

SMI

SORPTIVE MINERALS INSTITUTE

October 29, 2008

Docket ID No.: RIN 1219-AB41

MSHA, Office of Standards, Regulations, and Variances

Subject: RIN 1219-AB41

1100 Wilson Boulevard

Room 2350

Arlington, VA 22209-3939

Re: Comments from the Sorptive Minerals Institute on the proposed rule Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

The Sorptive Minerals Institute (SMI), the industry trade association representing the manufacturers and marketers of absorbent clay products would like to submit the following comments on the proposed 30 CFR Subchapter N – Uniform Mine Safety Regulations, PART 66—Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance. The SMI member companies account for over 90% of the absorbent clay materials produced and sold in the United States.

The SMI member companies agree that mines should be free of alcohol and drugs and that alcohol and drug-related policies should be in place to ensure workplace safety. As a result, the SMI member companies have alcohol and drug programs in place that go beyond the provisions in the proposed rule.

The SMI members have concerns with certain of the proposed provisions and the impact they might have on existing policies that have worked effectively in the metal and non-metal sector for a number of years. Given the statistics provided in the introduction of the proposed rule, which show that for the past 30 years an average of nine citations have been issued each year to surface and underground Metal and Non-metal mines for violations under the existing law, it would appear that the current law is effective and that further regulation is not needed.

Should the Department of Labor decide to proceed with the proposed rule, The SMI members would like to share their concerns with a number of the proposed provisions.

Safety Sensitive Job: SMI members do not agree with the language in the proposed rule that offers a distinction between miners doing “safety-sensitive job duties”. Our members view all mining jobs as safety-sensitive and all of their employees are trained as such. We request that this distinction be removed from the proposed rule. At the very least, if the distinction is to be retained the proposed rule must provide industry with specific guidance on how to distinguish these positions from other positions.

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Zero Tolerance Policy: SMI members have a zero tolerance policy for employees who violate the company's drugs and alcohol policy. As it is currently written in Section 66.404 of the MSHA proposal, mine operators would be required to offer job security to miners who violate the alcohol- and drug-free mine policy for the first time. Our members consider miners who violate the company policy on drug and/or alcohol to be a serious hazard to both themselves and their fellow miners. There is no incentive for miners to obey the company policy if they know they are allowed one free pass. We strongly recommend that this requirement be removed from the proposed rule.

In addition, Section 66.204 (b) allows miners who "voluntarily admit to the illegitimate and/or inappropriate use of prohibited substances prior to being tested and seek assistance shall not be considered as having violated the mine operator's policy." Our members feel this runs contrary to their zero tolerance policy and should be removed from the proposed rule.

Privacy Issues: There are provisions in the proposed rule that raise privacy concerns and may be open to legal challenge. The provision requiring miner operators to perform toxicology tests on deceased miners is a case in point. While it is understandable that MSHA would like to know if drugs or alcohol played a role in a fatality, the SMI members believe that MSHA does not have the legal authority to enforce this requirement. Our members feel this provision should be removed from the proposed rule.

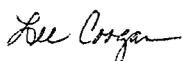
Liability Issues: The provision requiring that contractors and subcontractors be notified of the requirements of the rule raises issues of liability. Given the language in the proposed rule, it is unclear where the miner operator's liability for the actions of the employees of its contractors and subcontractors would end. This must be clarified.

Cost Burden: The SMI members believe that the proposed rule places an added economic burden on mine operators that is unnecessary in light of the record of the surface and underground Metal and Non-metal record under the existing law. The proposed rule will increase employee training costs, both for fill-in workers and new hires; the cost of testing through certified labs; and the cost of increased recordkeeping. This will be especially burdensome given the current economic conditions.

The SMI members applaud and share MSHA's commitment to keep this nation's mining operations accident and injury-free. We feel however, that the existing law and our individual alcohol programs have been effective, and that many of the changes proposed in the new rule are a step in the wrong direction.

On behalf of the members of the Sorptive Minerals, I would like to thank MSHA for allowing us the opportunity to share these comments.

Sincerely,



Lee Coogan
Executive Director