

## Kennebunkport Fire Department

### **POLICY 7 ALCOHOL AND DRUG POLICY AND TESTING PROCEDURES**

**April 2008**

#### **1. PURPOSE**

The Kennebunkport Fire Department is committed to a drug and alcohol free workplace. In order to ensure the safety of its employees and the general public, the Fire Chief has adopted this policy. We take pride in our employees who perform critical duties in a truly effective manner, with safety foremost in their minds. This policy strengthens our commitment to a safe workplace.

#### **2. PROGRAM ADMINISTRATOR**

The Fire Chief is the Alcohol/Drug Testing Program Administrator. The Program Administrator is responsible for answering questions from drivers, employees or the public in general. The Program Administrator will maintain the confidentiality of all information relating to drug and alcohol testing. The Program Administrator may provide such information as necessary to enable the appropriate supervisor to take the appropriate action to ensure compliance with this policy.

#### **3. SCOPE OF POLICY**

This policy applies to all full-time, part-time, seasonal, on-call, volunteer, and temporary Kennebunkport Fire Department employees.

#### **4. COMPLIANCE WITH REGULATIONS**

All employees subject to alcohol and drug testing must be in compliance with this policy at all times while working for the Kennebunkport Fire Department. This includes but is not limited to all time spent operating vehicles and equipment, as well as time spent working at an incident scene or engaged in training.

#### **5. SUBSTANCES TESTED FOR**

When drug and alcohol screening is required by this policy, a breath test and/or urine test will be given to detect the following:

- 1) Alcohol
- 2) Marijuana
- 3) Cocaine
- 4) Amphetamines
- 5) Phencyclidine (PCP)

## 6) Opiates

### 6. PRESCRIPTION DRUG USE

Employees covered by this policy may use prescription drugs and “over the counter” medications provided that:

- 1) The prescription drugs or their generic equivalent have been prescribed to the employee within the past 12 months by an authorized licensed healthcare provider.
- 2) The employee does not consume these drugs and medications more often than as prescribed by the licensed healthcare provider.
- 3) Any employee who has been informed that the medication could cause adverse side effects while working shall inform his/her supervisor. The Kennebunkport Fire Department reserves the right to have a licensed healthcare provider determine if use of a prescription drug or medication by an employee produces an adverse effect.

### 7. TESTS REQUIRED

All employees subject to this policy shall be tested for alcohol and/or controlled substances in the following circumstances:

- 1) Post-accident. As soon as is practicable after a motor vehicle accident, the employee shall be tested for alcohol and drugs if: (a) the accident involved the loss of human life; or (b) the employee received a citation for a moving traffic violation arising from the accident.
- 2) Reasonable suspicion. All employees who exhibit to a trained supervisor, or police officer, signs and symptoms of alcohol and/or drug abuse while on the job, prior to reporting to work, or just after work will be required to submit to an alcohol and/or drug test. The supervisor shall document the specific facts, symptoms or observations by completing a “Reasonable Suspicion Record” form.

NOTE: Do not allow an employee to drive him/herself to the testing facility for a reasonable suspicion test. Instead, the supervisor or another employee should provide transportation to the testing facility.

### 8. TESTING PROCEDURES

**Drug Testing:** Drug testing is accomplished by urinalysis. Specimens will be collected at an off-site facility selected by the Fire Department. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a laboratory, which is certified in accordance with DHHS or equivalent guidelines.

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

If the analysis of the primary specimen results in a confirmed positive test, the employee may request within 72 hours that the split specimen also be tested at a certified laboratory of his choice. The second test is at the employee's expense unless the test result is negative, in which case the Fire Department will reimburse the employee.

All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the Kennebunkport Fire Department. In the event of a positive test result, the MRO will first attempt to contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive results (such as over-the-counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative. If the MRO is unable to contact the employee, then the employer will be contacted and requested to advise the employee to contact the MRO. Urine samples shall be provided in a private test room, stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples. An employee may waive the right to privacy and provide the urine sample in the presence of a witness (of the same gender) and not be required to disrobe and wear a hospital gown.

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

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than .04 concentration is considered a negative result. Any result of .04 or greater requires a confirmation test. A confirmed test of .04 or greater is considered a positive result.

## **9. PROHIBITED CONDUCT**

KPFD employees shall NOT:

- 1) Report to work and/or remain on duty with an alcohol concentration of 0.04 or greater or exhibit such behavior or other evident manifestation of intoxication or impairment which raises in the mind of the employee's supervisor a reasonable question regarding fitness for duty;
- 2) Possess any alcohol while on duty;
- 3) Consume any alcohol while on duty;
- 4) Consume any alcohol within eight (8) hours after an accident for which the employee must be tested for alcohol concentration;
- 5) Refuse to submit to the following alcohol and/or controlled substance tests: reasonable suspicion test, post-accident test or follow-up test;
- 6) Report to or remain on duty when using any controlled substance, except when used under a physician's orders and when the physician has informed the employee in writing that the use will not affect the safe operation of any vehicle, equipment or other work detail while on an emergency scene. In the case of a written warning by the physician, the employee shall report this to his/her supervisor immediately;
- 7) Report to or remain on duty if the employee tests positive for controlled substances.

## **10. REFUSAL TO TEST**

An employee's failure to submit to testing or executing consent for testing may result in disciplinary action up to and including dismissal. Specifically, the following circumstances may be considered a refusal to test:

- 1) Failure to report to the designated testing area immediately after being notified to submit to an alcohol or drug test.
- 2) Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined to be unable to do so.
- 3) Engaging in conduct that clearly obstructs or delays the testing process.

## **11. NOTICE AND CONSENT**

Before a drug or alcohol test is administered, employees will be asked to sign a consent form authorizing the test and permitting the release of test results to the Program Administrator. The chemical screen consent form shall provide space to indicate current or recent use of prescription and over-the-counter medication.

## **12. CONSEQUENCES OF VIOLATION OF THIS POLICY**

1. Any KPFD employee who violates Sections 9 or 10 of this policy shall be immediately removed from any safety-sensitive function and will be advised by the Kennebunkport Fire Department of the resources available for evaluating and resolving drug and alcohol abuse problems. An employee shall not be allowed to return to the safety-sensitive function until he/she has a return-to-duty alcohol test result of less than 0.02 and/or a return-to-duty drug test with a verified negative result.
2. In addition, any employee who violates Sections 9 or 10 of this policy may be subject to disciplinary action up to and including dismissal. Factors to be considered in determining the appropriate disciplinary response include, but are not limited to the following: employee's work history, length of employment, current job performance, and existence of past disciplinary actions. Disciplinary action is imposed by municipal policy; it is not required by federal law.
4. During the period that the Kennebunkport Fire Department is awaiting an employee's test result for a post-accident test, reasonable suspicion test or return-to-duty test, the Kennebunkport Fire Department may transfer the employee to another position with or without a reduction pay or benefits. KPFD also reserves the right to place an employee on unpaid suspension to reduce any possible safety hazard. A determination as to whether an employee is placed in another position or placed on paid or unpaid suspension may be based on, but is not limited to: who is responsible for and/or the severity of the accident, if applicable; the observed condition of the employee, if applicable; the employee's work history; length of employment; current job performance; and the existence of past disciplinary actions. Action taken by KPFD under this subsection is a matter of department policy, and is not imposed by federal law.

## **13. EMPLOYEE/APPLICANT RIGHTS AND RESPONSIBILITIES**

- (1) In the event of a confirmed positive test result, employees shall have the opportunity to present an alternative explanation for the test result by contacting the Medical Review Officer (MRO). This shall be done within 72 hours after notification of the confirmed result. No further action will be taken if there is a justified explanation or there is a reasonable doubt as to the accuracy of the result of chain of custody of the sample.
- (2) Any employee with a positive test result may upon written request to the Program Administrator have the right to any information relating to the test result and procedures.

## **14. CONFIDENTIALITY OF INFORMATION**

Unless the employee consents, all information acquired by the Kennebunkport Fire Department in connection with the testing processes is confidential and may not be released to any person other than to the employee who is tested, the Program Administrator and the rehabilitation provider. The foregoing shall not prevent the release of information that is required or permitted by state or federal law, or the use of information in any grievance procedure, administrative hearing or lawsuit relating to the imposition of the test or the use of the test results.

## **15. DOCUMENTS PROVIDED**

The Kennebunkport Fire Department will provide each person subject to this policy a copy of the policy. The department will also provide, on request, printed material which describes the effects of alcohol and/or controlled substances on the individual's health, employment and personal life, as well as information on the signs and symptoms of alcohol or controlled substance abuse and methods of treatment or intervention for drug or alcohol abuse.

## **16. SEVERABILITY**

In the event that a Court finds that any provision of this policy is void or unenforceable, the remaining provisions shall continue in full force and effect.