

### 7.3 Drug-Free and Alcohol-Free Workplace

This policy applies to all employees and all employment applicants.

#### A. Purpose

In compliance with the Drug-Free Workplace Act of 1988, the Lewes Board of Public Works is committed to providing a safe and productive work environment for employees, prospective employees, and customers. Alcohol and drug abuse pose a threat to the health and safety of Lewes Board of Public Works employees and the security of the company's equipment and facilities. For these reasons, the Lewes Board of Public Works will not tolerate the abuse of drugs ( legal and illegal) and alcohol in the workplace.

#### B. Work Rules

1. Whenever employees are working, operating any Lewes Board of Public Works vehicle, present on Lewes Board of Public Works premises, or conducting company-related work off-site, they are prohibited from:

- a. Using, possessing, buying, selling, manufacturing, or dispensing of marijuana or any illegal drug (to include possession of drug paraphernalia).
- b. Being under the influence of alcohol, marijuana, or an illegal drug as defined in this policy.
- c. Possessing or consuming alcohol.

2. The presence of any detectable amount of illegal drug, illegal controlled substance, marijuana, or alcohol in an employee's body system, while performing company business or while in a company facility, is prohibited. Notwithstanding the foregoing, employees who possess a valid medical marijuana card at the time of the drug test and who have not used, possessed, or been impaired by marijuana on Lewes Board of Public Works' premises or during hours of employment, will not be considered to be "under the influence" for purposes of this policy. Subject to Section E of this policy regarding consequences of a positive drug test, Lewes Board of Public Works may consider, on a case by case basis, whether an employee's medical situation should be taken into consideration in determining appropriate discipline for a positive drug test.

3. Lewes Board of Public Works will also not allow employees to perform their duties while taking prescribed drugs that are adversely affecting their ability to perform their job duties safely and effectively. We strongly encourage employees to voluntarily disclose and/or provide official documentation from the physician prescribing the medication. Employees taking prescribed medication during work hours must carry it in a container labeled by a licensed pharmacist or be prepared to produce the container if asked. Employees prescribed medications that could impair their ability to perform their duties safely or effectively may request special accommodation, including a change in assignment. While the Lewes Board of Public Works will make every effort to accommodate such a request, it cannot guarantee the availability of an alternative position.

4. Any employee whose position has been identified by the Lewes Board of Public Works as safety sensitive, outside of those who hold a CDL license, who holds a medical marijuana card, must notify the BPW immediately upon receipt. The employee must notify the contracted lab before any test is administered. Failure to show proof of a medical marijuana card may result in disciplinary action up to and including termination of employment.

5. Any illegal drugs or drug paraphernalia will be turned over to an appropriate law enforcement agency and may result in criminal prosecution.

### C. Required Testing

**1. Pre-employment.** Applicants being considered for hire must pass a drug test before beginning work or receiving an offer of employment. Refusal to submit to testing will result in disqualification of further employment consideration.

**2. Reasonable suspicion.** Employees are subject to testing based on (but not limited to) observations by at least two members of management of apparent workplace use, possession, or impairment. The General Manager should be consulted before sending an employee for testing. Management must use the Reasonable Suspicion Observation Checklist to document specific observations and behaviors that create a reasonable suspicion that an employee is under the influence of illegal drugs or alcohol. When reasonable suspicion testing is warranted, management and HR will meet with the employee to explain the observations and the requirement to undergo a drug and/or alcohol test within two hours. Refusal by an employee will be treated as a positive drug test result and will result in immediate termination of employment.

**3. Post-accident.** Employees are subject to testing when they cause or contribute to accidents that seriously damage a Lewes Board of Public Works vehicle, machinery, equipment, or property, or that result in an injury to themselves or another employee requiring off-site medical attention. A circumstance that constitutes probable belief will be presumed to arise in any instance involving a work-related accident or injury in which an employee who was operating a motorized vehicle (including a Lewes Board of Public Works forklift, pickup truck, overhead crane, or aerial/man-lift) is found to be responsible for causing the accident. In any of these instances, the investigation and subsequent testing must take place within two hours following the accident, if not sooner. Refusal by an employee will be treated as a positive drug test result and will result in immediate termination of employment.

**4. Random.** Each Lewes Board of Public Works employee whose position has been identified by the Lewes Board of Public Works as safety sensitive shall be part of the testing pool. Tests will be conducted randomly, unannounced quarterly under this policy by an outside contractor. The names of employees randomly selected are sent to the Office Manager, then given to the employee's manager/supervisor. The randomly selected employees must report to the assigned lab immediately upon receiving the test authorization form from their manager/supervisor. All testing is to be completed on company time.

***Under no circumstances will the employee be allowed to drive themselves to the testing facility for reasonable suspicion or post-accident. A member of management must transport the employee to the testing facility and/or arrange for the employee to be transported home.***

### Testing Process

All testing required by this policy will be conducted by certified, qualified individuals at the testing facility determined by the Board of Public Works.

Testing may include, but is not limited to, the following substances:

- Alcohol
- Marijuana (THC)

- Cocaine
- Amphetamines and methamphetamine
- Opioids - Phencyclidine (PCP)
- Any prescription drug not prescribed to the employee

#### D. Payment

The Lewes Board of Public Works shall pay the cost of the initial testing described in this Policy. Employees shall pay the cost of any confirmation test (a retest of the original specimen will be used) requested by an employee to challenge a positive result. If a confirmation test is negative, the Lewes Board of Public Works shall reimburse the employee for the cost of the confirmation test. The Lewes Board of Public Works shall not pay the cost of any evaluation, counseling, or course of treatment that is recommended and/or required following a positive test result. The employee will be responsible for any costs not covered by their health insurance provider.

Employees subject to alcohol testing will be transported to a Lewes Board of Public Works-designated facility and directed to provide breath specimens. Breath specimens will be tested by trained technicians using federally approved breath alcohol testing devices capable of producing printed results that identify the employee. If an employee's breath alcohol concentration meets or exceeds the State of Delaware legal limit, a second breath specimen will be tested approximately 20 minutes later. The results of the second test will be determinative. Alcohol tests may, however, be a breath, blood, or saliva test, at the company's discretion. For purposes of this policy, test results generated by law enforcement or medical providers may be considered by the company as work rule violations.

Applicants and employees subject to drug testing will be transported to a Lewes Board of Public Works-designated testing facility and directed to provide urine specimens. Applicants and employees may provide specimens in private unless they appear to be submitting altered, adulterated, or substitute specimens. Collected specimens will be sent to a federally certified laboratory and tested for evidence of marijuana, cocaine, opiates, amphetamines, PCP, benzodiazepines, methadone, methaqualone, and propoxyphene use. (Where indicated, specimens may be tested for other illegal drugs.) The laboratory will screen all specimens and confirm all positive screens. There must be a chain of custody from the time specimens are collected through testing and storage.

The laboratory will transmit all positive drug test results to the General Manager, who will offer individuals with positive results a reasonable opportunity to rebut or explain the results. Individuals with positive test results may also ask the General Manager to have their split specimen sent to another federally certified laboratory to be tested at the applicant's or employee's own expense. Such requests must be made within 72 hours of notice of test results. If the second facility fails to find evidence of drug use in the split specimen, the employee or applicant will be treated as passing the test. In no event should a positive test result be communicated to the Lewes Board of Public Works until such time that the General Manager has confirmed the test to be positive.

#### E. Consequences

Applicants who refuse to cooperate in a drug test or who test positive will not be hired and will not be allowed to reapply/retest in the future.

Employees who refuse to cooperate in required tests or who use, possess, buy, sell, manufacture, or dispense an illegal drug in violation of this policy will be terminated. If the employee refuses to be tested,

yet the company believes he or she is impaired, under no circumstances will the employee be allowed to drive themselves home.

Employees who test positive or otherwise violate this policy will be subject to discipline, up to and including termination. Depending on the circumstances, the employee's work history/record, and any state law requirements, the Lewes Board of Public Works may offer an employee who violates this policy or tests positive the opportunity to return to work on a last-chance basis according to mutually agreeable terms, which could include follow-up drug testing at times and frequencies determined by the Lewes Board of Public Works for a minimum of one year but not more than two years as well as a waiver of the right to contest any termination resulting from a subsequent positive test. The employee shall be responsible for the cost of any follow-up testing required by the Lewes Board of Public Works under this type of agreement. If the employee does not complete the rehabilitation program or tests positive after completing the rehabilitation program, the employee will be immediately discharged from employment.

Employees will be paid for time spent in alcohol or drug testing and then suspended pending the results of the drug or alcohol test. After the results of the test are received, a date and time will be scheduled to discuss the results of the test; this meeting will include the General Manager and the Office Manager. Should the results prove to be negative, the employee will receive back pay for the times/days of suspension.

#### F. Confidentiality

Information and records relating to positive test results, drug and alcohol dependencies, and legitimate medical explanations provided to the General Manager will be kept confidential to the extent required by law and maintained in secure files separate from normal personnel files. Such records and information may be disclosed among managers and supervisors on a need-to-know basis and also may be disclosed when relevant to a grievance, charge, claim, or other legal proceeding initiated by or on behalf of an employee or applicant.

#### G. Inspections

The Lewes Board of Public Works reserves the right to inspect all portions of its premises for drugs, alcohol, or other contraband. All employees, contract employees, and visitors may be asked to cooperate in inspections of their persons, work areas, and property that might conceal a drug, alcohol, or other contraband. Employees who possess such contraband or refuse to cooperate in such inspections are subject to appropriate discipline, up to and including discharge.

#### H. Definitions

"Company premises" includes all buildings, offices, facilities, grounds, parking lots, lockers, places, and vehicles owned, leased, or managed by the Lewes Board of Public Works or any site on which the company is conducting business.

"Illegal drug" means a substance whose use or possession is controlled by federal law but that is not being used or possessed under the supervision of a licensed health care professional. (Controlled substances are listed in [Code of Federal Regulations Schedules I-V of 21 C.F.R. Part 1308.](#))

"Refuse to cooperate" means to obstruct the collection or testing process; to submit an altered, adulterated, or substitute sample; to fail to show up for a scheduled test; to refuse to complete the requested drug testing forms; or to fail to promptly provide a specimen(s) for testing when directed to do so, without a valid medical basis for the failure. Employees who leave the scene of an accident without a

justifiable explanation before submission to drug and alcohol testing will also be considered to have refused to cooperate and will automatically be subject to discharge.

“Detectable influence of drugs” means a confirmed positive test result for illegal drug use per this policy. In addition, it means the misuse of legal drugs (prescription and possibly OTC) when there is not a valid prescription from a physician for the lawful use of a drug during medical treatment (containers must include the patient’s name, the name of the substance, quantity/amount to be taken and the period of authorization).

“Drug Paraphernalia” means all equipment, products, and materials of any kind that are used, intended for use, or designed for use, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance the manufacturer, delivery, possession or use of which violates Delaware law.

“Reasonable Suspicion” means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

“Safety sensitive position” means any position designated by the Lewes Board of Public Works including any supervisory or management positions, that requires that performance of tasks that involve some aspect of a heightened danger in which impairment caused by drug or alcohol usage could affect the safety of health of the employee performing the task or of the other individuals. Any position that is considered safety-sensitive will be identified in the job description.