

OPERATIONAL GUIDELINES

for

**MECHANICAL SYSTEMS
OF
DAYTON, INC.'S
SUBSTANCE-FREE (DRUG-FREE) WORKPLACE
PROGRAM**

Specifications as of January 21, 2011

Program Implementation as of September 2004

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Version 06/04

INTRODUCTION

Dee Mason and Working Partners Systems, Inc. have prepared these materials - including the sample policy and appendices - to assist businesses and public entities in their efforts to maintain a drug and alcohol-free workplace. We feel you will find these materials useful and state-of-the-art for addressing workplace substance abuse issues. Thank you for the opportunity to help your organization!

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Obtain Further Input

Dee Mason and Working Partners Systems, Inc. emphasize the importance of having your organization consult experienced and qualified attorneys, accountants, medical advisors, third-party consultants and other business professionals to assure the best results for organizing and building your business and for attempting to achieve a drug and alcohol free workplace, Dee Mason and Working Partners Systems, Inc. are not engaged in rendering any legal, accounting or medical advice or service upon which you can or should rely.

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OHIO

MECHANICAL SYSTEMS OF DAYTON, INC.'S PROGRAM FOR A SUBSTANCE-FREE (DRUG-FREE) WORKPLACE

A. PURPOSE

Mechanical Systems of Dayton, Inc. (also referred to as “MSD” and/or “Company”) recognizes the adverse effects that the use of illicit drugs and abuse of alcohol can have on employees, our products and services, and the organization as a whole. It is MSD’s obligation and right to maintain a safe, healthy, and efficient work environment. Our Drug-Free Workplace Program is established to be a benefit for our employees and the public as well as to protect MSD’s property, operations, productivity and public image.

Under this program, MSD expects its employees to work free from the influence of illicit drugs and alcohol. MSD also expects its employees to refrain from other involvement with drugs or alcohol in a manner which compromises the employee’s or company’s safety, security, productivity, public image or otherwise violates this program.

In addition, this program reaffirms MSD’s commitment to the treatment of drug- and/or alcohol-related problems. MSD strongly encourages employees who have a drug- and/or alcohol-related problem to voluntarily seek confidential assistance through community resources or another appropriate program.

Finally, the implementation of this program is subject to the requirements and prohibitions contained in applicable federal, state* and local laws.

In addition to meeting the legal requirements of the state(s)* of Ohio, through implementation of this Program, MSD also seeks to comply with the requirements of the Drug-Free Workplace Act of 1988, the U.S. Department of Transportation’s (DOT) controlled substance and alcohol testing regulations, the Ohio Bureau of Workers’ Compensation’s (OBWC) Drug-Free Safety Program and construction contracts administered by the State of Ohio.

**When working or traveling in a state other than Ohio, there may be adjustments to applicable rules and practices of this program. (Refer to Program Administrator).*

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B. PROGRAM NUTS AND BOLTS

1. UNDERSTANDING THIS PROGRAM

Comprehension of many words and phrases throughout these MSD Drug-Free Workplace Program documents is essential to understanding the benefits and responsibilities afforded under this program. To aid in understanding the key words and phrases, refer to Section C. *Explanation of Terms*.

2. EXISTING GUIDELINES

This Drug-Free Workplace Program replaces and supersedes all of MSD's prior written and oral rules, representations and guidelines concerning drug-free workplace requirements and/or employee involvement with drugs and alcohol (excluding the company's DoT drug testing documents).

3. COVERAGE

This Drug-Free Workplace Program is applicable to all full-time, part-time, leased, seasonal, casual and temporary employees of MSD.

NOTE: Specific terms and responsibilities for leased, seasonal, casual and temporary employees are detailed in the agreement with each individual and/or organization through which the Company contracts for these employees.

Visitors, sub-contractors and employees of independent contractors and/or vendors are expected to be free from the effects of drug and/or alcohol use/abuse while conducting business for or on behalf of MSD. As a consequence, contractor or vendor employees or visitors found to be violating any aspect of this program may be asked, depending upon the nature of the violation and at MSD's discretion, to remove themselves from the worksite and/or to discontinue doing business with or on behalf of MSD.

Employed individuals under the age of 18 are subject to all requirements of this program and parental signature may be required on related forms. In addition, the business-related "Alcohol Exceptions" in this program (refer to Section E. *Drug and Alcohol Rules*) will not apply to anyone under the age of 21.

4. PROGRAM ADMINISTRATOR

The administrator for this program and the person to whom, in addition to supervisors, questions and concerns about this program should be addressed is: Jackie Tangeman, at 937-254-3235 or her designee.

The Program Administrator or designee will also be the company representative responsible to investigate situations of co-worker reporting. (refer to Section D.2.a.iii. *Co-Worker Reporting*) The Program Administrator may have other responsibilities as directed under other parts of this Program.

5. EMPLOYEE EDUCATION AND SUPERVISOR TRAINING

To assist employees in understanding this program and their responsibilities, and in an on-going effort to prevent and eliminate substance abuse in the workplace, MSD will provide employees with comprehensive education regarding substance abuse, safety and the Drug-Free Workplace Program.

In addition, supervisors will be trained on their roles and responsibilities in administering the program.

6. EMPLOYMENT CONTRACT DISCLAIMER

Nothing in this Drug-Free Workplace Program alters, amends or modifies the employment-at-will status of MSD's employees (full-time, part-time, temporary, etc.), nor should it or any oral representations related to it be construed as a contract of any kind (e.g. oral, written, expressed or implied), concerning any MSD employee's terms, conditions, duration or discharge from employment.

Furthermore, the Company reserves the right to interpret, change, or rescind this program in whole or in part, with or without notice, at any time it determines necessary in its discretion. In addition, changes to applicable federal, state or local laws or regulations may require the Company to modify or supplement this program. Changes to this program will be posted as soon as practical.

C. EXPLANATION OF TERMS

For the purposes of this program, the following definitions shall apply:

Accident – an incident or unsafe practice which occurs on Company property, on Company business, or during working hours, or which involves Company-supplied motor vehicles or motor vehicles being used for Company purposes and which results in either:

1. a fatality;
2. bodily injury requiring medical attention away from the scene of the incident or treatment from a medical professional;
3. vehicular and/or equipment damage in apparent excess of \$1000.00; or
4. non-vehicular property damage in apparent excess of \$1000.00.

NOTE: A post-accident drug/alcohol test should be administered as soon as possible following an accident (necessary medical attention takes priority followed by required testing); preferably within 8 hours for alcohol and 32 hours for drug.

Adulterated – a drug test ruling by the testing laboratory that the testing process has been corrupted by the addition of extraneous materials.

Alcohol - colorless, volatile and/or flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.

Alcohol Test - a test used to detect the content level of alcohol in the breath (BAC). This may be performed by using non-evidential testing devices such as a saliva test with an evidentiary breath testing device (EBT) applied for confirmation, or this level can be determined through a blood test.

Assessment - evaluation of an employee by a trained professional to determine: (1) the extent of relationship he/she has with drugs and/or alcohol, (2) whether treatment is necessary, and, if it is, (3) what degree of treatment is needed.

Company Property or Premises - includes buildings, offices, warehouses, plants, facilities, land, equipment, vehicles which are owned/leased/used for Company business, and parking lots owned/utilized/leased by the Company or any customer or supplier of the Company. It also includes any other site at which Company business is transacted whether on or away from the Company-owned or leased property.

Confidentiality - disclosed only to persons who have a “need to know” -- generally only those management representatives in the employee’s direct line of supervision and/or other management representatives whose job responsibilities require that they know such information.

Controlled Substance - any drug included in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code [21 USC 802(6)] (e.g. cocaine, marijuana, valium, morphine), the possession of which is unlawful under Chapter 13 of that title.

Corrective Action - the Company’s right to apply whatever disciplinary action best fits the circumstances of each violation of this program and is consistent with the Company’s established disciplinary practices and/or procedures. This may include referral to assessment (and/or treatment if needed), relief from job duties, and/or progressive or non-progressive discipline such as written or oral warning, suspension, or immediate termination.

Dilute Specimen - a scientific analysis result identifying the creatinine concentration of a specimen to be greater than or equal to 2 mg/dL but less than 20 mg/dL, and the specific gravity greater than 1.0010 but less than 1.0030 on a single aliquot.

Drug Paraphernalia - any item which is primarily intended or designed for use in the administering, ingesting, transferring, manufacturing or storing of a controlled substance and/or an illicitly used drug.

Drug Test - a urinalysis (urine) test (or when necessary, a blood test) that includes specimen collection and testing by laboratory certified by the federal Substance Abuse and Mental Health Services Administration (SAMHSA). (More information about the testing process can be found in Appendix B, “*Substance Testing Information.*”)

Both a screening test and a confirmation test must be used to establish a positive test result. The test will analyze (search) for a pre-determined set of drugs in the body in quantities which are at or greater than certain levels (cut-off levels). Below is a list of the drug categories this program will be testing for along with the some of the categorical brands and/or common names (not necessarily all inclusive).

Cut-Off Levels Accepted* by the Substance Abuse and Mental Health Services Administration (SAMHSA)

Drug	EMIT Screen (ng/ml)	GC/MS Confirmatory (ng/ml)
Amphetamines	500	250
Cannabinoids (THC)	50	15
Cocaine (including crack)	150	100
Opiates	2000	2000
Phencyclidine (PCP)	25	25
Barbiturates	200	200
Benzodiazepines (valium, Librium, etc.)	300	300
Methadone	300	300
Propoxyphene (Darvon)	300	300
Methaqualone**	300	100

* Cut-off levels may vary slightly depending upon the SAMHSA-approved GC/MS which is applied.

** Methaqualone may be removed from panel if not required by a regulatory or overseeing body.

NOTE: MSD reserves the right to expand this list or adjust the cut-off levels stated here in order to mirror additional drug categories that are required at the federal level for mandated employees (e.g. MDMA, etc.). Furthermore, the Company reserves the right to require testing for another drug that is not on this list if there is documentable reason to believe that the employee may be under its influence and therefore safety and productivity may be compromised or if the Company needs to comply with a contract or regulatory authority.

EBT (Evidentiary Breath Test) - a device approved by the National Highway Traffic Safety Administration (NHTSA) and will be listed NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.”. When testing for alcohol, an EBT is used for the evidential testing of breath and/or serves as a confirmatory test following a preliminary screening test of breath or saliva with a result of .02 BAC or greater. It provides quantitative data of alcohol concentration.

GC/MS (Gas Chromatography/Mass Spectrometry) - this science is used as a confirmatory drug test. It uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy; it represents a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the initial screening test. The government reports the accuracy of a GC/MS test as virtually 100%.

Illicit or Prohibited Drugs - chemical substances which:

- 1) are not legally obtainable;
- 2) are legally obtainable but have been obtained or are used in violation or illegally (including use at work without following Company RULES about the use of prescription drugs); or

- 3) are not used for the purpose for which they are prescribed or manufactured.
- 4) May include (in addition to others and depending upon the circumstances): marijuana, cocaine, opiates (morphine, heroin, codeine), alcohol (when used by a minor), amphetamines, benzodiazepines, barbiturates and phencyclidine (PCP), methaqualone, MDMA and other new designer drugs and other drugs not yet classified by the Federal government as illegal under the Controlled Substances Act.

Legal Drugs - prescription drugs and over-the-counter drugs legally obtained and used in the manner and for the purpose for which they are prescribed or manufactured.

Medical Review Officer (MRO) - an independent, licensed physician responsible for receiving laboratory drug testing results. The MRO has knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate a positive test as it relates to the employee's medical history and other biomedical information.

On the Job - during working hours, while performing work duties, while acting within the scope of employment, and/or while on, in or using MSD's premises or Company property (e.g. equipment, vehicle, machines, etc.) for business activities including within the scope of employment. Subject to the alcohol-exception guidelines (Section E), it also includes breaks, meal periods, and time between split shifts regardless of whether the employee is actually on Company premises.

Positive or Failed Drug or Alcohol Test - a test which indicates the presence of illicit drugs or alcohol in urine, blood, breath or saliva at or above a level as designated in the definition for "Under the Influence" for this program.

Random ("Systematic Computer Generated") Testing - selection of an employee from a pool of employees for submission to a drug test, which is made regardless of whether any suspicion of illicit drug or alcohol use exists. Random selection is made without advanced notice to the employee and is based on an equal probability of selection. It occurs pursuant to an objective and non-discretionary computer program operated and maintained by an outside contractor. All employees, including those previously selected for testing, have an equal chance of being selected each time neutral selection occurs. This means any employee may be selected more than once while others may not be selected. At least 10 percent of the Company's employees will be subject to random selection over the course of the year for drug testing.

NOTE: The Company reserves the right for a discretionary selection of all employees or a group of employees for submission to an unannounced drug and/or alcohol test, without advanced notice to any employee. The Company's need to implement this type of testing may be precipitated by "reasonable suspicion" as defined in this program.

Reasonable Suspicion of a violation of the substance abuse program and/or basis for testing- a belief that illicit drug and/or alcohol involvement and/or use is influencing an employee's behavior, appearance, job performance, attendance, or fitness for duty, and/or that the employee is under the influence of or is using, possessing, selling, purchasing, receiving, manufacturing or distributing illicit drugs or alcohol while on the job or while on Company's premises.

Among other possible criteria, the following criteria *may* warrant a drug and/or alcohol test for reasonable suspicion:

- 1) observable phenomena, such as direct observation of drug and/or alcohol use, possession or distribution and/or the physical symptoms of being under the influence of drugs and/or alcohol;

- 2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance (e.g. frequent absenteeism, excessive tardiness, recurrent accidents, poor work quality, etc.) which appears to be related to substance abuse;
- 3) a report or a conviction of a drug and/or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into unauthorized drug possession, use or trafficking;
- 4) a report of alcohol or other drug use provided by a reliable and credible source;
- 5) repeated or flagrant violations of the Company's safety or work rules, which are determined by a supervisor/manager to pose a substantial risk of physical injury or property damage and which appear to be related to substance abuse; and/or
- 6) unsafe practice as defined in this program, involvement in an accident or near accident as defined above in cases where the individual involved appears to have caused/contributed to the accident.

The above examples of Reasonable Suspicion of Drug and/or Alcohol Use are not all inclusive, but are intended to be illustrative. The symptoms of being affected by drugs or alcohol are not confined to acts of misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, *suspicion based upon mere rumor, speculation, or unsubstantiated information of third parties may not meet the standard of reasonable suspicion.*

NOTE: The Company reserves the right for a discretionary selection of all employees or a group of employees for submission to an unannounced drug and/or alcohol test, without advanced notice to any employee. The Company's need to implement this type of testing may be precipitated by "reasonable suspicion" as defined in this program.

Refusal – includes (1) refusing to take a test when required by the Company, (2) not reporting an accident (as defined in this program) timely, (3) not reporting for a drug and/or alcohol test in a timely manner as required by the Company, or (4) refusing to cooperate with the testing process.

Safety-Sensitive Position or Function - as deemed by the Company, any position or job function which, by the nature of the work activity involved, could be detrimental, dangerous and/or unsafe to the employee, coworkers, customers or the general public due to a momentary lapse in attention or judgment. MSD's specific positions or functions, which are designated as safety-sensitive, are listed in Appendix A.

Screening Test - a preliminary test. For a urine test it is an immunoassay or a thin-layer chromatography test which identifies the presence of a drug/metabolite in an individual's system and which generally is 92-98% reliable. For measuring the amount of alcohol in a person's system it is generally a certified breath or saliva test (although blood testing may be used when breath or saliva screenings cannot meet the necessary quality standards).

Supervisor – a Company representative who has received training in signs and symptoms of alcohol and drug use/misuse/abuse and, for the purposes of this program, has the authority to initiate the process of referral to a reasonable suspicion substance test (as described in this program), chemical dependency assessment and/or an inspection of property.

Time Off for Treatment - employees who are participating in an in- or out-patient treatment program are only entitled to time off from work according to what they would otherwise be entitled and eligible under the paid time off and leave of absence policies, and/or the Family and Medical Leave Act, and federal, state or local disability discrimination laws.

Treatment - rehabilitative services provided by treatment professionals in a variety of intensities and settings (outpatient, intensive outpatient, inpatient, etc.) which are therapeutically prescribed to improve the condition of an employee who has a problem with drugs and/or alcohol. Treatment professionals are required to meet all licensing/credentialing standards of their state.

Under the Influence of a Controlled Substance, Illicitly Used Drug and/or Alcohol -

1. the presence of illicit drugs in an employee's body at or above the cut-off levels currently in effect with the certified lab's GC/MS validated by the Department of Health and Human Services,
2. a blood alcohol content level (BAC) which is at or above the Company's prohibited level of .00% BAC,
3. in the case of "Alcohol Exceptions" noted in the Rules Section, and, only if an employee does *not drive a vehicle*, being under the influence is defined at or above the motor vehicle drinking law of the state in which the employee is located, and in no case at or above .08% BAC. Driving is a safety-sensitive activity and therefore if the employee will be driving in conjunction with the consumption of alcohol, he/she must remain under .00% BAC.

Unsafe Practice - poor behavior or judgment on the part of an employee which, in the opinion of a supervisor/manager, could have caused or contributed to an accident as defined above.

D. ASSISTANCE FOR EMPLOYEES

MSD recognizes that substance abuse is a treatable condition and a person who needs and receives help can be restored to a fully productive life. The Company supports early diagnosis and effective treatment for substance abuse problems. Employees are encouraged to seek help voluntarily for themselves or a family member. There are many resource options through which an employee can access assistance.

In cases where an employee does not seek help voluntarily for a problem related to substance abuse, MSD reserves the right to intervene and has established procedures for intervention. Many abusers do not seek treatment on their own because substance abuse is a disease of denial. Therefore, intervention which involves taking action rather than ignoring the signs of a possible problem, can be the step that begins the process of recovery.

1. RESOURCE OPTIONS FOR ASSISTANCE WITH ALCOHOL AND/OR DRUG PROBLEMS

a. COMMUNITY SERVICES

An Ohio employee can call their local county Alcohol, Drug Addiction and Mental Health Services Board (ADAMH) or the county Alcohol, Drug Addiction Services Board (ADAS) for support and/or a local list of publicly subsidized services. Many of these services base their fees on the individual's ability to pay. Employees can also contact the Program Administrator for a resource identification list of these community services.

NOTE: Programming for drug-free youth and education for parents to learn how to keep their children drug-free is available. If you would like more information about what is available in your community, please ask the Program Administrator and/or call Working Partners® at (614) 337-8200.

b. COMPANY-REFERRED / AUTHORIZED SERVICES

For further information concerning the employee's eligibility, requirements and available benefits, the employee should refer to any available Medical Benefits Plan (e.g. Company's, spouse's, student). Information about assessment, treatment opportunities and Company requirements are further set forth below in this program.

2. ASSISTANCE SERVICES

a. ASSESSMENT AND REFERRAL

(i) Voluntarily Seeking Help

Any employee who is experiencing problems with alcohol and/or drugs may voluntarily seek assessment and/or referral from a community service or another appropriate service. This can usually be arranged to be convenient to work schedules and accomplished without Company involvement or knowledge. Inquiries are maintained in confidence by the service except, for example, when the employee agrees to involve the Company in negotiating work accommodations.

IMPORTANT NOTE: Employees who first violate this Drug-Free Workplace Program and then seek voluntary assistance will not avoid corrective action, including termination.

(ii) **Mandatory Assessment (Voluntary Assessment in Lieu of Termination) and Referral**

When MSD determines or has reasonable suspicion to believe an employee has violated this Drug-Free Workplace Program, the Company may, within its sole discretion (See Program Sections I and J), refer the employee to a Company-authorized community service, the Company-authorized service or another appropriate employee assistance service for assessment. In certain circumstances, this may include relieving the employee of his/her job duties, with or without pay, until the assessment is completed. Any employee who declines such a referral will be in violation of this program. Such employees also may be asked to enter into an Assistance Agreement (Form D-7).

Employees referred for assessment following a positive drug and/or alcohol test and who are found *not* to need treatment will be required to pass a return-to-duty test and may also be required under an Assistance Agreement (see Form D-7) to comply with, among other things, follow-up testing for a period of time after returning to work. In addition, the employee may be required to attend Company-authorized education about alcohol misuse and drug abuse.

(iii) **Co-Worker Reporting**

Whenever an employee has reasonable suspicion that a fellow employee, supervisor or manager may be in violation of this program or otherwise may have a problem with drugs or alcohol, the employee should contact the Program Administrator directly to report his/her reasonable suspicion. The Program Administrator will then investigate the situation. The identity of the reporting employee will be maintained confidentially and without job repercussions, unless it is discovered that the report was made falsely, in bad faith, or without basis in fact.

b. TREATMENT

Employees requiring a modified schedule, adjusted job duties and/or a leave of absence to accommodate treatment are entitled, during the time of treatment, to use any paid time off and an unpaid leave of absence to which they are eligible under MSD's established policies. This program does not alter, amend or modify MSD's paid time off or leave of absence policies.

Such employees should also contact the Program Administrator to discuss whether they are eligible for and desire to take an unpaid leave of absence under the Family and Medical Leave Act ("FMLA" - covering employers with 50 or more employees).

(i) **Voluntary Treatment/Leave Requirements and "Assistance Agreement"**

Employees who, prior to committing a violation of this program, self-refer to a substance abuse treatment program and whose treatment program involves participation by the Company, may be required to enter into an Assistance

Agreement (see Form D-7) if, for example, the employee's schedule or duties need accommodation from the employer.

(ii) **Voluntary Treatment in Lieu of Termination/ "Assistance Agreement"**

Employees referred by the Company to a community service and/or another appropriate service and who are subsequently referred to treatment will be required, as a condition of continued employment, to enter into an Assistance Agreement (see Form D-7). Any employee who declines such a referral, declines to enter into a Participation Agreement with the Company, leaves treatment prematurely, or fails to abide by all aspects of the treatment program and/or Assistance Agreement will be in violation of this program.

(iii) **Treatment Costs**

Employees entering treatment are responsible for all treatment program costs and expenses. Some costs and expenses may be covered by insurance.

(iv) **Performance Responsibilities**

Employees who undergo treatment and continue to work for MSD are subject to the same job performance and behavior standards as MSD's other employees. Employees who voluntarily seek treatment and fail to meet performance or behavior standards will be subject to corrective action.

E. DRUG AND ALCOHOL RULES

This Program has a variety of rules which prohibit the possession of drug paraphernalia and the use, possession, purchase, receipt, sale, distribution, manufacture or being “under the influence”^{*} of illicit drugs and/or alcohol on “Company property”^{*} or “on the job.”^{*} The rules also outline the employee’s responsibilities regarding the use of prescription and over-the-counter drugs.

**These terms are defined with detail in Section C, Explanation of Terms.*

1. EMPLOYEE USE OF ILLICIT DRUGS

Employees who are under the influence of, or who use, possess, purchase, receive, sell, distribute or manufacture illicit drugs while on the job, or on/in Company property are in violation of this program. Employees are prohibited from having unauthorized drug paraphernalia on the job or on company property.

2. EMPLOYEE USE OF ALCOHOL

Employees who are under the influence of (as defined for this program), or consume, possess, purchase, receive, sell, distribute or manufacture alcohol while on the job or on/in Company property are in violation of this program.

3. EXCEPTIONS TO ALCOHOL RULES

While permitting consumption and possession of alcohol in certain circumstances, **these exceptions do not permit an employee to become under the influence of alcohol while on the job.** As it applies to these Alcohol Exceptions, and providing that the employee does *not* perform safety-sensitive functions (including driving a vehicle), “under the influence” is defined as at or above .08% BAC. As it relates to Alcohol Exceptions, if an individual will be performing safety-sensitive functions, consumption is not to reach or exceed .00% BAC.

Under no circumstances may alcohol be consumed by or made available to, any individual under the age of 21 on the job, on/in Company property or at Company-related activities.

As examples, the alcohol-related exceptions include:

a. CONSUMPTION

(i) Consumption of alcohol is permitted while attending a mandatory or non-mandatory Company-sponsored function, professional association meeting or other event within the scope of an employee’s employment, if consumption is authorized in advance and/or in writing by the Program Administrator.

(ii) Consumption of alcohol by an employee not on Company property while conducting business-related entertainment with non-Company personnel such as clients/customers or prospective clients/customers, or while traveling on business, attending sales functions, conferences, professional association meetings or other events within the scope of their employment or in the course of other

necessary professional activities is permitted if consumption is authorized in advance and/or in writing by the Program Administrator.

(iii) Consumption of alcohol while “out of town” on Company business, if the consumption is not while performing work activities or during work hours, is permitted.

NOTE: *As it relates to the above exceptions, if an employee appears to be under the influence of alcohol, the employee is not permitted to drive a vehicle and may be required to defer to a non-drinking driver for transportation. Should that not be possible, the employee shall take a cab or stay at a local hotel. Should an employee drive a vehicle while under the influence of alcohol under the above exceptions, it will be considered a violation of this program.*

b. PURCHASE OR POSSESSION

(i) Purchase of alcohol off Company premises during a break or meal period is permitted as long as the employee is not in a Company owned vehicle and/or is not wearing clothing or other wear with insignia which identifies the Company. Furthermore, such alcohol may not be used or stored unsealed on Company premises or property. (This includes personal vehicles on Company property.) As required by DoT/FMCSA, unless manifested, there will be no alcohol aboard a commercial motor vehicle (CMV).

(ii) Possession or storage of sealed and/or unused containers of alcohol which are on Company premises, in an employee’s vehicle, is permitted except on a CMV as directed by DoT/FMCSA. Storing unsealed and/or used containers of alcohol in any of these situations is prohibited.

(iii) Possession, transportation and/or on-site storage of unsealed alcohol containers used for Company-sponsored functions is permitted if storage is authorized in writing and/or in advance by the President of the Company.

4. PRESCRIPTION AND OVER-THE-COUNTER DRUGS

MSD does not prohibit employees from using prescription or over-the-counter drugs when used as prescribed, provided: (a) the prescription drugs are prescribed to the employee for medical reasons by a United States-licensed medical practitioner, and are used according to dosage and frequency of use prescribed on the label or accompanying documentation, and (b) the employee’s use of the prescription or over-the-counter drugs does not adversely affect the employee’s job performance or conduct; threaten the safety, productivity, public image or property of MSD or its employees; or result in criminal behavior (e.g. a drug related arrest or conviction, etc.).

It is an employee’s responsibility to learn if a prescription or over-the-counter drug he/she is taking may adversely affect job performance or conduct; threaten the safety, productivity, public image or property of MSD or its employees; or result in criminal behavior.

No employee is to perform any function or duty on behalf of the Company if the drugs being taken under this provision could adversely affect his or her ability to perform any such function or duty safely and satisfactorily. In such situations, the employee should notify his or her supervisor and/or the Program Administrator to discuss the situation.

Among possible courses of action, the employee may be asked to undergo a medical fitness-for-duty exam, provide physician certification or personally certify that he/she is “currently fit-for-duty and not a risk to self or others in performing his/her job” (see Form E-4). Among accommodations that can be reasonably made without undue hardship to the Company, if any, the Company may re-assign the employee to another available job duty or function for which the employee is qualified and which the Company believes the employee will be able to perform satisfactorily and safely.

5. USE THAT IMPACTS THE WORKPLACE

Employees who use illicit drugs or alcohol *off-the-job* in a manner which affects job performance and/or threatens the safety, productivity, public image or property of the Company or its employees are in violation of this program. Additionally, employees whose behavior results in a criminal incident, (e.g. DUI, another drug and/or alcohol-related arrest or conviction, etc.) may be in violation of MSD’s program.

IMPORTANT NOTE: Employees using Company property for personal use are expected to act responsibly and exercise good judgment as it relates to alcohol and other drugs. Furthermore, it will be seen as a violation of MSD’s program if any employee using a Company car or other Company property for personal use violates state motor vehicle or other laws regarding alcohol or controlled substances.

6. EMPLOYEES WHO ARE ON-CALL

Should a situation occur in which an employee is contacted to report for duty and the employee believes that he/she may be under the influence as defined in this program, the employee is required to notify his/her designated supervisor or manager. It will be determined if the employee in question should report to work. Employees who are *scheduled* on-call are prohibited from using alcohol.

7. COMPLIANCE WITH REQUIRED TESTING

Employees required to submit to any drug and/or alcohol test outlined in this program must, as a condition of continued employment with the Company, submit timely to any required drug and/or alcohol test; consent to testing; sign the appropriate forms; make no attempt to switch, adulterate, or alter any sample or specimen; and must comply with all specimen collection and chain-of-custody procedures. Failure or refusal to cooperate will constitute a violation of this program.

8. CONFIDENTIALITY

Anyone having information relating to an employee’s suspected problem with drugs and/or alcohol; the results of a drug or alcohol test; the referral for or determination of a substance abuse assessment and/or the treatment needs of an employee; must not disclose this information to anyone without a “need to know” (refer to Section C *Explanation of Terms*, “Confidentiality”). Any such breach of confidentiality or improper disclosure will constitute a violation of this program.

The Company will secure in a file other than a personnel file, drug and/or alcohol collection/laboratory testing paperwork; testing results; assessment/treatment referrals; and/or

recommendations and results for an employee. The information contained therein will be kept confidential to the extent practicable, among individuals who have a “need to know.” Please see the Program’s definition for “Confidentiality.”

Upon written request, an employee is entitled to review and to obtain copies of the documentation held within these files.

9. REPORTING CONVICTIONS

In compliance with Federal law (Drug-Free Workplace Act of 1988), if the Company receives a Federal grant or does contract work with the Federal government of \$100,000/year the employees will be responsible for the following: Any employee who is convicted under any federal or state criminal drug statute for a violation occurring in the workplace or occurring while conducting Company business must report the conviction to the Company within five (5) days of the conviction. The Company is obligated to report the conviction to the contract-holder within ten (10) days from being told of the conviction.

NOTE: Violations of this Program will not be reported to law enforcement officials unless required by a regulatory body or provisions of law.

F. DRUG AND ALCOHOL TESTING APPLICATIONS

MSD made its decision to conduct drug and alcohol testing after careful consideration of many concerns including employee privacy, and the health, safety and/or productivity of the Company and its employees, customers, contractors and public at large. Testing is one way to know with certainty whether someone has ingested drugs or alcohol. Drug addiction and alcoholism are diseases in which the abuser usually denies the existence of the problem - to the point of irrationality. Testing is a way to break through the denial and get the employee help before the disease progresses further. In this way, we are ensuring our goal of operating as a drug-free workplace, while at the same time protecting employees and the public against substance abuse.

1. PRE-EMPLOYMENT TESTING

Job applicants must submit to a drug test within 72 hours after receiving a conditional offer of employment and pass that test prior to assuming any duties.

2. REASONABLE SUSPICION TESTING

MSD may require an employee to submit to a drug and/or alcohol test if it has any objective, factual and documentable reason to suspect the employee: (a) is under the influence of illicit drugs or alcohol while on the job, (b) is using, possessing, selling, purchasing, receiving, manufacturing or distributing illicit drugs or alcohol while on the job, or (c) is using illicit drugs or alcohol off-the-job in a manner which affects the employee's job performance or conduct and/or threatens the safety, public image or property of MSD or its employees, customers or outside contractors.

NOTE: The Company reserves the right for a discretionary selection of all employees or a group of employees for submission to an unannounced drug and/or alcohol test, without advanced notice to any employee. The Company's need to implement this type of testing may be precipitated by "reasonable suspicion" as defined in this program.

3. POST-ACCIDENT TESTING

MSD will require an employee who receives treatment from a medical professional or may have caused or contributed to an on-the-job "accident" (as defined in this program) to submit to a *drug* test. If the situation involved a direct threat of serious injury or damage (even if the accident did not result in such), then an *alcohol* test will also be required. A post-accident drug and/or alcohol test will be administered as soon as possible after necessary medical attention is administered; preferably within 8 hours for alcohol and 32 hours for drugs.

4. RETURN FROM LAYOFF AND LEAVE OF ABSENCE TESTING

MSD may require employees returning from a layoff or leave of absence of 30 Days or more to submit to and pass a drug test as a condition of employment. Employees who fail to pass such a test and/or refuse to submit to such testing will be in violation of this program.

5. RANDOM (“SYSTEMATIC COMPUTER GENERATED”) TESTING

Employees will be subject to unannounced (i.e. no advanced warning) neutral selection drug testing. Selection procedures, percentages and/or frequency of such tests are discussed in the Explanation of Terms under Random (“Systematic Computer Generated”) Testing definition.

NOTE: The Company reserves the right for a discretionary selection of all employees or a group of employees for submission to an unannounced drug and/or alcohol test, without advanced notice to any employee. The Company’s need to implement this type of testing may be precipitated by “reasonable suspicion” as defined in this program.

6. RETURN-TO-DUTY FOLLOWING A PROGRAM VIOLATION DRUG AND/OR ALCOHOL TESTING

Any employee who is relieved of his/her job duties due to a violation of this program may be required to pass a drug and/or alcohol test before being reinstated to duty. Any employee who is relieved of his/her job duties as a result of a positive drug and/or alcohol test *will* be required to pass a drug and/or alcohol test before being reinstated to duty.

7. FOLLOW-UP TO ASSESSMENT AND/OR TREATMENT DRUG AND/OR ALCOHOL TESTING

Any employees who are assessed for a chemical dependency problem, may be subject to unannounced testing during their continued employment with the Company. Employees returning from treatment *will* be subject to unannounced tests during at least the first year the employee returns to work. Depending on the circumstances, such testing may be applied for extended periods of time including months or even years. The frequency and duration of follow-up testing will be determined with input from a qualified chemical dependency professional.

8. OWNER/CONTRACTOR-REQUIRED TESTING

MSD will require and implement drug and/or alcohol testing of its employees per the negotiated requirement(s) of the contractor, manager or owner of a job or project site if made a condition of MSD’s contract to perform work on the job or at the site.

9. GOVERNMENT-REQUIRED TESTING

The Company will require and implement drug and/or alcohol testing whenever federal, state or local regulations and/or laws require it to do so. Such employees may be subject to, in addition to this program, a separate substance abuse program which incorporates these federal, state or local law requirements. (Refer to Program Administrator.)

NOTE: This program in no way limits MSD’s right to discipline or discharge an employee for illicit drug and/or alcohol-related reasons without requiring a drug and/or alcohol test (e.g. such as based only on observed use, possession, sale, being under the influence of illicit drugs or alcohol, or due to some other violation of this program).

G. TESTING GUIDELINES

1. TESTING PROCEDURES

a. POSTING NOTICE

MSD's program for a Drug-Free Workplace shall be posted in a conspicuous location of the Company.

b. TESTING PROCEDURES

The testing procedures normally employed will apply urine (screening test and the confirmatory GC/MS) for drugs. Normally breath or saliva with a confirmatory evidentiary breath test (EBT) will be applied in testing for alcohol. If an EBT is not available or reasonably accessible, a blood test may be utilized to determine the presence of alcohol.

To ensure the integrity of testing and for the safety of employees, MSD has contracted with a lab certified by the federal Substance Abuse and Mental Health Services Administration ("SAMHSA-certified") which operates under the procedures and chain-of-custody guidelines recommended by the Federal Department of Health and Human Services (DHHS) and required by the Federal Department of Transportation (timing for reporting, MRO exchange, required direct observation, etc. may vary slightly from federally mandated testing). MSD is responsible for the cost of testing required under this program including time and reasonable transportation costs.

c. REPORTING RESULTS

Before a positive test result is reported to MSD, the employee will be given the opportunity to provide a Medical Review Officer (MRO) with a legitimate medical explanation for the positive test. Based upon such a verified explanation, a test that was scientifically positive per cut-off levels will be reported as a negative to the Company.

An employee will be notified of his/her positive test results. Consequences of the result and options for rebuttal (e.g. for re-test) are specified in Appendix B, "Substance Testing Information."

2. EMPLOYEE CALL FOR RE-TEST

Within seventy-two (72) hours after an employee or terminated employee is informed of a positive, adulterated, substituted test, he/she has the opportunity to request a re-test. This test will be performed on the original specimen at another SAMHSA-certified laboratory using the same procedures. If the results of the second test are negative, the employee or former employee will be treated as having had a negative test under this program. Employees and former employees must submit full payment for the cost of any re-test before any such re-test will occur. In the event that the re-test is negative, the employee will be reimbursed for the cost of the test.

3. EMPLOYEE COMPENSATION DURING "SUSPICION-LESS" TESTS

Employees on the job who are required to submit to "suspicion-less" tests (random, and/or "follow-up" testing) under this program will remain "on the clock" and will be paid their normal

wage during the period of time it takes the employee to submit to and complete the collection process and to return to work to resume performance of his or her employment responsibilities. Overtime will be paid if appropriate.

The employee will be directed to whether to drive himself/herself to a suspicion-less test and then will be directed by the company where to proceed after the collection.

4. COMPENSATION AND RETURN TO DUTY AFTER CERTAIN “FOR CAUSE” TESTS

a. REASONABLE SUSPICION:

An employee required to submit to “reasonable suspicion” testing, in most cases, will be removed from the job and will remain off-duty without pay from the time the employee completes specimen collection through the time when the company receives the test results. *(In no circumstance will an employee perform safety-sensitive work activities until the results of a test are known.)* If the test results are positive, the employee normally will not be paid for the time awaiting the test results. If the test results are negative, the employee normally will be compensated for the time lost while awaiting the test results unless the employee has committed some other violation of this program or other infraction of any other Company rule which would warrant not paying the employee for the time off.

b. POST-ACCIDENT:

An employee who is returned to duty after he/she has been subject to a “post-accident” test, but before the test result is known, will be required to certify that he/she is “currently not suffering any adverse effects from alcohol and/or other drugs and that he/she is able to perform the duties and responsibilities of his/her job safely and satisfactorily” (see Form D-6). If the test results are positive, the employee will be found in violation of this program from the time of the accident and administration of the post-accident test and will be subject to corrective action.

Employees will return to work after a post-accident test. An employee required to submit to a “post-accident” test may be removed from the job and remain off-duty pending MSD’s receipt of the test results. If the results are positive, the employee will not be paid for the time awaiting the test results. If the test results are negative, the employee may be compensated for the time lost while awaiting the test results unless the employee has committed some other violation of this program or other infraction of any Company rule which would warrant not paying the employee for the time off.

NOTE: *Return-to-duty, corrective action and back pay entitlement following “post-accident” testing may be subject to and superseded by another of MSD’s standard policies, payment rules for accidents and/or accident/injuries resulting in leave.*

H. INSPECTIONS

The Company respects the privacy of individuals. However, in cases where the Company has documentable, reasonable suspicion (as defined in this program) to believe that an employee may be using, possessing, selling, purchasing, receiving, distributing, or manufacturing drugs, drug paraphernalia or alcohol while on the job, the Program Administrator or a Company officer may request an employee to participate in and/or cooperate with an inspection for evidence of such a violation of the Company's Drug-Free Workplace Program. Whenever possible, the employee should witness the inspection. Employees who fail to cooperate with such an inspection are in violation of this program and will be subject to corrective action.

The search for evidence of a possible violation of this Program or other Company policy in areas and things may include: (a) any part or area of MSD's facilities and property, (b) any vehicle brought onto or parked upon Company property (including its trunk, compartments, etc.), (c) employee personal effects including outer garments (such as turning out pockets), any package, container, box, briefcase, lunch box, thermos bottle, purse, handbag, athletic bag or other similar property or item, and/or (d) employee locker or workstation including desk, tool chests, file cabinets, etc.

Situations may arise where evidence exists in MSD's workplace of a possible violation of local, state or federal drug and/or alcohol laws. If local law enforcement authorities become involved, MSD's premises and its employees may be subject to an inspection and/or search by law enforcement officials. MSD expects its employees to cooperate with all proper and lawful requests by such law enforcement officials as a condition of continued employment with the Company.

I. CORRECTIVE ACTION FOR VIOLATIONS OF PROGRAM

1. FAILURE TO COMPLY WITH ANY PART OF THE PROGRAM

Failure or refusal to comply with any of the rules, requirements or prohibitions of this program constitutes a violation which will result in “corrective action” ranging from mandatory referral for substance abuse assessment to discipline, up to and including immediate termination (refer to Section C. *Explanation of Terms* “Corrective Action”). Corrective action will be initiated for any violation of this program, including a first offense. As noted above, the degree of the action chosen will depend upon the circumstances of each case.

If an employee is terminated as a result of this program, his/her termination notice will indicate “misconduct-rule violation” as the reason and may affect his/her qualifying for benefits (e.g. unemployment benefits).

Employees need to be aware that for certain offenses testing is discretionary. Such offenses include but are not limited to use, possession or sale of illicit drugs; or a serious accident resulting from an employee being under the influence of illicit drugs or alcohol while on the job; and/or becoming insubordinate, violent, threatening or out-of-control during the Company’s efforts to enforce this program; will normally result in immediate termination.

2. DILUTE SPECIMEN

A “dilute” or a “negative dilute” result may require the employee to go through an unannounced re-collection and test. This may be administered under direct observation as directed by the MRO. A “positive dilute” will be treated as a positive test.

3. REFUSAL OR ATTEMPTS TO ALTER A DRUG AND/OR ALCOHOL TEST

Refusal which includes (1) refusing to take a test when required by the Company, (2) not reporting an accident timely, (3) not reporting for a drug and/or alcohol test in a timely manner as required by the Company, or (4) refusing to cooperate with the testing process, will be a violation of this program. (Even the first occasion of such a violation will result in either termination or will result in the same “Corrective Action” as those for a positive test unless there is a verified medical reason the specimen could not be produced.)

Any attempt to adulterate, substitute or otherwise manipulate a specimen and/or interfere in the testing process will be seen as an even greater violation of this program and will normally result in termination. However, as noted above, the degree of the action chosen will depend upon the circumstances of each case.

4. CORRECTIVE ACTION FOR A POSITIVE TEST

Employees should also be aware of the following possible corrective action for a positive drug and/or alcohol test:

a. FIRST POSITIVE ALCOHOL OR DRUG TEST

On the first occasion that an employee has a positive drug or alcohol test result, he/she will be terminated.

NOTE: Keep in mind that for any violation of this program by non-union employees, the Company reserves the right to apply whatever corrective action it decides best fits the circumstances of each situation.

J. REINSTATEMENT OR RE-HIRE CRITERIA

For any employee or former employee being considered for reinstatement or re-hire following a violation of this program, eligibility will be conditional, based upon:

1. the individual's current skills and qualifications for the job which the Company is seeking to fill;
2. the individual's demonstration, to the Company's satisfaction, that he/she:
 - a. has successfully completed (or is participating in) a supervised drug and/or alcohol treatment program, or
 - b. has had a formal assessment from a substance abuse professional (SAP) or other qualified professional determining that no treatment is required;
3. that the individual is no longer engaged in the illicit use of drugs or the use of alcohol in a manner which constitutes a violation of this program or otherwise makes the individual unqualified for the job in question;
4. passing a return-to-duty or a pre-employment test, and;
5. consenting to and participating in follow-up drug and/or alcohol testing as the Company deems appropriate, such as pursuant to an Assistance Agreement.

***NOTE:** Rehire of an employee or former employee following a violation of this substance abuse policy may be subject to and superseded by another of MSD's standard policies regarding re-hire.*

K. CLOSING

MSD has attempted to design and implement this drug-free workplace program to establish a balance between its legal rights and obligations and its employees' privacy interests. MSD is striving to operate a workplace which is as substance-free as is humanly possible. We want employees who do have a problem with drugs and/or alcohol to seek help and we want to protect those employees who do not have a problem. Unfortunately, denial is a key characteristic of substance abuse.

Therefore, to increase the effectiveness of our program, we are instituting reasonable measures to identify and intervene as early as possible in the destructive behavior of a substance abuser. Besides offering greater protection to the workplace, earlier intervention and immediate treatment correlates with the positive prognosis for a lasting recovery.

Our goal is to have an effective substance-free workplace program that is valued by all as a win-win endeavor.