

Received 11/15/05 MSHA/OSRV

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Re: RIN 1219-AB41

VIA E-MAIL: zzMSHA-comments@dol.gov.
VIA Facsimile: (202) 693-9441.

Dear Ms. Smith:

Martin Stone Quarries, Inc. is pleased to submit the following statement concerning the Mine Safety and Health Administration's Advance Notice of Proposed Rulemaking addressing *Use of or Impairment From Alcohol and Other Drugs on Mine Property*, 70 Fed. Reg. 57808 (October 4, 2005).

Martin Stone Quarries, Inc. maintains a fleet of stone delivery trucks. In 1990, the company implemented a drug free workplace program in order to satisfy both MSHA and DOT regulations. The DOT program was used as the basis to form company policy, including pre-employment, random, and post incident testing (see attached, "Martin Stone Quarries, Inc. Drug Free Workplace Guidelines"). In some cases, Martin Stone Quarries, Inc. policy exceeds DOT regulation. Martin Stone Quarries, Inc. retains the right to offer alternate screening methods for non-DOT employees. When alternate screening methods are used any result other than normal is referred to the SAMSHA lab for testing, using all appropriate chain of custody protocol.

Martin Stone Quarries, Inc. does not support additional regulation, except for the inclusion of coal into the existing rule. Additional regulation would only create the unnecessary burden of maintaining TWO drug free work place standards for the same mine sites.

Martin Stone Quarries, Inc. recognizes MSHA's request for comment to specific questions, as follows:

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.

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Alcohol, marijuana, methamphetamine, cocaine, and misuse of prescription drugs (e.g., oxycontin and vicoden).

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?

Use of illegal drugs is most prevalent among job applicants and new hires.

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

Very significant to everyone on the mine site.

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

None. Martin Stone Quarries, Inc. credits this to the random drug testing that is done company wide.

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

A coal mine standard should be established, comparable to the existing metal/nonmetal standard (§ 56/57.20001). At this time, there is no need to amend the metal/nonmetal standard, but penalties should be imposed against individual miners who violate the standard, similar to the penalty for smoking in underground mines.

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

Both alcohol and illegal drugs (including misuse of prescription drugs) should be included in any substance abuse rule. The DOT criteria should be used to determine what drugs are covered (marijuana, PCP, opiates, amphetamines, and cocaine).

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

The DOT five-panel criteria should be a minimum standard to determine what constitutes "under the influence."

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)?

Under the existing MSHA standard, miners or other persons violating this standard must be removed from the mine site. Martin Stone Quarries, Inc. also has established policy and protocol. If MSHA decides to impose

additional rules, the DOT standard covers rules for testing, Employee Assistance Programs (EAPs), and standing an employee down. DOT guidelines do not impose monetary penalties on a violating commercial driver, other than the possibility of loss of license. As previously stated, Martin Stone Quarries, Inc. would support a monetary penalty imposed upon miners who would violate drug free workplace rules, similar to those imposed on miners who violate the no smoking rules in underground coal mines.

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

Please see the attached Martin Stone Quarries, Inc. Drug Free Workplace Guidelines”

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

Part 46 allows for some training flexibility, according to company needs. Martin Stone Quarries, Inc. is already training the prevention of alcohol and other drug misuse under the heading of health training and according to DOT guidelines.

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

All persons working at Martin Stone Quarries, Inc. currently receive this training.

C3. What topics should be included?

Martin Stone Quarries, Inc. includes awareness of the hazards of substance abuse on and off the job, the company's substance abuse prevention policy, and DOT program requirements. Mine supervisors are trained on how to recognize the signs of impairment in the miners they supervise, and how to handle situations involving impaired miners.

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

Please refer to the answer in C3.

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

There is no need to revise this rule. Martin Stone Quarries, Inc. requires all employees, as a condition of employment, to allow post incident drug testing data to be used in cooperation with and as a part of any accident investigation. As such, Martin Stone Quarries, Inc. believes that this cooperation should not serve as the basis to issue a citation to the mine operator under § 56/57.20001 – particularly since Martin Stone Quarries, Inc. has a substance abuse prevention program in place, provides worker training, and has implemented a testing program and

disciplinary program. Even with these safeguards in place, it may still be impossible for a mine operator to determine if a miner has drugs or alcohol in their system – especially if the drugs were used during non-working hours but some levels remain in the worker's blood, which make determination of actual impairment difficult to assess.

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

The DOT rule provides a good basis for post incident testing. The Martin Stone Quarries, Inc. Drug Free Workplace Guidelines goes beyond the DOT standard.

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

At a minimum, any incident that results in a reportable injury should trigger an inquiry.

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

The information should be protected in a secure manner and used only by those who have a legitimate and clear, "need to know".

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?

If a mine operator knowingly permits an impaired miner to work at the mine and an accident results, a citation should be issued to the mine operator. The impaired miner should also be cited and an individual penalty imposed as described above. Mine operators who exercise due diligence to monitor worker compliance with a drug and alcohol-free workplace policy, and who conduct testing of workers under the DOT criteria, should be permitted to offer this as an affirmative defense to the fact of violation and should not be held strictly liable for the presence of an impaired worker at the mine site under such circumstances.

Internal disciplinary measures should be set on a company-by-company basis. Companies that have existing and effective substance abuse prevention programs (including those under the DOT regulations) should not be required to alter them in order to comply with MSHA requirements.

E1 (E2, E2-a, E2-b): 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 a part of a broader program?

Please see the attached, "Martin Stone Quarries, Inc. Drug Free Workplace Guidelines". This policy was adopted to meet DOT and MSHA requirements.

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

Pre-employment testing is critical. Positives test results are common in this group. Refusing to hire those with a positive test result is the first step to a drug free workplace. Random testing is important. It serves as an incentive to employees to maintain a drug free lifestyle and serves as a means to detect those who may have chosen to disregard the rule and whose violation may not be visibly symptomatic. Post incident testing adds another layer of detection where employees may be otherwise asymptomatic.

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

Martin Stone Quarries, Inc. has an employee population of 65. That population may vary +/- 5 people. Initial testing in 1990 resulted several positive drug tests. Random and post incident testing in the last 10 years have resulted in 4 positive tests. Martin Stone Quarries, Inc. does not keep statistics on positive pre-employment drug tests. A notable single incident: Seven finalists were tested and failed. Applicant 8 Finalist 8 has a negative drug tests and was hired.

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.

Specific data is not available.

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

Initially, there were a group of employees who refused to comply. They were discharged. The group filed a complaint with the Department of Labor. They also applied to Pennsylvania State Unemployment Compensation and won. Martin Stone Quarries, Inc. and counsel appealed the decision and won. There were employees who tested positive who chose to quit their jobs rather than commit to an EAP recovery program. There have been no additional problems.

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

Specifics can be found in the attached policy. In general, a miner that tests positive for drugs and or alcohol chooses between committing to a substance abuse recovery program under the EAP or chooses to leave the company. A second violation will result in termination of employment, under the specifics included in the job re-entry agreement that must be signed after recovery treatment is completed.

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

Not applicable. The Martin Stone Quarries, Inc. drug free workplace remains intact and uninterrupted since its inception.

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?

The EAP provider trains on-site. There are also mini re-training sessions conducted by the Director of Safety and Human Resources. Simply stated, they are trained to recognize eye-pupil irregularities, and odd behaviors such as unusually rapid speech, slurred speech, unusual outbursts, etc. Any suspected employee is immediately referred to the Director of Safety and Human Resources, a trained EAP facilitator with a medical background, for evaluation of "just cause" prior to drug testing and or referral to the EAP.

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?

The Martin Stone Quarries, Inc. has an EAP. The EAP is available on a confidential basis to all employees and their families. The only time Martin Stone Quarries, Inc. is aware of treatment of substance abuse is through facilitator referral, as a result of a positive drug test. In the few cases of Martin Stone Quarries, Inc. referral, the recovery rate is about 50%.

F1 and 2. What costs have you incurred or would be associated from your efforts to reduce or eliminate drugs and alcohol from the workplace?

Martin Stone Quarries, Inc. participates in a consortium and operates under their direction. To reduce costs, Martin Stone Quarries, Inc. underwrote training for the Director of Safety and Human Resources and the Martin Stone Quarries, Inc. Emergency Medical Technician to obtain training and certification as DOT specimen collectors and Breath Alcohol technicians. Specimens are tested under DOT criteria at a cost of \$58.00 per test, including approved courier service. Screening tests involving saliva or urine are also used at an average cost of \$15.00 per unit. Martin Stone Quarries, Inc. purchased a breath alcohol analyzer at a cost of \$1500.00. Maintenance of this unit costs about \$300.00 per year. Additional costs include wages for testing time. Testing time for an employee cannot exceed 3 hours. Wages for the technician must also be included, as well as any production lost. These numbers will vary from company to company and area to area. Training and related costs is done in conjunction with employee orientation, new miner training, newly hired employee training, and annual refresher training. Replacing employees

who violate the policy must also be considered and will vary according to area, company, and position.

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

Martin Stone Quarries, Inc. has a staff of 65 and does not qualify as a small mine. However, fixed costs should remain the same for smaller operations. Loss of productivity may be a larger cost in cases where there is inadequate staff to absorb the work of an employee being tested, particularly if the employee has to travel off site to be tested.

F3. What benefits have you derived from your efforts to reduce or eliminate alcohol or drugs from the workplace?

It is impossible to track the benefits from the Martin Stone Quarries, Inc. Drug Free Workplace Program, as it is impossible to track incidents that were prevented as a result of this program. It is important to note that this program has become important to Martin Stone Quarries, Inc. employees. They do not want to work with people who are impaired. In cases where symptoms are virtually non-existent to the supervisor, co-workers will report suspicions and have on occasion refused to work with people who appear to them to be under the influence, or have bragged about using drugs.

Martin Stone Quarries, Inc. appreciates the opportunity to provide input on this important subject.

Respectfully submitted:

Martin Stone Quarries, Inc.

Anne Kelhart CMSP, PHR
Director of Safety and Human Resources

Martin Stone Quarries, Inc.

Drug Free Work Place Guidelines

INDEX

- 01 INTRODUCTION: Policy Statement and Summary**
- 04 SECTION 1 - Purpose**
- 04 SECTION 2 - Applicability**
- 05 SECTION 3 - Definitions**
- 05 SECTION 4 - Test/Searches**
- 06 SECTION 5 - Drug/Alcohol Testing**
- 07 SECTION 6 - Testing Procedures**
- 08 SECTION 7 - Prohibited Conduct**
- 09 SECTION 8 - Consequences**
- 09 SECTION 9 - Searches**
- 10 SECTION 10 - Employee Assistance**
- 11 SECTION 11 - Training**
- Appendices**
- 12 A - Employee Acknowledgment Form**
- 13 B - Continued Employment Agreement**
- 14 C - Agreement to Treat**
- 15 D - Testing Information/Medical Review Officer**

Prohibited Conduct. This organization strictly prohibits the following conduct:

1. ILLEGAL DRUGS

The illegal sale, manufacturing, distribution, dispensing, use, possession, purchase, obtaining, or being under the influence of any illegal drug or misuse of controlled prescription drugs at any time (whether on or off-duty) or while on-the-job (regardless of the location), or while representing the organization in any capacity -- whether on or off-duty.

2. PRESCRIPTION DRUGS

While on-the-job, being under the influence of legally obtained and used prescription drugs that affect the individual's functioning in such a way as to jeopardize the safety of the individual or others or to substantially impair job performance, if the employee has failed to notify management that he or she is using such a prescription. Every employee who is issued a prescription drug has an obligation to ask the prescriber whether the medication, if used properly, will affect the individual's function in such a way as to jeopardize the workplace safety of the individual or others, or will significantly impair job performance. **If so, the employee has an obligation to report that situation to management.**

3. OVER-THE-COUNTER DRUGS

While on-the-job, being under the influence of over-the-counter drugs used contrary to the product's labeling (i.e. misuse of over-the-counter drugs) that affect the individual's functioning in such a way as to jeopardize the safety of the individual or others or to substantially impair job performance. Some over-the-counter drugs, even when used properly, will affect the individual's function in such a way as to jeopardize the workplace safety of the individual or others, or will significantly impair job performance. **If so, the employee has an obligation to report that situation to management.**

6. ALTERNATIVE SUBSTANCES (DESIGNER DRUGS)

While on-the-job, being under the influence of any chemical or substance used contrary to the product's labeling that affect the individual's functioning in such a way as to jeopardize the safety of the individual or others or to substantially impair job performance. This includes but is not limited to glue, butane, liquid lighter fluid, liquid eraser, and et.al.

5. ALCOHOL

- Being under the influence of alcohol at the worksite (whether on or off-duty or during lunch and breaks) or while on-the-job (regardless of the location).
- Use of alcohol at the worksite (whether on or off-duty or during lunch or breaks) or while on-the-job (regardless of the location).
- Possessing containers of alcohol on the job, regardless of location.

RULES REGARDING DRUGS AND ALCOHOL

This summary is meant to highlight the major points of the enclosed policy. To the extent that there are inconsistencies between the summary and the policy, the policy itself controls. No deviation from this policy will be permitted without the prior express authorization of Senior Management and the General Counsel.

THE DRUG FREE WORK PLACE POLICY

Section 1 - Purpose

This organization is committed to protecting the safety, health, and well being of its employees and all people who come into contact with its workplace(s) and property, and/or use its products and services. Recognizing that drug and alcohol abuse pose a direct and significant threat to this goal, and to increase confidence in our business and services provided, this organization is committed to creating a drug free working environment for all of its employees.

Additionally, recognizing other adverse legal, economic, and social consequences of substance abuse, this policy is adopted and enforced in order to:

- Deter illicit drug and alcohol use on-the-job.
- Deter illicit drug use off the job.
- Ensure that employees are fit for duty.
- Identify employees who have substance abuse problems that affect job performance and assist them in obtaining help.
- Maintain high morale among those many valuable employees who do not engage in substance abuse.
- Maintain high quality goods and services.
- Maintain its effectiveness.
- Provide a role model to those individuals or organizations that it serves.

This policy statement does not create an employment contract or otherwise limit this organization's management rights, including the right to change this policy.

SECTION 2 - APPLICABILITY

This policy applies to all employees, whether full or part-time, and whether temporary or permanent, at all levels within the organization. It applies to employees hired for a specific period of time, such as seasonal employees. The testing procedures and requirements outlined in this policy do not apply to employee drivers with a commercial driver's license. Testing procedures for these employees are conducted as required by the Department of Transportation.

Further, I understand that I have agreed and will allow Martin Stone Quarries, Inc. to refer positive test results to appropriate government agencies, in any case of post incident testing.

Additionally, the prohibited conduct section of this policy is also applicable to contractors, sub-contractors or individuals hired on a temporary basis through employment agencies. It is the policy of this organization to encourage these service providers to adopt and maintain their own drug free workplace policies and programs. In choosing such service providers, preference will be given to those businesses that have a substance abuse policy similar to this policy. Violations of the prohibited conduct section of this policy shall be grounds for terminating any contract or sub-contract or arrangement for temporary service.

As specifically delineated in 'Prohibited Conduct' of this policy, this policy governs conduct while on work premises, whether on or off-duty, and while on-duty, regardless of the location. It also applies to conduct that is off-duty if it is illegal, involves substance abuse, (as defined below) and

in the sole judgment of management is likely to undermine the public confidence in or harm the reputation of the organization.

SECTION - 3 - DEFINITIONS

"Drugs" include, without limitation, narcotics, marijuana, hashish, heroin, hallucinogens, depressants, cocaine, and all other controlled substances enumerated in Schedules I through V of the Controlled Substances Act, 21 U.S.C. §812 et seq., and in the federal regulations promulgated thereunder, and medication other than those sold to the public on a non-prescription basis and those that are prescribed to the employee by a duly licensed physician. This definition includes "look alike" and "designer" drugs. In addition, to the extent that they are not utilized for the primary purposes for which they were manufactured but are instead used for the purposes of altering one's mood, perception, pain tolerance level, or judgment, any chemical substance will be considered to be a drug under this definition, including but not limited to glue and liquid eraser.

An employee will be considered "under the influence" if he/she has a blood alcohol concentration of 0.02 percent or more by weight of alcohol in his/her blood.

The terms "alcohol" or "alcoholic beverages" mean any substance having an alcoholic content equal to or in excess of the percentage by volume considered under the applicable state law as constituting "liquor", "alcohol" or an "alcoholic beverage", including but not limited to beer, ale, wine, whether fermented naturally fermented, blended, fortified or otherwise, distilled liquors of any sort, or any mixture of the above.

The terms "premises" or "Martin Stone Quarries premises" mean all property owned, rented, leased or controlled by Martin Stone Quarries or its affiliates or subsidiaries, including all facilities, land, buildings, structures, and all other real estate, and motor vehicles.

SECTION 4 - TESTING AND SEARCHES

To the extent considered necessary for the safe and productive conduct of Martin Stone Quarries business and the safety and health of Martin Stone Quarries employees, drug and alcohol testing and searches may be performed. Such action may be taken when Martin Stone Quarries reasonably believes or suspects that there may be an alcohol or drug-related problem pertaining to job performance, including, but not limited to safety, productivity, quality of work, health or attendance, to determine whether an employee is in possession of or under the influence of alcohol or drugs, or has the presence in his/her system of drugs while on Martin Stone Quarries business anywhere or Martin Stone Quarries premises.

In cases where a drug or alcohol test is required, failure to submit to testing or failure to comply with testing procedures (sample tampering, employee release, etc.) will result in the employee's discharge. In cases where a search is required, if the results of the search show possession, the employee will be discharged. If the results of a drug or alcohol test confirm that the employee was under the influence of drugs or alcohol, he/she will be subject to discharge. If the results of the testing show presence of a drug or its metabolites used in violation of this Policy, the action that Martin Stone Quarries will take will depend upon the totality of the circumstances, and the test results will be considered as one factor in determining what action will be taken, such as referring the individual for appropriate assistance. In such cases, the employee will be subject to and must sign the Continued Employment Agreement.

For purposes of requiring drug and alcohol testing or searches under this Policy, Martin Stone Quarries defines a "reasonable belief or suspicion" as a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Specific situations which may lead to testing and/or searches include, but are not limited to:

- **Random testing** - done on a periodic basis through membership in a bona fide drug testing consortium.
- **Incident on Duty** - An employee who becomes involved while on Martin Stone Quarries business or on Martin Stone Quarries premises in an incident which endangers or adversely affects a person or property may be asked to submit to alcohol and drug testing and/or a search.
- **Accident on Duty** - Martin Stone Quarries shall conduct post accident testing of all involved employees when said accident takes place on Martin Stone Quarries, Inc. premises, or involves Martin Stone Quarries, Inc. property, or while in the course of conducting Martin Stone Quarries, Inc. business, if the accident results in an injury requiring medical treatment from a licensed physician or, in the opinion of a trained first aid responder, the injured is instructed to seek additional medical treatment from \$1,000.00 or more. All employees for whom, in the sole judgement of trained a licensed physician, or when the accident results in total property damage of supervisors or managers, there is a reasonable suspicion or cause to believe that the employee has violated our substance abuse policy are also subject to testing and discipline as outlined in this policy.
- **Unfit Condition** - If an employee on Martin Stone Quarries business or on Martin Stone Quarries premises is observed to be in an unfit condition (i.e., not capable of performing work in a normal, safe or productive manner), he/she may be asked to submit to drug and alcohol testing and/or a search.

Due to the possibility of impairment, any employee required to submit to drug/alcohol testing post accident, post incident, or due to possible unfit condition will not be allowed to return to duty until a negative test result is received. In the event that a disciplinary suspension has been imposed due to inappropriate action surrounding or precipitating the accident or incident, suspension may begin effective the first day the employee was not allowed to return to the duty station. In the event that a positive test result is received, the entire incident will be re-evaluated for possible additional action.

SECTION - 5 - DRUG AND ALCOHOL TESTING

The Director of Human Resources will insure that sampling is done in accordance with applicable state and federal laws and regulations, and with due regard for an individual's expectation of privacy. In the event that said testing must be done outside the supervision of the Director of Human Resources, a pre-determined medical facility will be used (Lehigh Valley Hospital Center and or its industrial medicine affiliate, AFFINITY, Inc., or any other qualified facility that may be appointed by the Director of Human Resources.)

Custody Procedure - Each location must maintain a documented chain of custody procedure. Further, each location must assure that any laboratory used maintains a documented chain of custody procedure. Split-sampling and/or sample preservation for confirmation will be used.

SECTION 6 - TESTING PROCEDURE

- Alcohol - The test for alcohol will be either by a blood, breath or saliva test. Blood tests will be confirmed by a second blood test. Breathalyzer tests will be confirmed by blood tests. Either Breathalyzer or blood test will confirm saliva tests. If the employee refuses a confirmation test, the employee must be advised that any decisions regarding policy violations will be based upon the results of the initial test.
- Drugs (urinalysis) - The initial test will be immunoassay. If the immunoassay test results are negative, no further testing will be required. However, if the immunoassay test result is positive, a second test, gas chromatography/mass spectrometry (GC/MS), must be made for confirmation before the employee is subjected to the terms of this Policy.
- The Medical Director will determine and set the appropriate levels at which each urine specimen will be assayed for the presence of drugs.

An employee or applicant with a confirmed positive test result will meet with the Director of Human Resources and will be given the opportunity to explain such result by presenting any information he/she considers relevant. An employee who has a confirmed positive drug test will be given up to 24 hours to choose one of the following:

- agree to be evaluated by the E.A.P. as outlined in Section 10, or
- resign his/her position, or
- recheck the original urine specimen at his/her own expense. However, laboratory criteria requires that such action must be taken within seventy-two (72) hours of the employee's notification of the test result.

Testing Methods - Martin Stone Quarries reserves the right to use other testing methods and procedures, as they become available. New testing methods and procedures will be recommended by the Director of Human Resources and approved by Senior Management and General Counsel.

As specifically delineated in the 'Prohibited Conduct' section of this Policy, this policy applies to:

- Illegal drugs.
- Illegal conduct with regards to prescription drugs that alter mood or impairs functioning. (Controlled substances)
- Illegal or improper conduct with regards to any chemical used to alter mood or impair functioning.

Any employee convicted of a criminal drug statute violation occurring in the workplace must advise Martin Stone Quarries within five (5) days of said conviction.

- Work-related abuse of over-the-counter medicines that alter mood or impair functioning.
- Work-related alcohol conduct.
- Illegal alcohol-related conduct.
- Illegal conduct with regards to any chemical used to alter mood or impair functioning

Collectively these items are referred to in this policy as "substance abuse."

SECTION 7 - PROHIBITED CONDUCT

This organization strictly prohibits the following conduct:

- **(ILLEGAL DRUGS)**

The illegal sale, manufacturing, distribution, dispensing, use, possession, purchase, obtaining, or being under the influence of any illegal drug or misuse of controlled prescription drugs at any time (whether on or off-duty) or while on-the-job (regardless of the location).

The sale, manufacturing, distribution, dispensing, use, possession, purchase, obtaining, or being under the influence of illegal drugs while representing the organization in any capacity -- whether on or off-duty.

- **PRESCRIPTION DRUGS**

While on-the-job, being under the influence of legally obtained and used prescription drugs that affect the individual's functioning in such a way as to jeopardize the safety of the individual or others or to substantially impair job performance, if the employee has failed to notify management that he or she is using such a prescription. Every employee who is issued a prescription drug has an obligation to ask the prescriber whether the medication, if used properly, will affect the individual's function in such a way as to jeopardize the workplace safety of the individual or others, or will significantly impair job performance. **If so, the employee has an obligation to report that situation to management.**

- **OVER-THE-COUNTER DRUGS**

While on-the-job, being under the influence of over-the-counter drugs used contrary to the product's labeling (i.e. misuse of over-the-counter drugs) that affect the individual's functioning in such a way as to jeopardize the safety of the individual or others or to substantially impair job performance. Some over-the-counter drugs, even when used properly, will affect the individual's function in such a way as to jeopardize the workplace safety of the individual or others, or will significantly impair job performance. **If so, the employee has an obligation to report that situation to management.**

- **"DESIGNER" DRUGS**

While on-the-job, being under the influence of any chemical or substance used to alter mood or impair function in such a way as to jeopardize the workplace safety of the individual or others, or will significantly impair job performance. Prohibition includes but is not limited to glue, butane, liquid lighter fluid, liquid eraser, and et.al.

ALCOHOL

- Being under the influence of alcohol at the worksite (whether on or off-duty or during lunch and breaks) or while on-the-job (regardless of the location).
- Use of alcohol at the worksite (whether on or off-duty or during lunch or breaks) or while on-the-job (regardless of the location).
- Possessing containers of alcohol on the job, regardless of location.

SECTION 8 - CONSEQUENCES

Any violations of this policy:

- May result in disciplinary action up to and including termination.
- May result in termination for new employees enrolled in a probationary period.
- Will result in enrollment and successful completion of a substance abuse program, approved by Martin Stone Quarries and completing all requirements of the attached continued employment agreements for employees not subject to the probationary period.
- **Will allow Martin Stone Quarries, Inc. to refer positive test results to appropriate government agencies, in any case of post incident testing.**

This organization recognizes that substance abuse by an individual may indicate that the individual is suffering from a medical condition that may be successfully treated. At the same time, however, this organization cannot and will not tolerate violations of this Drug Free Workplace Policy.

Therefore, it is the philosophy of this organization, whenever possible, and consistent with the interests of the organization and the health and safety of all its employees, to allow individuals in need of treatment and/or rehabilitation an opportunity to obtain help, and to return to work without loss of job privileges. At the same time, however, the individual will be held accountable for his or her behavior and work performance and may be subject to disciplinary action for policy violation.

Absent extenuating circumstance, violations of this policy that, if proven, would constitute a felony will result in termination and referral for prosecution. For this sanction to be applied, however, it is not necessary for criminal charges to be brought or for a conviction to occur. This sanction may be applied when, in the judgment of management, there is reasonable grounds to believe that the felony-type violation has been committed.

SECTION 9 - SEARCHES

Consenting to a search and cooperating in the company's investigation are a condition of employment. Entry into any job site or this organization's premises constitutes consent to search and inspections.

When this organization has any reason to believe that an employee is violating any aspect of this policy while at the worksite, the employee may be asked to submit immediately to search or inspection.

This includes a search of an employee's locker, desk, workstations, vehicles, or any other property he or she uses, or has access to.

An employee's refusal to consent to a search or inspection when requested constitutes a violation of this Drug Free Workplace Policy and will subject the employee to the consequences for violations given in Section 4 above.

Search - Each facility manager must notify its employees that they and their property may be subject to search for drugs and alcohol while on Martin Stone Quarries' premises. Searches must be approved in advance by the facility manager or his/her designee.

There must be reasonable suspicion to believe that a problem under this Policy has occurred before a search is initiated.

Employees should be notified that desks, lockers, cabinets, drawers, computers and computer applications, including electronic mail, that they use are the property of Martin Stone Quarries and, if necessary from time to time, may be searched. If the employee

has placed a personal lock on or limited access to any such locker, desk, cabinet, computer etc., he or she may be asked to remove it or, if the employee is not available or otherwise refuses such a request, it may be removed for the employee.

Employees must give consent before being personally searched (pockets emptied, purses opened, etc.). Searches will not consist of unnecessary physical contact. Refusal to consent could result in discipline up to and including termination of employment. Such searches should be carried out in privacy, but with a witness selected by the supervisor or other authorized employee conducting the search.

When property belonging to or used by an employee on Martin Stone Quarries' property (including a motor vehicle) is to be searched consent should be sought, but is not required. If possible, the employee should be notified of the search and should be present. Employees who fail to grant such consent or otherwise cooperate with the search, may be disciplined up to and including termination of employment. The search should be carried out in privacy, but with a witness selected by the supervisor or other authorized employee conducting the search.

Contraband found must be placed into properly marked containers. Transport should be by police or other personnel authorized to be in possession of the substance during transport. Testing of the contraband should be by a recognized laboratory.

Questioning - When there is reasonable suspicion to believe a problem under this Policy has occurred, the employee may be questioned.

Questioning must be non-threatening, and it must be conducted in private.

There may not be any involuntary detainment associated with the questioning, and the employee's request for the presence of a co-worker witness must be granted.

Employees who refuse to participate in the questioning may be disciplined up to and including termination of employment.

SECTION 10 - EMPLOYEE ASSISTANCE PROGRAM

This organization has provided for an Employee Assistance Program (E.A.P.). When an employee tests positive on a required drug/alcohol screening and the results have been verified or has been convicted of a criminal drug/alcohol offense, the company will require an evaluation through the company's E.A.P. and may require the employee to complete a substance abuse rehabilitation program acceptable to the company. The employee consent form is titled "Appendix C" and is a part of this policy. Any employee who is referred to seek treatment as part of a disciplinary process for violations of this policy who refuses to participate in the assistance program, to follow through with its recommendation, or to complete successfully the recommended course of action may be subject to additional discipline up to and including termination.

SECTION 11 - MANAGEMENT TRAINING

All employees in management positions shall (1) become familiar with the Martin Stone Quarries' Alcohol and Drug Abuse Policy and Procedure, (2) participate in supervisory training programs developed by Martin Stone Quarries to assist them in performing their responsibilities under this Policy, and (3) take the steps necessary to ensure that those managers and supervisors in the

organization with the need-to-know also participate in training programs and become familiar with the Policy. Such management and supervisory training shall include, at a minimum, behavioral observation training and drug and alcohol use education, including identification of drugs of abuse and the characteristics of their use.

APPENDIX A

SUBSTANCE ABUSE WORKPLACE POLICY ACKNOWLEDGMENT FORM

I have received, read and agreed to comply with Martin Stone Quarries Substance Abuse Policy as a condition of employment. **Further, I understand that I have agreed and will allow Martin Stone Quarries, Inc. to refer positive test results to appropriate government agencies, in any case of post incident testing.**

I further understand that this policy is not a contract and does not create employment rights and that Martin Stone Quarries may change the policy at any time.

Employee's Printed Name: _____

Employee's Signature: _____

Supervisor's Printed Name: _____

Supervisor's Signature: _____

Date: _____

APPENDIX B

CONTINUED EMPLOYMENT AGREEMENT

I understand that Martin Stone Quarries has agreed to continue my employment provided that I meet and satisfy each of the following conditions:

1. I must immediately enroll in and successfully complete a treatment program or plan approved by Martin Stone Quarries.
2. If my treatment includes in-patient treatment, I will report for an appropriate work assignment promptly on completion of the in-patient program. I recognize that my continued employment is based upon the availability of a position and the business needs of Martin Stone Quarries unless my absence for treatment constituted medical leave under the Family Medical Leave Act. In that case, I will return to my position or an equivalent position, unless my position has been eliminated.
3. During the twenty-four (24) months following my return to work, I agree to allow and will promptly comply with Martin Stone Quarries' requests to conduct follow-up drug and alcohol testing and searches on an unannounced basis. I understand that the follow-up testing and searches are due to the fact that I violated Martin Stone Quarries' policy and could have been terminated for that violation. I understand that I will be subject to termination if I test positive on any such drug or alcohol test or if any search uncovers the unauthorized possession of drugs or alcohol.
4. I agree to participate in and complete any follow-up programs and/or treatment that are deemed necessary by the counselors approved by Martin Stone Quarries.
5. I will cooperate with Martin Stone Quarries in disclosing information concerning my progress in and completion of the required treatment program or plan and follow-up treatments.
6. I understand that the Martin Stone Quarries' policy regarding drug and alcohol use is designed to promote the health and safety of all employees and to maintain a safe, healthful, and efficient workplace.

I understand that if I fail to satisfy any of the conditions listed above, I will be terminated. I also understand that this Agreement does not create a contract of employment for any duration and does not modify my status as an at-will employee, and that either Martin Stone Quarries or I may terminate my employment without cause and without notice. I further understand that in addition to the conditions set forth above, I must abide by all other Martin Stone Quarries' regulations and policies.

Employee's Printed Name: _____

Employee's Signature: _____

Supervisor's Printed Name: _____

Supervisor's Signature: _____

Date: _____

APPENDIX C

AGREEMENT TO UNDERGO DRUG AND ALCOHOL TREATMENT

I have voluntarily requested an opportunity to participate in a drug and alcohol treatment program or plan approved by Martin Stone Quarries. Upon my successful completion of such treatment program or plan, I will be permitted to resume my employment with Martin Stone Quarries subject to the following conditions:

1. I will cooperate with Martin Stone Quarries in disclosing information concerning my progress in and completion of the required treatment program or plan and follow-up treatments.
2. If my treatment includes in-patient treatment, I will report for work promptly after completion of the in-patient program. Martin Stone Quarries will make very reasonable effort to return me to my former position following the completion of my treatment. If my absence for treatment constituted medical leave under the Family Medical Leave Act, Martin Stone Quarries will return me to my position or an equivalent position, unless my position has been eliminated.
3. During the twenty-four (24) months following my return to work, I agree to allow and will comply with unannounced Martin Stone Quarries' requests to conduct follow-up drug and alcohol testing. I understand that I will be subject to termination if I test positive on any such drug or alcohol test. I further understand that this unannounced, follow-up testing is intended to help me refrain from drug and alcohol abuse.
4. I agree to participate in and complete any follow-up treatment that is deemed necessary by the counselors approved by Martin Stone Quarries.

I understand that if I fail to satisfy any of the conditions listed above, I will be terminated. I also understand that this Agreement does not create a contract of employment for any duration and does not modify my status as an at-will employee, and that either Martin Stone Quarries or I may terminate my employment without cause and without notice.

Employee's Printed Name: _____

Employee's Signature: _____

Supervisor's Printed Name: _____

Supervisor's Signature: _____

Date: _____

APPENDIX D

SECTION 1.

Recognizing that substance abuse poses a serious threat to the well being of our employees and our economic viability, this organization conducts drug testing in order to:

- Protect the safety, health, and well being of all its employees.
- Comply with provisions of certain contracts or grants.
- Deter the illegal use of drugs and alcohol use on-the-job.
- Deter the illegal use of drugs off the job.
- Ensure that employees are fit for duty.
- Identify employees who have substance abuse problems that affect job performance and assist them in obtaining help.
- Maintain high morale among those many valuable employees who do not engage in substance abuse.
- Maintain high quality goods and services.
- Protect the safety of the public and/or consumers who the organization serves or to whom it provides goods.
- Maintain consumer confidence in the organization's work product.
- Maintain its economic viability and vitality.
- Maintain its effectiveness.
- Provide a role model to those individuals or organizations that it serves.
- Protect its property, equipment, and operations.
- Identify employees who have violated its drug free workplace policy.

SECTION 2. SCOPE OF TESTING

In order to achieve the above stated purposes, this organization shall conduct testing for alcohol and illicit drugs including, but not limited to:

- **Alcohol**
- **Drugs, (5 panel):** Cannabinoids (THC--Marijuana), Cocaine (Coke, Flake, Snow, Crack), Phencyclidine (PCP, Angel Dust, Hog), Opiate (Heroin, Morphine, Codeine), Amphetamines (Methamphetamines, Benzedrine, Dexedrine)
- **Drugs, (10 Panel),** Benzodiazepine (Valium, Librium, Xanax), Barbiturate (Nembutal, Seconal, Black Beauties), Propoxyphine (Darvon, Darvocet, Dolene), Methadone (Dolephine), Methaqualine (Quaalude)

SECTION 3 - SANCTIONS FOR REFUSAL TO BE TESTED OR FOR TAMPERING WITH THE TEST.

Consenting to drug testing under the circumstances enumerated in this policy is a condition of obtaining employment and of continuing employment. Any job applicant who refuses to be drug tested or who tampers with the test will not be hired. Any employee who refuses to be drug tested or who tampers with the test:

- will be considered to be in violation of our drug free workplace policy and subject to sanctions pursuant to that policy.

SECTION 4 - DRUG TESTING PROCEDURES

Testing procedures for alcohol and drugs are outlined in Section 4 of the policy.

An initial screening will be conducted using:

- ACT Lab Services (pre-employment and random drug testing)
- Q.E.D. A150 Saliva Alcohol test (alcohol-post incident)
- LVHC Toxicology Lab (drugs - post injury)

For samples that are found to be positive by the initial screen, the sample will be re-tested using a different more sensitive chemical technique. If this verification test reveals that the sample contains drugs at levels pre-determined by management to constitute positive test results, the results will be reviewed by a Medical Review Officer (MRO). At all times procedures will be followed to insure proper chain of custody of the specimen.

EMPLOYEE VERIFICATION

- We do not provide for employee-directed verification of positive drug test results.

SECTION 5 - CONFIDENTIALITY

All records regarding whether and when a drug test was conducted and the results are confidential. They shall be maintained in secured files under the control of the Director of Human Resources. The results of all drug tests shall be revealed only to management personnel with a need to know.