



**OFFICE OF INSPECTOR GENERAL**  
*City of Albuquerque*

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**Investigation**

**FILE NO:** 21-0001-I

**DATE:** March 11, 2021

**SUBJECT:** The OIG received a complaint from the City of Albuquerque (COA) 311 system indicating that a passenger in a Solid Waste truck was smoking an illegal substance in a business bathroom and that this was the second time this had occurred.

**STATUS:** Final

**INVESTIGATOR:** J.S. & J.O.

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*Nicole Kelley*

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**NICOLE KELLEY**  
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**EDMUND E. PEREA, ESQ**  
**ACCOUNTABILITY IN GOVERNMENT OVERSIGHT COMMITTEE CHAIRPERSON**

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## **Executive Summary**

The OIG received a complaint from the City of Albuquerque (COA) 311 system indicating that a passenger in a Solid Waste truck was smoking an illegal substance in a business bathroom and that this was the second time this had occurred. The complainant did not provide a name for this passenger in the Solid Waste truck, but they provided a description. The OIG forwarded the complaint to the Director for the Solid Waste Management Department (SWMD) and the passenger was identified as a laborer for SWMD.

The OIG was provided with documents that included an email from a concerned employee at an Albuquerque apartment complex which had been sent to an Assistant Superintendent for SWMD stating that: “a garbage assistant in garbage truck number 185603 comes in the office to use the restroom and we don’t if he comes in and uses the bathroom but the problem is that every time he comes and uses the restroom, the restroom smells like marijuana. It just concerns me that he is on the job and high”.

The OIG investigation will focus on the request from 311. The OIG will also consult with the Director for SWMD and review information and documentation received to determine what, if any, SWMD employees were present at the date and time of the allegation. Further, the OIG will work with Risk Management and Human Resources (HR) to follow up on drug testing of staff, conducted when the 311 allegation was referred to the SWMD Director.

The methodology will consist of an initial review of relevant documents to include policies and procedures, and interviewing witnesses that could provide information regarding the allegations. The methodology will also consist of:

- Review of pertinent documents to include HR files, background information to include court searches and NEOGOV documentation;
- Interviews of relevant staff members;
- Review of Collective Bargaining Agreement
- Review of relevant City Ordinances SOP’s and COA’s policies and procedures; *and*
- Review of previous investigative reports relating to the staff in the allegation.

## **Abbreviations**

AC-1 – Apartment complex staff  
AC-2 – Apartment complex manager  
COA – City of Albuquerque  
COP – City Operator Permit  
IG – Inspector General  
OIG – Office of the Inspector General  
SAPM - Substance Abuse Program Manager

SWMD – Solid Waste Management Department

SW-1 – Subject  
SW-2 – Commercial Supervisor, SW-1’s Supervisor  
SW-3 – Commercial Driver  
SW-4 – Commercial Driver  
SW-5 – Commercial Collections Driver  
SW-6 – Commercial Collections Driver  
SW-7 - Foreman  
SW-8 - SW Assistant Superintendent

### **Background, Document Review, and Interviews**

#### **Information about the Solid Waste Department:**

According to the public information website for the Solid Waste Management Department (SWMD), the department’s dedicated employees are committed to making the City a more beautiful place to live, work, and play by providing median maintenance, daily graffiti removal, trash and recycling pick-up and disposal.

Upon receiving the complaint from the COA 311 process on January 13, 2021, the OIG forwarded the allegation to the SWMD to conduct a precursory review.

During the course of the investigation, the OIG was provided with documents that included an email from a concerned employee at an Albuquerque apartment complex which had been sent to an Assistant Superintendent for SWMD stating that: “a garbage assistant in garbage truck number 185603 comes in the office to use the restroom and we don’t if he comes in and uses the bathroom but the problem is that every time he comes and uses the restroom, the restroom smells like marijuana. It just concerns me that he is on the job and high”.

#### **Review of the COA and Local 624 AFSCME, Council 18, AFL-CIO Agreement**

A review of the current bargaining agreement was conducted and the following provisions were noted as applicable to this investigation:

- 12.4.1 Other work provisions: Employees shall receive one fifteen (15) minute rest period during each one-half shift.
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- 12.4.2 Other work provisions: The employer will provide a lunch break of at least thirty minutes but not to exceed one hour on non-pay status.

#### **HR File Review, Subject Discipline and Notices of Investigation:**

A review of the HR Central Office file for SW-1 found that:

- On July 1, 2002, when the COA previously employed SW-1 as an apprentice for the seasonal art program, SW-1 signed an acknowledgment that he received the Code of Conduct and Conflict of Interest policies and training.
- The COA hired SW-1 on July 11, 2015 as a Laborer. This remains as the current position held.
- On July 22, 2015, when SW-1 was in the current position with the COA, SW-1 signed for the standards of policy and training.
- SW-1 completed his COA probation period on January 7, 2016.
- SW-1 received a performance evaluation on January 13, 2016 whereas he 'Met' all Job Duties and Performance Goals and Expectations.
- SW-1 received a performance evaluation on July 12, 2016 whereas he 'Met' all Job Duties and Performance Goals and Expectations.
- On July 16, 2016, when SW-1 was in the current position with the COA, SW-1 signed for the standards of policy and training.

The OIG requested background information for SW-1 from the SWMD HR Coordinator as well as the HR Representative in Central HR (City Hall), to include hiring information, training documentation, policy acknowledgments and prior discipline received. The following information was found:

1. On September 5, 2017, SW-1 was issued a ten-day unpaid suspension for failure to report a DUI to his supervisor as per Personnel Rules and Regulations. A DUI leads to an automatic suspension of an employee's City Operator's Permit (COP), which is required for the position held by SW-1 (see below for more information on this requirement).
2. On October 8, 2019, SW-1 was given a Letter of Instruction regarding attendance and punctuality, reporting absences from work, and unauthorized absences.
3. On January 7, 2020, SW-1 was served a memorandum from the Deputy Director of the SWMD placing him on a 30/60/90 day plan. This plan was developed as a result of, and failure to report, a DUI charge. After a DUI charge, an employee cannot obtain a COP for a period of three years. The job description held by SW-1 requires a City Operator Permit (COP) and a valid New Mexico Driver's License. The plan provided SW-1 to: 1. 30 days – be temporarily reassigned to a position for which a COP is not required or take leave/compensatory time/or leave-without-pay; 2. 90 days – regardless of what jobs were available and for up to 60 days, leading up to the 90<sup>th</sup> day, SW-1 was allowed to take leave, any remaining compensatory time, or leave without pay. At any time during these 90 days, should SW-1 have regained the required driver's license and COP, he could be restored to his previous position. According to this memorandum, if SW-1 did not

receive the job required licensure, he would be given a Pre-Determination Hearing before any disciplinary action would be taken for failure to maintain required licenses and certification. Due to missed deadlines by the COA, as per bargaining unit contract, the investigation did not proceed and SW-1 was made whole to include recovery of any lost wages, benefits and accruals on or about April 23, 2020.

4. On December 19, 2020, SW-1 was served with a Notice of Final Action and issued a Letter of Reprimand for an on-going issue with punctuality and arriving to work and not punching in timely. SW-1 was found to have violated COA Personnel Rules and Regulations 301.1, 301.2, 301.3, 302, 401, and 402.5 as well as SWMD policy and procedure 4.1. These delays in timely arrival resulted in delays in trash service to the public and created inconveniences for fellow COA employees and to the COA customers.
5. On December 30, 2020, SW-1 was served a Notice of Investigation regarding inappropriate conduct towards his direct supervisor, SW-2, regarding the fulfillment of duties of the position assigned. During this alleged incident, which is pending investigation, SW-1 was insubordinate and used profanity towards his direct supervisor when asked to perform work duties. This notice was never issued to SW-1 due to missed deadlines by management.
6. On January 26, 2021, SW-1 was served a Notice of Investigation for this investigation regarding inappropriate and unprofessional conduct, possible violations of COA Personnel Rules and Regulations, or other rules, policies, guidelines or directives.

**Applicable policies:**

Personnel Rules and Regulations, 12.E.8., Department of Finance Administration Services, City Operator Permit states that all operators shall:

*Immediately report in writing and submit within one workday to their respective supervisors any change in the status of the driver's New Mexico Driver's license. Immediately reporting in writing and submit within one workday to the respective supervisor of the revocation, suspension, or loss of the Driver's New Mexico driver's license or City operator's permit or the receipt of any on or off duty citation or arrest for Homicide or Serious Bodily Injury by Vehicle, Driving While Under the Influence of Alcohol or Drugs or Reckless Driving. Receipt of a citation for one of the above charges will result in automatic suspension of the driver's COP, as per administrative instruction 4-14. An operator shall not drive a vehicle while on duty after receipt of the above listed violations unit authorized by their supervisor.*

Personnel Rules and Regulation, 311.1, Alcohol/Drug Possession and Consumption states that:

- *As a condition of employment, consumption, possession, sale, purchase and/or transfer of illegal drugs or drug paraphernalia by City employees are strictly prohibited. Consumption of alcohol by City employees is prohibited in any facility, vehicle or work*

*site (owned, leased or rented) during assigned work hours including lunch period and breaks.*

- *No employee will report to work, perform work, visit a City work site, City office or City owned facility (owned, rented or leased) while under the influence of alcohol or the presence of illegal drugs in their system. Employees suspected of being under the influence of alcohol or illegal drugs during assigned work hours shall be subject to a reasonable suspicion alcohol/drug test.*
- *Violations of the above provisions shall be grounds for denial, suspension or revocation of any City-issued driver's permit to operate a motor vehicle or hazardous machinery and is considered just cause for disciplinary action up to and including termination. Refusal to undergo any test required under this regulation or applicable City policy is considered a positive test and a direct act of insubordination and will result in termination.*

#### 19. COMMERCIAL DRIVER'S LICENSE REQUIREMENTS.

*A. The Federal Transit Administration, through the Department of Transportation, issues regulations establishing uniform criteria and classifications for obtaining commercial class motor vehicle operating licenses (CDL). The State of New Mexico has adopted these criteria and operator license classifications. Consequently, all shall conform to these federal and state requirements. This rule sets forth the procedure for obtaining and maintaining a valid commercial class operator license as a condition to perform duties as an employee of the City.*

*B. If holding a CDL is necessary to perform essential job functions of a driver's position and the driver cannot qualify for a CDL, the Department Director should refer the situation to the Human Resources Department for appropriate resolution.*

*C. Additional Responsibilities of the Supervisors of CDL Drivers, who shall:*

*(1) Not permit or direct a City employee to operate a vehicle on official City business without the appropriate commercial class operator's license (CDL) issued by the MVD as well as a City Operator's Permit.*

*(2) Whenever a supervisor has knowledge that a supervised Operator does not have a current, valid and appropriate commercial class operator's license (CDL), shall immediately prohibit the CDL driver from operating any vehicle requiring a CDL and shall notify the department director.*

### **Solid Waste Management Department, Policies and Procedures Manual**

*1.5 Code of Conduct states that employees are bound by the City Code of Conduct promulgated on February 1, 1989. Employees must in all instances maintain their conduct at the highest*

*standards. Employees shall not continue in their City employment with pay when they engage in activities which are found to more than likely lead to diminishing the integrity, efficiency or discipline of the City service.*

*Employees of the Department of Solid Waste Management are in possession of the public trust. The departmental mission is both physically as well as mentally alert, exceptionally safety conscious and of the highest loyalty and integrity.*

*3.3 Behavior/Conduct states that all employees of the Department are expected to conduct themselves in a manner consistent with the provisions of the COA Merit System Ordinance and the Personal Rules and Regulations. Employees should remember that they are representatives of the government of the COA, and should act accordingly. This includes refraining from the use of foul and abusive language in contacts with fellow employees as well as the public.*

*3.7 Drugs and Alcohol stated that due to the hazardous nature of the work performed by departmental employees and the fact that the conduct of all employees is subject to continuous, close public scrutiny, the possession and/or non-prescribed drugs is expressly prohibited upon City premises, in facilities, vehicles or job site.*

*Suspicious Behavior: suspects may be submitted to any testing prescribed by the Risk Management Department to determine if the suspected violation exists. Testing may include breath alcohol, blood sample, urine samples, as well as coordination tests. Should an employee be suspected of reporting to work under the influence of alcohol or drugs, the following procedures will be followed: 1. Monday through Friday, 8am – 5pm: The supervisor will escort the employee to the Employee Health Center in the basement of the old City Hall building and 2. Other times and days: The supervisor will escort the employee to Presbyterian Hospital Emergency Room and request an evaluation for suspicious behavior.*

*Employees who refuse to undergo testing as well as those who are found to be under the influence of alcohol or illegal drugs are subject to disciplinary action, including dismissal. Further information is available in City Administrative Instruction 7-1 Substance Abuse Policy issued February 7, 2006.*

**Laborer, Job Description:**

**ESSENTIAL FUNCTIONS:** (Essential functions may include, but are not limited to the functions listed below)

1. Perform a wide variety of manual labor tasks in support of assigned function including but not limited to construction and maintenance of City facilities, structures or open space areas, general janitorial and grounds maintenance duties, right of way maintenance of weed and litter on City arterials and interstate highways.
2. Participate in and assist skilled staff with the construction of a wide variety of City park facilities including shade structures, fencing, and play area equipment in newly developed

parks; install forms, shovel and spread concrete; cut and tie re-bar; assist with block laying of walls.

3. Perform general building janitorial and custodial duties; sweep, mop and buff floors; vacuum and shampoo carpets; clean windows and mirrors; clean rest-rooms, meeting rooms, ballrooms, and exhibit halls.
4. Assist warehouse staff in receiving, unpacking, storing and distributing supplies; verify description, quantity and condition of material against invoices or purchase requisitions; assist with inventory control.
5. Support street maintenance operations as assigned; check streets for holes in pavement, prepare holes for liquid asphalt, shovel hot mix into hole and tamp to level the fill; assist with the construction of manholes, sewer inlets and other improvements.
6. Support the maintenance of City open space areas; collect trash and assist in the installation of gates, fence posts, signs and flags.
7. Assist in the collection and planting of young trees and shrubs; hand dig, ball, and burlap trees and shrubs; hand water newly planted trees and shrubs; pull weeds from tree wells; assist with spraying of trees to prevent infestations.
8. Spread organic fertilizers with shovel and assist in distribution of chemical fertilizers in the planting and seeding of parks. Operate herbicide application equipment and apply herbicides to undeveloped medians and right of ways.
9. Assist with the installation, maintenance and repair of irrigation systems and mainlines including digging trenches.
10. Assist in the construction of trails, grade control structures and the installation of erosion control devices.
11. Operate, load and direct solid waste trucks, trailers, and motorized mowing equipment on assigned route; assist clean city operators in commercial and residential collections, guide truck in and out of alleys; pick up hazardous waste as required; sweep and pick up trash as needed. Maintain and mow weed and litter on right of ways of City arterials and interstate highways.
12. Sweep and clean outside of buildings, pick up trash and maintain open space.
13. Solid Waste laborer positions will be responsible for labor and manual tasks as assigned in any of the following areas: refuse collections, disposal, weed, litter and graffiti eradication and maintenance of the City's public right of way system and the Interstate Highway; operate assigned vehicles as needed, operate equipment and utilize tools common to the Solid Waste operations; perform a variety of other related duties in support of the Solid Waste Department.



14. Adhere to safe work practices and procedures.

**SUPPLEMENTAL FUNCTIONS:**

1. Respond to public inquiries in a courteous manner; provide information within the area of assignment; resolve complaints in an efficient and timely manner.
2. Perform related duties and responsibilities as required.

**ADDITIONAL REQUIREMENTS:**

Dependent on position may require a valid New Mexico Driver's license and a City Operator's Permit (COP).

**When assigned to Solid Waste:**

Possession of a valid New Mexico Driver's License, or the ability to obtain by date of hire.

Possession of a City Operator's Permit (COP) within 6 months from date of hire.

**Complaint Investigation and Interviews:**

Apartment Complex Complaint: After a review of the apartment complex complaint dated January 9, 2020, the OIG reviewed the contract to ensure this was a valid customer for a SWMD truck to pick up at, which was confirmed through the customer care system. The pick-up days for this location are listed on Mondays and Thursdays. In addition, employee line ups were reviewed and demonstrated that staff member SW-1 was assigned to this location and route this particular day. GPS data was also pulled for this route and demonstrated that SW-1 and an assigned driver, SW-3 were at this location on various days.

311 complaint, local restaurant: After a review of the complaint from a local restaurant, the OIG reviewed the contract to ensure this was a valid customer for a COA truck to pick up at, which was confirmed through the customer care system. The pick-up days for this location are listed on Mondays and Thursdays. In addition, employee line ups were reviewed and demonstrated that staff member SW-1 was assigned to this location route. GPS data was also pulled for this route and demonstrated that SW-1 and an assigned driver, SW-3 were at this location on various days.

After the first complaint was received, the supervisor forwarded the information regarding the allegation to the COA Substance Abuse Program Manager who requested a reasonable suspicion/for cause Order to Test. This was completed on January 19, 2021 and SW-1's test was completed within one hour and forty-five minutes of the request. The OIG reviewed the testing

Custody and Control forms for the sample. The temperature for this test was out of normal body-temp range, which means an "observed" collection must be conducted.

At this time, on January 19, 2021, SW-1 also signed a form titled *City of Albuquerque Substance Abuse Testing Acknowledgment Form*. This form details the COA policy regarding substance abuse and clearly stated that:

- All employees are subject to reasonable suspicion drug/alcohol testing;
- Testing is voluntary; *and*
- A refusal will be considered a positive test and such refusal will disqualify the individual from employment consideration or can subject the individual to disciplinary action up to and including termination.

Due to the need for an observed test, SW-1 was directed to take another test on January 21, 2021. SW-1 refused this test.

### **Discussion/Interview Substance Abuse Program Manager – SAPM**

During the course of this investigation, several calls and emails were exchanged with the COA Substance Abuse Program Manager, hereinafter referred to as SAPM.

SAPM was not in charge of the substance abuse program and training at the time that SW-1 was hired.

SAPM stated that he received an email back from the employees who would have taught the Defensive Driving Course back when SW-1 started with the COA. They said that it was discussed, "don't drink and drive", but there was nothing in the presentation that said the requirements of "you must notify your supervisor within 24-hrs of an arrest", and no acknowledgment was signed.

SAPM provided the OIG with the two Custody and Control Forms for the suspicion based urinalysis testing of SW-1. The first test indicated that the temperature was out of normal body-temp range, which means an "observed" collection must be conducted. SW-1 refused the second, observed collection.

SAPM stated that according to Personnel Rules and Regulations, all Vehicle Operators shall notify their supervisors of a DUI/DWI arrest within 24-hrs of arrest (12.E.8). In addition, SAPM stated there is also something similar in a different part of personnel rules/regulations which says they must notify their supervisor after a conviction, and not after an arrest. But even then, SW-1 was arrested in December 2016, but it was not discovered by the previous staff in this department until August 2017.

### **Interview SW Driver – SW-3**

An interview was held on February 8, 2021 with a commercial driver for SWMD, hereinafter referred to as SW-3. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-3:

SW-3 stated that a driver will be assigned a laborer if they have a route that was hazardous. Laborers will help to open gates, direct traffic when necessary and help the trucks back up.

SW-3 stated that he worked with SW-1 for a short period. He recalls SW-1 smelling of marijuana, usually at the start of shift, on numerous occasions. SW-3 states that he discussed this smell with other drivers but was told that laborers cannot be drug tested.

SW-3 recalls an instance with SW-1 near Golf Course Road. The bin at the location is at a four-way stop and drivers need assistance with traffic. SW-1 disappeared for a while without telling SW-3 and came back with a Starbucks Coffee. SW-3 stated that he asked SW-1 not to do that again since traffic was backing up.

**Interview  
SW Driver – SW-4**

An interview was held on February 9, 2021 with a commercial driver for SWMD, hereinafter referred to as SW-4. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-4:

SW-4 has been a commercial driver for approximately three years.

SW-4 stated that there are only certain routes where drivers are assigned a laborer. SW-4 explained that these are referred to as hazard routes where laborers help direct traffic as needed, assist with the different types of bins, help the driver back up, and assist with other general safety needs.

SW-4 was assigned to a route with SW-1 as a laborer.

SW-4 stated that SW-1 did use restrooms more than most other laborers he has worked with and that SW-1 was a cigarette smoker.

SW-4 stated that SW-1 did not drive the Solid Waste trucks under any circumstances.

SW-4 stated that he does not recall ever smelling marijuana on SW-1.

**Interview  
Apartment Complex Staff – AC-1**

An interview was held on February 9, 2021 with a staff member of an Albuquerque apartment complex, hereinafter referred to as AC-1. The interview was held telephonically due to COVID-19 precautions. AC-1 shared the following information:

AC-1 stated that SWMD provides trash pickup services at the apartment complex. The trash bins are located close to the main complex common area where residents are located.

AC-1 stated that he recalls two instances where SW-1 used the restroom and smelled of marijuana upon exit. On the first instance, AC-1 advised his manager. On the second instance, AC-1 immediately called his manager to smell the odor and confirm his thoughts that it was marijuana.

AC-1 stated that never before has a SW worker used their restrooms and he thought it was odd that SW-1 did so twice in one week. AC-1 reported this to the COA.

### **Interview**

#### **Apartment Complex Staff – AC-2**

An interview was held on February 9, 2021 with a staff member of an Albuquerque apartment complex, hereinafter referred to as AC-2. The interview was held telephonically due to COVID-19 precautions. AC-2 shared the following information:

AC-2 is a manager at this apartment complex.

AC-2 stated that SWMD provides the trash pickups services.

AC-2 stated that her employee, AC-1 once told her of SW-1 utilizing the restroom and it smelling of marijuana when he left. On the second instance, AC-2 was immediately called by AC-1 to smell the odor and confirm his thoughts that it was marijuana. AC-2 stated that is was a very strong odor of marijuana, as if it was just smoked in the restroom.

AC-2 stated that these instances were in early 2020, prior to COVID-19 as they do not let anyone in their offices to utilize the restrooms currently.

### **Interview**

#### **SW Driver – SW-5**

An interview was held on February 11, 2021 with a commercial collections driver for SWMD, hereinafter referred to as SW-5. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-5:

SW-5 stated that he worked with SW-1 for a period of time. He stated that SW-1 would often come to work late, clock in and go back to his vehicle or the bathroom for an unknown reason. SW-1 would often come up with an excuse such as he forgot something, he needed to check something, he had to go to bathroom. SW-5 stated that since the drivers are not supervisors, it is a difficult situation and they cannot say much to the laborer. SW-5 stated that when SW-1 was late, SW-5 would purposely wait in the lobby so supervisors could see that SW-5 was on time and always waiting on SW-1.

SW-5 stated that he recalls SW-1 leaving him one time at a Blake's restaurant and disappearing. SW-5 stated that traffic backed up at the drive through and he had difficulty without a Laborer.

SW-5 stated that this 'disappearing' had never occurred since with any other laborer. Communication is key between a laborer and their driver for the safety of not only them but the public.

SW-5 stated that he has often smelled smoke on SW-1 but believes it was cigarette smoke. He has heard other drivers complain of marijuana smoke smells on SW-1, but he cannot state that he has personally.

### **Interview SW Driver – SW-6**

An interview was held on February 12, 2021 with a commercial collections driver for SWMD, hereinafter referred to as SW-6. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-6:

SW-6 stated that he worked with SW-1 for approximately nine months.

SW-6 stated that SW-1 would take his time in the morning. SW-6 did not have a problem with this delay, but it was a daily occurrence.

SW-6 stated that he did not say anything to SW-1 since he was there every day. The Department is often short laborers, but SW-1 came in and did his job, SW-6 did not complain. SW-1 did the bare minimum, but did get the work done.

SW-6 does not think he smelled marijuana on SW-1 but he had heard about it from others. SW-6 thinks that he was always watching for it, since he did hear the rumors about it. SW-6 did notice SW-1 with red eyes or a 'duh' kind of demeanor many times.

### **Interview SW Foreman – SW-7**

An interview was held on February 11, 2021 with a foreman/superintendent for SWMD, hereinafter referred to as SW-7. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-7:

SW-7 stated that drivers and laborers each get two fifteen-minute breaks and a half-hour lunch break. He stated that bathroom breaks should not be made when emptying bins. The driver and laborer should communicate and pull over properly for a break.

SW-7 stated that drivers are higher ranked than the laborers but are not supervisors. Drivers are in charge of route and the truck, however, they should definitely address or report any issues that may occur.

SW-7 stated that he has known SW-1 for a while. He stated that SW-1 is “a good kid” but he has “changed recently and became more aggressive and has had a bad attitude”. SW-7 stated that this has been over the past few months but does not know the reason why the change occurred.

SW-7 stated that SW-1 is late often and this was addressed with him on a few occasions by management.

SW-7 stated that all staff can be drug tested, randomly or with suspicion through the safety sensitive employee policy.

SW-7 stated that they trust drivers with overtime and extra work needed to get the routes done correctly and safely. The process involves the drivers telling the supervisor of the extra time and it being entered. SW-7 stated that SW-1 is ‘up-there’ in terms of overtime but cannot say if it is because he is always late and taking breaks or because there is a need for more time in the field.

### **Interview SW Foreman – SW-8**

An interview was held on February 11, 2021 with a foreman/superintendent for SWMD, hereinafter referred to as SW-8. The interview was held via Zoom due to COVID-19 precautions. After introductions were made, the following information was stated by SW-8:

SW-8 stated that staff are permitted two breaks of fifteen minutes each and a half hour lunch period. Most drivers combine these breaks because each route is different with time, traffic, commotion, etc. so they know when a good time is.

SW-8 stated that the drivers are in charge of the route and truck so they would be in charge for the day to address or report any problems.

SW-8 stated that there has been a driver who asked to not work with SW-1 due to the problems with breaks and disappearing.

SW-8 stated that SW-1 would punch in and go back to his vehicle quite often.

SW-8 described instances where SW-1 has escalated things that did not need to be escalated and that SW-1 stated that he “feels targeted” whenever management addresses his actions with him. SW-1 has become more argumentative over time and difficult to deal with.

SW-8 recalled an instance where the mother of SW-1 called and started reading Human Resource policies of her employer (not COA) with management. SW-8 advised her that they could not speak with her about his performance since he is an adult and this was via telephone.

## **Interview**

### **Local Restaurant Owner – LR-1**

A telephone interview was held on February 23, 2021 with the local restaurant owner, hereinafter referred to as LR-1, who reported the smell of marijuana by a COA SW worker. After introductions were made, the following was stated by LR-1:

LR-1 stated that the COA SW department typically picks up trash for her business on Mondays. The restroom is in the back of the building and requires a key from the restaurant to use.

LR-1 stated that on one Monday, a solid waste worker who was not driving the truck, but the second person inside the truck, came in and asked for a key to the restroom. Upon returning the key, a restaurant employee went to check the restroom and smelled a strong odor of marijuana. This employee reported the smell to LR-1, the owner and manager.

The next Monday, LR-1 stated that the same SW worker once again asked to use the restroom. The employee took LR-1 to the restroom as the SW worker was leaving and once again, smelled the strong odor of marijuana in the restroom “as if it was just recently smoked”

### **Recommendations:**

1. From discussions with training staff, it is clear that the training and policy has evolved on the need to self-report any changes to your driving record when you hold a COP and when the COP is required for your job. It is recommended that SWMD re-train all staff who hold this classification and have them acknowledge their understanding through signature. In addition, it is recommended that the training department develop a clear process, Citywide, to ensure that all staff who attend COP class are aware of the reporting requirements and sign an acknowledgment thereto.

Personnel Rules and Regulations, 12.E.8., Department of Finance Administration Services, City Operator Permit states that all operators shall:

*Immediately report in writing and submit within one workday to their respective supervisors any change in the status of the driver's New Mexico Driver's license. Immediately reporting in writing and submit within one workday to the respective supervisor of the revocation, suspension, or loss of the Driver's New Mexico driver's license or City operator's permit or the receipt of any on or off duty citation or arrest for Homicide or Serious Bodily Injury by Vehicle, Driving While Under the Influence of Alcohol or Drugs or Reckless Driving. Receipt of a citation for one of the above charges will result in automatic suspension of the driver's COP, as per administrative instruction 4-14. An operator shall not drive a vehicle while on duty after receipt of the above listed violations unit authorized by their supervisor.*

2. Numerous staff who were interviewed stated that laborers could not be drug tested. It is recommended that the SWMD re-educates all staff on the COA policy:

Personnel Rules and Regulation, 311.1, Alcohol/Drug Possession and Consumption states that:

*As a condition of employment, consumption, possession, sale, purchase and/or transfer of illegal drugs or drug paraphernalia by City employees are strictly prohibited. Consumption of alcohol by City employees is prohibited in any facility, vehicle or work site (owned, leased or rented) during assigned work hours including lunch period and breaks.*

*No employee will report to work, perform work, visit a City work site, City office or City owned facility (owned, rented or leased) while under the influence of alcohol or the presence of illegal drugs in their system. Employees suspected of being under the influence of alcohol or illegal drugs during assigned work hours shall be subject to a reasonable suspicion alcohol/drug test.*

*Violations of the above provisions shall be grounds for denial, suspension or revocation of any City-issued driver's permit to operate a motor vehicle or hazardous machinery and is considered just cause for disciplinary action up to and including termination. Refusal to undergo any test required under this regulation or applicable City policy is considered a positive test and a direct act of insubordination and will result in termination.*

*Also, according to the SWMD Policy and Procedure Manual, 3.7 Drugs and Alcohol, due to the hazardous nature of the work performed by departmental employees and the fact that the conduct of all employees is subject to continuous, close public scrutiny, the possession and/or non-prescribed drugs is expressly prohibited upon City premises, in facilities, vehicles or job site.*

*Suspicious Behavior: suspects may be submitted to any testing prescribed by the Risk Management Department to determine if the suspected violation exists. Testing may include breath alcohol, blood sample, urine samples, as well as coordination tests. Should an employee be suspected of reporting to work under the influence of alcohol or drugs, the following procedures will be followed: 1. Monday through Friday, 8am – 5pm: The supervisor will escort the employee to the Employee Health Center in the basement of the old City Hall building and 2. Other times and days: The supervisor will escort the employee to Presbyterian Hospital Emergency Room and request an evaluation for suspicious behavior.*

*Employees who refuse to undergo testing as well as those who are found to be under the influence of alcohol or illegal drugs are subject to disciplinary action, including dismissal. Further information is available in City Administrative Instruction 7-1 Substance Abuse Policy issued February 7, 2006.*



3. COA HR should develop a process to ensure that all staff are aware of the COA Code of Conduct policy and ensure that they sign an acknowledgment for this policy. This should be distributed and acknowledged as updated.
4. Clearly define the role of the commercial driver, as many interviewed stated that they are in charge of the route and truck. If they feel unsafe or that a laborer is disappearing, taking many breaks, always late, or smelling of narcotics, they need to know that they can report this for the safety of the route and the citizens of the COA.
5. A refusal of drug test by an employee will be considered a positive test and such refusal will disqualify the individual from employment consideration or can subject the individual to disciplinary action up to and including termination. This information is detailed on the *City of Albuquerque Substance Abuse Testing Acknowledgment Form*. This form details the COA policy regarding substance abuse and clearly stated that:
  - All employees are subject to reasonable suspicion drug/alcohol testing;
  - Testing is voluntary; *and*
  - A refusal will be considered a positive test and such refusal will disqualify the individual from employment consideration or can subject the individual to disciplinary action up to and including termination.

It is recommended that this policy and procedure be trained, educated and documented by all staff upon hire and on an annual basis.