



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

September 24, 1992

MEMORANDUM FOR: Cynthia D. Pederson, Chief  
Reactor Programs Support Branch  
Division of Radiation Safety  
and Safeguards  
Region III

FROM: Phillip F. McKee, Chief  
Reactor Safeguards Branch  
Division of Reactor Inspection  
and Safeguards  
Office of Nuclear Reactor Regulation

SUBJECT: DISPUTED VIOLATION AND POLICY ISSUE:  
FOR-CAUSE TESTING BASED ONLY ON ODOR OF ALCOHOL

This responds to your memorandum of July 1, 1992, subject as above, and L. R. Greger's memorandum of March 5, 1991, on a related matter, i.e., for-cause testing for both drugs and alcohol in instances when only alcohol is suspected.

1. With respect to the disputed violation where the licensee failed to conduct a for-cause test:

10 CFR 26.24(a)(3) requires that a for-cause test be given as soon as possible following any observed behavior indicating possible substance abuse or after receiving credible information that an individual is abusing drugs or alcohol. Any clear indication of possible substance abuse must result in a for-cause test. No behavioral observation of degradation in performance is necessary, nor do we expect behavioral observation to detect subtle impairment. Detection of the smell of alcohol by 6 individuals provides a clear and credible indication of possible recent consumption of alcohol, possibly in violation of the 5-hour abstinence period or while on the job.

Although the rule does not specify what behaviors indicate possible substance abuse, the licensee's procedure, which indicates that the odor of alcohol alone is not sufficient cause for a for-cause test, fails to meet the intent of the rule. The licensee's procedure of needing to establish observable impairment in addition to the detection of alcohol ignores the fact that use of alcohol on the job or during the 5-hour abstinence period, with or without impairment, is a violation of the licensee's FFD policy. We, therefore, consider the licensee in this case violated the requirements of 10 CFR 26.24(a)(3).

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2. With respect to the policy issue concerning for-cause testing only for alcohol:

The current rule in 10 CFR 26.24(c) requires that "Licensees shall test for all substances described in paragraph 2.1(a) of the NRC Guidelines..." Section 2.1(a) of the NRC guidelines states that "Licensees shall, as a minimum, test for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol for pre-access, for-cause, random, and follow-up tests." Hence, once the licensee makes a determination to test for alcohol, this constitutes a for-cause test--which includes marijuana, opiates, amphetamines, phencyclidine, and alcohol.

Although it would seem that for cause testing would be justified for the detection of the odor of alcohol on an individual, there may be circumstances where such testing would not have to be performed. For example, unconfirmed claims by one person that he/she smells alcohol on another or the detection of an odor on an individual that is readily explainable. In such circumstances, the individual's supervisor is responsible to make the determination of whether the for-cause test should be administered. This determination needs to include factors other than observation of the individual for impaired behavior.

NUMARC has suggested that the NRC consider revising the regulation to provide for an alcohol-only test in response to the odor of alcohol as described in the pending revisions to Part 26. The staff believes that it would be inappropriate to allow an alcohol-only test when conditions are directly indicative of alcohol use, such as alcohol on the breath. Furthermore, as reflected in the current rule, we believe that it is preferable to perform both an alcohol test and a drug test, whether the alcohol test is positive or negative, to fully investigate the individual's fitness-for-duty. However, if the individual is determined fit by a designated licensee representative qualified to make the determination, the individual could be returned to duty (under a proposed change to the rule) pending collection of a urine specimen within 8 hours and receipt of urinalysis results. This would provide an appropriate balance between assurance of a thorough inquiry and reduction of the impacts caused by time away from the work station.

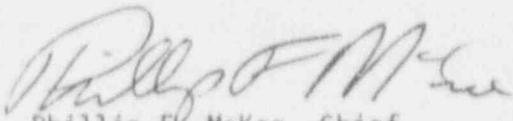
3. With respect to the issues raised in Greger's memorandum of March 5, 1991:
  - a. The licensee's corporate nuclear security guideline No. 207 is not in compliance with 10 CFR 26.24(c) and Section 2.1(a) of Appendix A to Part 26. Any test, including for-cause testing, must include, as a minimum, marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol.
  - b. For-cause testing must be done in a timely manner. It is not necessary to conduct a medical determination of fitness or ascertain the health or impairment of an individual since individuals in good health and not impaired may be in violation of the rule. It is not

appropriate to wait for a medical determination of fitness prior to a for-cause test, however, it is required (and appropriate) to have a medical doctor review the results of the for-cause test. Proposed revisions to the rule would require:

- Immediate removal and a for-cause test as soon as possible, and
- A return-to-duty test and medical determination of fitness prior to return if a person was denied access under the provisions of 26.27(b).

NOTE: A medical determination of fitness would be required regardless of the outcome of the test.

- c. Individuals identified as requiring a for-cause test (either due to impairment or due to other indications of rule violations) should be sent for testing as soon as possible. (A proposed revision to the rule would allow no more than 2 hours for an alcohol test and 8 hours for a for-cause drug test. These time intervals are considered acceptable because proposed changes to Part 26 would permit licensees to consider any drugs found during a for-cause test (i.e., any trace amounts) and require back-calculations for BAC.) Sending them home without a test because an MRO is not available would be in violation of 10 CFR 26.24(a)(3).



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