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## SECTION A

### GENERAL PROVISIONS

#### PART I --GENERAL POLICY STATEMENT

##### A. INTRODUCTION

This Administrative Regulation contains all of the City of Richmond's policies relating to substance abuse as it affects the workplace. Even though City government has maintained a substance abuse program since 1985, recent federal mandates which govern various groups of positions require that the policy be detailed and separated into the following Sections and Parts :

- ◆ General Policy Statement, Provisions, and Definitions ( Section A ),
- ◆ Federal Highway Administration (FMCSA) Coverage ( Section B ),
- ◆ Research & Special Program Administration Coverage (RSPA) ( Section C ),
- ◆ All Other City Groups Coverage ( Section D ); and
- ◆ Appendixes ( Section E ).

The City's Department of Human Resources shall be the designated agency responsible for administration, evaluation, and oversight of the Substance Abuse Policy and all of its components.

##### B. PURPOSE

The goal of the City of Richmond is to establish and maintain a safe and healthy workplace that is free from alcohol abuse and illegal drug use for its employees and to protect the safety of its citizens by providing the highest quality of services. **To that end, the City is committed to a policy of non-tolerance for its applicants and employees to be free from alcohol abuse and illegal drug use.**

The purpose of this Policy is to establish guidelines and procedures for the detection of alcohol abuse and illegal drug use within the workplace. This Policy assigns the responsibilities of management and employees, and is to be broadly interpreted in order to effect its intended purpose.

##### C. GENERAL POLICY STATEMENT

- (1) Employee substance abuse increases the potential for accidents, absenteeism, substandard performance, low morale, and tends to undermine public confidence in the City's work force. Such tendencies are counterproductive to the policy of the City of Richmond, which is to maintain a safe, healthy and productive work environment for all employees and to encourage obedience to the law. In order to implement this Policy, the City will act to the

fullest extent permissible, consistent with the requirements of law and individual rights, to eliminate employee substance abuse in the workplace.

- (2) In recognition of the serious duty entrusted to the employees of the City, and with knowledge that alcohol and drugs hinder a person's ability to perform his duties safely and effectively, the following policies against alcohol abuse and illegal drug use are hereby adopted by the City of Richmond.
- (3) The City's Substance Abuse Policy applies to applicants and [ all ] employees [ classified and unclassified ] regardless of service, position, or appointment status. All employees, persons working in personal services arrangements, and covered contractors, have an obligation to report any violation of this Policy.
- (4) All Department & Agency Heads shall take such steps as may be necessary to ensure maximum employee awareness of and compliance with this Policy. In addition, the Department of Human Resources shall create and maintain an alcohol and drug awareness program for all city employees.
- (5) In the event of conflict between federal or state law and the Policy stated herein, federal and/or state law shall prevail.
- (6) Departments & Agencies may not implement additional regulations regarding the City's Substance Abuse Policy. The Department of Police may perform special substance abuse testing for specific high risk police positions, if approved in writing by the APM / DPD in the Department of Human Resources.
- (7) **NOTICE:** All employees covered by this Policy should be aware that violations of the policy shall result in discipline, up to and including termination. The City retains the right to search, without employee consent, all areas and property in which it maintains either joint control with the employee or full control, including city vehicles, property and equipment.

#### **D. EMPLOYEE RULES OF CONDUCT**

The following responsibilities are imposed on all employees of the City. [ An exception to this policy is that with the prior approval of the Chief of Police, a police officer may in his official capacity, have possession of or consume, as required, alcoholic beverages or narcotic substances for the purpose of conducting an investigation ]. Failure to meet these responsibilities shall be the basis for imposing discipline. An employee must:

- ◆ not have his ability to perform job duties impaired by alcohol or any drugs, whether legal or illegal, while on duty or on call, while on City work sites in an official capacity, while acting in any official capacity representing the City, or at any time while operating City vehicles and/or equipment.
- ◆ not be under the influence of alcohol or illegal drugs under any of the circumstances described in the preceding paragraph.
- ◆ not use alcohol at all while on duty or report to work under the influence of alcohol.
- ◆ not use, possess, sell, distribute, or manufacture illegal drugs at any time, or assist another in such acts, regardless of whether on duty or off duty.

- ◆ submit to substance detection testing (alcohol and drug tests) when requested to do so by management pursuant to this Policy.
- ◆ provide within one day (24 hours) of request a current valid prescription for any drug found to be in his possession or identified in a positive drug screen analysis. Failure to provide a valid prescription shall give rise to a presumption that the employee did not legally possess or use the drug.
- ◆ notify his supervisor of any criminal drug related conviction within forty eight ( 48 ) hours of the conviction.
- ◆ notify his supervisor of any suspension, revocation, or other loss of commercial driver's license privileges within one (1) work day (24 hours) of the event.

#### **E. SELECTION PROCESS**

- ◆ The random selection procedure will be a computer - based number generator by which a number is matched with a valid position number and the employee's social security number.
- ◆ The City will maintain a variety of "pools" (i.e. RSPA, FMCSA, etc.) from which the random selection process will take place. The percentage of persons to be tested from each of these pools will be determined as mandated by federal, state or city regulations.
- ◆ Within every twelve (12) month calendar period, the City shall randomly test a percentage from each pool, as designated by HR. The specific percentage will be maintained in HR for review and inspection. An employee may be randomly picked more than once or not picked at all during a twelve month period.
- ◆ The selection of employee names for random testing shall be conducted only by persons in the Department of Human Resources and Employee Relations who are responsible for the administration of the Substance Abuse Policy. Any other person who requires an employee to submit to a random substance detection test shall be subject to disciplinary action.

#### **F. LEAVE DURING TESTING**

The following provisions will apply when persons are waiting to be tested for alcohol or drugs, while searches are taking place and when employees refuse tests:

- If an employee refuses to take a test, he shall be deemed 'not qualified' for duty. Employees deemed 'not qualified' for duty as a result of refusal to take their test, in addition to any disciplinary action, shall have their time charged as an unauthorized absence without pay.
- When employees are sent to be tested, awaiting tests to be conducted by the medical provider, or are being searched, he shall remain in pay status and no leave time is charged.
- Employees who are awaiting the results of a substance detection test shall have time away from the job handled on a case-by-case basis by the respective Appointing Authority, given the totality of the circumstances.

#### **G. PHYSICAL SEARCHES**

Physical searches shall be subject to the following rules:

- (1) If a supervisor has reasonable suspicion, as defined in this Policy, he may request an employee to turn over any alcohol and / or drugs or paraphernalia on his person or to permit a search of areas under the employee's sole control, including his personal vehicle. Such a request may not be made to an employee in the absence of reasonable suspicion. If the employee clearly, voluntarily, and unequivocally gives permission, such a search may be made; but in the absence of such permission it may not be made without a warrant. Refusal to give permission may not be the basis for imposition of any discipline.
- (2) Supervisors shall not physically search employees under any circumstances.
- (3) Supervisors may search **without employee consent**, all areas and property in which the City maintains either joint control with the employee or full control. All city vehicles, city equipment and city owned property are subject to full search without the employee's consent.
- (4) If alcohol or illegal drugs are found in an employee's possession or in any area under his control, the police will be immediately summoned and the alcohol/drugs will not be touched, moved, or confiscated by the supervisor. All reasonable efforts short of physical force shall be used to prevent the employee from disposing of the alcohol/drugs before the police arrive.

## **H. CONVICTIONS**

Any City employee who is convicted by a final judgment of any court on a charge of illegal sale or distribution of drugs, the possession with intent to distribute drugs, or simple possession of drugs, **shall forfeit his position** as required by Section 4.15 of the City Charter.

## **I. MULTIPLE MODALS**

In several cases, employees may be responsible for performing different modal functions ( i.e. duties which are covered for example under both FMCSA and RSPA guidelines ). When these cases arise, the following rules generally apply:

### ➤ Pre-Employment and Random Testing

An applicant or employee who undertakes duties covered by two or more of the federal operating agencies (FOA) which regulate alcohol and drug use would be covered by the requirements of the federal agency rule based on the function that the applicant or employee performs the majority (more than 50 percent) of the time.

In the event that an applicant or employee is subject to three or more federal operating agency (FOA) rules, the City must determine which function the applicant or employee performs the greatest percentage of time and operate under that FOA's rules.

### ➤ Reasonable Suspicion and Post - Accident Testing

With respect to reasonable suspicion and post - accident testing, both the administration of and reporting of the test must be determined by the function the employee was performing at the time of the accident or incident.



➤ Follow-Up and Return-to-Duty Testing

In the case of follow-up and return-to-duty testing, the employee must be tested and the results reported to the same FOA for which the initial positive alcohol or controlled substances test was reported.

**J. SEVERITY**

If any Section or Part of this Policy is held to be unconstitutional, illegal, or otherwise unenforceable, that Part shall be deemed severable, and the holding shall not affect the validity and enforceability of the remaining Sections or Parts.

**K. AUTHORITY**

This Policy is enacted pursuant to:

- ◆ US. Executive Order No. 12549
- ◆ Section 5151-5160 of the Drug Free Workplace Act of 1988 (Public Law 100-690)
- ◆ 49 CFR, Parts 40, 192, 193, 195, 199, 335, 382
- ◆ 49 CFR, Chapter III
- ◆ City Charter, Section 5.05
- ◆ City Charter, Section 4.15
- ◆ City Manager's Directive of December 1, 1985.

**L. REVISION DATES**

This Policy was originally implemented on December 1, 1985 and has been revised on the following effective dates:

- July 1, 1987
- April 27, 1990
- September 1, 1993
- January 1, 1995
- September 1, 1995

**M. REVISION DENOTATIONS**

Revisions to this Policy are denoted in brackets [ ] throughout. Revision pages are indicated by the revision date.

## SECTION A

### GENERAL PROVISIONS

#### PART II -- DEFINITIONS

*The following words and terms, when used in conjunction with the City's Substance Abuse Policy, shall have the following meaning:*

**Accident (FMCSA)** - an incident involving a commercial motor vehicle in which there is either :

- a fatality; or
- the driver receives a citation under state or local law for a moving violation arising from the incident; or
- any injury is treated away from the scene; or
- a vehicle is required to be towed from the scene.

**Accident (RSPA)** - an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities as follows:

191.3 - An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:

- an event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
  - (a) a death or personal injury necessitating inpatient hospitalization; or
  - (b) estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
- an event that results in an emergency shutdown of an LNG facility.
- an event that is significant in the judgment of the operator.

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

- explosion or fire not intentionally set by the operator.
- loss of 50 or more barrels of hazardous liquid or carbon dioxide.
- escape to atmosphere of more than five barrels a day of highly volatile liquids.
- death of any person.
- bodily harm to any person resulting in one or more of the following:
  - (a) loss of consciousness.
  - (b) necessity to carry the person from the scene.
  - (c) necessity for medical treatment.
  - (d) disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.

- Estimated damage to the property of the operator or others, or both exceeding \$50,000.

**Accident ( Non Motor Vehicle)** - an unplanned or unscheduled event which may or may not cause personal injury and / or property damage.

**ADP** - the Anti-Drug Plan portion of the City's Substance Abuse Policy as it relates to FMCSA & RSPA coverage.

**Air Blank** - a reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

**Alcohol** - the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

**Alcohol Concentration** - 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 conducted under federal regulations.

**Alcohol Misuse Prevention Plan (AMPP)** - the plan required for both FMCSA & RSPA covered employers to have in effect that outlines the employer's policy on alcohol misuse in the workplace.

**Alcohol Program Manager (APM)** - the person designated by the City who is primarily responsible for the administration of the AMPP as it relates to the Substance Abuse Policy.

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

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

**CFR** - the United States Code of Federal Regulations.

**Canceled or Invalid Test** - an alcohol test that is deemed to be invalid as listed in Appendix B of this Policy.

**Chain of Custody** - procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

**City** - City of Richmond, Virginia.

**Commercial Driver's License (CDL)** - a license issued by a government agency that allows an individual to operate a commercial motor vehicle.

**Commercial Motor Vehicle** - a motor vehicle or combination of motor vehicles used in 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 weight rating of more than 10,000 pounds; or
- has a gross weight rating 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 hazardous materials requiring placards.

**Confirmation Test** - for alcohol testing means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Covered Employee (RSPA)** - any person who performs on a pipeline or LNG facility in a operating, maintenance, or emergency response function regulated by Parts 192, 193, or 195. As applied in the regulations, “employee” and “applicant for employment” have the same meaning for the purpose of these requirements. Covered employee and “individual” or “individual to be tested” have the same meaning for the purposes of the alcohol regulations. Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations. Such persons may be employed directly by the City, or by a contractor engaged by the City.

**Covered Function (safety-sensitive FMCSA function)** - any of the following on-duty functions:

- ◆ All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the City; or
- ◆ All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; or
- ◆ All time spent at the driving controls of a commercial motor vehicle; or
- ◆ All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in a sleeper berth); or
- ◆ All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; or
- ◆ All time spent performing the driver requirements associated with an accident; or
- ◆ All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

**Covered Function (safety-sensitive RSPA function)** - an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

**DHHS** - United States Department of Health and Human Services.

**DPD** - the person designated by the City who is primarily responsible for the administration of the ADP as it relates to the Substance Abuse Policy.

**DPU** - the City of Richmond's Department of Public Utilities.

**Driver (City)** - any person who operates a motor vehicle owned by the City.

**Driver (FMCSA)** - any person who operates a commercial motor vehicle. For the purposes of pre-employment testing the term driver includes a person applying to drive a commercial motor vehicle.

**Employee Assistance Program (EAP)** - an established program which provides counseling, informational and rehabilitation services to the City work force.

**EBT (evidential breath testing device)** - a device approved by the National Highway Safety Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of evidential breath measurement devices.

**Employee** - any person who is employed by the City of Richmond and receives some form of compensation.

**FMCSA** - the Federal Highway Administration of the United States Department of Transportation.

**HRER** - the City of Richmond's Department of Human Resources & Employee Relations.

**LNG** - Liquefied Natural Gas.

**Motor Vehicle** - motorized equipment, licensed or unlicensed, capable of carrying one or more passengers, including the driver.

**MRO (Medical Review Officer)** - the licensed physician, either a Doctor of Medicine, or a Doctor of Osteopathy, responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders, including the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs; and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his medical history and other relevant biomedical information.

**OPS** - Office of Pipeline Safety, United States Department of Transportation.

**Performing a Covered Function** - an employee is considered to be performing a covered function (safety-sensitive function) during any period in which he is actually performing, ready to perform, or immediately available to perform such covered functions.

**Pipeline** - all parts of the physical facilities through which products move in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.

**Pipeline Facilities** - pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of products.

**Pipeline Operator** - is defined as an owner or operator of pipeline facilities.

**Prohibited Drugs** - any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum. P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

**Refusal to Submit (to an alcohol or controlled substance test)** - a covered employee fails to provide an adequate breath sample for testing without a valid medical explanation after receiving notice of the requirement to be tested; or fails to provide an adequate urine specimen for controlled substances testing without a valid medical explanation after he has received notice of the requirement for drug testing; or engages in conduct that clearly obstructs the testing process.

**RSPA** - the Research & Special Program Administration of the United States Department of Transportation.

**Screening test (or initial test)** - an analytic procedure to determine whether an employee or driver may have a prohibited concentration of alcohol in a breath specimen. In controlled substances testing it means an immunoassay screen to eliminate “negative” urine specimens from further consideration.

**State Agency** - an agency of the Commonwealth of Virginia that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

**Substance Abuse Professional** - a 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 or drug abuse related disorders.

**49 CFR, Part 40** - refers to the U.S. Department of Transportation Drug Testing Program Procedures (laboratory testing, specimen collection, etc.) in the federal register.

**49 CFR, Part 199** - refers to the U.S. Department of Transportation (RSPA) Drug Testing rules in the federal register.

**49 CFR, Part 382** - refers to the regulations issued by the U.S. Department of Transportation relating to alcohol & drug testing for commercial motor vehicles and commercial driver’s licensees.

## **SECTION B**

### ***FEDERAL HIGHWAY ADMINISTRATION (FMCSA) COVERAGE U. S. DEPARTMENT OF TRANSPORTATION***

#### ***PART I -- ALCOHOL MISUSE PREVENTION PLAN (AMPP)***

##### **A. FMCSA ALCOHOL MISUSE PREVENTION PLAN**

This Section of the Substance Abuse Policy has been developed by the City for those employees who are required to maintain a commercial driver's license (CDL) to perform any portion of their duties under Regulations administered by the Federal Highway Administration (FMCSA). Our goal is to establish and maintain a safe, healthy and productive working environment. Therefore, the City maintains a **non - tolerance policy** for levels of alcohol use that imperils the health and well-being of its employees or threatens the safety and quality of service to its customers or citizens.

The purpose of the FMCSA Alcohol Misuse Prevention Plan ( AMPP ) is to:

- (1) Establish consistent guidelines and procedures for the detection and deterrence of alcohol abuse within City of Richmond government.
- (2) Specify responsibilities of management and employees.
- (3) Complement the United States Department of Transportation, Federal Highway Administration, Alcohol Testing Regulations.

##### **B. COMPLIANCE STATEMENT**

It is the policy of the City to comply with all Federal, State and Municipal laws, rules and regulations relating to commercial driving safety.

The FMCSA Alcohol Misuse Prevention Plan incorporates those policies and procedures found in the U. S. Department of Transportation Federal Highway Administration (FMCSA) Regulations 49 CFR, Part 40 and 49 CFR, Part 382 into the Substance Abuse Policy. These regulations contain specific information which serves as the foundation for the Alcohol Misuse Prevention Plan .

In the event of any conflicts between Federal Law and the Policy stated herein, Federal Law shall prevail.

This document, in providing specific information and guidance to employees, is used for complying with Federal Regulations. Employees may view a copy of these Regulations for specific requirements of compliance during normal business hours at the City of Richmond, Department of Human Resources & Employee Relations (HRER), 900 East Broad Street, City Hall, Room 902, Richmond, Virginia.

### **C. BACKGROUND**

(1) The catalyst for the Alcohol Misuse Plan is Title 49, Code of Federal Regulations (CFR), Parts 40 and 382, which requires that employers test all employees who must maintain a commercial drivers license (CDL) to perform any portion of their job duties to test for misuse of alcohol under the following conditions:

- ◆ Pre - Employment
- ◆ Random
- ◆ Post-Accident
- ◆ Reasonable Suspicion
- ◆ Movement
- ◆ Return-to-duty
- ◆ Follow-up

(2) Title 49 CFR, Parts 40 and 382, specifies procedures which must be followed by the City when conducting alcohol misuse testing pursuant to regulations issued by agencies of the U. S. Department of Transportation, Federal Highway Administration.

### **D. RESPONSIBILITIES**

(1) Alcohol Program Manager (APM) - Appendix A contains the name, address, and phone number of the individual(s) who are responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR, Parts 40 and 382. The APM shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; overview of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (i.e. random); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment. The City shall ensure that all covered employees are aware of the provisions and coverage of the City's AMPP.

(2) Supervisor(s) - City individuals responsible for observing the performance and behavior of employees; observation and documentation of events suggestive of reasonable suspicion; and requesting post-accident testing if determined that it is applicable.

(3) Employees - Covered employees shall be knowledgeable of the provisions of the City's AMPP and fully comply with the provisions of the plan and this Policy.

### **E APPLICABILITY**

(1) Individuals Subject to Alcohol Testing - Any employee who is required to maintain a commercial driver's license ( CDL ) to perform any portion of his duties is subject to alcohol testing under Section B, Part I. A complete copy of all covered positions is maintained in HRER for inspection.

(2) Procedure for Notifying Covered Employees - Upon receipt of the City's Substance Abuse Policy which contains the AMPP, each manager and / or supervisor shall post a copy of the Policy in a prominent location that is readily accessible to all covered employees. All covered employees will be provided a copy of the applicable Sections of the Substance Abuse Policy.



(3) Employee Notification Criteria -

- (A) General Criteria - HRER has available and can provide written educational materials explaining the alcohol misuse requirements and procedures on how to comply with those requirements.
- (B) The City will distribute applicable Sections of the Substance Abuse Policy to each covered employee prior to the start of alcohol testing and to each person subsequently hired to perform covered functions.
- (C) Required Information - When requested, HRER shall provide information to all covered employees on the following elements:
- (1) Name of representative designated to answer questions for covered employees about the alcohol regulations ( See Appendix A ).
  - (2) List of Categories of covered employees who are subject to the alcohol regulations. A detailed position listing of all covered positions is maintained in HRER.
  - (3) Information concerning covered employee conduct which specifies what is prohibited by the AMPP portions of the Substance Abuse Policy.
  - (4) Circumstances under which a covered employee will be tested for alcohol under the AMPP portions of the Substance Abuse Policy.
  - (5) Procedures that cover:
    - ◆ testing for presence of alcohol ,
    - ◆ protection of employee rights ,
    - ◆ integrity of breath testing process ,
    - ◆ safeguarding validity of test results, and
    - ◆ assignment of test results to proper positions and employees.
  - (6) Information concerning requirements for covered employees to submit to various types of alcohol tests.
  - (7) Information detailing what constitutes a refusal and consequences of such refusal.
  - (8) Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP portion of the Substance Abuse Policy. This information addresses the removal from performing covered functions and guidance on referral for evaluation and / or treatment.
  - (9) Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greater but less than 0.04.
  - (10) Information detailing alcohol misuse and:
    - ◆ how it impacts on an individual's health, work and personal life;
    - ◆ detecting signs and symptoms of an alcohol problem; and

- ◆ intervening, evaluating and resolving problems associated with alcohol misuse (suspicions, confrontation, referral to the City's Employee Assistance Program (EAP) and referral to management officials).

## **F. TYPES OF TESTING**

### ***1 - PRE - EMPLOYMENT TESTING***

As a condition of employment and as a condition of performing any duties which require the applicant or employee to operate any vehicle requiring a CDL, the City shall cause the applicant or employee to undergo an alcohol test.

Any applicant who refuses to take the alcohol test; who tests positive for alcohol; or who violates any other provisions of alcohol prohibited conduct as outlined by Section B, Part I, shall be ineligible for employment or a personal services contract with the City for a period of one (1) year.

### ***2 - RANDOM TESTING***

All FMCSA employees covered by Section B, Part I, are subject to random alcohol testing.

The refusal of an employee who is on duty to report and submit to a random test within thirty (30) minutes of such a request and notification shall be considered as a refusal and shall be the basis for the imposition of discipline, in accordance with this Policy.

### ***3 - POST-ACCIDENT TESTING***

- (1) As soon as possible following an accident involving a commercial motor vehicle, the City shall test the employee driver for alcohol when either :
  - ◆ the accident involved a fatality; or
  - ◆ the employee driver receives (or is expected to receive) a citation under state or local law for a moving violation arising from the accident.

It is the applicable employee's immediate supervisor's responsibility to ensure that the provisions of post-accident testing are followed.

- (2) Each employee shall be required to submit to an alcohol test within two (2) hours of the accident. If a test is not administered within eight (8) hours following the accident, the City shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the APM and, upon request, made available to FMCSA officials.
- (3) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or department representative of his location if he leaves the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.
- (4) The employee must remain available for alcohol testing and may not consume any alcohol for eight (8) hours following the accident or until the alcohol test has been conducted.

Notwithstanding the previous statement, nothing in this Policy shall prevent employees from seeking and obtaining emergency medical care whenever necessary.

- (5) The FMCSA recognizes post-accident tests which are conducted by Federal, State, and local officials as meeting the requirements of the post-accident section under the following conditions:
- ◆ the official must have independent authority to conduct the test;
  - ◆ the test must conform to federal, state or local requirements; and
  - ◆ the alcohol tests require a blood or breath sample.

#### **4 - REASONABLE SUSPICION TESTING**

- (1) Reasonable suspicion testing is designed to provide the City with a tool (in conjunction with supervisor training on the signs and symptoms of alcohol misuse) to identify alcohol affected employees who may pose a danger to themselves and others in their job performance. Supervisors must make a decision as to whether there is reasonable suspicion to believe an employee is using or has used alcohol.
- (2) Supervisor Reasonable Suspicion Determination: The supervisor's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations will be made by a supervisor who has received at least sixty (60) minutes of training in detecting the symptoms of alcohol misuse. The supervisor who makes such a determination that reasonable suspicion exists shall not be authorized to conduct the breath alcohol test on that employee.
- (3) In making a determination of reasonable suspicion, the factors to be considered will include, but are not limited to the following:
- (a) Adequately documented pattern of unsatisfactory work performance for which no apparent non-impairment related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of alcohol related behavior on or off the work site.
  - (b) Physical signs and symptoms consistent with alcohol abuse.
  - (c) Evidence of prohibited alcohol use, possession, sale, or delivery while on duty.
  - (d) Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
- (4) If a reasonable suspicion test is not administered within two (2) hours following the determination that an employee may be impaired by alcohol, the respective supervisor shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test is not administered within eight (8) hours of the determination, the City shall cease all attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. A copy of all such determinations shall be forwarded to the APM and upon request, such records shall be made available to FMCSA officials.
- (5) The City shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators

of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:

- (a) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
  - (b) The start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP portion of the Substance Abuse Policy .
- (6) Except as provided above, the City shall not take any action under 49 CFR, Parts 40 or 382, against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. **However, this shall not prohibit the City from taking disciplinary action as outlined in the City's Substance Abuse Policy.**

**5 - RETURN-TO-DUTY TESTING**

- (1) Before an employee may return-to-duty to perform covered functions after engaging in prohibited conduct, he shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The City or its designated supervisors, managers, or agents shall not permit an employee who refuses to submit to an alcohol test to perform or continue to perform any FMCSA covered functions.
- (2) If the City's substance abuse professional makes a determination that some form of evaluation and / or treatment is required, then the employee must comply with the outlined provisions in order to be considered eligible to return-to-duty.

**6 - FOLLOW-UP TESTING**

- (1) Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced random follow-up alcohol testing as directed by a substance abuse professional. An employee who returns to duty shall be subject to random follow-up alcohol testing, up to sixty (60) months after his return to duty.
- (2) The employee shall be subject to at least six (6) unannounced alcohol follow-up tests during the first twelve (12) months following his return to duty. The substance abuse professional may discontinue the requirement for follow-up testing at any time after the initial six tests have been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
- (3) The City may require a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR, Parts 40 and 382.

## **G. ALCOHOL PROHIBITED CONDUCT**

- (1) Alcohol Concentration - A covered employee shall be prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.02 or greater. If a City representative has actual knowledge that a covered employee has an alcohol concentration of 0.02 or greater, the employee shall not be permitted to perform or continue to perform in a covered function.
- (2) Pre-Duty Use - Federal Regulations prohibit a covered employee from using alcohol within four (4) hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty. If the City or its agents has actual knowledge that a covered employee has used alcohol within four (4) hours prior to performing covered functions or within the time period after the employee has been notified to report for duty, the employee will not be permitted to perform or continue to perform covered functions.
- (3) Possession of Alcohol - All covered employees are prohibited while on duty from possessing alcohol (unless it is manifested and transported as a part of shipment), including the possession of medicines containing alcohol unless the seal is unbroken.
- (4) On-Duty Use - Federal Regulations prohibit a covered employee from using alcohol while performing covered functions. If the City or its agents has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions.

## **H. REFUSAL TO SUBMIT TO ALCOHOL TESTS**

Refusal to submit to a random, post-accident, reasonable suspicion, return-to-duty or follow-up alcohol test shall result in the covered employee not being allowed to perform or to continue to perform in any covered functions. The covered employee will be removed from his position, the employee's actions will be reviewed by the respective department and **disciplinary action will be imposed per the City's Substance Abuse Policy.**

## **I. CONSEQUENCES - DISCIPLINARY ACTIONS FOR FMCSA COVERED POSITIONS**

**NOTICE : The following consequences & disciplinary actions are imposed pursuant to the City of Richmond's independent government authority.**

- (1) Refusal To Report For Assessment With A Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and / or referral for treatment with the City's substance abuse professional, **he shall be dismissed.**
- (2) Refusal To Enter Or Successfully Complete A Rehabilitation Program - If an employee, after assessment, is referred for rehabilitation and the employee refuses to enter or fails to successfully complete such a rehabilitation assessment program, **he shall be dismissed.**
- (3) Repeat Usage - In all cases where an employee tests a second time at an alcohol concentration of 0.02 or greater, **he shall be dismissed.**

- (4) Refusal To Submit To An Alcohol Test - An employee who refuses to provide an adequate breath sample for alcohol testing without a valid medical explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, **shall be dismissed from City employment.**
- (5) On-Duty Use Of Alcohol - On-duty use of alcohol either during work time or on City of Richmond premises shall result in removal from performing a covered function.
- (6) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration of 0.02 Or Greater, But Less Than 0.04 - When an employee has tested for alcohol at a concentration of 0.02 or greater, but less than 0.04, that employee will be removed from performing a covered function and **will be immediately suspended for a period of forty (40) work hours.** Such employee may conditionally return to duty upon completion of the suspension and after he has retested at an alcohol concentration level below 0.02. Mandatory referral to the City's EAP, participation in and successful completion of rehabilitation is required as a condition of continued employment upon return to duty.
- (7) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration Of 0.04 Or Greater - Any covered employee who tests at a concentration level of 0.04 or greater **shall be dismissed from the City.** Such employee shall also be prohibited from reemployment with the City, participation in a personal services agreement or employment with a direct coverage contractor for a period of one (1) year from the date of the test results.

## **J. ALCOHOL TESTING REQUIREMENTS**

- (1) The alcohol testing procedures contained herein and in Appendix B shall be complied with by the designated alcohol testing sites. These procedures address the requirements contained in 49 CFR, Parts 40 and 382.
- (2) The alcohol testing site shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the testing and processing of alcohol test results. An independent medical facility may also be utilized as an alcohol testing site provided the other applicable requirements of Appendix B are met.
- (3) An alcohol testing site shall be any suitable location where a breath alcohol test can be collected under conditions set forth in Appendix B, including a properly equipped mobile facility. A designated alcohol testing site shall provide for privacy during the testing period and completion of all necessary record procedures.

## **K. DISCLOSURE OF ALCOHOL INFORMATION & RECORDS**

- (1) General - The City will maintain all alcohol related testing information including all test results and other appropriate records in a secure manner to prevent the disclosure of such information to unauthorized personnel. The APM will maintain a locked file system which will contain the alcohol testing information and records. This file shall be maintained as confidential. Employee files will be handled on a strict "need to know" basis. Alcohol test results shall not be included in personnel files.

- (2) Disclosure Provisions - The City shall not release covered employee information that is contained in records in accordance with federal requirements except as required by law or when expressly authorized or required by 49 CFR, Part 382.
- (3) A covered employee is entitled, upon written request, to receive copies of any records pertaining to his use of alcohol, including any records pertaining to his alcohol tests. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
- (4) The City shall permit access to all facilities utilized in complying with the requirements of 49 CFR, Parts 40 and 382 to any FMCSA or state agency with regulatory authority over the City.
- (5) The City shall make available copies of all results for alcohol testing and any other information pertaining to the administrative process of the City's AMPP portion of the Substance Abuse Policy as required by 49 CFR, Parts 40 and 382 when requested by any FMCSA or state agency with regulatory authority over the City. When specified by the agency, the information shall include name-specific alcohol test results, records, and reports.
- (6) When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to its administration of any post-accident alcohol test administered following the accident under investigation.
- (7) The City shall make alcohol records available to a subsequent employer, upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
- (8) The City may disclose required information pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered as required by the Substance Abuse Policy, and the regulations set forth in 49 CFR, Part 382 or from the City's determination that the covered employee engaged in prohibited alcohol conduct including, but not limited to worker's compensation, unemployment compensation, or other proceedings relating to a benefit sought by the employee.
- (9) The City shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.
- (10) Prior to employment in an FMCSA covered position the City shall obtain and review the following information from all employers for which the applicant was employed in the previous two (2) years :
  - (a) Information on the applicant's alcohol test in which a breath concentration level of 0.04 or greater was indicated.
  - (b) Any refusal to submit to a required alcohol test.

- (11) The respective hiring supervisor must obtain written authorization from the applicant for the release of this information. Any applicant who fails or refuses to grant such a release shall be deemed to have refused and shall not be employed by the City.
- (12) The hiring supervisor may secure this information in the form of personal interviews, telephone interviews, letters, or any other method that ensures confidentiality. Each hiring supervisor must maintain a written, confidential record with respect to each past employer contacted.

#### **L. EMPLOYEE ASSISTANCE PROGRAM ( EAP )**

- ◆ The City of Richmond contracts with an Employee Assistance Program (EAP). EAP services are available to all FMCSA covered employees under this Policy. The EAP staff shall be available to provide employees with the appropriate education regarding the use of alcohol. Alcohol information will be periodically distributed and / or displayed in City work areas. The telephone number of the EAP office is located in Appendix D and is displayed in work areas.
- ◆ Supervisory personnel responsible for those employees covered under FMCSA regulations will receive training under the alcohol misuse prevention plan. This training shall include at least one sixty (60) minute period of training on the specific, contemporaneous, physical, behavior, speech, and performance indications of probable alcohol misuse. This training shall be for any supervisor who may determine whether an employee must be alcohol tested for reasonable suspicion.



## **SECTION B**

### ***FEDERAL HIGHWAY ADMINISTRATION (FMCSA) COVERAGE U. S. DEPARTMENT OF TRANSPORTATION***

#### ***PART II -- ANTI-DRUG PLAN (ADP)***

##### **A. FMCSA ANTI-DRUG PLAN**

Section B, Part II of the Substance Abuse Policy has been developed by the City of Richmond (City) for those employees who are required to maintain a commercial driver's license (CDL) in order to perform any portion of their duties as outlined by Regulations administered by the Federal Highway Administration (FMCSA). Our goal is to establish and maintain a safe, healthy and productive working environment. Therefore, the City maintains a **policy of non - tolerance** for any drug use that imperils the health and well-being of its employees or threatens the safety and quality of services to its customers or citizens.

The purpose of the FMCSA Anti-Drug Plan (ADP) is to:

- (1) Establish consistent guidelines and procedures for the detection and deterrence of drug abuse within the City of Richmond government.
- (2) Specify responsibilities of management and employees.
- (3) Complement the United States' Department of Transportation (DOT), Federal Highway Administration (FMCSA), Drug Testing Regulations.

##### **B. COMPLIANCE STATEMENT**

It is the policy of the City to comply with all Federal, State and Municipal laws, rules and regulations relating to commercial driving safety.

The FMCSA ADP incorporates those policies and procedures found in the United States Department of Transportation, Federal Highway Administration Regulations, 49 CFR, Part 40 and Part 382. These regulations contain specific information which serves as the foundation for this Section of the Substance Abuse Policy.

In the event of any conflicts between Federal Law and the policy stated herein, Federal Law shall prevail.

This document in providing specific information and guidance to employees is to be used for complying with Federal Regulations and may be viewed in the Department of Human Resources & Employee Relations (HRER) located at 900 East Broad Street, City Hall, Room 902, Richmond, Virginia.

##### **C. RESPONSIBILITIES**

- (1) Drug Program Designee (DPD): The City's Department of Human Resources & Employee Relations is the primary agency responsible for the Substance Abuse Policy. Appendix A contains the name, address, and phone number of the individual(s) responsible for administering the Substance Abuse Program. The DPD or other designated individual shall

be responsible for the preparation of a drug testing anti-drug plan which complies with requirements of the U. S. Department of Transportation regulations as set forth in 49 CFR, Parts 40 and 382. The DPD shall be responsible for providing oversight and evaluation of the plan; providing guidance and counseling; reviewing discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling random drug testing and return-to-duty testing; and maintaining a locked file system on drug testing results. HRER shall ensure that all covered employees are aware of the provisions and coverage of the City's Anti-Drug Plan.

- (2) Supervisors: City individuals responsible for observing the performance and behavior of employees; observation and documentation of events suggestive of reasonable cause; and making requests of second supervisor for substantiation and concurrence for reasonable cause testing, if applicable.
- (3) Employees: Each employee has the responsibility to be knowledgeable of the requirements of the City's ADP and to fully comply with the provisions of the plan.

#### **D. APPLICABILITY**

- (1) General - All FMCSA covered employees who fall under the "persons covered" section of 49 CFR, Part 382 will be subject to random drug testing. "Persons covered" include all persons listed under the definition of "FMCSA Covered Employee" as stated earlier in the City's Substance Abuse Policy.
- (2) Covered Employees: A complete listing of positions which will be required to adhere to FMCSA random drug testing requirements is maintained in HRER and is available for review during normal business hours. Periodically, HRER will review the list of "covered persons" to ensure it is up-to-date and accurate. Names and positions may be added or deleted as jobs and circumstances change.
- (3) Notifying Employees of Plan: The goal of the City of Richmond is to establish and maintain a workplace that is free from drug use; one that is safe and healthy, and one that is a model for others to follow. Therefore, as early as the interview process, all job applicants will be informed as to whether or not the position / job they are seeking is a "FMCSA" position, subject to the FMCSA rules and procedures regarding random drug testing. If hired by the City, each new employee will be informed of the City's random testing policy by his immediate supervisor and will be required to sign an "Acknowledgment / Receipt Form" prior to receiving his individual copy of the City's Substance Abuse Policy. In addition, City employees will be notified of any changes and / or revisions through notices.
- (4) FMCSA Unauthorized Substances: FMCSA employees covered under the FMCSA Regulations, 49 CFR, Part 40 and Part 382 will be tested for the following unauthorized substances:
  - ◆ - Marijuana (THC),
  - ◆ - Cocaine,
  - ◆ - Opiates (Morphine and Codeine),
  - ◆ - Phencyclidine (PCP),and
  - ◆ - Amphetamines (Amphetamine, Methamphetamine)

## **E. TYPES OF TESTING**

### ***1 - PRE-EMPLOYMENT TESTING***

- (1) The City of Richmond will not hire or contract for any person, unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of FMCSA 49 CFR.
- (2) All job applicants selected for employment with the City under this Part shall undergo a drug test as part of a pre-employment physical at the City's expense. All individuals entering into a personal service contract for FMCSA purposes must undergo a drug test at their own expense, through a collection facility approved by the DPD. **It is the City's policy, under its independent authority that any persons testing positive will be denied employment in any position with the City for a period of three (3) years from the date of the drug test results.**
- (3) A drug test will be conducted when a current employee moves from a non-covered position into an FMCSA covered position.
- (4) An employee who previously is separated from an FMCSA covered position will be subject to another pre-employment test prior to performing in his former position or in any other FMCSA covered position.
- (5) All pre-employment job applicants who test positive shall have the right to have their original sample re-tested by a laboratory approved by the Medical Review Officer, at the applicant's own expense.
- (6) Employees moving into an FMCSA covered position who test positive have the right to have their original sample re-tested at their own expense. Employees who fail the re-test will not be moved to an FMCSA position and are subject to disciplinary action under the Substance Abuse Policy.
- (7) An employee who moves from one FMCSA position to another FMCSA position without interruption of service, shall not require testing under this Part of the City's Substance Abuse Policy.

### ***2 - POST-ACCIDENT TESTING***

- (1) As soon as possible following an accident involving a commercial motor vehicle, the City shall test the employee-driver for drugs when either :
  - ◆ the accident involved a fatality; or
  - ◆ the employee driver receives (or is expected to receive) a citation under state or local law for a moving violation arising from the accident.
- (2) It is the applicable employee's immediate supervisor's responsibility to ensure that the provisions of post-accident testing are followed.
- (3) Each employee shall be required to submit to a drug test within two (2) hours of the accident. If a test is not administered within eight (8) hours following the accident, the City shall cease

all attempts to conduct a drug test and shall prepare and maintain on file written documentation indicating why the drug test was not conducted. A copy of all such determinations shall be forwarded to the DPD and upon request, made available to FMCSA officials.

- (4) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or department representative of his location if he leaves the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.
- (5) The employee must remain available for drug testing until the drug test has been conducted. Notwithstanding the previous statement, nothing in this Policy shall prevent employees from seeking and obtaining emergency medical care whenever necessary.
- (6) If an employee is injured, unconscious, or otherwise unable to grant consent to the drug test, all reasonable steps must be taken to obtain a urine sample. The City or its agents may decide not to test under this paragraph; however such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident, or that because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.
- (7) The FMCSA recognizes post-accident tests which are conducted by Federal, State, and local officials as meeting the requirements of the post-accident section under the following conditions:
  - ◆ the official must have independent authority to conduct the test;
  - ◆ the test must conform to federal, state or local requirements; and
  - ◆ the controlled substances test requires a urine sample.

### ***3 - RANDOM TESTING***

- (1) Testing Requirements - Once notified for random testing, the employee will be tested at the City's Employee Medical Services (EMS) provider. The employee will have a total of forty-five (45) minutes to report to the EMS testing site from the time of notification of a random alcohol detection test. There are no exceptions.
- (2) A covered employee who tests positive for drug use will be removed from performing covered functions. Such employee shall be disciplined in accordance with the provisions of the Substance Abuse Policy.

### ***4 - REASONABLE SUSPICION TESTING***

- (1) The City of Richmond will test an FMCSA covered employee when there is reasonable cause to believe the employee is under the influence and/or using prohibited drugs.
- (2) Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a supervisor, exercising sound judgment, to suspect that an employee is under the influence of drugs.

- (3) Every supervisor covered by this Policy, who will determine whether or not an employee will be subject to a reasonable suspicion drug test will receive at least a one hour training period on the specific physical, behavioral and performance indicators of probable drug use.
- (4) In addition to the above, the City's Employee Assistance Program (EAP) will coordinate training with (HRER), or other pertinent sources, in order to provide all covered employees with the necessary training on drug awareness.

## **F. CONSEQUENCES - DISCIPLINARY ACTIONS FOR FMCSA COVERED POSITIONS**

Once the Medical Review Officer makes a determination that there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the City of Richmond will not knowingly use such employee or person in any capacity.

**NOTE:** Rehabilitation is not mandated by FMCSA Regulations.

**NOTICE : The following consequences & disciplinary actions are imposed pursuant to the City of Richmond's independent government authority.**

**It is the City's policy to dismiss any covered employee who fails a drug test.**

- (1) Refusal To Report For Assessment With A Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and / or referral for treatment with the City's substance abuse professional, **he shall be dismissed.**
- (2) Refusal To Enter Or Successfully Complete A Rehabilitation Program - If an employee, after assessment, is referred for rehabilitation and the employee refuses to enter or fails to successfully complete such a rehabilitation assessment program, **he shall be dismissed.**
- (3) Refusal To Submit To A Drug Test - An employee who refuses to provide an adequate urine sample for drug testing without a valid medical explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, **shall be dismissed from the City.**
- (4) Any covered FMCSA employee, who violates the provisions of this Part of the City's Substance Abuse Policy **shall be dismissed from the City's service and barred from employment in any position, personal services contract or with any contractor doing direct business with the City of Richmond for a period of three (3) years from the date of dismissal.**

## **G. SPECIMEN COLLECTION REQUIREMENTS**

A complete copy of the specimen collection requirements may be found in Appendix F.

## **H. DRUG TESTING LABORATORY**

Testing Laboratory/Analysis Of Samples - The City uses a laboratory certified by the DHHS to conduct the analysis of urine samples. These documents contain specific Drug Testing Procedures and may be found in Appendix F. The testing laboratory will comply with all methods

and procedures of 49 CFR and will provide annual reports to the contracting agency, and to the DPD showing compliance. Testing laboratory information for the City's ADP is listed in Appendix G.

## **I. BLIND SAMPLE PERFORMANCE TEST PROCEDURES**

Regulations regarding the submission of blind samples may be found in Appendix F of this Policy. The City's EMS provider shall be responsible for the submission of blind samples in compliance with Federal Regulations.

## **J. REVIEW OF DRUG TESTING RESULTS**

HRER contracts for the services of a Medical Review Officer (MRO). The name, address and general responsibilities of the MRO for the City are listed in Appendix H.

## **K. RETENTION OF SAMPLES**

- (1) General - Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days.
- (2) Retention Period - Within this 365 day period, the employee or a designated representative, FMCSA or other federal agencies with jurisdiction, or DPD may request in writing that the sample be retained for an additional period of time. If the laboratory does not receive a request to retain the sample within the 365 day period, the sample may be discarded.

## **L. RETESTING OF SAMPLES**

- (1) Challenges Of Test Results - All FMCSA covered applicants and employees who test positive may challenge the test results by notifying the DPD in writing within seventy - two (72) hours of receiving the test results. If a test result is challenged, the original sample will then be re-tested by a certified DHHS laboratory other than the City's medical provider primary laboratory. The selection of the certified laboratory must be made from a list of laboratories maintained by the EMS provider and approved by DPD.
- (2) NOTE: Because some analyses deteriorate or are lost during freezing and/or storage, quantization for a retest is not subject to a specific cutoff requirement, but must provide data sufficient to confirm the presence or absence of the drug or metabolite.
- (3) All costs associated with a positive re-test will be borne by the applicant or employee raising the challenge and must be prepaid.
- (4) Disclosure Of Information - Except as provided in the following paragraphs, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.
- (5) The MRO may disclose such information to the DPD in HRER; FMCSA, or other Federal safety agency officials; or to a physician responsible for determining the medical qualification of the applicant or employee under the appropriate FMCSA regulations, as applicable, only if:
  - ◆ An applicable FMCSA regulation permits or requires such disclosure;

- ◆ In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable FMCSA rule; or
  - ◆ In the MRO's reasonable medical judgment, in a situation, in which there is not a FMCSA rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his covered function could pose a significant safety risk.
- (6) Before obtaining medical information from an applicant or employee as part of the verification process, the MRO shall inform the applicant or employee that information may be disclosed to third parties as provided in this section and the identity of any parties to whom information may be disclosed.

#### **M. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The City contracts with an Employee Assistance Program (EAP). EAP services are available to all FMCSA covered employees covered under this Policy. The EAP staff shall be available to provide employees with the appropriate education regarding the use of prohibited drugs. Drug information will be periodically distributed and or displayed in work areas. The telephone number of EAP offices is displayed in work areas and located in Appendix D.

#### **N. RECORDKEEPING PROCEDURES**

The City maintains testing records in compliance with 49 CFR, Part 382. All recordkeeping requirements and guidelines may be found in Appendix E.

## SECTION C

### *RESEARCH & SPECIAL PROGRAMS ADMINISTRATION (RSPA) COVERAGE*

#### *U. S. OFFICE OF PIPELINE SAFETY*

### *PART I-- ALCOHOL MISUSE PREVENTION PLAN (AMPP)*

#### **A. RSPA ALCOHOL MISUSE PREVENTION PLAN**

Section C, Part I of the Substance Abuse Policy has been developed by the City of Richmond for those employees who work in the gas utility and are covered by regulations under the Research & Special Programs Administration (RSPA) office of the U. S. Department of Transportation. Our goal is to establish and maintain a safe, healthy and productive working environment. Therefore, the City maintains a **non - tolerance policy** for levels of alcohol use that imperils the health and well-being of its employees or threatens the safety and quality of service to its customers or citizens.

The purpose of the RSPA Alcohol Misuse Prevention Plan ( AMPP ) is to:

- (1) Establish consistent guidelines and procedures for the detection and deterrence of alcohol abuse within City of Richmond government.
- (2) Specify responsibilities of management and employees.
- (3) Complement the United States Department of Transportation, Office of Pipeline Safety, Alcohol Testing Regulations.

#### **B. COMPLIANCE STATEMENT**

It is the policy of the City to comply with all Federal, State and Municipal laws, rules and regulations relating to safety of natural gas.

The RSPA AMPP incorporates those policies and procedures found in the U. S. Department of Transportation (DOT - RSPA) Pipeline Safety Regulations 49 CFR, Part 199 and Part 40, into the Substance Abuse Policy of the City of Richmond. These regulations contain specific information which serves as the foundation for the Plan.

In the event of any conflicts between Federal Law and the Policy stated herein, Federal Law shall prevail.

This document, in providing specific information and guidance to employees, is used for complying with Federal Regulations. Employees may view a copy of 49 CFR, Parts 199 and 40 for specific requirements for compliance during normal business hours at either the City of Richmond, Department of Human Resources & Employee Relations (HRER), 900 East Broad Street, City Hall, Room 902, Richmond, Virginia, or the Department of Public Utilities (DPU), Administrative Services Office at 600 East Broad Street, Suite 816, Richmond, Virginia.



### **C. BACKGROUND**

(1) The catalyst for the alcohol misuse plan is Title 49, Code of Federal Regulations (CFR), Part 199, Subpart B, which requires pipeline operators subject to 49 CFR, Parts 192, 193 and 195, and their contractors to test their employees for misuse of alcohol under the following work-related conditions:

- ◆ Post-Accident
- ◆ Reasonable Suspicion
- ◆ Return-to-duty
- ◆ Follow-up

(2) Title 49 CFR, Part 40 specifies procedures which must be followed by the City when conducting alcohol misuse testing pursuant to regulations issued by agencies of the U. S. Department of Transportation, Office of Pipeline Safety.

### **D. DEFINITIONS**

*The following words and terms, when used in conjunction with the RSPA AMPP, shall have the following meaning:*

**Accident (RSPA)** - an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an incident reportable under Part 195 involving hazardous liquid pipeline facilities as follows:

191.3 - An accident on a gas pipeline or LNG facility is defined as an “incident,” as follows:

- An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
  - (a) A death, or personal injury necessitating inpatient hospitalization; or
  - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
- An event that results in an emergency shutdown of an LNG facility.
- An event that is significant, in the judgment of the operator.

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

- Explosion or fire not intentionally set by the operator.
- Loss of 50 or more barrels of hazardous liquid or carbon dioxide.
- Escape to atmosphere of more than five barrels a day of highly volatile liquids.
- Death of any person.
- Bodily harm to any person resulting in one or more of the following:
  - (a) Loss of consciousness.

- (b) Necessity to carry the person from the scene.
- (c) Necessity for medical treatment.
- (d) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
- Estimated damage to the property of the operator or others, or both exceeding \$50,000.

**Air Blank** - means a reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

**Alcohol** - the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

**Alcohol Concentration** - 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 conducted under federal regulations.

**Alcohol Misuse Prevention Plan (AMPP)** - the plan required for RSPA covered employers to have in effect that outlines the employers policy on alcohol misuse in the workplace.

**Alcohol Program Manager (APM)** - the person designated by the City who is primarily responsible for the administration of the AMPP as it relates to the Substance Abuse Policy.

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

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

**CFR** - the United States Code of Federal Regulations.

**Canceled or Invalid Test** - an alcohol test that is deemed to be invalid as listed in Appendix B of this Policy.

**City** - City of Richmond, Virginia.

**Confirmation Test** - for alcohol testing means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.

**Covered Employee (RSPA)** - any person who performs on a pipeline or LNG facility an operating, maintenance, or emergency response function regulated by Parts 192, 193, or 195. As applied in the regulations, “employee” and “applicant for employment” have the same meaning for the purpose of these requirements. Covered employee and “individual” or “individual to be tested” have the same meaning for the purposes of the alcohol regulations. Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations. Such persons may be employed directly by the City or by a contractor engaged by the City.

**Covered Function (safety-sensitive RSPA function)** - an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

**DPU** - the City of Richmond’s Department of Public Utilities.

**Employee Assistance Program (EAP)** - an established program which provides counseling, informational and rehabilitation services to the City work force.

**EBT (evidential breath testing device)** - a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of evidential breath measurement devices.

**Employee** - Any person who is employed by the City of Richmond and for which he receive some form of compensation.

**HRER** - The City of Richmond's Department of Human Resources & Employee Relations.

**OPS** - Office of Pipeline Safety, United States Department of Transportation.

**Performing a Covered Function** - an employee is considered to be performing a covered function (safety-sensitive function) during any period in which he is actually performing, ready to perform, or immediately available to perform such covered functions.

**Pipeline** - all parts of the physical facilities through which products move in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.

**Pipeline Facilities** - pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of products.

**Pipeline Operator** - is defined as an owner or operator of pipeline facilities.

**Prohibited Drugs** - Any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum. P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

**Refusal to Submit (to an alcohol test)** - a covered employee fails to provide an adequate breath sample for testing without a valid medical explanation after receiving notice of the requirement to be tested or engages in conduct that clearly obstructs the testing process.

**RSPA** - The Research & Special Program Administration of the United States Department of Transportation.

**Screening test (or initial test)** - an analytic procedure to determine whether an employee or driver may have a prohibited concentration of alcohol in a breath specimen.

**State Agency** - an agency of the Commonwealth of Virginia that participates under Section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

**Substance Abuse Professional** - a 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 or drug abuse related disorders.

## **E. RESPONSIBILITIES**

- (1) Alcohol Program Manager (APM) - Appendix A contains the name, address, and phone number of the individual(s) who are responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR, Parts 199 Subpart b and 49 CFR, Part 40 Subpart c. The APM shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; overview of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (post-accident, reasonable suspicion, etc.); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment. The City shall ensure that all covered employees are aware of the provisions and coverage of the City's AMPP.
- (2) Supervisor(s) - City individuals responsible for observing the performance and behavior of employees; observation and documentation of events suggestive of reasonable suspicion and post-accident testing if determined that it is applicable.
- (3) Employees - Covered employees shall be knowledgeable of the provisions of the City AMPP and fully comply with the provisions of the plan and this Policy.

## **F. APPLICABILITY**

- ◆ Individuals Subject to Alcohol Testing - Any employee who performs on a pipeline, an operating, maintenance, or emergency response function regulated by Part 192, 193, or 195, is subject to alcohol testing under Section C, Part I of the City's Substance Abuse Policy. This does not include clerical, accounting, or other functions not subject to Part 192, 193 or 195. The person may be employed by the City, be a contractor engaged by the City, or be employed by such a contractor. A complete copy of all covered positions is maintained in HRER for inspection.
- ◆ Procedure for Notifying Covered Employees - Upon receipt of the City's Substance Abuse Policy which contains the AMPP, each manager and / or supervisor shall post a copy of the Policy in a prominent location that is readily accessible to all covered employees. All covered employees will be provided a copy of the applicable Sections of the Substance Abuse Policy.
- ◆ Employee Notification Criteria -
  - (1) General Criteria. HRER & DPU has available and can provide written educational materials explaining the alcohol misuse requirements and procedures on how to comply with those requirements.
  - (2) The City will distribute applicable Sections of the Substance Abuse Policy to each covered employee prior to the start of alcohol testing and to each person subsequently hired or moved to perform covered functions.

- (3) Required Information. When requested, HRER shall provide written materials to all covered employees that will include detailed information and discussion on the following elements:
- (a) Name of representative designated to answer questions for covered employees about the alcohol regulations. ( See Appendix A ).
  - (b) List of Categories of covered employees who are subject to the alcohol regulations. A detailed listing of all covered positions is maintained in HRER for review.
  - (c) Information concerning covered employee conduct which specifies what is prohibited by the AMPP portions of the Substance Abuse Policy.
  - (d) Circumstances under which a covered employee will be tested for alcohol under the AMPP portions of the Substance Abuse Policy.
  - (e) Procedures that cover:
    - ◆ testing for presence of alcohol,
    - ◆ protection of employee rights,
    - ◆ integrity of breath testing process,
    - ◆ safeguarding validity of test results, and
    - ◆ assignment of test results to proper positions and employees.
  - (f) Information concerning requirement for covered employees to submit to various types of alcohol tests.
  - (g) Information detailing what constitutes a refusal and consequences of such refusal.
  - (h) Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP portion of the Substance Abuse Policy. This information addresses the removal from performing covered functions and guidance on referral for evaluation and / or treatment.
  - (i) Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greater but less than 0.04.
  - (j) Information detailing alcohol misuse and:
    - ◆ how it impacts on an individual's health, work and personal life;
    - ◆ detecting signs and symptoms of an alcohol problem; and
    - ◆ intervening, evaluating and resolving problems associated with alcohol misuse (suspicions, confrontation, referral to the City's Employee Assistance Program (EAP) and referral to management officials).

## **G. TYPES OF TESTING**

### ***1 - POST-ACCIDENT TESTING***

- (1) The City will promptly determine and test each covered employee for alcohol if that employee's performance contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test under Section C, Part I of the Substance Abuse Policy shall be based on the respective supervisor's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident.
- (2) Each employee shall be required to submit to an alcohol test within two (2) hours of the accident. If a test is not administered within eight (8) hours following the accident the City shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the APM and upon request, made available to RSPA officials.
- (3) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or department representative of his location if he leaves the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.
- (4) The employee must remain available for alcohol testing and may not consume any alcohol for eight (8) hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, nothing in this Policy shall prevent employees from seeking and obtaining emergency medical care whenever necessary.

### ***2 - REASONABLE SUSPICION TESTING***

- (1) Reasonable suspicion testing is designed to provide the City with a tool (in conjunction with supervisor training on the signs and symptoms of alcohol misuse) to identify alcohol affected employees who may pose a danger to themselves and others in their job performance. Supervisors must make a decision as to whether there is reasonable suspicion to believe an employee is using or has used alcohol.
- (2) Supervisor Reasonable Suspicion Determination: The supervisor's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations will be made by a supervisor who has received at least sixty (60) minutes of training in detecting the symptoms of alcohol misuse. The supervisor who makes such a determination that reasonable suspicion exists **shall not** be authorized to conduct the breath alcohol test on that employee.
- (3) In making a determination of reasonable suspicion, the factors to be considered will include, but are not limited to the following:
  - ◆ Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists, or a change in an employee's prior
  - ◆ pattern of work performance, especially where there is some evidence of alcohol related behavior on or off the work site.

- ◆ Physical signs and symptoms consistent with alcohol abuse.
  - ◆ Evidence of prohibited alcohol use, possession, sale, or delivery while on duty.
  - ◆ Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
- (4) If a reasonable suspicion test is not administered within two (2) hours following the determination that an employee may be impaired by alcohol, the respective supervisor shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test is not administered within eight (8) hours of the determination, the City shall cease all attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. A copy of all such determinations shall be forwarded to the APM and upon request, made available to RSPA officials.
- (5) The City shall **not** permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
- ◆ An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
  - ◆ The start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP portion of the Substance Abuse Policy .
- (6) Except as provided above, the City shall not take any action under 49 CFR, Part 199 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. **However, this shall not prohibit the City from taking disciplinary action as outlined in the City's Substance Abuse Policy.**

### ***3 - RETURN-TO-DUTY TESTING***

- (1) Before an employee may return-to-duty to perform covered functions after engaging in prohibited conduct, he shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The City or its designated supervisors, managers, or agents shall not permit an employee who refuses to submit to an alcohol test to perform or continue to perform any RSPA covered functions.
- (2) If the City's substance abuse professional makes a determination that some form of evaluation and / or treatment is required, then the employee must comply with the outlined provisions in order to be considered eligible to return-to-duty.

### ***4 - FOLLOW-UP TESTING***

- (1) Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced random follow-up alcohol testing as directed by a substance abuse professional. An employee

who returns to duty shall be subject to random follow-up alcohol testing,, up to sixty (60) months after his return to duty.

- (2) The employee shall be subject to at least six (6), unannounced alcohol follow-up tests during the first twelve (12) months following his return to duty. The substance abuse professional may discontinue the requirement for follow-up testing at any time after the initial six (6) tests have been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
- (3) The City may require a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR, Part 40, Subpart A.

## **H. ALCOHOL PROHIBITED CONDUCT**

- (1) Alcohol Concentration - A covered employee shall be prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.02 or greater. If a City representative has actual knowledge that a covered employee has an alcohol concentration of 0.02 or greater, the employee shall not be permitted to perform or continue to perform in a covered function.
- (2) Pre-Duty Use - Federal Regulations prohibit a covered employee from using alcohol within four (4) hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty. If the City or its agents has actual knowledge that a covered employee has used alcohol within four (4) hours prior to performing covered functions or within the time period after the employee has been notified to report for duty, the employee will not be permitted to perform or continue to perform covered functions.
- (3) On-Duty Use - Federal Regulations prohibit a covered employee from using alcohol (including any medication containing alcohol) while performing covered functions. If the City or its agents has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions.

## **I. REFUSAL TO SUBMIT TO ALCOHOL TESTS**

Refusal to submit to a post-accident, reasonable suspicion, return-to-duty, or follow-up alcohol test shall result in a covered employee not being allowed to perform or to continue to perform in any covered functions. The covered employee will be removed from his position, the employee's actions reviewed by the respective department and **disciplinary action will be imposed per the City's Substance Abuse Policy.**

## **J. CONSEQUENCES - DISCIPLINARY ACTIONS FOR RSPA COVERED POSITIONS**

**NOTICE : The following consequences & disciplinary actions are imposed pursuant to the City of Richmond's independent government authority.**

- (1) Refusal To Report For Assessment With A Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and / or referral for treatment with the City's substance abuse professional, he shall be removed from performing a covered function **and dismissed.**



- (2) Refusal To Enter Or Successfully Complete A Rehabilitation Program - If an employee, after assessment, is referred for rehabilitation and the employee refuses to enter or successfully complete such a rehabilitation assessment program, he shall be removed from performing a covered function **and dismissed**.
- (3) Repeat Usage - In all cases where an employee tests a second time at an alcohol concentration of 0.02 or greater, he shall be removed from performing a covered function **and dismissed**.
- (4) Refusal To Submit To An Alcohol Test - An employee who refuses to provide an adequate breath sample for alcohol testing without a valid medical explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, shall be removed from performing a covered function **and dismissed from City employment**.
- (5) On-Duty Use Of Alcohol - On duty use of alcohol either during work time or on City of Richmond premises shall result in removal from performing a covered function.
- (6) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration Of 0.02 Or Greater, But Less Than 0.04 - When an employee has tested for alcohol in a concentration of 0.02 or greater, but less than 0.04; that employee will be removed from performing a covered function and **will be immediately suspended for a period of forty (40) work hours**. Such employee may conditionally return to duty upon completion of the suspension and after he has retested at an alcohol concentration level below 0.02. Mandatory referral to the City's EAP, participation in and successful completion of rehabilitation is required as a condition of continued employment upon return to duty.
- (7) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration Of 0.04 Or Greater - Any covered employee who tests at a concentration level of 0.04 or greater **shall be dismissed from the City**. Such employee shall also be prohibited from reemployment with the City, participation in a personal services agreement or employment with a direct coverage contractor for a period of one (1) year from the date of the tests results.

#### **K. ALCOHOL TESTING REQUIREMENTS**

- (1) The alcohol testing procedures contained herein and in Appendix B shall be complied with by the designated alcohol testing sites. These procedures address the requirements contained in 49 CFR, Part 40, Subpart C.
- (2) The alcohol testing site shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the testing and processing of alcohol test results. An independent medical facility may also be utilized as an alcohol testing site provided the other applicable requirements of Appendix B are met.
- (3) An alcohol testing site shall be any suitable location where a breath alcohol test can be collected under conditions set forth in Appendix B, including a properly equipped mobile facility. A designated alcohol testing site shall provide for privacy during the testing period and completion of all necessary record procedures.

#### **L. CONTRACTOR MONITORING**

- (1) The City will provide by contract that all covered contractors must establish and implement alcohol breath testing, education, and training in accordance with Part 199 and Part 40 for covered functions.
- (2) Contractors shall retain copies of appropriate alcohol testing records as required by 49 CFR, Part 199 and Part 40. The records and access to the contractor's property shall be readily accessible for inspection by RSPA and representatives of those state agencies under which jurisdiction the City operates.
- (3) Refer to Appendix C for the City's contractor compliance and monitoring program.

#### **M. DISCLOSURE OF ALCOHOL INFORMATION/RECORDS**

- (1) General - The City will maintain all alcohol related testing information including all test results and other appropriate records in a secure manner to prevent the disclosure of such information to unauthorized personnel. The APM will maintain a locked file system which will contain the alcohol testing information and records. This file shall be maintained as confidential. Employee files will be handled on a strict "need to know" basis. Alcohol test results shall not be included in personnel files.
- (2) Disclosure Provisions - The City shall not release covered employee information that is contained in records as required to be maintained by the provisions of the AMPP and in accordance with federal requirements except as required by law or when expressly authorized or required by 49 CFR, Parts 199 and 40.
- (3) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his alcohol tests. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
- (4) The City shall permit access to all facilities utilized in complying with the requirements of 49 CFR, Parts 199 and 40 to any RSPA official or state agency with regulatory authority over the City.
- (5) The City shall make available copies of all results for alcohol testing and any other information pertaining to the administrative process of the operator's AMPP as required by 49 CFR, Parts 199 and 40 when requested by any RSPA official or state agency with regulatory authority over the City. When specified by the agency, the information shall include name-specific alcohol test results, records, and reports.
- (6) When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to its administration of any post-accident alcohol test administered following the accident under investigation.

- (7) The City will make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
- (8) The City may disclose required information pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered as required by the Substance Abuse Policy, and the regulations set forth in 49 CFR, Parts 199 and 40 or from the City's determination that the covered employee engaged in prohibited alcohol conduct including, but not limited to; worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.
- (9) The City shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

#### **N. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

- (1) The City of Richmond contracts with an Employee Assistance Program (EAP). EAP services are available to all RSPA covered employees under this Policy. The EAP staff shall be available to provide employees with the appropriate education regarding the use of alcohol. Alcohol information will be periodically distributed and or displayed in work areas. The telephone number of EAP offices is located in Appendix D and displayed in work areas.
- (2) Supervisory personnel responsible for those employees covered under Part 199 will receive training under the alcohol misuse prevention plan. The training shall include at least one sixty (60) minute period of training on the specific, contemporaneous, physical, behavior, speech, and performance indicators of probable alcohol misuse. This training shall be for any supervisor who may determine whether an employee must be alcohol tested for reasonable suspicion.

#### **O. RECORDKEEPING PROCEDURES**

The City of Richmond maintains testing records in compliance with 49 CFR, Part 199 and Part 40. All recordkeeping requirements and guidelines may be found in Appendix E.

## SECTION C

### ***U. S. OFFICE OF PIPELINE SAFETY RESEARCH & SPECIAL PROGRAMS ADMINISTRATION (RSPA) COVERAGE***

#### ***PART II -- ANTI-DRUG PLAN (ADP)***

##### **A. RSPA ANTI-DRUG PLAN**

This Section of the Anti-Drug Plan has been developed by the City of Richmond (City) for those employees who work in the gas utility and are covered by regulations of the Research & Special Programs Administration (RSPA) office of the U. S. Department of Transportation. Our goal is to establish and maintain a safe, healthy and productive working environment. Therefore, the City maintains a **policy of non - tolerance** for any drug use that imperils the health and well-being of its employees or threatens the safety and quality of services to its customers or citizens.

The purpose of the RSPA Anti-Drug Plan (ADP) is to :

- (1) Establish consistent guidelines and procedures for the detection and deterrence of drug abuse within the City of Richmond.
- (2) Specify responsibilities of management and employees.
- (3) Complement the United States' Department of Transportation (DOT), Office of Pipeline Safety (OPS), Drug Testing Regulations.

##### **B. COMPLIANCE STATEMENT**

It is the policy of the City to comply with all Federal, State and Municipal laws, rules and regulations relating to safety and natural gas.

The RSPA Anti-Drug Plan incorporates those policies and procedures found in the United States Department of Transportation, Pipeline Safety Regulations, 49 CFR, Part 199 and 49 CFR, Part 40. These regulations contain specific information which serves as the foundation for this Section of the City's Plan.

In the event of any conflicts between Federal Law and the policy stated herein, Federal Law shall prevail.

This document, in providing specific information and guidance to employees, is to be used for complying with Federal Regulations. Personnel are referred to 49 CFR, Part 199 and Part 40 for specific requirements for compliance. These documents may be viewed in the Department of Human Resources & Employee Relations (HRER) located at 900 East Broad Street, City Hall, Room 902, or in the Department of Public Utilities (DPU), Administrative Services Office at 600 East Broad Street, Suite 816, Richmond, Virginia.

### **C. RESPONSIBILITIES**

- (1) Drug Program Designee (DPD): The City's Department of Human Resources & Employee Relations is the primary agency responsible for the City's Substance Abuse Policy. Appendix A contains the name, address, and phone number of the individual(s) responsible for administering the City's Substance Abuse Program. The DPD or other designated individual shall be responsible for the preparation of a drug testing anti-drug plan which complies with requirements of the U. S. Department of Transportation regulations as set forth in 49 CFR, Parts 199 and 40. The DPD shall be responsible for providing oversight and evaluation of the plan; providing guidance and counseling; reviewing discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling random drug testing and return-to-duty testing; and maintaining a locked file system on drug testing results. HRER shall ensure that all covered employees are aware of the provisions and coverage of the City's Anti-Drug Plan.
- (2) Supervisors: City individuals responsible for observing the performance and behavior of employees; observation and documentation of events suggestive of reasonable cause; responsible for making second requests of supervisors for substantiation and concurrence for reasonable cause testing, if applicable.
- (3) Employees: Each employee has the responsibility to be knowledgeable of the requirements of the City's ADP and to fully comply with the provisions of the plan.

### **D. DEFINITIONS**

*The following words and terms, when used in conjunction with the RSPA ADP, shall have the following meaning:*

**Accident (RSPA)** - an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an incident reportable under Part 195 involving hazardous liquid pipeline facilities as follows:

191.3 - An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:

- An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
  - (a) A death, or personal injury necessitating inpatient hospitalization;  
or
  - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
- An event that results in an emergency shutdown of an LNG facility.
- An event that is significant, in the judgment of the operator.

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

- Explosion or fire not intentionally set by the operator.
- Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

- Escape to atmosphere of more than five barrels a day of highly volatile liquids.
- Death of any person.
- Bodily harm to any person resulting in one or more of the following:
  - (a) Loss of consciousness.
  - (b) Necessity to carry the person from the scene.
  - (c) Necessity for medical treatment.
  - (d) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
- Estimated damage to the property of the operator or others, or both exceeding \$50,000.

**ADP** - the Anti-Drug Plan portion of the City's Substance Abuse Policy as it relates to FMCSA & RSPA coverage.

**CFR** - the United States Code of Federal Regulations.

**Chain of Custody** - procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

**City** - City of Richmond, Virginia.

**Confirmation Test** - For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Covered Employee (RSPA)** - any person who performs on a pipeline or LNG facility an operating, maintenance, or emergency response function regulated by Parts 192, 193, or 195. As applied in the regulations, "employee" and "applicant for employment" have the same meaning for the purpose of these requirements. Covered employee and "individual" or "individual to be tested" have the same meaning for the purposes of the drug regulations. Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations. Such persons may be employed directly by the City, or by a contractor engaged by the City.

**Covered Function (safety-sensitive RSPA function)** - an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

**DHHS** - United States Department of Health and Human Services

**DPD** - the person designated by the City who is primarily responsible for the administration of the ADP as it relates to the Substance Abuse Policy.

**DPU** - the City of Richmond's Department of Public Utilities.

**Employee Assistance Program (EAP)** - an established program which provides counseling, informational and rehabilitation services to the City work force.

**Employee** - any person who is employed by the City of Richmond and for which he receives some form of compensation.

**HRER** - the City of Richmond's Department of Human Resources & Employee Relations.

**MRO (Medical Review Officer)** - the licensed physician, either a Doctor of Medicine, or a Doctor of Osteopathy, responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders, including the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs; and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his medical history and other relevant biomedical information.

**OPS** - Office of Pipeline Safety, United States Department of Transportation.

**Performing a Covered Function** - an employee is considered to be performing a covered function (safety-sensitive function) during any period in which he is actually performing, ready to perform, or immediately available to perform such covered functions.

**Pipeline** - all parts of the physical facilities through which products move in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.

**Pipeline Facilities** - pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of products.

**Pipeline Operator** - is defined as an owner or operator of pipeline facilities.

**Prohibited Drugs** - Any of the following substances specified in Schedule I or Schedule II of the Controlled Substances act, 21 U.S.C. 801.812 (1981 & 1987 Cum. P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

**Refusal to Submit (to a controlled substance test)** - a covered employee fails to provide an adequate urine sample for controlled substances testing without a valid medical explanation after he has received notice of the requirement for drug testing, or engages in conduct that clearly obstructs the testing process.

**RSPA** - the Research & Special Program Administration of the United States Department of Transportation.

**Screening Test (or initial test)** - in controlled substances testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

**State Agency** - an agency of the Commonwealth of Virginia that participates under Section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

**Substance Abuse Professional** - a 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 drug abuse related disorders.

**49 CFR, Part 40** - Refers to the U.S. Department of Transportation Drug Testing Program Procedures (laboratory testing, specimen collection, etc.) in the federal register.

**49 CFR, Part 199** - Refers to the U.S. Department of Transportation (RSPA) Drug Testing rules in the federal register.

## **E. APPLICABILITY**

- (1) General - All RSPA covered employees who fall under the “persons covered” section of Safety Regulation 49 CFR, Part 199 will be subject to drug testing. “Persons covered” includes all persons listed under the definition of “RSPA Covered Employee” as stated earlier in the City’s Substance Abuse Policy, as well as the employees of contractors working for the City on natural gas pipelines and natural gas facilities.
- (2) Covered Positions - HRER maintains a complete listing of positions in the City which will be required to adhere to RSPA drug testing. Periodically, HRER will review the list of “covered persons” to ensure it is up-to-date and accurate. Names and positions may be added or deleted as jobs and circumstances change.
- (3) Notifying Employees of Plan - The goal of the City is to establish and maintain a workplace that is free from drug use; one that is safe and healthy, and one that is a model for others to follow. Therefore, as early as the interview process, all job applicants will be informed as to whether or not the position / job they are seeking is an “RSPA” position, subject to the RSPA rules and procedures regarding drug testing. If hired by the City of Richmond, each new employee will be informed of the City’s drug testing policy by his immediate supervisor and will be required to sign an “Acknowledgment/Receipt Form” prior to receiving his individual copy of the City’s Substance Abuse Policy. In addition, City employees will be notified of any changes and / or revisions through notices.
- (4) RSPA Unauthorized Substances - RSPA employees covered under the RSPA Regulations, 49 CFR, Part 199, will be tested for the following unauthorized substances:
  - - Marijuana (THC)
  - - Cocaine
  - - Opiates (Morphine and Codeine)
  - - Phencyclidine (PCP)
  - - Amphetamines (Amphetamine, Methamphetamine)

## **F. TYPES OF TESTING**

### ***1 - PRE-EMPLOYMENT TESTING***

- (1) The City will not hire or contract for any covered person, unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of RSPA, 49 CFR, Part 199.
- (2) All job applicants selected for employment in a covered position with the City shall undergo a drug test as part of a pre-employment physical. **It is the City’s policy, under its independent authority that any persons testing positive will be denied employment in**



any position with the City for a period of three (3) years from the date of the drug test results.

- (3) A drug test will be conducted when a current employee moves from a non-covered position into a RSPA covered position.
- (4) An employee who previously is separated from a RSPA covered position will be subject to another pre-employment test prior to performing in his former position or in any other RSPA covered position.
- (5) All pre-employment job applicants who test positive shall have the right to have their original sample re-tested by a laboratory approved by the Medical Review Officer, at the applicant's own expense.
- (6) Employees moving into a RSPA covered position who test positive have the right to have their original sample re-tested at their own expense. Employees who fail the re-test will not be moved to a RSPA position.
- (7) An employee who moves from one RSPA position to another RSPA position without interruption of service, shall not require testing under Section C, Part II, of the City's Substance Abuse Policy.

## ***2 - POST-ACCIDENT TESTING***

- (1) Any employee who is involved in an accident while on duty or whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident, shall be tested for drugs as soon as possible, but not later than thirty-two (32) hours after the accident. In addition, all steps shall be taken by supervisors to follow the procedures established in the "Reasonable Suspicion Testing" paragraph of this Policy.
- (2) If an employee is injured, unconscious, or otherwise unable to grant consent to the drug test, all reasonable steps must be taken to obtain a urine sample. The City or its agents may decide not to test under this paragraph; however such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.
- (3) The refusal of an employee to submit to a post-accident test as soon as possible, but not later than thirty-two (32) hours of such a request shall be a violation of the City's Substance Abuse Policy.

## ***3 - RANDOM TESTING***

- (1) Testing Requirements - Once notified for random testing, the employee will be tested at the City's Employee Medical Services (EMS) provider. The employee will have a total of forty-five (45) minutes to report to the EMS testing site from the time of notification of a random alcohol detection test. There are no exceptions.

- (2) A covered employee who tests positive for drug use will be removed from performing covered functions. Such employee shall be disciplined in accordance with provisions as outlined in the Substance Abuse Policy.

#### **4 - REASONABLE SUSPICION TESTING**

- (1) The City of Richmond will test a RSPA covered employee when there is reasonable cause to believe the employee is under the influence and / or using prohibited drugs.
- (2) Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a supervisor, exercising sound judgment, to suspect that an employee is under the influence of drugs.
- (3) Every supervisor covered by this Policy, who will determine whether or not an employee will be subject to a drug test will receive at least a one hour training period on the specific physical, behavioral and performance indicators of probable drug use.
- (4) In addition to the above, the City's Employee Assistance Program (EAP) will coordinate training with (HRER), or other pertinent sources, in order to provide all covered employees with the necessary training on drug awareness.

#### **G. CONSEQUENCES - DISCIPLINARY ACTIONS FOR RSPA COVERED POSITIONS**

Once the Medical Review Officer makes a determination that there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the City of Richmond will not knowingly use such employee or person in any capacity.

**NOTE:** Rehabilitation is not mandated by RSPA Regulations.

**NOTICE :** The following consequences & disciplinary actions are imposed pursuant to the City of Richmond's independent government authority.

**It is the City's policy to dismiss any covered employee who fails or refuses a drug test.**

- (1) Refusal To Report For Assessment With A Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and / or referral for treatment with the City's substance abuse professional, he shall be removed from a covered position **and dismissed**.
- (2) Refusal To Enter Or Successfully Complete A Rehabilitation Program - If an employee, after assessment, is referred for rehabilitation and the employee refuses to enter or fails to successfully complete such a rehabilitation assessment program, he shall be removed from performing a covered function **and dismissed**.
- (3) Refusal To Submit To A Drug Test - An employee who refuses to provide an adequate urine sample for drug testing without a valid medical explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, shall be removed from performing a covered function **and dismissed from the City**.

Any RSPA covered employee who violates the provisions of this Part of the City's Substance Abuse Policy **shall be dismissed from the City's service and barred from employment in any position, personal services contract or with any contractor doing direct business with the City of Richmond for a period of three (3) years from the date of dismissal.**

#### **H. CONTRACTOR PERSONNEL**

- (1) General - All contractors utilized by the City shall be notified of the testing and reporting regulations as set forth in 49 CFR, Part 199 and Part 40. The City shall include in the contract of pipeline contractors a clause requiring testing, education and training in accordance with Part 199 and Part 40 for covered functions. Such contractors are required to submit statistical and enforcement data on their drug testing program to DPU on a quarterly basis.
- (2) Records And Access - Contractors shall retain copies of appropriate records required by Part 199 and Part 40. The records and access to the contractor's property shall be readily accessible for inspection by City officials, RSPA officials, and representatives of those state agencies under which jurisdiction the contractor operates.

#### **I. SPECIMEN COLLECTION REQUIREMENTS**

A complete copy of the specimen collection requirements may be found in Appendix F.

#### **J. DRUG TESTING LABORATORY**

- (1) Testing Laboratory/Analysis Of Samples - The City uses a laboratory certified by the DHHS to conduct the analysis of urine samples. These documents contain specific Drug Testing Procedures and may be found in Appendix F. The testing laboratory will comply with all methods and procedures of 49 CFR, Part 40 and will provide annual reports to the contracting agency and DPD showing compliance. Testing laboratory information for the City's ADP is listed in Appendix G.
- (2) Program Contractor - The program contractor for the RSPA Anti-Drug Plan is listed in Appendix H. The program contractor will comply with all methods and procedures of 49 CFR, Part 40 and will provide monthly reports to HRER showing compliance.

#### **K. BLIND SAMPLE PERFORMANCE TEST PROCEDURES**

Regulations regarding the submission of blind samples may be found in Appendix F of this Policy. The City's EMS provider shall be responsible for the submission of blind samples in compliance with Federal Regulations.

#### **L. REVIEW OF DRUG TESTING RESULTS**

HRER contracts for the services of a Medical Review Officer (MRO). The name, address and specific responsibilities of the MRO for the City are listed in Appendix H.

#### **M. RETENTION OF SAMPLES**

- (1) General - Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term frozen storage for at least 365 days.
- (2) Retention Period - Within this 365 day period, the employee or a designated representative, RSPA or other state agencies with jurisdiction, or HRER may request in writing that the sample be retained for an additional period of time. If the laboratory does not receive a request to retain the sample within the 365 day period, the sample may be discarded.

#### **N. RETESTING OF SAMPLES**

- (1) Challenges Of Test Results - All RSPA applicants and employees who test positive may challenge the test results by notifying the HRER DPD in writing within seventy - two (72) hours of receiving the test results. If a test result is challenged, the original sample will then be re-tested by a certified DHHS laboratory other than the City's medical provider primary laboratory. The selection of the certified laboratory must be made from a list of laboratories maintained by the EMS provider and approved by the DPD.
- (2) NOTE: Because some analyses deteriorate or are lost during freezing and/or storage, quantization for a re-test is not subject to a specific cutoff requirement, but must provide data sufficient to confirm the presence or absence of the drug or metabolite.
- (3) All costs associated with a positive re-test will be borne by the applicant or employee raising the challenge and must be prepaid.
- (4) Disclosure Of Information - Except as provided in the following paragraphs, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.
- (5) The MRO may disclose such information to the DPD in HRER, RSPA, or other Federal safety agency officials; or to a physician responsible for determining the medical qualification of the applicant or employee under the appropriate RSPA regulations, as applicable, only if :
  - ◆ An applicable RSPA regulation permits or requires such disclosure;
  - ◆ In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable RSPA rule; or
  - ◆ In the MRO's reasonable medical judgment, in a situation in which there is not a RSPA rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her covered function could pose a significant safety risk.
- (6) Before obtaining medical information from an applicant or employee as part of the verification process, the MRO shall inform the applicant or employee that information may be disclosed to third parties as provided in this section and the identity of any parties to whom information may be disclosed.

#### **O. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The City contracts with an Employee Assistance Program (EAP). EAP services are available to all RSPA covered employees covered under this Policy. The EAP staff shall be available to provide employees with the appropriate education regarding the use of prohibited drugs. Drug information will be periodically distributed and / or displayed in work areas. The telephone number of EAP offices is displayed in work areas and is contained in Appendix D.

#### **P. RECORDKEEPING PROCEDURES**

The City of Richmond maintains testing records in compliance with 49 CFR, Part 199. All recordkeeping requirements and guidelines may be found in Appendix E.

## **SECTION D**

### ***COVERAGE FOR ALL REMAINING CITY GROUPS CITY OF RICHMOND, VIRGINIA***

#### ***PART I-- ALCOHOL MISUSE PREVENTION PLAN (AMPP)***

##### **A. SENSITIVE EMPLOYEES**

An employee in a sensitive position shall be subject to all the rules of conduct set forth in Section D, Part I, of the Substance Abuse Policy. For purposes of this Policy, sensitive positions are defined as those in which:

- (1) the duties authorize or require the carrying of a weapon;
- (2) work predominately with children;
- (3) position duties, if neglected would have a significant or major impact on the citizens or the public safety; and,
- (4) hold the title of Chief Administrative Officer, Deputy Chief Administrative Officer, the Alcohol/Drug Program Manager, and all employees that have security access to the Substance Abuse data systems.

A covered employee in a sensitive position who violates any of these rules of conduct shall be disciplined pursuant to the Substance Abuse Policy. Sensitive employees who are dismissed pursuant to Section D, Part I, of the Substance Abuse Policy shall be barred from employment in any City position or personal services agreement for one (1) year from the date of dismissal.

##### **B. EMPLOYEES IN MANAGEMENT AND SUPERVISORY POSITIONS**

Employees in management and supervisory positions shall be under a duty to ensure maximum compliance with this Policy and to set an example for other employees. A management and supervisory employee who knowingly violates or fails to enforce any provision of the Substance Abuse Policy shall be subject to immediate disciplinary action, up to and including dismissal.

##### **C. PRIOR OFFENDER POOL**

Employees who have a first time offense of testing positive for alcohol at a concentration level of 0.02 (point zero two) or greater, but less than 0.04 (point zero four) shall be disciplined as specified in this Policy. After such discipline (except as noted in Section D, Part I, H, (6), these employees shall be considered 'prior offenders' and placed in a separate random testing pool for a period of sixty (60) months from their return to duty date.

##### **D. APPLICABILITY**

Section D, Part I, of this Policy applies to all employees in the City's classified & unclassified services except those persons outlined under Federal Motor Carrier Safety Administration (FMCSA) coverage (Section B) and Research and Special Program Administration (RSPA) coverage (Section C) of this Policy.

## **E. TYPES OF TESTING**

### ***1 - PRE-EMPLOYMENT TESTING***

- (a) All applicants covered by Section D, Part I, who are selected for employment and given a contingent offer of employment shall undergo an alcohol detection test as part of a pre - employment physical. Any person testing positive shall be denied employment and shall not be eligible for employment in any position or personal services agreement with the City for a period of one (1) year from the date of the test results.
- (b) All former employees shall undergo a pre-employment alcohol detection test prior to performing in their former position, in any other position, or a personal services agreement with the City. All former employees who were dismissed for violations of this Policy shall not be eligible for employment with the City in any position or with direct coverage contractors on a personal services agreement for a period of one (1) year from the date of dismissal.
- (c) A Pre-employment test result for alcohol is valid for a **maximum** period of thirty (30) calendar days from the date of the test.

### ***2 - MOVEMENT TESTING***

- (a) An alcohol detection test will be conducted before a current employee transfers, is reassigned, demoted, promoted or moved from a position in one testing pool to a position in a different testing pool covered by the Substance Abuse Policy (i.e. from a non-test position to a random test position).
- (b) Alcohol detection testing is not permitted for employees moving without interruption, from a non-test position to a non-test position; **or** movement within the same test pool.
- (c) If the employee refuses the alcohol test, he shall not be forced to have a test administered, but shall be immediately placed on Leave Without Pay (LWOP) from duty and sent or transported home.
- (d) The refusal of an employee to submit to a movement test within forty-five (45) minutes after such test has been scheduled with the City's Employee Medical Services Provider shall be a violation of this Policy and shall be the basis for imposition of discipline. In no case shall any employee who refuses an alcohol detection test be allowed to return to duty.

### ***3 - ANNUAL TESTING***

- (a) The City may elect to impose annual physicals for specific positions. These physicals may include alcohol detection tests and are in addition to any other testing the employee may be subject to. Refusal to take an annual physical is considered insubordination and shall be the basis for imposition of discipline.
- (b) If the employee refuses, he shall not be forced to have a test administered but shall be immediately placed on Leave Without Pay (LWOP) and sent or transported home.

- (c) The refusal of an employee to submit to an annual physical test within forty-five (45) minutes of such an initial request shall be a violation of this Policy. In no case shall any employee who refuses an alcohol detection test be allowed to return to duty.

#### **4 - RANDOM TESTING**

- (a) All employees who serve in a position determined as sensitive and all prior offender employees covered by Section D, Part I, are subject to random alcohol testing.
- (b) Testing Requirements - Once notified for random testing, the employee will be tested at the City's Employee Medical Services (EMS) provider's testing site. The employee will have a total of forty-five (45) minutes to report to the EMS testing site from the time of notification of a random alcohol detection test. There are no exceptions.
- (c) The failure of an employee who is on duty to report and submit to a random test within forty-five (45) minutes after receiving notification of such test shall be considered as a refusal and shall be the basis for the imposition of discipline in accordance with this Policy.
- (d) If the employee still refuses, he shall not be forced to have a test administered, but shall be immediately placed on Leave Without Pay (LWOP) and sent or transported home. In no case shall the employee who refuses a random alcohol detection test be allowed to return to duty.
- (e) A covered employee who tests positive for alcohol at the respective violation level will be removed from performing covered functions. Such employee shall be disciplined in accordance with the provisions of the Substance Abuse Policy.

#### **5 - REASONABLE SUSPICION TESTING**

- (a) When any supervisor has a reasonable suspicion that an employee is under the influence of alcohol and/or drugs he shall instruct the employee to be tested.
- (b) Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of alcohol or drugs. By way of example, and without limitation, any of the following conditions alone, or in combination, may comprise reasonable suspicion:
- ◆ Unexplained inability to perform normal job functions.
  - ◆ Slurred speech.
  - ◆ Smell of alcohol on breath/body.
  - ◆ Any unusual lack of physical coordination or loss of equilibrium.
  - ◆ Unexplained hyperactivity or depression and withdrawal.
  - ◆ Unexplained inability to think or reason at the employee's normal levels.
  - ◆ Bizarre behavior or ideation.



- ◆ Possession of alcohol, or the presence of alcohol or alcohol containers in an area subject to the employee's control.
  - ◆ On duty use of alcohol either during work time or on City of Richmond premises.
  - ◆ Information obtained from a reliable person with personal knowledge.
- (c) Any supervisor believing that there is reasonable suspicion to require an employee to submit to an alcohol and/or drug detection test shall immediately notify the Appointing Authority or designee to meet him to observe the employee's behavior. In order to make a reasonable determination decision, one of the required parties observing the employee, shall have received at least one hundred and twenty (120) minutes of EAP training on the specific contemporaneous physical, behavioral performance indicators and symptoms of alcohol misuse and drug use. If it is determined by both parties that reasonable suspicion exists, the employee shall receive both alcohol and substance detection testing, and the following procedure shall be promptly followed:
- ◆ The supervisor or designee shall document in writing the facts constituting reasonable suspicion that would lead the supervisor/designee to believe the employee is under the influence of alcohol and/or drugs.
  - ◆ The supervisor or designee shall either transport, or arrange to have the employee transported, to the City's designated Employee Medical Services (EMS) provider to conduct the necessary tests. In no case shall the employee be allowed to drive or report to the EMS provider alone.
  - ◆ If the employee refuses to be tested, the supervisor shall remind him that he is required to submit to alcohol and substance detection testing under this Policy and that refusal to do so will constitute insubordination and a violation of this Policy.
- (d) If the employee still refuses, he shall not be forced to have a test administered, but shall be immediately suspended without pay from duty and sent or transported home.
- (e) The refusal of an employee to submit to a reasonable suspicion test within forty five (45) minutes of such an initial request shall be a violation of this Policy and shall be the basis for imposition of discipline. In no case shall any employee who refuses an alcohol and/or substance detection test be allowed to return to duty.

#### ***6 - POST - ACCIDENT TESTING***

(a) **Motor Vehicle Accident:**

As soon as possible following a motor vehicle accident, the City shall test the employee driver for alcohol when either:

- ◆ the accident involved a fatality; or
- ◆ the employee driver receives (or is expected to receive) a citation within eight (8) hours under state or local law for a moving violation arising from the accident; or

- ◆ bodily injury occurs to any person who, as a result of the injury, receives medical treatment; or
- ◆ one of more of the motor vehicles incurred disabling damage as a result of the accident, requiring a motor vehicle to be transported away from the scene; or
- ◆ total property damage exceeds (or is expected to exceed) \$10,000; or
- ◆ at the time of the accident it is determined by any supervisor in the employee's supervisory chain of command or safety officer to have been preventable and/or is a result of the employee/operator's negligence, poor judgment, or failure to follow standard operating norms.

**(b) Motorized Equipment Accident:**

At the time of the accident it is determined to have been preventable and/or the result of the employee/operator's negligence, poor judgment or failure to follow standard operating norms, the City shall promptly test each employee who is involved in a motorized equipment accident while on duty if that employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

**In addition, all steps shall be taken by supervisors to follow the procedures established in the "Reasonable Suspicion Testing" section of this Policy.**

- (c) It is the responsibility of the applicable employee's supervisor or supervisory command to ensure that the provisions of post-accident testing are followed.
- (d) The decision not to administer an alcohol test under Section D, Part I, of the Substance Abuse Policy shall be based on the respective supervisor's determination, using the best available information at the time of the determination.
- (e) Each employee covered by this Part shall be required to submit to an alcohol test within forty-five (45) minutes after having been requested and notified to do so by the supervisor. If a test is not administered within two (2) hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not properly administered. If a test is not administered within eight (8) hours following the accident, the City shall cease all attempts to conduct an alcohol test and the supervisor shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the APM in HR.
- (f) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or Department representative of his location if he leaves the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.
- (g) The employee must remain available for alcohol testing and may not consume any alcohol for eight (8) hours following the accident or until the alcohol test has been conducted.

Notwithstanding the previous statement, nothing in this Policy shall prevent employees from seeking and obtaining emergency medical care whenever necessary.

- (h) All reasonable steps will be taken to obtain an evidential breath sample from the employee after an accident. However, if the employee is unable to give an evidential breath sample, a urine or blood sample test may be performed for employees covered by Section D, Part I. If the employee is conscious and able to give one of the tests described by this Part (in the opinion of a medical professional) and refuses to be tested, that employee shall be immediately removed from duty. The refusal of an employee to submit to a post - accident test within forty-five (45) minutes of such a request shall constitute insubordination and shall be the basis for the imposition of discipline.
- (i) Under no circumstances shall a supervisor cause a breath, blood, or urine sample to be taken from an unconscious employee.
- (j) The City recognizes post-accident tests which are conducted by Federal, State, and local officials as meeting the requirements of the post-accident section under the following conditions:
  - ◆ the official must have independent authority to conduct the test;
  - ◆ the test must conform to local requirements; and
  - ◆ the alcohol tests require a blood, breath, or urine sample.

**7 – EMPLOYEE ASSISTANCE TESTING/RETURN TO DUTY TESTING**

**(a) Employee Assistance Testing**

- (1) An employee who tests positive (below the point zero four {04} level) for alcohol use and who has been removed from duty and referred to the Employee Assistance Program (EAP) shall be subject to periodic unannounced EAP testing while in the EAP program, as a condition of continued employment. Such testing shall be at the discretion of the EAP Counselor.
- (2) If the City's Substance Abuse Professional makes a determination that some form of evaluation and/or treatment is required, then the employee must comply with the outlined provisions in order to be considered eligible to return-to-duty. The affected employee may utilize his existing leave time during the period of rehabilitation. When the employee exhausts all available leave time, the period of time in rehabilitation will be recorded as Leave Without Pay (LWOP).
- (3) Such an employee may be returned to work at the recommendation of the City's Medical Review Officer and upon approval of the Alcohol Program Manager (APM).
- (4) Once an employee is returned to duty, he shall be subject to the mandatory rehabilitation (EAP) test program as dictated by the Substance Abuse Professional. The employee will be subject to at least six (6) unannounced alcohol and drug follow-up tests during the first twelve (12) months following his/her return to duty. The Substance Abuse Professional may discontinue the requirement for follow-up testing at any time after the initial six tests have been completed, if the Substance Abuse Professional makes the determination that such testing is no longer warranted.

- (5) The EAP may require a covered employee participating in alcohol rehabilitation to also submit to a drug test when the Substance Abuse Professional has reason to suspect drug involvement.

**(b) Return to Duty Testing**

- (1) Once released to return to duty by the EAP, the employee shall undergo a return-to-duty alcohol test by the City's Medical Services Provider, with a result indicating an alcohol concentration of less than 0.02 (point zero two). Any employee who fails a return to duty test shall be treated as committing a second offense and shall be dismissed in accordance with this Policy.
- (2) All employees who have tested positive for alcohol and subsequently returned to duty pursuant to this Part shall be viewed as "positive" employees and placed in a separate "prior offenders" random testing pool.

**8- FOLLOW-UP TESTING / PRIOR OFFENDER POOL**

- (a) Following the determination that a covered employee is in need of assistance as a result of a violation of the SAP based on alcohol misuse and is eligible to return to work, the employee shall be placed in the follow-up test/prior offenders' pool for sixty (60) months from the date of return to duty.
- (b) Employees placed in the follow-up test/prior offenders' pool will be randomly tested by the City in addition to any and all other test pools (i.e. random, annual, EAP, etc.) in which they may be included.
- (c) An employee who is placed in the prior offenders' pool shall be tested for both alcohol and prohibited drugs each and every time they are randomly selected from the prior offenders' pool.

**NOTE – Employees must be on-duty or governed by the stand-by provisions of post-accident testing to be subject to alcohol and substance detection testing.**

**F. ALCOHOL PROHIBITED CONDUCT**

- (1) Alcohol Concentration - An employee covered by Section D, Part I, shall be prohibited from reporting for duty or remaining on duty requiring the performance of any City functions while having an alcohol concentration of 0.02 (point zero two) or greater.
- (2) Pre-Duty Use - Employees covered by this Part are prohibited from using alcohol within eight (8) hours prior to performing City functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty. If the City or its agents has actual knowledge that an employee has used alcohol within eight (8) hours prior to performing duties or within the time period after the employee has been notified to report for duty, the employee will not be permitted to perform or continue to perform any functions.
- (3) Possession of Alcohol - All employees covered by this Part are prohibited while on duty from possessing or transporting alcohol (unless it is manifested and transported as a part of an official City of Richmond shipment), including the possession of medicines containing alcohol unless the seal is unbroken.

- (4) On-Duty Use - Employees covered by this Part are prohibited from using alcohol while performing any duties. If the City or its agents has actual knowledge that an employee is using alcohol while on-duty, the employee shall not be permitted to perform or continue to perform any functions.
- (5) Employees who are on a ‘normal’ time period off and who are called to duty to respond to an emergency or call-back situation who have been using alcohol, are required to inform their supervisor or the management person responsible for the call-back (can be any supervisory or management level in the individuals normal chain of command), that he has consumed alcohol or medication containing alcohol. In such instances the employee should not report for duty and the supervisor/manager shall not require the employee to report to duty.

#### **G. REFUSAL TO SUBMIT TO ALCOHOL TESTS**

- (1) An employee is considered to have refused to take an alcohol test based on the following:
  - (a) Failure to appear for the alcohol test within the prescribed time after being requested and notified to do so.
  - (b) Failure to remain at the test site until the testing process is complete.
  - (c) Failure to attempt to provide a sufficient breath specimen as required in the testing process, and the MRO has determined through a required medical evaluation, that there is no medical explanation for the failure.
  - (d) Failure to cooperate with any part of the testing process; or, engages in conduct that clearly obstructs the testing procedure.
- (2) Refusal to submit to any alcohol test shall result in the employee not being allowed to perform or to continue to perform in any duties. The employee will be removed from his position, the employee’s actions reviewed by the respective department’s Appointing Authority/designee and disciplinary action will be imposed per the City’s Substance Abuse Policy.

#### **H. CONSEQUENCES - DISCIPLINARY ACTIONS**

- (1) Refusal To Report For Mandatory Assessment With the City’s Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and/or referral for treatment with a substance abuse professional, he/she shall be dismissed.
- (2) Refusal To Enter or Successfully Complete A Mandated Rehabilitation Program - If an employee, after assessment by the City’s Substance Abuse Professional, is referred for rehabilitation and the employee refuses to enter or fails to successfully complete such a rehabilitation assessment program, he/she shall be dismissed.
- (3) Repeat Usage - In all cases in which an employee tests a second time at a confirmed alcohol concentration of 0.02 (point zero two) or greater, he/she shall be dismissed.
- (4) Refusal To Submit To or Obstruction Of An Alcohol Test - An employee who refuses to provide an adequate breath sample for alcohol testing without a valid medical

explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, shall be dismissed from the City.

(5) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration Of 0.02 or Greater, But Less Than 0.04 (point zero four) - When an employee has tested for alcohol at a concentration of 0.02 or greater, but less than 0.04 (point zero four), the following actions shall be imposed:

- (a) employee shall be removed from performing any duties, and
- (b) non - exempt employees shall be immediately placed on Leave Without Pay (LWOP) for a period of forty (40) work hours; exempt employees shall be immediately placed on Leave Without Pay (LWOP) for a period of one (1) full work week, and
- (c) the employee shall conditionally return to duty upon completion of the suspension and after he has retested at an alcohol concentration level below 0.02 (point zero two), and
- (d) employee shall be given a mandatory referral to the City's EAP, of which participation in and successful completion of rehabilitation is required as a condition of continued employment upon return to duty, and
- (e) employee shall be required to sign a 'conditional return to employment' agreement before returning to duty. It shall be the responsibility of the affected department to secure the proper signatures on this document and forward a copy to HR, and
- (f) upon return to duty, employee shall be placed in the prior offender/follow-up random test pool for sixty (60) months from date of return to duty.

(6) Results Of An Alcohol (Confirmation) Test Indicating An Alcohol Concentration Of 0.04 (point zero four) Or Greater - Any employee covered by this Part who tests at a concentration level of 0.04 (point zero four) or greater shall be dismissed from the City. Such employee shall also be prohibited from re-employment with the City, participation in a personal services agreement or employment with direct coverage contractors for a period of one (1) year from the date of dismissal.

(7) Resignation - If an employee attempts to resign at any time during the testing process (i.e. after being requested and notified to report for testing; up to the final disposition of disciplinary action) the department shall reject the resignation and notify the employee in writing that a violation of the Substance Abuse Policy is carried as a dismissal. The department shall notify the employee that a one (1) year employment bar is in effect under the provisions of the Policy.

## **I. ALCOHOL TESTING REQUIREMENTS**

(1) The alcohol testing procedures contained herein and in Appendix B shall be complied with by the designated alcohol testing sites.

- (2) The alcohol testing site shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the testing and processing of alcohol test results. An independent medical facility may also be utilized as an alcohol testing site provided the other applicable requirements of Appendix B are met.
- (3) An alcohol testing site shall be any suitable location where a breath alcohol test can be collected under conditions set forth in Appendix B, including a properly equipped mobile facility. A designated alcohol testing site shall provide for privacy during the testing period and completion of all necessary record procedures.

## **J. EMPLOYEE ASSISTANCE PROGRAM**

The Employee Assistance Program (EAP) shall function as the City's Substance Abuse Professional and shall provide appropriate education to all employees regarding the use of alcohol and the availability of counseling, rehabilitation and other employee assistance. EAP shall also provide all management and supervisory personnel with at least one (1) one hundred and twenty (120) minute training session on the specific, contemporaneous physical, behavioral performance indicators and symptoms of alcohol misuse. The City's APD shall be the final authority regarding employment matters as they relate to the administration of the EAP in regards to the City's Substance Abuse Policy.

## **SECTION D**

### ***COVERAGE FOR ALL REMAINING CITY GROUPS CITY OF RICHMOND, VIRGINIA***

#### ***PART II -- ANTI-DRUG PLAN (ADP)***

##### **A. EMPLOYEES IN SENSITIVE POSITIONS**

An employee in a sensitive position shall be subject to all the rules of conduct set forth in this section of the Substance Abuse Policy. For purposes of this Policy, sensitive positions are defined as those positions in which:

- (1) the duties authorize or require the carrying of a weapon;
- (2) work predominately with children;
- (3) position duties, if neglected would have a significant or major impact on the citizens or the public safety; and,
- (4) hold the title of Chief Administrative Officer, Deputy Chief Administrative Officer, the Alcohol/Drug Program Manager, and all employees that have security access to the Substance Abuse data systems.

An employee in a sensitive position who violates any of these rules of conduct shall be disciplined pursuant to the Substance Abuse Policy. Sensitive employees who are dismissed pursuant to this Section shall be barred from employment in any City position for three (3) years from the date of dismissal

##### **B. EMPLOYEES IN MANAGEMENT AND SUPERVISORY POSITIONS**

Employees in management and supervisory positions shall be under a duty to ensure maximum compliance with this Policy and to set an example for other employees. A management and supervisory employee who knowingly violates or fails to enforce any provision of the Substance Abuse Policy shall be subject to immediate disciplinary action, up to and including dismissal.

##### **C. APPLICABILITY**

Section D, Part I, of this Policy applies to all employees in the City's classified & unclassified services except those persons outlined under the Federal Motor Carrier Safety Administration (FMCSA) coverage (Section B) and Research and Special Programs Administration (RSPA) coverage (Section C).

##### **D. TYPES OF TESTING**

###### ***1 - PRE-EMPLOYMENT TESTING***

- (a) All applicants covered by Section D, Part II, who are selected for employment and given a contingent offer of employment shall undergo a substance detection test as part of a pre - employment physical. Any person testing positive shall be denied employment and shall not be eligible for employment in any position or personal services agreement with the City for a period of three (3) years from the date of the test.



- (b) All former employees shall undergo a pre-employment substance detection test prior to performing in their former position, in any other position, or a personal services agreement with the City. All former employees who were dismissed for violations of this Policy shall not be eligible for employment with the City in any position or on a personal services agreement for a period of three (3) years from the date of dismissal.
- (c) Pre-employment tests for drugs are valid for a maximum period of thirty (30) calendar days from the date of the test.

## ***2 - MOVEMENT TESTING***

- (a) A substance detection test will be conducted when a current employee transfers, is reassigned, demoted, promoted or moved from a position in one testing pool to a position in a different testing pool covered by the Substance Abuse Policy (i.e. from a FMCSA position to Sensitive position, or from a RSPA position to a Sensitive position).
- (b) Substance detection testing is not permitted for employees moving, without interruption, from a non-test position to a non-test position; or movement within the same test pool.
- (c) If the employee refuses the substance detection test, he shall not be forced to have the test administered, but shall be immediately removed from duty and from the worksite.
- (d) The refusal or failure of an employee to submit to a movement test after such test has been scheduled with the City's Medical Services Provider shall be a violation of this Policy and shall be the basis for imposition of discipline. In no case shall any employee who refuses a drug test be allowed to return to duty.

## ***3 - ANNUAL TESTING***

- (a) The City may elect to impose annual physicals for specific positions as a condition of employment. These job-related annual physicals may include substance detection tests and are in addition to any other testing the employee may be subject to as a condition of employment. Refusal to take a job-related annual physical is considered insubordination and shall be the basis for imposition of discipline.
- (b) If the employee refuses a drug detection test, he shall not be forced to have a test administered, but shall be immediately placed on Leave Without Pay (LWOP) and sent or transported home.
- (c) The refusal of an employee to submit to an annual physical test within thirty (30) minutes of such an initial request shall be a violation of this Policy. In no case shall any employee who refuses a drug detection test be allowed to return to duty.

## ***4 - RANDOM TESTING***

- (a) All employees who serve in a position determined as sensitive and all prior offender employees covered by this Section D, Part II, are subject to random substance detection testing.
- (b) Testing Requirements - Once notified for random testing, the employee will be tested at the City's Employee Medical Services (EMS) provider's testing site. The employee will

have a total of forty-five (45) minutes to report to the EMS testing site from the time of notification of a random substance detection test. There are no exceptions.

- (c) The failure of an employee who is on duty to report and submit to a random test within forty-five (45) minutes of such a request and notification shall be considered as a refusal and shall be the basis for the imposition of discipline, in accordance with this Policy.
- (d) If the employee still refuses, he shall not be forced to have a test administered, but shall be immediately placed on Leave Without Pay (LWOP) and sent or transported home. In no case shall any employee who refuses a random substance detection test be allowed to return to duty.
- (e) A covered employee who tests positive for prohibited drug use will be removed from performing covered functions. Such employee shall be disciplined in accordance with the provisions of the Substance Abuse Policy.

#### **5 - REASONABLE SUSPICION TESTING**

- (a) When any supervisor has a reasonable suspicion that an employee is under the influence of alcohol and/or drugs he shall instruct the employee to be tested.
- (b) Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a reasonable person to suspect that an employee is under the influence of alcohol or drugs. By way of example, and without limitation, any of the following conditions alone, or in combination, may comprise reasonable suspicion:
  - ◆ Unexplained inability to perform normal job functions.
  - ◆ Slurred speech.
  - ◆ Smell of alcohol on breath/body.
  - ◆ Any unusual lack of physical coordination or loss of equilibrium.
  - ◆ Unexplained hyperactivity or depression and withdrawal.
  - ◆ Unexplained inability to think or reason at the employee's normal levels.
  - ◆ Bizarre behavior or ideation.
  - ◆ Possession of alcohol, the presence of alcohol or alcohol containers, drugs or drug paraphernalia in an area subject to the employee's control.
  - ◆ On-duty use of prohibited drugs either during work time or on City of Richmond premises.
  - ◆ Information obtained from a reliable person with personal knowledge.
- (c) Any supervisor that believes there is reasonable suspicion to require an employee to submit to an alcohol and/or substance detection test shall immediately notify the Appointing Authority or designee to meet him to observe the employee's behavior. In

order to make a reasonable determination decision, one of the required parties observing the employee shall have received at least one hundred and twenty minutes (120) of EAP training on the specific, contemporaneous physical, behavioral performance indicators and symptoms of alcohol misuse and drug use. If it is determined by both parties that reasonable suspicion exists, the following procedure shall be promptly followed:

- ◆ The supervisor or designee shall document in writing the facts constituting reasonable suspicion that the employee is under the influence of alcohol and/or drugs.
  - ◆ The supervisor or designee shall either transport, or arrange to have the employee transported, to the City's designated Employee Medical Services (EMS) provider to conduct the necessary tests. In no case shall the employee be allowed to drive or report to the EMS provider alone.
  - ◆ If the employee refuses to be tested, the supervisor or designee shall remind him that he is required to submit to alcohol and substance detection testing under this Policy and that refusal to do so will constitute insubordination and a violation of this Policy.
- (d) If the employee still refuses, he shall not be forced to have a test administered but shall be immediately placed on Leave Without Pay (LWOP) and sent or transported home.
- (e) The refusal of an employee to submit to a reasonable suspicion test within forty-five (45) minutes of such an initial request shall be a violation of this Policy and shall be the basis for imposition of discipline. In no case shall any employee who refuses an alcohol and/or substance detection test be allowed to return to duty.

#### ***6 - POST - ACCIDENT TESTING***

- (a) **Motor Vehicle Accident** As soon as possible following a motor vehicle accident, the City shall test the employee driver for drugs when either:
- ◆ the accident involved a fatality; or
  - ◆ the employee driver receives (or is expected to receive) a citation within thirty-two (32) hours under state or local law for a moving violation arising from the accident; or
  - ◆ bodily injury occurs to any person who, as a result of the injury, receives medical treatment; or
  - ◆ one or more of the motor vehicles incurred disabling damage as a result of the accident, requiring a motor vehicle to be transported away from the scene or total property damage exceeds \$10,000; or
  - ◆ at the time of the accident it is determined by any supervisor in the employee's supervisory chain of command or safety officer or law enforcement officer to have been preventable and/or is a result of the employee/driver's negligence, poor judgment, or failure to follow standard operating norms

(b) **Motorized Equipment Accident:**

The City shall promptly determine and test each employee who is involved in a motorized equipment accident while on duty if that employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

**In addition, all steps shall be taken by supervisors to follow the procedures established in the "Reasonable Suspicion Testing" section of this Policy.**

- (c) It is the responsibility of the applicable employee's supervisor or supervisory command to ensure that the provisions of post-accident testing are followed.
- (d) The decision not to administer a drug test under Section D, Part II of the Substance Abuse Policy shall be based on the respective supervisor or supervisory command's determination, using the best available information at the time of the determination.
- (e) Each employee covered by this Part shall be required to submit to a substance detection test within forty-five (45) minutes after requested and notified to do so by the supervisor/manager. If a test is not administered within thirty two (32) hours following the accident, the City shall cease all attempts to conduct the test and shall prepare and maintain on file written documentation indicating why the substance detection test was not conducted. A copy of all such determinations shall be forwarded to the DPD, in HR.
- (f) An employee who is subject to post-accident testing provisions who fails to remain readily available for such testing, including notifying the supervisor or department representative of his location if he leaves the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.
- (g) All reasonable steps will be taken to obtain a urine drug sample from the employee after an accident. If the employee is conscious, and able to give one of the tests described by this Part (in the opinion of a medical professional) and refuses to be tested, that employee shall be immediately removed from duty. The refusal of an employee to submit to a post-accident test within forty-five (45) minutes of such a request shall comprise insubordination and shall be the basis for the imposition of discipline.
- (h) Under no circumstances shall a supervisor cause a sample to be taken from an unconscious employee.
- (i) Nothing in this Policy shall prevent employees from seeking and obtaining emergency medical care whenever necessary.
- (j) The City recognizes post-accident tests, which are conducted by Federal, State, and local officials as meeting the requirements of the post-accident section under the following conditions:
- ◆ the official must have independent authority to conduct the test;
  - ◆ the test must conform to local requirements; and
  - ◆ the drug tests require a sample methodology, which is approved by a US DHHS NIDA, approved laboratory.

**NOTE – Employees must be on-duty or governed by the stand-by provisions of post-accident testing to be subject to alcohol and substance detection testing.**

## **E. REFUSAL TO SUBMIT TO A DRUG TEST**

- (1) Refusal to submit to any test (i.e. random, post-accident, reasonable suspicion, EAP, return-to-duty, follow-up, etc.) shall result in the employee not being allowed to perform or to continue to perform in any function. The employee will be removed from his position, the respective department will review the employee's actions and disciplinary action will be imposed per the City's Substance Abuse Policy.
- (2) An employee shall be **deemed to have 'refused'** to take a substance detection test based on the following:
  - (a) Failure to appear for any test within the prescribed time after being requested and notified to do so.
  - (b) Failure to remain at the testing site until the testing process is complete.
  - (c) Failure to provide a sufficient urine specimen and the MRO has determined through a required medical evaluation, that there is no medical explanation for the failure.
  - (d) Failure to cooperate with any part of the testing process; or, engages in conduct that clearly obstructs the testing procedure.
  - (e) Providing a urine specimen that is someone else's.
  - (f) Failure or decline to take a second test as directed by the employer or MRO in accordance with the collection procedures.
  - (g) Is reported by the MRO as having a verified adulterated or substituted test result.

## **F. CONSEQUENCES - DISCIPLINARY ACTIONS**

- (1) Once the Medical Review Officer (MRO) makes a determination that there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, it is the City's policy to dismiss any covered employee who fails or refuses a drug test.
- (2) Refusal To Report For Mandatory Assessment With The City Substance Abuse Professional - If an employee refuses to report for assessment, evaluation, and/or referral for treatment with the City's substance abuse professional, he/she shall be dismissed.
- (3) Refusal To Enter or Successfully Complete A Mandated Rehabilitation Program - If an employee, after assessment by the City Substance Abuse Professional, is referred for rehabilitation and the employee refuses to enter or fails to successfully complete such a rehabilitation assessment program, he/she shall be dismissed.
- (4) Refusal To Submit To or Obstruction Of A Drug Test - An employee who refuses to provide an adequate urine sample for drug testing without a valid medical explanation after he has received notice of the requirement to be tested, or who engages in conduct that clearly obstructs the testing procedure, he/she shall be dismissed.
- (5) Any covered City employee-who violates the provisions of Section D. Part II of the City's Substance Abuse Policy shall be dismissed from the City's service and barred from employment in any position, personal services contract or with any contractor doing direct business with the City of Richmond for a period of three (3) years from the date of dismissal.

- (6) Resignation - If an employee attempts to resign at any time during the testing process (i.e. after being requested and notified to report for testing; up to the final disposition of disciplinary action) the department shall reject the resignation and notify the employee in writing that a violation of the Substance Abuse Policy is carried as a dismissal. The department shall notify the employee that the re-employment bar is in effect under the provisions of the Policy.

## **G. DRUG TEST PROCEDURES**

- (1) Substances tested for: Any substance detection test conducted pursuant to Section D, Part II of this Policy tests for the following substances which could impair an employee's ability to effectively and safely perform his job:
- ◆ - Marijuana (THC)
  - ◆ - Cocaine
  - ◆ - Opiates (Morphine and Codeine)
  - ◆ - Phencyclidine (PCP)
  - ◆ - Amphetamines (Amphetamine, Methamphetamine)
- (2) Conduct of tests: Tests shall be conducted in accordance with established and reliable clinical procedures. The tests shall include an initial screen, which shall be followed by a confirmation analysis for any screen showing a positive result. Copies of these procedures are contained in Appendix F.
- (3) Challenges to test results: Applicants and current employees who test positive may challenge the test results by notifying the DPD in writing within seventy - two (72) hours of receiving the test results. The original sample will then be retested by a laboratory other than that of the City's medical service provider. The laboratory selected by the applicant / employee must be one of those certified laboratories maintained on the list of the EMS provider. All cost associated with the positive re-test will be initially borne by the City of Richmond. If the challenged test is positive, the City of Richmond may bill the employee/applicant for the actual amount of the retest.
- (4) Legitimate use of drugs affecting test results: A person who is taking a drug legitimately, whether it is a non-prescription drug being used for bona fide health reasons, a prescription drug being taken pursuant to a current valid prescription, or a drug being taken under supervision as part of a court-approved or court-supervised drug rehabilitation program, shall not be deemed to have violated Section D, Part II, of this Policy because of testing positive for that drug, provided the employee can show a current valid prescription or court order for that drug or the employee has on file with his supervisor a notice that he has been issued or is taking such drug. All employees must immediately notify a supervisor or manager of any use of a physician prescribed or non-prescription medicine. Upon request of the MRO, such prescriptions must be presented within twenty-four (24) hours of said request.
- (5) Confidentiality: Laboratory reports or test results shall be placed in the employee's confidential medical file. They may be disclosed to City management or the EAP provider on a strictly need-to-know basis and to the employee on request. Otherwise, the only disclosures which may occur without employee consent are when compelled by law, judicial or administrative process, when the information has been placed at issue in a formal dispute between the City and the employee, in the administration of an employee benefit plan, or when

needed by medical personnel for the diagnosis or treatment of the employee and the employee is not capable of authorizing disclosure.

## **H. MEDICAL REVIEW OFFICER**

The hospital or physician serving as the provider of the City's Employee Medical Services shall designate from its staff a qualified individual to be the City's Medical Review Officer. The Medical Review Officer shall be a licensed physician with knowledge of drug and alcohol abuse disorders. The Medical Review Officer shall review all laboratory results and determine alternative medical explanations for positive results.

The Medical Review Officer shall cooperate with the City's Employee Assistance Program (EAP) in the education and rehabilitation of City employees, and shall perform all medical functions related to the implementation of the various types of testing required by this Policy.

## **I. EMPLOYEE ASSISTANCE PROGRAM**

The Employee Assistance Program (EAP) shall function as the City's Substance Abuse Professional and shall provide appropriate education to all employees regarding the use of drugs, and the availability of counseling, rehabilitation and other employee assistance. EAP shall also provide all management and supervisory personnel with at least one (1) one hundred and twenty (120) minute training session on the specific, contemporaneous physical, behavioral performance indicators and symptoms of probable drug use. The City's DPD shall be the final authority regarding employment matters as they relate to the administration of the EAP with regard to the City's Substance Abuse Policy.

**SECTION E**

**APPENDIX A**

**SUBSTANCE ABUSE POLICY PERSONNEL AND SERVICES**

The following individuals are responsible for administration of the City's Substance Abuse Policy and each of its Sections & Sub-Parts and may be contacted for information regarding the Policy.

Tim Billups  
Interim Director of Human Resources  
Department of Human Resources  
City of Richmond  
900 East Broad Street, Room 902  
Richmond, VA 23219 - 6115  
Telephone Number - (804) 780 - 6630  
Fax Number - (804) 780 - 6856

HR Division Chief  
Employee Relations  
Department of Human Resources  
City of Richmond  
900 East Broad Street, Room 902  
Richmond, VA 23219 - 6115  
Telephone Number - (804) 646 - 7050  
Fax Number - (804) 780 - 6856

Additionally, persons covered under RSPA regulations may contact:

Christopher Beschler  
Director of Public Utilities  
Department of Public Utilities  
730 East Broad Street,  
Richmond, VA 23219  
Telephone Number - (804) 646-5200



**APPENDIX A (CONTINUED)**  
**SUBSTANCE ABUSE POLICY PERSONNEL AND SERVICES**

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**\*\*\* For purposes of this Policy, the Director of Human Resources shall designate a Personnel Administrator to be the APM & DPD for the City of Richmond government.**

## **APPENDIX B**

### **ALCOHOL TESTING PROCEDURES EVIDENTIAL BREATH TESTING (EBT) PROCEDURES**

#### **1 - SCOPE**

The evidential breath testing procedure set forth in this appendix address all the requirements as set forth in 49 CFR, Part 40, and specifies the required form and disposition of such testing forms.

#### **2 - ALCOHOL TESTING FORM AND LOG BOOK**

The BAT shall utilize the Breath Alcohol Testing form. The alcohol testing form must comply with the provisions as contained in 49 CFR, Part 40, with regard to the information that must be contained on the form. The form must address the specific requirements contained in § 40.59.

The City and its EMS contractors may utilize a form that is directly generated by an EBT and may omit the space for affixing a separate printed result to the testing form. The form shall provide triplicate or three consecutive identical copies with copy 1 (white copy) being retained by the APM in HRER, copy 2 (green copy) shall be provided to the employee, and copy 3 (blue copy) shall be retained by the BAT.

The medical provider shall use a log book in conjunction with any EBT used for screening tests that does not meet the requirements listed in the AMPP.

The breath alcohol testing form may include such additional information as may be required for billing or other legitimate purposes necessary to the testing, provided that personal identifying information on the individual (other than the social security number or employee identification number) may not be provided.

#### **3 - BREATH TESTING LOCATIONS**

The City shall ensure that there are sufficient breath testing sites or that the availability of BATs are located within a reasonable proximity to various work locations.

Testing shall be conducted in a location that affords visual and aural privacy to the employee being tested. The location shall prevent unauthorized personnel from seeing or hearing test results. All necessary equipment, personnel, and materials for conducting the alcohol testing shall be provided at the testing site.

A mobile collection facility, such as a van that is equipped for alcohol testing, that meets the requirements set forth in the AMPP may be utilized.

No unauthorized persons shall be permitted access to the testing site when the EBT remains unsecured, or in order to prevent such individuals from seeing or hearing a test result.

In some circumstances the City may have to conduct alcohol testing outdoors at the scene of an accident that does not meet the requirements as specified in post-accident provisions of the

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

AMPP; therefore, the BAT shall provide the necessary visual and aural privacy to the employee to the greatest extent practicable.

The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing site while the testing process is in progress.

**4 - BREATH ALCOHOL TESTING PREPARATIONS**

When an employee arrives at the alcohol testing site, the BAT shall ensure that the individual is positively identified as the employee selected for alcohol testing (e.g. through presentation of photo identification or identification by the department's representative). If the employee's identity cannot be established, the BAT shall not proceed with the alcohol test. If the employee requests, the BAT shall show proper identification to the employee.

The BAT shall explain the alcohol testing process to the employee.

If the employee fails to arrive at the assigned time, the BAT should contact the APM to obtain guidance on any action to be taken.

**5 - SCREENING TEST PROCEDURES**

The BAT shall begin the alcohol testing process by completing Step 1 on the Alcohol Breath Testing form. The employee shall then complete Step 2 by signing the certification. Refusal by the employee to sign the certification shall be regarded as a refusal to take the alcohol test.

The BAT shall select an individually sealed mouthpiece and it shall be opened in full view of the employee and attached to the EBT in accordance with the manufacturer's instructions.

The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT instrument indicates that an adequate amount of breath has been obtained.

If the EBT does not meet the requirements of the AMPP, the BAT shall show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form. The BAT shall record in the log book the test number, date of the test, name of the BAT, location, and quantified test result. The employee shall then initial the log book entry.

If the EBT provides a printed result but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space. The result shall be secured in such a manner that will provide clear evidence of removal, such as the use of tamper-evident tape.

If the EBT prints the test result directly onto the alcohol form, then the BAT shall show the employee the result displayed on the EBT.

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

If the result of the screening alcohol test is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall then sign the certification and fill in the date in Step 4 of the form. If the employee does not sign the certification in Step 4 or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the "Remarks" section. Both the BAT and the employee shall initial or sign the notation. The alcohol test is invalid and the APM and the employee shall be so advised.

At this point, no further testing is authorized. The BAT shall transmit the result of less than 0.02 to the APM or other designated representative in a confidential manner. The City shall receive and store the information so as to ensure that confidentiality is maintained as required in the AMPP.

If the result of the screening test is an alcohol concentration of 0.02 or greater, then the BAT shall perform a confirmation test. If the confirmation test will be conducted by a different BAT, then the BAT who conducts the screening test shall complete and sign the form and log entry. The BAT will upon completion of the alcohol test, provide the employee with Copy 2 of the breath alcohol testing form.

**6 - CONFIRMATION TEST PROCEDURES**

When a BAT other than the one who conducted the screening test is required to conduct the confirmation test, the new BAT will require the employee to provide positive identification such as photo ID card or identification by a representative. The BAT will, upon request of the employee being tested, provide such identification.

The BAT shall instruct the employee not to eat, drink, put any object or substance in his mouth and, to the extent possible, not belch during the waiting period just prior to the confirmation test being conducted. This waiting period shall begin with completion of the screening test and shall not be less than 15 minutes, but must be within 20 minutes of the completion of the screening test. The BAT shall explain to the employee that the reason for this is to prevent any accumulation of mouth alcohol leading to an artificially high reading and that it is for the benefit of the employee to comply with these instructions. The BAT shall also explain that the test will be conducted at the end of the required waiting period, even if the employee has disregarded the instructions. Should the BAT become aware that the employee has not complied with the instructions as provided; the BAT shall note the observations in the "Remarks" section of the form.

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

When a BAT other than the one who conducted the screening test is required to conduct the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall then complete Step 1 on the form and the employee shall then complete Step 2 by signing the certification. If the employee should choose not to sign the certification, the BAT shall then make an appropriate notation in the "Remarks" section indicating the employee's refusal to take the alcohol test. The BAT shall note in the "Remarks" section that a different BAT conducted the screening test.

The BAT shall open, in the presence of the employee, a new individually-sealed mouthpiece and attach the mouthpiece to the EBT in accordance with the manufacturer's instructions. The BAT will then instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

The BAT shall ensure, prior to the confirmation test being administered to the employee, that the EBT shall register 0.00 on an air blank. If the reading is greater, the BAT shall conduct one more air blank. Should the EBT again register greater than 0.00, the testing shall not proceed using that EBT. An EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within the accepted tolerance limits. Alcohol testing using another EBT may proceed.

In the event that the screening and confirmation test results are not identical, the confirmation test result shall be deemed to be the final result on which disciplinary action is taken in order to comply with the requirements of the AMPP and any applicable federal requirements.

If the EBT provides a printed result but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space. The result shall be secured in such a manner that will provide clear evidence of removal, such as the use of tamper-evident tape.

If the EBT prints the test result directly onto the alcohol form, then the BAT shall show the employee the result displayed on the EBT.

After the confirmation test is completed, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall then be instructed to sign the certification and fill in the date in Step 4. If the employee should elect not to sign the certification or to provide his initials in the log book entry for the test conducted, it shall not be considered as a refusal to be tested. The BAT shall then note the employee's failure to sign or initial the log book entry in the "Remarks" section of the testing form.

If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the "Remarks" section. Both the BAT and employee shall initial or sign the notation on the testing form. The test shall be considered "invalid" and the APM and the employee shall be so advised.

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

The BAT shall transmit all alcohol testing results to the APM or other designated City representative in a confidential manner. All communications by BATs shall be to the APM or designee only and may be provided in writing, in person, or by telephone or electronic means. The BAT shall ensure that immediate transmission of test results to HRER is conducted in order to prevent the employee from performing any covered functions.

Should the initial transmission not be accomplished in writing, but via telephone notification, the APM or designee shall establish a mechanism to verify the identity of the BAT providing the information. The BAT shall follow the initial transmission by providing to the APM or designee the City's copy of the breath alcohol testing form. The test results shall be stored in such a manner so as to protect the confidentiality of the results and to eliminate the disclosure of information to unauthorized persons.

**7 - REFUSALS TO TEST AND UNCOMPLETED TESTS**

Refusal by an employee to complete and sign Step 2 of the breath alcohol testing form, to provide breath, to provide an adequate amount of breath, or to otherwise 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 dismissed and the BAT shall immediately notify the APM or designee without delay.

If a screening or confirmation test cannot be completed or if an event occurs to invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test using a new breath alcohol testing form with a new sequential test number.

**8 - INADEQUATE AMOUNT OF BREATH**

If the employee is unable, or alleges that he is unable, to provide a sufficient amount of breath to permit a valid breath test because of a medical condition, the BAT shall again instruct the employee to attempt to provide an adequate amount. If the employee refuses to make the attempt, the BAT shall immediately inform the APM.

If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the testing form and shall immediately inform the APM. The APM shall direct the employee to obtain, as soon as practical after the attempt, an evaluation from a licensed physician who is acceptable to the City concerning the employee's medical ability to provide an adequate amount of breath.

If the physician determines, in his reasonable medical judgment, that a medical condition has or could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed as a refusal to take an alcohol test. The physician shall provide to the APM a written statement for the basis of his conclusion.

If the physician, in his reasonable medical judgment, is unable to make the determination that a medical condition has precluded the employee from providing an adequate amount of breath, the

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The physician shall provide a written statement for the basis of his conclusion to the APM.

**9 - INVALID TESTS**

A breath alcohol test shall be **invalid** under the following circumstances:

- The EBT does not pass its next external calibration check. This invalidates all test results of 0.02 or greater on tests conducted since the last valid external calibration test. This would not invalidate any negative tests conducted.
- The BAT does not observe the minimum 15-minute waiting period prior to conducting the confirmation test.
- The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of an alcohol test.
- The BAT does not sign the breath alcohol testing form.
- The BAT fails to note in the "remarks" section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test results.
- An EBT fails to print a confirmation test result.
- The sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

**10 - ALCOHOL TESTING EQUIPMENT**

The City's Employee Medical Services (EMS) provider shall use only approved evidential breath testing (EBTs) devices for conducting the alcohol testing.

*(a) - Screening Devices*

The City's EMS provider shall utilize a log book to record information relative to screening alcohol tests, if the EBT being utilized does not have:

- ◆ capabilities to be attached independently or by direct link to a separate printer, print a result in triplicate (or three consecutive identical copies) of each breath test;
- ◆ capabilities to assign a unique and sequential number to each completed test so that the number can be read by the breath alcohol technician (BAT) and the employee before each test and be printed out on each copy of the result;

**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

- ◆ capabilities of printing out the manufacturer's name of the device, serial number and time of the test.

A log book shall be used for each device that does not meet the above criteria and the log book shall include the following information: test number, date of test, name of BAT, location of test, test result and initials of the employee taking each test.

*(b) - Confirmation Devices*

The City's Employee Medical Services provider shall utilize an EBT for confirmation testing that has the required capabilities. The EBT shall also be able to distinguish alcohol from acetone; be capable of testing an air blank prior to each collection of breath, and performing an external calibration.

*(c) - NHTSA Conforming Products List*

All devices that will be used by the City's Employee Medical Services provider for alcohol testing shall be National Highway Transportation Safety Administration (NHTSA) approved evidential breath testing (EBT) devices. NHTSA has model specifications for evidential breath testing devices and periodically publishes an updated Conforming Products List, which states which devices have met NHTSA standards.

**11 - BREATH ALCOHOL TECHNICIAN (BAT) GUIDANCE**

The City's Employee Medical Services provider breath alcohol technician (BAT) shall receive sufficient training and be certified to proficiency in the specific operation of the evidential breath testing (EBT) device he uses in the required alcohol testing procedures as outlined in the Substance Abuse Policy. These procedures include the following:

- ◆ Each BAT used by the EMS shall be able to demonstrate by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required for obtaining a breath sample, and interpreting and recording EBT results.
- ◆ The EMS provider shall ensure that only courses of instruction that are equivalent to the National Highway Traffic Safety Administration (NHTSA), as amended, model course may be used to train BATs to proficiency. Upon request to NHTSA, they will review a BAT instruction to determine equivalency.
- ◆ The EMS provider shall ensure that the course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) to be used.

The EMS provider shall ensure that any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check:



**APPENDIX B (continued)**

**ALCOHOL TESTING PROCEDURES**

- ◆ on the particular model of the EBT to be used. The BAT training shall also include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in the maintenance and calibration of the particular EBT.
- ◆ The EMS provider shall ensure the BAT(s) receives sufficient additional training to ensure proficiency concerning any new or additional devices or changes in technology for equipment used.
- ◆ The EMS provider or its designated agent, who are involved in conducting alcohol testing, shall establish documentation regarding the training and proficiency testing of any BAT it uses to test employees. The documentation shall be maintained in accordance with the requirements of federal regulations.

## **APPENDIX C**

### **CONTRACTOR MONITORING PROCEDURES**

#### **1 - RSPA COVERED FUNCTIONS**

##### **A - GENERAL INFORMATION**

All contractors utilized by the City who operate under RSPA mandates, shall be notified of the testing and reporting regulations as set forth in 49 CFR, Parts 40 and 199. The City shall include in the contract of pipeline contractors a clause requiring testing, education, and training in accordance with Part 199 and Part 40 for covered functions.

**The City of Richmond, Department of Public Utilities shall designate an individual(s) to be responsible for the monitoring, compliance and recordkeeping functions associated with RSPA contractor compliance.** This individual(s) shall work closely and cooperate fully with the City's APM / DPD.

##### **B - ALCOHOL COMPLIANCE**

###### **(1) OBJECTIVE**

In order to assure a contractor's compliance with DOT regulations, the following procedures will be followed in determining compliance with the alcohol misuse testing regulations as set forth in 49 CFR, Part 199 Subpart B and 49 CFR, Part 40 Subpart C.

###### **(2) PROCEDURES FOR DETERMINING COMPLIANCE**

Qualifying Potential Contractor(s). Qualifications of the potential contractor as it pertains to alcohol testing policies/procedures will be assured by requesting the potential contractor to submit a copy of its AMPP for review and compliance with RSPA/DOT regulations. After review of the AMPP is completed, written correspondence will be sent to the contractor to advise whether or not the AMPP plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor plan shall be completed utilizing the criteria established in the RSPA Alcohol Misuse Inspection form. Addendum's made to the contractor's plan shall be attached to the previously submitted AMPP plan. Upon approval of the addendum, a letter of acceptance will be sent to the contractor.

Monitoring Contractor's Compliance. The contractor shall be required to provide information on their employees who will perform covered functions for the operator. This information may include the name and job title of employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's covered employees will be distributed to appropriate City field management and job sites.

Statistical Submission. All contractors will be required to submit AMPP testing statistical information on a periodic basis which may be based on the duration of the contract. This requirement will be conducted on a quarterly basis. The City may require a more frequent schedule for submission of data if a need for such statistics is determined.

**APPENDIX C (continued)**

**CONTRACTOR MONITORING**

Statistical Record Retention. The City will maintain a complete file on each contractor's statistical drug testing data reports. The City shall make available these reports when requested by the RSPA Administrator, designated representative, or representatives of those state agencies under which jurisdiction the City operates.

**C - DRUG COMPLIANCE**

**(1) OBJECTIVE**

In order to assure a contractor's compliance with DOT regulations, the following procedures will be followed in determining compliance with the anti-drug plan testing regulations as set forth in 49 CFR, Part 199 and 49 CFR, Part 40.

**(2) PROCEDURES FOR DETERMINING COMPLIANCE**

Qualifying Potential Contractor(s). Qualifications of the potential contractor as it pertains to drug testing policies/procedures will be assured by requesting the potential contractor to submit a copy of its ADP for review and compliance with RSPA/DOT regulations. After review of the ADP is completed, written correspondence to the contractor will advise it whether or not the plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor plan shall be completed utilizing the criteria established in the RSPA drug inspection form. Addendum's made to the contractor's plan shall be attached to the previously submitted ADP. Upon approval of the addendum, a letter of acceptance will be sent to the contractor. The contractor would now be eligible for City contract work that would be covered under Part 199 and Part 40.

Monitoring Contractor's Compliance. The contractor shall be required to provide information on their employees who will perform covered functions for the operator. This information will include the name and job title of employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's covered employees will be distributed to appropriate City field management and job sites.

Statistical Submission. All contractors will be required to submit ADP testing statistical information on a periodic basis which may be based on the duration of the contract. This requirement will be conducted on a quarterly basis. The City may require a more frequent schedule for submission of data if a need for such statistics is determined.

**APPENDIX C (continued)**

**CONTRACTOR MONITORING**

**2. REMAINING COVERED FUNCTIONS**

**A - GENERAL INFORMATION**

All contractors performing direct business with the City, shall be notified of the penalty rules as set forth in the City's Substance Abuse Policy. All such contractors, including those persons operating in a personal services agreement/contract, shall abide by the provisions of the Substance Abuse Policy as it relates to the employment of any individual who has been dismissed by the City for violation of the Substance Abuse Policy.

**The City of Richmond, Department of General Services, shall designate an individual(s) to be responsible for the monitoring, compliance and recordkeeping functions associated with this section of contractor compliance.** This individual(s) shall work closely and cooperate fully with the City's APM / DPD.

**B - ALCOHOL and DRUG COMPLIANCE**

**(1) OBJECTIVE**

In order to ensure a contractor's compliance with the City's Substance Abuse Policy, the following procedures will be followed in determining compliance with the alcohol misuse and drug testing regulations as set forth in this Policy.

**(2) PROCEDURES FOR DETERMINING COMPLIANCE**

Qualifying Potential Contractor (s). Qualifications of the potential contractor as it pertains to alcohol and drug testing policies/procedures will be ensured by requesting the potential contractor to submit an affidavit certifying that it does not employ nor will it employ any former City employee who has been dismissed for violation of the City's Substance Abuse Policy, until the time-frame for such employment bar is completed. After review of the affidavit is completed, written correspondence to the contractor will advise whether or not the information is acceptable or in need of further additions, deletions, revisions or clarifying language.

Monitoring Contractor's Compliance. The contractor shall be required to provide information on their employees who will contract for City functions. This information shall include the name and job title of employees who will perform any work or functions covered by that contract.

## **APPENDIX D**

### **EMPLOYEE ASSISTANCE PROGRAM**

The City of Richmond contracts with a provider of employee assistance services. Services provided by this program are available to all employees of the City of Richmond.

The City's current Employee Assistance Program (EAP) provider is :

#### **RICHMOND EMPLOYEE ASSISTANCE PROGRAM, Inc.**

Telephone Number - (804) 270-1550

If no answer, call (804) 254-0615

Outside Richmond Metro (804) 1-800-223-2515

FAX Number - (804) 273-0851

Office Locations Are :

**Main Office --- 2800 Parham Road, Suite 200, Richmond, VA**

**Southside Office --- 605 Twin Ridge Lane, Richmond, VA**

**Downtown Office --- 700 Building, 7th & Main Street, Richmond, VA**

**Chesterfield Office --- 6603 Irongate Square, Richmond, VA**

**Colonial Heights Office -- 320 A Charles Dimmock Parkway, Suite 4 , Colonial Heights, VA**

The Executive Director of REAP is :

Evelyn Lampert, L.C.S.W., CEAP

## **APPENDIX E**

### **RECORDKEEPING PROCEDURES**

#### **1 - ALCOHOL RECORDS**

##### **A - GENERAL**

The APM shall maintain the alcohol testing records in accordance with the provisions set out in the Substance Abuse Policy. Records shall be maintained for the specified periods of time as required in 49 CFR, Parts 199, 382 and 40. In addition the City's Employee Medical Services (EMS) provider will maintain the alcohol testing records as specified in the Federal Regulations.

##### **B - RECORD RETENTION PROVISIONS**

The following types of records shall be maintained for a minimum period of five years.

- ◆ Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater.
- ◆ Documentation of refusals to take required alcohol tests.
- ◆ Calibration documentation of each EBT used in alcohol testing, including records of the results of external calibration checks.
- ◆ Employee referrals and evaluations.
- ◆ MIS annual alcohol misuse report data.

The following types of records shall be maintained for a minimum period of two years.

- ◆ Records related to the collection process (except calibration of EBT devices).
- ◆ Records related to training.
- ◆ Records of the inspection and maintenance of each EBT used in employee testing.
- ◆ Documentation of the City's EMS provider compliance with the Quality Assurance Plan (QAP) for each EBT it uses for alcohol testing under the AMPP.
- ◆ Records of the training and proficiency testing of each BAT used in employee testing.
- ◆ Log books used in conjunction with EBTs.

The following types of records shall be maintained for a minimum period of one year.

- ◆ Records of all test results below 0.02.

##### **C - MAINTENANCE OF SPECIFIC TYPES OF RECORDS**

The following types of records related to the collection process shall be maintained:

- ◆ Collection log books, if used.
- ◆ Calibration documentation of EBT devices.
- ◆ Documentation of BAT training.
- ◆ Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

**APPENDIX E (continued)**

**RECORDKEEPING PROCEDURES**

- ◆ Documents generated in connection with decisions to administer post-accident alcohol test.
- ◆ Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.

The following types of records related to test results:

- ◆ EMS copy of the alcohol test form, including the results of the test.
- ◆ Documents related to the refusal of any covered employee to submit to a required alcohol test.
- ◆ Documents presented by a covered employee to dispute the result of an alcohol test administered under the AMPP.

Records related to other violations outlined in the AMPP.

The following types of records related to referrals and evaluations:

- ◆ Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
- ◆ Records concerning a covered employee's compliance with the recommendations of the SAP.
- ◆ Records related to the MIS annual alcohol misuse testing data. The City shall submit the required alcohol misuse MIS testing data to RSPA and FMCSA as prescribed by the regulations.

The following types of records related to education and training of employees and supervisors:

- ◆ Materials on alcohol misuse awareness, including a copy of the City's policy on alcohol misuse.
- ◆ Documentation of compliance with the requirements of Part 199.231 and Part 382.
- ◆ Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
- ◆ Certification that any training conducted under the AMPP be in compliance with the requirements of 49 CFR, Parts 199, 382 and 40.

**2 - DRUG RECORDS**

**A - GENERAL**

The DPD shall maintain the drug testing records in accordance with the provisions set out in the Substance Abuse Policy. Records shall be maintained for the specified periods of time as required in 49 CFR, Parts 199, 382 and 40. In addition the City's Employee Medical Services (EMS) provider will maintain drug testing records as specified in the Federal Regulations.

**APPENDIX E (continued)**

**RECORDKEEPING PROCEDURES**

**B - RECORD RETENTION PROVISIONS**

Records that demonstrate the collection process conforming to 49 CFR, Part 199 and Part 382, will be kept for a minimum of three (3) years by the program contractor.

Records of employee drug test results that show employees who had a positive test, and the type of test (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five (5) years, and include the following information:

- ◆ The function performed by each employee who had a positive drug test
- ◆ The prohibited drugs that were used by an employee who had a positive drug test
- ◆ The disposition of each employee who had a positive drug test or refused a drug test (e.g. dismissal, rehabilitation, removed from covered function, other).

Records of employee drug test results that show employees passed a drug test must be kept for at least one (1) year.

A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least five (5) years.

Records confirming that supervisors and employees have been trained as required by federal regulations must be kept for at least three (3) years.

Information regarding an employee's drug test results or rehabilitation may be released only upon the written consent of the employee, except that such information must be released regardless of consent to the federal agency or the representative of a state agency upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to FMCSA and RSPA federal agencies or the representative of a state agency upon request.



## **APPENDIX F**

### **SPECIMEN COLLECTION PROCEDURES**

#### **1 - POLICY**

The City's Employee Medical Services provider will provide collection of urine drug screens based on guidelines by the Department of Transportation Procedures for Transportation Workplace Drug Testing Programs. The EMS will send all Drug Screens to a NIDA certified laboratory for testing based on DOT guidelines.

#### **2 - REFERENCES**

Federal Register, Volume 53, Number 224

Federal Register, Volume 59, Number 110

U.S. Department of Transportation's Specimen Collection Workbook,

May, 1992

#### **3 - PROCEDURE**

##### ***A - COLLECTION SITE SECURITY***

The following conditions will be maintained to ensure that the collection site is secured for the purpose of drug testing:

- ◆ Doors to the collection rooms (bathrooms) will remain locked at all times. Access codes will be limited to department staff responsible for urine sample collections.
- ◆ All collection rooms will be inspected for paraphernalia which could be used to tamper with or adulterate the urine sample at the beginning of each workday and randomly throughout the day.
- ◆ Bluing agent will be added to the toilet water.
- ◆ During the collection process, all water faucets will be secured by remote control switches operated by the collector outside the collection room.

##### ***B - EMPLOYEE AND COLLECTOR IDENTIFICATION:***

- (1) The collector of the urine specimen will be a licensed medical professional or technician who has been instructed in the collection process.
- (2) All employees/donors will present valid photo identification at the time they are scheduled for the drug screening procedure. (Driver's license, employee ID, and equivalent current official photo, or identification by the employer's representative.)
- (3) If the employee/donor identity cannot be established, the collection site person shall not proceed with the collection.

**APPENDIX F (continued)**

**SPECIMEN COLLECTION PROCEDURES**

***C - COLLECTION PROCEDURE:***

- (1) Complete Step 1 (A, B, C, D and E) on Chain of Custody form.
- (2) The employee/donor is directed 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 urine specimen. The employee/donor is directed to leave all personal belongings such as a purse or briefcase with the outer garments. The employee/donor may retain his wallet.
- (3) The donor is instructed to wash his hands using soap from a dispenser outside the bathroom.
- (4) The water is then turned off from a remote control switch outside the bathroom.
- (5) A sealed split specimen sample COC box is handed to the donor for sample collection.
  - ◆ Collect an adequate amount of urine (45 ml minimum).
  - ◆ If the amount of urine is less than 45 ml, the collection is void and the urine sample is discarded.
  - ◆ The donor is provided not more than 24 ounces of fluid, and after a period of up to two hours, is instructed to provide a complete sample using a fresh collection kit.
  - ◆ If, after another attempt to collect, the specimen is less than 45 ml of urine, notify the employer and discard the urine.
- (6) Both the donor and the collector shall keep the specimen in full view at all times prior to its being sealed and labeled.
- (7) Check temperature. This must be done within four minutes after collection. The collector shall also inspect the specimen to determine its color and look for any signs of contamination.
  - ◆ If temperature sensor is not within 90 - 100 degrees, record actual temperature with thermometer in aliquot. Fill out Step 2 on COC Form.
  - ◆ A donor may volunteer to have his temperature taken to provide evidence to counter the reason to believe the donor may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.
- (8) Open sealed bottle in kit and pour off 15 ml into it from the first bottle. This is now sample bottle B (split). Cap both bottles firmly.
- (9) Seal containers with numbered bottle seals provided with the form. Specimen A should contain at least 30 ml. Collector dates both bottle seals. Donor initials both bottle seals. Place in COC bags and seal.

**APPENDIX F (continued)**

**SPECIMEN COLLECTION PROCEDURES**

- (10) Have donor complete Step 4 and Copy 4 (pink page) of COC form. Instruct donor to read certification statement before printing and signing name.
- (11) Collector fills out Step 5 on Copy 1. Remarks section can be used for comments, type of ID, suspicious behavior or witness's signature if indicated.
- (12) Collector prints and signs name on RECEIVED BY line on the first line of Step 6, signs and prints name again under RELEASED BY line. Under RECEIVED BY, line 2, write COC box/AML Courier (or other delivery service used). Under PURPOSE of CHANGE write "ship specimen to lab."
- (13) Give DOT copy 5 (green) to donor. Place sealed specimens and top 3 copies of form in COC box. Place red security seal over opening and initial and date. Place box in secure area.

**4 - DIRECT OBSERVATION COLLECTION**

A - Direct observation collection may be conducted in the following circumstances:

- ◆ The donor has provided a specimen that falls outside the acceptable temperature range (90 - 100 degrees).
- ◆ The collector observes conduct clearly indicating an attempt to substitute or adulterate the sample (i.e. substitute urine in plain view, blue dye in specimen presented, adulterated substance in view).

**NOTE:** In both of the above described circumstances the collector must obtain, in advance of the direct observation collection, the review and concurrence of the collection site supervisor or the designated employer representative. The person directly observing the specimen collection shall be of the same gender.

B - The DOT regulations permit a subsequent collection to be collected under direct observation if:

- ◆ The last specimen provided by the donor (i.e. on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and Creatinine concentration below 2.g/l.
- ◆ The donor has had a verified positive result on a previous drug test and is subject to return-to-duty or follow-up testing under DOT regulations.

C - The decision to conduct a direct observation collection in the two circumstances described above is made by the employer, not the collection site personnel. In these cases, it is the responsibility of the employer to notify the collection site personnel when a direct observation collection is warranted.

**APPENDIX F (continued)**

**SPECIMEN COLLECTION PROCEDURES**

**5 - REPORTING AND REVIEWING OF RESULTS**

- (a) The Medical Review Officer (MRO) shall be a licensed physician with knowledge of substance abuse disorders.
- (b) The MRO will review and interpret confirmed positive test results. If the test of the first specimen bottle (bottle A) is verified positive by the MRO, the MRO shall report the result to HRER.
- ◆ Prior to making a final decision to verify a positive test result of an individual, the MRO shall give the individual an opportunity to discuss the test results with him.
  - ◆ The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test results with him.
  - ◆ If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible.
  - ◆ If, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.
- (c) The MRO may verify a test as positive without having communicated directly with the employee about the test in two circumstances.
- ◆ The employee expressly declines the opportunity to discuss the test.
  - ◆ The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five days have passed since the date the employee was contacted by the designated employer representative.
  - ◆ If a test is verified positive under the circumstances specified in subparagraph (C-2) of this paragraph, the employee may present to the MRO information documenting the serious illness, injury or other circumstances which unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
- (d) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program and, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

**APPENDIX F (continued)**

**SPECIMEN COLLECTION PROCEDURES**

**6 - VERIFICATION FOR OPIATES**

Review for prescription medication. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate or opium derivative (e.g. Morphine, Codeine); (This requirement does not apply if the employer's GC/MS confirmation testing of opiates confirms the presence of 6 Monoacetylmorphine).

**7 - REANALYZES AUTHORIZED**

- (a) Should any questions arise as to the accuracy or validity of a positive test result, only the MRO is authorized to reanalyze of the original sample and such retests are authorized only at laboratories certified by DHHS. The MRO shall authorize a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having received actual notice of the positive test. If the retest is negative, the MRO shall cancel the test.
- (b) Only the donor may request, through the MRO, that the second specimen bottle (Bottle B) be tested in a DHHS certified lab for presence of the drug for which a positive result was obtained in the test of the first specimen bottle (Bottle A). The MRO shall honor such a request if it is made within 72 hours of the donor having received notice that he/she tested positive.
- (c) The result of this test is transmitted to the MRO without regard to the cutoff levels used to test the first specimen bottle (Bottle A).

**8 - RESULT CONSISTENT WITH LEGAL DRUG USE**

If the MRO determines there is a legitimate medical explanation for the positive test results, the MRO shall report the test to the employer as negative.

**9 - RESULT SCIENTIFICALLY INSUFFICIENT**

Additionally, the MRO based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine the result as scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. (The MRO may request that reanalysis as provided in S40.22 (e) be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the employer. The employer shall include, in any required annual report to a DOT agency, a summary or any negative findings based on scientific insufficiency, but shall not include any personal identifying information in such reports.

**APPENDIX F (continued)**

**SPECIMEN COLLECTION PROCEDURES**

**10 - DISCLOSURE OF INFORMATION**

(a) Except as provided in this paragraph, the MRO shall not disclose to any third party, medical information provided by the individual to the MRO as a part of the testing verification process.

(b) The MRO may disclose such information to the employer, a DOT agency or other Federal Safety Agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if:

- ◆ An applicable DOT regulation permits or requires such disclosure.
- ◆ In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule.
- ◆ In the MRO's medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information by the employee of his or her safety sensitive function could pose a significant safety risk.

(c) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

(d) Protection Of Employee Records - The EMS provider contract with laboratories shall require that the laboratory maintain employee test records in confidence as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

(e) Individual Access To Test And Laboratory Certification Results - Any employee who is the subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relating to the revocation of certification proceedings.

***Responsibility for Review: Employee Medical Providers - Director of Occupational Medicine***

***Frequency of Review: Annually***

***Next Review: September 2007***

***Approval Must Be Received from City of Richmond's Drug Program Designee***

## **APPENDIX G**

### **DESIGNATED COLLECTION AGENCY AND TESTING LABORATORIES**

#### **➤ NAME OF COLLECTION AGENCY:**

The Occupational Health Center of Retreat Hospital is the primary collection site utilized for the City of Richmond's drug screen collections.

OCCU HEALTH CENTER  
Retreat Hospital  
2621 Grove Avenue  
Richmond, Virginia 23220  
(804) 254-5467

#### **➤ THE NAME AND ADDRESS OF THE TESTING LABORATORY:**

The City of Richmond contracts (through our EMS provider) with the following NIDA certified laboratory to analyze drug test specimens.

American Medical Laboratories, Inc.  
14225 Newbrook Drive  
PO Box 10841  
Chantilly, Virginia 22021-0841  
(703) 802-6900  
1-800-852-9528

#### **➤ LICENSING & ACCREDITATION:**

##### **THE FOLLOWING AGENCIES LICENSE AML:**

- ◆ Health and Human Services (CLIA Code) #49D0221801
- ◆ New York Permit #847728A1
- ◆ Maryland Permit #209
- ◆ Pennsylvania Permit #001136
- ◆ Illinois Permit #0021758
- ◆ Nuclear Regulatory Commission
- ◆ New Jersey Drawing Station
- ◆ Maine Substance Abuse License
- ◆ Virginia Asbestos Analytical Laboratory License #000003
- ◆ Florida Forensic Toxicology License T015

##### **THE FOLLOWING VOLUNTARY**

##### **ACCREDITING AGENCIES ACCREDIT AML:**

- American Industrial Hygiene Association (AIHA)#206
- American Society of Cytology
- CDC (Centers of Disease Control) - Certificate of Traceability for Cholesterol
- College of American Pathologists (CAP) #13611-01
- Commonwealth of Virginia - Drinking Water Certification

**APPENDIX G (continued)**

**DESIGNATED COLLECTION SITE & TESTING LABORATORIES**

- Florida Drinking Water Testing Laboratory Certificate #87348
- International Academy of Cytology
- NIDA (National Institute on Drug Abuse)
- NVLAP (Bulk Asbestos Analysis)

**THE FOLLOWING AGENCIES INSPECT AML:**

- \* American Industrial Hygiene Association (AIHA)
- \* CAP Forensic (Forensic Urine Drug Testing)
- \* Commonwealth of Virginia - Drinking Water Certification
- \* Food and Drug Administration
- \* International Academy of Cytology
- \* National Institute on Drug Abuse (NIDA)
- \* National Voluntary Laboratory Accreditation Program (NVLAP)
- \* New York State
- \* Nuclear Regulatory Commission
- \* Virginia (Forensic Drug Testing)
- \* Virginia (Tuberculosis Control Program)

**APPROVED LISTS:**

- Commonwealth of Pennsylvania (Drug Abuse Testing)
- Commonwealth of Pennsylvania (Blood Alcohol Content)
- Commonwealth of Virginia (Blood Lead Analysis)
- Commonwealth of Virginia (Forensic Drug Testing)
- Commonwealth of Virginia (Syphilis Testing)
- OSHA (Blood Lead)
- State of Maryland (AFP/NTD Testing)
- State of Maryland (HIV-1 Antibody Testing 0 ELISA and Western Blot)
- State of North Carolina (HIV Testing and PAP Smear Certification)
- State of West Virginia (HIV Testing)

**CAP ORIGINAL ACCREDITATION - 1969**

**AMERICAN SOCIETY OF CYTOLOGY - 1981**

**NOTICE - Changes in the collection sites or testing laboratories must be approved by the City's APM / DPD.**



## **APPENDIX H**

### **MEDICAL REVIEW OFFICER**

#### **NAME AND ADDRESS OF THE MEDICAL REVIEW OFFICER (MRO):**

Gary McGowan, MD  
Medical Director of Occu Health Center  
(Occupational Health Center)  
Retreat Hospital  
2621 Grove Ave.  
Richmond, Virginia 23220  
(804) 254-5467

#### **MEDICAL REVIEW OFFICER GENERAL RESPONSIBILITIES:**

The Medical Review Officer is generally responsible for the following:

Although the laboratory analysis will determine whether the specimen is positive, any confirmed positive test results from the laboratory must be reviewed and interpreted by a Medical Review Officer (MRO) prior to transmission of the results to the City's DPD. The MRO's review must include a review of the chain of custody to ensure that it is complete and sufficient on its face.

Prior to confirming a positive result for opiates, the MRO must determine that there is clinical evidence (in addition to the urine test) of unauthorized use of any opium, opiate or opium derivative (e.g., morphine / codeine).

The MRO must be a licensed physician with knowledge of both substance abuse disorders and possible alternate medical explanations for a positive test result. The MRO may not be an employee of the laboratory conducting the controlled substances test(s).

As part of his responsibilities, the MRO must examine alternate medical explanations for any positive test results and review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO may not consider results of urine samples that were not obtained or processed in accordance with the DOT controlled substances testing program requirements.

**Additional detailed rules governing the responsibilities of the MRO may be found in 49 CFR, 40.33.**

**APPENDIX I**

**PERCENTAGE TO TEST**

In accordance with federal and city mandates, the City shall test the following percentages of employees for calendar year 1995:

**ALCOHOL TESTING**

***(1) FMCSA POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	50 %
Movement	100 % of those who move into a covered position
Return-To-Duty	100 %
Follow-Up	To be determined by Substance Abuse Professional

***(2) RSPA POOL***

Post - Accident	100 % who met requirements
Movement	100 % of those who move into a covered position
Return-To-Duty	100 %
Follow-Up	To be determined by Substance Abuse Professional

***(3) SENSITIVE POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	35 %
Movement	100 % of those who move into a covered position
Return-To-Duty	100 %
Follow-Up	To be determined by Substance Abuse Professional

***(4) LEADERSHIP POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	50 %
Movement	100 % of those who move into a covered position
Return-To-Duty	100 %
Follow-Up	To be determined by Substance Abuse Professional

***(5) PRIOR OFFENDERS POOL***

Random	100 %
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**Appendix I (continued)**

**Percentage To Test**

**DRUG TESTING**

***(1) FMCSA POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	50 %
Movement	100 % of those who move into a covered position

***(2) RSPA POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	50 %
Movement	100 % of those who move into a covered position

***(3) SENSITIVE POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	35 %
Movement	100 % of those who move into a covered position
Return-To-Duty	100 %
Follow-Up	To be determined by Substance Abuse Professional

***(4) LEADERSHIP POOL***

Pre-employment	100 %
Post - Accident	100 % who met requirements
Random	50 %
Movement	100 % of those who move into a covered position

***(5) PRIOR OFFENDERS POOL***

Random	100 %
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## **APPENDIX J**

### **Quality Assurance Plan for Intoximeters, Inc. - RBT IV/Alco-Sensor IV**

#### **1 - Designated Methods for External Calibration (“Accuracy”) Checks**

Assuming that they are approved for use by NHTSA, Intoximeters, Inc. recommends that external accuracy checks be performed using either an approved compressed dry gas standard made up of  $105 \pm 2$  ppm ethanol in nitrogen or any NHTSA-approved wet bath simulator in conjunction with a properly certified and maintained ethanol solution that has been manufactured to produce an apparent breath alcohol concentration of  $0.040 \pm 0.002$  grams per 210 liters of breath.

In all cases the compressed gas tanks, simulators and simulator solutions should be used and maintained only in accordance with the quality assurance plans provided by their respective manufacturers in order to insure that they produce consistent and reliable samples.

Instruction for use of these accuracy check standards with the instrument can be found in the documentation provided with the instrument.

#### **2 - Minimum Intervals for Accuracy Checks**

In order to maintain the highest level of integrity for all alcohol breath tests performed, an accuracy check would have to be performed before and after every breath test. For most employers this will be a cumbersome requirement that will not offer very much benefit.

When a test is run, an accuracy check must be run prior to that test if an accuracy check has not occurred within the past 31 days.

Intoximeters, Inc. also highly recommends that an accuracy check be run on the instrument as soon after a positive confirmation test as is practical.

Because an accuracy check that produces a result outside of the expected tolerances outlined below throws into doubt the validity of all previous breath tests since the last successful accuracy check, this procedure insures that only one positive test (the last one) will be compromised. Also, if the accuracy check is run immediately, it gives the BAT an opportunity to test the subject again.

Intoximeters, Inc. suggests, if practical, that an accuracy check be run before the first test on each day that the instrument is used. This procedure offers additional assurances that the instrument is functioning properly especially when there is a long period during which there are no positive tests and an accuracy check would not otherwise be run according to the procedures outlined above.

**Appendix J (continued)**

**Quality Assurance Plan for EBT**

**3 - Acceptance Tolerances on an External Accuracy Check**

The result of an accuracy check must be with  $\pm 0.005$  grams per 210 liters of breath inclusive of the expected value.

For wet bath simulators, the requirement is measured by using simulator solution manufactured to produce an apparent breath alcohol concentration of  $0.040 \pm .002$  grams per 210 liters of breath. The value of a sample from the wet breath simulator, as read by the Alco-Sensor IV, should be  $0.040 \pm 0.005$  grams per 210 liters of breath inclusive.

For compressed dry gas standards, the requirement is met by using compressed dry gas tanks containing  $105 \pm 2$  ppm of ethanol in nitrogen. The value of a sample of this gas delivered at 760 mm of Hg. absolute barometric pressure as read by the Alco-Sensor IV should be  $0.038 \pm 0.005$  grams per 210 liters of breath inclusive. However, both weather conditions and higher elevations for operation will change the barometric pressure and cause the expected value of the dry gas standard to change. For instance, in Santa Fe at 7000 ft. the compressed dry gas tank will have a value of approximately 0.025. To accommodate these variations, the TRUE-CAL device is supplied with compressed dry gas tanks for manual accuracy checks and calibrations.

The TRUE-CAL device contains a precision pressure sensor which monitors the barometric pressure and automatically corrects the expected value of the dry gas standard at that moment. The information is available by pushing a button on the TRUE-CAL device.

Altitude tables may be used for this correction, but weather extremes may cause variations of up to  $\pm .002$  grams per 210 liters in the expected value.

This value must be entered into the memory of the RBT IV/Alco-Sensor IV by the BAT before the standard is run and is recorded on the test record, along with the result obtained from running the standard.

If the instrument does fail an accuracy check, the employer shall take the instrument out of service as per 49 CFR, Part 40.55(b)(2) and re-calibrate it.

**4 - Inspection, Maintenance and Calibration Requirements**

The instrument should be calibrated when the result of an accuracy check is  $\pm 0.005$  grams per 210 liters of breath or more from the expected value as outlined above.

The instrument should be taken out of service if:

- ◆ the instrument repeatedly fails to maintain its calibration (i.e. if after two successful attempts to calibrate the device a successful accuracy check was not obtained);
- ◆ the instrument fails to maintain its calibration on three consecutive monthly accuracy checks;
- ◆ the instrument consistently takes more than two minutes to perform a breath analysis on a sample with a concentration less than 0.100 grams per 210 liters of breath.

*City of Richmond, Virginia*

*Administrative Regulation # 4053*

*Substance Abuse Policy*

*Effective Date – January 1, 1995*

*Issuing Department - Human Resources*

*This Policy Issued Under the Authority of the Mayor of the City of Richmond, VA*

**Appendix J (continued)**

**Quality Assurance Plan for EBT**

The instrument should be inspected by a certified technician at least once every two years in service.

Routine maintenance procedures are specified in the manuals of each instrument and must be followed in order to insure accurate test results.

***Responsibility for Review: Employee Medical Providers -Director of Occupational Medicine***

***Frequency of Review: Change of EBT Device***

***Approval Must Be Received from City of Richmond's Alcohol Program Manager***

**APPROVED:**

\_\_\_\_\_  
**MAYOR**