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October 8, 2008

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

2008 OCT 15 P 12:23

Re: *Comments on the Proposed Rule for Alcohol and Drug Free Mines:
Policy, Prohibitions, Testing, Training and Assistance (RIN 1219 –
AB41)*

To Whom It May Concern:

The Wyoming Contractors Association (“WCA”) is an organization protecting and serving the Wyoming construction industry. Since our establishment in 1932, the construction industry has drastically evolved and has faced more complex issues and challenges. The construction industry faces challenges in a wide-array of areas. Workforce and economic issues related to coal, oil and gas development in Wyoming are a high priority for the WCA and our members. Our members understand the importance of a drug-free workforce.

Our members are involved in highway, heavy, building, municipal and utility construction projects. The mission of the WCA is to provide benefits and services to our members through political involvement, training, safety programs and career opportunities which offer advancement for member employees, promote the construction industry and ensure a competitive opportunity that benefits all citizens of Wyoming.

The WCA appreciates the opportunity to provide comments on the above-referenced proposed rule, specifically “Subpart E – Operator Responsibilities, Actions and Consequences”. The provision that causes the WCA concern is in Section 66.400(b), which states as follows:

“Mine operators shall not terminate miners who violate the mine operator’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 Sections 66.405 and 66.406.”

The WCA believes that important proposed rules like these should be allowed the MSHA’s customary sixty-day comment period, instead of the thirty days allowed in this instance.

AB41-COMM-74

The WCA agrees with the MSHA that an alcohol and drug free mine program will contribute to the prevention of accidents and provide a safer work environment. However, the WCA does not believe that the federal government should impose a one-size fits all, nation-wide program to govern this issue. Almost all WCA members have instituted their own alcohol and drug policy to govern employees' actions and potential treatment. To have the federal government dictate how these situations will be handled by individual businesses places an unnecessary burden on their business operations, especially when its applicability is not limited by the size of a company's workforce.

A big concern for the WCA is that employees cannot be terminated for a positive test if it was the first time. Instead, the proposed rule requires the employer to complete an involved and complicated return-to-duty process. It appears that, under the proposed rule, termination of an employee is only allowed after numerous subsequent positive tests. This process places a heavy administrative and economic burden on employers and should be reconsidered by the MSHA.

The WCA has and will continue to support development of policies and programs to eliminate the use of drugs and alcohol in the workplace. We do not believe the proposed rule at issue is the correct way to approach this issue. We appreciate this opportunity to comment on such an important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Downing', with a stylized flourish at the end.

Jonathan Downing
Executive Vice President