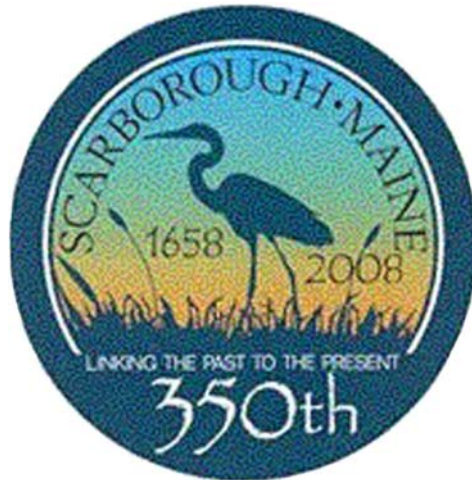


CHAPTER 303B

TOWN OF SCARBOROUGH

DRUG ALCOHOL POLICY



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**CHAPTER 303B
TOWN OF SCARBOROUGH
DRUG AND ALCOHOL POLICY
and
TESTING PROCEDURE**

1.0 POLICY STATEMENT AND AUTHORIZATION

1.1 This policy is designed to assure compliance with mandated Federal and State laws and regulations regarding drug and alcohol testing of employees in the workplace. This includes Rules and Regulations under CFR 49 Part 653, Prevention Drug Use in Transit Operations and CFR 49 Part 382, Substances and Alcohol Use and Testing Law (26 MRSA, CH 7, Subchapter III-A) and the Omnibus Transportation Testing Act. This policy is also designed to provide guidance to Town officials on employee management and on the implementation of the requirements of this Act.

1.2 The Town of Scarborough has a strong commitment to the health, safety and welfare of its employees, their families, its customers and the public at large. Therefore, the Town seeks to hire and employ workers requiring a Commercial Drivers License (CDL) who are free of illegal and abused drugs and alcohol, and protect employees, their families and the public from the adverse effects of alcohol and drug abuse. The Town requires the final applicant selected for a position requiring a CDL to undergo an alcohol and drug test to detect the presence of alcohol and drug abuse substances in the body.

Any applicant with a positive pre-employment test may be denied employment with the Town of Scarborough by reason of the positive test.

1.3 Research and studies indicate that the use and misuse of alcohol or drugs, whether prescribed or illegal, impairs the ability of an employee to perform assigned duties, particularly those involved in safety sensitive operations, and may endanger the employee, co-workers, the public, the Town, and public and private property. The Town of Scarborough seeks to prevent employees from using alcohol and drugs when the use of such is illegal, or in any way endangers the Town and the public. The Town of Scarborough also wants to provide appropriate and reasonable assistance to employees whose use or misuse impairs their ability to perform their duties.

2.0 DRUG AND ALCOHOL TESTING

2.1 All applicants/candidates for employment in positions requiring CDL shall be required to pass a drug and alcohol test as a post-offer prerequisite to employment. Testing shall also be required when a present employee transfers to a safety-sensitive (CDL driver) position.

2.2 Employees shall remain free from abuse of alcohol and controlled substances. An employee may be tested at any time on the following:

2.2.1 Reasonable Suspicion.

Reasonable suspicion testing shall be conducted when a trained supervisor has reasonable suspicion, based upon specific, contemporaneous, articulate behavior, speech or body odors, that the employee has:

- a. unlawfully used illicit drugs and/or abused controlled substances; or
- b. reported to work under the influence of or has illicitly ingested controlled substances or alcohol during work hours.

2.2.2 Post-Accident.

Post-accident shall be conducted after accident on drivers whose performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation.

2.2.3 Random.

Random testing shall be conducted on a random, unannounced basis just before, during or after performance of a safety-sensitive function. Fifty percent (50%) of employees in safety-sensitive positions must be tested for controlled substances and twenty-five percent (25%) of employees in safety-sensitive positions must be tested for alcohol on an annual basis.

2.2.4 Return to Duty and Follow-Up.

Return to duty and follow-up testing shall be conducted when an individual who has violated the prohibited alcohol or drug conduct standards returns to performing safety-sensitive duties. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first twelve (12) months after a driver returns to duty.

3.0 RESPONSIBILITY

It is the responsibility of the Human Resources Department under the direction of the Town Manager to administer and enforce this policy and the procedures as outlined. Employment by the Town shall not be deemed to be final nor shall a prospective employee have the right to accept any offer or suggestion of an offer of employment until such time as a drug test evaluation has been received and cleared by the Human Resources Department. Any work performed by an individual for or on behalf of the Town of Scarborough prior to such approval shall not involve the operation of any Town equipment requiring a CDL prior to testing.

It is the responsibility of each department director, division head, supervisor or manager to abide by this policy and work with the Human Resources Department to assure that alcohol and drug tests are conducted. The Human Resources Department will contract for specimen collection, medical review and testing. It is the responsibility of the Human Resources Department and each

department director to see that supervisors are properly trained and that employees have notice of and are familiar with these drug and alcohol policies and procedures.

4.0 DEFINITIONS

4.1 Alcohol and Drug Test.

A generally accepted and proven test methodology or methodologies as recommended by the Rules and Regulations under CFR 49 Part 653, Prevention of Prohibited Drug Use in Transit Operations and CFR Part 382. Substances and Alcohol Use and Testing. This test method determines whether an individual has ingested or otherwise used the substance in question within a period of time before the test.

4.2 Breath Alcohol Technician.

A professional trained and certified in the use of an evidential breath testing device.

4.3 Applicant.

A person who has applied for a position with the Town of Scarborough, including past employees eligible for hire, and employees voluntarily seeking another Town position.

4.4 Medical Review Officer (MRO).

A physician responsible for reviewing all test results for confirmation prior to communicating same to the employer. The MRO must protect the confidentiality of the individual involved.

4.5 NIDA.

The National Institute on Drug Abuse.

4.6 Positive Test.

Alcohol and Drug Tests results that meet or exceed the standards outlined under CFR 49.

4.7 Random Testing.

A scientific method used to select employees for testing at random. This method will be performed yearly, and involve a minimum of 50% for drugs and 25% for alcohol of employees/positions requiring a CDL, selected at random throughout the year. The minimum percent to be tested may decrease in subsequent years based upon the number of confirmed positive test results.

4.8 Reasonable Suspicion.

A belief by a trained supervisor based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol to the extent

that the job performance may be impaired or the ability to perform the job safely may be reduced. Circumstances which constitute a basis for determining “reasonable suspicion” may include, but are not limited to:

- a. A pattern of abnormal or erratic behavior;
- b. Information provided by a reliable and credible source;
- c. Direct observation of drug or alcohol use;
- d. Presence of the physical symptoms of drug or alcohol use (i.e. glassy or bloodshot eyes, alcohol odor or breath, slurred speech, poor coordination and/or reflexes);

4.9. Substance Abuse.

The use of alcohol, prescription or over the counter drugs, any of which impairs the ability of an employee to perform the job safely and effectively, use of illegal drugs or other controlled substances without a valid prescription;

4.10 Work Related Vehicular Accident.

Any reportable vehicular accident that damages property or involves injury to self or others for which a moving traffic violation citation is issued (this does not include minor personal injury not requiring transport to a medical facility or care beyond first aid). Any vehicular accident involving a fatality.

5.0 PROCEDURES FOR TESTING

5.1 Drugs to be tested for:

When chemical drug and alcohol screening is required under the provisions of this policy and CFR 49 and Parts, a breath test and/or urinalysis test will be given to detect the presence of the following drug groups:

- a. Alcohol (ethyl)
- b. Amphetamines
- c. Cocaine
- d. Opiates
- e. Phencyclidine (PCP)
- f. Marijuana

5.2 Testing Techniques

5.2.1 Drug Testing:

Drug Testing is accomplished by analyzing the employee's urine specimen. Specimens will be collected at an off-site facility selected by the Town of Scarborough. The testing facility must assure that specimen collection be done in a dignified, professional and confidential manner. Once the employee provides the urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee and the specimen is shipped to a NIDA certified lab.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-divided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result the split specimen may be used for a second confirmation test if requested by the employee.

During testing an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed for each individual drug. This test will ensure that over the counter medications are not reported as positive results.

If the analysis of the primary specimen results in a confirmed positive test, the employee may within 72 hours request that the split specimen also be tested at a NIDA lab of his/her choice. The second test is at the employee's expense unless the test should be negative, in which the Town would then reimburse the employee.

All test results are reviewed by a physician Medical Review Officer (MRO) prior to the results being reported to the Town. In the event of a positive test result, the MRO will first contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive result (such as over the counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative.

5.2.2. Alcohol Testing:

Alcohol testing will be conducted using an evidential breath testing device. The breath test must be performed by a certified Breath Alcohol Technician trained in the use of the EBT and alcohol testing procedures. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable.

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concentration is

considered a negative result. Any result of greater than 0.02 requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

5.3 Applicant Testing:

Applicants for all classes of employment requiring a CDL will be required to undergo a chemical drug and alcohol test upon a conditional offer of employment and prior to their final appointment to the position.

5.4 Current Employee Testing

- 5.4.1. The Town of Scarborough may require a current Town employee whose position requires a CDL to undergo drug and alcohol testing if there is reasonable suspicion by the immediate supervisor or other management personnel that the employee is under the influence of drugs or alcohol during work hours.
- 5.4.2 Supervisors are required to document the specific facts, symptoms or observations which formed the basis that reasonable suspicion existed or did not exist to warrant the testing of an employee. This documentation shall be forwarded to the appropriate Department Director and Human Resources Department. The “Observed Behavior Reasonable Cause Record” form must be completed.
- 5.4.3 The Town will require a current Town employee in a position requiring a CDL to undergo post-accident drug and alcohol testing if he/she is involved in a reportable work related vehicular accident.
- 5.4.4 All current employees in positions requiring a CDL will be subject to Random Testing.
- 5.4.5 Employees having a confirmed positive test will be subject to re-testing at the time they return to work. After returning to work, they may be subject to follow-up testing without notice for up to sixty (60) months.
- 5.4.6 This section shall not restrict the testing of present employees who are applying for other employment positions requiring a CDL. (See Sections 2.0 and 4.3 of this policy).

5.5 Prior Notice of Testing Policy

The Town of Scarborough shall provide written notice of its drug and alcohol testing policy to all employees and job applicants. The notice shall contain the following information:

- a. The need for drug and alcohol testing;

- b. The circumstances under which testings may be required;
- c. The procedure for confirming an initial positive drug result;
- d. The consequences of a confirmed positive result and the appeal Procedures available;
- e. The consequences of refusing to undergo a drug and alcohol test;
- f. The right to explain a positive test result and the appeal procedure available; and
- g. The availability of drug abuse counseling and referral services.

5.6 Notice and Consent

- 5.6.1 Before a drug and alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of test results to only those Town officials with a need to know. The chemical screen consent form shall provide space to indicate current or recent use of prescription and over-the-counter medication.

5.7 Pre-employment Testing

- 5.7.1 When any Department Director or other Town hiring authority makes a conditional offer of employment to an applicant for a position requiring a CDL, the offer will be conditional upon test results. The Department Director will notify the Human Resources Department of the final or top applicant for the position. The Human Resources Department will contact the testing facility and schedule a Pre-employment chemical drug and alcohol screening test of the applicant/candidate.
- 5.7.2 The applicant/candidate shall be given a copy of this policy, a consent form to complete, sign and take to the test facility and will be informed of the test appointment.
- 5.7.3 The MRO will notify the applicant/candidate of the test results, and if positive, will give the applicant/candidate an opportunity to discuss same prior to release of the information to the Town.
- 5.7.4 After the Human Resources Department has received the test results from the MRO or medical facility, they will not inform the hiring department or department director of the results. This disclosure from the MRO will state whether the test is positive or negative, if positive which substances were detected, and shall be kept confidential by the Human Resources Department.

5.7.5 The Human Resources Department shall inform the hiring department director whether or not the applicant is eligible for employment. All test results shall be kept confidential within the Human Resources Department.

5.8 Reasonable Suspicion Testing

5.8.1 A supervisor may upon reasonable suspicion and after at least attempting to consult with the department director, ask any on-duty employee to submit to an immediate alcohol and drug-test. The department director should be notified as soon as possible.

- a. The employee's department director shall immediately notify the Human Resources Department of the determination of reasonable suspicion.
- b. The employee shall be given a "Test Consent Form" to complete and sign.
- c. The employee will be immediately taken by the supervisor or another supervisor/management employee of the department to the appropriate facility for testing.
- d. If the employee is not able to be taken to the appropriate facility for testing, the supervisor shall immediately telephone the agency and/or primary medical facility (any time day or night) and request that they go to where the employee has been taken to acquire the drug and alcohol samples.
- e. The employee shall be immediately removed from duty with no reduction in pay or benefits and assisted in getting home after the drug and alcohol test.
- f. When reasonable suspicion is the grounds for requiring a drug/alcohol test, the employee shall be placed on administrative leave with no reduction in pay or benefits until the test results are available and a preliminary administrative review has been conducted.
- g. A drug and alcohol test for reasonable suspicion will include the urinalysis test and breath test.
- h. Results from the alcohol and drug screen test will be given by the lab to the MRO who after confirmation will forward to the Human Resources Department.

5.9 Random Testing

This method will be conducted yearly and will initially involve a minimum of 50% for drugs and 25% for alcohol of employees/positions requiring a CDL and will be selected at random and unannounced throughout the years.

5.10 Post-Accident Testing

A post-accident test will be conducted on any CDL employee involved in a work related motor vehicle accident if:

1. The accident results in a loss of life;
2. The operator receives a citation under local and State laws for a moving traffic violation arising from the accident.

5.11 Return-to-Duty Testing

Any employee returning to duty following a confirmed positive test must be subject to a return-to-duty test following the same guidelines described in Section 5.7. The test must show a verified negative result prior to the employee returning to duty.

5.12 Follow-Up Testing

An employee returning to work following a confirmed positive test and period of assistance/discipline will be subject to unannounced follow-up testing for a period of at least 12 months and not more than 60 months. A mandatory minimum of 6 tests within the first 12 months is required. Employees subject to follow-up testing must also remain in the random pool.

Follow up tests may be used to determine whether or not the drug is still being used.

5.13 Refusal to Consent: Applicant

A job applicant who refuses to consent to a drug and alcohol screening test will be denied employment with the Town of Scarborough. If the applicant is a current employee, the applicant will be denied employment in the position for which the application was made. No denial shall be made without first attempting to discuss the refusal with the applicant.

5.14 Refusal to Consent: Employees

An employee who refuses to consent to a drug and alcohol screening test when selected for random testing, or when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. No disciplinary action shall be taken without first discussing the matter with the employee, Department Director and the Human Resources Director.

5.15 Confirmation of Chemical Test Results

An employee or job applicant/candidate whose drug test yields a positive result, confirmed by the MRO, shall be given a second test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test.

If the second test confirms the positive result, the employee or applicant shall be notified of the results by the MRO, who will offer the employee an opportunity to discuss the results. The MRO will then notify in writing the Human Resources Department. The letter of notification shall identify the particular substance found and its concentration level.

5.16 Consequences of a Confirmed Positive Test Result

5.16.1 Applicants:

Job applicants will be denied employment with the Town of Scarborough if their initial positive results have been confirmed. Applicants will be informed in writing if they are rejected on the basis of a confirmed positive test result. Current employee applicants shall be denied employment in the position for which application was made. Employee applicants shall be referred to a Substance Abuse Professional.

5.16.2 Employees:

If an employee's positive test result has been confirmed, the Town will remove the employee from the CDL position and refer the employee to a Substance Abuse Professional. The Substance Abuse Professional will determine what assistance, if any, is needed to resolve problems associated with controlled substance abuse. In accordance with MRSA 26, Section 685, the Town is obligated to offer treatment assistance and limited financial assistance. If the employee chooses not to participate and comply with the recommended treatment he/she will be subject to disciplinary action up to and including termination. Factors to be considered in determining the appropriate disciplinary response include but are not limited to: the employee's work history, length of employment, current job performance and existence of past disciplinary actions. No disciplinary action shall be taken against an employee who voluntarily identifies himself/herself as a substance abuser prior to the time it is apparent that the use has been detected. A second positive test or further violation of the policy following an initial positive test shall be cause for discharge.

Prior to any disciplinary action imposed by the Town, the employee is entitled to a disciplinary hearing.

5.17 Confidentiality of Test Results

All information from an employee's or applicant's drug and alcohol test is strictly **confidential**. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee or applicant or upon subpoena. The results of a positive drug test shall not be released by the MRO to the Town until confirmed. The records of unconfirmed positive test results and negative test results will be destroyed by the testing lab. All positive test results will be maintained by the MRO and reported to the Human Resources Department where they will be kept on file.

5.18 Privacy in Chemical Drug Testing

Urine samples shall be provided in a private restroom stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Employees and applicants may be required to disrobe and applicants will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples.

An applicant or employee may waive the right to privacy and provide the urine sample in the presence of witness (of the same gender) and not be required to disrobe and wear a hospital gown.

5.19 Laboratory Testing Requirements

All chemical drug and alcohol testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the Town. To be considered as a testing site, a medical facility or lab must submit in writing a description of the procedures that will be used to maintain test samples. Factors to be considered by the Town in selecting a testing facility include in addition to NIDA certification:

- a. Testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;
- b. Methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- c. Chain of custody procedures which ensure proper identification, and handling of test samples; and
- d. Retention and storage procedures which ensure reliable results on confirmatory tests of original samples.

5.20 Second Confirmation Test

- a. The applicant or employee may request from the MRO a second confirmation test of the same sample within 72 hours of notice that the first test was positive.
- b. The cost of the second confirmation test must be paid in advance by the applicant or employee. If the test is negative, the Town shall reimburse the applicant or employee for the cost of the test.
- c. The second confirmation test will be performed by a NIDA certified lab selected by the MRO.

6.0 CONDUCT PROHIBITED

The following conduct or behavior is determined to be unacceptable and therefore is prohibited under this policy. Violation shall be cause for disciplinary action.

- 6.1 Reporting to or remaining on duty with a blood/alcohol concentration of 0.02 or greater. Any employee found to have a blood/alcohol concentration of at least 0.02 but less than 0.04 shall be immediately removed from the safety sensitive position and shall not be permitted to perform that function until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any employee found to have blood alcohol concentrations of greater than 0.04 may be subject to further disciplinary action.
- 6.2 Possessing alcohol on duty that is not manifested or part of a shipment.
- 6.3 Use of alcohol while on duty.
- 6.4 Use of alcohol for eight (8) hours after an accident that will require post-accident test or until the test is performed, whichever occurs first.
- 6.5 Any use of alcohol within 4 hours of reporting to duty to perform a safety-sensitive position.
- 6.6 Refusal to submit and properly participate in a required alcohol and/or controlled substances test. A refusal is defined as:
 - a. Failing to report immediately to the identified testing site, once notified, but in no case, more than 2 hours after notification.
 - b. Failing to follow proper instructions or participate in the required testing procedures.
- 6.7 Reporting to or remaining on duty while using any controlled substance, except when used under the direct orders of a physician and the physician has informed

the employee that the use will not affect the safety use and operation of the commercial vehicle.

- 6.8 Reporting to or remaining on duty after testing positive for any controlled substance under this policy.

7.0 RESPONSIBLE TOWN OFFICIAL

The Human Resources Director and/or the Town Manager may be contacted for further information about this Policy or its applicability.

Effective Date

This policy shall become effective January 1, 1996.