

APPENDIX O

Prepared Testimony of Loren L. Bush, Jr.,

**U.S. Nuclear Regulatory Commission Before the
Subcommittee on General Oversight and Investigations of
the Committee on Interior and Insular Affairs**

U.S. House of Representatives

June 11, 1987

**RELATIONSHIP OF THE NUCLEAR REGULATORY
COMMISSION TO THE NUCLEAR INDUSTRY**

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON
GENERAL OVERSIGHT AND INVESTIGATIONS

OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

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NUCLEAR INDUSTRY

HEARING HELD IN WASHINGTON, DC
JUNE 11, 1987

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PREPARED TESTIMONY

OF

LOREN L. BUSH, JR.

U.S. NUCLEAR REGULATORY COMMISSION

BEFORE

THE SUBCOMMITTEE ON GENERAL OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

ON

JUNE 11, 1987

My name is Loren L. Bush, Jr. I am the Chief, Program Development and Review Section, Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC). I have been NRC's staff contact on fitness for duty program matters since January 1985. "Fitness for duty" is the NRC's way of saying that no person under the influence of any substance which affects that person's ability to perform duties safely may gain access to equipment that could affect the safe operation of a nuclear power plant. It is the Fitness for Duty Program which is intended to protect against drug and alcohol abuse at nuclear power plants.

I became NRC's staff contact on fitness for duty during the development of the initial draft of the Commission's Policy Statement on Fitness for Duty of Nuclear Power Plant Personnel. Although other staff members were responsible for the development

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of NRC's rule and the initial draft of the Policy Statement, I have participated actively in staff actions on fitness for duty matters since that time. Furthermore, I have been quite heavily involved during the past two years, particularly with the implementation of the policy statement.

I am a retired Lieutenant Colonel in the U.S. Army. Prior to coming to the NRC, I was Chief, Nuclear Security Division of the Defense Nuclear Agency. In this position, I was responsible for developing nuclear weapons security policy and performing physical security research for the Department of Defense. Prior to that I managed Army Criminal Investigation activities, including the trafficking and abuse of drugs. I have held several elective and appointed offices in the American Society for Industrial Security.

Pursuant to a request to the NRC, I was interviewed by staff from the Subcommittee on General Oversight and Investigations. Subsequent to that interview, I was asked by the Subcommittee staff to testify at today's hearing.

On August 4, 1986, the Nuclear Regulatory Commission issued a policy statement on Fitness for Duty. This policy statement was issued in place of an NRC regulation that had been approved by the Commission but was withdrawn at the request of the nuclear industry. Unlike the rule, the policy statement is not legally binding and thus does not require action on the part of the utilities to prevent drug and alcohol abuse at nuclear power plants. The policy statement is essentially an expression of

broadening its coverage to include escorted and unescorted personnel, vital areas within the plant site, and NRC and other government employees (Attachment 4, Memorandum of December 12, 1983).

In July, 1984, the Commission approved publication of the broader final fitness for duty rule subject to two conditions:

- the staff was to prepare a generic letter with a description of how the NRC would determine compliance and
- explore with the two major industry groups, the Institute of Nuclear Power Operations (INPO) and the Nuclear Utility Management and Resources Committee (NUMARC) their willingness to develop detailed program elements and acceptance criteria in lieu of NRC prescriptive guidance (Attachment 5, SRM of July 9, 1984).

It was at this point that the NRC's approach to fitness for duty changed. On August 22, 1984, NRC staff met with NUMARC and INPO to discuss the effects of the NRC rulemaking. The industry representatives stated their belief that any rulemaking or other form of mandatory requirement undermines the voluntary efforts of the industry toward self improvement.

To explain what happened next, I will quote from an NRC document (Attachment 6, SECY 84-348, September 4, 1984):

"Subsequently at the August 28 meeting, the NUMARC Steering Committee developed a position that NUMARC would be willing

concern regarding drug and alcohol abuse at power plant sites and an expectation that licensees will develop and implement effective programs to deal with this concern. It references the industry's guidelines (EEI Guidelines to Effective Drug and Alcohol/Fitness for Duty Policy Development) which themselves only recommend, but do not require action by the utilities. The Commission established an eighteen-month trial period to evaluate the effectiveness of this approach and will reassess the possible need for further NRC action based upon industry performance during that period. The route that the NRC took to issuance of a policy statement rather than a rule may be of interest.

The Commission was first sensitized to the problem of drug and alcohol problems in March of 1982 when the staff reported "an alarming increase in reported drug-related incidences," a "wide range of personnel implicated," and a "persuasiveness of the reports on a national basis" (Attachment 1, IE Information Notice No. 82-05).

In August of 1982, in response to this report, the NRC issued proposed rulemaking on fitness for duty (Attachment 2, SECY 82-196). One year later, NRC staff proposed to the Commissioners a final rule that would have required licensees to establish and implement written procedures designed to provide reasonable assurance that personnel with unescorted access at power reactors are not under the influence of alcohol or drugs or otherwise unfit for duty (Attachment 3, SECY 83-339). In December, 1983, the Commission modified the staff proposal by

to develop such guidance [the detailed elements of a fitness for duty program] only under the condition that the NRC not promulgate the Fitness for Duty Rule. They want the NRC to promulgate a Policy Statement or Generic Letter regarding fitness for duty which would not establish enforceable requirements. (Emphasis added).

I regarded this as dictatorial and an attempt to intimidate the NRC, to gain the upper hand. My reaction was, "Who the hell is regulating who?"

In my opinion, the NRC did not have to buckle to industry pressure. However, NRC management believed that industry development of guidance would be the most expeditious course of action.

Two items are of note here. At the direction of the Executive Director for Operations (EDO), the NRC's ongoing research to establish special fitness for duty program elements and standards had been discontinued in early 1983 (Attachment 7, Memorandum of May 28, 1987, from Ryan to Bush). The instruction give by the EDO was that the research completed to date not see the light of day because there are no alcohol or drug-related problems in the nuclear industry. Second, regardless of that fact, the NRC could have restarted the research work that had been discontinued by the EDO, possibly combining this with application of existing industry guidelines. As it was, it took the industry until August, 1985, to complete the revision of its guidance document (Attachment 8).

In October, 1984, the Commission directed the NRC staff to withhold action on the rule and to write a policy statement. Preparation of the policy statement was to be done in coordination with INPO and NUMARC (Attachment 9, SRM of October 24, 1984). Between July, 1984, and April, 1986, the NRC worked closely with the industry in developing the policy statement. There were no fewer than seven meetings and numerous telephone calls (Attachment 10, Answer to Question 11 of Congressional Inquiry).

In September, 1985, Commissioner Bernthal raised the question of whether the proposed policy statement would provide any basis for NRC enforcement action should a licensee fail to conform to the industry guidelines. The Executive Director for Operations (EDO) informed Commissioner Bernthal that a policy statement does not provide any additional basis for enforcement action. The EDO stated that a policy statement may not effect substantive obligations; rather it serves as a statement of purpose or future intent to deal with an issue in a particular way (Attachment 11, Memorandum of September 27, 1985).

The staff submitted to the EDO a revised statement, which was broader in coverage and, given the limitations of a policy statement, attempted to emphasize NRC's inspection and enforcement authority. The EDO indicated that prior to submitting the statement to the Commission, the staff should discuss it with INPO and NUMARC to assure that it is understood and able to be accomplished by the industry. The EDO never

presented the staff's revised policy statement to the Commission (Attachments 12 and 13, revised policy statement, November, 1985 and Memorandum of November 27, 1985). Instead, in January, 1986, the Commission returned to the staff their revision to an earlier version of the policy statement (Attachment 14, SRM of January 29, 1986). The staff regarded this version as "untouchable." In May of 1986, NUMARC told the NRC that its steering committee had "overwhelmingly endorsed the policy statement" (Attachment 15, Letter of May 6, 1986 from NUMARC to EDO).

In July of 1986, the Commission approved publication of the policy statement and withdrawal of the previously approved final rule (Attachment 16, SRM, July 7, 1986).

The policy statement adopted by the Commission has some shortcomings. Since it is really no more than an expression of expectations by the Commission, the policy statement is unenforceable. The possible effects of drug and alcohol abuse on safety at nuclear power plants should merit the strongest appropriate regulatory measures to prevent such problems. If a fitness for duty program is intended to prevent drug and alcohol problems in nuclear power plants, then the policy statement only takes the initial steps to achieve that goal. Under the policy statement, if a utility does not have an adequate preventive program, there is little the NRC can do.

Moreover, without a rule, a related inspection program, and comprehensive reporting requirements, the NRC is not likely to find out about all the problems that should be addressed. The

NRC can take enforcement action with respect to fitness for duty only if there is a specific safety problem, for example, if someone is drunk in the control room at a given time and safety is jeopardized, or if a particular safety problem resulting from poor maintenance can be traced to a failure in the fitness for duty program. This approach is reactive and fails to emphasize prevention.

I should mention that while there is no comprehensive reporting requirement, the Executive Director for Operations recently approved a revision to NRC's regulations that would require licensees to report discovery of criminal acts including illegal use of a controlled substance, on a case-by-case basis. Furthermore, the staff is planning for a long-term inspection program beyond the limited sample being examined during this eighteen-month trial period. However, even if problems are discovered, the Commission can take no enforcement action. Any regulatory actions would have to be based on existing statutes and regulations. The policy statement adds nothing to the substantive law.

The policy statement cannot require the licensees to comply with the industry-developed guidance. Furthermore, since the industry guidance is not mandatory or prescriptive, the utilities can pick and choose what they want to include in their fitness for duty programs. It is essentially a catalogue of possible approaches to alcohol and drug abuse programs. It does not take

a definitive stand or establish a standard in many areas, such as:

- use of investigations and other pro-active measures
- approaches to chemical testing
- criteria for audits, and
- written procedures to define proper actions and assign responsibilities.

Despite these shortcomings, the industry guidelines do contain useful information which could be a starting point for a more comprehensive effort to develop a national standard.

Although there are some limited rules regarding employment of individuals with drug and alcohol problems, there are no NRC regulations which require utilities to take preventive measures to counteract the abuse of drugs and alcohol at nuclear power plants. As a result, the NRC has essentially left it to the nuclear industry to regulate itself. For its part, the industry developed voluntary guidelines but has prescribed no standards for the prevention of drug and alcohol abuse. Thus, there is no law, no regulation, no national or industry standard, which requires nuclear power plants to protect against drug and alcohol abuse.