MBCI DRUG & ALCOHOL POLICY

MISSISSIPPI BAND OF CHOCTAW INDIANS

DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

PURPOSE OF POLICY

The Mississippi Band of Choctaw Indians (the "Tribe") is committed to providing a drug-free, safe and healthy workplace environment for all tribal employees and visitors. The Tribe recognizes the health risks associated with controlled substance use and alcohol misuse and is committed to supporting employees who seek treatment for these conditions. The Tribe also recognizes that controlled substance use and alcohol misuse diminish workplace safety and undermine the Tribe's ability to reach its goals. The Tribe has established a policy and set of procedures for drug and alcohol testing to increase safety and deter and detect the use of controlled substances and alcohol by tribal employees. Compliance with this policy is considered a condition of employment.

The Drug and Alcohol Testing Policy addresses application, prohibited conduct, authorized use of prescribed medicine, enforcement through testing and searches, and discipline for policy violation.

The objectives of this Policy are:

A. To create and maintain a safe, drug-free working environment for all employees
B. To encourage any employee with a dependence on, or addiction to alcohol or other drugs, to seek help in overcoming the problem.
C. To reduce problems of absenteeism, tardiness, carelessness, and/or other unsatisfactory characteristics related to job performance.
D. To reduce the likelihood of incidents of accidental personal injury and/or damage to tribal property;
E. To reduce the likelihood that tribal property will be used for illicit drug activities;
F. To protect the reputation of the Tribe, its government and businesses and its employees.

APPLICABILITY OF THIS POLICY

This policy and drug and alcohol testing program shall apply to:

1) all current or future government services division employees, including appointed officials;

2) all current or future employees of Ordinance 56 enterprises;

3) all persons who receive stipend payments for services;

4) all contract employees; and

5) all applicants for employment in the above categories.

This policy does not apply to;

1) employees in FTA or DOT or SAFETY-SENSITIVE FUNCTION positions that are subject to commercial driver's license requirements and are covered under a separate policy; and

2) Choctaw Resort Development Enterprise or any other Enterprise whose Board has adopted a separate Drug and Alcohol Testing Policy.

All employees and job applicants must receive notice and review this policy and sign an agreement to be bound by its terms as a condition of continued employment. Those employees who refuse to participate in the Tribe's drug and alcohol testing program will be subject to immediate termination. Job applicants who refuse to participate in the drug and alcohol testing program will be eliminated from any further consideration for employment.

Elected officials of the Mississippi Band of Choctaw Indians will participate in the testing procedures outlined in this Drug and Alcohol Testing Policy and Procedure. The test results of elected officials who participate shall be reported to the Human Resources Office for inclusion in the officials' personnel file and to the Secretary-Treasurer of the Tribe and the Chief.

This policy applies to any tribal premises, work location and anywhere else the employee is while being paid by the Tribe to perform assigned work, including, but not limited to, any vehicle, equipment, property or office which is owned, leased, serviced, controlled, or used by the Tribe, including employee-owned vehicles on property owned, leased, used or controlled by the Tribe.

POLICY

A. Prohibited Conduct. The Tribe will not tolerate any drug or alcohol use which imperils the safety, health and well being of its employees or threatens or negatively impacts the Tribe, its government or businesses. The following conduct is prohibited and will result in disciplinary action, up to and including termination:

1. **Alcohol:** The unauthorized use, sale, manufacture, distribution, possession, storage, or dispensing alcohol on tribal premises or land of the Mississippi Band of Choctaw Indians, in the workplace, or while on tribal business or while using tribally supplied vehicles or equipment wherever located.

2. **Controlled Substances/Illegal Drugs:** Using, selling, manufacturing, distributing, possessing, storing, or dispensing controlled substances or illegal drugs or drug paraphernalia on tribal premises or land of the Mississippi Band of Choctaw Indians, in the workplace, or while on authorized business travel or while using tribally supplied vehicles or equipment wherever located.

3. Under the InÀuence While at Work: Being under the influence of an unauthorized controlled substance, illegal drug or alcohol, during working hours or while on tribal premises, in the workplace, or while on authorized business travel or while using tribally supplied vehicles or equipment wherever located.

a. "Under the influence" is a condition in which a person is affected by a drug or by alcohol in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion, a scientifically valid test, such as urinalysis or blood analysis, and in some cases by the opinion of a layperson. In the case of a blood alcohol test, it is defined as a blood alcohol content (BAC) of .04. In the case of a controlled substance or illegal drug, it is defined as having a detectable level as a result of a positive confirmed urine test.

4. **Employee Treatment Programs:** Failing to meet the requirements of a drug or alcohol treatment program that the Tribe requires an employee to complete as a condition of employment.

5. Workplace Search or Inspection: Interfering with a workplace search or inspection under this policy.

6. **Impaired Job Performance or Attendance:** Alcohol misuse or controlled substance use, even though not during working hours or in the workplace, which impairs job performance or attendance.

7. **Testing Procedures:** Failing any drug or alcohol test or engaging in any other conduct prohibited under the Tribe's drug or alcohol testing procedures.

8. **Prescription Drug Use:** Being under the influence of legally prescribed drugs in the workplace that prevent an individual from performing the essential functions of his or her job or where that individual poses a direct threat while using those drugs.

9. **Other Misconduct:** Any other conduct that the Tribe determines to be inconsistent with providing a drug-free and alcohol-free workplace.

B. Authorized Use of Prescribed Medicine.

1. Employees may maintain their prescription drugs on tribal premises provided the drugs have been prescribed by a doctor for the person in possession of the drugs. Employees must keep all prescribed medicine in its original container, which identifies the drug, date of prescription, and prescribing doctor.

2. Employees using prescription drugs or over-the-counter drugs are responsible for being aware of any potential effects that such drugs may have on their judgment or ability to perform their duties. Employees undergoing prescribed medical treatment with any drug which may alter their behavior or physical or mental ability must report this treatment to the supervisor who will determine whether the employee's job assignment should be temporarily changed during the period of treatment. Supervisors who have questions regarding an employee's prescription drug use and whether an employee's job assignment should be changed, should contact the Human Resources Office as the Tribe retains the right to judge the effect of the legal drug on the job

performance and to restrict the employee's work activity or presence at the workplace accordingly.

3. Inquiries regarding prescription drug use by employees should be made only as authorized by the Human Resources Office.

C. Types of Drug and Alcohol Testing. The Tribe reserves the right, as set forth below, to require its employees and job applicants to consent and submit, as a condition of continued or prospective employment, to breath, saliva, urine and/or blood tests, or other examinations to deter and detect the use of controlled substances and alcohol by tribal employees. These types of tests may be utilized under the following circumstances:

1. **Pre-Employment**. All job applicants who seek a position with the Tribe are subject to a pre-employment drug and alcohol test. Applicants who have been offered employment will be required to consent and submit to a drug and alcohol test to determine fitness for employment as a condition prior to employment. All job applicants must pass the drug and alcohol test to be considered for employment. No applicant may be scheduled to work until the drug and alcohol testing has been completed and results obtained. Refusing to submit to testing will result in any offer of employment being withdrawn.

2. **Random.** All current tribal employees shall be subject to random testing for controlled substances and/or illegal drugs and alcohol. Random tests will be spread reasonably throughout the calendar year and employees will not be notified when random testing will be given. The selection of employees will be made by a random selection process such as a computer-based random number generator that is matched with the employee's identification number or other comparable number identifier. All covered employees will have an equal chance of being tested each time selections are made, even if that employee has earlier been selected for a random test. However, alternates may be used when selected employees are on vacation, sick or personal leave.

3. **Post Rehabilitation.** An employee who has a chemical dependency and has completed a rehabilitation program shall also be required to consent and submit to an alcohol and drug test as a condition of reinstatement upon completion of a drug or alcohol treatment or counseling program or return to work after being granted a leave of absence. The employee shall also be subjected to post-rehabilitation monitoring by unannounced testing for a period up to one year thereafter as well as random testing.

4. **Post Accident.** A drug and/or blood alcohol test will be required for any employee who suffers or contributes to a work related accident requiring medical treatment away from the workplace for himself or another employee or involves property or equipment damage under circumstances in which the employee may have contributed to the accident. Such testing shall occur as soon as possible after the accident. Employees subject to post accident testing must remain readily available for such testing or will be deemed to have refused to submit to testing, except that an employee may leave the scene for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. In no event will necessary medical attention for injured people be delayed.

An employee who fails to promptly report an accident shall also be subjected to post-accident monitoring by unannounced testing for a period of six months following the report, and other disciplinary action as warranted.

5. **Reasonable Suspicion.** An employee shall be subject to being tested for drugs or alcohol when the employee's supervisor, department head, Human Resources Officer or Tribal Safety Officer has reasonable suspicion to believe the individual has used illegal drugs or a controlled substance, or in the case of alcohol, whether the individual has used alcohol and that use is affecting the employee's job performance. A decision to conduct reasonable suspicion testing must be based on specific aspects of the performance, appearance, behavior, speech, or body odors of the employee consistent with drug or alcohol use.

D. Testing Procedures. All drug and alcohol tests will be conducted in accordance with privacy and confidentiality protections and safety and security procedures. In all instances, except for post-accident testing done by a law enforcement officer in the course of investigation of an accident, the employee or applicant must sign a Drug and Alcohol Test Consent form. Refusal to submit to drug and/or alcohol testing, retesting or otherwise comply with all testing procedures and requirements is equivalent to a positive test result and is considered a serious act of insubordination, which will result in disciplinary action as described in Section G.

1. **Pre-Employment Testing Procedures.**

a. The Human Resources Office is responsible for advising all job applicants that they must submit to a drug and alcohol screen and successfully pass the screen before being hired. Notice of the Tribe's pre-employment testing policy must be prominently displayed at the Human Resources Office. Supervisors and managers should refer any questions from applicants regarding the nature of the drug and alcohol testing to the Human Resources Office.

b. Once an applicant is offered a position, he or she must submit to a drug and alcohol testing per directions of the Human Resources Office.

c. The applicant will be tested at a designated site for pre-employment drug and alcohol screening.

d. If the applicant fails to report for testing at the stated time and location, this will be considered as a refusal to submit and the offer of employment shall be rescinded.

e. If the applicant is unable to provide a sample for testing for (any reason) after two attempts within four (4) hours, this will be considered as a refusal to submit and the offer of employment shall be rescinded.

f. Upon receipt of the initial drug screen results, the Human Resources Office will notify the applicant and appropriate management personnel of the initial results.

g. Should the applicant test positive for a controlled substance, the specimen will be sent to an independent testing facility to verify the results.

h. Should the applicant test positive for alcohol, a second test to determine the presence of alcohol will be conducted from the same sample.

i. Applicants who do not pass the confirmation drug and/or alcohol screen will be informed by telephone by the Human Resources Office that they are being denied employment on the basis of a positive drug or alcohol screen result. The individual who notifies the applicant of the results must sign his or her name and date at the bottom of the Toxicology Report to acknowledge the applicant has been advised.

j. Applicants who fail the drug and/or alcohol screen or fail to appear for the drug and/or alcohol screen at appointed time will not be eligible for employment for one (1) year from the date displayed on the Drug and Alcohol Test Consent form. The exception to these criteria would be if the applicant has proof to show he has completed a drug/alcohol rehabilitation program or is undergoing drug/alcohol rehabilitation. In these instances the applicant would be subject to another drug and alcohol screening in accordance with this policy.

2. **Random Drug and Alcohol Testing Procedures.**

a. Each employee will be required to submit to random drug and alcohol testing through a computer-generated process of selecting employees as a condition of continued employment.

b. The random drug testing is spread reasonably through a 12-month period.

c. An employee may be tested more than once a year under this program because the selection is random.

d. Employees tested under the random program are not under suspicion of taking drugs or use of alcohol and are selected randomly.

e. When an employee is notified of selection for random testing, he or she must proceed immediately to the designated testing site, but not more than one (1) hour from the time of notification. Prior to the testing the Human Resources personnel or other designated personnel at the testing site will explain the specimen collection procedures to the employee.

f. The method of testing will be: non-instant oral fluid/saliva screen for use of illegal drugs and instant oral fluid/saliva for initial alcohol screen and blood

for confirmation alcohol screen.

g. Should the employee test positive for a controlled substance, a second, confirmation test will be administered and sent to an independent testing facility to verify the results.

h. Should the employee test positive for alcohol when the oral test is administered, a medical technician at the testing site will evaluate him and samples of blood will be taken and sent to an independent testing facility to verify the results.

i. If there is a positive result, the Tribe will make the necessary arrangements to get the employee to his home either by a member of the family, Tribal security or other transportation.

j. Should the employee test positive for drugs or alcohol, the Human Resources Officer or Enterprise shall be immediately notified. Human Resources or the Enterprise officials shall have full authority to place the employee on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.

k. The Human Resources Office shall investigate any case involving positive drug or alcohol tests, laboratory test results, and doctor's reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.

l. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.

3. **Post-Rehabilitation Testing Procedures.**

a. An employee is required to consent and submit to an alcohol and drug test as a condition of reinstatement to employment upon completion of a drug or alcohol treatment or counseling program or return to work after being granted a leave of absence.

b. If the returning employee fails to report for testing at the stated time and location, this will be considered as a refusal to submit and shall be terminated.

c. If the returning employee is unable to provide a sample for testing after two attempts within four (4) hours, with no plausible medical explanation for the failure, this will be considered as a refusal to submit and is subject to termination.

d. Upon receipt of the initial drug screen results, the Human Resources Office will notify the returning employee and appropriate management personnel of the initial results.

e. Should the returning employee test positive for a controlled substance, the specimen will be sent to an independent testing facility to verify the results.

f. Should the returning employee test positive for alcohol, the employee may have a confirmation blood test to determine the presence of alcohol. A medical technician will evaluate him or her and samples of blood will be taken and sent to an independent testing facility to verify the results.

g. Returning employees who test positive for drugs or alcohol after confirmation testing are in violation of this policy and are subject to disciplinary action as described in Section G.

h. After successfully completing the post-rehabilitation testing, the employee shall also be subjected to post-rehabilitation monitoring by unannounced testing for a period up to one (1) year after returning to work, as well as random testing.

4. **Post Accident Testing Procedures.**

a. An employee is required to submit to both a drug and alcohol test when the accident requires medical treatment away from the workplace for himself or another employee or involves property or equipment damage that is estimated to exceed Two Hundred Dollars ($200.00) under circumstances in which the employee may have contributed to the accident.

b. Employees must remain readily available for testing after an accident, except that an employee may leave the scene for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. In no event will necessary medical attention for injured people be delayed.

c. Drug testing will be conducted as soon as possible after the accident, but in no case more than thirty-two (32) hours. If the post accident drug test is not administered within that timeframe, there shall be no further attempts to have the test performed on the employee and the records shall reflect why no test was administered.

d. Alcohol testing must be administered within eight (8) hours following the accident. If a test is not administered within two (2) hours, a written

statement must be prepared stating the reasons for the delay. If the test is not performed within eight (8) hours of the accident, there shall be no further attempts to administer an alcohol test and the records shall reflect why no test was administered.

e. Employees are prohibited from using alcohol for eight (8) hours after an accident or until an alcohol test is given, whichever is sooner.

f. If a local law enforcement officer conducts a drug and/or alcohol test after an accident in compliance with federal, state or local law and provides the results to the Tribe, the results will satisfy the post accident testing requirements.

g. If the test results are negative, the employee will proceed to the appropriate medical treatment facility for their injury or may return to work.

h. If the initial drug test results are positive for a controlled substance, a second confirmation test will be administered and sent to an independent facility to verify the results.

i. If the initial alcohol test results are positive for alcohol, the employee shall be required to give samples of blood which will be sent to an independent testing facility to verify the results.

j. The Tribe will make the necessary arrangements to get the employee to his home either by a member of the family or other transportation.

k. Should the employee test positive for alcohol or drugs, the employee will be placed on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.

l. The Human Resources Office will investigate any case involving positive drug or alcohol tests, considering witness statements, laboratory test results, Security and doctor's reports or law enforcement reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.

m. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.

n. If the tests are negative, the employee's supervisor will review the employee's behavior on the date of the incident and decide whether any disciplinary action is warranted. For example, an employee may have taken too much of a prescribed drug, or may have not followed the physician's directions while taking the drug and, as a result, the employee's behavior was altered and it interfered with his ability to perform his work properly. If the employee's supervisor decides not to take any disciplinary action, the employee will be allowed to return to work with full pay from, and including the date on which he or she was suspended.

5. **Reasonable Suspicion Testing Procedures.**

a. Reasonable suspicion is based on objective facts sufficient to lead a prudent person to conclude a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreased in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable suspicion" situations.

b. If an employee's actions indicate he or she may be under the influence of alcohol and/or a controlled substance, the employee's supervisor, department head, Tribal Security Officer or Human Resources Officer will observe the employee's behavior.

c. When feasible, it is preferable that the employee's conduct or appearance that indicates that the employee may be under the influence of drugs, alcohol or a controlled substance be witnessed by at least two individuals.

d. A determination that a reasonable suspicion exists will be based on specific, contemporaneous, or articulable observations concerning the performance, appearance, behavior, speech or body odors of the employee. For drug tests, the observations may include indications of the chronic and withdrawal effects of controlled substances.

e. The person(s) who makes the determination that reasonable suspicion exists to conduct a drug or alcohol test shall not conduct the test.

f. If the behavior is out of the ordinary or is preventing the employee from properly performing the job and creates the reasonable suspicion that the employee is under the influence of drugs and/or alcohol, the employee's supervisor, department head, Tribal Security Officer or Human Resources Officer will tell the employee that his condition is out of the ordinary or interferes with properly performing his or her duties. The employee will be asked if he or she has any explanation for their unusual conduct or behavior.

If there is no reasonable or medically plausible reason for the conduct or behavior, the employee will be requested to report to the designated testing location or designated medical facility for a drug and/or alcohol test.

g. Drug testing will be conducted as soon as possible after the determination that reasonable suspicion exists to support a drug and, but in no case more than thirty-two (32) hours. If the reasonable suspicion drug test is not administered within that timeframe, there shall be no further attempts to have the test performed on the employee and the records shall reflect why no test was administered.

h. Alcohol testing should be administered within two (2) hours, but no more than eight (8) hours, following the reasonable suspicion determination. If a test is not administered within two hours, a written statement must be prepared stating the reasons for the delay. If the test is not performed within eight (8) hours of the accident, there shall be no further attempts to administer an alcohol test and the records shall reflect why no test was administered.

i. An employee must adhere and comply with all testing procedures and requirements of the Tribe and testing facility. Should the employee refuse to take the test or comply with all testing procedures, he or she will be advised their refusal to take the test or comply with procedures subjects them to disciplinary actions as described in Section G. Refusal to submit to drug testing is equivalent to a positive test result and is considered a serious act of insubordination, which will result in termination of employment. The employee will be read the following statement:

"We have cause to believe that you are under the influence of alcohol or a controlled substance. After being notified of the contents of this policy, you are directed to submit to an immediate evaluation, including laboratory tests, at a tribally designated facility, or be subjected to discipline, including but not limited to the penalty of termination."

j. The employee must sign the necessary consent form.

k. A written record will be made of the observations leading to the test and signed by the Supervisor or other tribal official or witnesses who make the observations, within twenty four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier.

l. An employee who consents to be examined and tested will be suspended pending investigation if the outcome of the initial drug or alcohol test is positive.

m. Should the employee test positive for a controlled substance, a second confirmation test will be administered and sent to an independent testing facility to verify the results.

n. If the initial alcohol test results are positive for alcohol, the employee shall be required to give samples of blood will be taken and sent to an independent testing facility to verify the results.

o. Should the employee test positive for alcohol or drugs, the employee will be placed on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.

p. The Tribe will make the necessary arrangements to get the employee to his home either by a member of the family, a co-worker or other transportation.

q. The Human Resources Office will investigate any case involving positive drug or alcohol tests, considering witness statements, laboratory test results, or doctor's reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.

r. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.

s. If the tests are negative, the employee's supervisor will review the employee's behavior on the date of the incident and decide whether any disciplinary action is warranted. For example, an employee may have taken too much of a prescribed drug, or may have not followed the physician's directions while taking the drug and, as a result, the employee's behavior was altered and it interfered with his or her ability to perform his work properly. If the employee's supervisor decides not to take any disciplinary action, the employee will be allowed to return to work with full pay from, and including the date on which he or she was suspended.

E. Consent Required. No test, search or inspection will be conducted without consent of the employee at the time the test, search or inspection is requested. No breath, saliva, urine/ blood test will be conducted without a signed written consent form. An employee's or applicant's consent to submit to drug and alcohol testing or a search or inspection is required as a condition of employment. Refusal of any employee to consent to a test, search or inspection, or sign a written consent form when requested is sufficient grounds for termination.

F. Searches and Inspections.

1. The Tribe reserves the right to conduct unannounced searches and inspection for drugs, drug paraphernalia or alcohol on tribal property, including tribal owned or controlled vehicles or equipment wherever located, as well as an employee's personal effects placed in such tribal property, where the Tribe suspects that property or personal effects may contain drugs, drug paraphernalia or alcohol. The Tribe also reserves the same right to search employees and their personal effects, including automobiles on tribal premises where justified by reasonable suspicion of the employee's possession of drugs, paraphernalia or alcohol.

2. All searches and inspections will be performed with concern for each employee or person's personal privacy, dignity and confidentiality. Illegal substances, drugs, drug paraphernalia or other prohibited items discovered through searches or inspections will be turned over to the proper law enforcement authorities.

3. An employee will be requested to consent to such a search or inspection. An employee's consent to search or inspection is required as a condition of employment. Refusal to consent to a search or inspection is sufficient grounds for termination.

G. Violation of the Policy; Discipline.

1. A positive test result for alcohol or any controlled substance is a violation of this policy.

   a. Any applicant who is found through drug or alcohol testing to have tested positive for an illegal drug or alcohol as indicated in Section 1.i. shall have any offer of employment withdrawn.

   b. Any employee who is found through drug or alcohol testing to have a detectable amount of an illegal drug or alcohol as indicated in Sections D.2.l, D.3.g, D.4.m or D.5.r will be subject to discipline up to and including termination <u>except</u> that, depending on the circumstances of the case and the employee involved, the employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program approved by the Tribe in lieu of, or in addition to, disciplinary action for violation of this policy. However, the offer of rehabilitation assistance shall not be made to any employee whose violation involves selling or transferring illegal drugs, or serious misconduct.

2. Any refusal to submit to a drug or alcohol test when required by this policy, in addition to being considered as insubordination, is also treated as a positive test result subject to termination pursuant to Section G.4. or withdrawal from consideration for employment if an applicant.

3. An employee or job applicant will be considered to have refused to submit to a drug test if he or she:

a. fails to appear for a test or fails to remain at the testing site until the process is complete;

b. refuses to cooperate in the testing process or procedures in such a way that prevents completion of the test;

c. adulterates or dilutes the specimen;

d. substitutes the specimen with that from another person or sends an imposter; or

e. will not sign the required forms.

4. If an employee refuses to submit to any test, or is an employee (other than an employee listed in Section G.5) and tests positive to any drug or alcohol test two (2) times, there shall be an automatic termination and the employee shall not be allowed to apply for employment for a period of one (1) year following termination.

5. The Tribe finds that employees that are employed in the following jobs are employed in safety-sensitive positions: Law enforcement personnel, fire personnel, ambulance drivers, medical providers, and equipment operators. If any of these employees violate this policy one (1) time, they shall be automatically terminated, but will be eligible for re-employment within one (1) year.

6. Employees who refuse to consent to a search or inspection when required by this policy, in addition to being considered as insubordination, are in violation of this policy and will be subject to disciplinary action, up to and including, immediate termination.

7. Any employee who is found to be in possession of drugs, alcohol, drug paraphernalia or other contraband in violation of this policy will be subject to discipline up to and including termination.

8. Any employee who is found to be under the influence of drugs or alcohol while at work is in violation of this policy and will be subject to discipline up to and including termination.

H. Enforcement of Policy.

1. The Human Resources Office shall be responsible for the coordination, implementation, application and strict enforcement of this policy. All questions about enforcement or interpretation should be directed to that Office.

2. Appropriate disciplinary action will be taken against employees who violate this policy, up to and including, termination.

3. This policy shall be enforced uniformly, and no favoritism shall be shown to any employee or applicant. Supervisors, department heads shall be held accountable for enforcement of this policy.

I. Reconsideration of a Drug or Alcohol Test Result.

1. An employee whose drug or alcohol test reported positive will be offered the opportunity at the meeting described in Sections 2.k, 3.d.,4.l or 5.q., to discuss the test results to offer an explanation and request reconsideration of the test results. The purpose of a reconsideration request will be to determine if there is any reason that a positive finding could have resulted from some cause other than drug or alcohol use. The Tribe, through its Human Resource officials, will judge whether an offered explanation merits further inquiry or reconsideration. The determination of whether further inquiry or reconsideration is warranted is solely that of the Human Resource Officer.

2. An employee whose drug or alcohol test is reported positive may be offered the opportunity to:

a. Obtain and independently test, at the employee's expense, the remaining portion of the urine specimen that yielded the positive result;

b. Obtain the written test result and submit it to an independent medical review at the employee's expense.

3. The decision whether or not to reconsider the drug or alcohol test results or conduct additional inquiries or to allow an independent test or review is final and not subject to appeal. Similarly, any decision of the Human Resource Office based on consideration of any independent testing or review by the employee shall be considered a final decision and not subject to appeal.

J. Con¿dentiality and Release of Information.

1. To preserve employee privacy, especially where matters regarding medical and personal information are involved, all coordination and investigation of suspected drug and alcohol abuse will be handled through the Human Resources Office. Information will be released only on a need-to-know basis.

2. It is the Tribe's intent to maintain strict confidentiality in matters regarding enforcement of this policy. It is the responsibility of the Human Resources Office to establish procedures for dissemination and filing of applicant test reports and to preserve the confidentiality of all records relating to drug and alcohol use by an employee.

3. Every effort will be made to limit the number of persons involved in such matters, and to restrict information or evidence generated or obtained during such actions on a need-to-know basis.

4. All information regarding drug and/or alcohol test results must be treated as confidential. The drug and/or alcohol test results must be maintained in a separate locked file in the Human Resources Office. Such information will be released only in accordance with the procedures established by the Human Resources Office.

5. Tribal representatives will not discuss interpretations of the drug and/or alcohol test results. If the employee or applicant requests a copy of the results, the Human Resources Office shall release a copy to the individual.

6. Violators of the confidentiality provision of this policy are subjected to disciplinary action, up to and including termination.

K. Assistance for Employees Who Voluntarily Seek Help for Alcohol or Substance Abuse.

1. Early recognition and treatment of chemical dependency problems is important for successful rehabilitation, economic return to the Tribe, reduced personal and family social disruption. The Tribe supports sound treatment efforts for its employees who have experienced or are experiencing drug and alcohol problems. It is the Tribe's intent to make assistance available to those individuals who voluntarily seek help.

2. Any employee experiencing problems resulting from drug, narcotic, or alcohol abuse or dependency should seek professional evaluation. No employee will be subject to disciplinary action for voluntarily requesting help due to chemical or alcohol dependency.

3. Employee requests for assistance will be treated as confidential and only those persons needing to know will be made aware of such request.

4. Unless absent under an approved leave of absence, any employee undergoing outpatient treatment or therapy will be expected to maintain satisfactory job performance and any use of controlled substances must be for prescribed medical purposes or for the purpose of treatment in accordance with a program of therapy prescribed and monitored under an approved medical program.

5. An employee who is diagnosed or evaluated as chemically dependent and is undergoing treatment for substance abuse will be allowed to use available leave to undertake rehabilitation treatment. The employee must cooperate fully with the treatment process and will not be permitted to return to work until a release from treatment is presented to the Human Resources Office certifying that the employee is rehabilitated and capable of returning to work. Employees must satisfy all requirements under the applicable leave policy. An employee who returns to work after having undergone a rehabilitation program, will be expected to comply with this policy and any prescribed after-care program. A returning employee is required to undergo post-rehabilitation testing in accordance with this policy.

L. Drug Testing Facility Quali¿cations.

1. A fully certified laboratory facility will be used to conduct all laboratory testing. The contracted external laboratory shall use state-of-the-art medical and laboratory facilities and procedures to conduct the laboratory tests.

2. The drug testing facility selected to conduct the analysis shall be certified, staffed with technically competent and experienced technicians and adheres to approved procedures to ensure proper quality control, documentation, chain-of-custody, confidentiality, collection testing and storage.

3. All procedures to ensure proper quality control, documentation, chain of custody, handling, testing and storage for specimens must be adhered to and all required forms must be completed by the proper parties.

M. Application, Modi¿cation and Interpretation. The Tribe reserves the right to interpret, change, rescind or depart from this policy as circumstances and situations change. As current laws are modified and/or otherwise changed concerning the policy set forth herein, the Tribe, as a statement of policy clarification, hereby adopts the position of complying with such modifications in principle and in practice.

The Tribe intends to apply this policy uniformly and consistently to employees. Any change, departure or addition must be approved in advance by the Director of the Human Resources Office.

The Tribe will develop and implement training for supervisors and department heads regarding the application of this policy.