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Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

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RULEMAKINGS AND
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November 8, 2006

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Washington, DC 20555-0001
Earth

SUBJECT: FITNESS FOR DUTY DURING NUCLEAR PLANT CONSTRUCTION (SUBPART K TO 10 CFR PART 26 RULEMAKING)

Dear Mr. Diec:

The November 7th public meeting on the NRC staff's technical rationale behind Subpart K of 10 CFR Part 26 helped us understand the intent and application of the final rulemaking language for fitness for duty (FFD) during the construction phase of nuclear power plants. UCS covered this FFD topic during the October 14th Commission briefing on new reactors. During the briefing, we stated our position that the NRC could not wait for nuclear fuel to be received at a nuclear plant construction site for the FFD regulation to come into effect.

The draft final rulemaking text was made publicly available on or about October 24th. Our comments to the Commission pre-dated our awareness of the staff position defined in this rulemaking text. Yesterday's meeting provided us sufficient understanding of the draft final rulemaking text to determine how well it addressed the concern and position we conveyed to the Commission during the October 14th briefing. We are pleased to report that this rule – although not what we would have crafted – sufficiently resolves our concern. We hope the substantive portions of the draft final rulemaking text remain in the final rule issued by the Commission.

During yesterday's meeting, the staff identified its concerns about construction workers having unfettered access to sensitive information as partial justification for the FFD prior to fuel receipt. The industry representatives at the meeting questioned this justification. We agree with the industry representatives. The link between FFD and protection of sensitive information is tenuous at best and most likely non-existent. The Subpart K requirements apply only to workers at the construction site, whereas there are hundreds if not thousands of workers assigned to the project with full and complete access to sensitive information at remote locations (i.e., offsite company offices). If NRC feels this sensitive information needs to be controlled, it must be done by some means other than this Subpart K gambit.

However, we firmly believe that safety considerations – completely independent of the sensitive information access issue – warrant NRC regulation of FFD prior to fuel receipt. We listened to but were not persuaded by the industry representatives' arguments that (a) no credible public safety hazard existed prior to nuclear fuel arriving onsite, (b) it was prudent business, and perhaps an insurance requirement, for companies to ensure their workers were not impaired by drugs or alcohol, and (c) that quality control

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and quality assurance programs provided ample protection against shoddy work performed by drug or alcohol impaired workers. We reject all three of these notions for the following reasons:

a) Federal regulations require materials arriving onsite to be inspected to ensure they meet the prescribed quality levels. Such measures are needed, far in advance of nuclear fuel receipt, to provide reasonable assurance that that assembled plant that first holds the nuclear fuel and later uses the nuclear fuel has the necessary safety margins. It is patently absurd to have regulations that ensure materials are appropriate if no regulations guard against drug-crazed, alcohol-hazed workers putting the controlled pieces together. If for no other reason, NRC must ensure that the individuals performing receipt inspections of safety-related components are not cocaine fiends.

b) Prudent business practice did not deter the wrong outcome in a recent case involving FFD at the Kewaunee nuclear plant (EA-03-105) that involved a $60,000 fine levied less than three years ago. The history of nuclear power in the United States is consistently that of most companies doing the right thing for the right reasons, but some companies – either via short-cuts or shortsightedness – doing the wrong thing (flashback to FirstEnergy putting production ahead of safety at Davis-Besse or Northeast Utilities putting Millstone on the regulatory rocks or TVA losing control of its construction program at Watts Bar or PSEG allowing safety culture problems to fester and grow at Salem / Hope Creek or any one of innumerable other examples). The NRC simply must regulate against the bad actors without, in doing so, placing undue burden on the good actors.

c) No one – repeat, no one – can place trust in quality control and quality assurance programs for the reality is that the nuclear industry cannot consistently achieve adequate quality assurance and the NRC cannot consistently detect quality assurance breakdowns. UCS's recent report, *Walking a Nuclear Tightrope: Unlearned Lessons of Year-plus Reactor Outages*, documented a sustained situation where undetected quality assurance breakdowns occur again and again at operating plants. Given this irrefutable reality, it is pure fantasy to think that quality assurance during construction will somehow avoid this four-decade trend of failure. And even if this fantasy were wrongfully believed, NRC still needs pre-fuel receipt FFD regulations to provide assurance that the quality control and quality assurance inspectors aren't high as a kite and hallucinating as they wander about the plant sites.

In sum, the Subpart K requirement for either random drug and alcohol testing or fitness monitoring of workers during the construction phase does a truly fine job of regulating FFD prior to the time when the complete 10 CFR Part 26 provisions apply. Subpart K sufficiently addresses the concern we identified to the Commission during the October 14th briefing about FFD protection during construction.*

We benefited from the November 7th public meeting and look forward to the issuance of the revised Part 26 regulation.

Sincerely,

* We recognize the staff had been developing its position and the Subpart K language prior to the Commission briefing and by no means are we implying that it was developed or revised in response to our presentation. Had we been aware of the Subpart K language, our presentation to the Commission would have been different on this point.

David Lochbaum
Director, Nuclear Safety Project

From: David Diec
To: Carol Gallagher; Evangeline Ngbea
Date: 11/08/2006 2:06:02 PM
Subject: Fwd: Meeting on Subpart K to 10 CFR Part 26 - Fitness for duty requirements during nuclear construction

Hi Van,

Pls put this doc in ADAMS and send Carol a link for publication on NRC webforum page.

Thanks

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>>> "Dave Lochbaum" <dlochbaum@ucsusa.org> 11/8/2006 12:53 PM >>>
Hello David:

Attached is a letter conveying our position on the Subpart K issue. It's essentially what I said yesterday during the meeting. But since we raised concern about NRC oversight of fitness for duty during construction at the October 14, 2006, Commission briefing on new reactors, I felt we should go on record as to whether the draft rulemaking language made available after that briefing resolved our concerns. As the attached letter indicates, it does.

Thanks,

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