

BROCK ADAMS
WASHINGTON

COMMITTEES:
APPROPRIATIONS
LABOR AND HUMAN RESOURCES
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, D.C. 20510

September 29, 1989

United States Nuclear Regulatory
Commission
Washington, D.C. 20555

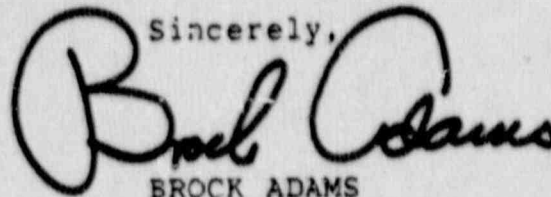
Dear Friends:

Enclosed please find a copy of a request from my
constituent, Jack Tellefson, of Richland, Washington.

I would appreciate it if you could address my constituent's
inquiries concerning mandatory drug testing.

Thank you for your attention to this matter. I look forward
to your response.

Sincerely,



BROCK ADAMS
United States Senator

BA/gg
Enclosure

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SENATOR BROCK ADAMS
SENATE OFFICE BLDG
WASHINGTON, D.C. 20510

NRC

Dear Sir;

I thought that as an elected official of the people of the United States you took an oath of office swearing to defend and uphold the constitution. Based on this premise, I would like to know why the Nuclear Regulatory Commission has been allowed to issue the 10 CFR Part 26 Fitness for Duty regulation imposing mandatory random drug testing on the nuclear industry totally ignoring individuals right to privacy and freedom from being forced to give information against themselves.

This regulation, in my judgement, is in direct conflict with Amendment 4 of the constitutions Bill of Rights. My employer in implementing this regulation has made noncompliance or refusal to take a random drug test the basis for termination. This places 1500 individuals under a coercive threat of loss of employment, and that is not right. Why the NRC or those who fostered this regulation believe it is right and necessary to impose this kind of a threat on 98% of the people in the industry to find or identify the 2% that abuse or use illegal drugs is beyond me. This reflects rule by special interests and not the democratic process reflected by the constitution.

I believe elected officials have the moral obligation to stand up for what the constitution provides and see to it that the constitutional rights of every citizen are protected. It should not be necessary, if you accept the responsibility of your office, for the courts to decide these fundamental issues. I ask your help in getting this regulation removed and the 4th Amendment rights of those affected restored.

Respectfully
Jack G. Tellefson
Jack G. Tellefson
1948 Cypress St.
Richland, WA. 99352

Attachment: Washington Public Power Supply System
Corporate Policy CPP 1.2.44 dated 8-1-1989
CC: American Civil Liberties Union

10 CFR Part 26, Fitness For Duty

- **Effective July 7, 1989**
 - Supply System Implementation October 23, 1989
- **Applicable to holders of unescorted access and certain EOF personnel**
- **Objectives**
 - Personnel are not impaired by drugs or other causes
 - Detection of personnel not fit for duty
 - Drug-free workplace

FFD RULE SECTIONS

- **Written Policy and Procedures**
- **Training**
- **Contractors and Vendors**
- **Chemical Testing**
- **Employee Assistance Programs**
- **Management Actions and Sanctions**
- **Appeals**
- **Protection of Information**
- **Inspections, Records, Reports**

FFD TRAINING

- **Program implementation (by October 23, 1989)**
 - All Supply System employees
 - All contractor employees with unescorted access
- **Ongoing Training**
 - Initial and annual awareness/badging training for unescorted access
 - Initial and annual supervisory training for all Supply System supervisors and for unescorted access contractor supervisors



WASHINGTON PUBLIC POWER
SUPPLY SYSTEM

NO. CPP 1.2.44

REV. NO.

6

EFFECTIVE DATE

8/1/89

QUALITY AFFECTING

YES NO

CORPORATE POLICY AND PROCEDURES

TITLE

FITNESS FOR DUTY

1.0 POLICY

The Supply System's mission is to operate and build energy facilities safely, dependably and efficiently. In fulfillment of that mission, it is the Supply System's policy to: (1) ensure employees are fit for duty and conduct business in a safe, productive and healthy manner; (2) create an environment free from the effects of employees and contractor employees impaired by the use of alcohol or drug substances; (3) prohibit the unauthorized possession, distribution, or sale of illegal drugs; (4) ensure that individuals who report for unscheduled work are able to perform that work; (5) prohibit the consumption of alcohol within an abstinence period of five hours preceding any scheduled working tour, or during the period of any paid working tour; (6) prohibit the possession of alcoholic beverages on Supply System property; and (7) make an assistance program available to employees whose personal problems affect their ability to perform their duties.

This statement of corporate policy is not intended to be part of a Supply System employment contract. The Supply System reserves the right to modify this policy at any time and, subsequently, will notify employees, employee representatives and contractors of any material changes.

2.0 PURPOSE

The purpose of this policy is to ensure worker fitness for duty and to protect employees, the public and property of the Supply System from risks which result from drug or alcohol-induced behavior.

3.0 SCOPE

3.1 This policy includes preemployment, for cause and random drug testing, and applies to all Supply System employees, contractor employees and visitors at all Supply System facilities.

3.2 Those sites where nuclear plants are operational shall have a Fitness For Duty Program which consists of uniform standards established by the Nuclear Regulatory Commission (NRC) and applies to all persons granted unescorted access to protected areas and those individuals who have TSC or EOF assignments related to nuclear power plant safety and are identified as "required" in the Supply System

APPROVED

Gary Denniston

7/31/89

SUPERSEDES ISSUE:

Rev. 5, dated 09/2/88

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Emergency Organization list. This policy does not apply to NRC, FEMA, state and county employees, EOF responders, law enforcement personnel or offsite emergency fire and medical response personnel while responding on site.

- 3.3 This policy also applies to Supply System employees when conducting Supply System business off site.
- 3.4 This policy and subsequent program is subject to an annual audit focusing on the effectiveness of the program and conducted by individuals qualified in the subject(s) and not directly involved in program implementation or administration.

4.0 DEFINITIONS

- 4.1 Alcohol - Any substance containing ethanol as defined in the Revised Code of Washington (RCW) 66.04.
- 4.2 Intoxicated/Under the Influence - Intoxicated means a person is affected by a drug/substance so as to noticeably impair physical coordination, balance and control and/or to noticeably impair mental functions of judgment, decision making, memory, concentration and cognitive problem solving. Under the influence means the drug/substance is in the body and is having some degree of effect on mental and physical functioning up to and including intoxication.
- 4.3 Chain of Custody - The protocol to be followed when submitting specimens for laboratory testing. This procedure is listed in the Human Resources Instruction (HRI) 7.3.
- 4.4 Chemical Testing - The examination of blood, breath or urine to determine if a person has used certain drugs or alcohol. This procedure is listed in HRI 7.1 and 7.2.
- 4.5 Confirmatory Test - A second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial screening test in order to ensure reliability and accuracy. For determining blood alcohol levels, a "confirmation test" means a second test using another breath alcohol device. Further confirmation of blood alcohol levels, upon demand, by a person will be by gas chromatography analysis of blood.

- 4.6 Confirmed Positive Test - The results of two laboratory's confirmatory tests that have established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cutoff level and that have been deemed positive by the Medical Review Officer (MRO) following evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without MRO evaluation.
- 4.7 For Cause/Reasonable Cause - Facts, circumstances, physical evidence, physical signs and symptoms or a pattern of performance and/or behavior that would cause a trained supervisor to reasonably conclude that an employee or contractor employee may be under the influence or intoxicated by a drug/substance.
- 4.8 Fitness for Duty - An individual's ability to perform their assigned job free from impairments due to drug and alcohol use, emotional distress and health problems.
- 4.9 Illegal Drugs - Those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to and consistent with a valid prescription or when used as otherwise authorized by law.
- 4.10 Initial or Screening Tests - An immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breath test for alcohol.
- 4.11 Proof of Wellness - Statement by a Supply System approved treatment specialist that the employee/applicant is free from conditions that would adversely affect work performance.
- 4.12 Random Test - A system of unannounced drug testing administered in a statistically random manner to a group so that all persons within that group have an equal probability of selection.
- 4.13 Enzyme Multiplied Immunoassay Technique (EMIT) - The first phase of screening urine samples for drugs or drug metabolites by using antibodies that chemically bind with specific substances as needed to screen out negative specimens.
- 4.14 Gas Chromatography/Mass Spectrometry (GC/MS) - The second phase of conducting confirmatory tests on all specimens screened positive in the initial phase. GC/MS is a combination of two different techniques, i.e., chromatography procedures are used to separate the different components in a urine specimen, and mass spectrometry is used to identify very specifically the components of the specimen.

- 4.15 Medical Review Officer (MRO) - The licensed physician used in the FFD Program who reviews drug test results, conducts evaluations of individuals tested, and makes final determination of positive or negative confirmations from laboratories. The Medical Review Officer has the option to interview the individual tested or the tested individual may request an interview upon notification of a positive confirmation.
- 4.16 BAC Datamaster II - An infrared breath test instrument approved by the state toxicologist as a device for measurement of a person's breath for alcohol concentration per Washington Administrative Code (WAC) 448-12-210.

5.0 PROGRAM ELEMENTS

5.1 Communication and Training

- 5.1.1 All Supply System employees and appropriate contractor employees shall be notified of the FFD policy. All agency, contractor, and subcontractor/vendor personnel performing activities for the Supply System are subject to the Supply System Fitness for Duty Program or to a program formally reviewed and approved by the Supply System which meets the requirements of this policy.
- 5.1.2 Those employees identified in Section 3.2 shall receive training on substance abuse and its impact on the workplace, the role of the Medical Review Officer and Employee Assistance Program, and what consequences may result from lack of adherence to the policy.
- 5.1.3 Managers and supervisors shall receive initial training prior to assignment to activities within the scope of Section 3.2 or within three months after initial supervisory assignment. The training will address the following: their role and responsibilities; role and responsibilities of the Medical Review Officer and Employee Assistance Program professionals; behavior observation techniques for recognizing drugs and indications of the use, sale, or possession of drugs; and procedures for initiating appropriate corrective action to include referral to the Employee Assistance Program. Refresher training must be completed on a nominal 12 month frequency. Records of the training will be retained for a period of three years.

5.2 Chemical Testing

- 5.2.1 Prior notification regarding chemical testing requirements shall be given to all Supply System and appropriate contractor applicants. Prior to chemical testing, applicants shall complete the Current Substance Use and Consent form as listed in HRI 7.1.
- 5.2.2 Pre-employment chemical testing shall be required for applicants for Supply System employment. A confirmed positive test associated with preemployment chemical testing without sufficient explanation on the Current Substance Use and Consent form shall be considered grounds for disqualification from employment for 90 days. Proof of wellness shall be required before reconsideration for employment.
- 5.2.3 Agencies and contractor organizations whose employees are assigned to work on Supply System property for 30 consecutive days or more shall:
- o Establish as policy that their employees are subject to chemical testing conducted by the Supply System.
 - o Take appropriate action to include removal of employees from Supply System property in those cases where employees are found to be in violation of this policy. When applicable, agencies and contractors shall provide proof of wellness prior to requesting reinstatement of an individual's access to Supply System property.
- 5.2.4 Implementation of pre-employment chemical testing for Supply System and appropriate contractor employees shall consist of chemical testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities on Supply System property.
- 5.2.5 Implementation of chemical testing for cause for Supply System and appropriate contractor employees may be subject to a Fitness for Duty evaluation to include chemical testing as appropriate if there is reason to believe that drug/substance or alcohol use, emotional distress, or health problems may be adversely affecting job performance. For cause chemical testing will be authorized by a Human Resource representative only after reasonable cause is adequately established.

Examples of reasonable cause may include, but are not limited to, the following:

- 1) Documentation of unsatisfactory performance.
- 2) Physical symptoms consistent with substance use.
- 3) Evidence of illegal substance use, possession, sale or delivery.
- 4) Fights (to mean physical contact), assaults and flagrant violations of established safety, security or other operating procedures.
- 5) Accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event.

5.2.6 Implementation of chemical testing for persons subject to Section 3.2 of this policy shall include, in addition to 5.2.5 above, unannounced chemical tests imposed in a random manner. Testing will be administered on a nominal weekly frequency and at various times during the day. Random chemical testing shall be conducted at an annual rate equal to 100 percent of the workforce.

5.2.7 Testing for the following drugs and alcohol at the following cutoff levels with the listed equipment:

	EMIT (Initial Test)	GC/MS (Confirmatory Test)
Marijuana metabolites	100 ng/ml	15 ng/ml**
Cocaine metabolites	300 ng/ml	150 ng/ml***
Opiate metabolites	300 ng/ml*	300 ng/ml (Morphine) 300 ng/ml (Codeine)

Phencyclidine	25 ng/ml	25 ng/ml
Amphetamines	1000 ng/ml	500 ng/ml (Amphetamine) 500 ng/ml (Methamphetamine)

Alcohol: Two breath testing devices are used at each collection site (BAC Datamaster II). If positive on the first breath test, a second device is used for confirmation. The cutoff level is 0.04.

- * 25 ng/ml is immunoassay specific for free morphine
- ** Delta-9 carboxylic acid
- *** Benzoyllecgonine

- 5.2.8 The Medical Review Officer reviews and evaluates laboratory specimen reports within 48 hours and is responsible for determining positive test results after evaluations. Any individual with confirmed positive chemical test results shall be notified of those results.
- 5.2.9 Submission of blind performance test specimens to the appropriate HHS certified laboratory in accordance with the NRC guidelines (10CFR26, Appendix A).
- 5.2.10 Tests for alcohol shall be administered using breath alcohol analysis meeting evidentiary standards described in HRIs 7.1 and 7.2.

5.3 Actions and Sanctions

- 5.3.1 Simple possession of illegal drugs or alcohol without authorization on property owned or leased by the Supply System shall result in disciplinary action up to and including termination.
- 5.3.2 Any individual determined to have been involved in the sale, use or possession of illegal drugs/substances while within the protected area of nuclear plants will be removed and/or not granted unescorted access to protected areas or assigned to emergency team activities for a minimum of five years from the date of removal.

5.3.3 Individuals found to be intoxicated or under the influence of a drug/substance while at work shall be subject to disciplinary action up to and including termination. Those workers subject to Section 3.2 of this policy who have confirmed positive test for illegal drugs will be removed from activities within the scope of Section 3.2 for at least 14 days. In addition, Supply System employees will be referred to the Employee Assistance Program for assessment and counseling. A Fitness for Duty Agreement must be developed and Fitness for Duty reestablished before return to aforementioned work activities. Any subsequent confirmed positive test must result in removal from unescorted access and activities within the scope of Section 3.2 of this policy for a minimum of three years from the date of removal.

5.3.4 Persons removed for period of three years or more under this policy may be granted unescorted access and assigned duties within the scope of Section 3.2 only if there is satisfactory medical assurance that the person has abstained from drugs for at least three years. Upon reinstatement of access or work activities, the person must submit to unannounced followup tests once every month for four months and once every three months for the next two years eight months to verify continued abstinence from drugs substances. During this time, any confirmed use of drugs through this process or other determination of subsequent involvement in the sale, use or possession of illegal substances will result in permanent denial of unescorted access.

5.3.5 Refusal to provide a specimen for testing, sample tampering, and resignation prior to removal for violation of Supply System Fitness for Duty policy by Supply System and appropriate contractor employees shall be grounds for disqualification from employment, removal from Supply System property or termination for cause.

5.3.6 Supply System employees and contractor employees on Supply System property are required to report to their supervisor when in their best judgement they are taking any prescription, over the counter medication or other substances which will likely impair their ability to function safely on the job. Such impairment includes, but is not limited to, sleepiness, dizziness, blurred vision and nausea.

5.3.7 Supply System and appropriate contractor employees will be periodically surveyed to determine their knowledge and use of the Fitness for Duty Program.

5.3.8 Supply System and contractor Supervisors/Managers who knowingly disregard the requirements of this policy shall be subject to disciplinary action up to and including termination and/or restriction from Supply System property.

5.3.9 Supply System and appropriate contractor employees called in to perform an unscheduled working tour must inform the supervisor if alcohol has been consumed within the preceding five hours. If alcohol was consumed, a determination must be made as to employee's Fitness for Duty by the Supervisor/Manager.

5.4 Appeals

5.4.1 Contractor employees shall be notified of any disciplinary actions taken as a result of this policy and the basis for such actions. Any contractor employee's appeal in regard to this policy is handled pursuant to the contractor's policy.

5.4.2 Supply System employees shall be notified of any disciplinary actions taken as a result of this policy and the basis for such actions. An opportunity for Supply System employees to appeal any such action shall be provided as stipulated in CPP 1.2.72, Appeals Process, or any applicable Bargaining Unit Agreement.

5.5 Employee Assistance Program

5.5.1 Supply System employees who voluntarily seek assistance in dealing with Fitness for Duty related problems should be immediately referred to the Supply System Employee Assistance Program. Employees will be provided an opportunity for assistance, and further evaluation and referral. This program is described in CPP 1.2.75, Employee Assistance Program.

- 5.5.2 Only in those cases where an employee assistance counselor has reason to believe the employee is a danger to him/herself or others or to the safety or security of Supply System facilities will the employee's manager and, if applicable, Security be notified. In those cases where an employee has unescorted access, the Plant Manager will be notified and a special access review shall be initiated. The employee will be advised of the notification.

6.0 REFERENCES

- 6.1 CPP 1.2.72, Appeals Process
- 6.2 CPP 1.2.75, Employee Assistance Program
- 6.3 CPP 1.2.77, Corrective Action Policy
- 6.4 CPP 1.2.97, Special Access Authorization Program
- 6.5 CPP 1.2.98, Continued Behavior Observation Program
- 6.6 CPP 1.2.99, Personal Background Investigation
- 6.7 CPP 3.2.2, Safety/Security Violations
- 6.8 NOS-7, Nuclear Power Plant Access Control
- 6.9 RCW 66.04, Alcohol
- 6.10 Controlled Substance Act
- 6.11 Applicable Collective Bargaining Unit Agreements
- 6.12 Washington Administrative Code (WAC) 448-12-210, Administration of Breathalyzer Test