

South Suburban Sanitary District – Employee Personnel Policy Manual 2014

7.0 DRUGS AND ALCOHOL

7.1 STATEMENT OF CONCERNS

- A. The District has a responsibility to its employees, and the public to ensure safe working conditions for its employees and a productive workforce unimpaired by chemical substance abuse. The District has a responsibility pursuant to the Drug Free Workplace Act of 1988. To satisfy these responsibilities, the District must preserve a work environment free (Zero Tolerance) from the effects of drugs, alcohol, or other performance-impairing substances.
- B. The misuse of alcohol and other drugs can impair employee performance, as well as physical and mental health, and jeopardize employee safety as well as the safety of the public.

7.2 POLICY

- A. The District is committed to maintaining a safe and healthy work place for all employees by assisting employees to overcome drug or alcohol related problems through appropriate treatment and, if necessary, disciplinary action.
- B. All employees that possess a commercial driver’s license as part of their job description shall be placed in a random drug testing pool.
- C. Safety-sensitive employees shall be asked to submit to pre-employment drug/alcohol testing, reasonable suspicion drug/alcohol testing (upon reasonable suspicion) and post-accident discovery testing (upon an accident occurrence involving the employee). Testing includes a urinalysis or blood serum, or both. An employee who is returning to their position after engaging in conduct prohibited by this policy concerning alcohol may also be required to undergo a return-to-duty alcohol test.
- D. Each employee is responsible for meeting performance, safety and attendance standards.
- E. Employees shall not report to work under the influence of intoxicating liquor or illegal drugs.
- F. The use, sale, possession, manufacture, distribution and/or dispensing by an employee of an intoxicating liquor, controlled or illegal substance, or a drug not medically authorized, or any other substances which impair job performance or pose a hazard to the safety and welfare of the employee, other employees or the public, is strictly prohibited. The use of alcohol or medically prescribed controlled substances off-duty is not controlled by this policy. Conduct in violation of this policy may result in disciplinary action up to and including termination and/or criminal investigation, if appropriate.
- G. Employees may obtain counseling and rehabilitation through the Employee Assistance Program (EAP). *(Spouses, dependents and others qualify for EAP. Please see The Director of Administrative Services for more details).*
- H. Laboratory tests relied upon shall be highly accurate and reliable.
- I. Positive test results may only be disclosed to the employee, the appropriate EAP administrator, and the appropriate management officials necessary to process an adverse

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action against the employee, or a court of law or administrative tribunal in any adverse personnel action.

- J.** All medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, authorizing court order, or otherwise as permitted by Federal law implemented at 42 CFR Part 2.
- K.** This policy will be enforced and administered in a manner, which is consistent with the value statements set forth in this section, and with the advice and concurrence of the District's Director of Administrative Services.

7.3 PERMITTED USE

It is the employee's responsibility to determine from a physician whether or not a prescribed drug can impair job performance. An employee whose impairment may affect job performance should take sick leave or other steps consistent with advice of a physician. If an employee reports to work under the influence of prescription medication and endangers self or others, the employee may be disciplined, up to and including termination of employment. Any failure to report the use of such drugs or other substances following an event of concern to the District, or failure to provide evidence of medical authorization, can result in disciplinary action, up to and including termination of employment.

7.4 REPORTS OF DRUG CONVICTION

Each employee must report facts and circumstances to the District's Director of Administrative Services no later than five (5) days after conviction for violating any criminal drug statute. Failure to do so may result in disciplinary action up to and including termination of employment.

7.5 EMPLOYEE EDUCATION

The District will afford employees an opportunity to deal with drug and alcohol related problems. The Director of Administrative Services maintains information relating to the hazards of and treatment for drug and alcohol related problems. Proactive training and information shall be sponsored by the District periodically. Any District employee may seek advice, information and assistance voluntarily. Medical confidentiality will be maintained, consistent with this policy.

7.6 EMPLOYEE ASSISTANCE

Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through a private treatment program for drug and alcohol problems. The District's designated health and mental health providers will assist employees who wish to identify and select an appropriate treatment program.

If an employee seeks drug treatment voluntarily and not under adverse employment circumstances, accrued sick leave benefits may be used while attending rehabilitation. After such accommodation, the discontinuation of any involvement with alcohol or drugs may be an essential requisite for employment and is consistent with the District's policy of maintaining a drug free workplace.

7.7 DISCIPLINE RELATED TO ABUSE

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

- A. Direct observation;
- B. Evidence obtained from an arrest or criminal conviction;
- C. A verified positive test result; or
- D. An employee's voluntary admission.

In such a case, the employee may be subject to disciplinary action, up to and including immediate dismissal. As part of the disciplinary action arising from current use of illegal drugs or job-related alcohol problem, an employee may be directed to consult with health care providers. Such an employee may be required to participate in a drug or alcohol treatment program as a condition of continued employment.

A supervisor, based on reasonable suspicion that substance abuse is a factor in employment, may require an employee to be evaluated for illegal drug and alcohol use and treatment by an employee assistance program or a doctor. An employee may be required to participate in follow-up care as part of a comprehensive alcohol and drug treatment program based upon medical advice.

When an employee is required to undergo treatment under the policy, the employee may be required to authorize the following as a condition of continued employment:

- 1. Monitoring of the treatment program and the employee's participation by the Director of Administrative Services, and
- 2. Submission to random blood and/or urine screening for alcohol and/or drugs for a specific period of time not to exceed thirty-six (36) months.

When an employee voluntarily enters a treatment program, which is not associated with District intervention, testing and monitoring by the District will not be required.

Medical confidentiality will be preserved, subject to rights granted by the employee to the District Manager and Director of Administrative Services to monitor treatment and program compliance with a health care provider in order to ensure compliance with conditions of employment and ability to return to or remain at work.

7.8 DRUG TESTING UPON REASONABLE SUSPICION

Where a supervisory employee has a reasonable suspicion that an employee is under the influence of alcohol or illegal drugs, including unlawful use of a controlled substance without a valid prescription, the employee in question will be asked to submit to discovery testing. This may include urinalysis or a blood screen, or both, to confirm involvement with alcohol or illegal drugs or that the employee is drug or alcohol free at the time in question.

7.9 CONSEQUENCE OF A POSITIVE TEST

An employee who is found to be under the influence of or impaired by alcohol or illegal drugs as a result of a test requested by the District, will be subject to disciplinary action including suspension or

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termination. If an employee test positive on any drug test and if they are not immediately terminated, they will be suspended without pay until they test negative. The employee will be required to sign a last change agreement prior to returning to work.

7.10 CONSEQUENCE OF REFUSAL TO SUBMIT TO TESTING

An employee who refuses to submit to discovery testing for alcohol and illegal drugs will be subject to suspension or discharge, or both. Alleged lack of reasonable suspicion is not grounds to refuse to submit to a test; however, it is reason to challenge discipline if discipline is imposed based on the test result alone.

7.11 TESTING PROCEDURE

- A. Employee Representation.** When the employee is notified that he or she is required to consent and submit to such tests, he or she may request the presence of a representative to witness the test. The test may not be delayed unreasonably in order to wait for a representative. The absence of a representative shall not be grounds for the employee to refuse to consent and submit to such tests or searches. The presence of a representative shall not disrupt or interfere with the tests or searches.
- B. Authorization to Test.** Before a supervisor, acting on behalf of the District under this policy, requires an employee to consent and submit to such test, the supervisor must first obtain concurrence from the Director of Administrative Services, District Manager, or in the absence of both, the Manager's designee, that the information available to the District about the subject employee is sufficient to determine a reasonable suspicion that prohibited conduct will be established as a result of the test.
- C. Procedure for Consent.** The employee shall give consent to a blood, urine or breathalyzer test, or any combination, upon request, by signing a consent form. The form shall contain the following information:
1. Employee's consent to release tests results to the District;
 2. The procedure for confirming an initial positive test result for a controlled substance, including marijuana;
 3. The consequences of a confirmed positive test result for a controlled substance, including marijuana;
 4. The consequences of a positive test for alcohol, under the circumstances;
 5. A listing provided by the employee of legally prescribed and over-the-counter medications, which may be in the employee's body;
 6. The right to explain a confirmed positive test result for a controlled substance, including marijuana, or a positive test for alcohol; and
 7. The consequences of refusing to consent to the blood, urine or breathalyzer test.

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- D. Confirmatory Test.** In the event that the blood or urine test results are positive for controlled substance(s), including marijuana, the District shall require that a second confirmatory test from the same sample be conducted, using gas chromatography/mass spectrometry methods performed by a laboratory certified by the National Institute on Drug Abuse. This test must be positive before concluding the employee has such substance(s) present in the body.
- E. Employee Requested Test.** If a blood or confirmed urine test is positive, the District will instruct the laboratory to retain the blood or urine sample for a period of not less than thirty (30) calendar days from the date the tests are complete for the purposes of allowing the employee to conduct an independent test at his or her own expense at a laboratory approved by the District.
- F. Chain of Evidence.** The procedures to obtain, handle and store blood and urine samples and to conduct laboratory tests shall be documented to establish procedural integrity and chain of evidence. Such procedures shall be administered with due regard for the employee's privacy and the need to maintain the confidentiality of tests results to an extent which is not inconsistent with the needs of this policy.
- G. Notification.** The employee shall be notified of the results of all tests conducted pursuant to this policy. Employees who test positive shall be afforded an opportunity to provide medical or other information that may explain the positive test result. If a question exists, a licensed physician will review the available information with training in forensic drug testing.

7.12 RANDOM DRUG TESTING

The District will perform random alcohol testing and random controlled substance testing for all safety-sensitive employees that possess a commercial driver's license as part of their job description. The dates for the tests will not be announced and will be spread throughout the calendar year. An employee who is notified of selection for random testing must proceed to the test site immediately.

7.13 POST-ACCIDENT TESTING

In the event of an accident involving a commercial motor vehicle, the District will test each driver who was performing safety-sensitive functions with respect to the vehicle if the accident:

1. Involved loss of human life;
2. The driver receives a citation under state or local law for a moving traffic violation arising from the accident and one or more motor vehicles incurs disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle, and/or bodily injury to a person who as a result of the injury receives medical treatment away from the scene.

7.14 SAFETY-SENSITIVE PRE-EMPLOYMENT DRUG SCREENING

The District will invite successful safety-sensitive applicants who are extended a conditional job offer the opportunity to consent to a pre-employment drug screen. The applicant will be advised that the presence of one or more drugs may be cause for rejection from further consideration for employment, and that appointment to a position is contingent upon a negative drug test result. The

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applicant will be asked to authorize the District to conduct through the District's designated physician or laboratory testing facility a drug screen test as a requirement of employment.

Safety-sensitive applicants shall be directed to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Safety-sensitive applicants shall be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by medical consultants to determine whether the individual is lawfully using an otherwise illegal drug.

The District will decline to extend a final offer of employment to any safety-sensitive applicant with a verified positive test result, and such applicant may not reapply to the District for a period of twelve months. The Director of Administrative Services shall object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the District. The District shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the District from hiring the applicant.

7.15 DEFINITIONS

A. **Reasonable suspicion** is defined as specific articulable observations by a supervisory employee concerning the work performance, appearance (including noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Any accident or incident involving physical injury to any person may be considered as constituting reasonable suspicion for discovery testing for drugs and alcohol where human factors contribute to the incident and a question of sobriety short of reasonable suspicion exists.

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; and
5. Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty; mere "Hunches" are not sufficient to meet this standard.

B. **Under the influence** is defined as any detectable level of drugs (in excess of trace amounts attributable to secondary exposure) in an employee's blood or urine or any noticeable or

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perceptible impairment of the employee's mental or physical faculties. With respect to alcohol, a blood alcohol content of 0.04% constitutes under the influence while on duty.

- C. Controlled substances** are deemed as all forms of narcotics, depressants, stimulants, hallucinogens, cannabis, and other controlled substances of which the sale, purchase, transfer, use or possession is prohibited or restricted by The Federal Controlled Substances Act. Illegal or controlled substances means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term illegal drug does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- D. Over-the-counter-drugs** are those, which are generally available without a prescription from a medical doctor and are limited to those drugs, which are capable of impairing the judgment of an employee to safely perform his or her duties.
- E. Prescription drugs** are defined as those drugs, which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.
- F. Searches.** Employees have no expectation to be free from search of a locker, desk or contents of other similar District controlled spaces. A search for contraband within personally controlled spaces on District property (purses, garments, brief cases or a personal vehicle, for example) shall be based on reasonable grounds or consent of the employee. In accordance with the provisions of this policy prohibiting drugs in the work place, or based upon legitimate concerns for the possession of other unauthorized materials (such as firearms, explosives or stolen property,) this policy constitutes formal notice of the District's intent to search premises, persons and secured spaces, including vehicles parked on District property, based upon reasonable grounds or consent. Searches shall be approved by the District Manager or his/her designee, and, if possible, notice to the employee and an opportunity to be present shall be given.
- G. Refusal.** Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the Director of Administrative Services to obtain guidance on action to be taken.

**LETTER OF COMMITMENT
“LAST CHANCE” AGREEMENT/EMPLOYMENT REINSTATEMENT CONDITIONS**

I _____ understand that my reinstatement and continued employment by the South Suburban Sanitary District is based upon and constrained by the following terms

- A. I will contact my employer’s Employee Assistance Program (EAP) at _____
I will attend the appointment setup at _____ on _____,
_____. I understand any cost associated with my rehabilitation treatment will be paid for by me or through my health insurance, if applicable.

***NOTE:** You have the right to an alternate health care professional to assist you if the person is a qualified chemical dependency counselor. A qualified certified alcohol and drug program, or is third party billing eligible, or is a Substance Abuse Professional by the DOT, and utilizes the American Society of Addiction Medicine (ASME) protocol. If you have an alternate choice, please let me know.*

- B. I will comply with all of the program requirements and follow-up recommendations to their successful conclusion.
- C. I authorize those persons/agencies involved in my substance abuse assessment and/or treatment to receive a copy of my alcohol/drug screen results, and all other relevant information, including direct communication with officials. I authorize the Director of Administrative Services and appropriate members of management to receive all relevant information regarding my progress in my assessment and rehabilitation program.
- D. I agree to submission of random screening for alcohol and/or drugs as often as the District requests, as well as, tests that may be required by my rehabilitation program for 60 months. I will be subject to unannounced testing (follow-up) monitoring.
- E. I recognize the adverse impact working overtime and standby may have on my recovery and waive my rights to assignment of overtime and standby for 60 months.
- F. I agree that I will not operate any District vehicles or equipment for a 60 month period.
- G. I understand that my job performance warrants close supervision for an extended period of time upon my return to work and I will accept such supervision as a constructive part of my recovery.
- H. I understand that I must meet all established standards of conduct and job performance and that I will be subject to the Districts disciplinary procedures for any failure to meet those standards, up to an including termination.
- I. I understand and accept all conditions of the South Suburban Sanitary District Drug and Alcohol Abuse Policy, as it relates to my reinstatement and employment and that if I test positive for drugs/alcohol during my employ at South Suburban Sanitary District I will be immediately terminated.
- J. I consent to any drug and alcohol testing that the District requests as well as tests that may be required by my rehabilitation program.
- K. I understand that I will be subject to the terms of these conditions. Upon completion of the twelve (12) months the appropriate parties will review my job performance and recovery progress and determine if the terms of these conditions of employment will be removed, modified, sustained or changed in any way.

I understand and agree that my reinstatement and continued employment with South Suburban Sanitary District is contingent upon my meeting satisfactorily, all of the above terms. Any failure to do so relinquishes all defenses on my part and I understand that South Suburban Sanitary District can immediately terminate my employment.

EMPLOYEE SIGNATURE: _____ DATE: _____

DISTRICT MANAGER: _____ DATE: _____