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**PROPOSED RULE PR 26**  
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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

GL05-033

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

Attention: Rulemakings and Adjudications Staff

**COMMENTS ON PROPOSED RULE: 10 CFR PART 26, FITNESS FOR DUTY PROGRAMS, (FEDERAL REGISTER, VOLUME 70, NUMBER 165, PAGES 50441-50677, DATED AUGUST 26, 2005)**

Virginia Electric and Power Company (Dominion), Dominion Nuclear Connecticut, Inc. (DNC), and Dominion Energy Kewaunee, Inc. (DEK), appreciate the opportunity to provide comments on the Fitness for Duty Programs proposed rule, as requested in the subject Federal Register Notice. Fitness for Duty is important to Dominion and we believe the proposed rule will be useful. However, to optimize use of the proposed rule, we believe that a number of comments need to be addressed. We strongly endorse the comments submitted by the Nuclear Energy Institute on December 20, 2005, and offer additional comments below for your consideration.

The following comment pertains to Subpart B – Program Elements

**26.31 Drug and alcohol testing**

26.31 (b) (i) requires that credit and criminal history checks and psychological screening for FFD personnel must be updated nominally every 5 years

Presently licensees must update reinvestigations for critical group personnel every 3 years and must update their psychological evaluations every 5 years. In addition, badged workers who do not belong to the critical group must have their backgrounds updated every 5 years but do not require periodic psychological evaluation.

The proposed rule requires that reinvestigations for FFD staff be completed on the same frequency as non-critical group personnel but that psychological evaluations be completed on the same frequency as for members of the critical group. In addition it appears that the psychological reevaluation for FFD personnel will have a different scope than that done for critical group personnel.

The NRC seems intent on now having three classifications of workers for screening purposes; non-critical group workers, critical group workers, and FFD staff members. We suggest that the NRC consider consistency of screening frequency and scope for FFD personnel and non-critical group personnel.

Section 26.31(b) (1) (I) should be revised to read " Licensees and other entities shall complete appropriate background investigations, credit and criminal history checks, and psychological assessments of FFD program personnel before assignment to tasks directly associated with administration of the FFD program. The background investigations, credit and criminal history, and psychological assessments conducted in order to grant unescorted access authorization to individuals under a nuclear power plant licensee's access authorization program are acceptable to meet the requirements of this paragraph. The credit and criminal history checks must be updated nominally every 5 years.

The following comment pertains to Subpart C – Granting and Maintaining Authorization

**26.69 Authorization with potentially disqualifying fitness-for-duty information (26.187 Substance abuse expert)**

26.69 (b) (4) The industry is already familiar with the role of Substance Abuse Professionals. We suggest that the proposed rule allow for utilization of either a Substance Abuse Professional or a Substance Abuse Expert as it relates to this section.

Section 26.69 (b) (4) should be revised to read, " Ensure that a SAE or SAP conducts a determination of fitness and indicates that the individual is fit to safely and competently perform his or her duties." The remaining paragraphs of this section should also include the option of using either a SAE or SAP.

The following comment pertains to Subpart E – Collecting Specimens for Testing

**26.89 Preparing to collect specimens for testing**

26.89 (b) We request a clarification of the use of "may" and "shall". This section states that if a donor cannot provide acceptable identification for any testing, other than pre-access testing, the collector **shall** proceed with the test. It then says that for pre-access testing, if the donor cannot provide identification, the collector **may** not proceed with the collection. In the second instance this appears to mean that the licensee may not (or may) proceed with the collection.

Section 26.89 (b) (2) should be revised to read, " If the donor cannot produce acceptable identification before any testing that is required under this part other than pre-access testing, the collector shall proceed with the test and immediately inform FFD program management that the donor did not present acceptable

identification, if the donor is scheduled for pre-access testing and cannot produce acceptable identification, the collector shall not proceed with the collection and shall inform FFD program management that the individual did not present acceptable identification. When so informed, FFD program management will take the necessary steps to determine whether the lack of identification was an attempt to subvert the testing process."

The following comment pertains to Subpart H – Determining Fitness-for-Duty Policy Violations and Determining Fitness

#### **26.189 Determination of fitness**

26.189 (d) states in part, "Neither the individual nor licensees and other entities may seek a second determination of fitness if a determination of fitness under this part has already been performed by a qualified professional."

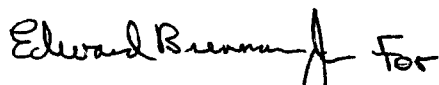
This provision appears to eliminate the use of a second MRO to evaluate additional information supplied by an individual after an initial determination of fitness has been made. This creates the situation where an individual's fitness can not subsequently be evaluated if the deciding MRO is on vacation or sick leave because only that MRO can change his/her initial determination. It also appears that this section may conflict with the review process as described in section 26.39.

Section 26.189 (d) should be removed from the proposed rule.

If you would like further information, please contact:

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Respectfully,



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