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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
CAROLINA POWER & LIGHT COMPANY)
and NORTH CAROLINA EASTERN) Docket No. 50-400 OL
MUNICIPAL POWER AGENCY)
)
(Shearon Harris Nuclear Power)
Plant))

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF CCNC CONTENTION WB-3
(DRUG ABUSE DURING CONSTRUCTION)

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I. Introduction

Carolina Power & Light Company ("CP&L") and North Carolina Eastern Municipal Power Agency (collectively "Applicants") hereby move the Atomic Safety and Licensing Board, pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Contention WB-3 by intervenor Conservation Council of North Carolina ("CCNC"). As grounds for their motion, Applicants assert that there is no genuine issue of material fact to be heard with respect to CCNC Contention WB-3, and that Applicants are entitled to a decision in their favor as a matter of law.

Pursuant to the schedule adopted by the Board, Tr. 7775, the NRC Staff's response to this motion is due on or before August 6, 1985. CCNC's response to this motion and to the

Staff's response is due on or before August 16, 1985. The Board is scheduled to communicate to the parties its ruling on this motion by August 30, 1985. If the motion is denied in whole or in part, testimony and exhibits by all parties are due by September 9, 1985, for an evidentiary hearing to begin on or about September 24, 1985.^{1/}

This motion is supported by:

1. "Applicants' Statement of Material Facts as to Which There is No Genuine Issue to be Heard (CCNC Contention WB-3)";
2. "Affidavit of Peter B. Bensinger" ("Bensinger Affidavit");
3. "Affidavit of Michael W. King" ("King Affidavit");
4. "Affidavit of John D. Ferguson" ("Ferguson Affidavit");
5. "Affidavit of William J. Hindman, Jr." ("Hindman Affidavit");
6. "Affidavit of A. Reid Pannill and Garry W. Flowers" ("Pannill-Flowers Affidavit"); and
7. "Affidavit of N. J. Chiangi" ("Chiangi Affidavit").

^{1/} See Applicants' Motion to Establish a Schedule for the Adjudication of CCNC Contention WB-3 (Drug Abuse During Construction), June 13, 1985.

II. Procedural Background

On January 18, 1985, CCNC filed "Request for Admission of a new Contention WB-3 (Drug Abuse During Construction)." Applicants and the NRC Staff opposed admission of this late-filed contention,^{2/} which the Board subsequently modified and admitted for discovery. See Memorandum and Order (Ruling on Contentions Concerning Diesel Generators, Drug Use and Harassment at the Harris Site) at 5 (March 13, 1985). As modified by the Board, CCNC Contention WB-3 states as follows:

Drug use at the Harris Plant is widespread (see the attached newspaper article for details and basis). Employees under the influence of drugs are less able to follow proper procedures and tech specs for the installation of electrical systems, pipe-fitting, and other safety-related work. Applicants' management has failed to control drug use during the construction and further, has failed to reinspect all safety-related work done by known drug abusers.

The Board set May 1, 1985 as the last day to serve interrogatories and as the date by which all other discovery was to be completed. Id. at 8.

Discovery on CCNC Contention WB-3 has included: the NRC Staff's discovery requests to CCNC of April 24, 1985, and

^{2/} Applicants' Response to CCNC's Request for Admission of New Contention WB-3 (Drug Use During Construction), February 6, 1985; NRC Staff Response in Opposition to Conservation Council of North Carolina's Motion to Admit Proffered Contention WB-3 Regarding Drug Use, February 7, 1985.

CCNC's responses of May 29, 1985; Applicants' discovery requests to CCNC of May 1, 1985, and CCNC's responses of May 24, 1985; CCNC's discovery requests to Applicants of May 1, 1985, and Applicants' responses of May 20, 1985. Discovery is completed, and CCNC Contention WB-3 is ripe for decision by the Board.

III. Argument

A. Standards for Summary Disposition

The admission of a contention for adjudication, under the standards of 10 C.F.R. § 2.714, is not an appraisal of the merits of a contention, but merely a determination that it meets the criteria of specificity, asserted basis and relevance. A hearing on an admitted contention, however, is not inevitable. Licensing boards are authorized to decide an admitted contention on its merits in advance of trial on the basis of pleadings filed.

"Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding." 10 C.F.R. § 2.749(a). The standard embodied in the regulation is that "[t]he presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on

file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 C.F.R. § 2.749(d).

The Commission and its adjudicatory boards have long encouraged the use of this summary disposition process where the proponent of a contention has failed to establish that a genuine issue exists, so that evidentiary hearing time is not unnecessarily devoted to such issues. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 457 (1981); see also Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 550 (1980) (" . . . the Section 2.749 summary disposition procedures provide in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues . . .").

The standards governing summary disposition motions in an NRC proceeding are quite similar to the standards applied under Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 A.E.C. 210, 217 (1974); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-554, 10 N.R.C. 15, 20 n.17 (1979). Where, as here, motions for summary disposition are properly supported pursuant to the Commission's Rules of Practice, a party opposing the motions may not

rest upon the mere allegations or denials of its answers. Rather, an opposing party must set forth specific facts showing that there is a genuine issue of fact. 10 C.F.R. § 2.749(b). A party cannot avoid summary disposition on the basis of guesses or suspicions, or on the hope that at the hearing Applicants' evidence may be discredited or that "something may turn up." Gulf States Utilities Company (River Bend Station, Units 1 and 2), LBP-75-10, 1 N.R.C. 246, 248 (1975).

The governing regulation permits summary disposition " . . . as to all or any part of the matters involved in the proceeding." 10 C.F.R. § 2.749(a). Just as summary disposition may be granted as to some but not all contested issues, so may summary disposition be granted as to one or more parts of an intervenor's contention. The format or organizational style employed by the pleader of contentions should not prevent a licensing board from deciding that, as to discrete matters of fact and/or law, there is no genuine issue to be heard with respect to one or more aspects or parts of a given contention. Thus, where summary disposition may not be appropriate as to the whole of a given contention, a licensing board may and should determine what issues within the contention are not genuinely disputed, and set only disputed issues for trial.

B. Relevant Regulatory Requirements

A contention must be material to those findings which precede licensing, as set forth in 10 C.F.R. § 50.57. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1654-55 (1982). While the NRC is not indifferent to the potential adverse effect on public health and safety attributable to drug use on site by workers at nuclear facilities,^{3/} the agency has no regulation governing the use of drugs on the site of a nuclear power plant under construction. Violations of criminal drug laws are the responsibility of law enforcement agencies.

Obviously, however, the NRC has stringent standards and oversight with respect to the construction of nuclear power plants. Execution of the construction permittee's quality assurance program, required by Appendix B to 10 C.F.R. Part 50, is designed to eliminate the possibility that construction defects of potential safety significance will go undetected and therefore unrectified. See Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2),

^{3/} See South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 N.R.C. 25, 27 (1983). In addition, allegations of widespread drug abuse and improper security practices at operating plants have been investigated by the Office of Inspection and Enforcement. See Commonwealth Edison Company (Dresden Nuclear Power Station; Zion Nuclear Plant), DD-83-8, 17 N.R.C. 1183 (1983).

ALAB-802, 21 N.R.C. 490, 492-93 (1985). CCNC Contention WB-3 postulates construction defects caused by impaired employees under the influence of drugs. In terms of the capability of the QA program to identify construction defects, the unspecified CCNC postulated defects are not distinguishable from defects which result from other causes. Consequently, to a great extent Applicants consider CCNC Contention WB-3 to be a challenge to the effectiveness of the QA program implemented during construction of the Shearon Harris Nuclear Power Plant. In the abstract, while of concern to Applicants for economic and other corporate reasons, an hypothesized work force under the influence of drugs matters here only to the extent that the QA program is not effective in identifying any resultant construction defects and overseeing their correction.

In assessing the execution of construction QA programs, NRC adjudicatory boards appropriately have turned for standards and guidance to the legal findings required for grant of an operating license application. Error-free construction is not a precondition for an operating license under either the Atomic Energy Act or the Commission's regulations. What is required instead is a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety. 42 U.S.C. §§ 2133(d), 2232(a); 10 C.F.R. § 50.57(a)(3)(i); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 N.R.C.

1340, 1345 (1983), aff'd, San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1319-21 (D.C. Cir. 1984), partial rehearing granted on other grounds, 760 F.2d 1320 (1985); Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 N.R.C. 343, 346 (1983), reconsideration denied, ALAB-750, 18 N.R.C. 1205 (1983), as modified, ALAB-750A, 18 N.R.C. 1218 (1983).

This is the fundamental standard against which the allegations in CCNC Contention WB-3 must be judged. CP&L's policies and programs to control drug abuse among site employees are relevant, and are addressed in this motion, only to the extent that they provide confidence in the effectiveness of the construction QA program. The concededly laudable societal goal of eliminating substance abuse by Americans is not the focus of NRC responsibilities.

In examining claims of quality assurance deficiencies, then, boards are to look to the implication of those deficiencies in terms of safe plant operation. Callaway, supra, ALAB-740, 18 N.R.C. at 346 (1983). Even if it is established that all ascertained construction errors have been cured,

. . . there may remain a question whether there has been a breakdown in quality assurance procedures of sufficient dimensions to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components. A demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding.

Id. Thus, the two-pronged test for examining CCNC Contention WB-3, as its allegations relate to the jurisdiction of the NRC, is: (1) whether ascertained construction errors caused by employees under the influence of drugs have been corrected; and (2) whether there has been a pervasive failure to carry out the quality assurance program as a result of employees working under the influence of drugs.^{4/} See Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 N.R.C. ___, slip op. at 6 (July 11, 1985); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 N.R.C. 1102, 1141 (1984).

Applicants demonstrate below that there have been no identified construction errors caused by employee drug abuse, and that the construction Quality Assurance program at the Harris Project has been executed effectively and provides reasonable assurance that any deficiencies in safety-related work by any employees impaired by drug use have been identified and corrected.

^{4/} The "pervasive failure" or "breakdown" portion of the test typically is applied in the context of alleged specific quality assurance deficiencies. See Callaway, supra, ALAB-740, 18 N.R.C. 343 (1983); Perry, supra, ALAB-802, 21 N.R.C. at 502 (1985) (attention focused on specific deficiencies at issue before deciding whether a need existed to expand the scope of the inquiry).

C. Factual Basis for the Contention

CCNC Contention WB-3 refers to a newspaper article for details and basis in support of its allegations. The article appeared in the Raleigh News & Observer on January 11, 1985, and was attached to CCNC's "Request for Admission of New Contention WB-3 (Drug Abuse During Construction)," dated January 18, 1985. During discovery, CCNC stated that the "[t]he article supplied basis for all allegations in the contention." Answer to Interrogatory 4(b), "Conservation Council's Answers to Applicants' Discovery Requests on Contention WB-3 (Drug Abuse)," dated May 24, 1985. CCNC identified no other factual bases for its allegations, and has not supplemented its discovery responses with additional information.

Ironically, this newspaper article reports on CP&L's participation in one of the activities recognized as a positive element of a corporate drug abuse control program -- cooperation with law enforcement in undercover investigations. See Bensinger Affidavit, ¶ 9; Waterford, supra, ALAB-812, 22 N.R.C. ___, slip op. at 45-47 (July 11, 1985). The article reports on the arrest of six workers following an investigation into drug activity at the Harris site. Warrants were also issued for the arrest of two other workers.^{5/} King Affidavit, ¶ 4.

^{5/} The employees were seven electricians and one pipe hanger fitter. Answer to Interrogatory No. 14-WB, "Applicants' An-

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The investigation followed a request by CP&L in August, 1984, to meet with representatives of the Wake County Sheriff's Department (WCSD) to explore the merits of using undercover agents for drug use detection at the Harris Project. This request was prompted by information that was being developed mutually between WCSD personnel and CP&L Security personnel. The two organizations had worked together in July, 1984, to arrest a site employee for possession of cocaine (off site). Information developed during that investigation led officers to believe that other site employees might be involved. In September, 1984, a site employee was found by Daniel Industrial Relations personnel to be in possession of a felony amount of cocaine. The subject and evidence were turned over by CP&L Security to the WCSD. As a result of charges filed against him, this subject agreed to work with the WCSD and CP&L Security as an informant in an undercover operation. The meeting mentioned above then took place with representatives of CP&L Security, the WCSD and the State Bureau of Investigation (SBI). As a result of that meeting, arrangements were made to conduct an undercover operation at the Harris site. The operation involved the use of two undercover agents -- one from the SBI and one

(Continued)

swers to Conservation Council's Discovery Requests to Applicants on Contention WB-3 (Drug Abuse During Construction)," May 20, 1985.

from the WCSD -- who posed as site employees. They began work at the site on October 21, 1984. CP&L arranged to have the informant back on the site, provided cover for the undercover officers on the site, and consulted regularly to provide needed assistance. The operation ended around the turn of the year. According to the newspaper account, the eight individuals charged as a result of the investigation made sales of drugs to the undercover agents, involving a total "street value" of \$3,000.^{6/} King Affidavit, ¶ 5.

The fact that drug activity has been reported as a result of this undercover investigation does not discount the efforts made, and described below, to control drug use at the Harris Project. Rather, it would be of far more concern if CP&L had undertaken no initiative with local law enforcement to identify and to deter drug abuse. Bensinger Affidavit, ¶ 18. Perhaps if CP&L had not cooperated with these law enforcement agencies, then there would have been no undercover investigation, no newspaper reports and no contention. It must be recognized, however, that one way to report the absence of drug activity on a construction project is to take no steps to identify and to

^{6/} It should not require proof that the sale of drugs per se does not physically impair an employee. Consequently, the established drug activity of these eight workers does not support the allegation in CCNC Contention WB-3 that impaired employees under the influence of drugs are compromising safety-related work.

control the activity -- essentially to turn one's back to the problem. Here, the information on drug activity at the site has surfaced because of CP&L's efforts to enforce its drug abuse policies.^{7/} This information should not be read as indicative of a problem, but rather as a necessary byproduct of an effective solution being achieved.

D. Drug Abuse Policies at the Shearon Harris Site

Mr. Peter B. Bensinger, former Administrator of the U.S. Drug Enforcement Administration and now a consultant to CP&L and many others on substance abuse, reports that the national problem of drugs in the workplace is extensive, and that drugs have invaded all of the work places in the United States.

Bensinger Affidavit, ¶ 8.

Drug abuse whether on or off the job is a serious concern to Carolina Power & Light Company -- a concern which focuses on the safety and work performance of all employees and the confidence of the public and government in the manner in which CP&L carries out its responsibilities. Statement of Sherwood H. Smith, Jr., CP&L Chairman/President, in the Foreward, CP&L Drug and Alcohol Abuse Reference Manual (Attachment C to the Ferguson Affidavit).

^{7/} Other nuclear power plant sites have experienced arrests for drug activity. See Bensinger Affidavit, ¶ 12; Waterford, supra, ALAB-812, 22 N.R.C. ____, slip op. at 45 (July 11, 1985).

Realistically our Company is representative of society and shares to some degree in the trends and problems of these times. For management to ignore these issues would be to display an attitude of irresponsibility toward the health and safety of every employee and to disregard much of our responsibility to our customers. In addition, our Company is subject to constant regulatory review and public scrutiny in all that we do.

Id.

As a result of this concern and recognition, several years ago CP&L adopted a Drug and Alcohol Abuse Statement of Practice. This Statement of Practice applies to CP&L employees whose assigned work location is the Shearon Harris site or who have unescorted access clearance to the site. The Statement, minus the provisions related to alcohol abuse, is as follows:

The use, possession, or sale of narcotics, hallucinogens, depressants, stimulants, marijuana, or other controlled substances by an employee while on Company business or on Company property will result in disciplinary actions, including possible termination.

Any other use, possession, or sale of narcotics, hallucinogens, depressants, stimulants, marijuana, or controlled substances by an employee that may adversely affect the employee's job performance, or that may reflect unfavorably upon public or governmental confidence in the manner in which the Company carries out its responsibilities, may result in disciplinary action, including possible termination.

This statement of practice does not apply to medication prescribed by a licensed physician and taken in accordance with such prescription.

Ferguson Affidavit, ¶ 4.

In order to provide guidance for assuring that Company practice on drug and alcohol abuse is adhered to at nuclear power plant sites, CP&L adopted a Drug and Alcohol Interdepartmental Procedure. The Procedure prescribes the responsibilities of Department/Nuclear Project Managers, Manager-Employee Relations, and Department/Nuclear Project Section Managers. Ferguson Affidavit, ¶ 5 and Attachment B.

Applicants for employment with CP&L at the Shearon Harris site are fully informed of the Company's Drug and Alcohol Abuse Statement of Practice and related Drug and Alcohol Interdepartmental Procedures. They are advised that a thorough five-year background investigation will be conducted, that drug screening procedures are a part of the required pre-employment physical examination, and that a professional evaluation using the Minnesota Multiphasic Personality Inventory (MMPI) is a part of the total pre-employment procedure. Applicants are told that if the drug screen indicates the presence of drugs or controlled substances, not obtained and used according to a valid prescription, they will not be considered further for employment. Also, if the MMPI indicates a background of or tendency toward drug or alcohol abuse or aberrant behavior in the opinion of professional advisors to the Company, they may not be considered further for employment. Ferguson Affidavit, ¶ 6.

Once employed, CP&L personnel assigned to the Harris site receive an instructional program entitled "Drug and Alcohol Abuse Orientation for CP&L Employees," presented by Employee Relations and the Harris Training Unit. The instruction familiarizes employees with CP&L's Drug and Alcohol Abuse Practice and Procedures, the adverse impact of drug and alcohol abuse, and CP&L's Employee Assistance Program. Each employee is given the CP&L "Drug and Alcohol Abuse Reference Manual." The Manual includes the Statement of Practice, a message from the Chairman/President of CP&L, and a summary of the Drug and Alcohol Interdepartmental Procedures. The Manual advises the employee that the Company may undertake announced or unannounced inspections, investigations and searches for illegal drugs and controlled substances. The Manual states that "the results of such actions may include a request that an employee have a Company-approved medical examination which will include a drug screen" and that "any employee who refuses to allow or cooperate with a properly authorized inspection, investigation or search may be subject to disciplinary action, including possible termination." The last page of the Manual is detached and retained as the employee-signed record of participation in the orientation, of the employee's agreement to abide by the Statement of Practice and related Procedures, and of the employee's understanding that compliance with the Statement of Practice and related Procedures is required for continued employment with CP&L. Ferguson Affidavit, ¶ 7 and Attachment C.

In order to implement its drug abuse policies and procedures effectively, CP&L has a drug awareness training program for CP&L managers and supervisors (including first-line supervisors, i.e., foremen) at the Harris site designed to prepare them to recognize drugs and drug-related behavior, and to understand their responsibilities when such substances or behaviors are observed or reported on the job. The supervisor is responsible for reporting any information on suspected drug activity, for removing from the job any employee having possession of or under the influence of drugs, and for initiating disciplinary action in accordance with the provisions of the Company's Drug and Alcohol Abuse Statement of Practice. The drug awareness training program enables supervision to carry out these responsibilities effectively. Ferguson Affidavit, ¶ 9.

CP&L supervisors and managers at the Harris Plant have attended a "Drug and Alcohol Workshop for Supervisors," initially presented by the Plant Manager or his designee, the plant personnel representative and/or a designated instructor from the Employee Relations Department. This program provides the participants with a comprehensive review of CP&L's Drug and Alcohol Abuse Practices and Procedures and of their supervisory responsibilities under those Practices and Procedures. Participants are then provided with the skills necessary to implement the Practices and Procedures. Subsequently, this training was

incorporated into a "Workshop in the Assessment of Aberrant Behavior," a 12 to 16-hour course presented by Management Consultants of Chapel Hill. That course includes 4 hours of instruction devoted to drug and alcohol abuse problems, practices and procedures. Each manager and supervisor receives, as a part of the drug awareness training program, the CP&L Supervisor's Reference Manual, Drug and Alcohol Abuse (Attachment D to Ferguson Affidavit). This manual illustrates the scope and content of the training provided. In addition to the Practices and Procedures, the manual describes drugs of common abuse (including identification of the drug, methods of use and signs/symptoms of use), guidance on observing and documenting changes in employee behavior, guidelines for administering CP&L's policy on drug abuse, behavior and job performance warning signs, a check-list for observing employee behavior, and guidelines for conducting a disciplinary interview. Ferguson Affidavit, ¶ 10 and Attachment D.

In addition to this on-going and repeated (for new supervisors/managers) training program, CP&L in 1984 gave special attention to drug abuse training. On August 1, 1984, CP&L management gathered for a briefing on drug and alcohol abuse training, presented by Mr. Peter B. Bensinger, President of Bensinger, Dupont & Associates, Inc. Mr. Bensinger is one of the foremost experts on drug and alcohol abuse in the United States. The program included a meeting with top CP&L

management; briefings to security, employee relations and nuclear power plant management personnel; and on-site training of CP&L supervisors. The on-site training at Harris in August, 1984, included a review by CP&L officials of the CP&L drug and alcohol policy, an awareness presentation by Bensinger-Dupont experts, and a discussion of CP&L resources available to assist in implementing the program. The awareness portion of the presentation, which has been used by the Edison Electric Institute as a model, included information about specific drugs which might be impairing an individual in the workplace, as well as a segment on "signs and symptoms" designed to alert supervisors to possible drug related work impairment. Bensinger Affidavit ¶ 11; Ferguson Affidavit, ¶ 11 and Attachment E.

In a further effort to remind personnel of the importance the Company attaches to its drug and alcohol abuse practices and procedures, CP&L employees at the Harris site, as well as contractor personnel who attend the routine safety meetings, recently received a videotape "Drug and Alcohol Abuse Refresher Training" session presented by Mr. E. E. Utley, CP&L Senior Executive Vice President. Ferguson Affidavit, ¶ 12 and Attachment F.

In addition to adopting and implementing its own drug abuse policies and procedures, CP&L has imposed, by contract amendment, a drug and alcohol abuse policy on contractors at the site. The article incorporated into these contracts

requires the contractor to communicate to its employees CP&L's drug abuse policy, CP&L's right to search on its property, and CP&L's discretion to remove from the site any employee who does not cooperate with or is found to be in violation of CP&L's drug abuse policy. Hindman Affidavit, ¶ 4 and Attachment B.

Daniel International Corporation is the constructor at the Harris project, and the employees of Daniel and of Daniel's sub-contractor represent roughly 70 percent of the site work force. Hindman Affidavit, ¶ 4. All prospective Daniel employees at the Harris site are subjected to pre-employment background verification, which includes, with respect to previous employment, confirmation of the dates of employment, job classification, performance rating and the reason(s) for termination. Any criminal records listed on the employment application are reviewed, and incidents involving drug-related activity in the applicant's background are viewed as grounds for denial of employment. Pannill-Flowers Affidavit, ¶ 4.

Daniel's drug policy at the Shearon Harris site is governed by two procedures: one which applies to the Technical Services Division (employees involved in quality confirmation roles in Quality Control or Construction Inspection) and another for all other employees. Procedure TSD-SH-207, "Security Actions/Illegal Drugs and Other Contraband Materials," provides that employees are forbidden to use, sell, possess or be under the influence of illegal drugs while on Daniel or CP&L property

and that violation of this prohibition is cause for immediate discharge. The procedure states that Daniel may take any of the following steps while employees are on Daniel/CP&L property: observe actions of employees; counsel employees; search employees' personal items, automobiles or persons; require searches with canines; require drug screen urinalysis testing. If the employee refuses a search, he/she is immediately discharged. The procedure prescribes the steps to be taken, and the action responsibilities, to implement the policy. Procedure DCC-PE-510, "Security Actions/Illegal Drugs and Other Contraband Materials," governs other Daniel employees and, as modified by memorandum of December 26, 1984, to all Daniel/Davis employees from C.C. Wagoner, Project General Manager, has provisions similar to the TSD procedure just described. Pannill-Flowers Affidavit, ¶ 5 and Attachments C, D and E.

Daniel employees are introduced to its drug policy for the Harris site in several ways. All new employees and all employees transferring from other Daniel worksites are introduced to the drug and alcohol policy through an employee orientation. During this orientation, the drug and alcohol policies are reinforced in the following ways:

- ° The presentor reads and reviews the drug policy letter of the Daniel Construction Company and re-emphasizes the company's commitment to the enforcement of this

policy, including searches, inspection of the employee and his/her property, and the right to require a urinalysis of an employee for "probable cause." The searches are re-emphasized and the employees are advised that dogs may be on site which would be used to locate drugs.

° During a video orientation, which includes a general discussion of the project itself and also acts as a visual orientation to the overall work procedures at the site, there is a clear and specific discussion of the drug and alcohol policy. The video expressly notes that one can "lose one's job" for violating safety or security rules or possessing or using beer, liquor, or unlawful drugs, or performing unsafe acts because of the use of beer, liquor, or unlawful drugs. In addition, the video discusses the Quality Check program, wherein employees are encouraged to make any observations on the worksite regarding the safety of the worksite, the procedures at the worksite or anything else that might be identified as a problem which other programs may have missed.

° Each employee is given an employee handbook to read during the orientation period and before he/she begins the job. The handbook states that incapacitation through alcohol, drugs or other substances, and the possession of dangerous weapons, alcohol or illegal substances on company property, are offenses which can lead

to an immediate involuntary termination. After the employee has read the employee handbook, he/she is required to fill out an affidavit certifying that he/she has received a copy of the handbook, has read it, and will abide by all of its rules and regulations. This certification becomes a part of the employee's personnel file at the site.

In addition, employees are reminded of the drug and alcohol policy through posters and bulletin board items throughout the worksite. Supervisory emphasis is also given to this topic at weekly safety meetings or other meetings during which the supervisors may be meeting with their employees. Mr. Wagoner's memorandum, mentioned above, also served as an important reminder to employees of the drug policy. Pannill-Flowers Affidavit, ¶ 6.

Since Daniel supervisors are responsible for reporting suspected drug activity and for taking immediate action if drug activity is observed, the supervisors receive special training on drug awareness and Daniel's policy. Supervisors are given the written drug policy which appears in a Personnel-prepared Supervisor's Handbook. The drug awareness training provided to supervisors familiarizes the participants with Daniel's drug policy and how to implement it. Daniel also teaches the supervisors how to recognize drugs with high abuse rates (e.g., marijuana, cocaine and different forms of speed), how to

recognize the symptoms of drug abuse in an employee, and the supervisor's role in carrying out the policy. The presentation is made by an instructor on site using slides, static displays of drug paraphernalia, and a drug display kit which was commercially purchased. Pannill-Flowers Affidavit, ¶ 7 and Attachments F and G.

E. Means for Identifying Drug Abuse by Site Employees

CP&L has employed numerous and diverse means for identifying violations of its drug abuse practices and procedures on the Harris Project. Beyond the pre-employment screening undertaken, these means include security measures, urinalysis drug screen testing, and the observations of managers, supervisors and employees.

1. Security

The security measures employed to identify drug activity on the Harris Project include: cooperation with law enforcement investigations, the activities of the construction security force, observation and searches of incoming and outgoing employees, property and personal searches, and searches by a narcotic detection dog.

Cooperation with responsible law enforcement agencies is one of the means utilized by CP&L to identify drug activity among the employees at the Harris site. Undercover operations,

such as the one which was conducted in late 1984, not only serve to identify employees involved in drug activity, but also to deter others who are contemplating involvement with drugs. The undercover operation discussed above is not the first one conducted on site by law enforcement officers in cooperation with CP&L. Further, CP&L will use such investigative techniques in the future whenever the situation warrants. King Affidavit, ¶ 6.

In addition to these special efforts with law enforcement personnel, the full-time security force at the construction site provides an on-going means for identifying and discouraging drug activity at the site. The contract security guard service at the Harris site is provided by the Wackenhut Corporation. There are currently 1,225 manhours per week authorized for the security contractor. These hours and the post assignments allow around-the-clock patrol of the entire job site by foot and vehicle patrols. These mobile patrols account for 5 of the 11 posts that are staffed on a daily basis to deter and detect any violations of site rules, regulations or policies. Through their contact with and observation of employees, the security personnel are able to provide management with intelligence information on drug activity at the plant. In addition, they pursue information received on possible drug activity in an attempt to confirm the accuracy of the information and to pursue additional sources of information. King Affidavit, ¶ 7.

Contract Security personnel are at the entrances to the site where they observe incoming and outgoing employees and watch for physical signs of incapacity such as staggering, falling, weaving, lack of coordination and odors. These observations of employees are also made by timekeeping and supervisory personnel assigned to monitor the entrance and exit of workers. During every shift change, lunch boxes, briefcases and other containers are opened for inspection as the employees leave the site, and on a random basis as the employees enter the site. On a random basis employees are selected for search using a hand-held metal detector. It should also be noted that construction personnel are rigidly controlled from the moment they access the site and until they leave. When on the job, they must remain in the job area; and when on break or lunch, they must be in a designated area. King Affidavit, ¶ 8.

Beginning in February, 1985, under the direction of the Construction Security Unit, a narcotic detection dog is on the site twice per month, on an unannounced schedule, to search a random sampling of areas on the site. If specific requests are made or information is available relative to specific areas on site, those areas are given priority for search by the narcotic detection dog. The dog and handler are provided by Canine Detection Services of Durham, North Carolina. The dog is capable of detecting marijuana, hashish, opiates, heroin, cocaine, amphetamines and barbiturates. As an example of its

capability, during its first visit the dog identified a pipe with marijuana residue in a locked toolbox. CP&L Security personnel have conducted a controlled test to ensure the continued reliability of the dog and handler. King Affidavit, ¶ 10.

In addition to the exiting and random searches, and the use of the narcotic detection dog, identified employees may be directed to submit to a search because of information obtained on potential or confirmed drug activity. Security, Employee Relations and Industrial Relations personnel conduct the searches. Searches of employees include a detailed inspection of the individual's clothing, work area, and any tools, equipment or personal property. Any vehicles within the construction security fence are also subject to search. King Affidavit, ¶ 11.

2. Urinalysis Drug Screen Testing

In addition to its use in the pre-employment process for CP&L personnel at the site, urinalysis drug screen testing is employed by CP&L and Daniel as one means of determining whether an employee suspected of drug activity is consuming drugs. When information becomes available which provides good cause for reasonable suspicion that an employee is involved in drug activity, the appropriate CP&L Security Agent or Daniel Industrial Relations representative, the appropriate section manager and Mr. Hindman (the project-level coordinator of information

pertaining to illegal drug use at Harris) will confer to determine if a drug screen urinalysis test should be required. In the case of site employees involved in quality confirmation roles (i.e., in Quality Assurance, Quality Control or Construction Inspection), this test is administered to the employee even where there is no independent evidence to confirm possible drug involvement (e.g., on the basis of an anonymous allegation alone). Hindman Affidavit, ¶¶ 2, 5; Pannill-Flowers Affidavit, ¶ 9.

The urine specimen is collected and delivered to CompuChem Laboratories, Research Triangle Park, North Carolina, with which CP&L and Daniel have business agreements to perform urinalyses for the detection of drug use. The drug classes included in the CompuChem analysis are amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, methadone, methaqualone, opiates, and phencyclidine. Each urine sample submitted to CompuChem first undergoes an Enzyme Multiplied Immunoassay Technique (EMIT) qualitative analysis. All positive EMIT analyses are confirmed by Gas Chromatography/Mass Spectroscopy (GC/MS) quantitative analysis. This test program ensures that if a drug is present, it will be detected by the EMIT test, and the quantity confirmed through the GC/MS analysis. Ferguson Affidavit, ¶ 8; Pannill-Flowers Affidavit, ¶ 9. The testing techniques utilized at the CompuChem Laboratories are considered to be the most sophisticated and foolproof available. Bensinger Affidavit, ¶ 10.

3. Observation by Managers, Supervisors and Employees

Employees at a construction site do not work in isolation. Site management and Security personnel learn about drug activity from information reported by managers, supervisors and co-workers of those involved. As described above, supervisors have been trained to identify illegal drugs and the signs/symptoms of abuse, and to implement their responsibility to report such information. Daniel site Industrial Relations representatives conduct active surveillance for visible drug activity, and receive reports from employees on known or suspected drug activity. Pannill-Flowers Affidavit, ¶ 8. Anonymous reports of drug activity have been made directly to Security personnel and site management, and others willing to identify themselves and to assist have provided information on a confidential basis. It should also be noted that the newspaper article filed by CCNC states that several construction workers interviewed by the reporter "indicated they would turn in their co-workers if they noticed them using alcohol, drugs or similar stimulates." One worker was quoted expressing the threat he perceived to his own safety which would be created by a co-worker using drugs. King Affidavit, ¶ 9.

CP&L and Daniel employees have been instructed on the use and availability of the Quality Check program as an avenue for reporting any alleged problem on a confidential, or even an

anonymous, basis. This program has been a source of information on alleged drug activity among site employees. King Affidavit ¶ 9; Pannill-Flowers Affidavit, ¶ 8. CP&L implemented the Quality Check program at the Harris Plant in order to provide an additional opportunity for site personnel to express concerns to management and to receive feedback on their concerns. Under this program, numbered forms are available throughout the site for completion by any employee having a safety concern he or she wishes to bring to the attention of management. Each such concern is investigated by a group of QA specialists and engineers, and the results of the investigation are then reported back to the employee. (If the employee wishes to remain anonymous, he can determine the action taken on his concern by telephoning the Quality Check program office and providing the form number of his concern.) In addition, as part of the Quality Check program, each employee working in a safety area who leaves employment at the site (whether by resignation, termination or reassignment) is scheduled to be interviewed by the Quality Check group in order to identify potential safety concerns. The Quality Check group also conducts interviews of randomly selected site employees to uncover safety concerns. Any concern identified through these interviews are similarly fully investigated by the Quality Check group. The most recent NRC Construction Appraisal Team inspection found the Quality Check program to be an effective and

viable method of addressing employee concerns. Hindman Affidavit, ¶ 7.

4. Coordination of Information

In his capacity as project-level coordinator of all information pertaining to illegal drug use on the Harris Project, Mr. Hindman is to be informed of all allegations of, or other information developed with respect to, potential drug use or other drug activity among project employees. In addition, CP&L Security and the section manager responsible for the suspected individual's work are notified. If Daniel employees are involved, the Daniel Industrial Relations organization is notified by CP&L Security. (Conversely, Daniel provides any information it receives or develops on known or suspected drug activity to Mr. Hindman of CP&L. Pannill-Flowers Affidavit, ¶ 8.) CP&L Security, Daniel Industrial Relations and Mr. Hindman then plan, in consultation with the employee's supervisor, the appropriate actions to be taken to resolve the situation -- whether through further investigation or immediate personnel action. If sufficient information is developed to confirm, or suspect on reasonable cause, a violation of CP&L's drug abuse policy, the employee either is required to submit to the urinalysis drug screen, or is terminated or removed from the site via CP&L's contractual right to direct contractors to remove any of their employees at CP&L's discretion.

Finally, where an employee is terminated or removed in part because of drug-related reasons, the relevant quality organization has been informed so that any corrective action necessary with respect to the employee's previous work may be identified and undertaken. Hindman Affidavit, ¶ 6.

F. Expertise Utilized to Develop and to Assess the Harris Drug Abuse Programs

Having recognized, perhaps prior to CCNC's interest, the importance of curbing drug abuse, CP&L long ago began utilizing the expertise and guidance of numerous outside individuals and organizations with valuable experience, including other utility companies, Federal and local law enforcement personnel, the academic community, and consulting firms with national experience in the prevention of drug and alcohol abuse. Ferguson Affidavit, ¶ 9. See, e.g., the list of contributors in the Acknowledgments to CP&L's Supervisor's Reference Manual on Drug and Alcohol Abuse (Attachment D to the Ferguson Affidavit).

Foremost among the outside contributors to CP&L's efforts in this regard has been Bensinger, Dupont and Associates, Inc., a professional consulting firm providing services to private industry, national and community organizations and government, on the problems of drug and alcohol abuse, including its impact on the workplace. The firm has provided consultation and training services to major corporations in the public utility,

pharmaceutical, energy, transportation, construction and computer fields, and clients include American Airlines, Boise Cascade Corporation, E.I. du Pont de Nemours & Company, the Federal Bureau of Investigation National Academy, Edison Electric Institute, Norfolk Southern Corporation, Airport Security Council, American Gas Association, Times Mirror Companies, and national associations of parent groups, hospitals and health providers, and state and local government. The principals of the firm are Peter B. Bensinger and Dr. Robert L. DuPont, with offices in Chicago and Rockville, Maryland. In addition, the firm has 16 associates who are retained on a contract basis for specific training and consultation assignments around the country. Associates' experience and special skills include medical, pharmacological, laboratory counseling, employee assistance, and employee development and training. Bensinger, DuPont & Associates has been one of the principal consulting resources for the public utility industry in general and the nuclear power industry in particular. Clients have included Commonwealth Edison Company, Georgia Power, Boston Edison, Northeast Utilities, Niagara Mohawk Power Corporation, Southern California Edison, Illinois Power, Public Service Electric & Gas, Virginia Electric Power Company, Florida Power & Light, Union Electric, as well as Carolina Power & Light. Bensinger, DuPont & Associates in addition has been retained by the Edison Electric Institute and provided consultation services to the

Institute of Nuclear Power Operations. Among utilities, Bensinger, DuPont & Associates has conducted training sessions at over 20 different nuclear power plants. Bensinger Affidavit, ¶¶ 1, 4.

Bensinger, Dupont has provided policy consultation to CP&L, input to and review of CP&L's routine supervisor drug awareness training, and in 1984 special refresher training to all CP&L management and supervisory personnel at CP&L's nuclear facilities and headquarters locations. The management training was provided by Mr. Bensinger, and the on-site training by his associates Mr. Glasco and Dr. Bucher, who have had extensive experience in the substance abuse field and particular experience in providing training at nuclear power facilities.

Bensinger Affidavit, ¶¶ 6, 11.

In addition, as noted previously, CP&L has utilized the best available chemical testing techniques for its outside laboratory drug screen urinalyses, and has employed the expertise of canine detection services, trainers in aberrant behavior, and law enforcement agencies.

The Daniel supervisory training program was developed from information provided by Federal and local law enforcement agencies, medical doctors and pathologists, and the training content has been reviewed for accuracy by law enforcement experts and medical doctors. Pannill-Flowers Affidavit, ¶ 7.

As is apparent from the affidavits filed in support of this motion, CP&L and Daniel also have in-house expertise in support of their drug abuse control efforts. Mr. Ferguson and Mr. Pannill, the personnel managers for CP&L and Daniel at the Harris site, both have experience and training in drug abuse prevention. Ferguson Affidavit, ¶ 1; Pannill-Flowers Affidavit, ¶ 1. Mr. King, the Supervisor of CP&L's Construction Security Unit, has extensive civilian and military law enforcement training and experience, including assignments in narcotics investigations and undercover operations. King Affidavit, ¶ 1 and Attachment A. Mr. Flowers, who developed Daniel's corporate drug abuse policy and supervisor drug awareness training, and who has trained supervisors at Harris, also has narcotics investigation experience in civilian law enforcement, as well as law enforcement training. Pannill-Flowers Affidavit, ¶ 2 and Attachment B.

Significantly, Applicants' motion is supported by the Affidavit of Peter B. Bensinger, President of Bensinger, Dupont and Associates. Mr. Bensinger served as Administrator of the United States Drug Enforcement Administration, appointed to this position in January of 1976 by President Gerald R. Ford and confirmed by the United States Senate, serving over five and a half years under four different Attorneys General as director of this major federal investigative agency. The Drug Enforcement Administration is responsible for enforcement of

U.S. narcotic and dangerous drug laws and has 4,000 employees in 160 offices in the United States and 40 foreign countries. As Administrator of the Drug Enforcement Administration, Mr. Bensinger was responsible for criminal investigations, laboratory services, intelligence, training for federal, state and local law enforcement, and regulation of the legal manufacture of controlled substances for legitimate medical use. Bensinger Affidavit, ¶ 2.

Prior to his appointment as Administrator, Mr. Bensinger served as Director of Corrections for the State of Illinois, Chairman of the Illinois Youth Commission, and Executive Director of the Chicago Crime Commission. He has served as a principal delegate to INTERPOL for the United States in 1979, has served on the Executive Committee of the International Association of Chiefs of Police, and been Chairman of this 12,000 member police organization's Narcotics and Dangerous Drug Committee. Mr. Bensinger has extensive experience in the problems of drug abuse within the nuclear power industry. Bensinger Affidavit, ¶¶ 3, 5.

Mr. Bensinger was asked to assess the allegation in CCNC Contention WB-3 that CP&L management has failed to control drug use during the construction of the Harris plant. His affidavit is based not only on his broad experience in the field of substance abuse in the work place, but also on his past work with CP&L and the Harris Project. More recently, in response to the

allegations made by CCNC, Mr. Bensinger met with CP&L Security and Harris Project management personnel to review the current status of efforts by CP&L and its contractors to control drug use at the site. He also reviewed the information provided in the other CP&L and Daniel affidavits filed in support of this motion. Finally, Dr. Richard Bucher, Manager of the Bensinger, Dupont Washington office, recently visited the site in order to advise Mr. Bensinger on the actual implementation by CP&L and Daniel of their drug abuse policies, procedures and programs. Bensinger Affidavit, ¶ 6.

Mr. Bensinger describes the elements of a multi-phased program implemented by companies which in his experience have faced up to the reality of drug abuse and determined to deal with the issue. These elements include:

- (1) distribution to all employees of a clear company policy on drugs;
- (2) providing management with clear orientation and training on the issue of substance abuse in the workplace and the need for management intervention;
- (3) providing training to supervisors on the recognition and warning signs of drugs and alcohol;
- (4) maintaining close liaison with local law enforcement for undercover investigations;
- (5) deployment from time to time of canine units for searches of nuclear power and construction site facilities;
- (6) maintaining consistency of discipline and denial of access for employees who appear to have violated company or construction-site rules with respect to drugs and alcohol;

- (7) initiating pre-employment and fitness-for-duty testing of employee body fluids for prohibited substances as a method of reinforcement of company policy.

Bensinger Affidavit, ¶ 9.

Mr. Bensinger found that all of these principal initiatives were undertaken for the Harris Project, and that these efforts conform to the Edison Electric Institute's Guide to Effective Drug and Alcohol Policy Development and to the training and seminars provided by EEI. Bensinger Affidavit, ¶ 10. Mr. Bensinger's Affidavit states:

14. Our assessment of CP&L's drug abuse and control procedures in place at the Harris Project is that they meet the needs and standards of the industry; that the policies are in keeping with the Edison Electric, INPO and Nuclear Regulatory Commission guidelines; and that CP&L has sought qualified expertise to assist in policy assessment and development and has reached out for consultation and training expertise to assist in briefings to management, training for supervisors, communication programs to contractors, and testing for fitness for duty and pre-employment purposes.

15. Our assessment of security measures finds that the Company has taken initiatives, including canine searches, liaison with local law enforcement, and utilization of undercover investigations in full cooperation with law enforcement, to address the drug abuse and sale threat at the site. The CP&L Supervisor of the Construction Security Unit (Mr. King) has a professional background and experience in law enforcement and narcotics investigations. A review of confidential files, investigative data, search procedures and the Quality Check program reflects professional and thorough documentation of incidents and

allegations, and appropriate investigative and preventative security actions.

16. The effectiveness of the contractors' training and supervisory methods to address drug control at the construction site have been reviewed by our senior associate and Washington manager, Dr. Richard Bucher. It is our judgment that the contractors' initiatives meet or exceed standards in other nuclear power plant locations and meet the need to address the threat of drug and alcohol abuse at the construction site.

17. The training program for supervisors at Harris is comprehensive and has involved active participation from supervisory members with trainers on location. Such training program will continue with updated awareness programs. It is my judgment that the training provided to the supervisors on identification of the symptoms of drug abuse enable the supervisors to recognize unusual behavior and to initiate intervention prior to the worker becoming so impaired that he would compromise safety-related work.

In short, Mr. Bensinger concludes that CP&L has taken specific and appropriate actions to control drug use and other drug activity on the project. Bensinger Affidavit, ¶ 19.

G. Extent of Drug Abuse Among Site Employees

The Harris construction site reflects the problems of society and has required to date over 26,000 personnel who have worked on the project. As is the case with other construction locations in the United States, individuals will bring drugs to the workplace in spite of the best efforts of the construction

site management and the owner utility. Bensinger Affidavit, ¶ 9. See also id. at ¶ 18 (drug abuse in government, including the FBI and DEA).

For this motion, a review has been made of Security, CP&L and Daniel records to provide an assessment of the extent of drug activity among employees at the Shearon Harris site (CP&L, Daniel and/or other contractor employees) since February, 1978, and through June 24, 1985. Thirteen employees have been identified for whom it was established that drugs were being used on the site. None of these employees worked for the Quality Assurance, Quality Control or Construction Inspection organizations. When considering the positive results of the drug screen urinalysis test (which would indicate that a drug or drugs had been consumed, but not that the drug(s) necessarily had been consumed on site), the total number of employees identified as consumers of drugs (whether on or off site) is 31. In addition, a list has been compiled of the site employees, including the above, who have been confirmed or suspected, on reasonable cause, of drug activity. That number is 173 employees. To illustrate the relatively low (conservative) standard for including personnel in this total, the group includes employees who refused to take the drug screen test and in some cases workers who failed to report drug activity within the work group. It cannot be concluded with certainty that such individuals consumed drugs on the job or engaged in any

drug activity. King Affidavit, ¶ 12. Each of these 173 employees has been terminated or removed from the site (in the case of some contractor personnel). Hindman Affidavit, ¶ 6.

Applicants do not have information which would support CCNC's speculation that drug use at the Harris plant is widespread. The results of the two-month undercover operation by two professional law enforcement officers do not confirm this allegation. Applicants also note the observations by workers, in the newspaper article filed by CCNC, that they saw little evidence of drug use on the job. Finally, Applicants are confident that the numerous and diverse means employed by CP&L to identify drug activity at the site would have provided corroboration by now if drug use at the site was in fact widespread. King Affidavit, ¶ 13.

Mr. Bensinger finds that the drug use at the Harris plant that has been identified by CP&L, its contractors and law enforcement represents, as a percentage of the site work force, less than one-eighth of the national work forces' percentage of drug abusers. The statistics identified are not out of line with other construction sites, and are significantly below the national average of drug use and abuse among the working population. In addition, Mr. Bensinger finds the outstanding industrial safety record at the Harris project to be a key indication of a low rate of substance abuse.^{8/} Bensinger

^{8/} For example, the Daniel Construction Company and its subcontractor (Davis Electric Company) have a 0.77 incidence of

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Affidavit, ¶ 13.

H. Assuring the Quality of Plant Construction

CCNC Contention WB-3 alleges that Applicants have failed to re-inspect all safety-related work done by known drug abusers. CCNC defines a "drug abuser" as "someone who consumes an illegal drug." "This definition does not include sale or other activities." ^{9/} Answer to Interrogatory 21, "Conservation Council's Answers to Applicants' Discovery Requests on Contention WB-3 (Drug Abuse)," dated May 24, 1985. If a drug abuser's work is independently inspected at least once under the Quality Assurance program, there is no reason why a second inspection should be conducted unless the independent inspector also is a drug abuser.

(Continued)

lost workday accident cases per 200,000 workhours for the six month period ending April, 1985. By comparison, the North Carolina State Department of Labor, Injury Statistics [1983 - Construction (latest available date)] show a 4.7 incidence of lost workday accident cases per 200,000 workhours for heavy construction in North Carolina. The national average - Construction 1984 Edition "Accident Facts National Safety Council" - for heavy construction is 3.5. Additionally, the Harris project has experienced no fatal accidents. Hindman Affidavit, ¶ 8.

^{9/} Consequently, the eight workers arrested in January, 1985, and discussed in the newspaper article are not drug abusers within the meaning of this allegation.

Consequently, Applicants explain first why the Quality Assurance program at the Harris Project provides reasonable assurance that any deficiencies in safety-related work by any employees impaired by drug use have been identified and corrected. Then we discuss the extent to which employees with quality confirmation responsibilities may have been involved in drug activity, and the steps taken to confirm the quality of their work.

1. The QA Program

Applicants' Quality Assurance program for the construction of the Shearon Harris Nuclear Power Plant was approved by the NRC prior to its implementation. That approval included a finding that the program complies with Appendix B to 10 C.F.R. Part 50, Criterion XVI of which requires that "[m]easures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected." Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-78-4, 7 N.R.C. 92, 107-109 (1978).

The Quality Assurance program at the Harris Project provides the necessary steps to ensure that a safe and reliable power plant is constructed in accordance with design requirements. Responsibility for achievement of quality lies with the

individual responsible for the accomplishment of the work. However, confirmation of that quality is accomplished by five basic groups. Namely:

- a. First Line Craft Supervision;
- b. Independent Inspection Organizations (Quality Control and Construction Inspection);
- c. System Walkdowns and Start-Up Testing;
- d. Surveillance and Auditing Organizations (Site Quality Assurance and Corporate Auditors); and
- e. Outside Agencies (NRC, Authorized Nuclear Inspector (ANI), various assessment groups (e.g., CAT, SALP, ASME, etc.)).

This five-tier approach provides sufficient checks and balances to conclude that reasonable assurance exists that plant construction meets design requirements. Chiangi Affidavit, ¶ 4.

The first line craft supervisor is responsible for supervising work activities within his scope of responsibility in accordance with the design requirements. He is responsible for assuring that his personnel have the proper training, materials and information necessary to perform their work correctly. Performance of the craft and first line craft supervision is judged through the independent inspection program. Chiangi Affidavit, ¶ 5.

Safety-related component installation is inspected for conformance with project design requirements by an inspection organization independent of the organization performing the work. At the Harris Project, this function is performed by the

Quality Control (QC) Unit and the Construction Inspection (CI) Unit. The inspection organizations have established training programs to assure that their personnel are trained and qualified in their respective areas of responsibility. Ongoing training is utilized to maintain performance proficiency. In addition, inspection supervision periodically assesses inspector performance to identify problems that may occur during the performance of their inspectors so that appropriate corrective action can be taken. Chiangi Affidavit, ¶¶ 6, 7.

Each inspection is documented and the inspection results are reviewed by first line inspection supervision to assure that applicable requirements have been met. Deficiencies identified are forwarded to the craft for corrective action and tracked through satisfactory resolution. Chiangi Affidavit, ¶ 8.

CCNC is under the mistaken impression that the typical inspection addresses solely the adequacy of the paperwork involved and does not look at the actual work performed. Answers to Interrogatories 22 and 23, "Conservation Council's Answers to Applicants' Discovery Requests on Contention WB-3 (Drug Abuse)," dated May 24, 1985. This clearly is not the case. To illustrate the "hands on" nature of the inspections, Mr. Chiangi in his affidavit describes the checks and balances provided by the independent inspection program as it is applied to the installation of a piping system:

During piping installation, pressure boundary connections, such as welds and mechanical joints, are inspected by QC personnel. Welds are visually examined for compliance with specification and Code requirements. When required by specifications/Code, welds are also nondestructively examined by either QC or NDE personnel. (The NDE Unit reports directly to the Manager - QA/QC Harris Plant Section.) Verification that the correct material was installed, along with several other attributes, such as welder qualification, are also confirmed as being acceptable. Mechanical joints are visually examined during in-process installation and during a final inspection for attributes such as alignment, thread engagement, material used and application of correct torque. Valves are inspected by QC for quality attributes such as damage, correct orientation, flow direction and correct valve operator. Piping installations are further subjected to random inspections and monitoring by the ANI. Pipe supports are inspected by CI for quality attributes, such as geometry, location, configuration and material, with a visual examination of the welds being performed by QC. Equipment installations are inspected by CI for quality attributes, such as correct mounting, structural integrity, alignment and proper orientation; QC performs the weld inspection. Once the installation is complete, a pressure test is performed to verify system integrity. This test is witnessed by QC personnel who examine pressure boundary joints for leakage. The ANI also witnesses these pressure tests and monitors the inspections performed by QC. On most tests, he will also select a random sample of joints to examine himself.

Chiangi Affidavit, ¶ 10. This effort belies CCNC's concern that the quality confirmation process focuses upon paperwork.

The Quality Assurance Sub-Unit, which reports to the Director - QA/QC, is responsible for performing surveillances of

construction and inspection activities to assure conformance with site procedures and design. This is accomplished via a planned and systematic review of the documentation and checks of inprocess and completed work. Unacceptable performance/work is identified to the appropriate organization for corrective action and tracked through resolution. Chiangi Affidavit, ¶ 12.

The Performance Evaluation Unit (PEU), which reports through the Manager - QA Services Section to the Manager - Corporate Quality Assurance Department, performs systematic audits of the construction site to assure compliance with established programs and procedures. The audits typically include review of documentation, personnel qualification and observation of inprocess and completed work. Written audit reports provide management with the results of the audit and identify any nonconformances noted. Each audit which identifies a nonconformance is then followed up by the PEU to verify completion of corrective action. Chiangi Affidavit, ¶ 13.

There are several outside organizations which have performed major audits/evaluations of the construction site. The audits/evaluations and the organization that performed them were:

- a. The Systematic Assessment of Licensee Performance (SALP) - NRC;
- b. Construction Appraisal Team (CAT) - NRC;

- c. The Construction Project Evaluation - INPO; and
- d. The ASME "N" Stamp Certification Surveys - ASME.

The results of these audits/evaluations demonstrate that CP&L has an excellent QA program. For example, the Harris Project had the lowest number of findings of any CAT audit in the country, and the most recent SALP evaluation of the Harris Plant quality programs found that the programs had undergone significant improvement in staffing and organization leading to increased strength and effectiveness in the programs. Also, the Harris Project has been subject to three major ASME Code surveys. In each case, CP&L has successfully passed these surveys and has had the required "N" stamps to perform Code work renewed. Chiangi Affidavit, ¶¶ 16, 17.

System walkdowns by Construction, Start-Up and QA are conducted, following these inspections, to verify that the system is complete and no obvious deficiencies exist. Start-Up testing is also performed to verify that the system will function as designed during operation. Chiangi Affidavit, ¶ 11.

Cf. Answer to Interrogatory 23, "Conservation Council's Answers to Applicants' Discovery Requests on Contention WB-3 (Drug Abuse)," dated May 24, 1985 (CCNC's mistaken belief that preoperational testing does not challenge components to full plant operating conditions).

Because of the multiple checks of this detailed Quality Assurance program designed to identify safety-significant

deficiencies, there has not been a re-inspection of the work of every site employee implicated in drugs. In general, re-inspection efforts have been directed to the inspection personnel on whom Applicants' may rely for a final determination of quality. A technical evaluation has been performed, however, of the work by five engineering checkers of design work who were removed from the job for suspected drug activity. Their work was determined to meet design requirements. Chiangi Affidavit, ¶¶ 21, 30.

2. Quality Confirmation Personnel

As discussed earlier, 173 of roughly 26,000 site employees have been terminated or removed from the site at least in part because of suspected or confirmed involvement with drugs. The QA, QC and CI organizations have not been immune from this phenomenon, and the 173 figure includes 11 QC and 7 CI inspectors. Chiangi Affidavit, ¶ 22.

In his affidavit, the Manager of QA/QC at Harris discusses the bases for confirming the quality of work performed by these 18 inspectors, including the re-inspections conducted.^{10/} Chiangi Affidavit, ¶¶ 23-28. The reinspections were conducted pursuant to procedure CQA-7, "Evaluation of Program

^{10/} Some work was not re-inspected, either because it did not form the basis for the final determination of quality, or in one case because of test results. Chiangi Affidavit, ¶¶ 23, 27.

Effectiveness" (Attachment B to Chiangi Affidavit), which establishes sampling techniques that are based upon Mil-Std-105-D and acceptance criteria for inspector proficiency that were approved in Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-41, 20 N.R.C. 1203, 1209-10, 1232 (1984), aff'd, ALAB-793, 20 N.R.C. 1591, 1599 (1984). In all cases, the work re-inspected met the requirements of the procedure. Chiangi Affidavit, ¶¶ 21, 23-28.

In that approximately eleven hundred QA/QC and CI personnel have been employed at the Harris Project since 1981, Applicants do not consider 18 inspectors identified as confirmed or suspected of involvement with drugs to reflect a programmatic safety problem. Rather, the identification of these employees indicates that our stringent program for pursuing any allegations of drug activity among quality personnel is working. In addition, as discussed above, the inspectors' work is subject to yet further checks under the Quality Assurance Program, including: oversight by inspection supervision, QA surveillances of inspection activities, QA audits, audits/evaluations/inspections by outside agencies, system walkdowns and start-up testing. The results of the re-inspections undertaken support Applicants' conclusion that the QA/QC and CI personnel are performing effectively in their role in the overall five-tier Quality Assurance program. Chiangi Affidavit, ¶ 29.

IV. Conclusion

In its ruling admitting CCNC Contention WB-3, the Board stated that "[a] contention alleging widespread drug use at a nuclear power plant construction site does not lend itself to a high degree of specificity." Memorandum and Order (Ruling on Contentions Concerning Diesel Generators, Drug Use and Harassment at the Harris Site) at 6 (March 13, 1985). If this is true, the same may be said of Applicants' burden to meet the contention with dispositive evidence. In defending the quality of construction of a nuclear power plant against the broad-brush, unsubstantiated allegations of CCNC, Applicants can be no more specific than the contention itself. Discovery of CCNC gleaned no factual basis for the allegations in the contention other than the original newspaper article which accompanied it. That newspaper article by itself clearly does not call into question the safe operation of the Shearon Harris Nuclear Power Plant.

In the absence of any specific target at which to direct their case, Applicants have assembled, in support of this motion, a wealth of evidence which demonstrates the integrity of plant construction in spite of the acknowledged fact of drug activity by some site employees. Given our society's respect for civil liberties, it is not practical to expect that drug activity on a construction site -- as in every other workplace

in America -- can be totally eliminated. Nevertheless, CP&L has taken what experts in the field refer to as a "pro-active" posture by confronting and fighting the problems of substance abuse in the workplace. Part of the price of this active policy is the adverse publicity which accompanies its successful implementation.

Applicants have demonstrated that their policies, security measures, and efforts at educating and training employees and supervisors at the Harris Project reflect aggressive management efforts to control drug use during construction, contrary to the allegation in CCNC Contention WB-3. These same efforts provide reasonable assurance that Applicants have the capability to identify drug abusers. While the NRC has no standard against which to assess Applicants' drug control programs, they have been reviewed by Peter B. Bensinger, a nationally recognized expert on substance abuse in the work place. He has concluded that Applicants' efforts at the Harris Project meet or exceed industry standards, and that CP&L has undertaken all of the principal initiatives of an effective, multi-phased program to meet the drug abuse problem.

The drug activity identified among employees at the Harris Project does not reflect widespread drug use as CCNC contends. Assuming that each of the employees identified by Applicants as potentially involved in drug activity actually consumed drugs on the job, as a percentage of the site work force this usage

is very low and represents less than one-eighth of the national work forces' percentage of drug abusers. But the employees identified by Applicants include those who refused to take a drug screen test when asked to do so, some who tolerated drug activity by others in the work group, and those who sold or delivered drugs. None of these employees necessarily were consuming drugs on the job. Even those who tested positive during a drug screen were not necessarily consuming drugs on the site or impaired while at work. Mr. Bensinger's assessment is ". . . that the training provided to the supervisors on identification of the symptoms of drug abuse enable the supervisors to recognize unusual behavior and to initiate intervention prior to the worker becoming so impaired that he would compromise safety-related work." Bensinger Affidavit, ¶ 17.

The Quality Assurance program for construction of the Shearon Harris Nuclear Power Plant was approved by the NRC prior to its implementation, and has been effectively executed by CP&L. Under this program, confirmation of the quality of safety-related work is achieved through a multi-tiered, detailed system of checks and balances, which includes: first-line craft supervision, inspections by independent organizations, surveillances and audits by yet different independent organizations, evaluations and audits by outside agencies, system walkdowns and start-up testing. This QA program provides reasonable assurance that any deficiencies in

safety-related work by any employees impaired by drug use have been identified and corrected. In the few cases where inspectors themselves have been identified as potentially involved in drug activity, a statistically valid sampling of their work relied upon for final quality confirmation has been re-inspected and found to be acceptable.

For all of the foregoing reasons, Applicants' motion for summary disposition of CCNC Contention WB-3 should be granted.

Respectfully submitted,

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Dated: July 12, 1985