

SUBSTANCE ABUSE IN VIRGINIA'S COAL MINES

SENATE BILL 1091

QUESTIONS and ANSWERS June 13, 2007

The following questions and answers have been prepared by the Department of Mines, Minerals and Energy (DMME) to assist mine operators and miners in understanding and complying with Senate Bill 1091 approved by the General Assembly on April 4, 2007, related to substance abuse in coal mining.

GENERAL QUESTIONS

1. In regards to the required substance abuse screening policy and program for miners, must it be submitted to the DMME for approval?
 - A. *The policy and program are not required to be submitted for approval. However, the policy and program must be in place and available for review at the mine site by the Division of Mines (DM) mine inspector and other interested persons. This policy and program must meet the minimum requirements of the Virginia Mine Safety Act and may be more extensive if the operator chooses. DM Operator Assistance personnel will assist those operations not currently having established policies and programs. (Va. Code § 45.1-161.87.D)*

2. What are the minimum requirements for a mine substance abuse policy and program?
 - A. *At a minimum, the policy and program must provide for a pre-employment, 11-panel urine test for all miners. Samples must be collected by providers certified as complying with standards and procedures set out in U.S. DOT Title 49 CFR Part 40. Collected samples must be tested by laboratories certified by the Substance Abuse and Mental Health Services Agency. Mine operators may implement more stringent substance abuse screening policies and programs. (Va. Code § 45.1-161.87.D)*

3. What about contractors working at mines, do the new substance abuse standards apply to them?
 - A. *Any independent contractor performing services or construction that is part of the mining operation at a licensed coal mine site is subject to all applicable provisions of the Virginia Mine Safety Act including the new Substance Abuse Control Standards. Therefore, any independent contractor performing services where their employees are required to hold General Coal Miner Certifications will be required to have a substance abuse policy and program in place, which meets minimum standards for substance abuse testing and reporting. (Va. Code § 45.1-161.8)*

4. How will the mine operator/contractor verify compliance with the mandated substance abuse screening policy and program?

A. *The mine operator/contractor must have on file and available at the mine site a copy of the substance abuse screening policy and program adopted that meets the minimum requirements of the Virginia Mine Safety Act. Also, a copy of the required 11-panel, pre-employment screening results must be available for review by DM inspection personnel for all miners employed after July 1, 2007. (Va. Code § 45.1-161.87.D)*

NOTE: This report and all reports required to be made to DMME for positive screenings resulting in temporary suspension of certification, must be maintained and treated as a confidential file. Further, the operator/contractor must maintain a confidential file of those reports to the DMME of miners who have tested positive and/or been discharged for violation of the operator's substance abuse policy and program. (Va. Code § 45.1-161.35.E)

5. A company operates mines in Virginia as well as in Kentucky and/or West Virginia and transfers miners from one of the neighboring states to a licensed mining operation in Virginia. Would these miners be required to submit to drug screening, even though they had a full 11-panel urine test one to three months earlier and have the proper documentation?

A. *Yes, the Virginia Mine Safety Act addresses General Miner Certification requirements and any other certifications granted by the Board of Coal Mining Examiners. As such, miners transferring into Virginia from other states must meet the pre-employment drug screening requirements in conjunction with being recognized with General Miner status. (Va. Code § 45.1-161.87.D)*

6. A miner is employed at a company and receives the full 11-panel urine test and has proper documentation. If this miner quits his job after working with the company for any duration of time, no matter how long or short, is he required to be screened again by any subsequent employers?

A. *Yes, the Virginia Mine Safety Act requires the new mine operator employing any new miner to comply with the requirement for an 11-panel, pre-employment urine test current to the time of employment as required by the mine's substance abuse screening policy and program. (Va. Code § 45.1-161.87.D)*

7. During an inspection, complaint or accident investigation, how will "reasonable cause" to suspect a miner's impairment due to intoxicants or any controlled substance be determined by the DMME and mine inspectors where requiring immediate substance abuse testing of a miner(s)?

A. *DM personnel have been trained and provided policies and procedures for assessing reasonable cause to suspect a miner's impairment due to intoxicants and/or other substance abuse including but not limited to discovery of suspected articles during a search and behaviors such as:*

Stumbling, unsteady gait	Flushed complexion	Slurred, thick speech
Drowsy, sleep, lethargic	Sweating	Incoherent
Agitated, anxious, restless	Cold, clammy, sweats	Exaggerated enunciation
Hostile, belligerent	Bloodshot eyes	Loud, boisterous
Irritable, moody	Tearing, watery eyes	Rapid, pressured
Depressed, withdrawn	Dilated (large) pupils	Excessively talkative
Unresponsive, distracted	Constricted (pinpoint) pupils	Nonsensical, silly
Clumsy, uncoordinated	Unfocused, blank stare	Cursing, inappropriate speech
Tremors, shakes	Disheveled clothing	
Flu-like illness complaints	Unkempt grooming	
Suspicious, paranoid		
Hyperactive, fidgety		
Frequent use of mints, mouthwash, eye drops		BODY ODORS Alcohol, marijuana
Inappropriate, uninhibited behavior		

The inspector’s assessment will be reviewed by a supervisor and/or the Chief prior to requiring a miner to be screened. (Va. Code § 45.1-161.78.D)

NOTE: See a copy of the “New Virginia Coal Mine Safety Act Requirements on Substance Abuse and How They Will Affect You”, which is included with information documents being provided during mine briefings.

8. Can DM inspectors search me and my property when investigating incidents and accidents where substance abuse violations are suspected?
 - A. Yes. As a certified miner, your presence at the licensed mine site is deemed to be consent to a reasonable search. This search is of your person, work area, and personal property, to include lunch box, lockers, clothing items, vehicles parked on mine property, and other areas and facilities on mine property where you would work and/or congregate. If your transportation to the site is with another miner whose vehicle is parked on mine property or facilities, that vehicle is also subject to reasonable search. (Va. Code § 45.1-161.35.D)**

REQUIRED REPORTING of SCREENING RESULTS

1. After July 1, 2007, if a person holding a Virginia coal mine certification issued by the Board of Coal Mining Examiners (BCME) has a criminal conviction for illegal use of any controlled substance, must this be reported to the DMME?
 - A. Yes! The holder of any certification issued by the Board must report “any criminal convictions” in any court of competent jurisdiction for illegal possession or use of any controlled substance. The individual miner is responsible and accountable to the**

Board for reporting such conviction within 30 days of the conviction date. The reporting should be in writing and placed in a sealed envelope marked “CONFIDENTIAL” and addressed to:

***Department of Mines, Minerals and Energy
Division of Mines
ATTN: Regulatory Boards Administrator
Post Office Drawer 900
Big Stone Gap, Virginia 24293***

The report should include the certified person’s full name, date of birth, nature of criminal complaint, and court of jurisdiction handing down conviction.

Notification will result in immediate, temporary suspension of all certifications issued by the BCME. If the conviction is being appealed, reporting is still required within 30 days of conviction. The suspended miner has the right to promptly appeal their suspension to the BCME. (Va. Code § 45.1-161.35.D, E)

2. What notifications are required by the mine operator/independent contractor to the DM Chief resulting from substance abuse screening?
 - A. ***All positive tests for any pre-employment screening, any miner testing positive for intoxicants and/or illegal use of controlled substances, and any miner discharged due to violation of the company’s substance or alcohol abuse policies must be reported to the Chief. (Va. Code § 45.1-161.87.F)***

3. If I come forward and my employer allows me to enter into an “Employee Assistance Program” for substance abuse, is this required to be reported to the DMME?
 - A. ***NO. Participation in an employee assistance program for rehabilitation purposes is not required to be reported. However, if an employee does not remain with the program and is terminated by the employer, then this must be reported to the DMME and will result in immediate, temporary suspension of all certifications issued by the BCME. (Va. Code § 45.1-161.F)***

4. When and how must operators report “positive” screenings for intoxicants and controlled substance abuses?
 - A. ***The operator must report within seven (7) calendar days of discharging or determining from receipt of positive screening results that substance abuse has occurred. Reporting to the DMME may be done electronically on a form provided on the DMME, Division of Mines web site (www.dmme.virginia.gov). If submitting electronically, please note “CONFIDENTIAL – etc” in the Subject Line of any electronic submission. If completing a reporting form in writing, the form should be placed in a sealed envelope marked “CONFIDENTIAL” and addressed to:***

*Department of Mines, Minerals and Energy
Division of Mines
ATTN: Regulatory Boards Administrator
Post Office Drawer 900
Big Stone Gap, Virginia 24293
(Va. Code § 45.1-161.87.F)*

CERTIFICATION SUSPENSIONS and BOARD ACTIONS

1. If my miner certification(s) are temporarily suspended, what does this mean?
 - A. *With the suspension of your General Miner Certification, issued by the Board of Coal Mining Examiners, you are not allowed by law to work at any licensed coal mine within the state of Virginia. This information will be provided to Kentucky and West Virginia mining authorities pursuant to the terms of bi-state reciprocity agreements and could affect any joint certification within those states or any attempt to work at mines in those states. (Va. Code § 45.1-161.35.A)*

2. How do I get my certification status restored if it is temporarily suspended due to substance abuse screening?
 - A. *You must request a review of your suspension before the Board of Coal Mining Examiners. (Va. Code § 45.1-161.35.H)*

3. How quickly can a hearing before the Board be conducted to consider reinstatement of my certification suspended for substance abuse?
 - A. *The Virginia Mine Safety Act requires that a hearing be conducted within 60 days of suspension and whenever possible, within 40 days. The Board will establish regular meeting schedules for consideration of suspensions to assist miners in addressing their certification status. (Va. Code § 45.1-161.35.H)*

4. What happens if I test positive, am reported, and suspended, but I am not using illegal drugs or intoxicated?
 - A. *A positive screening report will result in immediate, temporary suspension of all certifications issued by the BCME. The miner has the option to promptly appeal the suspension to the BCME. (Va. Code § 45.1-161.87.E, F)*

5. If I am temporarily suspended under the new Substance Abuse Control Standards, how do I get my certification status restored?
 - A. *By promptly requesting a review of the actions resulting in your suspension. This request should be directed to the:*

*Department of Mines, Minerals and Energy
Division of Mines
Post Office Drawer 900
Big Stone Gap, Virginia 24293
“CONFIDENTIAL” - ATTN: Regulatory Boards Administrator*

Your request, once received, will be docketed for the next scheduled Board meeting at which time you will be afforded the opportunity to appeal the suspension before the Board. You can be represented by legal counsel during this appeal. No one other than an attorney authorized in Virginia may represent you before the Board. The appeal proceedings will not be open to the public. (Va. Code §45.1-161.35.H)

6. How will the BCME approach appeals concerning suspensions related to the new Substance Abuse Standards?
 - A. *The Board will review circumstances related to the sampling and analysis for substance abuse in the case being appealed. Also, the Board will consider any other factual matters related to the suspension that is presented during the appeal. The Board is committed to working with those suspended miners who demonstrate a willingness to confront and resolve the problems of substance abuse they are experiencing. The goal of the Board is to help miners responsibly regain their miner certification status and resume productive and safe workplace participation in Virginia’s coal mining industry. (Va. Code § 45.1-161.35.H)*

GENERAL MINER CERTIFICATION

1. Have General Miner Certification requirements to work in Virginia’s coal mines changed?
 - A. *Yes, beginning July 1, 2007, every person working in a Virginia coal mine must hold a General Miner Certification. (Va. Code § 45.1-161.37.A)*
2. How do I obtain a General Miner Certification?
 - A. *Individuals seeking employment for the first time at a Virginia licensed coal mine may attend training provided at DMME offices at Big Stone Gap in Wise County or Keen Mountain in Buchanan County any Wednesday at 8:00 a.m.*
 - *Individuals must complete an “Application for Certification” DM-BCME-1*
 - *Attend training provided by a DM certified instructor*
 - *Provide MSHA Form 5000-23 for “New Miner Training” or submit a “Verification of Work Experience” Form DM-BCME-2 properly notarized, verifying one-year work experience. If work experience is submitted, it must be accompanied by MSHA Form 5000-23 for Annual Refresher Training*
 - *Fee Required (DMME Procedures)*

3. If I was employed in a Virginia mine prior to January 1996 and elected not to accept General Miner Certification, how do I now obtain a certification?

A. If you hold other certifications with DM prior to 1996, an applicable General Miner Certification will be issued by DMME without action from you. You will receive this within approximately 30 days by mail to your address currently on file with DM. It is your responsibility to make sure the address DM has on file is current. (DMME Procedures)

4. How do I obtain General Miner Certification if I was employed prior to 1996, however, hold no certifications with DM?

A. Individuals employed prior to 1996 may complete an “Application for Certification” (DM-BCME-1) verifying employment dates prior to 1996, and submit this form to DM certification section prior to September 30, 2007. Certification will be mailed to the address on the application. No fee is required. (Va. Code § 45.1-161.37.A)