



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 25, 1990

The Honorable John D. Dingell  
Chairman, Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding on behalf of the Commission to your letter of September 24, 1990, which forwarded a report by the Committee staff of its investigation into the handling of a drug test by the Houston Lighting and Power Company before the implementation of the Commission's fitness for duty regulations, codified at 10 CFR Part 26. Our initial analysis of several of the issues raised in your report is enclosed.

A number of the issues which the report addresses were of concern to the Commission during development of Part 26. The Commission already has scheduled a review of the results of the fitness for duty program and the lessons learned during implementation of Part 26 in the summer of 1991. We intend to include the issues raised by the Committee staff as part of that review.

The NRC staff will continue to work closely with the National Institute on Drug Abuse (NIDA) to achieve the goal of a safe, drug free workplace. We have sent a copy of your letter and the enclosed report to NIDA so that they may consider the testing issues associated with the program that NIDA developed in accordance with Executive Order No. 12564, of September 15, 1986. Some of the issues identified in the report may be more appropriate for NIDA, rather than the NRC, to address. These include the establishment of uniform GC/MS procedures, blind performance testing, adequacy of laboratory documentation, improvements in challenge procedures, and establishment of a professional certification program for medical review officers (MROs) and laboratory personnel.

As you note in your letter, the Commission recently published for comment a proposed amendment to 10 CFR 26.24 which would prohibit taking action against an individual based solely on an unconfirmed positive screening test result. The Commission will carefully consider public comments concerning the amendment and will ensure that a proper balance is maintained between the public need for safe nuclear operations and the individual's rights.

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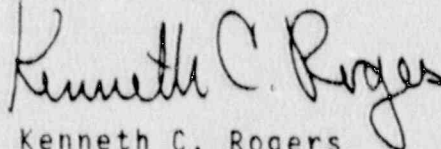
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The Honorable John D. Dingell - 2 -

Finally, on October 11, 1990, the Houston Lighting and Power Company forwarded to the NRC its evaluation of the Committee's investigation report. A copy of the utility's letter is enclosed for your information.

Sincerely,



Kenneth C. Rogers  
Acting Chairman

Enclosures:

1. NRC Comments on Issues Raised
2. October 11, 1990 letter from Houston Lighting & Power Company to Chairman Carr

cc: The Honorable Norman Lent  
Dr. Joseph H. Autry, NIDA



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 25, 1990

The Honorable Thomas J. Bliley  
Subcommittee on Oversight and  
Investigations  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Bliley:

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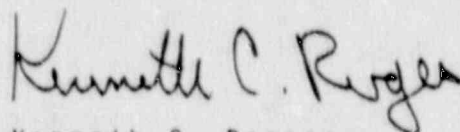
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The Honorable Thomas J. Bliley - 2 -

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Kenneth C. Rogers  
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2. October 11, 1990 letter from Houston Lighting & Power Company to Chairman Carr

cc: Dr. Joseph H. Autry, NIDA

NRC Comments on Issues Raised by  
Committee on Energy and Commerce  
Staff Report dated September 12, 1990

1. Issue:

Drug testing should meet the standards demanded for forensic credibility.

Response:

The Commission agrees. The public, particularly those being tested, need to be confident that test results are accurate and reliable. In that regard, Appendix A to 10 CFR Part 26 is an adaptation of the Department of Health and Human Services "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (HHS Guidelines) (53 FR 11970). To enhance these standards, Section 2.3, "Preventing Subversion of Testing," was added to Appendix A of the NRC's Rule.

2. Issue:

There is no reason for a drug testing laboratory to have any personal identifying information.

Response:

The Commission agrees that specific restrictions should be considered. The NRC staff will work with the NIDA staff to develop appropriate language for the HHS Guidelines and Section 2.4 of Appendix A to 10 CFR Part 26 to be considered for adoption in the future.

3. Issue:

The NRC regulations permit licensees to test for additional drugs, and allow licensees to establish more stringent cutoff levels. Lower cutoff levels are inconsistent with the results of the Battelle study.

Response:

The issues of testing for additional drugs and establishing more stringent cutoff levels were extensively discussed at a November 29-December 1, 1989, meeting hosted by NIDA which resulted in the publication of a Consensus Report<sup>1/</sup>. The Committee staff referred to the Consensus Report regarding issues associated with employee drug testing. The Consensus Report recommends that benzodiazepines, barbiturates, and other selected psychoactive drugs be added to the urine testing protocols and that other drugs should be considered for testing when justified as special problems in particular workplace environments. The Consensus Report also

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1/ Technical, Scientific and Procedural Issues of Employee Drug Testing Consensus Report, National Institute on Drug Abuse, 1990, "Additional Drugs and Cut-Off Levels," pp. 25-27

recommends that cut-off levels for cannabinoids and cocaine be reduced, and that a study be undertaken to support the lowering of the cut-off levels for amphetamines.

The Battelle 1988 Study<sup>2/</sup> cited in the Committee staff report was primarily based on the open literature at the time and discusses potential problems with using lower cutoff levels for amphetamines than called for in the HHS Guidelines. When formulating 10 CFR Part 26, the Commission staff took into account subsequent Battelle work, including a 1989 supplement to the Battelle study<sup>3/</sup>. The supplemental study stated, "Concern has been expressed regarding the cross-reactivity of over-the-counter medication and licit amphetamine use at lower initial and confirmatory cutoff levels than those proposed. Confirmatory testing with GC/MS and the review of all test results by the Medical Review Officer should eliminate such problems."

The NRC staff notes that the draft report from the Additional Drugs/Cut-Off Working Group (one of several working groups whose products were melded into the Consensus Report) had found that the 1,000 ng/ml level for initial screening for amphetamines should be reduced to 500 and could possibly be lower depending upon the development of data to support the lower level. Although the published Consensus Report did not contain this specific recommendation, it did contain a recommendation to conduct a study on this matter.

Logically, uniform testing protocols and cutoff levels could reduce the probability of errors by testing laboratories. However, because the HHS' Guidelines were primarily designed to discourage the use of drugs, the Commission concluded through its rulemaking proceeding that the option for more stringent standards should be preserved.

The Commission will continue to work with NIDA and will carefully review all the information before deciding what revisions to Appendix A to 10 CFR Part 26 are appropriate.

4. Issue:

The NRC permits on-site testing which is inequitable to job applicants when confirmation tests are not conducted. Furthermore, employees are subject to the risk of premature or unauthorized release of unconfirmed test results.

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<sup>2/</sup> NUREG/CR-5227. Fitness for Duty in the Nuclear Industry: A Review of Technical Issues, (1988), p. 5-21

<sup>3/</sup> NUREG/CR-5227, Supplement 1, Fitness-for-Duty in the Nuclear Industry: A Review of Technical Issues, (1989), p. 6-6.



Response:

As described in 10 CFR Part 26, the Commission requires all testing required by the rule be subject to screening and, if initial results are positive, also subject to confirmation testing and a review by an MRO. Any departure from these requirements would be subject to enforcement action by the Commission, and would require immediate corrective action by the licensee. The NRC's authority does not extend to hiring decisions by its licensees; therefore, the rule does not include pre-employment testing. However, 10 CFR 26.24(a)(1) requires a pre-access test within 60 days before the granting of unescorted access. With very few exceptions, licensees will administer only one test. That test, no matter what it is called, would be subject to the rule and, if positive, must be subject to confirmation testing and review by an MRO.

Section 2.7(g)(2) of Appendix A to 10 CFR Part 26 prohibits the reporting of presumptive positive results to licensee management, and 10 CFR 26.24(d) limits access to the results of preliminary tests to selected staff for the proper discharge of their responsibilities. However, the Commission found it necessary to seek public comments on an amendment that would further clarify the scope of the prohibition on premature or unauthorized release of unconfirmed positive results of an initial screening test.

The Commission also notes that the Consensus Report supports on-site screening with appropriate safeguards. During our forthcoming review of 10 CFR Part 26 and the lessons learned during implementation of the rule, we will carefully consider whether additional safeguards are needed to ensure the integrity of preliminary screening tests conducted on site.

5. Issue:

Why does the NRC need to be verbally informed by telephone when licensed operators or supervisory personnel test positive?

Response:

Because these personnel are considered the most essential to the safe operation of nuclear power plant, the Commission requires the reporting of any lack of fitness for duty involving these employees. This reporting enables the NRC to determine whether the licensee has performed measures necessary to ensure adequate protection of the public health and safety, and whether further actions (for example, with respect to a license held by an operator under 10 CFR Part 55) should be taken. Under 10 CFR 26.73, the report would not include the person's name. While following up on a reported event, the NRC staff may request the name of a licensed operator or supervisor.