

**Mass Excavation, Inc.
Drug and Alcohol
Policy and Procedures**

1.0 Introduction and General Information

1.1 Policy

Mass Excavation, Inc. (Mass) has a long-standing commitment to maintain the highest standards possible for the health and safety of its employees, clients, and the public at large. The presence of alcohol and drugs in the workplace and their influence on employees during working hours is contrary to these high standards and will not be tolerated.

1.2 Purpose

The purpose of this policy is to help prevent work-related accidents, injuries, and property damage resulting from the misuse of alcohol or the use of controlled substances by employees of Mass.

1.3 Applicability

Any prospective employee or current employee of Mass is subject to this policy.

For the purposes of this policy, employees and prospective employees are divided into two categories: drivers and non-drivers. Driver, as defined in 2.12, means any person employed by or seeking employment with Mass who may operate a Commercial Motor Vehicle (CMV) for Mass and exercise the privileges of a Commercial Driver's License (CDL) as part of his or her job duties. Drug and alcohol testing of drivers and prospective drivers is regulated by the Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA). This policy is a combination of a DOT (driver) policy and a non-DOT (non-driver) policy. Sections of this policy that apply to drivers only are written in italicized boldface type.

All employees and prospective employees are subject to the non-DOT provisions of this policy. Drivers are subject to DOT portions of this policy as well as non-DOT provisions.

Provisions of this policy that are also addressed by a collective bargaining agreement (CBA) are superseded by the CBA for any employee who is a union member and to whom the CBA applies, as long as the CBA complies with federal and state law.

1.4 Drug and Alcohol Testing

Mass' policy provides for pre-hire, post-accident, random, reasonable suspicion, return-to-duty, and follow-up drug and alcohol testing. These tests are described in great detail in other sections of this policy. Two types of tests, DOT and non-DOT, will be conducted. All employees are subject to Non-DOT tests and drivers are also subject to DOT testing.

Non-DOT testing for new hire screening and random selection will be administered by a screening saliva test. Positive results will be confirmed by an alternate method at a certified drug testing laboratory.

1.5 Compliance with Applicable Laws and Regulations

The portions of this policy that apply to drivers are compliant with 49 CFR Part 40, as amended, and FMCSA part 382. This policy is also compliant with AS 23.10.600 – 23.10.699 excepting where the Alaska Statutes may be superseded by the above mentioned DOT or FMCSA regulations in regard to drivers.

1.5 Management Guidelines only

This policy represents management guidelines only and should not be interpreted as a contract of employment. Noncompliance with this policy will result in disciplinary action, up to and including termination. In the case of an applicant, noncompliance with this policy may result in the applicant being ineligible for employment with Mass, as explained in section 7.3 (A).

1.6 Fair Employment

Consistent with its fair employment policy, Mass maintains a policy of non-discrimination and will endeavor to make reasonable accommodations to assist recovering addicts or alcoholics and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before drug and alcohol use renders them unable to perform essential job functions or jeopardizes the health and safety of themselves and others.

1.7 Privacy

Mass' policies regarding drug and alcohol testing for both drivers and non-drivers have been balanced with a recognition of the legal rights of employees, the preservation of an employee's reasonable expectations of privacy, and a commitment to ensure the integrity and reliability of the testing procedures. Any questions about the meaning or application of this policy should be directed to Mass' Designated Employer Representative, hereinafter referred to as the Drug Program Administrator (DPA):

Jacque Cato
Drug Program Administrator
Phone: (907)562-2336
Confidential email: dpa@davisconstructors.com

1.8 Availability of Policy

- A. Each Job Superintendent shall post this revised policy in a prominent location readily accessible to all employees at each Mass jobsite.
- B. A copy of this revised policy will be distributed to each labor union that Mass hires from, with instructions to post in a prominent location, readily accessible to all prospective employees.
- C. A copy of this revised policy will be made available to each newly hired employee in his/her new hire packet.
- D. A copy of this revised policy will be distributed to each non-union employee.

2.0 Definitions:

- 2.1 Adulterated Specimen** means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.
- 2.2 Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- 2.3 Alcohol Screening Device** means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.
- 2.4 Alcohol Use** means the drinking or swallowing of any beverage, liquid, mixture, or preparation (including any medication) containing alcohol.
- 2.5 Breath Alcohol Technician (BAT)** means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.
- 2.6 Chain of Custody** in drug testing means the procedures used to document the handling of the urine specimen or saliva test from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

- 2.7 Commercial Motor Vehicle** (CMV) (as defined by Part 383 of the Federal Motor Carrier Safety Regulations [FMCSR's]: Commercial Driver's License Standards Requirements and Penalties) CMV means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
- A. Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,001 pounds); or
 - B. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or
 - C. Is designed to transport 16 or more passengers, including the driver; or
 - D. Is of any size and is used in the transportation of hazardous materials as defined in § 383.5 of FMCSR.
- 2.8 Confirmation Test** in drug testing means a second analytical procedure performed on a different subpart of the urine specimen to identify and quantify the presence of a specific drug or drug metabolite. In alcohol testing, a confirmation test means a subsequent test, using an EBT, following a screening test with a result of 0.02 or greater, which provides quantitative data about the alcohol concentration. For onsite saliva testing this means allowing the prospective employee or employee to go to an accredited and certified drug testing facility for confirmation. ie. Beacon Occupational Health and Safety, Inc.
- 2.9 Controlled Substances and Drugs** are used interchangeably in this policy and mean marijuana, cocaine, opiates, amphetamines, ecstasy, 6-Acetylmorphine and phencyclidine (PCP) or their metabolites. The terms "controlled substances" and "drugs" include legal substances obtained illegally or used in an unauthorized manner, but do not refer to the proper use of controlled substances authorized by law which do not affect job safety or performance. The terms may also include any other illicit drug not in the 5-panel testing protocol.
- 2.10 Dilute Specimen** means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

- 2.11 Disabling Damage** means damage that does not allow a motor vehicle to leave the scene of an accident in its usual manner in daylight after simple repairs: including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. This term does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even if no spare tire is available; headlight or taillight damage; or damage to turn signals, horn or windshield wipers which make them inoperative.
- 2.12 Driver** means any person employed by or seeking employment with Mass who may operate a CMV and exercise the privileges of a CDL as part of his or her job duties.
- 2.13 Employee** is any person who works for Mass. The use of the term employee to refer to drivers or non-drivers subject to this policy is for convenience only and is not intended to change or in any way alter definition of that employee as a driver or non-driver.
- 2.14 Evidential Breath Testing Device (EBT)** means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for Evidential Breath Measurement Devices, and identified on the CPL as conforming with the model specifications available from the NHTSA's Traffic Safety Program.
- 2.15 Licensed Medical Practitioner (LMP)** means 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.
- 2.16 Medical Review Officer (MRO)** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- 2.17 Negative Drug Test Result** generally means a specimen that contains no drugs or that the concentration of the drug is less than the cutoff concentration and the specimen is a valid specimen.
- 2.18 Non-Driver** means any Mass employee who does not meet the **Driver** definition.

2.19 Performing A Safety-Sensitive Function means any period in which an employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. It is the policy of Mass that all job functions are considered to be safety-sensitive.

2.20 Positive Drug Test Result generally means a result reviewed by an MRO and determined to demonstrate evidence of prohibited drug use. See “Verified Test.”

2.21 Safety-Sensitive Function *means 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 driver functions for the purposes of DOT provisions included in this policy shall include:*

- a. 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 employer;*
- b. All time inspecting equipment as required by FMCSA’s regulations 49 CFR §§392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;*
- c. All time spent at the driving controls of a commercial motor vehicle in operation;*
- d. 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 FMCSA’s regulation 49 CFR §393.76);*
- e. 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*
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.*

Additionally, it is the policy of Mass that all job functions performed by all employees are considered to be “safety sensitive” with regards to compliance with this drug and alcohol policy.

- 2.22 Screening or Initial Test** in drug testing means, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. For saliva testing, this means an analytic procedure to determine the presence of drugs. In alcohol testing, means an analytic procedure to determine whether a driver may have a prohibited concentration of alcohol in a breath or saliva specimen.
- 2.23 Screening Test Technician (STT)** means an individual who instructs and assists an individual in the alcohol testing process and operates an alcohol screening device.
- 2.24 Substance Abuse Professional (SAP)** means a person who evaluates employees who have violated this drug and alcohol policy and makes recommendations concerning education, treatment, follow-up testing, and aftercare. ***For drivers, a SAP means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.***
- 2.25 Verified Test** means a drug test result or validity testing result from a certified laboratory that has undergone review and final determination by the MRO.

3.0 Prohibited Conduct

3.1 Controlled Substances

Employees are prohibited from reporting for duty or remaining on duty when using or under the influence of any drugs, except when the use is pursuant to the instructions of a Licensed Medical Practitioner (LMP). In cases where this exception applies, the LMP must advise the employee that the substance will not adversely affect the employee's ability to safely perform their job.

3.2 Alcohol

- A. Employees may not report for duty or remain on duty with an alcohol concentration of 0.02 or greater.
- B. Employees are prohibited from using alcohol in any form (including medications containing alcohol) while they are working for Mass in any capacity.
- C. No employee shall perform safety-sensitive functions within four hours after using alcohol. On-call employees who are not at work, but could be called to work are subject to this pre-duty alcohol prohibition. This means an employee who is on-call must decline a call to work if his or her acceptance would require the employee to perform safety-sensitive

functions within four hours of consuming alcohol. An employee who must turn down work due to a violation of the four-hour rule may be subject to discipline.

- D. Employees are prohibited from using alcohol for eight hours following an accident, or until the employee takes a post-accident alcohol test, whichever occurs first.

3.3 Drug and/or Alcohol Testing

- A. Employees may not refuse to submit to any drug and/or alcohol test required under this policy.
- B. Employees are prohibited from failing to stay in contact with Mass' DPA or its Medical Review Officer (MRO) while awaiting the results of a drug test.
- C. Employees are prohibited from performing or continuing to perform a safety-sensitive function if they have tested positive for controlled substances or alcohol.

3.4 Inspections

Employees may not refuse to submit to any inspection required under section 11.0 of this policy.

3.5 Related Activities

Employees are prohibited from engaging in the unlawful or unauthorized manufacture, distribution, dispensation, sale, purchase, solicitation, transfer, possession, use, or transport of controlled substances or alcohol while on Mass' paid time, on Mass' premises, in Mass' vehicles, or while engaged in Mass' activities. This prohibition does not include the prudent and authorized distribution, dispensation, sale, purchase, solicitation, transfer, possession, use, or transport of alcohol beverages in connection with Mass-sponsored functions or events.

3.6 Consumption of Food or Food-Related Products Containing Hemp

The consumption of food and food-products containing hemp or hemp oil may cause an employee to test positive. A test result that is positive as a result of an employee's consumption of food or food-related products containing hemp will be reported as a positive test.

3.7 Prohibition on Supervisor or Manager Permitting an Employee to Work

Any supervisor or manager who has actual knowledge that an employee has engaged or is engaging in conduct prohibited above shall not allow the employee to perform or continue to perform any safety-sensitive function.

3.8 Prohibition against Working While Using any Medication Which Affects Safety or Performance

Use of any medication (therapeutic drugs) while engaged in Company activities is prohibited to the extent such use may affect the employee's ability to perform his or her job duties safely.

An employee using any medication that contains alcohol or a controlled substance has an obligation to inquire of an LMP and determine whether the substance the employee is taking may affect the employee's ability to perform his or her job duties safely. Failure to make such an inquiry and get clearance from an LMP will subject the employee to discipline, up to and including termination.

If an employee discloses or it is discovered that the employee is using medication that contains alcohol or a controlled substance, the employee may be required to provide written verification from an LMP that the substance does not adversely affect the employee's ability to perform his or her job duties safely when taken as prescribed.

4.0 Required Tests and Past Test Results Information

4.1 Pre-Employment Drug Testing and Past Test Results Information

A. Pre-Employment Drug Testing

All prospective employees must take a pre-employment drug test. A negative test result is a condition of employment with Mass Excavation and a positive test result is grounds for denying employment. Non-drivers who have worked for Mass Excavation within the previous 30 days and have worked at least 32 hours during that period are not required to take a pre-employment test when they are re-hired.

Drivers may not be required to take a pre-hire test if they meet the requirements of FMCSA part 382.301. These requirements are (1) That the driver has participated in a controlled substances testing program that meets the FMCSA and DOT regulation requirements within the past 30 days and while participating in that program, either (i) was tested for controlled substances within the past six months or (ii) participated in the program's random controlled substances testing program for the previous 12 months. In addition Mass must be able to ensure that the driver has not violated the FMCSA's or DOT's drug and alcohol regulations within the previous six months.

Non-drivers transferring to driver positions must take a pre-employment DOT drug test.

B. Drivers' Past Test Results Information

In addition to a pre-employment DOT drug test, Mass will make inquiries to a driver's previous employers, as required by FMCSA, about any DOT drug tests the applicant was subject to in the previous two years. The information Mass request from previous employers is as follows:

- ◆ ***alcohol test results of 0.04 or greater;***
- ◆ ***verified positive drug tests;***
- ◆ ***refusals to be drug or alcohol tested;***
- ◆ ***other violations of DOT drug and alcohol testing regulations; and***
- ◆ ***if the driver violated a DOT drug and alcohol regulation, documentation of the driver's successful completion of DOT return-to-duty requirements, including follow-up tests.***

A driver's written authorization for Mass to obtain the information listed above is a condition of employment as a driver.

This information will be obtained and kept in a confidential manner. The DPA will keep written records regarding each previous employer contacted.

If Mass learns from a previous employer that the driver violated a DOT drug and alcohol regulation the driver either will be ineligible for employment, or if already employed, the driver's employment will be terminated, unless Mass receives evidence that the driver has successfully completed DOT's return-to-duty requirements.

4.2 Post-Accident Drug and Alcohol Testing

Employees whom Mass reasonably believes may have contributed to an accident in the workplace or during work time may be required to undergo drug and/or alcohol impairment testing. Such a test will be conducted as soon as practicable after the accident, but not later than 32 hours afterward for drugs and not later than 8 hours for alcohol. Mass will make reasonable attempts to obtain a sample from an employee after an accident, as defined below, but any injury should be treated first.

An accident may involve any of the following:

- ◆ Loss of human life,
- ◆ Issuance of a moving traffic citation under state or local law,
- ◆ Medical treatment other than first aid, as defined by OSHA, Part 1904, or
- ◆ Significant property damage.

A. Requirements for Post-Accident DOT Drug and Alcohol Testing of Drivers

A driver who is performing safety-sensitive functions as defined in 2.21 (a-f) involving a commercial motor vehicle is required to submit to a DOT post-accident drug and/or alcohol test under the following circumstances:

- ◆ A driver is involved in an accident which results in a human death.***
- ◆ A driver is involved in a non-fatal accident and is given a citation within eight hours for a moving traffic violation arising from the accident and the accident results in either: (i) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) one or more of the vehicles involved in the accident incurs disabling damage (as defined in section 2.11), requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle.***

DOT testing of drivers after an accident is strictly regulated. Because of this, the employee’s supervisor should immediately contact one of the following people for a final determination of the post-accident test to be administered, DOT or non-DOT.

	<u>Office Number</u>	<u>Cell Phone</u>
Jacque Cato	562-2336	632-7847
Kirk Waggoner	562-2336	952-3816
Sheila Hill	562-2336	

B. Process of Post-Accident Testing

1. In the event of an accident, an employee must notify his or her supervisor and/or the DPA as soon as reasonably possible to obtain information on how to proceed with the required drug and alcohol testing. Employees are obligated to follow the DPA’s instructions regarding post-accident testing.

- 2. For drivers, if a DOT alcohol test is required but is not performed within 2 hours of the accident the DPA will make a written record of why the test wasn't given promptly. If an alcohol test is not performed within 8 hours of the accident the DPA will stop attempts to administer the alcohol test and record the reasons for this failure. For drivers, if a post-accident DOT drug test is not given within 32 hours of the accident the DPA will stop attempts to administer the test and make a written record of the reasons for this failure.**
3. Employees may not consume alcohol for 8 hours following the accident or before the post-accident alcohol test is given, whichever occurs first.
4. Employees who must have a post-accident test must remain readily available for such testing; otherwise they will be considered to have refused testing. This "readily available" requirement does not mean the delay of necessary medical attention for injured people, or prohibit an employee from leaving the scene of the accident for the period necessary to get assistance in responding to the accident or to receive necessary emergency medical care.
5. Employees will not be suspended from their safety sensitive duties pending the results of a post-accident drug and alcohol test unless the provisions of reasonable suspicion, as defined in section 4.3, apply.
6. Mass reserves the right to evaluate the conduct of the employee which may have caused or contributed to the accident to determine if this conduct warrants discipline. Discipline, up to and including termination of employment may result from conduct that is determined to be careless or negligent.

4.3 Random Drug and Alcohol Testing

All employees shall be subject to drug and alcohol testing on an unannounced and random basis.

Mass will maintain two separate random pools, one for drivers and one for non-drivers. When selected for random drug and alcohol testing, drivers will receive DOT tests and non-drivers will receive non-DOT tests.

The following describes the process of random testing for all employees:

- A. Mass will attempt to conduct random drug and alcohol tests equal to 50 percent of the average number of employees in each random pool each year. This rate may be increased or decreased by management policy from time to time without notice to employees. ***The driver rate may be increased or decreased to comply with FMCSA drug and alcohol regulations without notice to drivers.***
- B. Employees will be selected for random testing using a random number generator that is matched with the last four digits of the employee's Social Security number, or other comparable identification number. This system ensures each employee has an equal chance of being selected each time selections are made.
- C. All random tests will be unannounced and the dates for administering random tests will be spread reasonably throughout the calendar year. The dates of random testing, locations and names of those to be tested will be kept in the strictest confidence by the DPA.
- D. Employees will remain in the random selection pool at all times, regardless of whether or not they have previously been selected for testing.
- E. Each employee who is notified of their selection must proceed immediately to the testing site. Failure to appear for random drug and/or alcohol testing within a reasonable period of time after being directed to do so will be considered a refusal to test.

4.4 Reasonable Suspicion Drug and Alcohol Testing

An employee must take a reasonable suspicion drug and/or alcohol test whenever a supervisor has reasonable suspicion that the employee has violated any of the drug or alcohol prohibitions listed in this policy.

Reasonable suspicion testing of drivers is strictly regulated by the DOT. A DOT test may only be conducted when a driver is performing safety-sensitive functions as defined in 2.21 (a-f) involving a commercial motor vehicle. A supervisor should call the DPA to determine if a DOT or non-DOT test is applicable in a specific situation.

- A. Reasonable suspicion determinations will be based on specific, contemporaneous, articulable observations concerning the employee. For example the following, either alone or in combination, may constitute reasonable suspicion:
- ◆ Slurred speech
 - ◆ Irregular or unusual speech patterns
 - ◆ Red or watery eyes
 - ◆ Impaired judgment
 - ◆ Alcohol odor on breath
 - ◆ Uncoordinated walking or movement
 - ◆ Unusual or irregular behavior, e.g. inattentiveness, listlessness, hyperactivity, hostility, or aggressiveness
 - ◆ Possession of drugs or alcohol
 - ◆ Observation of drug or alcohol use prior to reporting to work or during working hours

Additionally, the observations may include indications of the chronic and withdrawal effects of controlled substances.

- B. Reasonable suspicion determinations will be made by supervisors who have had FMCSA required training on alcohol misuse and drug use.
- C. Supervisors who make reasonable suspicion determinations will document the observations leading to a reasonable suspicion determination.
- D. An employee who is directed to take a reasonable suspicion drug and/or alcohol test must take the test as directed. Mass shall ensure safe transport for the employee to and from the collection site.
- E. For drivers requiring a DOT reasonable suspicion alcohol test, if the alcohol test is not administered within 2 hours, the DPA shall document the reasons for this failure. If the alcohol test is not given within 8 hours, the DPA shall document the reasons for this failure and cease attempts to administer the test and the provisions of paragraph F below shall apply.***
- F. In the event an alcohol test has not been conducted as required by FMCSA or this policy, but Mass has reason to believe an employee is under the influence of or impaired by alcohol, the employee is prohibited from performing safety-sensitive duties until an alcohol test can be administered and the result is below 0.02, or 24 hours have elapsed since the reasonable suspicion determination, whichever occurs first.

- G. An employee who is required to submit to a reasonable suspicion drug and/or alcohol test will be suspended after the completion of the tests, pending the verified result of the test. If that result is negative, the employee will receive compensation for all time lost from work that is directly attributable to the request to take the tests.
- H. Mass reserves the right to evaluate the conduct of the employee that warranted the reasonable suspicion drug or alcohol tests to determine if the conduct in and of itself should warrant discipline.

4.5 Requirements for Return-to-Duty after Violating this Policy

- A. Employees who have engaged in conduct prohibited in section 3.0 may not perform safety-sensitive duties until they have fulfilled the following requirements for returning to duty:
 - 1. Initial evaluation by a Substance Abuse Professional (SAP) to determine the level of assistance needed to address the employee’s drug and/or alcohol problems;
 - 2. Initiation of the education and/or treatment plan prescribed by the SAP; and, **for drivers,**
 - 3. ***Follow-up evaluation by the SAP to determine whether the driver has successfully complied with the prescribed education and/or treatment plan.***

The cost of any counseling, treatment, education, or rehabilitation is the responsibility of the employee.

- B. Employees who have fulfilled the above requirements for return-to-duty must also submit to a return-to-duty drug and/or alcohol test and have negative results on the test before returning to work.

Under certain rare circumstances, non-drivers may return to work pending negative results on a return-to-duty drug test. For this to occur, the SAP must recommend, in writing, the non-driver’s return to work and specify which job duties they may perform during this waiting period.

- C. Employees who engage in conduct prohibited by this policy will not be permitted to return to duty until they execute the “Agreement for Evaluation and Conditions for Continued Employment,” agreeing to comply with its terms and conditions, which include a follow-up evaluation, submitting to any follow-up tests as directed by the SAP and receiving negative test results.

4.6 Follow-up Drug and/or Alcohol Testing

A. Employees who are returning to working after fulfilling the return-to-duty requirements listed in section 4.5 must take unannounced follow-up drug and/or alcohol tests after returning to duty, as directed by the SAP's follow up evaluation report.

B. A minimum of six follow-up drug and/or alcohol tests must be conducted during the first twelve months following the driver's return to duty. Testing may continue for up to 60 months.

5.0 Self-Identification of a Substance Abuse Problem

Employees who voluntarily self-identify that they have a drug or alcohol problem, and request assistance for such a problem will be referred to a SAP for evaluation. The cost of the counseling, treatment, or rehabilitation is the employee's responsibility.

This request must be made before the employee is directed or otherwise required to submit to a drug or alcohol test required by this policy. Under these circumstances Mass will take no adverse action against the employee.

The return-to-duty process for an employee who self identifies is the same as that outlined in section 4.5.

6.0 Drug and Alcohol Testing Procedures

Non-driver employees and prospective employees will be given an onsite screening cheek swab saliva test. If the saliva screening test comes up positive, the employee or prospective employee has the option of going to the nearest certified urine collection facility for confirmation of the saliva testing results or accept the results as positive. A confirmation test by a 3rd party would be conducted without prejudice from the onsite positive saliva test. As required by FMCSA's rules, Mass' drug and alcohol testing procedures comply with 49 CFR Part 40, as amended.

These procedures ensure the integrity, confidentiality, and reliability of the testing processes. They also safeguard the validity of the test results and ensure that the results are attributed to the right employee. Further, these procedures minimize the impact upon the privacy and dignity of persons undergoing such tests to every extent feasible.

All saliva screening testing will be performed by a trained Mass Excavation employee, usually a Supervisor or Human Resources personnel.

Mass has contracted with Beacon Occupational Health and Safety, Inc. to provide testing facilities and personnel. Testing for employees in Anchorage will be done at the Beacon Occupational Health and Safety, Inc., located on the corner of 36th and C Street. For employees working outside of Anchorage, testing will be done at designated Beacon Occupational Health and Safety, Inc. collection sites.

6.1 Drug Testing Procedures

A. Drugs Being Tested for

The drugs specifically being tested for are:

- ◆ Marijuana (THC);
- ◆ Amphetamines (AMP);
- ◆ Phencyclidine (PCP);
- ◆ Cocaine (COC);
- ◆ Opiates (OPI);
- ◆ Methamphetamine (MET);
- ◆ And their metabolites.
- ◆ Or any other illegal substance as needed

B. Custody and Control Form and Laboratory

When drug tests are conducted and analyzed, the Federal Drug Testing Custody and Control Form (“CCF”) is used. This form will verify the identity of each specimen and test result. All drug tests conducted pursuant to this policy shall be performed by laboratories which are certified by the Department of Health and Human Services (“DHHS”).

C. Drug Testing Process

1. The first test performed is called the screening test. Screening test will either be a saliva test or a urine test depending if the employee or prospective employee is a driver or non-driver. This test eliminates all negative urine specimens from further analysis.
2. The second test is a confirmation drug test that identifies and quantifies the presence of a specific drug or drug metabolite. The confirmation test uses a gas chromatography and mass spectrometry (GC/MS).

3. All confirmed positive tests will be sent to the MRO to determine if there is a legitimate medical explanation for the confirmed positive, adulterated, substituted, or invalid test result. This review may include a medical interview, review of the applicant's or employee's medical history, or review of any other relevant biomedical factors and all medical records made available by the tested individuals. The MRO's review will give the individual who tested positive a chance to discuss with the MRO any legitimate explanation for the positive test result.
4. The last stage in the testing process is for the MRO to release the results of the test. A test result the MRO releases is called a verified test. If, after talking to the employee, the MRO determines there is a legitimate explanation for the confirmed positive test result, the MRO will report the verified test result as negative. If the MRO determines there is no legitimate explanation for the confirmed positive test, the MRO will verify the result as positive.

D. Verified Result Release without Talking to the Employee

The MRO may release a verified positive test in the following circumstances:

- ◆ If the employee expressly declines the opportunity to discuss the test with the MRO.
- ◆ If more than 72 hours has passed since the DPA instructed the employee to contact the MRO.
- ◆ If neither the DPA nor the MRO have been able to contact the employee within ten days of the date the MRO received the confirmed test result on the laboratory.

If a serious injury, illness, or other unavoidable circumstance has prevented the employee from being contacted by the MRO or the DPA, the MRO may reopen the verification process. (Refer to section 3.3 (B) regarding the employee's responsibility to stay in contact with the DPA and MRO).

E. Right to have Split Specimen Analyzed

All employees and prospective employees have the right to request, within 72 hours of being notified by the MRO of a verified positive test result, that the split specimen be analyzed in a different DHHS certified laboratory, selected by the employee, for the presence of the drug(s) for which a positive result was obtained or for reconfirmation of an adulterated, substituted, or invalid test result.

1. If the split specimen reconfirms the presence of the drug(s) or drug metabolite(s) or the adulteration, substitution or invalid finding, the MRO will notify the DPA and the tested individual of the test results.
2. If the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the DPA and the tested individual. When this occurs, another specimen must be collected immediately under direct observation.
3. If the split specimen fails to reconfirm the presence of the drug(s) found in the primary specimen or the adulteration, substitution or invalid finding, the MRO shall cancel the test and report the cancellation and the reasons for it to the DPA and the tested individual. ***If the tested individual is a driver, the cancellation will also be reported to the DOT's Office of Drug and Alcohol Program Compliance.***

F. Inability to Provide an Adequate Amount of Urine Specimen

Employees and prospective employees must provide at least 45 milliliters of urine for a drug test. If the tested individual is unable to provide that amount of urine, then the tested individual will be instructed to drink up to 40 oz of fluids and after a period of time, again attempt to provide a complete specimen.

If an applicant refuses to provide a new urine specimen, this will constitute a refusal to submit to a test and the applicant will be ineligible for employment with Mass.

If an employee refuses to provide a new urine specimen, this will constitute a refusal to submit to testing and the employee's employment will be terminated.

If an employee has not provided a sufficient specimen within 3 hours after the first unsuccessful attempt, Mass will direct the employee to get a medical evaluation from a LMP selected by Mass. If the LMP determines that there is no legitimate medical explanation for the employee's failure to provide an adequate amount of urine, this will constitute a refusal to submit to a test and the employee's employment will be terminated.

G. Altered or Substituted Urine Specimen

Procedures for collecting urine specimens allow individual privacy unless there is a reason to believe that a particular individual has altered or attempted to alter or substitute the specimen. In such cases, a specimen may be obtained under the direct observation of a same gender collection site person in accordance with the procedures outline in 49 CFR Part 40.

6.2. Alcohol Testing Procedures

A. How Tests will be performed

Alcohol screening tests will be performed by a screening test technician (STT) using a non-evidential screening device, or by a breath alcohol technician (BAT) using an evidential breath testing device (EBT).

Mass Excavation has a quality assurance plan for each non-evidential alcohol screening device and EBT it uses. In addition, Mass ensures that the STTs are proficient in the operation of non-evidential screening devices and that the BATs are proficient in the operation of EBTs. Further, the alcohol screening tests that are used are non-evidential alcohol screening devices that are on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) for non-evidential screening devices and EBTs which are on NHTSA's CPL for evidential breath measurement devices.

B. Testing Process

1. The first test is the screening test. The screening test eliminates negative samples from further testing. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed using an EBT.
2. The confirmation test will be conducted within 30 minutes from the end of the screening test. The confirmation test result is the final result upon which any discipline or other action taken under this policy shall be based.

C. Inability to provide adequate amount of sample for alcohol testing

1. If an employee fails to provide or claims that they are unable to provide a sufficient amount of breath sample to permit a valid breath test because of a medical condition, Mass will require the driver to be evaluated by a LMP selected by the Company. If the LMP determines that the employee's alleged medical condition is not likely to have precluded the driver from providing an adequate amount of breath sample, this will constitute a refusal to test and the employee's employment will be terminated.

2. If the employee is unable to provide sufficient saliva to complete a test on a saliva screening device, the STT shall conduct a new test, using a new device. If the employee refuses to complete the new test, this will constitute a refusal to submit to a test and the employee's employment will be terminated. If the new test is completed, but there is an insufficient amount of saliva to activate the device, the employee shall immediately take an alcohol test using an EBT. If the employee refuses to submit to the test using an EBT, the employee's employment will be terminated.

7.0 Consequences for Policy Violations

The consequences discussed below apply to all employees and prospective employees who are found to have violated this policy. FMCSA requires that all drivers and prospective drivers who violate this policy be advised of available resources for evaluation and treatment of drug and alcohol abuse. This information will be distributed by the DPA and is also available for non-drivers upon request.

7.1 Automatic Removal from Safety-Sensitive Functions

Employees who violate this policy will be immediately removed from their safety sensitive functions. It is Mass' policy that all job functions are considered to be safety sensitive.

If their employment is not terminated, employees will not be able to return to their safety sensitive functions until they have met the requirements for return-to-duty outlined in 4.5.

7.2 Refusal to Submit

Any employee who refuses to submit to a required drug and alcohol test may be terminated. Any prospective employee who refuses to submit to a pre-hire test will be ineligible for employment with Mass. The following conduct will be considered a refusal to submit:

- ◆ Failure to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so by Mass
- ◆ Failure to remain at the testing site until the testing process is complete
- ◆ Failure to provide a urine specimen for any drug test required by this policy
- ◆ Failure to permit the observation or monitoring of the provision of a specimen, when required to do so by DOT agency regulations or Mass policy

- ◆ Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- ◆ Failure to take a second test the employer or collector has directed the employee to take
- ◆ Failure to undergo a medical examination or evaluation, when directed to do so by the MRO as part of the verification process, or when directed by Mass
- ◆ Failure to cooperate with any part of the testing process
- ◆ Having a verified adulterated or substituted test result as reported by the MRO

7.3 Positive Test Results

A. Applicants

Non-driver applicants who receive a verified positive drug test result will be ineligible for employment with Mass for 30 days. After the 30 day waiting period has passed, non-driver applicants may take another pre-employment test and, if they receive negative results, become eligible for employment with Mass.

Driver applicants who have a verified positive pre-employment test will not become eligible for employment with Mass until they have successfully complied with the return-to-duty requirements listed in section 4.5.

B. Employees

1. Temporary Suspension Pending Results of Reasonable Suspicion Drug and Alcohol Tests

Any employee who is required to take a reasonable suspicion drug or alcohol test pursuant to this policy will be temporarily suspended, pending the results of the test. If the verified test results or split specimen test results are negative, the employee will receive back pay for the period of suspension.

2. Verified Positive Drug Test or Alcohol Test Results of .04 or Greater

Any employee who receives a verified positive drug test or an alcohol test result of 0.04 or greater for the first time may be suspended without pay and may be subject to further discipline, up to and including termination.

An employee's employment may be terminated if he/she: (i) refuses or fails to be evaluated by a SAP, (ii) fails to fully cooperate and complete the recommended counseling, treatment or rehabilitation program, (iii) violates the drug/alcohol prohibitions of this policy during the one-year period after return to duty, or (iv) does not abide by the conditions of the "Agreement for Evaluation and Conditions for Continued Employment."

If an employee submits a written request within six months after the date of the test, Mass will provide written test results to the employee within five working days after receiving the request.

3. Positive Alcohol Test Results of .02 or Greater but Less than .04

An employee who receives a confirmed alcohol test result of 0.02 or greater, but less than 0.04, for the first time, may be suspended without pay for 24 hours. The employment of an employee who receives a confirmed positive alcohol test result of 0.02 or greater for a second time may be terminated.

4. Fitness-for-Duty Evaluation in the Event of Employee's Legal and Authorized Use of a Controlled Substance

Whenever an employee submits to a reasonable suspicion test and receives a positive result for the legal and authorized use of a controlled substance, the employee may be required to submit to a fitness-for-duty evaluation, which may include a review of the employee's medical records and a medical examination. Under such circumstances, employees may be required to provide Mass with the necessary authorization to obtain the employee's medical records and agreement to submit to the medical examination. The purpose of the evaluation is to determine whether the employee can satisfactorily perform his/her essential job functions or poses a direct threat to the health or safety of the employee or others. Depending on the results of the evaluation, Mass will consider whether the safety or health risk can be eliminated or substantially reduced by a reasonable accommodation, if applicable.

7.4 Other Policy Violations

Employees who commit policy violations other than those addressed in Sections 7.2 and 7.3 above will be subject to discipline, up to and including immediate termination of employment. Applicants who violate this policy will be ineligible for employment with Mass. Time periods of ineligibility will be the same as those discussed in section 7.3 (A).

7.5 Potential Forfeiture of Workers' Compensation and/or Unemployment Compensation Benefits

An employee's violation of this policy constitutes gross and willful misconduct. In addition to the discipline and other consequences imposed by FMCSA and Mass under this policy, such misconduct may also result in the denial of unemployment compensation under the applicable state law. In addition, employees who are injured as a result of a violation of FMCSA's regulations and/or Mass' safety rules (including but not limited to the conduct prohibited under this policy) may also forfeit workers' compensation benefits under the applicable state law.

8.0 Notification of Test Results

Applicants will be notified of the results of a pre-employment drug test if they request their results within 60 days of being notified that they are ineligible for hire with Mass.

Employees will be advised of drug test results that are verified positive, adulterated, or substituted, and the drug or drug(s) for which a positive result was verified. Employees will be notified of their alcohol test results immediately after the administration of the screening test and, if necessary, the confirmation test.

If an employee submits a written request within 10 working days after the employee is notified of a positive test result, Mass will provide an opportunity, within 72 hours after receiving such request or before taking adverse employment action, for the employee to explain the positive test result in a confidential setting.

9.0 Testing Expenses and Compensation for Test

Mass Excavation will pay for drug and alcohol tests and related expenses as follows:

A. Required Tests

Mass will pay for all drug and alcohol tests required to be taken by employees or applicants under this policy, including confirmation tests.

B. Tests Taken upon Employee's and/or Prospective Employee's Request

Except where prohibited by state or local law, any test taken at an employee's or prospective employee's request, including split specimen tests, will be at the employee's expense, unless the result of the test is negative.

C. Payment for Time Spent Testing

All time spent by employees providing a urine, saliva, or breath specimen required under this policy, including travel time to and from the collection site, will be considered as on-duty time. The employee will receive his or her regular compensation, including overtime if applicable, for such time. Mass Excavation shall also reimburse current employees at the mileage rate allowed by the IRS for miles driven to an off-site testing location from his or her normal work site.

Exception: Prospective employees that are newly hired and receive a confirmed positive result for a pre-employment screening will not be paid for on-duty time or reimbursed for mileage.

10.0 Recordkeeping, Access to Records and Confidentiality of Test Results

10.1 Maintenance of Records

Mass will maintain records for drivers of its alcohol misuse and drug use prevention programs as required by FMCSA's regulations. Mass will also maintain records for non-drivers as required by this policy and state and local law. These records will be maintained in a secure location with controlled access and will not be released to any person except as required by law or expressly authorized by the employee.

10.2 Confidentiality of Results

The laboratory may disclose drug test results only to the MRO. The MRO, STT and BAT may disclose test results only to the individual tested, designated Mass representatives, a treatment program, or a court of law or administrative tribunal to the extent required by law. The DPA may disclose test results to the Controller, any Owner of Mass, or as required by law. Beyond that, an employee's test results shall not be released to any person without the individual's written consent.

11.0 Inspections

11.1 Inspections of Company Property

Mass may conduct unannounced random inspections for drugs and alcohol on Mass facilities and property such as, but not limited to, Mass vehicles, desks, file cabinets, Mass-issued employee lockers in which Mass retains a copy of the key or the combination, etc. Employees are expected to cooperate in the conduct of such inspections. Inspections of Mass facilities and property may be conducted at any time and need not be based on reasonable suspicion.

11.2 Inspections of Employee Property

Inspections of employees and their personal property such as, but not limited to, vehicles, clothing, packages, purses, brief cases, lunch boxes, or other containers brought on to Mass premises may be conducted when there is reasonable suspicion to believe that the employee may have or has violated the drug or alcohol prohibitions contained in this policy.

12.0 Compliance with Policy as a Condition of Employment

All applicants and employees are advised that full compliance with this policy shall be a condition of employment and continued employment. Refer to section 7.0 for the consequences of policy violations.

13.0 Employee Assistance Program (EAP)

13.1 Scope of Program

The EAP will provide education and training on drug and alcohol use to all employees as follows:

- ◆ Informational material distributed to employees as well as displayed on bulletin boards, employee break rooms, locker rooms, etc;
- ◆ A community service hot line telephone number for employee assistance displayed on bulletin boards and distributed to employees; and
- ◆ Distribution of Mass’ policy regarding the use of prohibited drugs and alcohol to all new employees. The policy shall be displayed in prominent places throughout Mass’ jobsites (i.e. employee bulletin board and break areas).

For further information or to arrange an appointment, call (907)562-2336 and ask to speak to the Drug Program Administrator, Jacque Cato.

13.2 Supervisor Training

Supervisory personnel will receive training regarding the drug and alcohol policy. The training shall include at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on drug use that meets FMCSA’s regulations for supervisor training. This training shall be for all supervisors who may determine whether an employee will be drug and alcohol tested for reasonable suspicion.

14.0 Drug and Alcohol Policy Limitations

The provisions in this policy reflect decisions made by management and are not required to be approved by employees. It is impossible to anticipate every circumstance or question about policy and include them all in this drug and alcohol policy. Also, as time goes by, the need for revisions will arise and Mass reserves the right to revise, supplement, or rescind any portion of this policy at its discretion at any time, with or without notice.

This revised policy replaces all prior Mass' drug and alcohol policies. To avoid confusion, please discard superseded copies.