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SOUTHERN COMPANY
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U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555-0001

Southern Nuclear Operating Company
Vogtle Early Site Permit Application
Revised Fitness-For-Duty Program During Limited Work Authorization

Ladies and Gentlemen:

By letter AR-08-0483, dated March 28, 2008, Southern Nuclear Operating Company (SNC) provided Revision 4 of the Vogtle Early Site Permit (ESP) Application to the U.S. Nuclear Regulatory Commission (NRC). Appendix 13.7A of the Site Safety Analysis Report (SSAR) portion of this ESP application contained a description of SNC's fitness-for-duty (FFD) program during limited work authorization (LWA) construction. Since that submittal, this material has been the subject of several interactions between SNC and NRC Staff. As a result of these interactions, SNC is proposing to revise the program to incorporate selected NRC comments on the described program. Enclosure 1 to this letter contains the revised (i.e., Revision 2) FFD program description. The revised FFD program will be included in the next revision of the ESP application. Enclosure 2 to this letter includes the NRC comments, and SNC resolution to the comments, as discussed in the May 22, 2008 FFD conference call between the NRC and SNC.

If you have any questions regarding this letter, please contact J. T. Davis at (205) 992-7692.

D078
A021
NRO

Mr. D. H. Jones states that he is Engineering Vice President of Southern Nuclear Operating Company, is authorized to execute this oath on behalf of Southern Nuclear Operating Company and to the best of his knowledge and belief, the facts set forth in this letter are true.

Respectfully submitted,

SOUTHERN NUCLEAR OPERATING COMPANY

David H. Jones

Sworn to and subscribed before me this 16th *day of* June, *2008*

Notary Public: Gail A. Hicks

My commission expires: July 5, 2010

DHJ/BJS/dmw

Enclosures:

1. Vogtle Electric Generating Plant Units 3 and 4 Fitness for Duty Program During LWA Construction Revision 2
2. SNC Responses to NRC Comments on Vogtle Electric Generating Plant Units 3 and 4 Fitness for Duty Program During LWA Construction Revision 1

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Southern Nuclear Operating Company

AR-08-0902

Enclosure 1

Vogtle Electric Generating Plant

Units 3 and 4

Fitness For Duty Program During LWA Construction

Revision 2

NOTE: This enclosure consists of a 23-page document.

Vogtle Electric Generating Plant

Units 3 and 4

Fitness for Duty Program

During LWA Construction

Revision 2

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VOGTLE ELECTRIC GENERATING PLANT UNITS 3 AND 4 FITNESS FOR DUTY PROGRAM DURING LWA CONSTRUCTION

1 INTRODUCTION

This document provides Vogtle Electric Generating Plant (VEGP) Units 3 and 4 construction site entities a process to authorize and maintain a worker's status in the construction site entity Fitness for Duty (FFD) Program in order to allow an individual to work on a U.S. Nuclear Regulatory Commission (NRC) approved limited work authorization (LWA) construction site. It is acknowledged that entities implementing this guidance may be Southern Nuclear Operating Company (SNC), contractors/vendors (C/Vs), or other entities authorized by the NRC and shall hereafter be referred to as construction site entities.

2 PURPOSE AND SCOPE

This document is applicable to the VEGP Units 3 and 4 construction site entity and applies only to persons who will perform LWA construction activities, at the location where the nuclear plant will be constructed and operated, on safety and security related structures, systems, and components (SSCs). This document ensures consistent application of regulations and is intended to serve as the FFD Program description for VEGP Units 3 and 4 LWA construction site as required in 10 CFR 26.401(b).

The FFD program described herein applies only to LWA construction activities that are performed at the location within the footprint of the new power reactor as well as the nearby areas where safety- and security-related SSCs will be installed and operated when the plant begins operation. The scope of LWA construction activities are described in the Vogtle Early Site Permit Application Site Safety Analysis Report Section 3.8.5. LWA construction activities conducted at facilities outside this prescribed area such as another location, city, state, or outside of the U.S. are not subject to the program described herein.

Personnel listed below shall be subject to the full operating plant FFD program that meets the requirements of 10 CFR 26, subparts A through H, N, and O.

- security personnel required by the NRC
- those who perform quality assurance/quality control/quality verification activities related to safety- or security-related construction activities
- individuals directly involved in witnessing or determining inspections, tests, and analyses and acceptance criteria (ITAAC) certification
- designated individuals to monitor the fitness of individuals
- individuals responsible for oversight and implementation of the licensee fitness-for-duty and access authorization programs
- second-level and higher supervisors and managers

3 RESPONSIBILITY

SNC is responsible to ensure that the applicable elements of 10 CFR 26 are implemented at the construction site. In ensuring this is completed, SNC may rely on program elements completed by another construction site entity program. Once it has been determined that an individual has provided a negative drug and alcohol test result, the individual may be eligible to gain access to the construction site. A construction site entity can maintain an individual in this status as long as the person remains in the construction site entity random FFD testing program for LWA construction, does not provide a positive drug or alcohol test result when tested, and is subject to a behavioral observation program. When an individual provides a positive drug or alcohol test, the construction site entity responsible for the test must notify SNC and the individual shall not be allowed access to the construction site without the approval of SNC.

Each construction site entity approving a C/V program shall ensure the latest revision of this document has been provided to each of its C/Vs for use and require that the criteria herein be met. Audits are used to assure that SNC and SNC-approved C/V programs supporting the fitness for duty program for the construction site meet regulatory requirements. Construction site entities are responsible for ensuring that program deficiencies are corrected.

4 DEFINITIONS

NOTE: These definitions expand upon but do not replace those found in regulatory documents. As used herein, any term that is not defined in this document but is defined in 10 CFR Part 26 has the meaning given in 10 CFR Part 26.

Construction Site – The defined physical location within the owner-controlled area (OCA) where the nuclear plant's security and safety related systems, structures, and components (SSCs) will be constructed and operated

Contractor/Vendors – Any company or individual not employed by the construction site entity that is providing work or services either by contract, purchase order, oral agreement, or other arrangement.

Conviction - A finding of guilt (including a plea of nolo contendere), or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug and/or alcohol statutes.

Criminal Drug Statute - A federal or non-federal, criminal statute involving the manufacture, distribution, dispensing, possession, or use of any illegal drug as defined in 10 CFR Part 26 and herein.

First Level Supervisors – The first level supervisory position that does not perform manual work.

HHS-certified laboratory - *a* laboratory that is certified to perform urine drug testing under the Department of Health and Human Services Mandatory Guidelines for Federal

Workplace Drug Testing Programs (the HHS Guidelines), which were published in the Federal Register on April 11, 1988 (53 FR 11970), and as amended, June 9, 1994 (59 FR 29908), November 13, 1998 (63 FR 63483), and April 13, 2004 (69 FR 19643).

Illegal Drugs - Any drug that is included in Schedules I to V of Section 202 of the Controlled Substances Act [21 U.S.C 812], but not when used pursuant to a valid prescription or when otherwise authorized by law.

Legal Action - A formal action taken by a law enforcement authority or court of law, including an arrest, an indictment, the filing of charges, a conviction, or the mandated implementation of a plan for substance abuse treatment in order to avoid a permanent record of an arrest or conviction, in response to any of the following activities:

- The use, sale, or possession of illegal drugs;
- The abuse of legal drugs or alcohol; or
- The refusal to take a drug or alcohol test.

Under the Influence – A determination that an individual is affected by drugs or alcohol in any detectable manner. The symptoms of influence include but are not confined to those consistent with aberrant behavior or obvious impairment of physical or mental abilities such as slurred speech or difficulty in maintaining balance.

Management and Oversight - The following position classifications are defined as management and oversight personnel:

- security personnel required by the NRC
- those who perform quality assurance/quality control/quality verification activities related to safety- or security-related construction activities
- individuals directly involved in witnessing or determining inspections, tests, and analyses (ITAAC) certification
- designated individuals to monitor the fitness of individuals
- individuals responsible for oversight and implementation of the licensee fitness-for-duty and access authorization programs
- second-level and higher supervisors and managers

MRO (Medical Review Officer) –a licensed physician who is responsible for receiving laboratory results generated by a HHS certified laboratory and who has the appropriate medical training to properly interpret and evaluate an individual's drug and validity test results together with his or her medical history and any other relevant biomedical information.

Presumptive Positive Drug Test Result – initial screen result that reaches or exceeds the screening cutoff whenever a test is required. This initial test requires a confirmatory drug test or alcohol test.

SSC (Systems, Structures or Components)

- *Safety-related SSCs* mean those structures, systems, and components that are relied on to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in 10 CFR 50.34(a)(1).
- *Security-related SSCs* mean those structures, systems, and components that SNC will rely on to implement the physical security and safeguards contingency plans that are required under 10 CFR 73.

5 DRUG AND ALCOHOL POLICY & PROCEDURES

Drug and Alcohol Policy

Each construction site entity who implements this FFD program shall ensure that a clear, concise, written FFD policy statement is provided to individuals who are subject to the program. The policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from a lack of adherence to the policy. At a minimum, the written policy statement must:

- Describe the consequences of the following actions:
  i. The use, sale, or possession of illegal drugs on or off site;
  ii. The abuse of legal drugs and alcohol;

- Describe the requirement that individuals who are notified that they have been selected for random testing must report to the collection site within the time period specified by the licensee or other entity;

- Describe the actions that constitute a refusal to provide a specimen for testing, the consequences of a refusal to test, as well as the consequences of subverting or attempting to subvert the testing process;

- Prohibit the consumption of alcohol, at a minimum
  i. Within an abstinence period of 5 hours preceding the individual's arrival at the construction site, and
  ii. During the period of any tour of duty;

- Convey that abstinence from alcohol for the 5 hours preceding any scheduled tour of duty is considered to be a minimum that is necessary, but may not be sufficient, to ensure that the individual is fit for duty;

- Describe the consequences of violating the policy;

- Describe the individual's responsibility to report legal actions,

- Describe the responsibilities of all managers and supervisors including management and oversight individuals to report FFD concerns;

- Describe the individual's responsibility to report FFD concerns.

Procedures

Construction site entities shall develop, implement, and maintain written procedures that address the following topics:

- The methods and techniques to be used in testing for drugs and alcohol, including procedures for protecting the privacy of an individual who provides a specimen, procedures for protecting the integrity of the specimen, and procedures used to ensure that the test results are valid and attributable to the correct individual;

- The immediate and follow-up actions that will be taken, and the procedures to be used, in those cases in which individuals who are subject to the FFD program are determined to have:

  i. Been involved in the use, sale, or possession of illegal drugs;
  ii. Consumed alcohol to excess before or while constructing safety- or security-related SSCs, as determined by a test that accurately measures breath alcohol content (BAC);
  iii. Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;
  iv. Refused to provide a specimen for analysis; or
  v. Had legal action taken relating to drug or alcohol use; and

- The process to be followed if an individual's behavior or condition raises a concern regarding the possible use, sale, or possession of illegal drugs on or off site; the possible use or possession of alcohol while constructing safety- or security-related SSCs; or impairment from any cause which in any way could adversely affect the individual's ability to safely and competently perform his or her duties.

- FFD documents, policies, and procedures ensure NRC guidance is met. In compliance with 10 CFR 26.417(a), these documents will be made available for NRC review at any time.

Written procedures must provide reasonable assurance that the individuals are fit to safely and completely perform their duties, and are trustworthy and reliable, as demonstrated by the avoidance of substance abuse.

Training

All individuals will receive FFD training as new employees and prior to initial granting of unescorted access to the construction site. Refresher training will be conducted at nominal 12-month intervals. All individuals will be trained in behavioral observation techniques per NRC requirements to be able to recognize behavior adverse to the safe

construction and security of the facility, and to detect and report aberrant behavior that might reflect negatively on an individual's fitness for duty, trustworthiness, or reliability.

Managers and supervisors will be trained regarding their role and responsibility in implementing the program. Training will include the role of the medical and Employee Assistance Program staff, techniques for recognizing drugs and indication of the use, sale, or possession of drugs, behavioral observation techniques, and procedures for initiating corrective action including referrals for mandatory FFD evaluations. Managers and Supervisors will be trained regarding their role in documentation of behavioral observation. New supervisors will be trained within 3 months after initial supervisory assignment. Refresher training will be conducted at nominal 12-month intervals.

5.1 USE, POSSESSION, OR SALE OF DRUGS OR ALCOHOL

5.1.1 Illegal Drugs

Using, selling, manufacturing, purchasing, transferring, dispensing, distributing, or possessing illegal drugs by any individual while on the construction site is strictly prohibited.

5.1.2 Alcohol

Using, selling, purchasing, transferring, dispensing, distributing, or possessing alcohol by an individual subject to this program while on a construction site is strictly prohibited.

Consumption of alcohol onsite or within 5 hours of performing construction work to safety-related or security-related SSCs is strictly prohibited. Abstinence from alcohol for the 5 hours preceding any scheduled work is considered to be the minimum that is necessary, but may not be sufficient, to ensure an individual is fit for duty.

Individuals who are called out to perform work outside their normal work hours shall be required by their supervisor to indicate whether alcohol has been consumed within the 5-hour pre-duty abstinence period. Employees may be required to be tested for alcohol upon reporting to work. Employees indicating they have consumed alcohol within this period may be further evaluated and/or tested prior to beginning a tour of duty. Employees reporting alcohol consumption within the 5 hour period must also be approved by appropriate management. No disciplinary action will be taken if the employee has informed his/her supervisor of alcohol consumption prior to reporting.

5.1.3 Reporting of Legal Actions

An individual subject to the provisions of this document is required to notify the construction site entity of any legal action involving drugs or alcohol as required by the construction site entity policies.

5.2 DISCIPLINARY ACTIONS

Individuals requiring access to the construction site shall sign a Consent Form (e.g., see Attachment A.), prior to gaining access, attesting to their understanding of the consequences for a violation of the FFD policy.

The construction site entity shall establish sanctions for FFD policy violations that, at a minimum, prohibit the individuals from being assigned to construct safety- or security-related SSCs unless or until SNC or other entity determines that the individual's condition or behavior does not pose a potential risk to public health and safety or the common defense and security.

5.3 DRUG AND ALCOHOL TESTING

The construction site entity shall employ urinalysis, breath tests or other methods as permitted by 10 CFR 26 to determine fitness for duty, including but not limited to pre-access, for-cause and random testing. At a minimum, the construction site shall test specimens for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acctylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol, at the cutoff levels specified herein or comparable cutoff levels if specimens other than urine are collected for drug testing. An individual must consent to submit to such tests as a condition of access to the construction site and refusal to consent shall result in denial of access to the construction site.

Testing of urine specimens for drugs and validity, except validity screening and initial drug and validity tests that may be performed by a construction site entity testing facilities, must be performed in a laboratory that is certified by HHS for that purpose, consistent with its standards and procedures for certification. Any initial drug test performed by a construction site entity must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Urine specimens that yield presumptive positive, adulterated, substituted, or invalid initial validity or drug test results must be subject to confirmatory testing by the HHS-certified laboratory, except for invalid specimens that cannot be tested. Other specimens that yield presumptive positive initial drug test results must be subject to confirmatory testing by a laboratory that meets stringent quality control requirements that are comparable to those required for certification by the HHS.

Testing for alcohol will be conducted through breath measurement or using oral fluids. The initial test for alcohol performed at the construction site testing facility shall be conducted by a breath measurement device which meets the requirements of the National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and any applicable State of Georgia statutes or by using oral fluids (e.g., saliva) using acceptable alcohol screening devices (ASDs) that are listed on the most recent version of NHTSA's Conforming Products List (CPL) for ASDs.

The following initial cutoff levels shall be used when testing specimens to determine whether they are negative for the indicated substances:

Initial Test Cutoff Levels

Substance*	Cutoff level
Marijuana metabolites	50 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	2000** ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1000 ng/ml
Alcohol (1)	0.02% BAC

(1) Applicable for breath measurement devices and ASDs.
* Construction site entities may specify more stringent cutoff levels as well as other illegal drugs as determined. Results shall be reported for both levels in such cases.
**25 ng/ml is immunoassay specific for free morphine.

Confirmatory testing for alcohol must be conducted using a breath measurement device.

Confirmatory testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.

Confirmatory Test Cutoff Levels

Drug	Cut-off level
Marijuana metabolite	15* ng/ml
Cocaine metabolite	150** ng/ml
Opiates: Morphine	2000 ng/ml
Opiates: Codeine	2000 ng/ml
Opiates: 6-acetylmorphine	10*** ng/ml
Phencyclidine	25 ng/ml
Amphetamines: Amphetamine	500 ng/ml
Amphetamines: Methamphetamine	500**** ng/ml
Alcohol (1)	0.01-0.04%***** BAC

(1) Applicable for breath measurement devices and ASDs.
*Delta-9-tetrahydrocannabinol-9-carboxylic acid.
**Benzoylecgonine
*** Test for 6-AM when the confirmatory test shows a morphine concentration > 2,000 ng/ml.
**** Specimen must also contain amphetamine at a concentration ≥ 200 ng/ml
***** Cutoff level for confirmed positive will be determined using conditions specified in 10 CFR 26.103.

Testing for additional substances may be ordered on individuals at the direction of the Medical Review Officer for follow-up and for-cause FFD tests. All testing will be conducted in compliance with 10 CFR 26.405(f). Appropriate cut-off limits shall be

established by construction site entities per the protocols of the certified Department of Health and Human Services laboratory. Testing methods will be chosen based on the additional substances being tested. Any individual subject to testing of additional substances at the direction of the MRO shall be informed of this requirement. In addition, construction site entities may specify more stringent cut-off levels. Results shall be reported for both levels in such cases.

Construction Site Testing Facilities

Construction site testing facilities shall have a supervisory individual responsible for day to-day operations and to supervise the testing technicians. The number of testing technicians required for the facility will be based on the needs of construction staffing and observation. The supervisory individual and testing technician(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. They shall have training and experience in the theory and practice of the procedures used in the construction site testing facilities, resulting in their thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; and proper remedial actions to be taken in response to detecting aberrant test or quality control results. On a case by case basis construction site entities may use alternative collection and testing facilities as described below.

Collector qualifications and responsibilities:

The construction site entity shall ensure the following:

- Urine collector qualifications: Urine collectors shall be knowledgeable of the requirements of the construction site FFD policy and procedures and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

    i. All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;
    ii. Methods to address "problem" collections, including, but not limited to, collections involving "shy bladder" and attempts to tamper with a specimen;
    iii. How to correct problems in collections; and
    iv. The collector's responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

- Alcohol collector qualifications: Alcohol collectors shall be knowledgeable of the requirements of the construction site FFD policy and procedures and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a

collector. At a minimum, qualification training must provide instruction on the following subjects:

i. The alcohol testing requirements of 10 CFR 26.405;
ii. Operation of the particular alcohol testing device(s) [i.e., the the alcohol screening devices (ASDs) or Evidentiary Breath Test (EBTs)] to be used, consistent with the most recent version of the manufacturers' instructions;
iii. Methods to address "problem" collections, including, but not limited to, collections involving "shy lung" and attempts to tamper with a specimen;
iv. How to correct problems in collections; and
v. The collector's responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

Alternative Collection and Testing

Construction site entities who are subject to this procedure may rely on a local hospital or other organization that meets the requirements of 49 CFR 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65-FR-41944; August 9, 2001) to collect specimens and conduct alcohol tests for the FFD program described herein.

5.4 EMPLOYEE ASSISTANCE PROGRAM

The construction site entity recognizes that problems of a personal nature could have an adverse effect on an employee's job performance. The goal of the Employee Assistance Program (EAP) is to provide employees with assistance for early intervention techniques that will improve the quality of their personal lives and prevent the development of job performance problems.

The Employee Assistance Program will provide assistance to any employee requesting services in the areas of alcohol abuse, substance abuse or any other problems.

Information concerning employee counseling will be protected in accordance with federal and state law, and will not be revealed to anyone outside the EAP program except as follows:

1. If disclosure is required by law.
2. If the EAP professional determines that the employee is a serious threat to themselves or to the safety of others.
3. If the EAP professional determines that the employee's condition is such that the employee should not be allowed access to the construction site, access to safeguards information, or be allowed to perform certain safety-sensitive job duties.
4. If the employee authorizes the release of the information to another party or individual.

6 DRUG AND ALCOHOL TESTING PROCEDURE

6.1 CONSENT FORM

Individuals are required to sign the Consent Form (Attachment A) as a condition of access to the construction site. Included in the consent form is the agreement to submit to periodic unannounced (random) testing during the course of their access to the construction site. Refusal to cooperate with or submit to such testing shall result in immediate termination of access to the construction site.

6.2 TESTING PROCEDURES

6.2.1 Pre-Access

Each worker who will construct or direct the construction of safety- or security-related SSCs shall have negative drug and alcohol test results prior to constructing or directing the construction of any safety- or security- related SSCs. These drug and alcohol tests must be administered no more than 30 days prior to the start of the worker's construction, or direction of the construction, of a safety- or security-related SSC.

6.2.2 For Cause

Post Accident

As soon as practical after an event involving a human error that was committed by an individual subject to this program where the human error may have caused or contributed to an accident. The construction site entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event but whose actions likely did not cause or contribute to the event. Individuals involved in a work-related accident shall be required to submit to a drug and alcohol test at the construction site testing facility.

In all cases treatment of an individual's illness or injury takes precedence over drug and alcohol testing.

For purposes of this policy, an "accident" is defined as the following:

- Work-related injury/illness – A~~n~~ injury or illness, resulting in an OSHA Recordable Incident.
- Work-related motor vehicle accident -- A significant on-site accident that occurs while an individual is in a vehicle performing construction site entity business, as defined in the construction entity's procedures.
- Significant property damage -- Damage, during construction, to any safety- or security-related SSC in excess of $100,000.

Occupational Injury and Illness Resulting in an OSHA Recordable Incident

A for cause test will be conducted when significant illness or personal injury occurs to an individual or another individual, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1904.7, and subsequent amendments thereto, and results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury as diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

- The injured individual must notify their onsite supervisor of the injury or illness if able.
- The construction site entity management shall make arrangements for the individual to submit for a drug and alcohol test at the construction site testing facility.
- The results of the drug and alcohol test shall be submitted to the construction site entity management.

Significant Property Damage

- The supervisor shall notify the respective construction site entity management that an incident has occurred that resulted in damage to safety- or security-related SSC in excess of $100,000.
- Construction site entity management shall make arrangements for the individuals involved in the damage to submit for a drug and alcohol test at the construction site testing facility.
- The results of the drug and alcohol test shall be submitted to the construction site entity management.

Observed Behavior

- If observed behavior or a physical condition creates a reasonable suspicion of possible substance abuse, the construction site entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing work on SSCs.
- If credible information is received that an individual is engaging in substance abuse, the construction site entity shall perform drug and alcohol testing.
- If the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required.
- For other indications of possible impairment that do not create a reasonable suspicion of substance abuse, the construction site entity may permit the individual to return to work only after the impairing or questionable

conditions are resolved and the MRO has determined that the individual is fit to safely and competently perform his or her duties.

- The results of the drug and alcohol test shall be submitted to the construction site entity management.

Custodial Arrest

- Individuals reporting custodial arrests involving drugs or alcohol will be sent for a drug and alcohol test at the construction site testing facility.
- The construction site entity may permit the individual to return to work only after arrest conditions are resolved and the MRO has determined that the individual is fit to safely and competently perform his or her duties.

Follow-Up Testing

- Drug and alcohol testing will be performed as part of a follow-up plan to verify an individual's continued abstinence from substance abuse.
- The results of the drug and alcohol tests shall be submitted to the construction site entity management.

6.2.3 Random Drug and Alcohol Testing

Random Selection and Frequency

Random testing shall be accomplished for the construction site at the rate of 50 % of the population that is subject to FFD testing for the calendar year. Testing will be conducted during all types of work periods, including weekends and holidays at various times of the day throughout the calendar year. Test selection is statistically random and unannounced, so that all individuals in the population subject to testing have an equal probability of being selected and tested. Testing will be administered in a manner that provides reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected. If an individual is selected and is not at work that day then another selection is made to replace that person.

Random testing for individuals concurrently authorized Unescorted Access to an operating power reactor shall be deemed adequate to maintain access to a construction site without being subject to additional random testing.

Random selection includes all individuals eligible for testing, for the construction site, on the date the random list is generated. Individuals to be tested (hereinafter the "subject") shall be chosen by use of a method which randomly selects the number of subjects from among the individuals eligible for testing for the construction site. The construction site entity will develop procedures to detail the implementation of the random testing selection process as required herein.

Notification Procedures

At the time of random drug and alcohol testing, the following steps shall be taken:

- A record of the individuals selected for random testing shall be documented.
- The construction site entity shall notify the subject individuals and request they report to the construction site testing facility within one hour.
- If an individual refuses to submit to the testing, the onsite supervisor shall attempt to inform the individual that access to the construction site shall be terminated unless he/she submits to testing.
- Individuals selected for testing will be immediately available to be selected the next time the random list is generated.
- Individuals not onsite the day the random selection is determined will not be subject to testing unless they are selected randomly again.
- When the construction site entity receives the results of the tests appropriate action shall be taken in the event of positive results.
- The laboratory forwards a written report to the construction site entity for the drug testing file.

6.3 SPECIMEN COLLECTION AND LABORATORY

Any initial test performed by a construction site testing facility or a HHS-certified laboratory, and the confirmatory test performed by a HHS-certified laboratory, shall use a process which meets the requirements of the Food and Drug Administration (FDA). Testing for drugs and drug metabolites will be conducted through the analysis of urine specimens or other process which meets the requirements of the FDA. Urine specimens that yield presumptive positive, adulterated, substituted, or invalid initial validity or drug test results must be confirmed using a HHS certified laboratory, except for invalid specimens that cannot be tested. Testing for alcohol will be conducted through breath measurement or oral fluids (e.g., saliva). The initial test for alcohol performed at the construction site testing facility shall be conducted by a breath measurement device which meets the requirements of the NHTSA standards (49 FR 48855) and to any applicable State of Georgia statutes, or by using oral fluids (e.g., saliva) using acceptable ASDs that are listed on the most recent version of NHTSA's CPL for ASDs.

Analytic methods used for testing for drugs will be urinalysis or any other method approved in 10 CFR 26. Testing indicates the presence of specific drugs or drug metabolites, but is not an indication of impairment due to drug use.

Initial analysis and validity testing may be performed by the construction site entity testing facility or by HHS-certified laboratories. Confirmatory analysis is performed by a laboratory that meets stringent quality control requirements that are comparable to those required for certification by the HHS. Breath analysis may be performed at the construction site testing facility.

Initial cut-off levels shall be detailed in the construction site entity procedures. Those specimens that test negative on the initial test are not subject to further testing unless they are suspected of having been adulterated or diluted.

Confirmatory testing must be performed after a presumptive positive, adulterated, or substituted specimen. Confirmatory drug testing is performed using gas chromatography (GC/MS) techniques. Breath analysis confirmation is performed by use of a breath

measurement device. Specimens that are negative on the confirmatory test are reported as negative and are not subject to further testing unless they are suspected of having been adulterated or diluted. If the confirmatory test is positive for morphine, a test for 6-monoacetylmorphine (6-MAM) shall be included in the confirmatory test for opiates to aid the MRO in determining whether the morphine is from legal drugs.

Specimens with a confirmed positive laboratory result for drugs, other than alcohol, will be evaluated by the MRO who will determine whether there is a legitimate medical reason for the presence of that drug in that specimen. This may involve review of medication history, physical examination and/or personal interview.

Vendor-operated testing facilities authorized by the construction site entity to conduct testing shall comply with the provisions of this program through the use of detailed procedures and shall be subject to assessment by the construction site entity or its representatives prior to implementation of the service and at a specified periodicity to assure continued effectiveness of service.

6.4 SPECIMEN PROCESSING

Construction site entity shall arrange for urine specimen collections and initial alcohol tests to be performed either at the construction site testing facility or at a nearby qualified facility. The testing should be done as soon as is reasonable after appropriate medical care if required.

Collection site personnel shall arrange to transfer the collected specimens to the HHS-certified laboratory. The construction site entity shall take appropriate and prudent actions to minimize false negative results from specimen degradation. Specimens that have not been shipped to the HHS-certified laboratory within 24 hours of collection, and any specimen that is suspected of having been substituted, adulterated, or tampered with in any way, must be maintained cooled to not more than 6 °C (42.8 °F) until they are shipped to the HHS-certified laboratory. Specimens must be shipped from the collection site to the HHS-certified laboratory or alternate testing facility as soon as reasonably practical but, except under unusual circumstances, the time between specimen shipment and receipt of the specimen at the alternate testing facility or HHS-certified laboratory should not exceed two business days.

The specimen collection and alcohol testing process will be detailed in the construction site entity procedures and will meet or exceed the requirements of specimen collection as stated in 10 CFR 26. For alternative methods not described in 10 CFR 26, the construction site entity will develop detailed collection and specimen testing procedures.

6.5 POSITIVE RESULTS

A positive confirmatory breath alcohol test indicates a violation of the FFD program.

A presumptive positive drug test result does not always indicate a violation of the FFD program. All presumptive positive drug test results confirmed by the HHS certified laboratory as positive shall be reviewed by the MRO. The MRO will determine whether a legitimate medical reason exists for the positive result and will be the final determination

as to whether an individual is in violation of the FFD program. If the MRO determines that there is a legitimate medical explanation for the confirmed positive result, the MRO shall report the result as negative. Substituted, adulterated or diluted samples will also be subject to MRO review for final determination. Invalid validity test results will be reviewed by the MRO to determine if the donor has violated the FFD policy.

Only the MRO can authorize the reanalysis of the original specimen, or the analysis of an aliquot of a split sample. The donor may request the MRO to authorize reanalysis. Such reanalysis shall be conducted by an HHS-certified laboratory.

The MRO shall report all positive results to the construction site entity management person responsible for the FFD program. The construction site entity shall ensure that appropriate action is taken as detailed in the construction site entity procedures. These procedures shall clearly state the consequences of violating FFD program requirements.

Employees who violate the FFD Policy by testing positive for drugs or alcohol are subject to discipline up to and including immediate discharge. In addition, employees who fail to notify supervision of factors that could adversely affect their fitness for duty, or who refuse to submit to FFD tests as required are subject to discipline up to and including immediate discharge.

6.6 REVIEW PROCESS

The construction site entity shall have an alternative review process that is objective and impartial. The construction site entity shall include a description of the process to be used in the procedures that implement this requirement. Construction site entity programs are not intended to modify, subjugate, or abrogate any review rights that currently exist for individuals with their respective employers. An individual who has been denied access to the construction site or whose access has been terminated due to a violation of the FFD program shall have the capability to:

- Be provided the basis for the denial of access;
- Have an opportunity to provide additional information, and;
- Be provided the opportunity to have the decision, together with any additional information, reviewed by another designated construction site entity manager who is equivalent or senior to and independent of the individual who made the decision to deny or terminate access to the construction site due to the program violation. The determination from this independent review is final.

6.7 BEHAVIORIAL OBSERVATION PROGRAM

The construction site entity's Behavioral Observation Program is the primary means to detect behavior that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol onsite or while on duty; or any physical impairment or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Supervisors that are responsible for observing individuals subject to a Behavioral Observation Program shall report any FFD concerns about individuals to the personnel designated in the construction site entity's policy.

Supervisors that are responsible to observe individuals subject to the Behavioral Observation Programs must be trained to have sufficient awareness and sensitivity to detect degradation in performance which may be the results of being under the influence of any substance, legal or illegal, physical or mental impairment which in any way may adversely affect their ability to safely and competently perform their duties. Training shall communicate the expectation of promptly reporting noticeable changes in behavior or FFD concerns about other individuals to the construction site entity designated personnel for appropriate evaluation and action in accordance with the FFD policy.

6.8 RECORDKEEPING AND CONFIDENTIALITY

Personal information, whether electronic or hardcopy, must not be disclosed to unauthorized persons. The construction site entity shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained before disclosing the personal information, except for disclosures to the following persons who are authorized:

- Operating plant licensees and other licensees or construction site entities seeking the information as required for determinations of access to construction sites;
- NRC representatives;
- Appropriate law enforcement officials under court order;
- The subject individual or his/her representative who has been designated in writing;
- Licensee or construction site entity representatives who have a need to have access to the information in performing assigned duties, including audits of licensee, contractor or vendor programs, except where specifically excluded by regulation;
- Persons deciding matters on review or appeal;
- Persons who have the authority to change personal data in electronic records;
- Other persons pursuant to court order;
- Assigned MROs and MRO staff; or
- The presiding officer in a judicial or administrative proceeding that is initiated by the subject individual.

The construction site entity will establish and maintain a system of files and procedures that clearly indicate that test records and associated documentation shall be retained and used with the highest regard for individual privacy and confidentiality.

Records which must be retained and the retention period shall be identified in the construction site entity program procedures.

Electronic Format Records

For information stored or transmitted in electronic format, access to personal information will be controlled by password protection to control access to personal data and limiting data entry to each authorized individual's area of responsibility.

Hardcopy Records

Hard copy records shall be maintained in secured storage or lockable file cabinets when not in review. Access to the FFD area where files and file cabinets are contained is limited to those authorized above.

Reporting The licensee shall make the following reports:

- Reports to the NRC Operations Center by telephone within 24 hours after the construction site entity discovers any intentional act that casts doubt on the integrity of the FFD program and any programmatic failure, degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol use or abuse by individuals who are subject to the FFD program. These events must be reported under 10 CFR 26.417, rather than under the provisions of 10 CFR 73.71; and
- Annual program performance reports for the FFD program.

6.9 AUDITS

Construction site entities who implement an FFD program shall ensure that audits are performed to assure the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, and the FFD programs of C/Vs that are accepted by SNC or other entity.

Construction site entity shall ensure that these programs are audited at a frequency that assures their continuing effectiveness and that corrective actions are taken to resolve any problems identified. Construction site entities may conduct joint audits, or accept audits of C/Vs conducted by others, so long as the audit addresses the relevant C/Vs' services.

Construction site entities need not audit HHS-certified laboratories or the specimen collection and alcohol testing services that meet the requirements of 49 CFR 40 on which the construction site entity may rely to meet the drug and alcohol testing requirements of 10 CFR 26.

The construction site entity will develop procedures to address the implementation of the audit requirements herein.

In accordance with 10 CFR 26.417, the construction site entity FFD program shall be made available for NRC inspection.

ATTACHMENT A

CONSENT FORM

The individual applying for access is required to sign a Consent that authorizes a construction site entity and its authorized agents to test the individual for drug and alcohol use as determined by the construction site entity.

The individual's signature on the Consent confirms that the individual has read and understands the Consent, and has voluntarily agreed to authorize the construction site entity and its authorized agents performing drug and alcohol testing and the individuals and entities releasing information to take the actions set out in the Consent. The Consent includes the following:

- Blank lines to be filled in with the name of the construction site entity and its authorized agent obtaining the Consent.
- Authorization to perform drug and alcohol testing for use in access decisions and the transfer of information among construction site entities and their authorized agents, and their employees who have a need-to-know.
- Authorization to use the information collected solely for the purpose of determining eligibility for access and subsequent work within the boundary of the nuclear power plant construction site.
- Authorization of the retention of collected information in files that are secure for a period required by NRC.
- Language to convey to the applicant that participation in drug and alcohol testing is voluntary. If an individual will not sign the consent or withdraws consent, or does not cooperate with the test process, the process cannot continue. In any of these cases, access to the nuclear plant construction site shall be denied or withdrawn immediately.
- The Consent serves to release construction site entities and their authorized agents, and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, representatives, agents, and records custodians of any entity or individual supplying drug and alcohol testing services from any and all liability based on their authorized receipt, disclosure, and use of the information obtained based on the individual's consent.
- The individual's rights and responsibilities relative to reviewing the records collected pursuant to this consent.
- Notice that nothing in the Consent is to be construed to waive any right or responsibility that the individual granting consent, the construction site entity or if different from the construction site entity, the individual's employer may have under Section 211 of the Energy Reorganization Act of 1974, as amended. Section 211 addresses "protected activity" by workers in the nuclear industry.

CONSENT FORM

_____ has my consent to drug and alcohol testing necessary to determine whether to grant me access to a nuclear power plant construction site and to allow me to maintain such access. The Nuclear Regulatory Commission (NRC) requires that this information be used in determining that an individual is fit-for-duty prior to granting and while maintaining access. The results of this determination may be available to other construction site entities. I understand the site FFD policy and consent to complying with that policy.

I understand that my information may be transferred, electronically or otherwise, to other construction site entities and contractor/vendors or the agents of each. This information shall include, but is not limited to:

- Name and Social Security Number;
- Dates when any of the following are completed: drug testing, alcohol testing;
- Dates when access has been authorized or terminated; and
- Dates associated with drug and/or alcohol follow-up testing, if applicable.

I authorize any individual, organization, institution, or entity that now has, or obtains in the future, drug and/or alcohol testing information about me (examples of which are provided in the above paragraph), to release any such information in order to perform the evaluation required for access.

I understand that my information obtained pursuant to this Consent shall be treated as confidential. The release of access-related information about me shall be limited to regulatory agencies and such personnel of construction site entities and their contractors/vendors who have been designated as having a "need to know" the information in order to do their jobs. These entities are listed in Section 6.8 of the site FFD program description.

I understand that all information about me in the database shall be maintained as securely as reasonably practicable for a period determined by the NRC.

I understand that, upon my written request to _____, and at no cost to me, I shall be provided, within ten (10) working days, with a printed copy of the information about me which is in the construction site entity files. If, after my review of such information, I can show that any of the information is incorrect or incomplete, such information shall be corrected and/or completed as soon as is reasonably practical.

I hereby release _____, and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, representatives, agents, and records custodians of any entity or individual supplying or using such information from any and all liability based on their authorized receipt, disclosure, or use of the information obtained pursuant to this Consent and to determine my eligibility for construction site access.

I understand that this Consent is not intended to and does not affect any right or responsibility that I, my employer (if not _____), or _____ may have under Section 211 of the Energy Reorganization Act of 1974, as amended. I further understand that nothing herein (1) affects my right or my responsibility to bring potential safety concerns to my employer (if not _____), _____, or the NRC; or (2) prohibits me from participating in any proceeding or investigation regarding such a potential safety concern.

I have read and understand this Consent and site FFD policy and authorize _____ to take such actions as are described therein. While I understand that construction site access is dependent upon my accepting the regulatory requirements of this FFD program, the statements made by me in this Consent and my decision to sign this Consent are voluntary. The statements were not induced by any promise nor have I been subjected to any threat, duress or coercion to sign this Consent. [*Additional provisions required by applicable Georgia State law would be included here.*]

_____	_____
Applicant's Printed Name	*Social Security No.*
_____	_____
Applicant's Signature	*Date*

Southern Nuclear Operating Company

AR-08-0902

Enclosure 2

SNC Responses to NRC Comments

on

Vogtle Electric Generating Plant

Units 3 and 4

Fitness For Duty Program During LWA Construction

Revision 1

NOTE: This enclosure consists of an 8-page document.

Comments on Vogtle Rev. 4 FFD Program during LWA Construction (5-12-08)

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
Incorporated	1	2	1/4	Delete "that are required to be described in the - construction entities site safety analysis report or physical security plans." Definitions of safety-related and security-related SSCs make this language unnecessary. Also, the term, "construction entities," is not defined.
Referred to 26.401(b) vs. 52	1	2	1/7	Part 52 does not require FFD program descriptions for LWA applications. Part 52 applies to COL applicants. This is an LWA application, which is covered by Part 50.
Revised text to address concern	1	2	2/4	The sentence "LWA construction activities include any fabrication, erection, integration, or testing of safety- or security-related SSCs" is incorrect. The LWA requested by Vogtle would not authorize these activities. The sentence should be changed to the following: "LWA construction activities include the installation of the foundations of safety- or security-related SSCs, including the placement of concrete, which includes the installation of rebar."
Revised text to address concern	1	2	3/1	The sentence limits the individuals who will be subject to a "full" Part 26 program to SNC management and oversight personnel. However, 10 CFR 26.4(e) requires that "any individual" who performs the activities specified in that paragraph must be subject to a "full" program, no matter by whom they are employed.
Incorporated	1	2	3/2	Replace "10 CFR 26" with "10 CFR Part 26, subparts A through H, N, and O."
Incorporated	2	3	1/1	This sentence, and the subsequent sentences in this section, should be revised to indicate that SNC, as the LWA holder, is responsible to the NRC for ensuring that the FFD program/program elements is/are implemented at the construction site.
Incorporated	2	3	1/4	Change "a negative drug and alcohol test" to "negative drug and alcohol test result."
Incorporated	2	3	1/8	Insert "result" after "drug or alcohol test".
Incorporated	2	3	1/7-8	Insert a comma after "LWA construction," delete "and" in line 8, and insert ", and is subject to a behavioral observation program" after "when tested."
Changed to Construction Site	2	3	1/10	"Construction facility" is not defined.
Incorporated	2	4	1/1	Add a note that states "NOTE: "As used herein, any term that is not defined in this document but is defined in 10 CFR Part 26 has the meaning given in 10 CFR Part 26."
Incorporated	2	4	Definition of "criminal drug statute"	Replace "controlled substance" with "illegal drug as defined in 10 CFR Part 26 and herein."
Definition is retained here as well as in Section	3	4	Definition of "management and oversight"	These categories of personnel are defined, but the term is not used throughout the remainder of the document. Because these individuals are already

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
2.				listed in section 2 on page 1 as "SNC management and oversight personnel," the definition can be removed.
Referred to HHS certified laboratory.	3	4	Definition of "Medical Review Officer"	What is a "10 CFR 26 drug testing program?" Is this term intended to include MROs who review drug test results from specimens collected at a facility that meets the requirements of 49 CFR Part 40 (i.e., a DOT collection site)? Instead of "10 CFR 26 drug testing facility," the definition should refer to the collection and testing facilities SNC proposes to use.
Incorporated & tied to LWA only.	4	4	Definition of "security-related SSCs"	Revise so definition applies to Vogtle's LWA application, not a CP or COL application. See definition of "security-related SSCs" in 10 CFR 26.5.
Not incorporated.	4	5	1st bullet	Include a description of the consequences of the use or possession of alcohol while on the construction site.
Incorporated	4	5	4th bullet	Define "facility."
Clarified these managers & supervisors.	4	5	8th bullet	Define "managers and supervisors." Are these first-line supervisors, "management and oversight personnel" or others?
Incorporated	5	5	Last bullet	Replace "10 CFR 26.20(f)" with "10 CFR 26.417(a)".
Incorporated	5	5	After last bullet	State the objective outlined in 10 CFR 26.419 by adding the following statement: "Written procedures must provide reasonable assurance that the individuals are fit to safely and competently perform their duties, and are trustworthy and reliable, as demonstrated by the avoidance of substance abuse."
Incorporated	5	5	Training/6	Insert "fitness for duty," between "individual's" and "trustworthiness".
Not incorporated.	5	5	Training	Individuals at the LWA construction site who are subject to the FFD requirements of an operating reactor, including managers and supervisors, must pass a comprehensive exam. See 10 CFR 26.29. Define "managers and supervisors."
Edit	6	5.1.2	2/4	"and" should be "an".
Clarified but did not define appropriate management.	6	5.1.2	3/6	The reference in "these cases" is unclear. Specify that this refers to individuals who have been called-in and report having consumed alcohol. Define "appropriate management."
Incorporated	6	5.1.3	1/1	Replace "engaged in the performance of construction site entity work at the construction site" with "subject to the provisions of this document".
Added policy to Attach A	6	5.2	1	The consent form in Attachment A does not address the individual's understanding of the consequences of violating "this policy." Also, "this" is an LWA application, rather than a "policy."
Incorporated	7	5.3	1/1	Replace "approved by 10 CFR 26" with "as permitted by 10 CFR Part 26".
Not incorporated.	7	5.3	2/2	Replace the term "construction site entity testing facilities" with "licensee testing facility compliant

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
				with 10 CFR Part 26 Subpart F."
Not incorporated.	7 & 8	5.3		The application should specify exactly which specimens will be tested, by which construction entity, and which methods will be used to test them. This level of specificity is required to clarify how the FFD program will be implemented.
Incorporated	7	5.3	1/3	Insert a new second sentence to reflect 10 CFR 26.405(d): "At a minimum, the construction site entity shall test specimens for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol, at the cutoff levels specified herein or comparable cutoff levels if specimens other than urine are collected for drug testing."
Incorporated	7	5.3	2/5	Remove "subject to this subpart".
Not incorporated	7	5.3	2/8	Insert "in accordance with 10 CFR Part 26.161" after "HHS-certified laboratory".
Modified 1st sent for oral fluids.	7	5.3	3	In the first line, the methods for testing for alcohol are limited to the use of breath measurements, but fifth line indicates that oral fluids could be used for testing for alcohol. If oral fluids are to be used, include them in the first sentence. Otherwise, remove language after "Georgia statutes."
Not incorporated.	7	5.3	3	10 CFR 26.91(a) requires that alcohol screening devices (ASDs), including devices that test saliva or breath, must be approved by NHTSA and listed on the most recent version of NHTSA's CPL for such devices. 10 CFR 26.91(b) specifies the acceptable evidential testing devices that may be used to conduct initial alcohol tests (listed on the NHTSA CPL for evidential breath testing devices). Revise the guidance to comply with 26.91(a) and (b) such that breath measurement devices and ASDs used for initial alcohol testing must be on the NHTSA CPL.
Editorial change.	7	5.3	3/4	Remove "to".
Not incorporated	7	5.3	3	Does not specify the requirement in 10 CFR 26.91(b) regarding evidential breath testing devices used to conduct confirmatory alcohol testing. The evidential breath testing device must be on NHTSA's CPL for evidential devices and listed "without an asterisk (*)." Devices identified with an asterisk do not meet the 10 CFR 26.91(c) requirements.
Editorial change.	7	5.3	Table "Initial Test Cutoff Levels (ng/ml)"	Although this table includes "ng/ml" in the title, it contains the cutoff level for alcohol which has a different unit of measurement (i.e., % BAC). Replace "ng/ml" in the table title with "ng/mL unless

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
				otherwise noted" or moving "ng/ml" out of the title and into each applicable row.
Incorporated	7	5.3	Table "Initial Test Cutoff Levels (ng/ml)"	Remove the ">" symbol from the cutoff levels listed in the table for marijuana, cocaine, opiate, phencyclidine, and amphetamines. See the cutoff levels specified in 10 CFR 26.133 and 10 CFR 26.163(a) for drugs and drug metabolites.
Incorporated	7	5.3	Table "Initial Test Cutoff Levels (ng/ml)"	The alcohol initial test cutoff of ">0.04% BAC" does not meet the requirements in 10 CFR 26.405(d) and 10 CFR 26.99. The initial alcohol test must be able to detect to a cutoff level of 0.02% BAC.
Incorporated	7	5.3	Note 1 to the Table	Revise the statement "(1) Applicable only for breath measurement devices." The cutoff level for initial alcohol testing is 0.02% BAC and this applies to both ASDs and breath measurement devices (see 10 CFR 26.99). An acceptable statement would be "(1) Applicable for breath measurement devices and ASDs." If SNC proposes to use only breath measurement devices for initial alcohol testing, ignore this comment.
Editorial change.	7	5.3	Sentence with asterisk below the table	Insert the word "as" after the word "well."
Editorial change.	7	5.3	Last line	Change the term "Confirmation testing" for alcohol to "Confirmatory testing" for alcohol to be consistent with other uses of the term in the document and Part 26.
Editorial change.	8	5.3	First line	Change the term "Confirmation testing" for drugs to "Confirmatory testing" for drugs to be consistent with other uses of the term in the document and Part 26.
Incorporated	8	5.3	Table "Confirmatory Test Cutoff Levels (ng/ml)"	Remove the ">" symbol from the cutoff level listed in the table for each drug or metabolite. See the confirmatory test cutoff levels for drugs and drug metabolites in 10 CFR 26.163(b).
Incorporated except used range of cutoffs from rule.	8	5.3	Table "Confirmatory Test Cutoff Levels (ng/ml)"	The confirmatory test cutoff for alcohol of ">0.04% BAC" does not meet the requirements in 10 CFR 26.405(d) and 10 CFR 26.103. The confirmatory test cutoff for alcohol test must be able to detect to a cutoff level of 0.01% BAC (see 10 CFR 26.103(b)).
Incorporated	8	5.3	Middle paragraph beginning with "Testing for additional"	After the first sentence, insert a new sentence specifying that all testing will be conducted in compliance with 26.405(f).
Addressed by adding a sentence on methods of testing for additional substances.	8	5.3	Middle paragraph beginning with "Testing for additional"	If the MRO determines that testing should be conducted for additional substances under for-cause and follow-up testing situations, it is unclear how compliance with 10 CFR 26.405(f) would be achieved unless the licensee had already determined, in advance of any such testing event, all possible additional substances that an individual

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
				could be tested for so that the appropriate FDA approved immunoassay(s) were available for use at the time of the testing. Therefore, insert a list of all possible substances that an employee may be subject to testing for under for-cause and follow-up testing situations to be compliant with 10 CFR 26.403.
Added reference to page 9 for use of other facilities	8 & 9	5.3	"On-site Testing Facilities" & "Alternative Collection and Testing"	Specify whether any construction site entities will operate a testing facility and whether alternative collection sites will be used. This level of specificity is required to clarify how the FFD program will be implemented.
Incorporated Will clarify	8	5.3	"On-site Testing Facilities"	The title reads "On-site Testing Facilities," but the document also references a "construction site entity testing facility," "SNC testing facility," and "licensee testing facility." Use one term globally, such as "SNC testing facility compliant with 10 CFR Part 26 Subpart F."
Incorporated Will clarify	8	5.3	"On-site Testing Facilities"	It is unclear to whom the third and fourth sentences apply: the individual responsible for day-to-day operations and supervising the testing technicians, the testing technicians, or all of the above?
Incorporated	9	5.3	Second bullet	In i., replace "this part" with "10 CFR Part 26."
Editorial change.	9	5.3	Last line	Replace "to collect and test specimens" with "to collect specimens and conduct alcohol tests".
Incorporated	10	6.2.1	1/1	10 CFR 26.405(c)(1) requires drug and alcohol testing "before assignment to construct safety- or security-related SSCs." "Within 30 days of gaining access" could be read to mean 30 days <u>after</u> gaining access, which could be 30 days after assignment to construct safety- or security-related SSCs. Replace paragraph with "Each worker who will construct or direct the construction of safety- or security-related SSCs shall have negative drug and alcohol test results prior to constructing or directing the construction of any safety- or security-related SSCs. These drug and alcohol tests must be administered no more than 30 days prior to the start of the worker's construction, or direction of the construction, of a safety- or security-related SSC."
Added	10	6.2		Follow-up testing is not discussed. 10 CFR 26.405(c)(4) requires follow-up testing as part of the FFD program.
Editorial change.	11	6.2.2	Occupational Injury	The first sentence is not a complete sentence; it is a definition.
Incorporated	12	6.2.2	Observed Behavior	In the "Occupational Injury" and "Significant Property Damage" sections, there is a similar third bullet requiring the submission of test results to management. To maintain consistency, recommend adding a similar statement to "Observed Behavior" after first and second bullets.
Clarified	12	6.2.2	6th bullet	What does "questionable conditions" mean? What

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
				are "questionable conditions"?
Clarified	12	6.2.2	Custodial Arrest, 1st bullet	When and to whom will an individual be sent for a fitness-for-duty evaluation?
Replaced person selected not at work with one that is at work until total # is tested.	12	6.2.3	1/4	Under 10 CFR 26.405(b)(3), random testing must "[e]nsure that all individuals in the population that is subject to random testing on a given day have an equal probability of being selected and tested." If an individual is selected, is not at work, and does not have to report for testing that day, then that individual actually has no chance of being selected and tested. Thus, not everyone has an equal probability of being selected and tested. To be consistent with 10 CFR 26.405(b)(3), either another selection must be made to replace the person who was selected but is not at work that day, or the group of individuals eligible for testing must include only individuals at work on the day of selection and testing.
Incorporated	12 and 13	6.2.3		The application should specify the time period within which individuals must report for testing after notification. This level of specificity is required to clarify how the FFD program will be implemented.
Incorporated Clarified	12	6.2.3	3	What is the "FFD testing pool" and "random pool"? Perhaps revise to "all individuals described in Section 2.0 herein" or "individuals eligible for testing".
Incorporated	13	6.2.3	Second bullet	The document uses the term "designated collection facility" here but also uses "collection site" and "construction site entity collection facility" to describe the same location. Use one term globally for the location that is used for specimen collections.
Clarified	13	6.3	1	Much of this paragraph repeats section 5.3 on page 7. Why have both? Also, this paragraph is inconsistent with 5.3 because 6.3 provides for the use of oral fluids for alcohol testing and 5.3 does not. Also, as in 5.3, the paragraph is not consistent with 10 CFR 26.91(a) and (b).
Clarified	13	6.3	2	Part 26 does not permit urinalysis as an alcohol testing method.
Addressed	13	6.3	4/3	Include specimens suspected of being substituted or invalid. Need to be consistent with Section 5.3, paragraph 2 on page 7.
Retained presumptive.	14	6.3	1	Remove "presumptive" and insert "initial drug" between "positive" and "test." "Presumptive" was in former Part 26 but is not in new Part 26.
Incorporated	14	6.3	1/5	Insert "confirmatory" between "the" and "test".
See Section 9. No period will be specified	14	6.3	3/4	What is "a specified periodicity"? Change this language to specify the periodicity.
Incorporated rule list of specimens	14	6.3	1/5	Include specimens suspected of being substituted or invalid.

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
requiring confirmatory testing.				
Incorporated See commit above.	14	6.4	1/1	Include in the statement the specific term for the location where specimen testing is conducted (i.e., licensee testing facility or HHS-certified laboratory)
Incorporated	14	6.4	1/1	Replace "all testing" with "urine specimen collections and initial alcohol tests."
Clarified	14	6.4	2/1	What are the conditions under which a collection site entity would ship specimens to the SNC testing facility?
Incorporated	14	6.5		10 CFR 26.405(g) states that an MRO must review invalid drug test results to determine whether the donor has violated the FFD policy. Because Section 6.5 does not mention invalid specimens, revise accordingly.
Retaining presumptive	14	6.5	2/1-2	Remove "presumptive" and insert "initial" between "positive" and "drug."
Retaining presumptive	14	6.5	2/6	Replace "presumptive positive result" with "positive initial drug test result".
Incorporated	15	6.6	1/1	Replace "independent" with "objective". See 26.413.
Editorial change.	15	6.7	1/1	Replace "supervision" with "supervisors"
Editorial change.	15	6.7	1/7	Replace "personnel designation" with "personnel designated."
Editorial change.	16	6.7	1 /1	Replace "supervision" with "supervisors"
Editorial change.	16	6.7	1/5	Replace "safety" with "safely."
Revised	16	6.8	Bulleted list	The list does not include all of the authorized persons listed in 10 CFR 26.37(b)(1) through (b)(6). Specifically, the list excludes MROs and MRO staff (per 10 CFR 26.37(b)(2)) and the presiding officer in a judicial or administrative proceeding (per 10 CFR 26.37(b)(6)).
Incorporated	17	6.8	1st and 2nd bullets	Insert "construction site" before "entity" in the first line.
Since first bullet intent is satisfied by second bullet, this concern was addressed by deleting first bullet	17	6.8	1st bullet	Under 5.1.1, possessing illegal drugs by any individual while on the construction site is "strictly prohibited." In 6.8, possession that results in confirmed positive tests is reportable. If possession is prohibited, why would reporting be required only if possession resulted in a confirmed positive test? Also, what is a "controlled substance" (see previous comment re: definition of "criminal drug statute")? Further, it is unclear whether the confirmed positive test result applies to supervisory personnel and controlled substances, or anyone with illegal drugs within the construction area. Define "supervisory personnel."
Incorporated	17	6.8	2nd bullet	Replace "10 CFR 26.73" with "10 CFR 26.417".
Incorporated	17	6.9	5	Replace "26.70" with "26.417".
Editorial change.	18	Consen t	1/2	Change "it" to "its".
Editorial change.	18	Consen	2/2	Change "it" to "its".

SNC Resolution	Page	Section	Paragraph/line	NRC Comment
		t		
Editorial change.	18	Consen t	2nd bullet	Change "performing" to "perform".
Clarified	19	Consen t Form	4/2	The group of people to whom information can be released should be the same group of people listed in 6.8.