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**BUILDING and CONSTRUCTION RESOURCE CENTER  
(BCRC)**

**Drug and Alcohol Policy**

in compliance with  
49 CFR Part 40, and  
49 CFR Part 199 (RSPA)

for  
BCRC's DOT-Covered Contractor Participants  
Approved by the Board December 19, 2001

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**I. PURPOSE**

Building and Construction Resource Center ("BCRC", "the Association") has established this alcohol and controlled substances testing program for contractor participants who, by definition, are required to conduct drug and alcohol test of employees under U.S. Department of Transportation (DOT) rules and regulations, 49 CFR Part 199, Drug and Alcohol Testing, Research and Special Programs Administration (RSPA). The overall goals of this testing program are to ensure a safe and drug-free transportation environment, to reduce the potential for accidents and casualties related to accidents, and to cooperate with the U.S. Department of Transportation and the transportation industry in efforts to eliminate the misuse of alcohol and the illegal use of controlled substances by our employees.

With these objectives in mind, BCRC has established the following policy and procedures for DOT-covered employees of its contractor participants. Full compliance with this policy is a condition of employment with each individual contractor.

**II. SCOPE**

BCRC's Drug and Alcohol Policy for DOT-Covered Employees, outlined below, applies to all full-time, part-time, and temporary employees who are "covered employees" as defined in Section VI [A].

In those circumstances that are not addressed by DOT regulations or in this policy, DOT-covered employees remain subject to rules and testing as defined in BCRC's Drug and Alcohol Policy for all employees.

In addition, an employee will be required to submit to a non-DOT test for reasonable suspicion in those circumstances when the employee is suspected of drug or alcohol use, or has violated a work rule as stated elsewhere in this policy, or is involved in or may have contributed to the causing of an accident, or causes injury to him/herself or to another person, when the circumstances related to that incident do not meet the requirements of a DOT test.

**III. REFERENCES**

Title 49 CFR §199, et al., Drug and Alcohol Testing

Title 49 CFR §40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Title 41 U.S.C. §§ 403, 701 et. Seq., Drug-Free Workplace Act of 1988.

**IV. POLICY / RULES OF CONDUCT**

An employee who violates the RSPA prohibitions of this policy (Section VI[B]), including a refusal to be tested, must be immediately removed from all RSPA covered functions in accordance with 49 CFR Part 199.233, RSPA rules and regulations. Under each employer's independent authority, the employee will be subject to disciplinary action up to and including termination of employment.

An employer also reserves the right to take action against an employee, where appropriate, for violation of other general employer policies, procedures and/or rules that may be defined in rules that are separate from this policy for DOT-covered employees.

A. A covered employee may not engage in any of the conduct(s) prohibited in Section VI [B].

<b>THIS POLICY IS NOT AN EMPLOYMENT CONTRACT OR AN OFFER OF AN EMPLOYMENT CONTRACT.</b>
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- B. Under independent authority, BCRC prohibits the possession of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug, or being under the influence of alcohol or of an illegal drug, during all work time, including meals and breaks, or at any time while on Company property, at a Company's job site, on Company business, or in a Company-owned /-leased vehicle. An employee who possesses alcohol, or who uses alcohol while on duty, will be terminated from employment.
- C. Under independent authority, BCRC prohibits the use of any over-the-counter medication by an employee during working time or any time while on Company property, at a job site, on Company business, or in a Company-owned /-leased vehicle if such use may detrimentally affect or impair the safety of coworkers, customers or members of the public, or an employee's job performance, or the safe or efficient operation of the Company, or its property.
- E. Cases of suspected trafficking, possession or use of illegal substances or drug paraphernalia on Company property, in or on Company vehicles, and/or at job sites, will be referred to law enforcement authorities, under each employer's independent authority.
- F. BCRC encourages participants who wish to voluntarily seek assistance for questions or problems related to drugs and alcohol to do so by contacting the Association's Employee Assistance Program.
- G. If an employee is called to duty to respond to an emergency during the employee's typical "off-duty" time, the employee may report to work only if he/she has not consumed alcohol within the time period after the employee has been notified to report for duty.
- H. BCRC considers a conviction for criminal drug activity to be very serious. An employee who has a workplace-related drug conviction must report that conviction to his/her supervisor within five (5) days of receiving it. An employee who fails to report such a conviction will, upon discovery of the conviction, be subject to immediate termination from employment.
- I. Each employer reserves the right to test a DOT-covered employee for alcohol or controlled substance use under the Company's independent authority when DOT regulations do not apply. These circumstances would include suspected impairment, violation of an employer's drug and alcohol rules, or of other rules that are stated in this policy, and causing or being involved in an accident or injury of self or another employee. In those cases, testing levels would be identical to DOT levels, but the test would be conducted as a non-DOT test.

**V. AUTHORIZED USE OF CONTROLLED SUBSTANCES**

If an employee undergoes prescribed medical treatment with a drug or controlled substance, the employee is required to report this treatment to his/her employer, who will take steps to investigate whether the employee's job assignment should be temporarily changed during the period of treatment, or whether other accommodations may be appropriate.

BCRC requires an employee to make such notification as soon as possible, and prior to performing covered functions, and to provide written documentation from the prescribing licensed medical practitioner that the medication(s) will not affect the employee's ability to perform covered functions safely. Each employer reserves the right to obtain an independent medical opinion regarding the potential effects of a prescription or over-the-counter drug on an employee's ability to perform covered functions or other aspects of his/her job. Further, each employer reserves the right to place any employee taking medication(s) on a leave of absence pending a decision as to whether the employee may continue to perform his/her regular job duties while taking the medication(s).

Each employer may, as it determines necessary, and when possible, temporarily reassign an employee to non-covered functions for the duration of his/her use of such drug(s). However, due to the safety-sensitive nature of many jobs in the construction industry, no employee can be guaranteed that these accommodations can always be made.

**VI. TESTING FOR DRUGS AND ALCOHOL**

Employers who are members of BCRC will conduct drug and alcohol testing of their employee/applicants and their employees in compliance with regulations established by the U.S. Department of Transportation (DOT), 49 CFR §§ 40 and 199.

**A. COVERED EMPLOYEES**

In accord with U.S. Department of Transportation RSPA Regulations, employees subject to drug and alcohol testing are those pipeline operator employees (of contractor participants) who provide operations, maintenance, or emergency-response functions regulated by 49 CFR Parts 192, 193, or 195, and who provide those functions on a pipeline or on an LNG facility. *Excluded from this definition are covered functions performed on master meter systems as defined in Sec. 191.3, or pipeline systems that transport only*

*petroleum gas or petroleum gas/air mixtures. Also excluded are clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195.*

When an employee is a contractor or is employed by a contractor, an operator may provide by contract that required drug and alcohol testing, education and training will be carried out the contractor, provided that:

- The operator remains responsible for ensuring that the requirements of 49 CFR §199 are fully complied with; and
- The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of 49 CFR §199.

B. RSPA PROHIBITIONS:

An employee shall not:

- Report for duty or remain on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater.
- Use alcohol, including medications that contain alcohol, while performing covered functions.
- Perform covered functions within four (4) hours after using alcohol, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. This prohibition includes the use of medications that contain alcohol.
- Use alcohol for eight (8) hours following an accident in which his/her performance of covered functions has not been discounted by the operator as a contributing factor to the accident, or until the operator has determined that the employee's performance could not have contributed to the accident, or until the employee has undergone a post-accident alcohol test, whichever occurs first.
- Refuse to submit to a pre-employment, post-accident, random, reasonable cause/suspicion, or follow-up alcohol or drug test.
- Report for duty, remain on duty, or perform covered functions if he/she tests positive for controlled substances.

If an employee engages in any of the conduct(s) prohibited in (B) above, the employee must be immediately removed from all covered functions, and is subject to Section VIII, Consequences of Prohibited Conduct.

An employee who engages in prohibited conduct a second time will be immediately terminated from employment.

Under RSPA regulations, an employee who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may not perform or continue to perform covered functions until the start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the test, or until the employee provides an alcohol test result of less than 0.02 on a subsequently-conducted alcohol test.

C. DEFINITIONS

- **Accident** means an incident reportable under 49 CFR Part 191 involving gas pipeline facilities or LNG facilities, or an accident reporting under 49 CFR Part 195 involving hazardous liquid pipeline facilities.
  - A. **§191.3** An accident on a gas pipeline or LNG facility is defined as an "incident as follows:
    1. An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
      - a. A death, or personal injury necessitating inpatient hospitalization; or
      - b. Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000
    2. An event that results in an emergency shutdown of an LNG facility.
    3. An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2) above.
  - B. **§195.50** An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:
    1. Explosion or fire not intentionally set by the operator.
    2. Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

3. Escape to the atmosphere of more than five barrels a day of highly volatile liquids.
4. Death of any person.
5. Bodily harm to any person resulting in one or more of the following:
  - a. Loss of consciousness.
  - b. Necessity to carry the person from the scene.
  - c. Necessity for medical treatment.
  - d. Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
6. Caused estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to property of the operator or others, or both, exceeding \$50,000.

- **Administrator** means the Administrator of RSPA or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.
- **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.
- **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 (BrAC).
- **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 use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
- **Applicant** means a person, independent contractor, or person working for an independent contractor, who applies to become an employee of a BCRC contractor participant, and includes a person who has received a job offer made contingent on the person passing a drug test.
- **Association** means Building and Construction Resource Center, which is the association formed by labor and management representatives of The Building and Construction Industry for Northwest Indiana, for the purpose of addressing problems of drugs and alcohol in the workplace.
- **Breath Alcohol Technician (BAT)** is an individual who is certified as trained to operate an Evidential Breath Testing device (EBT) and who is proficient in breath-testing procedures.
- **Canceled test** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is otherwise required, by Part 40, to be canceled. A canceled test is neither a positive nor a negative test. An employer is not permitted to take adverse job action based on a canceled test.
- **Company** means an employer who is a member of Building and Construction Resource Center.
- **Collection site** means a place designated by BCRC where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of controlled substances, or for purposes of providing a saliva or breath sample to be analyzed for alcohol concentration.
- **Company property** means all employer-owned and/or -leased property, including but not limited to owned and/or leased buildings and other real estate, parking lots and vehicles located on parking lots, and employer-owned and/or -leased vehicles, lockers, and desks.
- **Confirmatory test**
  - a. For alcohol testing, a confirmatory test is a second test following a screening test with a result of 0.02 or greater, conducted 15-30 minutes later, that provides quantitative data of alcohol concentration. This test is conducted on an EBT.
  - b. For controlled substances testing, a confirmatory test is a second analytical procedure to identify the presence of a specific drug or metabolite. This confirmatory test is independent of the initial test and uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy.
- **Consortium** means an entity, including a group or association of employers or contractors, that provides services related to alcohol or controlled substances testing as required by the DOT rules and regulations and that

acts on behalf of the employer. For purposes of this policy, BCRC serves as the consortium for contractor participants who are contributing members of Building and Construction Resource Center.

- **Contractor participant** means an employer who is a contributing member of Building and Construction Resource Center.
- **Controlled substances** means marijuana (THC), cocaine, opiates, phencyclidine (PCP) and amphetamines (including methamphetamines.)
- **Covered employee, employee, or individual to be tested** means a person who performs covered functions, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
- **Covered function (safety-sensitive function)** means an operations, maintenance, or emergency-response function regulated by Parts 192, 193, or 195 of 49 CFR that is performed on a pipeline or on an LNG facility. *(Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations.)*
- **DER (designated employer representative)** means an employee authorized by each employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results, SAP reports, and other communications on behalf of his/her employer. (An employer may designate more than one DER.)
- **DHHS-approved laboratory** means a laboratory that is certified under the U.S. Department of Health and Human Services Mandatory Guidelines for federal workplace drug testing programs. Drug tests for DOT-covered employees will be performed by a DHHS-certified laboratory.
- **Dilute specimen** means a specimen with creatinine and specific gravity values that are lower than expected for human urine.
- **Drug test** means a test conducted for controlled substances, including marijuana, cocaine, amphetamines, opiates, and phencyclidine.
- **Employee** (see Covered employee, above).
- **Initial test** (for drugs) means an immunoassay screen to eliminate “negative” urine specimens from further consideration.
- **Medical Review Officer** means a licensed physician responsible for receiving laboratory results generated by BCRC’s drug testing program who has knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his/her medical history and any other relevant biomedical information.
- **Operator** means a person who owns or operates pipeline facilities subject to 49 CFR Parts 192, 193, or 195.
- **Performs covered functions** includes actually performing, being ready to perform, or being immediately available to perform covered functions.
- **Pipeline** means all parts of the physical facilities through which a product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.
- **Pipeline facilities** means pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of a product.
- **Positive Test (alcohol)** occurs when an employee’s confirmatory test result reads 0.04% BrAC or higher.
- **Positive Test (drug)** occurs when an employee’s confirmatory test or retest result is at or above cutoff levels specified by DHHS in DOT rules and regulations, and has been verified by the MRO to be a positive test.
- **Prohibited drug** means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).
- **Random selection** means a scientifically valid method for selection of employees to be tested that results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and does not give an employer discretion to waive the selection of any employee under the mechanism. Thus, an employee might be selected more than once during a year.
- **Reasonable cause, reasonable suspicion** means a belief that an employee has violated alcohol or controlled substances prohibitions, based on specific, contemporaneous, documentable observations concerning the appearance, behavior, speech, or body odors of that employee. In the case of controlled substances, the observations may include indicators of chronic and withdrawal effects of controlled substances.
- **Refusal to submit to a required alcohol test** includes failure to appear for any test, failure to provide a breath or saliva specimen for a required test, failure to remain at the testing site until the testing process is complete, failure to provide a sufficient breath specimen without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient breath specimen, refusal to sign Step 2 of the Alcohol Testing Form, and failure to cooperate with the testing process.

- **Refusal to submit to a required drug test** includes failure to appear for any test within a reasonable time, failure to remain at the collection site until the testing process is complete, refusal to provide a urine specimen for a required drug test, failure to permit a directly observed or monitored collection when required, failure to provide a sufficient amount of urine without a medical explanation, failure to take a second test when required by a collector or by his/her employer, failure to undergo a medical examination following inability to provide a sufficient urine sample, and failure to cooperate with the collection/testing process (including refusing to empty pockets at the collection site).  
Under each employer's independent authority, an employee who refuses to submit to required alcohol and drug testing will be terminated from employment.
- **RSPA** means Research and Special Programs Administration, an Operating Administration of the Department of Transportation.
- **Screening test** (for alcohol) means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a saliva or breath specimen.
- **Screening Test Technician (STT)** means a person who instructs and assists employees in the alcohol testing process and operates an ASD (Alcohol Screening Device).
- **State agency** means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)
- **Substance Abuse Professional (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission [NAADAC] or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse [ICRC]), with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. A SAP evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.
- **Substituted specimen** means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.
- **Testing levels** means levels established by the U.S. DHHS, at which a specimen or sample is determined to be either negative or positive, according to 49 CFR §40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

#### D. TESTS REQUIRED

As provided in U.S. Department of Transportation rules and regulations, a covered employee shall be subject to pre-employment/pre-placement testing (drug only), random (drug only), reasonable cause/reasonable suspicion, post-accident, return-to-duty and follow-up testing for alcohol and controlled substances.

##### 1. **Pre-employment / Pre-placement Testing**

Every applicant for a driving position who receives a job offer from a BCRC contractor participant must submit to a urine drug test. The job offer is contingent on the applicant's providing a negative test result.

Each applicant will be asked whether he/she has tested positive, or refused to test, on any DOT pre-employment drug or alcohol test for a DOT employer during the previous two years. An applicant who has previously tested positive, or refused to be tested, will not be considered for employment until or unless he/she successfully completes DOT's return to duty process. (See Section VIII, Consequences of Prohibited Conduct).

An applicant is not required to submit to a pre-employment drug test if he/she is covered by an anti-drug program that conforms to RSPA requirements, provided that the prospective employer can verify to its satisfaction that the program is in complete compliance with DOT's rules and requirements.

If the applicant is a new hire, the testing must be completed, and a negative test result must be received, before the employee will be permitted to provide covered functions. If the pre-employment test result is positive, the job offer will be immediately withdrawn, and the applicant will be provided with names of qualified SAPs. The applicant cannot be reconsidered unless and until he/she completes a SAP assessment and recommended assistance (Section VIII, Consequences of Prohibited Conduct).

An applicant who has previously refused to be tested or who provided a positive test result on a DOT pre-employment test for controlled substances for any other employer will be expected to report those test results at the time of application. Under each employer's independent authority, failure to do so will constitute falsification of application information, and when discovered, will result in removal from consideration for employment, or, if already hired, immediate termination

of employment. An employer who wishes to reconsider the individual for employment will make such consideration only after the individual has completed a SAP assessment, complied with the SAP's recommendations, and provided a negative result on a Return-to-Duty test.

If an applicant has previously complied with a SAP's recommendations as the result of a violation under a previous employer, the applicant's pre-employment test will be considered to also be a Return-to-Duty test. When significant time has lapsed since the SAP's report of compliance, an employer may require an additional, second follow-up evaluation to be conducted by a SAP, designated by the employer, to verify that the applicant is currently free of drug use, prior to being considered for hire. The cost of this SAP evaluation will be paid by the employer who requests it.

An applicant is required to sign a form authorizing the hiring employer to obtain from all previous employers (in the previous two [2] years) a report of all DOT violations, including positive test results and refusals to be tested. The hiring employer will also request copies of Substance Abuse Professional (SAP) reports related to each of these violations. An applicant with a violation cannot be hired until the hiring employer has received a SAP's report of compliance, including a follow-up testing requirement.

If the applicant is a current employee who is being transferred to a covered position, a negative pre-employment drug test result must be received before the employee assumes the new position or assignment. If the test result is positive, the offer of promotion or transfer will be immediately withdrawn, and the employee will be subject to rules that the employer may have established in a separate drug and alcohol policy for non-DOT employees.

2. **Post-accident Testing**

As soon as possible following an accident (See Section VI[C], Definitions), the covered employee(s) whose performance either contributed to the accident, or that cannot be completely discounted as a contributing factor to the accident, must be tested for alcohol and drugs.

- a. A post-accident alcohol test, when required, must be administered as soon as possible, but within eight (8) hours following the accident.

If testing is required but is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If testing is required but is not able to be conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test.

- b. A post-accident drug test, when required, must be administered as soon as possible, but within thirty-two (32) hours following the accident. If testing is required but is not able to be conducted within thirty-two (32) hours, the reasons the test was not conducted must be documented. After thirty-two (32) hours, there will be no more attempts to conduct a drug test.

An operator's decision not to test a covered employee following an accident will be based on the best information immediately available at that time that the employee's performance could not have contributed to the accident, or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

An employee who is subject to post-accident testing shall remain readily available for such testing. If the employee is not available for any reason, except for leaving the accident scene for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care, an employer will consider the employee to have refused to submit to testing.

Under independent authority, an employee who has submitted to a post-accident test will be permitted to return to covered functions only at the direction of a supervisor.

3. **Random Testing (drug only)**

A percentage of employees will be subject to random drug testing each year. The percentage of employees to be tested will be determined annually by RSPA and published in the Federal Register in January. (At the effective date of this policy, the minimum annual percentage is twenty-five [25%] percent of the average number of covered positions.) Selections of employees to be tested shall be done by a scientifically valid method that provides that each employee will have an equal chance of being selected each time that selections are made. While an employee is subject to testing, the employee's name is never removed from the pool. Thus, an employee might be selected more than once during a year.

- a. Random tests will be unannounced; the dates for random tests will be spread throughout the year.
- b. An employee who is selected for random testing will be required to report to the collection site immediately upon notification. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct will be considered as a refusal to submit to a test. The employee will be in a duty status (paid) from the time he/she leaves to go to the collection site until the time he/she returns from the collection site.
- d. A random drug test can be scheduled at any time the employee is on duty, and is not related to when the employee is performing covered functions.
- f. BCRC will administer its own random selection through a scientifically valid means, and will maintain all necessary records as required in 49 CFR §199.117, Recordkeeping.

4. **Reasonable Cause/ Reasonable Suspicion Testing**

**DRUG TESTING:** An operator shall require a covered employee to submit to a reasonable cause drug test when a supervisor has reason to believe that the employee has used a prohibited drug, based on observation of the employee's appearance, behavior, speech, and/or body odor. For reasonable cause drug testing, the employee's conduct must be witnessed and documented by two supervisors, one of whom has been trained in compliance with RSPA rules and regulations. Concurrence between the two supervisors may be by telephone. If the supervisors determine that an employee might have used a prohibited drug, the employee must submit to testing. When an operator has 50 or fewer employees subject to testing under 49 CFR §199, the observation, documentation and decision to conduct a reasonable cause drug test may be carried out by only one supervisor, provided the supervisor has been trained.

Observation and testing for reasonable cause for prohibited drug use can occur at anytime the employee is on duty, and is not related to when he/she performs covered functions. A trained supervisor's determination will be based on observation of an employee's appearance, behavior, speech and/or body odor. An employee who is suspected of prohibited drug use must be immediately withdrawn from covered functions and is required to undergo drug testing.

**ALCOHOL TESTING:** An operator shall require a covered employee to submit to a reasonable suspicion alcohol test when a supervisor has reason to believe that the employee has violated an alcohol prohibition (Section VI, Prohibited Conduct), based on observation of the employee's appearance, behavior, speech, and/or body odor. For reasonable cause drug testing, the employee's conduct must be witnessed and documented by one supervisor who has been trained in compliance with RSPA rules and regulations.

Observation and testing for reasonable suspicion for alcohol use can occur only just prior to, during, or just after the employee's performance of covered functions, or at any time that the employee is in readiness to provide covered functions. A trained supervisor's determination of suspected alcohol use will be based on observation of an employee's appearance, behavior, speech and/or body odor. An employee who is suspected of alcohol misuse must be immediately withdrawn from covered functions and cannot return unless an alcohol test has been conducted with an alcohol concentration that measures less than 0.02, or (if no test is conducted) twenty-four (24) hours have elapsed since the reasonable suspicion determination occurred.

An alcohol test for reasonable suspicion should be administered within the first two (2) hours, or within the next six (6) hours, but no more than eight (8) hours after the initial observation occurred

If alcohol testing is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If alcohol testing then is not conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test. If no alcohol test is conducted at all, the employee cannot perform covered functions until eight (8) hours have elapsed following the original determination of reasonable suspicion of alcohol use, or until another alcohol test is conducted with a test result below 0.02.

Documentation is required for both drug and alcohol reasonable cause/suspicion.

An employee who is represented by a bargaining unit and who is requested by a supervisor to submit to reasonable suspicion testing may request to have a union representative present, provided the employee signs a consent for the supervisor to notify the union representative of the request for

testing. When the suspicion involves drugs only, the employer will allow a maximum of one-half hour for the union representative to arrive and accompany the employee through the collection process. When the suspicion involves alcohol only, or alcohol and drugs, the union representative may be notified, but because DOT requires alcohol testing to occur in a timely manner, the half-hour time allowance will not apply. If the union representative is not immediately available, he/she may have to arrange independent transportation to the collection site, as regulations do not allow for delay of the collection process.

5. **Return-to-Duty Testing**

Under DOT regulations, before an employee can be considered for reinstatement after having engaged in prohibited conduct (Section VI, [B], **Prohibitions**), the employee must provide a negative Return-to-Duty drug and/or alcohol test, depending on the substance(s) involved in the prohibited conduct. A Substance Abuse Professional (SAP) may, however, order testing for both alcohol and controlled substances.

Each employer reserves the right to withhold a final decision regarding reinstatement of an employee until after a negative result of a Return-to-Duty test has been received.

A positive Return-to-Duty test result is not considered to be an employee's second positive test, and is therefore not cause for termination. An employee may schedule additional Return-to-Duty tests, until such time as a negative result is obtained.

Under independent authority, an employer may require that the cost of Return-to-Duty tests will be borne by the employee.

6. **Follow-up Testing**

An employee who returns to duty after complying with the recommendation(s) of a Substance Abuse Professional and after providing a negative result on a Return-to-Duty test, is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the Substance Abuse Professional. Follow-up testing may be scheduled for a period of up to sixty (60) months, and must include no fewer than six (6) tests to be conducted in the first twelve (12) months after the employee's return-to-duty date. Follow-up alcohol testing shall be conducted only just prior to, during, or just after the employee's performance of covered functions, or when the employee is in readiness to perform covered functions.

Under independent authority, each employer may require that the cost of all follow-up tests will be borne by the employee.

When an employer, under independent authority, has terminated an employee from employment, the responsibility for any remaining follow-up tests recommended by a SAP must be assumed by the employee's gaining employer, provided the employee is offered employment as a DOT-covered employee with a new employer.

If a newly-hired employee is subject to follow-up testing due to a previous violation while working for a previous employer, that employee will, under independent authority, be responsible for the cost of any remaining follow-up tests as required by the Substance Abuse Professional, and such costs, if not paid by cash or personal check, will be deducted from the employee's next paycheck.

E. GENERAL TESTING INFORMATION (STANDARDS AND INTEGRITY OF THE TESTING PROCESS)

1. All tests shall be conducted as specified in 49 CFR §40.
2. An applicant or employee has the right to request and receive from his/her employer a copy of the test result report on any drug or alcohol test for which he/she provided a urine or breath sample. The request, in writing, should be addressed to the employer's DER.
3. Collection and testing procedures will be such as to protect the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct employee.
4. When an employee is required to obtain a medical examination by a medical specialist (related to the employee's inability to provide a sufficient breath or urine specimen), under each employer's independent authority, the employee will be required to pay the costs associated with that examination.

F. ALCOHOL TESTING AND THE REPORTING OF TEST RESULTS

1. Alcohol tests (screening and confirmatory) will be performed on a device that appears on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and that meets the DOT's testing requirements.

2. When a specific time for an employee's test has been scheduled, and the employee does not appear at the collection site at the scheduled time, the BAT will contact the employer's DER, who may determine that the employee has refused to be tested.
3. For alcohol testing (screening and confirmatory), a breath sample will be collected and analyzed by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing device (EBT). For the screening test, a saliva sample may be collected by a Screening Test Technician, using an Alcohol Screening Device.
4. If the result of the screening test indicates an alcohol concentration of 0.02 or greater, a Breath Alcohol Technician (BAT) will perform a confirmatory test, no less than fifteen (15) and no more than thirty (30) minutes after the completion of the screening test.
5. If the confirmatory test is positive (0.04 and above BrAC), the Breath Alcohol Technician (BAT) shall immediately notify the employer's DER.
6. Reasonable suspicion and follow-up alcohol testing must be conducted just before, during, or just after an employee performs covered functions, or at anytime the employee is in readiness to perform covered functions.
7. Results of additional tests arranged by an employee, or requested by a medical practitioner, will not be considered. This includes testing of blood samples, hair samples, DNA, or any other testing methods or protocols.

G. CONTROLLED SUBSTANCES TESTING, THE MRO PROCESS AND REPORTING OF TEST RESULTS

1. All controlled substances testing specimens shall be analyzed by a laboratory that is approved by the U. S. Department of Health and Human Services (DHHS), and that observes applicable chain-of-custody procedures.
2. When a specific time for an employee's test has been scheduled, and the employee does not appear at the collection site at the scheduled time, the collection site personnel will contact an employer's DER, who may determine that the employee has refused to be tested.
3. At the collection site, the employee will be required to empty his/her pockets and display the items in them. A refusal to empty all pockets as directed by the collector will be a refusal to be tested.
4. If a urine specimen temperature is outside the acceptable range (90 – 100 degrees F.), the collector must immediately require a new collection, under direct observation. An employee who refuses to provide a second specimen, or who refuses to permit a direct observation collection, will be determined to have refused to be tested.
5. The DHHS-approved testing laboratory shall forward the results of every drug test to a BCRC-designated Medical Review Officer (MRO) for review.
6. If a test result is negative, the result will be reported by the MRO to the employer's DER.
7. If a test result is non-negative, the MRO shall contact the employee, and will give the employee an opportunity to discuss the test results prior to making a final decision to verify a test result. The MRO shall inform the employee of his/her right to request a retest of the same specimen at a different DHHS-approved laboratory. Such request must be made by the employee within seventy-two (72) hours of the employee having been informed of a verified positive test result, unless the employee presents information to the MRO documenting that serious illness, injury, inability to contact the MRO, lack of actual knowledge of the verified positive test, or other circumstances unavoidably prevented the employee from contacting the MRO within 72 hours. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the specimen be performed.
8. An employer, under independent authority, will require that the cost of a retest shall be borne by the employee, and will be deducted from the employee's subsequent paycheck. If the retest is negative, the employee will be reimbursed by the employer for the cost of the retest.
9. If, after making 3 attempts in a 24-hour period, the MRO is not able to contact an employee, the MRO shall report to the employer's DER that all reasonable efforts have been made to contact the employee, without success. The DER shall then, as soon as practicable, ask the employee to contact the MRO within the next 72 hours, and shall apprise the MRO that the employee has been so notified.
10. The MRO may verify a test as positive without communicating with the employee if:
  - a. The employee expressly declines the opportunity to discuss the test result; or

- b. The employer's DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO and more than 72 hours have passed since the time the employee was successfully contacted by the DER; or
  - c. Neither the MRO nor the DER, after making all reasonable efforts, has been able to contact the employee within 10 days of the date on which the MRO receives the confirmed positive test result from the laboratory.
11. If a test is verified positive under the circumstances specified in #10 above, the employee may, within 60 days, present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the employee from being contacted by the MRO or his/her employer's DER, or from contacting the MRO, as applicable, within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.
  12. When a required drug test (pre-employment, return-to-duty, or follow-up) is canceled, the employee will be required to immediately take another test, with minimum advance notice.
  13. Results of additional tests that are arranged by an employee, or requested by a medical practitioner, will not be considered. This includes testing of blood samples, hair samples, DNA, or any other testing methods or protocols.
  14. When a drug test is reported as positive dilute (or negative dilute), the test result will be considered to be positive (or negative), respectively.
  15. If, in the MRO's opinion, the employee provides information that medically disqualifies the employee from providing covered functions, or that causes the MRO to have concern about the employee's ability to safely perform his/her safety-sensitive duties, the MRO is required to give that information to an employer's DER.
  16. After verifying the test results, the MRO shall report the test results in a confidential manner to the employer's DER.
  17. Verified test results will be reported by an MRO as either positive, negative, invalid, refused, or canceled.

## **VII. TEST RECORDS**

Records pertaining to the alcohol and controlled substances testing program shall be maintained in secured and locked confidential files in the office of each employer's DER. Access to these records shall be limited to each employer's management officials on a need-to-know basis.

Records and report data shall be maintained as specified in U.S. DOT's rules and regulations.

Except as required by law or expressly authorized or required by RSPA's rules and regulations, employee testing information maintained under the alcohol and controlled substances testing program will be released only to the employee (on written request), or to an identified person as directed by the specific, written consent of the employee authorizing the release of the information.

## **VIII. CONSEQUENCES OF PROHIBITED CONDUCT**

When a DER receives notice of an employee's verified positive drug or alcohol test result, or of a verified refusal to be tested, or of any other violation of RSPA rules (See Section VI[B], Prohibited Conduct), the employee will be immediately removed from all RSPA covered functions (see definition), and the employee will not be permitted or required to return to performing covered functions until or unless the employee successfully completes the return-to-duty process that is required by RSPA under this regulation.

The employer's DER will provide the employee with the phone number of BCRC's Employee Assistance Program, who will in turn direct the employee to qualified SAPs and available treatment resources. Under independent authority, each employer will accept evaluations conducted only by EAP-recommended SAPs. Additionally, DOT regulations do not permit an employee to obtain a second SAP's evaluation. If an employee does obtain a second SAP's opinion, DOT regulations do not permit an employer to acknowledge that second opinion.

If an applicant intends to reapply to an employer, or to another transportation industry employer, he/she must first successfully complete a SAP assessment and recommendation.

An employee who refuses to submit to testing will, under each employer's independent authority, be immediately terminated from employment, and provided with names, addresses and phone numbers of qualified SAPs and of available treatment resources.

DOT rules and regulations do not permit an operator to consider an employee for return to covered functions until the employee has been evaluated by a qualified SAP, and has complied with the SAP's recommendation(s) for rehabilitation and/or education.

If and when possible, an employer may reassign an employee to non-covered functions while he/she is following the SAP's recommended program of assistance and/or education. However, due to the safety-sensitive nature of most of the jobs in this industry, no employer can guarantee that these accommodations can or will be made.

For employers with more than 50 employees, an employee who is following a SAP's recommendation of treatment may access benefits under Family and Medical Leave Act (FLMA), provided he/she is eligible for such benefits. Under separate authority, employers may permit an employee who has been removed from covered functions under these regulations to request to receive earned time off and/or vacation time benefits during the assessment and/or treatment phase.

Upon receiving a SAP's report of compliance with recommendations, each employer will arrange for the employee's compliance to be reviewed by the MRO. If the MRO concurs with the SAP's report that the employee has successfully completed the SAP's recommendations for treatment and/or education, the employer may arrange for the employee to take a Return-to-Duty test. The SAP's report of compliance and the MRO's concurrence with the SAP's report must be completed before the employee can take a Return-to-Duty test. In order for the employee to then return to covered functions, the Return-to-Duty test must have a negative test result.

Under independent authority, each employer will require that any costs incurred in regard to services provided by a SAP, or of treatment and/or education recommended by the SAP, which are not covered by an employee's insurance plan or by BCRC's Employee Assistance Program, will be the responsibility of the employee.

When a SAP requires an employee to participate in a program of aftercare, the employee's compliance with that requirement will be monitored by the EAP or the SAP. Under independent authority, any costs related to this monitoring will be the responsibility of the employee. The aftercare requirement will be included in a Return-to-Duty Agreement, which must be signed by the employee. Failure to sign such agreement, or failure to adhere to the terms of a signed agreement, will result in termination of employment.

## **IX. EDUCATION AND TRAINING**

Any employee who has questions or concerns regarding this policy may seek clarification and further details from his/her employer's DER.

### **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

BCRC provides a comprehensive Employee Assistance Program (EAP) for employees of all contractor participants in the association. Our EAP is accessible by a toll-free phone number. Employees are encouraged to access the EAP for consultation and assistance regarding non-work-related problems that are or could potentially affect their ability to perform their jobs satisfactorily or safely, including problems with alcohol misuse or the use of drugs.

Educational materials, including a copy of this policy, and information concerning the effects of alcohol and drug use on an individual's health, work and personal life, signs and symptoms of an alcohol or drug problem (the employee's or a coworker's) and available methods for intervening when an alcohol or drug problem is suspected, will be provided to each employee. Additional materials may be requested and answers to questions about the materials may be obtained by contacting his/her employer's DER.

Attendance at training programs will be mandatory for supervisors and other employees involved in administering the drug/alcohol testing program.

Supervisors who are designated to determine whether or not reasonable cause/suspicion exists and who then order a DOT RSPA-covered employee to undergo testing under RSPA rules and regulations, will receive at least 60 minutes of training on recognizing alcohol misuse, and at least 60 minutes of training on recognizing prohibited drug use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of prohibited drugs.

All supervisors who participate in training will be given a certificate of completion of such training. The original certificate will be kept in Company records, and a copy will be provided to each supervisor for his/her own records, when requested.

### **DRUG-FREE WORKPLACE EDUCATION**

BCRC employers are committed to a Drug-Free Awareness program for all employees. Each employer will use that program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. The Drug-Free Awareness program will inform employees and their families about the dangers of alcohol and drug abuse in the workplace, of the employer's alcohol and drug policy, the availability of treatment for employees who voluntarily seek such assistance (including the Employee Assistance Program), and the consequences imposed by the employer on employees who violate the alcohol and drug policy.

***THIS DRUG AND ALCOHOL POLICY IS NOT AN EMPLOYMENT CONTRACT,  
OR AN OFFER OF AN EMPLOYMENT CONTRACT.***

*BCRC may change, alter, or eliminate any or all portions of this policy as it deems appropriate, or as mandated or permitted by applicable laws, and may interpret it in response to any particular circumstance. An up-to-date copy of the policy is kept in the office of each employer's DER. Employees may request to see the policy at any time during normal business hours.*