



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

February 7, 2000

IA 99-044

Thomas J. McGrath
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NUCLEAR REGULATORY COMMISSION'S OFFICE
OF INVESTIGATIONS REPORT NO. 2-98-013)

Dear Mr. McGrath:

This letter refers to the investigation initiated by the NRC's Office of Investigations (OI) on April 29, 1998, and completed on August 4, 1999. The investigation concluded that your actions were in apparent violation of Nuclear Regulatory Commission (NRC) requirements prohibiting deliberate misconduct, 10 CFR 50.5. Specifically at issue was whether your actions involving the non-selection of Mr. Gary L. Fiser, a former corporate employee, to a corporate chemistry position in 1996 were taken in retaliation for his engagement in prior protected activities. The synopsis of the OI report and report summary were provided to you by letter dated

September 20, 1999. A closed, predecisional enforcement conference was conducted at the NRC Region II office in Atlanta, Georgia, on November 22, 1999, to discuss the apparent violation. A list of conference attendees, copies of the NRC's presentation material, and information provided by you at the conference are enclosed.

After a review of the information obtained during the predecisional enforcement conference and the information developed during the OI investigation, the NRC has determined that you engaged in deliberate misconduct in violation of 10 CFR 50.5, Deliberate Misconduct. This rule prohibits any employee of a licensee from engaging in deliberate misconduct that causes a licensee to be in violation of any NRC requirement, in this case, 10 CFR 50.7, Employee Protection. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the previously provided summary of the OI investigation report. In summary, the violation involved actions, or lack of actions, taken by you to cause the non-selection of Mr. Fiser to a corporate Chemistry Program Manager position in 1996. The NRC concluded that you assisted in implementing a reorganization and selection process to ensure that Mr. Fiser was not selected, in part, because of his prior protected activities. These protected activities included Mr. Fiser's identification of chemistry related nuclear safety concerns in 1991-1993, and the subsequent filing of a Department of Labor (DOL) complaint in September 1993, that was based, in part, on these chemistry related nuclear safety concerns.

At the conference, you and TVA representatives presented information that a 1996 reorganization, which resulted in the elimination of Mr. Fiser's Chemistry and Environmental Protection Program Manager position, was based on legitimate business reasons. In addition, you stated that the extent of your involvement in the selection process to fill the two new Chemistry Program Manager positions that were created during the 1996 reorganization was

limited to requesting Human Resources and Labor Relations personnel to review the concerns expressed by Mr. Fiser to ensure that the posting of the new positions in 1996 and the selection process were in accordance with TVA policies and procedures. You also stated at the conference that you were unaware of Mr. Fiser's 1993 Department of Labor (DOL) complaint until the issue came to light in July 1996. You also clarified that the NRC's September 20, 1999, letter, was inaccurate in stating that you were named as a culpable party in Mr. Fiser's 1993 DOL complaint.

The NRC does not agree that your actions were based solely on non-discriminatory reasons. Although the information you provided at the conference suggests that the 1996 reorganization, the decision to create and post the two new positions of Chemistry Program Manager, and the selection process originated from legitimate business reasons, the NRC concluded that your involvement in the implementation of the reorganization and selection process was, at least in part, motivated by your and other's knowledge of Mr. Fiser's prior protected activity. Although not initially recommended by your staff, you were insistent that the full reduction in staff within the Radcon and Chemistry organization take place in a one year period, rather than over five years, directly causing the need to eliminate one of the Chemistry and Environmental Manager positions.

In addition, the manner in which the new position was filled (posting and competitive selection) was strikingly dissimilar to the manner in which the Radcon Chemistry Manager position was filled, notwithstanding the representations made by the TVA representatives at the conference that appropriate statutes and TVA personnel policies were followed. You were correct in noting that the NRC's September 20, 1999, letter, was inaccurate in stating that you were named as a culpable party in Mr. Fiser's 1993 DOL complaint; however, the NRC concluded that you had personal knowledge of Mr. Fiser's chemistry related nuclear safety concerns identified in 1991-1993.

You also stated at the conference your desire to make the selection process for the Chemistry Program manager position as impartial as possible. However, despite your awareness that one individual from Human Resources recused himself from the selection process because of his prior knowledge of Mr. Fiser's 1993 DOL complaint and his knowledge of Fiser's intent to file a 1996 complaint, you failed to take adequate actions to determine whether anyone else should be excluded from the selection process. As a result, two members of the Selection Review Board and the selecting official not only had knowledge of Mr. Fiser's DOL activities, but also discussed these DOL activities just prior to interviewing applicants (including Mr. Fiser) for the two newly created Chemistry Program Manager positions. The selecting official had substantial knowledge of and information regarding Mr. Fiser's 1993 DOL complaint. Moreover, NRC concluded it was highly unlikely that, given your position in the organization and the number of TVA employees who were involved in the various DOL and TVA Inspector General interviews, that you were completely unaware of the fact that Mr. Fiser filed a 1993 DOL complaint until 1996, as you stated at the conference. Lastly, although you denied preselection of any individual for the position of Chemistry Program Manager- Pressurized Water Reactor (PWR) at the conference, the evidence strongly suggests your desire to retain a particular individual in the corporate organization with substantial PWR chemistry experience.

Therefore, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Reactor Programs, the NRC has decided to issue the enclosed Notice to you based on your violation of regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement

Policy), issued NUREG-1600, the violation has been classified at Severity Level II. Copies of the applicable regulation and Enforcement Policy are enclosed for your reference.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in licensed activities. However, the NRC has decided to issue the enclosed Notice in this case because of your past involvement in licensed activities in a support function only, the fact that you are not involved currently in licensed activities, and the substantial action taken against TVA. You should be aware that should there be evidence of similar conduct on your part in the future, you may be subject to further enforcement action that could include an Order prohibiting your involvement in NRC-licensed activities for a term of years.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, please include in your response information regarding why, in light of your actions, the NRC should have confidence that you will adhere to regulatory requirements should you be employed in the nuclear industry in the future. If you believe any information concerning this matter is inaccurate, if you wish to provide additional information that you believe is important to our full understanding of this matter, or if you contest the violation, please include this in your response.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, and your response will be placed in the Public Document Room (PDR). A copy of this enforcement action will also be provided to TVA.

Questions concerning this letter may be addressed to Mr. Loren Plisco, Director, Division of Reactor Projects, at 404-562-4501 or Mrs. Anne Boland, Enforcement Officer, Enforcement and Investigations Coordination Staff, at 404-562-4421.

Sincerely,

Original Signed by Luis A. Reyes

Luis A. Reyes
Regional Administrator

Enclosures and cc: See Page 4

CERTIFIED MAIL NO. 7099 3400 0000 1701 1051
RETURN RECEIPT REQUESTED

Mr. McGrath

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Enclosures:

1. Notice of Violation
2. NRC Presentation Material
3. Presentation Material Provided by
by Mr. McGrath
4. Enforcement Conference Attendees
5. 10 CFR 50.5, Deliberate Misconduct
6. NRC Enforcement Policy, NUREG-1600

cc [w/HOME ADDRESS DELETED] w/encls 1, 2, 3, and 4 only:

Tennessee Valley Authority

Mr. J. A. Scalice

Chief Nuclear Officer and
Executive Vice President

6A Lookout Place

1101 Market Street

Chattanooga, TN 37402-2801

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COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

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NOTICE OF VIOLATION

Thomas J. McGrath

IA 99-044

As a result of an NRC Office of Investigations (OI) report issued on August 4, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is listed below:

10 CFR 50.5 requires, in part, that any employee of a licensee, or any employee of a contractor of a licensee, may not engage in deliberate misconduct that causes a licensee to be in violation of any NRC requirement.

10 CFR 50.7 prohibits, in part, discrimination by a Commission licensee or a contractor of a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, providing a Commission licensee with information about nuclear safety at an NRC licensed facility, testifying at any Federal proceeding regarding any provision related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

Contrary to the above, in July 1996, you engaged in deliberate misconduct that caused TVA, an NRC licensee, to be in violation of 10 CFR 50.7, in that you discriminated against Gary L. Fiser, a former employee of TVA, as a result of his engaging in protected activity. Acting in your official capacity as Operations Support General Manager, you discriminated against Mr. Fiser when you took actions to cause his non-selection to a position within Operations Support after a 1996 reorganization. Your actions were taken, at least in part, in retaliation of Mr. Fiser's engagement in protected activities involving identification of previous chemistry related nuclear safety concerns of 1991-1993, and the his previous Department of Labor (DOL) complaint of September 1993. (01012)

This is a Severity Level II violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth St., SW, Suite 23T85, Atlanta, Georgia, 30303, marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

ENCLOSURE 1

Because your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this letter, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 7th day of February 2000

LIST OF CONFERENCE ATTENDEES

Nuclear Regulatory Commission

L. Reyes, Regional Administrator, Region II (RII)
L. Plisco, Director, Division of Reactor Projects (DRP), RII
V. McCree, Deputy Director, Division of Reactor Safety (DRS), RII
D. Dambly, Assistant General Counsel for Materials Litigation and Enforcement, Office of General Counsel (OGC)
A. Boland, Enforcement Officer, RII
S. Sparks, Senior Enforcement Specialist, RII
M. Stein, Discrimination Enforcement Specialist, Office of Enforcement
C. Evans, Regional Counsel, RII
J. Euchner, Staff Attorney, OGC
W. McNulty, Director, Region II Field Office, Office of Investigations (OI)

Tennessee Valley Authority (TVA)

Thomas J. McGrath

Other Attendees at the request of Mr. McArthur

B. Marquand, Office of General Counsel, TVA
J. Boyles, Human Resource Manager, TVA
E. Viglucci, Office of General Counsel, TVA