

RESOLUTION 2013-208

**RESOLUTION AMENDING SAN DIEGO UNIFIED
PORT DISTRICT PERSONNEL RULES AND
REGULATIONS RULE 9 – APPOINTMENT, RULE
17- DRUG AND ALCOHOL POLICY AND RULE 18 -
SEARCHES**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 75 of the Port Act authorizes the District to adopt rules and regulations for the administration of its personnel system; and

WHEREAS, the Board of Port Commissioners (BPC) adopted Ordinance 1832 on July 23, 1996, and in accordance with Rule 2, Section 2 thereof, amendments and revisions to the Personnel Rules and Regulations (Rules) shall become effective by resolution of the BPC; and

WHEREAS, the District now intends to amend said Rules by amending Rules 9, 17 and 18.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. That Rule 9, Section 3 shall be amended to read:

“Section 3. **SELECTION OF APPOINTEES.** The appointing authority shall select from the list of eligibles certified by the Director of Human Resources the number of persons required to fill the vacancies in the department, unless objection is made to an eligible as provided in Rule 6. The appointing authority shall be entitled to select from the eligibles to be certified as specified in Rule 7.”

2. That Rule 9, Section 12 shall be amended to read:

“Section 12. **POST-CONTINGENT OFFER PHYSICAL EXAMINATION.**

- a. **All appointments of new hires**, whether in the classified or unclassified service, and those promotions and transfers where the examination announcement so requires, will be contingent upon the successful completion of a physical examination. For unclassified positions, the Executive Director may waive such examination on a case-by-case basis. The District shall designate the physician to conduct such examination.

One of the purposes of the examination is to determine whether the individual can perform the essential functions of the position safely and efficiently with or without accommodation, (within the meaning of the Americans with Disabilities Act), without posing a direct threat to the health or safety of self or others.

- b. **Those individuals who are disabled** within the meaning of the Americans with Disabilities Act, or other applicable state or federal law, will be disqualified only if they cannot perform the essential functions of the position with or without accommodation or cannot do so without posing a direct threat to the health or safety of themselves or others.
- c. **The Executive Director may require the reexamination of any employee** as the law requires and/or permits, and if the Executive Director deems it to be in the best interests of the District and that the purpose is job-related and consistent with business necessity. Some of the purposes of the reexaminations are provided under Rule 10.3, (Return to Work After Non-Work Related Injury), Rule 10.4 (Injury Leave), Rule 10.11 (Compulsory Leave), Rule 10.12 (Special Leave), Rule 17 (Drug and Alcohol Policy) and elsewhere in these Rules.”

3. That Rule 9, Section 14 shall be amended to read:

“Section 14. **APPOINTMENT TO A TRAINEE POSITION.** The Executive Director may designate any open position as a trainee position at any time that business conditions indicate a need. The Director of Human Resources shall establish the method for selection of eligible for each trainee position. The appointing authority shall establish the minimum criteria for successful completion of the training, including the maximum time allowed for meeting the criteria. If successful, the trainee shall commence a one (1) year probationary period (the same as if appointed from an open eligible list) on the day the training was completed. Probation does not include time served as a trainee. Employees that enter a trainee position as a result of layoff that do not successfully complete their training program shall be dismissed from the District service.

Employees that are selected for a trainee position that is not a result of a layoff will be eligible up to 6 months during the training program to return to his/her previous classified position or class by the appointing authority or the employee without a hearing before the Personnel Advisory Board. On a permanent employee’s return to a previous classified position, if another permanent employee in the classified service has been appointed as the successor, the latter shall be returned to his/her classified previous position. Such “bumping” shall continue only where the successor is a permanent employee.

Additional information is contained in Administrative Procedure No. 210, which may be amended from time to time.”

4. That Rule 17 shall be amended to read:

“Section 1. **ALL EMPLOYEES**, whether in the classified or unclassified service, shall be governed by the Drug and Alcohol Policy.” A copy of the Drug and Alcohol Policy referred to in this Section is attached hereto as Exhibit “A” and incorporated by this reference.

5. That Rule 18, Section 3 shall be amended to read:

“Section 3. **NO UNANNOUNCED SEARCHES** will be made without the express consent of the Executive Director, who will stipulate the manner in which the search will be conducted pursuant to applicable law.”

6. That Rule 18, Section 4 shall be amended to read:

“Section 4. **INSPECTING PERSONAL PROPERTY**. To the extent permitted by law, when the District has reasonable suspicion that an employee or group of employees may be in possession of drugs or alcohol in violation of the District’s Drug and Alcohol Policy, unauthorized possession of District property or contraband, on District premises owned or leased or while on District business, such employee or group of employees may be required, as a condition of employment, to submit to reasonable searches of their person, clothing, purses, lunch boxes, briefcases or other containers, computer disks, cassette tapes or other electronic or magnetic storage media, or personal vehicles which have been brought onto District premises. Refusal to consent to such a search amounts to insubordination and may constitute cause for termination. Such searches shall only be conducted with the express consent of the Executive Director.”

APPROVED AS TO FORM AND LEGALITY:
PORT ATTORNEY


By: Assistant/Deputy

2013-208

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of December, 2013, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith and Valderrama

NAYS: None.

EXCUSED: None.

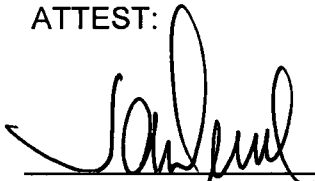
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)

Exhibit "A"



Drug and Alcohol Policy

The San Diego Unified Port District (District) is concerned about employees being impaired while in the performance of duty or under the influence of alcohol, drugs and/or controlled substances at work, and the use of such substances in the work environment. Unauthorized illegal drugs or alcohol in an employee's system while on District time is counter-productive to the goals and mission of the District. Compliance with this policy is considered an essential job function and/or qualification for all employees. For the same reasons, the District is also concerned about the possession, distribution, purchase or sale of illegal drugs and controlled substances in the workplace.

These above activities adversely affect work performance, efficiency, safety and health. Additionally, they constitute a risk to the welfare and safety of others, property loss or damage, or negative image for the District.

The District's Drug and Alcohol Policy is intended to promote a drug-free workplace and comply with applicable law. In recognition of the public service responsibilities entrusted to District employees, and because drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following drug and alcohol policy is hereby adopted by the District.

SECTION 1. PURPOSE

The purposes of this policy are as follows:

- A. To establish and maintain a safe, healthy working environment for all employees;
- B. To reduce the occurrence of accidental injury to persons or property;
- C. To reduce absenteeism, tardiness and indifferent job performance;
- D. To provide rehabilitation assistance to any employee seeking the District's help to overcome addiction to, dependence on or problems with alcohol or drugs; and
- E. To ensure a work environment free of alcohol and drug-related injuries, accidents, and performance problems.

This policy establishes the rules and procedures regarding the use of drugs, prescription drugs and/or alcohol as pertained to employment and the procedures used to test for drug, prescription drug and/or alcohol use in the following three circumstances:

- A. Pre-employment testing of external applicants in safety sensitive positions;
- B. Reasonable suspicion testing of current employees; and
- C. Post-accident testing of current employees

The District provides reasonable accommodation as required by law to those employees whose drug, prescription drug or alcohol problem classifies them as disabled. While the District is supportive of those who seek help voluntarily, the District will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance deficiencies, danger to the health and safety of others or themselves, and/or violations of federal or state law and/or District policies.

D. Searches

In order to ensure the safety of the workplace and the work force, and to protect and preserve District property, the District may from time to time search District vehicles, toolboxes, lockers, desks and file cabinets. These searches may not be announced and employees should have no expectation of privacy with respect to items brought onto District property and/or stored in District facilities. It is a condition of employment that employees cooperate with these searches. Refusal to consent to such a search may constitute insubordination and may lead to discipline up to and including termination.

No unannounced search will be made without the express consent of the President/CEO or his or her designee based on applicable law (see Personnel Rule 18).

SECTION 2. DEFINITIONS

- A. **“Alcohol”** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- B. **“Chain of Custody”** means procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.
- C. **“District Equipment”** means all property and equipment, machinery and vehicles owned, leased, rented or used by the District.
- D. **“Collection Site”** means a designated clinic/facility where applicants or employees present themselves for the purpose of providing a specimen to be analyzed. The District will select a Collection Site and require that the Collection Site comply with all methods of collection and Chain of Custody and provide documentation of compliance to the District.
- E. **“Designated Employer Representative (DER)”** means Human Resources Director or designee.

- F. **“Drug or Drugs”** means any controlled substance that is not legally obtainable under state or federal law, or a prescription drug obtained or used without benefit of a prescription or not being used for prescription purposes. The term includes marijuana. It also includes any substance, which a person holds out to another as an illegal drug.
- G. **“Follow-up Testing”** means a directly observed test by the collection site.
- H. **“Medical Review Officer (MRO)”** means a licensed physician with knowledge of drug abuse disorders as well as appropriate training to interpret and evaluate an employee’s positive test results together with an employee’s medical history and any other biomedical information. The MRO reviews all negative and positive test results and interviews individuals when tested positive to verify the laboratory report before the District is notified. The District MRO is a licensed physician.
- I. **“Prescription Drug”** means any controlled substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician.
- J. **“Positive Test”** means to have the presence of a drug or a drug metabolite and/or alcohol in a person’s system that is equal to or greater than the levels allowed by this policy as determined by appropriate testing of breath, urine or blood specimen and which is determined by the MRO to be the result of the use of drugs and/or alcohol.
- K. **“Random Testing”** means testing by the collection site even when at home in an off-duty status. Random alcohol tests occur while on duty or immediately before or after. Once notified to report for random testing, the employee must immediately report to the testing location.
- L. **“Testing Laboratory”** means a Substance Abuse and Mental Health Services Administration (SAMHSA) certified testing laboratory.
- M. **“Safety Sensitive Personnel”** means employees identified to have safety sensitive work related responsibilities as defined and mandated by the U.S. Department of Transportation (DOT) to participate in a drug/alcohol testing program for pre and post employment. See (Exhibit B).
- N. **“Safety Sensitive Position”** means employees in a job or position where the employee holding this position has the responsibility for his/her own safety or other people’s safety. Individuals perform work that involves a danger including, but not limited to the public (such as: operating dangerous instrumentalities such as heavy trucks used to transport hazardous material, work regarding national security, work involving the enforcement of drug laws, and/or operating natural and liquefied natural gas pipelines). Employees in these positions have to be with clear mind and diligent while

occupying such positions. (See Exhibit B).

- O. **“Safety Sensitive Function”** means all the time beginning from the time the employee is waiting to work, unless the employee has been relieved from duty by the District; any and all time spent inspecting, servicing, repairing, or conditioning any commercial vehicle; all time spent at the driving controls of a commercial motor vehicle in operation; and all time loading or unloading a vehicle, supervising, assisting in the loading or unloading, attending a vehicle being loading/unloading, remaining in readiness to operate the vehicle, or in giving/receiving receipts for shipments loaded/unloaded.

- P. **“Substance Abuse Professional (SAP)”** means a licensed physician, social worker, psychologist, Employee Assistance Program (EAP) or certified National Association of Alcohol and Drug Abuse Counselors (NAADAC) with knowledge of, and clinical experience in, diagnosis and treatment of alcohol and controlled substance disorders. The SAP shall determine whether an employee is “fit for duty” following an employee’s refusal to test or failed alcohol or drug test, and refers the employee for a return to duty test and recommends a schedule of unannounced follow up testing for a period of up to 5 years from the date the employee tested positive.

SECTION 3. VIOLATION OF POLICY

Any violation of this policy may result in discipline, up to and including termination, or in not being hired.

SECTION 4. INDIVIDUALS COVERED

This policy applies to post offer applicants for safety sensitive positions and District employees. Each post offer applicant and employee shall be given a copy of this policy and execute a written acknowledgement reflecting his or her receipt and understanding of the policy. This policy also applies to independent contractors or employees of independent contractors working on District projects (see section 8- Criminal Drug Statute Convictions). Copies of the policy are available on the District’s Intranet and from the Human Resources department.

SECTION 5. CONFIDENTIALITY

Any information concerning an employee’s use of prescription drugs, drugs, the results of any pre-employment or reasonable suspicion drug and/or alcohol testing, and/or an employee’s past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential personnel information. Any information received to enforce any provision of this policy shall be disclosed only as necessary for disciplinary actions and appeals, interactive process meetings and reasonable accommodation

efforts, or pursuant to applicable law. Any report or test result generated pursuant to this policy shall be stored in a confidential file, accessible only by those authorized to receive the information, and separate and distinct from the employee's personnel file.

SECTION 6. RESTRICTIONS ON THE USE OF ALCOHOL

Employees may not use, be under the influence of, or possess alcohol under any of the following circumstances:

- Any time when use of alcohol would impair, to any extent, the employee's ability to perform his/her duties.
- While performing their duties, or operating any District equipment (whether or not on District property)
- While on District property, except that moderate consumption of alcohol at designated District gatherings or under circumstances expressly authorized by the District will be permitted. (See Section 13-Exceptions).

SECTION 7. DRUG PROHIBITIONS

No employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or prescription drugs, or attempt to do so, or report to work with drugs or prescription drugs in his or her system, unless the prescription drug has been lawfully prescribed to the employee and the employee can safely perform his/her normal job duties. Violation of this rule shall result in disciplinary action, up to and including termination.

SECTION 8. CRIMINAL DRUG STATUTE CONVICTIONS

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the District requires any employee who is convicted of any criminal drug statute to provide written notice of the conviction to the District no later than five (5) days after the conviction. The District will periodically provide education to employees on the harmful effects of using and abusing drugs and/or alcohol.

Independent contractors, or employees of independent contractors, working on District projects, are required by law or contract to notify the District (Director, Human Resources or designee) of a drug and/or alcohol related conviction or positive test for drugs and/or alcohol. Said individuals may not be permitted to work on District projects.

SECTION 9. MEDICATION REPORTING REQUIREMENTS

Employees shall, in the case of prescription drugs, ask the prescribing physician to determine whether the use of a prescription drug may impair his/her ability to perform his/her normal job duties or to safely operate District equipment. In the case of medication available over-the-counter, an employee shall review product packaging to determine whether the over-the-counter medication may impair his/her ability to perform

his/her normal job duties or to safely operate District equipment. Any employee taking any over-the-counter medication or prescription drug marked "do not drive," "do not operate heavy equipment" or similarly labeled, shall inform the appropriate supervisor of the use of the medication or drug *prior* to reporting for duty.

In the case of prescription drugs, the supervisor shall determine whether the employee may work, full duty or light duty, based on the written opinion of the employee's medical provider that the use of the medication may impair the employee's ability to perform specific duties. The supervisor may, upon a determination that the employee is unable to safely perform his or her normal duties, and/or that a modified work assignment is not available, direct the employee not to work and to return home on annual leave, or other applicable leave. If the employee's personal medical provider provides a written opinion that the use of the prescription drug will not impair the employee's ability to perform his/her normal duties, the supervisor shall allow the employee to perform those duties. Any notice or communication required by this section shall be confidential and disclosed only to the supervisor and any other employees on a need-to-know basis.

An employee's failure to report the use of prescription drugs which have the potential of interfering with work performance or safety to a supervisor, in order to determine fitness to work, may result in disciplinary action up to and including termination, even for a first offense.

SECTION 10. INDICATIONS FOR ALCOHOL AND DRUG TESTING

- A. **Post Offer Job Applicants for Safety Sensitive Positions** – The District requires all job applicants for safety sensitive positions to take a drug and alcohol test after a conditional employment offer has been given. Those applying for jobs identified by the District as safety sensitive positions must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of an offer of employment that is conditioned upon passing a pre-employment physical and drug/alcohol test. (See Exhibits B and E).

Those job applicants, described above, who:

- 1) refuse to submit to testing, or attempt to tamper with or substitute a test sample, will be considered to have refused to participate in the testing process, shall not be hired and will not be considered for employment for one (1) year from the date of the job applicant's refusal to participate in the testing process.
- 2) test positive for drugs and/or alcohol or unauthorized prescription drug use, shall not be hired and will not be considered for employment for one (1) year from the applicant's last positive test.

- B. **Employees** – The District may require an employee to submit to a drug, prescription drug or alcohol screen test under the following circumstances:

1. Following a work-related accident, incident or mishap that resulted in death, or injury requiring medical treatment away from the scene of the accident, or property damage, where drugs, prescription drugs and/or alcohol use by the employee cannot be ruled out as a contributing factor. (See Exhibit E).
2. When a supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee may be under the influence of drugs, prescription drug and/or alcohol. (See Exhibit C).
3. When a supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee either possesses, uses, sells, transfers, manufactures, purchases, drugs, prescription drugs or alcohol on District property or while on duty or illegally transports alcohol, drugs, prescription drugs and/or drug related paraphernalia or attempts to do so on District property or while on duty. (See Exhibit E).
4. Follow-up testing for employees who have returned to work following a positive test and their participation in a drug and/or alcohol rehabilitation program.
5. When an on-duty employee is contacted by a law enforcement officer who has reasonable suspicion to believe the employee is under the influence of alcohol or drugs or the employee has been involved in an on-duty vehicle-related incident and the officer suspects the employee is under the influence of drugs and/or alcohol.

SECTION 11. DRUG AND ALCOHOL TESTING

A. Administration

1. The Human Resources Director or his/her designee shall be responsible for overseeing implementation of this policy and the testing procedures in Exhibit E. The Human Resources Director shall review all disciplinary actions resulting from violations of this policy to ensure that the action proposed or taken is consistent with this policy.
2. The Human Resources Director shall be responsible for the following:
 - a. Communicating directly with the MRO and/or SAP and SAMHSA regarding any drug an/or alcohol tests,
 - b. Overseeing testing programs: and,
 - c. Providing training to District supervisors and employees as needed.

B. Procedures

1. **Mandatory Reporting** – Any employee who has reason to believe that another employee may be in violation of this policy shall immediately notify his/her immediate supervisor or any available supervisor. The supervisor shall take whatever immediate action is deemed prudent to ensure the safety of the public and employee. Should the supervisor have reasonable suspicion to believe, based upon specific, documented facts, observations, and the totality of the circumstances, that the employee may be under the influence of drugs, prescription drugs, and/or alcohol, a recommendation shall be made to the Human Resources Director to immediately remove the employee from the workplace until such time as testing results confirm or refute the presence of drugs and/or alcohol. The supervisor may use the Reasonable Suspicion Evaluation Form (Exhibit C) to assist in this determination. Additionally, the supervisor must provide statement of facts regarding their observations and actions to the Director, Human Resources as soon as practical.
2. **Acknowledgment** – No drug, prescription drug, and/or alcohol test may be administered, sample obtained, or drug, prescription drug, and/or alcohol test be conducted on any sample in the pre-employment context without the written acknowledgement of the applicant being tested. (See Exhibit D). Refusal of any job applicant or employee to submit to testing, or attempt to substitute or evade the testing process shall constitute insubordination and will subject the person disqualify the applicant or result in disciplinary action, up to and including termination. The District will pay the cost of all drug, prescription drug, and/or alcohol tests required by the provisions of this policy.
3. **Collection, Integrity and Identification**
 - a. After the job applicant or employee has been advised of the reason for the test by the designee or applicable supervisor, the applicant or employee will be properly identified and Collection Site personnel will explain the mechanics of the collection process.
 - b. The procedures of collecting urine shall provide for individual privacy unless there is reasonable suspicion that the individual may alter or substitute the specimen to be provided. Samples collected will be tested for temperature and subject to other validation procedures as appropriate.
4. **Chain of Custody**

- a. Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 49 CFR Part 40, put into place by the Department of Health and Human Services as amended from time to time.
 - b. The test laboratory shall maintain custody of the specimens.
5. **Testing Methods** – All tests will be screened using an immunoassay technique and, for alcohol, an Evidential Breath Testing (EBT) device. All presumptive positive drug tests will be confirmed using gas chromatography/mass spectrometry (GC/MS) and all presumptive positive alcohol tests will be confirmed with a second EBT performed within 15-30 minutes after the first EBT test is completed. The District will test for cannabinoids (marijuana), cocaine, amphetamines, opiates, barbiturates, benzodiazepines, and phencyclidine (PCP) as well as alcohol, which are defined in this policy as drugs and/or prescription drugs. Tests will seek only information about the presence of drugs, prescription drugs and/or alcohol in an individual's system and will not test for any medical condition.
6. **Notification** – Any job applicant or employee who tests positive will be notified by the MRO and will be given an opportunity to provide the MRO any reason he or she may have that would explain the positive drug, prescription drug, and/or alcohol test, other than the presence of alcohol or the illegal use of prescription drugs or drugs. If the job applicant or employee provides an explanation acceptable to the MRO that the positive drug, prescription drug, and/or alcohol test result is due to factors other than the presence of drugs, prescription drugs, and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the District as negative. Otherwise, the MRO will report the positive test result to the Human Resources Director or designee. Test results shall only be disclosed to the extent expressly authorized by this policy.
7. **Split Sample Testing** – An employee who has been subjected to drug, prescription drug, and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the employee. All costs associated with an employee's decision to pursue split sample testing shall be the full financial responsibility of the employee. The employee and/or his/her designee shall adhere to the following procedures to maintain and ensure strict Chain of Custody of the sample and validity of the split sample test results:
1. To request a split sample test, the employee shall submit his or her written request on the required Chain of Custody

release form provided by the District's testing laboratory to the Director of Human Resources or his/her designee.

2. The request will be forwarded to the testing laboratory used by the District's facility. It will release the split sample to the certified lab chosen by the employee provided after receipt of a properly executed Chain of Custody release form.
3. The laboratory selected by the employee must be a certified laboratory per applicable California state regulations and authority and be able to conduct the GC/MS method of testing for validation of testing results. Any method of testing performed on the split sample that is not the GC/MS method will be considered invalid.
4. The split sample test results will not be released to the District without the employee's written consent.

C. Falsification

Any job applicant or employee who provides false information in connection with a urine and/or blood test administered under this policy, or who attempts to falsify test results through tampering, contamination, or substitution, shall be subject to disqualification from employment with the District pursuant to Section 10 A 1 and 2 of this policy and for an employee discipline up to and including termination.

D. Rights of Employees

Any action taken shall be held in confidence by the employee's appointing authority and only divulged to others on a need-to-know basis. The employee's immediate supervisor shall maintain confidentiality on a need-to-know basis regarding advice or recommendations given in the course of the incident or for any resulting Employee Assistance Program activities.

SECTION 12. REHABILITATION

- A. **Voluntary Disclosure** – Any employee with a drug, prescription drug, and/or alcohol problem may voluntarily disclose the problem to the Director of Human Resources or his/her designee, who shall refer the employee to the Employee Assistance Program (EAP). An employee requesting this assistance may, at the supervisor's discretion, be transferred, given work restrictions, or placed on leave, as defined in Section 12 B of this policy, while receiving treatment and until the employee is drug, prescription drug, and/or alcohol free. An employee's voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure.

Each employee is responsible for seeking assistance before the employee's drug and/or alcohol problem leads to a violation of this policy, or before the employee is asked to submit to a reasonable suspicion drug, prescription drug, and/or alcohol test.

- B. **Leave Time** – Employees shall use available sick time, vacation accrual or request special leave without pay if time off from work is necessary for any treatment or rehabilitation program. The costs of long-term rehabilitation or treatment services, whether or not covered by the employee's medical plan, are the sole responsibility of the employee.
- C. **Continued Employment** - To be eligible to continue employment following rehabilitation, an employee shall provide certification that he or she was continuously enrolled in a treatment program and actively participated in that program. Any employee suffering from an alcohol, prescription drug, or drug problem who rejects treatment or who leaves a treatment program prior to being properly discharged will be terminated from employment with the District. The reoccurrence of an alcohol or drug problem will be cause for discipline up to and including termination.
- D. **Return to Work Agreement** - All employees returning to active employment from rehabilitation will be required to sign a "Return to Employment Agreement" providing:
 - 1. Unannounced testing for a period of at least 12 months to ensure that the employee has freed himself/herself from the alcohol, prescription drug, or drug problem;
 - 2. That failure of any unannounced test during this period shall be grounds for immediate termination;
 - 3. That the employee must maintain an acceptable attendance and performance record and comply with all other District policies upon his or her return to work.

No disciplinary action shall be taken against any employee who comes forward to the District with his or her problem prior to the District learning of a violation of the Drug and Alcohol Policy. However, once the District learns of a violation of the Drug and Alcohol Policy, the District has no obligation to grant the employee rehabilitation leave. Additionally, the District is under no obligation to offer employees a Return to Employment Agreement if the employee receives a positive drug, prescription drug, and/or alcohol result and does not voluntarily disclose a drug, prescription drug, and/or alcohol problem. Disciplinary action up to and including termination may be imposed regardless of whether the employee is offered or accepts rehabilitation leave.

SECTION 13. EXCEPTIONS

This policy shall not prevent a sworn employee of the District's Harbor Police Department from possessing drugs, prescription drugs, or alcohol as part of his or her official duties.

Additionally, this policy shall not prevent an employee in the performance of his/her official duties at a District sponsored event, from possession and/or moderate consumption of alcohol.

SAN DIEGO UNIFIED PORT DISTRICT

**Return to Employment Agreement
(Sample)**

You have been found in violation of the San Diego Unified Port District's (District) Drug and Alcohol Policy. We will allow you to return to employment with the District, but only subject to the conditions set forth below:

1. You must begin a program of rehabilitation, strictly follow the rules and guidelines of that program, and sign a release of information so that the District can monitor your progress.
2. You must remain continuously enrolled in the treatment program and actively participate in that program.
3. You must not reject treatment or leave the treatment program prior to being properly discharged.
4. You must agree to submit to unannounced alcohol/drug testing by a District designated physician for a period of _____ months from the date you return to work in order to ensure that you have freed yourself from the alcohol or drug problem. Failure to immediately submit to such testing upon demand during this period shall be grounds for termination.
5. You must also agree that failing of any unannounced alcohol, prescription drug, or drug testing within the above-specified _____ month period shall be grounds for immediate termination of your employment.
6. You must maintain an acceptable attendance and performance record and comply with all other District rules and policies upon your return to work.

Please understand that we consider you a valued employee and wish you to remain in your employment with the District. However, because of our responsibilities to protect you, your fellow employees, and the public from accidents which are likely to occur when working in an impaired condition, your continued employment must be conditioned upon your agreement to satisfy the conditions set forth above.

RECEIVED AND AGREED TO:

Signature

Date

Printed Name

Date

**Witnessed by:
Director, Human Resources**

Date

SAN DIEGO UNIFIED PORT DISTRICT

QUESTIONS AND ANSWERS ABOUT THE DRUG AND ALCOHOL POLICY

1. Why have a policy?

Alcohol and/or drugs, when abused by you or another employee, can affect job performance. This policy ensures that everyone is treated fairly and with confidentiality, and it enables people to get help for substance abuse problems.

2. What positions/classifications have “safety-sensitive personnel” perform safety sensitive work as defined and mandated by the U.S. Department of Transportation (DOT) to participate in a drugs/alcohol testing program (pre and post employment)?

- Equipment Operator
- Fleet Maintenance Technician
- Lead Equipment Operator
- Lead Fleet Maintenance Technician
- Lead Maintenance Worker
- Maintenance Worker I
- Maintenance Worker II

3. What positions/classifications are defined as “safety sensitive” require pre-employment physicals and drug and alcohol testing?

Management personnel:

- Assistant Chief of Harbor Police
- Harbor Police Captain
- Vice President, Public Safety/Chief of Harbor Police

Sworn personnel:

- Harbor Police Lieutenant
- Harbor Police Sergeant
- Harbor Police Corporal
- Harbor Police Officer & Trainee

Non-sworn personnel:

- Assistant Environmental Specialist
- Associate Environmental Specialist
- Building Maintenance Coordinator
- Carpenter
- Central Services Technician I & II (Procurement only)
- Community Service Officer

- Community Service Officer Supervisor
- Construction Inspector
- Construction Inspector Supervisor
- Distribution & Storage Technician I & II
- Electrician
- Equipment Operator
- Fleet Maintenance Technician
- Gardener
- HVAC Technician
- Land Surveyor
- Lead Carpenter
- Lead Custodian
- Lead Distribution & Storage Technician
- Lead Electrician
- Lead Fleet Maintenance Technician
- Lead Gardener
- Lead Maintenance Mechanic
- Lead Maintenance Worker
- Lead Painter
- Lead Plumber
- Lighting Technician
- Locksmith
- Maintenance Mechanic
- Maintenance Planner/Inspector
- Maintenance Supervisor
- Maintenance Worker I & II
- Marine Mechanic
- Painter
- Parking Meter Repairer/Collector
- Plumber
- Safety Specialist I & II
- Senior Environmental Specialist
- Sign Painter
- Small Engine Repair Technician

4. When could I be tested?

You could be tested whenever there is reasonable suspicion that you are violating the Drug and Alcohol Policy. Reasonable suspicion may include, but is not limited to, the items listed below. You may be asked to submit to a test if you exhibit more than one of the following:

- Slurred or thick speech
- Alcohol on breath
- Inability to perform work properly

- Involved in a fight where blows are exchanged
- Problems walking
- Very unusual, anti-social behavior
- Possession of alcohol or drugs
- Blank, glassy-eyed stare
- Wide and severe mood swings
- Involved in an accident with District property
- Unexplained significant deterioration in job performance or behavior such as excessive absenteeism
- Employee admissions regarding drug or alcohol use

It is recognized that some medical problems may cause symptoms similar to those identified above. Testing will not be done automatically. Individual circumstances will be considered before a decision to test is made.

5. What is my supervisor's obligation if there is reasonable suspicion?

Whenever there is reasonable suspicion that you are violating the Drug and Alcohol Policy, your supervisor will complete the Reasonable Suspicion Evaluation form and report the issue up the chain of command, to ensure the appointing authority is notified. The appointing authority will contact the Director, Human Resources to provide reasons for the reasonable suspicion and request that you are tested to determine if you are fit for duty. A supervisor will escort you to the testing facility.

6. What happens if the drug and/or alcohol test is positive?

If the drug and/or alcohol results are positive, you may be subject to disciplinary action up to and including termination. If you have a drug and/or alcohol problem and voluntarily disclose the problem prior to testing positive to the Director of Human Resources, or his/her designee, you will be referred to the Employee Assistance Program (EAP).

7. What will happen if I need substance abuse treatment?

The Employee Assistance Program (EAP) can be used for outpatient treatment.

8. Can I still take my prescription medication?

Using prescription drugs according to physician direction is fine; however, if you are taking any drugs which could interfere with your ability to do your job safely, you must notify your supervisor prior to the beginning of your work day.

9. Suppose I suspect that my supervisor is under the influence of some substance?

You can and should report your supervisor or manager for substance abuse

without fear of retaliation. This can be reported to either someone higher in your chain or the Director, Human Resources.

10. Suppose my supervisor recommends that I submit to a drug screen just because he or she doesn't like me?

Tests are not performed without cause or reasonable suspicion. However, reports that are malicious won't be tolerated and the reporting person will be subject to disciplinary action.

11. If I have a positive drug screen, will it go on my record?

Yes, however discretion and confidentiality are cornerstones of this policy. Laboratory results will be kept in locked, separate confidential medical files in the Human Resources Department.

EXHIBIT C

**SAN DIEGO UNIFIED PORT DISTRICT
DRUG AND ALCOHOL TESTING POLICY
REASONABLE SUSPICION EVALUATION FORM**

Employee Name: _____

Observation Date and Time: _____

Location of Employee: _____

Location of Supervisor(s): _____

Others present during activities or observations: _____

Incident(s) observed which give cause for reasonable suspicion: _____

Factors that may be considered in combination with those listed in 1 – 6 below include: takes needless risks, accident(s), disregard for others safety, unusual distinct pattern of absenteeism/tardiness, increased high/low periods of productivity, lapses of concentration or judgment, etc.)

1. Presence of alcohol, alcohol containers, drugs, and/or drug paraphernalia (specify)

2. Appearance:

- | | | |
|---|--|---|
| <input type="checkbox"/> Flushed | <input type="checkbox"/> Inappropriate | <input type="checkbox"/> Disheveled |
| <input type="checkbox"/> Bloodshot/Glassy Eyes | <input type="checkbox"/> Tremors | <input type="checkbox"/> Profuse Sweating |
| <input type="checkbox"/> Dilated/Constricted Pupils | <input type="checkbox"/> Inappropriate Wearing of Sunglasses | |
| <input type="checkbox"/> Dry-mouth Symptoms | <input type="checkbox"/> Runny Nose/Sores | <input type="checkbox"/> Smell of Alcohol |
| <input type="checkbox"/> Puncture Marks | <input type="checkbox"/> Other | |

3. Behavior/Speech:

- | | | |
|-------------------------------------|--|--|
| <input type="checkbox"/> Incoherent | <input type="checkbox"/> Slurred/Thick | <input type="checkbox"/> Unconscious |
| <input type="checkbox"/> Confused | <input type="checkbox"/> Slowed | <input type="checkbox"/> Hostile/Confrontation |
| <input type="checkbox"/> Agitated | <input type="checkbox"/> Sleeping on the job | <input type="checkbox"/> Other: |

4. Awareness

- Confused
- Lethargic
- Lack of Coordination
- Other:
- Mood Swings
- Paranoid
- Euphoric
- Disoriented

5. Motor Skills/Balance:

- Unsteady
- Staggering
- Arms Raised for Balance
- Other:
- Swaying
- Stumbling
- Falling
- Reaching for Support

6: Other observed Actions or Behaviors:

Supervisor's Comments:

Supervisor's Name: _____

Signature: _____ Date: _____

Supervisor's Name: _____

Signature: _____ Date: _____

EXHIBIT D

SAN DIEGO UNIFIED PORT DISTRICT

DRUG AND ALCOHOL POLICY

ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING

I, _____, [PRINT NAME], understand and acknowledge that I have reviewed a copy of the San Diego Unified Port District's (District) Drug and Alcohol Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the District and that such information may be used as grounds for disciplinary action, up to and including termination.

I further understand and acknowledge that:

1. The District will pay the cost of all drug and/or alcohol tests required or requested by the District;
2. I may request in writing a copy of the results of any such test;
3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice, consistent with the procedures outlined in the District's Drug and Alcohol Testing Policy, and that I will bear all of the costs associated with the split sample testing;
4. By signing this form, I hereby acknowledge that the split sample test results will be released to the District;
5. Refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed "positive" test for purposes of disqualification from employment. If currently employed by the District, the employee will be subject to disciplinary action up to and including termination from the District; and
6. I may also be required to execute forms at the Collection Site of the Testing Laboratory.

With full understanding and knowledge of the foregoing, I hereby acknowledge my obligation to submit to drug and/or alcohol testing pursuant to the terms of the District's Drug and Alcohol Policy.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature: _____

Date: _____

City and State: _____

Witness Signature: _____ Date: _____

DRUG AND ALCOHOL POLICY

REASONABLE SUSPICION AND POST ACCIDENT TESTING PROCEDURES

A. Testing Procedures

1. Reasonable suspicion testing will be conducted when a Supervisor has a reasonable suspicion that an employee is under the influence of drugs, prescription drugs, and/or alcohol. Reasonable suspicion must be based on specific, current, documented observations concerning the physical symptoms or behaviors of being under the influence of drugs, prescription drugs, and/or alcohol. If conditions permit, the Supervisor will request the assistance of another Supervisor to observe the actions or behavior of the employee. Examples of performance indicators of probably drug, prescription drug, and/or alcohol abuse sufficient to lead a Supervisor to suspect that an employee is under the influence of drugs and/or alcohol, include, but are not limited to, those on the attached Reasonable Suspicion Evaluation Form (Exhibit C). The Supervisor may allow the employee to consult with a representative prior to the test.
2. The Reasonable Suspicion Evaluation Form and other documentation establishing reasonable suspicion shall be prepared and signed by the witness(es) and the Supervisor prior to testing. The appointing authority and Director, Human Resources should be notified as soon as possible.
3. Employee shall be sent for alcohol testing immediately following the determination made by the appointing authority or otherwise the District shall document the reasons the test was not promptly administered. If a test is not administered within eight hours following the determination, the District shall cease attempts to administer a test and shall state in the record the reasons for not administering the test.
4. Employee shall be sent for drug testing immediately following the determination made by a Supervisor or otherwise the District shall document the reasons the test was not promptly administered. If a test is not administered within 24 hours following the determination, the District shall cease attempts to administer a test and shall state in the record the reasons for not administering the test.
5. The potentially affected employee will not be allowed to proceed alone to or from the Collection Site. In addition to the safety concerns for the employee, the Supervisor accompanying the employee shall also assure that there is no opportunity en route to the Collection Site for the employee to do or ingest anything that could affect the test result or to acquire "clean" urine from another person.

B. Post Accident Testing

Follows the same testing procedures as the reasonable suspicion testing. Procedures stated in section A above.

C. Return to Duty Testing

1. Before an employee returns to duty after a positive test, the employee shall undergo an evaluation of fitness for duty by the Substance Abuse Professional.
2. Return to Duty testing, under the direction of the Medical Review Officer, will be completed after the SAP states the employee is fit to return to work. The employee will then submit to a return to duty test and receive a verified negative test result for drug and/or alcohol use from the MRO before being notified to return to work by the District.

D. Follow-Up Testing

1. Following a determination by a SAP that an employee is in need of assistance in resolving problems associated with drug, prescription drug, and/or alcohol use, the employee shall be subject to unannounced, observed, follow-up testing as directed by the SAP following the employee's return to duty. The SAP can terminate the requirement for the follow-up testing at any time, if the SAP determines that the testing is longer necessary and is supported by the District.
2. Follow-up testing may include testing for alcohol and controlled substance use as directed and determined by the SAP.
3. The time period for "follow-up" testing for drug and/or alcohol use will be determined by the SAP subject to a minimum of one year, and not to exceed five years.
4. Follow-up testing may be on a daily, weekly, monthly or longer basis at the discretion of the SAP.

E. Refusal to Submit to Testing

The following are definitions of refusal:

1. Not providing the District a written consent to take the test;
2. The applicant or employee does not supply enough quantity of the laboratory required sample for alcohol or drug testing without sufficient or valid medical explanation;
3. Tampering with a specimen or collection process;
4. Tardiness to reporting Collection Site after time allocated for applicant or employee to report without valid explanation;
5. Leaving the accident scene without justifiable cause before tests are conducted (testing for drugs and/or alcohol after an accident is presumed);
6. Any refusal to test will be considered a violation subject to disqualification for employment or if currently employed with the District, subject to discipline up to and including termination.