

ORDINANCE NO. 28-96

An Ordinance to establish a Township of Farmington Drug and Alcohol Policy for and pertaining to employees of the township holding commercial driver's licenses, in accordance with the Omnibus Transportation Employee Testing Act of 1991.

WHEREAS, the Township of Farmington Board of Supervisors has previously adopted policies with regard to consumption, use or possession of alcohol and prohibited drug or chemical substances by employees of the township upon or in township property and in the course of employment; and

WHEREAS, the Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad and mass transit industries and empowered the U. S. Department of Transportation to promulgate rules mandating and regulating anti-drug and alcohol misuse prevention programs; and

WHEREAS, the U. S. Department of Transportation has issued such rules and regulations which apply to safety-sensitive employees in commercial transportation, including the commercial motor vehicle industry and drivers holding commercial driver's licenses; and

WHEREAS, the said regulations of the Department of Transportation require implementation by employers such as the Township of Farmington effective January 1, 1995; and

WHEREAS, rules and regulations of the U. S. Department of Transportation are as set forth in 49 CFR Section 40.1, et seq., regulations governing testing for drugs and alcohol being as presently set forth in 49 CFR Section 40.51, et seq., and

WHEREAS, the Township of Farmington as an employer of individuals holding commercial driver's licenses is obligated to implement policies to effectuate the said regulations of the U. S. Department of Transportation and provisions of the Omnibus Transportation Employees Testing Act of 1991.

IT IS HEREBY RESOLVED by the Board of Supervisors of the Township of Farmington, Tioga County, Pennsylvania, as follows:

1. General Statement of Policy The Township of Farmington has a commitment to provide a safe and healthy workplace for its employees and to insure efficient delivery of services to the public. The Board of Supervisors recognized that, in order to accomplish this goal, it must implement programs that will enable the township to achieve its objectives in a cost-effective manner, while respecting the rights of township employees. Statistics show that employees who are substance abusers are absent from work approximately three times more often than are other employees, are about one-third less productive when they are at work and are twice as likely as others to have accidents in the workplace. Statistics indicated that such employees also are more likely to experience serious medical and emotional problems and to disregard safety policies and procedures. With this in mind, the Board of Supervisors must make every reasonable attempt to establish a work environment that is free, directly and indirectly, from the adverse effects of drug and alcohol abuse.

2. Statement of General Objectives The general objectives of the Board of Supervisors in adopting this Ordinance and Policy include the following:

- (a) Ensuring that the workplace is free from the effects of drug and alcohol use;
- (b) Establishing effective means to detect and deal with drug and alcohol abuse while respecting rights of township employees; and
- (c) Complying with applicable Federal and State laws and regulations.

3. Regulations Concerning Use, Possession or Distribution of Alcohol or Prohibited Substances

- (a) No employee of the Township of Farmington shall use, consume, possess, sell, distribute or receive alcohol and/or illegal drugs or substances ("prohibited substances"), nor shall any employee of the Township of Farmington distribute or sell prescription drugs while on or within property of the Township of Farmington and/or engaged in the course of his or her employment. Violation of these rules by any employee shall subject the employee to discipline, up to and including discharge, subject to applicable provisions and procedures of a collective bargaining agreement. Illegal drugs and prohibited substances shall include prescription medication for which the employee does not have a valid prescription.

- (b) The Township of Farmington reserves the right, upon reasonable suspicion or other good cause, to search lockers situated upon its premises and made available for use by its employees.
- (c) Any employee refusing to consent or cooperate with a reasonable search or investigation will be relieved of duty and removed from township property or workplace and will be subject to discipline, up to and including discharge, for insubordination.
- (d) Prescription drugs and medications should be kept in their original container identifying the drug, dosage, date of prescription and physician. Employees shall notify their foreman or supervisor if they are taking prescription medications which might impair the employee's working ability or alertness.
- (e) Employees are also expected not to engage in any off-duty or off-premises drug or alcohol-related conduct which may affect their work performance.
- (f) No employee shall be under the influence of alcohol or of any prohibited substance while upon or within property of the Township of Farmington or engage in his or her employment. Violation of this rule shall subject the employee to discipline up to and including discharge, as set forth in subparagraph (a), above.

4. Adoption of DOT Regulations Mandating Drug and Alcohol Testing
The Board of Supervisor hereby accepts its obligations under the Omnibus Transportation Employee Testing Act of 1991 (Act) and regulations of the U. S. Department of Transportation (DOT) as they may be amended. The regulations and Act require drug and alcohol testing of those employees of the Township of Farmington holding commercial driver's licenses and those persons applying for positions requiring such licenses. This Ordinance is adopted to implement a Policy required under said DOT regulations as presently found in 49 CRP Part 40, which shall apply without being fully recited herein. DOT Regulations establish procedures governing the conduct of breath alcohol testing (BAT), including screening and confirmation tests, and establish standards to be followed by BAT technicians conducting tests under said regulations, the Board of Supervisors expects that breath alcohol technicians will conduct tests and their operations in accordance with applicable DOT regulations.

5. Mandatory Drug and Alcohol Testing Required The Board of Supervisors hereby establishes a mandatory drug and alcohol testing program as is required under DOT regulations and the Omnibus Transportation Employee Testing Act of 1991. This Policy shall apply to all employees of the township holding commercial driver's licenses and to all persons applying for employment positions with the Township of Farmington which require commercial driver's licenses. Testing shall include breath alcohol and urine testing. Testing samples shall be analyzed for at least the following substances: alcohol, marijuana (THS Metabolite), cocaine, amphetamines, opiates (including heroin) and phenylcyclidine (PCP), subject to future amendment of DOT regulations. All such testing shall be conducted in accordance with the provisions of this Policy.

6. Types of Drug and Alcohol Testing Drug and alcohol testing required under this Policy shall be as follows:

- (a) Pre-Employment Testing All applicants for employment positions with the Township of Farmington shall be testing for alcohol and drugs prior to commencing employment with the township. A driver applicant testing positive for alcohol or drugs will not be considered for employment with the Township of Farmington.
- (b) Random Testing Each year commencing 1995, the Township of Farmington shall use a random process based upon Social Security numbers to select at least fifty percent (50%) of its employees holding commercial driver's licenses (CDL Drivers), who shall be tested for the use of controlled substances. Additionally, at least twenty-five percent (25%) of the Township of Farmington CDL Drivers shall be randomly tested for alcohol use in the first year of this policy. The annual alcohol testing rate in future years shall, under DOT regulations, be based upon the percentage of violations (defined as alcohol tests 0.04% or greater and refusals to test) in the preceding year, such rate to be either 10%, 25%, or 50%. Drivers selected on a random basis for drug abuse testing shall be required to supply a urine sample. Drivers selected on a random basis for alcohol testing shall be required to undergo breath alcohol testing. Notification of random testing will be given to employees immediately prior to the testing; should an employee not be present at the time he or she is selected, notification will be given to the employee upon his or her return to the workplace.
- (c) Periodic Testing Should annual or periodic medical examinations of CDL Drivers become mandatory, the Township of Farmington will test each driver for drug and/or alcohol use during such annual or periodic medical examinations.

- (d) Reasonable Suspicion Testing Reasonable Suspicion testing shall be conducted when a trained supervisor observes behavior or appearance of an employee subject to this Policy which is characteristic of alcohol misuse. Conduct giving rise to reasonable suspicion under this subparagraph must be witnessed by a supervisor of the employee who has received training in detection of probability of drug or alcohol use by observation of a person's behavior. If possible, a supervisor other than a township supervisor, roadmaster or the township secretary should immediately notify a supervisor, roadmaster or township secretary, although availability of such official shall not be deemed a prerequisite for the conduct of reasonable suspicion testing if the supervisory employee witnessing such conduct has previously obtained such training.
- (e) Mandatory Post-Accident Testing Drivers shall be subject to drug and alcohol testing as soon as is practicable after a commercial vehicle accident. For purposes of this subsection, an accident is defined as a collision involving either (1) a fatality; (2) bodily injury to any person which requires that person to be transported from the collision scene for medical treatment; (3) damage to any vehicle which requires that vehicle to be towed from the scene; or (4) the driver's receipt of a citation for a moving violation of State or local law arising from the collision. In no case shall an alcohol test required under this subsection be conducted later than eight (8) hours after the collision, nor shall a drug test required under this subsection be conducted later than thirty-two (32) hours after the collision. No driver subject to testing under this subsection shall consume alcohol from the time of the incident until such time as the tests required have been conducted. If, as a consequence of a collision, a CDL driver is seriously injured and cannot provide a specimen at the time of the collision as set forth above, the employee must provide the necessary authorization to the township to obtain hospital records and other documents which would indicate whether there were any prohibited substances or alcohol in the employee's system at the time of the collision and/or post-collision testing.
- (f) Followup Testing Any CDL driver who has returned to duty after a positive alcohol or drug test shall be subject to unannounced follow drug and alcohol testing for a period of up to 60 months following the employee's return to duty. A minimum of six (6) unannounced followup tests must be conducted in the first twelve months after the employee returns to duty, and the Board of Supervisors or its designee may require unannounced followup tests continuing for a period up to 60 months following the employee's return to duty.

- (g) Return to Duty Testing Should the Township of Farmington offer a CDL driver re-employment or a return to duty after the CDL driver has been referred to an alcohol and/or substance abuse professional for treatment and the CDL driver has participated in all recommended treatment, the CDL driver shall be tested for alcohol and prohibited substances prior to being returned to duty and, to be eligible to return to duty and employment, the CDL driver must test negative for both alcohol and prohibited substances.

7. Prompt Submission for Testing Employees shall appear at the proper facility and submit for testing required under this Policy within two(2) hours after being notified that they are obligated to submit for such random, reasonable suspicion, post-accident, followup or return to duty testing.

8. Refusal to Test and Uncompleted Tests

- (a) Refusal by an employee to submit to drug and alcohol testing required under this Policy shall subject the employee to discipline, up to and including discharge at the discretion of the Board of Supervisors.
- (b) Refusal by an employee to submit to testing required under this Policy shall be deemed to include any act or omission which prevents, thwarts or frustrates the objectives of this Policy and the requirements imposed under DOT regulations, included but not limited to the following:
(1) refusal to submit in timely fashion to testing as required under this Policy; (2) refusal or failure by the employee to complete, sign or initial the required breath alcohol testing form; (3) refusal or failure without good cause to provide breath; (4) refusal or failure without good cause to provide an adequate amount of breath to allow proper testing; and/or (5) failure or refusal to otherwise cooperate with the testing process in a way which prevents the completion of the test.
- (c) In accordance with 49 CFR 40.69, should the Township of Farmington be advised that a CDL employee has attempted and failed to provide an adequate amount of breath, the Board of Supervisors, itself or through its designee, shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the Board, concerning the employee's medical ability to provide an adequate amount of breath.

(i) If the physician determines, in his or her reasonable medical judgment, that a medical condition has or, with a high degree of probability, could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the Board of Supervisors a written statement of the basis for his or her conclusion.

(ii) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth above, the employee's failure to provide an adequate amount of breath shall be regarded by the Board of Supervisors as a refusal to take a test, in which event the employee shall be subject to discipline up to and including discharge for refusal to submit to testing. The licensed physician shall provide to the Board a written statement of the basis for his or her conclusion.

9. Testing Forms Prescribed The Board of Supervisors hereby adopts for use in conducting the drug and alcohol testing program established under this Policy such forms as are prescribed by the U. S. Department of Transportation and/or licensed testing establishments.

10. Precautionary Measures

- (a) Should an employee's behavior or appearance suggest to his or her supervisor misuse of alcohol or prohibited substances and a test cannot be administered immediately, the employee shall be removed from performing safety-sensitive duties for at least eight (8) hours, and for 24 hours in the case of CDL drivers.
- (b) Employees who have any alcohol concentration (defined as 0.02% or greater) in their breath when tested just before, during or after performing safety-sensitive functions, shall be removed from performing such duties for eight hours and, in the case of CDL drivers, for at least twenty-four hours, or until another breath test is administered and the result is less than 0.02%.

- (c) Should a CDL driver's test results be positive for alcohol and/or drugs, the employee shall not engage in the following activities until such time as the employee submits to another test which indicates the absence of alcohol and prohibited substances in the employee's system: operate commercial vehicles, load or unload commercial vehicles, ride in a commercial vehicle or repair a commercial vehicle.

11. Notification of Test Results The Township of Farmington shall notify its CDL drivers and driver-applicants of the results of tests conducted pursuant to this Policy. Those persons testing positive for alcohol and/or prohibited substances shall also be advised specifically as to what drugs or amount of alcohol was discovered present in their system in the testing.

12. Cautionary Measures Regarding Prescriptions Whenever a CDL employee subject to this Policy receives a prescription, a form should be completed by the employee's attending or prescribing physician and provided to the employee, stating whether or not the prescribed medication will affect the individual's driving ability and whether the prescribed medication would appear or be reflected on a drug test.

13. Effects of Positive Test Results An employee whose results of drug and alcohol testing under this Policy establish existence in the employee's body system of 0.04 % alcohol content or of a prohibited drug or substance shall be deemed to have violated township policy regarding alcohol and drug abuse. Upon the first such positive test result, an employee shall be referred to mandatory alcohol and/or drug rehabilitation treatment. An employee who participates as required in such treatment program and who successfully completes followup or return to duty testing shall be returned to employment without further discipline. An employee who refuses or fails to participate as required in referred rehabilitation treatment shall be subject to further discipline, up to and including discharge, and shall not be returned to duty. Any further instance of positive test results for alcohol and/or prohibited substance as defined above, or an employee's failure to submit to testing as defined above shall subject the employee to discipline, up to and including discharge.

14. Maintenance of Records

- (a) All records relating to administration and results of the township alcohol and drug testing program shall be maintained by the township for a minimum of five (5) years, subject to the requirements of 49 CFR 40.83.

- (b) The Township of Farmington shall retain a Medical Review Officer who shall be a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders, to interpret results of alcohol and drug testing in accordance with DOT regulations.
- (c) The Township of Farmington shall be the sole custodian of individual test results and shall retain reports of test results for a minimum of five (5) years.
- (d) The Township of Farmington shall retain in a CDL driver's personnel file information indicating only the following:
 - (i) that the employee submitted to a drug and/or alcohol test;
 - (ii) the date of such test;
 - (iii) the location of such test;
 - and (v) whether the test finding was "positive" or "sub-negative".
- (e) The Township of Farmington shall also maintain an annual (calendar) year summary of the records related to the administration and results of the testing program for its drivers under DOT regulations.

15. Confidentiality of Records No person may obtain the individual test results retained by the Township of Farmington and no results shall be released to any person or entity, without first receiving written authorization from the tested individual, unless otherwise required by law.

16. Employee Assistance Program (EAP)

- (a) The Township of Farmington shall establish an Employee Assistance Program which shall include the following:
 - (i) An educational and training component for drivers, addressing alcohol and controlled or prohibited substances;
 - (ii) An educational and training component for supervisory personnel, addressing alcohol and controlled substances; and
 - (iii) A written statement on file and available for inspection, outlining the township Employee Assistance Program.
- (b) The Employee Assistance Training Program for all CDL drivers and supervisory personnel will consist of at least sixty (60) minutes of training, and the training program shall include the following elements:

- (i) Effects and consequences of alcohol and/or controlled substance use on personal health, safety and the work environment;
- (ii) The manifestations and behavioral causes that may indicate alcohol and/or controlled substance use or abuse; and
- (iii) Documentation of training given to drivers and supervisory personnel.

17. Non-Contractual Arrangement This Policy and other documents executed or delivered pursuant to or in connection with this Policy are not intended to confer any contractual or rights or claims in favor of the Township of Farmington employees. Any failure to implement the Policy or any part thereof, any variation, addition or omission to or of the procedures set forth in the Policy shall not confer any contractual or other right or claims in favor of the employees which are not otherwise conferred by law.

18. Reservation of Rights The Board of Supervisors reserves the right to add to, change or modify this policy at its sole discretion, and to discipline or discharge any employee at any time, except if those rights are restricted by law or by any applicable collective bargaining obligation or agreement. The Board of Supervisors and the Township of Farmington accept no liability in the event of any alleged breach of any of the procedures or provisions set forth in this Policy. The Board of Supervisors encourages every employee to voluntarily comply with this Policy, for his or her own safety as well as the safety of others. Because of its importance, the Board of Supervisors shall take all necessary steps to insure implementation of compliance with the Policy.

19. Limitations and Severability This Policy will be limited by any applicable Federal or State law or regulations and by municipal ordinances, and by applicable collective bargaining agreements. Any portion of this Policy which directly conflicts with such a law, ordinance, regulation or agreement will not be implemented in that jurisdiction or bargaining unit, but shall be severable and shall not affect the validity or enforcement of the remainder of the Policy.

ADOPTED this 5 th day of Feb., 1996 at a meeting of the Board of Supervisors of the Township of Farmington held on the 5 th day of Feb., 1996.

ATTEST:

Maddie B. Smith
Township Secretary

[Signature]
Supervisor

Wallace A. Kemp
Supervisor

[Signature]
Supervisor