

February 18, 2014

NOTE

FROM: Christopher Ryder, Licensing Project Manager

SUBJECT: Pre-Application Conference Call: Possible Exemption Request to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20.1703(c)(5)

Date and Time

Monday, January 6, 2014, 1:30 PM (eastern)

Participants

NRC	Westinghouse
Christopher Ryder ^(a)	Nancy Parr ^(b)
Gregory Chapman ^(c)	

Notes

- a. Licensing Project Manager
- b. Licensing Manager
- c. Technical Reviewer

Background

The licensee intends to submit a request for an exemption of 10 CFR, Section 20.1703, discussing the use of individual respiratory protection equipment. Section 20.1703(c)(5) states that a licensee shall implement and maintain a respiratory protection program where a physician determines that the individual user is medically fit to use respiratory protection equipment:

- before the initial fitting of a face sealing respirator
- before the first field use of non-face sealing respirators
- either every 12 months thereafter, or periodically at a frequency determined by a physician

C. Ryder began the discussion by stating that the purpose of the call was to convey the expectations of the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) for an exemption request. Statements made during the call should not be taken as advice or consulting.

Discussion

Instead of using a physician to certify that a person at the Columbia Fuel Fabrication Facility (CFFF) is fit to use a respirator, the licensee intends to request an exemption to use a registered nurse practitioner. This exemption is modeled after a similar exemption from Babcock and Wilcox Nuclear Operations Group, Inc. (B&W NOG) that had been granted by the Staff.

The Staff explained that a medical physician needs to be involved in the certification process to make medically defensible statements about the fitness of a person to use a respirator. The involvement of a physician can take several forms, from performing a physical examination to establishing a program, establishing qualification criteria, and consulting with a nurse practitioner. A physician does not necessarily have to perform a complete physical examination.

G. Chapman described related experience when he worked at B&W NOG. There were male employees who objected to a female nurse performing a thorough physical examination. Also, the Health Insurance Portability and Accountability Act of 1996 may be an issue when NRC inspectors inspect to ensure that personnel are being properly certified. Westinghouse may want to obtain a legal opinion from their General Counsel to establish in advance what information that NRC inspectors will be able to access.

A physician will need to establish the elements that are necessary for an effective program. In general, the Staff does not question medical opinions.

The licensee asked the Staff to clarify the difference between statements in the regulations and statements in Regulatory Guide (RG) 8.15. Section 20.1703 requires a physician to certify. Occupational Safety and Health Act regulations and RG 8.15 allow a nurse practitioner to certify. The Staff explained that a physician had to be involved. However, that involvement can be establishing a certification program over the course of a few weeks followed by routine oversight and audits. The oversight may begin with a frequency of once or twice a week once the program is established; later, as the physician determines, the oversight/audits may be reduced to once or twice a month. The physician should be on retainer and available to the nursing staff as needed to support the program. The Staff would expect to see a commitment for a minimum oversight frequency at the site of the medical evaluations. If staff changes require another nurse to begin working at the CFFF, the Staff would expect to see a commitment to provide oversight appropriate to the level of experience of the new employee.

The Staff expects a commitment that the nursing staff be trained and that they have authority, at their discretion, to temporarily restrict an individual from the use of some or all respiratory protection equipment should medical circumstances warrant. For example, a person may be enthusiastic about work, but not be physically suited for prolonged use of heavy respiratory protection equipment such as a self-contained breathing apparatus. Medical staff should consider all available information when making these determinations including expectations of the assigned job and observations during training exercises. It is expected that the overseeing physician will make the final call as to whether restrictions are appropriate or should be lifted.

Closing Remarks

The Staff expects to see a commitment to have a physician oversee the respiratory protection medical evaluations with a stated minimum physical presence at the facility where medical evaluations are performed. The physician shall be available, as appropriate, to the licensee staff implementing the medical evaluations. The Staff expects to have assurance that the nursing staff will be trained; that they have the authority to, at least temporarily, restrict a person from using respiratory protection equipment based on their judgment; and that the overseeing physician will be responsible for verifying or removing any restrictions placed on personnel.