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**AkzoNobel**

Tomorrow's Answers Today

Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
Olympia, WA 98504-7250

February 12, 2010

Dear: Mr. Joe Subsits

This letter is written to address the letter from the WUTC dated January 21, 2010 regarding the Alcohol Misuse and Anti Drug plan.

You had requested to review the revised Alcohol Misuse and Anti Drug Plan. Enclosed is the plan Eka Chemicals has established. As noted on the plan it became effective January 20, 2010. Although the plan is currently in effect as it stands today should you find exception to the plan those changes will be made immediately.

If you have any questions or concerns I can be reached at 509-764-1502 or by email at [Lind.Bingham@akzonobel.com](mailto:Lind.Bingham@akzonobel.com)

Sincerely,  


**Lind Bingham**  
HSE / Q Manager

**eka**

**EKA CHEMICALS**

**Anti-Drug  
and Alcohol Misuse Prevention Plan  
to Comply with 49 CFR Parts 40 and 199**

**Effective 3/11/2010**

**Rev 3/11/2010**

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**EKA CHEMICALS**  
**Anti-Drug and Alcohol Misuse Prevention Plan**  
**to Comply with 49 CFR Parts 40 and 199**

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Effective 3/11/2010

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## **EKA CHEMICALS**

# **Anti-Drug and Alcohol Misuse Prevention Plan to Comply with 49 CFR Parts 40 and 199**

## **INTRODUCTION**

### **Purpose and Policy Statement**

Employees' unauthorized use of controlled substances or misuse of alcohol is incompatible with maintaining high standards of workplace safety and health. This Anti-Drug and Alcohol Misuse Prevention Plan ("ADAMPP" or "Plan") is intended to reduce accidents that result from substance abuse or misuse, thereby reducing fatalities, injuries, and property damage. The Plan specifies prohibitions against substance misuse and abuse and the means by which these prohibitions will be enforced.

The purpose of the program of testing described by the Plan is to enhance safety in our workplace and to comply with federal requirements. Federal drug and alcohol testing regulations, which apply to certain employees of EKA Chemicals (or "the Company"), are promulgated by the U.S. Department of Transportation (DOT). The applicable DOT administrations and regulations are:

- 49 CFR Part 199, "Drug and Alcohol Testing" from the Pipeline & Hazardous Materials Safety Administration (PHMSA) of the DOT, and
- 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which applies to all DOT administrations.

The ADAMPP will be administered jointly by a representative of the Company termed "the Designated Employer Representative" (DER) and a professional drug and alcohol testing service agent termed "Consortium/Third-Party Administrator" (C/TPA) (see Appendix F). The DER and C/TPA will be responsible for implementing and overseeing the execution of policies and procedures of the Plan.

This Plan is intended to comply with DOT regulations, changes in which will supersede specific policy provisions. In addition, federal alcohol testing regulations (49 CFR Part 199) will preempt any state or local law, rule, regulation or order to the extent that:

1. Compliance with both the state or local requirement and the federal regulation is not possible;
2. Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 199; or
3. The state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

EKA Chemicals retains the sole and exclusive right to administer and interpret this Plan.

### **Implementation of Plan**

The effective date of the Company's original Drug and Alcohol Screening Policy was 1/1/1990. A policy to comply with DOT regulations was implemented on January 20, 2010.

## Authority and Occasions for Testing

**NOTE:** Provisions of this Plan which are based on *Company authority*, as opposed to federal regulations, are printed in **bold, underlined** typeface.

Title 49 of the Code of Federal Regulations (CFR), Part 199, requires employers subject to 49 CFR Parts 192, 193 and 195 and their contractors to test their employees for prohibited drugs on the following occasions:

Pre-employment	Probable cause/reasonable suspicion
Post-accident	Return to duty
Random	Follow-up

The same employees must be tested for alcohol on the following occasions:

Post-accident	Return to duty
Reasonable suspicion	Follow-up

The term "accident" has specific meanings under the federal regulations. Please see Appendix A, Glossary of Terms, for definitions of this and other terms to be used throughout this Plan.

## Employees Subject to Testing

Any applicant/employee who would perform on a pipeline an operating, maintenance, or emergency response function regulated by Parts 192, 193 or 195 is subject to drug and alcohol testing under this Plan. Such individuals are employed by the Company in its function as a pipeline operator, and are termed "covered employees"<sup>1</sup> under the PHMSA regulations.

The specific jobs which qualify as "covered" under this Plan are listed in Appendix B.

## When Testing Can Occur

Covered employees may be tested for drugs or alcohol whenever they are **on duty**. **For the purposes of this Plan, "on duty" is defined as any time on the job**, since covered employees are expected to be ready to perform safety-sensitive functions on short notice. Conversely, time spent in association with drug testing specimen collection and/or alcohol testing is considered "on-duty" time.

## DER Responsibilities

The Company DER is responsible for:

- determining job functions of employees who will be covered by this ADAMPP;
- giving each covered employee a copy of this Plan, explaining the alcohol and drug testing requirements, as well as related educational materials (see Employee Assistance Program, page 15), prior to the commencement of testing ;
- retaining signed acknowledgments of receipt of the Plan and related educational materials for the term of each employee's employment;
- communicating the disciplinary sections of this ADAMPP, specifically the consequences of a verified positive drug test, violation of the alcohol prohibitions of this Plan, or a refusal to take a required drug or alcohol test;

<sup>1</sup> Terms used throughout this Plan are defined in Appendix A (page 20).

- scheduling pre-employment drug testing;
- ensuring that a report of a negative drug test is received before allowing an employee to perform functions covered by 49 CFR Parts 192, 193, or 195;
- notifying the C/TPA promptly when an individual is to be added to or removed from the random selection "pool";
- ensuring that employees who have been notified of random selection for drug testing proceed directly to a specimen collection site/qualified collector;
- assisting trained Company management personnel in resolving any "reasonable suspicion" or "probable cause" incident in which an employee is suspected of violating the alcohol provisions of this Plan or of having used controlled substances such that a drug or alcohol test may be needed under DOT regulations;
- determining whether post-accident drug and alcohol testing is required because an employee's performance cannot be completely discounted as a contributing factor to a pipeline accident;
- referring employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests to a qualified Substance Abuse Professional;
- ensuring that any pipeline subcontractors used for functions covered by PHMSA regulations have drug abuse and alcohol misuse prevention programs, including education and training, which meet PHMSA requirements;
- interacting in a timely manner with the C/TPA on issues regarding compliance with DOT drug and alcohol testing regulations;
- maintaining records as required by this Plan, including retention of periodic statistical reports prepared for review by DOT or other authorized agencies.

The Company shall not falsely represent that a drug or alcohol test is being conducted under the provisions of 49 CFR Part 199.

### **C/TPA Responsibilities**

Appendix F contains the name, address, and telephone number of the C/TPA. The C/TPA is responsible for:

- preparation of this ADAMPP, which is intended to comply with DOT regulations as set forth in 49 CFR Parts 40 and 199, for the DER's review and approval;
- performing selections for random testing and communicating them to the DER in a confidential manner;
- assisting the DER in determining whether post-accident drug and alcohol testing is required;
- monitoring the performance of urine drug screen specimen collectors to ensure compliance with DOT standards (49 CFR Part 40);
- interacting in a timely manner with the DER and his or her representatives on issues regarding compliance with DOT drug and alcohol testing regulations;
- preparation of periodic statistical reports as directed by the DER; and
- maintaining records in compliance with this ADAMPP.

### **Employee Responsibilities**

Each employee is responsible for reading this Plan, for asking questions about any element which is unclear, and for cooperating in the preparation for and performance of drug and alcohol testing required under the Plan. A copy of the complete Plan is available at the Company's primary place of business, and will be made available to any employee upon request. Each employee will sign an acknowledgment of



receipt of the Plan and educational materials, and of notification of his/her responsibilities. Signed acknowledgment must be obtained before any alcohol testing is conducted under this Plan.

## ALCOHOL AND DRUG PROHIBITIONS

**Under Company authority, the use or possession of alcoholic beverages or prohibited drugs (without a valid prescription) while on Company property or in any Company vehicle is strictly prohibited.**

Under this ADAMPP, employees are prohibited from using controlled substances without authorization (i.e. a valid prescription from a licensed health care practitioner). Employees are also prohibited from using alcohol for four (4) hours prior to reporting for duty, from using alcohol on duty, and from reporting for duty or remaining on duty while having an alcohol concentration of 0.04<sup>2</sup> or greater. If an employee is called to duty to respond to a pipeline emergency, he/she is prohibited from using alcohol within the time period after he/she has been notified to report for duty. If a representative of the Company knows that any employee has used alcohol within four hours prior to duty, after being called to duty to respond to a pipeline emergency, or while on duty, that employee will not be allowed to perform covered functions.

Covered employee are prohibited from refusing to submit a urine or breath specimen when required by federal regulations. Such refusal will have the same consequences as a test result of 0.04 or greater (see **Disciplinary Action** section, page 14), and result in the immediate removal of the employee from duty.

Finally, employees are prohibited from using alcohol after an accident (see Appendix A for definition) for eight (8) hours, unless and until one of the following occurs:

1. A designated Company representative has determined that testing was not required because the employee's performance of covered functions has been discounted as a contributing factor to the accident, OR
2. The employee has been tested for alcohol using procedures required by 49 CFR Part 40.

DOT regulations prohibit an employee with an alcohol level of 0.02 or greater from performing covered functions. Under this Plan, an employee with an alcohol level of 0.02 or greater will be removed from his or her job **pending investigation of the circumstances of the alcohol test. The employee will not be returned to covered duties until at least twenty-four (24) hours have elapsed.**

Any covered employee who engages in conduct prohibited under this ADAMPP will be advised of available resources to evaluate and resolve problems associated with abuse of drugs or misuse of alcohol. A Substance Abuse Professional qualified as of the revision date of this policy is identified in Appendix F.

## PRESCRIPTION MEDICATIONS

**Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. All employees should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of prescription medications which result in an incident or accident will be considered a violation of this Plan.**

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<sup>2</sup> Alcohol concentration is expressed in grams of alcohol per 210 liters of breath (g/210 L).

## **INQUIRIES INTO DRUG/ALCOHOL TESTING HISTORIES**

DOT regulations require the Company to obtain information concerning an applicant's past drug and alcohol tests from all of the DOT employers for which the applicant worked during the two years preceding the date of application for a covered position. As a condition of employment with the Company, applicants for covered positions are required to complete and sign a form which authorizes the applicant's former employers during the preceding two years (from the date of application) to release to the Company information concerning the applicant's:

1. Alcohol test results of 0.04 or greater;
2. Verified positive drug test results;
3. Refusals to be drug or alcohol tested (including verified adulterated or substituted drug test results); and
4. Other violations of DOT drug and alcohol testing regulations.

This information will be obtained in a confidential manner. The Company will maintain a written confidential record with respect to each former employer contacted. The information from a previous employer may contain any alcohol and drug information the previous employer obtained from other previous DOT employers after January 1, 1995.

## **DRUG AND ALCOHOL TESTING REQUIREMENTS**

### **Procedure for Notifying Employees**

The DER will notify each covered employee that a paper or electronic copy of this ADAMPP is available and request that s/he read it, along with educational materials concerning drug use and alcohol misuse; have him or her sign an acknowledgment that the ADAMPP and educational materials have been made available; and retain the original of this acknowledgment in a secure location. A copy of the acknowledgment will also be maintained separately from the original (e.g. in the employee's personnel file).

### **Substances for Which Testing Must Be Conducted**

Each employee will be tested for evidence of the following prohibited drugs:

Amphetamines	Opiates
Cocaine	Phencyclidine (PCP)
Marijuana	

In addition, employees are subject to testing for alcohol under certain circumstances (see below).

### **Required Testing**

#### **Pre-employment Drug Testing**

A pre-employment drug test must be conducted before an individual is hired and when an individual is transferred/promoted from a non-covered to a covered position. This also applies to employees returning from a leave of absence or lay-off who have not been participating in the random selection process **for 30 days or more**. A negative test is required prior to performing covered functions.

## Random Drug Testing

The primary purpose of random testing is to deter prohibited drug use and to ensure a drug-free workplace. DOT regulations require that covered employees shall be subject to drug testing on an unannounced and random basis.

An objective, outside party, the Company's C/TPA, will conduct random selections for the Company. DOT-covered employees will be in a random "pool" (computer database) with federally-regulated employees from other companies (**consortium**). The C/TPA will perform random selections on a quarterly basis, using methods which comply with DOT requirements. Each person in the pool will have the same chance of being selected every time a selection occurs. As a result, individuals are subject to testing at any time, and may be randomly tested more than once in a calendar year.

The Consortium manager shall conduct a number of drug tests equal to at least 25 percent of the number of covered employees in the selection "pool" each calendar year, spread reasonably over the 12-month period. The selection rate is subject to change by PHMSA based on the reported positive rate for the pipeline industry.

The C/TPA will notify the DER of the individuals selected for random testing. The DER shall maintain the security of the selection until just before the employee is sent to a specimen collection site for the drug test collection. The DER or his/her alternate will notify each selected individual in person or by telephone and instruct him or her to report to the designated specimen collection/breath testing site or to the qualified collector, if testing is conducted on the Company's premises. The date and time of notification will be documented.

## Reasonable Suspicion/Probable Cause Drug and Alcohol Testing

Reasonable suspicion/probable cause testing provides Company management with a tool (in conjunction with supervisor training on the signs and symptoms of drug use and/or alcohol misuse) to identify drug- and/or alcohol-affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is reason to believe an employee is using or has used a prohibited drug or alcohol in violation of this Plan.

The decision to test for drugs or alcohol must be based on a reasonable and articulable belief that the employee is using a prohibited drug, or has used alcohol in violation of the prohibitions stated above, on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use and/or alcohol misuse. Observations indicating possible alcohol misuse must be made just before, while, or just after the employee performs a covered function, and must be documented. Two of the employee's supervisors shall substantiate and concur in the decision to test the employee. The DER may serve as the second "supervisor" if needed, and the consultation may be by telephone.

Employees **MUST BE ACCOMPANIED** to the alcohol testing/specimen collection site(s). Drug or alcohol testing must take place **AS SOON AS POSSIBLE** after the observations leading to testing. Specimen collection for drug testing must take place within 32 hours. Alcohol testing must take place within eight (8) hours of the decision to test. Company supervisors will not be permitted to conduct alcohol testing under this ADAMPP. **Under Company authority, employees who are required to undergo reasonable suspicion testing will be suspended pending receipt of the test results (not fewer than 8 hours following decision to test). The employee will be paid for the time off if the test results are negative. The employee may use sick leave or personal leave for the time off if the test results are positive or the employee refuses to test.**

If required alcohol testing is not performed within two (2) hours of the decision to test, the DER will document the reason for the delay. If required alcohol testing is not performed within eight (8) hours of the decision to test, the DER will cease attempts to have the employee tested for alcohol and document the reason for failure to test.

If an alcohol test cannot be performed, but an employer or supervisor believes that an employee is under the influence of or impaired by alcohol, as shown by behavioral, speech or performance indicators of alcohol misuse, he/she must remove the employee from covered functions until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02, or until the next scheduled work shift, not fewer than eight (8) hours after the reasonable suspicion determination. **Any time lost under these circumstances will be paid.**

Supervisors who may need to make reasonable suspicion/probable cause determinations under this Plan will undergo at least two (2) hours of training on specific physical, behavioral, and performance indicators of probable drug use and of alcohol misuse (see Appendix B).

### **Post-accident Drug and Alcohol Testing**

#### **1. Determination of Need to Test**

A Company representative, who will ordinarily be the DER, is responsible for determining whether an employee's performance may be completely discounted as a contributing factor to an accident, as defined in federal pipeline safety regulations (see Appendix A). Medical treatment or emergency response will not be delayed, but a decision regarding post-accident testing should be made as soon as practicable following the accident or incident.

Each surviving covered employee shall be drug and alcohol tested if the employee's performance either contributed to the accident or cannot be completely discounted as having contributed to the accident. This determination shall be based on the best available information at the time of the accident. The Company may decide NOT to test if the time between the employee's performance and the accident is such that it is unlikely that a drug test would reveal whether performance was affected by drug use.

#### **2. Time Requirements**

If the employee's performance CANNOT be completely discounted as a contributing factor to the accident (pipeline), he or she must be tested for alcohol and drugs as soon as possible. Alcohol testing should take place within two hours, but in no case later than eight (8) hours following the decision to test. If required alcohol testing is not performed within two (2) hours of the decision to test, the DER will document the reason for the delay. If required alcohol testing is not performed within eight (8) hours of the decision to test, the DER will cease attempts to have the employee tested for alcohol and document the reason for failure to test.

Drug testing must take place no later than 32 hours after the determination to test.

#### **3. Employee Responsibilities**

Under this ADAMPP, employees are prohibited from using alcohol after an accident for eight (8) hours, unless and until one of the following occurs:

- a. The designated Company representative has decided that testing was not required because the employee's performance of covered functions has been discounted as a contributing factor to the accident, OR
- b. The employee has been tested for alcohol using procedures required by 49 CFR Part 40.

Covered employees may leave the scene of the accident for the period of time necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care. Otherwise, employees must remain readily available for alcohol testing and urine specimen collection until a decision NOT to test has been made or the alcohol testing and urine specimen collection have been completed. If an employee is not readily available, it will be considered a refusal to test.

#### 4. Hospitalized Employee

The Company will take all reasonable steps to obtain a urine sample from a covered employee following an accident when testing is determined to be required. In the case of a conscious, but hospitalized employee, the Company shall request that the hospital or medical facility obtain the sample from the employee.

- a. The employee must give consent for the test. If the employee is injured, unconscious (e.g. unable to communicate), or otherwise unable to give his or her consent (e.g. unable to sign drug test custody and control form), no urine sample will be collected. It is permissible to collect a urine sample from a catheterized employee with his or her consent.
- b. If the employee is conscious (e.g. can communicate), is able to give consent (e.g. able to sign drug test custody and control form), and is able to void normally (without the aid of a catheter), a specimen must be collected.
- c. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional), and refuses to be tested, the employee must be removed from duty in accordance with DOT regulations.

#### **Return to Duty Drug and/or Alcohol Testing**

Under DOT regulations, if an employee violates alcohol prohibitions, tests positive for drugs, submits an adulterated or substituted specimen, or refuses or fails to take a required drug or alcohol test, there are specific requirements he/she must fulfill prior to performing covered functions again. The employee must:

1. Be evaluated by a Substance Abuse Professional (SAP) to determine the level of assistance needed to address his/her drug and/or alcohol problem;
2. Initiate the education and/or treatment plan prescribed by the SAP;
3. Undergo a follow-up evaluation by the SAP to determine whether he/she has successfully complied with the prescribed education and/or treatment plan; and
4. Undergo return-to-duty drug and/or alcohol testing with a negative drug test result and/or an alcohol test less than 0.02. All return-to-duty drug tests must be conducted under direct observation.

The employee must have a negative drug test result or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

**Under Company authority, an employee who violates the prohibitions of this Plan will be promptly suspended pending investigation of the circumstances of the incident, and will be subject to disciplinary action up to and including termination of employment.** See also **Disciplinary Action** section, page 14.

#### **Follow-up Drug and/or Alcohol Testing**

A covered employee who returns to duty following a violation of the prohibitions of this Plan shall be subject to a program of follow-up testing, without prior notice, for up to 60 months after his or her return to duty as determined by the Substance Abuse Professional. The program must include at least six (6) unannounced follow-up drug and/or alcohol tests during the twelve (12) months after the employee's return to duty. All follow-up drug tests must be conducted under direct observation.

The Substance Abuse Professional who determines the program of follow-up testing may terminate the testing requirement at any time after the first year of testing.

#### **USE OF AN EMPLOYEE WHO FAILS OR REFUSES A DRUG OR ALCOHOL TEST**

**Compliance with this ADAMPP is required as a condition of employment for covered employees.**

Refusal to take a required drug or alcohol test, including adulteration or substitution, a verified positive drug test, or violation of the alcohol provisions of this Plan shall result in removal from performing covered functions **and disciplinary action, up to and including termination of employment.**

#### **DRUG TEST SPECIMEN COLLECTION PROCEDURES**

Urine specimen collection for drug testing will be performed with respect for the privacy and dignity of the person giving the specimen, by trained collectors, and in conformance with chain of custody procedures and standards specified by DOT regulations (49 CFR Part 40). Drug test specimens will consist of at least 30 mL of urine in a "primary specimen" shipping bottle and at least 15 mL of urine in a "split specimen" shipping bottle, as described in Appendix C.

Each specimen collection site shall have all the necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified laboratory (see below).

A designated collection site shall be any suitable location where a specimen can be collected under conditions set forth in Appendix C; a properly equipped mobile facility may serve as a site. A designated collection site shall have an enclosure within which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site must also have a source of water for washing hands that can be secured while the applicant or employee is giving the specimen.

Designated collection sites for Company drug screens are listed in Appendix E. Other collection sites that meet the criteria described above may be used for operations or personnel that are geographically distant from the Company's main location at the DER's discretion.

## DRUG TESTING LABORATORIES

The Company shall use drug testing laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) under Department of Health and Human Services' (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11970, April 11, 1988 and subsequent amendments). Each laboratory shall provide services in accordance with 49 CFR Part 40.

The certified laboratories used by the Company will maintain employee test records in confidence, as required by DOT regulations. The laboratory shall disclose information related to an employee's drug test to the Company upon written request in connection with certain legal proceedings. The laboratory shall immediately notify the employee in writing of release of the information that has been released. The laboratory will also provide, within 10 business days of receiving a written request from an employee, and made through the MRO, records relating to the results of the employee's drug test.

The certified laboratories used by the Company will permit inspections by the DER, the C/TPA, the Pipeline & Hazardous Materials Safety (PHMSA) Administrator, or if the Company is subject to the jurisdiction of a state agency, a representative of the state agency.

Every six months, the laboratory will send a Company representative a statistical summary of drug testing of the Company's employees without any personal identifying information. Confirmation data will be included from DOT/PHMSA test results reported within that quarter, including number of specimens received for confirmation and number of specimens confirmed positive for amphetamine, codeine, methamphetamine, morphine, phencyclidine, and metabolites of marijuana and cocaine. Normally, this summary will be forwarded by mail not more than 14 calendar days after the end of the period covered by the summary. The summary will not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory will not send a report until data are sufficiently aggregated to make such an inference unlikely.

The names and addresses of the primary laboratories to be used by the Company are contained in Appendix F.

### Retention of Specimens

SAMHSA-certified laboratories which perform testing for the Company will retain urine specimens which have been confirmed positive in secure, long-term, frozen storage for at least one year. Within this period, the employee or designated representative, the employer, PHMSA, or state agencies with jurisdiction may request in writing that the specimen be retained longer. If the laboratory does not receive such a request within one year, the specimen may be discarded.

## ALCOHOL TESTING PROCEDURES AND SITES

The Company will notify employees that alcohol testing is required by DOT regulations by providing a test request form indicating the need for a DOT test. The employee will also receive a copy of the Alcohol Testing Form, which indicates that testing has been conducted according to DOT regulations. **The test request form and non-DOT alcohol testing form will also specify when alcohol testing is to be conducted under the Company's independent authority.**

Sites used for alcohol testing shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the testing and processing of alcohol test results according to DOT requirements.

Designated alcohol testing sites shall provide privacy during the testing period and during completion of the necessary documentation to the extent feasible under the circumstances.

Alcohol screening may be performed using saliva or breath. Confirmation testing will use Evidential Breath Testing (EBT) devices. All alcohol testing devices used by the Company shall be approved by the National Highway Transportation Safety Administration (NHTSA), as listed on a Conforming Products List.

Screening test technicians (STTs) and breath alcohol technicians (BATs) technicians will be trained according to the requirements of 49 CFR Part 40 and be certified to proficiency in the specific operation of the devices they use. The Company or its designated agent will maintain documentation regarding the training and proficiency testing of each technician used to test employees. **Alcohol testing will not be conducted by Company supervisors.**

Designated breath alcohol testing sites are listed in Appendix E. The C/TPA will determine qualified testing facilities upon request by the DER (e.g. for a post-accident test outside the Company's normal geographic area).

## **BLIND PERFORMANCE TEST PROCEDURES**

The DER shall ensure that blind performance specimens are submitted by its service agents if required by 49 CFR Part 40. Currently, submission is not required, since the Company has an aggregate of fewer than 2000 DOT-covered employees.

If submitted, approximately 75% of the blind specimens would be negative (i.e., containing no drugs, nor adulterated or substituted). Approximately 15 percent would be positive for one or more of the five drugs involved in DOT tests, and approximately 10 percent would either be adulterated with a substance cited in HHS guidance or substituted, as defined in 49 CFR Part 40.

If the Company or its service agent submits a blind specimen and the result reported to the MRO is different from the result expected, the Company or the service agent will investigate the discrepancy. If the unexpected result is a false negative, the Company or its agent will provide the laboratory with the expected results (obtained from the supplier of the blind specimen), and direct the laboratory to determine the reason for the discrepancy. If the unexpected result is a false positive, adulterated, or substituted result, the Company or its agent will provide the laboratory with the expected results, direct the laboratory to determine the reason for the discrepancy, and will also notify ODAPC of the discrepancy by telephone or e-mail.

## **REVIEW OF DRUG TESTING RESULTS**

### **Duties of the Medical Review Officer (MRO)**

The Company will use the services of a licensed physician with knowledge of drug abuse disorders as its Medical Review Officer (MRO). The MRO acts as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process, performing all functions in compliance with 49 CFR Part 40 and other DOT regulations. The MRO shall not be an employee of the laboratory conducting the drug test.

A confirmed positive test (see Appendix A for definition) from a certified laboratory does not automatically identify an employee/applicant as having used drugs in violation of a DOT regulation. The MRO brings



detailed knowledge of possible alternate medical explanations to his or her review of the test results. This review shall be performed by the MRO prior to the transmission of results to the Company.

The MRO shall receive and review all drug test results and interview individuals with positive, adulterated, substituted or invalid tests to verify the result before reporting the results to the DER. If there is a legitimate medical reason for a confirmed positive drug test, the MRO shall declare the test to be "verified negative" and will take no action other than reporting the negative test result. The review of negative tests will be administrative to ensure that proper chain of custody procedures were used.

The MRO is a licensed physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The MRO is responsible for:

1. Receipt of test results from the SAMHSA-certified laboratory and administrative disposition of negative test results, including the timely flow of test results and other information to the Company.
2. Review of the custody and control form and any other information (e.g. inspection reports, quality control data) necessary for each test.
3. Investigation and correction of problems, and provision of feedback, to the Company, collection sites and laboratories regarding performance issues where necessary.
4. Reporting to and consulting with agencies of the DOT when assistance is needed to resolve a program issue.
5. Review and interpretation of confirmed positive test results to determine whether there is an acceptable medical explanation for the result. As part of this duty, the MRO will:
  - a. Provide an opportunity for the employee to discuss the positive result. The initial contact may occur by a designated staff person under the MRO's supervision.
  - b. Review the employee's medical history and any relevant biomedical factors. In the case of a confirmed positive test result for opiates, the MRO shall determine that there is clinical evidence of unauthorized use of an opiate, that 6-monoacetylmorphine is present in the specimen, or that the level of morphine and/or codeine is 15,000 ng/mL or above before verifying the test result as positive.
  - c. Review all medical records made available by the employee to determine whether a positive test resulted from legally prescribed medication.
  - d. Notify the employee of the right to split specimen testing and direct the laboratory to ship the split specimen to a second certified laboratory, if the employee requests this within 72 hours of notification of a positive, adulterated or substituted result. **Split specimen testing will be at the Company's expense.**
  - e. Verify the test result as NEGATIVE, POSITIVE, TEST CANCELLED, or REFUSAL TO TEST after review of available data.

NOTE: If the MRO is unable to contact an employee directly, after making at least three attempts during the 24 hours following receipt of the test result and documenting them, the MRO or his designated representative shall contact the DER, who shall direct the employee to contact the MRO as soon as possible. The DER shall employ procedures that, to the maximum extent practicable, keep the MRO's request in confidence. If the DER cannot contact the employee, he may place the employee on temporary medically unqualified status.

- f. The MRO may verify a test as positive or refusal to test without having communicated directly with the employee in three circumstances:
- (1) The employee expressly declines the opportunity to discuss the test;
  - (2) The DER or his/her alternate has 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 contacted; or
  - (3) 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 test result from the laboratory.

NOTE: If a test is verified positive under the circumstances specified above, the employee may present to the MRO, within 60 days, information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from contacting the MRO and/or the DER. On the basis of this information, the MRO may re-open the verification, allowing the employee to present information concerning a legitimate explanation for the positive test.

6. Reporting verified negative and positive test results to the DER in a manner consistent with DOT requirements (49 CFR 40.163).

#### **MRO Disclosure of Information**

The MRO shall not disclose to any third party medical information provided by the individual to the MRO as part of the test result verification process. The MRO must disclose such information to the Company, the DOT or another federal safety agency, a SAP evaluating the employee as part of the return to duty process, a state safety agency as required by state law, or a physician or other health care provider responsible for determining the medical qualification of the employee under the appropriate DOT regulation, as applicable, if in the MRO's reasonable medical judgment:

1. The information could result in the employee being determined to be medically unqualified under an applicable DOT rule; or
2. The information indicates that continued performance by the employee of his or her covered function could pose a significant safety risk.

Before obtaining medical information from the employee as part of the medical review process, the MRO shall inform the employee that information must be disclosed to third parties as described above and the identity of any parties to whom information may be disclosed.

The designated MRO(s) for the Company are listed in Appendix F.

#### **DISCIPLINARY ACTION**

1. A covered employee who demonstrates conduct prohibited under this ADAMPP will be immediately removed from duty. **Under Company authority, such employees will be promptly suspended pending investigation of the circumstances of the incident, and will be subject to disciplinary action up to and including termination of employment.** Violations include:
  - a. On-duty use of prohibited drugs or alcohol.

