

WEST VIRGINIA CRUSHED AGGREGATES COUNCIL

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November 6, 2008

Patricia W. Silvey
Director, Office of Standards, Regulations and Variances
U.S. Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939

RE: Notice of Rulemaking - Alcohol and Drug Free Mines
RIN 1219-AB41

Dear Ms. Silvey:

The West Virginia Crushed Aggregates Council appreciates the opportunity to comment on the proposed rules regarding U.S. Department of Labor Mine Safety and Health Administration's Alcohol and Drug Free Mines, specifically "Subpart E - Operator Responsibilities, Actions, and Consequences". The WVCAC is a division of the Contractors Association of West Virginia representing stone, sand and gravel operators.

The provision that causes the WVCAC concern is Section 66.400(b), which states as follows:

" Mine operators shall not terminate miners who violate the mine operators's policy for the first time (e.g. by testing positive for alcohol or drugs). Rather, those miners testing positive for the first time, who have not committed some other separate terminable offense, shall be provided job security while the miner seeks appropriate evaluation and treatment. The miner will be able to be reinstated and allowed to resume performance of safety-sensitive job duties provided the miner complies with return-to-duty requirements outlined in Section 66.405 and 66.406".

The proposal reduces the workplace safety of all employees due to the fact that the mine operator must decide whether to assign a temporary and, perhaps less experienced, worker to the vacancy created by a miner who is seeking treatment, or assign remaining workers to assume the additional duties of the absent miner. In either situation, safety is compromised by the violator's absence.

The WVCAC finds that the proposed rule creates a potential safety risk and undermines the mine operators responsibility to maintain safe workplace and significantly reduces the remaining employees' confidence that safety is the priority. Under the proposed rule, termination of an employee is only permitted after numerous subsequent positive drug or alcohol tests.

Our association supports responsible activities that minimize the potential to adversely impact a safe working environment, however, the proposed rule prohibits owners from enforcing established "zero tolerance" drug and alcohol policies, which in fact, weakens an employer's safety program.

Our association appreciates the opportunity to present its comments on this important issue. Should you have any questions or need further information, please contact me at (304) 342-1166.

Sincerely,



Michael L. Clowser
Executive Director

AB41-COMM-134