

# ASH GROVE CEMENT COMPANY



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November 23, 2005

U.S. Department of Labor  
Mine Safety and Health Administration  
Office of Standards, Regulations and Variances  
1100 Wilson Blvd., Room 2350  
Arlington, VA 22209-3939

Regulation Identifier Number 1219-AB41

**RE: Proposed Rulemaking; Use of or Impairment from Alcohol and Other  
Drugs on Mine Property (RIN Number 1219-AB41)**

Dear Sir/Madam:

Ash Grove Cement Company appreciates the opportunity to comment on the proposed rulemaking referenced above. In general, it is Ash Grove Cement's position that a rulemaking is unnecessary. This is an area in which responsible companies can and should voluntarily implement substance abuse policies that include pre-employment drug screening as well as random, for cause, and post-accident testing. Ash Grove Cement Company believes that companies need to have the flexibility to deal with substance abuse issues in a manner that best protects both the employee and the company. In some cases, such actions may include termination of employment or other disciplinary steps.

We have also taken the time to respond to each of your questions and to provide, where available, the additional information that you requested. Those responses are found below.

Sincerely,

Steve Minshall, CIH, CSP  
Corporate Health and Safety Manager

Cc: FLS

## **A. Nature, Extent, and Impact of the Problem**

A1. What specific substances are most prevalent and pose the greatest threats to mine safety and health? Please include comments on "controlled substances," illegal or illicit drugs, alcohol, inhalants, prescription and over-the-counter drugs, and any other substances you believe may create safety hazards when used or misused by miners.

Answer: We cannot say with certainty which substances are the most prevalent, but the ones that have shown up in the few positive tests we've had include: alcohol; marijuana; cocaine; and amphetamines.

A2. Based on your experience and knowledge of the industry, how widespread is the use or misuse of alcohol or other drugs in the mining workplace?

Answer: The actual use or misuse of drugs or alcohol while on mine property seems to be practically non-existent. However, employees may come to work impaired from the use or misuse of alcohol or drugs; of these two, alcohol seems to be the more common culprit since it is more socially acceptable. Employees don't tend to openly talk about illicit use of drugs and so it is harder to gauge how widespread it actually is or isn't in the industry.

A3. How severe a risk does the use or misuse of alcohol and other drugs pose to miners' safety?

Answer: The outcomes from the use or misuse of drugs or alcohol can obviously be severe in the mining industry. A drug or alcohol impaired person could easily seriously injure him or her self, as well as others, while operating heavy mobile equipment, machinery or while doing routine tasks in a complex environment. It hardly seems that this question needs to be asked, as the answer is self-evident.

A4. What accidents or injuries at your mine in the last five years have involved alcohol or other drugs?

Answer: In 2000, one plant had an incident (type of incident not specified) that was drug related. Another plant had three equipment damage incidents (without injuries but post-accident drug testing was required) over the last five years and the involved employees tested positive for drugs; note that these incidents occurred before the plant implemented a random drug testing program. A third plant terminated an employee who tested positive for marijuana after he ran a haul truck into a customer truck; this incident occurred before the plant implemented a random drug testing program. Seven other plants reported not having any drug or alcohol related incidents (injuries or equipment damage) in the last five years.

## **B. Prohibited Substances and Impaired Miners**

B1. Should we revise this existing metal and non-metal standard and establish a standard for coal mines? If so, how?

Answer: The word “narcotic” in the existing metal / non-metal standard (56/57.20001) should be changed to a more inclusive and descriptive term. The terms used in the question below are more inclusive (i.e. controlled substances, alcohol, misuse of prescription and over-the-counter drugs, and inhalants). We stop short of recommending that the language of the standard be amended to include a requirement that MSHA must be involved in the investigation of any event that possibly or positively involves the use of any of the listed substances. We believe that the company or mine operator is capable of properly handling such situations and should be allowed to voluntarily handle such situations in a responsible manner.

We have no stake in coal mining operations but see no reason why the standard for coal should be any different than the standard for metal/nonmetal.

B2. What substances should be prohibited? Please include comments on controlled substances, alcohol, misuse of prescription and over the counter drugs, and inhalants.

Answer: We see no problem in being more specific in the list of controlled substances, such as something to the effect, “controlled substances including but not limited to opiates (narcotic drugs); opium derivatives (narcotic drugs); hallucinogenic substances; depressants, and; stimulants.”

It also may be helpful to be more specific regarding alcohol and say something to the effect that a person is considered to be under the influence of alcohol if his or her blood alcohol level exceeds the legal limit specified by the state in which he or she is employed.

There are instances where a person may be using a prescription or over-the-counter drug (such as an antihistamine or cold treatment that may cause drowsiness) and its use may affect the ability to safely operate machinery or equipment. However, the term “misuse” may have different interpretations. For example, someone may take a prescription or over-the-counter drug in the proper dose but not follow the label caution to not drive or operate machinery. In another instance, someone may take more than the prescribed dose and that may be done either to enhance the reduction of symptoms or possibly for an illicit purpose such as getting high. In yet another case, a person may have taken an over-the-counter (or even prescribed medication) the night before work and could still have some lingering effects the next morning but the person may still choose (or need) to go on to work in anticipation of the effects wearing off.

The point of this is that a regulation that addresses this particular concern (misuse of prescription or over-the-counter drugs) is less straightforward than the use of illicit drugs or alcohol. We are uncertain of the legal basis for a regulation covering this area.

The misuse of inhalants is another serious issue. However, we are again uncertain of the legal basis for a regulation in this area.

B3. How should impairment be determined, and who should make the determination?

Answer: The answer for determining impairment from illicit drugs and alcohol is more straightforward than it is for prescription/over-the-counter drugs and inhalants. Protocols already exist for determining if there is illicit drug use and states have established the blood-alcohol limit that determines impairment; we recommend that companies follow these already established criteria for illicit drugs and alcohol.

Again, it is less clear-cut how to determine impairment due to the misuse of prescription and over-the-counter drugs as well as inhalants. The initial determinant in these cases is likely to be the employer noticing a behavior indicative of being under the influence of some substance.

We believe it is the responsibility of the employer to make these determinations, using qualified medical testing facilities that include the use of a Medical Review Officer (MRO) and adherence to a strict confidentiality policy.

B4. What actions should operators be required to take once an impaired miner is identified (e.g., remove from site, send home for the day, refer to the Employee Assistance Program or elsewhere for assessment, send for drug test, terminate, fine, or other actions)?

We believe that the employer has the voluntary responsibility to remove the impaired person from the work environment and to conduct follow-up testing to determine what substance(s) caused the impairment. Depending on the company's voluntary program and the circumstances, the impaired employee might be sent for counseling and rehabilitation, given unpaid time off, or he or she might be terminated.

B5. What policy or procedures do you have regarding employees who are using legally and properly prescribed drugs that may cause impairment?

Answer: The following statement is from our company drug and alcohol policy: "For purposes of this policy, the term "drugs" includes the controlled substances listed below, synthetic drugs, and prescription drugs, excepting only prescription drugs approved by and used in accordance with the directions of the employee's attending physician. Any employee using a prescription drug should consult with his/her physician regarding the effects of the medication in relation to the performance of the employee's job responsibilities, and provide the Company with a written statement from his/her physician advising the Company of any adverse effects on his/her ability to perform his/her duties."

## **C. Training**

C1. Should our regulations address training in the prevention of alcohol and other drug misuse? If so, how?

Answer: No, we believe that companies should be accountable for establishing and implementing their own workplace impairment policies.

C2. Who should receive this training (e.g., supervisors, managers, foremen, miners, miners' representatives?)

Answer: Again, we believe that companies should establish their own training guidelines. However, this should include various levels training and education to all workers, hourly and salaried.

C3. What topics should be included?

Answer: We believe that the voluntary training that employers provide could include: coming to grips with the presence of drugs/alcohol in the workplace; dangers of alcohol/drug use in the workplace; obligations and responsibilities of supervisors and managers; recognizing the signs of impairment and drug/alcohol use (behavioral, performance, physical, and paraphernalia indicators); procedures for reasonable suspicion testing; procedures for random and “for cause” testing, etc.

C4. What training do you provide to address alcohol and other drug misuse?

Answer: Our present training efforts have focused on communicating the company’s policy on random and for-cause drug and alcohol testing; supervisory staff receive periodic refresher training on this subject. Some plant locations have taken advantage of training provided by the specimen collection company (e.g. LabOne) in how to recognize symptoms of drug or alcohol use.

## **D. Inquiries Following Accidents**

D1. Should we revise 30 CFR 50.11 to address alcohol and other drug use inquiries by mine operators during accident investigations? Section 50.11 provides as follows:

Answer: Ash Grove believes that MSHA should not become involved in alcohol and other drug use inquiries. This should be the responsibility of the employer and it is imperative that strict confidentiality be maintained throughout the process.

D2. What type of alcohol and other drug use inquiries should be made after accidents (e.g., questioning, drug testing)?

Answer: On a voluntary basis, we suggest drug / alcohol testing post injury where a doctor, clinic or hospital visit is needed, or following equipment damage of a certain dollar amount (such as \$500 or more), or for cause. We do not advocate this as a regulatory requirement.

D3. What degree of accident or injury should trigger an inquiry (all, fatal, lost-time, others)?

Answer: Conduct alcohol/drug testing following an accident where medical treatment is required or if there is equipment damage above some threshold amount, or for cause (behaviors indicate the need for testing).

D4. How should the information collected in the inquiry be used, and by whom?

Answer: We believe that this type of information should be collected by the employer (such as through the human resources department) and used as appropriate to either enroll the employee in a counseling/rehabilitation program or to terminate employment. Again, we believe companies should voluntarily collect and use this information and that the information must be kept strictly confidential.

D5. What actions should be required if it is determined that the use of alcohol or other drugs was a contributing factor or cause of the accident?

Answer: Some state workers compensation regulations establish guidelines to follow when alcohol/drugs may be a contributing factor to any accident or injury. We believe that those guidelines, where they exist, should be used to help guide employers. We further believe that, on a voluntary basis, companies should have policies in place that direct the response to drug or alcohol-related incidents. Again, those voluntary policies may include professional drug/alcohol counseling and/or termination of the offending employee's employment.

## **E. Drug-Free Workplace Programs**

E1. Do you have a drug-free workplace program at your mine, or have you instituted any of the above mentioned components, even if not referred to as a drug-free workplace? Please provide a copy of your program policy and procedures. Is this program part of a broader program?

Answer: Yes, a sample copy of our alcohol and drug testing policy is included at the end of these responses.

E2. If you have a drug-free workplace policy or program:

E2-a. What prompted you to initiate your program?

Answer: Our company believes that employees should report for work unimpaired from the effects of alcohol/drug use. We are concerned about the detrimental effects on the safety of our employees and the lost resources that can occur from use or misuse of drugs or alcohol.

Please take note that our company had to first negotiate with the respective collective bargaining units representing our employee before implementing the drug-free workplace policy.

E2-b. What components does your program have?

Answer: Our program has three components: (1) for cause testing; (2) post accident testing (where either injury or property damage occurs); (3) random drug testing (generally test 40-50% of the workforce annually). Rehabilitation is provided for employees that either acknowledge (voluntarily) that a problem exists or for those identified during the random testing process. Employees involved in workplace accidents where it is determined that alcohol/drugs may have been a contributing factor are subject to immediate termination.

E2-c. Which of your program's components do you feel are most critical and/or effective, and why?

Answer: We believe that random testing and voluntary acknowledgement are the two most critical components. The random testing component lets all employees know that they are subject to a drug test and that discourages illicit drug or alcohol use. The opportunity for voluntary acknowledgment allows individuals the opportunity to seek proper medical intervention to address the problem; in effect, it means they may be able to keep their jobs if they act to correct their problem before it is discovered via an injury or other event.

E2-d. Have you been able to document any improvement as a result of your program?

Answer: We have not seen a significant positive change in our safety statistics since the implementation of the drug / alcohol testing program in 1999 (implementation concluded in 2005). However, that may say that drug or alcohol abuse were never major contributors to incidents within the culture of our company. Having the testing program is nevertheless seen as an effective deterrent for those who might consider illicit drug or alcohol use.

E2-e. Please provide any data that demonstrate the extent of the problem at your mine and the effectiveness of your program in improving safety at your mine.

Answer: Since 1999, through the random testing program (500 tests), one plant found six individuals who were positive for either marijuana or cocaine; however, none of them were involved in an incident. At another plant that has conducted 200 random tests since 2002, two persons have been found positive for alcohol; again, these people were not involved in an incident. A third plant found one employee positive for marijuana and amphetamines; this test was done for reasonable cause and not because of an incident. A fourth plant found one person positive for marijuana after doing a reasonable cause test (no incident involved); since this plant implemented random testing in early 2005 (about 32 tests), no positives have been found. Six other plants have not found any positives since they implemented random testing between 2004 and 2005.

We do not have any data that indicate changes in safety performance can be directly attributed to the random drug testing program. To re-emphasize, though, we still believe in the “correctness” of doing these tests.

E2-f. What issues/problems have you encountered in implementing your program and how have you resolved them?

Answer: We did not experience any significant problems (some employees did grumble about their right to privacy but those comments had no effect on the company’s decision to proceed). However, we did have to negotiate the program with our unionized employees, thus the reason for not implementing the program at all sites at the same time.

E2-g. What actions are taken for miners who violate the terms of the policy?

Answer: Our responses vary from rehabilitation and re-entry into the workforce (with specific re-testing requirements) to immediate termination.

E3. If you previously had a drug-free workplace program, what did it include? Why was it discontinued?

Answer: We have not had a previous program, just the current one and it is working fine.

E4. If you conduct supervisory training on drug issues, how are supervisors taught to recognize and handle employees who may have alcohol and/or other drug problems? Please elaborate on how supervisors make these determinations.

Answer: Presently our training only involves telling supervisors and other employees about the drug testing program. Through the company, they do not receive training on how to recognize drug problems. However, some plants may receive some of this training through another provider; unfortunately, we are unable to relate what that training includes.



E5. Do you have an employee assistance program, and if so, how many employees have accessed the EAP for problems related to alcohol and drug use? How many of these employees have had their problems resolved successfully?

Answer: We do not have a specific EAP program; however, our health care plan includes the opportunity for employees to obtain medical assistance to address alcohol/drug dependency issues.

## **F. Costs and Benefits**

F1. What costs have you incurred from your efforts to reduce or eliminate drugs or alcohol from the workplace? Please provide the costs by type (e.g., personnel, training, equipment).

Answer: The following costs are estimates:

- Personnel (salaries) – Administration of random testing each month across 10 locations: \$400
- Personnel (salaries) – trainers involved in initial training and administration at all 10 sites: \$2,500
- Personnel (wages & salaries) – 1 hour of training, average 100 employee per location; 10 locations: \$35,000 - \$40,000
- Travel Expense – involved in roll-out training at all locations: \$10,000
- Monthly Random Test Costs – cost ranges from \$40 to \$80 per test. We do not have a total cost available on random tests.
- Medical Review Officer (MRO) – for review of positives – approximately \$200 per review – there have not been that many positives, probably fewer than 12.
- Rehabilitation (a few weeks up to a few months): \$5,000 (few weeks of in-patient care) up to \$30,000 (few months of in-patient care). Note that these costs include payment of short term disability benefits and follow-up drug screens for one year plus the cost of rehabilitation. Also, the occurrence of rehabilitation cases is rare but expensive.

F2-a. What costs would be associated with having a drug-free workplace program (e.g., program implementation, training, drug testing, EAP, restricted work programs, personnel effects)?

Answer: See answer above.

F2-b. Would these costs be borne disproportionately by small mines? If so, please explain how and by how much the costs would vary.

Answer: We have applied our drug testing requirements across the entire company. This involves smaller operations that are not necessarily mining related but some are. Each

site bears its related costs (monthly or every other month random testing) and for the most part, those costs are manageable for them. However, if the situation arises that an employee needs extensive rehabilitation, the cost of that care would be disproportionately large for the smaller operations.

F3. What benefits have you derived from your efforts to reduce or eliminate alcohol or drugs from the workplace (e.g., lower workers compensation costs, reduced absenteeism, employee morale, reduction in turnover, accident and injury reduction and related cost savings)?

Answer: We do not have a metric that can specifically measure the benefit of having this drug testing program. The company mainly feels it is the right thing to do and that by having this program in place we prevent serious injuries and equipment damage from occurring.

# ASH GROVE CEMENT COMPANY ALCOHOL AND DRUG POLICY

## Introduction

It is the Company's policy to maintain a safe and healthful working environment for all of its employees and efficiency and productivity in all of its operations. This Policy is based on several important principles. First, all Company employees must be alert and in full possession of their faculties whenever they are on Company property. Second, employees should be given an opportunity to seek treatment, counseling and/or rehabilitation for abuse of alcohol and drugs before their performance deteriorates to a point where discipline may be required. Third, while individual employees have the right to make choices and they are subject to disciplinary action, including discharge, for violation of the Company's rules and regulations.

The Company encourages employees who are experiencing problems with alcohol and/or drug abuse to voluntarily seek assistance for such problems through available treatment, counseling and/or rehabilitation programs. The confidentiality of all records for any employees who seek assistance through such programs will be maintained to the extent reasonably possible. Furthermore, the employee's decision to voluntarily seek such assistance, before Company intervention, will not be the basis for disciplinary action. On the other hand, employees who choose not to voluntarily seek such assistance through available Company approved rehabilitation programs will not be protected from discipline for violation of the Company's Alcohol and Drug Policy. In all cases participation in such programs will not be a basis for diminishing or mitigating future discipline should the employee choose to continue use alcohol or drugs in violation of the Company's rules.

Alcohol and/or drug testing will be conducted under the Ash Grove Cement Company Alcohol and Drug Policy in accordance with the procedures and guidelines set forth below, subject to Company rules and applicable law. Where federal, state or municipal law imposes restrictions on the implementation of this policy, this policy shall be amended to the extent necessary to conform to the requirements of such laws. The Company has established the following specific policies regarding the use, possession, concealment, manufacture, distribution, and sale of alcohol and drugs.

All employees must be free from the effects of alcohol and drugs during scheduled working hours, and when they report for work, as a condition of employment. Drinking alcoholic beverages or using drugs on Company premises, or working when ability to perform is impaired by alcohol and drugs is strictly prohibited and is grounds for discharge. Possession, concealment, manufacture, distribution, or sale of alcohol or drugs while on duty or on Company property, is prohibited and is grounds for discharge.

The Company reserves the right to require an employee to submit to breath, saliva or blood tests to determine usage of alcohol and/or urine tests to determine usage of drugs as provided in the Policy. If an employee refuses to take any authorized test, he/she will be deemed insubordinate and it shall be conclusively presumed that the employee was impaired by alcohol and/or drugs. The Company also reserves the right to require follow-up alcohol and/or drug testing if it agrees to allow the employee to return to work following disciplinary action for a positive test, or as the result of a condition of continuing employment or reinstatement following completion of a Company-approved alcohol and/or drug treatment, counseling or rehabilitation program.

## A. Prohibited Substances/Unauthorized Items/Searches

***Prohibited Substances:*** Alcoholic beverages and drugs are considered to be prohibited substances in the work place. For purposes of this policy, the term "drugs" includes the controlled substances listed below, synthetic drugs, and prescription drugs, excepting only prescription drugs approved by and used in accordance with the directions of the employee's attending physician. Any employee using a prescription drug should consult with his/her physician regarding the effects of the medication in relation to the performance of the employee's job responsibilities, and provide the Company with a written statement from his/her physician advising the Company of any adverse effects on his/her ability to perform his/her duties.

The Company reserves the right to use appropriate test panels for the detection of use of prohibited substances. The following identifies prohibited substances under a 5-panel test.

1. Marijuana (Cannabinoids)
2. Cocaine
3. Opiates
4. Phencyclidine (PCP)
5. Amphetamines

***Unauthorized Items:*** Employees may not have any unauthorized items in their possession while on duty or on Company property. Unauthorized items include drugs as previously defined, drug paraphernalia and alcoholic beverages and containers.

This policy and rule shall not be construed to prohibit the presence of an otherwise lawfully unopened container of alcoholic beverage in a private motor vehicle which is not used in the business of the Company.

***Searches:*** Where management concludes that it has reasonable suspicion that the use, possession, sale and/or distribution of illegal drugs or alcohol is taking place on Company property, management retains the right to perform reasonable searches or inspections of employees' work area, lockers, desks, vehicles, and personal effects to determine whether an employee is engaged in such prohibited conduct while on Company property.

In such a case, the employee will be required to cooperate in the search. Employees who refuse to cooperate will not be forcibly searched, but will be advised that submission to such a search is a condition of employment and that failure to cooperate will result in termination of employment. If the employee again refuses, their employment will be terminated.

Any suspected illegal drugs or alcohol found will be impounded and sealed in a container.

The seal will bear the date, names of the persons present, and general description of the item. A receipt will be given to the employee for such seized property. Seized items will be retained in a locked cabinet under the exclusive control of a designated management representative. If possession is transferred, a chain of custody will be established. Management will have an authorized testing laboratory test the substances. If the substances are not illegal or violative of the Company's Alcohol and Drug Policy, they will be returned to the employee in return for a receipt previously provided to the employee.

## **B. When Alcohol And/Or Drug Testing May Be Required**

An employee may be required to submit to appropriate testing (blood, saliva, breath or urine) in the following circumstances:

- (1) When, in the Company's discretion, an employee's performance, physical appearance, and/or attendance record or verified information submitted to the Company creates a reasonable suspicion that the employee is currently using, impaired by, or under the influence of prohibited substances, including, but not limited to, alcohol or drugs as defined in Section A, above.
- (2) Following a serious or potentially serious accident or incident in which safety precautions were violated, or careless acts were performed by the employee, or in case of injury or property damage where there is reason to suspect that drug or alcohol abuse caused or contributed to the injury or property damage.
- (3) As part of a post job offer medical examination.
- (4) As part of a return to work medical examination when the employee is absent from work for thirty (30) or more calendar days, for any reason, except for vacation.
- (5) As part of a follow-up alcohol and/or drug test required under an agreement allowing an employee to return to work following disciplinary action for a positive breath, saliva, blood and/or urine test, or as the result of a condition of continuing employment or reinstatement following completion of a Company approved alcohol and/or drug treatment, counseling or rehabilitation program.
- (6) When any prohibited substance, including drugs, an alcoholic beverage, or an unauthorized item is found in an employee's possession (possession includes, without limitation, the employees' person, work area, locker, desk or vehicle).
- (7) Following any arrest for the use, possession, manufacture, distribution, and sale of alcohol and drugs.
- (8) In compliance with D.O.T. testing guidelines.
- (9) As part of the companies random drug testing program. (Note: Consult with your local Human Resources or Office Manager for details regarding random drug testing as it might apply to your specific location.)

### **C. Who May Require Testing**

For tests administered pursuant to subsection B (1) and B (2) above, the demand for tests shall be made only on the express authority of an appropriate manager or supervisor, or his/her designee, with the concurrence of another supervisory employee.

### **D. Alcohol and Drug Testing Procedures**

The following procedures shall govern the administration of alcohol and drug tests:

- (1) When an alcohol test is to be administered, a breath, saliva or blood sample will be taken from the employee. When a drug test is to be administered, a urine sample will be taken from the employee. (An employee who is afflicted with hemophilia, diabetes, or a condition requiring the use of anticoagulant under the direction of a physician may be permitted to take a breath or saliva test, in lieu of a blood test, to determine the presence of alcohol.)
- (2) Breath, saliva or blood samples will be collected and witnessed by authorized medical personnel at an outside health-care facility, practitioner's office or collection agency, and in the case of blood samples, will be sealed and initialed by the employee and a witness.
- (3) Urine samples will be collected at an outside health-care facility, practitioner's office or collection agency, under approved procedures designed to ensure the integrity of samples. Urine samples will be sealed and initialed by the employee and a witness.

If personnel at the collection site determine that an adulterated sample has been provided, the employee will be required to submit another sample in the presence of collection site personnel. Both samples will be submitted for testing and if it is concluded that the initial sample was altered, the employee will be subject to immediate discharge.

- (4) Blood and/or urine samples will be promptly sent to and tested by a laboratory approved by the Company. Substance Abuse and Mental Health Services Administration (S.A.M.H.S.A.) approved laboratories shall be used whenever possible before any other laboratories.
- (5) An approved chain of custody procedure shall be followed in the administration of all blood and/or urine tests. Whatever collection site(s) is/are chosen, appropriate arrangements will be made to coordinate activities with the testing laboratory so as to insure the integrity of the samples to be tested. Blood samples which test positive for alcohol and/or urine samples which test positive for drugs will be stored at the laboratory for a minimum of one (1) year.
- (6) Alcohol testing shall be conducted using a single quantitative blood test. (A preliminary breath or saliva test may be used if a breath test is administered, provided the results are confirmed by a second preliminary breath test or another accepted procedure.)
- (7) Initial drug screening shall be conducted using the EMIT or RIA (Immunoassay Techniques) drug testing methods. All positive drug tests shall be confirmed by the GC/MS (Gas Chromatography/Mass Spectrometry) drug testing method.
- (8) An employee required to submit to a breath, saliva, blood and/or urine test must, if required by a health-care facility, practitioner, collection agency or laboratory, promptly execute a consent to the taking of samples, their analysis related to alcohol and drugs, and the release of test results to the Company.
- (9) A legible copy of the laboratory report shall promptly be made available by the Company to the employee.
- (10) Any information collected in the process of administering breath, saliva, blood and/or urine tests shall be treated as confidential information and shall be released to other persons only on a "need-to-know" basis.

### **E. Positive Drug or Alcohol Tests**

The following cutoff limits will be used to determine whether initial drug screens and confirmation tests are positive for drugs and/or their metabolites:

<b>Substance</b>	<b>Initial (EMIT or RIA) Level ng/ml</b>	<b>Confirmatory (GC/MC) Level ng/ml</b>
Marijuana	50	15
Cocaine	300	150
Opiates	2000	2000
Phencyclidine (PCP)	25	25
Amphetamines	1000	500

The cutoff levels (EMIT/RIA-GC/MS) for the above drugs are subject to change as recommended by the testing laboratory.

When a positive drug test may be the result of use of a prescription drug, the employee will be required to submit proof of the prescription within forty-eight (48) hours of the request to do so, together with a written statement from his/her attending physician approving the use of the drug during working hours. If the prescription and/or the physician's statement is not submitted within the specified time limit, the employee will be subject to disciplinary action under this policy, up to and including termination of employment.

The cutoff levels used to determine whether alcohol tests are positive will be working or reporting to work with a blood alcohol content at or exceeding the state's legal intoxication limit, based upon the test result and application of a blood alcohol dissipation rate of .015% per hour.

### **F. Second Opinion Testing**

If a sufficient portion of the initial sample is available for further testing, (i.e., at least 2 ml in the case of a blood sample and 20 ml in the case of a urine sample), an employee who tests positive for drugs or is subject to discipline for violation of the Company's alcohol rule may request a second opinion test in accordance with the following guidelines:

- (1) The request must be made to the Company in writing within seven (7) calendar days of the date the laboratory report is provided to the employee.
- (2) The employee must pay the total cost of the second opinion test, including any courier fee, at the time the request is made. If the second opinion test is negative, the Company will reimburse the employee for these costs.
- (3) The second opinion test may be performed at an independent laboratory selected by the employee tested, provided said laboratory is S.A.M.H.S.A. approved.
- (4) An approved chain of custody procedure must be followed with respect to the release of the sample(s) to the laboratory which is going to perform the second opinion test (i.e., the sample(s) will only be released directly to the laboratory).
- (5) All alcohol and drug testing procedures set forth in this policy, including procedures regarding consent forms, shall be strictly observed. However, since some analytes deteriorate during storage, detected levels of drugs below the cutoff limits recognized by the Company, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be considered corroborative of the original positive results.

- (6) The results of the second opinion test will be binding on the Company and the employee.

If the second opinion test is negative, any discipline the employee has received as a result of the initial test will be voided and no further disciplinary action will be taken against the employee. If the second opinion test is positive, the test result cannot be challenged in any forum.

### **G. Policy Violations**

Employees will be subject to immediate discharge for the first offense in any of the following circumstances:

- (1) Refusal to take any authorized breath, saliva, blood or urine test, or do any acts the Company determines reasonably necessary for implementation of this Policy, including, but not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples or refusal to cooperate in a search.
- (2) Drinking alcoholic beverages or using drugs on Company property.
- (3) Possession, concealment, manufacture, distribution, or sale of any prohibited substance, including alcoholic beverages, while on duty or on Company property.
- (4) Working or reporting for work with a blood alcohol content at or exceeding the state's legal intoxication limit, based upon the test result and application of a blood alcohol dissipation rate of .015% per hour.
- (5) Testing positive for drugs and/or their metabolites in any authorized drug test.

Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the Company reserves the right to consider extenuating circumstances and impose lesser discipline when such action is deemed appropriate.

### **Rehabilitation and Additional Testing**

In cases where an employee receives a disciplinary suspension for having a positive drug test, having a blood alcohol content at or exceeding the state's legal intoxication limit during working hours, or any other violation of the Company's Alcohol and Drug Policy.

- (1) The Company may require the employee to participate in an approved treatment, counseling and/or rehabilitation program for alcohol and/or drug abuse at the time discipline is imposed. Participation in such programs shall not diminish the Company's right to issue appropriate disciplinary action, to include discharge.
- (2) The Company shall have the right to require the employee to undergo follow-up alcohol and/or drug testing at any time for a period of up to two (2) years as a condition of reinstatement or continued employment.

If an employee is required to enroll in a treatment, counseling and/or rehabilitation program for alcohol and/or drug abuse, his/her continued employment or reinstatement with the Company will be contingent upon successful completion of the program and remaining alcohol and drug free for its duration. In addition, an employee who is required to enroll in such a treatment, counseling and/or rehabilitation program must submit to any alcohol and/or drug tests administered as part of the program, and must sign a release of information form allowing the agency running the



program to provide periodic progress reports and the results of such alcohol and/or drug tests to the Company.

If an employee who has received a disciplinary suspension for violation of the Company's Alcohol and Drug Policy tests positive for drugs and/or their metabolites in any subsequent drug test or a subsequent alcohol test reveals an alcohol content at or exceeding the state's legal intoxication limit during working hours (based upon the test result and application of a blood alcohol dissipation rate of .015% per hour), the employee will be subject to immediate discharge.

### **Individual's Employability Pending Receipt of Test Results**

In addition to appropriate disciplinary measures, including suspension, which may be taken in response to the incident or course of conduct which gave rise to the test, management reserves the right to decide whether the incident or course of conduct prompting the test is of such a nature that the employee should not be put back to work until laboratory results are received. If such a decision is made, the employee will be removed from work, as appropriate, with or without pay. Where the test result is negative, the employee will be returned to work with back pay, for any regularly scheduled straight time hours missed up to the time the Company receives the test results. Suspensions for violating other Company rules will be administered separately from removal from work while awaiting such test results.

### **H. Voluntary Alcohol and Drug Rehabilitation**

If an employee who is not otherwise subject to disciplinary action for use of alcohol and/or drugs or otherwise voluntarily admits that he/she has an alcohol and/or drug abuse problem, the Company will meet with the employee to discuss the various treatment, counseling and rehabilitation options which are available. These options may include allowing the employee to continue working while receiving outpatient treatment, counseling and/or rehabilitation in a Company approved alcohol and/or drug abuse program; or placing the employee on a requested or unrequested leave of absence while he/she is receiving treatment, counseling and/or rehabilitation in a Company approved inpatient or outpatient alcohol and/or drug abuse program.

When such an employee voluntarily admits that he/she has an alcohol and/or drug abuse problem, the Company shall have the right to require the employee to submit to breath, saliva, blood or urine test(s) prior to deciding what action is appropriate. No disciplinary action will be taken by the Company against such an employee who voluntarily admits that he/she has an alcohol and/or drug abuse problem, in the manner described previously. However, the Company shall have the following rights in such a situation:

- (1) The employee may be required to enroll in and successfully complete an approved inpatient or outpatient alcohol or drug abuse program, and remain alcohol and drug free for its duration, as a condition of continued employment or reinstatement with the Company.
- (2) If the employee enrolls in such a program, he/she must submit to any alcohol and/or drug tests administered as part of the program, and must sign a release of information form allowing the agency running the program to provide periodic progress reports and any such test results to the Company.
- (3) The employee may be required to agree to be subject to future unannounced alcohol and/or drug testing, at the Company's discretion, for a period of up to one (1) year from successful completion of a Company approved program.

- (4) If the employee subsequently tests positive for any alcohol or drugs, the employee will be subject to immediate discharge.

**I. No Waiver of Legal Rights**

The parties agree that this program shall not diminish the rights of individual employees under state and federal laws relating to alcohol and/or drug testing.

**SAMPLE FORM**

**VOLUNTARY CONSENT AND RELEASE  
FOR CURRENT ASH GROVE CEMENT COMPANY EMPLOYEES**

I, \_\_\_\_\_(print name), have read and understand the Ash Grove Cement Company's policy on employee involvement with alcohol, illegal drugs and other controlled substances. I understand the policy is not intended to diminish my rights under state and federal laws relating to drug and alcohol testing. However, I also understand the policy provides if I refuse to take any blood, breath, saliva or urine test, or refuse to do other acts necessary to implement or administer the policy, including refusing to execute any required consent forms or refusing to cooperate in the taking of such samples, that I can be immediately terminated from employment with the Ash Grove Cement Company. By signing below I hereby consent to the collection of blood, breath, saliva or urine specimens from me, to the testing of such specimens for alcohol, drugs or their metabolites and to the release of test results by

\_\_\_\_\_

\_\_\_\_\_

*(print name of facility(ies) which draw and/or test specimens.)* to management representatives of the Ash Grove Cement Company.

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

