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International Union Of Operating Engineers

Local 793

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LOCAL 793**

**SUBMISSION**

**TO**

**THE CANADIAN NUCLEAR SAFETY COMMISSION**

**IN REGARDS TO**

**FITNESS FOR DUTY – REGDOC - 2.2.4.**

March 7, 2016



## **Who are we?**

We are the International Union of Operating Engineers Local 793.

The IUOE Local 793 was chartered in 1919 and today is a well-established construction trade union proudly representing over 14, 000 operators across the province of Ontario. Members of IUOE Local 793 operate mobile cranes, overhead cranes, drill rigs, tower cranes, concrete pumps, bulldozers, excavators, graders, tractor - loader – backhoes (TLBs), and many other types of heavy equipment.

**We are the Trade Union which represents workers engaged in the operation of heavy equipment to perform ongoing renovations, expansions, rebuilds and new construction at facilities used by Canada’s Nuclear Industry, as well as the operators of heavy mobile construction equipment used inside such facilities to handle nuclear waste.**

## **What is our interest?**

The reality of employment as an Operating Engineer, operating pieces of heavy and complex construction equipment and capable of causing great damage and destruction if improperly used, is that practically every assignment will be a ‘safety sensitive’ assignment. The potential harm caused by flawed or impaired operation, whether that impairment is due to improper training, health issues, prescription medication, or the abuse of alcohol or illegal drugs, is significant. As a Trade Union, therefore we are highly alert to the importance of effective and reasonable Fitness for Duty policies in the workplaces where our members spend the better part of their lives.

## **What is our experience?**

IUOE Local 793 has been active in working with our partners in the Electrical Power Systems Construction Association to ensure the members we dispatch are uniformly and properly trained to meet the standards required at Nuclear Facilities. This has included our commitment to supplying Nuclear Qualified Workers, as well as security cleared members to employment as required under our applicable collective agreement.

Local 793 has also been, for many years, involved in the development and promotion of drug and alcohol policies with our building trades employer partners, which maximize workplace safety while respecting the fundamental dignity and privacy of our members. In 2009 we were instrumental in drafting a policy on drug and alcohol testing endorsed by the Provincial Building and Construction Trades Council of Ontario and shared with our employer partners as a model for the kind of safety policy most relevant to and effective with respect to the work performed by construction employees.

Finally, Local 793 has been involved in litigation over the years, including before the Ontario Labour Relations Board, regarding employer drug and alcohol testing policies and their application in ways which have impacted the rights of our members, and has been diligent on keeping on top of the jurisprudence specific to Ontario regarding these policies.

### **What are our concerns?**

Like the Power Workers' Union and the Canadian Nuclear Workers Council (CNWC), IUOE Local 793 has serious issues with those portions of the draft regulatory document which appear to require our signatory contractors to impose certain terms and conditions of employment which are, in our view, unnecessary to achieve safety, deeply compromising of our members' dignity and privacy, and contrary to Ontario jurisprudence.

IUOE Local 793 has reviewed the submission of the PWU on the proposed policy, and wholeheartedly supports and endorses all of the conclusions and comments in that submission.

**In particular, and without undermining our support for the rest of that submission, it is the strong view of Local 793, that requiring contractors working under the auspices of the Canadian Nuclear Safety Commission (CNSC) to impose pre-placement and random drug and alcohol testing of our members is entirely unnecessary to achieve workplace safety, and puts those contractors in a position of violating their collective agreement, employment and human rights obligations. IUOE Local 793 would have no choice but to respond to and resist such violations.**

In 2012 in Ontario, Suncor, the operator of several major oil refineries, decided to introduce a policy which required universal pre-access drug testing. The policy was in many ways similar to the standards proposed to be imposed by the CNSC through the draft regulatory document. There was no question that Suncor's worksites could be highly dangerous and that many unionized employees of Suncor occupied highly safety sensitive positions. Another building trade with which IUOE Local 793 works closely, the United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry, Local 663 (the Plumber's Union) grieved a decision by the Mechanical Contractors Association of Sarnia to require compliance with this universal pre-access alcohol and drug testing policy.

The Plumber's Union asserted that that policy in respect of pre-access testing violated the Ontario Human Rights Code, and also constituted an 'unreasonable rule' prohibited by the managements rights clause of the collective agreement governing the terms and conditions of employees working at the refineries.

Arbitrator Surdykowski applied the reasoning used by the Supreme Court in its decision in *Irving Pulp & Paper v CEP Local 30* and found that there was no evidence of any alcohol or drug problem at any Sarnia area Suncor worksite to justify the introduction of the policy. He also found that the policy discriminated against disabled employees and could not be justified as it was not reasonably necessary to meet safety concerns. The Grievance was allowed, and the policy was struck down as violating the collective agreement and the Code.

As recently as 2014, the Ontario Superior Court upheld that decision of Arbitrator Surdykowski.

Local 793 is aware of no evidence of any kind of drug or alcohol problem in the Nuclear Facilities at which its members work which would result in a different outcome for the proposed standard than that faced by Suncor`s policy.

As noted in the submission of the CNWC, most if not all contractors working at or in facilities under the umbrella of the CNSC already have comprehensive and effective policies and procedures in place to ensure the fitness for work of all employees. There is no existing drug or alcohol problem to be addressed. While Local 793 certainly supports and will continue to work with contractors to ensure continued improvement of all policies and measures where reasonable, this must be within a framework which respects the law of the province and the terms and conditions of employment negotiated freely by the workplace parties.

**What are we asking?**

As with the PWU and the CNWC, who we understand are also providing submissions on the draft Fitness For Duty Regulatory Document, we strongly encourage the CNSC to remove the references currently contained in the document to pre-access and random drug and alcohol testing, in order to bring it into compliance with Ontario law. We also ask that all the other issues identified by the other Union groups, which we fully support, be taken into proper consideration.

**Respectfully submitted,**

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793**