

APPENDIX 1

VENTURA COUNTY FIRE PROTECTION DISTRICT

SUBSTANCE ABUSE PROGRAM

I. Covered Employees

All employees filling positions in the Ventura County Fire Protection District (VCFPD) represented by the Ventura County Professional Firefighters Association (VCPFA), and applicants for such positions.

II. Controlled Substances

Controlled substances shall be defined as marijuana, cocaine, opiates, amphetamines and phencyclidine. Covered employees are required to inform their supervisor of any therapeutic drug use.

III. Prohibited Conduct

Covered employees may not be under the influence or in possession of controlled substances or alcohol during any work hours. Covered employees are prohibited from:

- A. Reporting for duty or remaining on duty while having an alcohol concentration level of 0.04% or greater;
- B. Performing job-related functions within four (4) hours of using alcohol;
- C. Being on duty while in possession of alcohol;
- D. Using alcohol while on duty;
- E. Reporting for duty or remaining on duty when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform job functions.
- F. Reporting for duty or remaining on duty if the employee tests positive for controlled substances; or
- G. Refusing to submit to any alcohol or controlled substances test required by this policy. A covered employee who refuses to submit to a required drug/alcohol test will be treated in the same manner as an employee who tested 0.04% or greater on an alcohol test or tested positively on a controlled substances test.

In addition, to the above prohibitions, employees are reminded of their obligations under the Federal Drug-Free Work Place Act of 1988. All employees covered by this policy have previously been provided with a copy of the County's

Drug-Free Work Place Statement, and have signed an acknowledgement that they have read the statement and agreed to comply with it.

IV. Circumstances Under Which Drug and Alcohol Testing Will Be Imposed On Covered Employees

A. Pre-employment Testing:

All applicants (whether by initial application or in connection with a transfer) for positions represented by VCPFA will be required to submit to a pre-employment/pre-duty drug and alcohol testing. Applicants will not be hired for or transferred to a VCPFA represented position if they do not pass the test.

B. Post-accident Testing:

Post-accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor.

The decision as to whether or not to test the employee will be left to a supervisory or management employee. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance could not have been a contributing factor. If a fatality occurs, the employee will be tested irrespective of whether his/her involvement may be discounted.

Post-accident alcohol tests shall be administered within two (2) hours following an accident, and no test may be administered after eight (8) hours. A post-accident drug test shall be conducted within thirty-two (32) hours following the accident.

According to this policy, an accident occurs when, as a result of an occurrence involving a District vehicle, an individual dies or sustains an injury requiring medical attention, or when a state or local law enforcement authority issues a citation to a covered employee for a moving violation arising from an accident; or when property damage exceeds \$5,000.

C. Random Testing:

Unless otherwise mandated by the Department of Transportation, employees represented by the Association will not be subject to random alcohol and drug testing. In the event the Department of Transportation

includes these employees in mandatory random testing, the provisions of the Substance Abuse Program (Appendix 1) of the 1995-1996 Memorandum of Agreement relating to random testing become effective immediately.

D. Reasonable Suspicion Testing:

Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances.

1. Reasonable suspicion means suspicion based upon specific personal observation of two supervisors, unless only one supervisor is practically available. Approval to test must also be granted by the Assistant Duty Chief (who may serve as the second supervisor referenced above). The observing supervisors shall describe and document:
 - a. Specific, personal and articulable observations concerning the appearance, behavior, speech, body odors or performance of the employee; or
 - b. Violation of a safety rule or other unsafe work incident which, after further investigation of the employee's behavior or appearance, leads the supervisor(s) to believe that drug or alcohol use may be a contributing factor; or
 - c. Other physical, circumstantial or contemporaneous indicators of drug or alcohol use.

2. Suspicion is not reasonable, and thus not a basis for testing, if it is based solely on the observations and reports of third parties or violation of a safety rule or other unsafe work incident. However, such suspicion may be a basis for further investigation or for action to protect the safety of employees or the public, such as ordering the employee to stop work. Employees shall be removed from the performance of emergency job functions while the supervisor is completing his/her determination regarding whether a reasonable suspicion test is warranted.
3. When a supervisor suspects that an employee is impaired or affected by drug or alcohol use, the supervisor shall follow the reasonable suspicion procedure to determine whether a drug and/or alcohol test is appropriate and, if so, to initiate the testing.

The supervisor shall advise the employee of his or her right to have a Union representative present prior to testing, if a representative is available within a reasonable time (within one hour); will order the employee to stop work; will order the employee to submit to a urine, and/or breath test to determine the presence of drugs or alcohol; will note indicators of probable alcohol misuse and use of controlled substances.

E. Return to Duty/Follow-up Testing:

A covered employee who has violated any of the prohibitions of this policy must submit to a return-to-duty test before he/she may be returned to a active duty. The test result must indicate an alcohol concentration of less than 0.02% or a verified negative result on a controlled substances test. In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the employee will be subjected to follow-up testing which is separate from the random testing obligation. The employee will be subjected to at least six (6) unannounced drug/alcohol tests, but no more than eight (8), unless recommended by the Substance Abuse Professional (SAP)¹ during the first year back following the violation.

V. **Procedures to be Used for Detection of Drugs and Alcohol**

¹Substance Abuse Professional - licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, 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 controlled substances-related disorders.

A. Alcohol Testing:

Alcohol testing will be conducted by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.

A screening test will be conducted first. If the result is an alcohol concentration level of less than 0.02%, the test is considered a negative test. If the alcohol concentration level is 0.02% or more, a second confirmation test will be conducted.

B. Drug Testing:

Drug testing will be conducted pursuant to the procedures set forth in Exhibit 1.

VI. Refusal to Submit to an Alcohol and/or Drug Test

As set forth above, a covered employee who refuses to submit to any required drug/alcohol testing will be treated in the same manner as an employee who tested positive.

The refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to, the following:

- A. A refusal to provide a urine sample;
- B. An inability to provide a urine sample without valid medical explanation;
- C. A refusal to complete and sign the drug/alcohol testing form or otherwise to fail to cooperate with the testing process in a way that prevents the completion of the test;
- D. Inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
- E. Tampering with or attempting to adulterate the urine specimen or collection procedure;
- F. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
- G. Leaving the scene of an accident without authorization from a supervisor or manager (who shall make a determination whether to send the

employee for a post-accident drug and/or alcohol test) unless the employee has a valid reason for not obtaining such authorization, such as to receive medical treatment if required for injuries, or to attempt to notify medical authorities for treatment of other injured persons if no other means are available; or

- H. Consuming alcohol during the eight (8) hours immediately following an accident as defined in Section IV (B), unless the employee has been informed that his/her actions have been discounted as a contributing factor, or if the employee has been tested.

VII. Consequences for Employees Found to Have Alcohol Concentration Levels of 0.02% or Greater But Less Than 0.04%

An employee whose alcohol test indicates an alcohol concentration level equal to or greater than 0.02% but less than 0.04%, will be removed from duties at no loss in pay for at least eight (8) hours. Such employee shall be mandatorily referred to the County Employee Assistance Program. However, no disciplinary investigation shall be initiated solely on the basis of this result. Before the employee may be returned to his/her position, the employee's alcohol concentration must indicate a concentration below 0.02%.

VIII. Consequences of Failing an Alcohol and/or Drug Test

A positive result from a drug or alcohol test may result in disciplinary action, up to and including termination, in accordance with the County's existing disciplinary rules and procedures. Examples that, when combined with a positive drug or alcohol test, will merit strong consideration for termination include extreme circumstances such as: consumption of alcohol while on duty; ingestion of drugs or other controlled substances while on duty; sale of drugs while on duty; criminal activities associated with drugs or controlled substances. In addition to the above, the failure of a drug/alcohol test (excluding first time failure of a random test) may be used, in conjunction with other job performance indicators for a determination of appropriate discipline up to and including termination.

- A. Specifically, if an employee tests positive during a random screening, a reasonable suspicion test, or post-accident test:
 - 1. The employee will be assigned to a non-emergency position, and suffer no pay loss, unless disciplinary action is proposed pursuant to Section IX, below.
 - 2. The employee shall be required to submit to a Substance Abuse Professional (SAP) through the County's Employee Assistance

Program (EAP). The SAP will evaluate the employee and make a specific determination of appropriate treatment.

- a. Treatment will be on the employee's own time, however, if treatment requires the employee to use regular work-time the employee will be able to use the following types of leaves to the extent that leave time is available for this purpose: sick leave, compensatory time, shift trades and vacation.
 - b. Treatment cost will be borne by the employee, who will be allowed to use medical insurance plan to the extent that it covers the cost.
3. The employee will be required to provide a release which enables the District to communicate with the Substance Abuse Professional.
4. The employee may be placed in a medically supervised rehabilitation program, which may include full in-patient hospital, residential care, day treatment or out-patient care, provided by a County-approved rehabilitation facility.
5. If the rehabilitation program provider certifies that the employee has successfully completed the rehabilitation program, and specified terms and conditions of an after-care program, the employee will be required to sign a Return-To-Duty or Last Chance agreement acknowledging that he or she will abide by those terms and conditions.

6. The Return-To-Duty agreement will stipulate that the employee will be subject to announced and unannounced drug and alcohol tests, the frequency and duration of which will be determined by the Substance Abuse Professional (however, a maximum of eight (8) tests will be given during the first year), unless more are specifically recommended by the SAP.
7. If recommended by the Substance Abuse Professional, the employee will be permitted to return to emergency duty during the after-care or during any other out-patient program, provided the employee tested negative for drugs and alcohol in a Return-To-Duty test.
8. The employee must successfully adhere to the terms and conditions of the rehabilitation and after-care programs. If the employee violates the terms and conditions of the rehabilitation or after-care program, the employee will be subject to termination.

B. If an employee voluntarily requests assistance prior to selection by the District for any testing:

1. On a one-time only basis, an employee who voluntarily admits a drug and/or alcohol problem and requests assistance from the County's EAP prior to selection for testing will be assigned to a non-emergency position, and suffer no loss of pay.
2. A Last Chance or Return to Duty agreement will not be required of this employee.
3. This employee will be required to submit to an evaluation by a Substance Abuse Professional for determination of the most appropriate treatment and referral to the selected rehabilitation program. If recommended by the SAP the employee will be permitted to return to active duty during the after-care or any other out-patient program, provided the employee tested negative for drugs and alcohol in a Return-to-Duty test. Rehabilitation will be paid for by the employee. The employee will be on a non-pay status during any absence for evaluation or treatment, but is entitled to use accrued vacation time, compensatory time, sick leave and shift trades, as well as County-provided insurance benefits, while participating in the rehabilitation and after-care program.
 - a. An employee who has exhausted paid leave will be placed on paid administrative leave up to a maximum of 171 hours.

- b. The employee is required to provide a release which enables the District to communicate with the Substance Abuse Professional.

IX. Disciplinary Action:

The District may take appropriate disciplinary action, subject to all prescribed appeal rights, against any employee who violates any rule listed in Section III of this Policy, Prohibited Conduct (excluding first time failure of a random test).

X. Training

All employees of the District shall receive three (3) hours of training regarding the effects of alcohol and controlled substances and available methods of intervention.

XI. Right of Union Participation

At any time, the Union, upon request, will have the right to inspect and observe any aspect of the drug testing program with the exception of individual test results. The Union may inspect individual test results if the release of this information is authorized by the employee involved.

XII. Union Held Harmless

This Substance Abuse Program is solely initiated at the behest of the County. The Fire District shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this collective bargaining agreement relating to drug testing. The Union shall be held harmless for the violation of any worker rights arising from the administration of this program.

EXHIBIT 1

- I. All alcohol testing procedures shall conform to the Department of Transportation (DOT) breath alcohol testing procedures as required by 49 C.F.R., 40, including the use of a federally approved Evidential Breath Testing device (EBT) and be conducted by a federally certified Breath Alcohol Technician (BAT).
- II. The DOT breath alcohol testing form shall be completed by the Breath Alcohol Technician and signed by the employee. A copy of this form shall be provided to the employee.
- III. Alcohol testing shall be conducted at a location that affords visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. A mobile collection facility may be used for the testing that meets the requirements of 49 C.F.R., 40. The testing location shall be able to be secured so that unauthorized persons shall not have access to the EBT.
- IV. The BAT shall require the employee to provide positive identification through the use of a photo I.D. card or identification by a supervisor. The BAT shall explain the testing procedure to the employee. The BAT shall instruct the employee to complete the initial screening test. The BAT shall show the employee the result displayed on the EBT and shall record the result. The employee shall initial the log book entry.
- V. If the screening test result is less than 0.02% breath alcohol concentration, the alcohol test shall be declared negative and the employee allowed to leave.
- VI. If the breath alcohol concentration result is 0.02% or greater, the BAT shall commence the procedures for the confirmation test.
- VII. The BAT shall instruct the employee on the procedures for the confirmation test and instruct the employee not to eat, drink or put any object or substance in his or her mouth. After a period of fifteen (15) minutes, the confirmation test shall be conducted.
- VIII. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air-blank test.
- IX. The BAT shall transfer all results to the employer in a confidential manner.
- X. Drug Testing Procedures
 - A. The collection site shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security,

temporary storage, and shipping or transportation of urine specimens to a NIDA certified drug testing laboratory.

- B. Security procedures shall provide for the collection site to be secure at all times. The collection site shall have an area designated solely to drug testing and the portion of the facility used for testing shall be secure at all times.
- C. Chain of custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.
- D. Access to authorized personnel only. No unauthorized personnel shall be permitted in any part of the designated collection site where specimens are collected or stored.
- E. Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe a particular individual may alter or substitute the specimen to be provided.
- F. Integrity in identity of specimen. The collection site shall take precautions to ensure that a urine specimen shall not be adulterated or diluted during the collection procedure and that information on the urine bottle and on the chain of custody form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
 - 1. To deter the dilution of the specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no source of water (e.g., no shower or sink) in the enclosure where urination occurs.
 - 2. When an individual arrives at the collection site, collection site persons shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

3. Collection site personnel shall ask the individual to sign and complete a consent and release form. (The supervisor must witness the signature for all current employees.)
4. If the individual fails to arrive at the collection site at the assigned time, the collection site person shall contact the appropriate authority to advise them of the no-show status.
5. The collection site person shall ask the individual to remove any unnecessary outer garments, such as a coat or jacket, that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as purse or briefcase remain with the clothes and that these items are secured. The individual may retain his or her wallet.
6. The individual shall be instructed to wash and dry his or her hands prior to urination.
7. After washing the hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispense, cleansing agent or any other materials which could be used to adulterate the specimen.
8. The collection site person shall provide the individual with a collection container.
9. The individual shall provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.
10. The collection site person shall note any unusual behavior or appearance on the chain of custody form, as it relates to the collection process only.
11. Upon receiving the specimen from the individual, the collection site person is to transfer the urine from the collection container to the specimen bottles in the presence of the employee.
12. The collection site person shall determine that it contains at least sixty (60) milliliters of urine. If there is less than sixty (60) milliliters of urine in the container, the collection site person shall provide the individual with a reasonable amount of water to drink until a new specimen can be obtained. The first specimen shall be discarded. If the individual is still unable to provide a complete specimen, the following rules apply:

- a. In the case of a post-accident test or test for reasonable suspicion, the employee shall remain at the collection site and be given eight (8) ounces of water every thirty minutes until they are able to provide a complete sample or until the expiration of a period of up to eight (8) hours from the beginning of the collection procedure.
 - b. In the case of a pre-employment test, the employer may elect to proceed as in above-paragraph a or may elect to discontinue the collection, or conduct a subsequent collection at a later time.
 - c. If the employee cannot provide a complete sample within the up to eight (8) hour period, or at the subsequent collection, as applicable, then the supervisor of the employee shall notify the Medical Review Officer (MRO)² immediately of the situation. The Medical Review Officer shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. Upon completion of the examination, the Medical Review Officer (MRO) shall report his or her conclusions to the County in writing.
13. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
 14. The collection site person shall measure the temperature of the specimen. The temperature measuring device must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed four (4) minutes.
 15. If the temperature of the specimen is outside the range of 90° to 100° Fahrenheit, that is a reason to believe that the individual may

²Medical Review Officer (MRO) - A licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving laboratory results generated by an employer'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.

have altered or substituted the specimen and another specimen shall be collected under the direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may have his or her temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

16. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the chain of custody form.
17. When there is reason to believe that a particular individual has altered or substituted the specimen, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
18. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
19. Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled.
20. The collection site person shall complete the chain of custody form and the labeling and securing of each specimen container and prepare the specimens for shipment to the laboratory.
21. The urine specimen and the chain of custody form are ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.
22. The specimen bottles will be protected with a tamper-proof seal which covers the cap and down the sides of each specimen bottle.
23. Both the collection site person and the employee being tested shall confirm that the numbers on the tamper-proof seals and the numbers on the chain of custody form match prior to the specimen bottles being placed in storage for transportation.

- G. The urine specimen which has been split into two specimen containers are labeled as primary and split-specimen. Both bottles are to be sent to the lab.
- H. If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has seventy-two (72) hours to request that the split-specimen be analyzed by a different certified lab.
- I. The urine sample will be tested for the following drugs: marijuana, cocaine, opiates, amphetamines and phencyclidine. The initial screening test will be conducted using a testing methodology such as the Enzyme Multiplied Immunoassay or similar technique.
- J. If the initial test is positive, a confirmation test will be performed using gas chromatography/mass spectrometry analysis. A drug test will be considered positive only if the confirmation test is above the levels listed in 49 C.F.R., 40.
- K. The screening of all samples will be conducted by a County designated laboratory certified by the National Institute on Drug Abuse (NIDA).
- L. All drug test results will be reviewed and interpreted by a physician before they are reported to the employee and then to the County; and
- M. With all positive drug tests, the physician (a.k.a. Medical Review Officer) will first contact the employee to determine if there is an alternative medical explanation for the positive test result. If documentation is provided and the MRO determines that there was a legitimate medical use for the use of the drug, the test result shall be reported to the County as negative.
- N. Program records. All drug testing information relating to an individual employee is strictly confidential. All records relating to the program shall be maintained as directed by the Fire chief.
- O. The random drug screening program shall be considered an administrative matter, and the results of this test shall not be used in any criminal action. However, if additional information is available through other means to support criminal action against an employee, the Department shall not be precluded from taking further action.

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