

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

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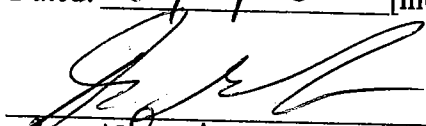
APPLICATION FOR MITIGATION OF PENALTIES

NOTE: This form must be completed, signed, and received by the Commission within 15 days of your receipt of this form.

I have read and understand RCW 9A.72.020, which states that making false statements under oath is a class B felony (printed below). I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, application for mitigation of the penalties (as described in the attached Notice of Penalties), for the following reasons:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: 04/29/06 [month/day/year], at Tukwila, WA [city, state]



President

Signature of Applicant

RCW 9A.72.020:
"Perjury in the first degree. (1) A person is guilty of perjury in the first degree in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

RECEIVED
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STATE OF WASH.
UTILITIES & TRANSPORTATION

KELLEY'S TRANSPORTATION, INC.

11022 EAST MARGINAL WAY SOUTH

TUKWILA, WA 98168

(206) 391-5454

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WASH. UT. & TP. COMM.

April 29, 2006

WUTC
P.O. Box 47250
Olympia, WA 98504-7250

RE: Penalty Assessment No.: TE-060395
Penalty Amount: \$1,500.00

Dear Sir or Madam:

Please consider this letter and enclosed documents as our Application for Mitigation of Penalties, associated with the inspection conducted by Investigator Leon Macomber on March 7, 2006.

As you are well aware, our company and its predecessor, Checker Transportation Company, have had a WUTC license for approximately 10 years. Naturally, our company was inspected by WUTC investigators on numerous occasions, including the compliance with Title 49 of the Code of Federal Regulations as its was applicable to the Controlled Substances and Alcohol Use and Testing procedure.

When Checker Transportation Company initially received its WUTC license several years ago, we had a drug and alcohol testing procedure in place for our company's employees (Copy of the policy is attached as "Exhibit A". It should be noted that the same policy has been in full force and effect on the date of inspection by Investigator Leon Macomber). However, since our company does not have any employees, only independent contractors, it appeared, upon the advise of our attorney, that 49 CFR §382.115 seized to be applicable to Kelley's Transportation Company.

Section 382.115(a), under which the Commission has imposed the penalty, specifically states as follows, " All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States" (Exhibit "B").

It is a reasonable inference from the regulations that in order to be an employer, a company must have employees. However, Kelley's Transportation, Inc. DOES NOT have any employees whatsoever. All individuals who drive Kelley's Transportation's vehicles are simply independent contractors, who have their own full-time jobs outside

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our company. Hence, any services the said drivers perform are conducted not as employees or self-employed, but only as **independent contractors**.

Although we tried to explain this issue to Investigator Leon Macomber, in spite of the plain language of the regulations, he believed that 49 CFR § 382 was also applicable to independent contractors.

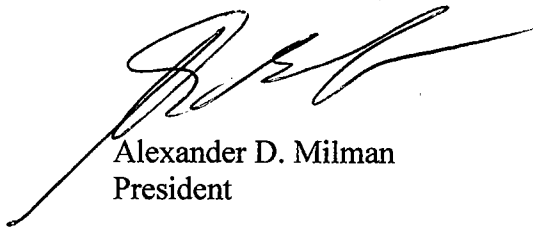
In addition, since there is a difference in understanding of the applicable federal regulation, on the date of inspection, we have re-established an account with a medical provider to perform random, pre-employment, post accident and reasonable suspicion tests (Copy of the letter from Health Work Medical Group is attached as Exhibit "C").

In summary, we respectfully request insists that the use of independent contractors by Kelley's Transportation, Inc. does not impose on the company an obligation of an employer, as provided by 49 CFR §382.115(a).

Furthermore, if the Commission determines that 49 CFR 382.115(a) is applicable to Kelley's Transportation, Inc., we respectfully request, in mitigation of penalties, to take into consideration the fact that Kelley's Transportation, Inc. had a drug and alcohol testing procedure in place ("Exhibit A"), and as of March 7, 2006, re-established a contract with a medical clinic.

If you have any questions regarding our company's request for mitigation of damages, please contact the Undersigned at your earliest convenience.

With kindest regards,



Alexander D. Milman
President

EXHIBIT A

DRUG AND ALCOHOL TESTING PROCEDURES

NOTICE OF TESTING

This procedure will act as notice of Drug and Alcohol Testing as prescribed in the Omnibus Transportation Employee Testing Act of 1991 and Department of Transportation (DOT) regulations. These regulations are 49 CFR Part 653, "Prevention of Prohibited Drug Use in Transit Operations", 49 CFR part 654, "Prevention of Alcohol Misuse in Transit Operations" and 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." In addition, the Federal government published 49 CFR Part 29, "The Drug-Free Workplace Act of 1983," which requires the establishment of drug free workplace policies and the reporting of certain drug-related offenses to the Federal Transit Administration (FTA). These procedures incorporate those requirements for safety-sensitive employees and others when so noted.

INTENT

Our Company is dedicated to providing safe and dependable transportation services to our passengers. Company's employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment which promotes personal opportunities for growth. In meeting these goals, it is our intent to:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
2. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and,
4. To encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affects their ability to perform their assigned duties.

PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING

This document provides a uniform procedure concerning the testing of employees or applicants for employment to detect individuals having drugs or alcohol in their system. The purpose of such testing is to provide, in the interest of the safety of employees, passengers, and the general public, work and service environments that are free from the effects of drug and alcohol abuse. We are committed to providing a safe work place for its employees that is free of the effects of substance abuse. Since we are involved in public service, the community depends on careful attention by all employees. Such attention cannot be affected by the use of drugs and/or alcohol.

The use of any drug, including alcohol, can interfere with the safe and efficient functioning of our Company' personnel, therefore, drug or alcohol abuse is a matter of our Company's concern and will be dealt with in an appropriate manner.

We expect the employees to report for work in condition to perform their duties. On-the-job involvement with drugs and/or alcohol is a violation of Company's policy and Federal law. Company also recognizes that employee off-the-job involvement with drugs and alcohol can have an impact on the work place and our ability to accomplish the goal of a safe, effective, drug and alcohol-free work environment.

APPLICABILITY

These procedures apply to all safety-sensitive and non-safety-sensitive employees, including paid part-time employees, temporary employees, volunteers, contract employees and contractors when they are on Company's property or when performing any safety-sensitive functions. They also apply to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contractor employees are governed by these procedures while on Company's premises and will not be permitted to conduct company business if found to be in violation of these procedures.

A safety-sensitive function is any duty related to the safe operation of a company revenue service vehicle (whether or not the vehicle is in revenue service), dispatch and maintenance of a revenue service vehicle or equipment used in revenue service and any other employee who holds a Commercial Driver's License. A list of safety-sensitive positions is under definition 19.

PROHIBITED SUBSTANCES

"Prohibited substances" addressed by these procedures include the following:

Illegally Used Controlled Substances or Drugs

Any illegal drug or substance identified in Schedules I through V Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (POP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

Legal Drugs

Employees who are taking prescription or non-prescription lawful drugs that may affect the performance of their job duties must report such usage to their immediate supervisor before beginning their workday. Such drugs used on the job may be

determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

Alcohol

The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing company's business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

PROHIBITED BEHAVIOR

Safety-sensitive and non-safety-sensitive employees shall not report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.

Safety-sensitive and non-safety-sensitive employees shall not possess alcohol while on duty or operating a commercial motor vehicle.

The use of alcohol while performing their safety-sensitive or non-safety-sensitive job functions.

Performing safety-sensitive and non-safety-sensitive functions within four hours of having used alcohol.

The use of alcohol by safety-sensitive and non-safety-sensitive employees within eight hours following an accident, or before undergoing a post-accident alcohol test, whichever comes first.

Reporting for duty, remaining on duty, or performing safety-sensitive and non-safety sensitive functions after having tested positive for a controlled substance.

Using, manufacturing, distributing, dispensing or possessing controlled substances.

Refusal by a safety-sensitive or non-safety-sensitive employee to submit immediately to a chemical or alcohol test (reasonable suspicion, post-accident, and random) when requested.

All employees are required to notify Company of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination

Our Company is dedicated to assuring fair and equitable application of the Drug and Alcohol Testing procedures. Therefore, supervisors and managers are directed to use and apply all aspects of this procedure in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

DEFINITIONS

"Accident" - means an occurrence associated with the operation of a motor vehicle if, as a result:

1. An individual dies;
2. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
3. One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle.

"Alcohol" - means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).

"Alcohol Test" - A test conducted by a Breath Alcohol Technician, or any other person approved by the DOT rules, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the Federal Highway Administration (FHA).

"Alcohol Use" - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

"Breath Alcohol Technician (BAT)" - means an individual trained to proficiency and certified in the use of an evidential breath testing device.

"Canceled Test" - means a test that has been declared invalid by a Medical Review Officer (MRO) for drug testing or for alcohol under 40.81 of 49 CFR.

"CDL" - means a Commercial Driver's License.

"Confirmation Test" - For alcohol testing, a confirmation test means a second test following a screening test with a result of 0.02 or greater, that provides a quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test. For controlled substances testing, a confirmation test means a second analytical

procedure to identify the presence of a specific drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

"Controlled Substances/Drugs" - For purposes of these procedures, controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, phencyclidine and any other substance determined by the U.S. Department of Transportation to be a controlled substance.

"Controlled Substance (or Drug) Test" - A method for determining the presence of controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR 40.

"DHHS" - means the United States Department of Health & Human Services.

"DOT" - means the United States Department of Transportation.

"Employee" - means any person employed by company.

"EAP" - means an Employee Assistance Program provided by company to assist its employees in dealing with drug or alcohol dependency or other personal problems.

"Evidential Breath Testing Device (EBT)" - A device approved by the NHTSA and placed on NHTSA's Conforming Products list and is used for the evidential testing of breath.

"Medical Review Officer (MRO)" - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

"Non-negative Test Result (alcohol breath test result)" - An alcohol breath test result between .02 and .039.

"Performing a Safety-Sensitive Function" - An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

"Safety-Sensitive Function" - Any of the following duties:
Operating a revenue service vehicle, including when not in revenue service (drivers and others required to operate revenue vehicles as part of their job duties):

Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

Controlling dispatch or movement of a revenue service vehicle (dispatchers or those who as part of their job duties fill in for a dispatcher or cross-train):

Maintaining a revenue service vehicle or equipment used in revenue service (mechanics, service mechanics, service helpers, and vehicle washers);

Any other employee required to hold a CDL as part of their job requirements (site supervisors, Operations Supervisors, Site Office Personnel, etc.).

"Screening Test (also known as an "initial test" - In alcohol testing, a screening test means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.

In controlled substances testing, a screening test means an immunoassay screen (or other DHHS-approved test) to eliminate "negative" urine specimens from further consideration.

"Split Sample" - An additional sample collected with the original specimen, to be tested in the event the original specimen tests positive.

"Substance Abuse Professional (SAP)" - 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), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

"Verified Negative Drug Test Results" - A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

"Verified Positive Drug Test Results)" - A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

CIRCUMSTANCES OF DRUG AND ALCOHOL TESTING Six drug and/or alcohol screening situations will be utilized by Our Company.

Pre-employment Testing: All safety-sensitive and non-safety-sensitive position applicants shall undergo urine drug testing immediately following the offer of employment or transfer into a safety-sensitive position. Receipt of a negative drug test result is required prior to employment. If an applicant refuses to be tested or fails the pre-employment drug test, the applicant will be disqualified for employment for a period of six months. A negative pre-employment drug test is required prior to further consideration for employment.

Post-accident Testing: Conducted after accidents on safety-sensitive and non-safety-sensitive employees if there was loss of life, an injury requiring transportation to a medical treatment facility, one or more vehicles incurs disabling damage where a vehicle must be towed from the scene **and** the employee receives a citation under state or local law for a moving traffic violation, or if the employees' performance could have contributed to the accident. Any safety-sensitive or non-safety-sensitive employee whose performance could have contributed to the accident, as determined by company using the best information available at the time of the accident, will be given a drug and alcohol test. Post accident drug and alcohol tests must be conducted as soon as possible after the accident. Drug tests must be performed within 32 hours after the accident. Alcohol tests must be performed within 3 hours after the accident.

Reasonable Cause: All safety-sensitive and non-safety-sensitive employees may be subject to a fitness for duty evaluation, and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with the short-term effects of substance abuse. Examples of reasonable cause include, but are not limited to the following:

1. Physical signs and symptoms consistent with prohibited substance use.
2. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances.
3. Occurrence of a serious or potentially serious accident that may have been caused by prohibited substance abuse or alcohol misuse.
4. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.
5. Reasonable cause referrals must be made by one supervisor (two trained supervisors are preferred) who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited abuse or misuse. The questioned conduct must be witnessed and documented in writing.

Random: Conducted on employees who perform safety-sensitive functions on a random, unannounced basis just before, during, or just after performance of safety-sensitive functions. Each year, at least 25% of all employees performing safety-sensitive functions will be tested for alcohol, and at least 500/c will be tested for drugs. All safety-sensitive employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. Random testing will be conducted in accordance with procedures established in 49 CFR parts 653 and 654.

Return-to-duty: Safety-sensitive and non-safety-sensitive employees who have previously refused to take a drug or alcohol test, or failed such a test, shall be tested for prohibited drug or alcohol use before they return to duty. The employee must first be certified by the Substance Abuse Professional (SAP) as capable of resuming duties. Any

such employee, once returned to duty may be administered unannounced follow-up drug and alcohol tests for up to 60 months after their return to duty.

Follow-up: Once allowed to return to duty, safety-sensitive and non-safety-sensitive employees shall be subject to unannounced follow-up testing for at least 12 but not to exceed 60 months. The frequency and duration of the follow-up testing will be recommended by the SAP as long as a minimum of six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

TRAINING

All supervisory and management level employees will attend substance abuse educational sessions to aid in the detection of and assistance with abusers. All safety-sensitive and non-safety-sensitive employees will attend substance abuse educational sessions.

SUBSTANCES TO BE INCLUDED IN TESTING

Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included. Because *Sample Program* is concerned about the abuse of prescribed and over-the-counter medications as well as illegal drugs and alcohol, the above list may be expanded to include yet to be developed substances, changes in *Sample Program* policy, or changes to Federal laws and regulations.

DRUG TESTING PROCEDURES

Company shall identify and select only qualified medical facilities certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures. Appointments for urine collection for drug screens will be coordinated by company's supervisory personnel or the Human Resources Department depending on site location.

The specimens will be collected at special facilities that optimize confidentiality and observe DPT collection procedures. The collection facility must adhere to the collection provisions set forth in the "DHHS" regulations entitled "Mandatory Guidelines for Federal Work place Drug Testing Programs 53FR (11970) published April 11, 1988 known as "DHHS Guidelines" and 49 CFR Part 40, as amended. A strict chain of custody will be maintained on the specimen as described in the "DHHS Guidelines" and U.S. DOT Guidelines. In the event that a non-designated collection facility must be used, the supervising employee contacting the facility must insure that the facility is properly advised concerning the collection requirements as described in the "DHHS Guidelines." Record keeping and reporting of all drug testing and results shall be in strict accordance with Federal guidelines to protect the confidentiality of the employees.

If there is concern about an individual's ability to function safely, that individual will be provided transportation to their home after completion of the drug testing. Supervisors will always transport employees to the collection site.

DRUG TESTING CUTOFF LEVELS

Initial Test

The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current NIDA/SAMHSA cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cutoff levels are:

Initial Test Cutoff Levels (ng/ml)

Marijuana Metabolites (cannabinoids)	50
Cocaine Metabolites	300
Opiate Metabolites*	300
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine

These cutoff levels are subject to change by the DHHS and/or the DOT as advances in technology or other considerations warrant.

Confirmation Test

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques using the most current NIDA/SAMHSA cutoff levels. The current cutoff levels are:

Confirmatory Test Cutoff Levels (ng/ml)

Marijuana Metabolite(1)	15
Cocaine Metabolite(2)	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine(3)	500

- (1) Delta-9 tetrahydrocannabinol-9-carboxylic acid.
- (2) Benzoyllecgonine
- (3) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

These cutoff levels are subject to change by the DHHS and/or the DOT as advances in technology or other considerations warrant.

Split Sample Testing

The employee may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate DHHS certified laboratory. This request must be made in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO. The cost for transportation and testing of the split sample is the sole responsibility of the employee and must be paid for in advance.

EFFECTS OF ALCOHOL

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment during social gatherings. However, when consumed primarily for its physical and mood altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

Signs and Symptoms of Use

1. Dulled mental processes
2. Lack of coordination
3. Odor of alcohol on breath
4. Possible constricted pupils
5. Sleepy or stuporous condition
6. Slowed reaction time
7. Slurred speech

(Note: Except for the odor, these are the general signs for any depressant substance.)

Health Effects

The chronic consumption of alcohol (average of three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass) over time may result in the following health hazards:

1. Decreased sexual functioning
2. Dependency
3. Fatal liver diseases

4. Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
5. Kidney disease
6. Pancreatitis
7. Spontaneous abortion and neonatal mortality
8. Ulcers
9. Birth defects (up to 54% of all birth defects are alcohol related)

Social Issues

1. Two-thirds of all homicides are committed by people who drink prior to a crime.
2. Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
3. Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
4. The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
5. Forty percent of family court cases are alcohol problem related.
6. Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
7. More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

Workplace Issues

1. It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
2. Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
3. A person who is legally intoxicated is six times more likely to have an accident than a sober person.

The Annual Toll

1. 24,000 people will die on the highway due to the legally impaired driver.
2. 12,000 more will die on the highway due to the alcohol-affected driver.
3. 15,800 will die in non-highway accidents.
4. 30,000 will die due to alcohol-caused liver disease.
5. Up to another 125,000 will die due to alcohol-related conditions or accidents.

Intervention

Employees are advised that our Company provides an Employee Assistance Program as part of its employee benefit program. Employees who may have a problem with alcohol consumption or illegal use are highly encouraged to take advantage of this program. Non-jeopardy referrals or voluntary participation in the program is desired.

ALCOHOL TESTING PROCEDURES

Alcohol testing will only be conducted using evidential breath testing devices in accordance with 49 CFR part 654.

Breath testing will be coordinated by Company's supervisory personnel or the Human Resources Department. The breath specimen will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provision set forth in 49 CFR Part 654. A strict change of custody will be maintained on the specimen as described in the DOT Guidelines. All record keeping will be in strict accordance with Federal regulations.

If there is concern about an individual's ability to function safely, the individual will be provided transportation to their home after completion of the testing. Supervisors will always transport employees to the test site.

Alcohol breath testing will be performed in the following manner in accordance with 49 CFR Part 654:

Screening Test

The initial test shall be done using an EBT in accordance with 49 CFR Part 654. If the initial test results are less than .02 alcohol concentration, the results are negative and will be reported by the BAT as such. If the initial test results are .02 or greater, a second or confirmatory test must be conducted.

Confirmation Test

The confirmatory test must be conducted on the same EBT as the initial test in accordance with 49 CFR Part 654. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 20 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-20 minute wait period is to ensure that the presence of mouth alcohol does not artificially raise the test result.

Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result.

If the results of the confirmatory test is less than .02 alcohol concentration, a negative result shall be reported by the BAT.

If the results of the confirmatory test are .02 or greater but less than .04 alcohol concentration (non-negative results), the employee must be removed from his/her safety-sensitive or non-safety-sensitive position for eight hours or longer and be referred to mandatory evaluation by the SAP. Based on the SAP evaluation, the employee may be

subject to the involuntary rehabilitation procedures set forth in Section XX as well as other disciplinary measures up to termination.

If the results of the confirmatory test show an alcohol concentration of .04 or greater, the employee must be removed from his/her safety-sensitive or non-safety-sensitive position, be informed about educational and rehabilitative programs, and be evaluated by an SAP. The determination of the SAP will guide further decision regarding continued rehabilitation and employment of the employee. See Section XV Positive Test/Refusal to Test.

POSITIVE TEST/REFUSAL TO TEST

A positive substance abuse test is a violation of our Company's policy and FTA regulations. A safety-sensitive or non-safety-sensitive employee who refuses to submit to a drug and/or alcohol test, will be considered to have failed the test. Failure to comply with the request for drug/alcohol testing will be just cause for termination.

If a positive test for drugs is reported by the medical review officer, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS). Failing a drug test will result in an immediate referral to an SAP for evaluation and the employee may be subject to termination - of employment

If a positive test for alcohol (.04 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT. Failing an alcohol test will result in an immediate referral to an SAP for evaluation of the safety-sensitive or non-safety-sensitive employee. A safety-sensitive or non-safety-sensitive employee who tests positive for alcohol will be required to go through involuntary rehabilitation in order to retain employment. Such employees must comply with the treatment and follow-up testing protocol outlined in Section.

Only one involuntary and one voluntary rehabilitation will be allowed during employment. If a safety-sensitive or non-safety-sensitive employee tests positive or non-negative for alcohol or drugs following involuntary rehabilitation, they will be referred to the SAP and their employment will be terminated unless determined to be a "qualified individual with a disability" by the SAP. A "qualified individual with a disability" may be allowed additional rehabilitation based on the SAP's evaluation.

BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

Behavior that constitutes a refusal to submit to a test includes, but is not limited to, the following:

1. Refusal to take the test.

2. Inability to provide sufficient qualities of breath or urine to be tested without a valid medical explanation.
3. Tampering with or attempting to adulterate the specimen or collection procedure.
4. Not reporting to the collection site in the allotted time.
5. Leaving the scene of an accident without a valid reason before the test has been conducted.

CONDITION OF EMPLOYMENT

Participation in Company's Drug and Alcohol Testing program is a requirement of safety-sensitive and non-safety-sensitive employees and therefore, is a condition of employment.

CHANGES OR MODIFICATIONS

Company reserves the right to change the provisions of this testing procedure. All personnel and Unions will be notified at least 15 calendar days prior to instituting the changes. Changes required by Federal, State and/or Local law will not require advance notification.

VOLUNTARY REHABILITATION

In an effort to meet the purpose of this drug and alcohol procedure, company wants to provide a program that will be helpful to employees. Our Company maintains an Employee Assistance Program available to all employees. The purpose is to provide access to professional services to aid the employee who has an alcohol or drug problem, or other personal problems that may affect job performance.

All employees are encouraged to use this program's resources before their employment status is affected. Those who voluntarily come forth and seek assistance for substance abuse problems may utilize sick leave, annual leave, or leave without pay to participate in a rehabilitation program without jeopardizing their continued employment with company, provided they stop all involvement with any and all such substances.

Voluntary participation treatment programs will not prevent disciplinary action(s) for procedure violations that have already occurred.

Supervisors can assist in contacting the Employee Assistance Program. At the conclusion of treatment, arrangements for drug screen follow-up testing will be made.

Specific guidelines will be agreed upon by management, supervisors and the rehabilitated employee at the time the employee returns to work. Employees will be allowed only one voluntary and one involuntary rehabilitation chance during their employment at our company under the provisions of Sections XIX and XX.

Our Company's EAP provider and telephone numbers to call to make an appointment is:

INVOLUNTARY REHABILITATION

Safety-sensitive and non-safety-sensitive employees who test positive (.04 and above) for alcohol and safety-sensitive and non-safety-sensitive employees who test non-negative (.02 and .039) for alcohol concentration may be afforded the opportunity for involuntary rehabilitation once during their employment.

If involuntary rehabilitation is offered, the employee must make and keep an appointment with the RAP within ten (10) days of notification of a positive or non-negative alcohol test and notify company of the date of such appointment. An employee with a positive test (.04 and above) will be suspended and placed on leave without pay during this ten (10) day period. An employee with a non-negative test (.02 to .039) may be required to take leave without pay during the ten (10) day period based on the recommendation from the SAP. Failure to make and keep an appointment with the RAP will result in termination of employment. After the employee meets with the RAP and the RAP confirms that he/she has signed a Release of Information and has made a commitment to work cooperatively with the RAP, company will hold the termination (or discipline) in abeyance pending successful completion of any and all treatment/recovery programs prescribed by the RAP an/or their referrals.

The terms and conditions will be incorporated in a Recovery Contract agreed upon by the employee and RAP. The employee will be required to enter into a Treatment/Recovery Contract with the RAP for a period of time as specified by the RAP. The employee must sign the standard Release of Information at the RAP allowing the RAP/SAP to talk to the employee's supervisor about the employee's recovery program, his/her progress with the program, and whether successful completion of the program was accomplished.

An employee who tested positive (.04 and above) will remain suspended during the recovery period and will be placed in a Personal LWOP status. The employee will be eligible for return to work to his/her position without loss of seniority after the successful completion of the RAP Treatment/Recovery Contract as long as they return to work within the prescribed time limits. To be eligible for reinstatement, the individual must provide documented proof to the RAP/SAP, and the EAP/SAP must confirm that the individual has met all the conditions of the Treatment/Recovery Contract.

All costs of the treatment/recovery program will be borne by the employee or any insurance he/she may have. Our Company's insurance is available through a self-pay program for employees in a LWOP status. Before returning to work after successful completion of the EAP programs, the employee will be required to enter into a Return to Work Contract with company. The Return to Work Contract may run concurrently with the EAP Treatment/Recovery Contract. Failure to successfully complete the EAP

Treatment/Recovery Contract or failure to successfully meet all the terms and conditions of company's Return to Work Contract will be grounds for immediate termination.

If a safety-sensitive or non-safety-sensitive employee tests positive or non-negative for alcohol following involuntary rehabilitation and for the remainder of their employment, he/she will be terminated unless found to be a "qualified individual with a disability" by the SAP. A "qualified individual with a disability" may be allowed additional rehabilitation based on the evaluation by the SAP. Involuntary rehabilitation does not prevent disciplinary action for procedure violations that have already occurred.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with the employer's compliance with the Department's new or existing drug and alcohol testing regulations. However, Title I of ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer may wish to take with respect to some individuals who test positive for drugs or alcohol, or otherwise violate the prohibitions of the Department's drug and alcohol rules.

The ADA specifically authorizes employers covered by DOT regulations to require their employees to comply with the standards established in those regulations, including complying with any rules that apply to employment in safety-sensitive positions as defined in the DOT regulations. Under the ADA, an employer is not viewed as "discriminating" for following the mandates of DOT drug and alcohol rules.

The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability." It is clear that an individual who has a positive test result on a DOT-mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title I, an employer may discharge or deny employment to an individual who has a positive result on a US DOT-mandated drug test.

Unlike the situation with respect to current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under Title I. An individual is protected by Title I, however, only if the individual has a disability in the first place. While, as the EEOC notes in its Title I regulation, "individuals disabled by alcoholism are afforded the same protections accorded other individuals with disabilities" (56 CFR 35752, July 26, 1991), not all individuals who use alcohol in violation of the law, Federal regulations or employer policy are "disabled by alcoholism."

Under Title I, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job

performance as it holds other employees, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee.

It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability.

EXHIBIT B

[Code of Federal Regulations]

[Title 49, Volume 5]

[Revised as of October 1, 2005]

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TITLE 49--TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

PART 382 CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING--Table of Contents

Subpart A_General

Sec. 382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

EXHIBIT C



03/07/06

Alex
Kelly Transportation
11022 E. Marginal Way
Tukwila, WA 98168

Dear Alex:

Thank you for setting up an account with USHW Medical Clinics for Drug Testing services. We have set you up in our system and your new employer account number is 21002

We have 10 locations in the Puget sound area that you can send your employees for drug testing. These include Seattle(Aurora& Denny), Tukwila, Federal Way, Bellevue and Redmond locations.

US HealthWorks also perform random, pre-employment, post accident and reasonable suspicion drug test.

Thank you for your new business and look forward to providing quality services for your company.

Sincerely,

Rahab Kaiman
Center Manager Bellevue
1925 140th Ave NE
Bellevue, WA 98005
(425) 865-8060