

# **Colas Inc.**

## **Non-DOT Drug-Free Workplace Policy**

**January 1, 2020**

**The Company's drug testing provider is:**

**Applicant Insight**

# **Colas Inc.**

## **Drug-Free Workplace Policy**

### **Purpose Statement**

Colas Inc. (“Colas” or “the Company”) has a vital interest in maintaining a safe and efficient environment for its employees, clients and customers. Employees who are under the influence of drugs or alcohol on the job pose serious safety risks not only for the user but also to co-workers and others. The possession, use or unauthorized sale of an illegal drug or alcohol may also pose unacceptable risks for safe and efficient operations. Accordingly, it is the right, obligation and intent of the Company to maintain a safe, healthy and efficient environment for all its employees and guests and to protect the public, Company property, equipment, and operations.

Colas has adopted this Drug-Free Workplace Policy (Policy) to ensure that our business is functioning safely, efficiently and effectively. In doing so, Colas will comply with all applicable federal and state laws and regulations governing drug-free workplace requirements. In addition, Colas has established a program that meets the requirements to disqualify individuals from receiving benefits for workers’ compensation and unemployment compensation purposes for Policy violations.

Colas will require all employees and job applicants to participate in, consent to, and comply with this Policy as a condition of employment and continued employment. For those who refuse to seek help on their own or who fail to cooperate fully with the terms and conditions of this Policy, the Company will take appropriate measures to address the situation promptly and directly. Substance abuse issues in the workplace or by employees that affect the workplace will not be tolerated.

### **State Amendments**

Colas has operations in Alaska, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Virginia and Wyoming. Specific provisions of the Policy that address drug or alcohol abuse in the workplace and state law requirements, if any, are attached as an Amendment. Where a provision of the Policy and any applicable Amendment to this Policy conflict, the provision of the applicable Amendment shall control.

## **Designated Employer Representative (DER)**

The Designated Employer Representative (DER) is an individual responsible to ensure adherence to this Policy will be met. The DER is authorized to receive communications and test results from service agents; take immediate actions to remove employees from duty for Policy violations; and to make required decisions in the testing and evaluation processes. Please direct all questions regarding this Policy to the DER. The DER contact information is included in Appendix A attached to this Policy.

## **Advance Notice of Testing and Policy Changes**

Unless otherwise required by state law, the Company will provide employees with thirty (30) days advance notice before implementing this Policy. When changes are made to this Policy, the Company will provide employees with thirty (30) days advance notice before implementing the changes.

## **Collective Bargaining Agreement**

To the extent this Policy supplements, and does not conflict with collective bargaining agreements, it is applicable. However, to the extent this Policy may conflict with a current collective bargaining agreement (CBA), the CBA shall prevail. In addition, Colas will notify the applicable Unions of any unilateral, material changes to its drug testing Policy and procedures.

## **Coverage**

This Policy applies to all employees of the Company when they are on Company business or on Company premises, including but not limited to all properties, facilities, land, platforms, buildings, structures, fixtures, installations, automobiles, trucks and other vehicles whether owned, leased or used by the Company or used for Company purposes. This Policy also covers the use of drugs or alcohol while off Company premises if the employee is "under the influence," as defined in this Policy, when performing work for the Company or representing the Company. Additionally, regardless of the event or situation, employees are always responsible for their actions and behavior at Company-related events or activities.

### **Scope of Coverage**

The Company's drug-free workplace program covers all:

- Full-time employees
- Part-time employees
- DOT employees (in addition to the Company's Controlled Substances and Alcohol Misuse Testing Policy mandated by DOT FMCSA regulations)
- Consultants, Contract and Temporary employees
- Interns

### **Applicants**

All applicants are covered by this Policy inasmuch as Colas has extended a conditional offer of employment pending the applicant's consent to take and provide a negative Pre-Employment drug test. If the tests are positive (without a valid medical explanation in accordance with

applicable state law) or if the applicant refuses to undergo testing, the offer of employment will be withdrawn.

Applicants are not entitled to employee assistance benefits, company-paid retests or any other services made available to employees in this Policy unless stipulated by applicable state or federal law.

## **Drug and Alcohol Testing**

All applicants and employees must comply with the Company's Policy as a condition of employment for their own safety, for the safety of other employees, workers and clients and for the good of Colas. Therefore, all applicants and employees must read, sign and return the "Acknowledgement of Receipt of Drug-Free Workplace Policy and Consent to Drug Testing Form" describing their responsibilities and their understanding of the consequences of noncompliance.

Colas will conduct drug testing of job applicants (after an extended conditional offer of employment has been accepted) and employees to achieve a safe and productive work environment. The Company will conduct such testing within the parameters of any applicable state and federal laws. The Company reserves the right to use any scientifically valid methods and procedures, which are not otherwise prohibited by state law, including breath, urine, saliva, blood or hair testing.

### **Alcohol**

Colas will test individuals for alcohol utilizing breath and saliva testing technologies. Blood alcohol may be used in limited circumstances. The Company reserves the right to utilize other testing technologies in accordance with applicable laws and when circumstances require an alternative. A blood alcohol content (BAC) level of 0.04 or higher will be considered a positive result. (See the Consequences for Policy Violations section of this Policy for more information.)

### **Drugs**

Colas will test individuals for illegal drugs utilizing urine/saliva/hair testing technologies, using an expanded DOT Look-a-Like 5 panel drug test. Blood specimens may be used in limited circumstances. The Company reserves the right to utilize other testing technologies in accordance with applicable laws and when circumstances require an alternative. Colas reserves the right, within the limits of federal and state laws, to examine and test for the presence of drugs and/or alcohol.

- Amphetamines
- Cannabinoid (marijuana)
- Cocaine
- Opiates
- Phencyclidine (PCP)

An individual who tests positive for any of the substances cited above may be subject to discipline up to and including denial of employment or termination of employment. We recognize that some states may permit the use of medical marijuana, but unless state law permits

otherwise, applicants and employees are not permitted to use, or be under the influence of, medical marijuana while on Company property, at Company events, or “during working time” (as defined below) or in other circumstances that might harm the Company’s operations, safety or reputation. (See the Medical Marijuana-Use and Consequences for Policy Violations sections of this Policy for more information.)

### **Cost of Drug and Alcohol Tests**

The Company will pay the costs of drug and alcohol tests required by the Company of all job applicants and employees. Applicants and employees will be required to pay the cost of any additional drug or alcohol testing not required by the Company such as retests.

### **Drug Testing Service Providers and Testing Procedures**

Colas will use the professional services of:

- laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA)/College of American Pathologists and/or licensed by the applicable states,
- certified collection facilities, and
- a licensed Medical Review Officer (MRO).

Specimen collection, and reporting procedures for drug testing will be in accordance with the guidelines set forth in the United States Department of Health and Human Service (HHS) and applicable state regulations, including the following:

- The laboratory shall meet the security and chain of custody guidelines set forth in HHS and applicable state regulations;
- The laboratory shall perform an initial screening test as set forth in HHS regulations and applicable state regulations. A specimen shall be identified as positive on the initial screening test if it exceeds the cutoff levels for that test set forth in the HHS regulations and applicable state regulations;
- A specimen identified as positive on the initial screening test shall be confirmed through a second test using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in the HHS regulations and applicable state regulations;
- A specimen identified as a negative dilute on the initial screening test shall not be considered to pass. Such a situation requires a second test. A second drug test resulting in a negative dilute will cause such result to be considered a positive drug test.
- The laboratory shall report as negative all specimens which are negative on the initial screening test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug. A MRO must review any positive test result in accordance with SAMHSA guidelines before it is reported to Colas; and

- The laboratory shall retain and place in properly secured long term frozen storage for a minimum of one year all specimens confirmed positive, or for additional periods of time as required by HHS or applicable state regulations.

### **Laboratory Confirmation and MRO**

If an initial screen is non-negative, the laboratory will conduct a confirmation test. The confirmation test will be by gas chromatography/mass spectrometry (GC/MS). All laboratory test results are reported to the Medical Review Officer (MRO). If the test result is reported as positive, the MRO will contact the donor. The donor will be given the opportunity to discuss the test result with the MRO. If the employee presents documentation acceptable to the MRO of authorized medical use of the drug(s) detected in the specimen, the MRO will declare the test negative.

The MRO will accept only valid prescriptions and documentation of drugs used in medical treatment. Use of drugs obtained outside the U.S., use of medications prescribed to persons other than the donor, or use of food products containing drugs (including hemp products) cannot be accepted by the MRO as legitimate medical explanations of a positive result. The MRO will accept a health care provider's authorization to use marijuana for medicinal purposes or proof of registration as a medical marijuana cardholder with the applicable state regulatory commission to the extent required by applicable state law.

The employee's interview with the MRO is confidential, and medical information other than the test result determination will not be shared with the employer or any other party, except where required by law, a court of jurisdiction, or where the MRO believes the information provided affects the safety of the workplace or the public.

### **Split-Specimens**

All split-specimen sample urine collections will be split into two separate samples. When a second test of a sample must be conducted, it will be from the second half of the split sample.

### **Testing Time Considered Work**

A drug and/or alcohol test of employees should be during, or immediately before or after, a regular work period. Testing required by the Company is considered time worked for the purposes of compensation and benefits for current employees.

The applicant or employee to be tested shall sign the "Acknowledgement of Receipt of Drug-Free Workplace Policy and Consent to Drug Testing Form" accompanying this Policy before taking the test(s). Refusal to sign the consent form or refusal to take the prescribed test(s) will result in disciplinary action, up to and including termination, as outlined in the Consequences for Policy Violations Section of this Policy.

## **Definitions**

**Alcohol**—includes, but is not limited to, beer, wine and liquor.

**Alcohol test**—the analysis of a bodily specimen used to determine the presence and specific level of alcohol in a person’s system. Methods of testing include breath, saliva, and blood.

**Alcohol use**—the consumption of any beverage or mixture of beverages that includes alcohol. For purposes of this Policy alcohol use can include any medication containing alcohol.

**BAC**—an abbreviation for blood alcohol content, a measurement of how much alcohol an individual has in his or her system.

**Chain of custody**—a systemized process involving a “chain of custody” form used to track the journey of a bodily specimen, usually urine, from donor to lab.

**Company property**—includes all buildings, parking lots, vehicles owned or leased by the Company or used for Company purposes, work facilities and plants, warehouses, equipment, or land used by the Company or its customers or suppliers.

**Confirmation test**—a second analytical process conducted following an initial or screening test for confirming the result of the first test. In the case of alcohol testing this would typically involve the use of an Evidentiary Breath Test following a non-evidentiary breath or saliva test. In the case of a drug test it would typically involve the use of gas chromatography/mass spectrometry technology.

**Controlled substances**—includes all prohibited substances covered by this Policy, which are included in Schedules I through V, as defined in Section 202 of the Controlled Substances Act, Title 21 of the United States Code. This includes, but is not limited to, amphetamines, cocaine, marijuana, opiates, phencyclidine (PCP).

**Cut-Off Levels**— drug testing cut-off levels are the minimum concentrations of drugs or drug metabolites that must be present in specimens before labs will report the results as positive.

**Employee Assistance Program (EAP)**—employee benefit programs offered by the Company and are designed for personal or family problems including mental health and substance abuse issues.

**Drugs**—see controlled substances. Also, includes legally obtained drugs that are used illegally (i.e., prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes, and any prescribed drugs not taken in accordance with a prescription).

**Drug paraphernalia**—any device used to assist in the use, transfer, manufacture of storing of illegal drugs or controlled substances.

**Drug test**—the analysis of a bodily specimen, usually urine, saliva, blood or hair to determine the presence and level of a drug or drugs in an individual’s system.

**During working time**—means time during which the employee is being paid to work for or represent Colas or the employee is in fact representing Colas’ interests. The term also includes all paid break and meal periods.

**Illegal drug use**—the illegal use of illicit drugs, prescription drugs, over-the-counter medications, alcohol, or any other substance (such as glue, aerosols, etc.) being used in a way other than in its intended purpose or that violates federal or state law.

**Legal Drugs**—includes drugs legally prescribed under federal or state law and over-the-counter medications that have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

**Medical Review Officer**—a licensed physician certified to review laboratory drug test results. This individual must have knowledge of substance abuse disorders and the necessary training and certification to evaluate a confirmed positive drug test result to verify the result.

**SAMHSA Laboratory**—a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency within the U.S. Department of Health & Human Services.

**Substance Abuse Professional (SAP)**—a qualified person with credentials in accordance with federal and state regulations, who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**Under the influence**—for purposes of this Policy “under the influence” means that the employee has a detectable amount of a drug, as measured by a scientifically valid test (i.e., a positive drug test result) or in the case of alcohol has a blood alcohol level of 0.04 or greater, as measured by a scientifically valid test, or in the case of marijuana demonstrates objective signs of impairment, including but not limited to, red eyes, lethargic demeanor, lack of coordination, confusion and lack of focus, and has a positive drug test result.

## **Education & Training**

Colas will provide employee drug awareness information and supervisor training on how to recognize signs and symptoms of substance abuse, how to confront, collaborate and document an employee exhibiting signs of being under the influence of a drug or alcohol. Additional training of employees may be required in accordance with applicable state law.

## **Employee Assistance Program**

The Company offers an Employee Assistance Program (EAP) benefit for employees and their families. The EAP provides confidential assessment, referral, and short-term counseling for employees who need or request it. If an EAP referral to a treatment provider outside the EAP is necessary, costs may be covered by the employee’s medical insurance; but the cost of such outside services are the employee’s responsibility.

Employees will not be discharged, disciplined or discriminated against for voluntarily seeking



treatment for a drug/alcohol related problem if that individual has not previously tested positive for drugs or alcohol in violation of the Company's Policy, and enters an employee assistance program for substance abuse-related issues or enters an alcohol and drug rehabilitation program.

Confidentiality of EAP services is assured. No information regarding the nature of personal problems will be made available to the Company, nor will it be included in the permanent personnel file. Participation in the EAP will not affect the employee's employment status, however, it will not protect an employee from disciplinary actions due to failure to meet conditions of continued employment. For more information about the Company's EAP program visit: [supportlinc.com](http://supportlinc.com).

## **Instant/Point of Collection Testing (POCT)**

Where lawful and in accordance with applicable state or local statutes, regulations, or ordinances, testing may include instant drug screens which are administered on Company premises or job site and/or clinics. If the result of an instant screen is negative, no further testing will be required. If the result of an instant screen is anything other than negative, a urine specimen will be collected at a site selected by the Company and submitted to a certified laboratory for further testing for drugs. The Company will not discipline an employee based solely on an unconfirmed instant screen.

## **Prohibited Conduct**

Colas employees are prohibited from:

- Being under the influence of drugs during working time as defined in this Policy (i.e., a confirmed positive drug test) (See the Medical Marijuana-Use section of this Policy.);
- Being under the influence of alcohol during working time as defined in this Policy (i.e., a BAC of 0.04 or higher as demonstrated by an alcohol test). (See the Alcohol Use Exceptions section of this Policy.);
- Testing positive for drugs or alcohol (See the Medical Marijuana-Use section of this Policy.);
- Failing to notify a supervisor or manager of the use of a prescription drug or over-the-counter medication that could alter the ability of an employee to safely perform any job function;
- Failing to notify a supervisor or manager if the employee believes that he or she is under the influence of drugs or alcohol;
- Bringing illegal drugs, alcohol, controlled substances or drug paraphernalia to work and/or storing such items on Company property;
- Possessing, using, manufacturing, distributing or attempting to distribute, sell or dispense illegal drugs or any narcotic, hallucinogen, sedative, controlled substance or other drug (other than in accordance with a doctor's prescription), off Company property that may adversely affect Colas, the worker's job performance, or place at risk the safety or wellbeing of the worker or others.

- Failing to notify the Company in writing within five (5) calendar days of a criminal drug conviction or pleading guilty to a criminal drug offense occurring in the workplace. In accordance with federal law, the Company will contact the appropriate federal contracting agency within ten (10) calendar days of receiving a notice of any workplace drug conviction of employees who are directly involved in performing work on federal contracts, as defined under the Drug-Free Workplace Act of 1988;
- Abusing prescription drugs, which includes exceeding the recommended prescribed dosage, usage in a manner other than for which a medication was prescribed, using others' prescribed medications, and/or obtaining medications in an illegal manner including obtaining medications from a foreign country without a valid and legal U.S. prescription under federal or state law;
- Switching, tampering with or adulterating any specimen or sample collected under the Company's Policy for testing for drugs or alcohol;
- Disclosing information related to a drug or alcohol test result, and/or substance abuse treatment referrals, except as required by this Policy;
- Failure to consent to and participate in and abide by the terms and recommendation of the Substance Abuse Professional (SAP) or Employee Assistance Professional (EAP);
- Refusing to cooperate with the terms and conditions of this Policy. Failure to cooperate includes, but is not limited to:
  - a. Refusal to be tested,
  - b. Failure to provide an adequate sample without a valid medical excuse,
  - c. Refusal to sign required paperwork (including, but not limited to, consent forms, acknowledgement forms, and chain of custody forms),
  - d. Failure to show up at an assigned collection site to provide a specimen, and
  - e. Failure to be reasonably available to be tested once the employee has been notified by the Company.

## **Alcohol-Use Exceptions**

There may be occasions when it is permissible to consume reasonable amounts of alcohol on Colas property during work time, if consumption of alcohol is authorized in advance in writing by an authorized member of Colas' management. Examples of occasions that might qualify for exemption include Colas functions or business functions, consumption after regular business hours, at professional events or professional association meetings, or while traveling on business or marketing/entertaining clients or potential clients.

Notwithstanding the foregoing exceptions, employees understand that it is a violation of this Policy to drive any vehicle if a manager has reasonable cause to believe that an employee authorized to consume alcohol under this section is under the influence of alcohol, or the employee believes that he or she is under the influence of alcohol. Managers or employees who

find themselves in these circumstances are expected to ensure that the involved employee or employees do not drive, but instead take a taxi cab and/or stay at a hotel.

The following exceptions, while permitting alcohol consumption, do not authorize an employee to be “under the influence” of alcohol or operate a Company vehicle after consuming alcohol:

<b>Alcohol-Use Circumstances</b>	<b>Company Policy</b>
Will on-duty alcohol use be permitted?	NO
Will drinking be permitted at company-sponsored events?	YES
Will drinking be permitted at professional functions/meetings?	YES
Will drinking be permitted while traveling and/or entertaining on behalf of the Company?	YES
Will the company pay for transportation/hotel expenses for an employee who is under the influence and unable to drive?	YES
Are employees permitted to consume alcohol and then operate a Company vehicle or any other vehicle while representing the Company?	NO

At no time is an employee permitted to consume alcohol while operating a motor vehicle or to operate a motor vehicle while under the influence of alcohol.

## **Medical Marijuana-Use**

While the use of marijuana has been legalized under some state’s laws for medicinal uses, it remains an illegal drug under federal law and its use during working time as it impacts the workplace is prohibited by Colas’ Policy. If an applicant or employee tests positive for marijuana and/or marijuana extract and a valid medical marijuana prescription is verified, Colas will direct the MRO to accept such authorization as a legitimate medical explanation for the presence of marijuana, and release the result as negative to the extent required by applicable state law, regulation or ordinance. However, unless state law permits otherwise, applicants and employees are not permitted to use, or be under the influence of, medical marijuana while on Company property, at Company events, or during working time. At no time is an employee permitted to operate a company-owned vehicle while under the influence of marijuana.

**Medical Marijuana Use by DOT Employees** – The DOT’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result. Therefore, the MRO will not verify a drug test as negative based upon learning that the DOT employee used “medical marijuana” in accordance with state law. Marijuana remains unacceptable for any safety-sensitive employee subject to drug testing under the DOT FMCSA regulations.

## **Results Reporting**

All results from instant testing devices will be reported verbally at the time of the test. The results of lab-based tests will be reported verbally as soon as possible following receipt of a result by the Company.

## **Types of Testing**

The types of testing performed by Colas include, but are not limited to, the following, as permitted under applicable state law:

### ***Pre-Employment Drug Testing***

Applicants for employment with Colas will be required to submit to a drug test once a conditional offer of employment has been extended and accepted. All offers of employment are contingent on a negative test result. Applicants will be required to sign an acknowledgement and consent form.

A positive drug test, failure or refusal to participate in a drug test, failure to sign the Company's Acknowledgement and Consent form, or any effort to tamper with a sample or to alter a test result will disqualify an applicant from employment. Candidates that fail the pre-employment drug test may not re-apply or be considered for employment for one year.

Applicants previously employed by the Company, regardless of the length of time they were away, will be subject to a pre-employment drug test as outlined above.

The Company's pre-employment drug screening test will be administered consistently.

### ***Reasonable Suspicion Drug and Alcohol Testing***

Employees will be required to submit to a drug and/or alcohol test when a supervisor or manager has a rational basis, whether from direct observation or from the credible reports of others, to believe that an employee has violated this Policy or is under the influence of drugs or alcohol in violation of this Policy. Reasonable suspicion will be documented and will not be based on rumor, speculation, or unsubstantiated information. Referrals for reasonable suspicion testing will be made according to the procedures set forth by the Company.

Behavior that could prompt reasonable suspicion of drug or alcohol use in violation of the Company's Policy includes, but is not limited to, the following:

- Direct observation of conduct, including reckless or risky behavior, that may indicate an individual is impaired by or under the influence of intoxicants or drugs during working time;
- Direct observation of speech, odor or appearance that may indicate an individual is impaired by or under the influence of intoxicants or drugs during working time;
- Reports or information that an individual was seen taking, selling, dispensing, or using drugs during working time, or telling other employees of being involved in such activities;
- Evidence of an attempt to alter a drug or alcohol test sample or result; and/or

- Patterns of abnormal and erratic conduct such as, but not limited to, increased absenteeism, excessive tardiness, or lack of expected or required work performance.

Reasonable suspicion does not mean that the Company must be correct in its belief, only that it has some rational basis for believing the employee is somehow involved in the use, sale, or possession of drugs and/or alcohol. The fact that reports may have been made anonymously about an employee does not necessarily mean that they cannot form the basis of a reasonable suspicion.

An employee will be removed from his or her position and receive a “non-disciplinary suspension” until Colas receives the test result. Hourly (non-exempt) employees will not be compensated for time missed from work if the test is positive, but will be compensated if the test is negative.

When an employee is sent to a testing facility for a reasonable suspicion or post-incident drug or alcohol test he or she should be transported in a taxi paid for by the Company or transported by a supervisor or manager. If the individual is to be sent home following providing a sample, he or she will be required to take a taxi paid for by the Company unless the employee prefers a non-employee pick him or her up from the testing facility. For liability reasons, it is not acceptable for a Company representative to drive the employee home. Under no circumstances is the individual allowed to drive himself or herself home if he or she may be under the influence. If the individual insists on driving home alone he or she will be informed that the Company is obligated to notify local police.

#### ***Post-Incident Drug and Alcohol Testing***

To evaluate the root cause of a workplace incident that harmed or could have harmed employees, all employees whose performance may have caused or contributed to an incident during work time, while on Company business or on Company property, will be subject to a drug and/or alcohol test as soon as possible following the incident.

In addition, all employees who have sustained an injury requiring or incurring any medical attention due to an incident during working time, while on Company business or on Company property, will be subject to a drug and/or alcohol test as soon as possible following the incident.

The incidents which will subject employees to a drug and/or alcohol test are as follows:

- 1) A fatality
- 2) Any incident that is reportable or causes lost work time or property damage

A post-incident drug test must take place within 32 hours of the time of the incident. A post-incident alcohol test must take place within 8 hours of the time of the incident.

#### ***Random Drug Testing***

All employees will be subject to random, unannounced drug testing, unless otherwise prohibited by applicable state law. Employees subject to random testing will have an equal probability of

being neutrally selected for such testing. Colas does not have the right to waive the selection of any employee who has been randomly chosen.

Random tests will be unannounced and performed at reasonable intervals throughout the year. The selection of employees for random drug testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employee identification numbers (i.e., Social Security numbers, payroll identification numbers, or other comparable identifying numbers).

The names of individuals who are randomly selected for testing will be returned to the eligibility list for future selection during the same year.

Whenever an employee is selected for a random test, he or she will be notified of the selection and instructed to report to a collection site immediately (plus travel time). Employees may be escorted by a Company representative.

#### ***Routine Fitness-for-Duty Drug Testing***

All employees who have been on an approved leave of absence of thirty (30) or more consecutive days will be subject to drug testing within seven (7) calendar days of returning to active duty, unless prohibited by state law. This routine fitness-for-duty testing will be applied uniformly to all employees and job classifications, regardless of the reason or nature of the leave of absence (including seasonal leaves of absence).

#### ***Return-to-Duty Drug and Alcohol Testing***

Employees who have tested positive and have been removed from his/her job duties must submit to and furnish a negative drug and/or alcohol test result prior to returning to his/her job duties.

#### ***Follow-Up Drug and Alcohol Testing***

An employee who has been removed voluntarily or otherwise from his or her job duties based on a verified positive drug test result and/or confirmed positive alcohol test result will be subject to unannounced drug and/or alcohol testing to determine whether he or she is under the influence of alcohol or drugs during working time. The testing can continue up to twelve (12) months from the return-to-work date.

Individuals who are subject to follow-up testing will continue to be evaluated by a Substance Abuse Professional (SAP) during the follow-up testing period. The SAP may alter the period the employee is subject to such testing, as well as the number of tests conducted.

#### ***Client-Required Drug and Alcohol Testing***

Colas workers may be subject to additional drug and alcohol testing contractually required by Colas' clients. When such testing is required employees will be notified.

### **Consequences for Policy Violations**

Employees who violate any of the conditions of this Policy will be subject to discipline, up to and including termination, at the Company's sole discretion as described below. The degree of action taken will depend on the circumstances of each case and any applicable state laws.

**Non-Testing Violations**—Employees should understand that certain Policy violations such as the use of alcohol (including possession of an open container) unless otherwise approved or any illegal drug activities (including the possession, sale, or use of illegal drugs) on Company premises or on Company time may result in immediate termination. Individuals who refuse to cooperate with the Company’s policies in any way, including refusal to sign the Acknowledgement and Consent form accompanying this Policy, may be subject to immediate termination.

**Applicant Positives**—Job applicants who test positive (without a valid medical explanation in accordance with applicable state law) will not be hired. Such individuals may not reapply for employment with the Company for at least one calendar year. (See the Medical Marijuana-Use section of this Policy.)

**Employee Positives**—Employees who are no longer in their introductory period and have a first-time verified positive drug or alcohol test result will be required to participate in an approved substance abuse treatment program at the individual’s cost unless otherwise restricted by applicable state law. Such individuals will be required to successfully complete the treatment program, provide a negative return-to-duty test, and participate in a follow-up testing program as determined by the SAP. The Company reserves the right, at its sole discretion, to terminate immediately the employment of an individual who tests positive for drugs and alcohol after a first verified test after considering the employee’s disciplinary and performance history and other relevant considerations.

If an employee tests positive a second time, the employee will be subject to immediate termination.

**Refusal, Tampering and/or Adulteration**—Individuals who refuse to submit to testing or who attempt to alter a drug or alcohol test result or a test sample by means of tampering with, adulterating, switching, or diluting a specimen will be treated as if they had a positive test result.

**Suspensions for Reasonable Suspicion Testing**—Employees involved in a reasonable suspicion drug or alcohol test will be removed from their positions and receive a suspension without pay until the Company receives the results of the test(s). If the result is negative the individual will be reinstated and paid for all time missed during the suspension. If the result is a verified positive the individual will be subject to discipline up to and including termination.

**Medical Marijuana**—Colas will accept medical marijuana as a legitimate reason for a positive drug test upon verification by the MRO and only to the extent required by applicable state law, regulation or ordinance. However, unless state law permits otherwise, applicants and employees are not permitted to use, or be under the influence of, medical marijuana while on Company property, at Company events, or during working time.

**Recreational Marijuana** – The use of marijuana for recreational purposes, will not be considered an acceptable/reasonable explanation for a confirmed positive laboratory report for marijuana under any circumstances even where recreational marijuana is permitted by applicable

state law, regulation or ordinance and will be reported by the Medical Review Officer (MRO) as a verified positive drug test for marijuana because such use is in violation of Schedule 1 of the Controlled Substances Act.

## **Confidentiality**

All information, interviews, reports, statements, memoranda, documentation, and drug and alcohol test results, written or otherwise, are confidential. Colas and any of its agents associated with drug and alcohol testing (laboratory, collection site, Medical Review Officer, rehabilitation/treatment/counseling service providers, etc.) who receive or have access to information concerning test results will keep all information strictly confidential. No such information will be released without the written consent of the employee unless the release is on a legitimate “need-to-know” basis, is relevant to a legal claim asserted by the employee, or as otherwise required by law. Unauthorized disclosure of such information will be grounds for disciplinary action up to and including termination. Any information regarding an employee’s use of prescription drugs and any positive drug test information will be filed in the employee’s confidential medical file that is maintained separately from the personnel file.

The Colas workers' compensation carrier may require that the Company report results of post-incident tests.

## **Consent**

All employees are required to sign the Acknowledgement and Consent form included in this Policy as a condition of employment or continued employment.

## **Non-Discrimination**

In accordance with the Americans with Disabilities Act, Colas does not discriminate against any qualified individuals with a disability who are not currently using illegal drugs and who have either successfully completed rehabilitation or who may be currently participating in a supervised rehabilitation program and are no longer using illegal drugs. Nothing contained in this Policy shall be construed to, or be applied in such a way that its application will, result in discrimination against any individual with a disability as defined by the Americans with Disabilities Act and similar applicable state laws.

A current disability of any kind, however, does not entitle an employee and/or job applicant to violate any provisions of this Policy.

## **Reservation of Rights**

Colas reserves the right to administer this Policy and interpret, change, or rescind the Policy in whole or in part, with or without notice or consideration. In addition, changes to applicable state and federal laws or regulations may require Colas to modify or supplement the Policy without notice.

**This Policy is not a contract, nor does it contain any promises or guarantees of any kind with respect to any terms or conditions of employment. This Policy does not, in any way,**



**change the nature of the at-will employment relationship on either the part of the employee or the Company.**

## **Searches**

Upon an employee's violation of this Policy or a reasonable suspicion of an employee's violation of this Policy, Colas reserves the right to conduct a reasonable search and inspection of all Company premises, as well as the suspected employee and any of the employee's personal property located on company premises, including but not limited to the employee's desk, files, lockers, lunch containers, briefcases, clothing and private vehicles, for the purpose of determining the presence of alcohol or any and all prohibited substances referenced in this Policy.. This Policy will extinguish and eliminate any continuing expectation of privacy where reasonable suspicion exists to believe that there has been a Policy violation. Where reasonably practical, inspections will be conducted in the presence of the employee implicated in the potential Policy violation. All searches will be performed with concern for the dignity and personal privacy of employees and other individuals involved, as circumstances allow. Employees are expected to cooperate in the conduct of such searches and any refusal to cooperate may result in disciplinary action.

# **Colas Inc. Acknowledgement of Receipt of Drug-Free Workplace Policy and Consent to Drug Testing Form**

As explained in Colas Inc.'s Drug-Free Workplace Policy (Policy), Colas. Inc. is committed to providing its employees with a safe workplace that is free from unlawful drugs and alcohol. Pursuant to that Policy, current employees of and applicants for employment with Colas. Inc. will be tested for drugs and alcohol at certain times before and during their employment with Colas Inc.

I, the undersigned, acknowledge that:

- 1) I have received and understand the Company's Drug-Free Workplace Policy. I understand that my compliance with the Company's Policy on drugs and/or alcohol is a condition of my employment with Colas Inc. and I agree to abide to all terms of the Policy. I further understand that non-compliance may result in disciplinary action up to and including termination.
- 2) I agree to submit to and cooperate fully with the Company's drug and alcohol testing ("drug test") requirements as described in the Policy. I agree to provide a urine, hair or other appropriate sample upon request, and undergo other necessary procedures, as required to perform the drug test. I acknowledge that the drug test will be conducted by a certified laboratory, which will collect and test the drug test samples, and verified by the Company's Medical Review Officer ("MRO"). I agree to be monitored by a laboratory employee of my gender when I provide the test sample. I authorize the release of the laboratory test results in accordance with the Company's Policy to the selected MRO. In doing so, I understand that I will be given an opportunity to discuss a positive drug test result with the MRO before the result is reported to the Company as a verified positive. I also authorize the collection site, laboratory and/or MRO retained by Colas Inc. or its designated agent, Applicant Insight to disclose the drug test results to Colas Inc. I understand that the drug test results will remain confidential to the extent required by law and all records related to the test will be kept separately from my personnel file.
- 3) I consent to undergo a pre-employment drug test before I begin my employment with Colas Inc. After commencing employment, I consent to undergo random drug tests that the Company may require for employees in my position. I also consent to be tested if I am involved in a workplace incident or injury, if the Company has reasonable suspicion to believe that I was under the influence of unlawful drugs or alcohol while working for Colas Inc. or on the Company's premises, and under any other circumstances permitted by applicable law.
- 4) The Genetic Information Non-Discrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. In compliance with this law, I understand that I am not being asked to provide any genetic information when responding to a request for medical information related to a drug test. Genetic information, as defined by the GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- 5) I understand that I may be tested for any of the following substances as well as any other substances the Company deems necessary: marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol to determine my eligibility for employment or continued employment.

- 6) I understand that the Company will pay for any initial drug test that it requires and that I will be compensated at my regular rate of pay for the time spent submitting to a drug test required by the Company.
- 7) I understand that if I test positive for unlawful drugs or alcohol, I will be in violation of the Company's Policy and subject to discipline, up to and including termination or withdrawal of a conditional job offer. I understand that I have the right to a retest at my own expense if an initial test indicates use of unlawful drugs or alcohol, and that I will have the opportunity to explain to the Company that a positive test result is due to my legitimate use of prescription medication. I understand that my refusal to take, failure to complete or tampering with a drug test required by the Company will be grounds for discipline, up to and including my termination or withdrawal of a conditional job offer. I understand that the test results will not be used for any other purpose than described in this form and the Policy.
- 8) I hereby release from liability Colas Inc. and its subsidiaries and their respective officers, directors, employees, agents, and all other parties involved in testing for any actions taken during or after a drug test, including any violation of state drug testing laws, as well as errors in testing and any actions taken by Colas Inc. following a test.
- 9) I understand that I have a right to receive a copy of this Acknowledgment and Consent form. I understand that I have the right to inspect and/or receive a copy of the information to be released and that I will be charged a fee for any copies of the medical records that I receive in accordance with applicable state law. I understand that information used or disclosed based on this authorization may be subject to re-disclosure and no longer protected by federal privacy standards. I agree that a photocopy of this signed Acknowledgment and Consent form has the same validity as an original.
- 10) I understand that I may revoke this authorization at any time by providing a written statement of withdrawal to the Designated Employer Representative (DER), except to the extent that action has already been taken in reliance upon it. I am aware that my withdrawal will not be effective until received by the DER. I am also aware that my withdrawal will not be effective regarding uses and/or disclosures of my health information that have been made prior to receipt of my withdrawal statement.
- 11) I acknowledge that I have fully read and understand this Acknowledgement and Consent form and I consent to drug and alcohol testing under the terms discussed above and in Colas Inc.'s Drug-Free Workplace Program Policy. I acknowledge and agree that I have had an opportunity to ask questions about this form before signing it. Unless otherwise revoked, this authorization is to remain in effect for one year from the date of signature, or upon termination of employment, whichever is later.

Applicant/Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant/Employee Number: \_\_\_\_\_

Applicant/Employee Signature: \_\_\_\_\_

Company Name: **SIMON – 6215 CLEAR CREEK PARKWAY, CHEYENNE, WY 82007**

I am the parent/guardian of \_\_\_\_\_, and I acknowledge that I understand the Company's Drug-Free Workplace Policy. I hereby consent to his/her participation in the Company's drug and alcohol testing program.

Parent/Guardian Signature: \_\_\_\_\_

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

**Appendix A**

**DRUG PERSONNEL AND SERVICES**

1. DESIGNATED EMPLOYER REPRESENTATIVE (DER) - PRIMARY

Kelly Duplantis, HR Specialist  
SIMON  
6215 Clear Creek Parkway  
Cheyenne, WY 82007  
307-772-3204  
[kduplantis@simonteam.com](mailto:kduplantis@simonteam.com)

2. DESIGNATED EMPLOYER REPRESENTATIVE (DER) – SECONDARY

Casey Turcato, HR Director  
SIMON  
6215 Clear Creek Parkway  
Cheyenne, WY 82007  
307-772-3214  
[cturcato@simonteam.com](mailto:cturcato@simonteam.com)

OR

Julie Penney, HR Manager  
SIMON  
3975 Sturgis Rd, PO Box 2720  
Rapid City SD 57709  
605.718.7418  
[jpenney@simonteam.com](mailto:jpenney@simonteam.com)

## AMENDMENT FOR COLORADO

This amendment only applies to operations in Colorado.

### **General Testing**

#### **Alcohol**

A blood alcohol content (BAC) level of 0.04 or higher will be considered a positive result as outlined in the policy and is evidence that may allow for denial of unemployment benefits. If a blood alcohol content (BAC) level is 0.10 or higher at the time of an accident, intoxication will be presumed and may allow for denial of workers' compensation benefits.

#### **Alcohol Specimen**

Blood alcohol is required.

#### **Split Specimen**

A duplicate sample shall be preserved for alcohol testing and made available for purposes of a second test to be conducted at the employee's expense.

## AMENDMENT FOR NEBRASKA

This amendment only applies to operations in Nebraska.

### **Administration**

#### **Adverse Employment Action**

When a confirmed test result is negative any adverse employment action must be rescinded.

#### **Chain of Custody**

An employer that performs drug testing or specimen collection shall maintain a written record of chain of custody and shall be maintained from time of collection until the specimen is no longer needed.

#### **Confidentiality**

Drug test results will not be revealed to the public except as required by law. Employees with a “need to know” may be informed of a drug test result.

#### **Refusal**

The Company retains the right to hold employees who refuse to participate in a drug test subject to disciplinary or administrative action (including termination).

### **General Testing**

#### **Alcohol Retest**

An employee who tests positive for alcohol may immediately request that a blood sample be tested to confirm the result of the breath test. If the confirmatory blood test result does not confirm a violation of the Company’s work rules, any disciplinary or administrative action will be rescinded.

Note: Positive initial alcohol tests must be confirmed by gas chromatography (blood) or by an approved breath testing device\*.

\*The Nebraska Health and Human Service Dept. regulations state that “fuel cell analysis is the approved method of analysis” and the following types of preliminary breath testing devices are approved for use by a Class C Permit holder (authorized to perform preliminary breath alcohol tests):

Alco-Sensor, all models  
Intoxilyzer, all models that use fuel cell analysis  
Lifeloc, all models that use fuel cell analysis

As for confirmatory testing by a Class B Permit holder (authorized to perform confirmatory alcohol tests), the following evidentiary breath testing devices are approved by the regulations:

Intoxilyzer, all models  
Intoximeter Model 3000  
DataMaster, all models

If this is not possible, a blood alcohol test will need to be performed.

**Confirmation Testing**

All initial screen positive drug results must be confirmed by GC/MS or other scientific testing technique which has been or may be approved by the department. Alcohol positives results must be confirmed either by GC/MS or breath. Employees may request a confirmatory blood alcohol test.

**Drug Test Cheating**

Drug test cheating can be considered the same as a positive test result. In addition, it is unlawful for a person to use or attempt to use drug-free urine for the purpose of cheating on a drug test and is considered a class I misdemeanor.

**Laboratory Requirements**

CLIA labs required for confirmation testing except for breath alcohol tests.

**On-Site Testing**

Permitted for screens only; positives must be confirmed at a certified laboratory.

**Specimens Permitted**

Bodily fluids and breath.

**Specimen Storage**

All confirmed positive specimens (except breath) must be stored for 180 days.

## AMENDMENT FOR WYOMING

This amendment only applies to operations in Wyoming.

### **Administration**

#### **Cost**

All drug and alcohol testing conducted pursuant to an employer's drug-free workplace policy shall be paid for by the employer.

#### **Employee Education**

Employees will receive at least one (1) hour of employee substance abuse education training annually. Employers shall retain records, to include attendee's signature, dates and training topics.

#### **Notice of Policy/Program**

Employees will be given 60 days to review a new or revised policy before implementation. The policy will be posted in an appropriate and conspicuous locations and employees and job applicants may request a copy of the policy by contacting the DER. In addition, Colas will include notification of the requirement for testing in all vacancy announcements.

#### **Supervisor Training**

Supervisors shall receive at least two (2) hours of substance abuse education training annually. The training will include physical, behavioral, speech and performance indicators of probable alcohol and drug use. Employers shall retain records, to include attendee's signature, dates and training topics.

### **General Testing**

#### **Approved Specimens**

Urine specimens for drug testing and breath or saliva for alcohol testing. Blood alcohol is strongly suggested for post-accident situations.

#### **Certified Lab Requirement**

Laboratory-based testing must take place at laboratories certified by the federal government's Substance Abuse and Mental Health Services Administration (SAMHSA).

#### **Collections**

All specimen collection and testing for drugs must be performed in accordance with DOT procedures set forth in 49 CFR, Part 40, including the use of a chain-of-custody and split specimen procedures.

#### **Confirmation Testing**

All initial screen positives (or non-negatives) must be confirmed using gas chromatography/mass spectrometry.



**Confirmatory Re-Test**

An employee may request an additional test by an independent laboratory of a urine split sample. The employee may choose the laboratory that will conduct this test. The Company will incur the costs of such test if the result is negative; the employee may be required to pay if the test is positive.

**Instant/Point of Collection (POCT) Drug Testing**

Instant testing is apparently restricted unless the device can following SAMHSA/DOT guidelines.

**Medical Review Officer Requirement (MRO)**

Before any action taken, based on a positive test result, the Company will have the results reviewed and certified by a MRO who is trained in the field of substance abuse. In addition, as outlined in the SAMHSA requirements the MRO will review 5% of negative results to ensure that MRO staff is correctly analyzing results.

**Opportunity to Rebut/Explain**

Employee who receives a positive confirmed test result has the right to contest or explain the results. The request must be in writing and within 5 working days after receiving notification of the test result.

**Substances/Cut-off Levels**

Alcohol, marijuana, cocaine, amphetamine, opiate, phencyclidine, a metabolite thereof, or any other controlled substance subject to testing pursuant to USDOT drug testing procedures.

**Testing**

As required pursuant to the Wyoming Workers Compensation Rules, Chapter 10, Section 2, the following tests are required to the extent permitted by law. Pre-employment, Reasonable Cause, Post-Accident and Random (20% annually) testing is required.