

ODNR Drug Testing Policy/Procedure

<input type="checkbox"/> Effective	September 1, 2008
<input checked="" type="checkbox"/> Purpose	To outline applicable federal, state, and collective bargaining guidelines for all aspects of drug and alcohol testing programs including pre-employment, random, reasonable suspicion, post accident and return to duty within the Department of Natural Resources as well as set forth the Department's policy in these areas. This policy applies to all DNR employees and prospective employees applying for certain positions within DNR.
 Authority	Ohio Administrative Code 123:1-76; The State of Ohio Drug-Free Workplace Policy; Federal Omnibus Transportation Employee Testing Act of 1991; OCSEA Collective Bargaining Agreement: Appendix M, Article 24.08; FOP Collective Bargaining Agreement : Appendix E; Federal Drug-Free Workplace Act of 1988; Federal Motor Carrier Safety Regulations: Parts 382, 383, 390-397 U.S. Department of Transportation Federal Highway Administration
 Reference	Drug Testing Procedure; Certificate of Information Receipt; Last Chance Agreement; OCSEA Collective Bargaining Agreement Article 9, FOP Collective Bargaining Unit Article 16; ODNR Discipline Grid, Classification List for Pre-employment
 Resource	Office of Human Resources, Drug Testing Coordinator and Labor Relations Staff, Division/Office Drug Testing Coordinators

OVERVIEW

Alcohol and other drug use is a problem of significant proportion that threatens the health and well-being of every citizen in the state of Ohio. Substance abuse reaches into every community and every walk of life, including the workplace. Substance abuse may lead to safety and health risks in the workplace, for the abusers, their co-workers, and the public at-large. In recognition of these factors the state created the Office of Drug Free Workplace Services Program. This office administers both a federally mandated program and the state program. These programs are designed to reduce on-the-job abuse of alcohol and drugs. This panel (drugs tested for) will always conform to the Federal Omnibus Transportation Employee Testing Act. Alcohol tests will be performed using an evidential breath-testing device. All aspects of the testing process conform to the drug testing protocols of the Omnibus Act. The U.S. Department of Health and Human Services certifies the laboratories performing the drug tests. The laboratory for the State of Ohio has established a network of collection sites.

A. STATE TESTING PROGRAM:

The state testing program includes positions that have been designated by the department and positions that were negotiated under the OCSEA/AFSCME and FOP contracts as safety sensitive. In addition, any ODNR employee may be tested for drugs/alcohol under reasonable suspicion. This testing program consists of the following testing components:

1. **Pre-employment testing of all final applicants of designated safety-sensitive classifications not covered by the federal testing act and unclassified positions.**

Final applicants who are not state employees who are applying for safety-sensitive positions, and all final applicants for unclassified positions, must complete and successfully pass a drug test as a condition of employment. However, the department has the discretion not to test an applicant who is a state employee, who has a negative test on record and who also has not had a break in service.

For intermittent, temporary, and external interim appointments, only those employees who are expected to work for four months or more in a safety-sensitive position for which drug testing is normally required will be subject to pre-employment drug testing.

2. **Reasonable suspicion testing** of any state employee where there is a reason to suspect that the employee, when reporting for duty or while on the job, is impaired by, or under the influence of, alcohol or other drugs.
3. **Random drug and alcohol testing** will be conducted for classifications of covered pursuant to collective bargaining agreements (e.g., OCSEA collective bargaining agreement: Appendix M, Article 24.08, and FOP classifications per the FOP collective bargaining agreement: Appendix E) and exempt commissioned personnel.
4. **Return-to-Duty and Follow-up testing** are required for employees testing positive on a reasonable suspicion or random test.

Except for return-to-duty testing, all travel time and time spent in the actual testing process will be considered "time worked" for compensation purposes for current departmental employees. ODNR will be responsible for the cost of required drug and alcohol tests with the exception tests required as the result of a positive test (i.e., retest of positive test, return-to-duty and follow-up tests). These tests will be at the expense of the employee.

The following outlines the various testing protocols and specifies the guidelines pertaining to the State Programs:

B. PRE-EMPLOYMENT TESTING

Drug tests (but not alcohol) are required for all final applicants for positions designated as safety sensitive under the state testing program. The Division/Office drug testing coordinator schedules a time for the applicant to go to one of the State's designated collection sites, and notifies the applicant of that time. The test should occur as soon as possible after notification, but no later than thirty-two (32) hours after the initial notification.

Any applicant who tests positive will not be eligible for state employment for a period of one-year following the date of the positive result. Applicants who refuse to be tested, or whose actions impede the collection process in any way, will not be hired.

C. REASONABLE SUSPICION TESTING

“Reasonable suspicion” testing shall be conducted when there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or his/her job performance is impaired by alcohol or other drugs. This reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing alcohol or drugs. Examples of reasonable suspicion include, but are not limited to:

- Slurred speech;
- Disorientation;
- Abnormal conduct or behavior, or
- Involvement in an on-the-job accident resulting in disabling personal injury requiring immediate hospitalization of any person or property damage in excess of \$2,000 where the circumstances raise a reasonable suspicion concerning the existence of alcohol or other drug use or abuse by the employee;

An employee ordered to undergo a reasonable suspicion test must ALWAYS be transported by the agency to the collection drug/alcohol test site.

Guidelines Specific to Employees covered by the State Testing Program

In addition to the aforementioned examples of reasonable suspicion, the following applies:

1. For bargaining unit employees reasonable suspicion must be documented in writing and supported by ***two witnesses***, including the person having such suspicion. The immediate supervisor shall be contacted to confirm that a test is warranted based upon the circumstances. This written documentation must be presented as soon as possible to the employee and the department head through the Office of Human Resources, who will maintain the report in the strictest confidence. A copy shall be released to any person designated by the affected employee. For exempt employee's the immediate supervisor, after gathering pertinent information and facts supporting a basis for reasonable suspicion (***one witness***), will prepare a written report detailing the reasons that reasonable suspicion testing is warranted.

D. RANDOM TESTING

The Drug-Free Workplace Services Program generates the master random testing list. All covered employees are placed in the random selection pool by their position control number. Positions to be tested are selected through a computer-based random process. The Drug-Free Workplace Services Program forwards the selection list to the agency coordinator. The list is distributed to agency personnel authorized to order random testing. This list must be maintained in the strictest confidence.

Guidelines specific to Employees Covered by the State Testing Program

FOP members, commissioned exempt employees, lock area technicians, and dredge operator 1's and 2's that are not in the federal testing program are included in the state random testing program for drugs and alcohol due to their position being designated as “safety sensitive.”

E. RETURN-TO-DUTY TESTING

Any employee who tests positive or refused to test for alcohol or drugs must be evaluated, treated, and given a return-to-duty test. The employee must have a negative drug and/or alcohol test pursuant to federal and state guidelines in order to resume safety-sensitive duties.

F. FOLLOW-UP TESTING

Every employee, who entered into a last chance agreement following a positive test, will be subject to unannounced follow-up controlled substance and/or alcohol testing. The employee must be tested a minimum of six times within 12 months after the employee returns to duty and may continue for a period of 60 months after the employee returns to work, if ordered by the Substance Abuse Professional. The Drug-Free Workplace Services Program with the Department of Administrative Services will notify the department the dates that follow-up tests are to be scheduled.

G. POST-ACCIDENT TESTING

A. Guidelines for State Testing Program:

Refer to Reasonable Suspicion, B-1

Under state guidelines employees must immediately notify the agency about the accident (if medically able to do so), remain available for testing, and not consume any alcohol for eight (8) hours after the accident, or until an alcohol test has been administered, whichever occurs first.

B. Rebuttable Presumption (Workers' Compensation) Testing

1. The "rebuttable presumption" law requires that an employee may not be eligible for workers' compensation benefits if they are injured while intoxicated or under the influence of a controlled substance not prescribed by the employee's physician. If an injured employee tests positive or refuses to test for drugs or alcohol, the employee may be disqualified for compensation and benefits under the Workers' Compensation Act.
 - a. O.R.C. 4123.54 requires that an employee may be subjected to drug and alcohol testing when involved in an accident or suffers an injury that may be compensable for workers compensation benefits. The standard drug panel is the same as that currently in place.
 - b. The employee's refusal to test may affect his or her eligibility for workers compensation and benefits pursuant with O.R.C. sections 4121 and 4123.
 - c. An employee's worker's compensation may be affected by a positive test as determined by federal DHHS-certified laboratories.
 - d. A test is considered qualifying if it is administered to an employee after an injury under at least one of the following conditions:
 - i. If there is reasonable cause to believe that an employee is under the influence of drugs and/or alcohol, when involved in an accident resulting in injury, a state reasonable suspicion or a federal post accident test shall be administered pursuant to current policy. That test may also be used to satisfy the conditions set forth for rebuttable presumption.
 - ii. If a physician or a police officer orders a test pursuant with O.R.C. 4123.54, results of that test will satisfy the conditions set forth for a rebuttable presumption.
 - e. Based on O.R.C. 4123.54, the following shall apply for state employees:

- i. When an employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician;
 - ii. At the request of a police officer pursuant to O.R.C. section 4511.191
 - iii. At the request of a licensed physician not employed by the State.
2. Rebuttable presumption means that an employee may dispute or prove untrue the presumption (or belief) that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury. The burden of proof is on the employee to prove that the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury.

H. POSITIVE TEST RESULTS

For drugs, specimens testing positive on the initial screen will undergo a confirmation test using gas chromatography/mass spectrometry. Specimens confirmed positive will be reviewed by a Medical Review Officer who is a physician to rule out any prescription medication, etc. as the cause of the positive test result. Only results declared positive after this Medical Officer review will be reported as positive.

Alcohol tests will be performed using an evidentiary breath testing device

acceptable to the National Highway Traffic Safety Administration. No Medical Officer review will be performed for alcohol tests since there is no alternative explanation for a positive test result. Results of 0.04 or greater will be positive. Should the collection site notify the Division of a positive alcohol test, the employee shall not be permitted to drive a state or personal vehicle back to the work site. All paid or unpaid leave (up to 12 weeks) used during substance abuse treatment for either drugs or alcohol may qualify under the Family Medical Leave Act, if the employee's condition meets the definition of a "serious health condition."

Employees testing positive for drugs and/or alcohol will be scheduled for a pre-disciplinary hearing prior to any administrative action being taken. An employee may waive the 72 hour notice requirement for this meeting. Positive tests will be considered a violation of this policy and the Departments' work rules. The Department has a zero tolerance for drug/alcohol use and/or abuse. The Department recommends removal for employees testing positive for either drugs and/or alcohol. However, on the first occasion for a positive test for either alcohol or drugs, discipline may be held in abeyance if the employee successfully completes a substance abuse program and no other infractions are involved. The last chance agreement will be valid for a period of five (5) years, except in the following situations, in which case the last chance agreement shall be for an unlimited duration: any accident involving a fatality; any accident in which the driver is cited and there is damage to the vehicle(s) requiring tow-away; or any accident in which the driver is cited and off-site medical treatment is required. In a last chance agreement the parties agree that discipline for this offense will be held in abeyance contingent upon the employee's successful completion of a treatment program. The employee will be referred to a Substance Abuse Professional by the Employee Assistance Program or through the United Behavioral Health Program. The employee will not be permitted to return to safety sensitive duties until successful completion of the treatment program, and after return-to duty alcohol and/or drug tests have been administered with negative test results. A minimum of six (6) follow-up tests will be administered in the twelve (12) months following the employee's return to work after testing positive. Follow-up testing may last up to 60 months if ordered by the Substance Abuse Professional. Should the employee fail to be certified to return to work by the Substance Abuse Professional and return to work within 180 calendar days the employee shall be

terminated from employment. Subsequent positive tests during the life of the last chance agreement will result in removal.

Employees on their initial probationary period who test positive for drugs or alcohol from either a random, reasonable suspicion or Rebuttable presumption test shall not be eligible for a last chance agreement. The probationary employee shall be terminated on the first occasion in which they test positive for alcohol or other drugs.

Nothing in this policy shall preclude the employer from disciplining employees for other work rule violations committed in conjunction with the positive test.

I. APPEAL OF POSITIVE TEST RESULTS

An employee may request a retest of a positive drug test result within 72 hours of the employee being advised of the positive result. The 72 hour clock begins when the employee is first notified of the positive result. All re-tests must be done by a laboratory certified by the U.S. Department of Health and Human Services and coordinated by the state's designated Medical Review Officer.

The employee will be responsible for all expenses of the retest.

There is no provision for retesting a positive breath test for alcohol.

J. REFUSAL TO TEST

An employee may not refuse to submit to a random, reasonable suspicion, or follow-up drug and/or alcohol test. An employee's refusal to test will be considered a positive test and will be subject to the provisions contained herein. Additionally, employees will be considered insubordinate and subject to the appropriate administrative action.

A refusal to test for alcohol will occur when.

- a. the employee refuses to sign the breath alcohol test form
- b. refuses to breathe for an alcohol test,
- c. refuses to provide an adequate amount of breath to complete an alcohol test, or
- d. fails to cooperate with the testing procedure in any way that prevents completion of the test.

A refusal to test for drugs occurs when the employee:

- a. refuses to provide a urine sample
- b. refuses to provide an adequate amount of urine, or
- c. fails to cooperate with the testing procedure in any way that prevents completion of the test.

Any person refusing to take a pre-employment test will not be hired.

FEDERAL PROGRAM

A. FEDERAL TESTING PROGRAM:

The federal testing program, mandated by the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. & 31306), applies to state employees (exempt and non-exempt) whose duties require commercial drivers licenses and who perform safety-sensitive functions as defined by the Act.

1. CDL Holder

Under the Act, a "commercial motor vehicle" includes any motor vehicle used to transport passengers or property on highways if the vehicle has:

- a. a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of 10,000 pounds; or
- b. a gross vehicle weight rating of 26,001 or more pounds; or
- c. is designed to transport 16 or more passengers including the driver; or
- d. is of any size and is used to transport hazardous materials as defined by federal regulations.

2. Performing safety-sensitive functions

Safety-sensitive functions are defined as all time a driver is at work or is required to be in readiness to work status. Safety-sensitive functions include the following six (6) situations.

- a. all time spent driving a commercial motor vehicle
- b. all time spent on employer or public property waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- c. all time spent inspecting, servicing or conditioning any commercial vehicle, except time spent resting in a sleeper berth;
- d. all time spent loading or unloading a vehicle, supervising or assisting in loading or unloading a vehicle, remaining in readiness to operate a commercial motor vehicle or giving receipts for shipments loaded or unloaded, and
- e. all time spent repairing, obtaining assistance for or standing by a disabled vehicle.

The Federal Act includes pre-employment drug tests, random, reasonable suspicion, return-to-duty, follow-up, and post-accident tests for both alcohol and drugs. To ensure accuracy of the results, two tests will be performed for both alcohol and drugs. The federal law requires that 50 percent of all eligible employees must be tested annually for drugs, and 10 percent for alcohol under the random testing program. Employees to be tested are selected from a computer-generated random selection process using the position control numbers of employees in the pool. The Drug-Free Workplace Services Program with the Department of Administrative Services supplies the names of employees in the positions selected to the departmental testing coordinator.

Except for return-to-duty testing, all travel time and time spent in the

actual testing process will be considered "time worked" for compensation purposes for current departmental employees. ODNR will be responsible for the cost of required drug and alcohol tests with the exception of tests required as the result of a positive test (i.e., return-to duty and follow-up tests). These tests will be at the expense of the employee.

The Act prohibits all of the following:

- the use of alcohol or any controlled substance while the employee is performing safety-sensitive functions;
- the performance of any safety-sensitive duty within four (4) hours after the consumption of alcohol;
- the refusal to take an alcohol or drug test when ordered;
- remaining on duty after a positive alcohol (0.04 or greater Blood Alcohol Content ("BAC") or drug test;
- the performance of safety sensitive functions by any person with a BAC of 0.02 to 0.0399;
- the consumption of any alcohol within eight (8) hours of an accident by any employee subject to a post-accident test.

The following outlines the various testing protocols and specifies the guidelines pertaining to the Federal Programs:

B. PRE-EMPLOYMENT TESTING

Drug tests (but not alcohol) are required for all final applicants for positions covered by federal DOT testing requirements (i.e., CDL holders). The Division/Office drug testing coordinator schedules a time for the applicant to go to one of the State's designated collection sites, and notifies the applicant of that time. The test should occur as soon as possible after notification, but no later than thirty-two (32) hours after the initial notification.

Any applicant who tests positive will not be eligible for state employment for a period of one-year following the date of the positive result. Applicants who refuse to be tested, or whose actions impede the collection process in any way, will not be hired.

Guidelines Specific to Employees covered by the Federal Testing Program

1. Persons entering these positions from outside state government, and current state employees who do not perform safety-sensitive functions who are transferring into these positions, must be tested. However, current state employees who already perform safety-sensitive functions are not required to be tested when they are transferred or promoted into other safety-sensitive positions.
2. Prospective employees are required to authorize the release of information about previous tests conducted under the Act. The authorization is a condition for employment, and must include:
 - a. positive drug tests for the preceding two years from the date of application.
 - b. alcohol test results of 0.04 or greater for the preceding two years from the date of application.
 - c. refusals to be tested for the preceding two years from the date of application, and proof of completion of rehabilitation and return-to-duty test requirements after any positive tests.

As a condition of employment, employees who previously failed tests must prove they have been medically re-certified as qualified.

C. REASONABLE SUSPICION TESTING

“Reasonable suspicion” testing shall be conducted when there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or his/her job performance is impaired by alcohol or other drugs. This reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing alcohol or drugs. Examples of reasonable suspicion include, but are not limited to:

- Slurred speech;
- Disorientation;
- Abnormal conduct or behavior, or
- Involvement in an on-the-job accident, resulting in disabling personal injury requiring immediate hospitalization of any person;

An employee ordered to undergo a reasonable suspicion test must ALWAYS be transported by the agency to the collection drug/alcohol test site.

A. Guidelines Specific to Employees covered by the Federal Testing Program

1. The Federal Act requires **one supervisory witness** and written documentation by that supervisor or a designated employer representative (to be completed within 24 hours of ordering the test) for a reasonable suspicion test for drugs, but there is no such requirement for reasonable suspicion alcohol testing. In all cases, first-line supervisors should be advised to secure additional witnesses and prepare written documentation but not to allow that process to interfere with the testing of the employee.
2. Reasonable suspicion testing for alcohol is authorized only if the required observations are made just before, during or immediately after the employee has performed a safety-sensitive function. If the alcohol test is not administered within two (2) hours of the reasonable suspicion determination, documentation must be prepared to explain why it was not done. If the alcohol test has not been administered within eight (8) hours, testing efforts must cease and the reasons for not administering the test must be documented. Testing should never be postponed or delayed in anticipation of using the random testing requirement as a substitute for a reasonable suspicion test.

D. RANDOM TESTING

The Drug-Free Workplace Services Program generates the master random testing list. All covered employees are placed in the random selection pool by their position control number. Positions to be tested are selected through a computer-based random process. The Drug-Free Workplace Services Program forwards the selection list to the agency coordinator. The list is distributed to agency personnel authorized to order random testing. This list must be maintained in the strictest confidence.

Guidelines specific to Employees covered by the Federal Testing Program

The federal law currently requires that 50 percent of all eligible State of Ohio employees must be tested annually for drugs, and 10 percent of all eligible State of Ohio employees must be tested annually for alcohol.

A randomly selected employee must be tested as soon as possible after being notified. Testing cannot be delayed or postponed because of work schedules or workloads.

1. Random drug tests
 - a. must be ordered any time during the employee's work shift.
 - b. if the employee is unavailable (attending a conference, sick, vacation, etc.) on the date the random drug test is scheduled, the employee must be ordered to test when he/she returns to duty during the testing cycle.
 - c. If the employee selected for random drug testing is off for more than 30 days (illness, vacation, etc.) a re-employment drug test is required before the employee can return to work.

2. Random alcohol tests
 - a. alcohol tests can be ordered any time the employee is at work performing safety-sensitive duties or is required to be in readiness to work.

E. RETURN-TO-DUTY TESTING

Any employee who tests positive for alcohol or drugs must be evaluated, treated, and given a return-to-duty test. The employee must have a negative drug and/or alcohol test pursuant to federal guidelines in order to resume safety-sensitive duties.

F. FOLLOW-UP TESTING

Every employee, who entered into a last chance agreement following a positive test, will be subject to unannounced follow-up controlled substance and/or alcohol testing. The employee must be tested a minimum of six times within 12 months after the employee returns to duty and may continue for a period of 60 months after the employee returns to work, if ordered by the Substance Abuse Professional. The Drug-Free Workplace Services Program with the Department of Administrative Services will notify the department the dates that follow-up tests are to be scheduled.

G. RE-EMPLOYMENT TESTING

Under the guidelines for the federal testing program, an employee selected for a random drug test that is off work for more than 30 days (illness, vacation, etc.) must pass a re-employment test as a condition for returning to duty.

H. POST-ACCIDENT TESTING

Guidelines for Federal Testing Program:

Three situations trigger post-accident testing:

1. Any accident involving a fatality;
2. Any accident in which the driver is cited and there is disabling damage to the vehicle(s) requiring tow-away; or
3. Any accident in which the driver is cited and off-site medical treatment is required.

Under federal guidelines employees must immediately notify the agency about the accident (if medically able to do so), remain available for testing, and not consume any alcohol for eight (8) hours after the accident, or until an alcohol test has been administered, whichever occurs first.

I. POSITIVE TEST RESULTS

For drugs, specimens testing positive on the initial screen will undergo a confirmation test using gas chromatography/mass spectrometry. Specimens confirmed positive will be reviewed by a Medical Review Officer who is a physician to rule out any prescription medication, etc. as the cause of the positive test result. Only results declared positive after this Medical Officer review will be reported as positive.

Alcohol tests will be performed using an evidentiary breath testing device acceptable to the National Highway Traffic Safety Administration. Other mutually agreed to methods may be used for FOP bargaining unit employees. No Medical Officer review will be performed for alcohol tests since there is no alternative explanation for a positive test result. Results of 0.04 or greater will be positive. Should the collection site notify the Division of a positive alcohol test, the employee shall not be permitted to drive a state or personal vehicle back to the work site. Under the Federal Omnibus Transportation Employee Testing Act, if the employee tests any measurable amount of alcohol, i.e., 0.02 percent to .0399 percent, progressive discipline may be imposed. Employees covered under the Federal Omnibus Transportation Employee Testing Act who test between 0.02 and 0.0399 BAC or test positive for drugs must be removed from all safety sensitive functions immediately. If non-safety sensitive duties are not available the employee will be placed on administrative leave without pay. However, the employees have the option of using their own leave time (i.e., vacation, personal, sick, or compensatory time). All paid or unpaid leave (up to 12 weeks) used during substance abuse treatment for either drugs or alcohol may qualify under the Family Medical Leave Act, if the employee's condition meets the definition of a "serious health condition."

Employees testing positive for drugs and/or alcohol will be scheduled for a pre-disciplinary hearing prior to any administrative action being taken. An employee may waive the 72 hour notice requirement for this meeting. Positive tests will be considered a violation of this policy and the Departments' work rules. The Department has a zero tolerance for drug/alcohol use and/or abuse. The Department recommends removal for employees testing positive for either drugs and/or alcohol. However, on the first occasion for a positive test for either alcohol or drugs, discipline may be held in abeyance if the employee successfully completes a substance abuse program and no other infractions are involved. The last chance agreement will be valid for a period of five (5) years, except in the following situations, in which case the last chance agreement shall be for an unlimited duration: any accident involving a fatality; any accident in which the driver is cited and there is damage to the vehicle(s) requiring tow-away; or any accident in which the driver is cited and off-site medical treatment is required. In a last chance agreement the parties agree that discipline for this offense will be held in abeyance contingent upon the employee's successful completion of a treatment program. The employee will be referred to a Substance Abuse Professional by the Employee Assistance Program or through the United Behavioral Health Program. The employee will not be permitted to return to safety sensitive duties until successful completion of the treatment program, and after return-to duty alcohol

and/or drug tests have been administered with negative test results. A minimum of six (6) follow-up tests will be administered in the twelve (12) months following the employee's return to work after testing positive. Follow-up testing may last up to 60 months if ordered by the Substance Abuse Professional. Should the employee fail to be certified to return to work by the Substance Abuse Professional and return to work within 180 calendar days the employee shall be terminated from employment.

Subsequent positive tests during the life of the last chance agreement will result in removal.

Employees on their initial probationary period who test positive for drugs or alcohol from either a random, reasonable suspicion or post-accident test shall not be eligible for a last chance agreement. The probationary employee shall be terminated on the first occasion in which they test positive for alcohol or other drugs.

Nothing in this policy shall preclude the employer from disciplining employees for other work rule violations committed in conjunction with the positive test.

J. APPEAL OF POSITIVE TEST RESULTS

An employee may request a retest of a positive drug test result within 72 hours of the employee being advised of the positive result. The 72 hour clock begins when the employee is first notified of the positive result. All re-tests must be done by a laboratory certified by the U.S. Department of Health and Human Services and coordinated by the state's designated Medical Review Officer.

The employee will be responsible for all expenses of the retest.

There is no provision for retesting a positive breath test for alcohol.

K. REFUSAL TO TEST

An employee may not refuse to submit to a required post-accident, random, reasonable suspicion, or follow-up drug and/or alcohol test. An employee's refusal to test will be considered a positive test and will be subject to the provisions contained herein. Additionally, employees will be considered insubordinate and subject to the appropriate administrative action.

A refusal to test for alcohol will occur when.

1. the employee refuses to sign the breath alcohol test form
2. refuses to breathe for an alcohol test,
3. refuses to provide an adequate amount of breath to complete an alcohol test, or
4. fails to cooperate with the testing procedure in any way that prevents completion of the test.

A refusal to test for drugs occurs when the employee:

1. refuses to provide a urine sample
2. refuses to provide an adequate amount of urine, or
3. fails to cooperate with the testing procedure in any way that prevents completion of the test.

Any person refusing to take a pre-employment test will not be hired.