

# Drug-Free Workplace Policy

prepared for

**Strom Engineering Corporation**

By



**"This policy was written to be in compliance with Ohio BWC DFWP procedures. It is not intended to provide legal or any other professional advice. It is recommended that you obtain legal review if there is any question regarding the protection of employees' rights and your potential liabilities."**

## Letter to All Employees

To all employees:

The employees of **Strom Engineering Corporation** are our most valuable resource, and for that reason, their health and safety are important to us. We take pride in the work performed by our employees. While we have the greatest respect for privacy, it must be understood that we will not tolerate any alcohol and/or drug abuse. Such negligence threatens the ability to maintain a safe, healthful, and efficient environment, which enhances the welfare of all of our employees.

We are instituting a Drug-Free Workplace Program. Below are a few of the commonly asked questions and answers for your information:

### **Who is covered by this policy?**

Any individual who conducts business for the organization, is applying for a position or is conducting business on the organization's property is covered by our drug-free workplace policy.

### **What is not allowed?**

The following behaviors on the part of employees that relate to substance use will not be allowed:

- the use of illegal drugs;
- the misuse of alcohol;
- the sale, purchase, transfer, manufacture, use or possession of any illegal drugs;
- arrival or return to work after having used any drug or alcohol or being under the influence of any drug (legal or illegal) or alcohol.

### **What will be tested?**

Employees will be tested for the presence of illicit or illegally used drugs and alcohol. Drugs to be tested include: amphetamines, cocaine, marijuana, opiates and PCP.

### **When will tests be performed?**

Employees will be tested on 6 (**six**) specified occasions:

1. New hire (drug test only).
2. Where there is reasonable suspicion of prohibited substance use.
3. Following an accident or injury.
4. Before returning to work following a violation.
5. As a follow-up to a violation.
6. Random (DOT only)

### **What are the consequences for violating the policy?**

#### **ALCOHOL USE:**

First positive result at or above **0.02:**      **Written warning and negative test to return to work.**

Second alcohol positive at or above **0.02:**      **Termination**

**Any alcohol positive in excess of 0.08 could affect your eligibility and/or result in a loss of compensation and benefits under this state's workers' compensation laws.**

**DRUG USE:**

**Any reported, confirmed positive result for the presence of any prohibited controlled substance WILL, THE FIRST TIME, REQUIRE the employee to agree to:**

1. An assessment by a Substance Abuse Professional (SAP),
2. Abide by any recommended plan of recovery,
3. Submit to a return to duty test and follow-up testing (at least four (4) within the first year from date of return to duty) or as recommended by the treatment provider.
4. Be responsible for any and all costs associated with assessment and treatment not otherwise covered by available health plan(s).

**A second violation or any further violation of this policy will result in termination of employment.**

**What if I refuse to take the test?**

It is a condition of employment and any refusal to submit to testing, failure to cooperate with the test process or any attempt to adulterate a sample will result in termination of employment and may affect eligibility for compensation and benefits under the state's workers' compensation laws.

**NOTE: Any positive result or any refusal to test may affect your eligibility for compensation and benefits under the workers' compensation laws of this state**

**How do I get help if I need it?**

The Company encourages all those in need of assistance with a substance abuse issue to seek help. **Gary Greenburg** shall maintain information regarding local service providers.

We encourage you to thoroughly read the policy and if you have any questions regarding the terms and conditions please contact: **Gary Greenburg at 952-544-8644.**

Training sessions will be held regarding the policy and all employees will be required to attend. This written policy will be shared, and everyone will be given an opportunity to ask questions.

**Remember!**

**Drug and Alcohol use at work are prohibited.  
Your Job Could be At Risk!**

*\*\*\*Where state laws differ they will be followed where applicable. See Addendum attached.*

# Strom Engineering Corporation

## Alcohol and Drug-Free Workplace Policy

### January 2009

#### ALCOHOL AND DRUG-FREE WORKPLACE STATEMENT:

**Strom Engineering Corporation** is committed to providing a safe work environment and to fostering the well being and health of its employees. This commitment is jeopardized when any **Strom Engineering** employee misuses prescription or over-the-counter drugs, uses illegal drugs any time or alcohol on the job, comes to work with these substances present in his/her body, or possesses, distributes, or sells illegal drugs or alcohol in the workplace. The safety and health of employees, protection of the environment, quality of our products, and financial performance of our Company can be directly affected by the use of illegal drugs and misuse of alcohol.

The Company believes that it is very important to provide a safe workplace for all of its employees. In so doing, the Company is taking steps to address the problem of substance use that negatively affects every workplace, including ours. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that alcohol abuse and illegal drug use are incompatible with employment at Strom Engineering Corporation. This policy applies to all employees of Strom Engineering, including management. We cannot condone and will not tolerate behaviors on the part of employees that relate to prohibited substance use, such as:

- The use of illegal drugs.
- The misuse of alcohol.
- The misuse of prescription or over-the-counter medications.
- The sale, purchase, transfer, manufacture, use or possession of any illegal drugs.
- Arrival or return to work after having used any drug or alcohol or being under the influence of any drug (legal or illegal) or alcohol to the extent that job performance is affected.

Other consequences that apply to all employees who violate this policy are clearly spelled out within this document. **PLEASE READ THIS POLICY CAREFULLY.**

This program will go into effect within 30 days of the announcement of our **Drug-Free Workplace Program** and this new policy that describes the program. This policy covers the five key parts of the Company's **Drug-Free Workplace Program**. The five parts consist of:

1. A written policy that clearly spells out the program and how everyone benefits.
2. Annual substance awareness education for all employees.
3. Training for supervisors regarding their responsibilities.
4. Drug and alcohol testing- the most effective way to change harmful substance use behaviors.
5. Employee assistance.

Employees will have the opportunity to receive information about substance use as a workplace problem, signs and symptoms, dangers of use, and how and where to get help for themselves and their families. **Gary Greenburg**, will be our Drug-Free Workplace Program Administrator (herein referred to as the Program Administrator). For information or assistance please call **Gary Greenburg** at **952-554-8644**.

The Program Administrator will be responsible for coordinating drug and alcohol testing, identifying resources that employees can turn to for help for themselves and/or their families, and arranging for qualified people to help with employee awareness education and with supervisor training.

Compliance with the Alcohol and Drug-Free Workplace Policy is a condition of employment with the Company. Failure to cooperate fully, sign any required documents, submit to any inspection or test, or follow any prescribed course of substance or alcohol abuse treatment will result in termination of employment.

**WARNING: ANY POSITIVE RESULT OR ANY REFUSAL TO TEST MAY AFFECT YOUR ELIGIBILITY FOR COMPENSATION AND BENEFITS UNDER THE WORKERS' COMPENSATION LAWS OF THIS STATE.**

**Nothing in this policy or in any oral representation by any Company representative related to any aspect of this policy is intended to alter the existing relationship between the Company and any employee and is not intended to create an express or implied contract of employment, or any promise of job security upon which an employee can rely.**

Unless otherwise specified, all employment relations with the Company remain "at-will."

This program is designed to protect employee's rights and to protect all who come in contact with this workplace from the behaviors of substance users. Some of the protections built into the program are:

1. Employee records such as testing results and referrals for help will be kept confidential. Information will be on a need-to-know basis. Any violation of confidentiality rights is subject to disciplinary action up to and including termination of employment.

2. We are committed to employees who come forward with a substance problem to get help. Each situation will be reviewed individually. Employee assistance information is available for employees and their families, including a list of resources available through the Program Administrator and distributed to all employees.
3. All supervisors will be trained in their duties related to testing before this program begins.
4. Employees will receive substance awareness education from a qualified person to help identify problems and learn where to turn to for help. This will be done annually.
5. Illegal drugs found on Company property may be turned over to law enforcement authorities.
6. The Company will administer the Alcohol and Drug-Free Workplace program within Federal and State regulations.

### **ADMINISTRATION OF ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM**

Supervisors and employees should contact a Program Administrator for guidance or assistance with the Alcohol and Drug-Free Workplace Program.

#### **Testing Procedure:**

Testing will be done through a qualified collection provider and through a federally certified laboratory that uses the highest level of care in ensuring that results are accurate. When properly conducted, this process is considered scientifically accurate in detecting that the substances that the Company is concerned about are present in the employee's "system" in sufficient quantity to lead to behaviors that may endanger the person or other employees.

The certified lab will work closely with our local collection provider to ensure fairness and accuracy. **Strom Engineering Corporation** has retained the services of a Medical Review Officer (MRO), who is a qualified, trained physician responsible for checking whether there is a valid medical reason for the presence of a substance in the employee's system.

The MRO is experienced in dealing with substance use. When a positive test result is received, the MRO will contact the employee and, with the employee's permission, any appropriate health care provider to determine whether there is a valid reason for the presence of the drug in the individual's system.

The testing program consists of an initial screening test whenever a test is determined to be appropriate. If the initial results are positive, then a second test is used. Cut-off levels for each drug and for alcohol are established based on federal guidelines. There are many other protections for employees that are built in.

An employee's violation of this policy will not be reported to law enforcement unless required by a regulatory body or by criminal statute, such as related to drug trafficking. However, in protection of the workforce, law enforcement may be requested to come onto Company property in conjunction with a referral for criminal prosecution.

### **Supervisor Training:**

As required by the rules set by the *Bureau of Workers' Compensation* (BWC) Drug-Free Workplace Program, supervisors will be trained to recognize substance problems that may endanger the employee and others as well as violate this policy. This training is in addition to annual employee education. Supervisors will be trained about testing responsibilities, how to recognize behaviors that demonstrate an alcohol/drug problem and how to make referrals for help.

### **Employee Awareness and Training:**

Employees will be given awareness training for the Alcohol and Drug-Free Workplace Policy. Every current employee will be required to attend a session in which this program is discussed. There will be an opportunity to ask questions. This written policy will be shared, and everyone will be expected to sign an acknowledgement of receipt. We will have a qualified person explain why and how substance use is a workplace problem, the effects, signs/symptoms of use, effects of commonly used drugs in the workplace, and how to get help. We will also cover how an employee can get a referral for employee assistance, the importance of determining how much of a substance problem the employee has, and what type of help is needed. There will be educational awareness annually for all employees. New employees will hear about the program during orientation and will receive substance education as soon as possible thereafter.

### **Employee Assistance Program:**

The Company believes in offering useful information to assist employees with a substance problem. We are supportive of employees taking action on their own behalf to address a substance problem. The Company will make information regarding local substance abuse resources available to any employee in need of assistance. Please contact your supervisor or program coordinator for such information. All expenses related to substance abuse assessment, treatment or follow-up testing not covered by Strom Engineering's group healthcare plan, will be the sole responsibility of the employee.

**Be forewarned**, however, that any employee found to be in violation of this policy *may* be terminated.

**The implementation of discipline or of sanctions shall be at the sole discretion of the Company.**

## **Employee Testing:**

**Strom Engineering Corporation** has adopted testing practices to identify employees who use illegal drugs or misuse alcohol either on or off the job. It shall be a condition of employment for all employees to submit to drug and alcohol testing under the circumstances in the following section. When a situation develops that requires or may require drug or alcohol testing for Reasonable Suspicion or an On-the-Job Incident, two supervisors (if there are two supervisors available) will approach the subject employee. The employee should be removed from the job and brought to a private area for the discussion.

## **Drug and Alcohol Testing:**

Testing is intended to detect use, deter usage and allow appropriate corrective and/or disciplinary action. In addition to alcohol, the drugs that we are testing for are:

1. Amphetamines (speed, uppers)
2. Cocaine (including Crack)
3. Marijuana
4. Opiates (Codeine, Heroin, Morphine)
5. Phencyclidine (PCP, "angel dust")

An employee attempting to adulterate a specimen or otherwise manipulate the testing process **will be terminated**, as will an employee who refuses to produce/provide a specimen or otherwise cooperate in the testing process.

## **Prescription medicine and over-the-counter drugs:**

The Company does not prohibit employees from using prescription or over-the-counter drugs when used as prescribed, provided:

1. The prescription drugs are prescribed to the employees for medical reasons by a licensed medical practitioner, with dosage and frequency of use prescribed on the label or accompanying documentation, and
2. The employee's use of the prescription or over-the-counter drugs does not affect the employee's job performance or conduct; threaten the safety, productivity, public image or property of the Company or its employees; or result in criminal behavior.

No employee is to perform any function or duty on behalf of the Company if the drugs being taken under this provision adversely affect his or her ability to perform any such function or duty safely.

All safety sensitive employees must report, in writing, to **Gary Greenburg** the use of prescribed or over-the-counter medication that contains a warning the same or similar to the following: "May impair mental and/or physical performance." The Company may restrict the employee's work assignments while he/she continues to use such medication.



Employees must keep all medication in its original container which identifies the drug.

**Safety sensitive** is any job or function identified by the Company, which by the nature of the work activity, could be dangerous and/or unsafe to the employee, co-workers, customers or the general public due to any momentary lapse in attention or judgment.

## **CIRCUMSTANCES FOR ALCOHOL AND DRUG TESTING:**

### **WHEN TESTING WILL OCCUR**

#### **A. New Hire Drug Testing**

During their first 90 days all newly hired employees will have an unannounced drug test. Anyone failing or refusing to submit to such test will be considered to have failed a pre-requisite of their probation and be terminated for cause.

Newly hired employees will attend orientation; during this session they will receive a current copy of the Company's *Drug-Free Workplace Policy*, and sign the form entitled, *Acknowledgement of Receipt*.

#### **B. Reasonable Suspicion Testing**

Reasonable suspicion testing will occur when Company Management and/or Supervisor have reason to suspect that an employee may be in violation of this policy. The suspicion must be documented in writing within 24 hours of the event or prior to the release of the test findings. Reasonable suspicion testing may be based upon, among other things:

1. Observed behavior, such as direct observation of drug/alcohol use or possession and/or the physical symptoms of drug and/or alcohol use;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking. The employee is responsible for notification to the Company, within five (5) working days, of any drug-related conviction;
4. Information provided either by a reliable and/or credible sources or independently corroborated, regarding an employee's substance use; or
5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

**Reasonable suspicion testing does not require certainty, but mere "hunches" are not sufficient to justify testing. To prevent this, all supervisors will be trained in the recognition of drug and alcohol-related signs and symptoms. Testing may be for drugs or alcohol or both.**

Prior to testing and provided consent is given by the employee, those individuals represented by a collective bargaining agent shall be allowed an opportunity to contact their representative and to consult with that representative in private. No more than one hour shall be allowed for this process. In all respects not in conflict with the requirements of the BWC rules, the terms of the current collective bargaining agreement shall be abided.

### **C. Post-Accident Testing**

Post-accident testing will be conducted whenever an accident occurs as defined below. For the purposes of this policy, an accident is considered an unplanned, unexpected or unintended event that occurs on Company property, during the conduct of the Company's business, during working hours, or which involves Company-supplied equipment, motor vehicles or motor vehicles that are used in conducting Company business, or is within the scope of employment, and which results in any of the following:

1. A fatality of anyone involved in the accident;
2. Bodily injury to the employee and/or another person that requires off-site medical attention away from the Company's place of employment;
3. Vehicular/equipment damage in apparent excess of \$750; or
4. Non-vehicular/equipment damage in apparent excess of \$500.

When such an accident results in one of the above circumstances, any employee who may have contributed to the accident will be tested for drug and/or alcohol use, **provided** the company has reasonable cause to believe that the employees involved may have violated this policy by using a prohibited substance. "Reasonable cause" includes a pattern of behavior or circumstances that involves an accident which includes an error in reason, timing or judgment.

#### **Timing: Drug and/or alcohol testing after an accident**

Urine specimen collection (for a drug test) or breath/saliva (for an alcohol test) is to occur immediately after a need has been determined. The company will consider any employee who seeks to delay providing a specimen as refusing to be tested. If the employee responsible for an employment-related accident is injured, it is a condition of employment that the employee herein expressly grants to the Company, its officers and management, the right to request that attending medical personnel obtain appropriate specimens (breath, blood and/or urine) for the purpose of conducting alcohol and/or drug testing. Furthermore, all employees herein expressly grant to the Company, its officers and management, access to any and all other medical information that may be relevant in conducting a complete and thorough investigation of the employment-related accident, to include, but not be limited to, a full medical report from the examining physician(s) or other health care providers.

## **D. Random Drug and Alcohol Testing**

**DOT Mandated Random** - Employees required to have a valid CDL license for their position will be tested in compliance with Code of Federal Regulations (CFR) Part 49.

An employee's failure to timely comply with the request for a specimen for random testing will be considered a refusal to submit to testing and may result in termination of employment.

Where state laws differ they will be followed where applicable. See Addendum attached.

## **E. Follow up Testing after Return-to-Work from Assessment or Treatment**

Testing is required when an employee who has previously tested positive for prohibited levels of alcohol is allowed to return to work under a "second-chance" or "last-chance" agreement. A return-to-duty test is required before the employee is allowed to return to work and, if the employee fails this test, this will lead to termination of employment. Once an employee passes the drug and/or alcohol test and returns to work, there will be a series of at least four or more additional tests conducted over a period of at least a year (or as recommended by the SAP). The returning employee's attending Substance Abuse Professional shall determine the frequency and total number of such tests. All expenses related to any violation such as substance abuse assessment, treatment, return-to-duty, and follow-up tests will be the sole responsibility of the employee found to be in violation of this policy.

**Any employee with a second violation of this policy will be subject to the consequences as specified in this policy.**

## **EMPLOYEE CONSENT**

All **Strom Engineering** employees and applicants will be required to complete and sign the appropriate consent form before the actual testing takes place. The employee consent form applies to breath/saliva or blood specimens for alcohol and a urine specimen for drugs. Failure to comply with a drug or alcohol testing request will be considered a refusal, and will be regarded as insubordination and subject to discipline up to and including termination.

## **SUBSTANCES TO BE TESTED FOR AND THE METHODS OF TESTING**

### **Urine testing for drugs (other than alcohol):**

"*Systems presence testing*" is the procedure that is used to identify the presence of the following controlled substances that may be present: (A negative initial screening test is considered a negative test.) For each of the tested drugs amphetamines, cocaine, marijuana, opiates and PCP, there is an initial test used to screen the urine specimen. If the initial screen is positive [at or higher than a cut-off level in accordance with federal Department of Health & Human Services (DHHS)], a second or confirmatory test is done. This is a different test and is considered scientifically accurate. Detection thresholds (or cut-off levels) are standards that have been established by the DHHS for each of the above drugs after years of research. These levels will be used to interpret all drug

screens/tests, whether for a pre-employment examination, reasonable suspicion test, and post-accident test, random or follow-up test.

*The Company also expressly reserves the right to add or delete substances on the list above, especially if mandated by changes in existing Federal, State or local regulations or legislation.*

### **Alcohol testing:**

A testing contractor that only uses federally qualified equipment and personnel will conduct breath alcohol or saliva testing. Breath alcohol concentrations exceeding 0.02 will be considered a verified positive result. In the event of an accident where an employee has a "whole blood" alcohol drawn at a medical treatment facility, a result equal to or greater than 0.02 shall be considered to be a verified positive result. An Evidentiary Breath Test (EBT) is used to confirm any initial positive test result. Any employee testing at or above 0.02 will be removed from any safety-sensitive position and will be subject to the discipline specified in policy (See CONSEQUENCES).

### **SPECIMEN COLLECTION PROCEDURE**

Trained collection personnel, who meet quality assurance and chain-of-custody requirements for urine collection and breath alcohol testing, shall conduct testing. Confidentiality is required from all service providers. Any individual subject to testing under this policy shall be permitted to provide urine specimens in private, but subject to strict scrutiny by collection personnel so as to avoid any adulteration or substitution of the specimen to be provided.

Breath alcohol testing will likewise be done in an area that affords the individual privacy. In all cases, there will only be one individual tested at a time. Failure to appear for testing when scheduled shall be considered refusal to participate in testing, and will result in termination. (For an applicant, failure to appear will result in withdrawal of any offer of employment).

All aspects of the testing procedure will be carried out in a confidential and private manner. After receiving notification to report for drug testing, the employee or applicant will go to the collection site and will:

1. Provide a photo ID;
2. Assist in completing a Drug Testing Chain of Custody and Control form;
3. Provide a urine specimen in privacy;
4. Be expected to observe the entire collection, processing and chain of custody procedure of the specimen;
5. Read, sign and date the chain of custody statement certifying the specimen is that individual's and it has not been changed or altered at the time of collection;
6. Note the temperature reading on the collection bottle and verify the temperature reading was correctly recorded on the form.

## **REVIEW OF TEST RESULTS**

To ensure fairness the Company has hired a licensed physician to review positive drug test results. This physician is referred to as the Medical Review Officer or MRO. The MRO is a medical doctor or doctor of osteopathic medicine with a specialized knowledge of substance abuse disorders. The role of the MRO is to review in confidence with the donor any possible legitimate medical explanation for the result. Federal Guidelines on this procedure will be followed. In the absence of any medical justification for the presence of drugs in the body, that result will be verified as positive and the Company will be notified.

## **EMPLOYEES' RIGHTS RELATED TO AN INITIAL POSITIVE TEST RESULT**

An employee who tests positive under this policy will be given an opportunity to explain, in confidence, the findings to the MRO prior to the issuance of a positive test result to the Company. Upon receipt of a confirmed positive finding, the MRO will attempt to contact the employee by telephone. If contact is made by the MRO, the employee will be informed of the positive finding and given an opportunity to rebut or explain the findings. The MRO can request information on recent medical history and on medications taken within the last thirty days by the employee. If the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position (for example, the names of treating physicians, pharmacies where prescriptions have been filled, etc.). A failure on the part of the employee to provide such documentary evidence will result in the issuance of a positive report by the MRO with no attendant medical explanation.

If the employee fails to contact the MRO as instructed, the employee will be considered to have waived the right to do so and/or to have failed to cooperate in the test process. The MRO will issue an appropriate (positive/confirmed adulteration, etc.) report to the Company.

## **REPORTING OF RESULTS**

All test results (positive, negative, adulterated) will be reported directly to the MRO by the laboratory prior to the results being issued to the Company. Each substance tested for will be listed along with the results of the testing. The Company will receive a summary report, and this report will indicate that the employee passed or failed the test. All of these procedures are intended to be consistent with the most current guidelines for Medical Review Officers, published by the federal DHHS.

## **STORAGE OF TEST RESULTS AND RIGHT TO REVIEW TEST RESULTS**

All records of drug/alcohol testing will be stored separately and apart from the employee's general personnel documents. Access is limited to designated Company officials on a "need to know" basis. The information contained in these files shall be utilized only to properly administer this policy and provided to certifying agencies for review as required by Law. Those designated Company officials that shall have access to these records are charged with the responsibility of maintaining the confidentiality of these records. Any breach of confidentiality with regard to these records may be an offense resulting in termination of employment. Any employees tested under

this policy have the right to review and/or receive a copy of their respective test results. An employee may request from the Drug-Free Workplace Program Administrator, in writing, with a duly notarized Employee Request for Release of Drug Tests Results form, that a copy of the test be provided. The Company will use its best efforts to promptly comply with this request and will issue to the employee a copy of the results personally or by U.S. Certified Mail, Return Receipt Requested.

## **CONSEQUENCES**

**Any violation of this policy could result in discipline as follows:**

### **ALCOHOL USE:**

First positive result **at or above 0.02: Written warning and negative test to return to work.**

Second alcohol positive **at or above 0.02: Treat as positive drug test.**

**Any alcohol positive in excess of 0.08 could affect your eligibility and/or result in a loss of compensation and benefits under this state's workers' compensation laws.**

### **DRUG USE:**

Any reported, confirmed positive result for the presence of any prohibited controlled substance will, **THE FIRST TIME**, require the employee to agree to:

1. An assessment by a Substance Abuse Professional (SAP),
2. Abide by any recommended plan of recovery,
3. Submit to a return to duty test and follow-up testing (at least four (4) within the first year from date of return to duty) or as recommended by the treatment provider.
4. Be responsible for any and all costs associated with assessment and treatment not otherwise covered by available health plan(s).

A second violation or any further violation of this policy will result in **termination of employment.**

**Refusal: Any refusal to submit to testing, failure to cooperate with the test process or any attempt to adulterate a sample may result in termination of employment and may affect eligibility for compensation and benefits under the state's workers' compensation laws.**

## **TERMINATION NOTICES**

In those cases where testing results in the termination of employment, all termination notices will list "misconduct" as the reason. Termination shall be deemed "for cause."

# Strom Engineering Corporation

## Alcohol and Drug-Free Workplace Policy Acknowledgement

By my signature below, I acknowledge that I have received a copy of and understand the **Strom Engineering Corporation** Alcohol and Drug-Free Workplace Policy. I have been given the opportunity to ask questions about all aspects of this policy and I agree to adhere to the policy requirements:

My signature below acknowledges my agreement to abide by the provisions of this policy and I recognize that any violation could lead to termination of my employment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **APPENDIX 1**

### **Definitions:**

**The following definitions shall apply to the interpretation and enforcement of this policy. Where any conflict occurs between this policy and state law, state law shall govern.**

#### **Glossary of Acronyms**

**ADA** Americans with Disabilities Act  
**ADAMH** Alcohol, Drug Addiction and Mental Health Services Board (Ohio)  
**ADAS** Alcohol and Drug Addiction Services Board (Ohio)  
**AOD** Alcohol and Other Drugs  
**BAC** Blood Alcohol Content  
**BWC** (Ohio) Bureau of Workers 'Compensation  
**CADCA** Community Anti-Drug Coalition of America  
**CAP** College of American Pathologists  
**CCDCIII** Certified Chemical Dependency Counselor  
**CEAP** Certified Employee Assistance Professional  
**DHHS** U.S. Department of Health and Human Services  
**DOT** U.S. Department of Transportation  
**EAP** Employee Assistance Program  
**FMCSA** Federal Motor Carrier Safety Administration  
**5-Panel** A drug test covering five drugs (required by DOT/FMCSA)  
**GC** Gas Chromatography (part of confirmatory drug test)  
**MCO** Managed Care Organization  
**MRO** Medical Review Officer  
**MS** Mass Spectrometry (part of confirmatory drug test)  
**NCADI** National Clearinghouse of Alcohol and Drug Information  
**NHTSA** National Highway Traffic Safety Administration  
**NIDA** National Institute on Drug Abuse (now SAMHSA)  
**OBWC** Ohio Bureau of Workers 'Compensation  
**OCPS 1 and** Ohio Certified Prevention Specialist  
**ODADAS** Ohio Department of Alcohol and Drug Addiction Services  
**OTC** Over-The-Counter medications  
**SAMHSA** Substance Abuse and Mental Health Services Administration  
**SAP** Substance Abuse Professional  
**9-Panel** A drug test covering nine drugs  
**TPA** Third Party Administrator



## APPENDIX 2

### ***Drug and Alcohol Testing Terminology***

**Accident** - An incident or injury which occurs on Company property, on Company business, or during working hours, or which involves Company-supplied motor vehicles/equipment or motor vehicle/equipment being used for Company purposes and which results in any of the following:

1. a fatality;
2. bodily injury requiring medical attention beyond first aid and administered within 32 hours of the incident;
3. vehicular and/or equipment damage in apparent excess of \$750.00, or non-vehicular property damage in apparent excess of \$500.00.

*NOTE: A post-accident drug and/or alcohol test should be administered as soon as possible after necessary medical attention is administered; preferably within 4 hours for alcohol and 24 hours for drug.*

**Air blanks** - A quality assurance test administered on an EBT to ensure that the machine is testing accurately.

**Alcohol concentration** - The amount of alcohol in an individual's breath, measured in grams per 210 liters of breath.

**Alcohol test** – A test used to detect the content level of alcohol in the blood (BAC). This may be performed by using federally authorized testing equipment such as breath or saliva test with an evidentiary breath testing device (EBT) applied for confirmation, or this level can be determined through a blood test.

**Breath alcohol technician (BAT)** - The only technician who can conduct a breath alcohol test for the Bureau's DFWP Program. To be classified a BAT; an individual is required to complete training and proficiency requirements outlined by the federal government.

**Chain of custody** - The protocol followed when submitting specimens for drug testing. It assures that there is no opportunity for contamination or switching of samples. Elements include signed and witnessed forms, sealed and initialed containers, and couriers requiring a receipt.

**Collection site** - A place where individuals provide specimens of their urine to be analyzed for the presence of drugs, or breath, saliva or (on rare occasion) blood to be analyzed for the presence of alcohol. This site may or may not be owned and/or operated by the laboratory that actually analyzes the specimen.

**Collection site person** - Only those individuals qualified in accordance with federal guidelines (49 CFR Part 40) shall be permitted to administer a drug test collection under this policy unless otherwise specified.

**Company property or premises** – including buildings, offices, warehouses, plants, facilities, land, equipment, vehicles which are owned/leased/used for Company business and parking lots owned/utilized by the Company or any customers or supplier of the Company. It also includes any other site at which the Company business is transacted whether on or away from the Company's property.

**Confirmatory test** - When testing for drugs, this is the second analytical procedure to confirm the presence of a specific drug/metabolite in a urine specimen. This procedure uses a more sophisticated technique (e.g., GC/MS, EBT) to ensure reliability and accuracy. With breath testing for alcohol, the confirmatory test is conducted on an EBT which has the capability to print out the results, date and time, a sequential test number, and the name and serial number of the testing device.

**Cut-off level** - A pre-determined amount of drug metabolite, measured in nanograms (ng) per milliliter (ml) of urine, which constitutes whether a tested specimen is negative or positive. For example, a test would be declared positive if the amount of drug/metabolite were equal to or above the cut-off level. Employers typically choose levels that have been adopted and tested by a recognized authority such as the Department of Health and Human Services (DHHS) or, for drugs other than the "DOT 5," are recommended by their DHHS-certified laboratory.

**DHHS (also referred to as NIDA or SAMHSA) -certified laboratory** - A drug testing facility, which is certified and closely monitored by the DHHS. To obtain and maintain certification, a laboratory must undergo extensive performance testing and on-site inspections.

**Drug metabolite** - The specific substance produced when the body breaks down a given drug as it passes through the body and is excreted in the urine.

**Drug test** - Both a screening test and a confirmation must be used to established a positive test result. The tests will analyze the following drugs in the body in quantities which are at or greater than the specified "cut-off" levels:

<b><u>Drugs</u></b>	<b><u>EMIT Screen</u></b> <b>(ng/ml)</b>	<b><u>GC/MS Confirmation</u></b> <b>(ng/ml)</b>
Amphetamines	1,000	500
Cannabinoids (THC)	50	15
Cocaine/Crack	300	150
Opiates	2,000	2,000
Phencyclidine (PCP)	25	25

**Evidentiary breath testing devices (EBT)** - Instruments used to measure the amount of alcohol in an individual's system. In DOT/FMCSA-mandated alcohol testing, these instruments are approved by the federal government and operated by trained and certified technicians. The DFWP Program is modeled on the federal programs in terms of procedures.

**Enzyme multiplied immunoassay technique (EMIT)** - A preliminary screening test performed on a urine specimen to identify the presence of a drug/metabolite in an individual's system. If this test is positive, while accurate, a second and more sophisticated analysis is conducted to confirm which

drug/metabolites are present and in what quantity.

**Follow-up testing after return to work from assessment or treatment** - This testing occurs when an employee who has previously tested positive for alcohol ONLY is allowed to return to work under a “second-chance” or “last-chance” agreement. A return-to-duty test is required before the employee is allowed to return to work and, if the employee fails this test, this will lead to termination of employment. Once an employee passes the drug and/or alcohol test and returns to work, there will be a series of a minimum of four (4) additional tests conducted over a period of at least a year. Any employee with a second positive test result will be terminated.

**Gas Chromatography/Mass Spectrometry (GC/MS)** - A state-of-the-art test used to confirm the presence and amount of an identified drug/metabolite in a urine specimen.

**Laboratory** - Facility where a urine specimen is analyzed for the presence of drugs/metabolites. The specimen is typically not collected at this facility, but rather at a designated collection site that then ensures timely transport of the specimen to the laboratory.

**Medical Review Officer (MRO)** - A licensed physician responsible for receiving laboratory results and determining if there is a medical explanation for the presence of drugs/metabolites in the donor’s urine. This physician must be qualified in accordance with federal guidelines (49 CFR Part 40) and have knowledge of substance use disorders and appropriate medical training to interpret and evaluate an individual’s confirmed positive test result, together with his/her medical history and any other relevant medical information.

**On the job** – during working hours, while performing work duties, while acting within the scope of employment, and/or while on, in or using Company premises or property. Subject to the alcohol exception this also includes breaks, meal periods, and time between split shifts regardless of whether the employee is actually on Company premises.

**Prohibited or illegal drugs** – chemical substances which:

- a. are not legally obtainable
- b. are legally obtainable but have been obtained or are used illegally; or
- c. are not for the purpose for which they are prescribed or manufactured; and
- d. may include, but not limited to the following:  
Marijuana, cocaine, opiates (morphine, heroin, codeine), alcohol used for minors, amphetamines, benzodiazepines, barbiturates, and phencyclidine (PCP).

**Reasonable suspicion** – A belief that illegal drug and/or alcohol involvement and/or use is influencing employee’s behavior, appearance, job performance, or fitness for duty, and/or that employee is under the influence of or is possessing, selling, purchasing, receiving, manufacturing or distributing illegal drugs or alcohol while on the job or while on Company premises.

- a. Observed behavior, such as direct observation of drug/alcohol use or Possession and/or the physical symptoms of drug and/or alcohol use;
- b. A pattern of abnormal conduct or erratic behavior;
- c. Arrest or conviction for a drug-related offense, or the identification of

an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.

The employee is responsible for notification to the Company, within five (5) working days, of any drug-related conviction;

- d. Information provided either by reliable and credible sources or independently corroborated regarding an employee's substance use; or
- e. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

Reasonable suspicion testing does not require certainty, but mere "hunches" are not sufficient to justify testing. To prevent this, all supervisors will be trained in the recognition of drug and alcohol-related signs and symptoms. Testing may be for drugs or alcohol or both.

**Re-test** - A second-opinion analysis of a urine specimen originally deemed positive for drugs/metabolites. This test is usually requested by the donor and performed at a laboratory meeting the same standards as the lab conducting the first analysis.

**Safety sensitive** – Any job or function, identified by the Company, which by the nature of the work activity, could be dangerous and/or unsafe to the employee, co-workers, customers or the general public due to any momentary lapse in attention or judgment.

**Screening Test Technician (STT)** - A technician who is qualified under federal guidelines (49 CFR Part 40 as may be amended) to use the saliva testing mechanism to screen for alcohol.

**Substance Abuse Professional (SAP)** - A professional who is qualified under federal guidelines (49 CFR Part 40) to perform alcohol/drug assessments. Such qualified professionals include licensed physicians, licensed/certified psychologists, social workers, employee assistance professionals and certified addiction counselors with knowledge of and clinical experience in the diagnosis and treatment of alcohol/drug-related disorders.

## APPENDIX 3

### Drug and Alcohol Testing Procedures For Commercial Drivers

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*The following provisions shall be applied to any employee that is required to hold a commercial drivers license (CDL) to perform assigned tasks. Where appropriate, those employees holding a CDL may also be tested under the general company testing provisions, such as in post injury situations where there is no DOT-reportable accident but there is an injury requiring medical attention away from the site of the injury, provided it has been determined that reasonable suspicion of prohibited substance use exists.*

#### **Management Guide for:** *Commercial Driver Drug and Alcohol Testing Provisions:*

**Applies to:** Any employee required to hold a commercial drivers license to perform assigned tasks and/or who operates any vehicle in excess of 26,001 pounds gross vehicular weight.

**Definitions:** See the general company policy. If there is a conflict between the general company policy and this ADDENDIX this APPENDIX shall apply. The following definitions shall govern any interpretation involving a commercial driver:

**"Actual knowledge"** *applies only to federally regulated workers and means actual knowledge by an employer that a has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided elsewhere in this policy. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under this policy.*

**"Adulterated specimen"** *means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.*

**"Air blank"** *means, in evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.*

**"Alcohol"** *means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.*

**"Alcohol concentration"** (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

**"Alcohol confirmation test"** means a subsequent test using an EBT, following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

**"Alcohol screening device (ASD)"** means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**"Alcohol screening test"** means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen

**"Alcohol testing site"** means a place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

**"Alcohol use"** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

**"Blind specimen or blind performance test specimen"** means a specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

**"Breath Alcohol Technician (BAT)"** means a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

**"Cancelled test"** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this policy otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**"Chain of custody"** means the procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

**"Collection container"** means a container into which the employee urinates to provide the specimen for a drug test. Collection site - A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

**"Collector"** A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

**"Commerce"** means: (1) Any trade, traffic or transportation within the jurisdiction of the

*United States between a place in a State and a place outside of such State, including a place outside of the United States; and (2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.*

**"Commercial motor vehicle"** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle-- (1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or (2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or (3) Is designed to transport 16 or more passengers, including the driver; or (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

**"Confirmation (or confirmatory) drug test"** means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

**"Confirmation (or confirmatory) validity test"** means a second test performed on a urine specimen to further support a validity test result.

**"Confirmed drug test"** means a confirmation test result received by an MRO from a laboratory.

**"Consortium/Third party administrator (C/TPA)"** means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this policy.

**"Controlled substances"** mean those substances to be tested including the following: (a) Marijuana metabolites. (b) Cocaine metabolites. (c) Amphetamines. (d) Opiate metabolites. (e) Phencyclidine (PCP).

**"Designated employer representative (DER)"** shall be the Technical Operations Manager (or his/her designee) who shall receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes.

**"Dilute specimen"** means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

**"Disabling damage"** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. (1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven. (2) Exclusions. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts. (ii) Tire disablement without other damage even if no spare tire is available. (iii) Headlight or taillight damage. (iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

**"DOT Agency"** means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with 49 CFR part 40

**"Driver"** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**"Drugs"** mean the substances for which tests are required under this policy and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

**"Evidential Breath Testing Device" (EBT).** A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

**"HHS"** means the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

**"Initial drug test"** means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**"Initial validity test"** means the first test used to determine if a specimen is adulterated, diluted, or substituted.

**"Invalid drug test"** means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

**"Laboratory"** means any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs

**"Licensed medical practitioner"** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.



**"Medical Review Officer (MRO)"** means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results

**"Performing (a safety-sensitive function) means"** a driver of any vehicle or operator of any equipment and applies to any employee considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**"Positive rate"** applies only to federally regulated workers and means the number of positive results for random controlled substances tests conducted under this policy plus the number of refusals of random controlled substances tests required by this policy, divided by the total of random controlled substances tests conducted under this policy plus the number of refusals of random tests required by this policy.

**"Primary specimen"** in drug testing, means the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**"Refuse to submit"** (to an alcohol or controlled substances test) means that an employee:

- (1) Fails(ed) to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA;
- (2) Fails(ed) to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences a pre-employment test is not deemed to have refused to test;
- (3) Fails(ed) to provide a urine specimen for any drug test required by this policy or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the employee's provision of a specimen;
- (5) Fails(ed) to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- (6) Fails(ed) or declines to take a second test the employer or collector has directed the employee to take;
- (7) Fails(ed) to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
- (8) Fails(ed) to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process, or failing to complete all documents); or

**(9) Is reported by the MRO as having a verified adulterated or substituted test result.**

**"Safety/Environmentally-sensitive function" ("S/ES")** means all time from the time an employee begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. S/ES functions shall include:

- (1) All time at an employer plant, terminal, facility, or other property, or on any public property, unless the employee has been relieved from duty by the employer;**
- (2) All time inspecting equipment as required by company procedure or federal rule or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;**
- (3) All time spent at the controls of any vehicle/equipment in operation;**
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;**
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and**
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.**

**"Screening Test" (or initial test)** means: **(1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. (2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.**

**"Screening Test Technician" (STT).** A person who instructs and assists employees in the alcohol testing process and operates an ASD.

**"Secretary"** means the Secretary of Transportation or the Secretary's designee.

**"Service agent"** means any person or entity, other than an employee of the employer, who provides services specified under this. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/ TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable law. Service agents are not employers for purposes of this policy.

**"Shipping container"** means a container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

**"Specimen bottle"** means the bottle that, after being sealed and labeled according to the procedures in this policy, is used to hold the urine specimen during transportation to the laboratory.

**"Split specimen"** in drug testing, means a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**"Stand-down"** means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

**"Substance Abuse Professional (SAP)"** A person who evaluates employees who have violated this policy and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**"Substituted specimen"** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

**"Violation rate"** applies only to federally regulated workers and means the number of drivers found during random tests given under this policy to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this policy, divided by the total reported number of drivers in the industry given random alcohol tests under this policy plus the total reported number of drivers in the industry who refuse a random test required by this policy

#### **Test Events:**

**Pre-employment Tests:** No individual shall be allowed to serve in a safety-sensitive capacity until a verified negative test result. Before any individual performs any safety-sensitive duties the first time after being hired by the Company you must obtain that individual's written consent to contact any commercial employer where that individual worked during the previous two (2) years to obtain the following information:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

If feasible, we must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, we must obtain and review the information as soon as possible. However, we must not permit the employee to perform safety-sensitive functions **after 30 days** from the date on which the employee first performed safety-sensitive functions, unless we have obtained or made and documented a good faith effort to obtain this information.

If we obtain information that the employee has violated a DOT agency drug and alcohol regulation, we must not use the employee to perform safety-sensitive functions unless we also obtain information that the employee has subsequently complied with the return-to-duty requirements of this policy.

We must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

The release of information under this section must be in any written form (e.g., fax, e-mail, and letter) that ensures confidentiality. As the previous employer, we must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

When information is requested from us we must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

As the employer requesting the information required under this section, we must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. We must retain this information for three (3) years from the date of the employee's first performance of safety-sensitive duties for us.

As the employer, we must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, we must not use the employee to perform safety-sensitive functions for us, until and unless the employee documents successful completion of the return-to-duty.

**Post-Accident Tests:** Any employee performing safety-sensitive commercial driver tasks who is involved in the following incidents shall undergo drug and alcohol testing:

(a) As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, tests for the use of alcohol and drugs shall be required for:

(1) Any driver who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Any driver who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

- (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

All required post-accident alcohol tests should be performed within two (2) hours following the accident and in all cases must be performed within eight (8) hours. If the test cannot be performed within 2 hours a note shall be maintained explaining why it could not be conducted. If the test cannot be performed within 8 hours there shall be no further attempt to conduct the test and a note shall be maintained in the driver's file.

If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to any government agency upon request. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. The Company shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

**Random Testing:** All commercial drivers shall be testing on a random basis from a separate random selection pool at the rate of **10% for alcohol** and **50% for drugs**. If selected, a driver shall cease any duties and proceed immediately to an approved facility for collection of samples. A driver shall only be tested for alcohol on as random basis just before, during and just after performing a safety sensitive function.

#### **Confidentiality of Records:**

In accordance with general company policy, all records related to drug and alcohol testing shall be maintained in a confidential manner and only disclosed with the written consent of the driver or in accordance with law.

## **APPENDIX 4**

### **MINNESOTA**

[Editor: The information below consists of highlights and is not intended to be all-inclusive.]

**GENERAL COMMENTS:** This is a “mandatory” state, meaning, if an employer chooses to conduct drug or alcohol testing such tests must be conducted per state law.

**POLICY:** MUST have written policy; MUST have written acknowledgement that applicant/employee has seen the policy.

**NOTICE:** Written notice to employees, transfers and applicants is required, though no advanced time is specified; Notice of the policy MUST be posted in conspicuous locations, noting where the full policy is available for inspection.

**COSTS:** Employer MUST pay all costs except retest and treatment costs requested by employee.

**CONSEQUENCES:** MUST confirm all initial screen results. MAY NOT discharge on the FIRST positive (unless refuses/fails to complete rehab. or another positive); May affect eligibility for benefits under states workers compensation or unemployment laws.

**WHO:** Applies to any employee/applicant drug/alcohol test within the state, EXCEPT federally mandated tests. Applies to public employers

**WHAT:** Not specified, although drug is defined as any controlled substance.

**WHERE:** All testing MUST be performed at an approved lab; NO on-site testing is permitted.

**WHEN:** Permitted tests include:

1. Applicants: Post-offer only; Only if all applicants are tested; MUST inform the applicant the reason for withdrawing an offer.
2. Routine Physical: No more than 1 per year; MUST give 2-week advanced notice in writing.
3. Random: Safety-sensitive or Pro Athletes ONLY. Safety-sensitive means “a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.”
4. Reasonable suspicion of being under the influence or violated written work rule while at work, while on employer premises or operating employer vehicle/equipment; includes work-related accidents or injury arising out of and in the course of employment under work comp section.
5. Treatment: If referred to treatment by the employer or is receiving treatment under employer health plan; for period of up to 2 years.

**HOW:** All tests must be confirmed using approved lab; retest is a matter of right; retest SHALL be at the same cutoff levels as the original test. All alcohol testing must be conducted by blood.

**OTHER STATE PECULIARITIES:** MUST GIVE WRITTEN NOTICE OF A POSITIVE, explaining employee rights (retest/provide info of prescription or over-the-counter drugs); right to “retest” (not to split sample) at the same cutoff levels as the original positive. MUST, w/in 3 days of getting result from lab, give written notice of positive or negative result to donor including what rights an

**employee has.**

**Employer Immunity:** Chapter 221.86 provides partial immunity for motor carrier employer that discloses information in good faith about a present or former employee in response to a request pursuant to Code of Federal Regulations, title 49, section 382.413, is immune from civil liability.

**WARNING:** This information is presented after a review of the statutes and court decisions in this library. This information inherently involves our opinion in certain instances and *you may disagree*. This information is presented for general educational purposes only -- **IT IS NOT INTENDED TO PROVIDE LEGAL OR OTHER PROFESSIONAL ADVICE.** Always consult your legal and medical professionals before making any decisions.