



**ALCOHOL & CONTROLLED SUBSTANCE ABUSE POLICY**

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## **I. INTRODUCTION AND POLICY STATEMENT**

Opp Construction is dedicated to the health and safety of our team members. Drug and/or alcohol use may pose a serious threat to team member health and safety. Therefore, it is the policy of Opp Construction to prevent the use of drugs and abuse of alcohol from having an adverse effect on our team members. Opp Construction has determined that all employees will be subject to this policy.

The federal government has recognized the serious impact of drug use and alcohol abuse. The Federal Motor Carrier Safety Administration (FMCSA) has issued regulations, which require Opp Construction to implement an alcohol and controlled substances testing program. The purpose of the FMCSA issued regulations is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by team members of Opp Construction.

Opp Construction will comply with these regulations and is committed to maintaining a drug-free workplace.

It is the policy of Opp Construction that the use, sale, purchase, transfer, possession, or presence in one's system of any controlled substance (except medically prescribed drugs) by any team member while on the company premises, engaged in company business, operating company equipment, or while under the authority of Opp Construction is strictly prohibited. Disciplinary action up to and including termination may be taken as necessary.

Neither this policy nor any of its terms are intended to create a contract of employment or contain the terms of any contract of employment. Opp Construction retains the sole right to change, amend, or modify any term or provision of this policy without notice. This policy is effective January 1, 2017, and will supersede all prior policies and statements relating to alcohol, drugs or controlled substances.

### **Regulatory Requirements**

All drivers who operate commercial motor vehicles that require a commercial driver's license under 49 CFR Part 383 are subject to the FMCSA's drug and alcohol regulations, 49 CFR Part 382.

### **Non-Regulatory Requirements**

The Federal Motor Carrier Safety Regulations (FMCSR) set the minimum requirements for testing. Opp Construction's policy in certain instances may be more stringent. This policy defines what is mandated by the FMCSR/DOT and what is mandated by Opp Construction.

## **II. WHO IS RESPONSIBLE**

It is Opp Construction's responsibility to provide testing for the team members that are in compliance with all federal and state laws and regulations, and within the provisions of this policy. Opp Construction will retain all records related to testing and the testing process in a secure and confidential matter. Opp Construction's alcohol and drug program administrator who is designated to monitor, facilitate, and answer questions pertaining to these procedures is:

Shaylee Brien  
HR Manager  
701-775-3322

The team member is responsible for complying with the requirements set forth in this policy. The team member will not use, have possession of, abuse, or have the presence of alcohol or any controlled substance in excess of regulation established threshold levels while on duty. The team member will not use alcohol within 4 hours of performing a 'safety-sensitive' function or while performing a 'safety-sensitive' function. Team members are prohibited from using alcoholic beverages while on duty at all times. All supervisors must make every effort to be aware of a team member's condition at all times the team member is in service of the company. The supervisor must be able to make reasonable suspicion observations to determine if the team member is impaired in some way, and be prepared to implement the requirements of this policy if necessary.

### III. DEFINITIONS

When implementing and interpreting the drug and alcohol policies and procedures required by the FMCSA as well as the policies and procedures required by Opp Construction, the following definitions apply:

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

**Alcohol Concentration** (or content) - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

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

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process, and operates an evidential breath-testing device (EBT).

**CFR** - Code of Federal Regulations.

**Collection Site** - A place designated by the company, where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Commercial Motor Vehicle** - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

**Consortium** - An entity, including a group or association of employers or contractors that provides alcohol or controlled substances testing as required by Part 382, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the company.

Controlled substances have the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V and any subsequent revisions to the list. The list can be found in 21 CFR 1308. In accordance with FMCSA rules, urinalyses will be conducted to detect the presence of the following substances:

1. Marijuana
2. Cocaine
3. Opiates (morphine, codeine, heroin, hydrocodone, and oxycodone)
4. Amphetamines (including methamphetamines and ecstasy (MDMA, MDA and MDE))
5. Phencyclidine (PCP)

Detection levels requiring a determination of a positive result shall be in accordance with the guidelines adopted by the FMCSA in accordance with the requirements established in 49 CFR, Section 40.29(e)(f).

**Disabling Damage** - Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1. Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
2. Exclusions.
  - i. Damage, which can be remedied temporarily at the scene of the accident without special tools or parts.
  - ii. Tire disablement without other damage even if no spare tire is available.
  - iii. Headlight or taillight damage.
  - iv. Damage to turn signals, horn, or windshield wipers, which make them inoperative.

**Driver** - Any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

**Team Member**-All Other employees of Opp Construction are subject to this policy and its Non-DOT provisions, including "Drivers" that are not performing safety-sensitive duties.

**Drug** - Any substance (other than alcohol) that is a controlled substance as defined in this policy and 49 CFR Part 40.

**EBT** (Evidential Breath Testing device) - An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

**FMCSA** - Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

**Licensed Medical Practitioner** - A person who is licensed, certified, and/or registered, in accordance with applicable federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Medical Review Officer** (MRO) - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the company's 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.

**Performing (a safety-sensitive function)** - A driver 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 functions.

**Prescription Medications** - The use (by a driver) of legally prescribed medications issued by a licensed health care professional familiar with the driver's work related responsibilities.

**Refuse to submit** (to an alcohol or controlled substances test) means that a driver:

1. Fails to provide adequate breath for alcohol testing as required by Part 40, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of Part 382,
2. Fails to provide an adequate urine sample for controlled substances testing as required by Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of Part 382, or
3. Engages in conduct that clearly obstructs the testing process or failure to execute all necessary

documents.

**Safety-Sensitive Function** - All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.

**Safety-sensitive functions include:**

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the company;
2. All time inspecting equipment as required by Secs. 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
3. All time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth (a berth conforming to the requirements of Sec. 393.76);
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Screening Test** (also known as initial test) - In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance (or drug) testing, it means an immunoassay screen to remove "negative" urine specimens from further consideration.

**Substance Abuse Professional** (SAP) - A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission). The SAP must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## **IV. PROHIBITIONS**

### **Alcohol Prohibitions**

Part 382, Subpart B, prohibits any alcohol misuse that could affect performance of safety-sensitive functions. This alcohol prohibition includes:

- Use while performing safety-sensitive functions;
- Use during the 4 hours before performing safety-sensitive functions;
- Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- Use of alcohol for up to 8 hours following an accident or until the driver undergoes a post-accident test; or
- Refusal to take a required test.

NOTE: Per FMCSA regulation (Sec. 382.505), a driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted to perform, safety-sensitive functions for at least 24 hours.

### **Drug Prohibitions**

Part 382, Subpart B, prohibits any drug use that could affect the performance of safety-sensitive functions. This drug prohibition includes:

- Use of any drug, except when administered to a driver by, or under the instructions of, a licensed medical practitioner, who has advised the driver that the substance will not affect the driver's ability to safely operate a commercial motor vehicle. (The use of marijuana under California Proposition 215 or the use of any Schedule I drug under Arizona Proposition 200 is not a legitimate medical explanation. Under federal law, the use of marijuana or any Schedule I drug does not have a legitimate medical use in the United States.)
- Testing positive for drugs; or
- Refusing to take a required test.

All drivers will inform the Human Resource Manager of any therapeutic drug (prescription drug) use **prior** to performing a safety-sensitive function. He/she may be required to present written evidence from a health care professional which describes the effects such medications may have on the driver's ability to perform his/her tasks.

## **V. CIRCUMSTANCES FOR TESTING**

### **Condition for Employment**

A DOT driver applicant who has failed a random, reasonable suspicion, post accident, return to duty, follow up alcohol test, or tested positive for controlled substances will not be considered for employment with Opp Construction and must wait a period of one year to be reconsidered for employment or submit to our EAP Program, Consequences for Violations Section.

A DOT driver applicant who has refused a drug or alcohol test will not be considered for employment with Opp Construction.

### **Pre-Employment Testing**

(Sec. 382.301): All team member applicants will be required to submit to and pass a urine drug test as a condition of employment. NON-DOT Applicants, who are denied employment because of a positive test, may reapply for employment after a period of one year has passed to be reconsidered.

Driver applicant drug testing shall follow the collection, chain-of-custody, and reporting procedures set forth in 49 CFR Part 40.

An existing employee of Opp Construction transferring to a CDL driving position is also subject to and must pass a urine drug test (pre-Employment DOT) as a condition of the transfer. A transferring employee who tests positive for controlled substances will face the same consequences as any other DOT driver who tests positive for drugs.

### **Reasonable Suspicion Testing**

Reasonable suspicion testing applies to all team members, NON-DOT and DOT, employed by Opp Construction. The following section refers specifically to DOT drivers.

(Sec. 382.307): If the driver's supervisor or another company official designated to supervise drivers (has had reasonable suspicion training) believes a driver is under the influence of alcohol or drugs, the driver will be required to undergo a breath test and/or urinalysis. The basis for this decision will be specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

The team member's supervisor or another company official will immediately remove the team member from any and all safety-sensitive functions and take the employee or make arrangements for the employee to be taken to a testing facility.

The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not administer the alcohol test.

Per FMCSA regulation, reasonable suspicion alcohol testing is only authorized if the observations are made during, just preceding, or after the employee is performing a safety sensitive function. Per FMCSA regulation, if the employee tests 0.02 or greater, but less than 0.04, for alcohol the employee will be removed from all safety-sensitive functions, including driving a commercial motor vehicle for at least 24 hours.

If an alcohol test is not administered within two hours following a reasonable suspicion determination, the program administrator will prepare and maintain a record stating the reasons why the test was not administered within 2 hours.

If the test was not administered within 8 hours after a reasonable suspicion determination, all attempts to administer the test shall cease. A record of why the test was not administered must be prepared and maintained.

A written record of the observations leading to a controlled substance reasonable suspicion test, signed by the supervisor or company official who made the observation, will be completed within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is first. A written record of the observations leading to a reasonable suspicion test for alcohol use will be completed and signed by the supervisor who made the observation within 24 hours of the observed behavior.

An employee awaiting the results of a reasonable suspicion drug test will be suspended without pay.

### **Post-Accident**

(Sec. 382.303): Team members are to notify their Immediate Supervisor, the Safety Director and/or the Human Resource Manager as soon as possible if they are involved in an accident.

According to FMCSA regulations (Sec. 382.303), if the accident involved:

- A fatality,
- Bodily injury with immediate medical treatment away from the scene and the employee received a citation, or
- Disabling damage to any motor vehicle requiring tow away and the driver received a citation

Post-accident drug testing will occur only if situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use, per OSHA's Recordkeeping Rule effective January 1, 2017.

Post-accident drug testing will be done by a Third-party Administrator (TPA).

### **Random Testing**

(Sec. 382.305): Opp Construction will conduct random testing for all pooled employees as follows:

☒ Opp Construction will use a Third Party Administrator (TPA). The TPA will use a selection process based on a scientifically valid method, prescribed by FMCSA regulations.

∞ Global Safety Network will administer the random selection program, and maintain pertinent records of random selections.

The random testing will be spread reasonably throughout the calendar year. All random alcohol and drug tests will be unannounced, with each team member having an equal chance of being tested each time selections are made. Selections are made by the third party administering our drug testing program.

An employee may only be tested for alcohol while he/she is performing a safety-sensitive function, just before performing a safety-sensitive function, or just after completing a safety-sensitive function. Once notified that he/she has been randomly selected for testing, the employee must proceed immediately to the assigned collection site.

### **Return to Duty Testing**

(Sec. 382.309): After failing an alcohol test, an employee must undergo a return-to-duty test prior to performing a safety-sensitive function. The test result must indicate a breath alcohol concentration of less than 0.02.

After testing positive for a controlled substance, a driver must undergo a return-to-duty test prior to performing a safety-sensitive function. The test must indicate a verified negative result for drug use.

### **Follow-Up Testing**

(Sec. 382.311): Following the driver's violation of this policy and/or Part 382, Subpart B, and through the determination of a SAP that the employee is in need of assistance in resolving the employee's substance abuse problems, the employee will be subject to follow-up testing. Follow-up testing will be unannounced. The number and frequency of such follow-up testing will be directed by the SAP, and consist of at least six tests in the first 12 months. Follow-up testing may be done for up to 60 months.

**WARNING:** Those returning to duty following a violation of this policy and those subject to follow-up testing will be required to submit to direct observed collection including being required to:

1. Raise above the waist your shirt/blouse, dress/skirt as appropriate, AND
2. Lower clothing/underpants, AND
3. Turn around to show you do not have a prosthetic device.

Then provide the sample while the collector directly observes you doing so.

### **Refusal to Submit**

According to Sec. 382.211, an employee may not refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test required by the regulations. An employee who refuses to submit to such tests may not perform or continue to perform safety-sensitive functions and must be evaluated by a substance abuse professional as if the employee tested positive for drugs or failed an alcohol test.

Refusal to submit includes failing to provide adequate breath or urine sample for alcohol or drug testing and any conduct that obstructs the testing process. This includes adulteration or tampering with a urine or breath sample.

A team member who refuses to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test required by the DOT regulations or company policy will be subject to the same disciplinary action, up to and including termination of employment, as if it were to have been a positive test result.



## **VI. TESTING PROCEDURES**

### **Alcohol Testing Procedures**

Alcohol testing will be conducted at a location of the company's choosing by a qualified breath alcohol technician (BAT), according to 49 CFR Part 40 Subpart C procedures. Only products on the conforming products list (approved by the National Highway Traffic Safety Administration (NHTSA)) will be utilized for testing under this policy.

The testing will be performed in a private setting. Only authorized personnel will have access, and are the only individuals who can see or hear the test results.

When the employee arrives at the testing site, the breath alcohol technician (BAT) will ask for identification. The employee may ask the technician for identification and/or proof of certification. The BAT will then explain the testing procedure to the employee. The BAT may only supervise one test at a time, and may not leave the testing site while the test is in progress.

A screening test is performed first. The mouthpiece of the evidential breath-testing device (EBT) used in the test must be sealed before use, and opened in the employee's presence. The employee must blow forcefully into the mouthpiece of the testing device for at least 6 seconds or until an adequate amount of breath has been obtained.

Once the test is completed, the BAT must show the employee the results. The results may be printed on a form generated by the EBT or may be displayed on the EBT. If the EBT does not print results and test information, the BAT is to record the displayed result, test number, testing device, serial number of the testing device, and time on the breath alcohol testing form. If the EBT prints results, but not directly onto the form, the BAT must affix the printout to the breath alcohol testing form in the designated space. If the reading is less than 0.02, both the employee and the BAT must sign and date the result form. The form will then be confidentially forwarded to Opp Construction.

If the reading is 0.02 or more, a confirmation test must be performed. An EBT must be used for all confirmation tests.

The test must be performed after 15 minutes have elapsed, but within 30 minutes of the first test. The BAT will ask the employee not to eat, drink, belch, or put anything into his/her mouth. These steps are intended to prevent the buildup of mouth alcohol, which could lead to an artificially high result. A new, sealed mouthpiece must be used for the new test. The calibration of the EBT must be checked. All of this must be done in the employee's presence. If the results of the confirmation test and screening test are not the same the confirmation test will be used.

Refusal to complete and sign the testing form or refusal to provide breath will be considered a failed test, and the employee will be removed from all safety-sensitive functions until the matter is resolved.

**Results:** According to FMCSA regulation, the BAT will transmit all results to the employer in a confidential manner. The results will be transmitted via a phone call followed by a written document, and must be done in a timely fashion so Opp Construction can prevent the employee who fails an alcohol test from performing any safety-sensitive functions. If the initial transmission is not in writing, the BAT must send a copy of the employee's breath alcohol testing form as soon as possible.

### **Drug Testing Procedures**

Drug testing will be conducted at a location of Opp Construction's choosing. Specimen collection will be conducted in accordance with 49 CFR Part 40, Subpart B, and any applicable state law. The collection procedures have been designed to ensure the security and integrity of the specimen provided by each employee.

The procedures will strictly follow federal chain of custody guidelines. A drug testing custody and control form will be used to document the chain of custody from the time the specimen is collected at the testing facility until it is tested at the laboratory.

As well as the use of a custody and control form, test preparation includes:

- Use of a clean, single use specimen bottle that is securely wrapped until filled with specimen.
- Use of a tamperproof seal system designed in a manner that the specimen bottle can be sealed, revealing any unauthorized tampering (including unauthorized opening of the bottle). The system must allow for identification of the test subject, either by number or some other confidential mechanism.
- Use of a shipping container for transporting the specimens and associated paperwork, which can be sealed and initialed, to prevent undetected tampering.
- Written procedures and instructions for the collection site person.

The collection of specimen must be conducted in a suitable location and must contain all necessary personnel, materials, equipment, facilities, and supervision to provide for collection, security, and temporary storage and transportation of the specimen to a certified laboratory.

When the employee arrives at the collection site, the collection site employee will ask for identification. The employee may ask the collection site person for identification. The employee will be asked to remove all unnecessary outer garments (coat, jacket) and secure all personal belongings. The employee may keep his/her wallet. The employee will then wash and dry his/her hands. After washing hands, the employee must remain in the presence of the collection site person and may not have access to fountains, faucets, soap dispensers, or other materials that could adulterate the specimen. The employee is then instructed to provide his/her specimen in the privacy of a stall, or otherwise partitioned area that allows for privacy.

The specimen must consist of at least 45 ml of urine. The sample must then be split in front of the employee into a primary specimen of 30 ml and a second specimen (used as the split) of 15 ml. Both bottles must be shipped in a single shipping container.

Within 4 minutes after obtaining the specimen, the collection site person will measure its temperature. The acceptable temperature range is 90 to 100 degrees Fahrenheit. The collection site person will also inspect the specimen for color and look for any signs of contamination or tampering. Unusual signs must be noted on the collection form. Whether the specimen is suspected of being tampered with or not, it must be forwarded to the lab for testing.

If the collection site person believes the specimen was tampered with, a second specimen must be obtained as soon as possible under the direct observation of a same gender collection site person. The specimen must be kept in the view of the collection site person and driver at all times prior to the specimen being sealed and labeled. The specimen must be sealed and labeled by the collection site person in the presence of the employee. The identification label must be placed securely on the bottle and must contain the date, the individual specimen number, and any other identifying information required. The employee must initial the identification label on the specimen bottle, certifying the specimen collected was his/hers.

The collection site person must enter all identifying information on the custody and control form. The collection site person, certifying collection was accomplished in accordance with the instructions provided, and must sign the form. The employee must also sign this form indicating the specimen was his/hers.

**Laboratory analysis:** As required by FMCSA regulations, only a laboratory certified by the Department of Health and Human Services (DHHS) to perform urinalysis for the presence of controlled substances will be retained by Opp Construction. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.

All specimens are required to undergo an initial screen followed by confirmation of all positive screen results. The confirmation process is done by gas chromatography/mass spectrometry (GC/MS), revealing a specific, scientific level of drug contained in a collected specimen.

**Results:** According to FMCSA regulation, the laboratory must report all test results directly to Opp Construction's Medical Review Officer (MRO) within an average of 5 working days. All results, positive and negative, must be reported. Only specimens confirmed by the GC/MS as positive are reported as positive. The MRO is responsible for reviewing and interpreting all positive results. The MRO must determine whether alternate medical explanations could account for the positive test results. The MRO must also give the employee who tested positive an opportunity to discuss the results prior to making a final determination that the test was positive. After the decision is made, the MRO must notify Opp Construction.

If the MRO, after making and documenting all reasonable efforts, is unable to contact a tested driver, the MRO shall contact the Human Resource Manager. This company official will arrange for the employee to contact the MRO before going on duty.

The MRO may verify a positive test without having communicated with the employee about the test results if:

- The employee expressly declines the opportunity to discuss the results of the test;
- Neither the MRO or employer has been able to make contact with the driver for 14 days; or
- Within 5 days after a documented contact by the designated company official instructing the employee to contact the MRO, the employee has not done so.

**Split Sample:** As required by FMCSA regulations, the MRO must notify each employee who has tested positive that he/she has 72 hours to request the test of the split specimen. If the employee requests the testing of the split, the MRO must direct (in writing) the lab to provide the split specimen to another certified laboratory for analysis. The employee will pay for the testing of the split specimen.

If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing, or unstable, the MRO must cancel the test and report the cancellation and the reasons for it to the DOT, Opp Construction, and the employee.

**Specimen Retention:** Long term frozen storage will ensure that positive urine specimens will be available for any necessary retest. Opp Construction's designated drug testing laboratory will retain all confirmed positive specimens for at least 1 year in the original labeled specimen bottle.

## **VII. CONFIDENTIALITY /RECORDKEEPING**

All employee alcohol and controlled substance test records are considered confidential (Sec. 382.401). For the purpose of this policy/procedure, confidential record keeping is defined as records maintained in a secure manner, accessible only to the Human Resource Department or Designated Representative.

If the Human Resource Manager or Designated Representative is unavailable, The Human Resource Assistant and the Vice President will have access to the alcohol and controlled substance records.

Driver alcohol and controlled substance test records will only be released in the following situations:

- To the employee, upon his/her request
- Upon request of a DOT agency with regulatory authority over Opp Construction
- Upon request of state or local officials with regulatory authority over Opp Construction
- Upon request by the United States Secretary of Transportation
- Upon request by the National Transportation Safety Board (NTSB) as part of an accident investigation
- Upon request by subsequent employers upon receipt of a written request by a covered employee
- In a lawsuit, grievance, or other proceeding if it was initiated by or on behalf of the complainant and arising from results of the tests
- Upon written consent by the driver authorizing the release to a specified individual

All records will be retained for the time period required in Sec. 382.401.

## **VIII. Notice of No Expectation of Privacy in Connection with Employment**

## **Searches and Investigations**

Opp Construction reserves the right to investigate and to interview employees in the course of implementing and enforcing this Policy, and other policies of Opp Construction, to require truthful answers to inquiries in connection with such investigations and interviews, to conduct searches of employees' persons, vehicles, work stations and locations, clothing, purses, briefcases, luggage, personal items, other possessions, documents, and any and all other articles within their possession or control while employees are on duty, on Company or customer property or while operating or being transported in a commercial motor vehicle or any other vehicle used, at that or any other time, in the service of the Company, and to conduct the tests provided for in this Policy.

Opp Construction may, in its sole discretion, seize any items that it deems to represent possible evidence of a violation of this Policy or other Company policies or state or federal law. An employee's refusal to submit to such investigations, interviews, searches and seizures, or to required tests, may lead to disciplinary action up to and including discharge.

## **IX. EMPLOYEE ASSISTANCE**

All employees will be given a copy of this policy and a publication that explains the effects of alcohol and drugs.

**Supervisor Training:** According to FMCSA regulation, all employees of Opp Construction designated to supervise employees will receive training on this program. The training will include at least 60 minutes on alcohol misuse and 60 minutes on drug use. The training content will include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use. The training allows supervisors to determine reasonable suspicion that a employee is under the influence of alcohol or drugs.

**Referral, Evaluation, and Treatment** (Sec. 382.605): According to FMCSA regulation, a list of substance abuse professionals will be provided to all employees who fail an alcohol test or test positive for drugs. The employee will pay for the evaluation by the SAP and any treatment, or follow up testing required.

A certified DOT SAP in the ND/MN area is:

PERRY SMITH  
1720 BURNT BOAT DR STE 108  
BISMARCK, ND 58503  
701-471-2033

To get a referral for another DOT SAP through Blue Cross Blue Shield please call **1-800-854-1446**.

According to FMCSA regulations, prior to returning to duty for Opp Construction, an employee must be evaluated by a certified SAP and must complete the treatment recommended by the SAP. Successful completion of a return to duty test and all follow-up tests are mandatory. An employee who fails to complete an evaluation by the SAP, treatment recommended by the SAP, a return to duty test, or a follow-up test will be suspended without pay until the employee is qualified to drive.

## **X. CONSEQUENCES FOR VIOLATIONS**

According to FMCSA regulation, no person who has failed an alcohol or drug test, or refused to test, will be allowed to perform safety-sensitive functions until the referral, evaluation, and treatment requirements have been complied with. The following company disciplinary measures apply to all reasonable suspicion, post-accident, and random tests.

Employees committing violations under this Policy (including testing positive for controlled substances or receiving alcohol test results showing alcohol concentration of at least 0.04) will be removed from all driving and any other work duties.

After removal from driving and other work duties, such DOT employees will be referred to a Substance Abuse Professional ("SAP") and will be notified of resources to evaluate and resolve problems associated with controlled substances use and misuse of alcohol. The SAP will evaluate whether the employee needs assistance with alcohol or controlled substances problems and will prescribe and oversee any necessary rehabilitation programs. After referral to the SAP, employees will not be allowed to return to duty until:

- (1) at least 24 hours have passed;
- (2) the employee has passed a return-to-duty alcohol and/or controlled substances test;
- (3) the employee has reported to the certified DOT SAP, and has cooperated with and commenced any SAP referrals or treatment or rehabilitation recommendations to Opp Construction satisfaction; and
- (4) appropriate discipline has been imposed. In addition, once back on duty, drivers will be required to pass unannounced follow-up alcohol and/or controlled substances tests, consistent with the SAP's evaluation.

If a NON-DOT or NON-DRIVING employee violates this policy as mentioned above, after removal from safety sensitive functions, NON-DOT or NON-DRIVING employees will not be allowed to return to work until:

- (1) at least 24 hours have passed;
- (2) the employee has passed, a return-to-duty alcohol and/or controlled substances test; and
- (3) the employee has reported to an Employee Assistance Program (EAP), and has cooperated with and commenced any EAP referrals or treatment or rehabilitation recommendations to Opp Construction satisfaction; and
- (4) appropriate discipline has been imposed. In addition, once back on duty, employees will be required to pass 6 unannounced follow-up alcohol and/or controlled substances tests over the next 24 months.

The employee will bear the costs of referral, treatment or rehabilitation and any follow up testing required under these provisions.

Applicants who refuse to submit to or fail a pre-employment controlled substances test are not eligible for employment with Opp Construction until a period of one year has passed.