



DUKE COGEMA
STONE & WEBSTER

DOCKETED
USNRC

December 21, 2005 (4:00 pm)

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PROPOSED RULE 26
(70FR 50442)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

20 December 2005
DCS-NRC-000183
Response Required: No

Attention: Rulemaking and Adjudications Staff

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Subject: Duke Cogema Stone & Webster Comments on
Proposed Rule, 10 CFR Part 26, *Fitness for Duty Programs*,
70 FR. 50442; August 26, 2005, RIN 3150-AF12

Reference: Letter of 7 May 2004, to Mr. Garmon West, Jr.,
Duke Cogema Stone & Webster, *Comments on Draft Rule Text*
10 CFR Part 26, Fitness for Duty Programs,
Dated March 29, 2004, DCS-NRC-000166

Duke Cogema Stone & Webster (DCS) submits the following comments in response to the Nuclear Regulatory Commission request for public comments on the proposed rule amending 10 CFR Part 26, *Fitness for Duty Program*, published in the Federal Register on August 26, 2005. DCS has received construction authorization for the Mixed Oxide Fuel Fabrication Facility (MFFF) owned by the National Nuclear Security Administration (NNSA) and located on the Department of Energy (DOE) Savannah River Site (SRS).

DCS concurs with both sets of comments submitted by Nuclear Energy Institute (NEI) on behalf of the nuclear industry, and requests that the NRC consider the NEI comments on both the Drug and Alcohol and on the Worker Fatigue portions of the rule to be incorporated by reference in these comments. Additional DCS comments are provided below.

DCS supports the majority of the provisions of the Drug and Alcohol portion of the proposed rule incorporating new DHHS requirements, reducing unnecessary regulatory burden and encouraging consistency in implementation with the access authorization program. DCS has two specific comments on the Drug and Alcohol portions of the proposed rule:

1. Under proposed 10 CFR § 26.3, the regulations, except those contained in Subpart I, will apply to the MFFF activities once NRC has issued a license authorizing possession and use of formula quantities of strategic special nuclear material (SSNM) under 10 CFR Part 70. DCS supports this proposal. In our letter of 7 May 2004, DCS provided comments to the NRC on an earlier draft of Section 26.3, which would have applied certain provisions of Part 26 to MFFF construction activities. As discussed in that letter, until SSNM arrives on site, there is no public health and safety reason that the fitness for duty requirements

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should be any more stringent than those typically applied in non-nuclear large commercial construction facilities. Far from reducing the burden on the licensee for the MFFF, such a change would impose a significant new burden that would not exist under either the current rule or the proposed rule, neither of which requires implementation of a Fitness for Duty Program during MFFF construction.

2. DCS questions whether there is adequate justification for proposed 10 CFR §26.75(b), which states that refusing to provide a specimen for testing should be considered an act of subversion. This would be a significant change from current Section 26.27(c), which states that refusal to provide a specimen for testing must be recorded as a removal for cause. Along the same line of thinking, proposed 10 CFR §26.75(d) states that any individual who resigns or withdraws his or her application for authorization before authorization is terminated or denied for a first violation of the FFD policy shall be subject to a harsher penalty than a person who does not resign or withdraw. Current 10 CFR §26.75(c) also provides that resignation in such circumstances shall be recorded as removal for cause. There does not appear to be adequate justification for changing this rule. Under the current regulation, resignation or withdrawal in such circumstances is tantamount to admission of a violation and does not have any potential to conceal a violation.

DCS also supports most of the provisions of the work hour portion of this rule. Requirements for policies, procedural management, training of individuals, behavioral observation and self-reporting of fatigue will assist licensees toward fatigue management and will establish clarity of the NRC expectations. Although, as discussed above, under the proposed rule subpart I would not apply to the MFFF, DCS has reviewed the provisions to stay abreast of regulatory requirements and management practices in the nuclear industry. DCS has the following specific comments on the Worker Fatigue portions of the proposed rule:

1. Under proposed Sections 26.3, Scope, and 26.195, Applicability, Subpart I would not apply to fuel fabrication facilities. DCS supports this proposal, and believes it is justified by the distinctly lower level of risk at such facilities. For example, in accordance with 10 CFR §70.22(i)(1)(i), the MFFF does not require an NRC-approved offsite emergency response plan because the maximum dose to an individual outside the controlled area boundary, due to a postulated release of radioactive materials will not exceed 1 rem effective dose equivalent, or an intake of 2 milligrams of soluble uranium. Further, the MFFF is approximately five miles from public access because the facility is located on the SRS.
2. While supporting many of the proposed requirements for managing worker fatigue, DCS does not support the additional requirements for collective work hour limits. DCS believes that collective work hour limits are not necessary because the individual work hour limits layered with requirements for worker training, behavior observation, self-reporting of fatigue and administrative policies and procedures will be most effective and sufficient in the management of cumulative fatigue by the licensee. Protection of the individual worker assures

of cumulative fatigue by the licensee. Protection of the individual worker assures protection of the work group. Similar considerations in the revision of 10 CFR Part 20 led the NRC to not impose a collective dose limit because individual dose limits protect the individual and therefore the work group.

3. DCS believes that the operations of the MFFF will be significantly different than the operation of a nuclear power plant, such collective work hour requirements would be even less justified for MFFF operation. DCS anticipates the use of several shift schedules within the MFFF with only limited units operating 24 hours per day seven days per week using a 4-shift rotation with 8-hour shifts. The outage schedule for the MFFF will be significantly different from a power reactor. DCS anticipates two scheduled facility outages annually, each for an approximate duration of up to 4 weeks. During these scheduled outages maintenance and specific subcontractors are expected to work overtime, while the operations staff schedule is not expected to be affected by the outage. Operations staff will likely be scheduled for routine training during scheduled outages. In addition, DCS wishes to stress that the unplanned outages the MFFF may experience will most likely be limited to a particular area of the facility and would last a few days in duration. In general, unplanned outages will not warrant a shutdown of the full MFFF and will not be expected to impact the MFFF operations schedule. This is another reason why DCS believes collective work hour limits would be unnecessary for MFFF, and in fact could be burdensome. For these reasons, DCS encourages the NRC to recognize the need for flexibility in this rulemaking.
4. DCS believes that the proposed requirements for reporting waivers and fatigue assessments are unnecessary and will not result in enhanced licensee performance. The type of information to be reported is similar to a large amount of information about compliance with regulatory requirements in facility operation that is subject to inspection, but is not required to be submitted to the NRC.
5. DCS also notes that the Regulatory and Backfit Analysis neglected to consider the cumulative and layered impact of all the various requirements of managing cumulative fatigue. Some proposed fatigue management requirements, if evaluated in light of other requirements, would provide limited or no added benefit, while creating additional administrative and cost burden to the licensee.

DCS appreciates the efforts of the NRC staff to involve stakeholders in the rulemaking process and appreciates the consideration that previous comments have been given. 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 980/373-3787 or Sheila Litchfield at 413/337-4957.

Sincerely,



Richard L. Sweigart,
Vice President, Regulatory Affairs

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Date: Wed, Dec 21, 2005 9:17 AM
Subject: DCS Comments on Proposed Rule 10 CFR Part 26- Fitness for Duty

Attached is an electronic copy of the comments that DCS will be sending in the mail.

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