

SUBJECT: DRUGS, CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY

CONTENTS

Designation.....	1	Reasonable Suspicion	11
Background.....	1	Post-Accident.....	12
Policy.....	2	Return-to-Duty	13
Applicability.....	2	Follow-Up	14
Definitions.....	2	Testing Procedures	14
Prohibitions.....	7	Alcohol.....	14
Alcohol.....	7	Drugs/Controlled Substances	17
Drugs/Controlled Substances.....	8	Consequences for Covered Employees.....	19
Other Prohibitions and Requirements	9	Discipline.....	20
Notice	10	Confidentiality	20
Testing Requirements	10	Referral, Evaluation and Treatment.....	21
General.....	10	Employer Notification	21
Pre-Employment.....	10	Drug-Free Workplace Act	22
Random Testing.....	11		

Designation: The Human Resources Director is the City Designated Representative (CDR) who shall administer and ensure compliance with the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act), the Drug-Free Workplace Act of 1988, and answer questions about this policy. The Director shall consult as required with the City Attorney to ensure that the City’s policies and procedures are in compliance with applicable law.

Background: While misuse of alcohol and drugs among employees is the exception rather than the rule, the City is concerned over the growth of substance abuse in society and acknowledges the devastating impact of such abuse on the safety, health and efficiency of its workforce and those it serves. Alcohol and drug use can impair thinking and reasoning and may lead to behaviors that bring the user into severe conflict with their work environment. Alcohol and drug use can affect coordination and perception, making the user prone to accidents and loss of effective performance. Over a period of time, it causes serious medical problems, and users are at risk of becoming clinically addicted psychologically and/or physically. While the City has no intention of unreasonably intruding into the off-duty lives of its employees, it is necessary to establish policies and procedures for dealing with use and/or misuse of alcohol and/or drugs/controlled substances, thereby preventing potentially serious consequences to the public and employees.

In compliance with the Omnibus Act, the Federal government has promulgated regulations which require employers to test drivers for the use of alcohol and drugs/controlled substances. The purposes of the provisions of the Omnibus Act and the Drug Free Workplace Act are to deter misuse of alcohol and drugs/controlled substances. The City supports and endorses the purposes of the Acts and finds that they apply to all employees in the workplace. In order to minimize the impact of the misuse of alcohol or drugs and to implement the Federal requirements, the City of Madison adopts and implements this policy.

Nothing herein shall preclude the City from establishing rules, regulations, policies and/or procedures in addition to those required by the Federal Acts so long as the same do not conflict with the requirements of the Federal Acts. This policy supplements existing work rules. If there is a conflict between this APM and a work rule, the more strict shall apply.

Policy: It is the City of Madison's desire and intent to ensure that City residents receive safe and efficient City services and that all City employees are provided a safe work environment. In order to achieve this, it is City policy to:

1. assure that employees are not impaired in their ability to perform assigned duties;
2. create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse;
3. prohibit the unlawful manufacture, distribution, dispensing, possession or use of drugs/controlled substances;
4. encourage employees to seek professional assistance at any time for the use or misuse of alcohol and/or drugs/controlled substances, and
5. comply with the Federal Omnibus Act and the Drug-Free Workplace Act.

If there is a conflict between this Administrative Procedure Memorandum and any modifications or binding interpretations of the Federal regulations, those modifications and interpretations shall prevail.

Applicability: This policy applies to all City of Madison employees except Madison Metro Transit System employees who are covered by a separate policy. The City policy also applies to applicants for and employees moving into positions requiring a Commercial Driver's License (CDL).

Though not subject to the testing requirements provided in this policy, visitors, volunteers, vendors, contractors and contractors' employees are governed by this policy while on City premises and will not be permitted to conduct business with the City if found to be in violation of this policy.

Every employee who is required to hold and maintain a CDL as a condition of employment or who receives a reimbursement in part or whole for securing a CDL or who operates a commercial motor vehicle including full-time, part-time, casual, intermittent or occasional drivers shall be subject to random testing conducted pursuant to Federal law and regulations. All employees are subject to reasonable suspicion, post-accident, return-to-duty and follow-up testing conducted pursuant to such law and regulations and this policy. In addition, all applicants may be subject to pre-employment drugs/controlled substances and alcohol testing.

Definitions:

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration (Or Content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Alcohol Test - An alcohol test is a test conducted by a Breath Alcohol Technician, or any other person approved by the Department of Transportation rules, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the Federal Highway Administration (FHWA).

Alcohol Use means the consumption of any beverage, mixture, or preparation, including medication, containing alcohol.

Breath Alcohol Technician (BAT) - A Breath Alcohol Technician is an individual who instructs and assists individuals in the alcohol testing process and operates the evidential breath testing device.

City-Designated Representative (CDR) means the primary contact person designated by the City to receive all information and/or reports from the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional and the laboratories. The CDR is also the designated contact person for inquiries regarding this policy.

Commercial Motor Vehicle - A commercial motor vehicle means a motor vehicle or a combination of motor vehicles used in a commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross combination weight of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (149 CFR 172, subpart F).

Confirmation Test

- For alcohol testing, a confirmation test means a second test following a screening test with a result greater than 0.00 that provides quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test.
- For drugs/controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. (Gas Chromatography/Mass

Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

Controlled Substance - Controlled substances include cocaine, marijuana, opiates, amphetamines, and phencyclidine and any other substance determined by the U.S. or Wisconsin Department of Transportation to be a drug/controlled substance.

Drugs/Controlled Substance Test - A method for determining the presence of drugs/controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR 40.

Covered Employee - All City of Madison employees except employees of the Transit Service Division of the City of Madison Department of Transportation.

Driver - Any employee required to have and maintain a Commercial Driver's License (CDL) and who is subject to operating a Commercial Motor Vehicle at the direction of, or with the consent of the City including, but not limited to, full-time, part-time, regularly employed drivers, casual, intermittent or occasional drivers, any person applying to the City to drive a commercial motor vehicle, and any person who has received a reimbursement in part or whole from the City for securing a CDL.

Drug

- Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them;
- Any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals;
- Any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or
- Any substance intended for use as a component of any article specified in pars. (1) to (3) but does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.

Evidential Breath Testing Device (EBT) - An evidential breath testing device is a device approved by the National Highway Traffic Safety Administration (NHTSA) and placed on the NHTSA's Conforming Products List and is used for the evidential testing of breath.

Follow-up Test - A follow-up test is an alcohol and/or drugs/controlled substances test administered to a covered employee who has violated the prohibitions of this policy and who has been permitted to return to duty after passing a return-to-duty alcohol and/or drugs/controlled substances test.

Medical Review Officer (MRO) - A Medical Review Officer is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's

drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

On-Duty Time - All time spent providing a breath sample or primary urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing as directed by the City.

Post-Accident Test - A post-accident test is an alcohol and/or drugs/controlled substances test administered to a covered employee following an accident involving:

- A City vehicle or any vehicle used in the performance of City business under the following circumstances:
 - The employee was performing safety-sensitive functions with respect to the vehicle and the accident involved a loss of human life, serious injury, or major property damage; or
 - The employee receives a citation under State or local law for a moving traffic violation arising from the accident.
- City equipment resulting in a loss of human life, serious injury or major property damage.

Pre-Employment Test - A pre-employment test is an alcohol and/or drugs/controlled substances test administered to an individual prior to the first time the individual performs a safety-sensitive function upon appointment to a position requiring the individual to hold a Commercial Driver's License or prior to the first time the individual performs a safety-sensitive function after having been laid off from a position requiring the individual to hold a Commercial Driver's License. In addition, alcohol and/or drugs/controlled substance tests may be administered to any person applying for a City position.

Random Test - A random test is an alcohol and/or drugs/controlled substances test administered to a driver who has been randomly selected by a scientifically valid method from among the pool of City drivers subject to such tests.

Reasonable Suspicion Test - A reasonable suspicion test is an alcohol and/or drugs/controlled substances test administered to a covered employee as a result of a trained supervisor's or trained City official's reasonable belief that the covered employee has violated the drug, alcohol or controlled substances prohibitions of this policy. A reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. The observations may include indications of the chronic and/or withdrawal effects of drugs/controlled substances or alcohol and any of the following:

- Documentation of unsatisfactory work performance or on-the-job behavior.
- Evidence of the manufacture, distribution, dispensing, possession, or use of drugs/controlled substances, alcohol, or other prohibited substances.

- Occurrence of a serious or potentially serious accident that may have been caused by human error.
- Fights (physical contact), assaults, and flagrant disregard or violations of established safety, security or other work rules.

Refusal to Submit (To a Drug Alcohol or Controlled Substances Test)

- A covered employee fails to provide an adequate amount of breath during testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
- A covered employee fails to provide adequate urine for drugs/controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing.
- A covered employee engages in conduct that obstructs or interferes with the testing process.
- A covered employee fails to be readily available for post-accident testing.
- A covered employee fails to report to, and undergo alcohol and drugs/controlled substances testing, at a collection site as required.

Return-to-Duty Test - A return-to-duty test is an alcohol and/or drugs/controlled substances test administered prior to a covered employee being permitted to return to duty, when the covered employee has violated this policy.

Safety-Sensitive Function - A driver shall be considered to be performing safety-sensitive functions whenever:

- s/he begins work until the time s/he is relieved from work including time spent at a facility waiting to be dispatched, or
- inspecting or servicing the vehicle, or
- driving or at the controls of the vehicle, or
- resting in the vehicle, or
- loading or unloading the vehicle including the performance of any related paperwork, or
- performing those duties required of a driver involved in a vehicle accident, or
- repairing or attending to a disabled vehicle, or

- during all time while providing a breath sample or urine specimen including travel time to and from the collection site in order to comply with testing directed by the City.

Screening Test (Also Known as an Initial Test)

- In alcohol testing, a screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.
- In drugs/controlled substances testing, a screening test means an immunoassay screen (or other DHHS-approved test) to eliminate “negative” urine specimens from further consideration.

Substance Abuse Professional (SAP) - A substance abuse professional is a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drugs/controlled substances-related disorders.

Supervisor - A management or supervisory employee of the City of Madison.

Trained Supervisor or Trained City Official - A trained supervisor or a trained City official is any City supervisor or any City management employee who has received the requisite training in identifying the signs and symptoms of alcohol abuse and/or drugs/controlled substances abuse.

Prohibitions:

Alcohol

- Covered employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely affected by alcohol or when their blood alcohol concentration is 0.04 or greater. Covered employees are prohibited from possessing or using alcohol while on duty. Covered employees are prohibited from having used alcohol within four (4) hours of reporting for duty. Employees are cautioned that refraining from alcohol for four (4) hours before reporting for duty may not result in a negative test. Alcohol levels are affected by the amount of alcohol consumed, physical characteristics of the employee, and the employee’s rate of metabolizing alcohol which has been consumed. Covered employees are prohibited from using alcohol during the hours that they are on call. NOTE: Covered employees are cautioned that prescription drugs and over the counter medications which contain alcohol may result in the employee having a positive test.
- Drivers are prohibited from performing safety-sensitive functions for 24 hours following an alcohol test result indicating an alcohol concentration of greater than 0.019 but less than 0.04. Such drivers shall be in a non-paid status for the period of time they are prohibited from performing safety-sensitive functions (required under Federal regulations). NOTE: See more restrictive State regulation listed below.

- A covered employee is prohibited from being on duty or operating a City motor vehicle while the employee possesses alcohol unless the alcohol is being transported on City business.
- A covered employee required to take a post-accident alcohol test is prohibited from using alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- A covered employee is prohibited from refusing to submit to a post accident, reasonable suspicion, return-to-duty or follow-up alcohol test. A driver is prohibited from refusing to submit to a pre-employment, post accident, random, reasonable suspicion, return-to-duty or follow-up alcohol test.

The State of Wisconsin has adopted a “zero tolerance” standard for holders of CDL’s. This standard prohibits employees from operating commercial motor vehicles for twenty-four (24) hours when any detectable amount of alcohol is found. Employers are also prohibited from allowing any employee from operating a commercial motor vehicle when the “zero tolerance” standard is not met. Any employee who is required to operate a motor vehicle and does not meet the State’s “zero tolerance” standard shall be removed, from duty for the required twenty-four (24) hour period. Employees who test 0.04 or above shall be required to be evaluated by a SAP.

Any removal from duty shall be without pay. Subject to the supervisor’s approval, employees will be allowed to substitute accrued paid leave for time lost under this provision. However, such substitution will be granted on a one time basis.

In the event that State laws, regulations, and/or interpretation of the “zero tolerance” standard or its application to the Federal drug and alcohol testing requirements change, this section of this memorandum shall be considered to be revised to meet the new laws, regulations, and/or interpretations.

Drugs/Controlled Substances

- A covered employee is prohibited from reporting for duty or remaining on duty when the covered employee uses any drugs/controlled substances, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect their ability to safely perform their duties.
- A driver is prohibited from reporting for duty, remaining on duty, or performing a safety-sensitive function if the driver tests positive for drugs/controlled substances. A covered employee is prohibited from reporting for duty and remaining on duty if the covered employee tests positive for drugs/controlled substances. A covered employee who tests positive for drugs/controlled substances shall be required to be evaluated by a SAP. Any removal from duty shall be without pay. Subject to the supervisor’s approval, employees will be allowed to substitute accrued paid leave for time lost under this provision. However, such substitution will be granted on a one time basis.
- A driver is prohibited from refusing to submit to a pre-employment, post accident, random, reasonable suspicion, return to duty or follow-up tests for drugs/controlled substances. A

covered employee is prohibited from refusing to submit to a pre-employment, post-accident, reasonable suspicion, return-to-duty or follow-up drugs/controlled substances test.

Other Prohibitions and Requirements

- A driver is prohibited from refusing to sign an Employee Acknowledgment Form for a copy of the City's Drug and Alcohol Testing Policy with associated materials upon receipt of the Policy and materials.
- A driver is prohibited from failing to report a conviction for operating a motor vehicle under the influence of alcohol, a controlled substance, a drug or any combination thereof. A covered employee is prohibited from failing to report a conviction for operating a City motor vehicle or a motor vehicle operated in the performance of City business while under the influence of alcohol, drugs, a controlled substance, or any combination thereof.
- A driver is prohibited from failing to report a conviction for a violation of a criminal drug statute.
- A covered employee is prohibited from failing to provide access to City owned vehicles, tool boxes, lockers, desks, or other City supplied equipment after a determination of reasonable suspicion that the covered employee is in violation of these provisions.
- A covered employee is prohibited from obstructing or interfering with the administration of any drug or alcohol testing.
- A covered employee shall not engage in any other conduct prohibited by this policy.
- City work rules not specifically cited in this policy remain in full force and effect.
- Before performing work-related duties, covered employees must notify their supervisor if they are taking any legally prescribed medication or therapeutic drug or any non-prescription drug which contains any amount of alcohol or which carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication. A written report of this notification is to be filed by the supervisor with the Human Resources Department. It is the responsibility of the employee to accurately inform his/her physician of the type of functions that the employee performs in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of the employee's duties or operation of City equipment. However, any employee who uses or possesses medication containing alcohol while on duty or who tests positive for alcohol will be removed from his/her position, and subject to provisions of this Policy, even though the reason for the positive alcohol test is the fact that the employee's prescription medication contains alcohol. A legally prescribed drug is one where the employee has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. The prescription or container label must include the patient's name, the name of the substance, and the quantity/amount to be taken. The misuse or abuse of legal drugs while performing City business is prohibited by this policy.

Note: In many instances physicians may be able to prescribe non-alcohol alternatives.

- The unlawful manufacture, distribution, dispensing, possession or use of a drug, controlled substance, alcohol or drug paraphernalia is strictly prohibited for all covered employees in the workplace.

Notice:

Before performing a drug, alcohol or controlled substances test under the requirements of the Department of Transportation rules and regulations, drivers being tested shall be notified that the alcohol and/or drugs/controlled substances test is required by 49 CFR Part 382.

Before performing a drug, alcohol or controlled substances test under this policy, employees other than drivers being tested shall be notified that the alcohol and/or drugs/controlled substances test is required by this policy.

Testing Requirements: Any drug, alcohol or controlled substances testing will comply with the procedures of title 49 CFR Part 40.

General

- Except for pre-employment, reasonable suspicion, return-to-duty and post accident testing, drivers shall be subject to alcohol testing only while the driver is performing a safety-sensitive function, just before the driver is to perform a safety-sensitive function, or just after the driver has ceased performing a safety-sensitive function.
- Controlled substances tests required to be administered to drivers may be administered at any time.

Pre-Employment Testing

- Prior to the first time a driver performs a safety-sensitive function, the driver shall undergo testing for alcohol and drugs/controlled substances, and shall achieve an alcohol test result indicating an alcohol concentration of 0.00 and shall achieve a drugs/controlled substances test result from the MRO indicating a verified negative test result.
- Employees who seek to move into driver positions must undergo pre-employment alcohol and drugs/controlled substances tests. The alcohol test must indicate a concentration of 0.00. The drugs/controlled substance result from the MRO must indicate a verified negative result. If the tests do not meet these standards, the employee shall be disqualified from further consideration for the position(s).
- As a condition of employment, an individual applying for a position requiring the performance of safety-sensitive functions shall, at the request of the City, provide written authorization for previous employers to release to the City any and all test results, including records of the individual's refusal to test, administered in accordance with the FHWA's Rules and Regulations concerning drugs/controlled substances and alcohol use and testing.

- An employee who learns that an applicant for a safety-sensitive position tested positive for drugs or alcohol or refused to test while at a previous employer shall inform the Human Resources Director. The Human Resources Director or designee shall verify the information, obtain proof that the applicant has completed a rehabilitation program and the return-to-duty test requirements, and shall furnish the information to the manager or supervisor involved. No manager or supervisor shall use a driver s/he knows has tested positive and has not been recertified and tested negative in return-to-duty testing.

Random Testing

- No fewer than 25% of the average number of City CDL positions shall undergo random alcohol testing in each calendar year, or a sufficient number of drivers equal to an annual rate not less than the minimum annual percentage determined by the Federal Highway Administration Administrator.
- No fewer than 50% of the average number of City CDL positions shall undergo random drugs/controlled substances testing in each calendar year, or a sufficient number of drivers equal to an annual rate not less than the minimum annual percentage determined by the Federal Highway Administration Administrator.
- The selection of drivers for random testing, the timing and frequency of random tests, and the number of drivers to be tested on any given day shall be determined by the City. The selection of drivers for random testing shall be made by a scientifically valid method. Each driver shall have an equal chance of being selected for testing each time selections are made.
- Random alcohol and drugs/controlled substances tests shall be unannounced and shall be spread reasonably throughout the year.
- Drivers who are notified of selection for random alcohol and/or drugs/controlled substances testing shall be required to proceed to the test site as instructed.
- When randomly selected, a driver may be required to submit to either an alcohol or drugs/controlled substance test, or both.

Reasonable Suspicion Testing

- A covered employee shall promptly submit to an alcohol and/or drugs/controlled substances test whenever a trained supervisor or trained City official has a reasonable suspicion to believe that the covered employee has violated the drug, alcohol or controlled substances prohibitions of this policy.
- The observations required by the paragraph above must be made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this policy.

- After determination of reasonable suspicion, the alcohol test shall be administered within two hours unless the supervisor or City official prepares and maintains on file a record stating the reasons the test was not administered within that time. The test may be conducted up to eight hours after the reasonable suspicion determination is made. If the test is not administered within eight hours after the determination, attempts to administer the test shall stop and the supervisor or City official shall record and maintain on file the reasons why the test was not conducted.
- No covered employee shall be subject to reasonable suspicion drug testing later than 24 hours following the determination that reasonable suspicion exists to require the covered employee to undergo such test. If the test is not administered within 24 hours after the reasonable suspicion determination, attempts to administer the test shall stop and the supervisor or City official shall record and maintain on file the reasons why the test was not conducted.
- A trained supervisor or trained City official who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the covered employee.
- A written record shall be made of the observations leading to a drugs/controlled substances reasonable suspicion test and shall be signed by the trained supervisor or trained City official who made the observations within 32 hours of the observed behavior or before the results of the drugs/controlled substances test are released, whichever is earlier.
- A written record shall be made of the observations leading to an alcohol reasonable suspicion test and shall be signed by the trained supervisor or trained City official who made the observations within 24 hours of the observed behavior.
- Nothing herein shall prohibit a supervisor or a City official from determining that a covered employee is unfit for duty. Nothing in this paragraph shall be used to circumvent the requirements stated in this section.

Post-Accident Testing

- A surviving covered employee shall be subject to post-accident alcohol and drugs/controlled substances testing as soon as practicable following the accident.
- A covered employee subject to post-accident testing shall be subject to a breath alcohol test not later than eight hours following the accident and to a drugs/controlled substances test no later than 32 hours following the accident.
- If an alcohol test is not administered within two hours following the accident, the trained supervisor or trained City official shall prepare and maintain on file a record stating the reasons the test was not administered. If an alcohol test is not administered within eight hours following the accident, the trained supervisor or trained City official shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. If a drugs/controlled substances test is not administered within 32 hours following the accident, the trained supervisor or City official shall cease attempts to administer a drugs/controlled

substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

- A covered employee who is subject to post-accident testing shall remain readily available for such testing or shall be deemed to have refused to submit to testing. Nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the covered employee from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.

Return-to-Duty Testing

- If a driver has an alcohol test result indicating an alcohol concentration of greater than 0.00, but less than 0.04, the driver shall be prohibited from performing a safety sensitive function for a minimum of 24 hours. A driver shall be prohibited from performing a safety-sensitive function until he or she has undergone a return-to-duty alcohol test with a test result of 0.00.
- A covered employee who has undergone an alcohol test with a result of 0.04 or greater or who has a confirmed positive test for drugs/controlled substances shall, at the sole discretion of the City, be permitted to return to work subject to the following and the follow-up testing provisions below:
 - If an employee other than a driver has violated the alcohol prohibitions above, s/he shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.04 before returning to duty. If a driver has violated the alcohol prohibitions, s/he shall undergo a return-to-duty test with a result indicating an alcohol concentration of 0.00 before performing safety-sensitive functions. The covered employee shall first have been evaluated by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with alcohol misuse and drugs/controlled substances use; and
 - Following a determination by a substance abuse professional that the covered employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of drugs/controlled substances, the covered employee shall comply with all initial requirements prescribed by the SAP and shall remain in compliance with any and all prescribed and recommended rehabilitation and/or treatment programs.
 - If the covered employee has violated the drugs/controlled substances prohibitions he or she shall undergo a return-to-duty drugs/controlled substances test with a result indicating a verified negative result for drugs/controlled substances use before returning to duty.
 - The covered employee shall be subject to such return-to-duty testing for both alcohol misuse and use of drugs/controlled substances if the substance abuse professional recommends testing for both alcohol and drugs/controlled substances.

Follow-Up Testing

A covered employee who has undergone an alcohol test with a result of 0.04 or greater or who has tested confirmed positive for drugs/controlled substances, and who is subject to, and has complied with the return-to-duty testing provisions above, shall, at the City's discretion, be permitted to return to work subject to the following:

- The covered employee has been evaluated by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with alcohol misuse and/or drugs/controlled substances use; and
- The covered employee shall be subject to unannounced follow-up testing.
 - The covered employee shall be subject to such follow-up testing for both alcohol misuse and use of drugs/controlled substances if the substance abuse professional recommends testing for both alcohol and drugs/controlled substances.
 - The number and frequency of such tests shall be determined by the substance abuse professional, and shall consist of at least six tests in the first 12 months following the covered employee's return to duty. Follow-up testing shall not exceed 60 months after the covered employee's return to duty.
 - The substance abuse professional may terminate such tests at any time after the first six tests have been administered if s/he determines the tests are no longer necessary.

Testing Procedures:

Alcohol

- Alcohol tests shall be administered by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing device (EBT) except that if the Department of Transportation Federal Highway Administration approves administration of tests by persons other than BAT's or approves the use of other methods or technologies for detecting the presence of alcohol then the administration of tests by such other persons and/or the use of such other methods or technologies shall be permitted under this policy.
- Alcohol testing shall be conducted in accordance with procedures set out as follows:
 - A covered employee directed to undergo alcohol testing shall proceed to the designated test site as instructed.
 - A covered employee shall follow all procedures and instructions given by the Breath Alcohol Technician (BAT) including completing, signing, initialing, and/or dating any required forms or log books. If the covered employee takes the test but fails to sign the certification in Step 4 of the Breath Alcohol Testing Form, or fails to initial the log book entry and the test shows a concentration of less than 0.02, it should not be considered a refusal to test.

- The testing site shall provide visual and aural privacy to the covered employee, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel and materials for breath testing shall be provided at the location where the testing is conducted.
- No unauthorized persons shall be permitted access to the testing location when the Evidential Breath Testing Device remains unsecured or, in order to prevent such persons from seeing or hearing test results, at any time when testing is being conducted.
- In unusual circumstances (for example, when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements of paragraph c, above. In such cases, the covered employee shall be provided visual and aural privacy to the greatest extent practicable.
- The BAT shall supervise only one covered employee's use of the EBT at a time and shall not leave the alcohol testing location while the testing procedure for a given covered employee is in progress.
- Upon entering the test site, the covered employee shall be required to provide the BAT with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or City official. On request of the covered employee, the BAT shall provide positive identification to the covered employee.
- If a screening test of a covered employee indicates a breath alcohol concentration of less than 0.02, no further alcohol testing of the covered employee shall be conducted during this testing event, the BAT shall transmit the result to the City in a confidential manner. While this test is declared a negative, State of Wisconsin standards require drivers to have no detectable amount of alcohol in their system. Therefore, drivers shall be prohibited from performing safety-sensitive functions for 24 hours following an alcohol test of greater than 0.00 and the City shall receive and store the information so as to ensure that confidentiality is maintained. However, if in the reasonable belief of the supervisor the covered employee's ability to perform is adversely affected, the covered employee may be removed from duty.
- If the result of a screening test of a driver indicates a breath alcohol concentration of 0.02 or greater, the driver shall be required to undergo a confirmation test.
- If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the Breath Alcohol Testing Form and log book entry. The BAT shall provide the covered employee with Copy 2 of the form.
- If a BAT other than the one who conducted the screening test is conducting the confirmation test, the covered employee shall be required to provide positive identification in the form of a photo ID or identification by a supervisor or City

official to the new BAT, and the covered employee may request positive identification of the new BAT.

- The covered employee shall not eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test, and shall not be less than 15 minutes.
- The confirmation test shall be conducted within 20 minutes of the completion of the screening test.
- If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The covered employee shall then complete Step 2 on the form, signing the certification. Refusal of the covered employee to sign the certification shall be deemed a refusal to test.
- Refusal by the covered employee to complete and sign the Breath Alcohol Testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test shall be noted by the BAT in the “Remarks” section of the form. The testing process shall be terminated and the BAT shall immediately notify the City Designated Representative (CDR).
- Refusal by the covered employee to complete and sign the Breath Alcohol Testing Form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test shall be deemed a refusal to test.
- If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new Breath Alcohol Testing form with a new sequential test number.
- If the covered employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the BAT shall again instruct the covered employee to attempt to provide an adequate amount of breath.
 - If the covered employee refuses to make the attempt, the BAT shall immediately inform the CDR.
 - If the covered employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the “Remarks” section of the breath alcohol form and immediately inform the CDR.

- If the covered employee attempts and fails to provide an adequate amount of breath, the CDR shall direct the covered employee to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the City concerning the covered employee's medical ability to provide an adequate amount of breath.
- If the licensed physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the covered employee from providing an adequate amount of breath, the covered employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the City a written statement of the basis for his or her conclusion.
- If the licensed physician, in his or her reasonable medical judgment, is unable to determine that a medical condition has, or with a high degree of probability, could have, precluded the covered employee from providing an adequate amount of breath, the covered employee's failure to provide an adequate amount of breath shall be deemed a refusal to take a test. The physician shall provide to the City a written statement of the basis for his or her conclusion.

Drugs/Controlled Substances

Drugs/controlled substances testing shall be conducted by a Department of Health and Human Services (DHHS) certified laboratory and in accordance with procedures set out as follows:

- Covered employees directed to undergo a drugs/controlled substances test shall proceed to the designated collection site as instructed.
- Covered employees shall follow all procedures and instructions given by the collection site person. Failure to do so shall be considered a refusal to test.
- The collection site person shall collect a urine sample from the covered employee in accordance with Federal Highway Administration procedures.
- Covered employees shall provide at least 45 ml of urine for testing. Covered employees who fail to provide at least 45 ml of urine shall be subject to the provisions of Paragraph 18 below.
- The collection site person shall divide the specimen into two containers. One container shall contain at least 30 ml of urine and shall be the primary specimen. The other container shall contain at least 15 ml of urine and shall be the split specimen.
- Both containers shall be shipped in a single shipping container, together with copies 1 and 2, and the split specimen copy of the chain of custody form, to the laboratory.

- The laboratory shall log in the split specimen with the split specimen seal remaining intact. The laboratory shall store the split specimen securely in accordance with approved procedures.
- The primary specimen shall undergo a screening test for the presence of drugs/controlled substances. If the screening test detects the presence of drugs/controlled substances, the primary specimen shall undergo a confirmation test.
- If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen.
- The MRO shall review all primary specimen results. If the result of the test of the primary specimen is confirmed positive for the presence of drugs/controlled substances, the MRO shall notify the covered employee that the covered employee has 72 hours in which to request a test of the split specimen if the confirmed positive test is verified as positive. If the result of the test of the primary specimen is negative, the MRO shall have the authority to direct an employee to undergo a retest for the presence of drugs/controlled substances if, upon review of those results, the MRO has reason to believe the primary specimen has been adulterated.
- If the primary specimen tests confirmed positive for the presence of drugs/controlled substances, the covered employee may request, in writing, that the MRO direct that the split specimen be tested in a different DHHS certified laboratory for presence of the drug(s) or drug metabolite(s) for which a positive test result was obtained in the test of the primary specimen. The MRO shall honor such request if it is made within 72 hours of the covered employee having been notified of a verified positive test result. The covered employee shall be responsible for any and all costs associated with having the split specimen tested.
- If the covered employee has not contacted the MRO within 72 hours, the covered employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the covered employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the covered employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed. The covered employee may not request a reanalysis of the primary specimen.
- If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it. Following the end of the 60-day period, if not informed by the MRO that the covered employee has requested a test of the split specimen, the laboratory may discard the split specimen.
- If the MRO directs the first laboratory in writing to forward the split specimen to a second DHHS-certified laboratory, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels established by DHHS. The split sample shall be retained in long-term storage for one year by the

laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).

- The result of the test of the split specimen shall be transmitted by the second laboratory to the MRO.
- If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the CDR, the covered employee, and to DOT for CDL holders.
- A covered employee whose primary specimen tests confirmed positive for the presence of drugs/controlled substances and who requests, in accordance with paragraph 11 above, that the split specimen be tested, shall not be permitted to return to work pending the outcome of such test but, shall be suspended without pay and subject to further disciplinary action. However, if the test of the split specimen does not reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the covered employee shall be paid his/her straight time salary for all regularly-scheduled shifts he or she would have worked had the suspension not occurred, and shall be reimbursed for the costs associated with having the split specimen tested.
 - If the covered employee is unable to provide the required 45 ml of urine, the covered employee shall be instructed to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded.
 - If the covered employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the laboratory shall notify the City of the covered employee's inability to provide an adequate sample.
 - The MRO will refer the covered employee for a medical evaluation to develop pertinent information concerning whether the covered employee's inability to provide an adequate specimen is genuine or constitutes a refusal to test. (In pre-employment testing situations, the City will determine whether or not to hire the employee, and the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
 - If the MRO determines that the covered employee's inability to provide an adequate sample is not genuine, the covered employee shall be deemed to have refused to test.

Consequences for Covered Employees:

- A driver shall not be permitted to perform a safety-sensitive function if the driver has engaged in conduct prohibited by this policy. See section entitled "Prohibitions" for specific prohibitions for drivers and other covered employees.

- A covered employee who violates any of the requirements of Title 49 CFR Part 382 shall be subject to the penalty provisions of 49 U.S.C. 521(b).
- A covered employee who refuses to submit to a required drug, alcohol or controlled substances test shall be deemed to have tested positive for drugs/controlled substances and at a level 0.04 or greater for alcohol.
- Refusal to submit to a required drug, alcohol or controlled substances test shall be deemed just cause for discipline up to and including discharge.
- Violation of the prohibitions contained in this policy shall establish just cause for discipline up to and including discharge.

Discipline:

- Just cause for discipline up to and including discharge shall be established when a covered employee engages in any conduct in violation of the provisions of this policy or when a covered employee uses drugs/controlled substances or misuses alcohol in violation of the FHWA rules and regulations or in violation of this policy or City work rules.
- Failure to comply with any required evaluation by a substance abuse professional or failure to comply and remain in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs shall establish just cause for discipline up to and including discharge.

Confidentiality:

- All records required to be maintained under the FHWA Rules and Regulations shall be maintained in a secure location with controlled access.
- Except as required or permitted by law or expressly authorized or required by Title 49, CFR subtitle B, Chapter III, Section 382.405, the City shall not release information that is contained in records required to be maintained under the FHWA Rules and Regulations.
- Records shall be made available to a subsequent employer upon receipt of a written request from a covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the covered employee's request.
- Upon written request, a covered employee is entitled to copies of any records pertaining to the covered employee's use of drugs/controlled substances or alcohol, including any records pertaining to his or her drug, alcohol or drugs/controlled substances tests.
- All results of alcohol and/or drugs/controlled substances testing conducted pursuant to this policy shall be made available, upon request, to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City or any of its drivers.

- Information related to post-accident test results administered following an accident which is under investigation by the National Transportation Safety Board shall be released to the Board upon request.
- The City may disclose information pertaining to a covered employee that is required to be maintained under the FHWA Rules and Regulations to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered employee, and including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee and arising from the results of an alcohol and/or drugs/controlled substances test administered in accordance with the FHWA.

Referral, Evaluation and Treatment:

Each covered employee who has a positive drugs/controlled substances test or a blood alcohol concentration test of 0.04 or greater shall be referred to a Substance Abuse Professional. The Substance Abuse Professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drugs/controlled substances use. An employee's Substance Abuse Professional would ordinarily be available through their health care provider. A listing of Substance Abuse Professionals will be provided in training and/or posted in work sites. Employees who do not know what Substance Abuse services are provided under their health care plan or who do not have a health care plan, are encouraged to contact the Employee Assistance Program for this information.

The Employee Assistance Program, in accordance with APM 2-12, is available to provide information, referral and support to employees seeking alcohol and drug abuse services, including treatment. Available information includes methods of intervening when an alcohol or drugs/controlled substances problem is suspected and a listing of alcohol and drug abuse services. For more information call the Employee Assistance Program office at 266-6561 or our external EAP provider, Symmetry, 24/7 at 800-236-7905.

Employer Notification:

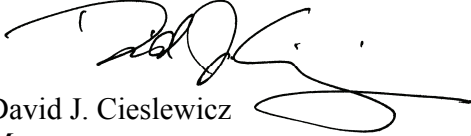
- The City of Madison shall notify an applicant/covered employee of the results of a pre-employment drugs/controlled substances test conducted under this part, if the applicant/covered employee requests such results within 60 calendar days of being notified of the disposition of the employment application. The City of Madison shall notify a covered employee of the results of reasonable suspicion and post accident tests, and notify drivers of the results of random tests, for drugs/controlled substances conducted under this part if the test results are verified positive. The City of Madison shall also inform the covered employee which drugs/controlled substances were verified as positive.
- The City's designated representative shall make reasonable efforts to contact and request each covered employee who submitted a specimen under the City's program, regardless of the covered employee's employment status, to contact and discuss the results of the drugs/controlled substances test with a medical review officer who has been unable to contact the covered employee.

- The City's designated representative shall immediately notify the medical review officer that the covered employee has been notified to contact the medical review officer within 24 hours.

Drug-Free Workplace Act:

- It is the policy of the City of Madison to provide a drug-free workplace for all of its employees. Covered employees shall neither use nor be under the influence of drugs, intoxicants, alcohol, or any controlled substances in the workplace. The City recognizes the importance of maintaining a safe, efficient and healthful workplace, as well as the social responsibility to provide assistance to its employees to the extent possible. Therefore, employees are expected to report to work free from any alcohol or drugs/controlled substances that could inhibit their ability to perform their duties.
- Reporting a Drug Conviction - The Drug-Free Workplace Act, Public Law 100-690, Title V, Subtitle D makes it a condition of employment that all City employees notify the City (your immediate supervisor or the Human Resources Director) of any criminal statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Within ten (10) days of receiving such notice of conviction, the City will notify the appropriate Federal contracting or granting agency, if any, as required. This is required by the Federal law. Within thirty (30) days of notice of the workplace drug conviction, the City will:
 - Require the employee to satisfactorily participate in a drug or alcohol assistance or rehabilitation program that is approved by the City, or
 - take appropriate disciplinary action up to and including discharge.

This Administrative Procedure Memorandum will become effective January 1, 1995.


David J. Cieslewicz
Mayor

APM No. 2-23
March 11, 2008

Original APM dated 11/30/94