

ORDINANCE NO. 1995 - 13

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS
OF THE
COUNTY OF MARTIN**

WHEREAS, the Board of Commissioners have previously passed personnel policy for the employees of Martin County; and

WHEREAS, it is felt necessary to adopt personnel policies regarding alcohol and drug abuse;

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF MARTIN COUNTY,
STATE OF INDIANA:

SECTION 1:

ALCOHOL AND DRUG ABUSE POLICY AND TESTING PROCEDURE

STATEMENT OF FACTS

The County of Martin is concerned with the public's safety and workplace safety for our employees. This alcohol and drug abuse policy is designed to ensure that employees are fit for duty. The County believes that our employees in safety sensitive positions cannot safely operate vehicles while under the influence of any controlled substance or while under the influence of alcohol. This policy applies to all employees who perform safety sensitive jobs, including mechanics and employees who are required to hold a Commercial Drivers License (CDL), to perform their job function. This policy covers truck drivers, bus drivers, mechanics, heavy equipment operators, and any other positions that require a commercial driver's license. Safety sensitive employees are expected and required to be in suitable mental and physical condition while at work, performing their jobs satisfactorily and behaving appropriately. When the use of alcohol and other drugs interfere with such expectations, a driver's failure to meet these basic expectations could result in disciplinary action. It is for this purpose that the County of Martin has implemented the following Substance Abuse Policy which includes testing for the presence of drugs and alcohol. The intent of the County of Martin is to also ensure that the County is in compliance with Federal Law.

This policy addresses the use of alcohol and illegal drugs or substances on many fronts. The use, possession, sale, purchase or transfer of unauthorized or illegal drugs or substances, or the abuse or misuse of legal drugs on County property, while on County business or while operating vehicles and equipment, is prohibited. Drinking alcoholic beverages resulting in having any measurable amount of alcohol, as defined in the federal regulations, in his/her system during working hours is prohibited, whether on or off County property. Working hours include all breaks. Off-duty use of drugs and alcohol is prohibited to the extent it affects an employee's attendance or performance and his/her ability to pass required DOT alcohol and controlled substance tests. Any violation of this policy is grounds for discipline, up to and including termination.

Physician-directed use of drugs can affect behavior and performance. When such use of drugs adversely affects job performance or safety, it is in the best interest of the driver, co-workers, the public, and the County of Martin, that the driver take sick or vacation days, or if necessary, unpaid leave in accordance with the Personnel Policies concerning requesting medical leaves.

The County of Martin reserves the right to terminate any employee in a safety sensitive position who violates the County of Martin Drug and Alcohol Abuse Policy. Reporting to work under the

influence of alcohol or non prescribed drugs or using same while on the job are listed as cause for discipline up to and including immediate dismissal in the Personnel Policy. The Supervisor or his/her designee is authorized to implement this policy and program, including a periodic review of the program to address any problems, changes, and/or revisions of it, and maintenance of all records required by the federal regulations. The Supervisor or his/her designee is responsible for communicating this policy to all employees in safety sensitive positions and is accountable for its consistent enforcement.

SECTION 2:

REGULATIONS - TESTING OF SAFETY SENSITIVE EMPLOYEES

All safety sensitive employees will be tested for alcohol and drug abuse in accordance with the approved procedures when directed by the Supervisor or his/her designee. The County of Martin will specify the testing site and provide tests and test interpretations at no cost to employees.

DRIVERS WILL BE TESTED UNDER THE FOLLOWING GUIDELINES:

A: Pre-Employment

Under no circumstances will an individual be placed in a safety sensitive position without proof of a successful completion of alcohol and drug tests. Any individual who refuses to submit to such tests, has a detectable amount of alcohol in his/her system, or has a positive controlled substance test result, as defined by the federal regulations, will not be considered for employment with the County of Martin.

B: Random

A minimum rate of 50% of employees in safety sensitive positions shall be tested annually for drugs and 25% of employees in these positions shall be tested annually for alcohol.

Random drug and alcohol testing may be combined. For example, when testing at 50% drug random rate and 25% alcohol random rate, half of the randomly selected drivers chosen for testing would be tested for both drugs and alcohol, while the rest could be tested only for drugs. Alcohol testing will be conducted just prior to, during, or immediately following performance of a safety sensitive function.

Random testing selection requires:

1. Employee remains in pool.
2. Use valid random selection process.
3. Test at least once each quarter.
4. Do not announce dates for testing.
5. Test 50% of drivers for drugs and 25% of drivers for alcohol.

C. Post Accident

Drivers are required to submit to drug and alcohol testing as soon as possible following a "DOT" accident which involves the loss of human life, or the driver receives a citation under the state or local law for a moving traffic violation arising from the accident.

A driver who is subject to post accident testing shall remain readily available for such testing for a period up to eight (8) hours or he or she may be deemed by the County of Martin to have refused to subject to testing. Nothing in this section shall be construed to require the delay of necessary

medical treatment or to prohibit the driver from leaving the scene of an accident for a period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

No driver required to take a post accident alcohol test shall use alcohol for eight hours following the accident or until he/she undergoes a post accident alcohol test, whichever occurs first.

If a driver is seriously injured and cannot submit to testing at the time of the accident, he/she shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any drugs or alcohol in his/her system.

The results of a breath or blood test for the use of alcohol, or a urine test for the use of drugs, conducted by Federal, State, or Local officials having independent authority for the test, shall be considered to meet the requirements for post accident testing if the results are obtained by the County of Martin.

Actions to take in a post accident testing situation:

1. Treat injuries.
2. Work with law enforcement.
3. Explain the need for testing.
4. Work with medical facility.
5. Collect specimens promptly.
6. Document events.

D. Reasonable Suspicion

The County of Martin is required to test for the use of alcohol and controlled substances upon "reasonable suspicion". Reasonable suspicion is defined to mean, that the County of Martin believes the behavior, speech, body odor, or appearance of an employee while on duty are indicative of the use of alcohol and/or controlled substances. The conduct must be witnessed by a supervisor, if so trained. Supervisors will receive at least two (2) hours of training to further their knowledge of possible signs of alcohol and/or drug abuse that influences an employee's fitness for duty. The mere possession of alcohol does not constitute a need for an alcohol test. The witness must have received training in the detection of probable alcohol and drug use by observing a person's behavior. If it is at all possible, the witness should not conduct the alcohol test in order to protect the driver.

Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day of the employee. A written record shall be made of the observations leading to a reasonable suspicion alcohol and/or controlled substance test. This record is to be signed by the supervisor who requires a reasonable suspicion test and shall include all observations that culminated in the test(s) being administered.

1. If a reasonable suspicion alcohol test is not administered within two hours following the observations, the witness shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, all attempts to administer the test shall cease. A record shall be prepared and maintained stating why the alcohol test was not administered.
2. Prior to the start of work a driver must report to his/her immediate supervisor, use of any prescription and/or over the counter drugs which may affect job performance or the safety of others. It is the driver's responsibility to obtain from his/her physician a determination as to whether or not the drug could affect job performance.

3. Confidentiality - All information obtained in the course of testing of drivers shall be protected as confidential medical information. No data concerning this information will be made a part of the employee's personnel file nor will it be provided to any other party without the direct written consent of the driver, unless the results are grounds for discipline and/or the grievance procedure is requested by the employee.

4. Failure to sign a release for alcohol and drug testing will be classified as refusal to carry out an order of a supervisor and the employee shall be terminated.

5. Refusal to submit to alcohol and/or controlled substance testing as required will be recorded as a positive test. Refusal to submit to an alcohol or controlled substance test means that an employee (1) fails to provide adequate breath for testing without valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with this policy, (2) fails to provide adequate urine for controlled substance testing without a valid medical explanation after he/she has received notice of the requirement for testing in accordance with this policy, or (3) engages in conduct that clearly obstructs the testing process.

As stipulated in the federal regulations, an employee testing positive for alcohol (.04 or greater) or for a controlled substance shall be prohibited from driving or performing a safety sensitive function for the County and referred to the Supervisor. Employees testing .02 or greater, but less than .04 shall also not drive or perform safety sensitive functions for the County, nor shall the County permit him/her to perform safety sensitive function, until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test or until a disposition of possible discipline is decided. Employees may be subject to discipline, up to and including discharge.

Performing a safety sensitive function means a driver is considered to be performing a safety sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety sensitive function.

A safety sensitive function is defined as:

1. All time sent at a facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the County.
2. All time spent inspecting equipment, otherwise inspecting, servicing, or conditioning any motor vehicle at any time.
3. All driving time spent at the driving controls of a motor vehicle in operation.
4. All time, other than driving time, in or upon any motor vehicle.
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle.
6. All time spent performing the driver requirements relating to an accident.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

RETENTION OF RECORDS AND CONFIDENTIALITY

Records will be maintained, in keeping with federal regulations, by the County of Martin drug and alcohol testing contracted services.

SECTION 3:

Two (2) copies of this drug and alcohol policy shall be kept on file in the Martin County Auditor's Office for public inspection pursuant to I.C. 36-1-5-4.

SECTION 4:

If any section, paragraph, sentence, clause or phrase in this Ordinance is declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected by such declaration and shall remain in full force and effect.

SECTION 5:

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 6:

This ordinance shall be effective upon approval and adoption according to law.

PASSED AND ADOPTED this 14th day of August, 1995.

**BOARD OF COMMISSIONERS OF
MARTIN COUNTY, INDIANA**



DALE E. ABEL, President



RANDY WININGER, Commissioner



DALE E. BROWN, Commissioner

ATTEST:



VICTOR P. CREW, Auditor