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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Submitter Information

Name: Johnny Rogers
Address:
931 Brynwood Drive
Chattanooga, TN, 37415
Email: johnn151@yahoo.com

General Comment

26.33 denotes the standard for the behavior observation program as noted below. Behavior Observation is the cornerstone of the FFD program and has contributed to crucial observations that have protected the safety and security of licensee personnel. Behavior observation has been extremely effective when implemented properly, but disastrous when not executed in the manner prescribed by code. Over the years there have been note worthy examples of personnel who had expressed knowledge of FFD issues, but chose to ignore or down play observations for fear of becoming involved or implicated in actions that could impact an individual's that could employment. Additionally, the current language stipulates, "detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty." This language specifically addresses use, sale or possession of illegal drugs or alcohol, but does not address the abuse of legal drugs or other substances that have the propensity of impair and endanger safety.

Recommendation: Consider additional language that emphasizes the vital importance of the FFD Behavior Observation program and the potential consequences of purposely ignoring the mandate to report behavior observation concerns. In two recent cases I was involved with, two supervisors observed serious behavior observation issues that were attributed to severe mental illness in each case. In these cases, the observations were overt and abundantly apparent but were ignored. Language should address willful noncompliance.

Additionally, recommend language that addresses detecting behaviors that may indicate possible sale or possession of abused legal or illegal drugs, alcohol, or any substance used for the expressed purpose of impairing an individual's ability to work safely and competently. This would include inhalants or other household substances that have been used to alter or impair consciousness.

Licensees and other entities shall ensure that the individuals who are subject to this subpart are subject to behavioral observation. Behavioral observation must be performed by individuals who are trained under 26.29 to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Individuals who are subject to this subpart shall report any FFD concerns about other individuals to the personnel designated in the FFD policy.