



# TRAPPER MINING INC.

Raymond G. DuBois

President & General Manager

November 10, 2008

Richard Stickler  
Acting Assistant for Mine Safety & Health  
U.S. Department of Labor  
1100 Wilson Boulevard, 21<sup>st</sup> Floor  
Arlington, VA 22209-3939

Re: MSHA Substance Abuse Regulatory Initiative

Dear Mr. Stickler:

I am writing to express my concern with and opposition to several provisions of the proposed rule the Mine Safety and Health Administration (MSHA) published on September 8, 2008, establishing a uniform alcohol and drug testing standard for the mining industry.

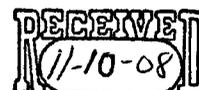
I applaud MSHA for its desire to promote an alcohol- and drug-free workplace, and I feel that most of the language in the proposed regulations will be very beneficial in increasing mine safety; however, I strongly feel there are several flawed concepts in the proposed language, and that changes must be made to ensure effective rules.

Trapper Mining Inc. (Trapper), located in Northwest Colorado, has been a major coal producer in Colorado for more than thirty-years. Our hourly workforce is represented by the International Union of Operating Engineers (IUOE), and the workforce enjoys a very open and cooperative relationship with the mine's management team.

Safety has always been the number one priority at Trapper. Trapper Mine has won the mining industry's coveted Sentinels of Safety Award, and has qualified for the award on several occasions including qualification in 2006 and 2007. The mine's workforce recently completed nearly five consecutive years, logging more than 1.6 million man-hours, without experiencing a lost time accident. This level of safety performance could not have been sustained without ongoing adherence to all of our safety policies, one of which already specifically addresses alcohol and drugs.

Trapper's safety policies are periodically examined and updated as necessary. Trapper's policy on alcohol and drugs was implemented in 1988, and then revised to meet with changing times and technology in 1989, 1994, 2002 and 2005. Our employees are made aware of our policies, notified of any changes, given safety and policy training on an ongoing basis, and they adhere to those rules.

Trapper agrees with MSHA that alcohol and drug use in a mine setting poses safety and health risks to the user and others, has a negative impact on work efficiency and results in unacceptable risks to miners, equipment and property. In order to maintain high production standards and a safe, healthful and efficient work environment, Trapper requires its employees to report for work fit to perform their jobs. Just as MSHA has proposed, Trapper also requires all employees and/or job applicants to submit to appropriate testing for the following reasons:



1. Post-offer, Pre-employment
2. Random
3. Safety related/Post-accident
4. Reasonable suspicion
5. Return-to-duty

Trapper fully supports these five circumstances under which testing for alcohol and drugs should be performed.

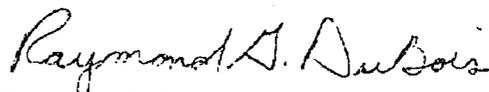
However, there are several areas in the currently-proposed regulations that I feel warrant revision or elimination if we truly wish to develop effective substance abuse regulations. These include:

- 1) **Eliminate reference to "safety-sensitive" jobs** All miners must be held to the same standards when it comes to alcohol and drug use on the job. We should not define certain jobs as "safety-sensitive" for the purposes of enforcing substance abuse regulations and policies at a mine. Trapper holds all mine employees (hourly and supervisory) to the same standards, and does not make a distinction based on job classification.
- 2) **Eliminate mandatory second chance for first-time offenders** MSHA should not condone miners reporting to work or working under the influence of alcohol and/or drugs. A regulation that mandates a second chance for a first-time offender of the alcohol and drug regulations is counterproductive. There may be situations where an employee should be allowed a second chance when they violate a safety policy, but there may be other circumstances when a first-time offender should face immediate discharge. Trapper typically discharges employees who are found to be under the influence of prohibited substances on the job, whether they are first-time offenders or not; however, all the facts are considered before doing so.
- 3) **Eliminate mandate for employer to provide Employee Assistance Programs** Trapper supports employees who seek treatment for alcohol and/or drug dependencies prior to any on-the-job alcohol or drug violations; however, it does not feel that MSHA should mandate which health care benefits are offered to employees. Mine regulations should not mandate that a company offer and bear the cost for substance abuse programs for its workers. Even though this may be a good idea for some employers and the employees, it is not a good fit for mine safety regulations.  
  
Further, mine safety regulations should not require mine operators to offer health benefits to job applicants. As part of Trapper's substance abuse policy, the mine encourages employees to seek help with drug and/or alcohol dependencies. We will allow an employee to take time off from work without pay to get appropriate professional help. We will even pay part of the uninsured medical costs that an employee may incur getting assistance. However, we do not feel that it is reasonable to require employers to provide this type of treatment to applicants. We believe this is unreasonable and it could place an undue financial hardship on a company.
- 4) **Revise requirements for testing protocols** The drug and alcohol testing protocols as proposed are too restrictive and do not allow for changes in technology or for the unique circumstances that exist in many of the nation's rurally-located coal mines. Regulations should allow for on-site testing, and should allow for mine employees to become qualified testers without undue restrictions or requirements. With today's technology, accurate testing can be performed by reasonable individuals with relatively minor, but specific training. Regulations should allow for other generally accepted testing methods beyond those currently listed in the proposed regulations.

- 5) **Revise mandate for paying wages while waiting on testing results** Miners who choose to ignore their own safety and the safety of others should not be compensated for their irresponsible actions; therefore, their wages should not be paid while the parties await the results of alcohol and/or drug testing in all circumstances. In situations where, for instance, a miner is tested for substance abuse based on reasonable suspicion, the mine operator should be allowed to withhold wages pending the alcohol and/or drug testing results. If the testing results are returned with a negative finding, an employee should not suffer any loss of pay based on the testing. In this instance, the employee should be granted back pay for time away from work. However, if the testing results return a positive finding, an employee should not be compensated for time away from work.
- 6) **Do not mandate the time element for training** Even though a certain amount of employee and supervisor training is necessary to ensure an effective safety program, regulations should not mandate what may or may not be the appropriate amount of time spent on training. It has been found to be very effective to regulate what topics shall be covered with regard to training, and then allow the mine operators to design a unique training program around those topics. This is how current regulations approach annual refresher training. Trapper's employees are made aware of our policies, notified of any changes, given safety and policy training on an ongoing basis, and they adhere to those rules.
- 7) **Develop testing requirements that reflect the needs of the mining industry** I do not feel that the Department of Transportation's (DOT) alcohol and drug testing programs are suited for mining. DOT's programs are developed with a much more broad audience in mind – the general public – and many DOT regulations are not suited or necessary for mining operations. As an example, even though it is not directly related to the proposed substance abuse regulations, the DOT requires that drivers of trucks of a particular gross vehicle weight rating (GVWR) possess a commercial driver's license (CDL), but yet, that same requirement is not mandated for miners who drive trucks of similar or larger size on a mine site; it just is not necessary.
- 8) **Modify the return-to-duty testing provision** In Trapper's alcohol and drug policy, we have a return-to-duty provision where employees are subject to testing for controlled substances upon their return to work after completing a substances abuse program, or following a leave of absence or a layoff that exceeds thirty days. However, I would like to reiterate that offering employees assistance for their alcohol and drug related problems should be strictly voluntary on the mine operator's part, and Trapper typically only offers such assistance to those who seek help prior to being found in violation of our alcohol and drug policy.

Although MSHA's proposed rule is intended to protect mining's most precious resource—the miner—by preventing accidents, injuries, and fatalities, it is the opinion of Trapper Mining Inc. that the rule as proposed would significantly diminish rather than enhance miner safety. I urge you to carefully reconsider these provisions of the proposed regulation.

Respectfully Submitted,



Raymond G. DuBois  
President & General Manager