DUKE COGEMA
STONE & WEBSTER

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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

13 May 2004
DCS-NRC-000166
Response Required: No

Subject: Duke Cogema Stone & Webster Docket Number 070-03098
Comments on 10 CFR Part 26, Fitness for Duty Programs,
Draft Rule Text Dated March 29, 2004

Duke Cogema Stone & Webster (DCS) attended the 13 April 2004 stakeholder meeting on the draft text of 10 CFR Part 26, Fitness for Duty Programs, in which the NRC staff requested comments on the proposed changes. In response to that request, DCS is sending this letter of comment. DCS is the applicant currently requesting construction authorization for the Mixed Oxide Fuel Fabrication Facility (MFFF) to be owned by the National Nuclear Security Administration (NNSA) and located on the Department of Energy (DOE) Savannah River Site.

As the applicant of the MFFF currently requesting construction authorization, DCS is concerned that the staff is proposing to amend 10 CFR Part 26 to apply the Fitness for Duty Program requirements to the MFFF during construction. Implementing the requirements of 10 CFR Part 26 during construction singles out the MFFF for treatment more like a nuclear power plant licensed under 10 CFR Part 50 than a fuel fabrication facility licensed under 10 CFR Part 70. Although this change was not identified on the NRC Staff's list of notable changes since the last stakeholder meeting, DCS considers this change to be very significant and notes that no justification for this change was presented at the stakeholder meeting or in the written material. The stated reasons for proposing the revision to 10 CFR Part 26 are implementation of new DHHS requirements, reducing regulatory burden and consistency in implementation. Far from reducing the burden on the licensee for the MFFF, this change would impose a significant new burden that would not exist under the current rule, which does not require the implementation of a Fitness for Duty Program during fuel fabrication facility construction.

In addition to the comments identified above, DCS has more detailed comments that are identified by draft rule section in the attachment to this letter. We appreciate the opportunity to review the proposed language and comment on its implementation. Should you have any questions on our comments, you may contact me at 980/373-7820 or Sheila Litchfield at 413/337-4957.

Sincerely,

Peter S. Hastings, P.E.
Manager, Licensing and Safety Analysis

Attachment: Duke Cogema Stone & Webster Comments on
10 CFR Part 26, Fitness for Duty Programs,
Draft Rule Text for Comment

NMSS01
A021

xc:

David Alberstein, NNSA/HQ
Kenneth L. Ashe, DCS
Timothy S. Barr, DOE/CH
Mary L. Birch, DCS
Bernard F. Bentley, DCS
Allison Blackmon, NNSA/HQ - SR
Edward J. Brabazon, DCS
David D. Brown, USNRC/HQ
Mosi Dayani, NNSA/HQ-SR
Joseph G. Giitter, USNRC/HQ
Al Gutterman, Esq., DCS
James V. Johnson, NNSA/HQ
Rebecca Karas, USNRC/HQ
Sheila M. Litchfield, DCS
Joseph Olencz, NNSA/HQ
Andrew Persinko, USNRC/HQ
Donald J. Silverman, Esq., DCS
Thomas E. Touchstone, DCS
Mr. Garmon West, Jr., USNRC/HQ
PRA/EDMS: Corresp/Outgoing/NRC/Licensing/DCS-NRC-000166

Duke Cogema Stone & Webster Comments on
10 CFR Part 26, Fitness for Duty Programs
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Document or regulatory reference	DCS Comments/Proposed language revision/Questions and Statements applicable to MFFF
10 CFR §26.3 Scope.	Scope change regarding applicability to MFFF construction is a significant change since the last public meeting. DCS understands that the intent of this change is to require a Fitness for Duty (FFD) program during MFFF construction that meets the requirements of §26.23(c) and (d), that the elements adopted to meet these requirements are audited in accordance with §26.41, and that the process for making any required determinations of fitness is consistent with §26.189. Details of other aspects of the FFD Program, such as the random drug and alcohol testing program, are left to the MFFF for determination, and not dictated by the draft rule. To make this clear, the reference to §26.23 should be changed to reference §26.23(c) and (d).
10 CFR §26.41(g)	To make clear that holders of construction permits and construction authorizations also may share audits, insert after "licensees" the words "and holders of construction permits or authorizations."
Draft Regulatory Analysis, Appendix 2: Exhibit A2-1	The number of employees during construction should be revised. Current DCS estimates are that in addition to an average of 750-800 construction craft workers there will be approximately 150 non-craft workers. Consequently, 950 is a more reasonable number to use in these equations.
Draft Regulatory Analysis, Appendix 2: Exhibit A2-1	Since the 50% random testing requirement in §26.31 would not be applicable to the MFFF during construction, this table requires revision to a lower percentage.
Draft Regulatory Analysis, Appendix 2: Exhibit A2-8	The estimate of $1,800 for the cost to purchase quality evidential grade breath alcohol testing equipment is too low. Most states recognize the infrared data collection process and reliability of the Intoxilizer 5000 or the BAC Datamaster as evidential grade equipment that is superior to hand held devices that rely on fuel cell technology. Consequently, the $1,800 hand-held units are generally used as screening devices only. A more appropriate cost estimate for evidential grade breath alcohol testing equipment is $5,600 per unit, plus the external simulator (calibration standard) that costs approximately $500 per unit. As the FFD rule requires a second test on another machine, each FFD facility would need a minimum of 2 units plus a backup unit. The total one time equipment purchase cost estimate should be approximately $18,500 per facility.
Draft Regulatory Analysis, Appendix 1, Page A-1, (page 59 of 353)	Change "works" to "workers"

Document or regulatory reference	DCS Comments/Proposed language revision/Questions and Statements applicable to MFFF
Draft Regulatory Analysis, Appendix 1, Page A-2, (page60 of 353)	As discussed above, DCS anticipates a work force of approximately 950 during construction. The actual number of Pre-Access tests during MFFF construction period would be much higher because of the anticipated frequent turnover of C/V personnel.
Draft Regulatory Analysis, Appendix 1, Page A-2, (page60 of 353)	The calculation should be revised to be consistent with the anticipated number of personnel, the inapplicability of the 50% random testing rate, the currently projected 5-year schedule for completion of construction and the other changes discussed above.
Draft Regulatory Analysis, Appendix 1. page A-3, (page 61 of 353)	The equations need to be revised for the reasons stated previously. The greater number of personnel will result in additional FD Manager hours, MRO, EAP and SAE hours.
Draft Regulatory Analysis, Appendix 1. page A-4, (page 62 of 353)	Clerical hours will increase due to the greater number of personnel onsite.
Draft Regulatory Analysis, Appendix 1. page A-5, (page 63 of 353)	The assumptions need to be revised for the reasons stated previously. Again, the greater number of personnel will result in additional FD Manager hours, MRO, EAP and SAE hours. The estimate that 99.61 % of workers tested yield negative test results is representative of licensed nuclear facility workers; does the NRC have data to indicate that this data is representative of other work groups such as construction craft workers? If data is not representative of these other work groups, then costs to implement the program will be higher.
Draft Regulatory Analysis, Exhibit A2 - 14: FFD Programs; (page 350 of 353)	The MFFF may need both an onsite and an offsite testing facility, due to access control and escorting that would be necessary for conducting pre-access tests on the MFFF controlled site on the DOE reservation.
Draft Resolution of Public Comments Regarding OMB Clearance for the Withdrawn 2000 Affirmed FFD Rule (as of 3/29/04)	As discussed above in connection with draft rule §26.41(g), the discussion of issue 4 should be revised to make clear that holders of construction permits and construction authorizations also may participate in sharing audits.