



**PUBLIC
SERVICE
INDIANA**

S. W. Shields
Senior Vice President
Nuclear Division

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Service Branch

Dear Mr. Chilk:

Public Service Company of Indiana, Inc. (PSI) wishes to comment on the proposed Fitness for Duty Rule, 10 CFR 50.54(x), as published in the August 5, 1982 Federal Register (Reference 1). If finalized, this rule will require all NRC licensees holding class 103 licenses to establish, document, and implement written procedures to assure that personnel with unescorted access to protected areas are not unfit for duty. Personnel would be considered unfit if their faculties were affected in a way contrary to safety by alcohol, drugs, or any mental or temporary physical impairments.

PSI fully agrees that the nuclear industry should not tolerate employees or contract personnel whose performance is seriously impaired by drugs, alcohol, or personal problems. In addition to these personnel being able to damage safety related equipment, they also present a significant risk to the safety of their fellow employees and the protection of non-safety related equipment. Therefore, all utilities as well as other industries should have programs to discipline and help employees with these problems.

However, PSI does not believe the proposed Fitness for Duty Rule should be adopted for the following reasons:

- 1) It has not been demonstrated that the rule is required.
 - A. There is no firm evidence that the health and safety of the public is being significantly threatened. As a basis for the proposed rule, the Commission cites the increasing number of reported drug related incidents in which licensee or contractor employees were

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add: Tom Ryan
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arrested or terminated over the past three years. Reference 2 shows the following trends:

<u>YEAR</u>	<u>NUMBER OF INCIDENTS</u>
1977	2
1978	0
1979	1
1980	5
1981	12
1982	4 (as of March 10)

However, these numbers may be misleading. Due to the large number of people in the nuclear industry, the number of reported incidents and the increase over the last three years are not very large and may not be statistically significant. There is no specific evidence given in Reference 1 or 2 that any of these incidents significantly threatened the health and safety of the public. In fact, this data may only indicate that the NRC licensees are detecting drug abuse and disciplining the offending personnel more effectively.

- B. There is no firm evidence that NRC licensees do not already have effective drug and alcohol programs in place.

The NRC Office of Inspection and Enforcement (IE) formed a Drug Abuse Task Force in February, 1982. This Task Force surveyed ten utilities who were thought to have effective drug abuse programs in place and the results are reported in NUREG-0903 (Reference 3). NUREG-0903 cautions that this survey should not be considered as representative of the industry. However, it is significant to note that of the ten utilities surveyed:

- i) Almost all had a clearly defined and written policy regarding the work-related use of alcohol or drugs;
- ii) All used background investigations as a screening mechanism for new employees;
- iii) All had a program of psychological testing for nuclear employees;

- iv) All had a program that provided supervisory training in recognizing abnormal behavior and performance;
- v) All had an employee assistance or rehabilitation program; and
- vi) All conducted searches of personnel, packages, and vehicles as required by the NRC.

As far as PSI knows, NUREG-0903 is the only survey that has been done of licensees' drug and alcohol abuse programs. While these results may or may not be representative of the industry, they do indicate that at least ten licensees have developed responsible drug abuse programs. Adoption of this rule seems unnecessary unless there is evidence that the licensees are not making a responsible effort in this area.

- 2) The rule will undoubtedly lead to future NRC rulemakings and/or Regulatory Guides which mandate specific fitness criteria and requirements for drug abuse programs.

The Commission states that it wants to allow each licensee to develop its own procedures which take into account fairness and due process for its employees and conditions unique to its procedures. Therefore, the proposed rule is broadly worded.

However, the Federal Register notice also states that:

"At this time, establishment of specific criteria to be used to determine fitness for duty and specific methods of implementation of this requirement have been left to the licensee."

The implication is that fitness criteria and required implementation methods may follow.

Even if additional rulemakings or Regulatory Guides do not follow, the NRC must decide if each licensee is meeting the proposed Fitness for Duty Rule. This decision will require at least subjective standards for whether a licensee has an acceptable drug and alcohol program in place.

- 3) This rule may cause problems in several areas and it is premature to finalize it before all implications are known.

A. Financial

There have been no specific estimates made of the cost of programs that might be developed as a result of this proposed rulemaking. Reference 4 does contain a Value/Impact statement but this statement does not contain specific cost estimates. Additional costs could develop in the following areas and may be significant:

- i) Personnel training
- ii) Detection methods chosen by licensee (e.g., psychological tests, etc.)
- iii) Lost productivity
- iv) Employee rehabilitation programs
- v) Record keeping
- vi) Personnel background investigations

A very formal drug abuse program and its resultant cost may not significantly decrease employee drug abuse. Skilled and conscientious supervisors, combined with a formal policy on work related use of drugs or alcohol, may be just as effective in spotting problems and disciplining the offending personnel.

B. Legal

The legal implications of this rule and some methods of implementation are not known. Questions will arise concerning the right to have personnel take mandatory urinalysis tests or in the ability of a company to control activities in off-duty hours. Such questions should be answered before this rule is finalized.



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C. Personnel

Since the Three Mile Island Unit II accident of March 28, 1979, nuclear power plant operators have come under increased public scrutiny and criticism. This has led to several NRC NUREGs, standards and guidelines which address operator qualifications and training. Reference 3 indicates that several utilities believe these and other regulations are having a negative effect on operator morale.

The proposed rule may also be demoralizing and be seen as an infringement on personal rights. In that case, this rule may be another cause of qualified and experienced operations staff leaving the industry. Therefore, the effect of this and other rulemakings on the operations staff's morale should be considered.

In addition, PSI would like to make the detailed comments on Attachment 1.

PSI appreciates the opportunity to comment on this proposed rule. If clarification or discussion of these comments is desired, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'S. W. Shields'.

S. W. Shields

SWS/MEN:1j1

Attachment

ATTACHMENT 1

PSI DETAILED COMMENTS

- 1) If the rule is finalized, the rule should only apply to employees or contract personnel with unescorted access to vital areas as defined in 10 CFR 73.2.

The proposed rule applies to all personnel with unescorted access to protected areas. A protected area will be defined by a new paragraph 10 CFR 50.2(y) as follows:

"A protected area means an area encompassed by physical barriers and to which access is controlled."

By this definition, a protected area could be interpreted as almost any area within the licensee's site.

Since the intent of the rule is to decrease the threat to public health and safety, applying the rule to personnel with unescorted access to protected areas is much too broad. Instead the rule should apply only to individuals with unescorted access to vital areas. A "vital" area is defined by 10 CFR 73.2 as an area containing "any equipment, systems, device, or material, the failure of which could directly or indirectly endanger the public health and safety by exposure to radiation."

- 2) The phrase "designed to ensure" in paragraph 10 CFR 50.54(x)(1) should be reworded.

The word "ensure" implies to guarantee with 100% certainty. Therefore, a utility that developed drug and alcohol abuse procedures would have to take every possible measure (e.g., behavioral observation, urinalysis, etc.). This is inconsistent with the Commission's intent to leave the rule's implementation methods to the licensees.

Therefore, this phrase should be rewritten as "designed to provide reasonable assurance." This phrase allows considerable flexibility to the licensee and provides a more realistic basis for procedures.

- 3) Paragraph 10 CFR 50.54(x)(1)(iii) is much too broad and should be deleted.

As written, this paragraph is inconsistent with the intent of the rule.

The summary in Reference 1 specifically states that:

"The proposed rule was developed because of a concern that certain personnel could become unfit for duty due to the effects of substances such as alcohol or drugs, and thereby, would perform actions that might adversely impact the health and safety of the public."

However, paragraph 50.54(x)(1)(iii) broadens the rule into many other areas. It is clearly impractical for a licensee to develop programs in all conceivable areas. Deleting sub-paragraph (iii) and leaving only (i) and (ii) would concentrate the rule on the specific problem and make the licensee's compliance practical.

- 4) Paragraph 10 CFR 50.54(x)(1)(ii) is much too broad and should be reworded. As worded, paragraph 10 CFR 50.54(x)(1)(ii) states:

"(ii) Using any drugs that affect their faculties in any way contrary to safety."

This statement is much too broad. The phrase "contrary to safety" seems to expand the rule into the areas of safety of utility personnel and the protection of non-safety related equipment. While these are laudable goals, this is not consistent with the NRC's concern with protecting the health and safety of the public.

To resolve this concern, sub-paragraph (ii) should be rewritten as follows:

(ii) Using any drugs that affects their faculties in a way that significantly threatens the health and safety of the public.

- 5) Paragraph 10 CFR 50.54(x)(1)(i) is inconsistent with the rest of the rule and should be rewritten or combined with sub-paragraph (ii).

While sub-paragraph (ii) and (iii) emphasize impairment "in any way contrary to safety," sub-paragraph (i) only states that personnel should not be "under the influence of alcohol." This phrase implies that any consumption of alcohol is unacceptable and makes an employee unfit. This is clearly not the intent of the rule.

To be concise, sub-paragraph (i) and (ii) should be combined to read as follows:

Using any drug including alcohol that affects their faculties in a way that significantly threatens the health and safety of the public.

- 6) Licensees should not be required to maintain written records of the required procedures for the lifetime of the plant.

Paragraph 10 CFR 50.54(x)(2) requires the licensee to maintain written records of the required procedures for the life of the plant. No basis is given for this requirement, but it seems inappropriate.

If a licensee can show that he has had a drug and alcohol abuse program in place throughout the plant's life, maintaining written records of the past procedures should not be required. This is especially inconsistent with the NRC's desire not to mandate the content of the procedure.

- 7) These requirements would be more appropriate as a policy statement or industry standard.

Since the Commission wishes to leave fitness criteria and methods of implementation to the licensee, the requirements of this rule would be more appropriate as a policy statement or industry standard such as ANS 3.3 (Reference 6). This would inform all licensees of the NRC's intent and yet prevent some of the implementation and enforcement problems previously stated.

Including these requirements in a policy statement would also be consistent with a recent NRC policy statement on a similar problem, operator fatigue due to excessive overtime (Reference 5).

- 8) The level of specificity is appropriate.

Fitness criteria and methods of implementation should be left to the licensee. The fact that there are many methods of detection (e.g., breath tests, urine tests, background investigation, etc.) and uncertainty associated with each imply that there are many ways a licensee can develop effective programs. The NRC should not dictate program details so that each licensee can develop the most effective program for his site based on consideration of other factors (e.g., type and experience of employees).

Although Reference 1 cites the Federal Aviation Administration's (FAA) regulations regarding crew members of civil aircraft 14 CFR 91.11(a), similar fitness criteria would be inappropriate and ineffective for nuclear power plant personnel. The FAA criteria are very similar and no more specific than the proposed NRC criteria except for a restriction that no crew member may consume alcohol within eight hours of a flight. However, civil aircraft crew members work on very specific and predetermined schedules. Nuclear power plant personnel may be on 24-hour a day call and an eight hour rule may have unsupportable impact on their off-duty activities.

- 9) The proposed rule should apply to all personnel.

Commissioner Gilinsky requested comments on whether the rule should also apply to NRC personnel. If the rule is finalized, it should apply to all personnel equally. To exclude NRC personnel would imply that while the licensee trusts NRC personnel, it does not trust its employees. This would be demoralizing. In addition, a licensee may not have day-to-day contact with some NRC personnel and may not be aware of developing drug or alcohol problems.

REFERENCES

- 1) 47 FR 33980 "Personnel with Unescorted Access to Protected Areas; Fitness for Duty," Federal Register, August 5, 1980.
- 2) IE Information Notice No. 82-05, "Increasing Frequency of Drug Related Incidents," March 10, 1982.
- 3) NUREG-0903, "Survey of Industry and Government Programs to Combat Drug and Alcohol Abuse," W. Altman, et al; Drug Abuse Task Force, June 1982.
- 4) SECY-82-196, "Proposed Rulemaking Requiring Fitness for Duty for Personnel with Unescorted Access to Protected Areas," May 18, 1982.
- 5) 47 FR 23836, "Nuclear Power Plant Staff Working Hours, NRC Policy Statement," Federal Register, June 1, 1982.
- 6) ANSI/ANS 3.3-1982, "Security for Nuclear Power Plants," American Nuclear Society, July 16, 1982.



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Northern States Power Company

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414 Nicollet Mall
Minneapolis, Minnesota 55401
Telephone (612) 330-5500

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Secretary of the Commission
U S Nuclear Regulatory Commission
Washington, DC 20555

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(47 FR 33980)

Attention: Docketing and Service Section

Northern States Power Company appreciates the opportunity to review and comment on the proposed revision to 10 CFR Part 50 relating to Fitness for Duty of Personnel with Unescorted Access to Protected Areas of nuclear power plants that was published in the Federal Register on August 5, 1982.

We have the following comments to offer:

- a. The focus of the rule stresses determination of fitness rather than the handling of potentially unfit workers. The wording of the proposed rule would make failure to detect "unfit" persons a regulatory violation. The rule should require the establishment of a program that recognizes something less than perfect detection but requires 100% follow-through on those determined to be unfit.
- b. The rule presently excludes NRC inspectors from being denied access when visibly unfit. Federal employees are not immune to behavioral problems and must be included in the rule.
- c. The supplementary information attached to the rule recommends six specific methods of implementation. NSP already utilizes five of these methods. These include background investigations, testing, behavior observation, employee awareness, and assistance programs.
- d. Our present practice requires supervisors to determine the fitness of their employees. This practice allows for consideration of job duties, work location, and past observation of the employee. We believe this practice is preferable to establishing common criteria for all employees, other than general statements about alcohol and drugs, and plan to continue it. We do not believe security personnel should become involved in fitness determinations other than bringing potential problems to the attention of appropriate supervisors.

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add: Tom Ryan
5650 NL

Acknowledged by card. 10/22/82 emp

NORTHERN STATES POWER COMPANY

Secretary of the Commission

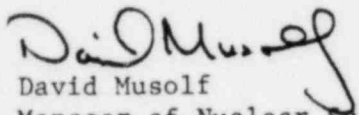
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- e. Consideration should be given to dealing with this subject in the proposed Access Authorization Rule as an alternative to the proposed rule.

- f. The requirement to "maintain the written records of these procedures for the life of the plant" should be revised or deleted. It is difficult to develop meaningful written records for many of the measures which are most effective in determining fitness. A "life of the plant" retention period appears to be excessive.

Please contact us if you have any questions concerning our comments related to the proposed fitness for duty rule.



David Musolf
Manager of Nuclear Support Services

DMM/bd

cc: Regional Administrator-III, NRC
NRR Project Managers, NRC
NRC Resident Inspectors
G Charnoff