

TITLE HUMAN RESOURCES DEPARTMENT
CHAPTER 11 Substance Abuse Policy
PART 5 Pipeline Safety Policy

1. ISSUING AGENCY: The Human Resources Department and the Division of Risk Management, of the Department of Finance and Administrative Services.

2. SCOPE: These rules have general applicability to all prospective and current employees, classified and unclassified, who perform or will perform safety-sensitive job functions including but not limited to the operation, maintenance or emergency response to the landfill pipeline.

3. STATUTORY AUTHORITY: ROA, 1994, § 2-15-1, et seq.; Council Resolutions 65-1995 and 78-1995; 21 U.S.C. § 812; 41 U.S.C. § 701; 49 U.S.C. § 31,301; 21 C.F.R. §§ 1300.11 through 1300.15; 49 C.F.R. §§ 40, 199; ROA, 1994, § 3-1-1; ROA, 1994, § 3-2-1.

4. DURATION: Until revoked.

5. EFFECTIVE DATE: January 1, 2014

6. PURPOSE: The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. § 31,301).

7. DEFINITIONS

A. **Accident (PHMSA)** means for purposes of post-accident testing of Pipeline & Hazardous Materials Safety Administration (pipeline), means: (i) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences: (a) A death or personal injury necessitating inpatient hospitalization; (b) Estimated property damage, of \$50,000 or more, including loss to City of Albuquerque and others, or both, but excluding cost of gas lost; (c) Unintentional estimated gas loss of 3 million cubic feet or more; (ii) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident. (iii) An event that is significant, in the judgment of City of Albuquerque, even though it did not meet the criteria of paragraphs (i) or (ii) above.

B. **Administrator** means the Administrator of the Pipeline & Hazardous Materials Safety Administration (PHMSA) or any person who has been delegated such authority.

C. **Adulterated specimen** means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

D. **Air Blank** means a reading by an EBT of ambient air containing no alcohol.

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

F. **Alcohol Concentration or Content (AC)** means the 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.

G. **Alcohol confirmation test** means a subsequent test using an evidential breath-testing device (EBT) following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

H. **Alcohol Use** means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

I. **Aliquot** means a fractional part of a specimen used for drug testing. It is taken as a sample representing the whole specimen.

J. **Breath Alcohol Technician (BAT)** means an individual who instructs and assists individuals in the alcohol testing process and operates an Evidentiary Breath Testing (EBT) device.

K. **Cancelled test** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test result.

L. **C.F.R.** means any references herein to the Code of Federal Regulations (C.F.R.) shall refer to the most recent enactment, as it shall be from time to time.

M. **Collection/Testing Site** means a place selected by the employer where individuals present themselves for the purpose of providing a urine specimen for a drug test and for the purpose of providing breath for an alcohol test.

N. **Confirmation or confirmatory Test** means (A) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration; or (B) In drug testing, a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

O. **Confirmatory validity test** means a second test performed on a different aliquot of the original specimen to further support a validity test result.

P. **Confirmed Drug Test** means a confirmation test result received by an MRO from a laboratory.

Q. **Covered Employee (PHMSA)** means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

R. **Covered Function** means an operations, maintenance, or emergency-response function regulated by Part 192, 193, or 195 of Pipeline Safety Regulations that is performed on a pipeline or on an LNG facility.

S. **DHHS** means the Department of Health and Human Services or any designee of the Secretary of DHHS.

T. **Designated Employer Representative (DER)** means an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40 regulations.

U. **Dilute Specimen** means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

V. **DOT Agency** means an agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol or drug testing (49 CFR parts 199, 382 and 655).

W. **Evidential Breath Testing Device (EBT)** means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath for detection of alcohol and placed on NHTSA'S "Conforming Products List of Evidential Breath Measurement Devices."

X. **Invalid Drug Test** means the result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Y. **Medical Review Officer (MRO)** means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Z. **Negative Drug Test Result** means the result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

AB. **Non-negative Test Result** means a test result that is found to be adulterated, substituted, invalid, or positive (for drug(s) or drug metabolite(s)).

AC. **Operator** means a person who owns or operates pipeline facilities subject to Part 192, 193, or 195.

AD. **Observed Collection** means, consistent with 49 C.F.R. § 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if (1)the laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; (2)the MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; (3) the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; (4) the temperature on the original specimen was out of range; (5) the MRO reports a negative-dilute result with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL; or (6) The test is a return-to-duty or follow-up test.

AE. **PHMSA** means the Pipeline and Hazardous Materials Safety Administration.

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

AG. **Pipeline Facilities** mean a pipeline, rights-of way, and equipment, facility or building used in the transportation of products.

AH. **Positive Alcohol Test Result** means the result for an alcohol test that confirms an alcohol concentration of 0.02 BAC or greater.

AI. **Positive Drug Test Result** means the result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

AJ. **Prohibited Drug** means drugs including, but not limited to, marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 C.F.R. § 40, as amended.

AK. **Refusal to Test.** A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by 49 C.F.R. § 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take an additional test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the “shy bladder” or “shy lung” procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failure to wash hands after being directed to do so by the collector)
- Verbal or written refusal to provide a breath/urine specimen;
- For an observed collection, failure to follow the observer’s instructions 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:
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process:
- Admission to the collector or MRO that the specimen was adulterated or substituted:
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

AL. **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 or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse) with knowledge of and clinical experience in the diagnosis/treatment of alcohol and controlled substance-related abuse, addictions or disorders and who is qualified to act as a SAP under 49 C.F.R. Part 40.

AM. **Substituted Specimen** means a verified specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with human urine.

AN. **Validity Testing** means the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

AO. **Verified Negative Test** means a drug test result reviewed by a medical review officer and determined not to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as amended.

AP. **Verified Positive Test** means a drug test result reviewed by a medical review officer and determined to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as amended.

8. PURPOSE AND APPLICABILITY

A. Purpose

(1) The City of Albuquerque provides safe delivery of landfill gas in compliance with Department of Transportation Regulations to the Bernalillo County Metropolitan Detention Center. Part of mission of the City of Albuquerque is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the City of Albuquerque declares that the unlawful manufacturing, distributing, dispensing, possessing, or using of controlled substances or misuse of alcohol is prohibited for safety-sensitive employees.

(2) The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. § 31,301). This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation has published 49 C.F.R. § 199, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibit performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also published 49 C.F.R. § 40, as amended, that sets standards for the collection and testing of urine and breath specimens. Any provisions set forth in this policy that are included under the sole authority of the City and are not provided under the authority of the above named Federal regulations are underlined. If there is any question, conflict, or discrepancy in this policy and DOT Regulations as codified at 49 CFR Parts 40 and Part 199, the DOT Regulations will prevail.

B. Applicability

(1) This Part of the City's Substance Abuse Policy applies to all safety-sensitive City of Albuquerque employees (full- or part-time) when performing any pipeline-related business (covered employees). A safety-sensitive function is any duty related to the operation, maintenance or emergency-response on the pipeline.

9. EDUCATION AND TRAINING

A. Every covered employee will receive a copy of Part 5 of the City's Substance Abuse Policy and will have access to the corresponding federal regulations including 49 C.F.R. §§ 40 and 199, as amended. The City will provide a 1-hour training session to each new-hire employee who performs covered functions. These sessions will be held periodically to address all new employees on a timely and efficient basis. In addition, all covered employees will receive educational materials explaining the DOT's

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requirements and the City's policies and procedures to meet those requirements. In addition to this policy, the City will provide covered employees with information concerning:

- (1) the effects of drugs and alcohol on an individual's health, work, and personal life;
- (2) the signs and symptoms of a drug or alcohol problem; and
- (3) the available methods of intervention when a problem does exist.

B. Each covered employee is required to certify that he has been given a copy of this policy and other drug and alcohol information by the City. Applicants for employment are also required to execute the certification as a condition of employment. The signed document will be kept in the employee's personnel file. Existing covered employees who refuse to execute this required certification will be subject to discipline.

C. The City will inform existing employee of any significant DOT regulation changes to this policy using the same recordkeeping process as noted in B. above. Minor policy changes will be distributed via the Human Resources Department.

D. All supervisory personnel who are in a position to determine employee fitness for duty will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Under the City's own authority, supervisory personnel will also be trained on how to intervene constructively and how to effectively integrate an employee back into his/her work group following intervention and treatment.

10. PROHIBITIONS

A. Prohibited Substances. Prohibited substances addressed by this policy include the following:

(1) **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration and any drug cited in 49 C.F.R. § 199. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. Federal Pipeline and Hazardous Materials Safety Administration drug testing regulations (49 C.F.R. § 199, as amended) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section 12 of this policy. Employees may also, under City Authority, be tested for any drug or any substance identified in Schedule 1 through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined in 21 C.F.R. §§ 1300.11 through 1300.15. Illegal use of these drugs is prohibited at all times and covered employees may be tested for these drugs anytime that they are on duty.

(2) **Legal Drugs:** The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a supervisor in accordance with the Personnel Rules and Regulations. The employee is required to provide a written release from his/her doctor indicating that the employee can perform his/her job functions while under the influence of the prescribed drugs. The misuse and/or abuse of prescription

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and/or non-prescription drugs while performing City business is prohibited.

(3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 C.F.R. § 199, as amended, under post accident, reasonable suspicion, return-to-duty and follow-up testing. Under City authority, an alcohol test can be performed on a covered employee under random testing. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

B. Prohibited Conduct

(1) Covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 C.F.R. § 40, as amended.

(2) Covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his on-call responsibilities and may be subject to disciplinary action.

(3) Employees who are not at work and not "on-call" duty, but who could be called at any time to perform covered functions are subject to the 4-hour pre-duty alcohol prohibition. An employee, who has been notified to report for duty to respond to an emergency, may not use alcohol after being notified to report. Additionally, the employee must notify management of any alcohol consumption within the previous 4-hours. If the City determines that an employee has used alcohol within the time period after the employee has been notified to report for duty, the City shall not permit the covered employee to perform or continue to perform covered functions.

(4) The City shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.

(5) Covered employees are prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(6) Covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he submits to the post-accident drug and alcohol test, whichever occurs first.

(7) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

(8) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(9) Consistent with the Drug-free Workplace Act of 1988 (41 U.S.C. § 701) and Personnel Rules and Regulations, all City employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business.

11. DRUG STATUTE CONVICTION

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A. Consistent with the Drug Free Workplace Act of 1988 (41 U.S.C. § 701), all employees have a duty to notify their immediate supervisor and the Human Resources Director in writing of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

12. TESTING REQUIREMENTS AND PROCEDURES

A. Testing Requirements

(1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by Federal regulations. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and random as defined in the Testing rules of this policy. All covered employees who test positive on a drug, alcohol, or drug and alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the covered employee will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional. Return-to-duty and follow-up testing will be conducted under direct observation.

(2) A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed under post accident, reasonable suspicion, return-to-duty and follow-up testing. Under City authority, an alcohol test can be performed on a covered employee under random testing. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

(3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in the Results and Appeals Section of this policy. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and disciplined as defined in the Results and Appeals Section of this policy. Additionally, refer to the Definitions: Refusal to Test for all circumstances that constitute a refusal to test. The City of Albuquerque has a zero-tolerance policy for refusing to test.

B. Drug Testing Procedures

(1) Testing shall be conducted in a manner to assure 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 (HHS). All testing will be conducted consistent with the procedures put forth in 49 C.F.R. § 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

(2) After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 C.F.R. § 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted

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on the primary urine specimen. Specimen validity testing will be conducted on all urine specimens provided for testing under PHMSA authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of the 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. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are at or above the minimum thresholds established in 49 C.F.R. § 40, as amended.

(3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO must have the qualifications required by DOT procedures (49 C.F.R. § 40, as amended). The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a non-negative test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Substance Abuse Program Manager. If a legitimate explanation is found, the MRO will report the test result as negative to the Substance Abuse Program Manager and no further action will be taken. If a test is invalid without a medical explanation, a retest will be conducted under direct observation. If a test is negative dilute, a retest will not be conducted, the result of the original test will stand as the test of record.

(4) Any covered employee who questions the results of a required drug test under the Testing sections of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 C.F.R. § 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Employees do not have access to a test of their split specimen following an invalid result. The City will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

(5) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the employer to retest the employee under direct observation.

(6) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will be retained for one year.

(7) Observed Collections. Consistent with 49 C.F.R. § 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

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- (a) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; or
- (b) The MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
- (c) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or
- (d) The temperature on the original specimen was out of range; or
- (e) The MRO reports a negative-dilute result with a creatine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL; or
- (f) The test is a return-to-duty or follow-up test.

13. PROCEDURES APPLICABLE TO NATURAL GAS PIPELINE WORKERS UNDER DOT-PHMSA AUTHORITY

A. Covered Employees

(1) This section of the policy applies to all PHMSA pipeline covered employees as it details specific Drug and Alcohol testing requirements mandated by DOT. Covered employees are those who perform any "covered functions" such as operations, maintenance, or emergency-response function regulated by 49 CFR §192, 193, or 195 which is performed on a pipeline or on an LNG facility. Pipelines include all parts of the physical facilities through which natural gas moves in transportation (gathering, transmission, distribution, or storage), including pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, holders and fabricated assemblies. The term "covered employee" does not include clerical, truck driving, accounting, or other functions not subject to PHMSA but does include anyone who performs a covered function employed by the City, or be a contractor engaged by the City, or be employed by such a contractor.

B. DOT Procedures Referenced By 199.5

- (1) This anti-drug and alcohol program must be conducted according to the requirements of part 199 and DOT Procedures as listed as 49 CFR Part 40.
- (2) Part 199 terms and concepts have the same meaning as in DOT Procedures.
- (3) Violations of DOT Procedures with respect to anti-drug and alcohol programs required by Part 199 are violations of Part 199.
- (4) An employer must check on the drug and alcohol testing record of applicants or employees it is intending to use to perform safety-sensitive functions to comply with Part 199 and Part 40.25.

(a) The City must obtain specific written consent from the prospective covered employee to inquire about the applicant's previous controlled substances and alcohol testing information.

(b) The City shall, pursuant to an applicant's written consent, request the following information from DOT-regulated employers who have employed the employee (applicant) during any period before the date of the employee's application or transfer. Testing information required includes:

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- i. Alcohol tests with a result of 0.04 or greater;
- ii. Verified positive controlled substance test results;
- iii. Refusals to be tested, including verified adulterated or substituted drug test results;
- iv. Other violations of DOT agency drug and alcohol testing regulations;
- v. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests) the City must complete the following:

(1) If the previous employer does not have information about return-to-duty process, the City must seek to obtain this information from the employee.

(2) The City will only request information from previous employers regarding drug or alcohol test information that was obtained pursuant to Part 199, or other applicable DOT agency regulations only. *Non-DOT testing results will not be considered by the City for compliance with Part 199.5.*

(c) If feasible, this information must be obtained and reviewed prior to the first time the applicant or employee performs a covered function. If it is not feasible, the City must obtain and review the information as soon as possible. However, the City must not permit an employee to perform covered functions after 30 days from the date on which the employee first performed covered functions without having made a good faith, documented effort to obtain the information.

(5) The City shall not use a covered employee to perform covered functions if the City obtains information on a DOT controlled substances or alcohol prohibition, without first obtaining information on DOT compliance (Return to Duty Process) per Part 40 Subpart O.

C. STAND-DOWN WAIVERS REFERENCED BY PART 199.7 AND PART 40.21

(1) In accordance with Part 40.21, the City may not stand-down any employee unless the City obtains a specific waiver from the DOT agency with authority over the employer and its employees. The City will not remove covered employees from covered functions until the MRO has completed the verification process and the City has received results from the MRO. *The City will not apply for such a waiver.*

(2) The DOT stand-down procedure does not apply to situations where DOT employees test positive and request the split sample to be tested or a request by the employee to the MRO for a quantitative test result. The City MRO will immediately notify the City when a DOT employee has a verified positive test regardless of a split specimen being tested or not or if the employee requests a quantitative result from the MRO. The City will immediately remove the DOT employee from duty.

D. PREEMPTION OF STATE AND LOCAL LAWS AS REQUIRED BY 199.9

(1) Part 199, subpart B, The Alcohol Misuse Prevention Program, except as provided in paragraph two (2) below, preempts any State or local law, rule, regulation, or order to the extent that:

- (a) Compliance with both the State or local requirements and compliance is not possible;
- or

(b) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of part 199 (b).

(c) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(2) Part 199 subpart A shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

E. ANTI-DRUG PLAN

(1) The City will maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures.

(2) The plan must be revised if requested by NM-PRC-Pipeline Safety Bureau or the DOT Administrator in order to provide a reasonable level of safety.

F. USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST AS REFERENCED BY PART 199.103

(1) The City may not knowingly use as a covered employee any person who:

(a) Fails a required drug test and the MRO determines that there is no legitimate medical explanation for the confirmed positive test result; or

(b) Refuses to take a required DOT drug test.

(2) All covered employees who test positive on a drug, alcohol, or drug and alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty the City may only use such employees in performing covered functions if the employee has:

(a) Been considered by the MRO in accordance with DOT Procedures and been determined by a SAP to have successfully completed required education or treatment;

(b) Passed a DOT Return-to-Duty test (result must be acceptable to DOT *and this policy*); and

(c) Submit to DOT imposed follow-up testing including a minimum of 6 tests in the first 12 months, and not have failed any of those follow-up tests required by Part 40 Subpart 0 after returning to duty.

(4) Per DOT Part 40.261(b) employees that refuse to take a DOT controlled substances test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(5) The City tests for prohibited drugs and the presence of unacceptable levels of such drugs, constitutes a positive result.

G. DRUG TESTS REQUIRED BY 199.105

The City shall conduct the following drug tests for the presence of prohibited drugs:

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(1) Pre-Employment Testing as required by 199 105(a)

(a) The City may not hire or contract for the use of any person as a covered employee unless that person passes a DOT pre-employment drug test.

(b) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a DOT drug test with a verified negative result.

(c) If an applicant fails or refuses to submit to a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure or refusal of a pre-employment drug test will disqualify an applicant for employment with the City for a period of one year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 C.F.R. § 40, as amended, and the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(d) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a DOT drug test with a verified negative result.

(e) All current employees applying for transfer from a non-DOT position to a DOT covered position must consent to and successfully pass a DOT pre-employment drug test prior to transfer.

(f) If a pre-employment or pre-transfer test is canceled, the City will require the applicant to take and pass another drug test.

(g) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section 14 herein.

(h) In instances where a covered employee is on extended leave for a period of ninety (90) days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions. A verified positive test will result in termination from City employment.

(i) All applicants or employees being placed, transferred, or promoted from a non-covered position to a covered position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the applicant worked for the previous two years.

(2) Post-Accident Testing As Required By 199.105(b)

(a) As soon as possible, but no later than 32 hours after a **PHMSA accident**, the City shall drug test each employee whose performance either contributed to the accident **or cannot be completely discounted as a contributing factor** to the accident. The investigating supervisor will notify the employee(s) of the need to test. The supervisor will make the determination using the best information available at the time of the decision. If the drug test is not conducted within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

(b) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the

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scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(c) The City may decide not to test under this requirement but must document the decision (City post-accident form). Any decision not to test following an accident 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.

(d) Nothing in Part 199 (or this policy) will be construed to require the delay of necessary medical attention for the injured following an accident or prohibit a covered employee from leaving an accident scene for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

(e) It is the responsibility of the City supervisor to determine whether the drug test is covered under DOT-PHMSA (gas operations), DOT-FMCSA (CDL), or City policy. It is also the supervisor's responsibility to inform the collection facility as to which of the above categories the test falls under and to confirm that the appropriate tests have been administered.

(f) In the rare event the City is unable to perform an PHMSA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City may use drug post-accident test results administered by State or local law enforcement officials in lieu of the PHMSA test. The State or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(g) An employee who submits a urine sample for a post-accident drug test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(3) Random Testing As Required By 199.105(c)

(a) All covered employees will be subjected to random, unannounced testing.

(1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

(2) The number of employees randomly selected for drug testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The City of Albuquerque is subject to more than one DOT Agency drug and alcohol testing rule namely FMCSA, PHMSA and FTA. The City has elected to combine DOT safety-sensitive employees under FMCSA and PHMSA into a single random pool. The City must test at or above the highest minimum annual random testing rates as set forth in 49 C.F.R. § 382.305(b) and § 199.105(c).

(3) The selection of employees for random drug testing shall be made by a scientifically valid method such as a compliant computer-based random number generator that is matched with the employee's ID number. Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

(4) Random tests can be conducted at any time during an employee's shift for drug

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testing. Testing can occur during the beginning, middle, or end of an employee's shift.

(5) Employees are required to proceed immediately to the collection site upon notification of their random selection.

(6) An employee who submits a urine sample for a random drug test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(b) Dual DOT-FMCSA (CDL drivers)/PHMSA –gas pipeline employees) are randomly selected for urine drug testing at an annual minimum ratio established by federal regulations for urine drug testing.

(4) Reasonable Suspicion Testing As Required By 199.105(d)

(a) The City shall drug test each employee when there is reasonable suspicion that the employee is using a prohibited drug. Note: An alcohol test is also required as noted below in the PHMSA Alcohol Misuse section of this policy.

(b) The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug based on specific, contemporaneous, physical, behavioral, or performance indicators of probable drug use. Document the decision criteria on the Reasonable Suspicion – Direct observation form. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug use, and who reasonably concludes that an employee may be adversely affected or impaired in his work performance due to possible prohibited substance abuse.

(c) A reasonable suspicion drug test can be performed any time the covered employee is on duty.

(d) A supervisor shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves or others into a situation which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug test shall not be permitted to finish his shift and shall immediately be placed on leave with pay status pending disciplinary action.

(e) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee has current drug use or is a substance abuser, the health care provider shall notify the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the Department director or the designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(f) When there are no specific, contemporaneous, articulable objective facts that indicate current drug use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, an Employee Assistance Program (EAP) counselor, or a provider of medical services under contract to the City, the employee shall be referred to the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the Department designee who shall place the

employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(g) A written record of the observations which led to a drug test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the MRO and shall be attached to the forms reporting the test results.

(h) An employee who submits a urine sample for a reasonable suspicion drug test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(5) Return to Duty Testing As Required By 199.105(e)

(a) All covered employees who test positive on a drug, alcohol, or drug and alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the provisions of this section apply.

i. A covered employee who previously refused to take or had a positive drug test may not return to duty in a covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning SAP's and the return-to-duty process.

ii. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety.

iii. Return-to-duty testing is conducted when the employee is off duty.

iv. Per DOT Part 40.67 mandatory direct observation collection procedures will be used for all DOT required Return-To-Duty tests.

v. An employee who submits to a urine sample for a return-to-duty test which is determined to be a positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(6) Follow-Up Testing As Required By 199.105(f)

(a) All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. In the event a covered employee returns to duty, the provisions of this section apply.

i. Following a positive drug test or a refusal to take a DOT drug test, a covered employee will be required to undergo frequent, unannounced drug testing as directed by the SAP, for a period of up to 60 months. The number and frequency of such follow-up testing shall be determined by the SAP, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, such follow-up testing may include testing for alcohol as directed by the SAP in accordance with DOT Part 40.

ii. Follow-up testing shall be conducted just before, during, or immediately after the employee is on duty.

iii. Per DOT Part 40.67 mandatory direct observation collection procedures will be used for all DOT required Follow-Up tests.

iv. Follow-up testing is separate and in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

v. An employee who submits a urine sample for a follow-up drug test which is determined to be a positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

H. Employee Assistance Program As Required By 199.113- The City shall provide an employee assistance program (EAP) for its employees and supervisory personnel. Reference Section 1100 Substance Abuse Part 4.

I. Contractor Employees Provisions As Required By 199.115- With respect to those employees who are contractor or employed by a contractor, the City may provide by contract that the drug testing, education, and training required by Part 199 be carried out by the contractor provided:

(1) The City must remain responsible for ensuring that the requirements of Part 199 are complied with regardless if the contractor administers the program or City administers the program or a combination thereof; and

(2) The contractor must allow access to property and records by the City, by the Administrator, and a representative of the state agency for the purpose of monitoring the operator's (City's) compliance with the requirements of Part 199.

J. Recordkeeping Provisions for Part 199 As Required By 199.117

(1) The City must keep the following records for the periods specified as well as permit access to the records as noted in paragraph (2) below:

(a) Collection process records demonstrating compliance with part 199 for at least 3 years

(b) Records of employee drug tests that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of 5 years.

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

(d) Records confirming that supervisors and employees have been trained as required by part 199 must be kept for at least 3 years.

(2) Information regarding an individual's drug testing results or rehabilitation must be released upon the written consent of the individual and as provided by DOT Procedures.

K. Reporting Of PHMSA Drug Testing Results As Required By Part 199.119

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The City shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 C.F.R. Part 40 and Part 199.119.

L. Alcohol Misuse Plan

(1) Requirement To Maintain An Alcohol Misuse Plan Per 199.202

(a) The City must maintain and follow a written alcohol misuse plan that conforms to the requirements of part 199 and DOT Procedures concerning alcohol-testing programs.

M. Other Requirements Imposed By Operators As Required By 199.209

(1) Except as expressly provided in Part 199, nothing in alcohol related Part 199 requirements shall be construed to affect the authority of the City, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

(2) The City may, but is not required to, conduct pre-employment alcohol testing under Part 199. If the City chooses to conduct pre-employment alcohol tests, specific criteria must be met.

(a) The City will not conduct pre-employment alcohol tests of covered employees.

N. Requirement for Notice Prior To Drug or Alcohol Testing As Required By Part 199.211

(1) Before performing an alcohol test under this policy, the City shall notify the covered employee that Part 199 requires the alcohol test. The City cannot falsely represent that a test is administered under Part 199.

O. Alcohol Tests Required By 199.225- The City shall conduct the following types of tests for the presence of alcohol:

(1) **Post-accident As Required by 199.225(a):**

(a) As soon as practicable following a **PHMSA accident**, the City shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the PHMSA accident **or cannot be completely discounted as a contributing factor** to the accident. The decision not to administer a test under this part must be based on the City's determination, using the best available information at the time of the determination that the covered employee's performance could not have contributed to the accident.

(b) If a required post-accident test is not **administered within 2 hours following the PHMSA accident**, the City shall prepare and maintain on file a record (post-accident summary form) stating the reasons the test was not promptly administered. The City will continue attempting to administer an alcohol test in this case for up to 8-hours. If a required test is not administered within 8 hours following the accident, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the City of his or her location if the employee leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(d) Nothing in Part 199 (or this policy) will be construed to require the delay of necessary medical attention for the injured following an accident or prohibit a covered employee from leaving an accident scene for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

(e) It is the responsibility of the supervisor to determine if the alcohol test is covered under DOT-PHMSA (gas operations), DOT-FMCSA (CDL), or City policy. It is also the supervisor's responsibility to inform the collection facility as to which of the above categories the test falls under and to notify the collection facility which test to perform or not perform (e.g., no alcohol test after 8-hours after the accident).

(f) In the rare event the City is unable to perform an PHMSA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City may use alcohol post-accident test results administered by State or local law enforcement officials in lieu of the PHMSA test. The State or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(g) An employee who submits a breath sample for a post-accident alcohol test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(2) Random Testing:

(a) DOT-PHMSA does not authorize random alcohol tests. Under City authority, however, all covered employees will be subject to random unannounced alcohol testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

i. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

ii. The number of employees randomly selected for alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random drug testing by Federal regulations. The City of Albuquerque is subject to more than one DOT Agency drug and alcohol testing rule namely FMCSA, PHMSA and FTA. The City has elected to combine DOT safety-sensitive employees under FMCSA and PHMSA into a single random pool. The random testing rate for alcohol established by the City will equal the random test rate for drugs.

iii. The selection of employees for random alcohol testing shall be made by a scientifically valid method such as a compliant computer-based random number generator that is matched with the employee's ID number. Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

iv. Under the City's authority, a random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

v. Employees are required to proceed immediately to the collection site upon

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notification of their random selection.

vi. An employee who submits a breath sample for a random alcohol test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(3) Reasonable suspicion testing required by 199.225(b):

(a) The City shall require a covered employee to submit to an alcohol test when the City has reasonable suspicion to believe that the employee has violated the prohibitions of this policy.

(b) (B) Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his work performance due to possible prohibited alcohol misuse.

(c) (C) The City's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. These reasons are to be documented (Reasonable Suspicion –Direct observation form)

(d) Alcohol testing is authorized by Part 199 (or this policy) **only** if the observations required by this sub-part are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this sub-part. Under DOT authority, a covered employee may be directed by the City to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions. However, under City authority, a reasonable suspicion alcohol test may be performed any time the covered employee is on duty.

(e) If a test required by this policy is not administered within 2 hours following the determination, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. The City will continue attempting to administer an alcohol test in this case for up to 8-hours. If a required test is not administered within 8 hours following the determination, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to PHMSA upon request of the Administrator.

(f) Notwithstanding the absence of a reasonable suspicion alcohol test under this provision, 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 City permit the covered employee to perform or continue to perform covered functions, until:

(i) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(g) Except as provided above, the City will not take any action against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test.

(h) The City shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves or others into a situation which might endanger the physical

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safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to an alcohol test shall not be permitted to finish his shift and shall immediately be placed on leave with pay status pending disciplinary action.

(i) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee has current alcohol use, the health care provider shall notify the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the Department director or the designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(j) When there are no specific, contemporaneous, articulable objective facts that indicate current alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol to a supervisor in his/her chain of command, an Employee Assistance Program (EAP) counselor, or a provider of medical services under contract to the City, the employee shall be referred to the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the Department designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

(k) A written record of the observations which led to an alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the MRO and shall be attached to the forms reporting the test results.

(l) An employee who submits a breath sample for a reasonable suspicion alcohol test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(4) Return to Duty Testing As Required By 199.105(e):

(a) All covered employees who test positive on a drug, alcohol, or drug and alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty the provisions of this section apply.

i. A covered employee who previously refused to take or had a positive alcohol test may not return to duty in a covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning SAP's and the return-to-duty process.

ii. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety.

iii. Return-to-duty testing is conducted when the employee is off duty.

iv. Per DOT Part 40.67 mandatory direct observation collection procedures will be used for all DOT required Return-To-Duty tests.

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v. An employee who submits to a breath sample for a return-to-duty test which is determined to be a positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

(5) Follow-Up Testing As Required By 199.105(f):

(a) All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. In the event a covered employee returns to duty, the provisions of this section apply.

i. Following a positive alcohol test or a refusal to take a DOT alcohol test, a covered employee will be required to undergo frequent, unannounced drug testing as directed by the SAP, for a period of up to 60 months. The number and frequency of such follow-up testing shall be determined by the SAP, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, such follow-up testing may include testing for alcohol as directed by the SAP in accordance with DOT Part 40.

ii. Follow-up testing shall be conducted just before, during, or immediately after the employee is on duty.

iii. Per DOT Part 40.67 mandatory direct observation collection procedures will be used for all DOT required Follow-Up tests.

iv. Follow-up testing is separate and in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

v. An employee who submits a breath sample for a follow-up alcohol test which is determined to be a positive test result will be terminated from City employment. An employee who refuses to test will be terminated from City employment.

P. Retention Of Records (199.227)

(1) The City will maintain records of its alcohol misuse and controlled substances use prevention programs as required by Part 199. All records must be maintained in a secure location with controlled access.

(2) Records shall be maintained by record type and for the following duration:

(a) Records that must be kept for a five (5) year retention period include:

- i. Alcohol test results indicating an alcohol concentration of 0.02 or greater;
- ii. Documentation of refusals to take required alcohol tests;
- iii. Employee evaluation and referrals;
- iv. A copy of each MIS annual report data as required by part 199.229; and
- v. Copies of calibration records

(b) Records that must be kept for a two (2) year retention period include:

- i. Records related to the alcohol collection process (except calibration of EBT's)
 - ii. Records related to training
- (c) Records that must be kept for a one (1) year retention period include:
- i. Records of negative alcohol test results with a concentration of less than 0.02
- (3) The types of records that must be generated and maintained under Part 199 and Part 40 are:
- (a) Records related to the collection process
 - (b) Calibration documentation for evidential breath testing device
 - (c) Documentation of breath alcohol technician training
 - (d) Documents generated regarding decisions to test under reasonable suspicion requirements
 - (e) Documents generated in connection with decisions on post-accident tests
 - (f) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
 - (g) Records related to a covered employee's test results
 - (h) The employer's copy of the alcohol test forms including the results
 - (i) Documents related to the refusal of any covered employee to submit to an alcohol test required by part 199.
 - (j) Documents presented by a covered employee to dispute the result of a DOT Part 199-alcohol test.
 - (k) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer obtains per part 40.25,
 - (l) Records related to other violations of part 199.
 - (m) Records relating to evaluations or treatment such as:
 - i. SAP determinations concerning a covered employee's need for assistance
 - ii. Records concerning a covered employee's compliance with recommendations of the SAP
 - iii. Records related to the operator's MIS annual testing data.
 - iv. Materials on alcohol misuse awareness including a copy of the employer's policy on alcohol misuse,
 - v. Documentation of compliance with requirements of part 199.231

- vi. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to made reasonable suspicion determinations
- vii. Certification that training conducted under this part complies with requirements for such training.

Q. Reporting Of Alcohol Testing Results (199.229):

(1) The City shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 C.F.R. Part 40 and Part 199.119.

R. Contractor Employees Per Part 199.245

- (1) The City may utilize contractors to perform covered functions and administer their own drug and alcohol-testing program that complies with Part 199.
- (2) The City, however, remains responsible for ensuring alcohol testing; training and education required by Part 199 are complied with.
- (3) The contractor must allow access to property and records by the City, the Administrator, any DOT agency with regulatory authority over the City or covered employee, and if the City is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the City's compliance with the requirements of Part 199 and Part 40.

14. RESULTS AND APPEALS

1. Result of Drug/Alcohol Test

(a) Any covered employee that has a positive drug test result, positive alcohol test result, or refuses to test will be removed from his safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

(b) A positive drug and/or alcohol test or a refusal to test will also result in disciplinary action as specified herein.

i. All testing results shall be reported by the City's HHS certified laboratory to the Medical Review Officer or his/her designee. If the test results are negative, the Medical Review Officer or designee will notify the Substance Abuse Program Manager.

ii. If the City's HHS certified laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the employee with the opportunity to discuss the test results. If the MRO finds a valid medical explanation (i.e. prescription, medical treatment) for the non-negative test result, the MRO will verify and report the test as negative and no action will be taken. If the MRO's assessment finds no valid medical explanation for the non-negative result, he will verify the test as positive or refusal to test, and copies of the testing records shall be provided to the Substance Abuse Program Manager.

iii. Upon notice of a verified positive drug and/or alcohol test result, or a refusal to submit to a test, the Department Director or designee shall place the employee on paid administrative leave and

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notify the Director of Human Resources.

iv. The first instance of a verified positive test result from a sample submitted under the pre-employment, random, reasonable suspicion, or post accident drug/alcohol test provisions herein shall result in termination from City employment.

v. Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination.

vi. The employee shall be immediately referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.

vii. A Voluntary Referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

viii. Failure of an employee to report in writing to their immediate supervisor and the Human Resources Director within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

B. Grievance and Appeal

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination that is subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance or applicable collective bargaining agreements. The consequences specified by 49 C.F.R. § 199, as amended, for a positive test or test refusal are not subject to a grievance.

15. PROPER APPLICATION OF THE POLICY

A. The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

16. INFORMATION DISCLOSURE/ACCESS TO FACILITIES

A. Drug and alcohol testing records shall be maintained by the Substance Abuse Program Manager or designee and, except as provided below, by law or expressly authorized or required in Part 199, the results of any drug or alcohol test shall not be disclosed without express consent of the tested employee.

B. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to follow-up testing plans.

C. Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the City's Substance Abuse Program Manager, Department Director, and Department

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Supervisor on a need to know basis.

D. Records will be released to a subsequent employer only upon receipt of a written request from the employee.

E. Records of an employee's drug and alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug and alcohol test. The records will be released to the decision maker in the preceding. The information will only be released with binding stipulation from the decision maker will make it available only to parties in the preceding.

F. Records will be released to the National Transportation Safety Board during an accident investigation.

G. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

H. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City or the employee.

I. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of 49 C.F.R. § 40, as amended, necessary legal steps to contest the issuance of the order will be taken.

J. In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the PHMSA.

K. The City shall permit access to all facilities utilized in complying with the requirements of Part 199 to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the City.

17. INCORPORATION AND ENFORCEABILITY

A. **Incorporation.** This policy incorporated by reference the cited federal law and regulations as in effect at the time this policy is issued and this policy shall be deemed automatically modified by any amendment or modification to the cited federal law and regulations. Employees shall be given notice of the changes in the cited federal law and regulations.

B. **Enforceability.** The invalidity or unenforceability of any provision of this policy shall not affect any other provision hereof, and the policy shall be construed in all respects as if such invalid or unenforceable provision was omitted. If this policy in its entirety or a material portion of it is invalidated, then, and in that event only, the City's Substance Abuse Policy shall be as described in Administrative Instruction 7-1-2 as amended February 17, 2011.

PART 5

Appendix A

JOB TITLES UNDER THE JURISDICTION OF DOT-PHMSA DRUG AND ALCOHOL TESTING REGULATIONS

GENERAL INSTRUCTIONS: List only job functions that

- Perform covered function work on natural gas pipelines, facilities, or pipeline Right-of Way.
- Respond to natural gas leak emergencies or emergency response.
- Employee names are not required on this list.

Do not list job functions that do not work on natural gas pipelines or the Right-of Way of natural gas pipelines including accounting, administration, or other job duties that do not require actual pipeline work or emergency response duties. **JOB TITLE**

REASON FOR PHMSA D&A COVERAGE

EXAMPLE # 1: BACKHOE OPERATOR

Conducts Actual Work On Natural Gas Pipelines

1. Environmental Compliance Coordinator

1. Works on pipelines + Emergency Response

2. Solid Waste Supervisor/Landfill

2. Works on pipelines + Emergency Response

3. City Security Supervisors

3. Emergency Response

**PART 5
Appendix B
Alcohol Fact Sheet**

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

Signs and Symptoms of Use

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed an alcoholic)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.

- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

The Annual Toll

- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

Workplace Issues

- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

**PART 5
Appendix C**

SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s). Names and contracted vendors are as of the date of adoption and may change from time to time without a formal amendment of the rule.

City Substance Abuse Program Manager:

Name: Lori Cruz
Title: Manager of the Substance Abuse Program
Address: 1 Civic Plaza NW, 9th Floor Albuquerque, NM 87103
Telephone Number: (505) 768-3080

Medical Review Officer

Name: Dr. William Prickett
Title: Medical Review Officer
Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103
Telephone Number: (505) 768-4630

Substance Abuse Professional

Name: Adam Stern, M.A., LPCC, CEAP
Title: Substance Abuse Professional
Address: The Solutions Group
1240 Pennsylvania NE Albuquerque, NM 87110
Telephone Number: (505) 254-3555

HHS Certified Laboratory: Primary Specimen

Name: Quest Diagnostics Incorporated
Certifying Scientist: Director of Science and Technology: R. H. Barry Sample, Ph.D.
Address: 3 Giralda Farms
Madison, NJ 07940
Telephone Number: 1-800-222-0446

HHS Certified Laboratory: Split Specimen

Name: Medtox
Address: 402 West County Rd, Suite D
Saint Paul, MN 55112
Telephone Number: (800) 832-3244