

**VALLEY CONSTRUCTION COMPANY  
DRUG AND ALCOHOL-FREE  
WORKPLACE POLICY**

**Effective: June 15, 2008**



# DRUG AND ALCOHOL POLICY

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## NOTICE

This drug and alcohol policy does not create any contractual rights on behalf of any individual or employee nor any obligations or duties on the part of Valley Construction Company. Valley Construction Company reserves the right to terminate or modify the terms of this policy at any time.

The policy is intended to cover all of Valley Construction Company's employees working in our safety sensitive environment, with the exception of those employees who are subject to drug or alcohol testing under federal regulations, *i.e.*, CDL drivers.

The policy is subject to the terms of any current applicable bargaining agreements while this policy is in effect.



# VALLEY CONSTRUCTION COMPANY POLICY FOR A DRUG AND ALCOHOL FREE WORKPLACE

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## **I. STATEMENT OF PURPOSE**

Valley Construction Company recognizes the problems of substance abuse in society and in the workplace. Substance abuse poses a serious threat to our employees, customers, and to the communities in which we do business. By enacting this substance abuse policy and program, we hope to combat the problems associated with substance abuse by creating a drug and alcohol free workplace.

Our substance abuse policy seeks to balance our respect for individual privacy with our need to keep a safe, productive, drug and alcohol free environment. Our intention is to prevent substance abuse and promote its treatment. We encourage those who use drugs or who abuse alcohol to seek help in overcoming their problems.

With these basic objectives in mind, Valley Construction Company has established the following program and policies for a drug and alcohol free workplace.

## II. DEFINITIONS

- **Abuse of a Legal Drug or Alcohol:** Any use of a legal drug or alcohol which negatively impairs an individual's faculties while on the job (other than use of a legal drug for appropriate purposes in accordance with applicable medical directions). In addition, the taking of a prescription drug that was prescribed for another shall be considered "abuse" of a legal drug.
- **Alcohol:** Ethanol, isopropanol, or methanol.
- **Controlled Substance :** The term "controlled substance" as used in this policy means:
  - Any drug or substance defined as a controlled substance and included in schedule I, II, III, IV or V under the federal Controlled Substance Act, 21 U.S.C. §801 *et seq.*;
  - Any substance regulated by the "Iowa Imitation Controlled Substance Act" (Iowa Code Chapter 124A) which is held out to be or which is sold distributed as a controlled substance; and
  - Any controlled substance or counterfeit substance under the Iowa "Uniform Controlled Substance Act," found at Iowa Code Chapter 124 and in the Illinois Controlled Substances Act, 720 ILCS Section 570.
- **Eligible Employee:** An employee who has worked at least 12 out of the last 18 months, and has demonstrated the skills to fulfill the essential functions of the job, and does not represent a hazard to themselves, the general public, and fellow employees as determined on a case by case basis taking into consideration attendance, safety, production, morale, available work assignments, and applicable Federal and State Law.
- **Legal Drugs:** A drug for which there is a valid prescription for the employee or an over-the-counter-medication.
- **Medical Review Officer (MRO):** A licensed physician, or osteopathic physician, authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who had knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.
- **Pre-employment:** Pre-employment drug or alcohol testing is permitted only if it is conducted in a manner complying with statutory procedural requirements. Tests may be performed in conjunction with Pre-employment physicals or as a stand-alone exam.
- **Prospective Employee:** A person who has made application, whether written or oral, to our company to become an employee.

- **Reasonable Suspicion:** Reasonable suspicion testing is drug or alcohol testing based upon evidence that an employee is using or has used drugs or alcohol in violation of the Valley Construction Company's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience.

### III. WORK RULES

#### A. Legal Drugs

1. **Prescription Drugs:** An employee may bring to work and take a prescription drug during work hours only if the drug has been prescribed for the employee by a physician or other authorized prescriber and only if the drug is taken in accordance with the prescriber's directions. All prescription drugs should be kept in the container in which they were received from the pharmacy or other dispenser.
2. **Over-the Counter Medications:** An employee may bring to work an over-the-counter drug during work hours only if the drug is used for its intended purposes and in accordance with package directions and any supplemental directions of the employee's physician. All over-the-counter drugs should be kept in the original container (including the box which may contain the appropriate warnings in which they were received).
3. **Notification:** When an employee is utilizing a prescription or over-the-counter medication which the employee or his/her physician believes will negatively affect the employee's ability to safely perform his/her assigned essential job duties, the employee must notify his/her job site supervisor concerning use of the medication. Information with regard to the employee's use of the medication will be provided to other Company officials only on a "need-to-know" basis. Any written documentation concerning this notification will be preserved in the employee's confidential medical records file.
4. **Abuse:** Abuse of legal drugs will not be tolerated, and will be dealt with in the same manner as the illegal use of a controlled substance.

#### B. Drug and/or Alcohol Possession, Transfer or Use, Other Than Use Detected by a Drug and/or Alcohol Test

Except as otherwise provided in Rule A above, an employee possessing for the purpose of consuming, selling, transferring, or an employee under the influence of any alcoholic beverage or any prescription drug or controlled substance (including "look alike" substances as defined above), while on Company business whether or not on duty, and whether or not on Company business or property, is guilty of misconduct and is subject to discipline, including discharge or suspension without pay, even for the first offense.

Valley Construction Company employees are not allowed to drink alcoholic beverages on any job site, even after the end of the working day.

### **C. Impairment During Work Hours**

1. It is our intent that an employee whose faculties appear to be negatively impaired during work hours will not be allowed to work, regardless of the cause.
2. An employee whose faculties are impaired during work hours due to the effects of the use of alcohol and/or illegal use of a controlled substance including the abuse of a legal drug is subject to discipline, up and including termination, even for the first offense. However, if a drug or alcohol test is done, discipline will be imposed only in accordance with the guidelines outlined below in (F).

### **D. Notification of Drug/Alcohol-Related Convictions**

An employee is required to notify the Safety Manager within five days of the employee's conviction of any drug or alcohol-related law. Failure to do so may result in disciplinary action, up to and including, termination of employment.

### **E. Prospective Employee Discipline in Connection with a Drug Test**

Prospective employees may be required to undergo a drug test (see "Prospective Employee Substance Abuse Screening Program" below). The following is a list of uniform requirements for action the Company will take against the employee upon receipt of a confirmed positive drug or alcohol test result, or upon the employee's refusal to submit to such test. Any action taken against the employee is based only on the results of the drug or alcohol test.

### **F. Employee Discipline in Connection With a Drug or Alcohol Test**

1. **Refusal to Submit to a Drug or Alcohol Test.** An employee's refusal to submit to a drug or alcohol test when requested to do so will subject the employee to discharge.
2. **First Positive Drug or Alcohol Test Result.**
  - a. An employee's first confirmed positive drug test will result in the employee's termination.
  - b. An eligible employee's first confirmed positive alcohol test will result in a one-time rehabilitation. Upon the Company's receipt of a confirmed positive alcohol test result, eligible employees are required to enroll in an approved rehabilitation treatment, or counseling program. The program may include additional alcohol testing. Participation and successful completion of the program is a condition of continued employment with the Company. Failure to comply with these requirements will result in the employee's termination. This one-time rehabilitation program only applies if all of the following requirements are met:

- i. The rehabilitation program is required for positive alcohol tests;
    - ii. The employee testing positive for alcohol must have been employed by the Company for at least 12 of the previous 18 months, from the date of testing;
    - iii. The employee's positive test for alcohol must be at a level of at least .02 grams of alcohol per two hundred ten liters of breath, or its equivalent.
    - iv. The employee must agree to the treatment; and
    - v. The employee must not have previously violated the Company's substance abuse policy.
  - c. If an eligible employee successfully completes rehabilitation, Valley Construction Company shall not take adverse employment action against the employee based upon the results of a first confirmed alcohol test beyond written documentation of such first offense for future reference and evidential value.
3. **Second Offense Provision.** If an employee who has previously tested positive under the Company's alcohol testing program has a confirmed positive on an alcohol test performed on a second occasion, the employee will be terminated.
4. **Pre-Result Suspension.** Prior to the Company receiving the results of the employee's alcohol and/or drug test for "reasonable suspicion" and/or in a "post incident" situation, depending upon the circumstances, the employee's employment with the Company may be suspended without pay, pending the outcome of the test. If the result of the test does not violate the terms of this written policy, the employee will be reinstated with applicable back pay as required by law and or collective bargaining agreement.
5. **Unsafe Individuals.** Any prospective employee or current employee who has a confirmed positive drug test, or any eligible employee who has a confirmed positive alcohol test and refuses rehabilitation, or has a confirmed positive alcohol or drug test following rehabilitation, violates a major Company safety rule. A person who violates a major company safety rule will be classified as "unsafe" and will be subject to termination or refusal to hire. An unsafe person is not eligible for consideration for rehire for a period of 90 days following termination or refusal to hire.

#### **IV. DRUG AND ALCOHOL TESTING PROGRAMS**

##### **A. Prospective Employee (Pre-Employment) Drug Screening Program**

If a prospective employee has been subjected to a drug test within the previous 45 days prior to his/her application with our Company, then the applicant will be requested to release the information verifying the results of that test to avoid being tested again. However, if a prospective employee has not been tested within 45-day period for the presence of drugs and/or refuses to sign the release of such information, they will be subjected to the following pre-employment substance abuse screening.

The Company will conduct pre-employment drug tests designed to prevent hiring individuals who use controlled substances or who abuse legal drugs.

At the time of the collection of the sample, the prospective employee may provide any information which may be relevant to the drug test to the testing agency or the designated Medical Review Officer. Such information may include identification of prescription or nonprescription drugs currently or recently used or any other relevant medical information. To the extent feasible, precautions will be taken to ensure that the testing only measures, and the records concerning the testing only make use of, information regarding drugs in the body. The following is a list of drugs for which testing will be conducted:

- Marijuana (Including cannabinoids and THC derivatives. The Company has a “zero tolerance” for cannabinoids and has instructed its MRO that no explanation for the presence of this substance should be accepted);
- Barbiturates;
- Cocaine;
- Opiates (and their derivatives including morphine and codeine);
- Phencyclidine;
- Amphetamines (including methamphetamines);
- Benzodiazepines;
- Methadone;
- Propoxyphene

To be considered qualified for employment with the Company; the prospective employee must receive a “negative” report on a valid drug screen. If that qualification is not met, the prospective employee will be deemed “not qualified”, and either the application process will be terminated or any conditional offer of employment that has been extended will be withdrawn.

If a confirmed positive drug test for a prospective employee is reported to the Company, the Company will notify the prospective employee in writing with the results of the test, the name and address of the Medical Review Officer who made the report to the Company and the prospective employee’s right to request records related to the test. The prospective employee’s request for the records must be made within 15 calendar days from the date the Company provided the prospective employee with notice of the test results.

## **B. Current Employee Substance Abuse Screening Program**

**1. An active employee may be requested or required to submit to a drug and/or alcohol test under any of the following circumstances:**

- a. **Reasonable Suspicion Drug and alcohol Testing:** A specific active employee may be required to submit to a drug or alcohol test if the Company has evidence that an employee is using or has used other drugs or alcohol in violation of the company’s written policy. This evidence must be drawn from specific objective and articulable facts and reasonable inferences drawn from

those facts in light of experience. Examples that might support such include the following:

- observations made at work, such as direct observation of drug or alcohol use or the physical symptoms of being impaired by drug or alcohol use
- abnormal conduct or erratic behavior while at work or a significant deterioration in work performance
- a report, by a reliable and credible source, of drug or alcohol use
- evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer
- evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drug while working, or while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

The "Reasonable Suspicion Documentation" form will be used in evaluating an employee's ability to perform his/her job. It must be completed by the individual making the performance evaluation. A copy of the "Reasonable Suspicion Documentation" form will be retained in the employees confidential medical records file if an employee is disciplined or referred for testing, regardless of the results of the test. If a Reasonable Suspicion Documentation form is completed and an employee is neither disciplined nor referred for testing, the document will be destroyed.

- b. Workplace Accident Drug and Alcohol Testing:** The Company may require an employee to submit to an alcohol or a drug test in conjunction with its investigation of any incident in the workplace which results in damage to property, including equipment, in the amount "reasonably" estimated at the time of the incident to exceed \$1000.00 or which results in any injury that requires outside medical treatment to any person (regardless of whether the injured person is an employee of the Company). For purposes of this section, where there is a death or where the condition of the individual is such that he or she may lose work time other than the day of the incident, was unconscious, or may have some restriction in work or motion, the requirement of an OSHA-reportable injury will be deemed to have been met. It should be emphasized that testing in conjunction with the investigation of a workplace incident is not limited to the individual who was injured.
- c. Unannounced/Random Drug Testing of Current Employees:** Employees may be subject to drug testing which is conducted on a periodic basis, without advance notice of the test to the employee selected, prior to the day of the test. This testing is performed without any individualized suspicion or involvement in any post accident testing protocol as defined in the previous section (b). Any employee who is in the following pool(s) of employees is subject to unannounced testing:
  - Entire employee population pool: It is our intent that the unannounced testing of current employees will be administered such that up to 10 percent of our entire employee population may be tested quarterly

(excluding employees who are subject to testing, including random testing, under the requirements of federal regulations, including those of the Department of Transportation, and employees who are not scheduled to be at work at the time the testing is to occur (*i.e.* leave of absence, lay off, works a different shift, etc.) or who have been excused from work pursuant to the Company's policies prior to the time the testing is announced to employees).

- Particular work site pool: It is our intent, when required by a site or project owner, to include all employees engaged in safety sensitive positions at a particular work site in a pool for unannounced testing (excluding employees who are subject to testing, including random testing, under the requirements of federal regulations, including those of the Department of Transportation, and employees who are not scheduled to be at work at the time the testing is to occur (*i.e.* leave of absence, lay off, works a different shift, etc.) or who have been excused from work pursuant to the Company's policies prior to the time the testing is announced to employees).

Employees who are in the pool(s) identified above all have an equal chance of selection for testing, regardless of whether the employee has been selected or tested previously. We utilize, as required by law, a random selection process conducted by an entity independent from the Company. Employees that have been randomly selected will be notified by management and required to submit a sample at the location deemed appropriate.

- d. **Rehabilitation Testing for Alcohol or Drugs:** The Company may require a current employee to undergo alcohol or drug testing during or following completion of alcohol or drug rehabilitation, without any prior notice that such a test will be conducted.
- e. **Federal Laws/Regulations:** The Company will conduct drug or alcohol testing as required by a federal law or regulation or by law enforcement.

## 2. **Types of Testing That May be Required for Current Employees**

### a. **Alcohol Testing**

The Company has decided to conduct alcohol testing in an attempt to prevent employees from abusing alcohol. An alcohol concentration equal to or greater than 0.02 grams of alcohol per two hundred ten liters of breath (or its equivalent) is considered a confirmed positive alcohol test result and violates this policy.

Testing for violations of the Company's rules with regard to "alcohol" may be done through a breath saliva test in compliance with applicable law. It is the intent of the Company that this policy be construed in such a manner as to assure compliance with applicable statutory provisions, including compliance with the provision that certain requirements governing alcohol screening devices, evidential breath testing devices and the qualifications for personnel

administering both initial and confirmatory alcohol testing, “be consistent with the regulations adopted as of January 1, 1999, by the United States Department of Transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991.” These regulations are included in 49 CFR Part 40. A copy of the regulations is available for inspection during regular business hours at our corporate office.

Where there is such “alcohol” testing, the following standards shall apply:

- i. Initial screening for alcohol will be done by an analytic procedure to determine whether an individual may have a prohibited concentration of alcohol. This initial screening may be done either by an “evidential breath testing device” or by a non-evidential alcohol screening device.
  - a. For purposes of this policy, when the initial screening for alcohol is done by a non-evidential alcohol screening device, such testing will be administered by an individual who is qualified as a “screening test technician” (STT) under the standards established by the United States Department of Transportation.
  - b. For purposes of this policy, a “non-evidential alcohol screening device” means a screening device included by the National Highway Traffic Safety Administration (NHTSA) on its Conforming Products List (CPL) for non-evidential screening devices. These may be either a non-evidential breath testing device, or a saliva testing device.
- ii. All confirmatory testing for alcohol shall be done by an “evidential breath testing device” and such confirmatory testing shall be performed by a “breath alcohol technician.”
  - b. For purposes of this policy, an “evidential breath testing device” (EBT) means a device approved by the national Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on the NHTSA’s Conforming Products List (CPL) of Evidential Breath Measurement Devices, and identified on the CPL of conforming with the model specifications available from the Office of Alcohol and State Programs of the NHTSA. Such EBT, when used for a confirmatory test, shall meet all the requirements of the regulations set out in Part 40.
  - c. For purposes of this policy, a “breath alcohol technician” is an individual who has been trained to proficiency in the operation of the EBT that he or she will be using as well as on the testing procedures required by 40 CFR Part C. Such training will include successful completion of a course of instruction determined to be the equivalent of the Department of Transportation “model course” as determined by the NHTSA.

- d. Law Enforcement Officers who have been certified by state or local governments to conduct breath alcohol testing, including certification by the appropriate government entity to use the particular device that he/she used, are deemed under this policy to be qualified as a "BAT".
- iii. For all testing for alcohol done under this portion of our policy, if an initial screening test reveals the presence of 0.019 or less grams of alcohol per two hundred ten liters of breath, or its equivalent, the test will be considered over, and the employee is free to leave. A "negative" test result will be reported. If the initial test reveals the presence of 0.020 or more grams of alcohol per two hundred ten liters of breath, or its equivalent, the employee will be instructed that they must provide a sample for a "confirmatory" test. The confirmatory test shall be performed no less than 15 minutes and no more than 30 minutes after completion of the initial screening test.
- iv. We require that testing for alcohol done under this portion of our policy be done in such a manner so as to provide, to the greatest extent practicable under the circumstances, visual and aural privacy to the individual being tested such that unauthorized persons may not see or hear the test results. We expect that the individual administering or supervising the testing will conform with the applicable DOT established standards for test administration.
- v. Pursuant to 49 CFR Subpart C, if an individual being tested is unable to provide an adequate amount of breath for testing, the individual will be directed to immediately obtain an evaluation from a licensed physician acceptable to the Company concerning the individual's ability to provide an adequate sample, and to have that licensed physician provide a written statement to the Company of both his/her conclusions and the basis for those conclusions. If that physician determines in his or her reasonable medical judgment that the individual has a medical condition which could have precluded the individual from providing an adequate amount of breath, the failure of the individual to provide an adequate amount of breath for testing shall not be deemed a refusal to submit to a test. If the licensed physician is unable to make such a determination, or if the employee fails to obtain either an evaluation by or cause the licensed physician to furnish the Company with any written statement, the failure to provide an adequate amount of breath shall be regarded as a refusal to submit to a test, and the appropriate sanction provided by these policies shall apply.
- vi. Pursuant to 49 CFR Subpart D, if an individual being tested is unable to provide an adequate amount of saliva to complete a test on a saliva screening device, the individual shall be required to submit to a new saliva test with a new device. If the employee is still unable to produce an adequate amount of saliva for testing, the employee will be required to submit to a breath test. If the employee cannot provide an adequate breath sample, the provisions of v. (above) shall apply.

**b. Drug Testing**

The Company has determined to conduct controlled substance, or “drug” testing in an attempt to discourage and prevent employees from illegally using drugs, be it the use of an illegal drug or the abuse of a legal drug. At the time the sample is collected, an employee may provide any information which may be relevant to the drug test. Such information may include identification of prescription or nonprescription drugs currently or recently used or any other relevant medical information. Precautions will be taken to ensure that the testing only measures, and the records concerning the testing only make use of, information regarding drugs in the body. The following is a list of drugs for which testing will occur:

- Marijuana (Including cannabinoids and THC derivatives. The Company has a “zero tolerance” for cannabinoids and has instructed its MRO that no explanation for the presence of this substance should be accepted);
- Barbiturates;
- Cocaine;
- Opiates (and their derivatives including morphine and codeine);
- Phencyclidine;
- Amphetamines (including methamphetamines);

At the time the specimen is collected for drug testing it will be split into two components. If there is a confirmed “positive” test result reported to the Company by the Medical Review Officer, the employee will be notified in writing of the result through a letter hand delivered or sent certified mail return receipt requested. The employee may have a second test performed on the “second half” of the split sample or specimen, at the employees own cost, at an “approved” laboratory of the employees own selection. If an employee desires to have that second, confirmatory test done, the Company must receive notification within seven days of the date of mailing of the letter to the employee including both receipt of the payment and the designation of the laboratory. This notification and testing process also applies to conditional employees.

**3. Standards Applicable to All Testing of Current Employees:**

- a. **Test Scheduling:** Drug or alcohol testing shall normally occur during, or immediately before or after, a regular work period. The time required for testing, including travel time, is considered work time for purposes of the FLSA, compensation, and benefits.
- b. **Test Costs:** The actual costs for testing, other than for a second confirmatory test if one is requested as provided by law, are paid by the Company. If the drug or alcohol sample collection or alcohol screening is conducted at a place other than the employee’s normal worksite, the Company will provide transportation, or pay reasonable transportation costs to the employee.

- c. **Transportation of Employees Unfit for Duty:** Any employee deemed unfit for duty because of a reasonable suspicion that the employee is under the influence of drugs or alcohol, will be instructed not to transport him/herself home and/or to a medical facility for drug or alcohol testing. A Company representative will offer private or public transportation to take the employee to the testing center and/or to the employee's home. If the employee refuses transportation assistance, and indicates an intention to drive from work, the Company supervisor or other Company official will document the refusal and will warn the employee that appropriate law enforcement authorities will be notified.

## **V. EMPLOYEE ASSISTANCE PROGRAM**

Valley Construction Company is aware that many personal or health problems can and do interfere with an employee's ability to perform on the job. These problems may include emotional and mental disorders, family and marital difficulties, abuse of drugs or alcohol, ect. The company offers information on various services that are available for employees to take advantage of. Many services are covered in whole or in part by an employee's health insurance or medical plan. Employees who cannot afford such service should contact either the Safety Manager or Jim Hass for referral to a social services agency that can assist the employee in their needs.

The purposes and practices of the Company's disciplinary rules and the EAP are distinctly separate in their applications. An employees decision to seek prior assistance from the EAP will not be used as the basis for disciplinary action and will not be used against the employee in any disciplinary action and will not be used against the employee in any disciplinary proceeding, On the other hand, the fact that an employee has been using the EAP will not be a defense to imposition of disciplinary action where facts showing a violation of the Company's rules are obtained outside the EAP.