

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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))

AFFIDAVIT OF PETER B. BENSINGER

County of Los Angeles)
) ss.
State of California)

PETER B. BENSINGER, being duly sworn according to law, deposes and says as follows:

1. Currently I am President and Chief Executive Officer of the firm of Bensinger, DuPont and Associates, Inc., 20 North Wacker Drive, Chicago, Illinois 60606, 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 work place.

2. Prior to forming this consulting service with Dr. Robert L. DuPont, I 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, I 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.

3. Prior to my appointment as Administrator, I served as Director of Corrections for the State of Illinois, Chairman of the Illinois Youth Commission, and Executive Director of the Chicago Crime Commission. I have served as a principal delegate to INTERPOL for the United States in 1979, have 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. A vitae is provided as Attachment A to this affidavit.

4. Bensinger, DuPont & Associates is a national consulting firm which specializes in consultation services, training, audit and expert testimony dealing with the problems of substance abuse in 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 Co. of Chicago, 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 in

the United States, all of whom have received and are retaining licenses from the Nuclear Regulatory Commission.

5. As President of Bensinger-DuPont, I have provided expert testimony to Committees of the United States House and Senate, to the Federal Railway Administration and the Nuclear Regulatory Commission, and have been an expert witness at arbitration hearings and court proceedings involving the subjects of drug policy, drug testing, the health and safety hazards of drugs, and employer responsibilities. I have authored a monograph entitled "Drugs in the Workplace: Employers' Rights and Responsibilities," published by the Washington Legal Foundation in 1984, in addition to a number of articles published in the NEW YORK TIMES, WASHINGTON POST, CHICAGO TRIBUNE and HARVARD BUSINESS REVIEW on the subject of drug control and drugs in the workplace issues. I have represented the nuclear power industry in discussions with the Nuclear Regulatory Commission in conjunction with the Edison Electric Institute on fitness-for-duty issues. I was retained by the Edison Electric Institute as a principal keynote speaker during four regional conferences made available in 1984 to the utility industry in Los Angeles, Chicago, Atlanta and New York City, and have visited personally and conducted briefings and training sessions in over a dozen nuclear power plants in the United States, and for the largest nuclear utility companies with construction currently under way or recently completed.

6. The purpose of my affidavit is to respond to the allegations in CCNC Contention WB-3 that drug use at the Harris Plant is "widespread," and that CP&L management has failed to control drug use during the construction. My affidavit is based not only on my experience described above, but on the direct and personal knowledge I have of CP&L's efforts to control drug use on the Harris Project. As I describe in more detail below, Bensinger, DuPont & Associates has served as a consultant to CP&L on substance abuse. We provided input to and reviewed CP&L's Supervisor's Reference Manual on Drug and Alcohol Abuse and provided drug awareness training to CP&L management as well as to supervisors at its nuclear power facilities. More recently, in response to the allegations made by CCNC, I 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. I have also reviewed the information provided in the other CP&L and Daniel affidavits which respond to the CCNC contention. Finally, Dr. Richard Bucher, Manager of our Washington office, recently visited the site in order to advise me on the actual implementation by CP&L and Daniel of their drug abuse policies, procedures and programs.

7. I will first discuss the extent of the problem of drug abuse in the workplace and the elements of an effective corporate program to address this problem. I will then assess the programs in place at the Harris site to control drug use,

and assess the extent and significance of the identified drug use by employees at the Harris Project.

8. The national problem of drugs in the workplace is extensive. There are, according to the National Institute of Drug Abuse, over 22 million users of marijuana on a once-a-month basis, over 4 million users of cocaine at least once-a-month, and perhaps as many as 10 million abusers of prescribed medication. Drugs have invaded all of the workplaces in the United States.

9. The Harris construction site will reflect the problems of society and will require thousands of workers to complete the construction project. There are presently approximately 7,000 employees at this location, and over 26,000 have worked there since the project began. As is and has been the case with other construction locations in the United States, drugs and alcohol, and other contraband represent a serious threat to this location. Individuals will have brought such substances to their work assignment, regardless of the best efforts of the construction site management and the owner utility company. Companies that have faced up to the reality of this threat have implemented multi-phased programs to deal with this issue, including:

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

10. In the case of Carolina Power & Light, all of these principal initiatives were undertaken: supervisors were trained by professionals with respect to warning signs and symptoms of drug abuse; employees received the drug abuse policy and supervisors received guidelines with respect to the implementation of company policy; contractors were put on notice with respect to their own responsibilities regarding drug activity by contractor and the subcontractor employees; canine searches took place at Harris, as did undercover investigations, in concert with state and local law enforcement; fitness for duty testing and a top laboratory (Mead CompuChem), utilizing the most sophisticated and foolproof testing techniques available, was selected to provide chemical testing for pre-employment and fitness-for-duty purposes. All of these efforts, including a top commitment from management, conform to the Edison Electric Institute's guide for drug control

distributed in 1983 and to the training programs and seminars provided by EEI.

11. Bensinger-DuPont & Associates has provided policy consultation to CP&L and provided supervisory training to all CP&L management and supervisory personnel at their nuclear facilities and headquarters locations. The program included a meeting with top management; briefings to security, employee relations and nuclear power plant management personnel; development of a supervisory training manual and a reference booklet for supervisors; and on-site training by Bensinger-DuPont Associates Mickey Glasco and Dr. Richard Bucher, who have had extensive experience in the substance abuse field and particular experience in providing training at nuclear power facilities, including those operated by the Georgia Power Company and the Virginia Electric Power Company. Training included a review of CP&L drug and alcohol policy by CP&L officials, an awareness presentation by Bensinger, DuPont experts and discussion of CP&L resources available to assist management in implementing this program. The awareness portion of the presentation, which has been used by 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. An outline of the training material used for the supervisors is Attachment E to the Affidavit of John D. Ferguson.

12. As should be readily noted, nuclear construction sites have experienced and documented a number of drug investigations. Such investigations reflect not an abnormal amount of drug use at the construction site per se but reflect additional efforts and initiatives undertaken by companies and law enforcement to arrest such use and abuse. For example, arrests for drug use and sale have been made at the following nuclear power sites:

- Plymouth (Boston Edison Company)
- Salem (Public Service Electric & Gas)
- Surry (Virginia Electric Power)
- Hatch (Georgia Power)
- Zion (Commonwealth Edison)
- LaSalle (Commonwealth Edison)
- Diablo Canyon (Pacific Gas & Electric)
- San Onofre (Southern California Edison),

to name just a few locations. The Harris construction site, like others throughout the United States, has experienced drug use and sale incidents.

13. Drug use at the Harris plant that has been identified by CP&L, its contractors and law enforcement over the last several years 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 significantly below the national average of drug use and abuse among the working population. In addition, the industrial safety record at the Harris project, discussed in Mr. Hindman's affidavit, is outstanding. This is a key indication of a low rate of substance abuse. The

identified drug use at Harris reflects initiatives taken by management and law enforcement to identify users and sellers, reflects intervention, and has enabled the Company to take the opportunity to recheck and identify any safety or security voids that may have been caused by such identified individuals.

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.

18. The fact that ongoing abuse or use has been reported as a result of an undercover investigation does not discount the contractors' and CP&L efforts. It would be of far more concern if there were no initiatives undertaken by companies with local law enforcement or through intervention by management disclosing such use and abuse. In government, as well as in industry, violations of drug policy and the abuse and sale of drugs have taken place, including within the last several months the arrest of FBI agents for the sale of cocaine, of DEA agents for the use of controlled substances, and of postal

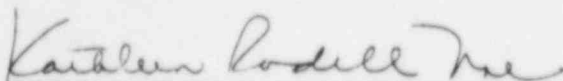
workers for drug distribution. Companies and government agencies should take a proactive stance, providing education, training, and also employee assistance as well as security measures, drug testing, canine searches and undercover probes. In this regard, the CP&L Employee Assistance program has been established and a top professional is on staff who has visited principal nuclear power plant and construction site facilities to increase employee awareness about this program.

19. Our judgment, after on-site review of the contractor training program, and our familiarity with practices within the nuclear power industry and at other utilities and construction sites specifically, is that the Harris drug control efforts have met or exceed the industry standard and reflect the practices and experiences, as well as problems, found in other locations. CP&L's training program for supervisors to identify warning signs and symptoms of drug use and aberrant behavior, combined with the Supervisor's Reference Manual, the briefing to top management and Harris Plant supervision, professional health and safety presentations with interaction and question and answer sessions with supervisory personnel by experts on substantive abuse, pre-employment and fitness for duty testing, contractor notification and specific supervisor training, canine searches and undercover investigations, and the Quality Check program, represent the critical initiatives necessary to surface and arrest drug use and abuse in the work place. In conclusion, I find that the drug use identified at the Harris

site is not widespread as CCNC contends, and that CP&L has taken specific and appropriate actions to control drug use and other drug activity on the project.


Peter B. Bensinger

Sworn to and subscribed before me
this 10 day of July, 1985.


Notary Public

My commission expires: 9-5-87



BIOGRAPHY

of

PETER B. BENSINGER
Bensinger, DuPont & Associates

Peter B. Bensinger is President of Bensinger, DuPont & Associates, a professional consulting firm providing services to private industry, national and community organizations, professional sports, and government on drug abuse policy.

Prior to forming this consulting service with Dr. Robert DuPont, Bensinger served as Administrator of the United States Drug Enforcement Administration. He was appointed to this position in January of 1976 by President Gerald R. Ford and was confirmed by the Senate, serving over 5-1/2 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. The Administrator of the Drug Enforcement Administration is 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. During Bensinger's tenure, heroin overdose deaths decreased from 2,000 a year in 1976 to 800 in 1980, while heroin imports fell from 7 tons to under 4 tons per year. Legislation enacted in 1978 provided for the forfeiture of assets derived from illegal drug trafficking to be seized by the government.

Prior to Bensinger's appointment in Washington, he served as Director of the Illinois Department of Corrections with direct responsibility for all penitentiaries, reformatories, training schools, and parole supervision. During this period he was elected by directors of other state prison systems as President of the Association of State Correctional Administrators. He has served as Chairman of the Illinois Youth Commission, Chief of the Crime Victims Division of the Illinois Attorney General's Office, and as Executive Director of the Chicago Crime Commission.

Bensinger held responsible positions with the Brunswick Corporation from 1958 to 1968, serving as General Sales Manager for Brunswick United Kingdom in London, England, as General Sales Manager for Europe in Frankfurt, Germany, and as General Merchandise Manager of Brunswick International in Chicago.

He was a principal delegate to Interpol for the United States in 1978, was appointed by the International Association of Chiefs of Police to serve on the Executive Committee of this 12,000 member police organization, and was Chairman of its Narcotic and Dangerous Drug Committee. He has been honored by the National Sheriffs Association with Honorary Life Membership and has received honorary Doctor of Law degrees from San Marcos University in Lima, Peru, and Dankook University in Seoul, Korea, for outstanding leadership in international drug control.

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Bensinger, DuPont and Associates have provided consultation and training services to American Airlines, Boise Cascade Corporation, E. I. du Pont de Nemours & Company, Commonwealth Edison Co., the F.B.I. National Academy, Georgia Power, Norfolk Southern Corporation, Edison Electric Institute, Airport Security Council, American Gas Association, Times Mirror, national associations of parents groups, hospitals and health providers, and major companies in the pharmaceutical, energy, transportation, construction and computer fields. Both the Senate and House of Representatives have sought Mr. Bensinger's testimony, and he has lectured widely throughout the United States on the subject of drug control, drugs in the workplace, and the need for consistency in corporate and government policy. He has authored a number of articles published in the New York Times, The Washington Post, Chicago Tribune, and in other national and international publications on law enforcement and drug abuse, and has appeared on network evening news programs, the Today Show, Good Morning America, Issues and Answers, the MacNeil-Lehrer Report, and Nightline. The November-December 1982 issue of the Harvard Business Review featured a Special Report by Bensinger on "Drugs in the Workplace," and he has been quoted on this subject in 1983 and 1984 cover stories in Time, Newsweek, U.S. News and World Report. Mr. Bensinger authored a monograph published by the Washington Legal Foundation in 1984 entitled Drugs in the Workplace: Employers' Rights and Responsibilities.

Mr. Bensinger has been awarded the Distinguished Service Medal from the Government of Peru. He has been the recipient of the U. S. Distinguished Service Award from the Coast Guard, the highest award presented to a civilian, and has received special commendation for outstanding leadership in equal employment opportunity from the Department of Justice. The John Howard Association awarded Bensinger its highest recognition for outstanding service in the field of corrections in 1971. He was Man-of-the-Year for the Spanish-American Congress of Chicago in 1975 and was awarded the Distinguished Alumni Service Award by the Chicago Latin School in 1978. Mr. Bensinger has served on the Board of Trustees of many civic and professional organizations, including the Phillips Exeter Academy, the National Council on Crime and Delinquency, the American Correctional Association, the Juvenile Protective Association, the Chicago Council for Community Services, the City Club of Chicago, and the American Bar Association's National Commission on Corrections. He has been a member of the Visiting Committee on the Humanities of the University of Chicago and a member of the Illinois Law Enforcement Commission. In 1981 he was General Chairman of the Boy Scouts of America Explorer Scouts National Law Enforcement Conference. From 1973 until 1985, Bensinger has represented the United States Attorney General on the six-member Board of Directors of Federal Prison Industries, Inc., a \$150-million government corporation responsible for industry in the Federal Penitentiary System.

Mr. Bensinger, a graduate of Yale University, was born in 1936 and speaks French, Spanish, and Italian. He is married to a physician, Judith S. Bensinger. They have four children.