

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #09/95

**DRUG AND ALCOHOL TESTING
FOR DRIVERS OF COMMERCIAL MOTOR VEHICLES**

**Adopted by Resolution #1422/95 of the Fond du Lac Reservation
Business Committee on December 12, 1995.**

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

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FOR DRIVERS OF COMMERCIAL MOTOR VEHICLES**

CHAPTER 1

AUTHORITY, FINDINGS AND PUBLIC POLICY

Section 101 Authority

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as granted by Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States of America under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and in accordance with the requirements of the laws of the United States pertaining to the subject matter hereto, particularly as set forth at 49 U.S.C. §§ 31136, 31302 et seq., 31502; and 49 C.F.R. Part 382.

Section 102 Purposes

The Reservation Business Committee finds, and declares the purposes of this Ordinance to be, to prevent problems created by drug and alcohol use in the performance of safety-sensitive functions related to the operation of commercial motor vehicles by the programs and businesses of the Fond du Lac Band.

Section 103 Reservation of Rights of the Fond du Lac Band

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time and there shall be no vested private right of any kind against such amendment or repeal. All actions taken pursuant to this Ordinance shall be undertaken pursuant to the authority of the Fond du Lac Band and the Reservation Business Committee, and shall be imbued with the privileges and immunities so held. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2

GENERAL DEFINITIONS

Section 201 General Definitions

The following definitions shall apply in the meanings and interpretation of the provisions of this Ordinance, unless otherwise expressly indicated by the context of a specific provision:

- (a) **"Alcohol"** shall mean the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- (b) **"Alcohol concentration (or content)"** shall mean the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this Ordinance.
- (c) **"Alcohol use"** shall mean the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- (d) **"Commercial motor vehicle"** shall mean a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
 - (3) Is designed to transport 16 or more passengers, including the driver; or
 - (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations of the United States (49 C.F.R. Part 172, Subpart F).
- (e) **"Confirmation test"** shall mean:
 - (1) For alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration; or
 - (2) For controlled substances testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different

technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

- (f) **"Controlled substance"** shall mean any substance which is listed in Schedules I, II, III, IV, or V under Title 21, Chapter 13 of the United States Code.
- (g) **"Driver"** shall mean any employee of the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof who operates a commercial motor vehicle while in the capacity of the employee's employment or any other use of a commercial motor vehicle which is owned, leased or otherwise in the legal possession of the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof.
- (h) **"Drug"** shall mean any controlled substance as defined under subsection (h) of this section.
- (i) **"Employee"** shall mean any person who performs services for the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof in return for compensation which involve the operation of a commercial motor vehicle. For the purposes of this Ordinance, the term "employee" shall not include an independent contractor.
- (j) **"Employer"** shall mean any employing unit of the Fond du Lac Band, the Reservation Business Committee and any subdivision or enterprise thereof which employs one or more individuals for the purpose, in whole or part, of operating a commercial motor vehicle.
- (k) **"Employment"** shall mean service by an individual performed for wages or under any contract of hire, which is performed for the Fond du Lac Band, the Reservation Business Committee, or for any subdivision or enterprise thereof, which involves the operation of a commercial motor vehicle. The term "employment" shall not include services performed by an independent contractor.
- (l) **"Fond du Lac Band"** shall mean the Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and which occupies the Fond du Lac Reservation pursuant to a treaty with the United States of September 30, 1854, 10 Stat. 1109.
- (m) **"Gross misconduct"** shall mean any violation of this Ordinance by an employee of the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof, in the course of the operation of a commercial motor vehicle which is determined by the

Reservation Business Committee or the director or manager of the subdivision or enterprise in which that employee is employed to demonstrate a wanton disregard of the purposes and procedures set forth under this Ordinance.

- (n) **"Human Resources Department"** shall mean the Fond du Lac Human Resources Department, and includes any officer thereof who is responsible for performing any function under this Ordinance.
- (o) **"Job applicant"** shall mean any person who has applied for a position with the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof which involves the operation of a commercial motor vehicle, and includes a person who has received a job offer for such position which is made contingent upon the person passing drug and alcohol testing.
- (p) **"Performing (a safety-sensitive function)"** shall mean that a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- (q) **"Positive test result"** shall mean a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels contained in this Ordinance or in applicable laws or regulations of the United States.
- (r) **"Refuse to submit (to an alcohol or controlled substances test)"** shall mean that a driver:
 - (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this Ordinance or applicable laws or regulations of the United States; or
 - (2) Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this Ordinance or applicable laws or regulations of the United States; or
 - (3) Engages in conduct which clearly obstructs the testing process.
- (s) **"Random selection basis"** shall mean a mechanism for the selection of employees which results in an equal probability that any employee from those employees who are subject to the selection mechanism will be selected and which does not give the employer the discretion to waive the selection of any employee selected under the mechanism.

- (t) **"Reasonable suspicion"** shall mean a basis for forming a belief based upon specific facts and rational inferences drawn from those facts.
- (u) **"Reservation Business Committee"** shall mean the elected governing body of the Fond du Lac Band of Lake Superior Chippewa.
- (v) **"Safety-sensitive function"** shall mean any function involving the operation of a commercial motor vehicle in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.
- (w) **"Screening test (initial test)"** shall mean:
 - (1) In alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system;
 - (2) In controlled substances testing, an immunoassay screen to eliminate "negative" urine specimens from further consideration.
- (x) **"Substance abuse professional"** shall mean a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

CHAPTER 3

DRUG AND ALCOHOL TESTING POLICIES

Section 301 General Policy

All persons who are employed by the Fond du Lac Band, the Reservation Business Committee or any subdivision or enterprise thereof in a position requiring a commercial driver's license or whose job duties involve the operation of a commercial motor vehicle shall be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include discharge from employment.

Section 302 Testing of Job Applicants and Employees

Every job applicant for, and employee in, any position with the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof which requires a commercial driver's license or whose job duties involve the operation of a commercial motor vehicle which is owned, leased, or in the legal

possession of the Fond du Lac Band shall be required to submit to drug and alcohol testing in accordance with the provisions of this Ordinance and applicable federal laws and regulations.

Section 303 Prohibition of Drug Use or Possession

Any employee in a position with the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof whose position requires a commercial driver's license or whose job duties involve the operation of a commercial motor vehicle which is owned, leased, or in the legal possession of the Fond du Lac Band is prohibited from using, possessing, selling, purchasing, transferring or dispensing any alcohol or drugs which are not medically prescribed while on the worksite or while operating commercial vehicles. The use of alcohol or drugs which are not medically prescribed is also prohibited throughout the work day, including lunch or other breaks, whether or not the employee is on or off the worksite. Employees under the influence of alcohol or drugs which are not medically prescribed are prohibited from entering or remaining on worksite. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

CHAPTER 4

TESTING LIMITATIONS AND REQUIREMENTS

Section 401 Limitations on Testing

No job applicant or employee shall be requested to undergo drug and alcohol testing, except as authorized under this Ordinance and conducted by an accredited testing laboratory. No job applicant or employee shall be required to submit to drug or alcohol testing on an arbitrary and capricious basis.

Section 402 Administrative Responsibilities

All requirements of this Ordinance pertaining to the drug or alcohol testing of job applicants shall be administered through the Fond du Lac Human Resources Department. All requirements of this Ordinance pertaining to the drug or alcohol testing of employees shall be administered through the division or enterprise in which that employee is employed.

Section 403 Applicant and Pre-Employment Testing

- a. An applicant for any position with the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof whose position requires a commercial driver's license or whose job duties involve the operation

of a commercial motor vehicle which is owned, leased, or in the legal possession of the Fond du Lac Band shall undergo testing for alcohol and controlled substances before the first time the driver performs safety-sensitive functions.

- b. Tests conducted under subsection (a) shall only be conducted after the applicant has received a conditional offer of employment, and the same test is requested or required of all job applicants conditionally offered employment for that position.
- c. In order to be hired, the applicant must test negative.
- d. If the applicant tests positive for alcohol with a concentration greater than .04, the applicant shall not be permitted to perform any safety-sensitive functions. If the test result indicates a concentration of .02 or greater but less than .04, the applicant shall not perform safety-sensitive functions for a period of at least 24 hours.
- e. If a job applicant has received a job offer which is contingent on the applicant passing drug and alcohol testing, the job offer may only be withdrawn based on a positive test result from an initial screening test after the initial test has been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the job applicant shall be promptly notified of the reason for the action.

Section 404 Post-Accident Testing

As soon as practicable following an accident, a driver of a commercial motor vehicle shall be tested for alcohol and controlled substances if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from the accident.

Section 405 Random Testing

- a. Drivers of commercial motor vehicles for the Fond du Lac Band, the Reservation Business Committee, or any subdivision or enterprise thereof shall be subject to tests on a random basis at unannounced times throughout the year.
- b. Random tests for alcohol shall be conducted at a minimum annual percentage rate of 25 percent of the average number of commercial driver positions for each subdivision or enterprise with commercial driver positions, and for controlled substances, at a minimum annual percentage of 50 percent of commercial driver positions for each subdivision or enterprise with commercial driver positions.

- c. Each subdivision or enterprise of the Fond du Lac Band or the Reservation Business Committee with commercial driver positions shall adopt a scientifically valid method for selecting commercial drivers for testing.

Section 406 Reasonable Suspicion Testing

- a. The Division Director or Enterprise Manager of a subdivision or enterprise shall require a commercial driver to submit to an alcohol test and/or controlled substances test when the Division Director or Enterprise Manager has reasonable suspicion that the employee:
 1. Is under the influence of drugs or alcohol; or
 2. Has violated the provisions of this Ordinance or the personnel policies applicable to the employee prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is at the worksite or operating the employer's commercial vehicles.
- b. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing shall be administered within two hours following a determination of reasonable suspicion. If it is not done within two hours, the Division Director or Enterprise Manager shall prepare and maintain a record explaining why it was not done.
- d. The Division Director or Enterprise Manager who makes observations leading to a controlled substances reasonable suspicion test shall make a written record of the observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

Section 407 Return-to-Duty Testing

Before a commercial driver returns to driving duty after engaging in conduct prohibited by this Ordinance, the driver shall undergo alcohol and/or controlled substances testing, depending upon the violation (alcohol or controlled substances).

Section 408 Follow-Up Testing

When a substance abuse professional (S.A.P.) has determined that a driver is in need of assistance in resolving problems, the driver shall be subject to unannounced follow-up testing as directed by the S.A.P., with the prior consent of the Division Director or Enterprise Manager.

Section 409 Treatment Program Testing

An employee may be required to undergo drug and alcohol testing if the employee is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

Section 410 The Right of a Job Applicant or Employee to Refuse Drug or Alcohol Testing and Consequences of Such Refusal

- a. Right of Refusal. Any job applicant or employee has the right to refuse drug and alcohol testing subject to the provisions contained in subsections (b) and (c) of this section.
- b. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing. Any job applicant who refuses to undergo drug and alcohol testing pursuant to this Ordinance shall not be employed.
- c. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing. Refusal by any employee to undergo drug and alcohol testing requested pursuant to this Ordinance shall be considered misconduct, will result in the employee's immediate suspension from the performance of any safety-sensitive function, and such employee shall also be subject to disciplinary action, up to and including immediate discharge.

Section 411 Use of Prescription Drugs

A driver shall inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. Such use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

CHAPTER 5

DRUG AND ALCOHOL TESTING PROCEDURES

Section 501 Rights of Employees and Job Applicants

- a. Before a job applicant or employee is requested to undergo drug or alcohol testing, the job applicant or employee shall be provided with the following:

1. A "Pretest Notice Form," as set forth in the Appendix to this Ordinance, on which to (1) acknowledge that the job applicant or employee has seen the drug and alcohol testing policy as set forth under this Ordinance, and (2) indicate any over-the-counter or prescription medications that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result; and
 2. A "Waiver and Consent to Submit to Drug and Alcohol Testing" form, on which the job applicant or employee shall indicate that he or she is giving his or her informed consent to submit to testing.
- b. Within three (3) working days after notice of a positive test result on a confirmatory test, the job applicant may submit information to the Human Resources Department or the employee may submit information to the Division Director or Enterprise Manager, in addition to any information already submitted, to explain that result, or may request a confirmatory retest of the original sample at the job applicant's or employee's own expense.

Section 502 Test Results

- a. Notice of Test Results. Within three (3) working days after receipt of a test result report from the testing laboratory, the job applicant or employee shall be informed in writing of (1) a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test, and (2) the right of the job applicant to request and receive a copy of the test result on any drug or alcohol test. In the case of a positive test result on a confirmatory test, the job applicant or employee shall also, at the time of this notice, be informed in writing of the rights to explain the results, to submit information, and to request a confirmatory retest, to participate in treatment or counseling, whichever are applicable.
- b. Right to Test Result Report. A job applicant or employee has the right to request and receive a copy of the test result report on any drug or alcohol test.
- c. Confirmatory Retests. A job applicant or employee may request a confirmatory retest of the original sample at the job applicant's or employee's own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the job applicant shall notify the Human Resources Department or the employee shall notify the Division Director or Enterprise Manager in writing of the job applicant's or employee's intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the Human Resources Department,

Division Director or Enterprise Manager shall notify the original testing laboratory that the job applicant or employee has requested the laboratory to conduct the confirmatory retest or transfer the sample to another accredited laboratory to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the job applicant or employee.

Section 503 Chain-of-Custody Procedures

The Human Resources Department and each division or enterprise responsible for the administration of the provisions of this Ordinance shall observe the following chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested:

- a. Possession of a sample must be traceable to the job applicant or employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
- b. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
- c. A sample must be accompanied by a written chain-of-custody record; and
- d. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

CHAPTER 6

ENFORCEMENT AND DISCIPLINARY CONSEQUENCES

Section 601 Enforcement

- a. Refusal by any driver to submit to post-accident, random, reasonable suspicion, or follow-up testing requested pursuant to this Ordinance shall constitute misconduct and shall be subject to disciplinary action in accordance with the applicable personnel policies.
- b. Drivers who test positive with verification of a confirmatory test shall be subject to disciplinary action

in accordance with the applicable personnel policies, which may include immediate suspension without pay and/or immediate discharge.

Section 602 Disciplinary Consequences of Prohibited Conduct

- a. Any driver who has engaged in prohibited conduct under this Ordinance shall be suspended from the performance of any safety-sensitive function until such time as a full investigation of the violation has been completed, and such suspension may include suspension from employment without pay if the Division Director or Enterprise Manager has determined the prohibited conduct at issue to constitute gross misconduct, as defined under Section 201(m) of this Ordinance.
- b. The Division Director or Enterprise Manager shall inform a driver who has engaged in prohibited conduct not amounting to gross misconduct of resources available for evaluating and resolving problems associated with misuse of alcohol and drugs and, such driver shall be evaluated by a S.A.P., who shall determine what assistance, if any, the driver needs. The driver must undergo Return-to-Work Testing before returning to duty. If the driver is referred to rehabilitation, the S.A.P. will evaluate him or her to determine that the driver has followed the rehabilitation program, and the driver will be subject to unannounced follow-up testing.

Section 603 Employee Discipline and Discharge

- a. No employee shall be disciplined, discharged, or required to undergo rehabilitation on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this Ordinance and the appropriate personnel policies.
- b. No employee may be discharged on the basis of a positive test result on a confirmatory test if the positive test result was the first such result for the employee on a drug or alcohol test requested of the employee under this Ordinance, unless the following conditions have been met:
 1. The employee has been first given an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Division Director or Enterprise Manager after consultation with a certified chemical use counselor or a physician

trained in the diagnosis and treatment of chemical dependency; and

2. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.
- c. Notwithstanding subsection (b), a positively-tested employee may be temporarily suspended pending the outcome of the confirmatory test where the Division Director or Enterprise Manager has determined such suspension to be reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
- d. An employee shall not be disciplined, discharged, discriminated against, or required to undergo rehabilitation on the basis of medical history information concerning that employee unless the employee was under an affirmative duty to provide the information before, upon, or after hire.
- e. An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

CHAPTER 7

RECORDKEEPING REQUIREMENTS

Section 701 Confidentiality Requirements

All records which are collected and retained pursuant to this Ordinance shall be regarded as confidential data and shall not be disclosed to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the job applicant or employee tested.

Section 702 Exceptions to Privacy and Confidentiality Disclosure

Notwithstanding Section 701, evidence of a positive test result on a confirmatory test may be used as follows:

- a. In a judicial proceeding, provided that information is relevant to the hearing or proceeding, except that positive test results may not be used as evidence in a

criminal action against the job applicant or employee tested.

- b. Disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and
- c. Disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

Section 703 Retention of Records

The Human Resources Department shall maintain records which are collected under this Ordinance in accordance with the following minimum periods:

Basic records	5 years
Collection records	2 years
Training records	2 years
Negative tests	1 year
Cancelled controlled substances tests	1 year
Alcohol with less than .02 concentration	1 year

CHAPTER 8

TRAINING AND EDUCATION

Section 801 Training of Supervisory Staff

Each Human Resources officer, Division Director, Enterprise Manager or supervisor who is responsible for making determinations of reasonable suspicion under this Ordinance shall receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable misuse of alcohol and use of controlled substances.

Section 802 Policy and Educational Materials

- a. A copy of this Ordinance shall be provided to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a commercial motor vehicle.
- b. The Human Resources Department shall also provide the following information to each employee who is affected by this Ordinance, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing:

1. Educational materials that explain the requirements of this Ordinance and applicable federal laws and regulations;
 2. The identity of the person designated by the Human Resources Department to answer questions about the materials;
 3. The categories of drivers who are subject to testing;
 4. Information regarding what period of the workday that the driver is required to be in compliance with this Ordinance and applicable federal laws and regulations;
 5. Information as to driver conduct that is prohibited by this Ordinance and applicable federal laws and regulations;
 6. The circumstances under which the driver will be tested;
 7. The procedures that will be used for testing;
 8. The requirement that a driver submit to alcohol and controlled substances testing in accordance with this Ordinance and applicable federal laws and regulations;
 9. An explanation of what constitutes a refusal to submit to the testing and the consequences for such a refusal;
 10. The consequences for violating the prohibitions under this Ordinance or applicable federal laws or regulations;
 11. The consequences for drivers found to have an alcohol concentration of .02 or greater but less than .04; and
 12. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistant program, and/or referral to management.
- c. The Human Resources Department shall provide written notice to the appropriate staff and committees of the Fond du Lac Band that the information described under subsection (b) is available.

- d. The Division Director or Enterprise Manager shall require each driver to sign a statement certifying that he or she has received a copy of the materials. The Division Director or Enterprise Manager will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

CERTIFICATION

We do hereby certify that the foregoing Fond du Lac Ordinance, FDL Ordinance #09/95, entitled "Drug and Alcohol Testing for Drivers of Commercial Motor Vehicles," was duly presented and adopted by Resolution #1422/95 by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Reservation Business Committee held on December 12, 1995 in Cloquet, Minnesota.

Robert B. Peacock
Robert B. Peacock, Chairman

Peter J. Defoe
Peter J. Defoe, Sec. / Treas.

APPENDIX

[TO BE PLACED ON APPROPRIATE LETTERHEAD]

- PRETEST NOTICE -

I, _____, the undersigned job applicant/employee of the Fond du Lac Band of Chippewa, do hereby acknowledge that I have been provided a copy of the Drug and Alcohol Testing Policy for Drivers of Commercial Motor Vehicles.

I am currently taking or have recently taken:

_____ no over-the-counter or prescription medications; or
_____ the following over-the-counter or prescription medications:

I also offer the following information relevant to the reliability of, or explanation for, a positive test result:

Signature of Job Applicant/Employee

Date: _____

WAIVER AND CONSENT TO SUBMIT

TO DRUG AND ALCOHOL TESTING

I hereby agree to submit to drug or alcohol testing on a random basis as required by my employer, the Fond du Lac Band of Chippewa. I understand that such testing may include any method of analysis at my employer's discretion, including intoxilyzer (breath-testing), blood test, or urine test, and may occur at any time without prior notice to me. I understand that I have certain rights regarding drug and alcohol testing and I have been provided a copy of a description of those rights and have had an opportunity to review it. I hereby waive all of my rights regarding employer drug and alcohol testing under applicable law including, but not limited to, the right to written notice of drug and alcohol testing pursuant to the employer's policy and confirmatory retest. I understand that a positive drug or alcohol test may result in disciplinary action against me, which may include immediate discharge.

I specifically acknowledge that this waiver and consent is completely voluntary and no person has forced me in any manner to execute this Waiver.

Name

Dated: _____

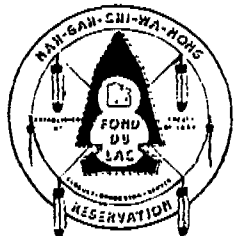
Witness

Dated: _____

Fond du Lac Reservation Business Committee

105 University Road,
Cloquet, MN. 55720
Phone (218) 879-4593
Fax (218) 879-4146

RESOLUTION #1422/95



The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

Chairman
Robert B. Peacock

Secretary/Treasurer
Peter J. Defoe

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
Daryold Blacketter

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the permanent home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, the United States Department of Transportation has issued regulations requiring that employers with 50 or fewer commercial vehicle drivers must begin complying with the federal laws and regulations concerning drug and alcohol testing by January 1, 1996 (49 U.S.C. § 31306; 49 C.F.R. Part 383, et al.); and


WHEREAS, the Reservation Business Committee has determined it to be in the best interests of the Fond du Lac Band to adopt an ordinance governing drug and alcohol testing for drivers of commercial motor vehicles; and

WHEREAS, towards this purpose, the Reservation Business Committee has considered the proposed ordinance entitled "Drug and Alcohol Testing for Drivers of Commercial Motor Vehicles," and has determined that adoption of said Ordinance is in the best interests of the Fond du Lac Band;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt Fond du Lac Ordinance #09/95, entitled "Drug and Alcohol Testing for Drivers of Commercial Motor Vehicles" as the law of the Fond du Lac Band which shall govern drug and alcohol testing for drivers of commercial motor vehicles.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on December 12, 1995 in Cloquet, Minnesota.


Robert B. Peacock, Chairman


Peter J. Defoe, Sec./Treas.