



July 27, 2000
RC-00-0277

Mr. L. A. Reyes
Regional Administrator
U. S. Nuclear Regulatory Commission
61 Forsyth St., SW
Suite 24T60
Atlanta, GA 30303

Gentlemen:

Subject: VIRGIL C. SUMMER NUCLEAR STATION
DOCKET NO. 50/395
OPERATING LICENSE NO. NPF-12
RESPONSE TO PROPOSED UNRESOLVED ITEM, SUPPLEMENT 1
NRC INSPECTION REPORT 50-395/00-04

Reference: Stephen A. Byrne to Mr. L. A. Reyes Letter, Dated June 28, 2000,
RC-00-0255

This letter provides South Carolina Electric and Gas (SCE&G) comments on a proposed unresolved item (URI), as identified during a recent Fitness for Duty inspection. SCE&G disagrees with the proposed NRC position as stated at the inspection exit and during a follow-up telephone conference on July 7, 2000. The SCE&G position and basis are contained within the attached response.

If you have any questions regarding this request or require additional information, please contact Mr. Philip A. Rose at (803) 345-4052.

Very truly yours,

Stephen A. Byrne

PAR/SAB/dr
Attachment

- | | | |
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*Rec'd 9/26/00
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Position of V. C. Summer Nuclear Station
Pertaining to the Proposed URI
Fitness for Duty Inspection

Restatement of issue:

Title 10, Code of Federal Regulations, Part 26, Section 24(a)(3) states:

- (3) Testing for-cause, i.e., as soon as possible following any observed behavior indicating possible substance abuse; after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event; or after receiving credible information that an individual is abusing drugs or alcohol.

During a fitness for duty inspection performed in May at the V. C. Summer Nuclear Station (VCSNS) an inspector determined that our program does not require mandatory "for-cause testing" after any accident that results in personnel injury due to a "failure in individual performance."

Position on Issue:

VCSNS's position is based on a straightforward reading of the regulation using accepted rules of regulatory interpretation.

We acknowledged that our program does not require "for-cause testing" after *each* and *any* accident that results in any personal injury due to a "failure in individual performance" and take the position that there is no regulatory requirement for a low threshold regarding such testing.

Our reading of §26.24(a)(3), is that "for-cause testing" is required under the following conditions:

1. "observed behavior indicating possible substance abuse;"
2. "after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant *if* there is reasonable suspicion that the worker's behavior contributed to the event; *or*"
3. "after receiving credible information that an individual is abusing drugs or alcohol."

Emphasis supplied.

The proposed NRC position vitiates the “for-cause” component of the testing requirement. Moreover, the placement of the semi-colons commands that the regulation be read in such a way as to break it out in a three-part test. If anyone of those three parts is completely satisfied, then testing for cause is required. Given the proposed interpretation, the clause “...if there is reasonable suspicion that the worker’s behavior contributed to the event...” is rendered mere surplusage. A regulation must be read in such a way as to give effect to all of its parts.

There is an additional common sense basis for VCSNS’s reading. If the intent of the regulation were to require drug and alcohol testing after *any* accident due to a failure in individual performance, the clause “...if there is reasonable suspicion that the worker’s behavior contributed to the event...” would be unnecessary.

VCSNS believes that the licensee has discretion over the threshold that mandatory “for-cause” testing should be conducted if the accident is obviously the result of a performance issue. Our Fitness for Duty Program, FFD-100, Section 5.3.2 includes specific requirements for mandatory consideration of chemical testing:

1. Blatant or intentional violation of procedures, instructions, or programs.
2. Violation of industrial safety practices that result in an injury, or any incident that results in the actual or potential substantial degradation of the level of safety of the plant.
3. Violation of operating or maintenance procedures that result in equipment damage or in a significant plant transient.

The VCSNS procedure on Fitness for Duty directs station management to take under consideration the need for chemical testing after an accident resulting in personal injury based upon direct observation and past history. Requiring mandatory testing in all injury situations resulting from a failure in individual performance could be seen as punitive and have a detrimental effect on reporting of accidents.

Requiring chemical testing for-cause, without any suspicion of drug or alcohol impairment could be perceived by the worker as discriminatory. Very few accidents that result in personal injury do not stem from some level of failure in an individual’s performance. Establishing a mandatory chemical-testing threshold, without allowing management consideration of the situation and severity of the incident, could create significant workforce concerns.