

WOLF CREEK

NUCLEAR OPERATING CORPORATION

Neil S. "Buzz" Carns
Chairman, President and
Chief Executive Officer

March 20, 1995

WM 95-0050

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Mail Station P1-137
Washington, D. C. 20555

Subject: Docket No. 50-482: 10 CFR 73.55 Exemption Request

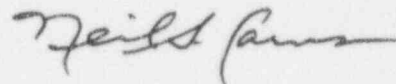
Gentlemen:

Pursuant to the provisions of 10 CFR 73.5, Wolf Creek Nuclear Operating Corporation (WCNOC) requests an exemption from the requirements of 10 CFR 73.55(d), "Access Requirements," regarding physical protection of licensed activities in nuclear power reactors against radiological sabotage. In particular, WCNOC requests exemption from the requirement for a pat-down search to be conducted when persons, accessing the protected area boundary and known to be wearing medical appliances cause the metal detectors to alarm. This exemption will apply to those WCNOC employees who have been granted unescorted access to the protected area in accordance with approved WCNOC policies. The attachment to this letter contains the exemption request with an evaluation justifying the requested exemption.

The exemption request is based on an alternative which utilizes a random pat-down search of personnel wearing medical appliances which activate the alarm on the metal detectors. The practice which is currently required is unnecessarily burdensome, humiliating, and degrading for personnel wearing medical appliances.

If you have any questions concerning this matter please contact me at (316) 364-8831, extension 4000, or Mr. Richard D. Flannigan at extension 4500.

Very truly yours,



Neil S. Carns

NSC/jra

Attachment

cc: L. J. Callan (NRC), w/a
D. F. Kirsch (NRC), w/a
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J. C. Stone (NRC), w/a

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PROPOSED EXEMPTION

In accordance with the provisions of 10 CFR 73.5, "Specific Exemptions," Wolf Creek Nuclear Operating Corporation (WCNOC) requests an exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." This exemption request is submitted for Wolf Creek Generating Station (WCGS). Specifically, WCNOC requests an exemption from the portion of 10 CFR 73.55 (d)(1) which states, "... The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee must subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into protected areas, the licensee shall conduct a physical pat-down search of that individual..."

10 CFR 73.55(a), "General performance objective and requirements," states, "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety...The Commission may authorize an applicant or licensee to provide measures for protection against radiological sabotage other than those required by this section if the applicant or licensee demonstrates that the measures have the same high assurance objective...and that the overall level of system performance provides [equivalent] protection against radiological sabotage..."

The Americans with Disabilities Act (42 U. S. C. 12101, et seq) (ADA), requires equal employment opportunities for qualified individuals with disabilities. The Appendix to part 1630 "Interpretive Guidance on Title I of the Americans with Disabilities Act," defines physical or mental impairment in section 1630.2(h) as, "Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs..." Additionally, section 1630.2 (i) defines major life activities as, "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing...and working." Section 1030.2(o), "Reasonable accommodations," (iii) states "Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."

WCNOC is a covered entity as defined in the ADA and seeks to more fully comply with ADA requirements by implementing adjustments to the Access Authorization requirements by way of exemption to the requirements of 10 CFR 73.55(d)(1). WCNOC seeks this exemption to decrease the frequency of a humiliating experience, which one employee who wears a full leg prosthesis is subjected to, as a result of the required pat-down search.

BACKGROUND

WCNOC currently employs an individual who utilizes a full leg prosthesis to enhance mobility. The individual's job responsibilities require the individual to be located within the WCGS protected area. As a result of wearing the prosthesis, the metal detectors alarm in the Security Access Control Area when the employee enters. Pursuant to 10 CFR 73.55(d), the employee is then subjected to a pat-down search each time entry into the protected area is required (at least daily). Affected employees may feel that this daily pat-down search is a demeaning and humiliating experience. In addition, the pat-down search, when performed on a daily basis, discriminates against the employee solely on the basis of a physical disability. This employee is subjected to the pat-down search, on a daily basis, in contrast to non-handicapped workers who are pat-down searched infrequently. In addition, the pat-down search for this particular employee is not effective, in that it only verifies that he is wearing the prosthesis, which Security already knows about. To verify this individual is not carrying restricted objects would require a strip search, including removal and thorough inspection of the prosthesis. This is clearly an unacceptable procedure to have to perform everyday on the same employee. Therefore, WCNOC is seeking to find an acceptable alternative to the daily pat-down search for this employee.

EVALUATION

Under the proposed system, individuals authorized to gain unescorted access to the protected area and who wear a medical appliance which is known to alarm the detection equipment, would be subjected to a random pat-down search. The exemption would be applied on a case by case basis to individuals wearing a prosthesis or other medical appliances which create an alarm condition of the metal detection equipment. This exemption will apply to those WCNOC employees who have been granted unescorted access to the protected area in accordance with approved WCNOC policies. The proposed exemption will provide more dignity to individuals wearing medical appliances by not subjecting those individuals to a pat-down search on a daily basis.

WCNOC Administrative Policy HR-350, "Access Authorization," provides for an in depth background investigation in the areas of, employment history, education history, criminal history, military service, character and reputation, credit history, and psychological evaluation. In addition to the WCNOC Access Authorization Policy, Administrative Policy HR-163, "Employee Behavior Reliability," provides for continuing observation of WCNOC personnel to detect aberrant behavior and determine if a reliability risk exists. All WCNOC employees in a lead or supervisory position are required to attend Employee Reliability Training. In addition to the Access Authorization Policy and the Employee Behavior Reliability Policy, WCNOC Administrative Policy HR-351, "Fitness for Duty," provides for random drug and alcohol testing of all employees who require unescorted access to WCGS.

The Access Authorization Policy provides a high degree of assurance that personnel granted unescorted access to the WCGS protected area are reliable and stable. The Employee Behavior Reliability Policy provides a high degree of assurance that employee behavior is continuously monitored to detect any aberrant behavior and therefore provides a high degree of assurance that employees granted unescorted access to the WCGS protected area have remained reliable and stable. The Fitness for Duty Policy provides a high degree of assurance that employees granted unescorted access to the WCGS protected area are not under the influence of alcohol or drugs and are reliable and stable.

Therefore, WCNOC concludes that random pat-down searches would be an acceptable alternative to the daily pat-down search which is required for some medically disadvantaged individuals.

JUSTIFICATION

10 CFR 73.5 states that the Commission may grant exemptions from the requirements of the regulations contained in 10 CFR 73 provided that: (1) the exemption is authorized by law, (2) the exemption will not endanger life or property, (3) the exemption will not endanger the common defense and security, and (4) the exemption is otherwise in the public interest.

1. The Exemption is Authorized by Law

No law exists which would preclude the activities covered by this exemption request, thus the Commission is authorized to grant this exemption. Further, this exemption would allow WCNOC to more fully comply with the ADA.

2. The Exemption Will Not Endanger Life or Property

WCNOC policies in the areas of access screening, fitness for duty and continuing observation of employees, in conjunction with the proposed random pat-down search for individuals wearing medical appliances, provide a high degree of assurance that unauthorized firearms and explosives will not be introduced into the WCGS protected area. The exemption from the requirement to perform pat-down searches on individuals wearing a medical appliance who have been granted unescorted access to the protected area does not present an undue risk to the public health and safety and will not endanger life or property.

3. The Exemption Will Not Endanger the Common Defense and Security

The common defense and security are not impacted by this exemption request. The WCNOC administrative policies already in place, in conjunction with the random pat-down search being performed as described, provide a high degree of assurance that individuals subject to the random pat-down search will not introduce firearms or explosives into the WCGS protected area.

4. The Exemption is Otherwise in the Public Interest.

This exemption would allow individuals to ingress the protected area boundary when wearing a medical appliance, which causes the detection equipment to alarm, without the daily indignity of a pat-down search. This exemption would also allow WCNOG to more fully comply with the ADA. In addition, security resources could be assigned to more productive areas.

CONCLUSION

This requested exemption provides the same high assurance objective and equivalent protection against radiological sabotage as those found in 10 CFR 73.55(d)(1). Therefore, this requested exemption meets the requirements of 10 CFR 73.55(a). Granting the requested exemption from the requirements of 10 CFR 73.55(d)(1), for individuals who are wearing medical appliances that cause metal detection equipment to alarm on a frequent basis, is warranted. This conclusion is based on the administrative policies already in place in conjunction with the random pat-down search previously discussed. This conclusion also considers the human indignities inflicted upon individuals required to submit to pat-down searches on a daily basis. In addition, the requested exemption would allow WCNOG to more fully comply with the intent of the Americans with Disabilities Act.