



COMMENTARY ON: MSHA_FRDOC_0001_0039

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance; Proposed Rule 30 CFR Parts 56, 57, and 66

FROM: ASOCIACIÓN DE INDUSTRIAS PRODUCTORAS DE AGREGADOS
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The mining industry has been continually exposed to a number of incidents where our most important resource, the miner, has suffered the consequences even with his own life. Laws, rules of engagement and other aides have been legislated with the ultimate goal of protecting the miner such that no other worker is exposed to similar consequences. The industry has suspected that some accidents have occurred as result of the miner's incapacity to perform its duties because he or she may be under the influence of drugs or alcohol. Therefore, the fact that it is permitted for random samples to be taken and screened for use of alcohol or drugs serves us as one of the tools to keep reducing the causes that harm our miners, who are continually exposed to a risky and dangerous work environment.

The association that we represent in Puerto Rico, Asociación de Industrias Productoras de Agregados (AIPA, for its initials in Spanish) has revised the proposal of PART 66 which regulate the consumption of drugs and alcohol. In order to determine the impact on our industry, AIPA review the proposed Part 66 and respectfully present our comments about the following sections that need to be modify or eliminated for the best implementation of this rule:

Section 66.202 Education and Awareness Program for Nonsupervisory Miners

- a) Mine operators plough required to provide education and awareness programs for on supervisory miners that meet the following requirements:
- (1) *Mine operators are required to provide education and awareness programs for nonsupervisory miners that meet the following requirements:*
- a. *Each newly hired miner must receive a minimum of 60 minutes of training before such miner is assigned to safety-sensitive job duties. The training must inform them of:*
 - b. *All non-supervisory miners, on an annual basis, will receive a minimum of 30 minutes of training to review the Elements in paragraph (a)(1) of this section.*
 - c. *Training must be delivered by a competent person knowledgeable about workplace substance abuse, these regulatory requirements, and the mine operator's policy. Mine operators may use the training materials available from MSHA or the Web site at <http://www.msha.gov>.*

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The reason for approval of Part 46 was the flexibility for the operators in its implementation. Point (1) (a) establishes that an hour of training is to be given to the operators before being able to work on what he or she was hired to do. Part 46 also establishes that new miners are to be given no less than 4-hours of 24-hours comprehensive training where the first 7 topics of new miners training are discussed and have up to 90 days to complete the required training, and these same topics for experienced miners who do not have a defined time set before entering work. We understand that this demand stiffens its implementation, which is not necessary because the miner will be submitted to the screening process and, if tested positive he or she would be fired, if he or she tested negative it is prove that does not have a drug or alcohol problem; preliminarily speaking at least. It is because of such that we recommend that only some is discussed in the first 4 hours [(1) (b) and the rest within the timeframe established in the part of the plan that applies to the miner]. Second, that a one-hour time frame is not imposed; the material being discussed according to each section should regulate this time.

It equally occurs to the annual review. Let us not forget that this rule is against those having drug or alcohol problems. Those that tests positive will receive ASP or EAP counseling. The essence of PART 66 is that drug/alcohol screening has to be the mandate witch in turn encourages us to take action. All that can be done in a preventive manner is excellent, but this rule should not be to impose yet another heavy burden to the mining industry.

Having said that, we have reached point (1) (c) which demands that it can only be an individual with knowledge of substance abuse who can teach this matter, because it is included on the next sections our comments will be also in the next paragraphs.

Section 66.203 Training Program for Supervisors

a) *A training program for supervisors is required and must meet the following requirements:*

1) *Every supervisor authorized by the mine operator to make reasonable suspicion and post-accident testing determinations shall receive an initial two hours of training and one hour annually, that, at a minimum:*

(i) *Reviews the topics covered in the non-supervisory miner training described in § 66.202 (a)(1)(i) through (iv) (ii) makes them aware of their role in enforcing the alcohol- and drug-free workplace policy;*

(iii) *Reviews the physical, behavioral, and performance indicators of probable drug use or alcohol misuse and prepares them to recognize and adequately document their observations of these signs of alcohol or drug impairment;*

(iv) *Trains them to make reasonable suspicion determinations and what procedures to follow when such determinations are made;*

(v) *Trains them to make post-accident determinations and what procedures to follow when such determinations are made;*

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(vi) Trains them to make referrals to Substance Abuse Professionals or Employee Assistance Professionals and/ or to community resources if they suspect a miner has an alcohol or drug problem but there has not been a known violation of the policy and there is insufficient evidence to warrant a reasonable suspicion test; and

(vii) Trains them on what constitutes safety-sensitive job duties so that they understand who is subject to drug testing.

(viii) All supervisors, on a annual basis, will receive a minimum of 60 minutes of training to review the elements in paragraph (a)(1) of this section.

(ix) Training must be delivered by a competent person knowledgeable about workplace substance abuse, these regulatory requirements, and the mine operator's policy. Mine operators may use the training materials available from MSHA or the Web site at <http://www.msha.gov>.

Historically there have been hints of drug/alcohol use in the workplace, and as a result, workers have caused bodily damage upon themselves and others. Establishing drug/alcohol tests is a step forward to maintain a safe work environment. These tests would eliminate the process of deducing if an individual is indeed under the influence of drugs or alcohol, but makes the supervisor continually watch over the employee's job performance. [Inconsistent performance quality, poor concentration, low productivity, rise in absences, missing without an explanation from the work place, carelessness, lack of judgment, extended lunch breaks and early departures from work] to infer that an individual is being affected by drugs/alcohol is to eliminate regulations [(a) (1) (iii)].

We shall explain, according to you anybody whose behavior affects their job performance (may it be frequent financial problems, avoiding constant contact with friends or colleges, blaming others for their inefficiency, complaining about problems at home or worn down personal appearance) will indicate that he or she is in fact under the influence of drugs/alcohol and is required a sample to determine such.

We know that if a miner fairly exceeds the limits of alcohol intake their behavior would be incoherent, would not be able to speak properly and could become aggressive. These would indicate that he or she may be under drug/alcohol influence or that the employee may feel sick, which would give the supervisor a reason to submit him or her for testing. On the other hand, there is another big group of miners that, working under the influence of drugs/alcohol do not show the signs mentioned before, and whose job performance is not affected. If this is the case, who has the gift of correctly guess this condition, including an expert? It is because of this that in the first case we do not see a problem, but on the second one we object that the supervisor should identify this condition.

Placing such a task in the supervisor's hands would cross the line and put the supervisor in a critical position. To understand this we have to establish the characteristics of the supervisor and its education. As a standard, this is a scalar position with its merits; its function is to basically give out instructions on what to do and make sure that tasks are done appropriately

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and efficiently. Supervisors will manage and until a certain degree eliminate the perception of the inefficient worker. The supervisor's education tends to be at high school level. This person will try to avoid getting mixed up in having to find out if one of the workers he manages is under drug/alcohol influence.

We all know that there are number of factors that affect the performance of a worker in his area. This downfall in his output is contemplated in his normal evaluation as a regular employee for the company. The employee knows that this could cost him promotions, including being fired. Therefore, the inefficiency of an employee should not be yet another factor to assume he or she is under drug/alcohol influence and ask for a testing because this would lead to an eventual hostile working environment.

To make matters worse, if an incident is to occur where the individual that is hurt or dies tests positive, automatically the company and or supervisor will be fined by MSHA for not suspecting that the individual was working under drug/alcohol influence.

For this, the supervisor's position will be rejected creating a huge problem for the companies. Part 66 establishes the appropriate tools to perform testing for such substances, in this we agree upon because it would eliminate any misinterpretation. The training to understand and manage such situations is very good, but this would place a great burden on the supervisors as many of them might reject the idea.

It is because of this that we agree on any training that may offer to all (Miners, Supervisors and Managers) so they grow aware of the problem and could eventually take action to deal with such.

Also, since you accepted that training was to be held in Part 46, we ask that the same rules and definitions especially that dealing with time and personnel to do so, apply. Saying that the individual who is to give the training should be one with knowledge about the subject changes the intention of Part 46.2 that defines the instructor as a competent person starting out from the principle of flexibility as said on Part 46. We should use the term "competent person" to give uniformity and flexibility to the individual who will give such training. To fill any void regarding the "competent person" MSHA could qualify the instructor authorized and accepted in Part 46(.2)

Establishing that it should be an expert in substance abuse who can teach would limit the number of individuals who may give such training and skyrocket its cost.

Again, we recommend about the time span of the training so that it may adjust to the hours established in Part 46.5 and 46.8

Section 66.204 Miner Assistance Following Admission of Use of Prohibited Substances

This section establishes that an employee who voluntarily says that he or she has a problem with drugs/alcohol has to be giving an opportunity and be sent to an assistance program. This puts the company in a delicate position, because the employee's work would be put on

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hold for a certain time. How much time? What about if there are two or more individuals that come voluntarily at the same time? We recommend a mechanism should be established in case his condition allows him to work. As for the treatment this one must be in a short specific time. Fulfilled the term and results still negative it should be permitted that the individual be substituted.

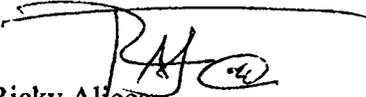
This section also includes that the worker who voluntarily indicates if he or she has a problem of drug/alcohol, is covered for treatment and job protection, nevertheless there is no cover for the person who hide it, and if discovered by the tests, some type of penalty should exist to make the difference, so that those who have problems understand that it is more beneficial to do it voluntarily so there is a real balance.

Section 66.307 Reasonable Suspicion Testing

In the previous sections we have discussed our position on the training for the supervisor to qualify and to be able to identify a possible suspect to be submitted specifically to the tests. In the Section 66.203 we present our argumentation of two groups of miners who might be under the effects of drug/alcohol. The first one that shows a few clear conditions to be under the effects of drug/alcohol will have to be submitted to the tests recommended in this section where the supervisor should no have problem for it. The second group that does not show the characteristics of being under the effects of drug/alcohol must be covered for the tests of alcohol and drugs that are made during the year at random.

As representatives of the majority of the mine operators in Puerto Rico, we trust that our comments will be reviewed and considered, and at the same time, it reflects our compromise to be part of this movement to have an accidents free environment for our miners, but also to work with MSHA to reach this common goal.

For any questions or comments regarding this matter, please does not hesitate to contact our offices with Mrs. Irma Miranda at 787-315-2482 or 787-858-1022.



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File: MSHA Propuesta Parte 66.2