

DEPARTMENT OF NATURAL RESOURCES

POLICY NO.: 23
EFFECTIVE DATE: APRIL 1, 2009
SUBJECT: SUBSTANCE ABUSE AND DRUG-FREE
WORKPLACE POLICY
AUTHORIZATION: DRUG-FREE WORKPLACE ACT OF 1988;
LA. R. S. 49:1001 ET SEQ.

I. PHILOSOPHY

A) Employees are our most valuable resource and their health and safety are of utmost concern. The Department of Natural Resources (DNR) will not tolerate substance abuse or use which imperils the health and well being of our employees or threatens our service to the public. The use, possession or presence in the body of illegal/prohibited drugs, on or off duty, is inconsistent with law-abiding behavior expected of all citizens. Employees who use illegal drugs or abuse alcohol, on or off duty, tend to be less productive, less reliable and prone to greater absenteeism, resulting in the potential for increased cost, delay and risk in providing services. Ultimately, illicit drug use and substance abuse threaten the State's ability to serve the public.

Furthermore, employees have the right to work in a drug-free environment and work with persons free from the effects of drug or alcohol abuse. Employees who unlawfully use drugs or abuse alcohol are a danger to themselves and other employees. In addition, substance abuse inflicts a significant toll on DNR's productive resources and the health and well being of our employees.

B) DNR's philosophy is consistent with the State of Louisiana's long standing commitment to maintain a drug free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of employee drug testing programs. Further, the Governor of the State of Louisiana issued Executive Order BJ 08-69 providing for the promulgation of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with LA. R. S. 49:1001 *et seq.* DNR fully supports these actions and is committed to a drug-free workplace as required by State law and the federal Drug-Free Workplace Act of 1988.

II. PURPOSE

DNR is committed to maintaining a safe and healthy workforce free from the influence of substance abuse. To accomplish this, DNR hereby adopts this Substance Abuse and Drug-Free Workplace Policy which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, and reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our Agency and employees.

III. APPLICABILITY

This policy applies to all DNR employees, as well as potential employees, including individuals providing service to DNR through contract with a third party employer (temporary agency employees), and all other persons having an employment relationship with DNR, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary.

Following a job offer, potential employees and appointees, except those transferring from another agency without a break in service, will be required to submit to pre-employment drug and/or alcohol testing; Existing employees and applicants who seek to be detailed, reassigned, promoted or demoted to a safety-sensitive position are subject to pre-selection drug and/or alcohol testing. All employees are subject to post-accident/incident, reasonable suspicion, return-to-duty/rehabilitation monitoring and Section 1081 substance testing. Employees who encumber safety-sensitive or security-sensitive positions are subject to random drug and/or alcohol testing.

IV. REPORTING REQUIREMENTS

- A)** To maintain a safe and productive work environment, all DNR employees are required to:
- 1) Notify a supervisor on the first scheduled workday following any arrest or conviction for DWI or drug-related offense, whether such occurred on or off duty;
 - 2) Notify a supervisor immediately of any on-duty or off-duty vehicular accident while operating a DNR vehicle. Employees are also required to immediately report an on-duty vehicular accident while operating a personal vehicle in the course and scope of employment for DNR;
 - 3) Notify a supervisor, prior to or immediately upon reporting for duty, when he/she has reason to believe or has been informed by a physician/pharmacist that prescribed or over-the-counter medication may impair his/her ability to

perform customary job duties or otherwise create a safety hazard. Any employee so affected must decide whether leave should be taken. If the employee chooses to report for duty, he/she must remain alert and satisfactorily and safely perform his/her customary job duties. However, supervisory personnel reserve the right to require an employee to utilize leave in those instances in which the medication taken impairs the employee's ability to function or creates an unsafe or hazardous working condition.

Note: While the effects and duration that the medication will be taken should be disclosed, employees should know that it is not necessary to disclose to the supervisor the medication being taken nor the condition for which it is prescribed. Such information may be required to be disclosed to the drug testing company's Medical Review Officer should circumstances or the nature of the employee's job duties warrant, as determined by the appointing authority.

- B) DNR is required by law to report within ten days of receiving notice or actual knowledge of an employee's conviction of a drug offense occurring in the workplace to any federal agency from which a grant or contract is received. For purposes of this policy:
- 1) A **conviction** is a finding of guilt, plea of guilty or plea of nolo contendere before any judicial body charged with responsibility for determining violations of federal or state criminal drug statutes.
 - 2) A **drug offense** is a violation of a criminal statute involving the manufacture, distribution, dispensation, sale, use or possession of any controlled substance.

V. PROHIBITIONS

- A) DNR strictly prohibits an employee's use, abuse, misuse, possession, dispensation, distribution, manufacture and sale of controlled dangerous substances or other prohibited drugs while on duty or engaged in DNR business, on or off DNR premises;
- B) DNR strictly prohibits the presence of unauthorized controlled dangerous substances or other prohibited drugs within the body of a DNR employee, as determined by authorized testing procedures as set forth herein, while on duty or engaged in DNR business, on or off DNR premises;

- C) DNR strictly prohibits the possession or presence of unauthorized controlled dangerous substances or other prohibited drugs on DNR premises or in an DNR vehicle, on or off duty;
- D) DNR strictly prohibits the presence of alcohol within the body of an employee, as determined by authorized testing procedures as set forth herein, while on duty or engaged in DNR business, on or off DNR premises; and
- E) DNR strictly prohibits the possession or presence of alcohol on DNR premises or in a DNR vehicle, on or off duty.

Note:

- 1) A **controlled dangerous substance** is any drug, substance or immediate precursor identified in Schedules I through V of LA. R. S. 40:964 or Section 202 of the Controlled Substances Act (21 U. S. C. 812).
- 2) A **prohibited drug** includes any drug which is not legally obtainable, any drug which is legally obtainable, but has been illegally obtained, and prescription drugs not being used as prescribed.

VI. TESTING CONDITIONS

A) Pre-Employment:

Following a job offer, potential employees and appointees, except those transferring from another agency without a break in service, will be required to submit to pre-employment drug and/or alcohol testing at the designated time and place. A prospective employee or appointee testing positive for the presence of prohibited drugs or alcohol shall be eliminated from consideration for employment.

An applicant shall be so informed if rejected because of a confirmed positive substance test and may not be considered for employment with DNR for a period of one year from the date of notification.

B) Post Accident/Incident:

Any employee involved in an on duty accident or incident shall be required to submit to drug and/or alcohol testing if:

- 1) The accident involves circumstances giving rise to a reasonable suspicion that the accident/incident may have involved the employee's substance use and the employee's action or inaction may have been a causative factor;

- 2) The accident meets the criteria of previous statement and results in or causes the release of hazardous waste as defined by LA. R. S. 30:2173(2) or hazardous materials as defined by LA. R. S. 32:1502(5); or
- 3) The accident results in a fatality or serious bodily injury.

Note: "Reasonable Suspicion" is discussed more fully in Section E hereafter. When post accident/incident testing is ordered, an Agency representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

C) Random:

Random drug and/or alcohol testing is required of all employees holding safety sensitive positions as listed in Appendix A. Such testing shall be periodic and unannounced, and employee selection therefore shall be by a random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

D) Promotion/Reassignment to Safety/Security Sensitive Position:

Current employees are required to undergo drug and/or alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety sensitive or security sensitive position. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug and/or alcohol test result is reported, and an employee testing positive is further subject to disciplinary action as specified in this policy.

E) Reasonable Suspicion:

An employee shall be required to submit to drug and/or alcohol testing when he/she exhibits behavior or appearance that is characteristic of impairment or substance use. The decision to test will be by the appointing authority or his authorized representative based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) or reported to supervisory personnel by a reliable and credible source. The supervisory personnel shall record, in writing, the specific facts, symptoms or observations leading to the recommendation for testing. Such observations include, but are not limited to:

- 1) Direct observation of substance use;
- 2) A pattern of abnormal or erratic behavior and mood changes;
- 3) Presence of physical symptoms of substance use (i.e. glassy/bloodshot eyes, slurred speech, poor coordination and reflexes);
- 4) Decreased productivity, lack of participation and desire to work alone;
- 5) Unusual absenteeism and tardiness; and
- 6) Frequent or prolonged absences from the work area.

Note: When reasonable suspicion testing is ordered, an Agency representative shall transport the individual being tested to and from the testing site. Under no circumstance, should any employee who is reasonably believed to be impaired or under the influence of any substance be permitted to operate a motor vehicle.

F) Return to Duty/Rehabilitation Monitoring:

Any employee who is permitted to retain his/her own job following a violation of this policy shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug and/or alcohol testing at the discretion of his/her appointing authority.

Further, any employee who voluntarily or, as a condition of continued employment, participates in a substance abuse rehabilitation program, shall be subject to random drug and/or alcohol testing for a minimum of one year or as recommended by the treating substance abuse professional.

Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of continued employment.

G) Section 1081 Testing:

Any employee involved in an accident/incident which results in an injury compensable under the Louisiana Worker's Compensation Law is required to immediately submit to drug and/or alcohol testing. An employee should be aware of the legal presumption of impairment under LA. R. S. 23:1081 if he/she refuses

to submit to testing and that, as a consequence, payments under the Worker's Compensation Law may be denied.

VII. DRUG TESTING PROCEDURE

A) Employee drug testing pursuant to this policy shall be for the presence of:

- 1) THC (Marijuana)
- 2) Cocaine
- 3) Amphetamines/Methamphetamines
- 4) Phencyclidine (PCP)
- 5) Opiates (Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)

B) At a minimum, the testing procedure shall assure:

- 1) That all specimens for drug testing are collected, stored, transported and tested in compliance with DHHS guidelines (and applicable federal and state regulations) to ensure integrity of the testing process.
- 2) That all specimens for drug testing are collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of a urine specimen will be allowed only under the following conditions, and only by same gender collection site personnel:
 - a) When there is a specific, articulable reason to believe that the individual may alter or substitute the specimen;
 - b) When the individual has provided a urine specimen which falls outside the acceptable temperature range;
 - c) When the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or
 - d) When collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process.

Note: In instances in which direct observation is deemed appropriate, the appointing authority or his authorized representative, unless impracticable, shall review and concur, in advance, with any recommendation by collection site personnel to obtain a specimen under direct observation. The appointing authority or his representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation.

- C) The split sample collection methodology must be used as required by federal law, both the primary and split specimens properly stored and transported to the testing laboratory.
- D) Appropriate chain of custody forms shall be utilized to ensure the integrity of each specimen by tracking its handling, storage and transportation from point of collection to final disposition.
- E) Testing shall be performed in accordance with SAMHSA guidelines and by a SAMHSA or CAP-FUDT certified laboratory as required by La. R.S. 49:1005.
- F) The dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmation test (gas chromatography/mass spectrometry).
- G) All positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.87) shall first be reported by the testing laboratory to the Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or the possibility that medications, medical history or any other condition caused the positive test result.
- H) If the test is confirmed to be positive by the MRO, an employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense.
- I) Once a positive test is confirmed and reported to DNR by the MRO, an employee in a safety/security sensitivity position will be prohibited from performing

safety/security sensitive job functions. A request for testing of the split sample will not delay any such employee's removal from performing such functions.

- J) If testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.
- K) Testing for prohibited drugs generally will involve urine screening. However, testing of blood, saliva or hair may be required by the appointing authority or his authorized representative.

VIII. ALCOHOL TESTING PROCEDURE

The use or effects of alcohol while on duty or while operating a vehicle and the abuse of alcohol while off duty likewise endanger the health, welfare and safety of our employees. Therefore, DNR will additionally test for the presence of alcohol under the testing conditions identified herein. Such testing will generally be done via Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration and conducted by certified breath alcohol technicians.

An employee undergoing such testing will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within twenty minutes, but not less than fifteen minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.02 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the result will be reported as positive to DNR's designated representative.

A confirmed positive test result will be addressed in accordance with the Enforcement provisions set forth herein below. Additionally, a testing procedure will be presumed positive and reported to the appointing authority whenever an employee refuses to participate in the testing process, provides an inadequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the testing process.

An employee occupying a safety sensitive or security sensitive position will be immediately removed from performing such functions in the event of a positive alcohol test.

IX. ENFORCEMENT

The use or presence within the body of controlled dangerous substances, prohibited drugs and alcohol will not be tolerated. Substance abuse endangers the health and well being of our employees, prevents quality service to the public and is inconsistent with DNR's mission. While the Agency's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor. Disciplinary action in accordance with Chapter 12 of the Civil Service Rules will be taken after a complete and thorough review of the applicable data. A permanent employee will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

A) Penalty for a first positive test:

A first positive test (drug and alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, circumstances leading to the testing process, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. The first time offender may be required to remain off from work for up to thirty calendar days. For any such period, the first ten workdays generally will be a suspension, without pay. For the remaining twenty days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this period, the employee may be required to obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

B) Disciplinary action up to and including termination will be the recommended penalty for the following violations:

- 1) A second positive test result;
- 2) Refusal to submit to testing;
- 3) Failure to cooperate in any way which prevents completion of the testing process;
- 4) Submission of an adulterated or substitute sample for testing;
- 5) Buying, selling, dispensing, distributing or possessing a controlled dangerous substance or prohibited drug while on duty, in a State vehicle or on DNR premises; and

- 6) Operating a State vehicle on or off duty or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy.

C) Disciplinary action will be the recommended penalty for the following violations:

- 1) Failure to notify supervisor of the use of prescribed medication when the employee has reason to believe that the medication being used may impair the employee's ability to perform his/her customary duties and responsibilities or otherwise create a safety hazard;
- 2) Failure to notify a supervisor of an on or off duty arrest or conviction for DWI or drug related offense at the beginning of the next scheduled workday; and
- 3) Possessing unauthorized alcohol while on duty in a State vehicle or on DNR premises.

X. CONFIDENTIALITY/EMPLOYEE RIGHTS

All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications pursuant to LA. R. S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; agencies when licensure or certification actions are required; to a decision maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

In compliance with LA. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

Employees should know that statistical records and reports of drug testing are maintained by DNR, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

DNR has no interest in informing the law enforcement authorities of a positive drug test. However, nothing contained in this policy will be construed to preclude the delivery of any illegal drug, controlled dangerous substance or other substance prohibited by this policy discovered in/on DNR property or upon the person of an

DNR employee to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfers of prohibited drugs or controlled substances while on duty or on DNR property shall be referred to the appropriate law enforcement authority.

XI. EMPLOYEE ASSISTANCE PROGRAM

Early recognition and treatment of substance abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Agency's Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs. DNR will assist employees in utilizing available state supported services. Unless other cause exists, no disciplinary action will be taken against an employee who voluntarily identifies himself/herself as a drug or alcohol abuser, obtains counseling and rehabilitation through substance assistance programs, and thereafter refrains from violating DNR's Substance Abuse and Drug-Free Workplace Policy. Such employees will be given an opportunity for rehabilitation through the use of authorized leave to the extent that such is available. Upon return to duty, employees are subject to the Return to Duty/Rehabilitation Monitoring provision within this policy.

XII. MISCELLANEOUS

DNR reserves the right to have a licensed physician of its own choosing and at its own expense determine if use of prescription medication produces effects which impair the employee's performance or increases the risk of injury to the employee or others. In such case, DNR may modify the employee's customary job duties or work activities for the period of time the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be permitted or required to use accrued leave.

Although the substance abuse testing defined in this policy is restricted to specified drugs and alcohol, DNR reserves the right to require employees to submit to additional testing, if warranted. Such tests will generally be administered only when post accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with state and federal regulations.

XIII. EMPLOYEE NOTIFICATION OF POLICY

This policy is posted on the DNR Intranet Web Site for employee access. Supervisors in the Agency are responsible for notifying employees of this policy and providing a copy of this policy to those who do not have Intranet access. Additionally, all employees will be required to sign a formal Acknowledgement to confirm their receipt and understanding of this policy.

XIV. EXCEPTIONS

Exceptions to this policy may be approved solely by the Executive Director and then only if determined to be in the best interest of the Agency.

XV. QUESTIONS

Questions regarding the interpretation and enforcement of this policy should be directed to the Human Resources Division.



Stephen Chustz, Interim Secretary
8/9/12

Date

DEPARTMENT OF NATURAL RESOURCES

Employee Substance Abuse and Drug-Free Workplace Acknowledgement

My signature hereon acknowledges that:

- 1) I have received a copy of the Substance Abuse and Drug-Free Workplace Policy;
- 2) I have read this policy;
- 3) I understand the content of this policy;
- 4) I agree to comply with the terms and provisions of this policy; and
- 5) I acknowledge that compliance with this policy is a condition of employment and continued employment by DNR.

Employee Signature

Date

APPENDIX A

1. Employees authorized to operate any boat 20 ft. in length or longer and all airboats;