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OFFICE OF SECRETARY
DOCKET

Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Services Branch

Subject: *Consideration of Changes to Fitness-For-Duty (FFD) Requirements,
10 CFR Part 26, 59 Fed. Reg. 24373 (May 11, 1994) Request for
Information and Comments*

Dear Mr. Chilk:

On May 11, 1994, the Nuclear Regulatory Commission published in the Federal Register a request for information and comments regarding the scope of random drug testing requirements contained in the Fitness-For-Duty Rule, 10 CFR Part 26. This request was triggered by comments contained in a recent Court of Appeals decision in International Brotherhood of Electrical Workers v. NRC, 966 F.2d. 521 (9th Cir., 1992). In that decision, the court, while declining to reduce the current scope of random testing at Diablo Canyon, speculated that a blanket inclusion of all workers with access into plant protected areas in random drug testing programs "may in some cases be overkill." *Id.* @ 526. However, because of the importance of this matter, we are also submitting brief comments herewith.

It is Niagara Mohawk's strongly held view that the existing random drug testing scope should be maintained. We believe that all workers, whether or not allowed access to vital areas, should be subject to random testing if their activities require them to have even occasional access to the protected area of the plant. It is beyond question that unescorted access into the protected area by any drug impaired or otherwise unreliable person, regardless of that person's work assignment, appreciably increases the likelihood of an inadvertent or deliberate act that could adversely impact the safety of the plant.

It is clear that the court in the Diablo Canyon case failed to understand the significance of access into the protected area of the plant by drug-impaired individuals. The philosophy of the NRC and the nuclear industry has always been to provide a "defense in depth," i.e., multiple and redundant systems, to address all possible safety risks. By allowing potentially unreliable individuals to bypass security measures in place to safeguard the protected area, we substantially increase the likelihood that a drug impaired individual will willfully or inadvertently harm the plant. That the vital areas of the plant are behind locked doors does not render protected area security measures superfluous. It is only common sense to

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Page 2

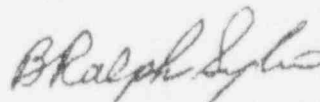
conclude that the more security barriers we can place between unreliable individuals and vital plant equipment the safer the plant will be.

Industry wide, Fitness-For-Duty Programs have been a success story. Nuclear utilities have been remarkably successful in establishing and maintaining a drug-free work place. In our view, random testing has been the single most important factor in that success. Changes to the program that eliminate or single out segments of workers or alter the type of testing will set the stage for casual use of drugs and alcohol by workers who are not challenged with random testing. Further, it opens the door for persons inclined to deal in the sale of drugs and related paraphernalia to hold positions on site without being subject to random testing.

The Nuclear Regulatory Commission has directed nuclear power facilities to establish programs to ensure that all "individuals granted unescorted access [into protected and vital areas] are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public" 10 CFR §73.56. To accomplish this objective, nuclear utilities are required to utilize background investigations, criminal history checks, psychological testing and behavioral observation, as well as random drug and alcohol screening. All of these measures involve some limited impairment of personal freedom and all are subject to challenge in the same way as random drug testing; but together these programs have achieved the NRC's objective of assuring that nuclear plant workers are evaluated and monitored against high standards of personal behavior before being allowed access to nuclear facilities, thereby assuring trustworthiness and reliability. We should not now abandon or substantially diminish a program that has had a key role in the achievement of this objective.

For the foregoing reasons, Niagara Mohawk urges the Nuclear Regulatory Commission to continue the random drug testing program in its current form.

Very truly yours,



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