CITY OF NORTON SHORES

Drug and Alcohol Abuse
Policy and Procedures

March 1996

CITY OF NORTON SHORES

Drug and Alcohol Policy and Procedures

TABLE OF CONTENTS

I. POLICY STATEMENT 4
Safe working environment 4
Reputation of the City of Norton Shores 4
Accidental injury 4
Absenteeism, tardiness, and indifferent or declining job performance 4
Deterrence 5
Detection 5
Assistance & rehabilitation 5

II. DEFINITIONS 6
Employees 6
Drivers or operators (6); Vehicle mechanics (6); Supervisors (6)
Other Employees 6
Illegal, Unauthorized Drugs and Alcohol 7
Controlled Substance Acts (7)
Drug Tests 7
Breath Alcohol Tests 8
Reasonable Cause, For Cause, or Reasonable Suspicion 8

III. TEST LEVELS 10
Controlled Substances 10
Alcohol Use 10
Other Alcohol Use 10
Penalties for Other Alcohol Use 10
Controlled Substance Levels 10
Amphetamines (11); Cocaine (11); Marijuana (11); Opiates (11); Phencyclidine (11); Test Use (12)
Split Samples 12
Alcoholic Beverages 12
Odor (12); Refusals (12); Assessment (12); Independent authority (12); Referrals (12)
Conditions of Employment 13
Notification of Criminal Conviction 13
Notification of Civil or Criminal Driving Infraction Convictions 13

IV. DRUG AND ALCOHOL SCREENING 13
Independent laboratory 14
On-site collections (14); Neutral-site collections (14); Clinical collections (14)
Transportation to lab 14
Refusal to submit 14
Inhalants or Other Products 14
Off Duty Alcohol Use 15
on-call, (15)
Alcohol Level of .02 to .04 percent 15
Alcohol Level of .041 and above 16
Supervisory Administered Alcohol Tests (17)

V. EMPLOYMENT CONSIDERATION TESTING 18
Applicants 18
Participating (regulated) positions 18
Positive drug test 18
Post-Offer Candidates (non-regulated) 18

VI. POST ACCIDENT TESTING 20
Fatality 20
Citation (Moving Violations) 20
accident (20); unable to be driven (20); injury (20)
Duty Procedures 20

VII. RANDOM and PERIODIC SELECTION 21
Random Selection 21
Regulated Selection (21); Drug Tests (21); Alcohol Tests (21); Random test selections (21); equal chance (21); calendar (21); stops performance (21); alcohol testing (21)
Open Selection 22
Qualification for Tests 22

VIII. REASONABLE SUSPICION or FOR CAUSE TESTING 22
Justification 22
trained supervisor (22); personal prejudices (22); confirmation (22)
Drug or alcohol screening tests 22
. absenteeism or tardiness (22); Accident investigation (23); job performance (23); personality (23); Reports (23); Admission (23); Unexplained absences (23); Odor (23); Behavior (23); withdrawal (23); possession (23)

IX. RETURN TO DUTY TESTING 24
Submission to 24
breath alcohol test (24)
Results of 24
breath alcohol test (24)
Submission to 24
urine drug screen (24)
Results of 24
urine drug screen (24)

X. FOLLOW-UP TESTING 25
Substance abuse professionals 25
Follow-up testing schedules 25
Costs 25

XI. SUPERVISORY ACTIONS 26
Performance indicators 26
Behavioral indicators: 26
Speech indicators 26
Physical indicators 26
Reasonable Suspicion 26
Conduct 26
. Interview (26); Extenuating Circumstances (26); Denials (27); Physical Evidence (27); collection (27); witnesses (28); written statement (28); **PRESCRIPTION DRUGS** (28)

XII. CONFIDENTIALITY 30
Record Retention 30
Five Years (30); Two Years (30); One Year (30)
Need-To-Know 30
In-house administrators (30); Manager (30); Auditors or Enforcement Officials (30); Program Administrator's (30); Medical Review Officer (31); Substance Abuse Professional (31); Employee Assistance Program (31)
Confidential Discussions 31

XIII. SUSPENSIONS 32
Positive Test Results 32
Justification: 32
warning (32); treatment or counseling (32)

XIV. TERMINATION 33
Prohibited conduct following, ... 33
Prosecution for violation of prohibited conduct 33
Termination notices 33
Misconduct (33); Michigan Employment Security Commission (33)
Negative Test Results 33

XV. EMPLOYEE ASSISTANCE 34
Substance Abuse Assessments 34
Substance Abuse Professional, duties 34
refusing assessment (34); failing to complete (34); positive following treatment (34)
Substance Abuse Professional, designation of 34
Referrals 34
self-referral (34); recommended treatment (35); positive report (35); intervention Employee Assistance Provider 35
Pay During Treatment 35

XVI. RETURN TO WORK 36
Controlled Substance Recovery Testing 36
Alcohol Recovery Testing 36
Regulatory Requirements 36

Explanation: Parts of this policy and accompanying procedures contain requirements implemented by the City of Norton Shores under independent authority. We are encouraged to institute such local rules as long as we clearly define them as such and not being required under existing Federal regulations (49 CFR, Part 382). Our right to do so is clearly defined under 49 CFR, Part 382, Subpart F, §382.601 (c) which states:

> *"The material supplied to drivers (employees) may also include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver (employee) found to have a specified alcohol or controlled substance level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority."*

In order that we clearly identify such policies and consequences, we are printing independent authoritative issues in a **bold type-face.**

CITY OF NORTON SHORES
4814 Henry Street
Norton Shores, Michigan 49441-5499

DRUG AND ALCOHOL ABUSE POLICY

I. POLICY STATEMENT OF THE CITY OF NORTON SHORES:

The City of Norton Shores is dedicated to the well-being and safety of its employees, management, and community. It is committed to improve employee productivity, and to service the needs and demands of its residents.

Alcohol and drug abuse in the workplace reflects a national problem. Therefore, the City subscribes to the *Federal Drug Free Workplace Act of 1988 (Section 4804 of the Anti-drug Abuse Act of 1988).*

The City must also comply with the following regulations: 1.) *Federal Highway Administration, Department of Transportation (DOT) Qualification of Drivers* and *Procedures for Transportation Workers Drug Testing Programs (49 CFR, Parts 40 and 382;* and 2.) *Michigan's Motor Carrier Safety Act No. 339 of 1990 (M.C.L. 480.11)* and all revisions to that act, specifically, *Public Act No. 100 of 1991.*

The City of Norton Shores has a strong commitment to its employees to provide an alcohol and drug-free working environment. Likewise, the City of Norton Shores is committed to conduct its operations safely and prudently.

Procedures on file in the Department of Administrative Services will serve as a guide in the administration of policy. The procedures are based upon Federal regulations governing the use of controlled substances, abuses of alcohol, and testing programs designed to deter and detect the use of alcohol and/or controlled substances in the workplace. The procedures may be reviewed by contacting the Director of Administrative Services. The purpose of these procedures is to:

A. **ESTABLISH** and maintain a healthy and safe working environment for all employees

B. **REDUCE** accidental injury to persons and property

C. **REDUCE** absenteeism, tardiness, and indifferent or declining job performance

D. **ELIMINATE** the use of controlled substances or alcohol when it affects the delivery of public services

E. **OFFER** rehabilitation assistance for any employee through the City of Norton Shores' *Employee Assistance Program*.

Mark C. Meyers
Director of Administrative Services

3/5/96
Effective Date

CITY OF NORTON SHORES
ADMINISTRATIVE PROCEDURES
FOR
ALCOHOL ABUSE AND CONTROLLED SUBSTANCES USE

II. DEFINITIONS:

The City of Norton Shores is *required by Federal regulations* to enforce a policy on the misuse of alcohol and the use of controlled substances.[1] The policy has been provided to each CDL employee. Copies of these administrative procedures[2] are on file for inspection in the Department of Administrative Services. These same Federal regulations also require a system of testing. The system will test for illegal controlled substances and alcohol use by employees doing certain functions or holding specific licenses. These specific classes of employees include:

A. EMPLOYEES required to possess a valid commercial driver's license to satisfy job requirements.[3] This requirement includes:

1. Drivers or operators required to possess a commercial driver's license by virtue of the equipment they operate;

2. Vehicle mechanics who, because they must evaluate their work on equipment, operate equipment identified as requiring a commercial driver's licenses to operate;

3. Supervisors who, because they significantly affect vehicle safety[4], assign or otherwise have day-to-day responsibility for supervising subordinates and;

4. Any employee, whether licensed or not, who may operate a commercial motor vehicle (CMV) on public highways.

B. Any other employees.

[1] *49 CFR, Part 382, Subpart F, §382.601*

[2] *§382.601(a)(1)*

[3] *Subpart A, §382.103(a)*

[4] *US DOT Guidance Letter HCS-30 dated 12/21/94.*

C. **ILLEGAL, UNAUTHORIZED DRUGS AND ALCOHOL:** The City of Norton Shores attempts to provide a secure, healthy, safe, and drug and alcohol-free working environment[5]. No employee may report to work displaying the effects of illegal, illicit, controlled, or unauthorized drugs. No employee will take, make, sell, give, transport, or possess a controlled or illegal substance listed within the context of the Controlled Substance Act (CSA). This, specifically, includes all Schedule I. and II. substances and Schedule III. through V. substances being used or possessed without approval or authorization.

1. **CONTROLLED SUBSTANCE ACTS** are contained within Title 21 of the United States Code [Section 802(6), Food and Drugs] and use and possession of these controlled substances is unlawful under Chapter 13 of that title [Section 801 et seq.].

2. **DRUG TESTS:** We will utilize testing procedures with scientifically valid protocols that meet the certification criteria of the Substance Abuse and Mental Health Services Administration (SAMHSA), formerly known as the National Institute of Drug Abuse (NIDA). The only approved drug detection tests are urinalysis samples analyzed by U.S. Department of Health and Human Services-certified laboratories. We and the laboratories we utilize are compliant with 49 CFR, Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

   a. All urine samples will be subjected to an initial screening utilizing an immunoassay technique.

   b. Specimens with negative test results following the initial screening will be reported to our Medical Review Officer (MRO) as negative tests. The initial screening test is designed to eliminate negative tests from any further consideration[6]. The MRO will, in turn, report those tests to us as negative screening tests.

   c. Specimens with positive test results following the initial screening will be subjected to a laboratory-administered analytical procedure to identify the presence of a specific drug or metabolite[7].

      (I). This confirmatory test must, by definition, be independent from the screening test.

      (II). To ensure reliability and accuracy, the confirmatory test must use a technique and chemical principal different from the screening test.

   d. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

[5] *49 CFR, Part 382, Subpart B, §382.213(a)(b)*

[6] *49 CFR, Part 382, Subpart A, §382.107*

[7] *49 CFR, Part 40, §40.3*

e. Protested positive test results allow the employee or applicant to submit a split sample portion of the original specimen required by Federal regulations immediately, and without prior notice, for testing.

(I). If the split-sample urine drug screen test is requested, the applicant will pay for the test.

(II). If the split sample's test's results overturn a first test positive, the test will be reported as a negative and a copy of the second test results, and only the second test's results, will be placed in the employee's driver's or personnel file and a copy provided to the employee or applicant

3. BREATH ALCOHOL TESTS: Only those tests with approved protocol issued by the United States Department of Health and Human Services will be permissible. Certified Breath Alcohol Technicians will administer our alcohol tests using devices appearing on the Conforming Products Lists (CPL) and approved by the National Highway Traffic Administration (NHTSA).[8]

a. Initial screening to determine the presence of alcohol in an employee's body will utilize an analytical procedure and device to determine if an employee has a prohibited level of alcohol in his or her system. If the initial screening indicates a breath alcohol concentration of above .02 percent, a confirmatory test will be administered.

b A confirmatory test following the initial test with a test result of .02 percent or greater will be administered within 20 minutes of the initial test result. The confirmatory test will result in a quantitative result measuring alcohol concentration within an employee's body as measured by breath.

c. At the time of this document, blood testing is not an approved technique for determining the presence of alcohol in one's body.

4. REASONABLE CAUSE, FOR CAUSE, OR REASONABLE SUSPICION: **For our purposes and based on our independent authority, we consider these phrases interchangeable and we define them as follows:**

a. **An apparent state of facts and/or circumstances found to exist upon inquiry by the supervisor that would lead an intelligent and prudent person to believe that an employee, or groups of employees, are under the influence of or are using drugs or alcohol violating this policy.**

b. **A reasonable cause for belief in the existence of facts or circumstances warranting an order to submit to a urine drug screen or breath alcohol test.**

c. Indicators of chronic abuse or effects of withdrawal qualify as reasonable suspicion. Federal regulation strictly prohibits the use of controlled substances by covered employees. These substances remain present in the body for long periods. Withdrawal symptoms may suggest that an employee have used drugs

[8] *49 CFR, Part 382, Subpart A, §382.107*

violating both this policy and the Federal regulations. Therefore, we may test employees showing these kinds of symptoms under reasonable suspicion.

d. When we require a urine drug screen and/or breath alcohol test, **the supervisor initiating the test action must complete the supervisor's incident report by our independent authority.** A copy of the report must be completed within 24-hours or before the results of the test become known to the City of Norton Shores, whichever comes first.[9]

e. We cannot authorize a reasonable suspicion test based on a third-party observation or information of alcohol or drug use or possession. This procedure is included under our independent authority, however, we do base our decision on The Federal Highway administration's Guidance Letter, no. 94.14, dated June 27, 1994. This letter says, *"A trained supervisor can document and defend his or her observations of specific coexisting, distinct appearance, speech, body odor, or behavior suggesting the use of alcohol or controlled substances."*

[9] *49 CFR, Part 382, Subpart C, §382.307(e)(2)(f)*

III. TEST LEVELS:

A. **Controlled Substances:** An employee will be considered to have failed *(with a positive test result)* an administered urine drug screen if, after confirmed analysis, test levels show a reportable presence more than the allowable cutoff levels defined in 49 CFR, Part 40, §40.29 (f). The reportable presence will be for any of five controlled substances included in Schedule I or II. These schedules are defined by § 802(6) of Title 21 of the United States Code [Section 802(6) of title 21, Food & Drugs]. The possession of any of these drugs is unlawful under Chapter 13 of that Title [§ 801 et seq. of title 21]. The term ***illegal drug*** does ***not*** mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law. Valid prescriptions used following the physician's instructions must be recorded and treated as negative test results.

B. **Alcohol Use:** An employee will be considered to have failed (with a test result of .04 percent or greater) an administered evidential breath alcohol test administered by a certified breath alcohol technician[10]. To be considered a confirming evidential test, a breath alcohol technician must have administered a preliminary (screening) breath test within the 20 minute period immediately preceding the evidential test. The preliminary test must have resulted in a reading of not less than .02 percent to warrant the evidential breath test.

C. **Other Alcohol Use:** An employee submitting to a preliminary breath alcohol screening test with a result of .02 or higher but less than .04 percent as confirmed by an evidential breath test will be removed from duty or performance of their safety-sensitive function for a period of not less than 24 hours[11].

D. **Penalties for Other Alcohol Use:** Federal regulations indicate we may not classify as positive any employee who tests between .02 percent and .04 percent. Results in this range are to be classified as a low end alcohol violation but are not reportable to the US DOT as a positive alcohol test. We do, however, reserve the right to institute our own disciplinary action for employees who test between .02 and .04 percent. **Under independent authority granted us under 49 CFR, Part 382, Subpart F, §382.601 (c), we will remove employees testing within this range from further performance of safety-sensitive functions without pay.**

E. **CONTROLLED SUBSTANCE LEVELS:** We will accomplish all substance testing according to the guidelines established by the U.S. Department of Health and Human Services and the Department of Transportation, *49 CFR Parts 40, 382, and, where appropriate, Part 391*[12]. We are requiring testing for the following five substances; the use of which we consider unacceptable in our business environment. We're required to test for these substances by the Federal Highway Administration (FHWA) drug testing programs. The substance cutoff levels, and their most common signs and symptoms of use, are indicated on page 11.[13]

[10] *Subpart A, §382.107*

[11] *Subpart E, §382.505 (a)*

[12] *49 CFR, Part 40, §40.29(e)*

[13] *§40.29*

SUBSTANCE	SCREENING LEVEL	CONFIRMATORY LEVEL	SIGNS & SYMPTOMS
1. Amphetamines *Inc.: Benzedrine, biphetamines, dexedrine, synatan, appetrol, methedrine and desoxyn*	1000 NG/ml	Amphetamine 500 NG/ml Methamphetamine 500 NG/ml	• Hyperactivity • Feelings of strength • Short-term insomnia • Loss of appetite • Irritability • Dilated pupils • Dizziness • Distorted thinking
2. Cocaine *Inc.. Coke, free base, and crack*	300 NG/ml	Metabolites 150 NG/ml Benzoyl Ecgonine	• Momentary feelings of confidence, strength, and endurance. • "Rush" of short-term pleasurable sensations. • Impaired driving ability and reactions • Uncommon excitability or anxiety. • Dilated pupils and difficulty in focusing. • Paranoia
3. Marijuana *Inc.: pot, smoke, has, hashish oil, and Tai sticks*	50 NG/ml	Metabolite 15 NG/ml Delta-9-tetrahydrocannabinol	• Changes in sensory perception • Impaired driving ability for 4-6 hours after one joint. • Restlessness followed by a dream-like state of relaxation • Dulling of attention
4. Opiates *Inc.: morphine, codeine, heroin, methadone, meperidine, demerol, darvon, darvocet, tylenol 3 or 4, dilaudid, percodan, and percocet*	300 NG/ml	25 NG/ml if immunoassay for free-morphine 300 NG/ml Morphine 300 NG/ml Codeine	• Constricted pupils • Drooping eyelids • Low raspy speech • Poor coordination • Depressed reflexes • Impaired driving ability • Euphoria (short-lived) • High pain threshold
5. Phencyclidine *aka: Angel dust, rocket fuel, Krystal joints, super kools, sherms, mint weed, cluster*	25 NG/ml	Metabolite 25 NG/ml	• Impaired driving ability • Extreme agitation • Hallucinations • Schizophrenia • Enhanced physical strength

6. Test Use: Any urine specimens collected may only be used to test for controlled substances designated or approved for testing and will not be used to conduct any other analysis or test unless otherwise specifically authorized by FHWA regulations. The accompanying Chain of Custody will reflect the nature of the test required.[14]

   a. Split Samples[15]: The specimen collected must consist of not less than 45 milliliters of urine, 30 of which we pour into a container for initial testing. We will then pour the remainder into a second container for storage. The testing laboratory will retain this sample for at least 60 days from receipt of both specimens by the lab.

   b. The split sample confirms contested test results if the primary sample shows a positive test result.

   c. Further, our program does not prohibit procedures incidental to an analysis of the specimen for controlled substances.

F. ALCOHOLIC BEVERAGES AND USE: The use of alcoholic beverages by employees affects safe and efficient operations. No employee will use or possess alcoholic beverages during working hours[16]. No employee will report to work while under the influence of alcoholic beverages, displaying the effects of having used alcohol, or within four (4) hours of having used alcohol[17].

1. Odor of alcohol on any employee's breath is reason enough for us to believe that the employee has used and may be under the influence of alcohol. Any employee who engages in such conduct may be subject to immediate removal from their safety-sensitive function and, **based upon our independent authority, discipline up to and including termination of employment.** Any other lesser action required under these procedures will be according to the requirements of the Federal Regulations, 49 CFR. Part 382, inclusive.

2. Refusals to submit to a required preliminary breath test (PBT) followed by an evidential breath test (EBT) or any other DOT-approved test to measure the extent and level of alcohol within a worker's body[18] will be considered to have a positive alcohol test level greater than .04 percent.

3. Assessment refusals by an employee testing above .04 percent Breath Alcohol Level (BAL.) and who refuses assessment or fails to complete the treatment plan prescribed by the assessment professional will be suspended from duty until he or she submits to an assessment.

4. **Independent authority allows us to discipline employees up to and including termination for testing above .07 percent BAL. while reporting for duty, while on duty, or within eight (8) hours following a reportable accident.**

[14] *49 CFR, Part 391, Subpart F, §391.93*

[15] *49 CFR, Part 40 §40.25(B)(1)*

[16] *49 CFR, Part 382, Subpart B, §382.205*

[17] *§382.207*

[18] *§382.211*

5. Any employee referred to a substance abuse professional and/or employee assistance program who fails to follow any of the following will be the subject, **according to our procedures, of disciplinary action up to and including termination.**

   a. Keep the appointment

   b. Complete the prescribed treatment or rehabilitation plan

   c. Authorize the disclosure of progress reports to the City of Norton Shores

G. CONDITIONS OF EMPLOYMENT: All employees will obey fully and promptly the instructions issued under the authority of this policy. Failure to do so can result in disciplinary action, up to and including immediate termination of employment based on proper and documented justification[19]. This regulation does not, however, comprise terms and conditions of an employee contract and cannot be construed as an employee contract.

H. NOTIFICATION OF CRIMINAL CONVICTION: **We exercise our independent authority to require all employees to notify the City of Norton Shores of any criminal drug statute *conviction* for a drug violation or related offense occurring on any property owned or operated by the City of Norton Shores. This includes any sites where the employee does work and where any vehicles are owned or operated by the City of Norton Shores. A drug violation is any offense considered violating the Controlled Substance Act or any applicable state or local law or ordinance controlling the use, possession, distribution, sales, manufacturing, or dispensation of any substance listed within the CSA.**

I. NOTIFICATION OF CIVIL OR CRIMINAL DRIVING INFRACTION CONVICTIONS: Likewise, all employees will notify the City of Norton Shores of any civil or criminal driving conviction resulting from an arrest for an impaired driving or operating under the influence moving violation or related offense.[20] This includes any conviction for those offenses resulting from operating any motor vehicle, either on or off-duty.

   1. The employee must notify their immediate supervisor of any such arrest within 24-hours or at the end of the business day following the day on which notice of the conviction was received. The immediate supervisor will report the incident to the Director of Administrative Services of the City of Norton Shores.

   2. This provision also includes any other locations or modes of transportation to and from those locations while operating any motor vehicle.

IV. DRUG AND ALCOHOL SCREENING:

A reliable hospital or independent laboratory using qualified and trained medical technicians will do all substance testing. This facility will be one recommended by Specialists Limited and approved by the City of Norton Shores. [21]

At this time, the following laboratories are providing analysis of all urine specimens collected from our employees;

[19] *49 CFR, Part 382, Subpart A, §382.113*

[20] *Michigan Vehicle Code, reference Truck Driver's Guidebook March 1995, Michigan Truck Safety Commission, p.28*

[21] *49 CFR, Part 40, §40.27*

Healthcare/MetPath Laboratories
24451 Telegraph Road
Southfield, Michigan 48034

Tel.: (800) 444-0106

SmithKline Beecham Clinical Laboratories
506 E. State Parkway
Schaumburg, Illinois 60173

(800) 447-4379

A. COLLECTION of specimens required for testing under these procedures will be accomplished in one of three ways:

1. On-site collections using the secured facilities within our offices and trained collectors employed by:

   Specialists Limited
   800 Hastings Street
   Suite 100
   Traverse City, Michigan 49686
   (616) 929-3129

2. Neutral-site collections using the secured facilities within hotels, motels, or other public buildings wherein our collection-site personnel can control the access of and to the lavatories to be used for urine drug test collections. In such cases, the facilities will be inspected and secured by trained collectors employed by:

   Specialists Limited
   800 Hastings Street
   Suite 100
   Traverse City, Michigan 49686
   (616) 929-3129

3. Clinical collections by existing health care professionals, doctors' offices, or clinics meeting the high quality standards of Specialists Limited. We will identify such locations to employees of the City of Norton Shores

B. TRANSPORTATION: We will always transport or arrange for transportation of our employees to and from the collection site in all cases involving reasonable suspicion or cause or post accident testing. Should these tests prove negative, we will return the employee to work without discipline or loss of pay related specifically to this policy. In cases where a positive test result is reported or the results are not immediately available, we will transport or arrange for transportation of the employee to their home or temporary place of residence. **Positive testing of drug or alcohol use or abuse or refusal to submit to this testing can be grounds for discipline up to and including termination.**

C. REFUSAL to submit to a required test under both federal regulations[22] and state regulations is prohibited. The primary purpose of these testing provisions is to deter the use and misuse of alcohol while working, immediately before reporting to work, or immediately following a reportable accident. We are including these provisions in our administrative procedures because we are concerned about the health and welfare of our employees and to insure the public safety.

D INHALANTS OR OTHER PRODUCTS: **It is becoming apparent that the misuse of otherwise legal substances such as volatile solvents, anesthetics, or aerosols is increasing. These misuses are becoming so widespread that we are exercising our independent authority to limit the use of such substances. Our limitations include chloroform, ether, thinners, petroleum products, or other**

[22] *49 CFR, Part 382, Subpart B, §382.211*

products containing chlorinated or fluorinated hydrocarbons to only their intended and legal use. No employee will use or possess dangerous or unauthorized inhalants to misuse these products before, during, and immediately following working hours.

1. **Employees displaying the signs or symptoms of misuse of otherwise legal substances can be directed to our Substance Abuse Professional (SAP) for an assessment of their condition. The SAP will also provide explanations of the health and occupational hazards misuses of these substances represent.**

2. **Since there is no currently-approved testing protocol to determine the use or presence of such substances, we will not require a urine drug screen. The SAP, however, may do so to eliminate the possible use of illegal controlled substances by the employee.**

3. **In cases where an employee shows signs or symptoms of such products, the employee will be relieved from further performing any safety-sensitive function until the results of the SAP's assessment are received and reviewed by the City of Norton Shores.**

E. OFF DUTY ALCOHOL USE: No employee, on-call, subject to call-in, or engaged in transporting away from the City of Norton Shores owned or controlled property will consume any alcoholic beverage within four (4) hours of expected starting time or beginning a safety-sensitive function[23].

1. ANY EMPLOYEE called to work and having consumed alcohol within the four (4) hour period will advise their supervisor or dispatcher they are unable to report for work. **We exercise our authority to take appropriate disciplinary action against the employee for continued refusals to work under this provision up to and including termination.**

   a. Any employee refusing to submit to a Preliminary Breath Test (PBT) for cause or whose breath alcohol level measures .02 percent or more, but less than .04 percent as measured by a PBT and confirmed by an Evidential Breath Test (EBT) will be placed out of service for not less than 24 hours.[24]

   b. The employee who refuses to submit to PBT or EBT and was operating a commercial motor vehicle will be considered to have a BAL. of above .04 percent and is medically disqualified from operating a commercial motor vehicle until they can successfully pass a chemical analysis of breath. Michigan's motor carrier safety regulations require that a driver refusing to submit to a chemical test will have their CDL suspended for one (1) year.

   c. Under the terms of 49 CFR, Part 382, Subpart A, § 382.211, No employer will allow a driver who refuses to submit to a required alcohol or controlled substance test to do or continue to do safety-sensitive functions.

2. **Breath Alcohol Level of .02 to .04 percent:** *Federal Motor Carrier Safety Regulation (FMCSR) 392.5* A person, whether licensed or not, whose Breath contains .02 percent or more but less than .04 percent by weight of alcohol will not operate a commercial motor vehicle within the State of Michigan. Any operator found operating a commercial motor vehicle in this condition is suspended **without pay** from duty for 24 hours and *could* be cited by law enforcement personnel[25].

[23] *§382.207*

[24] *Subpart E, §382.505*

[25] *49 CFR, Part 382, Subpart E, §382.505*

a. Any vehicle or equipment being operated by an employee testing positive for alcohol use to these levels will be shut down, locked, secured, or, otherwise locked-out and tagged-out until a designated representative of the City of Norton Shores can retrieve the vehicle and/or equipment.

b. Any employee found to have violated the mandatory twenty-four (24) hour stand down order will be considered violating these procedures and, **under independent authority, we can take appropriate disciplinary action.**

c. Employees who operate a commercial motor vehicle violating law enforcement imposed out-of-service order may be guilty of a misdemeanor and may have their CDL suspended for one (1) year. Such an action would disqualify that employee from continued employment as a driver.

d. **Any employee who operates under *our* out-of-service order will be subject to disciplinary action up to and including termination consistent with any conditions contained in any collective bargaining agreement.**

3. **Breath Alcohol Level of .041 and above:** A positive PBT confirmed by an EBT for the presence of alcohol in the body at .041 percent or above by weight of alcohol while on duty, while reporting for duty, or within eight (8) hours after a reportable accident, will be suspended[26] from duty, **without pay** consistent with our procedures, and the following actions will be taken:

a. **Any vehicle or equipment being operated by an employee testing positive for alcohol use to these levels will be shut down, locked, secured, or otherwise locked-out and tagged-out until a designated representative of the City of Norton Shores can retrieve the vehicle and/or equipment.**

b. The supervisor will inform the employee observing the incident and follow the following steps:

(I). We will suspend the employee, **without pay**, pending an assessment by a qualified and licensed substance abuse professional (SAP) to learn the degree of dependence and recommend the treatment required to rehabilitate the employee.

(II). State regulations provide that a person found guilty under this provision may face penalties of $300 fine and/or 90 days in jail *and* a suspension of their CDL for one (1) year.

(III). To be reinstated, an employee must successfully complete the treatment plan outlined by the SAP and agree to submit to follow-up testing consisting of not less than six (6) unannounced alcohol tests in the twelve months following completion of treatment.[27]

c. The employee will be considered on suspension, **without pay,** until the City of Norton Shores reviews the results of the assessment or the employee enrolls in or completes a supervised treatment program. Return to work following a first offense of this kind of violation is dependent upon successfully completing a supervised treatment program.

[26] *Subpart F, §382.605*

[27] *49 CFR Part 382, Subpart C, §382.309 and .311*

d. Second or continuing violations of this provision of the City of Norton Shores' administrative procedures can result in **disciplinary action up to and including termination within the context of the collective bargaining agreement.** The City of Norton Shores will consider the employee disqualified from operating a commercial motor vehicle.

4. Supervisory Administered Alcohol Tests: Consistent with the Federal regulations and accompanying comments contained in the Federal Register, *"any supervisor who makes the reasonable suspicion* (for cause) *determination is prohibited from conducting the preliminary breath test (PBT)*[28]*."* As a result, **two supervisors must become involved before any driver is found to have violated our procedures resulting in a referral to a SAP.**

   a. Any supervisor making the reasonable suspicion (for cause) determination must have not less than sixty (60) minutes of training on the physical, behavioral, speech, and performance indicators of alcohol misuse.

   b. Any supervisor administering an evidential breath test (EBT) must meet the requirements of Procedures for Transportation Workplace Drug and Alcohol Testing Programs [29] specifically, and we quote from the Federal regulations:

   c. *"(6)(b) A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable to quickly do the test. A supervisor will not serve as a BAT for the employee in any circumstance prohibited by DOT regulation."*

[28] *Federal Register, Vol. 59, No. 31, February 15, 1994, p. 7488*

[29] *49 CFR, Part 40, Subpart C., §40.51*

V. EMPLOYMENT CONSIDERATION TESTING[30]:

All regulated *(safety-sensitive)* applicants must submit to and pass a urine drug screening test to be considered for employment. **We may also request that applicants submit and pass an alcohol breath test administered within two hours of the first time they assume their safety-sensitive job.** The prospective employer may waive drug testing, if[31]

A. AN APPLICANT has undergone a drug test required by DOT regulations under part 40 within the preceding 30 days, and[32]

B. While participating in that program, the applicant, either:

   1. Was tested for controlled substances within the preceding six months (from the date of application with the employer),[33] or

   2. Participated in a random controlled substance testing program for the previous twelve months (from the date of application with the employer)[34], and

   3. The employer ensures that no previous employer of the applicant has any record of a previous positive test result or any other violation that would have been reported as a positive within the preceding six months[35].

C. **JOB applicants whom we deny employment because of a positive drug test *may* reapply for employment after six (6) months.** We may make a job offer only after an applicant successfully passing the urine drug screening test.

D. **POST-OFFER CANDIDATES: All other job candidates, if appropriate, will submit to, and pass both a urine drug screen and breath alcohol test following the offer of a job but just before reporting for work.**

Authority: Americans With Disabilities Act

   1. **We caution an applicant who has received a firm job offer against giving notice at their current position, selling real estate, or incurring other costs associated with accepting employment with the City of Norton Shores until drug screening testing clearance has been received. Under no circumstances should a new employee report for work until the City of Norton Shores receives clearance.**

[30] *49 CFR, Part 382, Subpart C, §382.301*

[31] *§382.301(1)*

[32] *§382.301 (c)(1)*

[33] *§382.301 (c) (2) (I)*

[34] *§382.301 (c) (2) (ii)*

[35] *§382.301 (c) (3)*

2. Part-time or seasonal employees may be exempted from pre employment testing only if they remain in the random selection pool while the City of Norton Shores does not employ them. Employees whose names we remove from the random selection pool of the City of Norton Shores will submit to and pass pre employment testing at the time they return to work for the City of Norton Shores

VI. POST ACCIDENT TESTING:

Any employee involved in a reportable vehicle accident[36] while operating any vehicle owned or operated by the City of Norton Shores will be required to submit to a urine drug screen or Evidential Breath Test. By definition, the City of Norton Shores considers an accident reportable when:

A. FATALITY: A fatal accident resulting in a human death within 30 days of the incident, or

B. CITATION: An investigating law enforcement agency cited an employee for a moving violation resulting from the accident, and

   1. Any vehicle or heavy equipment involved in the accident is unable to be driven from the scene under its own power, or

   2. Any person sustains an injury requiring first-aid treatment away from the scene of the accident.

C. DUTY PROCEDURES: This provision applies to any employee operating any City of Norton Shores-controlled vehicles while on or off-duty.

[36] *49 CFR, Part 382, Subpart C, §382.303*

VII. RANDOM and PERIODIC SELECTION:

All affected employees will submit to a urine drug screen at the time of their regularly scheduled, employment-related, physical examination until our random selection process has been in effect for one (1) year. We must also have tested 50 percent of our affected employees.[37]

A. **RANDOM SELECTION:** we include all of our regulated employees in casual selections of employees to undergo unannounced urine drug screens and alcohol tests. We call such casual selections random tests and Specialists Limited will conduct selection from a pool of eligible workers employed by municipalities participating in the Michigan Municipal League Consortium[38]. Selection will be based upon:

1. Regulated Selection: A casual or random draw of those employees required by Federal regulation to undergo testing. These employees' names will be cross-referenced to a pool containing the employees' social security numbers of all regulated employees.

   a. Random Drug Tests will equal not less than 50 percent of all employees listed within the pool in a calendar year[39].

   b. Random Alcohol Tests will equal not less than 25 percent of all employees listed within the pool for at least the first year of operation[40].

   Random test selections will be accomplished using a scientifically valid, computer-based random number generator matching the employee's social security, driver's license, or other unique identifying number[41]. In addition, our random selection process ensures:

   a. Each employee within the pool has an equal chance of being selected for either or both tests[42];

   b. All random test selections will be accomplished reasonably throughout the calendar year[43];

   c. Any employee notified by us of his or her selection under random testing immediately stops performance of any safety-sensitive function and proceeds directly to the designated collection site[44]; and,

   d. Any employee selected for alcohol testing under our random testing provision understands that they may only be tested within two (2) hours before they're ready to

37 *49 CFR, Part 391, Subpart F, §391.105*

38 *49 CFR, Part 382, Subpart C, §382.305(e)(f)*

39 *§382.305(2)*

40 *§382.305 (a) (1)*

41 *§382.305 (h)*

42 *§382.305 (h)*

43 *§382.305 (j)*

44 *§382.305 (k)*

start performing their safety-sensitive function. In addition, alcohol testing may be accomplished during performance of their safety-sensitive function, or within two hours after they've completed performance of their safety-sensitive function[45].

1. If industry-wide positive levels exceed more than one (1) percent for two years running, the random alcohol testing rate will increase to fifty (50) percent.

2. If industry-wide levels are below one (1) percent positives for two years running, the random alcohol rate will fall to ten (10) percent.

B. QUALIFICATION FOR TESTS: All employees selected for the administering of casual or random tests will be included in the pool of available employees. Participation in any other testing event does ***not*** exclude any employee for selection under the provisions of this section.

VIII. REASONABLE SUSPICION or FOR CAUSE TESTING:

Any employee whose performance suggests that they are unfit for duty and are possibly using or abusing drugs or alcohol will be subject to a drug or alcohol screening test[46].

A. JUSTIFICATION OF REASONABLE SUSPICION TESTING: A trained supervisor may insist on a reasonable suspicion drug or alcohol test any time he or she has a valid and supportable reason to believe that the employee's actions, behavior, appearance, or symptoms suggest the use or abuse of illegal or unauthorized drugs and/or alcohol. The trained supervisor must document factual incidents of reasonable suspicion (for cause). **We require two or more of the documentable indicators contained on the *Supervisor's Incident Report* (AD-102).**

1. A trained supervisor is one who has received ***not less than*** 60 minutes of initial training in detecting the signs and symptoms of drug use and 60 minutes in detecting the signs and symptoms of alcohol use and abuse.[47]

2. **To reduce the possibility of personal prejudices affecting the reasonable suspicion decision, we require the supervisor making the initial observation enlist the assistance of another trained supervisor to confirm their observations within the expectations of employee privacy and confidentiality.**

3. **In cases where obtaining eyewitness support is not possible, the supervisor may obtain telephonic or electronic confirmation of his or her observations.**

B. DRUG OR ALCOHOL SCREENING TESTS: we will require approved tests of a specific employee, or group of employees, anytime the City of Norton Shores, based upon the factual observations of a trained supervisor, can document that such testing may be appropriate, including, but not limited to the following[48]:

1. Employee absenteeism or tardiness

[45] *49 CFR, Part 382, Subpart C, §382.305 (k) (1)*

[46] *49 CFR, Part 382, Subpart C, §382.307*

[47] *§382.307 and Subpart F, §382.603*

[48] *§382.307(a)(b)(c)(d)*

2. Accident investigation

3. Unexplained deterioration of individual job performance

4. A significant change in the individual's personality

5. Reports that an individual employee, or groups of employees, have been using drugs or alcohol violating this policy. Such reports, however, must be observed by the initiating supervisor and cannot be based solely upon a report from a third-party.

6. Admission regarding the employee's use of drugs or alcohol.

7. Unexplained absences from the normal workplace when there is reason to suspect a drug or alcohol-related activity violating this policy.

8. Odor suggesting the presence of drugs or alcohol.

9. Behavior suggesting the employee is under the influence of drugs or alcohol.

10. Signs or symptoms indicative of withdrawal or chronic use of controlled substances

11. Under existing Federal regulations, we may not require an employee to submit to an alcohol breath test solely because he or she may have undeclared or unmanifested alcohol in their possession[49].

C. **Employees** and employers alike are required by Federal regulation to comply fully with the provisions stated under reasonable suspicion.

[49] *49 CFR, Part 382, Subpart C, §382.307 (a) and Subpart B, §382.204*

IX. RETURN TO DUTY TESTING

Any employee enrolled in a treatment program or successfully completing a rehabilitation program because of a previously administered and reported positive drug or an alcohol test as required by the DOT will:

A. **SUBMIT** to and pass a breath alcohol test administered within two (2) hours before resuming their safety-sensitive function[50], and

B. **Results** of the breath alcohol test must be less than .02 percent[51].

C. **SUBMIT** to and pass a urine drug screen administered with reportable results reported to the City of Norton Shores before the employee can resume performance of safety-sensitive functions[52], and

D. **Results** of the urine drug screen must indicate a verified negative for any of the five substances previously identified[53].

[50] *49 CFR, Part 382, Subpart C §382.309 (a)*

[51] *§382.309 (a)*

[52] *§382.309 (b)*

[53] *§382.309 (b)*

X. FOLLOW-UP TESTING

A. **Employees** found to have violated either our administrative procedures and/or existing Federal regulations by experiencing a positive alcohol breath test or urine drug screen must submit to an assessment[54]. The names, addresses, and telephone numbers of our substance abuse professionals are[55]:

Child and Family Services
1352 Terrace Street
Muskegon, Michigan 49442

(616) 726-3582

B. **Substance** Abuse Professionals may prescribe follow-up testing[56]. Federal regulation has authorized such testing. Employees are required to submit to follow-up testing consisting of not less than six times in the first year. Upon the direction of the SAP, testing may continue for up to a period of 60 months.[57]

C. **Costs** associated with substance abuse professional services or employee assistance programs are not the responsibility of the City. **We may assign the costs associated with follow-up testing, assessments, or employee assistance programs to the employee. Where possible, the employee may coordinate payment or reimbursement of such costs with our existing health care program.**

[54] *49 CFR, Part 382, Subpart F, §382.605 (b)*

[55] *§382.605 (a)*

[56] *Subpart C, §382.311*

[57] *Subpart F, §382.605*

XI. SUPERVISORY ACTIONS:

Trained supervisors or management of the City of Norton Shores may take controlled substance and/or alcohol testing action if an employee shows any of the following symptoms[58]:

A. **PERFORMANCE:** If an employee is having an identifiable work performance problem, or

B. **BEHAVIOR:** If an employee is displaying abnormal behavior that may be drug or alcohol-related, or

C. **SPEECH:** If the employee is displaying speech signs or symptoms indicative of either drug or alcohol use, or

D. **PHYSICAL:** If an employee displays indicators of chronic and withdrawal effects of controlled substance use, we may insist on a controlled substance urine screen but NOT an alcohol breath test[59].

E. **REASONABLE SUSPICION:** If the supervisor thinks that action is appropriate for any combination of the reasons in Part VIII, Section B, Paragraphs 1 through 11.

F. **CONDUCT:** If an employee displays conduct that may be violating this policy and within the content of any collective bargaining agreement, the supervisor may:

1. Interview the employee privately and in a confidential location stating his or her suspicions and ask the employee for an explanation[60]. **The City of Norton Shores recommends the confirmation of another trained supervisor, where practicable[61].** The originating supervisor will take all necessary steps to assure the employee of the confidentiality of the interview. Supervisors, during the interview, should, again, refer to the Supervisor's Check List and make any appropriate notations.

2. **Extenuating Circumstances: If the employee admits to impairment but claims extenuating circumstances *(for example: a strong reaction to a prescription medication)*, then the following may occur:**

   a. We will inform the employee that if prescription drugs are involved, the employee has an obligation to give the supervisor proof that a doctor prescribed the medication for that employee within reasonable period.

   b. The supervisor will arrange to have the employee safely transported to and from the test collection facility.

   c. Following the administration of the collection, we will transport the employee home pending further action based upon the results of the appropriate test.

[58] *49 CFR, Part 382, Subpart F, §382.603*

[59] *US DOT Guidance Letter 94.14, dated June 27, 1994*

[60] *Federal Register, Vol. 59, No. 31, 7488 dated February 15, 1994, lowers the number of observing supervisors to only one. City of Norton Shores, under independent authority contained in 49 CFR, Part 382, Subpart F, §382.601 (c) requires employers to specifically identify terms and conditions enacted under independent authority.*

[61] *Independent Authority: City of Norton Shores as opposed to Federal regulations 49 CFR, Part 382, Subpart C, §382.307 which requires only one trained supervisor need make the case.*

3. Denials: If the employee denies impairment, we will ask that the employee submit to a urine drug screen[62] or an analysis of breath[63] to detect illegal drug use or alcohol. Refusal to submit to such a test is a violation of these procedures and Federal regulations[64] **and can result in further disciplinary action up to and including termination.**

4. **Physical Evidence: If suspected illegal drugs or substances are found, the originating supervisor will secure the location and arrange for law enforcement personnel to confiscate suspected illegal or unauthorized drugs involved in the incident. If they do not satisfy the supervisor with the explanation offered by the employee, the supervisor will coordinate the confiscation of the drugs or illegal substances with law enforcement personnel.**

   a. **We will give the employee a receipt for the substances confiscated.**

   b. **If the employee states the pills or medication suspected by the supervisor of being illegal or unauthorized are of a prescription nature, the supervisor will request law enforcement personnel confiscate a single pill or small sample of the medication for testing.**

   c. **Since the City of Norton Shores cannot retain illegal drugs following confiscation, we will turn over all such substances or samples to public authorities for testing according to that authority's established procedures and/or for eventual disposal or destruction.**

5. In addition, the originating supervisor will request the employee submit to a urine drug screen to detect illegal drug use, and/or a chemical analysis of breath to detect alcohol use. Supervisors may also:

   a. Request the employee to sign a consent release form authorizing performance of such tests[65].

   b. **The consent form is considered a condition of continuing employment with the City of Norton Shores.**

   c. Urine drug screens and/or evidential alcohol breath tests are accurate methods of detecting the presence or absence of illegal drugs or alcohol in a person's body[66]. Under the terms of the Americans With Disabilities Act, employers covered by DOT regulations must require their employees to comply with those standards.

6. In addition, the supervisor will arrange for the collection of the sample within a reasonable time. The collection of the sample will be consistent with the guidelines established by

62 *49 CFR, Part 382, Subpart C, §382.307 (b)*

63 *§382.307 (a)*

64 *Subpart B, §382.211*

65 *Subpart A, §382.113*

66 *Americans With Disabilities Act of 1990 (Pub. L. 101-36) Title I*

the Department of Transportation and the Substance Abuse and Mental Health Services Administration (SAMHSA)[67].

a. Reasonable, in this situation, will be within two *(2)* hours from the point of the confrontation if possible[68].

b. Supervisor will arrange for transportation to and from the collection site.

c. If the test results show the employee is violating both this policy and Federal regulations, the management of the City of Norton Shores will suspend the employee **without pay**[69] pending a final determination of the case.

d. In the event the split sample test shows a confirmed negative result or the results of the first test are overturned, we will reinstate the employee to duty. The employee will be **compensated at their current rate of pay for their assigned schedule for each day lost** and the test will be reported as a negative test.

7. The supervisor **will confidentially identify witnesses and** prepare a detailed written statement describing his or her observations, what they said, material confiscated, and any other facts concerning the incident. The supervisor will use the Supervisor's Incident Report (AD-102).

a. **If necessary, the originating supervisor will identify any witnesses to the event and, within the limits of confidentiality, ask each to prepare a written statement saying what they witnessed.** Reported facts must support all conclusions by the supervisor.

b. The originating supervisor initiating the action must notify the most senior supervisor or administrator on the premises of their action.

c. A Supervisor's Incident Report (AD-102) must be completed and filed within twenty-four (24) hours or before the results of the urine drug screen or evidential breath test are reported to the City of Norton Shores; Whichever comes first.[70]

8. **PRESCRIPTION DRUGS**, legally taken following dosage instructions and by the person for whom the prescription was written are legal. Often, the legal use of a prescription medication will not result in a reportable positive test result. Illegal drug use through fraudulent use of prescriptions or deliberate misuse of prescriptions creates health and safety concerns.[71] As a result:

a. No person but the person for whom the physician prescribes the drug, will bring any prescription drugs onto City of Norton Shores-owned or controlled property. The drug may only be used in the manner, combination, and quantity prescribed.

[67] *49 CFR, Part 40, §40.25*

[68] *49 CFR, Part 382, Subpart C, §382.307 (e)(1)*

[69] *Independent Authority under 49 CFR, Part 382, Subpart F, §382.601 (c)*

[70] *49 CFR, Part 382, Subpart C, §382.307 (f)*

[71] *Subpart B, §382.213 (c)*

b. **We will refer any employee showing signs of prescription drug abuse or misuse such as tardiness, absenteeism, poor work, or accidents, to the SAP for an assessment of their condition. Refusal to submit to an assessment or failure to comply with a treatment plan will result in disciplinary action up to and including termination.**

c. Employees undergoing prescribed medical treatment with a controlled substance must:

(I). Report to their physician that they are, in fact, a safety-sensitive employee of the City of Norton Shores and request alternative non influencing medications if appropriate and available. This includes elixirs or preparations containing alcohol.

(II). In cases where the physician prescribes medications that may cause drowsiness or other limiting symptoms, we require that the employee report and list such medications to the City of Norton Shores

(III). We can not discipline any employee for properly using a prescription medication consistent with the physician's directions. The directions relative to use and any after-affects must be provided by the prescribing physician, NOT by recommendations of the pharmacist[72]. There may be occasions where we may reassign an employee to non safety sensitive jobs while undergoing treatment and until the effects of the prescription have left the employee's body.

72 *US DOT Guidance Letter No. 94.14 dated June 27, 1994 referencing §382.213 (a)*

XII. CONFIDENTIALITY:

All actions by the City of Norton Shores under the authority of these procedures will be taken to insure the confidentiality of the employees[73]. Information related to investigations, possible employee violations, or drug or alcohol screening test results will be made available only on a strict "*need-to-know*" basis[74].

A. **RECORD RETENTION:** We are required by Federal regulation, to retain all records consistent with the following schedule[75]:

1. Five Years: the following records must be retained by us, or our program administrator, Specialists Limited, on our behalf, for a period of five years.

   a. Records of all employee alcohol tests with results of .02 or greater.

   b. Records of employees controlled substance tests with verified positive test results.

   c. Documentation of all refusals to submit to controlled substances tests or alcohol tests.

   d. Calibration documentation of breath alcohol testing devices used by our collection sites.

   e. Employee evaluations, assessments, and referrals.

   f. A copy of each calendar year's summary required under the US DOT Management Information System (MIS -Annual Report).

2. Two Years: We or our program administrator, Specialists Limited, will retain all records related to the alcohol and controlled substance collection process and all employee education and supervisory training records.

3. One Year: We or our program administrator, Specialists Limited, will retain all records of negative or canceled controlled substance test results and any alcohol tests with results less than 0.02 percent.

B. **NEED-TO-KNOW:** For the purposes of our procedures, *"need-to-know"* is limited to[76]:

1. The City Administrator and Director of Administrative Services who are responsible for maintaining and receiving record and reports, or

2. Department directors or supervisors acting for the administrator(s), or

3. Auditors or Enforcement Officials of the U.S. Department of Transportation, Michigan Department of Transportation, Motor Carrier Division of the Michigan State Police, or

[73] *49 CFR, Part 382, Subpart D, §382.401*

[74] *§382.403 (c) through (h)*

[75] *§382.401 (a)*

[76] *§382.405 (a) through (h)*

4. Program Administrator's principal, Specialists Limited, or his designee, or

5. Medical Review Officer (MRO) responsible for interpreting the results of a urine drug screen, or

6. Substance Abuse Professional (SAP) responsible for learning the extent and degree of addiction or dependance on alcohol resulting from a positive alcohol EBT or urine drug screen, and/or

7. Employee Assistance Program (EAP) counselor responsible for treating or rehabilitating the employee.

C. **CONFIDENTIAL DISCUSSIONS:** we will conduct all discussions with employees as privately as circumstances permit.

XIII. SUSPENSIONS:

An employee who is found to have *confirmed* a positive illegal drug or an alcohol test result is to be suspended immediately from further performance of any safety-sensitive function[77]. **Under our independent authority we will suspend without pay. Successful completion of a voluntary, supervised substance abuse treatment or rehabilitation program may reduce the level of disciplinary action for first time offenders.**

A. POSITIVE TEST RESULTS: **If, at the sole discretion of the City of Norton Shores, a person who has a confirmed positive drug or alcohol test is not terminated, we will suspend him or her without pay[78].**

B. JUSTIFICATION: We intend suspensions for drug or alcohol abuse violations to allow the time for the drugs and/or alcohol to clear from the employee's body.

1. **These suspensions will serve as a warning that reporting to work with illegal drugs and/or alcohol in the body is a violation of our administrative procedures governing the use of controlled substances' and/or alcohol.**

2. **We may also condition suspensions and, sometimes, waive suspensions based upon satisfactorily completing a supervised drug or alcohol abuse treatment or counseling program.**

[77] *49 CFR, Part 382, Subpart E*

[78] *Independent authority under 49 CFR, Part 382, Subpart F, (C)*

XIV. TERMINATION:

Without compelling reasons for contrary results, the City of Norton Shores may terminate the employee following a review of the facts and within the context of our collective bargaining agreement. In addition, employees terminated from employment with the City of Norton Shores under the terms of these procedures are:

A. PROHIBITED from entering City of Norton Shores-owned or controlled property, including vehicles unless:

1. Specifically invited to do so by an official of the City of Norton Shores, and are

2. Accompanied by an official of the City of Norton Shores

B. PROSECUTION: We may prosecute terminated employees violating our policy and accompanying procedures under existing local and state trespassing laws.

C. TERMINATION NOTICES: Under this policy, for employees with confirmed positive test results who refuse treatment or fail to complete treatment, we will identify the reason for termination as, "Misconduct."

1. Positive Test Results: Consistent with the updated policies of the Michigan Employment Security Commission (MESC),Michigan Department of Labor, employees terminated for a positive drug or alcohol-related test result with a Misconduct discharge are denied unemployment benefits.[79]

2. Employees of Layoff: Likewise, employees on layoffs and who are drawing unemployment compensation will loose their benefits should they refuse to apply for a job with a prospective employer requiring pre employment drug testing if referred to that interview by the MESC.[80]

3. Possession: Any employee found in possession of, or using, illegal drugs and fired for that reason, is ineligible for unemployment compensation.[81]

D. NEGATIVE TEST RESULTS: When an employee suspected of drug or alcohol use passes the urine or breath analysis test, i.e., the results are negative, the employee will receive a confidential memorandum. A copy of the memorandum will also be placed in the employee's personnel file.

[79] *Michigan Employer Advisor, Michigan Employment Security Commission, Department of Labor, Vol. 6, No. 1, First Quarter 1995.*

[80] *Michigan Employer Advisor, Michigan Employment Security Commission, Michigan Department of Labor, Spring 1995.*

[81] *Michigan Employer Advisor, et al*

XV. EMPLOYEE ASSISTANCE:

The City of Norton Shores actively supports the Employee Assistance concept[82]. This program openly promotes the treatment of employees suffering from addiction or abuse problems. As a matter of policy, we provide our employees, support personnel, supervisors, and management with information regularly. This information includes the dangers of abuse, awareness, community and professional efforts, and community or private treatment availability. We cannot, however, financially support an employee who voluntarily submits to treatment beyond the benefits normally provided by virtue of our existing health care program, medical insurance, or employees' assistance program.

A. **SUBSTANCE ABUSE ASSESSMENTS:** Employees testing positively for alcohol abuse or controlled substance use shall undergo an assessment by a licensed and certified Substance Abuse Professional[83]. The SAP will be trained at minimum to M.S.W. (Masters of Social Work) and preferably be a Clinical Psychologist.

B. **THE SUBSTANCE ABUSE PROFESSIONAL** (SAP) may prescribe a treatment or rehabilitation program for a positive tested employee following the initial assessment.

1. We may terminate a positively tested employee refusing assessment from continuing employment. We may not, however, under any circumstance, use the employee in any safety-sensitive capacity.

2. A positively tested employee failing to complete the prescribed treatment plan may be terminated from continuing employment. We may not, however, under any circumstance, use the employee in any safety-sensitive capacity.

3. We may terminate a positively tested employee testing positive following treatment from continuing employment. We may not, however, under any circumstance, use the employee in any safety-sensitive capacity.

4. Frequently, assessments to find an employee's level of addiction or our existing health care benefit package has covered dependency and we encourage our employees to seek out assistance whenever and wherever possible.

5. The Substance Abuse Professional may not refer the employee to the SAP's private practice.[84]

C. Child and Family Services is designated as the Substance Abuse Professional for City of Norton Shores. Child and Family Services can be contacted at:

Child and Family Services
1352 Terrace Street
Muskegon, Michigan 49442

(616) 726-3582

D. **REFERRALS:** We encourage any and all of our employees to contact our EAP provider in cases where:

[82] *49 CFR, Par 382, Subpart F*

[83] *Subpart F, §382.605*

[84] *§382.605(e)*

1. They wish to refer themselves for treatment (known as a self-referral), or

2. Their supervisor or official of the City of Norton Shores have recommended treatment, or

3. The employee's drug or alcohol tests result in a positive report, or

4. They or members of their family show signs of needing assistance or through intervention by family members.

E. **EMPLOYEE ASSISTANCE PROVIDER:** Our Employee Assistance Provider is:

Child and Family Services
1352 Terrace Street
Muskegon, Michigan 49442

(616) 726-3582

F. **PAY DURING TREATMENT: Except where specifically authorized, employees may not collect pay during periods of treatment or rehabilitation.**

XVI. RETURN TO WORK:

The City of Norton Shores will attempt to, where possible, return a recovering employee to work **if the return does not reflect adversely on our reputation or the public's perception of us.** A recovering employee is one who is currently participating in, or has successfully completed a supervised treatment or rehabilitation program. **A return to work is not a guarantee of an employee's previous position or classification. We may reinstate regulated employees who prove recovery provided our insurance carrier will insure an employee in their previous capacity and the employee can be licensed according to State and Federal law or regulation.**

A. CONTROLLED SUBSTANCE RECOVERY TESTING: Employees recovering from a controlled substance abuse, or addiction will submit to unannounced urine drug screens at least six times in the first 12 months following the driver's return to duty[85].

B. ALCOHOL RECOVERY TESTING: Employees recovering from alcohol abuse or addiction will submit to unannounced evidential breath tests at least six times within the first twelve months following return to work[86].

C. REGULATORY REQUIREMENTS: The preceding returns to work and the U.S. Department regulates follow-up testing requirements of Transportation, Federal Highway Administration, under 49 CFR, Part 382. These procedures specifically address coverage of employees of local and state units of government, and drivers operating intrastate and interstate[87].

Prepared by:

Specialists Limited,
Inc.
800 Hastings, Suite
100
Traverse City,
Michigan 49686
(616) 929-3120
(800) 449-8498

for

City of Norton Shores

[85] *49 CFR, Part 382, Subpart F, §382.605(c)(2)(ii)*

[86] *§382.605(c)(2)(ii)*

[87] *Federal Register, Vol. 59, No. 31, February 15, 1994, p.7486*

THE CITY OF NORTON SHORES
ACKNOWLEDGMENT AND AGREEMENT

The City of Norton Shores is a Drug-Free Workplace. Under the terms of the Drug-Free Workplace Act and accompanying federal regulations covering the qualification of drivers and other employees, they require that we give you a copy of our policy.

Please read and sign below that:

- **You have received a copy of the Drug and Alcohol Abuse Policy,**
- **You have read it and been informed of its contents,**
- **You understand that the related procedures are on file for inspection in the Department of Administrative Services,**
- **You have had your questions regarding our procedures answered, and**
- **You agree to abide by the policy and procedures in all respects.**

PLEASE NOTICE: The Federal Drug Free Workplace Act of 1988 requires you to acknowledge and agree to the above:

> ***I acknowledge that I am aware of and agree with The City of Norton Shores' current administrative policy and procedures regarding controlled substances and alcohol abuse[88]. I also understand that, sometimes, an employee may be terminated for violations of this policy.***

Acknowledged and Agreed:

_____
Signature

_____
Print your name here

_____
Date

[88] *49 CFR, Part 382, Subpart F, §382.601 (c)*