

July 8, 2003

Mr. Gary Wright, Director  
State of Illinois  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, IL 62704

Dear Mr. Wright:

I am responding to a November 18, 2002, letter from the Illinois Department of Nuclear Safety (IDNS) requesting an exemption from 10 CFR 26.6 that would allow employees of IDNS who require unescorted access at U.S. Nuclear Regulatory Commission (NRC) licensed nuclear power reactor facilities to participate in the NRC fitness-for-duty program for NRC employees. Prior to that letter on May 8, 2002, an informal e-mail request was made to Mr. Paul Lohaus, Director of the Office of State and Tribal Programs. Mr. Lohaus' October 11, 2002, response to the request stated that the NRC authority to conduct drug testing is limited to NRC employees and job applicants, and thus the NRC would not be able to conduct drug testing of Illinois inspectors. Former Chairman Meserve indicated in his January 27, 2003 letter that the Commission would review the IDNS request with respect to the Commission's current legal requirements and policies.

The Commission has considered IDNS' request, and after careful review of applicable Federal statutes, Executive orders and appropriations legislation, it has been determined that the conclusion in Mr. Lohaus' October 2002, letter noting the limitation on NRC authority to conduct drug testing is correct. In particular support of the IDNS request, the November 18, 2002 letter cites Section 274i. of the Atomic Energy Act of 1954, as amended, and the IDNS interest in avoiding a licensee's restriction on granting accessibility to its facilities to IDNS employees, or approving drug testing requirements for such employees. Section 274i. does not authorize the Commission to drug test employees of the State. Rather, the assistance authorized by Section 274i. is limited to assisting States in preparation for assuming independent regulatory jurisdiction under Section 274b. agreements. For these reasons, we regret we cannot grant the IDNS request.

In your letter, you indicate that the department might consider an alternate IDNS fitness-for-duty testing program. If the NRC can be of assistance in this matter, the contact would be Mr. Paul Lohaus, Director of the Office of State and Tribal Programs. He can be reached at 301-415-3340.

Sincerely,

/RA/

Edward McGaffigan, Jr.  
Acting Chairman