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OFFICE OF THE
COMMISSIONER

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

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November 13, 1985

SPV

copy to RV

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Taylor
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Morgan
ED: R/f

MEMORANDUM TO: Samuel J. Chilk
Secretary

FROM: James K. Asselstine

SUBJECT: COMFB 85-16 AND SECY 85-21B -- FITNESS
FOR DUTY POLICY STATEMENT

I disapprove both of the proposed policy statements on fitness for duty. Because they are merely policy statements, they are unenforceable. Instead, I would promulgate a relatively simple, nonprescriptive rule which would do two things. First, it would prohibit anyone who is unfit for duty from being permitted access to vital areas of plants. Second, it would require licensees to have a program to ensure that no one who is unfit for duty gains access to vital areas. With such a rule, the Commission would have a clear basis for enforcement action in all cases in which a utility fails to maintain an effective fitness for duty program.

I realize that we have broad authority to take enforcement action by issuing an order should there be an immediate threat to public health and safety, for example, a drunk reactor operator in the control room, and where the licensee refuses to correct the situation. We could also take enforcement action if we could tie a specific safety problem to a lapse in the licensee's fitness for duty program, but only because of the safety problem, not because of any failure to maintain an adequate fitness for duty program. However, the Commission is unlikely to order the plant shut down in the absence of an immediate threat, and waiting until a specific safety problem surfaces and then trying correct the situation after the fact is not the best way to ensure that licensees have effective fitness for duty programs. Thus, our general enforcement authority does not provide us with enough flexibility to deal with all potential fitness for duty problems in a timely manner. It would not allow us to do much of anything if a licensee simply does not have an adequate program. Nor are we likely to have the information needed to identify a breakdown in a licensee's fitness for duty program, absent a rule and related inspection program.

I recognize that no one else seems to be interested in promulgating a rule. However, even absent a rule, there are certain things the Commission can do to make its proposed policy statement more useful to all concerned. As presently formulated, the policy statement provides no guidance to either the NRC staff or to the industry on what it is the Commission wants them to do, or on what the Commission considers to be an adequate fitness for duty program.

If the Commission intends to issue a policy statement, it should at least explain what the Commission considers to be the essential elements of a fitness for duty program. The EEI guidelines are optional, not mandatory. The utilities can, therefore, pick and choose what they want to include in their programs. The Commission should tell the industry which of the elements of a program it considers to be essential. The Commission should also establish the specific criteria against which individual licensee programs will be evaluated. We should have in place now the ground rules for evaluating programs and for monitoring progress. We should not wait until two years from now, when all of the utilities have their programs in place, to decide whether we agree with the industry's approach to the problem. That would benefit neither the NRC nor the industry. Indeed, absent further guidance on what is an acceptable fitness for duty program, the utilities can and probably will adopt widely differing approaches on such aspects as chemical testing and offsite drug use. It is difficult to see how, in such circumstances, INPO and NRC staff reviews of these programs will provide any meaningful insights as to their adequacy.

The draft policy statement proposed by Commissioner Bernthal moves in the right direction in this respect by listing several "essential elements" of an acceptable program. While Commissioner Bernthal's elements seem to me to be a good start, I do not believe his list is exhaustive. I would ask staff and NUMARC to negotiate, on a relatively short time schedule, a set of general minimum requirements for an adequate fitness for duty program, and we should then include those in the policy statement. The staff and INPO should then negotiate a more detailed set of criteria to be used by both the staff and INPO in evaluating individual programs and in monitoring the progress of individual licensees. The staff should report to the Commission within two months what those criteria will be.

This approach will ensure that everyone is working from a common base of understanding. It will also provide the staff with some guidance (something sorely lacking in the present policy statement) on how it is to go about determining whether licensee programs are adequate and whether there is sufficient progress so that two years from now they can recommend whether the Commission should have a rule.

cc: Chairman Palladino
Commissioner Roberts
Commissioner Bernthal
Commissioner Zech
OGC
OPE
EDO
OI