

# ***Construction Industry Substance Abuse – Enhancing Project Risk Management***

A substance abuse program (“Program”) has been implemented for comprehensive construction-industry drug and alcohol testing, safety, and employment management. In pursuit of shared interests and through exemplary cooperation, a number of unions, union contractors, and a trade association have developed the Program and initially enrolled over 2,500 field construction workers over the last two years. Contractors and employees/union members are part of the Program by way of being signatory to the applicable Collective Bargaining Agreements between labor and management. The Program continues to add additional union locals and contractors and forecasts participation by over 7,000 employees and 400 companies by 2008.

## **TOPIC ONE**

### **DETAILS OF THE RISK MANAGEMENT METHODOLOGY UTILIZED TO IDENTIFY AND QUANTIFY THE NEED FOR THE TECHNIQUE OR PROCESS.**

According to the U.S. Department of Health and Human Services, the construction industry has a higher percentage of current illicit alcohol and other drug users than any other occupation category. A 1997 estimate indicates 14.1% of full-time construction workers between the ages of 18 and 49 were current illicit drug users and 12.4% engaged in heavy alcohol use. The Substance Abuse and Mental Health Service Administration (SAMHSA) estimated in 1999 that the national average for all industries is 7.7% for illicit drug use and 7.6% for alcohol use.

Workers’ compensation data is a strong source for defining the seriousness of the consequences of this behavior. The effect of substance abuse can be particularly observed through experience rating. Experience ratings are a statutorily mandated and involve methodologies for charging employers insurance premiums based on individual past loss experience. The experience is used to calculate the premium by using a formula modification (“MOD”) comparing the employer’s actual loss record to the overall average for its business sector in a given state. Each business, according to its industry, has an annual number of expected workers’ compensation losses. If the company’s losses equal the industry standard for that year in that state, its experience-rating modification factor is 1.00. Safer-than-average firms have a MOD lower than 1.00. Conversely, firms with higher-than-average losses have a MOD higher than 1.00. Practically, a modification of 1.50 increases a \$400,000 premium to \$600,000. Analyses indicate that companies with drug-testing programs experienced a 51% reduction in incident rates within 2 years of implementation. (Source: “Evaluation of Drug Testing in the Workplace: Study of the Construction Industry”, Journal of Construction Engineering and Management, November/December 2001 pg. 438-444, Jonathan K. Gerber and George S. Yacoubian Jr.)

Such opportunities in risk-managing substance abuse engender the following key objectives for the Program:

- Manage risk / Improve safety
- Save costs
  - Personal injury
  - Property damage
  - Lost time / productivity
- Improve quality of work
- Achieve recovery from substance abuse

A major goal of the Program has been to integrate and/or substitute a large number of fragmented, inconsistent, relatively ineffective, and redundant drug testing programs in the local construction industry. Historically, union contractor employers had only pre-hire and “for cause” ability to do drug and alcohol testing. During the course of the past ten years, a large variety of owner-driven, and insurance-driven programs have emerged. Most notably owner- and contractor-controlled insurance programs (“O-CIPs” and “C-CIPs”) have been negotiated project-by-project and have provided for pre-project testing. Certain owner-based drug testing also has been established such that the employee knows the time that testing will occur (i.e., frequently on an anniversary date). Such testing has resulted in construction workers being tested multiple times a year but at a time known in advance by such employees.

This multiplicity of non-random testing also comes at a higher than necessary cost to the industry. The Program has been established to lower the incidence and cost of testing while concurrently raising its quality.

## **TOPIC TWO**

### **DETAILS OF THE DESIGN OF THE TECHNIQUE OR PROCESS**

All drug testing is conducted in accordance with procedures espoused by the U.S. Department of Health and Human Services (“DHHS”) as outlined in the “Mandatory Guidelines for Federal Workplace Drug Testing Programs” as set forth by federal regulations. Urine analysis is used, and blood testing is authorized, as necessary. The Program’s laboratories are licensed or certified by SAMHSA and follow guidelines established by the National Institute on Drug Abuse (“NIDA”). Verification is conducted by a Medical Review Officer (“MRO”).

The 5-panel test covers:

- Amphetamines
- Cocaine
- Marijuana
- Opiates
- PCP

The Program was design to encompass the entire employee population with an Initial Test conducted in mass on Saturdays for each union craft.

- Initial Testing
  - ✓ 100% of employees
  - ✓ Drug testing
  - ✓ Tested in mass at union halls and trade association apprentice training facilities
  - ✓ Program Cards issued and carried by employees

The urine specimen is separated into two containers at the time of collection. Urine specimen samples are sealed in front of the person providing the sample, labeled and checked against the identity of the employee to ensure the results match the tested specimen. A blood specimen may be used in the event that an employee has been injured and taken to a medical facility. Strict chain-of-custody procedures and documentation for the specimen are maintained by the collection facility or laboratory. Samples are stored in a secure and controlled atmosphere prior to testing. Both containers are frozen following the test such that the originally tested bottle, Bottle A, can be retested. Also, the employee can have Bottle B independently tested, if requested.

The Program Administrator issues program cards to employees and manages their possession of the cards. Employees use the cards to “Clear the Gates” at construction sites in addition to construction contractors confirming compliance statuses with the Program Administrator.

The Program also covers the on-going testing needs of employers including:

- Pre-Employment
- Post-Incident (accidents and safety violations – testing for alcohol, too)
- Reasonable Suspicion (testing for alcohol, too)

This testing is conducted in clinics, some of which are operated by the third-party Program Administrator; others are part of a testing collection network (i.e., workers’ compensation injury clinics). Transportation is provided by the employers in post-incident and reasonable suspicion cases. The Program provides DOT-compliant training for supervisory personnel for the identification and documentation of reasonable suspicion of drug and alcohol use.

The heart of the program, is on-going random drug testing. Each business day the Program Administrator randomly draws names. Fifty percent of the population is tested, annually (1/12 of 50% are tested monthly). The Program Administrator contacts the employer’s Designated Employee Representative for, in most cases, on-site drug testing. Ideally, the test is scheduled the same day. In the event the employee is unavailable up to 2 more days are permitted for the testing to occur. After such time the employee moves to a “non-compliant” status in the Program and is ineligible to work. The

scheduling of random tests are all designed to become known to the employee only at such time as his/her supervisor and the Program Administrator's Collector Agent appears for an immediate on-site drug test.

Random testing affords a greatly improved risk management tool over annual or pre-project testing and saves cost to the industry by unify various programs through recognition and acceptance of Program Cards at construction project gates. This higher quality program has replaced relatively ineffective redundant testing. This has especially been the case in the area of certain O-CIPs and C-CIPs.

- Random: 50% of population / yr
  - ✓ Program Administrator draws random names
  - ✓ Communication with the Designated Employee Representative (DER) of the contractor
  - ✓ Best-time scheduling that day (or the following 2 days, if necessary)
  - ✓ Employee not knowable of test until immediately before it is to occur
  - ✓ Urine collection is done at construction project sites with minimal work interruption or loss of work time

Alcohol testing occurs by way of breath analysis, or blood if necessary. Alcohol testing occurs for:

- Post-incident (i.e., accident or safety violation)
- For reasonable suspicion (with a written report)
- *DOT Subprogram only:* Random testing of 10% of the population

The main program does not provide compliance with Department of Transportation (DOT) drug and alcohol regulations. However, Participant Employers may voluntarily enroll in a Subprogram for DOT compliance. An employee can be in only one DOT testing pool at a time. This Subprogram mirrors the main Program with the following nuances:

- 10% random alcohol testing
- Blood Alcohol Content (BAC) of .02-.04 (called "Not Negative Result") requires removal from work for 8 hours
- Mandatory referral to Substance Abuse Professional (SAP)

Positive test confirmations and verifications have the following results:

- Work Release:

- ✓ Following a positive test result, the employee will not be released to work for any employer in the Program until the employee obtains a negative "Work Release Test" result.
- ✓ Return to Work Testing is at the expense of the employee.
- Employment:
  - ✓ Except for random drug testing, any positive test (i.e., first time) is a basis for an employer to discipline up to and including terminating employment.
  - ✓ With respect to "for cause" testing, employee can be terminated for any positive.
  - ✓ In case of random drug testing, any positive test within 24 months of an initial positive test is basis for Participant Employer to discipline up to and including terminating employment. The 24-month period is called a "Watch Block," and the employee is subject to a greater number of random tests during this period.
- Program Card Management:
 

Suspension and permanent revocation rules apply to participation status in the Program.

  - ✓ 1st Positive test - No suspension
  - ✓ 1st Positive during Watch Block (meaning 2 within 2 years) - 90-Day Suspension of Card (ineligible to take test)
  - ✓ 2nd Positive during Watch Block (meaning 3 within 2 years) – Permanent Revocation of Card
- Program Enforcement:
 

To enforce mandatory participation in the program, there are several enforcement mechanisms.

  - ✓ Various parties may utilize the grievance handling procedures under the Bargaining Agreements.
  - ✓ The parties may appeal grievance decisions to the civil courts.
  - ✓ General contractors are also opting to include in their Subcontractor Agreements a requirement that only employees compliant with the Program be permitted on the construction sites.
- Other details include the following governance and operational processes include:
  - ✓ Trust: A multi-employer, multi-craft Taft-Hartley trust fund has been established pursuant to Section 302 of the Labor Management Relations Act of 1947 ("LMRA"). Both labor and management trustees sit on this governing Board.

- ✓ Funding: Funding by employers commenced April 1, 2003 at \$.09 per hour worked by employees. Reduction in the hourly contribution rate is anticipated now that start-up costs and monetary reserves have been covered.
- ✓ Fund Administration: Cash flow management and financial reporting is performed by a third-party Fund Administrator.

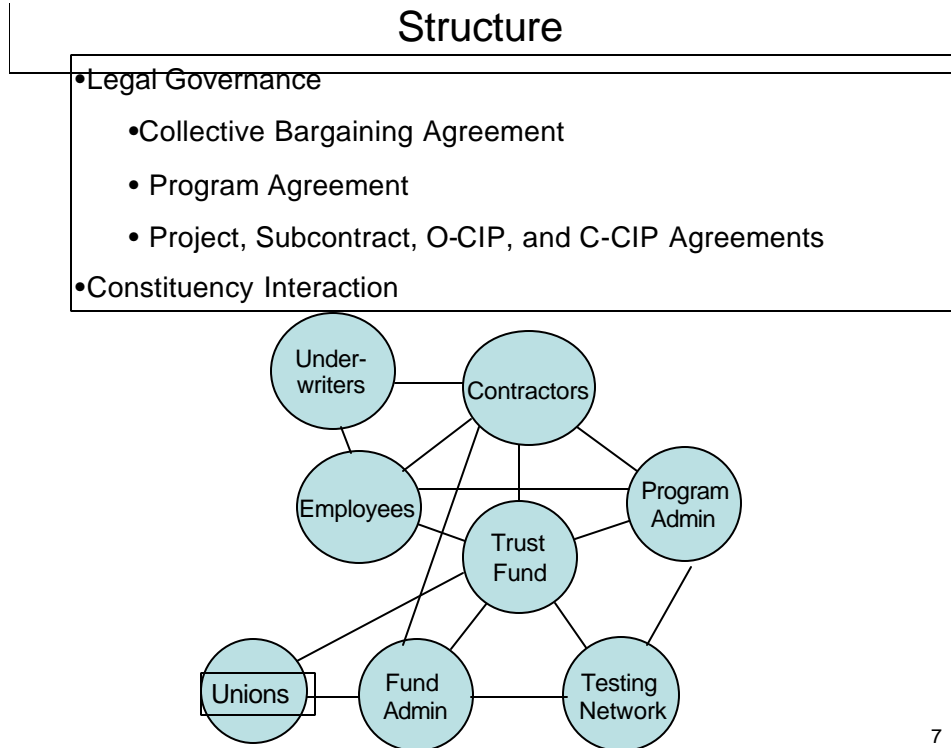
### **TOPIC THREE**

#### **DETAILS OF THE IMPLEMENTATION OF THE TECHNIQUE OR PROCESS**

During the past two years the following implementation activities have occurred under the Program:

- Negotiated a Program Agreement with on of the labor crafts
- Entered into ten Collective Bargaining Agreements incorporating the Program as part of the collective bargaining process, automatically covering all employees / union members and contractors / employers signatory to such Bargaining Agreements
- Formed a multi-employer, multi-craft Taft-Hartley Trust to centralize management and shift liability form employers and unions to a single entity
- Issued Requests for Proposal, selected, and contracted with a third-party Program Administrator and a Fund Administrator
- Formed specimen collection network (including workers' compensation treatment clinics utilized by the employers and their insurance carriers)
- Collected contact information for Designated Employee Representatives ("DERs")
- Performed initial testing and issued Program Cards for approximately 2,500 employees between September 1 – December 31, 2003
- Began random drug testing January 2, 2004
- Added a DOT Subprogram
- Established various remittance bank accounts
- Started employer contributions
- Began to market to owners and underwriters for acceptance as a substitute for pre-existing pre-project testing programs
- O-CIPs and C-CIP Agreements drafted to provide for contractors to remove non-compliant employees from projects

The Program has a number of constituencies and interactions between them. It can be depicted, in part, as:



#### TOPIC FOUR

##### DETAILS OF THE RESULT OF THE TECHNIQUE OR PROCESS

To date, the incidence of positives has been approximately 1.5% for initial tests that were scheduled in advance to admit current employees into the Program and approximately 5% positives for random tests. With additional time for program operation, the affect on contractors' loss modifications can be studied and compared against the 51% reduction in incident rates cited within the Gerber and Yacoubian study.

The Program has become an area benchmark for the operation of comprehensive substance abuse testing and risk management. As various union locals and management groups have undertaken negotiating this mandatory subject of bargaining, settlements have consistently been in favor of adopting the Program. It is adding *certainty, consistency, and quality* to this venue of construction project management.

Anecdotally, employees who previously where required to test multiple times a year at a time known to them (i.e., in advance of beginning a new project) now "clear the project gates" with verification of their Program Card and compliance status. This has reduced superfluous, ineffective testing that kept the employee from entering the job site for two or three days awaiting test results, to a system of high-quality testing that permits employees to clear the gates immediately. It is a win-win

situation for labor and management. For labor it means being quickly deployed to earn wages and reduce time spent being drug tested. For management it means reduced testing costs and improved deployment and efficiency of labor for project management.

The industry savings from O-CIP and C-CIP recognition; the expedited, on-site random testing under the Program; and reduced project interruptions are estimated to be delivering an annual return in excess of 300% on the annual cost of the Program.

## Supplemental Information

Supplemental information included with this submission are: 1) the Program's Frequently Asked Questions ("FAQ") and 2) the abstract to "Evaluation of Drug Testing in the Workplace: Study of the Construction Industry", Journal of Construction Engineering and Management, November/December 2001 pg. 438-444, Jonathan K. Gerber and George S. Yacoubian Jr.

### **Construction Industry Substance Abuse Program Frequently Asked Questions (FAQ)**

**Q:** Is this program mandatory or voluntary?

**A:** The main program does not provide compliance with Department of Transportation (DOT) regulations. This non-DOT program is mandatory for all the signatory unions, the contractors subject to their Bargaining Agreements, and the employees who are members of the signatory union. These unions include:

1. Laborers' Locals Nos. 264 and 1290 (Kansas City area) and 676 (Springfield)
2. Operating Engineers' Local No. 101 (Kansas City and Springfield areas)
3. Bricklayers Local No. 15 (Kansas City and Springfield areas)
4. Teamsters Local No. 541 (Kansas City area)
5. Cement Masons and Plasterers Local No. 518 (Springfield only)

The DOT-Compliant Subprogram is a voluntary program that can be elected by a contractor to add to the mandatory non-DOT Program. Contractor must request this, individually. It will not be automatic. Biennial DOT physicals will not be included under the Program but must be obtained by contractors individually from a medical organization.

Your other union employees cannot participate in this program unless and until such time as their Bargaining Agreement with you is changed to adopt the Program.

On the other hand, your non-union employees can be added to the Program if your management voluntarily chooses such a human resource policy.

**Q:** Where is all of this testing conducted?

**A:** The location of testing depends on the bases of the test:

1. **Pre-employment** and **reasonable-cause** testing is done at a collection clinic
2. **Post-accident** testing is done at the clinic where your workers' compensation treatment occurs
3. **Random** drug testing is done primarily at the project site where the employee is working. There are some locations, however, where it is more economical for employees to travel to a collection clinic for testing.

**Q:** When random drug testing is done at the project site, does the Program Administrator bring a mobile unit to the site?

**A:** No. In virtually every case, only 1 worker will be tested on a given project on a given day. So, rather than bear the expense of a mobile unit for one collection, we use the portable bathroom facilities available on the site.

**Q:** Who pays for this program?

**A:** Participant Employers contribute \$.09/hour worked for employees who are members of one of the signatory unions. The contributions are included in fringe remittance reports. Participant Employers should use the Program for pre-employment, post-accident, and reasonable-suspicion drug testing for their employees at no additional cost.

**Q:** What drugs does the Program test for?

**A:** the Program conducts a 5-panel test. It tests for marijuana, cocaine, amphetamines (including meth), PCP, and opiates.

**Q:** Does the Program perform "quick screen" drug tests?

**A:** No. The Fund Trusts decided to utilize full laboratory testing, not on-site quick screens. The laboratory is SAMHSA certified.

**Q:** What percentage of positives has the program experienced?

**A:** Initial Tests have resulted in 1%-2% positives. Random Tests have been closer to the 4%-5% range.

**Q:** How long does it take to get drug test results?

**A:** Within 2 business day the results are available to the Medical Review Officer (MRO) for certification

**Q:** If my employee is on prescription drugs, when can he/she explain that?

**A:** In all cases where a test comes back positive from the lab, it must be certified by the Medical Review Officer (MRO). That process involves the MRO first talking to the employee about possible explanations for the positive result. This happens before an employer is advised of test results.

**Q:** How many employees have been issued Program Cards?

**A:** About 2,500 employees

**Q:** Is testing on the clock?

**A:** Initial testing, pre-employment, and work-release testing are off the clock. Random, post-accident, and reasonable suspicion testing are on the clock.

**Q:** What percentage of the employee population is randomly drug tested each year?

**A:** 50%. (The goal is to test 50% of 1/12<sup>th</sup> of the population each month.)

**Q:** Under what circumstances does the Program test for alcohol?

**A:** An alcohol screening is conducted post accident and when there is reasonable suspicion of alcohol intoxication. In addition, under the DOT subprogram, 10% of the DOT employee population will be randomly tested for alcohol each year.

**Q:** What is the cut off blood alcohol content (BAC) level under the Program?

**A:** .04. Under the DOT sub-program a BAC of .02- .04 is not considered positive, but is called a "Not Negative Result" by the DOT, and the employee must be removed from work for 8 hours.

- Q:** When can I terminate an employee with a positive test result?
- A:** An applicant coming up positive on a pre-employment test can simply not be hired. An employee testing positive on a "for cause" test (post accident or reasonable suspicion) may be terminated on the first positive. For random drug testing, however, a special "One-Bite Rule" applies and provides that the first positive looking back over a 2-year period, results in the employee being placed in a "Watch Block." These employees cannot be terminated solely on the basis of this 1 test result, but they cannot return to work until they obtain a negative test result (called a "Return to Work Test"). 2 positives within 2 years is the basis to terminate the employee and they cannot take any test in the Program for 90 days. 3 positives within 2 years causes the employee to be permanently revoked from the Program.
- Q:** Will a Program Card pass my employees through Owner-Controlled Insurance Program (O-CIP) and Contractor-Controlled Insurance Program (C-CIP) gates?
- A:** We have been working on getting recognition in the industry (especially insurance underwriters, and owners, etc.) and have had good success for workers to clear project gates with their Program Cards. Participation in the Program overrides the need for pre-project drug testing.
- Q:** Will the Program cover more crafts and/or local's territories in the future?
- A:** The program is being marketed to add more locals and crafts and has successfully added 4 additional locals or areas of locals within the past 6 months.
- Q:** What happens if an employee refuses to take a test?
- A:** A refusal to test is treated as a positive test result.
- Q:** What happens if an employee is working out of the area (i.e., as is common for refractory workers)?
- A:** If an employees name is pulled for a random test and the employee is working outside of the jurisdiction, the random test will not occur. We are not conducting testing out of the territory of our Bargaining Agreements. Such an employee would be placed in a "non-compliant" category and would required to take a test within 3 working days upon returning to our local area.
- Q:** If an employee has possession of a Program Card does it mean that they are in compliance with the Program and if they don't then they are not in compliance?
- A:** That may be what it means, but it is not for certain. Contact the Program Administrator to determine the most up to date status. This verification process will be available on the internet, soon.
- Q:** What if my company already has a company-wide drug testing policy, how should we coordinate with the Program?
- A:** Your employees who are members of signatory Locals will be governed by the Program. That is to say that with respect to such employees (and only such employees), the Program supersedes your company drug policy as a mandatory subject of bargaining according to the National Labor Relations Board (NLRB).

**"EVALUATION OF DRUG TESTING IN THE WORKPLACE: STUDY OF THE CONSTRUCTION INDUSTRY", JOURNAL OF CONSTRUCTION ENGINEERING AND MANAGEMENT, NOVEMBER/DECEMBER 2001 pg. 438-444, Jonathan K. Gerber1 and George S. Yacoubian Jr.**

**ABSTRACT:** During the past two decades, drug testing in the workplace has gone from virtual nonexistence to widespread employer acceptance. This growth is particularly critical for the construction industry. High rates of alcohol and other drug use, coupled with the high-risk, safety-sensitive nature of the industry, have prompted the implementation of a variety of drug surveillance and prevention strategies. Despite this growing vigilance, however, no scholarly works have examined the impact of drug-related policies in the construction industry. The present study investigates the efficacy of workplace drug-testing programs in reducing injury incident rates and workers' compensation experience-rating modification factors within the construction industry. Analyses indicate that companies with drug-testing programs experienced a 51% reduction in incident rates within 2 years of implementation. Furthermore, companies that drug test their employees experienced a significant reduction in their workers' compensation experience-rating modified factors.