



**STEVEN F. LEER**  
Chairman and  
Chief Executive Officer

October 30, 2008

VIA FACSIMILE TO 202-693-9441  
Ms. Patricia W. Silvey  
Director, Office of Standards, Regulations & Variances  
U.S. Department of Labor  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

Re: RIN 1219-AB41, Proposed Rules on Alcohol- and Drug-Free Mines

Dear Ms. Silvey:

Thank you for the opportunity to comment on the proposed rules on alcohol- and drug-free mines.

As indicated in the introduction to the proposed rules, “[u]sing alcohol and/or drugs can affect a miner’s coordination and judgment significantly at a time when he or she needs to be alert, aware, and capable of performing tasks where there is substantial risk of injury to oneself or others.” Sharing this concern, Arch and its subsidiaries have had drug and alcohol testing programs in place for some time, and we applaud MSHA’s effort to require all mining companies to implement such programs. Our main goal is for every miner to return home safely every day. To this end, we have suggestions on the proposed rules that we believe will strengthen their ability to improve safety.

First, Arch and its subsidiaries have drug testing policies that are more stringent than the proposed rules – including zero-tolerance policies or at least the option to terminate for violation. We are sympathetic to those who have problems with drugs and alcohol and, for this reason, have amnesty programs that allow miners to seek help under Employee Assistance Programs without repercussion before being identified for testing. However, we are opposed to a rule that requires us to put policy violators back to work. We consider this requirement to be a step backwards in safety and an improper intrusion into day-to-day management. As written, the rule would require us to retain even those employees who actively are attempting to conceal their drug use by purchasing and using adulterants, those who have illegal drugs on mine property and those who are dealing drugs on mine property. This does not promote safety.

Second, we are concerned that the definition of “safety-sensitive” is too narrow. At coal mines, all employees have to drive onto mine property, around large, moving equipment and other dangerous areas on the way to and from work, and almost every office and warehouse position involves some kind of travel into the active mine site. Our General Managers are at the active mining areas daily as part of their jobs, as are Human Resources Managers, Safety Managers and other office workers. We all have a role in safety, from those who take comprehensive miner training, to those who keep and file

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the record of that training, to the Presidents of our subsidiaries. I, along with every employee at our corporate headquarters, am subject to testing under Arch's Drug-Free Workplace Policy.

Third, we are concerned about the requirement to follow Department of Transportation testing regulations because they would exclude newer and more effective testing methods. In terms of minimum standards, we think it is sufficient to use FDA-approved tests and, for confirmation testing, SAMHSA-certified labs. This leads me to our suggestion that the proposed rules be modified to act as minimum standards only. We believe this would address the majority of comments that expressed concerns about having to modify current successful testing programs.

Finally, I would like to address comments some have made that the mining industry somehow is immune from the problems that drug and alcohol abuse can cause in the workplace. In its Drug-Free Work Week Talking Points, the Department of Labor recognized that "[n]o business is immune to the problems that drug and alcohol abuse can cause in the workplace," citing U.S. Government statistics that, in 2006, almost 75 percent of the nearly 18 million illicit drug users age 18 or older were employed. While our policies are effective in weeding out impaired workers and encouraging those with problems to come forward, make no mistake that drug and alcohol abuse is a problem in our mining communities – and it only takes one impaired worker to cause an accident.

In light of this, we urge MSHA to revise the proposed rules to establish minimum-standards that would permit existing, more-stringent drug-free workplace programs to continue and allow mine operators the discretion to terminate first-time offenders when they consider this to be in the best interest of safety.

Very truly yours,



Steven F. Leer