

New Virginia Coal Mine Safety Act Requirements on SUBSTANCE ABUSE AND How They Will Affect YOU

As a result of changes to the Virginia Coal Mine Safety Act (the Act) that will become effective July 1, 2007, the Department of Mines, Minerals and Energy (DMME) Division of Mines (DM) can now require substance abuse testing as part of an inspection or complaint investigation. Testing will be required if a DM inspector finds there is reasonable cause to suspect a miner is impaired due to the presence of intoxicants or any controlled substance not used in accordance with the prescription of a licensed prescriber. Substance abuse testing will also be required if such an impairment is suspected of being a contributing factor to a mine accident causing serious injury or death. DMME can also accept appropriate testing results provided by your employer.

I. COMPLAINTS AND INSPECTIONS

DMME/DM will immediately respond to anonymous complaints of an alleged violation or reasonable cause to suspect a substance abuse violation during an inspection at your mine.

- If you are taking prescribed, controlled medications, this should be documented in your employer's substance abuse policy on file at the mine site.
- Under the Act, your presence at the mine has deemed you to have given consent to a reasonable search of your person and personal property located at the mine site.
- DMME/DM will conduct a search for controlled substance in the presence of a company agent or other witness(s).
- DMME/DM will, if necessary, require that you undergo substance abuse testing as part of an investigation.
- If you are found to be illegally in possession of a controlled substance, you will be issued an individual violation.
- DMME/DM will advise your employer of required actions and you will be transported by a company or DM representative to an appropriate provider chosen by DMME to collect samples. You will then be transported back to the mine site.
- If testing results warrant, DMME/DM will initiate temporary suspension actions against you.
- If you refuse to promptly follow the instructions in the written violation, your employer will be required to withdraw you from the mine.
- If the mine operator refuses to withdraw the person from the mine, DMME/DM will issue a violation to the licensed mine operator; failure to comply with the violation will result in the issuance of a closure order by DMME/DM.

II. SERIOUS PERSONAL INJURY OR DEATH

DMME/DM will base its decision to test for substance abuse any person involved in a serious personal injury or whose actions may have been a contributing factor in any accident involving serious personal injury or death with reasonable cause to suspect the person' impairment.

- DMME/DM investigator(s) will make an immediate assessment of the accident scene and those who may have contributed to the accident.
- DMME/DM will follow the process outlined in Section I., above, with regard to requiring substance abuse testing.
- DMME/DM will coordinate with the medical examiner or other appropriate person(s) to test for substance abuse any miner killed in a mining accident or dying on mine property.

III. REQUIRED DOCUMENTATION FOR DMME MANDATED SUBSTANCE ABUSE TESTING WHEN IMPAIRMENT IS SUSPECTED

- The decision to require an individual to submit to substance abuse testing will be based on substantial facts. These facts must be thoroughly and correctly documented since the results will be presented to the Board of Coal Mining Examiners and may subsequently be presented in a court of law. The following information will be documented in the DM inspection report.
 - Employee Name, Address, Telephone #, Date of Birth, and Certification #
 - Employee Job Title
 - Date and Time of Observation
 - Exact Location
 - Duties Being Performed by the Employee
 - Behavior Observation (The attached list identifies some behaviors to assist in the required documentation. The list is not all-inclusive.)

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		

- Name and organization of all witness(es)
- Name and organization of who transported employee to the collection site
- Time employee was transported
- Name and location of collection site

DISCOVERY OF POTENTIAL VIOLATIONS OF SUBSTANCE ABUSE DURING A SEARCH

- DMME/DM will document the names, addresses and telephone numbers of any witnesses, and name, birth date, telephone number, address, and certification number of any person found possessing controlled substances.
- DMME/DM will document the location in detail of any controlled substances found.
- DMME/DM will create a record for all items taken, as evidence will be compiled and a copy given to a company official.
- In the event articles are discovered in lunch buckets, coats, toolboxes, etc., DMME/DM will attempt to identify the owner of these items. If identified, the person's name and other pertinent information will be documented on the record given to the company.
- Mining personnel on whom unauthorized articles are found will be immediately withdrawn to the surface.
- **If smoking articles are found during any search, DMME/DM will pursue actions under the Act. No miner or other person shall smoke or carry or possess underground any smoker's articles or matches, lighters, or similar materials generally used for igniting smoker's articles. Any person convicted of a violation of this subsection shall be guilty of a Class 6 felony.**