

DIVISION OF MINES	CHAPTER: IV Inspections
PROCEDURES MANUAL	
	PROCEDURE NO: 1.04.13
	ISSUE DATE: July 1, 2007
SUBJECT: Substance Abuse	LAST REVISED:

OBJECTIVE AND INTENT

To establish procedures for responding effectively to alleged violations or suspicion of impairment due to presence of intoxicants or controlled substances that have not been prescribed and for appropriate substance abuse testing when a serious personal injury or death occurs at a mine. **If the mine operator can and is willing to provide the appropriate testing results outlined in these procedures, it would not be necessary for DMME to conduct the testing.**

GENERAL

Upon notification of an anonymous complaint of an alleged violation or reasonable cause to suspect a substance abuse violation during an inspection at a licensed coal mine operation, the area supervisor will be immediately notified. The inspector supervisor will coordinate the inspection/investigation with the appropriate DM personnel.

A. COMPLAINT INVESTIGATION

1. If there is reasonable cause to suspect a miner's impairment during a complaint investigation, the following procedures should be followed.
 - The company substance abuse policy should require employees who are taking prescribed, controlled medications to have this information on file at the mine. Therefore, you should review this information prior to the search or before taking enforcement actions.
 - Notify affected person(s) of section 45.1-161.35.D and that their presence at the mine has deemed them to give consent to a reasonable search of person and personal property located at the mine site.
 - Conduct any search for controlled substance in the presence of a company agent or other witness(s).
 - Document witness(s) and make detailed notes of location of search and of any controlled substances discovered.
 - In the event unprescribed controlled substances are discovered, refer to "Enforcement Action".
 - Notify person(s) of section 45.1-161.78.D, which allows DMME to require substance abuse testing as part of an investigation.
 - Issue person(s) an individual violation. Refer to "Enforcement Action"

- Inform mine operator of required actions and have the operator transport suspected impaired person(s) to the appropriate provider chosen by DMME for collecting samples. If the operator cannot transport person(s), then DM personnel may transport individual(s) in their state vehicle. If the DM representative transports individual(s), they should, if necessary, contact their supervisor for assistance. Whoever transports the person(s) for testing will also transport the person(s) back to the mine site.
 - If testing results warrant, refer all information to the appropriate supervisor to begin temporary suspension actions.
2. If person(s) refuses to promptly follow instructions written within the body of the violation:
 - Inform mine operator to immediately withdraw person(s) from the mine.
 - Inform affected supervisor to begin temporary suspension actions.
 - Refer to “Enforcement Action”.
 3. If operator refuses to withdraw person(s) from the mine:
 - Refer to “Enforcement Action”.

B. INSPECTION

1. If there is reasonable cause to suspect a miner’s impairment during any inspection:
 - Company substance abuse policy should require employees who are taking prescribed, controlled medications to have this information on file at the mine. Therefore, you should review this information prior to search or before taking enforcement actions.
 - Notify affected person(s) of section 45.1-161.35.D and that their presence at the mine has deemed them to give consent to a reasonable search of their person and personal property located at the mine site.
 - Conduct any search for controlled substances in the presence of a company agent or other witness.
 - Document witness(s) and make detailed notes of location of search and any controlled substances discovered.
 - In the event unprescribed controlled substances are discovered, refer to “Enforcement Action”.
 - Notify person(s) of section 45.1-161.78.D, which allows DMME to require substance abuse testing as part of an investigation.
 - Issue person(s) an individual violation. Refer to “Enforcement Action”.
 - Inform mine operator of the required actions and have the operator transport suspected impaired person(s) to the appropriate provider chosen by DMME for collecting samples. If operator cannot transport such person(s), then the DM representative may transport the individual(s) in their state vehicle. If the DM representative transports individual(s), they

should, if necessary, contact their supervisor for assistance. Whoever transports the person(s) for testing will also transport the person(s) back to the mine site.

- If results warrant, refer all information to the appropriate supervisor to begin temporary suspension actions.
2. If person(s) refuses to promptly follow the instructions written within the body of the violation:
 - Instruct mine operator to immediately withdraw person(s) from the mine.
 - Inform appropriate supervisor to begin temporary suspension actions.
 - Refer to “Enforcement Action”.
 3. If operator refuses to withdraw person(s) from the mine:
 - Refer to “Enforcement Action”.

C. *SERIOUS PERSONAL INJURY OR DEATH*

1. The decision to substance abuse test person(s) involved in a serious personal injury or whose actions may have been a contributing factor of any accident involving serious personal injury or death will be focused on reasonable cause to suspect the miners’ impairment by:
 - Investigator(s) making an immediate assessment of scene and those who may have contributed to the accident.
 - Immediately notifying affected supervisor of his assessment.
 - Supervisor(s) and/or Chief reviewing facts and determining that substance abuse testing is necessary
2. If a decision is made to substance abuse test a person(s) involved in a serious personal injury or who may have contributed to an accident:
 - Notify person(s) of section 45.1-161.78.D, which allows for DMME to require substance abuse testing as part of an investigation.
 - Issue person(s) an individual violation. Refer to “Enforcement Action”
 - Inform mine operator of required actions and have operator transport person(s) to the appropriate provider chosen by DMME for collecting samples. If operator cannot transport person(s), then DM may transport the individual(s) in their state vehicle. If the DM representative transports individual(s), they should, if necessary, contact their supervisor for assistance. Whoever transports the person(s) for testing will also transport the person(s) back to the mine site.
 - If results warrant, refer all information to the appropriate supervisor to begin temporary suspension actions.
3. If affected person(s) refuses to promptly follow the instructions written within the body of the violation:
 - Instruct mine operator to immediately withdraw person(s) from the mine.

- Inform appropriate supervisor to begin temporary suspension actions.
 - Refer to “Enforcement Action.
4. The Chief and/or appropriate supervisor 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.

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

The decision to require an individual to submit to substance abuse testing must 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. In an effort to maintain confidentiality, the inspector must open the provided Microsoft word template identified as Substance Abuse Confidentiality and document the required information stated below and any other information he feels may be of interest. The inspector will then be responsible for maintaining the confidentiality of the document by printing the word document and either mailing it to his supervisor or hand delivering. If mailed, it must be marked confidential. The hard copy will be placed in a confidential file and maintained in the Big Stone Gap office. In order to maintain confidentiality, the word document with the information should not be saved on your laptop.

- 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
- Exact 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 speech
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 or other suspicious odors
Inappropriate, uninhibited behavior		

- Name and organization of all witness(s)
- Name and organization who transported to the collection site
- Time employee was transported
- Name and location of collection site
- DM Enforcement individual violation number

UPON DISCOVERY OF POTENTIAL VIOLATIONS OF SUBSTANCE ABUSE LAW DURING A SEARCH

- Summon other DM representatives, mine officials, and applicable miner's representative to any location where unprescribed controlled substances are found. All parties should acknowledge the presence and location of any unprescribed controlled substances found.
- One DM person should 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 unprescribed controlled substances.
- The DM person in charge should document location in detail of any unprescribed controlled substances found. A sketch of the location of such substances and other pertinent information should be prepared.
- Unprescribed controlled substances should be placed in a paper bag or other container (using surgical gloves if available). If articles found are together, place in bag as found. If they are separate and/or in containers, place in separate bags.
- Paper bag should be properly identified (EX: #1, #2, #3, etc.), stating the contents, date, time, and specific location in which the items were obtained. The inspector sealing the bag/container should initial and record the time and date in ink on the outside of the bag/container or on a tag attached to the bag/container. **The current holder must ensure chain of custody is maintained. In the event the articles change hands, ensure the name of the person receiving the articles and the date and time are recorded on the bag/container in addition to the name of person from whom articles were received.**
- Make a record of 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., attempt to identify the owner of these items. If identified, the person's name and other pertinent information should be documented on the record given to the company and on the identifying containers (paper bag) containing the items.
- Mining personnel on whom unprescribed controlled substances are found should be immediately withdrawn to the surface.

***NOTE* If smoking articles are found, refer to and follow 1.04.08 "Smoking Articles" of the Division of Mines Procedure Manual.**

II. ENFORCEMENT ACTION

- If there is reasonable cause to believe during an inspection or investigation that a person(s) is impaired due to substance abuse and or that substance abuse contributed to a serious personal injury or death: issue an individual violation to each person(s) under section **45.1-161.78.D**. The instructions in the body of the violation must state date, time and location of testing. For example, (1) there is reason to believe that ____ (name) is impaired due to substance abuse on __ (date) __ at __ (time) __; therefore, you are instructed to be transported to ____ (collecting facility) __ and submit to substance abuse testing immediately. Other information of confidentially will be on file at the DMME office in Big Stone Gap referencing the above violation number. (2) There is reason to believe that ____ (name) __ has contributed to a serious personal injury due to impairment from substance abuse on ____ (date) __ at __ (time) __, therefore, you are instructed to be transported to __ (collecting facility) __ and submit to substance abuse testing immediately. Other information of confidentially will be on file at the DMME office in Big Stone Gap referencing the above violation number.
- If unprescribed controlled substances are found during a search of a person or his personal property, (i) issue a violation to the individual person, referencing **Section 45.1-161.12.A** of the Coal Mine Safety Laws of Virginia. (ii) If management does not remove the person from the mine, issue the licensed mine operator a violation referencing **45.1-161.14.B**; (iii) if the licensed mine operator does not comply with the **45.1-161.14.B** violation within a reasonable time, issue an **Order of Closure affecting the entire mine, for failure to abate (45.1-161.91.A (IV))**.
- If a person refuses to submit to substance abuse testing as directed by the Chief, (i) issue a violation to the individual referencing **Section 45.1-161.78.D**; (ii) if management does not remove the person from the mine, issue the licensed mine operator a violation referencing **45.1-161.14.B**; (iii) if the licensed mine operator does not comply with the **45.1-161.14.B** violation within a reasonable time, issue an **Order of Closure affecting the entire mine, for failure to abate (45.1-161.91.A (IV))**.
- If the operator refuses to withdraw a person from the mine, who has been instructed by DM to submit to a substance abuse test and has refused, (i) issue the licensed mine operator a violation referencing **45.1-161.14.B**; (ii) if the licensed mine operator does not comply with the **45.1-161.14.B** violation within a reasonable time, issue an **Order of Closure affecting the entire mine, for failure to abate (45.1-161.91.A (IV))**.
- If results of substance abuse testing are negative, the violation(s) will be **VACATED**.