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**From:** Bill Houghton [mailto:billh@dixielime.com]

**Sent:** Monday, October 27, 2008 3:09 PM

**To:** zzMSHA-Standards - Comments to Fed Reg Group

**Subject:** [Docket No: 1219-AB41];[FR Doc: E8-20561];[Page 52135-52163]; Alcohol- and Drug- Free Mines; Policy, Prohibitions, Testing, Training, and Assistance

We have reviewed the proposed rule on Alcohol and Drug Free Mines. It is our opinion that MSHA has not reviewed this with very many mine operators before starting this new rule process. We instituted a Drug and Alcohol Free Workplace policy many years ago. In the state of Florida in order to comply with Workers Compensation Laws Companies were required to do this by there Workers Compensation Insurance carriers. In administering this program we found that the only successful policy was a Zero Tolerance one. We tried the one time SAP program with a return to work re-testing as suggested in the PNRM. This failed as we had no one who tested positive and completed the SAP be able to pass a subsequent test after returning to duty. This just continued to endanger the miners. A Zero Tolerance Policy must be given at least as an option to the Mine Operator.

Also listed in the new rule is the release to MSHA of highly confidential information on the test results. This information is protected by Federal Law and can not be released. This would violate the rights of the miners and our employees. There is no basis in this new rule to maintain confidentiality of the miners/employees information and tests results. Unless this is addressed and upheld in Court it will subject the Mine Operator/Employer to many Civil Lawsuits for violation of confidentiality. We feel that this rule must be changed to address this issue before any employer could or would release any confidential information to MSHA or any of its employees.

Once again this rule as so many like it includes training. It requires 1 hour of new miner training and ½ hour recurrent training. Both of these and the new Supervisors training can and should be included in the already mandated 24 hour new miner and 8 hour recurrent training of part 46. These should not be an addition to these times.

As a member of our States Mining Association, I have discussed this new rules with many of our members and found that every member I spoke to already had a Drug & Alcohol Policy and all of them were a Zero Tolerance Policy. We respectfully request that this Proposed Rule be withdrawn completely, and that MSHA then do a survey of all Mine operators with specific questions as to each operators current Drug Policy and its contents. We feel that MSHA will find that there is no need to add additional regulation to the mines as this is already being done by the operators as Employers.

Sincerely,

Bill Houghton  
General Manager  
Dixie Lime & Stone Company

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billh@dixielime.com  
(352) 629-9715 Office