

May 30, 2001

Martha E. Csala, Esq.
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001

Dear Ms. Csala:

This letter responds to your letter of March 15, 2001. Your letter raised two questions related to my letter to John Moriarity of the Vermont Yankee Nuclear Power Corporation, dated October 27, 2000. My response to those questions is enclosed. Please feel free to call on me with any related questions and please keep the agency apprised of developments in this proceeding.

Respectfully,

/RA/

Glenn M. Tracy, Chief
Operator Licensing, Human Performance
And Plant Support Branch
Division of Inspection Program Management
Office of Nuclear Reactor Regulation

Attachment: as stated

cc: Mr. John Moriarity
Peter Robb, Esq.
Richard Croteau, Project Manager

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DATE	05/29/01		05/29/01		05/29/01		05/30/01		06/01/01	

Answers to Questions of March 15, 2001 from Vermont Attorney General

1. There is no NRC regulation, directive, or any other written policy that gives a licensee Medical Review Officer ("MRO") the authority to make a final decision on whether an individual is able to work while taking a prescription drug that is not listed in Part 26, Appendix A, §2.1(a). The NRC's regulations do require the MRO -- and only the MRO -- to make certain decisions including confirming and interpreting positive test results in the random drug testing program, part of the Fitness for Duty Program established by Part 26. See, e.g., 10 C.F.R. §§ 26.3, 26.24, and Part 26, Appendix A, §2.9. Thus, as your letter of March 15, 2001, correctly notes, it is plant management that must determine whether an individual worker is "fit for duty" under 10 C.F.R. § 26.27.

However, the MRO may play a role in reviewing the use of drugs not prohibited by Part 26. For example, Part 26, Appendix A, §2.1(c) provides that "the appropriateness of the use of these substances [i.e., other drugs not specified in Part 26] can be evaluated by the MRO to ensure individuals are ... fit for maintaining access to and performing duties in protected areas." In addition, NRC regulations do not prohibit the licensee from assigning the MRO to perform additional duties in order to assist or to support plant management, as with any other licensee employee, as long as those duties are not inconsistent with, or do not conflict with, the duties required of the MRO under NRC regulations. However, those additional duties should be detailed in the licensee's written policies and procedures required under 10 C.F.R. § 26.20, and communicated to licensee employees during the training required under 10 C.F.R. § 26.21.

In this case it appears that the licensee management either consulted with the MRO (the person with medical knowledge on the management staff) or delegated authority to the MRO to make an initial decision, based upon his medical knowledge, on whether the employee in this incident could perform his duties while taking the specified medication. Either action would appear consistent with the MRO's required duties under NRC regulations. However, there is nothing in NRC regulations that prevents licensee management from reviewing and, on appropriate occasions, reversing a decision by the MRO when the MRO is acting under delegated authority from plant management outside of the duties specified in NRC regulations. Again, any delegation of authority to the MRO should be detailed in the licensee's written policies and procedures and made available to each licensee employee.

2. The NRC does not prescribe how plant management should "evaluate" a worker who is taking a particular medication to determine whether the worker is "fit for duty." More specifically, the NRC does not mandate that plant management must make a personal assessment of the individual worker. However, plant management is required to maintain written policies and procedures that inform each licensee employee about how those decisions are made and what appeal procedures are available to that employee. See 10 C.F.R. § 26.20. For example, the licensee's procedures should inform the employees (1) how they should report medications that have been prescribed for them; (2) whether a decision to prevent them from working while taking a medication is based upon a personal evaluation; and (3) what appeal rights, if any, each individual has within the plant management chain. Any licensee decision should be "reasonable under the circumstances." Furthermore, 10 C.F.R. § 26.21(a) (3) requires licensees to provide their employees with training on the MRO's role in the programs implemented under Part 26.

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DOCUMENT TITLE: G:\IOLB\IRSS\WEST\Final Fitness For Duty Rule\VYAGletter.wpd

ORIGINATOR: G. West (301-415-1044)

SECRETARY: K. Grimes

DATE: 5/29/01

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ADAMS ACCESSION #: ML
TEMP=NRR-106

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