

**Jefferson Parish Office of Inspector General**



# **EBCFD/VFC Drug Policy**

**Evaluation Report 2021-0019**

**October 10, 2024**

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## EXECUTIVE SUMMARY

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The Jefferson Parish Office of Inspector General (JPOIG) conducted an evaluation of policies and procedures pertaining to substance use among individuals involved in providing fire suppression and prevention services for the Parish, as well as related support services. The purpose of the evaluation was to: (1) Assess whether policies and procedures were in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons; (2) Evaluate whether policies and procedures satisfied state law mandates when there are anticipated negative employment actions; and (3) Determine the effectiveness of the implementation of the established policies and procedures in practice, ensuring that they are followed consistently and efficiently. The scope of this evaluation relied upon data from 01/01/2017 through 09/20/2021 and included: (1) total number of drug tests conducted; (2) total number of positive tests; and (3) negative employment action after positive tests.

This evaluation was conducted to ensure that fire service providers in Jefferson Parish maintain a drug-free workplace, thus safeguarding public safety.

The evaluation identified the following findings:

### **Positive Findings for East Bank Consolidated Fire Department (EBCFD)**

1. **Policy Incorporation:** EBCFD is governed by Personnel Rules of the East Bank Consolidated Fire Protection Districts (the “Red Book”) which incorporate permissible and mandated elements of drug testing under state law. The policies also distinguished between prohibited substances and medications.
2. **Support for Negative Employment Action:** EBCFD’s Red Book satisfied state law mandates to support negative employment action because rules incorporated use of certified laboratories and Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines to include a review by a Medical Review Officer.
3. **Effective Implementation:** EBCFD implemented drug testing in compliance with the Red Book. EBCFD maintains an adequate rate of random drug testing.

### **Findings for Volunteer Fire Companies (VFCs)**

1. **Lack of Proper Policies:** 12 of the 13 VFCs did not have policies and procedures in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons. Additionally, 6 out of 13 policies did not address the use of medication while on duty. This poses a risk of firefighters operating under the influence of drugs.
2. **Non-Compliance with Employment Action Requirements:** 10 out of 13 VFCs’ policies and procedures did not satisfy state law mandates to support negative employment action because policies did not incorporate SAMHSA guidelines and/or require use of certified laboratories and review by a Medical Review Officer.
3. **Improper Drug Testing Implementation:** 10 out of 13 VFCs did not conduct drug testing in a manner compliant with state laws and incorporated regulations, which could lead to liability issues for the VFCs and the Parish.

The JPOIG recommended the following:

### **Recommendations For VFCs**

1. **Policy Development:** Develop a thorough understanding of state law concerning drug testing and establish compliant policies and procedures similar to those of the EBCFD.
2. **Training:** Receive training about state mandates regarding drug testing of employees to ensure policies are correctly implemented.

### **Recommendations For Jefferson Parish**

1. **Contract Amendments:** Amend contracts with VFCs to include required drug testing policies and programs that comply with state law.
2. **Model Policy Development:** Develop and provide model language for drug testing policies for VFCs' adoption.
3. **Mandatory Reporting:** The Office of Fire Services should mandate that VFCs report on their drug testing practices in quarterly reports to ensure compliance.

This evaluation highlights the critical need for standardized, legally compliant drug testing policies across all fire service entities within Jefferson Parish to ensure the safety and reliability of fire suppression and prevention services. Because of the lack of compliant policies in VFCs, most VFCs could not terminate a firefighter for operating a public vehicle under the influence of drugs.

Drug testing policies and practices that do not comply with state law and incorporated regulations open the VFCs and the Parish to liability. If a firefighter injures someone or causes death, the taxpayers are ultimately liable, because VFCs are supported by taxpayer millages. These funds are public funds that can also be seized in a judgement.

## OBJECTIVES, SCOPE, AND METHODOLOGY

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The Jefferson Parish Office of Inspector General (JPOIG) conducted an evaluation of policies and procedures pertaining to substance use among individuals involved in providing fire suppression and prevention services for the Parish, as well as related support services.

The objectives of the evaluation were:

1. Testing and Identification: Assess whether policies and procedures were in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons.
2. Support for Employment Action: Evaluate whether policies and procedures incorporated state law mandates for taking negative employment action in cases where substance use or abuse is identified.
3. Effectiveness of Implementation: Determine the effectiveness of the implementation of the established policies and procedures in practice, ensuring that they are followed consistently and efficiently.

The JPOIG reviewed substance abuse and/or drug testing rules and policies across entities responsible for providing fire suppression and prevention services to residents of the Parish. This review encompassed examining the East Bank Consolidated Fire Department's Red Book as well as policies and procedures from individual fire companies operating within the Parish.<sup>1</sup> The rules and policies were assessed against relevant state and local laws for compliance with legal requirements.

The JPOIG assembled data including but not limited to the total number of drug tests conducted, total number of positive tests, and negative employment action after positive tests.

The scope of this evaluation relied upon data from 01/01/2017 through 09/20/2021.

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<sup>1</sup> The JPOIG requested current policies from all VFCs. All VFCs complied except Grand Isle who submitted none, and Marrero Estelle who submitted a policy created after the records request. JPOIG had in its possession policies for these two VFCs, and these policies were used. EBCFD policies are contained within the *Personnel Rules of the East Bank Consolidated Fire Protection District Parish of Jefferson*, aka *Red Book*, and posted online: <https://www.jeffparish.net/departments/fire--eastbank-consolidated-fire-/red-book>

## BACKGROUND

### Acronyms

CEA	Cooperative Endeavor Agreement	NFPA	National Fire Protection Agency
DOT	Department of Transportation	OSHA	Occupational Safety and Health Administration
EBCFD	East Bank Consolidated Fire Department	SAMHSA	Substance Abuse and Mental Health Services Administration
HHS	Department of Health and Human Services	VFC	Volunteer Fire Company
JPOIG	Jefferson Parish Office of Inspector General		

### Providing Fire Protection Services

The Parish is divided into nine Fire Protection Districts. Districts 1 through 3 are located on the East Bank. Districts 1 and 2 were consolidated to form East Bank Consolidated Special Service Fire Protection District. Districts 4 through 9 are located on the West Bank, Lafitte, and Grand Isle. These districts generate tax revenue to support fire prevention and suppression services.

These services are provided in one of two ways:

- Fire persons employed by the Parish; or
- Fire persons, paid or unpaid, employed by a non-profit corporation.

#### 1. Public Employees

The East Bank Consolidated Fire Department (EBCFD) is supported by revenue generated from the East Bank Consolidated Special Service Fire Protection District. The EBCFD is a department within Parish government. Fire persons employed by the EBCFD are Parish employees. These fire persons fall under the supervision of a fire chief and are part of a fire civil service system.

#### 2. Private Employees

The Parish also contracts with private, non-profit volunteer fire companies. The Parish entered into a Cooperative Endeavor Agreement (CEA) with thirteen different volunteer fire companies (VFC) who operate a total of 33 stations spread across seven fire districts serving unincorporated West Jefferson, Lafitte, Grand Isle, and River Ridge.<sup>2</sup> The CEAs are funded by revenue generated from Districts 3-9. *See* Table #1 for a listing of VFCs and date of expiration of CEA with Parish.

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<sup>2</sup> Third District VFC primarily provides fire prevention and suppression services to River Ridge, but covered territory includes sections of Metairie and Kenner.



*Table #1: Volunteer Fire Company CEA Expiration Date*

District	Volunteer Fire Company	CEA Expiration
3	Third District Volunteer Fire Department	12/01/2027
4	Lafitte-Barataria-Crown Point Volunteer Fire Company	12/01/2027
5	Terrytown Volunteer Fire Company	12/01/2027
6	Harvey Volunteer Fire Company No. 2	12/01/2027
7	Bridge City Volunteer Fire Company	12/01/2027
7	Live Oak Manor Volunteer Fire Company	12/01/2027
7	Avondale Volunteer Fire Company	12/01/2027
7	Herbert Wallace Memorial Volunteer Fire Company	12/01/2027
7	Nine Mile Point Volunteer Fire Company	12/01/2027
8	Marrero-Harvey Volunteer Fire Company	12/01/2027
8	Marrero-Estelle Volunteer Fire Company	12/01/2027
8	Marrero-Ragusa Volunteer Fire Company	12/01/2027
9	Grand Isle Volunteer Fire Company #1	12/01/2027

Fire persons, paid or unpaid, are employed by an individual VFC. These fire persons fall under the supervision of a fire chief who is employed by the VFC.

The total number of paid and unpaid employees in each fire department varies greatly from one to another. *See* Table #2 for a table demonstrating the number of fire persons for each fire department.<sup>3</sup>

*Table #2: Fire District Employee Types*

District	Fire Departments	Full-time	Part-time	Volunteer	Total
1&2	East Bank Consolidated Fire	273	0	N/A	273
3	Third District	42	24	50	116
4	Lafitte-Barataria-Crown Point	12	1	20	33
5	Terrytown	33	3	0	36
6	Harvey	30	6	23	59
7	Bridge City	10	2	12	24
7	Live Oak Manor	9	3	4	16
7	Avondale	10	4	1	15
7	Herbert Wallace Memorial	5	4	0	9
7	Nine Mile Point	10	5	16	31
8	Marrero-Harvey	24	1	8	33
8	Marrero-Estelle	21	1	15	37
8	Marrero-Ragusa	21	6	15	42
9	Grand Isle	12	2	0	14

<sup>3</sup> These numbers are from inquiry calls made to each VFC and EBCFD in May 2022.

## Legal Mandates

With some exception, there is no legal mandate for public or private employers to have a drug-free workplace policy which is supported by a program of drug testing. Both public and private employers have the discretion to establish such policies as necessary to meet operational needs and concerns. While employers have the latitude to establish drug-free workplace policies, the policies must adhere to certain legal mandates if they are to be given effect.<sup>4</sup> One exception is that public employers must drug test employees whose primary responsibility is to operate or supervise the operation of a public vehicle.<sup>5</sup>

If an employer opts to establish a drug-free workplace policy, Louisiana state law established a framework governing drug testing of employees by employers. This framework outlines the rights and responsibilities of both employees and employers regarding drug testing procedures and the consequences of testing positive for a prohibited substance. These laws apply to public and private employers. State law defines employees to include any person, paid or unpaid, in the service of an employer.<sup>6</sup> State law defines “employer” to include any person, firm, or corporation, including any governmental entity, that has one or more workers or operators employed, or individuals performing services, in the same business, or in or about the same establishment, under **any contract of hire** or service, expressed or implied, oral or written.<sup>7</sup>

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<sup>4</sup> La.R.S. 49:1005(A).

<sup>5</sup> La.R.S. 49:1015(F).

<sup>6</sup> La. R.S. 49:1001.

<sup>7</sup> La.R.S. 49:1001(4).



## I. Testing and Identification

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The JPOIG assessed whether policies and procedures were created, as permitted or required by state law, to test and identify substance use or abuse among fire persons.

If a public employer opts to implement a drug-free workplace requirement, the employer must comply with LA Revised Statute 49:1015, *Public employee drug testing*, which provides that any “public employee drug testing shall occur pursuant to a written policy, duly promulgated.”<sup>8</sup> It further provides that a public employer *may* require:

1. *Pre-employment*: A public employer may require samples from prospective employees, as a condition of hiring, to test for presence of drugs.
2. *Random drug testing*: A public employer may implement a program of random drug testing of those employees who occupy safety-sensitive or security-sensitive positions.
3. *Reasonable suspicion*: A public employer may implement a program of drug testing under other circumstances which result in reasonable suspicion that drugs are being used, or as a part of a monitoring program established by the employer.
4. *Monitoring*: Employees who return to work after completing a rehabilitation program are tested for compliance.
5. *Post-accident*: A public employer may implement a program of drug testing as a condition of continued employment, following an accident during the course and scope of employment.<sup>9</sup>

Even if a public employer does not implement a drug-free workplace requirement, LA Revised Statute 49:1015(F) still requires a public employer to test employees whose primary responsibility it is to operate or supervise the operation of a public vehicle:

(1) A public employer shall require samples to test for the presence of drugs, as a condition of hiring, from prospective employees whose principal responsibilities of employment include operating a public vehicle, performing maintenance on a public vehicle, or supervising any public employee who operates or maintains a public vehicle.

(2) A public employer shall implement a program of random drug testing of those employees whose principal responsibility is to operate public vehicles, maintain public vehicles, or supervise any public employee who drives or maintains public vehicles.

(3)(a) For the purposes of this Subsection, “public vehicle” shall include any motor vehicle, watercraft, aircraft, or rail vehicle owned or controlled by the state or by a local governmental subdivision that has adopted an ordinance as provided in Subparagraph (b) of this Paragraph.

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<sup>8</sup> La.R.S. 49:1015(D).

<sup>9</sup> La.R.S. 49:1015.

(b) For purposes of this Subsection, “public employer” shall mean the state and any local governmental subdivision that has adopted an ordinance providing that the subdivision is a public employer for such purpose. The governing authority of any local governmental subdivision may adopt such an ordinance.

(4) The provisions of this Subsection shall not be construed so as to supplant any testing program in existence that meets the requirements of the Subsection.

While LA Revised Statute 49:1015(F) applies to “public employers,” fire trucks owned by the Parish through the various fire protection districts are operated by public and private employees.

State law does not specifically address components of a drug testing program for private employers. Private employers are free to establish policies and procedures for implementing drug testing programs. However, state law does address employer and employee rights and responsibilities for both private and public employers.<sup>10</sup>

### Testing and Identification of EBCFD Rules

EBCFD fire persons are Parish employees. They are part of a fire civil service system which is governed by the “Personnel Rules of the East Bank Consolidated Fire Protection Districts” (aka the “Red Book”).<sup>11</sup>



Positive Finding #1: EBCFD is governed by rules which incorporate permissible and mandated elements of drug testing under state law. The policies also distinguished between prohibited substances and medications.

The Red Book establishes a drug-free and alcohol-free workplace. Rule VII-A, Drug and Alcohol Testing Program, of the Red Book provides:

In order to ensure a drug and alcohol free workplace, for the East Bank Consolidated Special Service Fire Protection District (“**District**”), the Parish of Jefferson (the “**Parish**”) shall require urine specimens for all prospective employees, and may require a breath sample from all prospective employees, in order to test for the presence of Prohibited Substances (defined below). The Parish shall also require urine specimens and/or breath samples from employees under those circumstances as set forth in this Rule, in order to test for the presence of Prohibited Substances (“**Drug and Alcohol Testing Program**”).

The JPOIG reviewed the Red Book to determine if it incorporated permissible and mandated elements of drug testing under state law, and if so, which types. As shown in Table #3 below, we observed the Red Book incorporates all permissible elements of drug testing under state law. Rule VII-A, Section 1.3, Drug and Alcohol Testing, provides for the following testing:

<sup>10</sup> La. R.S. 49:1011 and 49:1012.

<sup>11</sup> The Personnel Rules carry out the policies, procedures, and administration of paid fire persons of the Parish of Jefferson in the classified civil service under the provisions of La.R.S. 33:2531 *et seq.*

- Pre-employment: Each offer of employment is conditioned upon passing of a Drug test, and if required, an alcohol test.
- Random: The Parish shall implement a program of random drug and alcohol testing of employees who occupy Safety or Security Sensitive Positions.
- Reasonable Suspicion: Parish shall require urine specimen to test for Prohibited Substances under circumstances which result in reasonable suspicion that Prohibited Substances are being used.
- Monitoring: Parish shall require urine specimen to test for Prohibited Substances as part of a monitoring program to assure compliance with terms of a Conditional Employment Agreement.<sup>12</sup>
- Post-accident: Parish shall require urine specimen to test for Prohibited Substances if during course and scope of employment the employee is involved in an accident.

*Table #3: EBCFD Reasons for Drug Testing*

Fire Department	Pre-Employment	Random	Reasonable Suspicion	Monitoring	Post Accident
EBCFD	Yes	Yes	Yes	Yes	Yes

The Red Book also included definitions of prohibited substances and medications. “Prohibited Substances” is defined by Rule VII-A, Section 1.1(19) to include: (1) alcohol; (2) marijuana, cocaine, opiates, amphetamines, or phencyclidine; (3) any Drugs or pharmaceuticals which cannot be legally obtained; (4) any Drugs or pharmaceuticals which have not been legally obtained; (5) any Drug or pharmaceutical which is legally obtained but is used or consumed for a purpose or in a manner than that for which it is not prescribed or intended, or that is used or consumed by a person other than the person for whom it has been prescribed.

Additionally, Section 1.4 provides the following concerning Medications:

If an employee in a Safety or Security Sensitive Position reports to duty with any detectable quantity of a Prohibited Substance in the employee's system, or while taking any prescription medication or over the counter medication that may adversely affect the employee's safe, productive or efficient work performance, and fails to obtain medical authorization from the Parish Physician, as specified in this sub-section 1.4, he shall be subject to disciplinary action, up to and including termination.

The Red Book defined “Safety or Security Sensitive Position” to mean a position of employment characterized by critical safety and/or security responsibilities and duties of such a nature that failure to properly perform those responsibilities and duties could compromise Parish, state, or national security, and/or endanger the health or safety of the employee, other employees or the

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<sup>12</sup> A Conditional Employment Agreement is a binding agreement entered into between the Parish and an employee as a condition of continued employment relating to past conduct or pending legal action associated with substance use.

public. Under this definition, all fire persons providing fire prevention and suppression services are in a safety sensitive position.

While EBCFD's rules did not specifically address persons whose primary responsibility it is to operate fire trucks, the policies noted above were designed to test all fire persons which would include all those whose primary responsibility it is to operate fire trucks.

### Testing and Identification of VFC's Policies and Procedures

Volunteer fire company fire persons are paid or unpaid employees of private non-profit corporations, each of whom has entered into a CEA with the Parish to provide fire prevention and suppression services. While each VFC individually contracts with the Parish, the terms and conditions of each CEA are substantially the same. The VFCs are not required to maintain a program of drug testing as a term of their CEAs. However, there are several terms which are relevant:

1. Observe all applicable state and federal safety laws, and endeavor to adhere to all applicable NFPA standards for personal safety and working conditions. Section 1, Obligations of Company, Paragraph 1(h).
2. Adhere to all applicable federal, state, and local laws in the performance of all services and obligations set forth herein. Section 1, Obligations of Company, Paragraph 1(k).
3. Apparatus, equipment, and vehicles purchased with Contract Consideration or with public funds generated through bond issues shall be the property of (fire protection) DISTRICT and shall be titled in the name of the (fire protection) DISTRICT.

The JPOIG reviewed each VFC's policy and noted the following issue and revised dates. *See* Table #4 below:

*Table #4: # VFCs Policies Issue and Revision dates*

	Fire Departments	Policies	
		Issued	Last Revised
1	Third District	Unknown	7/1/2000
2	Lafitte-Barataria-Crown Point	Unknown	02/05/2004
3	Terrytown	07/01/2007	Unknown
4	Harvey	08/19/2002	Unknown
5	Bridge City	Unknown	01/01/2017
6	Live Oak Manor	05/2013	Unknown
7	Avondale	01/01/2016	10/21/2020
8	Herbert Wallace Memorial	Unknown	Unknown
9	Nine Mile Point	Unknown	1/4/2005
10	Marrero-Harvey	Unknown	Unknown
11	Marrero-Estelle	05/06/2019	Unknown
12	Marrero-Ragusa	06/13/2019	01/29/2020
13	Grand Isle	Unknown	2017



**Finding #1:** 12 of the 13 VFCs did not have policies and procedures in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons. 6 out of 13 policies did not address the use of medication while on duty.

The JPOIG reviewed each VFC's policy to determine if it incorporated permissible and mandated elements of drug testing under state law, and if so, which types. As shown in Table #5 below, we observed the following:

- 12 of the 13 VFCs' policies did not require testing for all permitted elements, that is pre-employment, random, reasonable suspicion, monitoring, and post-accident testing.
- Grand Isle VFC's policies did not mention drug or alcohol testing.
- 6 out of 13 VFCs' policies did not test for pre-employment.
- 7 out of 13 VFCs' policies did not identify a random testing program
- 2 out of 13 VFCs' policies did not test for reasonable suspicion.
- 10 out of 13 VFCs' policies did not test for monitoring
- 2 out of 13 VFCs' policies did not test for post-accident.

*Table #5: VFC Reasons for Drug Testing*

	Fire Departments	Pre-Employment	Random Program	Reasonable Suspicion	Monitoring	Post-Accident
1	Third District	Yes	No	Yes	Yes	Yes
2	Lafitte-Barataria-Crown Point	No	No	Yes	No	No
3	Terrytown	Yes	Yes	Yes	No	Yes
4	Harvey	Yes	Yes	Yes	Yes*	Yes
5	Bridge City	No	No	Yes	No	Yes
6	Live Oak Manor	No	No	Yes	No	Yes
7	Avondale	No	Yes	Yes	No	Yes
8	Herbert Wallace Memorial	No	No	Yes	No	Yes
9	Nine Mile Point	Yes	No	Yes	Yes	Yes
10	Marrero-Harvey	Yes	Yes	Yes	No	Yes
11	Marrero-Estelle	Yes	Yes	No	No	Yes
12	Marrero-Ragusa	Yes	Yes	Yes	No	Yes
13	Grand Isle	No	No	No	No	No
	<b>TOTAL EXCEPTIONS</b>	<b>6</b>	<b>7</b>	<b>2</b>	<b>10</b>	<b>2</b>

\*Harvey refers to testing as a condition of returning to work.

Although fire persons employed by VFCs are not public employees, they operate public vehicles. Therefore, the JPOIG reviewed the VFCs' policies to determine if they maintained a program of pre-employment and random testing of fire persons whose principal responsibility is to operate public vehicles, maintain public vehicles, or supervise an employee who drives or maintains a public vehicle. As shown in Table #6 below, we observed the following:

- Harvey VFC’s policies were found to be the only policies that mention testing of those associated with fire vehicles. The Harvey policies state, “anyone issued a Harvey Volunteer Fire Co. #2 vehicle, for example the Fire Chief, are also subject to random testing.”
- Lafitte VFC’s policies state all operators are “subject to” drug and alcohol testing.

*Table #6: VFCs Driver Testing Policies*

	Fire Departments	Operators	Maintenance	Supervisor
1	Third District	No	No	No
2	Lafitte-Barataria-Crown Point	No	No	No
3	Terrytown	No	No	No
4	Harvey	Yes	No	No
5	Bridge City	No	No	No
6	Live Oak Manor	No	No	No
7	Avondale	No	No	No
8	Herbert Wallace Memorial	No	No	No
9	Nine Mile Point	No	No	No
10	Marrero-Harvey	No	No	No
11	Marrero-Estelle	No	No	No
12	Marrero-Ragusa	No	No	No
13	Grand Isle	No	No	No
<b>Total Exceptions</b>		<b>12</b>	<b>13</b>	<b>13</b>

In the alternative, we reviewed VFCs’ policies to determine if pre-employment and random testing were required of all fire persons. This would include those whose primary responsibilities relate to public vehicles. As shown in Table #5 above, we observed the following:

- 8 out of 13 VFCs policies did not require pre-employment *and* random testing.

There were five VFCs whose policies required pre-employment and random testing. They are: Terrytown, Harvey, Marrero-Harvey, Marrero-Estelle, and Marrero-Ragusa.

The JPOIG also reviewed each VFC’s policy to determine if it defined “prohibited substance”. As shown in Table #7 below, we observed:

- 9 out of 13 VFCs’ policies did not list prohibited substances in their policies.
- All 13 of the VFCs’ policies mentioned alcohol testing and/or prohibit alcohol abuse or drinking alcohol on duty.<sup>13</sup>

<sup>13</sup> The only mention of controlled substances in the Grand Isle VFC policies states: “Refrain from using or having in their possession any intoxicant or controlled substance while on duty, or respond to an emergency if the Officer in Charge deems the member is under the influence of an intoxicant.”



*Table #7: Prohibited Substance Listed in VFC's Policies*

	Fire Departments	Prohibited Substance Listing	Alcohol Use Prohibited
1	Third District	Marijuana, Cannabinoids, Cocaine, Opiates, Codeine, Heroin, Morphine, Phencyclidine (PCP), Amphetamines, Methamphetamines	Yes
2	Lafitte-Barataria-Crown Point	No	Yes
3	Terrytown	Marijuana, Cocaine, Barbiturates, Amphetamines, PCP	Yes
4	Harvey	Cocaine, Amphetamines, Hallucinogens, PCP or Phencyclidine, Opium, Morphine, Codeine, Heroin, Inhalants, Cannabis, Marijuana, Hashish, Hash Oil	Yes
5	Bridge City	No	Yes
6	Live Oak Manor	No	Yes
7	Avondale	No	Yes
8	Herbert Wallace Memorial	No	Yes
9	Nine Mile Point	Amphetamines, Methamphetamines, Barbiturates, Benzodiazepines, Cocaine Opiates (including various synthetic Opiates), Marijuana, Phencyclidine (PCP), and/or any other illegal drugs, as outlined in the Controlled Substance Act (21 USA 812) and as further defined in Regulation 21 CFR 1308.15	Yes
10	Marrero-Harvey	No	Yes
11	Marrero-Estelle	No	Yes
12	Marrero-Ragusa	No	Yes
13	Grand Isle	No	Yes
<b>TOTAL EXCEPTIONS</b>		<b>9</b>	<b>0</b>

Finally, the JPOIG reviewed each VFC's policy to assess whether the policies distinguished between prohibited substances and medications that may adversely affect the employee's work

performance. We found that most VFCs’ policies did not make a clear distinction between prohibited substances and medications that may adversely affect the employee’s work performance.

As shown in Table #8 below, we observed:

- Third District, Harvey, and Nine Mile Point policies prohibit the misuse of prescription drugs and “off-the-shelf” medications and require employees to inform supervisor of possible adverse side effects prior to taking part in fire department activity.
- Lafitte policies require employee to contact the Fire Chief if an employee is under prescription drugs that may cause drowsiness or limit function.
- Terrytown policies require the reporting of prescription medications that impair job performance and written notification from the issuing physician.
- Harvey and Nine Mile policies permit use of medication provided work performance is not affected. Employees must inform their supervisor.
- Marrero-Harvey policies require reporting of the use of prescription drugs or OTC drugs that will impair the employee or member to perform their duties and may require written notification from the issuing physician.
- Marrero-Ragusa policies require reporting of prescription drug use that may adversely affect the ability to work in a safe and productive manner. They also state that members in safety-sensitive positions have the responsibility not to use or have in their systems prescriptions or non-prescription substances that will impair safe job performance.

*Table #8: Mention of Medications in VFC’s Policies*

Fire Departments	Mention of Medications
Third District	<p>The use of off-the-shelf drugs/medicine or those prescribed by a licensed Physician for a given employee/member is permitted, provided performance is not affected, and subject to the following stipulation:</p> <p>A. Employees/members should only possess a reasonable amount of medication.</p> <p>1. All prescription medicine must be in its original container with the employee/member’s name, physician’s name, and prescription number on the label.</p> <p>A. Each prescription must not be older than one (1) year of the date of issue.</p> <p>2. All off-the-shelf medicine must be in its original container.</p> <p>B. Employees/members must inform their supervisor of possible adverse side effects prior to taking part in fire department activity.</p> <p>C. Employees/members must not consume prescribed drugs more often than prescribed by their physician.</p> <p>D. Employees/members must not allow another person to consume their prescribed drugs.</p> <p>E. Employees/members must not consume off-the-shelf drugs more often that is recommended on the original container label. The department reserves the right to have a licensed physician determine if a prescription drug increase the risk of injury to the employee/member while participating in fire department activity.</p>
Lafitte-Barataria-Crown Point	<p>If at any time an employee is under prescription drugs that may cause drowsiness or may limit the employee's function, it shall be mandatory to contact the Fire Chief before the next regular shift change.</p>

Terrytown	Any employee or volunteer required to take prescription drugs that may impair his/her abilities to operate a vehicle/machinery or to make split-second decisions shall report this to his/her immediate supervisor, who shall alter the employee's or volunteer's assignment without retribution to the employee or volunteer. Written notification from the issuing physician must be presented to your supervisor within 24 hours of taking said medication. Prescription medications that must be reported are those that impair job performance such as muscle relaxants, cough syrups with codeine, pain killers, sleeping pills, etc. Long term prescription drugs such as birth control pills, vitamins, fertility pills, etc. are exempt from reporting.
Harvey	The use of off-the-shelf drugs/medicine or those prescribed by a licensed physician for a given employee is permitted, provided work performance is not affected, under the following conditions: employees must only possess a reasonable amount of medication; employees must inform their supervisor of possible adverse side effects prior to using such substances on the job; employees must not consume prescribed drugs more often than prescribed by their doctor; employees must not allow any other person to consume their prescribed drugs; all medicine must be in its original container with the employee's name, the doctor's name and prescription number on the label; each prescription must not be older than one (1) year of the date issued. However, Harvey Volunteer Fire Co. No. 2 at all times reserves the right to have a licensed physician to determine if prescription drug use increase the risk of injury to the employee or others while working.
Bridge City	Bridge City Vol. Fire Co. #1 prohibits the use, possession, sale, manufacture, or distribution of illegal or illicit drugs, alcohol or other controlled substance on its property, as well as reporting to an emergency call or scene under the influence of drugs or alcohol. This includes the sale or misuse of prescribed drugs.
Live Oak Manor	None
Avondale	...AVFC, prohibits the use, possession, sale, manufacture, or distribution of illegal or illicit drugs, alcohol or other controlled substance on its property, as well as reporting to an emergency call or scene under the influence of drugs or alcohol. This includes the sale or misuse of prescribed drugs.
Herbert Wallace Memorial	None
Nine Mile Point	<p>Controlled or Illegal Substances: Includes, but is not limited to, narcotics, hallucinogens, depressants, stimulants, look alike drugs, or other substances which can affect or hamper the senses, emotions, reflexes, judgment or other physical or mental activities. Included are controlled medications or substances not prescribed for current personal treatment by a licensed physician in a medical setting to address a specific physical, emotional, or mental condition. Also included are controlled medications that are prescribed but that may be being abused or over used. Also included are other substances listed in schedules I thru V of Section 202 of the Controlled Substance Act (21 U.S.A. 812) and as further defined in Regulation 21 CFR 1308.15...</p> <p>The use of over the counter (off the shelf) drugs/medications or those prescribed by a licensed physician for a specified employee or member is permitted, providing that their performance is not affected, and subject to the following stipulations:</p> <p>A. Employees or members should possess a reasonable amount of medication while on duty or while attending a company function. All prescription medication must be in its original container with the employees or members name, the physician's name, the prescription number on the label, and must not be older than one (1) year of the date of issue.</p> <p>B. Employees or members must inform their immediate supervisor of any possible side effects of the medication (s) they may be taking prior to taking part in company functions or performing their job duties.</p> <p>C. Employees or members must not consume prescribed medication more often than prescribed by their physician.</p> <p>D. Employees or members must not allow any other person to consume their prescribed medication.</p> <p>E. Employees or members must not consume over the counter (off the shelf) medication more often than is recommended on the original container label.</p>

	The company reserves the right to have a licensed physician determine if a prescription medication increases the risk of injury or accident to the employee or member while participating or performing their job for the company.
Marrero-Harvey	Prescribed medication may include any pharmaceutical product, which is prescribed to the employee/ member by a physician, dentist, or over-the-counter medication which have been legally obtained and being used for the purpose for which they are prescribed or manufactured. If a prescribed or over-the-counter medication causes the employee/member to become impaired and the employee/member is unable to safely perform their duties and responsibilities, and may endanger themselves, co-workers, consumers, or the public, the employee must notify the Chief, Deputy Chief, or president that he/she is taking prescribed medication. The Chief, Deputy Chief, or President may request that the employee/member obtain a release from their physician as to the duties the employee/member may be able to perform while taking prescribed medication.
Marrero-Estelle	None
Marrero-Ragusa	It is a violation of this policy for any member to use prescription drugs illegally or in a manner inconsistent with a treating physician's prescribed dosage. It is also a violation of this policy for a member paid or volunteer to use prescription drugs which have the effect of impairing the member's ability to perform his or her job duties in a safe and acceptable manner. However, nothing in this policy precludes the appropriate use of legally prescribed medications that do not cause unsafe or unacceptable job performance. Members in safety-sensitive positions have the responsibility not to use or have in their systems prescriptions or non-prescription substances that will impair safe job performance. These types of substances often have a warning such as "Do not use around or while operating moving equipment or machinery" or "Do not drive or operate machinery while using." Members are responsible for obtaining advice from their physicians to avoid drug interactions that could affect safe operations. Any member taking a drug or other medication which may adversely affect the ability to perform work in a safe and productive manner must notify the Fire Chief or President prior to beginning a shift or entering the fire station.
Grand Isle	None

### Why This Finding Matters:

The lack of properly designed drug testing policies and programs to identify substance use or abuse in VFCs could result in fire persons operating public fire trucks and vehicles under the influence of drugs without detection. Fire persons may also be operating fire equipment and providing fire suppression services under the influence of drugs without detection. The lack of control poses a threat to the health and safety of other fire persons and to the public who are reliant upon these fire persons.

The International Association of Fire Chiefs (IAFC) Position Statement states:

All fire and emergency service agencies/organizations should develop written policies and have procedures in place to support and enforce this policy recommendation. Agencies should have drug and alcohol testing procedures, including provisions for random testing, testing for cause, and critical event testing as a result of any incident that causes measurable damage to apparatus or property; or injury/death of civilians or agency/organization personnel.<sup>14</sup>

<sup>14</sup> <https://www.iafc.org/topics-and-tools/resources/resource/iafc-position-drug-and-alcohol-free-awareness>

**Causes:**

The VFCs are not required to test and identify substance use under state law. The Parish does not require drug testing as a condition of funding through the CEA, even though they are operating public vehicles.

It appears that most VFCs have made attempts to implement drug testing of fire persons; however, the developed policies demonstrate a lack of understanding of state law.

Our review of the VFCs' policies and procedures suggests the VFCs do not understand what is required under state law.

**Recommendations:**

In the absence of guidance, the VFCs should: (1) develop a thorough understanding of state law concerning drug testing of employees; and (2) establish policies and procedures alike or similar in nature to the policies of EBCFD to comply with state law.

The Parish should: (1) amend all contracts with VFCs to include required drug testing policies and drug testing programs that comply with state law; and (2) develop model language for drug testing policies alike or similar in nature to the policies of EBCFD and require adoption by VFCs.

## II. Support for Employment Action

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The JPOIG evaluated whether policies and procedures satisfied state law mandates for taking negative employment action in cases where substance use or abuse is identified.

If a public or private employer opts to implement a drug-free workplace requirement, the employer must comply with LA Revised Statute 49:1005 which provides:

A. All drug testing of individuals in residence in the state and all drug testing of samples collected in the state, including territorial waters and any other location to which the laws of Louisiana are applicable, shall be performed in SAMHSA-certified, CAP-FUDT-certified, or CAP-FDT-certified laboratories, if both of the following apply:

(1) If, as a result of such testing, mandatory or discretionary negative employment consequences will be rendered to the individual.

(2) Drug testing is performed for any or all of the following classes of drugs: marijuana, opioids, cocaine, amphetamines, and phencyclidine.

B. Drug testing as provided in this Subsection shall be performed in compliance with the SAMHSA guidelines except as provided in this Chapter or pursuant to statutory or regulatory authority under R.S. 23:1081 et seq. and R.S. 23:1601 et seq. The cut off limits for drug testing shall be in accordance with SAMHSA guidelines with the exception of initial testing for marijuana. The initial cut off level for marijuana shall be no less than fifty nanograms/ML and no more than one hundred nanograms/ML as specified by the employer or the testing entity. The Louisiana Department of Health shall have the responsibility to adopt the SAMHSA guidelines for purposes of governing drug-testing programs for specimens collected in accordance with this Chapter. The Louisiana Department of Health shall have the responsibility for adoption of any subsequent revisions of the SAMHSA guidelines as of the initial effective date of this Chapter.<sup>15</sup>

**“Negative employment consequences”** is defined to mean any action taken by an employer or an employer’s agent which negatively impacts an employee’s or prospective employee’s employment status. These include, by way of example, termination of employment, refusal to hire, or altered conditions of employment such as counseling, probation, suspension, and demotion.<sup>16</sup>

**“SAMHSA”** refers to the Substance Abuse and Mental Health Services Administration which is a branch of the United States Department of Health and Human Services (HHS) that certifies labs for drug testing and mandates the Guidelines for Federal Workplace Drug Testing Programs. SAMHSA guidelines include: specimen chain of custody procedures; National Laboratory

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<sup>15</sup> La.R.S. 49:1005(A).

<sup>16</sup> La.R.S. 49:1001(6).



Certification Program standards; and guidelines for conducting testing and the types of drugs to test.<sup>17</sup>

**“SAMSHA-certified laboratory”** means “a laboratory certified for forensic drug testing by the Substance Abuse and Mental Health Services Administration.”<sup>18</sup> SAMHSA publishes a notice listing of all currently certified laboratories for drug testing in the Federal Register. If a laboratory’s certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under mandatory guidelines.<sup>19</sup>

**“CAP-FDT certified laboratory”** and **“CAP-FUDT certified laboratory”** means a laboratory certified for forensic hair drug testing *and* a laboratory certified for forensic urine drug testing, respectively, by the College of American Pathologist.<sup>20</sup>

**“SAMHSA guidelines”** refers to the Mandatory Guidelines for Federal Workplace Drug Testing Programs as published by the Federal Register on April 11, 1988 (53 FR 11970), REVISED ON June 9, 1994 (59 FR 29908), further revised on September 30, 1997 (62 FR 51118), and as subsequently revised.<sup>21</sup> Mandatory Guidelines for Federal Workplace Drug Testing Programs, Section 2.7 (53 FR 11970), provides:

An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to agency administrative officials. (53 FR 11985).<sup>22</sup>

We evaluated policies to determine whether they complied with the above laws and incorporated regulations such that the policies would support negative employment action. First, we tested (1) whether policies required use of a laboratory which was SAMHSA-certified, CAP-FDT-certified,

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<sup>17</sup> <https://www.samhsa.gov/workplace/drug-testing-resources>. See also La.R.S. 49:1001(10) which provides, “‘SAMHSA’ means the Substance Abuse and Mental Health Services Administration.”

<sup>18</sup> La. R.S. 49:1001(9).

<sup>19</sup> <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>. See also La.R.S. 49:1001(10) which provides, “‘SAMHSA guidelines’ means the Mandatory Guidelines for Federal Workplace Drug Testing Programs as published in the Federal Register on April 11, 1988 (53 FR 11970), revised on June 9, 1994 (59 FR 29908), further revised on September 30, 1997 (62 FR 51118), and any further revised guidelines issued by SAMHSA.”

<sup>20</sup> La. R.S. 49:1001(1) and (2).

<sup>21</sup> La.R.S. 49:1001(10). HHS originally published the Mandatory Guidelines for Federal Workplace Drug Testing Programs (hereinafter referred to as Guidelines or Mandatory Guidelines) in the Federal Register (FR) on April 11, 1988 (53 FR 11979). The Substance Abuse and Mental Health Services Administration (SAMHSA) subsequently revised the Guidelines on June 9, 1994 (59 FR 29908), September 30, 1997 (62 FR 51118), November 13, 1998 (63 FR 63483), April 13, 2004 (69 FR 19644), and November 25, 2008 (73 FR 71858). SAMHSA published the current Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) on January 23, 2017 (82 FR 7920), and published the current Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFMG) on October 25, 2019 (84 FR 57554). SAMHSA published proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs using Hair (HMG) on September 10, 2020 (85 FR 56108), and proposed revisions to the UrMG (87 FR 20560) and OFMG (87 FR 20522) on April 7, 2022.

<sup>22</sup> 53 FR 11985.

or CAP-FUDT-certified; and (2) whether policies provided for review by a Medical Review Officer (MRO), as required under state law which incorporates SAMHSA guidelines. Next, we tested whether policies provided for negative employment action upon the discovery of a positive drug test.

### **Support for Employment Action under EBCFD Policy and Procedures**

We determined that the Personnel Rules of the East Bank Consolidated Fire Protection Districts (aka the “Red Book”) which govern EBCFD satisfied state law mandates to support negative employment action. State law mandates compliance with SAMHSA guidelines to support employment action. SAMHSA guidelines address specimen collection, analysis procedures, and medical review.<sup>23</sup> The Red Book incorporated SAMHSA guidelines.<sup>24</sup>



**Positive Finding #2: EBCFD policies and procedures satisfied state law mandates to support negative employment action because policies incorporated use of certified laboratories and SAMHSA guidelines to include a review by a Medical Review Officer.**

The key components of SAMHSA guidelines are incorporated in Rule VII-A, Drug and Alcohol Testing Program, which provides:

1. Use of certified laboratories for drug testing specimens collected: All drug testing shall be performed in SAMHSA-certified or CAP-FUDT-certified laboratories. Rule VII, Section 1.5.
2. Collection of urine specimen: All urine specimens for drug testing shall be collected, stored, and transported in compliance with SAMHSA Guidelines, and shall be collected with regard to privacy of individual. Rule VII, Section 1.6.
3. Initial test and confirmatory test required: Drug testing shall, at least, consist of an initial test as provided in SAMHSA guidelines. All specimens identified as positive on the initial test shall be confirmed using confirmatory test as provided in SAMHSA guidelines. Rule VII, Section 1.7.
4. Review of drug testing results: Medical Review Officer: The Parish shall employ a Medical Review Officer whose qualifications and responsibilities shall be as provided in the SAMHSA guidelines. Rule VII, Section 1.8.

The Red Book also provides notice of employment action. Rule VII-A, Section 1.3 provides:

Any of the following shall result in a dismissal under Rule VII of these Rules: (i) a confirmed positive result from urinalysis for Drugs; (ii) a post-accident, random, or reasonable suspicion alcohol test result indicating an alcohol level of .04 grams or more per 100 milliliters of blood, or per 210 liters of breath; (iii) the refusal to participate in Drug and Alcohol Testing Program; (iv) submission of an adulterated Specimen; (v) failure to provide an adequate Specimen in the allotted time

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<sup>23</sup> 53 FR 11985.

<sup>24</sup> La.R.S. 49:1005(A).

(unsupported by valid medical explanation, and in accordance with SAMHSA Guidelines); or (vi) violation of a Conditional Employment Agreement. The Director, upon notification of any of (i) through (vi) above shall dismiss the employee, provided that such dismissal shall be taken in accordance with Rule XII of these Rules.

Rule VII-A, Section 1.10, *Reporting results to Superintendent of Fire; removal of names from certifications and eligible lists; disqualification for future employment eligibility*, provides that the Director shall cause an eligible employee's name to be removed from all current certifications and from all employment lists upon receipt of confirmed positive under the conditions outlined. A refusal to submit to a test and/or a resignation are regarded the same as a dismissal under the policy.<sup>25</sup>

### **Support for Employment Action under VFC's Policies and Procedures**

The JPOIG reviewed each VFC's policy to determine whether the policies incorporated "SAMHSA guidelines," and/or whether policies required use of a certified laboratory and provided for review by a Medical Review Officer (MRO). We determined that the VFC's policies and procedures were not designed to provide a necessary framework for taking appropriate employment actions.



**Finding #2: 10 out of 13 VFCs' policies and procedures did not satisfy state law mandates to support negative employment action, because policies did not incorporate SAMHSA guidelines and/or require use of certified laboratories and review by a Medical Review Officer.**

The JPOIG reviewed each VFC's policies and procedures to determine if they incorporated SAMHSA guidelines and/or whether they (1) required use of a certified laboratory and (2) required review by a Medical Review Officer (MRO). As shown in Table #9, we found the following:

- 10 out of 13 VFCs' policies did not incorporate "SAMHSA guidelines." Two key elements of SAMHSA guidelines are: (1) use of a certified laboratory; and (2) review by a Medical Review Officer. State law mandates drug testing be performed under SAMHSA guidelines to support negative employment action.
- 9 out of 13 VFCs' policies did not require use of a certified laboratory, which is one element of SAMHSA guidelines and a state law mandate.
- 10 out of 13 VFCs' policies did not require review by a MRO, which is an element of SAMHSA guidelines and, therefore, a state law mandate. Harvey required review by a MRO, but did not also require use of a certified laboratory.

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<sup>25</sup> Personnel Rules of the East Bank Consolidated Fire Protection Districts," Rule VII-A, Sections 1.10 and 1.11.

Any VFC policy which incorporates (1) SAMHSA guidelines *OR* (2) use of certified laboratory *and* review by Medical Review Officer could arguably comply with state law. 10 out of 13 incorporated neither.

*Table #9: # VFCs with Requirements to use Certified Laboratories and MRO Review*

	Fire Departments	SAMHSA Guidelines	Certified Laboratory	Medical Review Officer (MRO) Review	SAMSHSA Guidelines/ Certified Lab and MRO
1	Third District	Yes	Yes	Yes	Yes
2	Lafitte-Barataria-Crown Point	No	No	No	No
3	Terrytown	Yes	Yes	No	Yes
4	Harvey	No	No	Yes	No
5	Bridge City	No	No	No	No
6	Live Oak Manor	No	No	No	No
7	Avondale	No	No	No	No
8	Herbert Wallace Memorial	No	No	No	No
9	Nine Mile Point	Yes	Yes	Yes	Yes
10	Marrero-Harvey	No	No	No	No
11	Marrero-Estelle	No	No	No	No
12	Marrero-Ragusa	No	Yes	No	No
13	Grand Isle	No	No	No	No
	<b>TOTAL EXCEPTIONS</b>	<b>10</b>	<b>9</b>	<b>10</b>	<b>10</b>

Based on the results above, 10 out of 13 VFCs' policies would not support negative employment action because they do not meet mandates of state law.<sup>26</sup>

Next, the JPOIG reviewed each VFC's policy to determine whether the policy provided for negative employment action based upon a positive test. In this testing we found that 3 out of 13 VFCs' policies did not provide for disciplinary action after a positive test. They are: (1) Herbert Wallace Memorial, (2) Marrero-Estelle, and (3) Grand Isle. Of the 10 VFCs' policies which provide for disciplinary action, 7 of the 10 VFCs' policies did not incorporate mandated testing protocols to support negative employment action. *See* the results in Table #10 below.

*Table #10: VFCs that Require Negative Employment Action*

	Fire Departments	Disciplinary Action after Positive Test	SAMSHSA Guidelines/ Certified Lab and MRO
1	Third District	Yes	Yes
2	Lafitte-Barataria-Crown Point	Yes	No
3	Terrytown	Yes	Yes
4	Harvey	Yes	No
5	Bridge City	Yes	No
6	Live Oak Manor	Yes	No
7	Avondale	Yes	No
8	Herbert Wallace Memorial	No	No
9	Nine Mile Point	Yes	Yes
10	Marrero-Harvey	Yes	No
11	Marrero-Estelle	No	No

<sup>26</sup> La.R.S. 49:1005(A).

12	Marrero-Ragusa	Yes*	No
13	Grand Isle	No	No
<b>TOTAL EXCEPTIONS</b>		<b>3</b>	<b>10</b>

\*Negative employment action for a positive test is mentioned in the consent to test form contained in the Marrero-Ragusa drug policies.

### **Why This Finding Matters:**

The lack of properly designed drug testing policies that do not comply with state law prohibits VFCs from taking negative employment actions against firefighters who operate and maintain public vehicles under the influence of drugs. If the VFC does not enforce a zero-tolerance policy, firefighters can continue operating public vehicles after receiving a positive drug test.

### **Causes:**

The VFCs are not required to test and identify substance use under state law. The Parish does not require drug testing as a condition of funding through the CEA, even though they are operating public vehicles.

It appears that most VFCs have made attempts to implement drug testing of firemen; however, the developed policies demonstrate a lack of understanding of state law.

Our review of the VFCs' policies and procedures suggests the VFCs do not understand what is required under state law to support negative employment action.

### **Recommendations:**

In addition to Recommendation #1 above, the JPOIG also recommends the VFCs receive training about state mandates regarding drug testing of employees.

### III. Effectiveness of Implementation

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Lastly, the JPOIG evaluated implementation or practice of drug testing programs. A total of 2,019 records of drug testing were submitted by the EBCFD and the VFCs for the period 01/01/2017-09/20/2021. Based upon these tests, we evaluated the following:

1. The frequency, type, and circumstances under which testing was performed.
2. The frequency of positive tests and what action, if any, was taken.

As noted earlier, LA Revised Statute 49:1015, *Public employee drug testing*, provides that any “public employee drug testing shall occur pursuant to a written policy, duly promulgated.”<sup>27</sup> It further provides that a public employer *may* require:

1. *Pre-employment*: A public employer may require samples from prospective employees, as a condition of hiring, to test for presence of drugs.
2. *Random drug testing*: A public employer may implement a program of random drug testing of those employees who occupy safety-sensitive or security-sensitive positions.
3. *Reasonable suspicion*: A public employer may implement a program of drug testing under other circumstances which result in reasonable suspicion that drugs are being used, or as a part of a monitoring program established by the employer.
4. *Monitoring*: Employees who return to work after completing a rehabilitation program are tested for compliance.
5. *Post-accident*: A public employer may implement a program of drug testing as a condition of continued employment, following an accident during the course and scope of employment.<sup>28</sup>

A program of “*Random Drug Testing*” is not specifically defined in state law governing “Drug Testing” by public and private employers.<sup>29</sup> Attributes of a random drug testing program are: (1) notice to employees of random testing; (2) no discretion in who is tested; (3) compliance with testing protocols required by law.<sup>30</sup> For purposes of this evaluation, the JPOIG referred to Chapter III of Title 49 of the Code of Federal Regulations, *Federal Motor Carrier Safety Regulations (FMCSF)* for best practices regarding number of tests. FMCSF provides for a rate between 25% and 50% of a total population of drivers subject to jurisdiction of FMCSF. The percentage of drivers subject to random testing may be as low as 25% or as high as 50% based upon the number of positives detected in the previous year.<sup>31</sup>

#### Effectiveness of Implementation under EBCFD Policy and Procedures

As noted earlier, the “Personnel Rules of the East Bank Consolidated Fire Protection District” (aka

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<sup>27</sup> La.R.S. 49:1015(D).

<sup>28</sup> La.R.S. 49:1015.

<sup>29</sup> La.R.S. 49:1001 et seq.

<sup>30</sup>

[https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Best\\_Practices\\_for\\_DOT\\_Random\\_Drug\\_and\\_Alcohol\\_Testing\\_508CLN.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Best_Practices_for_DOT_Random_Drug_and_Alcohol_Testing_508CLN.pdf)

<sup>31</sup> 49 CFR 382.305



the “Red Book”) Rule VII-A, Section 1.3, Drug and Alcohol Testing, provides for the following testing:

- Pre-employment
- Reasonable Suspicion
- Post-accident
- Monitoring
- Random

Red Book Rule VII-A, Drug and Alcohol Testing Program, provides that all drug testing shall be performed in SAMHSA-certified or CAP-FUDT-certified laboratories. The Red Book also provides for employment actions in Rule VII-A, Sections 1.3 and 1.10.



**Positive Finding #3: EBCFD implemented drug testing in compliance with policies and procedures. EBCFD maintains an adequate rate of random drug testing.**

Based upon our assessment, we determined that EBCFD conducted drug testing in a manner compliant with state laws and incorporated regulations. First, we reviewed EBCFD drug testing for the frequency and type of testing conducted and the number of positive tests. EBCFD’s testing is maintained by the Jefferson Parish Department of Human Resource Management (HRM).<sup>32</sup> We requested the HRM Director to provide all records regarding drug testing for EBCFD personnel during the relevant time-period of 01/01/2017 through 9/20/2021. The HRM Director did not provide records of drug testing, but provided the following numbers:

- A total of 923 records of drug testing were conducted on behalf of EBCFD for time-period 01/01/2017-09/20/2021.
- There was a total of 30 preemployment drug tests.
- There was a total of 20 reasonable suspicion and/or post-accident drug tests. The system does not differentiate between reasonable suspicion and post-accident.
- There were no tests related to on-going monitoring.
- There was a total of 873 random tests.

See Table #11 below for a summary of information provided.

*Table #11 East Bank Consolidated Fire Department Drug Testing Practices*

Fire Department	Pre-Employment	Random	Reasonable Suspicion and Post-Accident	Monitoring	Total	Positives
EBCFD	30	873	20	0	923	4

<sup>32</sup> Personnel Rules of the East Bank Consolidated Fire Protection Districts,” Rule VII-A, Section 1.

Next, we reviewed EBCFD drug testing for compliance with SAMHSA guidelines. We requested the HRM Director provide any all invoices and proof of payment for drug testing during the relevant time-period of 01/01/2017 through 9/20/2021. The HRM Director provided invoices of drug testing for the period 01/01/2017 to 09/30/2021. These invoices indicated that all tests were performed by and/or through West Jefferson Industrial Medicine or Ochsner Clinic (MHM Occupational Medicine, LLC). Our review found that the Parish contracts with the following entities for specimen collection, testing, and analysis:

- Ochsner Clinic, LLC, formerly MHM Occupational Medicine, LLC – to provide for Medical Review Officer services including drug and/or alcohol testing and medication review in compliance with SAMHSA Guidelines, DOT Procedures, and DTP Standards, CAP-FUDT.<sup>33</sup>
- West Jefferson Industrial Medicine, LLC – to provide for Medical Review Officer services including drug and/or alcohol testing and medication review in compliance with SAMHSA Guidelines, DOT Procedures, and DTP Standards, CAP-FUDT.<sup>34</sup>

Both contracts provide for review by Medical Review Officers. Both providers were contacted and confirmed that each uses SAMHSA accredited laboratories to test specimens.

Next, the JPOIG also assessed the EBCFD random drug testing. According to the HRM Director, there were 923 tests performed during the relevant time-period of which 873 were random. To arrive at an annual number of random tests, the JPOIG calculated a monthly total by dividing 873 by 57 months then multiplying by 12. Based upon this calculation, the average number of random tests per year is 183.79, or 67% of the total population of EBCFD fire persons. We concluded there was an adequate random drug testing program for EBCFD, because the rate of random testing (67%) fell within the parameters of 25%-50% used by FMCSF. See Table #12 below.

*Table #12 EBCFD Percentage of Random Testing*

Fire Department	Total number of fire persons	Random Tests 01/01/2017-09/20/2021	# of Random Annually		% Tested <u>Total fire persons</u> # of Random Annually
			Formula	Calculation	
EBCFD	273	873	$(873/57)12 = 183.79$		67%

Finally, the JPOIG assessed negative employment action associated with positive tests. The HRM Director reported there were 4 out of 923 drug tests that were reported positive. See Table #11

<sup>33</sup> Contract between the Parish and MHM Occupational Medicine was executed on 11/23/2016 for a 3-year period, as authorized by Council Resolutions #127780 adopted 09/21/2016 and #128048 adopted 10/19/2016. The parent company of MHM Occupational Medicine, LLC was purchased by Ochsner Clinic, LLC, and pursuant to Resolution No. 130142, adopted on October 4, 2017, the contract and invoicing was changed to Ochsner Clinic. Contract was extended 3 years by Resolution #136328 adopted 09/16/2020.

<sup>34</sup> Contract between the Parish and WJIM was executed on 08/31/2012 for a two-year period, as authorized by Council Resolutions #119341 adopted 08/08/2012 and #119548 adopted 09/19/2012. Contract was extended two years by Resolution #122667 adopted 04/09/2014, and three years by Resolution #136397 adopted 09/30/2020.

above. Of the 4 positive tests, 2 fire persons were terminated and 2 others resigned in lieu of termination.<sup>35</sup>

### **Effectiveness of Implementation under VFC's Policies and Procedures**

As demonstrated in earlier sections, 12 of the 13 VFCs had policies and procedures in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons. 10 out of 13 VFCs' policies and procedures did not satisfy state law mandates to support negative employment action, because policies did not incorporate SAMHSA guidelines and/or require use of certified laboratories and review by a Medical Review Officer. Notwithstanding these findings, the JPOIG assessed each VFC's practice of drug testing against what is permitted or mandated under state law. This included assessing any negative employment action.



**Finding #3 10 out of 13 VFCs did not conduct drug testing in a manner compliant with state laws and incorporated regulations.**

We reviewed each VFC's practice of drug testing for frequency, type of testing conducted, and drug positives. We requested each VFC to provide (1) any and all records regarding drug testing and (2) any and all invoices and proof of payment for drug testing for the relevant time-period of 01/01/2017 through 09/20/2021. We received drug testing results and invoices from VFCs, but we did not necessarily receive the same type of information, whether tests results or invoices, from every VFC. As shown in Table #13, we found the following:

- 11 of 13 performed 1,096 drug tests for time-period 01/01/2017-09/20/2021. The JPOIG did not receive drug testing records from Grand Isle and Herbert Wallace VFC.<sup>36</sup>
- 2 out of 13 reported a total of 5 positives.
- 13 out of 13 VFCs did not test for all types of drug testing.<sup>37</sup>
- 4 out of 13 VFCs did not conduct pre-employment drug testing.
- 8 out of 13 VFCs did not conduct random testing.

<sup>35</sup> Per East Bank Consolidated Special Service Fire Protection District Rule VII-A Section 1.13 entitled 'Responsibilities of the Parish': The Department of Human Resource Management shall develop and promulgate to the Director and employees of the East Bank Consolidated Special Service Fire Protection District, a written Substance Abuse Policy that shall comply with the provisions of this Rule. The Parish Substance Use Policy requires the Parish to implement a program of drug testing that includes EBCFD employees, per Section I. Policy Statement. B. Scope and Effect. Personnel Rule VI, Section 10 designates the Department of Human Resource Management as being responsible for the management of the Parish Drug and Alcohol Testing Program.

<sup>36</sup> After one request via certified mail, two requests via email, and a follow-up phone call, we received no records of drug testing from Grand Isle VFC. Additionally, Chief Thomas Berggren of Herbert Wallace VFC responded via email with a letter stating that per VFC President Barbara Camp, no employee or volunteer has ever been drug or alcohol tested for any reason at the HWVFC, as former Chief Christian Collins "did not feel it necessary to have testing done for any reason." Chief Berggren also stated he revised the drug testing policy and established a monthly random drug testing policy and submitted a letter from West Jefferson Industrial Medicine (WJIM) confirming this program.

<sup>37</sup> Terrytown tested for all types of drug testing but Reasonable Suspicion, and Harvey for all but Monitoring/Return to Work.

- 12 out of 13 VFCs did not conduct drug testing for reasonable suspicion.
- 11 out of 13 VFCs did not conduct monitoring and/or return to work testing.
- 2 out of 13 VFCs did not conduct post-accident drug testing.
- 8 out of 13 VFCs did not conduct both pre-employment and random testing.

*Table #13 VFCs Drug Testing Practices*

Fire Departments	Pre-Employment	Random	Reasonable Suspicion	Monitoring*	Post-Accident	Testing Reason Unknown	Total	Positives Identified
Third District	0	0	0	2	4	10	16	3
Lafitte-Barataria-Crown Point	1	2	0	0	3	0	6	0
Terrytown	15	74	0	24	12	42	167	2
Harvey	3	136	1	0	46	10	196	0
Bridge City	0	0	0	0	2	1	3	0
Live Oak Manor	2	0	0	0	1	0	3	0
Avondale	1	0	0	0	2	0	3	0
Herbert Wallace Memorial	0	0	0	0	0	0	0	0
Nine Mile Point	19	0	0	0	5	0	24	0
Marrero-Harvey	5	49	0	0	2	36	92	0
Marrero-Estelle	4	23	0	0	5	55	87	0
Marrero-Ragusa	2	0	0	0	3	61	66	0
Grand Isle	0	0	0	0	0	0	0	0
<b>TOTAL EXCEPTIONS</b>	<b>4</b>	<b>8</b>	<b>12</b>	<b>11</b>	<b>2</b>			

\*Monitoring includes return to work drug testing.

Testing records showed 6 of 13 VFCs conducted annual drug testing, at times in connection with an annual physical examination. Because drug testing in connection with an annual drug test does not satisfy the drug testing practices outlined in state law, these drug tests were excluded in the table above. However, the number of annual drug tests performed is provided in Table #14 below.

*Table #14 VFCs Annual Drug Tests*

Fire Departments	# of Annual Drug Tests
Harvey	36
Marrero Estelle	2
Marrero Harvey	28
Marrero Ragusa	15
Terrytown	116
Third District	236

Next, we assessed whether drug testing was conducted in compliance with SAMHSA Guidelines. As shown in Table #15, we observed the following:

- 11 out of 13 VFCs submitted records of drug testing. These records demonstrated that drug testing sample collection was conducted in a facility which utilized a SAMHSA or CAP-certified lab for analysis.<sup>38</sup>

*Table #15 VFCs Drug Testing Use of SAMHSA or CAP-Certified Lab*

Fire Departments	Drug Testing Collection Facilities	Records Demonstrated Use of SAMHSA or CAP-Certified Lab for Drug Testing of Sample*
Third District	Ochsner Clinic; B.A.L. Associates; West Jefferson Industrial Medicine; MHM Occupational Medicine	Yes**
Lafitte-Barataria-Crown Point	Drug & Alcohol Testing, LLC; West Jefferson Industrial Medicine	Yes
Terrytown	West Jefferson Industrial Medicine; Westbank Urgent Care	Yes
Harvey	West Jefferson Industrial Medicine	Yes
Bridge City	West Jefferson Industrial Medicine	Yes
Live Oak Manor	West Jefferson Industrial Medicine	Yes
Avondale	West Jefferson Industrial Medicine	Yes**
Herbert Wallace Memorial	N/A	N/A
Nine Mile Point	West Jefferson Industrial Medicine	Yes
Marrero-Harvey	West Jefferson Industrial Medicine	Yes
Marrero-Estelle	West Jefferson Industrial Medicine	Yes
Marrero-Ragusa	West Jefferson Industrial Medicine	Yes
Grand Isle	N/A	N/A

\*If the provider is SAMHSA accredited, then the JPOIG assumed that the provider complied with SAMHSA protocols.

\*\*No test results were provided. Invoices from collector whose protocol is to use SAMHSA/CAP-certified laboratories were provided.

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<sup>38</sup> Records of drug testing for this purpose included records of drug tests and/or related invoices for drug test.

Next, the JPOIG also assessed the VFCs' random drug testing. To arrive at an annual number of random tests, the JPOIG calculated a monthly total by dividing the total number of random drug tests reported by each VFC by 57 months. This number was multiplied by 12. Then, we divided the annual number by the total population of fire persons per VFC to arrive at a percentage of testing to determine which, if any VFC, maintained a rate of random drug testing within the parameters of 25%-50% used by FMCSF. As show in Table #16, we observed the following:

- 8 out of 13 VFCs did not randomly test.
- 3 out of 13 VFCs' rate of random testing was above 25%.
- 10 out of 13 VFCs' rate of random testing was below 25%.

*Table #16 VFCs Percentage of Random Testing*

Fire Department	Total number of fire persons	Random Tests 01/01/2017-09/20/2021	# of Random Annually		% Tested <u>Total fire persons</u> # of Random Annually
			Formula	Calculation	
Third District	116	0	$(0/57)12 = 0$		0%
Lafitte-Barataria-Crown Point	33	2	$(2/57)12 = .42$		1%
Terrytown	36	74	$(74/57)12 = 15.57$		43%
Harvey	59	136	$(136/57)12 = 28.63$		48.5%
Bridge City	24	0	$(0/57)12 = 0$		0%
Live Oak Manor	16	0	$(0/57)12 = 0$		0%
Avondale	15	0	$(0/57)12 = 0$		0%
Herbert Wallace Memorial	9	0	$(0/57)12 = 0$		0%
Nine Mile Point	31	0	$(0/57)12 = 0$		0%
Marrero-Harvey	33	49	$(49/57)12 = 10.31$		31%
Marrero-Estelle	37	23	$(23/57)12 = 4.84$		13%
Marrero-Ragusa	42	0	$(0/57)12 = 0$		0%
Grand Isle	14	0	$(0/57)12 = 0$		0%

Lastly, we reviewed what employment actions were taken upon the discovery of a positive test. As shown in Table #17 below, we observed:

- 1 out of the 5 positive tests concluded with the termination of an employee.
- 1 out of 5 positive tests was cleared by a Medical Director.
- 1 out of the 5 positive tests concluded with not hiring the applicant.
- 2 out of the 5 positive tests concluded with the individuals resigning.



*Table #17 VFCs Employment Action Post Positive Test*

Fire Departments	Record of Employment Action After Positive Drug Test
Third District	2 Resigned, 1 Cleared by Medical Director.
Lafitte-Barataria-Crown Point	No positive tests reported.
Terrytown	1 Termination, 1 Not Hired.
Harvey	No positive tests reported.
Bridge City	No positive tests reported.
Live Oak Manor	No positive tests reported.
Avondale	No positive tests reported.
Herbert Wallace Memorial	No positive tests reported.
Nine Mile Point	No positive tests reported.
Marrero-Harvey	No positive tests reported.
Marrero-Estelle	No positive tests reported.
Marrero-Ragusa	No positive tests reported.
Grand Isle	No positive tests reported.

### **Why This Finding Matters:**

Drug testing policies and practices that do not comply with state law and incorporated regulations open the VFCs and the Parish to liability. If a firefighter injures someone or causes death, the taxpayers are ultimately liable, because VFCs are supported by taxpayer millages. These funds are public funds that can also be seized in a judgement.

### **Causes:**

The VFCs are not required to test and identify substance use under state law. The Parish does not require drug testing as a condition of funding through the CEA, even though they are operating public vehicles.

It appears that most VFCs have made attempts to implement drug testing of fire persons; however, the developed policies demonstrate a lack of understanding of state law.

Our review of the VFCs' policies and procedures suggests the VFCs do not understand what is required under state law.

### **Recommendations:**

In addition to Recommendations #1 and #2 above, the JPOIG also recommends the Office of Fire Services require reporting of VFCs demonstrating drug testing in quarterly reports. Reporting for the quarter should minimally include number of firemen tested, types of tests, and the number of positive tests detected.

## RESPONSES: PARISH & NON-PARISH ENTITY COMMENTS

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Pursuant to the Jefferson Parish Code of Ordinances (JPCO), the JPOIG must provide a draft of the report or recommendations to the person or entity being reported. The JPCO §2-155.10(9)(c) provides the following for all Parish individuals or entities:

...person in charge of any parish department, agency, board, commission, the parish president, the parish council, or any member of the parish council or person in charge of any parish department [and these persons] shall have thirty (30) working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation.<sup>39</sup>

On July 9, 2024, the JPOIG provided the Draft Report to the following Parish individuals:

Parish President Cynthia Lee-Sheng	Councilman Deano Bonano
Councilwoman Jennifer VanVrancken	Councilman Byron Lee
Councilman Scott Walker	Councilwoman Arita Bohannon
Councilman Marion Edwards	Councilman Hans Liljeberg

Copies were also provided to the Chief Operating Officer, Chief Administrative Assistant for Compliance and Research, and the Director of Fire Services.

The JPOIG received the Parish comments on 08/20/2024.

The JPCO §2-155.10(9)(d) provides the following for all non-Parish individuals or entities with:

...a copy of the report after thirty (30) working days and [those individuals or entities] shall have twenty (20) working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation.<sup>40</sup>

On August 21, 2024, the JPOIG provided the Draft Report to the Non-Parish individuals who were the subjects of the evaluation, Jefferson Parish VFC Fire Chiefs and Board Presidents:

Avondale Volunteer Fire Company	Marrero Estelle Volunteer Fire Company
Bridge City Volunteer Fire Company	Marrero Harvey Volunteer Fire Company
Grand Isle Volunteer Fire Company	Marrero Ragusa Volunteer Fire Company
Harvey Volunteer Fire Company	Nine Mile Point Volunteer Fire Company

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<sup>39</sup> JPCO §2-155.10 (9)(b).

<sup>40</sup> JPCO §2-155.10 (9)(c).

Herbert Wallace Memorial Volunteer Fire Terrytown Volunteer Fire Company  
Company

Lafitte-Barataria-Crown Point Volunteer Fire Third District Volunteer Fire Company  
Company

Live Oak Manor Volunteer Fire Company

The JPOIG received comments from Grand Isle Volunteer Fire Company, Harvey Volunteer Fire Company, Herbert Wallace Memorial Volunteer Fire Company, Lafitte-Barataria-Crown Point Volunteer Fire Company, Live Oak Manor Volunteer Fire Company, and Terrytown Volunteer Fire Company.

Comments received, if any, follow this page.



# JEFFERSON PARISH

## OFFICE OF THE PARISH PRESIDENT

CYNTHIA LEE SHENG  
PARISH PRESIDENT

August 20, 2024

**Via Electronic Mail**

Kim Raines Chatelain  
Jefferson Parish Inspector General  
990 N. Corporate Drive, Suite 300  
Jefferson, LA 70123

Re: Administration Response to Office of Inspector General-Jefferson Parish-  
Confidential Draft Evaluation Report 2021-0019-EBCFD/VFC Drug Policy

Ms. Chatelain:

In accordance with Jefferson Parish Code Section 2-155.10(9), the Administration respectfully submits this response to the above-referenced JPOIG Confidential Draft Evaluation Report. In connection with the above-referenced matter, my staff met with the various Departments responsible for oversight of the East Bank Consolidated Fire Protection District and the Volunteer Fire Companies ("VFC"), including the Office of Fire Services ("OFS"). Your draft evaluation report produced many relevant suggestions that I believe warrant further action to ensure that policies are further developed and adhered to by the VFC.

The findings identified in the draft evaluation report are addressed in detail below.

**Finding No. 1: 12 of the 13 VFCs did not have policies and procedures in place, as permitted or required by state law, to test and identify substance use or abuse among fire persons. 6 out of 13 policies did not address the use of medication while on duty.**

In accordance with Code of Ordinances Sections 2-211 *et seq.* – and within the constraints set forth in the CEA with each of the VFC – OFS oversees and provides guidance to each VFC, however, ultimately the officers and management are responsible for the day-to-day operations of each VFC who are in turn accountable to each VFC Board of Directors. OFS will provide each VFC a model drug testing program and policy that complies with Louisiana law.

**Finding No. 2: 10 out of 13 VFCs' policies and procedures did not satisfy state law mandates to support negative employment action, because policies did not incorporate SAMHSA guidelines and/or require use of certified laboratories and review by a Medical Review Officer.**

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In accordance with Code of Ordinances Sections 2-211 *et seq.* – and within the constraints set forth in the CEA with each of the VFC – OFS oversees and provides guidance to each VFC, however, ultimately the officers and management are responsible for the day-to-day operations of each VFC who are in turn accountable to each VFC Board of Directors. OFS will provide each VFC a model drug testing program and policy that complies with Louisiana law.

**Finding No. 3: 10 out of 13 VFCs did not conduct drug testing in a manner compliant with state laws and incorporated regulations.**

In accordance with Code of Ordinances Sections 2-211 *et seq.* – and within the constraints set forth in the CEA with each of the VFC – OFS oversees and provides guidance to each VFC, however, ultimately the officers and management are responsible for the day-to-day operations of each VFC who are in turn accountable to each VFC Board of Directors. OFS will provide each VFC a model drug testing program and policy that complies with Louisiana law.

**Finding No. 4: The NMP VFC did not comply with the Fire Protection Agreement because it did not submit a current vehicle inventory report to the OFS, nor did it title all vehicles in District 7's name.**

In conclusion, the Administration and OFS is committed to continued discussion with and input from your Office so that prospective and existing policies and procedures are followed.

Thank you for your assistance, and for providing us an opportunity to respond.

If you have any questions, please contact me at your earliest convenience.

Sincerely,



Cynthia Lee Sheng  
Parish President

cc: Mr. Steve LaChute, Chief Operating Officer  
Ms. Cherreen Gegenheimer, Deputy Chief Operating Officer  
Honorable Jennifer Van Vrancken, Councilwoman at Large, Div. A  
Honorable Scott Walker, Councilman at Large, Div. B  
Honorable Marion Edwards, Councilman, Dist. 1  
Honorable Deano Bonano, Councilman, Dist. 2  
Honorable Byron Lee, Councilman, Dist. 3  
Honorable Arita Bohannon, Councilwoman, Dist. 4  
Honorable Hans Liljeberg, Councilman, Dist. 5  
Chief Don Robertson, Fire Services

**From:** [Stacy Santiny](#)  
**To:** [Jeff Adolph](#)  
**Subject:** Response from GI fire Department  
**Date:** Wednesday, August 21, 2024 12:35:48 PM

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In response to the drug policy report:

Grand Isle Volunteer Fire Department has begun establishing a drug abuse policy in Dec 2022 and it was finalized at the end of 2023 and implemented in 2024. We would welcome additional guidance on the policies if changes need to be made.

If you need anything further or need me to write a different response please just let me know.

Stacy Santiny

Administrative Assistant

Grand Isle Volunteer Fire Co. No. 1

P.O. Box 550

100 Chighizola Lane

Grand Isle, La 70358

P: 985.787.2777 | F: 985.787.3942

[gifire1@yahoo.com](mailto:gifire1@yahoo.com)



# Harvey Volunteer Fire Co. No. 2

Jefferson Parish - Sixth District

P.O. Box 1053 • Harvey, Louisiana 70059

**Scott M. Berthelot**  
*Fire Chief*

September 18, 2024

**Richard Parker Jr.**  
*President / District Chief*

Jefferson Parish  
Office of Inspector General  
990 N. Corporate Drive  
Suite 300  
Jefferson, LA 70123

RE: Drug Policy Evaluation JPOIG #2021-0019

Dear Ms. Chatelain:

Please accept this letter on behalf of Harvey Volunteer Fire Company No. 2 ("HVFC2") as a formal response to Evaluation Report 2021-0019 regarding EBCFD/VFC Drug Policy.

Preliminarily, we note that the statistics on which much of the report is based were approximately three years old. Thus, new practices, additional data, and new information was neither evaluated, nor in the possession of the OIG at the time the report was issued.

That said, HVFC2 was happy to notice that the report indicates that in large part, its policies are in compliance with the relevant statutes and model policies as set forth in the East Bank Consolidated Fire Department Personnel Rules (the "Redbook").

The most significant concern in the OIG's report regarding HVFC2's policies as they currently read, appears to be that absent specific reference to the SAMHSA testing standard in the policy, the fire company would not be able to enforce disciplinary action against an employee who violates the drug policy of HVFC2. However, we note that the relevant statute does not appear to require that the policy "specifically" state that HVFC2 uses a SAMHSA standard, but only that the SAMHSA standards be used to perform drug tests that form the basis of negative employment action.

HVFC2 has verified that the testing authority which it uses to conduct drug tests on its employees does, in fact, use the SAMHSA standard and subjects the test results to the inspection of a medical review officer.

To this end, HVFC2's Drug policy as written can validly serve as the basis for disciplinary action up to and including termination of employment for violations of policy.

Regardless, HVFC2 intends to review its policy in order to bring it more explicitly in line with the similar policy contained in the Redbook as suggested in the OIG report.

Once its review is complete, HVFC2 requests that the OIG accept for review the proposed revised policy to confirm compliance with the relevant statutory requirements for drug testing of employees and possible disciplinary action for violations of same.

Respectfully,

*Richard A. Parker, Jr.*

Richard Parker, Jr.  
President/Deputy Chief

RP/pm



## Alcohol/Drugs/Random Testing

### Herbert Wallace Fire Dept. Workplace Substance Abuse Policy

- I. Introduction
- II. Statement of Policy Purposes
- III. Statement of Policy
  - A. Policy Statement
  - B. Policy Terms
  - C. Drug Classification
    - 1. Illegal Drugs, Unauthorized Controlled Substances, Look-a-Likes, Inhalants of Abuse, Designer and Synthetic Drugs
    - 2. Unauthorized Use of Intoxicating Beverages
    - 3. Prescription Drugs (Legally Controlled Substances) and Off-The-Shelf Medicines
  - D. Policy Enforcement Activities Regarding Workplace Inspections
  - E. Circumstances For Urine, Blood, or Other Workplace Drug Testing
    - 1. Pre-Employment Testing
    - 2. For Cause/Post-Incident Testing
    - 3. Post-Accident
    - 4. Random Testing
    - 5. Post-Treatment/Counseling/Rehabilitation or Return-to-Work Testing
  - F. Notice of Grounds for Termination or Disciplinary Action for Violation of Workplace Substance Abuse Policy
    - 1. Employee Request for Help
    - 2. Failure to Comply
    - 3. Substance Abuse Violations
      - a. Illegal Drug Use
      - b. Alcohol Abuse
      - c. Other Violations

#### I Introduction

Herbert Wallace Fire Dept. believes in and is committed to providing a safe workplace. We will achieve this by establishing policies promoting high standards of health and safety. In keeping with this objective, it is Herbert Wallace Fire Dept's intent to maintain a drug/alcohol-free workplace and workforce.

All employees are expected to report to work in a physical and emotional condition that allows them to perform their assigned tasks in a competent and safe manner. Therefore, the use, abuse, presence in the body or reporting to work under the influence of

alcohol, drugs or other impairing substances by an employee is strictly prohibited. These scenarios limit the ability of the user to exercise good judgment, to react properly in unexpected situations or to perform tasks safely and efficiently. They endanger not only that employee, but also coworkers, the public and property. Herbert Wallace Fire Dept. has implemented this policy to eliminate these problems and to achieve the policy's other purposes.

Everyone shares responsibility for maintaining a safe work environment. Employees with drug/alcohol problems are encouraged to seek early assistance from an approved counseling/rehabilitation program. It is the responsibility of the company's supervisors to alert management and to confront employees when changes in one's performance or behavior suggest substance abuse. Coworkers should encourage anyone with a drug problem to seek help. The goal of this policy is to provide a safe, productive and healthful working environment for employees of Herbert Wallace Fire Dept. while maintaining our respect for individual privacy rights and confidentiality.

## **II. Statement of Policy Purposes**

Herbert Wallace Fire Dept. recognizes the problem of drug/alcohol abuse in our society. In addition, we view substance abuse as a serious threat (to the abusing employee, our staff and the public). Though employees and applicants may be required by a physician to use prescription drugs, abuse of prescribed medications will be handled the same as the abuse of illegal substances. Therefore, we are introducing a workplace drug testing policy to ensure that Herbert Wallace Fire Dept. will have a drug/alcohol-free environment.

Objectives of this policy include:

- A. To assist in maintaining a safe and healthful working environment for employees of Herbert Wallace Fire Dept.
- B. To maintain a drug/alcohol-free workplace and workforce.
- C. To provide counseling and/or rehabilitation for employees when appropriate.
- D. To prevent accidental injuries or deaths and to protect property.
- E. To prevent the occurrence of incidents whose consequences may drastically affect the safety and future operations
- F. To protect the reputation of Herbert Wallace fire Dept. and its employees within the community
- G. To comply with all applicable federal, state and local laws and regulations and contractual obligations
- H. To maintain our respect for individual privacy rights and confidentiality through fair and reasonable procedures and protocols

## **Statement of Policy**

**A. Herbert Wallace Fire Dept. Policy Statement.** At any time employees are on company premises or on company business, the following activities are strictly prohibited; the illegal use of any drug, narcotic, or controlled substance; the possession, transit, transfer or purchase of illegal or unauthorized drugs; the use, abuse, presence in the body or reporting to work under the influence of drugs/alcohol or other intoxicants; the sale of

illegal or unauthorized drugs or substances or drug-related paraphernalia. Any employee in violation of this policy is subject to disciplinary action, including immediate discharge. Depending on the circumstances, other actions, including notification of appropriate law enforcement agencies, may be taken against any employee who violates this policy.

**B. Definition of Policy Terms.** For the purpose of this policy, company premises encompasses company affiliates and subsidiaries including all properties, offices, parking lots, facilities, lands, platforms, buildings, structures, fixtures, installations, automobiles, trucks and all other vehicles and equipment, whether owned, leased or used. Employees are on company business whenever on duty and under Herbert Wallace Fire Dept.'s control; whether at other worksites, or during transit to and from those worksites, or while in the course and scope of Herbert Wallace Fire Dept.'s employment or pay status.

For the purpose and application of this policy, employees include all full-time, casual or contract employees and employment applicants and candidates as well. This policy equally applies to all employees and employment applicants and candidates as well. This policy equally applies to all employees. Compliance with this policy will be required as a condition of employment for all employees. There shall be no exceptions.

**C. Drug Classification.** The prohibitions addressed by this policy pertain to, but are not limited by the following overview of drugs/alcohol. There, or any other illegal or unauthorized drug's presence in the employee while working in any detectable amount (unless stipulated), is prohibited.

**1. Illegal Drugs, Unauthorized Controlled Substances, Look-a-Likes, Inhalants of Abuse, Designer and Synthetic Drugs.** These include, but are not limited to, central nervous system stimulants such as cocaine and amphetamines; hallucinogens; PCP or Phencyclidine; narcotic analgesics as found in opium (like morphine and codeine) or opium derivatives (heroin); inhalants from volatile solvents like glue, paint or gasoline or from aerosols like hair sprays, deodorants or insecticides or from anesthetic gases like ether, chloroform or amyl nitrate; cannabis such as found in marijuana, hashish or hash oil.

**2. Unauthorized Use of Intoxicating Beverages.** An employee whose alcohol blood level is over 0.04 percent (40 MG/DL blood) during working time is in violation of this policy

**3. Prescription Drugs (Legally Controlled Substances) and Off-The-Shelf Medicines.**

The use of off-the-shelf drugs/medicine or those prescribed by a licensed physician for a given employee is permitted, provided work performance is not affected, under the following conditions: employees must only possess a reasonable amount of medication: employees must inform their supervisor of possible adverse side effects prior to using such substances on the job; employees must not consume prescribed drugs more often than prescribed by their doctor; employees must not allow any other person to consume their

prescribed drugs; all medicine must be in its original container with the employee's name, the doctor's name and prescription number on the label; each prescription must not be older than one (1) year of the date issued. However, Herbert Wallace Fire Dept. at all times reserves the right to have a licensed physician to determine if prescription drug use increase the risk of injury to the employee or others while working. If such a finding is made, Herbert Wallace Fire Dept. may limit or suspend the employee's work activity during the period job safety may be adversely affected by the consumption of such medication.

**D. Policy Enforcement Activities Regarding Workplace Inspections.** In order to achieve the objectives of this policy, Herbert Wallace Fire Dept. reserves the right at all times while employees are entering, departing or on the premises or when circumstances warrant or when reasonable suspicion or cause exists to have properly authorized supervisors or inspection personnel (including drug detection dogs) conduct unannounced reasonable inspections. These inspections may extend throughout the company's premises as described above, as well as to employees' and persons' effects. Personal property subject to inspection includes, but is not limited to, lockers, baggage, briefcases, boxes, bags, parcels, lunchboxes, food/beverage containers, desks, tools, clothing and vehicles. The purpose of said inspection is to determine if employees or others are in possession, use, transportation or concealment of any prohibited items and/or substances of this policy.

Inspections may be initiated without prior notice and conducted at times and location as deemed appropriate by Herbert Wallace Fire Dept. At NO time will employees or others be touched nor will any clothing on said person be removed during these inspections.

**E. Circumstances for Urine, Blood or Other Workplace Drug Testing.** Harvey Wallace Fire Dept. reserves the right in certain circumstances to require employees, as a condition of employment and/or continued employment to submit to urine, blood or other drug tests to determine the presence of illegal or unauthorized drugs/alcohol or other substances prohibited by the policy. Each employee so tested will be required to provide written consent prior to testing. All urine and blood sampling will be performed with concern for each employee's personal privacy, dignity and confidentiality. The final determination of all test results will be made by a Medical Review Officer. The test results will be disclosed on a need-to-know basis in order to administer the policy or as may be legally required. These unannounced tests may be exercised under the following state of affairs:

**1. Pre-Employment Testing.** All job applicants will be required to undergo screening for the presence of illegal drugs or alcohol as a condition of employment at Herbert Wallace Fire Dept. Applicants will be required to voluntarily submit to a urinalysis test at a laboratory chosen by the company and by signing consent agreement will release the company from liability. Any applicant with positive test results will be denied employment at that time, but may initiate another inquiry with the company after six (6) months. The company will not discriminate against applicants for employment because of past abuse of drugs/alcohol. Neither will the company tolerate the current abuse of drugs/alcohol.

**2. For Cause/Post-Incident Testing.** When there is reasonable cause to suspect that a working employee's behavior, performance, error in judgment, accident or incident or unsafe actions are related to substance abuse; when there is an accident or near accident involving personnel in which injury to persons or damage to property has occurred or potentially could have occurred; or when an employee returns from absences of six (6) weeks or more, it will be a condition of continued employment for said employee to submit to a requested drug screening.

**3. Post-Accident Testing.** If an employee suffers an occupational on-the-job injury requiring treatment from a doctor or is involved in any type of vehicular accident: causes injury to a coworker requiring treatment from a doctor; or receives injury due to the employee's failure to wear required personal protective equipment, drug testing will be required. This policy extends to all volunteer personnel as well employees.

**4. Random Testing.** All (or specified) employees are subject to routine drug/alcohol testing in order to prevent and detect substance abuse. In addition, anyone issued a Herbert Wallace Fire Dept. vehicle, for example the Fire Chief, are also subject to random testing.

**5. Post-Treatment/Counseling/Rehabilitation or Return-to-Work Testing.** A condition of reinstatement to employment upon completion of a drug/alcohol treatment or counseling program or any other return-to-work established procedure, will be submission to a drug screening test.

**F. Notice of Grounds for Termination or Disciplinary Action for Violations of Workplace Substance Abuse Policy.** The company reserves the right, at any time, to inspect any person, place or thing on company premises to enforce this policy. Any preliminary investigation of a policy violation may require placing an employee on suspension pending review of the surrounding circumstances, facts and final determination of test results.

**1. Employee Request for Help.** An employee's job will not be placed in jeopardy, nor will any employee be subject to disciplinary action for voluntarily requesting help for alcohol and other drug addictions. However, a request for assistance will not excuse an employee from a policy violation immediately prior to or while an actual drug screen, blood sample or inspection is being conducted on company premises of after the urine drug screen or sampling has been completed.

**2. Failure to Comply.** Failure to comply with the provisions of this policy, including not submitting to the required medical or physical examinations or tests when requested to do so, constitutes a policy violation and will be considered grounds for

disciplinary action. Discharge or suspension without pay from employment may occur even for a first offense, except as otherwise provided in this policy.

### **3. Substance Abuse Violations**

**a. Illegal Drug Use.** Any employee found in violation of this policy due to the use, abuse, presence in the body or reporting to work under the influence of illegal drugs or the bringing of illegal drugs onto Herbert Wallace Fire Dept. premises; the use, possession, transit, transfer, storage, concealment, promotion, sales or attempt to sell any form of illegal drugs or substances while on company premises or on company business, at any time during the hours between the beginning and ending of the employee's work day, whether on duty or not; or the possession or sale or attempt to sell drug-related paraphernalia will be subject to disciplinary action, up to and including DISCHARGE. Possession or sale of illegal drugs or substances will be causes for immediate discharge.

**b. Alcohol Abuse.** Any employee who is under the influence of alcoholic beverages at any time while on company premises, on company business or at any time during the hours between the beginning and ending of the employee's work day, whether on duty or not, shall be in violation of this policy and is subject to disciplinary action. This action specifically includes, but is not limited to, discharge or suspension without pay from employment, even for the first offense. An employee shall be determined to be under the influence of alcohol if his/her normal faculties are apparently impaired due to consumption of alcohol or if the employee has a blood alcohol level of 0.04 percent (40 MG/DL blood) or higher.

**c. Other Violations.** Other violations subjecting an employee to immediate discharge include substituting or tampering with a urine or blood sample, refusal or failure to report an approved counseling or rehabilitation program requested by management after a confirmed positive test for any substance prohibited by this policy, leaving a treatment program prior to completion and not being properly released to return to work or a positive confirmed test for any substance prohibited by this policy after completion of a counseling or rehabilitation program return to work.

**G. Counseling/Rehabilitation/Employee Assistance Programs.** Employees with drug/alcohol problems are encouraged to seek early assistance from an approved counseling/rehabilitation program. Participation in Herbert Wallace Fire Dept.'s approved counseling/rehabilitation program is voluntary and completion of the program is the responsibility of the employee. Any employee participation in such a program will be expected to maintain satisfactory job performance. Confidentiality, in accordance with Herbert Wallace Fire Dept.'s policies, will be followed regarding a rehabilitation program. If an employee must sustain treatment under a prescribed rehabilitation program, absences will be handled according to existing policies regarding disability, sick leave or leave of absence. Counseling programs are to be offered to the employees at their own expense.





The Lafitte Barataria Crown Point Volunteer Fire Department has received the OIG of Jefferson Parish findings, dealing with the department's SOP on drug testing policies. We will review the recommendations needed and will adopt the findings within our SOP. This shall take time but we will comply with the findings. We will then get our attorney to review our draft to make any changes to comply with state law.

Linton Duet Jr.

Fire Chief LBCPVFD

9/6/24



**From:** [Brian Miller](#)  
**To:** [Jeff Adolph](#)  
**Subject:** RE: CONFIDENTIAL - EBCFD/VFC Drug Policy Evaluation Draft Report  
**Date:** Tuesday, September 17, 2024 9:31:00 AM  
**Attachments:** [image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)

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I have read the draft that your office sent out to all the Chiefs. I want to first thank the Inspector General for allowing us to view and have an opinion on this matter. It is a greater effort to rectifying issues if we can all work together on them. After reading the draft and getting a clarification through conversation and legal advice. I agree with the overall concept of having a improved testing policy and here at Live Oak since my hiring, I cannot find a written policy. However, based on the fact that the Parish administration has all Live Oak Fire vehicles titles in the name of the Parish. I will follow or mirror the parish drug testing policy here at Live Oak. I will be obtaining that information and have a more defined written policy on record for current and future paid staff and volunteer members. The policy will be immediately followed and the new handbook/SOG and policies will be definitively in place by Dec. 30, 2024. Again thanks for involving us in the process and I look forward to any future cooperation between us.

Brian K. Miller  
Fire Chief  
Live Oak Manor Volunteer Fire Department  
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## TERRYTOWN 5<sup>TH</sup> DISTRICT VOLUNTEER FIRE DEPARTMENT



*Office of the Fire Chief*  
**Nicholas P Gaspard**  
341 Heritage Ave, Terrytown, La 70056  
504-349-5551

To: Jefferson Parish Office of Inspector General

Date: September 17, 2024

Subject: JPOIG #2021-0019 EBCFD/VFC Drug Policy Evaluation

Following a comprehensive review of the EBCFD/VFD Drug Policy Evaluation Report 2021-0019, the Terrytown 5th District Volunteer Fire Department ("T5VFD") acknowledges receipt of the findings in the report. It is important to emphasize that in response, T5VFD has diligently updated and revised our Substance Abuse Policy ("Policy") to ensure compliance with Evaluation Report 2021-0019 along with Federal and State mandates.

The Policy submitted to your office was initially issued on 07/01/2007. Subsequently, T5VFD has consistently made updates and revisions to this policy under the past two administrations in 2022, 2023, and recently under my administration in September 2024, which has meticulously addressed the discrepancies identified by your office in Evaluation Report 2021-0019.

Policies and procedures have become increasingly important tools for fire service leaders in today's complex and litigious society. Effective policies and procedures reduce liability, improve operations, and enhance the health and safety of our firefighters and the public. While there are 13 Combination organizations in Jefferson Parish, we all should be working under the same policies and procedures to ensure compliance, clarity, and consistency. As identified in this report as a recommendation, T5VFD agrees that the development of a Model Policy by Jefferson Parish, which has greater resources to produce such a document, would allow for consistent and quality policy production among the Departments.

We look forward to continuing working with and strengthening our relationship with the Jefferson Parish and the Inspector General's Office.

Thanks

Nicholas P Gaspard

Fire Chief

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