



March 3, 2016

Mr. Brian Torrie, Director General
Regulatory Policy Directorate
Canadian Nuclear Safety Commission
280 Slater Street
P.O. Box 1046, Station B
Ottawa, Ontario
K1P 5S9

Dear Mr. Torrie:

**Comments of the International Brotherhood of Electrical Workers, Local 37 on
Regulator Document: REGDOC-2.2.4 *Fitness for Duty***

Please accept these comments from the International Brotherhood of Electrical Workers, Local 37 ("IBEW, 37") regarding REGDOC 2.2.4 *Fitness for Duty*.

I would like to begin by addressing Article 4.1 of the regulation. Article 4.1 contains a list of what positions must be classified as "safety sensitive". The list includes:

1. Certified workers;
2. The following security personnel: Nuclear Security Officers (NSO), onsite nuclear response force (NRF) members, and designated non-NRF personnel;
3. Positions that are part of the minimum staff complement at high-power reactor facilities, unless excluded based on the results of the risk-informed analysis; and
4. Any other position identified via the risk-informed analysis performed by the license.

The risk-informed analysis is noted as including the following considerations:

- Tasks of the workers during normal and emergency operating conditions;
- Nature of equipment and material that he or she handles or could handle;

- Actions assigned to the workgroup that could directly cause or contribute to a significant incident; or could result in an inadequate response to a significant incident.

While the IBEW, 37 agrees that drug and alcohol testing is only appropriate for employees holding a safety-sensitive position, and that the employees listed at item 1, and the NFR employees listed at item 2 of Article 4.1 are indeed safety-sensitive positions, the IBEW, 37 disagrees that it is appropriate to prescribe any other position listed at items 2 or 3 as safety-sensitive without first conducting a risk-informed analysis to determine whether the position is indeed safety-sensitive. The IBEW, 37 asks Article 4.1 be amended accordingly.

I would now like to address the alcohol and drug testing provisions found at Article 4.6 of the regulation. It is the IBEW, 37's position that alcohol and drug testing is only appropriate in the circumstances identified by the Supreme Court of Canada in *Communications, Energy, and Paperworkers Union of Canada, Local 30 v. Irving Pulp and Paper, Ltd.*, [2013] 2 SCR 458, namely:

- When there is reasonable cause to believe that the employee was impaired while on duty;
- When the employee was involved in a workplace accident or near miss; and
- On the return of the employee to work after treatment for substance abuse.

On the issue of random alcohol and drug testing in particular, it is only in the context of an employee returning to work after substance abuse treatment that it is appropriate to test an employee on a random basis. Otherwise, the Supreme Court of Canada has confirmed that random drug testing is not appropriate.

In addition to violating what the Supreme Court of Canada has found in the *Irving Oil* decision, should the CNSC enact a regulation that includes the obligation for licensees to institute a policy requiring random drug and/or alcohol testing, it would also infringe employees rights as protected under the *Canadian Charter of Rights and Freedoms*. Specifically, such a requirement would violate section 8, which protects employees from unreasonable search and seizures, section 7, which protects employees' rights to life, liberty, and security of the person, and, in the right circumstances, section 15, which protects employees from discrimination based on the enumerated ground of "disability".

The IBEW, 37, therefore, asks that Article 4.6 be amended accordingly.

I would now like to address Article 5.5 of the regulation, which prescribes for a substance abuse evaluation process. This Article, in an environment where drug and alcohol testing is already prescribed, is excessive and unnecessary. Accordingly, the IBEW, 37 asks that Article 5.5 be removed in its entirety.

I would finally like to address the medical and psychological assessment requirements found in various provisions of the regulation. It is the IBEW, 37's position that requiring all

employees designated in a safety-sensitive position to submit to pre-placement, periodic, or for cause medical and psychological assessments is unreasonable. Simply put, requiring such medical and psychological assessments will lead to discrimination against employees with physical and mental disabilities, and will create a chilling effect whereby employees will not feel comfortable disclosing physical and mental disabilities, for fear of putting their employment in jeopardy.

The New Brunswick *Human Rights Act* gives all persons the right to be free from discrimination in the workplace, including by reason of physical or mental disability. Subjecting all safety-sensitive employees to medical and psychological assessments has the potential to result in discrimination to employees with physical or mental disabilities. Specifically, by reason of their disability, these employees could have their site access removed, or be demoted to a non-safety-sensitive position.

As for the chilling effect, it is important that employees feel comfortable disclosing their physical or mental disabilities, by, for example, requesting help through the Employee and Family Assistance Program. However, if employees fear that requesting help for a physical or mental disability will result in the triggering of a medical or psychological assessment, which in turn could result in an adverse impact to their employment, they will be less inclined to seek help. Thus, these provisions may actually perpetuate the problem that they seek to fix.

For these reasons, the IBEW, 37 asks that all provisions providing for the medical or psychological testing of safety-sensitive employees be removed. Alternatively, the IBEW, 37 states that these assessments should be significantly restricted so as to apply only to those employees whose job duties justify, on a good faith basis, such assessments.

Should the CNSC enact a regulation that includes the obligation for licensees to institute a policy requiring medical and psychological assessments for all employees in a safety-sensitive position, it would also infringe employees rights as protected under the *Canadian Charter of Rights and Freedoms*. Specifically, such a requirement would violate section 15, which protects employees from discrimination based on the enumerated ground of "disability".

Dated this 3 day of March, 2016.



Ross Galbraith, Business Manager
IBEW, Local 37