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[Notices]  
[Page 3923-3925]  
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NUCLEAR REGULATORY COMMISSION

[IA 96-101]

Joseph R. Bynum; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Since April 1993, Joseph R. Bynum has held the position of Vice President, Fossil Operations in the Fossil and Hydro Power organization of the Tennessee Valley Authority (TVA or Licensee). At the time of the events described in this Order, Mr. Bynum was employed as Vice President, Nuclear Operations, in the Licensee's corporate organization and was responsible for the oversight of TVA's nuclear program at its four nuclear reactor sites. During this time, the Licensee held five operating licenses and four construction permits issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. License Nos. DPR-77 and DPR-79 authorized the Licensee's operation of the Sequoyah Nuclear Plant in Soddy-Daisy, Tennessee; License Nos. DPR-33, DPR-52, and DPR-68 authorized operation of the Browns Ferry Nuclear Plant in Athens, Alabama; Construction Permit Nos. CPPR-91 (now Operating License NPF-90) and CPPR-92 authorized the construction of the Watts Bar Nuclear Plant in Spring City, Tennessee; and Construction Permit Nos. CPPR-122 and CPPR-123 authorized the construction of the Bellefonte Nuclear Plant in Scottsboro, Alabama.

II

Following receipt of information regarding alleged discrimination against Mr. William F. Jocher, former Manager, Chemistry and Environmental Protection in TVA's corporate organization, the NRC Office of Investigations (OI) initiated an investigation, Case No. 2-93-015, on April 15, 1993. OI completed its investigation on August 31, 1995, and concluded that: (1) Mr. Jocher was engaged in protected activities during his employment at TVA, and received an adverse employment action in the form of a threat of termination by TVA if he did not resign; (2) the reason proffered by TVA for this adverse action, namely that Jocher's performance in the area of management skills was inadequate, was primarily pretextual; and (3) despite denials by the TVA managers involved, the methodology of Jocher's engagement in protected activity was the primary reason for the adverse action against him.

In addition, on June 29, 1993, Mr. Jocher, filed a complaint with the U. S. Department of Labor (DOL). In his DOL complaint, Mr. Jocher alleged that he was forced to resign from employment with TVA as a result of carrying out activities protected by the Atomic Energy Act of 1954. He further stated that his forced resignation was based on his activities in revealing deficiencies in the plant chemistry program at the Sequoyah Nuclear Plant, revealing TVA's non-compliance with NRC approved guidelines, and revealing inconsistencies between a TVA and TVA management's reports to the NRC and other TVA oversight agencies.

DOL efforts to conciliate the matter between Mr. Jocher and TVA were unsuccessful, and on April 29, 1994, the DOL District Director (DD) issued the initial finding of the DOL compliance action in the case. The DOL DD concluded that Mr. Jocher was a protected employee engaged in protected activity within the scope of the Energy Reorganization Act, and that discrimination, as defined and prohibited by the statute, was a factor in the actions which comprised his complaint.

Following an appeal by TVA, administrative hearings were conducted

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Following an appeal by TVA, administrative hearings were conducted before the DOL Administrative Law Judge (ALJ). On July 31, 1996, the DOL ALJ issued a Recommended Decision and Order (RDO) in the case (DOL Case No. 94-ERA-24) finding that TVA discriminated against Mr. Jocher in violation of Section 211 of the Energy Reorganization Act. On November 20, 1996, the ALJ issued a Recommended Order of Dismissal, based on a conciliation agreement between Mr. Jocher and TVA, and on November 22, 1996, the DOL Administrative Review Board issued a Final Order Approving Settlement and Dismissing Complaint.

Both the ALJ and OI stated that Mr. Joseph R. Bynum, the former Vice President of Nuclear Operations of TVA, ordered the forced resignation of Mr. Jocher. By letter dated August 26, 1996, Mr. Bynum was informed of the DOL findings and the OI investigation results and requested to attend a predecisional enforcement conference. On September 23, 1996, a closed, transcribed conference was conducted with Mr. Bynum, legal counsel, and management representatives of TVA. During the conference and in a written statement provided to NRC Region II prior to the conference, Mr. Bynum vigorously denied any violation of 10 CFR 50.5, Deliberate Misconduct, and stated that he did not discriminate against Mr. Jocher for engaging in protected activities. He attributed his decision to ask for Mr. Jocher's resignation to Mr. Jocher's poor management skills, and stated that he (Mr. Bynum) used poor judgement in not coordinating the personnel action with the appropriate TVA offices (i.e., Human Resources, Office of General Counsel). Mr. Bynum provided a detailed description of the events and circumstances surrounding Mr. Jocher's departure and addressed specific conclusions drawn by the DOL ALJ.

Based on the NRC staff's review of the evidence gathered by OI, the ALJ decision, and the views presented by Mr. Bynum at the predecisional enforcement conference, the NRC staff is satisfied that discrimination against Mr. Jocher by Mr. Bynum, who is currently the TVA Vice President for Fossil Operations, as described in the ALJ RDO and the OI Report, had occurred when Mr. Bynum ordered the forced resignation of Mr. Jocher. In reaching this determination the staff considered among other things: (1) The close timing between some of the protected activities in March 1993, i.e., formal notification by the NRC that it would be investigating the safety issues raised by Mr. Jocher, and the adverse action taken against Mr. Jocher on April 5, 1993; (2) statements made by TVA managers that Mr. Bynum ordered the forced resignation of Mr. Jocher; (3) inconsistent statements made by Mr. Bynum and the two managers who carried out the forced resignation of Mr. Jocher with respect to why and how the employment decision was made, and whether Mr. Jocher was placed in a six month improvement program in March, 1993; (4) inconsistencies in the various statements given by Mr. Bynum regarding his knowledge of Mr. Jocher's protected activities, most notably the

[[Page 3924]]

post-polygraph interview where he stated that he was aware that Mr. Jocher had submitted several safety complaints and Significant Corrective Action Reports, in light of TVA's processes for handling safety issues of which Mr. Bynum should have been fully cognizant; (5) the results of Mr. Bynum's voluntary polygraph examination which indicated deception with respect to key questions related to the termination of Mr. Jocher; and (6) the lack of adequate documentation by TVA as to Mr. Jocher's inadequacies as a TVA manager.

The staff adopts, in essence, the conclusions reached by OI and the DOL ALJ and believes that Mr. Jocher would not have been forced to resign on April 5, 1993 but for his engaging in protected activities. Therefore, it is concluded that, on April 5, 1993, Mr. Bynum's deliberate actions against Mr. Jocher were in violation of Section 211 of the Energy Reorganization Act and 10 CFR 50.5, Deliberate Misconduct. Further, Mr. Bynum's actions caused TVA to be in violation of 10 CFR 50.7, Employee Protection.

III

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Based on the above, the staff concludes that Mr. Joseph R. Bynum.

an employee of the Licensee, has engaged in deliberate misconduct in violation of 10 CFR 50.5 that has caused the Licensee to be in violation of 10 CFR 50.7. NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement that prohibits discrimination against employees for engaging in protected activities. Joseph R. Bynum's actions in causing the Licensee to violate 10 CFR 50.7 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Joseph R. Bynum were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Joseph R. Bynum be prohibited from any involvement in NRC-licensed activities for a period of five years retroactive to May 1, 1993, the date in which he was transferred out of the Licensee's nuclear organization. If Mr. Bynum is currently involved in or overseeing NRC-licensed activities at TVA or any other licensee of the NRC, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Additionally, Joseph R. Bynum is required to notify the NRC of his first involvement in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bynum's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

#### IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, it is hereby ordered that:

A. For a period of five years from May 1, 1993, Joseph R. Bynum is prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) Using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

B. Following the five-year period of prohibition in Section IV.A above, at least five days prior to the first time that Joseph R. Bynum engages in, or exercises control over, NRC-licensed activities, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Joseph R. Bynum is committed to compliance with NRC requirements and the reasons why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bynum of good cause.

#### V

In accordance with 10 CFR 2.202, Joseph R. Bynum must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555,

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and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Joseph R. Bynum or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, Suite 2900, Atlanta, GA 30323, and to Joseph R. Bynum if the answer or hearing request is by a person other than Joseph R. Bynum. If a person other than Joseph R. Bynum requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Joseph R. Bynum or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Joseph R. Bynum, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order

[[Page 3925]]

without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 13th day of January 1997.

For the Nuclear Regulatory Commission.  
Edward L. Jordan,  
Deputy Executive Director for Regulatory Effectiveness, Program  
Oversight, Investigations, and Enforcement.  
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