Open Letter to Chairman Klein and Commissioners of the NRC:

The Commission's "Drug-Free Workplace Plan," scheduled to begin no later than August 25, 2008, will bring all NRC employees into the random drug testing pool. The present pool includes no more than half. The Commission should put this schedule on hold and reconsider its approval of random drug testing at the NRC.

Describing the compelled collection of urine for drug testing, Justice Scalia wrote: "I think it obvious that it is a type of search particularly destructive of privacy and offensive to personal dignity." *Treasury Employees v. Von Raab,* 486 U.S. 656, 680 (1989) (dissenting opinion). I agree entirely with Justice Scalia. The "Drug-Free Workplace Plan" invades privacy and grossly affronts personal dignity. I have served the Commission creditably in the Office of General Counsel for over 32 years. There is not the slightest reason to suspect that I use illegal drugs, and I am sure this is true for most if not all NRC employees. I would find intolerably offensive an order to produce a urine sample for drug testing. At least a few others might have said the same, if the Commission had asked for its employees' views.

There is no "drug problem" at the NRC. The staff paper proposing the Plan says that out of about 1800 random tests over the past two years, "there have been less than .05 percent positive drug tests." SECY-07-0052. The staff believes this "low percentage of positive tests" is the "direct result" of a high drug testing rate. If that's right, then a significant number of NRC employees would be drug abusers but for the fear their urine will betray them. Surely the Commission recognizes this as insulting nonsense.

Drug testing isn't cheap. SECY-07-0052 says the NRC's drug testing program is currently budgeted at $396K for 2008. Including all NRC employees in the random drug testing pool will raise the total to $600K. Spending more than half a million dollars for drug tests might turn up one or two errant employees who smoked marijuana at a party the previous month. There are more cost-effective ways to advance nuclear safety.

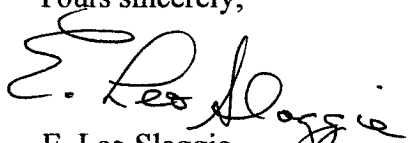
The bare possibility that an NRC office employee might be drug-impaired presents no significant threat. We do not operate the controls of reactors. We do, of course, have access to classified and other sensitive material. The notion that drug use creates a special vulnerability to "coercion" is imaginative but proves too much. Alcoholism, gambling, marital infidelity, and many other personal failings might also open an NRC employee to pressure by evildoers. Presumably, the Commission doesn't plan to "test" for all these. Has an NRC document ever been compromised by coercion? None that I'm aware of.

Justice Scalia's dissenting views are not the law, so NRC's random drug testing may be legal. It is certainly not legally required. President Reagan's 1986 Executive Order 12564, cited by the staff, directs Executive agencies to "establish a program to test for the use of illegal drugs" but goes on to state: "The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency." An NRC program of testing only when there is reasonable suspicion of drug abuse would be entirely consistent with the Executive Order.

In *Von Raab* Justice Scalia went on to say: "In my view the Customs Service rules are a kind of immolation of privacy and human dignity in symbolic opposition to drug use." *Id.* at 681. The NRC's "Drug-Free Workplace Plan" matches this description, as its name confirms. The Commission should give up random drug testing and treat its employees as the "dedicated men and women of the agency" the Chairman says we are.

These are my personal views and should not be attributed to the Office of General Counsel or to anyone else in the NRC.

Yours sincerely,



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