

# PUBLIC SUBMISSION

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**Docket:** MSHA-2008-0014

Alcohol-and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

**Comment On:** MSHA-2008-0014-0001

Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance

**Document:** MSHA-2008-0014-DRAFT-0020

Comment from Don Gutjahr, Excalibar Minerals LLC

## Submitter Information

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## General Comment

I object to 66.400(b) requirement that "Mine operators shall not terminate miners who violate the mine operator's policy for the first time..."

It is not within the scope of MSHA's mandate to establish social policy or to establish personnel policy. We have an established drug free policy which allows employees to avail themselves of an SAP) confidentially if they have a substance abuse problem. They may also self identify, in which case, they may use the SAP and, if they follow the recommended treatment plan of the SAP provider, they may return to work with no adverse action related to pay or position, except that we must receive a negative test result before the employee returns to a safety sensitive position. However, if an employee is selected for random, post accident, or reasonable suspicion testing before he/she self identifies, we have a strict "no-tolerance" policy and after an MRO confirmed positive test, the employee is terminated. Also, an applicant who tests positive will not be hired under any circumstances.

This is a reasonable, well considered policy that we have maintained for several

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years. We do not believe that MSHA has any right to circumvent this policy.

I would agree that MSHA might provide the option to maintain such employees.

Re: 66.403(a), the employer should not be required to pay for the SAP services if the employee is to be terminated under the aforementioned circumstances.

Re: 66.404(a) The operator should be permitted to terminate the employment of any miner who refuses to test or alters a test.

Re: 66.404(b) Mine operators should not be required to provide "an applicant" a listing of SAP's and, as mention previously, it should be the decision of the company whether to permit the employee to return to duty following a violation of the policy.

Re: 66.405(d) As a matter of policy, the operator should be permitted to discharge an employee for his/her first offense.