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Re: Feedback on Draft REGDOC-2.2.4 – Fitness for Duty

I have worked in the field of alcohol and drug policy development and implementation since the mid 1980's. This included work with the nuclear industry on several occasions, and work with Commission in 2011 supporting their consultation prior to the development of these regulations. The comments and suggestions below result from over thirty hears of hands on experience, including work with employees, unions, supervisors, management teams, and government agencies, as well as direct involvement in key legal cases addressing workplace alcohol and drug issues in Canada.

1.2 Scope and 4.1 Safety-sensitive positions

The scope of coverage appears somewhat unclear. This appears to be strictly governing the high security sites, and would not cover such other operations or areas of support as mining, transportation, waste disposal etc. Also, it does not appear to cover contractors doing construction, repair and maintenance work at a mine or power plant. However, it appears 4.1 item 4 would allow individual licensees to simply broaden coverage as they choose.

Consistent with other regulations covering fitness for work and alcohol and drug rules, as well as testing requirements (U.S. based), I would recommend the regulations be clear on exactly which classes of work are either covered or not covered by the regulations so that there is consistency in the application of what will ultimately be a legal requirement for all licensees governed through these regulations. Then if licensees want to extend their individual policies to cover additional positions, it would be under their own authority and not ad hoc under the umbrella of the regulations. Leaving 4.1.4 open-ended could lead to inconsistency in application of these legal requirements if some sites pick certain positions for regulatory coverage and others do not. All US regulations governing alcohol and drug issues and testing are absolutely clear on which locations and which positions are mandated for compliance; beyond that the facilities can set their own rules outside of the regulatory framework.

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Will the Commission be providing any further guidance on the risk-informed analysis so there is consistency in application from site to site? Again, if there are mandatory regulations on testing and other specific requirements, would it not be prudent to ensure application is consistent across the board as opposed to leaving it to individualized decision making from site to site?

I note that 10 CFR Part 26.3 of the U.S. nuclear regulations is much more specific as to coverage. In addition, in Part 26.4 governing program applicability, it is again much more specific as to the positions which are directly covered by the regulations and those that are not. If section 4.1.4 in the Canadian proposal is intended to leave application open ended, I wonder how compliance with the regulations can be adequately monitored by the Commission.

Finally there does not appear to be direction on how the licensees are expected to ensure contractors doing safety-sensitive work are also held to these standards. Not understanding the system, I do not know if contractors doing work at a nuclear facility are indeed subject to CNSC regulations directly, or whether this is direction that comes through the licensee. In Canadian programs, it is normal practice not to hand an employee policy to contractors, but legal health and safety obligations do extend to the work of contractors, so direction should be provided on how licensees are expected to ensure contract workers are held to these same standards, even though they may not be regulated by the Commission. This would include contract work at the licensed mine sites as well, if they are in fact covered by these proposed regulations.

3.1 Policy Statements

With the significant increase in availability and use of mood altering substances, for example synthetic marijuana, 'bath salts' etc., in the last several years, it would be important to broaden the prohibitions in #2 and #3 to also reference mood altering substances. This is now standard practice in workplace policies across Canada and reinforces the fitness for work mandate. Many of these substances are legal yet equally impairing if not more so in many cases. Although the overall approach in the regulations is clearly fitness for duty, missing this additional factor may limit the overall intent of the program. The standard definition is:

Mood Altering Substances refers to any product that is legally or illegally used, resulting in cognitive or physical limitations that negatively impact performance on the job (e.g. synthetic marijuana, "bath salts", doda, solvents, inhalants and other similar products).

> #2: prohibit reporting to work or remaining at work under the influence of alcohol, illicit drugs, or other mood altering substances

#3 prohibit bringing, possessing or consuming alcohol, illicit drugs or other mood altering substances, drug paraphernalia…etc.

3.4 General fitness for duty process - guidance

This section says: "Prior to a directed referral based on observed behavior, a fitness for duty screening should be conducted." I agree that an investigation is proper and consistent with legal rulings. This may result in a variety of referral options, including a decision on a reasonable cause test. However it should be clear that if there are objective grounds to believe the individual is unfit due to the use of alcohol or other drugs, the referral would be for a test, and not for a medical assessment or counseling through an EAP.

So I suggest it should be clarified that those subject to these regulations should have in place: "Processes should identify the conditions that will warrant for cause testing decisions." This is separate and distinct from the other referral options and consistent with your "for cause" reference in the testing section.

3.5 Access to assistance – guidance

I would recommend the guidance stress "…to workers who have any personal problems that could adversely…" In this way there is no assumption it is limited to alcohol and drug problems. I know this is likely not intended, but often people conclude when the EAP is referenced in a document like this, it is just for alcohol and drug issues. In fact, people may access the service for many other personal issues. And note, there are occasions where people access help for a personal problem (e.g. financial, stress at home), when it is determined through the counseling sessions that alcohol or drug problems are an underlying factor.

3.6.1 Peer observation and reporting

Hopefully there would be clarification on how this situation should be reported, as union workers will be hesitant to get involved, yet must understand that there are safety issues, as well as issues affecting the health of the individual. In addition, there is an opportunity to work with the unions on the development of peer prevention programs that may guide workers to get the help they need at an early stage before their actions impact the health and safety of themselves or others. This would be different than a situation where the worker is currently unfit on the job and presenting a safety risk.

3.6.2 Supervisor awareness program

The outline of awareness training components is good. I would recommend that the regulations make reference to periodic refresher training as too often the training is done once at the initiation of the policy and then put on a shelf. It is important to refresh, revisit, and refine as experience in implementation is gained.

Also it says training is to cover unfit contractors but throughout the document it is not clear how and when contract personnel are covered.

3.7 Assessment and Continual Improvement

Will the Commission be performing an audit function to ensure these activities take place, and gain information from the trend analysis for continuous improvement of the overall program? Is there going to be an annual reporting requirement on test results? Other program parameters? The audit and reporting requirements set out by the U.S. government are very specific and allow the various agencies to ensure compliance.

3.8 Training, Education and Awareness

I would recommend in bullet 3 that the reference be extended not only to cover EAP services (which are broad based beyond just alcohol and drug issues), but also to cover the assessment and referral services provided through the organization if someone requests help specifically for an alcohol or drug problem through management or occupational health. In Canadian programs, this would be through a formal referral for a Substance Abuse Professional (SAP) assessment.

Bullet 6 is concerning. This implies that the trainer is going to coach people on how to "beat" a drug test. I have trained thousands of supervisors and employees across Canada over several decades, and at no time would that ever be part of a course. Employees are advised they must be fit for work when using medications. They are also advised that legitimate use of medications will not result in a positive test result. Although a limited number of medications may be identified in the laboratory testing process looking for illicit drug use there is another step in the process. The confidential discussion with the qualified and certified Medical Review Officer (MRO) would result in the lab positive being overturned for legitimate medical reasons. But to provide training on factors that could affect a test result does not make sense and in fact is unnecessary – it is the information covered in bullet 5 that is key. In addition, I don't know how any trainer would have the knowledge base to draw from to begin to provide that information in association with test results, without formal training as an MRO.

4.1 Identification of safety-sensitive positions

My concerns regarding the need to expand and be more specific regarding coverage of these regulations is found on page 1 of this submission.

4.6 Alcohol and Drug Testing

4.6.1 Pre-placement testing: First, it should be clear in the regulations that the test is one condition of qualification for a safety-sensitive position, but there is nothing here saying failure to pass the test means the individual did not meet the requirements for the position; it just says they have to 'submit to' a test. And within what timeframe does the test have to have been passed prior to assignment to a site? And are there provisions to waive the requirement if the applicant passed a test within a specific period of time for a position at another facility that meets the same rigorous testing standards? Some direction is needed.

Also, the Ontario Court of Appeal ruling in Imperial Oil/Entrop made it very clear that any testing of an applicant, whether an external hire or internal transfer, must be a final condition of qualification for the position, and must be part of an overall qualification process that includes more than just the test. And the regulations should be clear that the internal applicant is transferring from a non-sensitive to safety-sensitive position. There is normally no testing required for anyone already holding a safety-sensitive position who is transferring to another safety-sensitive position at the same or another facility. That may have been the intention but the wording is not clear.

If this is a regulated requirement, then the regulations should also be clear on the consequence for failure. What is proposed to prevent drug users who fail the test from hopping from one licensee to another and not addressing any personal issues associated with alcohol or drugs? A rational solution to this comes from the US experience. In the transportation sector, if someone fails a test at the applicant stage, they are still referred for a SAP assessment (at their own cost) and must follow through if they want to continue as a driver, pilot etc. with the same company or a new entity. If a new company considering them for employment, they must not only ensure the individual passes the drug test (alcohol is optional) before assignment, but must also check with previous employers or potential employers over a designated number of prior years to determine if there had been a violation within that period, and if yes, ensure the assessment and treatment process was followed, and any unannounced testing plan also is being followed.

This type of back check is also an integral part of the US nuclear program as set out in Part 26.69 where a five year back check on employment history is required.

4.6.2 For Cause testing: I understand that the intention is that reasonable cause and post incident testing are two separate routes of investigation. However having developed or revised hundreds of Canadian policies, I have never seen them collapsed into the same category and in fact see a inherent danger in interpretation of the Commission requirements when the licensees move to develop and implement their policies.

You will also note in the U.S. Nuclear Regulatory Commission's regulations 26.31 on testing, that these two circumstances for testing are clearly differentiated.

> *(2)* For cause. *In response to an individual's observed behavior or physical condition indicating possible substance abuse or after receiving credible information that an individual is engaging in substance abuse, as defined in § 26.5;*
>
> *(3)* Post-event. *As soon as practical after an event involving a human error that was committed by an individual who is subject to this subpart, where the human error may have caused or contributed to the event. The licensee or other entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event whose actions likely did not cause or contribute to the event. The individual(s) who committed the human error(s) shall be tested if the event resulted in—*
>
> And then the specific testing triggers are listed.

Concern #1: Historically in Canada there have been debates as to whether, in a post incident investigation which may result in testing, the investigator must also have reasonable cause to believe alcohol or drug use was a factor, and some have argued only in that situation would testing be required. Although this has been through numerous legal challenges with the results confirming that these are two separate avenues of investigation, there still may be challenges to individual licensees if this is not totally clear in the regulations.

Otherwise it may be concluded that 1) the incident requiring testing must first be identified, and then 2) the investigator must have reasonable cause to believe someone is under the influence of alcohol or drugs before making the decision to test. In the best of circumstances it is very difficult for a supervisor or manager to determine if someone is under the influence of alcohol or drugs at any point in time, and in the wake of a serious incident, that determination is even more difficult.

As such I would strongly recommend that these two lines of investigation that may lead to a decision for testing be set out in the regulations as being separate and distinct, and not under the one umbrella of "for cause". That term is well recognized under Canadian policies as a "reasonable cause" situation and should not be mixed with a post incident investigation which is a separate decision process.

If the Commission feels the two distinct categories of testing requirements must be presented in one collapsed section, I would strongly recommend that you add to the guidance section the following:

"Significant incidents refer to a subset of incidents that have safety significance. See the definitions of "incident" and "safety significance". In the case of a post incident test, the investigator does not need to determine if alcohol or drugs were a contributing factor. The significance of the incident itself will form the basis of the investigation and decision to test."

Concern #2: The post incident testing requirements lack specificity when it comes to identifying the incidents that require testing to comply with these regulations. I recognize "incident" and "safety-significance" are defined later in the document. But I would be interested in the feedback from the licensees themselves as to whether these definitions provide sufficient concrete direction on events that would require testing – particularly in that their actions will likely be audited for compliance.

In my view, it would be important to leave no ambiguity on the part of employees, unions and supervisors as to when testing is required, and in that way, the Commission through its program audit can confirm that the regulatory requirements are in fact being complied with. Otherwise there could be inconsistencies in the decision making from location to location, and I expect an extensive number of unnecessary and expensive grievance hearings to determine what in fact is allowable. The Commission has the regulatory authority to clearly set out their minimum expectations if they are in fact requiring post incident testing in certain situations. This decision should not be left to arbitrators, who even then may not provide consistent direction from one location to the next.

All of the U.S. regulations requiring alcohol and drug testing after a significant incident have been clear on the regulated situations requiring testing. The regulations covering the nuclear industry are no different. Specifically they set out the requirements for post incident testing in Section 26.31 (c) (3).

I believe any additional direction and/or guidance in this area for Canadian facilities will help licensees understand at a minimum when they must test and that they are required keep records of the testing that was done. Should any facility want to conduct post incident testing in other circumstances, they would do this under their own authority and not under the regulations.

4.6.3 Follow up alcohol and drug testing: It is standard practice in Canadian programs to implement follow-up unannounced alcohol and drug testing as a monitoring program for anyone returning to work in two distinct situations:

1. As a condition of return to work in a post violation situation as set out in an individualized agreement which is clear on the consequences of a further violation. The individual may not have a dependency but simply be a recreational user. If employment is continued unannounced testing is part of a return to duty program tied to managing safety risk.

2. As one part of a broader monitoring program recommended by the Substance Abuse Professional in a post treatment situation for anyone determined to have a dependency with the aim of supporting ongoing recovery. This may result from a post positive/post violation SAP assessment that concludes there is a dependency, and recommends unannounced testing. It may also result from a voluntary request for assistance with an alcohol or drug problem where the SAP recommends unannounced testing again, to support ongoing recovery.

Because it is standard practice in any post violation situation that does not result in termination of employment, to make a referral for an assessment by a Substance Abuse Professional (not an EAP referral), the SAP will make unannounced testing recommendations whether the final determination is recreational use, abuse requiring education or counselling, or dependency. The duration and frequency of required testing will reflect the result of their assessment. This is not the role of the EAP.

In addition, it is standard practice that before any individual in either of these situations returns to the job, they are required to pass a "return to duty" alcohol and drug test; failure to pass the test means they have not been cleared to return to work. This step is not evident in the draft regulations. Nor is the requirement for testing in a post violation situation as noted above. The Licensee now has an individual who clearly presented a safety risk by being on the job in violation of the fitness for duty standards, and to put them back on the job without any kind of monitoring could be seen as blatant disregard for safety (reference the Criminal Code Bill C45).

Non-sensitive positions: Normally post treatment or post violation monitoring programs are not limited to safety-sensitive positions. For non-sensitive positions, is determined on a case by case basis as a condition of continued employment and/or as a part of a monitoring program to support ongoing recovery on return to work. Dependencies are not limited to safety-sensitive work, and people who make decisions that may affect safe operations should also be fit for work and have the support of a relapse prevention program on returning to the job. Although not mandatory, that guidance should be provided.

Frequency of Unannounced Testing: Regulating that the testing be every three months totally negates the deterrence component of what should be unannounced testing. If the individual knows it is only once a quarter, and is tested a few weeks in, they will know they won't be tested for another few months and have no deterrence to comply with their abstinence agreement. Standard practice for any post violation or post treatment unannounced testing program is to set the duration of the agreement specific to the individual's circumstances, and to let the Substance Abuse Professional recommend the appropriate duration and number of tests during that period of time. That number would never be set out in the agreement or provided to the worker.

The selection of dates would be made the independent Third Party Administrator contracted to deliver the company's testing program. It should not be through the employer. Through their computer selection system, the TPA would normally 'front end' the frequency of testing for the first three to six months when there may be greater potential for relapse or further violation, and the other selection dates would be spread throughout the rest of the agreement. But regulating a designated timeframe for selection negates the whole point of the deterrence exercise and should be removed from the regulations.

4.6.4 Random alcohol and drug testing: I will not comment on the current legal situation with respect to random alcohol and drug testing in Canada. However, if it is introduced, licensees should be required to have an independent selection process which would normally be through the Third Party Administrator managing their testing program. They should not be handling the selection themselves, just as they should not be doing the selection the post violation/post treatment unannounced testing in house.

5.4 Alcohol and Drug Testing Process

There are a number of specific comments that follow. However I have one overriding concern about this section of the regulations. If the Commission is going to regulate the requirement for testing, there should be a parallel set specific requirements for anyone engaged in any part of the testing process. These standards and requirements should not be up to the licensees to individually establish or the integrity and defensibility of the program will be put to question.

They should be established by the CNSC so that it is absolutely clear that a "gold standard" for testing is accurate, fair, and consistently applied. When the U.S. government issued regulations requiring testing in the transportation industry, for example, they set out all of the specific requirements in 49 CFR Part 40.

https://www.transportation.gov/odapc/part40

The Regulations governing the testing requirements for the U.S. nuclear industry are extensive and set out in CFR 26 Subparts E, F, G and H. In both cases their application is monitored by the appropriate agency and guidance is issued on an ongoing basis, as are updates to the requirements. Those administrating the various parts of the program (collectors, laboratories, Medical Review Officers, Substance Abuse Professionals) must meet very clear qualifications and can be removed from service for failure to meet those qualifications or failure to appropriately follow all protocols in the testing process.

This is the first time any government agency in Canada has proposed to issue regulations requiring employee alcohol and drug testing. Therefore, I believe the same level of detail should be set out on the mechanism for testing, and that this should not be left to the licensees to determine based on the guidance presented in the draft.

In order to introduce a requirement for licensees to implement testing programs, there must be clearer direction on the very critical procedures that need to be established and followed where testing is taking place.

5.4.1: Breath Alcohol Testing Process: Having action taken at .02 to .039 BAC and then at .04 BAC or higher is consistent with programs in safety-sensitive workplaces in Canada, and the regulations in the U.S. nuclear industry. However, what steps are expected to be followed if a worker tests in the .02-.039 BAC range in order to determine they are fit to return to work? Is this a mandatory medical assessment? Or does the supervisor make this assessment? Are they held out for a minimum period of time? In a reasonable cause situation would they be held out regardless until the drug test result is reported (as it is not known whether drug use played a role in the unfit situation)? In the regulations covering Canadian truck and bus drivers, they are held out of service for at least 24 hours after administration of the test. But there is no further action. The regulatory requirements should be clarified as to what goes into the determination that they are "fit for work".

I have to assume that the instruments approved for breath testing by the Alcohol Test Committee have met the standards of the conforming products list issued by the U.S. government for their regulated testing programs, such that they are accurate at .02 BAC and not solely used for roadside testing which looks at higher BAC levels. The devices from the conforming products list are used in all Canadian workplace programs, whether regulated by the U.S. government or not.

5.4.2: Urine Drug Testing: I expect the licensees would not have experience in setting out and implementing these specific standards for testing. As noted previously they should be set out in detail and under regulation by the Commission so that they are fair, reasonable, accurate and consistently applied.

Laboratory Certification: The Canada Standards Council does not have the same standards or experience in certifying laboratories in Canada for employee testing programs as SAMHSA has. They were briefly involved in the program in the 1990's when Canadian cross border truck and bus drivers were first subject to US regulations, but were not able to sufficiently meet the requirements, and SAMHSA stepped in and certified Canadian laboratories to the standards set out in the Part 40 regulations.

If there are no Canadian regulations, what standard would the CSC be holding the laboratories to? Will they do regular and unannounced inspections? Will they send in spiked and clean blind samples to ensure ongoing accuracy of the testing process? Would they meet all of the other high standards a certifying body must meet for employee testing?

The qualifications and integrity of the laboratories in Canada which are SAMHSA certified has held up in arbitration and judicial hearings. Since that system has been in place for many years there is no reason to introduce another certifying body lacking the depth of experience in place with the current system. That standard should not be deviated. If additional laboratories want to provide this service, they should establish the appropriate protocols and obtain SAMHSA certification. But the CNSC should not be minimizing the importance of SAMHSA certification by suggesting any lab accredited by the Canada Standards Council would therefore meet the high standards that must be met on an ongoing basis by a SAMHSA certified lab.

Medical Review Officers: Consistent with the need for high standards, the procedure for reviewing the lab result should be set out in regulation, and conducted by a qualified and certified Medical Review Officer in line with the Part 40 regulations. This should not be up to the licensees to determine. Qualification to be an MRO requires ongoing training and the requirement to pass an exam on a regular basis, and to maintain the qualifications and certification as set out by the nationally recognized MRO certification boards. This would be through the American Association of Medical Review Officers (http://www.aamro.com/) or the Medical Review Officer Certification Council (https://www.mrocc.org/).

The training and qualification process for U.S. and Canadian Medical Review Officers is extensive and there are many qualified Canadian MRO's who can provide this service to the nuclear industry should testing be introduced. This is a critical part of the testing process, as the MRO's final findings determine a positive, negative or tampered test result, which could lead to specific consequences for the employees. Licensees should not "consider" using any other specialist to review the lab results. They should only be using certified Medical Review Officers; forensic toxicologists or pharmacists simply can not provide this service, or appear as a qualified expert witness in any legal case without having a legitimate MRO designation. In addition, if the reviewing individual is a toxicologist or pharmacist, one would question whether they would even be able to obtain medical information from the employee's doctor as normally this is a "doctor to doctor" discussion to determine if there is a legitimate medical reason to overturn the laboratory result.

Collection: There should be clear procedures set out for the collection process that provide specific direction to the collectors on all steps of the process. This is particularly critical if the facilities are allowed to do their own collection as is implied in the document.

The Commission should be setting out detail regarding proper procedures that must be in place to respect privacy while ensuring the integrity of the collection process. This would include the steps to follow and forms to fill out for breath alcohol testing, as well as proper procedures for a "shy lung" situation. It would also include procedures for urine drug testing and proper completion of the forms to fill out which are critical to provide proper information to the lab and accompany the sample. It would also provide direction on adulterant testing, and what to do if there is possible tampering at the collection site or a "shy bladder" situation. And are there situations for direct observation of sample collection? There are a multitude of other collection issues the collector must be trained and experienced in managing, and again this should be set out through standards that the licensee will contract for services against, and not up to them to figure out appropriate procedures.

Alternative Technologies: The Commission should also consider allowing the use of Health Canada approved screening devices for urine testing performed at the collection site. Although not currently part of the U.S. regulations, this has become a fairly standard practice in Canada for reasonable cause and post incident testing, particularly where samples are coming from remote locations or being shipped across the country to the certified lab in London. However, collection should be handled by an independent trained and qualified collection agent, and any sample that is not negative at the collection site must be sealed and forwarded to the SAMHSA certified laboratory for confirmation testing. In this case,

- if the post incident breath and urine drug test are negative, the individual can return to work provided they are medically capable and/or not being held out of service for other parts of the investigation. If either test is not negative, the person is held out of service until the testing process is completed.

- in a reasonable cause situation, if both tests are negative, the person would still not return to work, because they are unfit for work. Arrangements can be made for a fitness for work assessment as soon as possible, because other issues may have contributed to the unfit for work situation, and just did not test positive for alcohol or the tested drug classes. There may be use of other drugs, misuse of medications, or medical conditions contributing to the situation.

In addition, the US government has final draft regulations allowing for the use of oral fluid testing, which allows for observation of the collection, and therefor minimizes risk of tampering with the test. This is being used in many random testing programs in Canada because of certain rulings, and has been accepted for use in other programs for reasonable cause and post incident testing. In this case there is no quick screening test at the collection site; the sample must go to the laboratory for confirmation testing.

The protocols for collection and analysis, including the drug slate and cut-off levels have been established, and will soon be introduced in regulation. Both of these options should be considered by CNSC before a final decision on testing protocols is taken. But whatever the decision, clear procedures and appropriate cut-off levels should be established and not left to the licensees to determine.

5.4.3 Process for positive alcohol and drug tests

This section is silent on a verified tampered or adulterated sample. What direction is the CNSC providing to licensees in this situation? This is not a positive test, but would still be considered a rule/regulation violation with appropriate consequences. This would normally include a referral for assessment whether employment is continued under their policy or not. (refer to the tracking system commented on in 4.6.1)

The direction to send an individual who tests positive to the Employee Assistance Program is contrary to everything done in workplace programs in Canada, and contrary to all direction in the US regulations, including those set out for the Nuclear industry. By its very nature, the EAP is a confidential counseling service for any personal problem, not just alcohol or drug related. But the cornerstone is confidentiality. The programs are voluntary and can be accessed at any time. The employer would have no idea whether the person in violation of the rules meets with the EAP as there is no reporting back.

However, Canadian rulings have stated that if an employee tests positive and has an alcohol or drug dependency, there is a duty to accommodate. (Autocar Connissaur and Milazzo, Canadian Human Rights Tribunal). Sending the individual to the EAP would not provide the information necessary to determine accommodation obligations. So the standard practice, and what the Commission should be requiring, is a referral for a SAP assessment after any rule violation.

5.5 Substance Abuse Evaluation Process

The regulations should be much clearer on the expected procedures in this area similar to the direction provide to our regulated truck and bus companies. It is not clear what a "duly qualified health professional" is, and without setting minimum requirements for the assessment and return to duty process, the management of safety risk on post violation return to duty situations under these regulations could be inconsistent and lacking. An example of the type of direction needed is found sub-part O in the Part 40 regulations and provides more concrete direction on the procedures required and the qualifications for the assessment and return to work process. Again, although unregulated employers have to depend on guidance from professionals on how to address this process, in this case it appears much is being left to the Licensees to try to figure out.

Since they are being regulated to introduce testing, more specific direction should be provided on what to do next with the positive or tampered result.

Reference Subpart O – Substance Abuse Professionals and the Return-to-Duty process. https://www.transportation.gov/odapc/part40

This provides the type of detail needed to ensure any covered operator has qualified individuals performing the SAP assessments and managing the return to duty process. Also there is no need for the SAP to be a physician or nurse, and in fact many in these positions would not have the skills to do this job. I expect you will receive additional comments on qualifications and procedures from the Canadian SAP organizations themselves.

5.6 Investigative and impairment screening tools

Section 3.1 specifically says licensees must

> "prohibit bringing, keeping or consuming alcohol, illicit drugs, drug paraphernalia, or prescribed medications without a legal prescription on the grounds of the high-security site"

I recommend the requirement for investigations/searches be clearer on what is expected to enforce this prohibition so that any action taken will be within legal and reasonable boundaries. Also I would recommend that the definition of drug paraphernalia include any device or product that may be used to tamper with a test sample. There appears to be quite a lot of tampering attempts in current Canadian programs. If someone is in possession of anything that specifically is produced and sold/provided be used to tamper with a urine test sample, that should also be considered a violation.

5.7 Records

With the requirement to maintain these records, will there be a reporting requirement, and an audit function on behalf of the Commission? I would suggest you refer to Subparts N and O in the US Nuclear regulations as an example of the type of detail licensees should have under a regulated program to explain the Commission's record keeping and audit requirements. In my experience, one thing that is critical to ensure compliance with any mandated program is the implementation of a strong audit function so that those subject to the regulations, or for example, in a non-regulated situation, those contractors subject to owner site requirements, maintain compliance knowing they may be audited and penalized for failure to do so. What are the penalties under these regulations for non-compliance of licensees? And how will they be enforced?

I also recommend that licensees be required to keep a record of supervisor training that meets the regulatory requirements. There should also be a record of communication with all covered employees confirming in writing that they have received the company's policy and specific information on the regulations that they must individually comply with. This would include reference to the requirement to be fit for work, and to cooperate with any fitness for work or medical assessment, any required SAP assessment, and with alcohol and drug testing should it be required under the regulations.

Appendix D-2

Immunoassay screening: If the regulations are expanding the opiate list, it is recommended you test oxycodone/oxymorphone as well as hydromorphone/hydrocodone as this will be in the new regulations covering employers and certified laboratories affecting Canadian truck/bus and rail operations into the US. The proposed screen for oxycodone/oxymorphone is 100 and confirmation at 50 ng/mL. The proposed screen for hydromorphone/ hydrocodone is 300 with confirmation at 100.

https://www.gpo.gov/fdsys/pkg/FR-2015-05-15/pdf/2015-11524.pdf

Testing for benzodiazepines and methadone are not standard in workplace programs, nor are they part of any of the U.S. regulated programs. I question why they are being added unless they have been identified as an abused drug in Canadian workplaces, or in the nuclear system in particular. For example, if there is a limited safety risk associated with a properly administered methodone treatment program, and the managing physician has cleared the individual to resume their work responsibilities, would the individual in a legitimate recovery program be discriminated against by being tested for methodone? And there are many many medications that employees may be using – why were benzodiazepines identified in particular for testing? Perhaps the TPAs and Lab who are reviewing this document would have further insight. I notice PCP has been removed from the standard testing slate. Although it appears it is not currently a drug of abuse and the statistics from the large TPAs confirm this, be aware that the reagent packages are set up to include this drug for testing. New reagent packages will need to be established to meet this and other changes from the standard testing program.

I have never seen a dilution protocol setting out separate cut-off levels for the drug classes. This is not in place for workplace programs in Canada, and certainly not part of any of the U.S. regulations or legislation. Given there are no details on the actual testing procedures, this is simply there with no guidance to employers or the laboratories on when and how to introduce this additional step. In normal practice, the sample is reported as dilute and the employer would conduct a second test with no prior warning to the employee.

It would be helpful to have input from the Canadian certified lab and some experienced Medical Review Officers as to the validity of this chart and the drug concentration levels it sets out.

Summary

It is important that employers in all industry sectors properly address fitness for duty and related alcohol and drug issues in a proactive manner. Although regulations have not been issued through the federal, or provincial, governments in the past, this initiative would certainly assist Canadian nuclear operations in best meeting the objective of health and safety, and assessment, assistance and ongoing support for workers who need help for an alcohol or drug dependency. I am happy to respond to questions that result from review of this input to the development of the regulations.