

**EASTERN MUNICIPAL WATER DISTRICT
HUMAN RESOURCE MANAGEMENT
POLICIES AND PROCEDURES**



SECTION: Drug and Alcohol Policy	DATE: June 7, 1996	PREPARED BY: Angela Carman
PAGE: 1	REVISION DATE:	APPROVED BY:

**EASTERN MUNICIPAL WATER DISTRICT DRUG AND ALCOHOL POLICY
PURSUANT TO DEPARTMENT OF
TRANSPORTATION REGULATIONS**

Effective immediately, Eastern Municipal Water District adopts the following addendum to its Substance Abuse Policy. This action is taken in compliance with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the District must comply with the regulations of the Federal Highway Administration (FHWA). Adoption of a policy is one of the Districts obligations under the regulations. This policy sets forth the rights and obligations of covered employees. If you are an employee covered by these new requirements you should familiarize yourself with the provisions of this policy **BECAUSE COMPLIANCE WITH THIS POLICY IS A CONDITION OF YOUR EMPLOYMENT.**

If you are an employee covered by this policy, you should be aware that you are still required to comply with the provisions of the District's Substance Abuse Policy (See attachment.) The obligations and requirements set forth below are **in addition** to existing obligations and requirements set forth in the District's Substance Abuse Policy.

I. EMPLOYEE QUESTIONS REGARDING POLICY

Employees shall refer any questions regarding their rights and obligations under the new regulations to the Human Resources Management Department.

II. EMPLOYEES COVERED UNDER THE POLICY

The testing requirements of this policy apply to all applicants and employees who are required by the District to obtain a commercial driver's license for the performance of their assigned job functions. Employees affected by this policy include all regular, probationary and temporary employees required by the District to operate a Commercial Motor Vehicle (CMV) or perform a safety-sensitive function. The testing requirements also apply to any commercial driver under contract with the District to provide transportation services requiring a California Drivers License (CDL).

All supervisors and managers who directly supervise persons subject to the testing procedures of this policy are required to comply with this policy as it pertains to the exercise of their supervisory authority

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A “**commercial motor vehicle**” **includes** any motor vehicle used to transport passengers or property if the vehicle has:

- A gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- A gross vehicle weight rating of 26,001 or more pounds, or
- Is designated to transport 16 or more passengers, including the driver; or
- Is any size and is used to transport materials that are hazardous for the purposes of the Hazardous Materials Transportation Act and that require the motor vehicle to be placarded under the Hazardous Materials Regulations.

III. DEFINITIONS

1. **Accident:** Is an incident in which a person has died or is treated at a medical facility, or when there has been property damage resulting in the towing of a vehicle (either a District vehicle or another vehicle) away from the scene.
2. **Alcohol:** Means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl and isopropyl alcohol.
3. **Alcohol Concentration:** Means the Alcohol in a volume of breath expressed in terms of grams of Alcohol per 210 liters of breath as indicated by an EBT (or evidential breath testing device).
4. **DOT Agency:** Means an agency (or Aoperating administration@) of the United States Department of Transportation (DOT) administering regulations requiring alcohol and/or drug testing in accordance with 49 CFR Part 40.
5. **Covered Employees:** Means any person who operates a commercial motor vehicle requiring possession of a commercial drivers license.
6. **EBT (or evidential breath testing device):** Means EBT approved by the National Highway Transportation Safety Administration (NHTSA) for the evidential testing of breath and placed on the NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices” (CPL).
7. **Employer:** Means any person who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term Employer includes an employer’s agents, officers and representatives. As used herein, the term “Employer” specifically means the Eastern Municipal Water District.
8. **FHWA:** Means the Federal Highway Administration.

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9. **Illegal drugs:** As used in this policy, refers to drugs specifically prohibited by the Department of Transportation, currently cocaine, PCP, amphetamines, marijuana and opiates.
10. **Medical Review Officer (MRO):** Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an Employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information.
11. **On-Duty Time:** Means all time from the time a covered employee begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.
12. **Performing (a Safety-Sensitive Function):** Means a covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
13. **Refuse(al) To Submit (to an alcohol or controlled substances test):** Means that a covered employee:
 - a) Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirements for breath testing in accordance with the provisions of this policy; or
 - b) Fails to provide adequate urine sample for controlled substances testing without a genuine inability to provide a specimen (as determined by a medical evaluation) after he or she has received notice of the requirements for urine testing in accordance with the provisions of this policy; or
 - c) Engages in conduct that clearly obstructs the testing process.
14. **Safety-Sensitive Function(s):** Means any of those On-Duty Time functions which include:
 - a) All time on any public property, waiting to be dispatched, unless the covered employee has been relieved from duty by the Employer; or
 - b) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; or
 - c) All time spent at the driving controls of a commercial motor vehicle in operation; or
 - d) All time, other than driving time, in or upon any commercial motor vehicle; or
 - e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to

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operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; or

- f) All time spent performing the post accident requirements relating to accidents; or
 - g) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
15. **Substance Abuse Professional (SAP):** Means 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 alcohol and controlled substances-related disorders.
16. **Use of (Using) Alcohol:** Means the consumption of any beverage, mixture, preparation, including any medication containing alcohol.

IV. EMPLOYER REQUIREMENTS AND NOTICES AND PROHIBITIONS

1. Except as expressly provided in this Policy, nothing in this Policy shall be construed to affect the authority of the employer, or the rights of covered employees, with respect to the use or possession of alcohol, the use of controlled substances, including authority and rights with respect to testing and rehabilitation.
2. Before performing an alcohol or controlled substances test under this Policy, the Employer shall notify the employee that the alcohol or controlled substances test is required under this Policy.
3. If the Employer has actual knowledge that an employee has an alcohol concentration of 0.04 or greater, the Employer shall not permit the employee to perform or continue to perform safety-sensitive functions.
4. If the Employer has actual knowledge that an employee is using alcohol while performing safety-sensitive functions, the Employer shall not permit the employee to perform or continue to perform safety-sensitive functions.
5. If the Employer has actual knowledge that an employee has used alcohol within four (4) hours of performing a safety-sensitive function, the Employer shall not permit an employee to perform or continue to perform safety-sensitive functions.
6. The Employer shall not permit an employee who refuses to submit to a post-accident, random, reasonable suspicion or follow-up alcohol or controlled substances test to perform or continue to perform safety-sensitive functions.
7. If the Employer has actual knowledge that an employee has used a controlled substance, the Employer shall not permit the employee to perform or continue to perform safety-sensitive functions.

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8. If the Employer has actual knowledge that an employee has tested positive for controlled substances, the Employer shall not permit the employee to perform or continue to perform safety-sensitive functions.
9. The Employer shall not permit any employee to perform safety-sensitive functions, including driving a commercial motor vehicle, if the Employer has determined that the employee has engaged in any "Prohibited Conduct".
10. The Employer shall not permit an employee who has engaged in any "Prohibited Conduct" of this Policy to perform safety-sensitive functions", including driving a commercial motor vehicle, unless the employee has met the requirements of 382.605 (referral, evaluation and treatment by a Substance Abuse Professional).

V. PROHIBITED CONDUCT

The following conduct is prohibited and will be subject to discipline, up to and including termination:

1. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. Using alcohol while performing safety-sensitive functions as defined in Section II.
3. Performing a safety-sensitive function within four (4) hours after using alcohol.
4. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle. ***It will be the responsibility of the covered employee to notify their supervisor before performing any safety-sensitive function if they are on any medication prescribed by their physician.***
5. Reporting for duty, remaining on duty or performing a safety-sensitive function, if the employee tests positive for controlled substances.
6. Refusing to submit to any alcohol or controlled substances test required by this Policy. A covered employee who refuses to submit to a required drug/alcohol test will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

A refusal to submit to an alcohol or controlled substance test required by this Policy includes, but is not limited to:

- a) A refusal to provide a urine sample for a drug test;
- b) An inability to provide a urine sample without a valid medical explanation;

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- c) A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
- d) An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
- e) Tampering with or attempting to adulterate the urine specimen or collection procedure;
- f) Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
- g) Leaving the scene of an accident without a valid reason prior to authorization from a supervisor or manager who shall make a determination whether to send the employee for a PST-accident drug and/or alcohol test;
- h) Consuming alcohol during the eight hours immediately following an accident, unless the employee has been informed that his/her actions have been discounted as a contributing factor, or if the employee has been tested.

VI. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

1. Covered employees shall submit to testing required by this policy and the Department of Transportation Regulations. Refusal by the employee to submit to testing will constitute a positive test.
2. Covered employees who test positive for illegal drugs or refuse to submit to a test required under this policy shall be removed from performing a safety-sensitive function, and will be subject to disciplinary action up to and including termination of District employment.
3. A positive result from a drug or alcohol test will be subject to disciplinary action, up to and including termination.

This District maintains a “zero tolerance” substance abuse policy. Employees found to be under the influence of alcohol or illegal drugs are subject to discharge. If a covered employee is not terminated, the employee:

- a) Must be removed from performing any safety-sensitive function;
- b) Must submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment to cure his/her alcohol or drug abuse. The District is not required to pay for this treatment;
- c) May not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and or alcohol test (depending on

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which test the employee failed) which indicates an alcohol concentration level of less than 0.02 or a negative result on a controlled substance test;

- d) Will be required to submit to at least six unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position. See Section VIII (5).

VII. CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.02 OR GREATER BUT LESS THAN 0.04

Covered employees who have a test result showing an alcohol concentration of .02 or greater but less than .04 shall be removed from performing a safety-sensitive function until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

Such an employee may be subject to disciplinary action up to and including termination of District employment. Except as just stated, the Employer shall not take any action against a covered employee based solely on test results showing an alcohol concentration less than 0.04 under this policy. This does not prohibit the employer, as stated in CFR49 Part 382 from taking action otherwise consistent with other policies the employer may have in effect.

VIII. CIRCUMSTANCE UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES:

1. *Pre-Employment Testing:*

All applicants for classifications which are covered by the DOT regulations (see Section II) as well as all employees who transfer from classifications which are not covered to classifications which are covered will be required to submit to pre-employment/pre-duty drug testing. Applicants will not be assigned to a safety-sensitive position if they do not pass the tests.

2. *Post-Accident Testing:*

Post-Accident drug and alcohol testing will be conducted on employees following an accident involving a commercial motor vehicle in the following situations:

- a) Covered employees who were performing safety sensitive functions with respect to the vehicle involved in an accident, if the accident involves the loss of life; or
- b) Covered employees receive a citation for a moving traffic violation arising from the accident.
- c) If individuals are injured and require medical treatment, or the vehicle is damaged extensively requiring a tow, drug and alcohol testing can only be conducted if a citation is issued.

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- d) Post-Accident alcohol tests shall be administered within two hours following an accident and no test may be administered after eight hours. Post-accident drug tests must be administered within 32 hours following the accident, and may not be administered after this time period. If testing is not done the supervisor or management employee must provide written documentation as to why the test was not promptly conducted.

3. ***Random Testing:***

Covered employees will be subject to random alcohol and drug testing as follows:

A random alcohol test will only be administered:

- 1) just prior to the employee performing a safety-sensitive function (i.e., driving).
- 2) while the employee is performing a safety-sensitive function, or;
- 3) just after the employee has stopped performing a safety-sensitive function. The District will subject at least 25% of the total number of covered employees to random alcohol testing per year.

A random drug test will be administered to at least 50% of the total number of covered employees per year. Some employees may be tested more than once in a year, while others are not tested at all depending on the random selection.

4. ***Reasonable Suspicion Testing:***

Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

The reasonable suspicion alcohol test will be administered within two hours of the observation. If not, the supervisor must provide written documentation as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

To ensure that supervisors are trained to make reasonable suspicion determination, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substance use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

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5. ***Return To Duty/Follow-up Testing:***

A covered employee who has violated any of the prohibitions of this policy (see Section III) must submit to a return to duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a controlled substance test. In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the employee will be subject to at least six unannounced drug and/or alcohol tests during the 12 months following the violation and while assigned to a safety-sensitive position.

Costs of Testing

The District will pay for all tests except for follow-up testing beyond the first 12 months the employee has returned to work following a positive test, and for testing of split urine samples which test positive for drugs. Cost for testing not paid by the District will be paid by the employee.

IX. TRAINING OF EMPLOYEES AND SUPERVISORS

All employees covered by this policy at the time of adoption and all employees who are hired, promoted, demoted or transferred into a covered position shall receive a copy of this policy and supporting documents and participate in a training program regarding this policy, which includes information on testing procedures and the consequences of the use of illegal drugs and the misuse of alcohol.

Each employee shall, upon receipt of the policy, related documents and training, sign a statement certifying receipt of the materials and training. This receipt will be kept in the employees personnel file.

The requirements of this policy differ from the standards in the District's "Substance Abuse" Policy. The District may take action against an employee covered by this policy for an event which is a violation of the "Substance Abuse" Policy but not of this policy.

Supervisors will receive at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

X. TESTING PROCEDURES

Sample Collection and Testing shall be conducted in a manner to assure confidentiality, a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All sample collection and testing will be conducted consistent with the procedures put forth in 49 CFR Part 40 of the DOT regulations.

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The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (CG/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40 of the DOT regulations.

Tests for alcohol concentration will be conducted utilizing a National Highway Transportation Safety Administration (NHTSA) approved evidential breath testing (EBT) device operated by a trained breath alcohol technician (BAT). If the initial test indicates alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test.

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SUBSTANCE ABUSE POLICY/D.O.T. REGULATIONS
ACKNOWLEDGMENT FORM

This is to acknowledge that I have received a copy of Eastern Municipal Water District's Substance Abuse Policy and have attended an employee orientation regarding my responsibilities under this policy.

Further, I understand that Eastern Municipal Water District reserves the right to change, rescind, or add to this policy and its procedures consistent with the District's obligation to meet and confer.

EMPLOYEE'S SIGNATURE

DATE

PRINT OR TYPE NAME