

EDO Principal Correspondence Control

FROM: DUE: 12/13/10

EDO CONTROL: G20100609

DOC DT: 09/23/10

FINAL REPLY:

Anthony R. Pietrangelo
Nuclear Energy Institute (NEI)

TO:

Borchardt, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Borchardt, EDO

DESC:

Request for Enforcement Discretion Regarding
Minimum Days Off Provisions of 10 CFR Part 26,
"Fitness-for-Duty Programs"
(EDATS: OEDO-2010-0861)

ROUTING:

Borchardt
Weber
Virgilio
Ash
Mamish
OGC/GC
Zimmerman, OE
Wiggins, NSIR
Miller, FSME
Haney, NMSS
Burns, OGC
Kotzalas, OEDO

DATE: 09/27/10

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OE, NSIR, FSME, NMSS and OGC, as appropriate.

EDATS Number: OEDO-2010-0861

Source: OEDO

General Information

Assigned To: NRR

OEDO Due Date: 12/13/2010 11:00 PM

Other Assignees:

SECY Due Date: NONE

Subject: Request for Enforcement Discretion Regarding Minimum Days Off Provisions of 10 CFR Part 26, "Fitness-for-Duty Programs"

Description:

CC Routing: OE; NSIR; FSME; NMSS; OGC

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20100609

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

OEDO Monthly Report Item: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: EDO

Sensitivity: None

Urgency: NO

Approval Level: No Approval Required

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Coordinate with OE, NSIR, FSME, NMSS and OGC, as appropriate.

Document Information

Originator Name: Anthony R. Pietrangelo

Date of Incoming: 9/23/2010

Originating Organization: NEI

Document Received by OEDO Date: 9/27/2010

Addressee: R. W. Borchardt, EDO

Date Response Requested by Originator: NONE

Incoming Task Received: Letter



NUCLEAR ENERGY INSTITUTE

Anthony R. Pietrangelo
SENIOR VICE PRESIDENT
AND CHIEF NUCLEAR OFFICER

September 23, 2010

Mr. R. William Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Request for Enforcement Discretion regarding Minimum Days Off Provisions of
10 CFR Part 26, "Fitness-for-Duty Programs"

Project Number: 689

Dear Mr. Borchardt:

In October 2009, nuclear plant licensees began implementing Subpart I of 10 CFR Part 26, the revised fitness-for-duty rule. While the rule was intended to enhance safety by requiring actions to manage fatigue, compliance with the rule has impeded many safety-beneficial practices at plant sites, adversely impacted the quality of life of covered workers, and resulted in conflicts between rule requirements and represented bargaining unit agreements. On September 3, 2010, the Nuclear Energy Institute, on behalf of its members, submitted a Petition for Rulemaking, Docket Number PRM-26-5, further delineating the unintended consequences from complying with certain fatigue management provisions of Part 26 and seeking appropriate modification of the regulations. The purpose of this letter is to request that NRC exercise enforcement discretion from the minimum days off provisions of the rule as detailed below until the final disposition of our petition.

Specifically, we request that the NRC exercise enforcement discretion with regard to the minimum days off provisions at §26.205(d)(3), (4), (5), and (6) of 10 CFR Part 26, Subpart I provided that licensees conduct the review at §26.205(e)(1)(i) on a quarterly basis, consistent with our Petition for Rulemaking. This would provide the safety benefits of the rule that the minimum days off provisions were intended to achieve, i.e. establish maximum average work weeks in the range of 48-54 hours, but without the unintended consequences noted above.

September 23, 2010

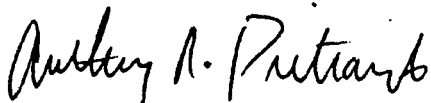
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Grant of this request would be consistent with the Commission practice of developing Interim Enforcement Policies. For example, in the past, in order to accommodate industry practice, the NRC adopted an Interim Enforcement Policy pertaining to certain requirements of 10 CFR Part 26 related to unescorted access. See "NRC Enforcement Policy," pp. 60-62. As in that case, grant of the enforcement discretion requested here would improve the efficiency of the regulatory process without interfering with the intended effect of the subject regulation.

It is requested that the enforcement discretion provision remain in place until final action is taken on the Petition for Rulemaking submitted by NEI. In that regard, NEI believes that grant of this request for enforcement discretion would in no way prejudice the merits of the subject Petition.

We appreciate your attention to this matter. If you have any questions concerning this request, please contact me at 202.739.8081; arp@nei.org or Scott Bauer at 202.739.8058; sab@nei.org.

Sincerely,

A handwritten signature in black ink, reading "Anthony R. Pietrangelo". The signature is written in a cursive, flowing style.

Anthony R. Pietrangelo

c: Chairman Gregory Jaczko
 Commissioner Kristine Svinicki
 Commissioner William Magwood
 Commissioner William Ostendorff
 Commissioner George Apostolakis
 Mr. Eric Leeds, NRR, NRC
 Mr. Roy Zimmerman, OE, NRC
 Mr. Steve Burns, OGC, NRC