

DRUG AND ALCOHOL TESTING CONTRACTOR REVIEW

PROGRAM EVALUATION AND AUDIT



January 5, 2016

INTRODUCTION

Background

The Metropolitan Council employs drivers of commercial motor vehicles that operate on public roads, and as such is required by federal regulations to conduct drug and alcohol testing within the specifications outlined by the US Department of Transportation (DOT) in Title 49 CFR Part 40. Employees who perform other safety-sensitive functions are also required by this same law to undergo such testing. In addition, it is the Met Council's policy that all employees be subject to drug testing as a precondition of employment.

The Council's HR Occupational Health Division has oversight over those testing programs, and Program Evaluation and Audit is partnering with Met Council's Occupational Health department to evaluate compliance with these regulations. The Metropolitan Transportation Services division, which oversees the Metro Mobility service, separately monitors the drug and alcohol testing of the Metro Mobility contractors.

The Metropolitan Council contracts with Minnesota Occupational Health (MOH) as its sole provider to perform pre-employment, post-accident, random screening, reasonable suspicion, return-to-duty, and follow-up drug and/or alcohol tests for its 2,927 safety-sensitive employees, which includes vehicle operators, dispatch, maintenance, transit police, and plant operators. Pre-employment tests are carried out at three MOH testing sites located in Blaine, Eagan and Saint Paul. Post-employment tests are carried out at 4 Metro Transit maintenance and transportation centers, transit police headquarters, and six Environmental Service plants.

The drug and alcohol tests are scheduled by the Department Managers (for post-employment tests) and Met Council's Human Resources department (for pre-employment tests). Test results are reported to the Drug and Alcohol Program Manager, the Designated Employee Representative (DER), the employee's supervisor, and the Medical Review Officer (MRO).

The most recent Program Evaluation and Audit review of drug and alcohol collection sites was conducted in 2013. At that time there were three providers for drug and alcohol testing. MOH became the sole provider in July 2015.

In accordance with Thrive 2040 principles, accountability at the Council includes a commitment to monitor and evaluate the effectiveness of our policies and practices toward achieving shared outcomes and a willingness to adjust course to improve performance. The Program Evaluation and Audit Department works collaboratively with the Council's HR Occupational Health Division to monitor the effectiveness of the Drug and Alcohol Program to ensure compliance with DOT regulations regarding safety sensitive employee drug and alcohol testing.

Purpose

The purpose of this audit was to determine whether MOH'S drug and alcohol testers are conducting drug and alcohol screenings in accordance with DOT regulations as stipulated in the contract and they meet the training/certification requirements for drug and alcohol screeners and can provide proof upon request.

Scope

This review was limited to verifying compliance with DOT drug and alcohol regulations and procedures.

Methodology

To determine the contractor's compliance with DOT and FTA regulations the following activities were performed:

- Three auditors performed a total 13 mock drug and alcohol tests, which included eight (62%) drug screenings and five alcohol tests (38%). Three of the drug screenings were pre-employment tests and the remaining five were random tests. All alcohol tests were random as well.
- Testing sites were selected by the Met Council's HR Occupational Health Manager
- Tests were conducted at:
Minnesota Occupational Health (MOH) sites (Blaine, St. Paul, and Eagan),
Environmental Services' Metro Plant in Saint Paul
Metro Transit garages (Heywood, East Metro, and South).
- In each case, the Auditors presented themselves as either potential new employees or current employees of Metro Transit or Environmental Services. Uniforms for bus operators and plant operators were obtained and worn to the site visits. In some cases, an auditor pretended to fail the drug or alcohol test by either feigning a "shy bladder" (thus providing no urine sample), or using mouthwash to present a false positive for alcohol.
- Mock Drug and Alcohol checklists and questionnaires obtained from the US Department of Transportation (USDOT) were used to evaluate each tester's compliance with required procedures.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

OBSERVATIONS

Water was accessible to individuals being tested during the drug screening process.

During one of eight (13%) mock drug screenings conducted, the water supply was not shut off or faucet taped. This enabled the Auditor to provide a water specimen instead of an actual specimen. Furthermore, several actual drug screenings were performed in the same restroom prior to the mock test by the same tester and based on the tester's response, water was accessible to all individuals who were screened that day.

According to 49 CFR 40.41(f)(2)(i), all sources of water within a multi-stall restroom being used for urination are to be secured, unless a monitored collection is being performed.

The Tester was not aware of this specific procedure.

Not securing the water supply may enable employees being tested to provide an adulterated specimen or obtain a negative result, when they may actually have a positive result. This could be detrimental to the Council especially for employees handling safety sensitive roles.

Shy bladder procedures were not adequately followed

In two (25%) of eight mock drug tests conducted, Shy bladder instructions provided by Testers were not adequate. In the first instance at the MOH clinic in Blaine, the Tester did not instruct the Auditor regarding the amount of water she needed after the Auditor feigned a shy bladder, instead the Auditor was instructed to use a cup at the water fountain in the lobby, and keep drinking water under the monitoring of the receptionist, until she was able to provide a specimen.

In the second instance at the St. Paul MOH clinic, the Tester notified the Auditor of the amount of water needed after her 'shy bladder' test; instructed the Auditor to drink '10 cups' of water; and to wait in the Lobby area where she would be monitored by the receptionist. The Auditor consumed 4 cups of water and waited 20 minutes before attempting to provide another specimen, however, her water intake was not measured by the Tester and the Auditor was not closely monitored during the waiting period.

49 CFR 40.193(b)(2)) stipulates that Testers should notify individuals taking the test to drink up to 40 oz. of liquids within a maximum 3-hour wait time period. Both procedures are to be adequately monitored by the Testers.

Testers who administer DOT drug screening tests must provide employees with all instructions related to their tests. If employees are not given adequate instructions, they may unintentionally fail to comply with federal regulations and may face unwarranted disciplinary action.

Clothing was not adequately checked prior to drug screening process

In three (38%) of eight mock drug screenings conducted, Auditors were told to empty their jacket pockets but not their pant or shirt pockets. In one of those cases, the Auditor was able to take a tube of lip balm which was hidden in her shirt pocket to the drug screening site.

Per 49 CFR 40.62(4), the Tester must direct the employee to empty his or her pockets and display the items found.

Not ensuring that employees empty all of their pockets could enable them to bring an adulterant into the urine collection room, which could be used in an attempt to falsify the test results and thereby delay the collection of urine that might contain a prohibited substance.

Same-Gender Tester is not readily available to perform a direct observation collection

For two (25%) of the eight Mock drug screenings performed, the tester was male and the auditors performing the Mock tests were female. When asked about how they would handle a direct observation test if warranted, the first tester stated that he would first ask the female Metro Plant Manager to assist or call MOH to send a female tester. The second tester stated that he would call MOH to send a female tester and that it would take approximately fifteen minutes for a new tester to arrive.

The Metro Plant Manager stated that while she could and has helped in monitoring employees who had a shy bladder during the 3-hour maximum time, she would not feel comfortable performing a direct observation test for an employee.

Not having a suitable same-gender observer, as required by 49 CFR 40.67(2)(g), may introduce a delay in the urine collection process. This could provide time for evidence of a prohibited substance to dissipate.

CONCLUSIONS

There are a few areas identified as areas of improvements for the Council's Drug and Alcohol testing provider. Because of the safety-sensitive operations of the Council, neglecting to correct and ensure compliance in these areas could be detrimental to the Council in many ways.

- 1. Tester(s) did not adequately secure the drug screening site**
- 2. Tester(s) did not adequately ensure that employees do not have the opportunity to take any items into the drug screening area**
- 3. Same-gendered testers were not readily available for direct observation, if warranted.**
- 4. When questioned about procedures for "shy bladder," testers knew the maximum amount of liquid that could be given but not all testers indicated the need for measuring the amount of liquid consumed.**

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council's Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council's Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

1. **(Essential) HR Occupational Health should ensure that MOH comes into compliance with all applicable regulations.**

Collection sites are critical to drug and alcohol programs since they provide the crucial information as to whether or not an individual is in violation of the policy. However, the sites tested had violations of DOT regulations. Each site should be provided with a detailed list of its deficiencies, and given 30 days to correct the deficiencies and provide documentation of steps taken to ensure future compliance with regulations.

Follow-up should be conducted by the Occupational Health division and documentation of the corrective action should be reviewed to ensure that all requirements were met to satisfy DOT regulations.

Management Response: *HR/OH Manager will notify Minnesota Occupational Health (MOH) of the findings and request they provide proof of refresher training regarding securing the water supply, proper check of clothing and monitoring of fluid intake during a shy bladder event.*

Staff Responsible: *Human Resources Manager, Occupational Health*

Timetable: *30 days (February 11, 2016)*

2. **(Significant) HR Occupational Health should work with MOH as well as Metro Plant and Metro Transit Managers to establish protocols to ensure that either same-gendered testers are scheduled for drug screenings and/or agree on a process to handle direct observations when the Tester and employee being tested are not the same gender.**

Management Response: HR/OH Manager will require a copy of MOH's protocol if a collection must be done observed and the collector is not of the same gender as the donor.

Staff Responsible: Human Resources Manager, Occupational Health

Timetable: 30 days (February 11, 2016)



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