

26
53FR36795

286

'88 NOV 21 P4:42

DOCKED

83 Las Olas South
Jensen Beach FL 34957
Nov. 11, 1988

Secretary of the Commission
Attn: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: 10 CFR Part 26, Fitness for Duty program.

Sir:

I have recently read the proposed Fitness for Duty rule as published in the Federal Register Thursday, September 22, 1988. The objective, a drug free environment at all nuclear plants, is an excellent ideal for which to strive. I can not agree with random testing, the method of the proposed rule.

The constitution of the United States, amendment 4 states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation--"

Amendment 5 gives all persons the right of no self incrimination. If urinalysis is a search, and I believe it is, then any coercive test is a violation of the fourth amendment. If any drugs are found, the person has had his fifth amendment rights violated.

I would agree with Commissioner Roberts, testing upon probable cause is the best method. It is much more likely to be constitutional. With proper training of supervision it can be very effective, although admittedly not as effective as random testing.

8811300345 881111
PDR PR
26 53FR36795 PDR

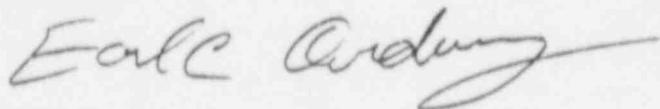
DS/

It may be that the right of the public to be absolutely sure that there are no drug users on any nuclear site supercedes the fourth and fifth amendment rights of nuclear workers. If this is true, it should be decided either by a constitutional amendment, by the Supreme Court of the United States, or by an act of congress. I do not believe I should be forced to surrender any constitutional right as a prerequisite of any job. I do not believe that a regulatory body should require me to do so.

Another concern is testing accuracy. What is to happen if a lab technician makes a mistake - mixes up samples, reads results incorrectly, or if there is an equipment failure?

I am presently employed as an I&C Supervisor II at the ST Lucie plant of Florida Power and Light. This letter and all opinions herein are wholly my own and do not reflect the opinions of Florida Power and Light. I will also state that I am not and have never been a user, and will comply with whatever rule is promulgated.

Sincerely

A handwritten signature in cursive script, reading "Earl C. Ordway". The signature is fluid and extends to the right with a long, sweeping underline.

Earl C. Ordway