



Received 11/23/05
MSHA/OSRV

November 22, 2005

Mine Safety & Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Boulevard
Room 2350
Arlington, Virginia 22209-3939

RE: Written Comments on RIN 1219-AB41
Use of or Impairment from Alcohol and Other Drugs on Mine Property
Deer Creek Mine 42-00121

Dear Director:

The following comments are provided in response to the Advance Notice of Proposed Rulemaking (ANPRM) which solicits information on regulatory and non-regulatory approaches to address the risks of impairment from alcohol and drugs in the work place. We appreciate the opportunity to make the following comments:

1. *Drug Program:*

As indicated in our comments in the public hearing held in Salt Lake on October 24, 2005 most companies have some type of program in place which addresses drug prevention. Our company is no exception and has a drug prevention program which provides for:

- Pre-employment testing
- For cause and post accident testing (Personnel and Equipment)
- Department of Transportation (DOT) random sampling for holders of Chauffer Drivers License.

One area missing from our program is that of Random Sampling of the general workforce which is restricted by a company/union bargaining agreement. We feel this is a critical area that needs to be addressed to make a drug program successful. Potentially this is something that could be negotiated with the Union but if required by regulation would remove some road blocks and allow this to happen.

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2. **Concern of Proposed Regulations:** We would look favorably on regulations that would require a company to develop and maintain a drug and alcohol program. MSHA could define certain critical components of a program that would need to be addressed in the plan but the company needs the flexibility to address site specific issues, cultures, conditions, etc. We would oppose regulation that would just cite an operator for drugs or alcohol found on mine property. Citing the operator for these instances will not address or correct the problems with drugs or alcohol.
3. **Alcohol Program:** Our company follows certain procedures if an employee is suspected of being under the influence of alcohol but does not have a formal written program. This program if written in regulations would also need some flexibility for the company to comply.

4. **Collection Process:**

One area that needs to be addressed is the appropriate and legal process of collecting samples from individuals. Some issues with collecting samples would be:

- **Employee Availability:** In our area we would need a qualified person (qualified for collecting samples) at the mine to collect a sample. In most cases this sampling has involved an independent outside source. If the person to be sampled fails to show up then the preparation and cost for obtaining the sample would be wasted. Even though the sample could not be taken due to the employee being absent the cost of having the qualified person at the mine would still need to be paid. The process of collecting samples becomes a critical issue and must be addressed to allow some flexibility in collecting samples based upon issues such as the mines circumstances and availability of qualified people who can collect samples.
 - **Time and Distance:** Unless an outside company is contracted to obtain a sample, which would be very difficult in the case of post accident or for cause sampling, we would need to transport the miner to the nearest collection facility (medical facility or hospital). In our area this medical facility has set hours and is not available for after hour service which would mean transporting to the hospital. The medical facility and hospital are over twenty (20) miles from the mine. Having to take a person for sampling off mine property in most causes could involve half a shift before the employee could be put back on his scheduled job. This does not include having to replace the employee while they are off the property for sample collection. On site testing to us is a critical issue and would speed up this process and provide for more effective sampling of miners with minimal loss of employee time.
5. **Chain of Custody:** If regulations or programs are established the entire chain of custody issue needs to be addressed. The location of the collection, type of collection, custody to the lab facility, and the reporting process for results etc. would need to be addressed. It would be hard to address specifics in regulation and would be better handled through individual programs.

6. ***Prescription Medications:*** Many people have prescribed medications that must be taken during working hours, and if they do not impede work performance and are taken as prescribed would be acceptable to be taken during work. There are times when medications are taken in excess of those prescribed by a physician, which could impair judgment and reflexes. Other times medication may be taken by a person, when they are in fact another person's prescription (such as a husband or wife). If prescription medications are abused, injuries could result or an employee could end up showing positive for a medication not prescribed to them in a drug screen and find themselves terminated or in a rehabilitation program. Prescription medication use and abuse is an ever-increasing worry and needs to be considered in the development of regulations or programs.

We appreciate the ability to comment on this Advance Notice of Proposed Rule Making. This issue is a concern for all parties involved. MSHA must take care that regulations created can be complied with and not put a worthless burden on the operator and MSHA to enforce.

Should you have any questions regarding our comments please feel free to contact me at (435) 687-6642.

Sincerely,

Kevin Tuttle

Kevin Tuttle
Manager of Safety
Energy West Mining Company

Cc: Ralph Sanich, Earl Snow, Doug Johnson, Gary Christensen