



POLICY AND PROCEDURE MEMO

NO. 2.015
DATE: 9-19-13 revised

SUBJECT: CDL CONTROLLED SUBSTANCE AND
ALCOHOL TESTING POLICY

D. W. Fitzgerald
CITY MANAGER

I. STATEMENT:

The City of Rochester New Hampshire (the "City") is committed to providing a safe, efficient, and productive work environment for all employees.

II. POLICY

It is the policy of the City that its employees perform their jobs safely and professionally. The City has adopted a Drugs and Alcohol Policy relating to controlled substances and alcohol in the workplace (the "Policy") in order to help foster a drug and alcohol free workplace. The Policy is set forth in full in the City's Employee Handbook, the relevant sections of which are incorporated herein by reference. The overall goal of this Policy is to ensure a controlled substance and alcohol-free environment and to reduce accidents, injuries, and fatalities.

The City is also committed to the establishment of an alcohol and controlled substance testing program that meets all applicable requirements of state and federal laws and regulations. The purpose of the testing program is to help prevent accidents and injuries resulting from the misuse of alcohol and/or controlled substances by those employees holding Commercial Driver's Licenses ("CDL").

This policy is in compliance with Department of Transportation and Federal Motor Carrier Safety Administration regulations found at 49 CFR Parts 40 and 382 (copies of which are available for review upon request, and accessible at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>). The following policy in no way attempts to modify those regulations or related laws, which should always be referred to when questions regarding implementation of this policy arise.

III. CONTACT PERSON

If you have any questions about this controlled substance and alcohol testing policy please contact the Human Resource Manager.



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IV. APPLICABILITY AND IMPLEMENTATION

1. Who Will Be Tested

All persons employed by the City who operate vehicles and/or equipment requiring a CDL (referred to in this policy as "Drivers") are subject to controlled substance and alcohol testing as set forth in this policy.

2. Types of Testing

Drivers shall be subject to the following types of testing:

2.1 Pre-Employment Testing

All Driver applicants who have been offered a position of employment must submit to controlled substance and alcohol testing.

All Drivers subject to pre-employment testing will not be hired or begin work until receipt of satisfactory test results. All Drivers will not be hired if pre-employment testing returns a confirmed positive test result.

Drivers subject to pre-employment testing will be notified at the time of initial application that they will be tested for controlled substances and alcohol if they are offered a position of employment and will be advised how they may review this policy.

2.2 Random Testing

The City shall conduct random controlled substance and alcohol testing of all Drivers.

The City or its agents will submit all Drivers to a random selection system. The random selection system provides an equal chance for each Driver to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. The City will test for controlled substances, at a minimum, 50% of



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the average number of Drivers in each calendar year. The City will select, at a minimum, 10% of the average number of Drivers for random alcohol testing.

Random selection, by its very nature, may result in Drivers being selected in successive selections or more than once per calendar year. Alternatively, some Drivers may not be selected in a calendar year. If a Driver is selected at random, for either a controlled substance or alcohol test, a City official will notify the Driver and inform him or her of when and where he or she will be tested. Once notified, the Driver must take action intended to lead to a collection. If the Driver engages in conduct that does not lead to a collection as soon as possible after notification, such conduct will be considered a refusal to test.

2.3 Reasonable Suspicion Testing

The City conducts reasonable suspicion controlled substance and alcohol testing with respect to all Drivers. Reasonable suspicion for requiring a Driver to submit to controlled substance and/or alcohol testing shall be deemed to exist when a Driver manifests physical symptoms or reactions commonly attributed to the use of a controlled substance or substances and/or alcohol, such as (but not limited to) the appearance, behavior, speech, or body odors. Such conduct must be witnessed by at least one supervisor trained in compliance with 49 CFR Section 382.603.

2.4 Post-Accident Testing

The City shall conduct post-accident controlled substance and alcohol testing of all Drivers. Following any accident, a Driver must contact the City as soon as possible. When a Driver is involved in an accident where a fatality is involved, the Driver shall submit to post-accident controlled substance and alcohol testing. If there are two Drivers in the cab when involved in an accident with a fatality, both must be tested. Where a Driver is involved in a recordable accident and receives a citation for a moving violation arising from the accident (within 8 hours for



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alcohol testing and within 32 hours for controlled substance testing), he or she also must submit to controlled substance and alcohol testing if the accident involved:

- (1) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (2) One or more motor vehicles incurring disabling damage as a result of the accident, and requiring a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Any time a post-accident controlled substance or alcohol test is required, it will be performed as soon as possible following the accident. If no alcohol test is administered within two (2) hours following the accident, the City will prepare and maintain on file a record stating the reasons the test was not promptly administered. If no alcohol test can be administered within eight (8) hours, attempts to collect a breath sample shall cease and the City shall prepare and maintain the same record. If no collection can be obtained for purposes of post-accident controlled substance testing within thirty-two (32) hours, attempts to make such collection shall cease and the City shall again prepare and maintain on file a record stating the reasons the test was not promptly administered.

In the event that Federal, State, or local officials conduct breath or blood tests for the use of alcohol and/or urine test for the use of controlled substances following an accident, these tests shall be considered to meet the requirements of this section, provided the tests conform to applicable Federal, State, or local requirements. After being tested, the Driver will sign a release allowing the company to obtain the test result from Federal, State, or local officials.

In the event a Driver is so seriously injured that he or she cannot provide a urine or breath specimen at the time of the accident, he or she must provide necessary authorization for the City to obtain hospital records or other documents, including blood tests, that



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would indicate whether there were controlled substances or alcohol in the Driver's system at the time of the accident.

2.5 Return to Duty Testing

The City shall ensure that, before a Driver returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct concerning alcohol and/or controlled substances, the Driver shall:

- (1) Have undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02, and/or a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use; and
- (2) Have completed an alcohol/controlled substance assessment and be in compliance with any ongoing treatment recommendations.

A Driver is prohibited from performing safety-sensitive functions as a result of testing positive for either alcohol or controlled substances may be assigned to non-safety sensitive functions until such time as the Driver complies with the requirements for returning to duty.

2.6 Follow-Up Testing

Each Driver who has been identified by a substance abuse professional from the City's Employee Assistance Program ("EAP") as needing assistance in resolving problems with alcohol misuse or controlled substance use and who has returned to performing a safety sensitive function, shall be subject to a minimum of 6 unannounced follow-up tests administered by the City over the following 12 months. Follow-up testing may be extended for up to 60 months following return-to-duty. For additional information regarding follow-up testing see 49 C.F.R. Section 40, Subpart O.



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V. SAFETY SENSITIVE FUNCTIONS

Drivers perform a number of safety-sensitive functions. A Driver is deemed to be performing a safety-sensitive function from the time a Driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include but are not limited to:

- (1) All time at a City plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the Driver has been relieved from duty by the City;
- (2) All time inspecting equipment as required by federal regulation or otherwise inspecting, servicing, or conditioning any CMV at any time;
- (3) All time spent at the driving controls of a CMV in operation;
- (4) All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth conforming to applicable federal regulatory requirements;
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

VI. REFUSAL TO TEST

Refusal to submit to the types of controlled substance and alcohol tests employed by the City will be grounds for refusal to hire applicants and to discipline or terminate the employment of Drivers. A Driver's refusal to submit to testing will subject the Driver to immediate removal from the performance of safety-sensitive functions and a Driver's failure to comply with federal regulations or this policy is grounds for disciplinary action up to and including termination from employment.

Refusal to test shall mean either failure to provide an adequate breath or urine sample without valid medical explanation or engaging in any conduct that would obstruct the implementation of any test required under this policy. Any of the



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following actions constitutes a refusal to submit to a test:

- (1) Failure to appear for any test (except pre-employment) within a reasonable period of time;
- (2) Failure to remain at the testing site until the test is complete;
- (3) Failure to provide adequate specimens/samples of substance(s) undergoing testing, including but not limited to breath and urine, without a valid medical reason;
- (4) Failure, in the case of a directly observed or monitored collection, to permit the observation or monitoring of the provision of a specimen;
- (5) Failure or declination to take a second test the City or the collector has directed the employee to take;
- (6) Failure to cooperate with any part of the testing process, including but not limited to refusal to empty pockets when directed to do so and/or behaving in a confrontational way that disrupts the collection process;
- (7) Verified adulteration or substitution of a test result (as reported by a Medical Review Officer ("MRO")).

VII. SUBSTANCES TESTED

1.1 Controlled Substances

Controlled substance testing will test for the presence of the following controlled substances and/or their metabolites:

- (1) Marijuana;
- (2) Cocaine;
- (3) Opiates;
- (4) Amphetamines; and
- (5) Phencyclidine ("PCP")

2.1 Alcohol

The Company will also test for the presence of alcohol, which includes the intoxicating agent in beverage alcohol, ethyl alcohol, and/or other low molecular weight alcohols including methyl and isopropyl alcohol.



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VIII. CONSEQUENCES OF POLICY VIOLATION

Any employee subject to testing who engages in prohibited conduct as set forth herein (or in the Employee Handbook) is subject to discipline, up to and including termination from employment.

IX. PROHIBITED CONDUCT

The following shall be considered "prohibited conduct" for purposes of this policy:

- (1) Reporting for duty or remaining on duty while having an alcohol concentration of .04 or greater.
- (2) Being on duty or operating a commercial motor vehicle while possessing alcohol, unless the alcohol is manifested and transported as part of a shipment.
- (3) Using alcohol while performing safety-sensitive functions.
- (4) Performing safety-sensitive functions within four (4) hours after using alcohol.
- (5) Reporting for duty or remaining on duty when using or having used any controlled substance, except when use is pursuant to the instructions of a physician who has advised that the substance does not adversely affect ability to operate a CMV or perform the functions of a position subject to testing.
- (6) No Driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- (7) Refusal to submit to a pre-employment alcohol or controlled substance test, a post-accident alcohol or controlled substance test, a random alcohol or controlled substance test, a reasonable suspicion alcohol or controlled substance test, or a follow-up alcohol or controlled substance test.



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If the City has actual knowledge or has reason to believe that an employee subject to testing has engaged in prohibited conduct, the City may require the employee to submit to controlled substance and/or alcohol testing.

If a Driver engages in prohibited conduct, the Driver is not qualified to drive a CMV and shall be immediately removed from service and terminated.

Additional requirements regarding employee behavior and prohibited conduct are set forth in the Employee Handbook and incorporated herein by reference.

X. ENFORCEMENT

The City, in its independent authority as an employer, shall subject any employee who violates this policy or federal regulations to potential disciplinary action up to and including termination from employment, except to the extent that any state law or collective bargaining agreement requires otherwise.

In the event that a Driver subject to testing, on the basis of the test, has a blood-alcohol content of 0.02 to 0.0399, the Driver shall be removed from duty for 24 hours or until their next scheduled on-duty time, whichever is longer. Tests indicating a blood-alcohol concentration of .04 or over are considered prohibited conduct which will result in termination. All alcohol tests performed on Drivers shall be performed just prior to, during, or just after a safety sensitive function.

XI. TRAINING

The City shall ensure that supervisors designated to determine whether reasonable suspicion exists to require a Driver subject to testing under this policy to undergo testing receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

XII. RECORDS

Employee controlled substance and alcohol tests and results shall be maintained under strict confidentiality in a secure location with controlled access and released only in accordance with law. A Driver, upon written request, shall receive copies



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of any records pertaining to his/her use of controlled substances or alcohol, including any records pertaining to his/her controlled substance and alcohol tests. Records shall be made available to subsequent employers or other identified persons only when expressly requested in writing by the Driver.

XIII. NOTIFICATIONS

Each Driver subject to testing under this policy shall receive educational materials explaining the requirements of the Code of Federal Regulations, Title 49 Part 382, and containing a copy of this policy for meeting these requirements. Representatives of employee organizations, to the extent applicable, shall be notified of the availability of this information. The City shall also include in the package of informational material submitted to each driver, a statement to be signed certifying that he/she has received the informational material. The City shall maintain the original signed copy of the statement on file.

In addition to the aforementioned items, the City shall also make available to drivers information which shall identify:

- (1) The procedures that will be used to test for the presence of alcohol and controlled substances; protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;
- (2) Information concerning the effects of alcohol and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance(s) problem (the driver's or co-worker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to a substance abuse professional or rehabilitation program

XIV. PRESCRIBED CONTROLLED SUBSTANCES

Drivers subject to testing shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty only if the physician has advised the employee that it will not adversely affect his/her ability to safely operate a CMV or otherwise perform the functions of their jobs.



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XV. SUBSTANCE ABUSE PROFESSIONAL REFERRAL

A Driver who has engaged in conduct prohibited by this policy shall be advised by the City of resources available to the Driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances. The information the Driver receives will include: names, addresses, and telephone numbers of substance abuse professionals, counseling and treatment programs. Drivers are responsible for payment of such services to the extent they are not covered by insurance.

XVI. OTHER POLICIES/PROCEDURES

Nothing contained in this policy shall prevent the City from establishing and enforcing independent policies relating to alcohol or controlled substances or any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including termination from employment.

This policy is not intended nor should it be construed as a contract between the City and Drivers. This policy may be changed at any time at the City's sole discretion.

- END OF PROCEDURE -



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This is to certify that I have received, seen, read, and understood a copy of the Controlled Substance and Alcohol Testing Policy and agree to adhere to and follow it.

Date: _____

Employee Signature