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**From:** Glynn, Jerry [mailto:jglynn@bxi.com]  
**Sent:** Wednesday, November 05, 2008 12:35 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Cc:** Pete Jacobson  
**Subject:** MSHA Comment Letter RIN 1219-AB41

To Whom It May Concern:

Attached is a comment letter regarding MSAH Proposed Alcohol and Drug RIN 1219-AB41 for posting.

If you have any questions, please contact me.

Thank you,

Jerry D. Glynn  
303-499-1010 x 3037

AB41-COMM-122



November 5, 2008

Mr. Richard E. Stickler  
Assistant Secretary of Labor  
for Mine Safety and Health  
U.S. Department of Labor  
1100 Wilson Blvd. 21<sup>st</sup> Floor  
Arlington, VA 22209-3939

Re: Alcohol and Drug –Free Mines: Policy, Prohibitions, Testing, Training, and Assistance, Proposed Rule RIN: 1219-AB41

Dear Mr. Stickler:

I am writing to you at the request of the Members of the Colorado Stone, Sand, & Gravel Association to comment on the above proposed rule. Our Members are totally committed to the establishment of alcohol and drug free mines and recognize the need by MSHA to address the very serious issue of alcohol and drugs in the mining workplace.

While our Members may oppose some or all of the provisions contained in the proposed rule it is not the additional administration, training, testing, recordkeeping, and cost but rather the provision that **prohibits the termination of miners who violate the mine operator's policy for the first time** that our members unanimously have said they oppose.

MSHA's own Federal Register of the proposed rule repeatedly makes an argument for the removal of the controversial section that allows first time offenders the opportunity to return to work with the following statements:

... "Mining is inherently dangerous and the misuse of alcohol and drugs increase the risk of accident, injury or death...Mining is a complicated and hazardous occupation, and a clear focus on the work at hand is a crucial component of safety...Miners under the influence of alcohol and/or prohibited drugs endanger themselves as well as co-workers...It is reasonable to expect that any diminution of a miner's attentiveness, concentration, dexterity, balance, or reaction time could play a contributing if not causative, role in the accident...Using 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 the tasks where there is substantial risk of injury to oneself or others."

There can be no question these statements are in complete contrast with the Federal Mine and Health Act of 1977, where Congress declared the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner. This proposed rule invalidates the Mission Statement of MSHA to enforce compliance with mandatory safety and health standards as a means to eliminate fatal accidents; to reduce the frequency and severity of nonfatal accidents; to minimize health hazards; to promote improved safety and health conditions in the Nation's mines. As a consequence there can be no reconciliation between the proposed rule, The Mine Act, and the MSHA Mission Statement.

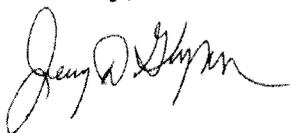
Our Members take very seriously the safety and welfare of our miners and non-miners. Our Members have developed many successful programs to ensure this safety. Our Members have developed and instilled a core set of values regarding safety in our miners that have been handed down from one generation to another as any family would. MSHA has always encouraged our Members to go beyond the mandated standards to improve the safety of the miners whenever possible. To that end our Members have for good reason developed a "Zero Tolerance" policy with respect to those who violate company policy on alcohol and drug use. Many of the 114 respondents who have commented so far have expressed similar policies and concerns.

Sadly, if MSHA adopts this proposed rule without amendment it will be asking our Members to put our miners in harms way of the very thing each of us wants to avoid at all cost and that is a serious injury or death to our miners. MSHA will be asking our members to compromise long established "Core Values" that currently protect our miners.

When core values are compromised it is not a question of if a serious injury or death will happen but rather when it will happen. On that day it will not be MSHA who knocks on the door of a Mother or Father, a Husband or Wife to tell them their loved one has been critically injured or worse never coming home again, it will be one of our Members. We, our Members and MSHA, will know that it was avoidable if that miner who knowingly and willfully reported to the job under the influence of alcohol or drugs a second time had been removed from the mine site that very first time. We should all be reminded that an outcome can not be reversed at the end but only at the very beginning.

The Members of the Colorado Stone, Sand & Gravel Association respectfully request this proposed rule not be adopted without amendment to the provision that **prohibits the termination of miners who violate the mine operator's policy for the first time.**

Sincerely,



Chairman CSGGA Safety Committee  
303-499-1010 x 3037