



March 7, 2016

Brian Torrie
Director General
Regulation Policy Directorate
Canadian Nuclear Safety Commission
280 Slater St
Ottawa ON K1P 5S9

Re: Canadian Nuclear Association Comments on REGDOC 2.2.4 Fitness for Duty

The Canadian Nuclear Association, along with its members, has reviewed REGDOC 2.2.4 Fitness for Duty – Drug and Alcohol Testing and we have several comments we would like to provide you for your consideration.

The Members of the Canadian Nuclear Association are committed to ensuring the safety of employees, the public and the environment and these commitments are central to all actions our members undertake. As such, the CNA appreciates the CNSC's efforts to ensure that Canadian nuclear facilities are free from the influences of drugs and alcohol. In fact many of the requirements in this document are consistent with existing practices.

While the nuclear industry supports the spirit and intent of REGDOC 2.2.4, we have grave concerns over the technical and logistical implementation of this proposal. We note that there is no clear legislation in Canada supporting many of the proposed regulations particularly those related to random testing. A recent Supreme Court ruling in the Irving Pulp case found that random alcohol testing in that workplace infringed on privacy rights. Drug testing was not at issue in that case, but the Ontario Court of Appeal had already ruled out random drug testing as a violation of human rights protections in the Entrop case. Additionally arbitrators and the courts have identified problems with drug testing as a means for determining Fitness for Duty, including the fact that current methods used in practice for drug testing do not identify current impairment. It is our belief that if this Regulatory Document is adopted, it will generate numerous privacy concerns and legal challenges. In our view a clearer legal/legislative basis is needed before this regulatory document can be implemented.

Our members have identified a large number of implementation issues which would need to be addressed in order to implement the measures identified in this REGDOC. While some may eventually be overcome it could well take years of employer/union negotiation, arbitration and litigation before many of these measures could be implemented. For example: the inability for drug testing to definitively identify impairment.

Our members are also concerned that the well-established practice of using an arbitration process to resolve differences over the interpretation of collective agreements in the absence of clear legal authority could lead to a situation where an arbitrator makes a ruling that an operator is obliged to follow that is in conflict with the Regulatory Document. This is an untenable position for our members.



CNA members are also concerned about the ongoing level of investment and effort that is required to setup and maintain an organization to manage the level of testing required by the REGDOC. It is our view that the intent of the REGDOC could be met by focusing on the subset of security and operations staff that have the most direct impact on nuclear safety.

In addition, the requirement to psychologically assess the indicated positions is too sweeping, goes beyond positions that are truly safety sensitive, and duplicates a number of existing requirements such as Regulation 18.2 of the Nuclear Security Regulations which already ensures security staff be subject to a pre-appointment psychological test. As well, the requirements of REGDOC 204, Certification of Persons Working at Nuclear Power Plants, ensures a robust system of selection, testing and evaluation of candidates.

CNA members, as employers in a highly regulated and important industry, have for many years had robust measures in place to identify fitness for duty issues and deal with them effectively. The industry's safety record over many decades of operations demonstrates the vigilance of CNA members in maintaining workplaces that are safe for both the workers and the public. Human performance and monitoring measures in place are an effective guarantee of public safety in this industry.

In conclusion, while the nuclear industry supports the overall intent of the REGDOC, the CNA believes that there are significant challenges around the legal basis for a number of requirements as well as significant challenges to implementing the regulatory document. Therefore, the CNA recommends that the CNSC redefine the scope of the document to better refine the truly safety-critical elements of employees as well as doing additional consultation with employers and unions to resolve the significant concerns that exist.

Thank you for providing us an opportunity to provide comments. Please feel free to contact me at 613-237-4262 should you require additional information.

Sincerely,

A handwritten signature in blue ink that reads 'Steve Coupland'. The signature is written in a cursive, flowing style.

Steve Coupland
Director, Regulatory and Environmental Affairs