

U.S. DEPARTMENT OF LABOR

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MINE SAFETY AND HEALTH ADMINISTRATION
REGULATORY DEVELOPMENT DIVISION
OFFICE OF STANDARDS, REGULATIONS, AND VARIANCES

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USE OF OR IMPAIRMENT FROM ALCOHOL AND OTHER
DRUGS ON MINE PROPERTY
FIFTH PUBLIC MEETINGWednesday
November 2, 2005Marriott Town Center
200 Lee Street East
Charleston, West Virginia 25301

PANEL:

ED SEXAUER, Moderator, Chief of Regulatory
Development DivisionBILL CROCCO, Accident Investigation Division for
Coal.LINDA ZEILER, Deputy Director of Technical
Support.BILL BAUGHMAN, Regulatory Specialist,
Office of Standards.

TOM McCLOUD, Education and Training Division.

GENE AUDIO, Metal, Nonmetal Enforcement
Division.**Received OSRV/MSHA 11/08/05 AB41-HEAR-5****NEAL R. GROSS**

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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

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Good morning. My name is Ed Sexauer. I am the Chief of the Regulatory Development Division of the Office of Standards, Regulations, and Variances for the Mine Safety and Health Administration. On behalf of David Dye, the Acting Assistant Secretary of Labor for Mine Safety and Health, I welcome you to this public meeting. This meeting provides an opportunity for you to comment on the topic of the use of or impairment from alcohol or other drugs on mine

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property.

Also with me this morning are other individuals from Mine Safety and Health Administration. On my immediate right is Bill Crocco who heads the Accident Investigation Division for Coal. Linda Zeiler, who is our Deputy Director of Technical Support. Bill Baughman is currently over there with the sound system. He's a regulatory specialist that works in my division, the Office of Standards. On my immediate left is Tom McCloud, who is with us from Education and Training Division. And Gene Audio who is with our Metal, Nonmetal Enforcement Division.

This is the fifth of seven public meetings. These meetings were announced in an Advance Notice of Proposed Rulemaking or ANPRM that we published in the *Federal Register* on August 4, 2005.

This is the document that I circulated to anyone who wished to copy. So that's floating around somewhere in the audience.

We held meetings last week in Salt Lake City, Utah, St. Louis, Missouri and Birmingham, Alabama. This week we met in Lexington, Kentucky on Monday and we will meet in Pittsburgh, Pennsylvania on

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Friday. Our last meeting will be in Arlington, Virginia on Tuesday of next week. The *Federal Register* document has detailed information about the dates and exact locations of the meetings and it also discusses our reasoning that caused us to publish the ANPRM.

The purpose of these meetings is to obtain information about the use of or impairment from alcohol and other drugs on mine property. We will use the information from these public meetings and from written comments to help us make decisions about whether we need to change our existing rules, develop new rules, or provide training or other assistance in the mining community. Because we believe there may a variety of approaches to address the problems of alcohol and other drugs, we are seeking information for both regulatory and non-regulatory solutions.

The information we obtain from these public meetings and written comments, will help us develop a better understanding of the problem and its solutions. Our preliminary review of our fatal and non-fatal mine accident records revealed a number of instances where alcohol or other drugs, or drug paraphernalia, were found or reported, or where the post-accident toxicology screen revealed the presence

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of alcohol or other drugs. However, our accident investigations do not routinely include an inquiry into the use of alcohol or other drugs as a contributing factor. There may be many instances in which alcohol or other drugs were involved in accidents and either are not reported to us, or we do not uncover them during investigations.

Because we're concerned that alcohol and other drugs can create risks to miner safety, we have initiated a number of education and outreach efforts to raise awareness in the mining industry of the safety hazards from the use of alcohol and other drugs. They include alliances with four international labor unions, production of awareness videos on the hazards of alcohol and other drugs, monetary grants to states to provide substance abuse training, and stakeholder meetings at the local level to discuss these issues and raise awareness of the problems. Additionally, during a one-day summit conducted with the states of Kentucky, Virginia and West Virginia in 2004, several coal mine operators described the effectiveness of their drug-free workplace programs and expressed their concern that such programs were not universal in the industry.

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The significance of the problem of alcohol and other drugs in the workplace has been recognized by the Federal Government and a number of programs have been implemented, and various statutes enacted with the goal of reducing the use of alcohol and other drugs in the workplace. For example:

The Anti-Drug Abuse Act of 1986 allows the Secretary of Labor to initiate efforts to address the issue;

The Omnibus Transportation Employee Testing Act of 1991 requires the transportation industry employers to conduct drug and alcohol testing for employees in "safety-sensitive" positions;

The Drug-Free Workplace Act of 1998 establishes grant programs that assist small businesses in developing drug-free workplace programs, and;

DOL's Working Partners for an Alcohol-and Drug-Free Workplace, of which we are a partner, is a public outreach campaign raising awareness and assisting employers to implement these programs.

On the regulatory side of this issue, we currently have safety regulation for metal and nonmetal mines that addresses the use of alcohol and

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narcotics at these mines. The regulation is the same for both surface and underground metal and nonmetal mines. And it simply states: "Intoxicating beverages and narcotics shall not be permitted or used in or around mines. Persons under the influence of alcohol or narcotics shall not be permitted on the job."

Between January 1, 2000 and June 30, 2005, we issued 75 violations of the metal and nonmetal surface regulation and 3 violations of the metal and nonmetal underground regulation. We do not have a similar regulation for coal mines.

Using drugs or alcohol at a mine can impair a miner's judgment significantly at a time when a miner needs to be alert and aware. Even prescription medications can affect a worker's perception and reaction time. Mining is a complicated and hazardous occupation, and a clear focus on the work at hand is a critical component of workplace safety.

Therefore, through these public meetings and written comments that we receive we are seeking data and information about six general topics that are outlined in the *Federal Register* notice. They are as follows:

A. The nature, extent and impact of the

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substance abuse at the workplace, including how to measure the extent of the problem;

B. The types of prohibited substances in use and the problems they present;

C. The impact of effective training to address substance abuse;

D. How our investigation of accidents could address alcohol and other drugs. And, by the way, at the meetings we've had so far these topics have been addressed with probably fewest comments on that particular issue; how investigations of accident can address alcohol and other drugs. So I mention particularly if someone here has any comments or suggestions along those lines, we would certainly welcome those.

Continuing the list of subjects where we're seeking information:

E. The aspects of a Drug Free Workplace Program, which ones work and how well they work, and lastly;

F. The costs and benefits of addressing substance abuse at mines.

The *Federal Register* document poses several questions for each one of these issues that I

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enumerated, and you are encouraged to respond to these questions specifically.

The procedure for each of our public meetings is the same. Those who have notified us in advance of their intent to speak or who have signed up today will make their presentations first. After all scheduled speakers have finished, others are free to speak. We will conclude this public meeting when the last speaker has finished. This meeting will be conducted in an informal manner and rules of evidence will not apply. The MSHA panel may ask questions to clarify statements for the record, but there will be no cross examination of the speaker.

If you wish to present any written statements or information today, please clearly identify your material, and if you would give it to me before the conclusion of this meeting, I will then identify the material for the record by the title of the document.

You may also submit comments following the meeting. But if you do so, we need to have those by November 27, which is the close of the comment period.

You may submit comments to us by electronic mail, fax or regular mail at addresses listed in the *Federal*

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Register notice.

Hopefully, a transcript of this meeting will be made available on our website within several days.

Thank you for your patience and attention to these introductory remarks.

And at this point, I'm going to pause for a minute and check with our recorder here and see what the status is. We have no way of verifying that with the system we have set up. So we're going to make that assumption, and we'll be making notes as well.

(Whereupon, a recess.)

What I'd like to do at this point is ask, I believe nobody has signed up in advance to speak or signed the speaker list outside, so I'm going to open it up for anyone in the audience who cares to address us and share any concepts, comments or ideas with us concerning these issues.

Would anyone care to come up to the microphone? This could be a very short meeting.

Let me just say again, the purpose of these meetings is to gather information from the public. And that information we'll use to help us develop our ideas on how to proceed. You, of course,

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may submit comments to us through November the 27th, as indicated in the notice.

So what I'm going to do at this point is take a break for about ten minutes. And if anyone cares to talk to me private with the idea of making a decision of whether they want to talk or not, we'll do that.

So we'll take a break for about ten minutes.

(Whereupon, at 9:30 a.m. a recess until 9:40 a.m.)

MODERATOR SEXAUER: Before I ask one final time if we have any takers to speak to our group, I'll just mention that in the other meetings we've heard a lot of testimony on a variety of issues. And, of course, we're going to post all of these transcripts on our web page so it will be public information.

We've heard testimony on drug testing, particularly random drug testing. Testimony on training, a lot of discussion of existing programs that seem to be working and data supporting that they are working. And we've had a lot of useful information come our way. I was hoping that we might be able to get some people here to tell us some more

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things.

So with that, I'll just ask is there anyone here who would like to address the group? Do you have a question?

I'm sorry. Would you mind coming up to the microphone so we can hear you?

MS. DUNLAP: (Off microphone).

MODERATOR SEXAUER: Okay. Would you mind stating your name so --

MS. DUNLAP: My name is Jennifer Dunlap.

[INAUDIBLE TO RECORDER: There seems to be some confusion about where we are on this effort. Is it correct that MSHA has not proposed a rule? Typically, MSHA proposes a rule and the public will comment on the proposal. This process seems awkward in that we cannot comment on a proposed rule. Is this correct?]

MODERATOR SEXAUER: Jennifer Dunlap.

I think there's a little difficulty here. Okay. I guess it's working now. Okay. We'll try this microphone.

At this point we have not proposed any specific rules. We are trying to make up our mind on what we should be doing to address the problem. Should we have a regulation? Should we change the

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existing regulation and expand it to coal? Should we address any of those issues that we've discussed in our ANPRM? For example, we talked in there about different questions, they're in six different areas. And we would like some public input that would assist us in helping us make up our mind as to which direction would be most helpful to the mining community.

We haven't determined which course of action we're going to take. And that's why we've added this additional phase to our rulemaking to come to different locations that are representative and seek information from the public that would help us make up our mind. So the short answer is, no, we don't have any proposed rule yet. And the question is are we going to do one and if so, what would you like to see in it.

Okay. Anyone else?

Does anyone on the panel have any comments they want to make?

Okay. Then if that's the case, then I'm going to close this meeting. And I'll just remind you one final time you may submit comments through November 27th.

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Okay? That's it. We're done.

(Whereupon, at 9:45 p.m. the meeting was
adjourned.)

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