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From: Jack Cottrell [mailto:Jack.Cottrell@kinross.com]
Sent: Monday, October 27, 2008 12:55 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: Comments-Drug and Alcohol Proposal

Dear

Sir/Madam

Please find attached comments regarding Mshas' proposed regulation for Drug and Alcohol use on mine sites.

Sincerely

Jack Cottrell

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AB41-COMM-99

October 27, 2008

Mine Safety and Health Administration
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1100 Wilson Boulevard
Room 2350
Arlington, Virginia
22209-3939

Via email zzMSHA-comments@dol.gov

Re: RIN 1219-AB41

Dear Sirs and Madams:

As a Safety Professional and a Professional Miner (Msha Certificate) I am astonished that the agency (the premier Mine Safety Organization in the Nation) would be so brazen as to propose a Drug and Alcohol regulation that is less than Zero Tolerance and which, takes the industry backwards instead of forward.

As a Professional Miner and a Safety Professional, I must object to these proposed regulations and comment with a plea for the agency to take a Zero Tolerance stance towards Drug and Alcohol use on mine sites. In this plea please consider the following:

General

It appears the agency is more intent on protecting miners who abuse alcohol and drugs on the mine site than protecting the safety of responsible miners.

Msha has the right to regulate drugs and alcohol use on mine property and has done so under Subpart S – Miscellaneous for surface and underground mines (30 CFR Parts 56 and 57 Subpart S Miscellaneous .20001), but as a Federal Agency you should not force feed a management system to meet a regulation which is clearly the responsibility of the mine operator.

As such Msha simply needs to amend the current regulation and require operators to implement a formal Drug and Alcohol Policy.

Mining companies have adopted a Zero Tolerance for drug and alcohol use. With the “one strike” provision these proposed regulation will dilute these companies programs and force companies to abandon their Zero Tolerance Drug and Alcohol Programs. Msha should be promoting and demanding Zero Tolerance.

The Msha proposal with a one strike concept is unacceptable and Msha should be embarrassed to even try to regulate drug and alcohol on mines sites under such a proposal.

Miners must be held responsible for irresponsible acts and using and/or being under the influence of drugs and alcohol while on mine property is irresponsible and places me and other miners in jeopardy, and with this proposal the agency will become complaisant in this jeopardy.

In several sections of this proposed regulation Msha is also regulating areas where, there is no reasonable manner in which a mining company could comply with these proposals. The following indicate areas where Msha is weakening companies’ drug and alcohol policy and procedures and requiring unreasonable regulations. Please consider:

Comments Msha Drug and Alcohol Proposal

J.Cottrell

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Subpart A- General

66.2 Applicability

(a) Around mines – is a vague term and should be deleted or clearly defined as parking lots. Around mines is also limited as it may be mis-construed to not include compliance in crushers, mills, roadways, tails ponds, shops etc. If a bar is close to the mine or “around mines” how would a company comply with this standard?

(b) Limiting drug use on mine property to safety related jobs is simply ludicrous. The agency is sending a message that the use of drugs and alcohol by office workers, security, janitors etc is acceptable. There should be no drugs and alcohol in the mining work place and employees who abuse the rule should not be allowed on mine property ... period.

66.3 Definitions

Medical Review Officer (MRO)

This will require additional cost to a company as they will be required to hire or contract with a medical professional, instead of using confidential Human Resource personnel as many mines do now. The regulation should allow Human Resource Representatives to monitor this function of the program.

Msha’s Pre-employment testing

This definition weakens a company policy to hire person who test positive for drugs and alcohol prior to starting work. Companies can not and should not hire workers that test positive.

Subpart D- Alcohol and Drug Testing Requirements

66.301 Substances subject to mandatory testing

This section may work today but does not allow for testing of new drug. There must be an allowance for companies to address new circumstances and new drugs are developed. This section and concept needs to be deleted.

66.302 Additional Testing

As written the response to new testing will be delayed until Msha enact additional testing requirements. Msha’s past performance in most areas have shown a lag time of 20 years and companies can not wait or depend on the government. This section should be removed as companies need to be on the front line of drug and alcohol abuse in the workplace and cannot wait for the government response.

66.304 Pre-employment Testing

Drug and Alcohol testing must not be required of “Any Applicant”. Testing should only be required of those the company has made an offer of employment. Any applicant must be removed from the regulation. This would literally require a company to test anyone that sends in an application for employment, and is over bearing and not feasible and the cost has not been captured in Msha’s review.

Subpart E- Operators Responsibilities, Actions, and Consequences

66.400 Consequences to miner for failing an alcohol or drug test or refusal to test

(b) Msha should not set company policy. Mining companies have a Zero tolerance for illegal drug use and this proposed regulation does not set a Zero Tolerance Standard. This section should be deleted. If a miner under this proposed regulation is involved in a fatality due to drugs or alcohol use, will Msha give the company a free pass? If companies do not receive a free pass, miners need to be held responsible for their actions.

66. 401 Operators actions pending receipt of test results

Many testing protocol and systems will yield immediate results especially for alcohol testing. If a miner tests positive they must not be allowed to return to work, but appropriately removed from the property.

66.404 Evaluation and referral

Msha should not dictate hiring practices for mine companies. SAPS are covered in the induction training for new employees. The term applicant needs to be removed from paragraph (b) of this section.

66.405 Return to duty process

This section is reasonable for miners who go through a SAP but it implies that all miners must go through a SAP before they can be terminated for drug or alcohol use on the job. Companies' must retain the right to terminate immediately.

66.406 Return to duty and follow up testing

(a) Follow up alcohol testing is ridiculous. The alcohol will have worked its way through the body by time they are returned to work.

(b) The SAP must not be the sole determiner or the number and frequency of test. Msha should not remove the company inputs and Human Resource programs.

(3) Msha breaks its own rule in this section by out-lining testing requirements when in section (b)1 it places full responsibility on the SAP for follow up testing. This section should be removed.

Thanks you for your consideration. I hope the agency will consider and act on these comments and concerns.

Sincerely,

Jack Cottrell csm/wso