with the energy and minerals necessary in today's productive world. To label these hard-working men and women as drug users is simply unsupported by the evidence. The studies that were relied upon in proposing this new rule are not statistically valid. The study groups do not focus on the mining industry.

Since the Sago mine disaster, it is becoming more and more apparent everyday that in MSHA's attempt to make mines safer, MSHA is over-regulating the industry unnecessarily. Mines will not be safer with this proposed rule.

Sincerely,



Mark A. Wilson
Vice President of Safety and Human Resources
Greer Industries, Inc.

FACSIMILE COVER SHEET

DATE 11-7-08

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TO MSHA

COMPANY: Proposed law comments on "RIN 1219-AB41"

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COMMENTS: Comments for Proposed Rule on Alcohol and Drug Free Mines: B22y, Prohibitions, Testing, Training, and Assistance. "RIN 1219-AB41"