



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 24 2009
Ms. Denise Hamsher
Director, Public, Government and Regulatory Affairs
Enbridge Energy Partners, L.P.
1100 Louisiana
Houston, TX 77002

Dear Ms. Hamsher:

On January 19, 2005, you wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting interpretations of 49 CFR Parts 194, 195 and 199. Enbridge is requesting clarification on the limited use of Canadian first responders to support local emergency response agencies for a pipeline emergency in the U.S. when the Canadian personnel are located geographically closer to the emergency than U.S. personnel. These non-U.S. based first responders would carry out limited duties focused on public safety and environmental protections until U.S. based responders arrive.

You specifically requested clarification as to whether the training you provide Canadian emergency crews would meet emergency response and PHMSA's Operator Qualification (OQ) pipeline safety regulations. Also, because Enbridge's non-U.S. based employees are not subject to PHMSA's random drug and alcohol testing requirements, you seek clarification on the applicability of PHMSA's drug and alcohol testing regulations in the event they perform first responder duties in the U.S. during a pipeline emergency.

Emergency Response Training

You asked whether Enbridge's emergency response training records would be sufficient to meet PHMSA's emergency training requirements and add that your emergency responders receive extensive training in emergency response procedures similar to Occupational Safety and Health Administration's (OSHA) Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

Though many U.S. pipeline operators use HAZWOPER training to meet a portion of PHMSA's emergency response training requirements, HAZWOPER is an OSHA standard not a PHMSA regulation. PHMSA's emergency response training requirements are at 49 CFR 195.403 for hazardous liquid pipelines. We list additional training requirements at 49 CFR 194.117 for pipelines with oil spill response plans, such as the Enbridge pipeline.

Under PHMSA's performance based regulations, pipeline operators can use a variety of methods and resources to provide emergency response training as long as they meet all the training requirements and keep adequate records to show compliance. Therefore, PHMSA will accept non-U.S. emergency response training for purposes of assessing compliance with Parts 194 and 195 for Enbridge's non-U.S. based emergency response personnel in the same way we would accept and review a U.S. based training program during a compliance audit. That is, Enbridge's training program must provide all the required training and you must adequately document the training in records available for inspection in the U.S. by PHMSA at reasonable times.

Operator Qualification

You ask whether alternative qualification training would be accepted and that, "*Similar to our emergency responder training in Canada ... Enbridge also provides extensive qualification training for employees in the types of tasks they are expected to complete.*" You indicate Canadian employees would respond by, among other things:

- confirming the event and exact location of the pipeline failure;
- notifying, and if necessary, evacuating nearby residents; and
- isolating the affected segment by manual closure of valves that cannot be remotely closed by the Control Center.

PHMSA's OQ regulations in Part 195 govern "covered tasks," which are tasks that meet all components of § 195.501(b), generally referred to as the "four-part test." The manual closure of valves is an OQ covered task. The other tasks listed above could be OQ covered tasks in some circumstances. Enbridge should analyze how it will perform all anticipated emergency response tasks to determine if they meet the four-part test in § 195.501(b).

Enbridge must then meet the OQ regulations of Part 195 for all emergency response personnel who might perform manual valve closures and any other OQ covered tasks if responding to an emergency in the U.S..

Drug and Alcohol Testing

The random testing requirements in 49 CFR Part 199 apply "only with respect to employees located within the territory of the United States." Therefore, non-U.S. based employees are not subject to random testing. However, to the extent an employee responding to a cross-border emergency performed in a manner that may have contributed to the accident, that employee is potentially subject to post-accident testing. In addition, supervisors overseeing such employees must be trained to effectively perform their drug or alcohol suspicion testing responsibilities. This employee monitoring and potential suspicion testing is a supervisory imperative in ensuring that substance abuse does not contribute to any accident/incident. All potential drug or alcohol post-accident or suspicion testing, and any relevant supervisory determinations must be performed and documented according to applicable sections of Enbridge's Part 199 compliant substance abuse plans and procedures and records kept for the duration of the employee's tenure in this safety-sensitive position. These records can be discarded after five years from the date the employee leaves this position. All these aforementioned requirements would apply to both

Enbridge's direct Canadian employees and any Canadian contractor/subcontractor employees performing emergency response in the U.S. on behalf of Enbridge.

If I can further assist you with this, or any other pipeline safety regulatory matter, please contact me at (202) 366-3015.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Gale', written over the typed name.

John A. Gale
Director, Office of Regulations

Enbridge Energy Company, Inc.
1100 Louisiana
Houston, TX 77002
www.enbridgepartners.com



January 19, 2005

File Number: File

Ms. Stacey Gerard
Office of Pipeline Safety
Research and Special Programs Administration
U.S. Department of Transportation,
400 Seventh Street,
S.W., Rm. 2103
Washington D.C. 20590-0001

Dear Ms. Gerard:

Re: Enbridge Cross Border Emergency Response

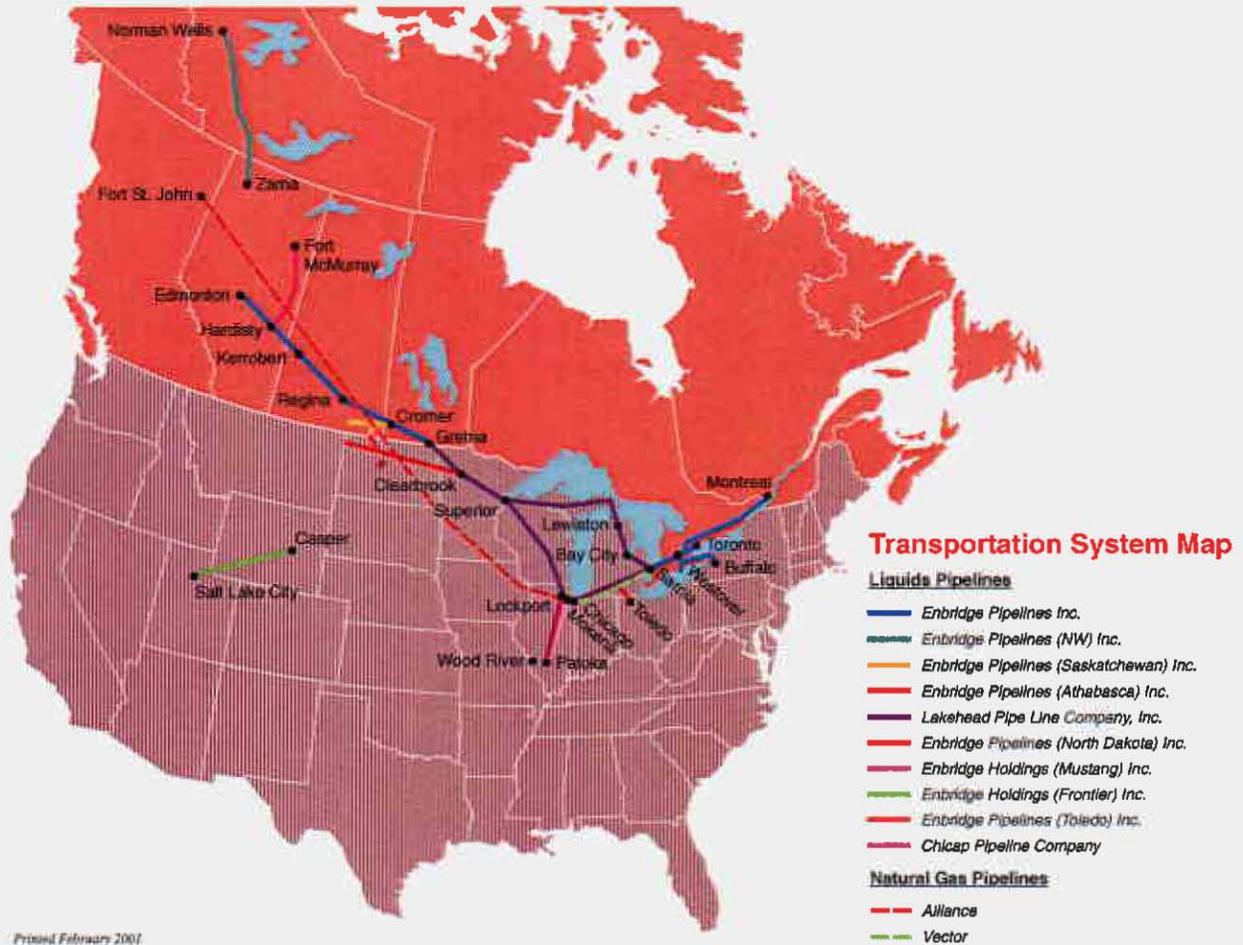
As you are aware, Enbridge operates a liquid petroleum pipeline system that originates in Canada and transports to the United States and Eastern Canada.

Enbridge is requesting a regulatory interpretation of 49 CFR Part 194 and 195 to ensure we can have our Canadian-based emergency crews act as "first responders" (pending arrival of our U.S.-based crews and contracted resources) should the location of the incident be geographically closer to a Canadian response crew facility than to the closest U.S. based facility.

By way of background, the U.S. portion of the pipeline owned by Enbridge Energy Partners, L.P. is referred to as the "Lakehead System" and meets the requirements of the Oil Pollution Act of 1990 and possesses an Emergency Response Plan that is compliant with 49 CFR Part 194. Specifically, this plan complies with the minimum response times of 49 CFR Part 194 and OPS has previously reviewed and approved our plan. Enbridge currently has adequate resources and response times to minimize environmental consequences and to protect public safety in the event of an emergency. While our focus is on prevention, we are always looking for ways to supplement and improve our emergency preparedness by assuring public safety and mitigating environmental impact following a pipeline release. Moreover, we are also focused on the swift resumption of energy delivery after an incident, especially since Enbridge's Lakehead System delivers 50-75% of the crude oil feedstock for some of the refineries served in the Great Lakes region.

Based on the location of the Enbridge emergency response crews along our Canadian and U.S. segments, if a pipeline emergency occurs in the northern-most U.S. portions of

the pipeline system, Enbridge emergency response personnel located in facilities just over the Canadian border are positioned for even swifter emergency response than U.S. response crews.



In the event of such an emergency, Enbridge emergency responders from Canada could act as first responders to a U.S. pipeline emergency, accelerating the time Enbridge has its own U.S. employees and responders on the scene. As first responders, the Enbridge Canadian employees would carry out and/or support local emergency response agencies in protecting the affected public, property, or the environment from the effects of the release by:

- confirming the event and exact location of the pipeline failure,
- identifying the impacted areas,
- securing the site,
- notifying, and if necessary, evacuating nearby residents,
- containing the impacts by using spill response equipment that our crews stock in special emergency trailers, and
- further isolating the affected segment by manual closure of valves that cannot be remotely closed when the pipeline is shutdown by the Control Center.

We do not expect Canadian-based crews to complete repair, investigative, or subsequent integrity inspection duties following their initial role in site control as these crews would be very quickly replaced by U.S.-based response crews and pre-designated contractors.

We have worked with representatives from the U.S. Customs and Border Protection and U.S. Department of Homeland Security to identify the process required for Enbridge Canadian emergency response staff to quickly cross the border in the event of a pipeline failure. We will obtain L-1B Temporary Non-Immigrant Work Visas for all Canadian personnel who may act as first responders in the event of an emergency in the northernmost U.S. portions of the pipeline system. We are also meeting with representatives at the various impacted border-crossing locations (Sarnia, Gretna and Buffalo).

make that duty emergency
As part of our plans to further enhance emergency preparedness, we are also meeting with Natural Resources Canada and Canada Border Services Agency in Ottawa to identify and meet the requirements for U.S. emergency response staff to cross the Canadian border for similar first-responder support should a U.S. crew be in closer geographic proximity to a Canadian pipeline segment incident. At this time, we are not aware of any Canadian regulatory requirements by the National Energy Board that would prevent Enbridge U.S. emergency responders from assisting with a pipeline emergency in Canada. The National Energy Board is aware of our first-responder approach and has not identified any concerns.

Enbridge requests a regulatory interpretation on the potential for using our Canadian-based response crews and compliance with 49 CFR Part 194 responder qualifications (HAZWOPER), 49 CFR Part 195 Operator Qualification requirements and DOT Drug and Alcohol testing requirements.

HAZWOPER:

As part of good company and industry practices, our Enbridge Canadian emergency responders receive extensive training in emergency response procedures, similar to the OSHA's Hazardous Waste Operations and Emergency Response Standard ("HAZWOPER"). The Onshore Pipeline Regulations Sections 32, 46 and 47 require that the Enbridge Emergency Response Manual for our Canadian pipeline system be filed with the National Energy Board and that our training policies and procedures ensure that employees are adequately trained to respond in an emergency. The National Energy Board regularly audits our policies and procedures. Enbridge will ensure and be able to demonstrate that all Enbridge personnel from Canada that would be engaged as first responders to a pipeline emergency in the U.S. receive the prescribed HAZWOPER training or equivalent. Following the arrival of Enbridge response personnel located in the U.S., the Enbridge Canadian personnel would immediately turn over the response to the Enbridge personnel from the United States and return to their resident locations in Canada or perform non-pipeline emergency covered task duties at the site. We want OPS clarification that our Canadian training records for our emergency crews will be deemed sufficient in the unlikely event such employees act as first responders on the U.S. segment. *who know these*

*What about
international borders*

Operator Qualification: Similar to our emergency responder training in both Canada and the U.S., Enbridge also provides extensive qualification training for employees in the types of tasks they are expected to complete. However, the Enbridge Canadian personnel are not subject to 49 CFR Part 195 Operator Qualifications (OQ) for the covered tasks. In the event of a cross-border emergency, Enbridge personnel from Canada entering the United States are trained and would respond in a defensive fashion to contain the release, keep it from spreading, and support public emergency agencies to prevent exposures to the public. It is feasible that a member of the crew would also close manually operated valves. However, as stated above, we do not plan or expect these employees to complete repair, investigative or subsequent integrity inspection related tasks. Such covered tasks associated with repairing the pipeline and returning the line to service would be completed by Enbridge U.S. employees or contractors with the appropriate Operator Qualification compliance.

We seek regulatory clarification that Enbridge records maintained in Canada will be sufficient to demonstrate training in these first-responder duties. Such records would be made available to OPS subsequent to Canadian based response crew participation in first-responder activities in the U.S.

Drug and Alcohol Testing:

The Enbridge Canadian pipeline maintenance/emergency response staff are not subject to the DOT alcohol and drug testing requirements. Enbridge Canadian employees in safety-sensitive positions are subject to the Canadian alcohol and drug testing (copy of the related Canadian Human Resources policy is attached). The major difference is that the Canadian policy does not include random alcohol and drug testing and indeed, such random testing is not legally permitted in Canada. The laws governing alcohol and drug testing of employees in Canada differ significantly from the United States and random alcohol and drug testing is not required by our Canadian regulatory agencies. Post-incident testing and reasonable cause testing are included in the Enbridge Canadian policy and are comparable to the DOT requirements. As you will note by our Canadian policy attached, the full intent of the DOT alcohol and drug-testing requirement is met since alcohol and drug use is not tolerated.

We seek regulatory clarification that under the U.S.-Canadian discussions by the Department of Transportation on this issue, Enbridge Canadian-based employees who are not subjected to random testing, will not be in violation in the unlikely event they perform first-responder duties in a U.S. pipeline emergency.

In summary, we seek a regulatory interpretation to ensure that the HAZWOPER, Operator Qualification and Drug & Alcohol requirements would be in compliance should we have Canadian employees perform first-responder duties on a U.S. pipeline segment.

Enbridge would like to resolve this issue to ensure that we provide the best available response in the event of an emergency. We will continue to work with various federal agencies in both Canada and the U.S. to ensure that we can respond effectively and efficiently. I would also be pleased to arrange a telephone or face-to-face meeting with

appropriate Enbridge management and you or your designate to discuss this further if desired.

Sincerely,



Denise Hamsher
Director Public, Government and Regulatory Affairs
Enbridge Energy Partners, L.P.

Enclosure (1)

Transportation North Human Resources Policy

Subject: **Alcohol and Drug Free Workplace**

Number: **HR-18**

Date: **September 10, 2004**

Last Revised: **September 2002**

Introduction:

This policy applies to and has been adopted by each of the Enbridge subsidiaries that comprise the Canadian operations of Transportation North. (Accordingly, the word "Corporation" should be read to refer to any of these subsidiaries.)

This policy applies to all employees, except where indicated in the policy that application is restricted to safety-sensitive positions or safety-sensitive tasks. In this policy, a "safety-sensitive position" means a position in which performance impaired by alcohol or drugs could result in direct and significant risk of injury to employees, contractors, the general public or the environment. A "safety-sensitive task" is a particular task performed by an employee in which the performance impaired by alcohol or drugs could result in direct and significant risk of injury to themselves, other employees, contractors, the general public or the environment.

Policy Statement:

All employees are responsible for safety in the workplace. Alcohol and drug use that impairs the ability of employees to perform their jobs, including jeopardizing their safety and the safety of other employees, the general public and the environment, is prohibited.

The Corporation recognizes that alcohol and drug abuse are illnesses, which can respond to therapy and treatment. The Corporation is committed to employee safety, health and wellness and will assist employees in obtaining treatment for such illnesses.

Violation of Policy:

The presence in the body, possession, use, distribution, dispensation, sale or manufacture of illicit or illegal drugs is prohibited while conducting Corporation business, while in or operating a vehicle of the Corporation or while on Corporation premises.

Employees using prescribed or over-the-counter medications are expected to use such medications responsibly. The intentional misuse of medications (e.g. using medication other than as prescribed or combining medication and alcohol against direction) is prohibited while conducting Corporation business, while in or operating a vehicle of the Corporation or while on Corporation premises.

The consumption, distribution or sale of alcoholic beverages is prohibited while conducting Corporation business, while in or operating a vehicle of the Corporation or while on Corporation premises. Employees working in a safety-sensitive position (including the operation of a motor vehicle of the Corporation) are prohibited from consuming any alcoholic beverage during their working hours, including meals and breaks.

The transportation of alcohol is permitted in corporate vehicles provided the alcohol is inaccessible to the driver and passengers. Laws governing the possession and transportation of alcohol take precedence over Corporation policy and must be observed at all times.

Employees are expected to be able to safely and acceptably perform assigned duties without limitations due to the use or after effects of alcohol, illicit drugs or medications. Employees are prohibited from performing services while under the influence of alcohol or illicit drugs. Designated on-call employees

must be able to respond to an incident and shall not consume alcohol to the extent they become impaired or are unable to safely and acceptably perform their duties. If an employee, such as a non-designated on-call employee, is requested to perform unscheduled services or to respond to an incident while unfit to do so, the employee must decline.

Responsibilities:

a) Management

- Communicate this policy to all employees of the Corporation.
- To the extent the Corporation deems appropriate, implement an education program regarding the effects of using or abusing alcohol or drugs.
- Train supervisors to recognize and handle performance problems caused by alcohol or drug use.
- Deal promptly with an actual or perceived alcohol or drug problem in consultation with Human Resources.
- If an employee arrives at the work place appearing to be impaired as a result of alcohol or drug use, the Corporation will make all reasonable efforts to ensure that the employee returns home safely.
- In appropriate circumstances, refer employees affected by substance abuse for counseling and treatment.
- Monitor performance after an employee returns to work from drug and/or alcohol treatment, assisting the employee as necessary.
- Conduct alcohol and drug testing of employees working in safety-sensitive positions following an accident (including a motor vehicle accident), near miss or other potentially dangerous incident where involvement of alcohol or drugs has not been positively ruled out.
- Conduct alcohol and drug testing of employees working in safety-sensitive positions where there is reasonable cause to believe an employee is unable to work in a safe manner because of the use of alcohol or drugs.
- In so far as it is reasonable, protect the confidentiality and privacy of an employee taking steps to deal with an alcohol or drug dependency problem.
- The Corporation will make all reasonable efforts to ensure attendees at Corporation sponsored functions (where alcohol is served) return home safely.

b) Supervisors

- Attend training and awareness programs as directed by the Corporation.
- Identify unsatisfactory or deteriorating levels of work performance, discuss with employee, and if necessary, together with Human Resources initiate corrective action.
- Monitor employees for fitness for work, including documenting evidence of alcohol or drug use and/or impairment.
- Take immediate action to remove from the job an employee appearing to be impaired. Impairment is to be judged by a supervisor on the behaviour or performance of an employee that suggests consumption or impairment by alcohol or drugs.
- Upon removing an employee from the job, arrange to transport the employee home (i.e. drive the employee home; contact a spouse, family member or other individual to transport the employee home; and failing that, arrange for a taxi).

e) Employees

- Read and understand this policy; perform job in a safe manner in accordance with this policy.
- If they will be working in a safety-sensitive position, disclose a present or past (within the last six years) substance dependency problem upon application for employment.
- Seek counseling and accept the necessary treatment as prescribed for an emerging alcohol or drug problem before the problem adversely affects job performance.
- Follow any recommended monitoring or follow-up program as part of rehabilitation from an alcohol or drug dependency.
- Report any possible impairment of a co-worker to their supervisor.
- Cooperate fully during investigations related to this policy. For employees in safety-sensitive positions, this includes submitting to an alcohol and drug test, if requested, based on reasonable cause or following an accident (including a motor vehicle accident), near miss or other potentially dangerous incident.

Confidentiality:

Any medical information regarding an employee's alcohol or drug use, including alcohol and drug test results, will be handled in a confidential manner. Such information will be shared only among the collection site personnel, Enbridge medical review officer and Enbridge personnel on a need to know basis. Medical information will not be disclosed by the Corporation, except with the employee's written consent; as required by law; or where the Corporation determines that there is a serious risk to the health or safety of the employee or others.

Enforcement of Policy:

a) Education and Training

The Corporation is committed to informing employees of the risks associated with the use of alcohol or drugs and advising of available assistance to deal with an emerging or existing substance dependency. The Corporation will provide supervisors with periodic training to assist supervisors in identifying an alcohol or drug problem.

b) Employee Assistance

The Employee and Family Assistance Program (EFAP) is designed to assist employees (and their dependents) who are experiencing personal or work-related problems, including those arising from alcohol or drug abuse. For more information about the EFAP, contact the Human Resources department.

Treatment for alcoholism or drug abuse is within the scope of the Short-Term Disability Plan, which maintains the employee's income during the rehabilitation period to the extent that benefits are available.

Employees who believe they may be unable to comply with this policy and voluntarily seek assistance before violating this policy will not be disciplined for requesting help. An employee who receives treatment must comply with the terms of any program established to assist with a dependency.

c) Testing

- (i) The Corporation will undertake alcohol and drug testing of employees in safety-sensitive positions, and employees performing safety-sensitive tasks, following an accident, near miss or other potentially dangerous incident (including a motor vehicle incident). If the supervisor or manager of any such employee, in his or her discretion, concludes that there are reasonable grounds to believe that such employee was involved in an accident, near miss or other potentially dangerous incident (including a motor vehicle incident), he or she must ask the employee to submit to an alcohol or drug test as soon as reasonably possible. A supervisor or manager is not required to ask an employee to submit to an

alcohol or drug test if, after consultation with the next level of management (e.g. General Manager or Director), he or she concludes that the use of alcohol or drugs can be positively ruled out as a contributing factor to the accident, near miss or potentially dangerous incident.

Employees must not consume any alcohol or drugs after the accident, near miss or potentially dangerous incident until testing is complete. The Corporation will conduct alcohol and drug testing in accordance with recognized standards and as set out in Schedule "A" attached to this policy.

- (ii) The Corporation will conduct alcohol and drug testing of employees in safety-sensitive positions, and employees performing a safety-sensitive task, for "reasonable cause". A supervisor or manager who has "reasonable cause" to believe that an employee is or may be unable to work in a safe manner because of the use of alcohol or drugs must contact the next level of management and/or Human Resources. Subsequently, the supervisor or manager must ask the employee to submit to an alcohol or drug test and explain to the employee why this request has been made. "Reasonable cause" will be based on observation of the employee's conduct or other indicators such as possession of alcohol or drugs.

A written report describing the employee's behaviour and cause for testing will be completed, dated and signed by the supervisor or manager observing the employee. A copy of the report will subsequently be made available to the employee. The Corporation will conduct alcohol and drug testing in accordance with recognized standards and as set out in Schedule "A" attached to this policy.

- (iii) Post-Disclosure or Post Treatment - The Corporation will conduct alcohol and drug testing of employees upon return to work after treatment or following a positive test result.

d) Failure to Comply with Policy

The consequences for violation of this policy will depend on the facts of each case. Some of the factors that will be considered include the nature of the violation; the existence of prior violations; the response to prior treatment or corrective programs; and the seriousness of the violation.

No employee with an alcohol or drug dependency will be disciplined or terminated for requesting help in overcoming a problem or because of involvement in a treatment or rehabilitation program. However, an employee with a substance dependency is expected to seek treatment prior to violating this policy or putting their safety and the safety of other employees, the public and the environment in jeopardy. Accordingly, if an employee violates this policy, appropriate disciplinary action will be taken, including but not necessarily limited to a warning or reprimand, suspension, corrective action agreement or termination for cause.



J. Richard Bird
Group Vice President
Transportation North

Related Documents:

Book 2 Safety: Alcohol and Drug Use

Human Resources Policy: HR-22 – Driver's License Requirement-Operation of Company-Owned and Leased Vehicles

Human Resource Policy: HR – 24 – Serving of Alcohol at Company Functions

Schedule A – Enbridge Pipelines Inc. Requesting Drug and Alcohol Testing

