

May 4, 2001

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Collins:

As a retired NRC employee who continues to believe I have an obligation to protect the Commission and the public, I have concluded that I must respond to your letter of April 24, 2001. That letter was in response to my letter of April 2, 2001 to Chairman Meserve, concerning a public health and safety issue that could be caused by the deletion of 10CFR26.10(c).

I note that the justification for that action, as stated during the public meeting concerning implementation of the Fitness-For-Duty Rule on March 20, 2001, was that OGC concluded that the NRC had no regulatory authority to require a drug-free workplace. I refuted that in my letter of April 2nd. In your response of April 24th, you avoided the regulatory authority issue (which, I assume, is no longer the basis), and provided two "new" reasons which had been thoroughly addressed during the rulemaking process in 1988 and 89: First, the performance objective is redundant and, second, the term "drug-free workplace" is ambiguous and there are valid reasons for using over-the-counter (OTC) and prescription drugs.

With respect to your contention of redundancy, it should be noted that 10CFR26.10(a) and (b) focus on worker fitness, whereas 10CFR26.10(c) focuses on the worker's environment. I briefed the Commission on the general performance objectives during the rulemaking process in 1988 and 89, and vividly remember them recognizing the subtle differences and blessing all three objectives. Since there were no objections by the Commission, industry, or the public to the performance objectives, there is little documentation of the logic, but as the author, I can assure you that the performance objectives were intentionally written very broadly to support more specific provisions of the rule. For example, 10CFR26.10(c) supported the written policy and procedures required by 26.20. (This also captures your second point, i.e., 10CFR26.20(a) requires that licensee policy must address abuse of legal drugs).

NUREG-1354, which provided responses to public comments on the Fitness-For-Duty Rule contains some points you should be aware of: Section 3.2 addresses concerns about accomplishing the general performance objectives; and questions 3.5.9, 3.5.12, and 3.5.20 are relevant.

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With respect to your contention that "drug-free workplace" is ambiguous and there are valid reasons for using OTC and prescription drugs there is a long, well documented history that was apparently not recognized by the staff. First, Chapter 3 of NUREG/CR-5227, Supplement 1 contains a lengthy discussion of issues associated with OTC and prescription drugs. A key point is that because these drugs have beneficial effects, there are so many, and little was known about their impairing effects the NRC would only provide objective guidance. Section 3.7 provides recommendations for licensee's FFD policies.

Question 6.4.1 of NUREG-1354 is closely related to your second point: Commenters proposed that the goal should be to achieve a workplace free of illegal drugs and alcohol and the abuse of legally prescribed drugs and their effects (omitted OTC drugs). The response indicated that "drug-free workplace" is not intended to deprive the workforce of legal drugs used for legitimate purposes. The NRC did not intend that there be a literal interpretation of the phrase, etc.

I am not aware of any problem that any licensee has had in developing policies and procedures to meet the performance objective of 10CFR26.10(c). I fear that the deletion of 10CFR26.10(c), which was started because of a question of the NRC's regulatory authority, and now is a policy matter that is second-guessing previous Commission decisions when there is no problem that indicates those decisions should be revised, will end up jeopardizing public health and safety, as I emphasized in my letter of April 2, 2001.

Sincerely,



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cc: Chairman Meserve
Garmon West, NRR