

PUBLIC SUBMISSION

As of: October 20, 2008 Received date: Not specified Status: Pending_Post Tracking No. 8073cefa Comments Due: Submission Type: Web

Docket: MSHA-2008-0011

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

Comment On: MSHA-2008-0011-0001

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

Document: MSHA-2008-0011-DRAFT-0028

Comment from Don Gutjahr, Excalibar Minerals LLC

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General Comment

Revised from 10/3/2008 submission:

On behalf of Excalibar Minerals, we object to 66.400(b) requirement that "Mine operators shall not terminate miners who violate the mine operator's policy for the first time..."

We support MSHA's goal of improving safety by requiring that companies regulated by MSHA adopt drug and alcohol policies that include the testing of employees. Excalibar has had such a policy for many years. Fundamentally, Excalibar is responsible for insuring the safety of its operations, If in discharging our obligation, we elect to adopt a more stringent policy than is provided for in this proposed regulation, we should not be prevented from doing so. We submit that it is not within the scope of MSHA's mandate to establish social policy or to establish personnel policy.

Excalibar has an established drug free policy which allows employees to avail

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themselves of an SAP (confidentially) if they have a substance abuse problem. They may also self identify, in which case, they may use the SAP and, if they follow the recommended treatment plan of the SAP provider, they may return to work with no adverse action related to pay or position, except that we must receive a negative test result before the employee returns to a safety sensitive position.

However, if an employee is selected for random, post accident, or reasonable suspicion testing before he/she self identifies, we have a strict "no-tolerance" policy and after an MRO confirmed positive test, the employee is terminated. Also, an applicant who tests positive during pre-hire screening will not be hired under any circumstances. Given the seriousness of the risks involved in our employees being under the influence of drugs or alcohol while performing their job duties, we believe that our policy is necessary and appropriate. MSHA should not prevent Excalibar and companies like it from adopting and enforcing stricter and safer drug and alcohol policies, The proposed regulation should be revised to give employers the right to adopt stricter policies than those mandated under the regulation, including the right to terminate for a first offense.

We have provided additional comments below on other specific sections of the proposed regulation, consistent with the comments above.

Re: 66.403(a), the employer should not be required to pay for the SAP services if the employee is to be terminated under the aforementioned circumstances.

Re: 66.404(a) The operator should be permitted to terminate the employment of any miner who refuses to test or alters a test.

Re: 66404(b) Mine operators should not be required to provide "an applicant" a listing of SAP's and, as mention previously, it should be the decision of the company whether to permit the employee to return to duty following a violation of the policy.

Re: 66.405(d) As a matter of policy, the operator should be permitted to discharge an employee for his/her first offense.