

From: Tom Ma <nukefxr@yahoo.com>
Sent: Tuesday, March 19, 2013 11:49 AM
To: Mensah, Tanya
Subject: Re: US NRC: Petition Review Board's Initial Recommendation For Your Fitness For Duty (FFD) 10 CFR 2.206 Petition

The additional information was in the e-mail and in the FDA links. The FDA did classify synthetic drugs on the class 1 drug list with no geographical locations listed (FOR IMMEDIATE RELEASE March 01, 2011 Contact: DEA Public Affairs Number: 202-307-7977 The Final Order was published today in the *Federal Register* to alert the public to this action. Not limited to a geographical Area.) That was one of the findings the PBR argued saying a utility could implant testing on there own. It ia not a geographical issue as per FDA findings as the NRC insist in there response. if the NRC dosnt take emergency actions as did other federal entities(FDA and Military did) . Your people need to look into the seriousness of the synthetic drug problem in the US before the NRC start saying there is no problem in the plants. These are drugs that have never been around in the past when considering the FFD factors. The NRC is responsible for for the safety of the public and the environment and the NRC disregard for the synthetic drug problem in this country is a problem. ALL the NRC has to do is initiate my rule-making petition and start testing for synthetic drugs. Its that simple. If the federal government FDA the house of rep's and the senate can bypass standard protocol and take Emergency actions so can the NRC. The NRC function is to protect the public and environment and in this serious situation lack of action action by the NRC is unacceptable. If the NRC does not immediate take action on this matter by not implementing synthetic drug testing or place all power plants in cold shutdown. well they drag there feet on The rule-making petition implementation. We will bring this action before the courts For the lack of the NRC action to prevent synthetic drug use that mimic all the drugs currently tested for at nuclear facilities country wide. putting the people of this country at risk for serious nuclear incident from a drug induced person There is a synthetic drug for every drug being tested for on the standard drug test panel used at nuclear facilities. With that information being known to the NRC and the NRC not taking action. It is like there is no drug testing program at all.

Thomas King

From: "Mensah, Tanya" <Tanya.Mensah@nrc.gov>
To: Tom Ma <nukefxr@yahoo.com>
Sent: Tuesday, March 19, 2013 8:29 AM
Subject: RE: US NRC: Petition Review Board's Initial Recommendation For Your Fitness For Duty (FFD) 10 CFR 2.206 Petition

Hello Mr. King:

I will inform the PRB members of your response. For clarification, you stated in your email that you plan to appeal the PRB findings.

Please be aware that since the 10 CFR 2.206 process is not a hearing, there is no appeal process.

At this point, if you want to provide additional facts to the PRB before it makes its final recommendation, the next step would be for you to request that I coordinate a teleconference or public meeting (if you want to address the PRB in person) so that you can discuss your petition in more detail.

Since there is no appeal in the 2.206 process, if you prefer to address the PRB via teleconference or public meeting, please advise me by Wednesday, March 20th, so that I can coordinate a meeting date and time at your convenience. If I do not receive a response from you by March 20th, the PRB's initial recommendation will become final.

In addition, if you have any questions about the 2.206 process, please feel free to contact me.

Tanya Mensah, Senior Project Manager
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301-415-3610

From: Tom Ma [<mailto:nukefxr@yahoo.com>]

Sent: Monday, March 18, 2013 8:48 PM

To: Mensah, Tanya

Subject: Re: US NRC: Petition Review Board's Initial Recommendation For Your Fitness For Duty (FFD) 10 CFR 2.206 Petition

Hello

In response to your letter since when does drug use at nuclear facilities NOT qualify that a safety or security concern exists? your petition does not provide sufficient facts to demonstrate that plant safety and security have been impacted as a result of any specific incidents involving licensee personnel and synthetic drug use. so that means just because it hasn't happened yet, the potential doesn't exist?

Furthermore, the NRC staff is not aware of any incidents where drug use (illegal or legal) have compromised the public's health and safety at operating reactors. For these reasons, the PRB is denying the request for immediate action because there are no immediate safety or security concerns identified, So the NRC is condoning the use of drugs because there hasn't been an incident yet?

However, your petition does not provide facts related to synthetic drug use occurring at any operating reactor to support the basis that there is a safety or security-related concern. **Facts** I was there I saw it first hand at several utility's Hope Creek, Monticello and St Lucie. I would have been able to report it BUT there is no drug test being used to detect synthetic drugs so if I reported it there would be no way for the utility to confirm positive test any way.

Synthetic drug use is an epidemic in the USA that's why the DEA had an emergency action making them a class 1 drug and to be listed as a schedule 1 drug. FOR IMMEDIATE RELEASE March 01, 2011 Contact: DEA Public Affairs Number: 202-307-7977 The Final Order was published today in the *Federal Register* to alert the public to this action. Not limited to a geographical Area.

10 CFR Part 26(d)(1)(i) allows licensees to test for drugs that may not be detected in the panel of drugs specified in 10 CFR 26(d)(1). Section 26.31(d)(1)(i) explains the process that a licensee may use to

determine if other drugs with abuse potential (must be listed as a schedule 1 drug) are being used in the geographical locale of the facility. Since when is it up to the utility to pick and chose what class 1 drugs they test for? DEA 202-307-7977 specifically states (Not limited to a geographical Area).

From the NRC website..The NRC requires certain nuclear facilities to have fitness-for-duty programs to provide reasonable assurance that nuclear facility personnel are trustworthy, will perform their tasks in a reliable manner, are not under the influence of any substance, legal or illegal, that may impair their ability to perform their duties, and are not mentally or physically impaired from any cause that can adversely affect their ability to safely and competently perform their duties. With the introduction of synthetic drugs in the late 2000's there is no truth to this statement above. and the public is **NOT** resonably assured of a drug free work place.As designed there are synthetic that mimic everything that is tested for under current FFD testing

As for your comment in concern 1 Since you have only provided general assertions that licensee personnel are using synthetic drugs, this concern does not meet the criteria for review under 10 CFR 2.206. The FFD program general assertion is for a drug free work place.. If that is not a concern then get rid of drug testing all together. That wont happen, the FFD program was designed because of drug problems in the 70's 80's during construction. I have worked in the nuclear industry before drug testing existed. If you think the construction workers of today are not using synthetic drugs they know cant get caught for using Get your head out of your aresses and wake up it is a problem. I have seen it first hand by some workers in hope creek telling others where you could buy synthetic drugs locally. If they tested for the synthetic i would have been able to turn in the workers and they would have tested positive. But no testing no proof, it is the FFD program that lacks to give you the **FACTS** you talk about..

In concern 2 the NRC states In your petition, you questioned how a supervisor can make a behavioral observation on someone that they have never met (specifically during an outage). However, your petition did not provide sufficient facts to support your concern that this aspect of the FFD program is flawed. So why dont one of you geniuses explain how you make a BOP evaluation on someone they have never meet before ? That is not limited to supervisors i understand any one report a BOP suspect but with no testing there will never be a violation!!

Your responses are just about what I excepted i will appeal the PRB findings and after that peruse leagle action with one of my local anti nuke activist groups. That the NRC failed to protect the public and the environment by not providing a drug free workplace. As for the 41 violations in 2011 that shows that there is a drug/alcohol problem in the nuclear industry with the majority being supervisors that are supposed to be looking out for public safety. and yes i do have a (PRM 26-8) for NRC staff consideration. PRM 26-8 requests that the NRC revise Part 26 to require that licensees also test its personnel for synthetic drugs. **The DEA thought it is a serious enough drug epidemic to take Emergency actions so did the House and Senate** and the NRC should also.

<http://www.justice.gov/dea/pubs/pressrel/pr090711.html>

<http://www.justice.gov/dea/pubs/pressrel/pr061912.html>

It could all be avoided be just get off your butts and take emergency actions like the DEA ,House of Reps and the Senate and implment PRM 26-8 requesting that the NRC revise Part 26 to require that licensees also test its personnel for synthetic drugs. The nuclear industry has no room for mistakes by some one under the infulance of undetectable synthetic drugs....

Thomas King

From: "Mensah, Tanya" <Tanya.Mensah@nrc.gov>
To: "NUKEFXR@YAHOO.COM" <NUKEFXR@YAHOO.COM>
Sent: Monday, March 18, 2013 3:33 PM

Subject: US NRC: Petition Review Board's Initial Recommendation For Your Fitness For Duty (FFD) 10 CFR 2.206 Petition

Hello Mr. King:

I am writing in reference to the attached 10 CFR 2.206 petition that you submitted to the NRC on February 26, 2013, regarding your request to immediately place all 104 operating nuclear facilities into a safe shutdown mode (mode 5). The NRC petition review board (PRB) has denied your request for immediate action and has also determined that your 10 CFR 2.206 petition does not meet the criteria for review in accordance with Management Directive (MD) 8.11. Additional discussion related to the specifics of your 10 CFR 2.206 petition are provided below.

PRB DECISION ON THE REQUEST FOR IMMEDIATE ACTION: On Monday, March 11, 2013, the PRB met to discuss your request for immediate action. The PRB determined that the petition does not provide any specific facts that a safety or security concern exists which would warrant an immediate shutdown of all operating reactors. Your petition provides a general assertion that the use of synthetic drugs by licensee personnel could impact plant safety and security at all operating reactors, thus compromising the public's health and safety. However, your petition does not provide sufficient facts to demonstrate that plant safety and security have been impacted as a result of any specific incidents involving licensee personnel and synthetic drug use. Furthermore, the NRC staff is not aware of any incidents where drug use (illegal or legal) have compromised the public's health and safety at operating reactors. For these reasons, the PRB is denying the request for immediate action because there are no immediate safety or security concerns identified, which would warrant the NRC's issuance of a shutdown Order to all operating reactors.

PRB INITIAL RECOMMENDATION: As discussed in the 2.206 petition, you raised two primary concerns. In summary, your first concern is that since synthetic drugs are undetectable with a standard drug test, that the current FFD program is flawed and does not work as designed, or protect the public as designed. Your second concern is that the FFD program is flawed and does not work, in part due to an inadequate Behavior Observation Program (BOP). You also equate the fact that because there were 41 FFD violations in 2011 (23 of those violations involved supervisors) that the FFD program is flawed.

On Monday, March 11, 2013, the PRB determined that the petition does not meet the criteria for review for the following reasons **((MD 8.11 criteria are highlighted in yellow text))**:

1. The facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare essentials. The supporting facts must be credible and sufficient to warrant further inquiry.

- 1st Concern: Your 2.206 petition states that licensee personnel are using synthetic drugs that can not be detected under the current FFD program. However, your petition does not provide facts related to synthetic drug use

occurring at any operating reactor to support the basis that there is a safety or security-related concern. 10 CFR Part 26(d)(1)(i) allows licensees to test for drugs that may not be detected in the panel of drugs specified in 10 CFR 26(d)(1). Section 26.31(d)(1)(i) explains the process that a licensee may use to determine if other drugs with abuse potential (must be listed as a schedule 1 drug) are being used in the geographical locale of the facility. The licensee would identify any deviations to Part 26 in their site policies and procedures. Since you have only provided general assertions that licensee personnel are using synthetic drugs, this concern does not meet the criteria for review under 10 CFR 2.206.

○ 2nd Concern: Your 2.206 petition states that the FFD program is flawed, in part due to the inadequacy of the BOP; however, your petition does not provide sufficient facts to warrant further inquiry. In your petition, you questioned how a supervisor can make a behavioral observation on someone that they have never met (specifically during an outage). However, your petition did not provide sufficient facts to support your concern that this aspect of the FFD program is flawed. Under Part 26, all site personnel with unescorted access are trained in BOP; therefore, anyone can report a behavioral observation concern of site personnel, including their coworkers. It doesn't have to be a supervisor. In addition, your petition also offers as evidence that the FFD program is broken because there were 41 FFD violations in 2011, and of those, 23 involved supervisors. In accordance with Part 26, the FFD programs provide reasonable assurance that licensee personnel will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. Drug and alcohol testing provides a reasonable measure for early detection of persons who are not fit to perform activities within the scope of Part 26. In addition, drug and alcohol testing is just one element of multiple layers of defense-in-depth in place to ensure that the security and safety requirements at operating reactors are not adversely impacted. Since your petition only provided general assertions that the FFD program is flawed, this concern does not meet the criteria for review under 10 CFR 2.206.

2. There is no NRC proceeding available in which the petitioner is or could be party and through which the petitioner's concerns could be addressed.

○ 1st Concern: This concern regarding synthetic drug testing is generic to all operating reactors and would require a proposed change to the NRC regulations (i.e., rulemaking). The 2.206 PRB is aware that you have submitted a rulemaking petition (PRM 26-8) for NRC staff consideration. PRM 26-8 requests that the NRC revise Part 26 to require that licensees also test its personnel for synthetic drugs. Therefore, since this concern is generic and

you have already submitted a rulemaking petition which has been accepted for review by the NRC staff, the PRB determined that this concern does not meet the criteria for review because there is another NRC proceeding available for which your generic concerns on synthetic drug testing can be addressed by the NRC staff.

- 2nd Concern: For your second concern on the BOP, it does not meet the criteria for review (as discussed above in Criteria #1, second bullet). In addition, although you did not identify this specific concern in PRM 26-8, it would not be considered (rolled into) the existing PRM 26-8 by the NRC staff because you have not provided sufficient facts or proposed changes to the BOP. In the course of the review of PRM 26-8, you can submit comments on any concerns regarding BOP.

NEXT STEPS:

- Per MD 8.11, you have another opportunity to provide additional facts to the PRB now that you have been informed of the initial recommendation. **Please advise me by Wednesday, March 20, 2013,** if you want me to arrange a teleconference or public meeting so that you can provide additional information in support of your 10 CFR 2.206 petition request. If I do not receive a response from you by March 20th, the PRB's initial recommendation will become final and will be documented in a 2.206 closure letter.

Thank you for your attention to this matter.

Tanya Mensah, Senior Project Manager

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