



REFUSAL TO PERFORM FIELD SOBRIETY TEST AND CHEMICAL TEST

Written by: Hearing Office Staff

Often times in BUI cases the party refuses to cooperate with any field sobriety tests (FST). This alone does not create a presumption of intoxication.

33 CFR 95.040 states: “If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be under the influence of alcohol or a dangerous drug.”

33 CFR 95.040 expressly requires that the chemical test be directed by the law enforcement officer. Refusal to perform FSTs, along with the observations that make the administration of FSTs appropriate, can provide reasonable cause to direct a chemical test. But, if the boarding officers do not specifically direct a party to submit to chemical testing, after the refusal to perform FSTs, the refusal to perform FSTs by itself will not give rise to a presumption of being under the influence as provided for in 33 CFR 95.040.

Boarding officers must not assume that refusal to perform FSTs means the party is also refusing to submit to a chemical test. If a party refuses to perform FSTs and the boarding officer has reasonable cause to suspect the individual of being in violation of the standards in 33CFR 95.020 or 95.025, the boarding officer must specifically direct the party to conduct a chemical test in order for a refusal to raise the presumption under 33 CFR 95.040.