

SUBSTANCE ABUSE POLICY STATEMENT

I. SUBSTANCE ABUSE POLICY 12/27/17

The Town of Big Flats is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any Town employee illegally uses drugs on the job, comes to work under the influence of illegal drugs or alcohol, or possesses, distributes or sells drugs in the workplace. **THIS POLICY SUPPLEMENTS THE POLICY CONTAINED IN THE EMPLOYEE HANDBOOK AND TO THE EXTENT IT IS STRICTER THAN THE HANDBOOK, THIS POLICY SUPERCEDES THE HANDBOOK.** Therefore, The Town of Big Flats has established the following policy:

1. It is a violation of Town policy for any employee to possess, sell, trade, manufacture or offer for sale illegal drugs or alcohol or otherwise engage in the illegal use of drugs or alcohol on the job.
2. It is a violation of Town policy for anyone to work under the influence of illegal drugs or alcohol.
3. It is a violation of Town policy for anyone to use prescription drugs illegally or contrary to prescribed dosages and frequency thereof. (However, nothing in this policy precludes the appropriate use of legally prescribed medications.)
4. Violations of these policies are subject to disciplinary action up to and including termination.

It is the responsibility of the Town of Big Flats supervisors to counsel employees whenever they see changes in performance or behavior that suggest an employee has a drug or alcohol abuse problem. Although it is not the supervisor's job to diagnose personal problems, the supervisor will encourage such employees to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment and co-workers should encourage anyone who may have a substance abuse problem to seek help.

Any provisions of this substance abuse policy statement that may not be in compliance with any local, state, or federal laws will be applied by The Town of Big Flats so as to be in compliance with such local, state, or federal laws.

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that substance abuse is incompatible with employment with The Town of Big Flats.

II. DEFINITIONS

For the purposes of this drug-testing program, the following definitions will be applied:

Covered Individuals: All Town of Big Flats employees including those subject to DOT Drug Testing Regulations.

DOT Drug Testing Regulations: Department of Transportation procedures for Transportation Workplace Drug Testing Programs. Final Rule (49 CFR 40)

Prohibited Drugs: The following prohibited substances will be tested for under this Town policy: Amphetamines, Cocaine, Opioids, Marijuana (except when medically prescribed), Phencyclidine (PCP), alcohol and any other substances determined by law to be prohibited and or illegal.

Medical Review Officer (MRO): A licensed physician or doctor of osteopathy knowledgeable in the area of substance abuse disorders who shall be responsible for review and evaluation of drug test results.

Prescribed Drug: Any substance prescribed for individual consumption by a licensed medical practitioner.

Illegal Drug: Any drug or controlled substance the sale, possession or consumption of which is illegal.

SAMHSA Laboratory: A drug-testing laboratory certified by the Substance Abuse and Mental Health Services Administration "SAMHSA" (Formerly NIDA) National Institute of Drug Abuse.

Safety-sensitive or Security-sensitive Jobs: When asked to decide whether a particular position is security or safety-sensitive, the courts focus on the immediacy of the threat to safety of an individual or individuals or to the safety of any activity posed by a potential drug-induced mistake or failure in the performance of specific job duties. As the Supreme Court expressed it, a safety-sensitive position is one in which the duties involve "such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences." See Skinner v. Railway Labor Executive's Association, 489 U.S. 602 and National Treasury Employees Union v. Von Raab, 489 U.S. 656. Security-sensitive jobs are jobs that require high degrees of confidentiality and or secrecy in their functions and include positions with the potential to expose the Town to extensive liability and may include: 1) positions involving information technology, due to their responsibility for oversight and management of the institutions computer systems and accessibility to data; and 2) positions that handle financial transactions as a job responsibility. These responsibilities include, but are not limited to: approval authority within the accounting system, collecting and handling of cash or checks, writing or approving checks, and having access to a direct money stream. Before performing a random drug test on an employee, the Town should ensure that there is a safety or security issue involved in the person's job duties that would be affected by drug use. Since job duties and their safety or security sensitive nature is a fact issue, the Town should always consult with its attorney or local counsel before implementing a random drug testing policy or testing any employee for drug use.

III. PROHIBITED ACTIVITIES

The following activities are strictly prohibited (Offending individuals will be subject to the disciplinary action specified in Section 805 of the Employee Handbook regarding Drug-Free Workplace/Drug Free Awareness Program and as set forth below. In appropriate circumstances, these activities will be reported to law enforcement officials.):

Working under the influence of illegal drugs or alcohol, controlled substances, or prescription drugs used contrary to a doctor's instructions.

The unauthorized use, sale, transfer, possession, manufacture or purchase of illegal substances or drugs on the Town of Big Flats premises while on duty or while performing business activities for The Town of Big Flats.

Use of illegal drugs, controlled substances, prescription drugs used contrary to a doctor or medical provider's instructions or without a valid and current prescription, or alcohol.

Refusal to participate in and successfully complete a qualified rehabilitation program, if required by the Town as a condition for continued employment with the town by any individual who has had a verified positive drug or alcohol test result, or on the part of any subject individual who recognizes that he/she has a substance addiction or dependence problem and has been directed to participate in and successfully complete such a program as a condition for continued employment by the Town..

Refusal to comply with the Town of Big Flats substance abuse testing schedules or instructions.

Conviction of a drug related offense, whether committed on or off the premises of the Town.

IV. SCOPE

All job applicants for safety-sensitive or security-sensitive positions for the Town of Big Flats will undergo testing for the presence in their system of illegal or prohibited drugs or alcohol as a condition of employment and only after they have been offered a job conditioned on passing a drug test. See: Lanier v. City of Woodburn, 518 F.3d 1147 (2008). Any applicant with a verified positive test result may be denied employment. If an individual has been prescribed marijuana or any prohibited drugs by his physician, or other medical provider that prescription should be provided before the test is given. Before determining that the position is safety-sensitive or security-sensitive there should be a review by the town attorney. The Town of Big Flats will not discriminate against applicants for employment because of a past history of drug abuse.

The Town of Big Flats will utilize testing practices to identify employees who use prohibited substances either on or off the job. It shall be a condition of employment for all employees to submit to substance abuse testing under the following circumstances:

On a pre-employment exam and on any required annual or regularly scheduled physical examinations and on a random selection basis for employees in safety-sensitive or security-sensitive jobs. Security sensitive jobs involve the handling of sensitive information and to get such a job one will be required to undergo background investigations and/or medical examinations or other intrusions that diminish expectations of privacy. A safety-sensitive job is where a single mistake by the employee can create an immediate threat of serious harm to other individuals or property.

When an employee is involved in an on-the-job accident where personal injury or damage reasonable estimated to be over \$3,000 to Town property or personnel has occurred and when immediate and significant threats to public safety are involved, unless the employee was clearly not at fault in causing the accident. In a case where there has been personal injury, the injury must need medical treatment away from the scene of the accident or require immediate medical attention.

When there is reasonable suspicion or "special needs" (See Skinner, Supra) to believe that an employee may be under the influence of illegal or prohibited drugs or alcohol while on duty. A "reasonable suspicion" shall be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee that leads one to believe that the employee has engaged in any of the behaviors prohibited concerning the use of

alcohol and/or drugs. “Special needs” arise in the case of accidents or the violation of safety rules and generally exist when needs for a warrantless search exist beyond normal needs and render the warrant and probable cause requirements impracticable such as the need to ensure safety. Consultation with the Town Attorney and Supervisor is strongly recommended before such a test is ordered. PLEASE NOTE THAT AN EMPLOYEE OR PROSPECTIVE EMPLOYEE MAY SEEK TO CHALLENGE WHETHER OR NOT THEIR POSITION CONSTITUTES A SPECIAL NEED FOR TESTING OR THAT THEY ARE IN A SAFETY SENSITIVE OR SECURITY SENSITIVE JOB.

Before returning to duty after a positive test result for any reason.

As part of a follow-up program to treatment for substance abuse.

When the employee drives a commercial vehicle he or she must be tested in accordance with US Department of Transportation regulations.

Purely random demands for a drug test are not allowed except per DOT regulations.

V. TESTING PROCEDURES

Minimum standards are established for specimen collection, laboratory procedures, and laboratory test cut-off levels for illegal or prohibited drugs or substances above and for alcohol, and MRO verification of positive tests. Testing procedures shall be as unobtrusive as possible and as set forth in the Federal “Omnibus Transportation Employee Testing Act of 1991”.

TESTING LABORATORIES:

Laboratories used will be certified by the Substance Abuse and Mental Health Services Administration (formerly NIDA). SAMSHA guidelines will be followed for:

- Urine or blood specimen collection
- Specimen Testing
- Medical review of positive tests
- Test Result Reporting

VI. MEDICAL REVIEW OFFICER (MRO)

A physician (M.D. or Doctor of Osteopathy) who is knowledgeable in substance abuse will review all drug test results, to insure test validity.

The MRO will:

- Receive all positive test results
- Ensure that the chain of custody forms are in order
- Review and interpret each positive result
- Conduct a medical interview with any individual that tested positive, if desired by that individual
and shall verify in writing all drug tests as being negative or positive and provide such to the proper town representative.

The MRO will maintain all individual drug test result records in a confidential manner.

VII. SUBSTANCE ABUSE AWARENESS TRAINING/EMPLOYEE ASSISTANCE PROGRAM

The Town of Big Flats will provide an education and training program for all employees, officers and supervisors on the effects and consequences of substance abuse on personal health, safety, and work environment; and manifestation and behavioral causes that may indicate substance abuse. This training will be documented and the attendance at such training shall be verified by all employees, etc.

The Substance Abuse Awareness Training program material will be distributed and/or presented to all covered individuals under separate cover or by video. The Town of Big Flats will display and distribute a community-service Hot-Line phone number if such is available for individual assistance; and will display and distribute this Substance Abuse Policy Statement regarding the use of illicit drugs and alcohol.

Individuals with laboratory confirmed positive test results, as verified by the MRO, will be provided with substance abuse treatment and rehabilitation facility information

Individuals who feel that they may have developed a substance addiction or dependence may voluntarily participate in a substance abuse treatment and rehabilitation program.

Employees found to be using illegal or prohibited drugs may, at the discretion of the Town Supervisor be offered a leave of absence conditioned upon their attending a rehabilitation program (verification of attendance on a daily basis is required and at the end of the program a letter from the program indicating that he/she has successfully completed the program is required) and upon the completion of the program the Town and the employee shall sign an agreement giving the employee one last chance of employment with the Town conditioned on being illegal drug use free and shall submit to a drug test upon return to work. If the employee refuses to participate in the program or sign the agreement disciplinary action can be taken and immediate termination of employment may occur.

All referrals for rehabilitation treatment will be kept confidential. Participation in a rehabilitation treatment program not covered by Town insurance programs is at an individual's own expense.

VIII. SUBSTANCE ABUSE TESTING

The Town of Big Flats Substance Abuse Policy Statement contains the following testing requirements:

Pre-employment Testing: As set forth above

Applicants whose test results are negative will have successfully completed the test and are eligible for hire. Applicants whose tests are confirmed as positive by the laboratory and are verified as positive by the Medical Review Officer (MRO) may not be eligible for employment with the Town of Big Flats.

Random Testing: As set forth above.

Covered individuals and any employees or town officers who refuse to take a lawfully requested test or who test positive and are verified as positive by the MEDICAL REVIEW OFFICER (MRO) will be subject action up to and including termination of employment.

Probable Cause and Reasonable Suspicion:

When a covered individual's behavior indicates, in the opinion of the immediate supervisor and one other management person, that there is reasonable cause to believe that the individual may be under the influence of prohibited drugs or alcohol, a drug test may be conducted immediately at the Town's expense.

Such individuals whose test results are negative will have successfully completed the test. If the test result is positive or the individual refuses to take the test, the individual may be subject to immediate suspension from employment and thereafter any reasonable disciplinary action up to termination of employment.

Post-Accident Testing:

Post-accident testing for covered individuals will be conducted as set forth above.

Return to Duty:

A person who is permitted by the Town to return to duty after rehabilitation must take and pass the Town of Big Flats drug and Alcohol tests before returning to duty. This test will be at the employee's expense. Before an employee may return to duty, they must be evaluated by a Substance Professional ("SAP"), have complied with the SAP's recommendation and have received a return to duty approval from the SAP. (See item XI)

Follow up Testing:

After returning to duty, that employee will be subject to as many follow up tests as the Town of Big Flats requires, with a minimum of six (6) follow up tests in the first twelve (12) months following the return to duty. These tests will be at the employee's expense. If the employee is selected at any time for a random test, that random test will not count as a follow up test.

Individuals who refuse to submit to testing, or who fail an after-rehabilitation drug test will be immediately terminated.

Split Sample Tests:

Individuals who test positive and are verified by the MRO as positive may request a one-time only reanalysis of the original specimen by the original NIDA certified laboratory, providing the individual makes a written request within 72 hours of receipt of the first test result from the MRO.

If the Split Sample tests negative, the MRO will cancel the test, and the cost of the test will be refunded to the individual. If the retest result is still positive, the individual will be subject to the Town of Big Flats action up to and including termination of employment. If the split tests positive, the employee will reimburse the Town of Big Flats for the cost of the Split Sample Test.

Adulteration of Tests:

All specimens will be tested for adulteration. Any Specimen found to be adulterated will be considered as a positive result with the same penalties as a positive test result. Any specimen with Specific Gravity, Creatinine or pH levels outside of the normal range will require the employee to submit to a second test at an unannounced time selected by the Town of Big Flats.

IX. CONFIDENTIALITY

All actions taken under the Town of Big Flats Drug Abuse Policy will maintain the confidentiality of the individuals involved. Information related to investigations, possible violations, medical tests, or test results will be communicated on a strict “need to know” basis. Discussions with individuals tested under this program will be conducted as privately as circumstances permit.

X. TOWN SUBSTANCE ABUSE POLICY COMPLIANCE

The Town of Big Flats and all employees share a mutual vested interest in the success of this policy.

While it is not our intent to intrude in the personal lives of individuals subject to substance abuse testing, we do expect compliance with this Program.

Accordingly, failure to strictly comply with this program will result in the following Town action:

New job applicants who test positive and are verified as positive by the Medical Review Officer will not be eligible for hire.

The Town of Big Flats personnel subject to testing under this Program who refuse to submit to a drug test or who test positive and are verified as positive by the Medical Review Officer will be subject to Town action up to and including termination of employment.

The Town of Big Flats personnel participating in any of the prohibited activities specified in Section III of this Town of Big Flats Policy Statement, or who otherwise fail to strictly comply with its provisions, are subject to Town of Big Flats action up to and including termination of employment.

Any employee of the Town who is convicted of any criminal drug crime or violation occurring in the workplace must notify their immediate supervisor and the Town Supervisor no later than 5 days after such conviction.

Please note that individuals who currently use drugs illegally are not individuals with disabilities protected under the Americans with Disabilities Act (ADA) when an employer takes action because of their continued use of drugs. This includes people who use prescription drugs illegally as well as those who use illegal drugs. However, people who have been rehabilitated and do not currently use drugs illegally, or who are in the process of completing a rehabilitation program, may be protected by the ADA.

XI. SUBSTANCE ABUSE PROFESSIONALS

Any employee who has a verified positive test result for drugs or alcohol must be evaluated by a Substance Abuse Professional (“SAP”) as defined by 49 CFR Part 40. The Fees for any SAP services will be the employee’s own expense.

XII. CONSEQUENCES FOR VIOLATIONS REGARDING THE PRESENCE OF ALCOHOL AND A POSITIVE DRUG TEST

The following penalties are set as consequences for testing positive:

If an employee has an alcohol concentration between 0.02% and 0.039%:

- 1st Violation - Employee must be removed from safety-sensitive functions until the next day’s duty. Employee may be sent home and may use accumulated leave for the time off.

- 2nd Violation - Employee will be suspended for 24 consecutive hours with the loss of one day’s pay. Employee may be referred to a Substance Abuse Professional for assessment and consultation.

- 3rd Violation - Employee will be dismissed if there are three (3) violations in a three (3) year period.

If an employee has an alcohol concentration of 0.04% or greater, or a positive drug test:

- 1st Violation - Employee will be suspended without pay for forty-eight (48) hours. Employee will be referred to a Substance Abuse Professional for assessment and recommended rehabilitation. Reinstatement to the employee’s position and return to full duties shall be determined by the Substance Abuse Professional (who shall provide a written report to the town) and the town supervisor.

- 2nd Violation - Employee will be dismissed if there are two (2) violations in a three (3) year period.

Refusal by an employee to submit to alcohol or drug testing will be equivalent to a positive test result.

For all union members, the nature of discipline shall be governed by the union’s contract with the town.

XIV. ATTACHMENTS

Exhibit A - Acknowledgment of receipt and understanding of the Town of Big Flats Anti-Drug Program.

Exhibit B – Substance Abuse Testing Panel

EXHIBIT A

**ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF SUBSTANCE ABUSE
POLICY**

The Town of Big Flats is vitally concerned with those situations where the use of illegal drugs or alcohol, or the illegal use of legal drugs seriously interferes with any person's health and job performance and The Town of Big Flats business operations, and is a hazard to the safety and welfare of other employees or the public at large.

The Town of Big Flats has established a Substance Abuse Policy in order to maintain a drug free workplace.

I understand that all covered Town of Big Flats employees and new applicants for the Town of Big Flats employment must be drug free in accordance with the Town of Big Flats Substance Abuse Policy.

I hereby certify that I have received a copy of The Town of Big Flats Substance Abuse Policy Statement; that I have read and understand its contents; and understand that I must be drug free as a condition of employment.

Full Name (Please Print): _____

Last 4 digits of Soc Sec #: _____

Signature: _____

Signature Date: _____

EXHIBIT B

SUBSTANCE ABUSE TESTING PANEL

1. The following are some of the most common drugs which shall be tested for at the following cut off levels:

<u>Drug Group</u>	Screen Detection Level <u>NG/ML</u>	GC/MS Confidence Level <u>NG/ML</u>
Amphetamines	1000	500
Cocaine Metabolites	300	150
Marijuana Metabolites	50	15
Opioid Metabolites	2000	2000
Phencyclidine	25	25
Alcohol	≥ .02 BrAC	Actual BrAC

NG/ML is nanogram per milliliter.

Opioid drugs include semi-authentic drugs such as hydrocodone, oxycodone, hydromorphone or oxymorphone whose common names are OxyContin, Percodan, Percocet, Vicodin, Lortab, Norco, Dilaudid, and Exalgo. Other such drugs may be included as determined by drug monitoring entities such as the FDA.

The above list is not all-inclusive and does not exempt any drugs that are or may in the future become illegal.