

RESOLUTION No. 2012-24

A Resolution providing for certain amendments to the Personnel Policies Handbook Of the Muncie Sanitary District first adopted March 9, 2010 concerning Section 5.8.2 Federal Motor Carrier Safety Regulations/Safety Sensitive Positions Drug & Alcohol Policy

WHEREAS, the Board of Sanitary Commissioners (the “Board”) has heretofore adopted by Resolution No. 2010-01 the Personnel Policies Handbook of the Muncie Sanitary District, adopted and dated March 9, 2010 (the “Personnel Policies Handbook”); and

WHEREAS, the Board wishes to make changes in Section 5.8.2 of the Personnel Policies Handbook which deals with Federal Motor Carrier Safety Regulations on testing for alcohol and drugs so as to bring the policies of the Muncie Sanitary District into conformity with Federal Department of Transportation rules and practices on drug use and testing.

BE IT THEREFORE RESOLVED, that the Board of Sanitary Commissioners does hereby adopt the following amendments to the Personnel Policies Handbook:

1) **CHAPTER 5 – WORKING CONDITIONS, SECTION 8.2, DRUG FREE WORK PLACE: Federal Motor Carrier Safety Regulations/Safety Sensitive Positions Drug and Alcohol Policy**, shall be amended by striking from that section the current language and substituting for that language the following paragraphs to read as follows:

“The Muncie Sanitary District’s drug and alcohol program administrator designated to monitor, facilitate, and answer questions pertaining to these procedures is the Health Care Administrator.

Prohibited Conduct

The following shall be considered “prohibited conduct” for purposes of this policy.

1. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcoholic concentration of .04 or greater. An employee is considered to be performing a safety-sensitive function if he/she is actually performing, ready to perform, or immediately available to perform any of the following on-duty functions:
 - a. All time spent at a facility waiting to be dispatched;
 - b. All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - c. All driving time or time spent at the driving controls of a commercial vehicle in operation;
 - d. All time spent loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, including completion of any related paperwork; and remaining in readiness to operate the vehicle;
 - e. All time performing those duties required of an employee involved in a vehicle accident;
or
 - f. All time spent repairing, assisting, or attending to a disabled motor vehicle;
2. No employee shall be on duty or operate a commercial vehicle while the employee possesses alcohol.
3. No employee shall use alcohol while performing safety-sensitive functions.

4. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.
6. No employee shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.
7. No employee shall report for duty or remaining on duty when the employee uses any controlled substance, except when the use is pursuant to the written instruction of a physician who has advised the employee that the substance will not adversely affect their ability to safely perform their duties. The employee must provide the Muncie Sanitary District with proof of such medical advice. The Muncie Sanitary District can decide if the employee can remain at work or on the Muncie Sanitary District premises and what work restrictions, if any, are deemed necessary.

Prescription Drug Use

1. Any employee who is using a prescribed drug or other medication, which is known or advertised as possibly affecting or impairing judgment, coordination or other senses, (including dizziness or drowsiness), or which may adversely affect the employee's ability to perform work in a safe and productive manner, must notify the Muncie Sanitary District prior to starting work or entering any Muncie Sanitary District premises. The Muncie Sanitary District will decide if the employee can remain at work or on the Muncie Sanitary District premises and what work restrictions, if any, are deemed necessary.
2. Ingestion of products that contain hemp will not be an acceptable explanation for testing positive for marijuana.

Refusal to Test

Refusal to submit to the types of drug and alcohol tests employed by the Muncie Sanitary District will be grounds for refusal to hire employee/applicant(s) and to discipline existing CDL employee(s). A refusal to test would include any of the following situations:

1. Failing to appear for any test within a reasonable time after being directed to do so.
2. Failing to remain at the testing site until the testing process is completed.
3. Failure to provide a breath sample, saliva sample or urine sample as directed.
4. Failure to permit, if the situation requires, the observation or monitoring of providing a urine specimen.
5. Failure to provide a urine, breath or saliva specimen within required time frames may be considered a refusal. If an employee cannot provide a sufficient quantity of urine or breath, he/she will be directed to be evaluated by a physician of employer's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either breath or urine), it will be considered a refusal to test. In that circumstance the employee has violated one of the prohibitions of the regulations.
6. Failure or decline to take an additional drug test the employer or collector has directed you to take.
7. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of a "shy bladder" or "insufficient breath" situation.
8. Failure to cooperate with any part of the testing process and/or conduct that would obstruct the proper administration of a test. (e.g., refusing to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)

9. For an observed collection, fail to follow the observer's instruction to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
11. Admission to the collector or MRO by the employee that they adulterated or substituted their specimen.
12. A report from the MRO of a verified adulterated or substituted test result.
13. Refusing to sign step two (2) of the alcohol testing form.

Types of Tests

Pursuant to regulations promulgated by the Department of Transportation (DOT), the Muncie Sanitary District has implemented six circumstances for drug and alcohol testing: pre-employment (drug testing only), post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing.

1. Pre-employment Testing

As a condition of employment, the employee applicant shall provide the Muncie Sanitary District with a written authorization for all previous employers within the past three (3) years to release drug and alcohol testing records as the DOT and FMCSA regulations require. Within thirty (30) days of performing a safety-sensitive function, DOT regulations require that the Muncie Sanitary District obtain, to the extent available, certain drug and alcohol testing records from the employee's previous employers for the previous three (3) years. All applicants who are required to have or obtain a CDL must submit to a urine drug test unless a qualifying pre-employment exemption can be documented.

2. Random Testing

The Muncie Sanitary District conducts random drug and alcohol testing. The Muncie Sanitary District will submit all employees' names to a random selection system. The random selection system provides an equal chance for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. The Muncie Sanitary District will drug test, at a minimum, fifty (50) percent of the average number of employee positions in each calendar year or at a rate established by the DOT for the given year. The Muncie Sanitary District will select, at a minimum, ten (10) percent of the average number of employee positions in each calendar year for random alcohol testing, or at the rate established by the DOT for the given year. Random selection by its very nature may result in employees being selected in successive selections more than once a calendar year.

If an employee is selected at random, for either drug or alcohol testing, a Muncie Sanitary District official will notify the employee. Once notified, the employee must proceed to the designated collection site immediately. If the employee does not go to the collection site as soon as possible after notification, such conduct may be considered a refusal to test.

3. Post-Accident Testing

Following any accident, the employee must contact Muncie Sanitary District as soon as possible. The employee must submit to a Federal DOT drug and alcohol test any time he or she is involved in an accident where 1) a fatality is involved; or 2) the employee receives a citation for a moving

violation arising from the accident that involved:

- injury requiring medical treatment away from the scene, or
- one or more vehicles having to be towed from the scene.

The employee shall follow the instructions from the Muncie Sanitary District or its representative to complete required testing.

Any time a post-accident drug or alcohol test is required, it must be performed as soon as practical. If no alcohol test can be made within eight (8) hours, attempts to perform an alcohol test shall cease. If no urine collection can be obtained for the purpose of post-accident drug testing within thirty-two hours, attempts to make such collection shall cease. An employee is prohibited from consuming alcohol between the time of the accident and the test.

In the event that federal, state, or local officials conduct breath or blood test for the use of alcohol and/or urine tests for the use of controlled substances following an accident, employees must comply with law enforcement personnel requests. The Muncie Sanitary District may request testing documentation from such agencies, and may ask the employee to sign a release allowing the Muncie Sanitary District to obtain such test results.

In the event an employee is so seriously injured that the employee cannot provide a sample of urine, breath or saliva at the time of the accident, the employee must provide necessary authorization for the Muncie Sanitary District to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the employee's system at the time of the accident.

4. Reasonable Suspicion Testing

Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing shall be deemed to exist when an employee manifests physical, behavioral, speech or performance symptoms or reactions commonly attributed to the use of controlled substances or alcohol. Such employee conduct must be witnessed by a supervisor who is trained in compliance with Part 382.603 of the Federal Motor Carrier Safety Regulations.

A supervisor observing such conditions will take the following actions immediately:

- a. Confront the employee involved, and keep under direct observation until the situation is resolved.
- b. Secure the DER's concurrence to observations. After discussing the circumstances with the DER, arrangements will be made to observe or talk with the employee. If he/she believes, after observing or talking to the employee, that the conduct or performance problem could be due to substance abuse, the employee will be immediately required to submit to a breath test or urinalysis. If the employee refuses to submit to testing for any reason, the employee will be informed that continued refusal would result in a refusal to test violation and disqualification from performing any safety-sensitive function.
- c. Employees will be asked to release any evidence relating to the observation for further testing. Failure to comply may subject the employee to subsequent discipline or suspension from driving duties. All confiscated evidence will be receipted for with signatures of both the receiving supervisor, as well as the provider.
- d. The DER shall, within 24 hours or before the results of the controlled substance test are released, document in writing the particular facts related to the behavior or performance

problems that led to the reasonable suspicion test and maintain this documentation in appropriate DOT files.

- e. The DER shall remove or cause the removal of the employee from the Muncie Sanitary District-owned vehicle and ensure that the employee is transported to an appropriate collection site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstances will that employee be allowed to continue to drive a Muncie Sanitary District vehicle until a confirmed negative test result is received.

5. Return to Duty Testing

A return to duty test will be required for all employees who have violated this policy (test positive, have an adulterated or substituted specimen or refuse to test). The employee may not return to duty until he or she passes (tests negative) a drug test and/or tests below a .02 for breath alcohol and the MRO or SAP and the Muncie Sanitary District have determined that the employee may return to duty.

6. Follow-up Testing

Any employee who has returned to work following a violation of this drug and alcohol policy will be subject to follow-up testing. At a minimum six follow-up tests will be required within the first twelve months following an employee's return to work, and less frequently during the next 4 years. Employees covered by a DOT agency will be tested in accordance with DOT regulations and the recommendations of the substance abuse professional.

Controlled Substance Testing Protocol

Urine Collection Procedures

1. The testing procedure starts with the collection of a urine specimen.
2. Collection procedures will follow the specific guidelines set forth by the U.S. Department of Transportation as outlined in the published collection procedures guidelines.
3. Employees will be directed to empty their pockets and display the contents to the collector.
4. Employees will be allowed privacy during the collection process except as noted in number 5 below.
5. Observed collections are required by DOT if:
 - a. The previous specimen provided by the employee is determined to be invalid and the MRO has ordered a re-test.
 - b. The previous specimen provided by the employee is determined to be negative-dilute with a creatinine value >2 mg/dl but <5 mg/dl.
 - c. The collector observes evidence of an employee's attempt to tamper with the specimen.
 - d. The temperature of the specimen is out of range.
 - e. The specimen appears to have been tampered with.
6. Observed collections are required on return-to-duty and follow-up tests.
7. As part of the collection process, the specimen provided will be split into two portions; a primary specimen and a secondary (split) specimen.
8. If the employee is unable to provide 45 ml of urine, the DOT "shy bladder" rule will apply. The employee will have up to 3 hours to provide the required 45 ml, and may consume up to 40 ounces of fluids during this time period. The employee will be required to be monitored during the waiting period.

9. After collection, the specimen will be submitted to a SAMHSA certified laboratory for testing.

Laboratory Procedures

Drug testing will be performed through urinalysis. Urinalysis will test, at a minimum, for the presence of drugs and/or metabolites of the following controlled substances: marijuana, cocaine, opiates (including codeine, morphine & heroin), amphetamines (including methamphetamines, MDMA, MDEA, & MDA) and phencyclidine (PCP).

The SAMHSA certified laboratory will perform initial screenings on all primary specimens. In the event that the primary specimen tests positive, a confirmation test of that specimen will automatically be performed. If the confirmatory test is positive it will be reported to the Medical Review Officer (MRO) as a positive.

Validity Testing

The laboratory must also perform validity testing on each specimen received. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. The following will be measured: creatinine level, specific gravity, and PH. In addition, all specimens will be tested for known adulterants. An initial validity test is performed first, followed by a confirmation test if required.

All laboratory results will be reported by the laboratory to a MRO designated by the Muncie Sanitary District or its agents.

MRO Procedures

1. All tests results will undergo a review process by the MRO.
2. Negative test results will be reported directly to the Muncie Sanitary District by the MRO.
3. Positive, adulterated or substituted results will be handled in the following manner by the MRO:
 - a. Before reporting a positive, adulterated or substituted test result to the Muncie Sanitary District, the MRO will attempt to contact the employee to discuss the test result.
 - b. The employee is required to discuss the result with the MRO. The employee will be allowed to explain and present medical documentation to explain any permissible use of a drug.
 - c. In the MRO's sole discretion, a determination will be made as to whether a result is verified as positive, negative or considered a refusal.

Diluted Specimens

If a test is reported as negative and diluted, it will be the policy of the Muncie Sanitary District to require an immediate recollect for another test. The employee will be given the minimum possible advance notice to report for another test. The result of this second test will become the test of record. If the second test is also negative and diluted the test will be accepted as a valid test and no additional testing will be required. If the employee is directed to take another test and declines to do so, this will be considered a refusal to test and have the consequences of a refusal to test.

Medical Information Disclosure

Pursuant to DOT regulations, if, in the MRO's opinion, any information provided may mean a medical disqualification or represent a safety hazard, such as the use of certain prescription drugs, the MRO must disclose this to the employer. Individual test results for employee applicants and employees will be released to the Muncie Sanitary District and will be kept strictly confidential unless consent for the release of the test result has been obtained. Any individual who has submitted to drug testing in compliance with this procedure is entitled to receive the results of such testing upon written request.

Safeguards for the integrity of the drug testing process

1. The collector must obtain photo identification from the employee or identification by supervisor prior to administering the test.
2. The employee will be asked to wash their hands.
3. The employee signs the chain of custody form signifying the correctness of data for test reporting.
4. Electronic communication of test results from the laboratory into the MRO reporting system with no external human intervention.
5. The specimen container and specimen bottles are individually wrapped and unwrapped in employee's presence.
6. After the specimen is provided in a reasonable time, the collector inspects it for sufficient volume, temperature and signs of tampering. If a specimen is not provided, the employee will be referred to a MRO to determine whether there is a valid medical reason. If there is, the employee must still attempt to provide a specimen each time the employee is required to test under this program.
7. After the specimen is given to the collector, the remaining collection procedures are conducted in employee's view.
8. The specimen bottles and shipping container are sealed with tamper evident seals.
9. The employee will be asked to initial the seals covering the specimen bottles identifying they were sealed in their presence.
10. The specimen number on the bottle seals match the specimen number on the chain of custody form.
11. The laboratory will check the specimen bottles upon receipt to insure the seal has not been broken. If the seal has been broken the laboratory will report the test as cancelled.
12. Blind sample submission through the laboratory for quality control.
13. *A collector who has completed the qualification training as mandated in CFR Part 40 as amended will perform the collection.*

Split Specimen Testing Protocol

An employee may request that the "split" portion of his/her specimen be tested at a different SAMHSA laboratory if he/she was notified by the MRO that his/her test result was positive, adulterated or substituted. The request must be made to the MRO within 72 hours of being notified of a verified positive, adulterated or substituted result. The MRO will arrange for all procedures to be done in accordance with split specimen testing procedures.

The cost of a split specimen test will be the responsibility of the employee. The Muncie Sanitary District will withhold the amount of the cost of testing the split from the employee's pay unless other arrangements are acceptable to both the employee and the Muncie Sanitary District. If the employee

makes a timely request (within 72 hours) to the MRO for the split portion to be tested, the MRO shall immediately make arrangement with the laboratory to initiate the process.

Alcohol Testing Protocol

Alcohol tests will be conducted by a trained Breath Alcohol Technician (BAT) or Screening Test Technician (STT). Screening tests may be done using an evidential breath testing device (EBT) or non-evidential screening device approved by the National Highway Traffic Safety Administration. Confirmatory tests will be done by a trained BAT using an evidential breath testing device. The employee shall report to the alcohol testing site as notified by the Muncie Sanitary District. The employee shall follow all instructions given by the alcohol technician.

If the result of a screening test is a breath alcohol concentration (BAC) of less than 0.02, no further testing is authorized. Any initial test indicating a BAC of .02 or greater will be confirmed on an EBT operated by a BAT. The confirmation test will be performed no sooner than fifteen (15) minutes and no later than thirty (30) minutes following the completion of the initial test. In the event the confirmation test indicates a BAC of .020 to .039, the employee shall be removed from duty for twenty-four (24) hours or until his/her next scheduled on-duty time, whichever is longer. Employees with tests indicating a BAC of .04 or greater are considered to have engaged in prohibited conduct, which may result in disciplinary action up to and including termination. All alcohol tests shall be performed just prior to, during, or just after performing a safety sensitive function.

Alcohol Testing Safeguards For Employee's Protection

1. The BAT must obtain employee's photo identification prior to administering the test.
2. An individually wrapped mouthpiece will be opened and inserted into the EBT for the employee's test.
3. The National Highway Traffic Safety Administration approves the EBT that is used.
4. Calibration checks are frequently performed to insure the EBT is working efficiently.
5. If the screening test indicates a 0.02 or greater, a confirmation test will be administered.
6. An air blank will be administered prior to the confirmation test with a 0.000 reading.
7. An individually wrapped mouthpiece will be inserted for the confirmation test.
8. The BAT has completed the required training course in the correct operation of the EBT.

Disciplinary Procedures

Any employee who has a positive test for alcohol (.04 BAC or greater) or controlled substances or has refused to test is considered in violation of this policy. This employee is not qualified to drive a commercial motor vehicle and will be immediately removed from safety-sensitive duty. The consequences of testing positive or refusing to test fall under Group II offenses and such Employee may be disciplined for such actions up to and including termination.

Substance Abuse and Follow Up Testing Following Discharge

Any employee who is discharged shall be provided with the names, addresses and telephone numbers of qualified abuse professionals (SAPs) who are approved by the Muncie Sanitary District. To be able to be returned to any CDL position by an employer, the following steps must be completed:


1. Complete an initial evaluation with a SAP.
2. Complete any rehabilitation and/or education required by the SAP.

3. Complete a second evaluation with the SAP and obtain written confirmation of satisfactory progress and/or completion of all recommendations.
4. Complete a return-to-duty test that is issued with a negative result.

3) EFFECTIVE DATE, This Resolution shall become effective on and after its passage and shall remain in full force and effect until amended or repealed by this Board.

THIS RESOLUTION APPROVED this 4th day of September, 2012 by the Board of Sanitary Commissioners of the Muncie Sanitary District.

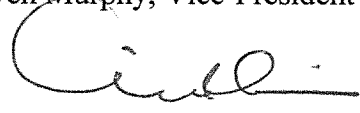
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