

		<b>DOT-Regulated Employee Alcohol Misuse Prevention &amp; Anti-Drug Policy</b>			
Owner:	HR Manager	Approving Position:	Common Council	Pages:	20
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Special Instructions:					

### I. PURPOSE

The Federal Motor Carrier Safety Administration (FMCSA) has issued federal regulations (49 CFR Parts 40 and 382) implementing the provisions of the federal Omnibus Transportation Employee Testing Act of 1991 which requires alcohol and controlled substance testing of drivers who are required to have a commercial driver's license (CDL). These regulations include detailed procedures for urine drug testing and breath alcohol testing of employees involved in safety-sensitive functions. The purpose of this policy is to establish an alcohol and controlled substances testing program to help prevent accidents, injuries, and property damage resulting from the misuse of alcohol and the use of controlled substances by drivers of commercial motor vehicles. Consequently, the City of Whitewater has established the following alcohol misuse prevention program and anti-drug program as well as subsequent enforcement of violations for its employees conducting safety-sensitive functions.

#### **Program Contact**

For additional information or questions, please refer to the Designated Employer Representative (DER) - **Human Resources Manager, 262-473-1387**.

### II. POLICY

The City of Whitewater recognizes that the use and/or abuse of alcohol or controlled substances by drivers of our commercial motor vehicles present a serious threat to the safety and health of the driver and the general public. It is the policy of the City of Whitewater that its drivers should be free of drugs and alcohol at all times while performing any work for the organization, or while on any City of Whitewater property. In order to further the goal of obtaining a drug-free and alcohol-free environment, and to be in full compliance with the DOT-regulated testing requirements of 49 CFR Parts 40 and 382, the City of Whitewater has implemented a drug and alcohol testing program which is designed to help reduce and prevent vehicle accidents and injuries to the organization's employees and the public, to discourage substance use and alcohol abuse, and to reduce absenteeism, accidents, health care costs, and other drug and alcohol-related problems.

### III. DEFINITIONS

For the purposes of this policy, the following definitions will apply:

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

**Alcohol Use** means the consumption of any beverage, mixture or preparation, including medications, containing alcohol.

**Breath Alcohol Technician (BAT)** means an individual certified as trained to operate an Evidential Breath Testing Device (EBT) and proficient in breath testing procedures.

**Canceled Test** means, in controlled substance testing, that a test that has been declared invalid by the MRO. A canceled test is neither positive nor negative.

**Collection Site** means a place where individuals present themselves for the purpose of providing body fluids or tissue samples to be analyzed for controlled substances, or to provide a breath sample to be analyzed for alcohol concentration.

**Commercial Motor Vehicle (CMV)** means a motor vehicle or combination of motor vehicles used in commerce to transport property or passengers if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of the towed unit with a gross vehicle weight of 10,000 pounds; or
2. Has a gross vehicle weight of 26,001 more pounds; or
3. Is designed to transport 16 or more passengers inclusive of the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the vehicle to display a placard.

**Controlled Substance** under DOT rule means marijuana, cocaine, opioids, amphetamines, and phencyclidine (PCP) or other substances later defined by DOT as controlled substances.

**Designated Employer Representative (DER)** is an individual identified by the employer as able to receive communications and test results from service agents and is authorized to immediately remove employees from safety-sensitive functions and make decisions in the testing and evaluation processes. The DER must be an employee of the City of Whitewater.

**Evidential Breath Testing Device (EBT)** is a device designed to measure alcohol concentration from breath samples which has been approved by the National Highway Traffic Safety Administration.

**Laboratory** means a laboratory for conducting drug testing that is approved by the Department of Health and Human Services.

**Medical Review Officer (MRO)** means a licensed doctor of medicine or osteopathy with the knowledge of drug abuse disorders that is retained by the organization to conduct and analyze drug tests in accordance with DOT rules.

**Safety-Sensitive Function** means the following on duty functions:

1. All time waiting to be dispatched;
2. All time inspecting, servicing or conditioning any commercial motor vehicle;
3. All driving time, i.e. all time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, in or upon any commercial motor vehicle;
5. All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
6. All time repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.

**Performing (a safety-sensitive function)** means a driver is considered to be performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform a safety-sensitive function.

**Substance Abuse Professional (SAP)** is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis

and treatment of alcohol and controlled substances-related disorders.

#### IV. POLICY COVERAGE

This policy applies to every employee (“driver”) who performs “safety sensitive functions” in association with the operation of a commercial motor vehicle in commerce in any state, and is subject to the commercial driver’s license requirements of part 383 of this subchapter.

Drivers are also governed by the City’s Non-DOT Drug and Alcohol Use Policy. In addition, transit (bus) drivers may be subject to drug and alcohol testing requirements as outlined in 49 CFR Part 655 and their department specific policy.

#### Condition of Employment

All drivers subject to this policy are required to submit to DOT drug and alcohol testing and therefore, it is a condition of employment

#### V. PROHIBITED CONDUCT

Federal Regulations prohibit the City of Whitewater’s drivers from engaging in the following conduct:

1. Using or possessing alcohol while on duty. **Note:** Federal regulations include medications containing alcohol in the substances banned from use or possession in the workplace. Therefore, drivers should not report for duty while using or possessing medication if such medication contains any measurable amount of alcohol;
2. Using alcohol within eight (8) hours following an accident, unless the employee has already undergone DOT-regulated post-accident drug and alcohol testing or is not required to undergo post-accident drug or alcohol testing;
3. Reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater;
4. Consuming any amount of alcohol within four (4) hours before reporting for duty;
5. Using controlled substances while on duty, unless the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle;
6. Reporting for duty or remaining on duty if the employee tests positive for controlled substances or has adulterated or substituted a specimen for controlled substances; or
7. Refusing to submit to any alcohol or drug testing required by this policy.

#### Refusal to Test

Refusal to test, in addition to #7 Above, includes:

- Failing to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so. This includes the failure of an employee to appear for a test when called.
- Failing to remain at the testing site until the testing process is complete (except in a pre-employment testing situation when an applicant leaves the testing site before the testing process commences);
- Failing to provide a urine specimen for any drug test;
- Failing to provide an adequate amount of saliva or breath for any alcohol test;
- Failing to permit a directly observed or monitored collection in a drug test;
- Failing to provide a sufficient amount of urine for the drug test or sufficient breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failing or declines to take an additional drug test the employer or collector has directed the driver to take;

- Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process or as directed by the employer associated with a shy bladder or insufficient breath sample. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
- Failing to sign the certification at Step 2 of the alcohol testing form;
- Failing to cooperate with any part of the drug and/or alcohol testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector);
- For an observed collection, failing 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;
- Admitting to the organization, collector or MRO that they have adulterated or substituted the specimen;
- Providing a specimen that the MRO has determined to have been tampered with, verified adulterated or substituted;
- Failing to comply with any follow-up testing plan/criteria.

## VI. CONSEQUENCES

### Removal from Position

1. Any driver who engages in prohibited conduct, or otherwise violates the DOT/FMCSA regulations will immediately be removed from his/her covered position, including the operation of a commercial motor vehicle and the performance of any safety sensitive duties.
2. The driver shall not return to or assume any DOT covered position with this organization until and unless they complete the Substance Abuse Professional evaluation, referral, and education/treatment process detailed in Subpart O of 49 CFR Part 40.
3. A driver with an alcohol test result equal to or greater than 0.020 but less than 0.040, will immediately be removed from their position for a mandatory period of twenty-four (24) hours. When a reasonable suspicion drug and/or alcohol test cannot be administered and the employee's behavior or appearance suggests alcohol misuse or use of a controlled substance, they will immediately be removed from their position for a mandatory period of twenty-four (24) hours.

### Disciplinary Action

In addition to above, any employee who violates any of the rules set forth in this policy is subject to discipline, up to and including termination.

## VII. REQUIRED TESTS

Refusal to submit to a required test will result in removal of that driver from their assignment(s) which, in turn, may result in discipline up to and including termination. The City of Whitewater will test drivers in the following situations:

### 1. Pre-Employment Testing

Any individual not currently employed by the City who is applying for a safety-sensitive position shall be required to undergo pre-employment-controlled substance testing after a conditional offer of employment has been extended.

Prior to the first time an existing employee performs safety-sensitive functions for the organization (i.e. new position, promotion, job transfer, etc.); the employee shall be required to undergo testing for controlled substances. A positive result will result in a disqualification from further consideration for the vacancy or eligibility list. Any applicant or existing employee who refuses to undergo such alcohol or drug testing will be disqualified from further consideration for employment in that safety-sensitive position.

Per §382.701 and effective January 6, 2020 the City of Whitewater will obtain driver consent and subsequently conduct a pre-employment full query of the Drug and Alcohol Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

The City of Whitewater will not allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:

1. That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
2. That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 and specified in the SAP report required by §40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the City of Whitewater assumes the responsibility for managing the follow-up testing process associated with the testing violation.

## **2. Post-Accident Testing**

As soon as practicable following an accident involving a commercial motor vehicle, the City shall test the driver for alcohol and controlled substances in the following situations:

- a. The accident involves a human fatality, each surviving driver is subject to testing whether they were at fault or not;
- b. The driver has received a citation and the accident involved bodily injury requiring immediate medical attention from the accident scene; and/or
- c. The driver has received a citation and the accident involved disabling damage causing vehicle or vehicles to be towed from the scene of the accident.

### **Testing Timeframes**

The alcohol breath test should be administered within 2 hours, but must be administered no later than 8 hours following the accident, and the drug test must be administered within 32 hours of the accident. If the alcohol test is not administered within 2 hours of the accident, or a drug test within 32 hours of the accident, the supervisor will complete a report explaining the reasons for the delay in conducting the test.

### **Driver Obligations**

A driver who is subject to post-accident testing shall remain readily available and may not take any action to interfere with the testing or the results of the testing.

The driver shall notify their immediate supervisor as soon as possible if they are involved in an accident. After the initial

call to the employer, the driver is required to remain in contact with their supervisor with any subsequent information pertinent to the accident, including contact by any law enforcement agency, issuance of a citation, etc.

The driver shall allow law enforcement to conduct their investigation. It is possible for a federal, state, or local law enforcement official to direct an employee, who is in the course of conducting City of Whitewater business, to submit to drug and/or alcohol testing. In this case, the employee shall provide the results of that testing to the employer as soon as they become available. These results may be used in lieu of or in addition to post-accident testing outlined in this section.

### **3. Random Testing**

Drivers are subject to unannounced DOT/FMCSA random drug and alcohol testing. Testing percentages are established annually by the FMCSA. The random selection process ensures that each driver has an equal chance of being selected and tested. Some drivers may be tested more than once each year; some may not be tested at all depending on the random selection. However, once a driver has been notified of their selection for testing, they must immediately report for testing. Failure to show for a test within a reasonable time from the time of notification or interfering with the testing process is considered a refusal to test. An employee shall only be tested for alcohol during, just before or just after the performance of safety sensitive functions.

### **4. Reasonable Suspicion Testing**

An employee is required to submit to an alcohol or controlled substance test upon a trained (*in accordance with this policy and Section 382.603 requirements*) supervisor's reasonable suspicion to believe that the employee is in violation of this policy. The determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the employee.

Under DOT regulations, alcohol testing is only authorized if observations are made during, just preceding or just after the period of the work day that the employee is required to be in compliance (during, just before or after the employee has performed safety-sensitive functions). However, City policy requires that reasonable suspicion alcohol testing shall be performed at any time during an employee's work day.

Under DOT regulations, the employee will not be permitted to perform safety sensitive functions until: (1) an alcohol test is administered and the alcohol concentration measures less than 0.02; or (2) 24 hours have elapsed following the determination that there was reasonable suspicion to test the employee. However, City policy requires that an employee will not be returned to work until confirmed test results are obtained.

If an alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the supervisor must prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the reasonable suspicion determination, the supervisor must cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. In addition, the driver will be out of service for 24 hours.

The supervisor who made the observations shall provide a report that contains the observations leading to an alcohol or controlled substances reasonable suspicion test within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

1. Upon the employee's removal from the job site, the supervisor should contact the Human Resources Department. If contact cannot be made at that time, the supervisor should proceed to the next step of this procedure and make contact with the Human Resources Department as soon thereafter as possible.
2. The supervisor is to then take the employee to the collection site for drug and/or alcohol testing, and must remain at the site until the test is completed.
3. If the alcohol test is conducted more than two (2) hours, but less than eight (8) hours, after the supervisor makes the

reasonable suspicion determination, the supervisor will complete a report explaining the reason for the delay in conducting the test. If the alcohol test is not conducted within eight (8) hours after the supervisor makes such reasonable suspicion determination, or if the drug test is not conducted within twenty-four (24) hours after such determination, the supervisor will complete a report explaining the reasons why the test was not conducted.

4. Once the drug and/or alcohol test has been completed the supervisor is to make arrangements for the employee to be taken home. The employee will not be permitted to drive their own car home at that time. The employee may have a family member or a friend pick them up or the supervisor may take the employee home.
5. The employee is to be advised not to report to work. The City of Whitewater will contact the employee once the test results are known (this normally takes 24-48 hours) and a decision has been made as to the employee's status.
6. The results of the drug and/or alcohol test will be sent directly to the Human Resources Department. When the results are obtained, the employee's supervisor and department head will meet with the Human Resources Department and City Manager to determine the appropriate course of action to be taken.
7. This is a confidential process. Test results will be held strictly confidential and are not to be discussed or shared with anyone who does not need to know. Likewise, a supervisor must not discuss the suspected reason for a referral or termination with anyone who does not need to know.
8. Once the test has been completed and the employee has been taken home, the supervisor must submit a written report to the Human Resources Department outlining in detail what happened and what behavior was observed that led the supervisor to believe the employee was under the influence of alcohol and/or drugs. This report is to be done within 24 hours of testing.

#### **5. Return-to-Duty/Follow-up Testing**

The requirements for return-to-duty testing must be performed in compliance with the Substance Abuse Professional process detailed in Subpart O of 49 CFR Part 40. In summary, the driver shall not return to a driver position with the City of Whitewater unless and until they complete all requirements of Subpart O. Once those requirements have been met, the driver must complete and receive negative test results associated with return-to-duty testing. The alcohol test must be .000.

The requirements for follow up testing must be performed in compliance with the Substance Abuse Professional process detailed in Subpart O of 49 CFR Part 40. In summary, once the driver returns to their position, they will be subject to a follow up testing plan as prescribed by the Substance Abuse Professional. Follow up testing includes, but is not limited to, a minimum of six unannounced follow up tests in the first twelve months of returning to their position. Additional testing may occur for up to forty-eight months following the initial first twelve-month period.

### **VIII. DRUG AND ALCOHOL CLEARINGHOUSE QUERIES**

In addition to the required pre-employment Clearinghouse full query, and effective January 6, 2020, the City of Whitewater will also conduct a query of the Clearinghouse at least once per year for information for all employees, subject to controlled substance and alcohol testing as defined in 49 CFR Part 382 to determine whether information exists in the Clearinghouse about those employees.

To conduct the annual query referenced above, the City of Whitewater will obtain the individual driver's consent and may conduct a "limited" query to satisfy the annual query requirement. The limited query will tell the City of Whitewater whether there is information about the individual driver in the Clearinghouse but will not release that information to the City of Whitewater. The individual driver may give consent to conduct limited queries that is effective for more than one year.

If the limited query shows that information exists in the Clearinghouse about the individual driver, the City of Whitewater must conduct a full query, within 24 hours of conducting the limited query. If the City of Whitewater fails to conduct a full query within 24 hours, the City of Whitewater must not allow the driver to continue to perform any safety-sensitive function until the City of Whitewater conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined §382.701 (d).

## IX. REPORTING TO THE CLEARINGHOUSE

The City of Whitewater must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

- (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- (ii) A negative return-to-duty test result;
- (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
- (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of the drug and alcohol regulations.

**The information required to be reported under section must include, as applicable:**

- (i) Reason for the test;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Employer name, address, and USDOT number;
- (iv) Date of the test;
- (v) Date the result was reported; and
- (vi) Test result. The test result must be one of the following:
  - (A) Negative (only required for return-to-duty tests administered in accordance with §382.309);
  - (B) Positive; or
  - (C) Refusal to take a test.

**For each report of a violation of 49 CFR 40.261(a)(1) [refusal to test for alcohol] or 40.191(a)(1) [refusal to test for controlled substances], the employer must report the following information:**

- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
- (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
- (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs them as a driver pursuant to §382.705 (b)(6) of this section when the reported refusal occurred (if applicable); and
- (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under §382.705 (b)(3).

**Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:**

- (i) On-duty alcohol use pursuant to §382.205;



- (ii) Pre-duty alcohol use pursuant to §382.207;
- (iii) Alcohol use following an accident pursuant to §382.209; and
- (iv) Controlled substance uses pursuant to §382.213.

**For each violation in which the employer obtains actual knowledge, as defined at §382.107, the employer must report the following information:**

- (i) Driver's name, date of birth, CDL number and State of issuance;
- (ii) Employer name, address, and USDOT number, if applicable;
- (iii) Date the employer obtained actual knowledge of the violation;
- (iv) Witnesses to the violation, if any, including contact information;
- (v) Description of the violation;
- (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph §382.705 (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
- (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph §382.705 (b)(4) of this section.

**Reporting Entities and Circumstances**

<b>Reporting entity</b>	<b>When information will be reported to clearinghouse</b>
Prospective/Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result.
	—Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was initiated.
	—Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

## X. DRIVER CONSENT AND ACCESS TO THE CLEARINGHOUSE

The City of Whitewater cannot query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining driver consent. The City must retain the consent for 3 years from the date of the last query. Written consent for limited queries can be obtained by using the “*General Consent for Limited Queries of the FMCSA-Drug and Alcohol Clearinghouse Form*” which is attached to this policy.

Before the City may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the City of Whitewater access to the following specific records:

- (1) A verified positive, adulterated, or substituted controlled substances test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to a test in violation of §382.211;
- (4) An employer's report of actual knowledge, as defined at §382.107, of:
  - (i) On duty alcohol use pursuant to §382.205;
  - (ii) Pre-duty alcohol use pursuant to §382.207;
  - (iii) Alcohol use following an accident pursuant to §382.209; and
  - (iv) Controlled substance uses pursuant to §382.213;
- (5) An SAP report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

**The City of Whitewater cannot permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by the paragraphs of this section.**

A driver granting consent must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).

A driver may review information in the Clearinghouse about themselves, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing their information.

## XI. CLEARINGHOUSE RECORDKEEPING

The City of Whitewater must retain for 3 years a record of each query and all information received in response to each query made. As of January 6, 2023, an employer who maintains a valid registration with the Clearinghouse fulfills this requirement.

## XII. SELF ADMISSION

The City of Whitewater strives to maintain a safe and drug free work environment. Alcohol and drug use on the job poses a serious threat to the safety of our employees and the general public. However, the organization also understands the addictive nature of alcohol and certain drugs. The organization greatly values and cares about all employees, and will make every effort to assist any employee who comes forward and admits the need for help or treatment. To this end, the City of Whitewater has created a qualified self-admission program as detailed in its Non-DOT policy which complies with the DOT regulations by incorporating the following required elements:

- The City will not take any adverse action (loss of seniority, position, title, etc.) against any employee who makes a voluntary admission of having an alcohol or drug problem.
- In the event of a voluntary self-admission, the organization is required to remove the employee from performing, and the employee will be prohibited from performing, or continuing to perform, any safety sensitive functions.
- Self-admitting employees will be given the opportunity to seek treatment (at the employee's expense). The organization shall ensure that the employee is provided sufficient opportunity to seek evaluation, education or treatment to establish control over their drug or alcohol problem;
- In order to be permitted to resume performing safety sensitive functions for the City of Whitewater:
  - The organization must be satisfied with and approve the employee's treatment option/program.
  - The employee must successfully complete the treatment program, and provide documentation/certification of completion (as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional or qualified drug and alcohol counselor).

Further, the City of Whitewater must ensure that:

- Prior to the employee participating in a safety sensitive function, the employee shall undergo a return-to-duty test (at the employee's expense) with a result indicating an alcohol concentration of less than 0.02; and/or
- A return-to-duty controlled substance (at the employee's expense) test with a verified negative test result for controlled substances use; and
- The organization may incorporate employee monitoring and include non-DOT follow-up testing (at the employee's own expense).

Employees who admit to alcohol misuse or controlled substances use, are subject to the above procedures, but will not be subject to the referral, evaluation and treatment requirements set forth in 49 CFR Part 40, Subpart O, provided that:

- The driver does not self-identify in order to avoid testing under the requirements of this policy;
- The driver does not make the admission of alcohol misuse or controlled substances use prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and
- The driver does not perform a safety-sensitive function until the City of Whitewater is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

### XIII. TESTING PROCEDURES

Drug testing establishes the presence of a drug or drugs at or above the minimum cut-off concentration levels. The drugs for which tests are conducted include, but are not limited to, marijuana (THC), cocaine, amphetamines, phencyclidine (PCP), and opioids. The cut-off concentration levels for these substances are consistent with those defined in 49 CFR Part 40.

Alcohol testing determines the presence of alcohol based on alcohol concentration levels. Alcohol concentration (or content) 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. Alcohol use means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Before the testing process can begin, the employee must present a valid photo ID (such as a driver's license, state issued identification card, employer ID, etc.).

#### **Alcohol Testing**

##### Initial Testing

An alcohol testing form (ATF) is used to document the alcohol testing process. The Breath Alcohol Technician (BAT) will conduct an initial breath test and if the result is 0.020 or greater, a confirmation test is required. The collector completes Step 1 and the employee is required to sign Step 2 in order for the test to proceed. The employee provides an adequate

amount of breath so the device can analyze it and provide the result. The BAT and employee observe the test results, which are then recorded on the ATF. If the test result is less than .020, the result is considered negative. The collector completes Step 3 and the collection process is complete.

#### Confirmation Testing

A 15-minute wait period will be observed prior to the confirmation test being administered. The wait period allows an opportunity for any accumulation of residual mouth alcohol to dissipate and will prevent an artificially high reading. The confirmation test result is administered following an air blank on the testing device. Once the results are received, they must electronically print on ATF.

Confirmation test result equal to or less than 0.019 is considered negative; no further action is required. Confirmation test result equal to or greater than .020 but less than .040 requires the employee to immediately be removed from their position for a minimum of 24 hours or until their next regularly scheduled shift. An alcohol test result equal to or greater than 0.040 is considered a positive test result. The employee is directed to read and sign Step 4; if the employee refuses to sign Step 4, it will have no bearing on the result, but will be documented on the ATF.

The confirmation test results are those the organization will rely on when determining further action, if any.

#### DOT Drug Testing

The drug testing processes and protocols are compliant with those mandated by 49 CFR Part 40. The collector utilizes a custody and control form to document the collection process. The collector will provide a brief summary regarding the steps to complete the collection process. The driver is provided privacy to provide their specimen, immediately returns the specimen to the collector, and observes the temperature along with the collector. The collector splits the specimen into bottles A & B, seals each container and dates the label. The employee initials each label. The paperwork and specimens are sent to a laboratory certified by the U.S. Department of Health and Human Services.

#### Laboratory

The laboratory is certified by the U.S. Department of Health and Human Services and utilizes approved techniques and equipment to analyze the specimen. The laboratory conducts validity testing to determine if the specimen is consistent with normal human urine and to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. Drug testing establishes the presence of a drug or drugs at or above the minimum cut-off concentration levels.

For initial drug testing, an immunoassay technique is used. If the presence of drugs is detected at or above the minimum cut-off concentration levels, a confirmation test is required. For confirmation testing, a second analytical procedure is conducted by gas chromatography/ mass spectrometry (GC/MS) technology. The procedure is used to further support a validity test result and/or identify and quantify the presence of a specific drug or drug metabolite at or above the minimum thresholds.

All test results are reported to the Medical Review Officer.

#### Medical Review Officer (MRO)

The MRO serves as an independent, impartial gatekeeper regarding the accuracy and integrity of the drug testing program. As a safeguard to quality and accuracy, the MRO reviews each test for accuracy.

When the laboratory reports non-negative results (i.e., confirmed positive, adulterated, substituted, or invalid drug test result), the MRO conducts a verification process with the employee. During this process, they will obtain information to determine if an alternative medical explanation for the test result exists.

If the MRO determines that a legitimate medical use exists, the drug test result is reported as negative to the employer. However, even if there is a legitimate medical explanation and verifies a test negative, the MRO has a responsibility to raise fitness-for-duty considerations with the employer.

When no legitimate medical reason is established, the MRO will report the applicable result to the employer.

#### XIV. CONTROLLED SUBSTANCES/ OTC/ PRESCRIPTION MEDICATIONS

Before performing any work-related duties, employees must notify their supervisor if they are taking any legally prescribed medication, therapeutic drug (to include the use of CBD Oils), or any non-prescription (over-the-counter) drug especially if it contains any measurable amount of alcohol or if it carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication. It is the responsibility of the employee to inform their physician of the type of safety-sensitive function that they perform in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of their duties or operation of City vehicles and other equipment. However, as required by the Federal Regulations, any employee who uses or possesses medication containing alcohol or any substance which would cause a positive test while on duty or who tests positive for alcohol or controlled substance(s) will be removed from their position, and subject to the provisions of this policy, even though the reason for the positive test is the fact that the employee's prescription medication contains alcohol or a controlled substance.

A legally prescribed drug is one in which the employee has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. The prescription must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing City of Whitewater business or on City of Whitewater property is prohibited by this policy.

##### Special Note for Rx Opioids:

Historically, the DOT's regulation required the MRO to report your medication use/medical information to a third party (e.g. your employer, health care provider responsible for your medical qualifications, etc.), if the MRO determines in their reasonable medical judgement that you may be medically unqualified according to DOT Agency regulations, or if your continued performance is likely to pose a significant safety risk. The MRO may report this information even if the MRO verifies your drug test result as 'negative'.

As of **January 1, 2018**, prior to the MRO reporting your information to a third party you will have up to five days to ensure your prescribing physician contacts the MRO. Under DOT rule, **the driver is responsible for facilitating the contact between the MRO and the prescribing physician**. The prescribing physician should be willing to state to the MRO that you can safely perform your safety-sensitive functions while taking the medication(s), or consider changing your medication to one that does not make you "medically unqualified" and/or does not pose a significant safety risk.

If the MRO and prescribing physician cannot agree on a resolution regarding the prescription and conclude the driver must remain "medically unqualified" the City of Whitewater will either place the driver on administrative leave, offer modified duty-not to include performance of any safety sensitive functions, and/or evaluate if the driver qualifies under FMLA as appropriate. During this time, as the driver is unable to perform safety sensitive functions and likely unable to perform all the essential functions of their job, an ADA interactive process may begin, as required, to help determine reasonable accommodations (if any) for the driver.

#### XV. CONFIDENTIALITY OF RECORDS

Procedures used for drug and alcohol testing follow the requirements of 49 CFR Part 40 to protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver. The City of Whitewater will strictly adhere to all standards of confidentiality to ensure drivers testing records and results will be released only to those authorized by the FMCSA rules to receive such information.

#### XVI. EMPLOYEE EDUCATION

As required by Federal Regulations, supervisors of CDL holders will be required to attend two hours of drug and alcohol education. One hour will cover alcohol misuse and the other hour will cover controlled substances use. The training shall cover the physical, behavioral, speech, and work performance indicators of probable alcohol misuse and use of controlled substances. Documentation of this training will be maintained by Human Resources and will be available for review.

For regulated employees who possess a CDL, the City will also provide each employee with a copy of this policy relating to drug

and alcohol use. This policy provides basic information concerning the effects of alcohol and controlled substances use on a person's health, work, and personal life; signs and symptoms of an alcohol or controlled substance problem; and available methods of intervening when an alcohol or controlled substance problem is suspected, including referral to any employee assistance program and/or referral to management (see below).

#### XVII. CERTIFICATE OF RECEIPT

The City of Whitewater shall ensure that each driver is required to sign a statement certifying that they have received a copy of this policy and materials. The organization shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

#### XVIII. JOB AIDS – Forms Attached



**WHAT ARE THE AFFECTS OF ALCOHOL AND DRUGS ON THE BODY**

**ALCOHOL**

A central nervous system depressant, alcohol is the most widely abused drug. About half of all auto accident fatalities in this country are related to alcohol abuse.

**How Much is Too Much?**

Consider that a 12-ounce beer, a 5-ounce glass of wine, and a 1.5 ounce shot of liquor contain about the same amount of alcohol. For the average to larger person (170#) and petite to small person (125#) the following approximate BACs can be expected:

	<u>170# person</u>	<u>125# person</u>
1 drink in 1 hour	.015%	.025%
2 drinks in 1 hour	.04%	.075%
7 drinks in 1 hour	.10%	.175%

**The Removal of Alcohol from The Body**

- ▲ Blood alcohol concentrations in the average person usually decrease at the rate of .012 to .02% per hour
- ▲ For a given person, the rate of elimination is nearly constant regardless of the % of alcohol in the body
- ▲ Coffee, cold showers, and exercise do not quicken sobriety.

**To demonstrate this, here is a chart that shows what happens when a person goes to bed intoxicated with a blood alcohol level of .250**

<u>Time</u>	<u>Activity</u>	<u>Blood Alcohol</u>
1:00 AM	Goes to Bed	.250
5:00 AM	Get Up for Work	.190
7:00 AM	Reports for Work	.160
8:00 AM	Still Legally Intoxicated	.145
9:00 AM	Driving Erratically	.140
11:00 AM	Still Legally Intoxicated – car	.100
3:00 PM	Quitting Time – Still Intoxicated CDL	.040

Alcohol first acts on those parts of the brain that affect self-control and other learned behaviors. Low self-control often leads to the aggressive behavior associated with some people who drink. In large doses, alcohol can dull sensation and impair muscular coordination, memory and judgment. Taken in larger quantities over a long period of time, alcohol can damage the liver and heart and cause permanent brain damage. On the average, heavy drinkers shorten their life span by about 10 years.

**Other Effects:**

- |  |                                       |
|--|---------------------------------------|
| * greatly impaired driving ability       | * overindulgence (hangover) can cause |
| * reduced coordination and reflex action | * headaches/unclear thinking          |
| * inability to divide attention          | * nausea/unsettled digestion          |
| * impaired vision and judgment           | * dehydration/aching muscles          |

**1. MARIJUANA**

Marijuana is also called grass, pot, weed, Mary Jane, herb, joint and reefer, among other street names. Marijuana may impair or reduce short-term memory and comprehension, alter sense of time, and reduce ability to perform tasks requiring concentrations and coordination, such as driving.

**NOTE:** While alcohol dissipates in a matter of hours, marijuana stays in the body for four weeks or more!

**Other Effects:**

- ▲ driving impaired for at least 4-6 hours after smoking 1 joint
- ▲ restlessness, inability to concentrate
- ▲ increased pulse rate and blood pressure
- ▲ altered sense of identity
- ▲ impaired memory, dulling of attention
- ▲ hallucinations, fantasies and paranoia
- ▲ reduction or temporary loss of fertility

**2. COCAINE**

Cocaine is a stimulant drug, which increases heart rate and blood pressure. As a powder, it is inhaled, ingested, or injected. It is often called coke" snow, blow, nose candy, and white. Cocaine is also used as a free-base cocaine known as crack or rock, which is smoked.

The most dangerous effects of crack are that it can cause vomiting, rapid heart rate, tremors, and convulsive movements. All of this muscle activity increases the demand for oxygen, which can result in a cocaine-induced heart attack. Since the heat regulating center in the brain is also disrupted, dangerously high body temperatures can occur. With high doses, brain functioning, breathing and heart beat are depressed – leading to death.

**Other Effects:**

- ▲ a rush of pleasurable sensation
- ▲ heightened, but momentary feeling of confidence, strength and endurance
- ▲ paranoia, mood swings, anxiety
- ▲ irritation of the nostrils and nasal membrane
- ▲ reduced sense of humor
- ▲ compulsive behavior such as teeth grinding or repeated hand washing

**3. AMPHETAMINES:**

Amphetamines can cause increased heart and respiratory rates, and promote a feeling of alertness and an increase in speech and general physical activity. It is often called speed uppers pep pills black beauties bennies and hearts.

**NOTE:** People with a history of sustained low-dose use often become dependent and believe they need the drug to get by. These users frequently keep taking amphetamines to avoid the “down” mood or crash they experience when the ‘high’ wears off.

Even small infrequent doses can produce toxic effects in some people. Restlessness, anxiety, moody swings, panic, heart beat disturbances, paranoid thoughts, hallucinations, convulsions, and coma have been reported. Long-term users often have acne resembling measles, trouble with their teeth, gums and nails, and dry, dull hair. Heavy, frequent doses can produce brain damage resulting in speech disturbances.





#### **Other Effects:**

- \* loss of appetite
- \* exaggerated reflexes
- \* distorted thinking
- \* irritability, anxiety, apprehension
- \* increased heart rate
- \* short term insomnia
- \* difficulty focusing eyes
- \* increased blood pressure
- \* perspiration, headaches, dizziness

#### **4. OPIOIDS**

Opioids, including heroin, morphine, and codeine are narcotics used to relieve pain and induce sleep. Common street names include, junk, smack, brown sugar, Harry or big H.

**NOTE:** Heroin accounts for 90% of the narcotic abuse in this country

Sometimes narcotics found in medicines are abused. This includes pain relievers containing opium and cough syrups containing codeine. Heroin is illegal, and cannot even be obtained with a physician's prescription.

#### **Other Effects:**

- \* short-lived state of euphoria
- \* impaired driving ability
- \* drowsiness followed by sleep
- \* constipation
- \* decreased physical activity
- \* reduced vision
- \* change in sleep habits
- \* possible death

#### **5. PHENCYCLIDINE (PCP):**

Also called angel dust, rocket fuel, super kools and killer weed, it was developed as a surgical anesthetic in the late 50's. Later, due to unusual side effects in humans, it was restricted to use as a veterinary anesthetic and tranquilizer. Today, it has no lawful use and is no longer legally manufactured.

**NOTE:** PCP is a very dangerous drug. It can produce violent and bizarre behavior even in people not otherwise prone to such behavior. More people die from accidents caused by erratic behavior produced by the drug than from the drug's direct effect on the body.

PCP scrambles the brain's internal stimuli and alters how users see and deal with their environment. Routine activities like driving and walking become very difficult.

#### **Other Effects:**

- \* impaired driving ability
- \* perspiration
- \* Incomplete verbal responses
- \* thick, slurred speech
- \* drowsiness
- \* repetitive speech patterns
- \* blank stare
- \* involuntary eye movement

Additional information about the City of Whitewater's Drug & Alcohol Program is available from:

#### **Designated Employer Representative (DER):**

**Human Resources Manager     Phone: 262-473-1387**



**General Consent for Limited Queries of the Federal Motor Carrier Safety Administration (FMCSA)**

- **Drug and Alcohol Clearinghouse**
- I, \_\_\_\_\_, hereby provide consent to City of Whitewater to conduct annual limited queries of the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse to determine whether drug or alcohol violation information about me exists in the Clearinghouse, for the duration of my employment with City of Whitewater
- I understand that if the limited query conducted by City of Whitewater indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to City of Whitewater without first obtaining additional specific consent from me.
- I further understand that if I refuse to provide consent for City of Whitewater to conduct a limited query of the Clearinghouse, the City of Whitewater must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations.

License # \_\_\_\_\_

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date



**EMPLOYEE ACKNOWLEDGEMENT FORM  
DRUG & ALCOHOL POLICY**

Detach and return this page to the City of Whitewater's Designated Employee Representative, Safety Manager or other identified City of Whitewater manager.

I acknowledge that I have received City of Whitewater's Drug and Alcohol Testing Policy and that this policy has been reviewed with me in a training session conducted by the City of Whitewater. I understand that the terms described in this policy may be altered, amended, or changed by the City of Whitewater, at any time or in order to comply with changes or revisions to federal law, with or without, prior notice.

PRINTED NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

LICENSE \_\_\_\_\_



**CITY OF WHITEWATER LIST OF APPROVED TREATMENT PROGRAM OPTIONS  
Within 75 miles**

1. Maya Robinson Wauwatosa, WI 53226 414-426-0417
2. Beth Mutton 4835 Manhattan Dr (Clarity Counseling) Rockford, IL 61108 815-520-2303
3. Michael Bauer W177N 9856 Rivercrest Dr Ste 222 Germantown, WI 53022-6422 262-509-0096
4. Tonyetta Ross 5301 W Hampton Ave Milwaukee, WI 53218 262-675-1857
5. Desilynn Smith 4021 N 27th St Fl 7 Milwaukee, WI 53216 414-554-5538
6. Tim Obert 1307 State Road 69 New Glarus, WI 53574-9328 608-527-2401
7. Hilary Harris 310 S Greenleaf St Ste 207 Gurnee, IL 60031 708-692-3194
8. Nashonna Turner 123 W. Water Street Waukegan, IL 60085 847-406-9527
9. Joanne Pilot 504 S Delphia Park Ridge, IL 60068 773-601-5191
10. Brian G. Lengfelder 800 Roosevelt Rd Bldg 322 Glen Ellyn, IL 60137-5839 630-740-7535