



SUBSTANCE ABUSE POLICY

STATEMENT OF PHILOSOPHY

The Department of Transportation (DOT) through the Federal Highway Administration (FHWA) has implemented regulations into the Code of Federal Regulations (40 CFR and 49 CFR part 382) which are designed to help make our highways as safe as possible by assisting employers in identifying commercial motor vehicle drivers who have problems with alcohol and drugs. This Substance Abuse Policy is a direct result of these mandated regulations and will assist Toro Enterprises' desire to comply with these regulations.

Toro Enterprises is concerned about the safety, health and work performance of its employees. It is also concerned with the impact the company and its employees may have on the safety and welfare of the general public. The misuse of alcohol and/or the use of illegal controlled substances (hereafter called "drugs") of its employees may seriously affect the safety, health and work performance of themselves, their co-workers, as well as the safety and health of the general public.

Toro Enterprises is therefore concerned with employees being impaired by the misuse of alcohol and/or of drugs at work and how they may directly or indirectly be brought into the workplace. Toro Enterprises shall make every reasonable effort to eliminate the possession, distribution, purchase or sale of alcohol and/or drugs in the work environment in order to provide a safe, drug-free, and healthy workplace. Toro Enterprises will exert every effort to be in compliance with these regulations and issues the following statement:

Toro Enterprises will not tolerate the use, possession, distribution, purchase or sale of alcohol and/or drugs in the work environment.

DEFINITIONS

Words or phrases used in this document (as taken from DOT regulations.)

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

(Use or misuse of) Alcohol means the consumption of any beverage, mixture, or preparation containing alcohol.

Confirmation (or confirmatory) test In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol

testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Designated Employer Representative (DER) is the individual(s) who is (are) identified by the employer as the one(s) able to receive communications and tests results directly from medical review officers, breath alcohol technicians, screening test technicians, collectors, and substance abuse professionals. This (these) individual(s) is also authorized to take immediate action to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. This requirement is mandated by DOT 382.601.

Driver means and person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.

EBT (or evidential breath testing device) An EBT approved by the National Highway Safety Administration (NHTSA) for the evidential testing of breath.

Medical Review Officer (MRO) means licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

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


Refuse to submit (to an alcohol or controlled substance test) means that a driver: (1) Fails to provide adequate breath for alcohol testing as required by the Regulation, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of the Regulation, (2) Fails to provide an adequate urine sample for controlled substances testing as required by the Regulation, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the Regulation, or (3) Engages in conduct that clearly obstructs the testing process.

Regulation means DOT-FHWA 40 CFR and/or CFR Part 382.

Screening test (or initial test) In drug testing, an immunoassay screens to eliminate "negative" urine specimens from further analysis. In Alcohol testing, an analytic procedure to determine whether an employer may have a prohibited concentration of alcohol in a breath specimen.

APPLICABILITY

This policy applies to employees who possess a commercial driver's license (CDL) and who operate (or may operate) a commercial motor vehicle in a safety-sensitive function and who is subject to specific Department of Transportation regulations. All such employees shall be notified as to their applicability and eligibility of this Company Policy,

shall be issued and ID card as described below, and will be notified that Toro Enterprises' DERs are Sean Castillo, President and Lynda Favre  Assistant Controller.

ID CARDS

Each eligible driver shall be issued an ID card, which identifies the driver as belonging to a drug and alcohol testing program. It may not be used for any other purposes than that stated on the back of the card. The driver will ensure that the card be maintained in his or her personal possession while on-duty. The ID card will be taken to the collection site each time a test is required. The ID card is not the property of the driver and must be surrendered upon termination or at Toro Enterprises' request.

GENERAL RULES

Toro Enterprises hereby establishes the following for applicable employees:

1. While on duty, any employee who possesses, distributes, purchases or sells any alcohol or drugs will be subject to immediate disciplinary action.
2. While on duty, any employee who uses, consumes, or works under the influence of alcohol or drugs will be subject to immediate disciplinary action.

EMPLOYEE AWARENESS

All employees will be made aware of this Policy. Drivers will be provided a Driver Information Manual and supervisors will receive a minimum of one (1) hour of training in dealing with the misuse of alcohol and one (1) hour of training in dealing with substance abuse problems. The Substance Abuse Policy will be posted on all bulletin boards.

PROHIBITIONS

Alcohol concentration – No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Toro Enterprises, having actual knowledge that a driver has an alcohol concentration of 0.04 or greater, will not permit the driver to perform or continue to perform safety-sensitive functions.

Alcohol possession – No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as a part of a shipment. Toro Enterprises, having actual knowledge that a driver possesses unmanifested alcohol, will not permit the driver to drive or continue to drive a commercial vehicle.

On-duty use – No driver shall use alcohol while performing safety-sensitive functions. Toro Enterprises, having actual knowledge that a driver is using alcohol while performing safety-sensitive functions, will not permit the driver to perform or continue to perform safety-sensitive functions.

Pre-duty use – No driver shall perform safety-sensitive functions within four hours after using alcohol. Toro Enterprises, having actual knowledge that a driver has used alcohol within four hours previous, will not permit a driver to perform or continue to perform safety-sensitive functions.

Use following an accident – 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.

Refusal to submit to a required alcohol or controlled substance test – No driver shall refuse to submit to a post-accident alcohol or controlled substance test required, a random alcohol or controlled substance test required, a reasonable suspicion alcohol or substance abuse test, or a follow-up alcohol or controlled substances test. Toro Enterprises will not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

Controlled substances use – No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

Toro Enterprises, having actual knowledge that a driver has used a controlled substance, will not permit the driver to perform or continue to perform a safety-sensitive function.

Toro Enterprises requires a driver to inform the employer (in writing) of any therapeutic drug use.

Controlled substances testing – No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. Toro Enterprises, having actual knowledge that a driver has tested positive for controlled substance use, will not permit the driver to perform or continue to perform safety-sensitive functions.

TESTING REQUIREMENTS

The following testing requirements shall be conducted pursuant to the Regulations.

Pre-employment testing – All new commercial drivers (classes A and B) shall undergo testing for drugs. Toro Enterprises does not require a drug test if:

1. the driver has participated in a drug testing program within the previous 30 days and while participating in that program either
 - i. Was tested for drugs within the past 6 months or
 - ii. Participated in a random drug testing program for the previous 12 months,

and

2. the driver does not have a record of a violation as provided by a previous testing program.

Post-accident testing – As soon as practicable following an accident involving a motor vehicle, Toro Enterprises will test for alcohol and controlled substances each surviving driver:

1. who was performing safety-sensitive functions if the accident involved the loss of human life, or

2. who receives a citation for a moving traffic violation arising from the accident.

Random testing- All commercial drivers will be entered in a "pool" of drivers consisting of eligible drivers from Toro Enterprises, other companies, and owner/operators. Drivers will be randomly selected throughout the year and may be chosen more than once. The rate or percentage of drivers selected from this pool is governed by DOT Regulations. For 2005, the random drug testing rate is 50% and the random alcohol testing rate is 10%. The selection will be made by a scientifically valid method. Each driver shall have an equal chance of being tested each time selections are made. Tests are unannounced and spread throughout the year. When notified, the driver will proceed to the test site immediately. A driver shall be called for alcohol testing only while the driver is performing safety-sensitive functions. A driver may be called for drug testing at any time.

Reasonable suspicion testing- Toro Enterprises may require a driver to submit to an alcohol test when the Company has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The company will require a driver to submit to a drug test when the company has reasonable suspicion to believe that the driver has violated the prohibitions concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the driver. The Observations may include indications of the chronic and withdrawal effects of controlled substances. The required observation for alcohol and/or drug reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with the Regulations. The person who makes the determination that reasonable suspicion exists to conduct an alcohol and/or drug test shall not conduct the alcohol test of the driver. Alcohol testing is authorized only if the observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance. A driver may be directed by Toro Enterprises to only undergo reasonable suspicion testing while the driver has ceased performing such functions, just before the driver is to perform safety-sensitive functions. Notwithstanding the absence of a reasonable suspicion alcohol test, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

1. an alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
2. 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions concerning the use of alcohol.

The company will not take any actions against the driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence, in the absence of an alcohol test. A written record shall be made of the observation leading to a reasonable suspicion test, and signed by the supervisor or company official who made the observation, within 24 hours of the observed behavior or before the result of the controlled substance test are released, whichever is earlier.

DISCIPLINARY ACTIONS

Toro Enterprises, Inc. will take disciplinary action based on test results as follows:

Drugs (Marijuana (THC metabolite), Cocaine, Amphetamines, Opiates (including heroin) or Phencyclidine (PCP)) If a Medical Review Officer (MRO) indicated a positive Confirmation Test the driver shall immediately be discharged and removed from duty.

Alcohol - .04 or greater

If a Breath Alcohol Technician (BAT) using an Evidentiary Breath Test (EBT) shows an alcohol concentration equal to or above .04 on a Confirmation Test, the driver shall immediately be discharged and removed from duty.

Alcohol - .02 or greater to less than .04

If a Breath Alcohol Technician (BAT) using an Evidentiary Breath Test (EBT) shows an alcohol concentration equal to or above .02 but less than .04 on a Confirmation Test, the driver shall be removed from duty for 24 hours with no disciplinary action.

Drivers discharged under the actions above shall be advised by Toro Enterprises of the resources available in evaluating and resolving problems associated with the misuse of alcohol and/or use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

Refusal to test

Drivers who refuse to take any requested drug or alcohol test as provided in this Policy shall be considered insubordinate and shall immediately be discharged and removed from duty.

CHAIN OF POSSESSION PROCEDURES (drug testing only)

At the time a specimen is collected, the driver shall be given a copy of the specimen collection procedures. The specimen must then be immediately sealed, labeled, and initialed by the employee to ensure that the specimen tested by the laboratory is that of the driver.

The required procedure is as follows:

1. Urine shall be in a wide-mouthed clinic specimen container which shall remain in full view of the driver until split, transferred to, sealed and initialed in two tamper – resistant urine bottles.

2. Immediately after the specimens are collected, the urine bottles shall, in the presence of the driver, be labeled and then initialed by the driver. The specimens shall be placed in the transportation container. The container shall be sealed in the driver's presence and the driver shall be asked to initial or sign the container. The container shall be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
3. A chain of possession form shall be completed by the collection site personnel during the specimen collection and attached to and mailed with the specimen.

POSITIVE DRUG TESTING RESULTS

A medical review officer shall interview the driver concerning a positive test result within 5 days. The driver will be given an opportunity to explain and substantiate his/her use of legal drugs (prescription or over-the-counter) or other substances which may have results in a positive test result. The MRO shall inform the driver of his/her right to have a second confirmatory test at a second DHHS approved laboratory. The driver shall have 72 hours within which to request the confirmatory test at his/her expense.

PRESCRIPTION AND NON-PRESCRIPTION MEDICATION

The Driver shall note on a form furnished by Toro Enterprises use of any prescription and non-prescription medication before any test is given. If a driver is taking a prescription or non-prescription medication in the appropriate described manner and has noted such use, as provided above, and has been cleared to return to duty by the MRO or counsel, he/she will not be disciplined.

CONFIDENTIALITY

Every effort will be made to ensure that all information and records regarding substance abuse be kept confidential and only be distributed to those named in the Regulations and to Toro Enterprises officials on a need-to-know basis. The information and records will be placed in a medical folder and not in the driver's personnel folder. The records shall be maintained in a secure location with controlled access.