

NIAGARA FALLS POLICE DEPARTMENT GENERAL ORDER

EFFECTIVE DATE: 09/03/2013	SUBJECT: USE OF FORCE; NON DEADLY WEAPONS-CHEMICAL AGENTS	Number 122.30 (NYSLEAP A-20-6, T- 32-4)
RESCINDS: 06/05/2012		Number of pages 10

- I. Purpose:
To provide members of the Niagara Falls Police Department with guidelines and procedures for Chemical Agent applications in the field.

- II. Policy:
It is the policy of the Niagara Falls Police Department that officers shall use the least amount of force necessary to accomplish their lawful objectives while safeguarding their own lives and the lives of others. Consistent with this policy, the Department authorizes the use of certain chemical agents by officers certified in their use as a non deadly weapon against subjects or groups exhibiting at minimum, active resistance to a lawful arrest, or to otherwise control a combative, uncooperative person or group when verbal commands and persuasion have been ineffective in inducing cooperation; or to prevent a subject from harming himself/herself or others. The NFPD authorizes the use of Oleoresin Capsicum and Pepper Ball System by all qualified members. The NFPD prohibits the use of tear gas, CN or CS Gas by any member.

- III. Definitions:
 - A. Definitions:
 1. Active Resistance: Physically evasive movements to defeat an officer's attempt at control or custody, including bracing, tensing, pulling away, or pushing.
 2. Authorized Weapons: All weapons approved, authorized and issued to officers who have been trained and met required proficiency standards by the Niagara Falls Police Department Firearms Training Unit, including firearms, impact weapons, chemical agents, and electronic controlled weapons.
 3. Chemical Agent: Chemical Agent: Solid, liquid, or gaseous substance that produces an effect on a living organism by acting on the body tissue, or in an environment by interacting with air, water,

and/or soil. Includes Department issued Oleoresin Capsicum (OC) containers, and Pepper Balls.

4. Command Presence: An officer projecting the appearance of being in control both of self and the situation in a manner that actually helps create such control.
5. Deadly Physical Force: Force which, under the circumstances in which it is used, can reasonably be expected to cause death or serious physical injury.
6. De-escalation of Force: A conscious reduction in the level of force used in response to a perception of decrease in the level of resistance or compliance.
7. Force: To compel by physical means; physical contact or action beyond mere restraint. Any physical strike or instrumental contact with a person, any intentional attempted physical strike or instrumental contact that does not take effect, or any significant physical contact that restricts the movement of a person, including: aiming a firearm, discharging a firearm, use of chemical agents, use of impact weapons, use of an electronic controlled weapon, acquiring a target with an electronic controlled weapon, the taking of a subject to the ground, and any physical contact that includes control techniques. The escorting or handcuffing of a person with minimal or no resistance shall not constitute the use of force. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to affect an arrest or protect the officer or other person.
8. Hard Hand Control: Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and include strikes to pressure points such as: the common peroneal nerve (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).
9. Harm: Injury inflicted upon a person, whether visible or not.
10. Imminent Threat: An officer's reasonable perception of impending death, danger, or serious injury from any action or outcome which may occur during an encounter.
11. Non-Deadly force: Any use of force not intended to cause, nor likely to cause, death or serious bodily harm.

12. Oleoresin Capsicum Spray: Also known as pepper spray, is a chemical compound that irritates the eyes to cause tears, pain, and even temporary blindness. Its inflammatory effects cause the eyes to close, taking away vision. This temporary blindness allows officers to more easily restrain subjects and control unruly crowds.
13. Objective Reasonableness: A balance between the rights of the person being arrested and the government interests that allows the use of force. Facts and circumstances make up what is objectively reasonable.
14. Passive Resistance: Physical actions that do not prevent the officer's attempt to control, for example, a person who does not cooperate with commands, but does not take action to prevent being taken into custody.
15. Pepper Ball System: Air-Powered launch device and projectiles that are plastic spheres filled with powdered Oleoresin Capsicum (OC). Projectiles burst on impact and release OC. Pepper Ball projectiles subdue by strongly irritating the nose, lungs, and breathing. Response to inhaling Pepper Ball projectile OC powder varies greatly among individuals. In most cases, the symptoms last for a few minutes. The Pepper Ball can deliver projectiles with enough kinetic energy to produce abrasions, bruises, and/or welts.
16. Physical Injury: Impairment of physical condition or substantial pain.
17. Reportable use of force: All force used above non-resistant compliant handcuffing with the exception of drawing a firearm at low ready position. While it does not include unresisted (cooperative) handcuffing, it does include handcuffing individuals to objects.
18. Resisted Handcuffing: When a person actively resists being placed in handcuffs and the officers must use "soft hand controls" to gain compliance by forcibly moving the subject's wrists or arms, or to physically maneuver the subject's body so the handcuffs can be applied. The "resistance" may range from an active struggle to a person simply "locking" his/her arms to prevent compliant handcuffing. Conversely, "unresisted (cooperative) handcuffing" occurs whenever the subject complies with the officer's verbal commands and/or unresistingly allows the officers to position their arms in order to apply handcuffs, or the subject positions their arm as commanded for the application of handcuffs.

19. **Serious Physical Injury:** Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
20. **Soft Hand Control:** The use of physical strength and skill in defensive tactics to control arrestees that are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
21. **Supervisor:** A supervisor includes a Lieutenant who is assigned responsibility for supervising officers.
22. **Tactical Communication/Verbal Commands:** Communication consisting of verbal dialogue, requests, instructions, and commands.
23. **Weapon:** Any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious bodily injury.

IV. Use of Force Standards; Chemical Agents:

- A. The use of a Chemical Agent involves the application of force.
- B. Each application of a Chemical Agent involves an additional use of force.
- C. Multiple applications of a Chemical Agent cannot be justified solely on the grounds that a subject fails to comply with a command, absent other indications that the subject is about to flee, or poses an immediate threat to an officer.
- D. Any decision to apply multiple applications of a Chemical Agent must take into consideration whether a subject is capable of complying with the officers' commands
- E. A Chemical Agent is not intended to replace the use of firearms when deadly physical force is necessary, but rather to provide a non-deadly alternative within the guidelines of the Niagara Falls Police Department Use of Force Policy.

V. Procedures:

A. Oleoresin Capsicum Spray:

1. Officers who are trained and authorized by the NFPD Firearms Training Unit will be issued Oleoresin Capsicum as a non deadly weapon.
2. Niagara Falls Police Department members shall only carry Oleoresin Capsicum issued or authorized by the Firearms Training Division.
3. Oleoresin Capsicum provides a non deadly force option in certain situations.
4. Oleoresin Capsicum may be used when a subject is exhibiting active resistance to a lawful arrest or control. Some examples of this are:
 - a. To prevent an injury to an officer or a third person.
 - b. To ward off threatening dogs and other animals.
 - c. To subdue a person who is threatening or attempting physical harm to himself or another.
 - d. To quell rioting.
 - e. Against subjects physically interfering with an arrest.
 - f. Any other situation where the officer can clearly articulate the need to deploy this device.
5. When feasible, verbal warnings should be issued to prior to application of OC.
6. The target area of OC Spray is the face, specifically, nose, mouth, eyes, and nose. If possible, officers should shake the OC Spray canister prior to use.
7. Oleoresin capsicum, in sufficient concentration, will produce a short period of pain, gagging and loss of vision. The following principals regarding the use of Oleoresin Capsicum are consistent with legal guidelines applicable to all use of force. Oleoresin Capsicum will not be used against a subject who:
 - a. Submits peacefully and complies with lawful commands,

- b. Is merely expressing verbal disagreement and does not threaten an officer or others,
 - c. Is not significantly obstructing or delaying an officer from carrying out his/her duties.
8. Officers shall not use Oleoresin Capsicum
- a. Toward any person who is passively resisting the lawful commands of the officer
 - b. Toward any person who appears to be less than 10 years of age or over 70 years old,
 - c. Toward any person with a known respiratory condition,
 - d. Toward any person who is handcuffed or under control, unless they are actively resisting or exhibiting aggression, and/or to prevent individuals from harming themselves or others,
 - e. Against an operator in physical control of a vehicle in motion, including automobiles, trucks, motorcycles, ATVs, bicycles, and scooters, unless exigent circumstances exist,
 - f. Toward a pregnant female, if the officer has knowledge, or is visibly aware of the pregnancy,
 - g. Toward a crowd, or toward an individual in a crowd unless exigent circumstances exist,
 - h. In any poorly ventilated area,
 - i. To rouse unconscious, impaired, or intoxicated individuals.
 - j. For horse play or clowning around, or in an unprofessional manner.
 - k. To experiment on a person or allow a person to experience the OC, even if the person requests it, when use would not otherwise be allowed under this policy. This OC experience does not apply to voluntary training exposures or demonstrations as authorized by the Department.
 - l. For illegal purposes (e.g. illegal coercion, torture, etc.).

Note: It is the policy of the Niagara Falls Police Department that officers who use excessive force will be subject to discipline, possible criminal prosecution, and/ or civil liability.

9. Any deployment of OC shall result in the immediate submittal of a Use of Force Report.
- B. Pepper Ball System:
1. Only qualified NFPD Department trained and certified personnel shall be allowed to use the Pepper Ball System.
 2. Authorized Supervisors may carry a Pepper Ball System while on patrol.
 3. Use of the Pepper Ball projectile shall be considered a use of force and must meet the requirements of all Department policies and procedures and New York State Laws.
 4. The Pepper Ball System may be deployed:
 - a. To incapacitate a combative or physically resistive person whose conduct rises at least to the level of Active Resistance. The purpose is to neutralize the person to the point they can be safely controlled and taken into custody.
 - b. When it is unsafe for an employee to approach a subject who exhibits violent, or potentially violent, behavior and who threatens the safety of others, and conventional means of persuasion will reasonably appear unlikely to be effective.
 - c.. When more aggressive response options may be justified, but an opportunity exists for the use of Pepper Ball before these options are employed.
 - d. To defend oneself or another from an aggressive and/or attacking animal.
 - e. To incapacitate a suicidal person who cannot be safely controlled with other force options
 - f. Area saturation (room, vehicle, etc.).
 5. Officers shall communicate to other officers and the subject that they are about to discharge a not-deadly weapon prior to its use or clearly and audibly announce the same to officers in the immediate area unless urgent circumstances prevent this from occurring.

6. Officers shall not deploy the Pepper Ball System in the following circumstances, unless exigent circumstances exist which can be clearly articulated:
 - a. Toward any person who is passively resisting the lawful commands of the officer,
 - b. Toward any person who appears to be less than 10 years of age or over 70 years old,
 - c. Toward any person with a known respiratory condition,
 - d. Toward any person who is handcuffed or under control, unless they are actively resisting or exhibiting aggression, and/or to prevent individuals from harming themselves or others,
 - e. Against an operator in physical control of a vehicle in motion, including automobiles, trucks, motorcycles, ATVs, bicycles, and scooters, unless exigent circumstances exist,
 - f. Toward a pregnant female, if the officer has knowledge, or is visibly aware of the pregnancy,
 - g. Toward a crowd, or toward an individual in a crowd unless exigent circumstances exist,
 - h. In any poorly ventilated area,
 - i. To rouse unconscious, impaired, or intoxicated individuals.
 - j. For horse play or clowning around, or in an unprofessional manner.
 - k. To experiment on a person or allow a person to experience the OC, even if the person requests it, when use would not otherwise be allowed under this policy. This OC experience does not apply to voluntary training exposures or demonstrations as authorized by the Department.
 - l. For illegal purposes (e.g. illegal coercion, torture, etc.).
 - m. On or in an open wound if the officer has knowledge of the open wound.

Note: It is the policy of the Niagara Falls Police Department that officers who use excessive force will be subject to discipline, possible criminal prosecution, and/ or civil liability.

7. There is no minimum distance requirement when deploying the Pepper Ball System.
8. Any deployment of the Pepper Ball System shall result in the immediate submittal of a Use of Force Report.

VI. De-escalation:

- A. When reasonable and safe under the totality of circumstances, officers must use advisements, warnings, verbal persuasion, and other tactics. Additionally, under the totality of the circumstances, an officer should de-escalate force, including, when reasonable and safe, disengaging to a position that is tactically more secure or allows an officer greater distance, if to do so will reduce the immediacy of the threat and allow more time for the officer to call for backup or to consider or deploy a greater variety of force options.

VII. Decontamination:

- A. Any subject that is sprayed by a chemical agent will be considered contaminated and will require follow-up care.
- B. Use Professional Communications skills to calm and reassure the subject, who may feel panicked.
- C. Ask the subject if he/she is wearing contact lenses. If so, contact emergency medical personnel to remove same.
- D. If the subject is wet with a chemical agent, dry him/her before transporting.
- E. Encourage the subject to open his/her eyes and blink. This will encourage tearing, which will help wash out the chemical agent.
- F. If possible, move the subject to fresh air, and face him/her in the wind.
- G. If possible, rinse the subjects face and eyes with cool water, preferably from a running tap or hose. Dipping the face into standing water will contaminate the water and result in re-exposure. Advise the subject not to rub his/her eyes.
- H. If available, use (non-lotion) soap and water to remove the resin from the skin. Do not use salves, creams or lotions. These will trap the chemical agent against the skin.

VIII. Medical Treatment:

- A. Officers who have used a chemical agent on a subject shall not leave the subject unattended and will continue to provide post-use care of the subject until the subject has recovered from the effects.
- B. Immediate evaluation by medical personnel is required to determine the degree of injury suffered by the subject. This medical check shall be documented on the Use of Force report and the Incident Report. If the prisoner is jailed, the officer will notify detention facility personnel that a non-deadly weapon was used.

IX. Reporting:

- A. All deployments of chemical agents shall be documented on a Use of Force Report and reviewed by the on-scene Supervisor.
- B. After review by the Supervisor, a copy of the Use of Force Report shall be forwarded to the Office of Professional Standards and the Superintendent of Police.

X. Supervisor's Responsibility:

- A. Supervisory personnel shall respond to the scene of chemical agent use and review the incident for consistency with policy and training.
- B. Supervisory shall ensure appropriate medical care is provided and review Use of Force Report prior to submittal.
- C. Supervisor will oversee proper collection of evidence.

XI. Training:

- A. All personnel shall be trained and qualified in the use of chemical agents prior to issuance.
- B. The proper use of chemical agents shall be incorporated into the Niagara Falls Police Department's Use of Force/Arrest Control Technique annual training curriculum.