

Chapter 19

DRUG AND ALCOHOL TESTING

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ARTICLE I

Introduction

§ 19-1. Purpose.

It is important to assume that safety sensitive employees are free of the effects of drugs and alcohol use. Federal law requires that employers of persons who hold Commercial Driver's Licenses (CDL's) institute a policy requiring drug and alcohol testing of safety sensitive employees as well as education and training of employees and supervisors. It is the purpose of the Drug and Alcohol Testing Policy to comply with the requirements of regulations of the Federal Highway Administration to assure safe and healthy operations, and to establish a policy on drug and alcohol use which may effect the workplace for all employees of the Town of Windsor.

This policy is designed to protect employees and the public from injury and economic loss caused by employees affected by drugs and alcohol. In addition this policy is to create a deterrent environment discouraging use, possession, and sale of drugs on or off Town Property.

§ 19-2 Definitions.

- A. For the purposes of the Policy, "**Prohibited Drugs**" are defined and limited to the following prohibited substances:
1. Marijuana
 2. Cocaine
 3. Opiates
 4. Amphetamines
 5. Phencyclidine
 - 6 All substances for which testing procedures have been set by the United States Department of Transportation and 49 CFR Part 40, et. seq.;
 7. Other controlled substances the use or possession of which without prescription to the user is prohibited by the law of the State of New York.
- B. **Alcohol** as used herein, means the intoxicating agent in the beverage alcohol, ethyl alcohol or other low

molecular weight alcohols, including methyl or isopropyl alcohol. References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing alcohol.

- C. The Town of Windsor recognizes that the use of alcohol is legal when done off the job and in a manner that cannot affect job performance.

"Alcohol Misuse" consists of a violation of the following requirements:

- 1.) No safety sensitive employee shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater. The provisions of this subparagraph exceed the requirements of federal regulations, and are intended to control, paragraph C5 notwithstanding.
- 2.) No safety sensitive employee shall be on duty or operate a vehicle while that employee possesses alcohol, unless the alcohol possessed by such employee is manifested and transported as part of a shipment.
- 3.) No employee shall use alcohol while performing a safety sensitive functions or during the performance of their duties, or while on duty.
- 4.) No employee shall perform a safety sensitive function within four hours after using alcohol.
- 5.) No employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first.

- D. **"Safety Sensitive Function"** means any of the following on-duty functions:

- 1.) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the employee has been relieved from duty.
- 2.) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- 3.) All driving time.
- 4.) All time, other than driving, in or upon any commercial motor vehicle.
- 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.

- 6.) All time spent performing driver requirements relating to accidents.
- 7.) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- 8.) All time while on active duty or voluntary standby status.

ARTICLE II

Testing for Prohibited Drugs and Alcohol

§ 19-3. Type of testing allowed.

Analytical testing of urine of safety sensitive employees for prohibited drugs and of breath for alcohol misuse shall be conducted as provided by this policy and as required by law or regulations. The six testing categories are:

- A.) Pre-employment Testing
- B.) Reasonable Suspicion Testing
- C.) Post-accident Testing
- D.) Random Testing
- E.) Return to duty Testing
- F.) Follow-up Testing

§ 19-3.1 Testing.

A.) Pre-employment testing.

- 1.) All applicants for employment in or assignment to a safety sensitive function shall be tested for prohibited drugs and alcohol.
- 2.) The drug and alcohol tests required by this section shall be administered only after the applicant is informed in writing that the urine sample being collected will be tested for the five classes of prohibited drugs and that breath will be tested for alcohol.
- 3.) An applicant who fails a drug test shall not be hired for or assigned to a safety sensitive function, but shall not be barred from reapplying at a later date not less than one year after the date of the failed test, provided that the applicant has followed all procedures described in this policy, including a return to duty test, and has agreed to be subject to follow-up testing.

- 4.) If a pre-employment alcohol test result indicates an alcohol content of 0.02 or greater, the applicant shall not be hired for or assigned to a safety sensitive function. The provisions of this subparagraph exceed the requirements of federal regulation, and shall control paragraph C5 notwithstanding.

B.) Reasonable Suspicion Testing.

1.) An employee who performs a safety sensitive function and who is reasonably suspected by any of three supervisors (being the Supervisors of the Town of Windsor, the Town of Windsor Superintendent or the foreman of the Town of Windsor Highway Department) of using a prohibited drug or the misuse of alcohol, or both, shall be administered a drug test (urine) or alcohol test (breath) or both, as appropriate. An employee is reasonably suspected of using a prohibited drug or of the misuse of alcohol, or both, when two of said three supervisors who are trained in the detection of drug use or in the detection of alcohol misuse make specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the employee indicating such use or misuse, or both. Neither of the persons who make the determination that reasonable suspicion exists to conduct an alcohol test shall conduct the alcohol test of the employee.

2.) Alcohol testing is authorized only if the observations stated above are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with the restrictions on alcohol use. When two supervisors determine that a reasonable suspicion alcohol test should be administered, the employee shall not perform or continue to perform safety sensitive functions until (1) an alcohol test is administered and the employee's alcohol concentration measures less than 0.02, or (2) 24 hours have elapsed following the determination that there is a reasonable suspicion to believe that the employee has violated the restrictions on alcohol use.

C. Post-Accident Testing.

1.) For purposes of this Policy, the term "accident" means an occurrence associated with the operation of a vehicle causing (1) the death of an individual, (2) bodily injury to an individual who immediately receives medical treatment away from the scene of the accident, or (3) disabling damage to one or more vehicles requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The phrase "disabling damage" means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs.

2.) Each employee performing safety sensitive functions with respect to a vehicle involved in an accident shall be tested for alcohol and drugs if the accident involved the loss of human life or if the employee received a citation under state or local law for a moving traffic violation arising from the accident.

3.) An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this paragraph shall be

obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

4.) A post-accident alcohol test shall be administered within 8 hours of the accident. A post-accident drug test shall be administered within 32 hours following the accident.

D. Random Testing

1.) Any employee performing a safety sensitive function shall be subject to random drug and alcohol testing.

2.) The selection of employees from the pool or consortium to which the Town may belong for random alcohol or drug testing shall be made by a scientifically valid method, such as a random number table or a computer based random number generator that is matched with the employee's social security number, payroll identification number or other comparable identifying number. Each employee shall have an equal chance of being tested each time selections are made.

3.) The number of random drug tests conducted each year shall be equal to at least 50% of the number of employees in the pool of employees to which the Town of Windsor may belong, subject to random drug testing. The number of random alcohol tests conducted each year shall be equal to at least 25% of the number of employees subject to alcohol testing. An employee may be selected for both types of tests at the same time.

4.) Random alcohol and drug test are unannounced, and the dates for administering them shall be spread reasonably throughout the calendar year.

5.) Each employee who is notified of selection for random alcohol and/or drug testing shall proceed to the test site immediately, or, if the employee is performing a safety sensitive function at the time of notification, the employee shall cease to perform the safety sensitive function and proceed to the testing site as soon as possible.

6.) An employee shall only be tested for alcohol while the employee is performing safety sensitive functions, just before the employee is to perform safety sensitive functions, or just after the employee has ceased performing such functions.

ARTICLE III

Collection and Analysis

§ 19-4. Collection and Analysis.

All collection of urine or breath for random testing shall be performed at a facility or facilities to be designated by the Town of Windsor and for all other testing required by this Policy, at the site of an independent health provider selected by the Town Board of the Town of Windsor.

Employees shall be advised of the location of the testing site during training on alcohol and drugs, and by a supervisor at the time testing is required.

- A. Collection and testing of urine and breath shall be in accordance with 49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- B. The collection site for urine samples will provide a privacy enclosure for urination. A toilet, a suitable, clean, writing surface, and a water source for hand washing, which if practicable, will be outside the privacy enclosure. Any water source within the privacy enclosure will be secured to prevent its use to adulterate the urine sample.
- C. The employee will be assured of privacy during urination except in circumstances where there is evidence that a prior sample was altered, adulterated or tampered with, in which case a retest will be required and privacy will not be assured.
- D. The urine specimen must be split and poured into two specimen bottles. This provides the employee with the option of having an analysis of the split sample performed at a separate laboratory if the primary test result is verified positive.
- E. Urine testing will be conducted at a laboratory certified by the United States Department of Health and Human Services.
- F. All drug testing laboratory results will be reviewed by a qualified Medical Review Officer (MRO) to verify and validate test results. A MRO is a licensed physician responsible for receiving laboratory results generated by a drug testing program who has knowledge of substance abuse disorders and has relevant training and qualifications.
- G. The MRO will review and interpret all confirmed positive tests by reviewing the employee's medical history, including any records and biomedical information provided, affording the employee a reasonable opportunity to discuss the test result, and deciding whether there is a legitimate medical explanation for the result including legally prescribed medication.
- H. The MRO will notify each employee who has a verified positive test that the employee has 72 hours in which to request a test of the split specimen at a separate certified laboratory.
- I. Upon completion of the MRO's review the MRO shall report each verified test result to the Supervisor of the Town of Windsor or his written designee. The employee's supervisor will be informed by the Supervisor of the Town of Windsor of a verified positive test result, and the employee will be removed from safety sensitive functions and shall be subject to the consequences outlined in this Policy. Removal from safety sensitive functions will be immediate and will not await the results of any requested retest.
- J. An employee requesting a drug retest shall advance the cost of the additional analysis and all costs associated with the transfer of the specimen to another laboratory including shipping and handling. Selection of the certified laboratory for retests will be made by the Town

§ 19-5 Alcohol Testing Procedures.

- A. Alcohol testing shall be conducted by collection of a breath specimen through the use of an evidential breath testing device (EBT) that is approved by the National Highway Traffic Safety Administration. The test must be performed by a breath alcohol technician (BAT), who is trained to proficiency in the operation of the EBT being used and in the alcohol testing procedures specified in the regulations.
- B. The persons who will serve as BATs shall be personnel employed by a health facility selected by the Personnel Officer. The health facility will be identified to employees during training and by a supervisor at the time of selection for an alcohol test.
- C. Alcohol tests will be conducted at a site that provides privacy to the individual being tested.
- D. Upon arrival at the alcohol collection site, the employee must provide positive identification to the BAT. After testing procedures are explained to the employee, the employee and the BAT must complete, date and sign the alcohol testing form.

§ 19-6 Screening Test.

- A. The BAT will open an individually sealed, disposable mouth piece in view of the employee and attach it to the EBT. The BAT will instruct the employee to blow forcefully into the mouth piece for at least six seconds or until an adequate amount of breath has been obtained.
- B. Following the screening test, the BAT must show the employee the result displayed on the EBT or a printed result. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required and the test will be reported to the employer as a negative test. The employee may then return to his or her safety sensitive position.

§ 19-7 Confirmation Test.

- A. If the result of the Screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.
- B. The confirmation test must be conducted at least 15 minutes, but not more than 20 minutes, any object or substance in his/her mouth, and will be instructed not to belch to the extent possible while awaiting the confirmation test. The confirmation test will be performed whether or not the employee complies with such instructions.

- C. The confirmation test is conducted using the same procedures as the screening test. A new mouth piece will be used.
- D. If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.
- E. The BAT will transmit all results to the Town Supervisor in a confidential manner. If the employee must be removed from safety sensitive duties, the BAT will notify the Town Supervisor immediately, and the employee will be removed from duty immediately without pay by a supervisor, subject to final termination by the Town Board, of the Town of Windsor.
- F. Where a random, reasonable suspicion, or post-accident alcohol test indicates an alcohol concentration of 0.02 percent or more the employee shall be suspended without pay, pending final termination by the Town Board of the Town of Windsor.

ARTICLE IV

Violations and Consequences

§ 19-8. Major Violations.

The following conduct shall be considered a Major Violation of this Policy:

- A. Taking a drug or alcohol test required by this Policy leading to a verified positive result. For purposes of this subparagraph "A", a verified positive result includes an alcohol test indicating an alcohol concentration of 0.02 percent or more.
- B. Using alcohol while performing safety sensitive functions.
- C. Using alcohol within eight hours after an accident requiring a post-accident alcohol test or until the employee undergoes a post-accident alcohol test, whichever comes first.
- D. Refusal to submit to a post-accident alcohol or drug test, a random alcohol or drug test, a reasonable suspicion alcohol or drug test, or a follow-up alcohol or drug test required by this Policy.
- E. Failure to produce an adequate urine or breath sample when selected for testing, where such failure is not consistent with the requirements of 49 C.F.R. Part 40.
- F. Altering, adulterating, or tampering with a urine sample or a breath sample used in a drug or
- G. Alcohol test required by this Policy, or otherwise distorting the result of a required drug or alcohol test or attempting to do any of the foregoing.

- H. Refusal to sign consents or releases required by federal regulations in connection with drug or alcohol tests.
- I. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
- J. Reporting or duty or remaining on duty requiring the performance of safety sensitive functions when the employee uses any of the drugs prohibited by this Policy, except when the use is pursuant to the instructions of a physician who has advised the employee that the drug does not adversely affect the employee's ability to operate safely a commercial motor vehicle. It shall be the burden of any employee, in any proceeding to prove the instructions of the physician.

§ 19-9. Minor Violations.

The following conduct shall be considered a Minor Violation of this Policy:

- A. Being on duty or operating a commercial motor vehicle while possessing alcohol unless the alcohol is manifested and transported as part of a shipment.
- B. Performing safety sensitive functions within four hours after using alcohol, but not with a blood alcohol concentration of 0.02 or greater.

§ 19-10. Consequences

- A. Each employee who commits a Major Violation (Article V"A" through "I") of this Policy shall be immediately suspended without pay, subject to final termination by the Town Board of the Town of Windsor. b.) Any employee who commits a Minor Violation shall be subject to progressive disciplinary action up to and including termination.
- B. The employment of any employee who commits a major violation of this Policy shall be terminated.
- C. The employment of any employee who commits two Minor Violation of this Policy within a five-year period shall be terminated immediately.
- D. Any discipline imposed hereunder shall be subject to the grievance and arbitration procedure of any applicable, respective collective bargaining agreement.

ARTICLE V
Employee Rights

§ 19-11. Testing and Waiting Time.

All time spent on testing, including reasonable travel time of not more than one hour to and from the testing facility, is paid time under regular pay status, including overtime, if applicable. Employees will be paid while being tested for the time away from duty, or, if their duty assignment has ended, they will be paid up to the time they are released from the testing site. All costs of testing under this Policy shall be borne by the Town of Windsor, except as specifically provided in Article III "K".

§ 19-12. Confidentiality.

The Town of Windsor shall make every effort to assure confidentiality throughout the testing process and to protect the individual dignity and right to privacy of all employees. Personal data regarding the drug testing results and rehabilitation program evaluations will be forwarded only to the Town Supervisor or his written designee and are confidential. Any release of this information to persons other than representatives of the Town Board of the Town of Windsor or the employee's supervisor is prohibited without the written permission of the employee tested.

The Town of Windsor shall make reasonable efforts to afford employees the right to union representation whenever an employee is directed to submit to an alcohol or drug test. Such representation shall not interfere with, or more than minimally delay, the movement of the employee to the testing site and shall not include the presence of a union representative when the independent health provider referred to in Article III "A" is conducting the testing, collection or required preliminary procedures (interview, identification, consents, etc.).

§ 19-13. Police Ordered Testing.

Nothing in this Policy shall be deemed to supersede any police drug/alcohol tests made pursuant to investigation of accidents, or violation of law, and the results of such test shall be admissible hereunder as if properly taken pursuant to this policy.

§ 19-14. Severability.

This policy is intended to comply with all applicable laws and regulations governing drug and alcohol testing of safety sensitive employees, and other employees of the Town of Windsor, New York. The Federal Highway Administration(FHWA) has adopted and published regulations at 49 C.F.R. Part 382, entitled "Controlled Substances & Alcohol Use and Testing." These apply to safety sensitive employees of the Highway Department and all employees of the Town of Windsor holding CDL's and required to use them in their work effective January 10, 1996, and this Policy is effective as to those employees on that date. The regulations mandate urine testing and breath alcohol testing for safety sensitive positions and prevent performance of safety sensitive functions when there is a positive test result. The U.S. Department of Transportation(DOT) has also promulgated regulations

at 49 C.F.R. Part 40, entitled "Procedures for Transportation Work Place Drug and Alcohol Testing Programs"

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setting standards for the collection and testing of urine specimens and the administration of breath alcohol tests. This policy is intended to be in full compliance with the foregoing regulations, if there is any inconsistency between those regulations and the provision of this policy, or if this policy fails to cover anything contained in those regulations, the provisions of the Federal regulations shall prevail and shall be considered to be a part of this policy.