



**City of Vernon, California  
Human Resources Policies and Procedures**

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**U.S. Department of Transportation (DOT) – Pipeline and Hazardous Material Safety  
Administration (PHMSA) Anti-Drug and Alcohol Misuse Prevention Policy**

***Revision Date: 10/01/2024***

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**IMPORTANT INFORMATION FOR PHMSA DRUG & ALCOHOL TESTING POLICY**

<p><u>Notice to Applicants and Employees</u></p> <p><b>REQUIRED DRUG TESTING IS FOR THE FOLLOWING FIVE DRUGS:</b></p> <ul style="list-style-type: none"><li>◆ <b>Marijuana</b></li><li>◆ <b>Cocaine</b></li><li>◆ <b>Phencyclidine (PCP)</b></li><li>◆ <b>Opiates – Codeine, Morphine, Heroin</b></li><li>◆ <b>Amphetamines - Methamphetamine, MDMA (Ecstasy)</b></li></ul> <p><b>Alcohol is tested for when required:</b></p> <ul style="list-style-type: none"><li>◆ <b>Saliva Screening</b></li><li>◆ <b>Breath Alcohol Testing</b></li></ul>	<p><b>CITY DESIGNATED EMPLOYER REPRESENTATIVE (DER) – ALL QUESTIONS REGARDING THE DRUG &amp; ALCOHOL TESTING PROGRAM</b></p> <p>DER: <b>Lisette M. Grizzelle</b></p> <p><b>CITY LOCATION:</b> <b>City of Vernon</b> <b>4305 Santa Fe Ave.</b> <b>Vernon, CA 90058</b> <b>323-583-8811 Ext. 116</b></p>
<p><b>DRUG OR ALCOHOL TREATMENT PROGRAMS</b></p> <p><b>SAMHSA (Substance Abuse Treatment Facility Locator)</b> <a href="http://findtreatment.gov/">http://findtreatment.gov/</a> 1-800-662-HELP (4357)</p> <p><b>Alcohol &amp; Drug Referral Hot Line</b> <b>1-800-252-6465</b></p> <p><b>SUBSTANCE ABUSE PROFESSIONAL</b> (Employee must be referred after violation of DOT drug/alcohol policy):</p> <p>American Substance Abuse Professionals, Inc. 711 W 40th Street, Suite 235 Baltimore, MD 21211 <b>888-792-2727</b></p> <p>National Substance Abuse Professionals Network <b>1-800-879-6428</b></p>	<p>It is the policy of The City of Vernon that there is no place for those who use illegal drugs or who abuse legitimate drugs or who have become dependent upon any chemical substance including alcohol.</p> <p>The City intends to be in compliance with the DOT regulations concerning drug abuse and alcohol misuse which includes a program of random urinalysis testing for illicit drug use and a program for random alcohol testing.</p> <p><b>Employees who refuse to test or have a confirmed positive test for drugs or alcohol will be removed from their safety sensitive position and are subject to dismissal, discipline or transfer to a non-covered position.</b></p>

**DEPARTMENT OF TRANSPORTATION (DOT)**

**PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)  
ANTI-DRUG and ALCOHOL MISUSE PREVENTION POLICY**

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## **STATEMENT OF POLICY AND SCOPE**

The City of Vernon has a legal responsibility to comply with the United States Department of Transportation (DOT) regulations regarding testing of certain City employees. DOT Regulations 49 Code of Federal Regulations (CFR) Part 40 (DOT Regulation) are on file with the City's Designated Employer Representative (DER) for review at any time during normal working hours.

To comply with its legal duty, the City cannot condone and will not tolerate any of the following behaviors by its employees:

- a. Use of illicit drugs.
- b. Abuse of legal drugs (prescription or over-the-counter).
- c. Abuse of alcohol.
- d. Sale, purchase, transfer or use or possession of illegal drugs or prescription drugs obtained illegally.
- e. Arrival for work under the influence of drugs or alcohol.
- f. Consuming illicit drugs or alcohol while working.

Within this Drug/Alcohol Testing Policy, certain elements are required because the City is regulated by the DOT. In addition, certain policy elements, mostly related to specific personnel actions or this City's drug-free workplace regulations or City Policy, reflect requirements of the City but are not required by DOT. With regard to those employees governed by DOT regulations, federal regulations shall be considered as preempting any inconsistent City policy, state or local law or regulation.

All provisions and requirements of Federal Regulations 49 CFR Part 40 (DOT Regulation) and 49 CFR Part 199 (PHMSA Regulation) are adopted as a component of this City policy and the City will enforce all provisions and requirements of these regulations. These regulations are located at: <https://www.phmsa.dot.gov/pipeline/drug-and-alcohol/drug-and-alcohol-regulations>. All references to statutes in this policy include all regulations made thereunder and any applicable amendments to the statute or regulations. %

Operators of pipeline facilities subject to 49 CFR Parts 192, 193, and/or 195 are required to test covered employees for the presence of prohibited drugs and alcohol. Pipeline operators are also required to ensure that contractors are in compliance with Part 199.

## **APPLICABILITY**

This policy applies to any person who performs on a pipeline or liquefied natural gas (LNG) facility an operation, maintenance, or emergency-response function.

The anti-drug and alcohol program required by this policy must be conducted according to the requirements of 49 CFR Part 199 and Part 40 procedures. Terms and concepts used in this policy have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this policy are violations of this policy.

## **DEFINITIONS - DEFINITIONS RELATED TO 49 CFR PART 199 AND PART 40**

Definitions found in 49 CFR Parts 192, 193 and 195 are incorporated by reference as used in this policy and include the following:

*Accident* means an incident reportable under Part 191 of CFR Title 49 involving gas pipeline facilities or LNG facilities, or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.

### *Incident*

- 1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
  - a) A death, or personal injury necessitating in-patient hospitalization;
  - b) Estimated property damage of \$122,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
  - c) Unintentional estimated gas loss of three million cubic feet or more;
- 2) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
- 3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2) of this definition.

### *Reporting Accidents*

An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

- 1) Explosion or fire not intentionally set by the operator.
- 2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
  - a) Not otherwise reportable under this section;
  - b) Not one described in §195.52(a)(4);
  - c) Confined to City property or pipeline right-of-way; and
  - d) Cleaned up promptly (with little or no delay, immediately);
- 3) Death of any person.
- 4) Personal injury necessitating hospitalization;
- 5) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

*Administrator* means the Administrator or the Pipeline and Hazardous Materials Safety Administration or his or her delegate.

*BAT* means Breath Alcohol Technician.

*City* means the employer who has promulgated this policy.

Control room means an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller means a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

Covered employee, employee, or individual to be tested (or applicant) means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Consortium/Third Party Administrator or C/TPA means the service agent; a vender contracted to assist the City with the administration of the PHMSA regulated ANTI-DRUG and ALCOHOL MISUSE PREVENTION POLICY

Covered function means an operations, maintenance, or emergency-response function regulated by 49 CFR Parts 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

DER means Designated Employer Representative.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in 49 CFR Part 40.

Fail a drug test means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee's system.

MRO means Medical Review Officer.

Operator means a person who owns or operates pipeline facilities subject to Parts 192, 193, or 195.

Pass a drug test means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person's system.

Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

PHMSA means the Pipeline & Hazardous Materials Safety Administration (PHMSA) and agency of the United States Department of Transportation (DOT).

Pipeline or pipeline system means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and

delivery stations and fabricated assemblies therein, and breakout tanks.

Pipeline facility means new and existing piping, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this policy plus the number of refusals of random drug tests required by this policy, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) required by this policy.

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

Refuse to submit, refuse, or refuse to take means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq).

STT means Screening Test Technician.

#### **DESIGNATED EMPLOYER REPRESENTATIVE(DER)**

**Appendix A** contains the name, address, and phone number of the responsible individual(s) who ensure(s) adherence to the policy and requirements will be met. The DER shall be responsible for the preparation of an ANTI-DRUG and ALCOHOL MISUSE PREVENTION POLICY which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Part 199 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. The City of Vernon shall ensure that all covered employees are aware of the provisions and coverage of the City's ANTI-DRUG and ALCOHOL MISUSE PREVENTION POLICY and that all employees are notified prior to testing that such a test is required by Part 199.

The position of DER shall be held by an employee of the City and not outsourced to a Service Agent.

#### **DOT VERSUS NON-DOT TESTS AND EMPLOYEES:**

DOT-PHMSA Covered Employees include: Electric Operator, Electric Operator, Sr., Utilities Dispatcher, Utilities Dispatcher Sr., Chief Utilities Dispatcher, Utilities Dispatcher Trainee, Utilities Operations Trainee, Gas Systems Specialist, Gas Systems Specialist, Lead, Gas Systems Superintendent, Gas Systems Technician, Electric Operations Supervisor, Utilities Operations Supervisor, and Utilities Operations Manager. These positions are considered operations, maintenance, or emergency-response.

Supervisor positions that require supervisor training for reasonable cause/suspicion determinations include: Chief Utilities Dispatcher, Gas Systems Superintendent, Electric Operations Supervisor, Utilities Operations Supervisor, and Utilities Operations Manager.

<b>Covered Position</b>	<b>Employee Position</b>	<b>Supervisor Position</b>
Electric Operator	X	
Electric Operator, Sr.	X	
Utilities Dispatcher,	X	
Utilities Dispatcher, Sr.	X	
Chief Utilities Dispatcher	X	X
Utilities Dispatcher Trainee	X	
Utilities Operations Trainee	X	
Gas Systems Specialist	X	
Gas Systems Specialist, Lead	X	
Gas Systems Superintendent	X	X
Gas Systems Technician	X	
Electric Operations Supervisor	X	X
Utilities Operations Supervisor	X	X
Utilities Operations Manager	X	X

This policy does not preclude the City from adding or deleting covered classifications as needed or required.

The City will require annual written verification by applicable contractors or subcontractors of their compliance with 49 CFR Part 199 and 49 CFR Part 40 from contractors or subcontractors who perform covered functions and conduct drug testing, education and training as part of the Anti-Drug Program [§199.115].

The contractor must allow access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of Part 199 and Part 40 [§199.245(c)].

The City when utilizing applicable contractors or subcontractors who perform covered functions and conduct alcohol testing, education and training as part of the Alcohol Misuse Prevention Program [§199.245], but separate from the employer, will require annual written verification by applicable contractors or subcontractors to ensure compliance with Part 199 and Part 40.

DOT tests are completely separate from non-DOT tests in all respects.

DOT testing is conducted and completed before a non-DOT test is begun. No excess urine is left over from a DOT drug test to be used for a non-DOT test. The results of a DOT alcohol test are not used for a non-DOT alcohol testing situation.

The City may test for additional drugs but it will not be performed on the DOT test submitted by the employee. A completely separate void is provided for a test where additional substances are to be tested



under the City's authority.

In the event a non-DOT test has a different result than the DOT test, the City, Services Agent or MRO are not permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. DNA testing will not be conducted on the DOT test nor shall the laboratory allow this to happen.

This City is prohibited by DOT to use the Federal Drug Testing Custody and Control Form (CCF) or the Alcohol Testing Form (ATF) in the City's non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. The City also must always use the CCF and ATF for all DOT- mandated drug and alcohol tests.

### **ANTI-DRUG AND ALCOHOL MISUSE PLAN**

The City maintains and follows the requirements of PHMSA and DOT by issuance of this drug plan. It contains:

1. Methods and procedures for compliance with all the requirements of PHMSA, including the employee assistance program;
2. The name and address of each laboratory that analyzes the specimens collected for drug testing;
3. The name and address of the City's Medical Review Officer, and Substance Abuse Professional; and
4. Procedures for notifying employees of the coverage and provisions of the plan.

### **USE OF PERSONS WHO FAIL OR REFUSE A DRUG OR ALCOHOL TEST**

The City may not knowingly use as an employee any person who:

- 1) Fails a drug or alcohol test required by PHMSA and the Medical Review Officer makes a determination under DOT Procedures;
- 2) Refuses to take a drug or alcohol test required by this policy.

The City will only be allowed to use employees listed in items 1 and 2 above when the employee successfully completes a return-to-duty program prescribed by a qualified Substance Abuse Professional (SAP) and:

- 1) Performs a return-to-duty drug and/or alcohol test and the test is negative;
- 2) Does not fail a drug or alcohol test following return-to-duty.

### **DRUG COLLECTION PROCEDURES**

The employee will be asked to provide appropriate identification to the collector upon arrival at the collection site. Acceptable forms of identification include a photo identification (e.g., driver's license, employee badge issued by the City, or any other picture identification issued by a Federal, state, or local government agency), or identification by an employer or employer representative.

If the employee cannot produce positive identification, the collector will contact the DER to verify the identity of the employee.

The collector will explain the basic collection procedures to the employee and will review any additional instructions with the employee. The Collector will maintain personal control over each specimen and CCF throughout the collection process and prevents unauthorized personnel from entering any part of the site in which urine specimens are collected or stored [49 CFR §40.43(d)(5) and §40.43(e)].

The collector will ask the employee to remove any unnecessary outer clothing (e.g., coat, jacket, hat, etc.) and to leave any briefcase, purse, or other personal belongings he or she is carrying with the outer clothing. The employee can retain his or her wallet. In most cases, lockers are provided for the employee and the employee is provided the key. If the employee asks for a receipt for any belongings left with the collector, the collector must provide one.

The collector will direct the employee to empty his or her pockets and display the items to ensure that no items are present that could be used to adulterate the specimen. If nothing is there, the employee places the items back into the pockets and the collection procedure continues. If the employee refuses to empty his or her pockets, this is considered a refusal to cooperate in the testing process. The DER has the responsibility to make the final determination of a refusal to test. Refusals are considered a positive result that has the same requirements as if the employee tested positive for a drug substance.

The collector will instruct the employee to wash and dry his or her hands while the collector observes and the collector will direct the employee that they cannot wash their hands until directed to do so.

The collector will either give the employee or allow the employee to select the collection kit or collection container (if it is separate from the kit) from the available supply. Either the collector or the employee, with both present, then unwraps or breaks the seal of the kit or collection container.

The collector will take precautions to ensure that unadulterated specimens are obtained and correctly identified that meet the following requirements:

- Bluing agents in toilet tank and all water sources secure [§40.43(b)(1) and (2)]
- Individual positively identified (photo ID, etc.) [§40.61(c)]
- Proper authority contacted if individual fails to arrive at the assigned time [§40.61(a)]
- The donor shall remove any unnecessary outer garments. Purses or briefcases shall remain with outer garments [§40.61(f)].
- Donor shall wash and dry his/her hands [§40.63(b)].
- To the greatest extent possible, the collector must keep an employee's collection container within view of both himself/herself and the employee between the time the employee has urinated and the specimen is sealed [§40.43(d)(2)]
- Any unusual behavior noted on the CCF [§40.63(e)]

The collector will direct the employee to go into the room used for urination and provide a specimen of at least 45 ml. The employee will be directed to not flush the toilet, and return with the specimen as soon as possible after completing the void. The collector may set a reasonable time limit for the employee to be inside the bathroom and this time frame should be explained to the employee. This is to the employees benefit as once the urine is voided in the specimen container, it begins to cool down. The specimen must be in the 90 to 100 degree Fahrenheit range to be an acceptable specimen.

The collector will check the temperature of the specimen as soon as the employee hands over the specimen, but no later than four minutes after the employee comes out of the restroom.

After the employee hands the collection container to the collector, the collector unwraps or opens the specimen bottles.

The collector then pours at least 30 mL of urine from the collection container into a specimen bottle and places the lid/cap on the bottle. This will be the primary specimen or "A" bottle. The collector, then pours at least 15 mL into a second bottle and places the lid/cap on the bottle. This will be the "B" bottle used for the split specimen.

The collector will remove the tamper-evident seals from the CCF and place them on each bottle. The collector writes the date on the seals and the employee will be asked to initial the seals. If the employee fails or refuses to initial the seals, the collector will note this in the "Remarks" line of the CCF and complete the collection process. This is not considered a refusal to test.

The collector will now direct the employee to read, sign, and date the certification statement, and provide date of birth, printed name, and day and evening contact telephone numbers in Step 5 of Copy 2 of the CCF.

The collector completes the collector's portion of the chain of custody on the CCF.

The collector will ensure that all copies of the CCF are legible and complete and will remove Copy 5 from the CCF and give it to the employee. The collector may suggest the employee is to list any prescription or over-the-counter drugs on the employees copy of the CCF. This information may help the employee remember what medications he or she may have taken if a positive result is reported by the laboratory to the MRO.

The collector will place the specimen bottles and Copy 1 of the CCF inside the appropriate pouches of the leak-resistant plastic bag, and seals both pouches. The collector will allow the employee to wash his or her hand at this time and can now leave the collection site.

An immediate supervisor of the City shall not serve as a collector unless no other collector is available as stated in §40.31(c).

When a collection site uses a facility normally used for other purposes, the City will ensure before the collection that: (1) access to collection materials and specimens is effectively restricted; and (2) the facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs will be posted [§40.43(c)].

### **Direct Observation Urine Collection**

Federal regulations require a collector or observer to directly observe the employee while that employee provides their urine specimen if the employee's previous urine specimen was out of normal temperature range, or the collector previously observed the employee attempting to tamper or substitute a specimen, or the employee's previous test result was invalid due to an interfering substance and the employee did not

have a legitimate medical explanation, or the employee's split specimen could not be tested following a non-negative test result. The collector (or the observer) must be of the same gender as the employee for direct observation collections. All return to duty and all follow-up testing shall be collected with direct observation.

### **Shy Bladder (If You Have Difficulty Providing a Urine Specimen)**

When the donor does not provide at least 45 milliliters of urine, the collector will follow all provisions of CFR §40.65(a) and move into a Shy Bladder process. After the employee's first unsuccessful attempt to provide an acceptable specimen, you have up to 3 hours to produce a single specimen of sufficient volume (you cannot combine specimens). The employee is allowed to consume up to 40 ounces of fluid reasonably spread out over the 3 hours. If the employee does not provide a specimen within those 3 hours, the employee must undergo a medical evaluation to determine if there was a medical reason for their inability to do so. If a physician determines that there was no medical reason for not providing the sample, this will be considered a refusal to test and the employee will be immediately removed from performing safety-sensitive functions and could result in termination of employment. If the employee refuses the physician evaluation, this is a refusal to test and the employee will be immediately removed from performing safety-sensitive functions and could result in termination of employment.

### **COLLECTION PROCEDURES –ALCOHOL**

Only evidential breath testing devices (EBTs) and alcohol screening devices (ASDs) listed on the National Highway Traffic Safety Administration (NHTSA) Conforming Products List (CPL) will be used for DOT alcohol testing [CFR §40.229]. An EBT must always be used for conducting the confirmation tests [CFR §40.231(a)].

When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, the collector will contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, the collector will notify the DER that the employee has not reported for testing.

The DER will make the call as to whether it is a refusal to test.

Once the employee enters the alcohol testing site, the alcohol testing process should begin without undue delay. The alcohol test should be completed first if in conjunction with a DOT drug test if at all possible.

**The Evidential Breath Testing Device (EBT) currently used is: RBT IV**

Sometimes the EBT machine is not available because it is in use. In that case a DOT urine collection can be completed first.

Reasonable suspicion and Post-accident collections should always be conducted first.

If the employee requires medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), treatment must be performed before an alcohol test can be conducted.

The employee is to provide positive identification by way of a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). No fax or photocopies are allowed. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, the DER can verify the identity of the employee.

The employee can ask for the Breath Alcohol Technician (BAT) to provide their identification to the employee. The identification must include the BAT's name and their employer's name but is not required to include a picture, address, or telephone number.

The BAT will explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.

The BAT will complete Step 1 of the Alcohol Testing Form (ATF).

The BAT will direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, they will document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

The BAT will select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.

The BAT will open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

The BAT will instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

The BAT will show the employee the displayed test result.

If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, the BAT must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, the BAT must record this information in Step 3 of the ATF.

If the test result is an alcohol concentration of less than 0.02%, the BAT must sign and date Step 3 of the ATF and send to the DER in a confidential manner.

If the test result has an alcohol concentration of 0.02% or higher the BAT must direct the employee to take a confirmation test.

There must be a waiting period of 15 minutes before the confirmation test can be conducted.

The BAT will instruct the employee to not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch.

The reason for the waiting period is to prevent an accumulation of mouth alcohol from leading to an artificially high reading; that following the BATs instructions concerning the waiting period is to the employee's benefit; and that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

Once the waiting period has begun, the BAT conducting an alcohol confirmation test must follow these steps in order to complete the confirmation test process:

In the presence of the employee, BAT must conduct an air blank on the EBT they are using before beginning the confirmation test and show the reading to the employee.

- 1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT will conduct another air blank.
- 2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must take the EBT out of service.

The BAT will open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

The BAT will read and instruct the employee to read the unique test number displayed on the EBT.

The BAT will instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

The BAT will show the employee the result displayed on the EBT.

The BAT will show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.

If the EBT provides a separate printout of the result, the BAT will attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

After the EBT has printed the result of an alcohol confirmation test, the employee and the BAT will:

- 1) Sign and date Step 3 of the ATF.
- 2) If the alcohol confirmation test result is lower than 0.02%, nothing further is required of the employee. They will sign and date Step 3 of the ATF.
- 3) If the alcohol confirmation test result is 0.02% or higher, the BAT will direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, the BAT will note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.
- 4) If the test is invalid, the BAT will tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test.

5) The BAT will immediately transmit the result directly to the DER in a confidential manner.

When an employee is unable to provide enough breath to complete the required breath alcohol test, instructions shall be provided so the employee can make a second attempt. A third attempt can be made along with attempting the test in a manual mode on the EBT or utilizing an ASD. If the employee is still unable to produce a sufficient amount of breath or successfully complete a manual test or saliva test, the BAT must note the fact on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test unless a medical evaluation by a physician can document explanation for the failure. All provisions of CFR§40.261(a)(1) to (7) and CFR§40.265 shall be followed. Based on a refusal to test an employee must be removed from the safety sensitive position and can face termination of employment.

Problems that occur that can cancel an alcohol test are outlined in §40.267 and §40.269. The BAT or Screening Test Technician (STT) always has responsibility of trying to complete successfully an alcohol test for each employee. Every attempt will be made to correct any problems. A cancelled alcohol test is neither positive nor negative and cannot be used in a situation where an employee needs a test result that is below 0.02% (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions). The BAT or STT will immediately notify the DER of a canceled alcohol test.

When a saliva ASD is used for the initial alcohol screening, this shall be conducted by a trained and qualified STT following all procedures required by §40.261.

When an employee is unable to provide an adequate amount of saliva for testing; the employee shall be provided instructions for requiring the employee to attempt again to provide an adequate amount of saliva for testing. All provisions of §40.263 shall be followed. If the employee refuses the second request for the saliva collection, this is a refusal to test. If the employee is still unable to provide an adequate amount of saliva, then the DER must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

External calibration checks and calibration will be performed at the intervals specified in the manufacturer's instructions for any EBT used for any DOT required alcohol confirmation testing [§40.231 and §40.233]. For any EBT that is used the devices recommended Quality Assurance Plan (QAP) will be implemented. This will be verified annually of Service Agents providing breath alcohol testing services to the City.

The City or its Service Agents shall comply with the QAP and manufacturer's instructions for the ASD that is used for saliva alcohol screening [§40.235 and §40.235(c)].

### **DRUG AND ALCOHOL TESTS REQUIRED**

The City shall conduct the following tests per the PHMSA and DOT procedures:

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

The City may not hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this policy. The City shall conduct a pre-employment drug test and receive a negative result before the first performance of covered functions by every covered employee.

The same procedure applies to a new employee or an existing employee who has transferred to a position involving the performance of covered functions.

### **Post-Accident Testing**

The City will be required to immediately inform the Pipeline Operator they are working for, that an accident/incident has occurred so the Pipeline Operator can make the determination that the employee either contributed to the accident or cannot be clearly ruled out as a contributing factor to the accident. The City shall provide the Pipeline Operator concrete facts of the accident. They must do this by providing information of the employees' contribution to the accident or incident promptly to meet the timelines for testing required by the regulations.

If the Pipeline Operator makes the determination that the City's employee performance either contributed to the accident or cannot be completely discounted as a contributing factor for the accident, then the City will perform a drug and alcohol test in accordance with the guidelines in **Appendix F**.

The City, having actual knowledge of an accident will remove the employee from performing covered functions and will inform the employee they are prohibited from using alcohol for eight hours or until determination has been made by the Operator as to if the employee was determined to have contributed to the accident or was not a contributing factor to the accident.

See **APPENDIX F: POST-ACCIDENT GUIDELINES FOR SUPERVISORS AND EMPLOYEES**

### **Random Testing**

The selection of employees for the random drug testing is made by a scientifically valid method which is a computer-based random number generator that is matched with employees' payroll identification numbers, or other comparable identifying numbers facilitated by our third-party administrator.

The City shall ensure that random drug tests conducted under this policy are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. This means the employee selected in the previous selection period will remain in the drug testing random program for the next selection to be performed.

The City shall randomly select and ensure that a sufficient number of covered employees are selected for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the City elects to conduct random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same PHMSA current minimum annual percentage rate.

Random testing shall be for drugs only; PHMSA does not authorize random alcohol testing.



The following are the key aspects of the random testing selection process:

- 1) Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
- 2) Employees will be selected for random testing based on the number of covered employees in the random pool at the time and the current PHMSA random testing rate. The current rate for 2023 for drug testing is 25% annually.
- 3) Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's employee ID number, or other comparable identifying numbers facilitated by our third-party administrator.
- 4) The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection.
- 5) Specimen collection will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their drug use patterns to the schedule for collection.
- 6) The list of employees that have been selected for random drug testing will be retained by the DER or his/her designee in a secure location.
- 7) Employees shall report immediately to the collection site once notified by a supervisor.

### **Reasonable Cause**

The City shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug or alcohol. The employee to be tested under DOT authority may be just starting to perform covered functions, during performing covered functions, or just after performing covered functions. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. The same indicators are used for alcohol testing with the addition of speech and odor .

The PHMSA regulation requires that at least one supervisor for each operator or contractor (with 50 or fewer covered employees) must be trained in Reasonable Suspicion Awareness. This training is designed to provide supervisors information regarding the signs and symptoms of drug and alcohol misuse. One hour on drug misuse and one hour regarding alcohol misuse is required. For operators and contractors with more than 50 covered employees, a minimum of two supervisors must be trained.

At least two supervisors, one of whom is trained in detection of the symptoms of drug use; shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use CFR §199.105(d).

A supervisor making a reasonable cause determination for testing shall not serve as the BAT or STT CFR §40.211(c) and §199.225(b)(2).

**See APPENDIX G: REASONABLE SUSPICION/CAUSE GUIDELINES FOR SUPERVISORS**

A Reasonable Suspicion/Cause Checklist Form is also provided for Supervisors to document reasonable suspicion/cause.

### **Return-to-Duty Testing**

A covered employee who refuses to take or has a positive drug test, or refuses to take or has an alcohol concentration 0.04% or greater, may not return to duty in the covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.

Per DOT regulations, the DER must direct the drug collection of the employee for a return-to-duty test be performed as a direct observation collection procedure.

If the employee does not admit to refusing or having a positive test and the City finds out from a previous employer of the employee that they did indeed refuse or tested positive, the employee will not be hired. In the event that the previous employer checks were not conducted prior to hiring the employee and the employee provides a negative pre-employment test, and then the City finds that the employee did refuse or tested positive for a drug and/or alcohol test, the employee will be terminated.

The City will not conduct a return-to-duty drug and/or alcohol test until it has received the SAP letter detailing the employees' compliance with the rehabilitation ordered by the SAP.

### **Follow-Up Testing**

A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the City following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

Per the DOT regulations, the DER must direct the drug collection of the employee for a follow-up test be performed as a direct observation collection procedure.

### **DRUG TESTING LABORATORY**

The City shall use for the drug testing required by the PHMSA regulation only drug testing laboratories certified by the Department of Health and Human Services (HHS) under the DOT Procedures. See **Appendix A** for the laboratory this City utilizes.

The laboratory tests for the drugs required by DOT regulations of drug classifications for cocaine, marijuana, opiates, amphetamines and PCP. The list of the drugs and metabolites required by DOT is in **Appendix D** of this policy.

The laboratory listed in **Appendix A** reports all results directly to our Medical Review Officer who is listed in **Appendix A** through a secured mechanism designed by the Laboratory and the MRO office.

Laboratories testing the primary specimen will retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year. The specimen must be kept in secure, long-term, frozen storage in accordance with HHS requirements [CFR §40.99 and CFR §199.111(a)].

The laboratory will retain all records pertaining to each employee's urine specimen for a minimum of two years and also keeps for two years employer-specific data required in §40.111 [§40.109].

The laboratory will transmit an aggregate statistical summary, by employer, of the data listed in **Appendix B** to the employer on a semi-annual basis.

### **MEDICAL REVIEW OFFICER REVIEW OF DRUG TESTING RESULTS**

MRO Appointment. The City has designated a Medical Review Officer (MRO) listed in **Appendix A** to verify results according to 49 CFR Part 40 regulations.

MRO Qualifications. Our MRO is a licensed physician who has the qualifications required by DOT Procedures which require the MRO to go through training and re-qualification every five years. The MRO qualification document is kept by our C/TPA and is listed on their web-site.

The City prohibits standing down an employee before the MRO has completed the drug test verification process. Completed and verified drug test results will be transmitted directly from the MRO to the City.

### **MRO Duties**

Acts as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.

Provides a quality assurance review of the drug testing process for the specimens under the MROs purview. This includes, but is not limited to:

Ensures the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled.

Provides feedback to employers, collection sites and laboratories regarding performance issues where necessary; and

Reports to and consults with the ODAPC or a relevant DOT agency when requiring DOT assistance in resolving any program issue. As an employer or service agent, are prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.

The MRO must determine whether there is a legitimate medical explanation for confirmed positive,

adulterated, substituted, and invalid drug tests results from the laboratory.

Even though the MRO reviews employees' test results, this does not deem that MRO has an established doctor-patient relationship with the employees whose tests the MRO reviews.

The MRO must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results, problems with blind specimens).

The MRO must ensure the timely flow of test results and other information to employers.

The MRO must protect the confidentiality of the drug testing information.

The MRO must perform all your functions in compliance with this part and other DOT agency regulations.

#### Negative Results:

The City's MRO reviews 5% of all negative drug tests outlined by the 49 CFR Part 40 regulations. The MRO staff releases all negative drug test results as allowed by the regulations. Copy 1 and Copy 2 of the Federal Custody and Control form are in hand before releasing negative results to perform a QC function in order to ensure no discrepancies have occurred.

Qualifications and requirements for acting as an MRO are set forth in 49 CFR §40.121 and incorporated herein by reference.

#### **Negative Dilute Results:**

If the MRO informs the City that a negative test was dilute, the City may take the following action depending on City policy and/or guidance provided by the MRO:

(1) If the MRO directs that a recollection take place under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL), the City will do so immediately. Failure of the employee or applicant to submit for this recollection is classified by the DOT as a refusal to test.

(2) Otherwise (i.e., if the creatinine concentration of the negative dilute specimen is greater than 5 mg/dL), the City will, for existing employees, require the employee to retest upon immediate notification and be escorted by a supervisor.

(3) Regarding a negative dilute (greater than 5 mg/dL) on an applicant, the City will require the applicant to retest within 24 hours and provide instructions to applicant on how to avoid a dilute specimen.

NOTE: The City will treat all employees the same for this purpose. The City may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). The City will inform its employees in advance of its decisions on these matters.

When such a retest is required after a negative dilute specimen, the employee or applicant will be given

the minimum possible advance notice that he or she must go to the collection site. Instructions will be provided on how to avoid a dilute specimen. The result of the retest will be considered the final result, not the result from the first test. For current employees required to submit to a return-to-duty test or follow-up test (both of which under DOT regulations must render a negative test result) a second directly observed collection resulting in a negative dilute urine test result will render the final result a “negative” test; and an applicant with a second directly observed negative dilute urine test result will not be eligible for hire under the City’s uniformly enforced policy.

If the employee declines to take a retest required because of a dilute specimen, the action will be considered a “refusal to be tested” and will be treated the same as a confirmed and verified positive result. The offer of employment will be rescinded if an applicant refuses to take the retest because of a dilute specimen.

### **Non-Negative Results**

The MRO is required to review all positive, adulterated, substituted and invalid drug test results provided by the laboratory. The MRO reviews Copy 1 of the Federal Drug Testing Custody and Control Form (CCF) to determine if there are any fatal or correctable errors that may require the test to be cancelled.

The MRO reviews Copy 1 of the (CCF) to ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form.

The MRO conducts a confidential verification interview with the employee if the employee wants to discuss the result. The MRO when in contact with the employee will explain to the employee that, if he or she declines to discuss the result, the MRO will be required to verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.

The MROs staff may conduct this initial contact for MRO under the MROs direction. The staff contact is to schedule the discussion between the MRO and the employee and explain the consequences of the employee declining to speak with the MRO. (i.e., that the MRO will verify the test without input from the employee). If the employee declines to speak with the MRO, the MROs staff person will document the employee’s decision, including the date and time.

The MROs staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.

The MRO will make three attempts spread reasonably during a 24-hour period to contact the employee. If after the 24-hour period the employee did not contact the MRO, the MRO will contact the DER with a statement that he has made three attempts to contact the employee with no response. The MRO will direct the DER to contact the employee for the employee to call the MRO.

The DER must make three attempts within the next 24-hour period. If successful contact is made, (actually talk to the employee) the DER is to notify the MRO that contact was made with documentation of the date and time the contact was made. The DER must inform the employee that he or she should contact the MRO immediately. The DER must also inform the employee of the consequences of failing to contact the MRO

within the next 72 hours. The consequences are that the MRO will report the non-negative test event to the DER after 72 hours has passed even if no contact has been made between the MRO and employee.

If the employee does not call the DER within the 24-hour period, the DER may leave a message for the employee by either leaving a voice-mail on the employees' personal cell phone, sending a personal email or by US mail. If/when the DER has exhausted all reasonable efforts to contact the employees but fails to do so, the DER may place the employee on temporary medically unqualified status or medical leave.

### **MRO Notification to Employee**

At the beginning of the confidential verification interview, the MRO will explain to the employee that the laboratory has determined that the employee's test result is positive, adulterated, substituted, or invalid. The MRO will tell the employee the drug(s) for which their specimen tested positive or the basis for the finding of adulteration or substitution.

The MRO will explain the verification interview process to the employee and inform the employee that the MROs decision will be based on information the employee provides during the interview.

The MRO will explain that, if further medical evaluation is needed for the verification process, the employee must comply with the MROs request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.

The MRO will notify the employee who has a confirmed positive, adulterated, substituted or invalid test that the MRO is required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives to the MRO in the verification process without the employee's consent. This means that any information provided by the employee to the MRO such as medications or other substances that will or may affect the performance of safety-sensitive duties will be reported to the employee's DER.

### **MRO Notification of Employee Right to Test the Split Specimen**

If the MRO determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO will inform the employee of the following procedure in which to request a test of the split specimen if the employee desires.

The MRO will inform the employee they have up to 72 hours from the time the MRO interviews the employee regarding the test result. The MRO will give the employee the MRO phone number to call to request another SAMHSA certified laboratory to test the split specimen which is Bottle B performed during the collection. The MRO will immediately order the split sample testing when the employee informs the MRO of the request. The MRO will also inform the employee that the City may require the employee to pay for the cost of shipment (if any) and reanalysis of the sample. The MRO informs the employee that the laboratory is not allowed to perform additional tests of the specimen nor will DNA tests be authorized. The MRO will document the date and time of the employees' request.

### **MRO Reporting of Results to DER**

The MRO reports positive, refusal to test, and invalid results by providing an MRO Letter, and by calling

and/or emailing directly to the DER. This letter is provided to the DER the City has designated to receive these confidential results. The MRO simultaneously provides the report to this City's C/TPA listed in **Appendix A** of this policy.

Negative or cancelled test results are reported through the C/TPA's database by electronic confidential means when the MRO immediately releases the results. Once the MRO releases the result, a test result certificate is generated and emailed to the DER on file. The DER has access to the C/TPA database 24/7 for accessing the test result certificate at any time.

### **EMPLOYEE ASSISTANCE PROGRAM**

The City of Vernon maintains an Employee Assistance Program (EAP) that consists of referring employees with substance use or misuse disorders to local rehabilitation centers. Any costs of outside services are, however, the employee's responsibility.

Any employee who has not previously tested positive for drug or alcohol use and has not yet entered a drug and/or alcohol abuse rehabilitation program, may seek assistance for substance use or misuse disorders before they lead to disciplinary actions. Seeking a referral after a positive drug or alcohol test, however, will not in any way excuse the employee from disciplinary action required by violations of this policy

No employee will be discharged, disciplined or discriminated against solely upon the employee's voluntarily seeking treatment for a drug/alcohol related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug related problems, or entered an alcohol and drug rehabilitation program.

Through the EAP, the City will attempt to provide appropriate referral to drug and alcohol abuse rehabilitation programs.

If an employee wishes to pursue help through the EAP or wishes to contact a SAP, please contact the person listed in **Appendix A** for an appropriate referral. **Appendix C** also has additional EAP and SAP information.

The City's EAP program includes education and training on drug use as outlined in this policy and additional employee education and supervisor training that will be required with documentation of receipt of the educational and supervisor training programs.

### **REPORTING OF ANTI-DRUG AND ALCOHOL TESTING RESULTS (MIS REPORTS)**

Each large operator (having more than 50 covered employees which includes contractor companies that perform PHMSA safety-sensitive functions for the Operator.) shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 not later than March 15 of each year for the prior calendar year (January 1 through December 31).

The PHMSA Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to

PHMSA (The DER will need to request this information from the TPA).

Each report required under this section shall be submitted to the Office of Pipeline Safety Compliance (OPS), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, PHP-60, 1200 New Jersey Avenue, SE, Washington, DC20590.

Each report shall be submitted in the form and manner prescribed by the PHMSA Administrator. No other form, including another DOT Operating Administration's MIS form, is acceptable for submission to PHMSA.

Each report shall be certified and signed by the Operator's anti-drug manager or designated representative. PHMSA will allow the operator the option of entering the data through the Drug & Alcohol Testing Management Information (DAMIS) system. The PHMSA program manager provides the Operator their unique username and password.

The Operator lists the contractor companies that perform PHMSA covered functions for the Operator. The DAMIS system will provide a unique username and password for each contractor company.

The Operator may provide the username and passwords to the contractor company and direct the contractor company to enter the MIS data provided or the Operator may hire a third party to enter the MIS data.

The City is required to prepare the MIS data and enter the information in the DAMIS system by the request of the Operator or provide a completed MIS Form to the Operator that has been certified by a City official and date of the certification of the data.

The C/TPA may prepare the MIS report for the City but may not be the certifying official for signing the document.

**Retention of records – (49 CFR §199.117)**

(a) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (b) of this section:

- (1) Records that demonstrate the collection process conforms to this part must be kept for at least 3 years.
- (2) Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of five years.
- (3) Records of employee drug test results that show employees passed a drug test must be kept for at least 1 year.
- (4) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.
- (5) Records of decisions not to administer post-accident employee drug tests must be kept for at least 3 years.

(b) Information regarding an individual's drug testing results or rehabilitation must be released upon the



written consent of the individual and as provided by DOT Procedures. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

#### **Access to facilities and records – (49 CFR §199.231)**

- (a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.
- (b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
- (c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.
- (d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.
- (e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.
- (f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
- (g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.
- (h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

#### **Retention of records – (49 CFR §199.227)**

Records of decisions not to administer post-accident employee alcohol tests must be kept for a minimum of three years.

#### **Reporting of alcohol testing results – (49 CFR §199.229)**

- (a) Each large operator (having more than 50 covered employees) must submit an annual MIS report to PHMSA of its alcohol testing results using the MIS form and instructions as required by 49 CFR part 40 (at §40.26 and Appendix H to part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator may require by notice in the PHMSA Portal (<https://portal.phmsa.dot.gov/phmsaportallanding>) that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, to prepare and submit such reports to PHMSA.

(b) Each report required under this section must be submitted electronically at <http://damis.dot.gov>. An operator may obtain the username and password needed for electronic reporting from the PHMSA Portal (<https://portal.phmsa.dot.gov/phmsaportallanding>). If electronic reporting imposes an undue burden and hardship, the operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE. Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075, or electronically to [informationresourcesmanager@dot.gov](mailto:informationresourcesmanager@dot.gov) to make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

### **PROHIBITIONS:**

The use or possession of alcoholic beverages while on City property, or in any City vehicles, or on City time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

This policy makes no exception for medical marijuana. The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs; including marijuana, for any reason medical, recreational or otherwise.

### **Alcohol Concentration**

**Alcohol** – removal from safety sensitive position at .02% blood alcohol content(BAC) or greater, violation of Policy at .04% BAC or greater.

Covered employees are prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04% or greater. The City, having actual knowledge that a covered employee has an alcohol concentration of 0.04% or greater, shall not permit the employee to perform or continue to perform covered functions.

**On-Duty Use** – Covered employees are prohibited from using alcohol while performing covered functions. The City, having actual knowledge that a covered employee is using alcohol while performing covered functions, shall not permit the employee to perform or continue to perform covered functions.

**Pre-Duty Use** – Covered employees are prohibited from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. The City having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty, shall not permit that covered employee to perform or continue to perform covered functions.

**On-Call Employees** - Employees who are not at work, but who could be called at any time to perform covered functions are subject to the pre-duty alcohol prohibition. An employee, who has been notified to report for duty to respond to an emergency, may not use alcohol after being notified to report. If City personnel determine that an employee has used alcohol within the time period after the employee has been notified to report for duty, the covered employee shall not be permitted to perform or continue to perform

covered functions.

### **REFUSAL TO TEST OR FAILED A DRUG/ALCOHOL TEST**

Covered employees shall acknowledge and that they will be considered to have refused to take a drug/alcohol test or failed a drug/alcohol test if they:

- 1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the City, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner- operator) to appear for a test when called by a C/TPA;
- 2) Fail to remain at the testing site until the testing process is complete; Provided, that an employee who leaves the testing site **before** the testing process commences for a pre-employment test is not deemed to have refused to test;
- 3) Fail to provide a urine specimen for any drug test required by part 40 or DOT agency regulations; Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- 4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of their provision of a specimen;
- 5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- 6) Fail or decline to take an additional drug test the City or collector has directed the employee to take;
- 7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under part §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
- 8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process, refuse to remove hat, coat, gloves, coveralls when directed or failure to wash hands as directed);
- 9) For an observed collection, fail to follow the observer's instructions to raise you're their clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
- 10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process;
- 11) Admit to the collector that they adulterated or substituted the specimen;
- 12) The confirmed specimen reported to the MRO by the laboratory was adulterated or substituted;
- 13) Fail to sign the certification statement at Step 2 of the Alcohol Testing Form (ATF); or
- 14) Fail to cooperate with any part of the alcohol testing process.

### **CONSEQUENCES OF PROHIBITED CONDUCT**

Each covered employee should understand that certain policy violations will result in immediate termination. Such violations of the policy include, but are not limited to:

- the use of alcohol on City time;
- the possession, sale or use of illegal drugs on City premises or on City time;
- any effort to substitute or adulterate a drug test sample or otherwise alter a drug test result; or
- refusal to test when required by this policy

Additional Discipline Actions for Violations of this Policy:

1. Job Applicants will not be hired and will be provided a referral list to a Substance Abuse Professional (SAP) to meet the required conditions of 49 CFR Part 40.281 Subpart O.
2. An employee violation of this policy will result in immediate removal from the safety sensitive position and meet the required conditions of 49 CFR Part 40.281 Subpart O with referral to the SAP as stated below in Item 3. Per the City authority, a second violation of this policy will result in immediate termination of employment.

*Employees testing positive or refusal to test may forfeit eligibility for unemployment payments per City authority. Injured employees after a positive or refusal to test on a post-accident testing event may forfeit eligibility for workers' compensation medical payments and indemnity payments per City authority.*

3. DOT consequences for a confirmed positive, adulterated, substituted drug/alcohol test or refusal to test require the employee to be removed from a safety sensitive position and referred to a SAP. The employee cannot return to the safety sensitive position until a final evaluation from the SAP and a return to duty negative test. The employee will be responsible for any costs associated with the SAP program.
4. City policy requires employees arrested, indicted or convicted of violating controlled substance laws will notify the City within five (5) business days of the event and if this substance abuse policy was also violated, will be disciplined up to and including termination, depending on the circumstances.
5. The consequences for covered employees found to have an alcohol concentration of 0.02% or greater but less than 0.04% shall be removal from the safety sensitive covered position until;
  - a. The employee's alcohol concentration measures less than 0.02% in accordance with a test administered under CFR §199.225(e); or
  - b. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

**REFERRAL, EVALUATION, AND TREATMENT**

Each covered employee who has violated the policy by having a non-negative or refusal to test for a drug and alcohol test will be provided with a list of qualified substance abuse professionals within a reasonable distance from the employee's residence or the City can provide the employee with a national SAP network for which to call for qualified SAPs in the employee's area of residence.

A form will be provided to an employee who registers a verified positive drug or alcohol test result or

refusal to test with a listing of qualified Substance Abuse Professionals (SAPs), regardless of whether or not the employee is terminated or denied employment by his/her employer. This form shall document the employee's removal from safety-sensitive position and the requirement of providing a list of SAPs.

Before a covered employee returns to duty for performance of a covered function after engaging in a non-negative or refusal to test for any employer, the employee must have a face-to-face assessment by a qualified SAP, go through the required rehabilitation prescribed by the SAP, successfully complete the rehabilitation and have a follow-up assessment by the same SAP.

The employee shall be subject to unannounced follow-up alcohol tests administered by the City following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a SAP, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

Evaluation and rehabilitation may be provided by this City, by a SAP under contract with this City, or by a SAP not affiliated with the City. The choice of SAPs and assignment of costs shall be made in accordance with employer/employee agreements and employer/employee policies.

The City shall ensure that a SAP who determines that a covered employee requires assistance in resolving problems with drug abuse and alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or in which the SAP has a financial interest.

This paragraph does not prohibit a SAP from referring an employee for assistance provided through:

- A public agency, such as a State, county, or municipality;
- The City or a person under contract to provide treatment for alcohol problems on behalf of the City;
- The sole source of therapeutically appropriate treatment under the employee's health insurance program; or
- The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

#### **CONFIDENTIALITY FOR DRUG AND ALCOHOL TEST INFORMATION**

The City or their service agent is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under

this part.

The City may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings such as an employment lawsuit, grievance (an arbitration concerning disciplinary action taken by the employer), or administration proceeding (an unemployment compensation hearing) brought by or on behalf of an employee and resulting from a positive DOT drug and alcohol test or refusal to test (including, but not limited to adulteration or substituted test results).

These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.

In such a proceeding, the City may release the information to the decision maker in the proceeding (e.g., the court in a lawsuit). The City may release the information only with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding.

If the City requests its employee's drug or alcohol testing information from their service agent to use in a legal proceeding as authorized for a litigation proceeding (e.g., the laboratory's data package), the service agent will provide the requested information to the City.

Any time the City or their Service Agent release information in a legal proceeding, immediate notification to the employee will be sent in writing.

### **RECORDKEEPING**

The City will ensure that all records required by the DOT are maintained in a secure location under a locked file cabinet to protect confidentiality of the employees' information. The following records and time requirements the City are to keep are outlined below:

One Year:

- 1) Records of employee drug test results that show employees passed a drug test;
- 2) Alcohol test results below 0.02%.

Two Years:

- 1) Records related to the inspection, maintenance and calibration of EBTs, i.e., collection logbooks, calibration documentation for evidential breath testing devices, documentation of breath alcohol technician training
- 2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests
- 3) Documents verifying existences of a medical explanation of the inability of an employee to provide adequate breath for testing

Three Years:

- 1) Information obtained from previous employers under §40.25 concerning drug and alcohol test

results of employees

- 2) Information this City provided to a prospective employer under the §40.25 drug and alcohol test results of previous employees
- 3) Records related to reasonable suspicion supervisor training
- 4) Records related to employee training
- 5) Documents generated in connection with decisions on post-accident tests

Five Years:

- 1) Records of alcohol test results indicating an alcohol concentration of 0.02% or greater
- 2) Records of verified positive drug test results
- 3) Documentation of refusals to take required alcohol and/or drug tests (including substitution and adulterated drug test results)
- 4) Calibration documentation for evidential breath testing devices
- 5) Substance Abuse Professional demonstration of compliance with the recommendations (e.g., SAP Report)
- 6) Follow-up tests and testing schedule provided by the SAP for follow-up tests
- 7) MIS Annual Report.

### **ALCOHOL EDUCATION SUPPLEMENT**

The following information shall be distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position [49 CFR §199.239(a)(1)].

Written notice shall be provided to representatives of employee organizations of the availability of this information [49 CFR §199.239(a)(2)].

For many people, the facts about alcoholism are not clear. What is alcoholism, exactly? How does it differ from alcohol abuse? When should a person seek help for a problem related to his or her drinking? The National Institute on Alcohol Abuse and Alcoholism (NIAAA) has prepared this information to help individuals and families answer these and other common questions about alcohol problems. The following information explains both alcoholism and alcohol abuse, the symptoms of each, when and where to seek help, treatment choices, and additional helpful resources.

#### **A Widespread Problem**

For most people who drink, alcohol is a pleasant accompaniment to social activities. Moderate alcohol use—up to two drinks per day for men and one drink per day for women and older people—is not harmful for most adults. (A standard drink is one 12-ounce bottle or can of either beer or wine cooler, one 5-ounce glass of wine, or 1.5 ounces of 80-proof distilled spirits.) Nonetheless, a large number of people get into serious trouble because of their drinking. Currently, nearly 14 million Americans—1 in every 13 adults—abuse alcohol or are alcoholic. Several million more adults engage in risky drinking that could lead to alcohol problems. These patterns include binge drinking and heavy drinking on a regular basis. In addition, 53 percent of men and women in the United States report that one or more of their close relatives have a drinking problem.

The consequences of alcohol misuse are serious—in many cases, life threatening. Heavy drinking can

increase the risk for certain cancers, especially those of the liver, esophagus, throat, and larynx (voice box). Heavy drinking can also cause liver cirrhosis, immune system problems, brain damage, and harm to the fetus during pregnancy. In addition, drinking increases the risk of death from automobile crashes as well as recreational and on-the-job injuries. Furthermore, both homicides and suicides are more likely to be committed by persons who have been drinking. In purely economic terms, alcohol-related problems cost society approximately \$185 billion per year. In human terms, the costs cannot be calculated.

### **What Is Alcoholism?**

Alcoholism, also known as “alcohol dependence,” is a disease that includes four symptoms:

- 1) Craving: A strong need, or compulsion, to drink.
- 2) Loss of control: The inability to limit one’s drinking on any given occasion.
- 3) Physical dependence: Withdrawal symptoms, such as nausea, sweating, shakiness, and anxiety, occur when alcohol use is stopped after a period of heavy drinking.
- 4) Tolerance: The need to drink greater amounts of alcohol in order to “get high.”

People who are not alcoholic sometimes do not understand why an alcoholic can’t just “use a little willpower” to stop drinking. However, alcoholism has little to do with willpower. Alcoholics are in the grip of a powerful “craving,” or uncontrollable need, for alcohol that overrides their ability to stop drinking. This need can be as strong as the need for food or water.

Although some people are able to recover from alcoholism without help, the majority of alcoholics need assistance. With treatment and support, many individuals are able to stop drinking and rebuild their lives.

Many people wonder why some individuals can use alcohol without problems but others cannot. One important reason has to do with genetics. Scientists have found that having an alcoholic family member makes it more likely that if you choose to drink you too may develop alcoholism. Genes, however, are not the whole story. In fact, scientists now believe that certain factors in a person’s environment influence whether a person with a genetic risk for alcoholism ever develops the disease.

A person’s risk for developing alcoholism can increase based on the person’s environment, including where and how he or she lives; family, friends, and culture; peer pressure; and even how easy it is to get alcohol.

### **What Is Alcohol Abuse?**

Alcohol abuse differs from alcoholism in that it does not include an extremely strong craving for alcohol, loss of control over drinking, or physical dependence. Alcohol abuse is defined as a pattern of drinking those results in one or more of the following situations within a 12-month period:

- 1) Failure to fulfill major work, school, or home responsibilities;
- 2) Drinking in situations that are physically dangerous, such as while driving a car or operating machinery;
- 3) Having recurring alcohol-related legal problems, such as being arrested for driving under the influence of alcohol or for physically hurting someone while drunk; and
- 4) Continued drinking despite having ongoing relationship problems that are caused or worsened by the drinking.



Although alcohol abuse is basically different from alcoholism, many effects of alcohol abuse are also experienced by alcoholics.

Absenteeism among problem drinkers or alcoholics is 3.8 to 8.3 times greater than normal. If your fellow workers don't come to work, you may have to do their jobs in addition to your own. Workers who misuse alcohol don't function at their full potential. Not only is absenteeism a problem, when they are at work these employees may have reduced capabilities and productivity. Since our mission is the safe transportation of hazardous liquid (or natural gas), alcohol misuse is an especially serious issue.

**Where to Get Help:**

- 1) Outpatient programs exist in a variety of settings: Community mental health centers.
- 2) Full service agencies
- 3) Private physicians' and therapists' offices Occupational settings
- 4) Specialized alcoholism treatment facilities
- 5) Inpatient services, designed for those with more serious alcohol problems, can be found in hospitals, residential care facilities, community halfway houses, and some alcoholism clinics.

Your local phone directory will list helpful referral organizations such as:

- 1) Local council on alcoholism
- 2) Alcoholics Anonymous
- 3) Community alcoholism or mental health clinic Social services or human resources department  
County medical society

## **FREQUENTLY ASKED QUESTIONS AND ANSWERS**

The City has a commitment to a fully compliant, safe, effective, and reliable alcohol and controlled substances testing program as mandated by the U.S. Department of Transportation (DOT) and the Pipeline Hazardous Materials Safety Administration (PHMSA). The Federal regulations not only establish rules which the City must comply with, but they also protect employee rights. The City urges all covered employees to read this document carefully so they better understand the testing program. The City has on file a complete copy of the CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY for inspection.

### **COLLECTIONS AND LABORATORY**

Q. SHOULD I HAVE IDENTIFICATION WITH ME WHEN I REPORT TO THE COLLECTION SITE?

A. YES. The collection site person must positively identify you by a photographic identification such as a driver's license or other picture I.D. In the absence of a photo I.D., you may be identified by a representative of the City who can vouch for your identification, either in person or by phone. You may request the collection site person to show you their identification.

Q. WILL I HAVE TO TAKE OFF MY CLOTHING FOR THE TEST?

A. NO. Only unnecessary outer garments, such as coats, or jackets that might conceal substances that could be used to tamper with the specimen, must be removed. This is also true of purses or briefcases; however, you may keep your wallet. Be aware that it is the practice of some physicians to ask the donor to put on an examination gown as a matter of general practice, however, the donor is within their right to refuse to do so. You may be asked to empty and show the collector items you have in your pockets. If you would like, you may request that the collection site person give you a receipt for any personal belongings that you are requested to leave with the collector during the collection process.

Q. I'VE HEARD THAT THERE ARE OBSERVED COLLECTIONS, IS THIS TRUE?

A. Yes. The collector will follow the 49 CFR Part 40 guidelines for observing the collection. There are several reasons a direct observation is to take place which are outlined below. In the event of an observed collection, the observer must be of the same gender.

Your employer must request a directly observed collection if: (1) The laboratory reported to the MRO that a specimen is invalid, and the MRO determines that there is not an adequate medical explanation for the result; or (2) The MRO reports that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed. Your employer must request a directly observed collection if you are taking a return-to-duty or a follow-up test.

The collector must immediately conduct a collection under direct observation if: (1) Instructed to do so by your employer; (2) You are observed bringing materials to the collection site or your conduct clearly indicates an attempt to tamper with a specimen, (3) The temperature on the original specimen was out of range; or (4) The specimen appeared to have been tampered with.

The collector is required to request that you raise your shirt, blouse, dress/skirt (as appropriate per gender)

above the waist and lower clothing and underpants to show the collector, by turning around, that you do not have a prosthetic device. After the collector has determined that a device is not present, they will permit you to return your clothing to its proper position for continuation of the collection. The collector is still required to watch the urine from the body into the collection container.

Refusal to submit to an observed collected specimen is treated as a refusal to test and reported to the employer as such.

Q. WHAT IS “VALIDITY” TESTING?

A. Laboratories test every specimen for adulteration, substitution and dilution. An adulterated or substituted specimen is a violation of Federal drug testing regulations.

Q. IS IT TRUE THAT I MUST WASH MY HANDS BEFORE PROVIDING A SPECIMEN?

A. YES

Q. WHY IS THERE COLORING AGENT IN THE BOWL?

A. To prevent the dilution or tampering of a specimen, a variety of measures are required by Federal regulations. Other measures are designed to prevent donor access to any materials or substances which could be used to adulterate specimens. These include barring access to any soap, soap dispenser, water fountain, faucet, cleaning agent or other such potential adulterants. Similarly, a coloring agent (other than red) in the bowl prohibits dilution of the urine by water from the bowl.

Q. WHAT IS THE COLLECTION PROCESS ACTUALLY LIKE?

A. The collection site will provide you a clean, single-use specimen container that is still securely sealed in a plastic bag. You should take the container out of the bag yourself.

After affording you privacy behind the stall door to provide your sample, within four (4) minutes of voiding, the collector will measure the temperature and also inspect the specimen for color and any sign of contaminants. If the specimen is outside the permitted temperature range, the collector is required by Federal regulation to immediately conduct a direct observation collection.

DOT regulations require a “split specimen”, that is, two specimen bottles. In the event of a positive test, you will have 72 hours to request a testing of the second or split sample by another DHHS lab.

Q. DOES THE CITY CONTROLLED SUBSTANCES TESTING PROGRAM USE A RELIABLE LABORATORY TO PERFORM THE URINALYSIS?

A. YES, ABSOLUTELY. The testing laboratories used by your agency have been certified by the U.S. Department of Health and Human Services (DHHS) and follow strict procedures set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Q. HOW CAN I BE SURE THAT THE URINE SAMPLE TESTED BY THE LABORATORY IS MINE?

A. Our laboratories have been evaluated by DHHS to ensure that they adhere to strict laboratory security and chain of custody procedures. The labs strictly control access to keep unauthorized personnel from all testing processes as well as areas where records are stored. Similarly, labs must be able to prove, in court, that chain of custody (COC) procedures were maintained to control your specimen from collection through completion of testing, reporting of results, storage and final disposition. For this reason, our labs use federally mandated chain of custody procedures and forms and will ensure that your own chain of custody form (CCF) is shipped with your specimen. You will participate in the identification of your own specimen while observing the sealing of your specimen bottles.

Q. HOW DOES THE RANDOM SELECTION PROCESS WORK?

A. The City has contracted with a C/TPA, because it gives the City access to a highly sophisticated computer program through which employees are selected for random testing. This process is not subject to tampering by anyone and contains a variety of security passwords and encryption codes to ensure that no employee can be “singled out” for a random test. For your protection, this computer program will only be provided to duly authorized DOT inspectors for their review to ensure compliance with the law.

Be aware that a true random program gives each employee in the random pool an equal opportunity to be picked and therefore, it is possible and quite probable that some employees will be picked more than once.

### **MEDICAL REVIEW OFFICER**

Q. WHAT IS THE MEDICAL REVIEW OFFICER (MRO) AND WHAT DO THEY DO?

The MRO is a licensed physician with knowledge of substance abuse disorders. MRO duties include:

- Reviewing and verifying both negative and positive test results,
- Contacting the employee whose test is reported positive by the lab and providing the employee an opportunity to discuss the test results,
- Reviewing and interpreting positive test results to determine if an alternate medical explanation, medical history, relevant biomedical facts and medical records made available by the employee could have caused the positive, including legally prescribed medications and,
- If required by the employee, the split specimen will be analyzed by another DHHS laboratory.

Q. WHAT IF THE MRO CAN'T CONTACT ME?

A. If the MRO can't contact you, they must (by Federal regulation) notify the Designated Employer Representative (DER), without revealing the test result or any information. That person will then attempt to contact you and request that you contact the MRO. After notification by whatever means, you have 72 hours to contact the MRO. If you do not contact the MRO within this time period, the MRO will automatically verify the test as positive and notify the DER. Moreover, if the DER is unable to contact you, they have a right to place you on temporary medically unqualified leave.

Q. DO I HAVE A RIGHT TO A RETEST OF ORIGINAL SPECIMEN?

A. **ABSOLUTELY YES!** If the MRO determines there is no legitimate medical reason for a positive, within seventy-two (72) hours of receipt of those test results from the MRO, you may request a test of the split specimen (the second specimen). The retest will be done at another DHHS certified laboratory and both labs must follow DHHS approved custody transfer procedures. A retest of the first (primary) specimen or giving a new specimen is NOT permitted by Federal rules.

Q. WHAT HAPPENS IF THE MRO DETERMINES THERE IS A LEGITIMATE MEDICAL REASON FOR A POSITIVE TEST RESULT?

A. The MRO reports the result to the Designated Employer Representative as a “negative” and no further action is taken.

NOTE: If there are other questions concerning the City of Vernon’s alcohol and drug testing program, please contact the City’s DER.

## APPENDIX A - INFORMATION AND REVISION SHEET

**City Designated Employer Representative (DER)** – This is the Program Administrator, the person in charge of the drug/alcohol testing program. This representative must remove employees from a Safety Sensitive position upon a violation of the DOT rules and regulations for drug/alcohol testing.

DER Name:	Lisette M. Grizzelle	
City Location:	City of Vernon 4305 Santa Fe Ave. Vernon, CA 90058 323-583-8811 Ext. 116	
C/TPA Service Agent:	Quality Consortium Services (507) 838-3080	
Drug Testing Laboratory:	LabOne, Inc. d/b/a Quest Diagnostics 10101 Renner Blvd. Lenexa, KS 66219  Phone: 913-888-3927 800-873-8845	Alere Toxicology Services 1111 Newton St. Gretna, LA 70059  Phone: 504-361-8989 800-433-3823
Drug & Alcohol Collections Coordinated by:	Quality Consortium Services (507) 838-3080	
EBT Device for Breath Alcohol Testing		
Medical Review Officer (MRO):	Dr. Brian N. Heinen 151 Leon Ave. Eunice, LA 70535  Phone: 888-382-2281	
Substance Abuse Professional (SAP):	American Substance Abuse Professionals 888-792-2727	National Substance Abuse Professionals Network 1-800-879-6428
Employee Assistance Program (EAP):	Anthem PRISM See Appendix C of this Policy for EAP information	

For EAP (Employee Assistance) Referral: Attached to this policy is also a list of referral sources (Appendix C). For required SAP referral speak to the DER listed above and/or the SAP listed above.

## **APPENDIX B – THIRD PARTY PROVIDERS**

The City shall be responsible for all actions of their Officials, Representatives, and Agents (including service agents) as required by CFR §40.11 and CFR §199.115(a).

On an annual basis the City will audit all third-party providers (Service Agents) who are providing DOT PHMSA services for the City. The audit will be to verify that services provided are in compliance with 49 CFR Part 40 (DOT) and 49 CFR Part 199 (PHMSA) regulations.

The City shall verify initially upon contract and annually that all Urine Specimen Collectors meet the training and qualification requirements required by 49 CFR Part 40.33. Specific training requirements for all contracted Urine Specimen Collectors are set forth in 49 CFR § 40.33 and incorporated herein by reference.

Training requirements for STTs and BATs are set forth in 49 CFR §40.213 and incorporated herein by reference.

The City shall verify all Substance Abuse Professionals (SAP's) referred to applicants or employees meet the training and qualification requirements required by DOT 49 CFR Part 40.281. Specific qualification requirements to act as a SAP are set forth in 49 CFR 40.281 and incorporated herein by reference.

## **APPENDIX C - EMPLOYEE ASSISTANCE PROGRAM**

DOT regulated employees testing positive, or refusal to test must be referred to a **Substance Abuse Professional (SAP):**

<b>American Substance Abuse Professionals, Inc.</b> 888-792-2727	<b>National Substance Abuse Professionals Network</b> 1-800-879-6428
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### **Mutual of Omaha**

**The following organizations and resources provide confidential assistance to individuals who have, or know someone who has, a problem with alcohol or other drugs.**

**Substance Abuse Treatment Locator** [www.findtreatment.gov](http://www.findtreatment.gov)

**Phone: 1-800-662-4357 / 1-800-662-9832 (Español) / 1-800-228-0427 (TDD)**

This Substance Abuse and Mental Health Services Administration (SAMHSA) Web site and toll-free phone line help individuals locate drug and alcohol abuse treatment programs in their communities.

### **Other National Hotlines & National Assistance Groups:**

Drug & Alcohol Abuse Hotline	1-800-252-6465
Drug Addiction Referral Hotline	1-800-758-5877

Alcoholics Anonymous	1-800-344-2666
Narcotics Anonymous	1-818-773-9999
AL-ANON Family Group Headquarters	1-800-356-9996
Child Help's - National Child Abuse Hot Line	1-800-422-4453
M.A.D.D.	1-800-438-6233
S.A.D.D.	1-508-481-3568
Families Anonymous	1-800-736-9805
Florida Alcohol and Drug Abuse Association	1-850-878-2196
National Runaway Switchboard	1-800-621-4000
National Institute on Drug Abuse (NIDA)	1-301-443-1124
National Suicide Prevention Lifeline	1-800-273-8255
National Council on Alcoholism & Drug Dependence Hopeline	1-800-622-2255
National Clearing House for Alcohol & Drug Information	1-800-729-6686

Employees may also speak with the City representative identified in **APPENDIX A** for additional Employee Assistance Program (EAP) information or required referral to a Substance Abuse Professional.



## APPENDIX D - DRUG PANEL

As specified in DOT regulations 49 CFR Part 40, Section 40.87; the following substances will be tested for: (subject to change if the regulation changes)

All cutoff concentrations are expressed in nanograms per milliliter (ng/mL)

<b>DOT 5 Panel Drug Test Effective 01/01/2018</b>				
	<b>Initial Test Analyte</b>	<b>Initial test cutoff</b>	<b>Confirmatory test analyte</b>	<b>Confirmatory test cutoff concentration</b>
<b>1</b>	<b>Marijuana metabolites (THCA)</b>	50 ng/mL	THCA	15 ng/mL
<b>2</b>	<b>Cocaine metabolite (Benzoylcegonine)</b>	150 ng/mL	Benzoylcegonine	100 ng/mL
<b>3</b>	<b>Phencyclidine (PCP)</b>	25 ng/mL	Phencyclidine (PCP)	25 ng/mL
<b>4</b>	<b>Amphetamines</b>			
	Amphetamine	500 ng/mL	Amphetamine	250 ng/mL
	Methamphetamine	500 ng/mL	Methamphetamine	250 ng/mL
	MDMA/MDA	500 ng/mL	MDMA/MDA	250 ng/mL
<b>5</b>	<b>Opioids</b>			
	Codeine/Morphine	2000 ng/mL	Codeine/Morphine	2000 ng/mL
	6-Acetylmorphine (6-AM or Heroin)	10 ng/mL	6-Acetylmorphine (6-AM or Heroin)	10 ng/mL
	Hydrocodone	300 ng/mL	Hydrocodone	100 ng/mL
	Hydromorphone	300 ng/mL	Hydromorphone	100 ng/mL
	Oxymorphone	100 ng/mL	Oxymorphone	100 ng/mL
	Oxycodone	100 ng/mL	Oxycodone	100 ng/mL

On an initial drug test, a result below the cutoff concentration is a negative. If the result is at or above the cutoff concentration the lab must conduct a confirmation test.

On a confirmation drug test, a result below the cutoff concentration is a negative. If the result is at or above the cutoff concentration it is a “lab report” confirmed positive requiring an MRO review.

The laboratory must report quantitative values for morphine or codeine that are greater than or equal to 15,000 ng/mL to the MRO.

All specimens will undergo a validity test to determine if the specimen is consistent with normal human urine. The purpose of validity testing is to determine whether adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

**Alcohol** – removal from safety sensitive position at .02% BAC or greater, violation of Policy at .04% BAC or greater.

## **APPENDIX E – PREVIOUS EMPLOYER REQUEST**

### **REQUEST FOR DOT DRUG AND ALCOHOL TESTING INFORMATION FROM PREVIOUS EMPLOYER**

**EFFECTIVE AUGUST 1, 2001**, 49 CFR Part 40, U.S. Department of Transportation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs requires employers to do a background check of all new employees hired (or current employees transferred) to perform safety sensitive covered functions. Enclosed with this document is a suggested form for requesting that information. The following is the regulation.

#### **49 CFR Part 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?**

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

Employers regulated by FMCSA, must comply with the requirements of this section by using the FMCSA's Drug and Alcohol Clearinghouse in accordance with section 382.71(a). In addition, they must continue to comply with the requirements of section 40.25 when checking an employee's testing history with employers regulated by a DOT operating administration other than FMCSA.

Employers regulated by FMCSA, with a prospective employee subject to drug and alcohol testing with a DOT agency other than FMCSA, must continue to request the information about the employee listed in this section. For example, if employers regulated by both FMCSA and PHMSA, hiring an employee to perform functions regulated by both DOT agencies, must query FMCSA's Clearinghouse to satisfy FMCSA's requirements and must request the information listed below in this section to satisfy PHMSA's requirements.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years (three years for FMCSA) before the date of the employee's application or transfer:

- 1) Alcohol tests with a result of 0.04% or higher alcohol concentration;
- 2) Verified positive drug tests;
- 3) Refusals to be tested (including verified adulterated or substituted drug test results);
- 4) Other violations of DOT agency drug and alcohol testing regulations; and
- 5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

A form is provided with this policy for the City to use to request the previous employer drug and alcohol history.

If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of 49 CFR Part 40 Subpart O and DOT agency drug and alcohol regulations.

You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided. A form is provided with this policy to make this request.

If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the required return-to-duty process.

Previous employer means any DOT regulated person who employed the covered employee in the preceding **2 years (3 years for FMCSA)**, including any possible current employer.

## **APPENDIX F - POST-ACCIDENT GUIDELINES**

### FOR SUPERVISORS and EMPLOYEES

The employee is required to notify their supervisor immediately when an incident occurs.

The appropriate official of this City must take all reasonable steps to obtain both an alcohol test and a urine sample from an employee after an accident has been determined by the Pipeline Operator, as defined in this policy, but any injury should be treated first.

Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test is not administered within two hours following the accident the City shall prepare and maintain on file a record stating the reasons why the test was not administered. If a test is not administered within 8 hours following the accident the City shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted.

Each employee shall be required to submit to a drug test no later than 32 hours after an accident. If a test is not administered within 32 hours following the accident the City shall cease all attempts to conduct a drug test and shall prepare and maintain on file written documentation indicating why the drug test was not conducted.

In the event the employee is injured, treatment comes first however; the following guidelines will be followed for alcohol/drug testing:

In the case of a conscious but hospitalized employee, management should request that the hospital or medical facility obtain the breath and urine samples from the employee under DOT drug testing requirements as set forth in 49 CFR Part 40.

If an employee is injured, unconscious (employee is unable to communicate), or otherwise unable to evidence consent (employee is unable to sign custody and control form or alcohol test form) to the alcohol/drug test, a test should not be attempted.

If an employee is conscious (employee can communicate) and he/she is able to evidence consent (employee able to sign custody and control form and the alcohol test form) to the alcohol/drug test and is able to provide an adequate breath and void normally the specimens shall be collected.

If an employee who is subject to post-accident testing is conscious, able to breath and urinates normally (in the opinion of a medical professional), and refuses to be tested, that employee will be removed from duty and will be subject to disciplinary action up to and including termination.

The following procedure should be followed to ensure a proper post-accident procedure.

Employee should report all post-accident/incidents to their supervisor if a supervisor has not witnessed the accident.

The supervisor will validate the post-accident decision by making sure the definition of a PHMSA accident

applies to the current event. This will be done by obtaining approval from the PHMSA Operator to proceed with post-accident testing.

The supervisor will remove the employee from the workplace during the decision-making process to concur or discount a PHMSA accident occurred and the supervisor will explain the reason to the employee. The supervisor should explain to the employee that even though it may feel like an accusation, stress that this is an attempt to gather additional data to determine why the accident occurred,

Document the reason to test or not to test and all other actives that take place surrounding the accident event.

The employee who is subject to post-accident testing must remain available for testing, or the City may consider the employee to have refused to submit to an alcohol & drug test.

The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.

When the determination has been made, explain to the employee that it is a requirement to conduct the drug and alcohol test per the PHMSA regulations.

It is a best practice to transport the employee to the collection/testing facility.

After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol and drug test and any discussion of disciplinary action that may occur.

## **APPENDIX G - REASONABLE CAUSE/SUSPICION GUIDELINES FOR SUPERVISORS**

In making a determination of reasonable cause, the factors to be considered include, but are not limited to the following:

- 1) Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of alcohol misuse or drug related behavior on or off the work site.
- 2) Physical signs and symptoms consistent with alcohol misuse or controlled substance use.
- 3) Evidence of illegal substance use, possession, sale, or delivery while on duty.
- 4) Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.

Forms utilized for this Policy include a Reasonable Cause/Suspicion Checklist to assist in making the reasonable suspicion determination.

The following are recommended actions a supervisor should take when confronted with a possible drug or alcohol use situation:

- 1) Ask the employee to come to a private area with another supervisor and/or other appropriate personnel
- 2) Inquire about the behavior, rumor or report
- 3) Inform the employee of your concerns
- 4) Get his or her explanation of what is going on
- 5) If you feel there is a problem, notify your superior
- 6) If there is evidence or suspicion of recent use and based upon the employee's response the supervisor should:
  - a. Transport the employee to the collection/testing site
  - b. Place the employee on leave until a formal investigation takes place
  - c. Arrange for the employee to be escorted home
  - d. Refer the employee to the EAP, if applicable

If you make observations regarding the illegal distribution, possession, sale, transportation or manufacturing of controlled and dangerous substances on work property, contact local law enforcement. These situations usually result in a uniformed officer responding to conduct an investigation, make an arrest(if appropriate) and prepare a report

**49 CFR Part 382.603:** Each employer shall ensure that all persons designated to supervise drivers 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 will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under 49 CFR §382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

**ACKNOWLEDGEMENT OF RECEIVING ANTI-DRUG AND ALCOHOL MISUSE PREVENTION POLICY**

**City of Vernon**

I hereby acknowledge receipt of this notice, Frequently Asked Questions and Answers, the Anti-Drug and the Alcohol Misuse Prevention Policy. I agree to familiarize myself with these plans and to comply with all provisions.

\_\_\_\_\_  
(PRINT EMPLOYEE NAME)

\_\_\_\_\_  
(EMPLOYEE I.D. NUMBER)

\_\_\_\_\_  
(EMPLOYEE SIGNATURE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(WITNESS PRINT NAME AND SIGNATURE)

\_\_\_\_\_  
(DATE)

This receipt is to be read and signed by the employee. A copy of this receipt may be given to the employee. The original of this receipt must be kept on file.