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**From:** Juni Tennant [mailto:Theodore.Tennant@wrquarries.com]  
**Sent:** Monday, October 27, 2008 9:41 AM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** RIN1219-AB41

To Whom It May Concern:

I completely disagree with allowing alcohol and drug offenders a second chance at employment with our company or any other company.

Mining is a dangerous job as are most of the positions at a mine. They are highly sensitive and hazardous. Most of the jobs and tasks at our mine involve risky environments and situations.

1. The plant: pinch points, moving parts, large equipment, falling rocks, etc.
2. The stockpile "sales load" area: operating loaders work area; heavy traffic of commercial, loaders and maintenance vehicles; and changing road conditions and patterns due to production and sales needs as well as weather factors.
3. The pit: high traffic volume, large equipment such as haul trucks loaders, drills, draglines; commercial, maintenance and other vehicles, the electric line that follows the road with over 7000 volts of electricity, and changing road patterns and conditions due to production and/or weather.

These are just highlights of a few of the dangers.

Our company policy states a ZERO TOLERANCE for an infraction involving alcohol or drugs. As a company we currently have the right and freedom to choose the rules we deem necessary to conduct our business in the safest manner possible within the guidelines established by the laws as mandated in the state of Florida, as mandated by the U.S. Federal Government and as regulated by the Mining Safety and Health Administration.

We currently have a drug and alcohol policy in place which is standard of many companies in Florida. It includes a drug and alcohol prescreening for all new hires. An hour training on the rules and policies and consequences as it relates to alcohol and drugs. And a quarterly random alcohol and drug testing outsourced to a third party.

The new proposed drug and alcohol policy aspect that may require us to continue to employ a "rehabilitating" employee places an undue burden upon our company. There are several factors that pose concern:

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Liability: We then become further liable if the “rehabilitating” employee perpetrates any incident which causes harm.

Costs: This assumes that our company will cover the costs for the rehabilitation as well as continue to pay for the salary of a non-productive employee.

Safety: A ‘rehabilitating’ employee is an unsafe employee. An employee with the effects of drugs or the lapsing effects of drugs and/or alcohol withdrawal is not in the “right” state of mind and continues to pose a danger to him/herself and others.

Placing a “rehabilitating” employee in a non-sensitive job is difficult due to the fact that most positions are sensitive and there are very few non-sensitive positions available. Our non-sensitive positions are limited and we currently have difficulty locating work for our injured employees. Not only do we have to comply with MSHA but we must also comply with workers compensation legislation. This proposed ruling of not being allowed to dismiss an offending employee furthers our burden. Our “good” employees should have priority, especially since our company rewards are based on merit.

Allowing an employee a “second chance” undermines the whole purpose of having a drug and alcohol policy. It makes a joke of the rules and would promote a more casual attitude from our employees towards the policy, since they would get a second chance if they were caught. It allows more scofflaws. That in turn would make our job environment much more dangerous. Human nature being what it is and drug and alcohol use on the rise as statistically shown in numerous studies would increase the probabilities of more frequent injuries and possible fatalities.

I believe in personal responsibility, each and every person comes into this world the same and it is from that point on we must choose to move forward. Although each one of us may have been presented with different options and may have had different circumstances, some over coming more difficult odds than others we never the less must make our own choices. It is the personal choice of every individual to decide whether or not they are going to consume or not consume drugs and/or alcohol. The company cannot be held responsible:

1. If we have done everything in our power to explain the company policy.
2. If we have very clearly detailed the failure to comply with the regulations
3. If we have taken the necessary steps to enforce and promote a safe behavior.

In my personal working experience of the last sixteen years in various industries to include: petroleum, seismic research, mining, international banking, local government and retail I have not worked for any company which has given an employee a “second chance” for not complying with the company’s drug and alcohol policy. In each company I have worked for the policy was very clear, the ramification for not complying with the drug and alcohol policy is termination. If it such in some industries which are not

considered a dangerous working environment how much more should it be such for the dangerous and hazardous environment of the mining industry.

Sincerely,

Theodore E. Tennant, Jr.  
Director, Safety  
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