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October 27, 2010

Via e-mail Jackie.Rogers@hq.doc.gov and U.S. Mail

Jackie D. Rogers, Office of Health Safety and Security,
Office of Worker Safety and Health Policy
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: HS-RM-10-WSAP

Dear Ms. Rogers:

These comments are submitted on behalf of the Pantex Guards Union (“PGU”) in response to the Department of Energy’s solicitation of comments related to the addition of anabolic steroids to the current randomized drug testing program. The many issues related to testing for anabolic steroids are of great concern to the PGU because of the direct impact it could have on their membership. The PGU represents Security Police Officers (“SPO”) assigned to protect DOE assets (including SNM) at the Pantex Site.¹ Any changes to current drug and alcohol testing programs directly impact their employment which is already highly regulated through various DOE regulations and orders. Over time, the PGU has supported necessary DOE programs established to assure the reliability of individuals tasked with protecting their site. However, the asserted need for these programs must be balanced against constitutionally protected privacy rights of employees and must be fair and reasonable to employees. In this instance, as more detailed below, the PGU opposes random testing for anabolic steroids.

- 1) Random testing for anabolic steroids is not necessary because there is no credible evidence suggesting that anabolic steroids currently pose a security risk. At the Pantex site, the PGU is not aware of any incidents or inappropriate work place behavior attributable to anabolic steroids. In addition, the leadership of the PGU maintains communication with other guard unions throughout the DOE complex. To their knowledge, there have been no work place incidents that are attributed to

¹ There are approximately 400 Security Police Officers assigned to the Pantex site.

anabolic steroids. Consequently, anabolic steroids do not pose a present threat to the safety or security of sites covered by current testing.

The PGU understands the DOE is primarily concerned over the psychologic effect of long term anabolic steroid use. There is well documented medical evidence that long term psychologic effects manifest in the following behaviors:

- Wide and erratic mood swings
- Irrational behavior
- Increased aggressiveness
- Irritability
- Increased libido

These types of behaviors increase over time and become quite noticeable to co-workers and supervisors who have daily contact with users. To the extent a SPO begins to exhibit one or more of these behaviors, the behavior itself provides a sufficient basis to question the SPO's fitness for duty. Current programs, such as the Human Reliability Program, are designed to address situations where SPO's exhibit any behavior that raise questions over their fitness to carry weapons and to properly perform their assigned duties. Unlike drug and alcohol use, the psychologic effects of anabolic steroid use provide an independent basis to evaluate fitness for duty. Therefore, there already exists programs in place to address behavior resulting from long term use of anabolic steroids.

In addition, random tests will lead to innumerable challenges to the testing because many dietary supplements result in false positive reporting. Under current policies, SPO's are required to maintain a high level of fitness as a condition of continued employment. It is well documented that in order to maintain fitness a large proportion of SPO's regularly exercise and are careful in their eating habits. This focus on "fitness" leads many SPOs to use dietary supplements as a part of their overall approach to maintaining fitness. There is ample medical commentaries reporting false positives for anabolic steroids based on use of various dietary supplements. Given the known use of dietary supplements by SPOs it can be reasonably expected that random testing will lead to challenges based on purported false positives. This will become time consuming and costly for all parties (i.e, employees, employers, DOE and Unions) involved in the process. More importantly there is a significant risk innocent SPOs will find themselves without employment because of a false

positive result having to fight to recover their job. For many SPOs, the time, cost, and effort required to challenge such actions becomes prohibitive meaning many “victims” of false positives will be prematurely washed out of the system. In weighing the costs and benefits of testing the number of and consequences of false positives should not be overlooked.

For these reasons described above, PGU opposes random testing for anabolic steroids. At the very most, testing should be limited to “for cause” testing based on verified observations of psychologic behavior related to anabolic steroid use. Even though arguably “for cause” testing is unnecessary because the behavior itself is actionable, such limited testing would at least avoid the many difficult legal/practical issues raised by random testing.

2. There exists a whole host of supplements and medications, both prescribed and sold over the counter, that result in positive or false positive results. I am confident that other commentators with far greater knowledge of these products will comment on these medications and supplements. From PGU’s perspective, what is extremely important is if anabolic steroid testing is approved that DOE list those medications and supplements which are banned and will be reported as positive. This gives SPOs fair prior notice of medications and supplements they must avoid when considering medications or supplements for health and fitness training. To not provide such a list places a SPO at an undue risk when shopping for medications and supplements because as a general rule SPOs do not have the training or education to determine whether the content of medications or supplements produce positive or false positive testing results. There are many sports organizations that maintain such lists for the same reasons. Given the evolving industry and marketing of supplements, SPOs should not carry the unreasonable burden of sorting out “legal” supplements from “illegal supplements”.
3. There is the hard cost of anabolic steroid testing which PGU believes ranges between \$250.00 to \$1,000.00 depending on laboratory and other associated costs. There is also the hidden costs of providing necessary appeal rights and reimbursing employees who are wrongfully suspended based on false positives and the like. There is also the hidden costs of covering shifts for employees that are temporarily suspended based on test results. These costs cannot be quantified at this time but can be reasonably characterized as not insubstantial. There are other costs which are even more indirect such as costs of educating employees on steroid testing and use and for maintaining and updating lists of banned medications and supplements. All of these costs must

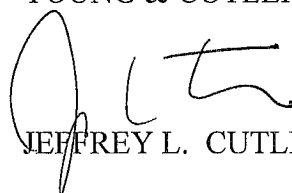
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be considered, particularly given current budgetary shortfalls, in light of the fact that there is no current evidence suggesting anabolic steroid use is either prevalent at DOE sites or has contributed to any incident or erratic behavior at any of the sites.

The PGU has commented on the few areas it has information and where it believes anabolic steroid testing will have the most impact on its members. They are prepared to fully participate in the rule making process and request notice of any proposed rules.

Respectfully Submitted,

WOHLNER KAPLON PHILLIPS
YOUNG & CUTLER



JEFFREY L. CUTLER

JLC:apl
cc: Leo Salazar