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Sent: Monday, October 06, 2008 5:15 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: Bill McNeely; Mack McNeely; Scott Ashe
Subject: RIN 1219-AB41

Subject: Alcohol and Drug Free Mines: Policy, Prohibitions, Testing, Training, & Assistance
RIN 1219-AB41

Metal/Nonmetal (MNM) has an existing standard (56.20001) that mandates drug and alcohol free mine sites, so why not have coal adopt the existing MNM standard? Why create an entirely new standard for MNM. Is this new standard going to make all mines safer or just create an additional burden for all mine operators? What is the justification for this new standard? Does MSHA have any scientific data that supports their position? Are new regulations necessary that require operators to further reduce the possibility that employees do not abuse drugs or alcohol while working in a MNM mine? The best deterrent is the zero tolerance policy – if you fail the drug test, you are terminated; and this personnel issue should be the operator's decision not MSHA's.

What is the operator's liability exposure since the miner can't be terminated? Now mine operators will be required to accept MSHA's position that drug or alcohol abusers will have a second chance – does this mean MSHA will not take the issue of substance abuse as serious as the mine operators? As stated in the proposed rule: “*However, LBM Industries Inc. has no intention of interfering with the private lives of its employees unless involvement with alcohol and other drugs off the job affects job performance or worksite safety.*” Most mine operators require employees to adhere to strict substance abuse policies, particularly the use of illegal drugs, on or off the job. Does MSHA now condone the use of illegal drugs, as long as it does not affect job performance?

The proposed standard requires that all employees must comply with this policy. Furthermore, under this policy, those miners who perform safety-sensitive job duties and their supervisors will be subject to alcohol and drug-testing. Who determines the definition of a “safety-sensitive job?” Does this apply to managers, administrative assistants, board of directors, or just to operators and laborers? Substance Abuse Programs (SAPs) are normally offered only to employees who seek help BEFORE random or post-accident testing. Under MSHA's proposed standard, an employer can only remove the miner from a safety-sensitive job after a positive test, and then must enroll the miner in a SAP. This proposed rule will allow MSHA to coerce operators into adopting a plan that is less stringent than their existing policy.

MSHA's congressional mandate is to ensure a safe (workplace) for the miners, but there is no legal mandate that gives MSHA the power to dictate the implementation of personnel substance abuse policies. If MSHA is going to require that a substance-abusing miner attend a

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SAP, is MSHA willing to provide the funding to pay for this program? Will the operator be forced to hire an additional miner to fill a position while a miner is attending the SAP? If so, the operator will now be paying two miners for one position and the additional cost of the SAP.

Our company has a zero tolerance policy when it comes to substance abuse. This proposed new policy will be a huge step backwards in protecting our employees. We firmly believe MSHA has no legal authority to dictate how companies respond to Human Resource issues. While MSHA is attempting to solve the serious problem of workplace substance abuse, the proposed standard exceeds MSHA's role.

Sincerely,

Charlie Jones, Safety Director
LBM Industries, Nantahala Talc and Limestone Inc.