

MUNICIPALITY OF BUCKFIELD

ALCOHOL AND DRUG POLICY AND TESTING PROCEDURES

1. PURPOSE

The Municipality of BUCKFIELD is committed to a drug and alcohol free workplace. In order to ensure the safety of its employees and the general public, as well as to comply with 49 CFR Part 382 and other pertinent federal laws, the Municipal Officers have adopted this employment policy.

The Municipality takes pride in its employees who perform critical duties in a truly effective manner with safety foremost in their minds. This policy strengthens our commitment to a safe workplace.

2. PROGRAM ADMINISTRATOR

The TOWN MANAGER is designated by the Municipality as the Alcohol/Drug Testing Program Administrator. The Program Administrator is responsible for answering questions from drivers, employees or the public in general. The Program Administrator will maintain the confidentiality of all information relating to drug and alcohol testing. The Program Administrator may provide such information as necessary to enable the appropriate supervisor to take the appropriate action to ensure compliance with this policy. In addition to his/her duties under this policy, the Program Administrator is also responsible for compliance with the Program Administrator Guidelines.

3. SCOPE OF POLICY

This policy applies to all regular full-time, part-time, seasonal, on-call and temporary employees who are required to hold a Commercial Driver's License (CDL) for their position. All applicants for employment positions requiring a CDL are required to pass a drug test as a prerequisite of employment, prior to final hiring. Any applicant who fails a drug test shall not be hired, although may re-apply for employment in the future.

Any person who was employed on a part-time or on-call basis for the Municipality at least once during 1995 and is employed at least once annually thereafter shall be considered a continuing employee for purposes of this policy, and is not subject to pre-employment testing prior to recommencing work. However, such employees are subject to all other provisions of this policy.

All covered employees shall receive a copy of this policy, as well as educational materials on alcohol and substance abuse.

4. COMPLIANCE WITH REGULATIONS

All CDL employees subject to alcohol and drug testing must be in compliance with this policy at all times while working for

the Municipality. This includes all time spent operating commercial vehicles, as well as time spent maintaining or repairing those vehicles.

NOTE REGARDING INDEPENDENT CONTRACTORS: Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 and are responsible for compliance with that and related laws. The Municipality will not provide or pay for tests, evaluation or rehabilitation for independent contractors or their employees. The Municipality shall make compliance with the law a condition of any contract which requires a CDL driver.

5. SUBSTANCES TESTED

When drug and alcohol screening is required by this policy, a breath test and/or urine test will be given to detect the following:

- 1) Alcohol
- 2) Marijuana
- 3) Cocaine
- 4) Amphetamines
- 5) Phencyclidine (PCP)
- 6) Opiates

6. PRESCRIPTION DRUG USE

Employees covered by this policy may use prescription drugs and "over the counter" medications provided that:

- 1) The prescription drugs or their generic equivalent have been prescribed to the employee within the past 12 months by an authorized medical practitioner.
- 2) The employee does not consume prescribed drugs more often than as prescribed by the employee's physician.
- 3) Any employee who has been informed that the medication could cause adverse side effects while working shall inform his/her supervisor prior to using these substances. The Municipality at all times reserves the right to have a licensed physician determine if use of a prescription drug or medication by an employee produces an adverse effect. If such a finding is made, the Municipality may notify the employee's doctor (with employee's permission) to determine if other medications are available which would not seriously affect the employee's ability to work safely. If an appropriate substitute medicine is not

available, the Municipality may limit or suspend the employee's work activities to non-safety sensitive duties.

7. TESTS REQUIRED

All employees subject to this policy shall be tested for alcohol and/or controlled substances in the following circumstances:

- 1) **Pre-employment.** Drug tests will be conducted when an offer is made to hire an employee for a CDL position. The offer for employment is contingent on the applicant passing these tests. This includes existing employees who are applying for CDL positions.
- 2) **Random.** Drug and alcohol tests will be conducted on a random, unannounced basis. The number of annual drug tests shall equal 50% of the number of CDL required positions while the number of annual alcohol tests shall equal 25% of the CDL required positions. The Municipality has entered into an agreement with a third party administrator (TPA) to randomly select the CDL employees for testing and then notify the Program Administrator of the person or persons chosen.
- 3) **Post-accident.** As soon as is practicable after an accident, the employee shall be tested for alcohol and drugs if: (a) the accident involved the loss of human life; or (b) the employee received a citation for a moving traffic violation arising from the accident.
- 4) **Reasonable suspicion.** All employees who exhibit to a trained supervisor signs and symptoms of alcohol and/or drug abuse while on the job, prior to reporting to work, or just after work will be required to submit to an alcohol and/or drug test. The supervisor shall document the specific facts, symptoms or observations by completing a "Reasonable Suspicion Record" form.

NOTE: Do not allow an employee to drive him/herself to the testing facility for a reasonable suspicion test. Instead, the supervisor or another employee should provide transportation to the testing facility.

- 5) **Return-to-duty.** An employee who engaged in conduct prohibited by Section 9 must submit to an alcohol test and drug test to return to duty. The results of a drug test must be negative to return to duty, and the results of an alcohol test must be less than 0.02 to return to duty.
- 6) **Follow-up.** An employee who previously tested positive and has returned to duty must submit to a combination of at least six (6) alcohol and drug tests during the first year after returning to work. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to work, not to exceed twelve (12) a year.

8. TESTING PROCEDURES

Drug Testing: Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at an off-site facility selected by the Municipality. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a laboratory which is certified in accordance with DHHS guidelines or equivalent guidelines.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-divided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test if requested by the employee.

During testing an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed for each individual drug using gas chromatography/mass spectrometry (GC/MS) analysis. This test ensures that over the counter medications are not reported as positive results.

If the analysis of the primary specimen results in a confirmed positive test, the employee may within 72 hours request that the split specimen also be tested at a certified laboratory of his choice. The second test is at the employee's expense unless the test result is negative, in which case the Municipality will reimburse the employee.

All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the Municipality. In the event of a positive test result, the MRO will first attempt to contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive results (such as over-the-counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative. If the MRO is unable to contact the employee, then the employer will be contacted and requested to advise the employee to contact the MRO. Urine samples shall be provided in a private test room, stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Employees and applicants may be required to disrobe and will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples.

An applicant or employee may waive the right to privacy and provide the urine sample in the presence of a witness (of the same gender) and not be required to disrobe and wear a hospital gown.

Alcohol Testing: Alcohol testing will be conducted using an evidential breath testing (EBT) device. The test breath test must be performed by a certified Breath Alcohol Technician (BAT) trained in the use of EBT and alcohol testing procedures. Under certain circumstances, post-accident tests conducted by law enforcement personnel or medical personnel will be acceptable.

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concentration is considered a negative result. Any result of 0.02 or greater requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

9. PROHIBITED CONDUCT

CDL employees shall not:

- 1) Report to work and/or remain on duty with an alcohol concentration of 0.04 or greater;
- 2) Possess any alcohol while on duty;
- 3) Use any alcohol while on duty;
- 4) Use any alcohol within four (4) hours before going on duty;
- 5) Use any alcohol within eight (8) hours after an accident for which the CDL employee must be tested for alcohol concentration;
- 6) Refuse to submit to the following alcohol and/or controlled substance tests: random test, reasonable suspicion test, post-accident test, or follow-up test;
- 7) Report to or remain on duty when using any controlled substance, except when used under a physician's orders and when the physician has informed the CDL employee in writing that the use will not affect the safe operations of a commercial vehicle. In the case of a written warning by the physician, the employee shall report this to his/her supervisor immediately;
- 8) Report to or remain on duty if the employee tests positive for controlled substances.

Failure to comply with these rules is a violation of this policy and may result in disciplinary action and shall result in referral to a substance abuse professional.

10. REFUSAL TO TEST

An employee's failure to submit to testing may result in disciplinary action up to and including dismissal, and is also grounds for referral to a substance abuse professional. Failure to submit to a test by an applicant will result in denial of employment. Specifically, the following circumstances may be considered a refusal to test:

- 1) Failure to report to the designated testing area immediately after being notified to submit to an alcohol or drug test.
- 2) Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined to be unable to do so.
- 3) Engaging in conduct that clearly obstructs or delays the testing process.

11. ALCOHOL CONCENTRATION OF 0.02 OR GREATER BUT LESS THAN 0.04

Provided that the employee has not violated Section 9, any employee whose alcohol test results in a concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform any safety-sensitive function for at least 24 hours following the test. The employee will not be paid for work-time lost as a result of this section unless he/she works in another capacity for the Municipality during that time period. The employee will not be required to undergo evaluation by a substance abuse professional if the test result is 0.02 or greater but less than 0.04, nor will a return-to-duty test be required unless there is reasonable suspicion that the employee is still under the influence of alcohol or drugs.

NOTE: This Section applies only in limited situations. For example, if an employee last consumed alcohol more than 4 hours before work, but still has a blood/alcohol level of .03 when he shows up for work, he is not in violation of Section 9 but is subject to this Section.

12. NOTICE AND CONSENT

Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of test results to those officials with a need to know. The chemical screen consent form shall provide space to indicate current or recent use of prescription and over-the-counter medication.

All recruitment announcements for any CDL position, including in-house recruitment and promotion, will disclose that a drug screening test will be required of the applicant.

13. CONSEQUENCES OF VIOLATION OF THIS POLICY

1. Any employee who violates Sections 9 or 10 of this policy shall be immediately removed from the safety-sensitive function and will be advised by the Municipality of the resources available for evaluating and resolving drug and alcohol abuse problems. The employee is required to be evaluated by a substance abuse professional. All evaluation and rehabilitation shall be at the employee's cost unless otherwise agreed by the Municipality. An employee shall not be allowed to return to the safety-sensitive function until he/she has a return-to-duty alcohol test result of less than 0.02 or a return-to-duty drug test with a verified negative result. Employees who are undergoing drug and/or alcohol rehabilitation are entitled to utilize their sick time and paid vacation time to offset lost wages, but shall be otherwise considered unpaid leave.
2. In addition, any employee who violates Section 9 or 10 of this policy may be subject to disciplinary action up to and including dismissal. Before discipline, reassignment or dismissal is imposed following a confirmed positive drug test, the employee shall have the opportunity to participate for up to 6 months in a rehabilitation program. The employee is responsible for all costs associated with the rehabilitation program unless otherwise agreed by the Municipality. Factors to be considered in determining the appropriate disciplinary response include, but are not limited to the following: Employee's work history, length of employment, current job performance and existence of past disciplinary actions. Disciplinary action is imposed by municipal policy; it is not required by federal law. Employees who are undergoing drug and/or alcohol rehabilitation are entitled to utilize their medical insurance benefits, to the extent of the existing policy, to offset the costs of said rehabilitation, but the balance of said rehabilitation costs shall be otherwise exclusively borne by the employee.
3. Further ground for discipline or dismissal under municipal policy include, but are not limited to:
 - a. Refusal to submit to a rehabilitation program after testing positive.
 - b. Failure within 6 months to successfully complete a rehabilitation program after commencing the program, or failure to pass a return-to-duty drug or alcohol test.
 - c. Evidence that the employee has substituted, adulterated, dilute or otherwise tampered with his/her urine sample.
 - d. Failure to contact a substance abuse professional within five (5) regular working days after being notified of a confirmed (MRO certified) positive test for the improper use of alcohol or unauthorized substances.

- 4) During the period the Municipality is awaiting an employee's test result for a post-accident test, reasonable suspicion test, or return-to-duty test, the Municipality may transfer the employee to another position with or without a reduction in pay or benefits. The Municipality also reserves the right to place an employee on unpaid suspension to reduce any possible safety hazard. A determination as to whether an employee is placed in another position or placed on paid or unpaid suspension may be based on, but is not limited to: who is responsible for and/or the severity of the accident, if applicable; the observed condition of the employee, if applicable; the employee's work history; length of employment; current job performance and the existence of past disciplinary actions. Action taken by the Municipality under this subsection is a matter of municipal policy, and is not imposed by federal law.

14. EMPLOYEE/APPLICANT RIGHTS AND RESPONSIBILITIES

- (1) In the event of a confirmed positive test result, employees and job applicants shall have the opportunity to present an alternative explanation for the test result by contacting the Medical Review Officer (MRO). This shall be done within 72 hours after notification of the confirmed result. No further action will be taken if there is a justified explanation, or there is a reasonable doubt as to the accuracy of the result or chain of custody of the sample.
- (2) Any employee with a positive test result may upon written request to the Program Administrator have the right to any information relating to the test result and procedures. A job applicant may request information concerning the test result within 60 days after the decision on his/her employment application.
- (3) Upon successfully completing a rehabilitation program within 6 months after it commences and upon passing a return-to-duty drug test, the employee is entitled to return to his/her previous job with full pay (but not back pay) and accrued benefits, unless conditions unrelated to the employee's previous test make the employee's return impossible or inappropriate. The rehabilitation or treatment provider in consultation with the Program Administrator shall determine whether the employee has successfully completed in the rehabilitation program. The Municipality is not required to hold the employee's job open for more than 6 months after the employee commences a rehabilitation program. The employee may apply accrued vacation and sick leave, if any, against any time period where he or she is unavailable for work due to drug abuse rehabilitation.

15. CONFIDENTIALITY OF INFORMATION

Unless the employee or applicant consents, all information acquired by the Municipality in connection with the testing processes is confidential and may not be released to any person other than to the employee or applicant who is tested, the Program Administrator, officials with a need to know, and the rehabilitation provider. The foregoing shall not prevent the release of information that is required or permitted by state or federal law, or the use of information in any grievance procedure, administrative hearing or lawsuit relating to the imposition of the test or the use of the test results.

16. DOCUMENTS PROVIDED

The Municipality will provide each person subject to this policy a copy of the policy. The Municipality will also provide printed material which describes the effects of alcohol and/or controlled substances on the individual's health, work and personal life, as well as information on the signs and symptoms of alcohol or controlled substances and methods of treatment or intervention for drug or alcohol abuse.

17. SEVERABILITY

In the event that a Court finds that any provision of this policy is void or unenforceable, the remaining provisions shall continue in full force and effect.

Municipal Officers

Bernie E. Lottner

Perley E. Lovejoy

Wesley W. Wright

Date: 12-12-95