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OCT 31 1994

Oswald J. Zeringue, LP 3B-C

TVA MANAGEMENT

GARY L. FISER, FORMER CHEMISTRY AND ENVIRONMENTAL SUPERINTENDENT
SEQUOYAH NUCLEAR PLANT (SQN) - COMPLAINANT
DEPARTMENT OF LABOR - ENERGY REORGANIZATION ACT MATTER
OIG FILE NO. 2D-135

We have completed our investigation of the circumstances surrounding a September 1993 complaint which Gary L. Fiser, former Chemistry and Environmental Superintendent, SQN, filed with the Department of Labor (DOL). In his DOL complaint, Fiser alleged TVA violated Section 211 of the Energy Reorganization Act of 1974, as amended, by discriminating against him because he reported safety concerns. More specifically, Fiser alleged that because he reported safety concerns, (1) his position as SQN Chemistry and Environmental Superintendent was surplusd and he subsequently was reduced-in-force (RIF'd), and (2) a later offer to become SQN Chemistry Manager was withdrawn.

Our investigation did not find evidence of misconduct on the part of TVA management. Rather, our investigation revealed the following.

- The evidence does not support Fiser's assertion that actions were taken against him due to his raising concerns. To the contrary, management concluded Fiser was a weak manager because there were problems falling under his management responsibilities which he did not identify and/or correct. Based on management's evaluation of Fiser's management skills, he was transferred from SQN to the Corporate Chemistry Group Manager for a one-year assignment, moved to a position of lesser responsibility in Corporate Chemistry during that year, not allowed to return to SQN at the end of the year, and not considered for the SQN Chemistry Manager position.
- Fiser's RIF was due primarily to miscommunication and misunderstanding among managers regarding what position was being RIF'd; specifically, whether Fiser's position as a Program Manager in the Corporate Chemistry Group or as SQN Chemistry Manager was being RIF'd.
- The SQN Chemistry Control Manager position was discussed with Fiser while he was in the Employee Transition Program, but he was ultimately told management felt he could not perform adequately in that position. (In fact, Fiser did not apply on the posted vacancy for that position.)

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In the matter of TVA

Staff _____ IDENTIFIED

Applicant RECEIVED

Intervenor _____ REJECTED _____

Other _____ WITHDRAWN _____

DATE 6/19/02 Witness _____

Clerk BHM

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The results of our investigation are described in the attached investigative report.

Since our report contains no recommendations for administrative or disciplinary action, we are providing it to you only for your information. Our investigation of this matter is closed.

ORIGINAL SIGNED BY
G. DONALD HICKMAN

G. Donald Hickman
Assistant Inspector General
(Investigations)

ET 4H-K

EHS:RPL:JMF

Attachment

cc (Attachment):

Oliver D. Kingsley, Jr., LP 6A-C

Mark O. Medford, LP 3B-C

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Tennessee Valley Authority
Office of the Inspector General

Report of Administrative Inquiry

TVA MANAGEMENT
GARY L. FISER, FORMER CHEMISTRY AND ENVIRONMENTAL
SUPERINTENDENT
SEQUOYAH NUCLEAR PLANT (SQN) - COMPLAINANT
DEPARTMENT OF LABOR - ENERGY REORGANIZATION ACT
MATTER

OIG FILE NO. 2D-135

APPROVED BY: ORIGINAL SIGNED BY
G. DONALD HICKMAN
G. Donald Hickman

DATE ISSUED: OCT 31 1994

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INTRODUCTION

We have completed our investigation of the circumstances surrounding a September 1993 complaint which Gary L. Fiser, former Chemistry and Environmental Superintendent, Sequoyah Nuclear Plant (SQN), filed with the Department of Labor (DOL). In his DOL complaint, Fiser alleged TVA violated Section 211 of the Energy Reorganization Act of 1974, as amended, by discriminating against him because he reported safety concerns. More specifically, Fiser alleged that because he reported safety concerns (1) his position as SQN Chemistry and Environmental Superintendent was surplused and he subsequently was reduced-in-force (RIF'd), and (2) a later offer to become SQN Chemistry Manager was withdrawn.

We investigated Fiser's allegation to determine whether any current or former TVA employee engaged in misconduct. We did not address whether any Section 211 violation occurred since such determinations are, by statute, entrusted to DOL. (During March 1994, TVA and Fiser reached an agreement to Fiser's DOL complaint. As a result of the agreement, Fiser became Technical Support Program Manager, Corporate Chemistry, and DOL stopped its investigation.)

SUMMARY OF INVESTIGATION

Our investigation did not find evidence of misconduct on the part of TVA management. Rather, our investigation revealed the following.

- The evidence does not support Fiser's assertion that actions were taken against him due to his raising concerns. To the contrary, management concluded Fiser was a weak manager because there were problems falling under his management responsibilities which he did not identify and/or correct. Based on management's evaluation of Fiser's management skills, he was transferred from SQN to the Corporate Chemistry Group Manager for a one-year assignment, moved to a position of lesser responsibility in Corporate Chemistry during that year, not allowed to return to SQN at the end of the year, and not considered for the SQN Chemistry Manager position.
- Fiser's RIF was due primarily to miscommunication and misunderstanding among managers regarding what position was being RIF'd; specifically, whether Fiser's position as a Program Manager in the Corporate Chemistry Group or as SQN Chemistry Manager¹ was being RIF'd.

¹The terms SQN Chemistry and Environmental Superintendent and SQN Chemistry Manager are used interchangeably in this report.

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- The SQN Chemistry Manager Control position was discussed with Fiser while he was in the Employee Transition Program (ETP), but he was ultimately told management felt he could not perform adequately in that position. (In fact, Fiser did not apply on the posted vacancy for that position.)

The bases for these conclusions are outlined below.

BACKGROUND

Organization

During August 1988 when Fiser became SQN Chemistry and Environmental Superintendent, he reported to Ron Fortenberg. After a subsequent reorganization, Fiser reported directly to the Plant Manager, then Steve Smith. About a year and a half later, Chemistry was moved and Fiser reported directly to the Operations Manager, then William R. Lagergren. (Patrick M. Lydon replaced Lagergren during December 1991.) Lagergren's (and then Lydon's) supervisor was Robert J. Beecken, then SQN Plant Manager.

When Fiser became Corporate Chemistry Manager, Wilson C. McArthur, Operations Services Manager, was his immediate supervisor. McArthur's supervisor was Dan R. Keuter, then Vice President, Operations Services. Keuter's supervisor was Joseph R. Bynum, then Vice President, Nuclear Operations. When Fiser was demoted to program manager, Sam L. Harvey, III became the acting corporate chemistry manager and was Fiser's supervisor.

Chronology

The following is an outline of significant events concerning Fiser.

<u>Date</u>	<u>Action</u>
September 1987	TVA hired Fiser as Program Manager, Corporate Chemistry Group.
April 1988	Fiser selected as SQN Chemistry Group Manager.
August 1988	Fiser selected as SQN Chemistry and Environmental Superintendent.
1991	Fiser rotated to Outage Manager position.
March 1992	Fiser temporarily assigned (for one year) as Corporate Chemistry Manager and William F. Jocher was assigned to Fiser's position.

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- November 16, 1992 McArthur (Operations Services Manager) told Fiser that the Operations Services managers² were not willing to honor the agreement that Fiser could return to SQN.
- November 23, 1992 Fiser was "demoted" to a Corporate Chemistry program manager, and Harvey was assigned as Acting Corporate Chemistry Manager.
- January 27, 1993 SQN Radiation Protection and Chemistry were combined and Charles E. Kent, Jr., was appointed the group's manager.
- February 26, 1993 Kent implemented an interim organization at SQN without a Chemistry Manager position.
- April 2, 1993 Bynum by memorandum notified Fiser that the SQN Chemistry Manager position was surplus and assigned Fiser to ETP.
- April 27, 1993 Bynum stated in a memorandum that there would be an SQN Chemistry Manager.
- May 1993 Bynum approved a revised SQN Radiological and Chemistry organization which included the Chemistry Manager position. (This position was somewhat different from Fiser's former SQN position.)
- July 6, 1993 Fiser met with Kent concerning SQN Chemistry Manager position.
- July 15, 1993 Kent asked Gordon L. Rich, then Corporate Chemistry Manager, if interested in the SQN Chemistry Manager position.
- August 13, 1993 Ronald M. Eytchison, Vice President, Nuclear Operations, notified Fiser that his RIF was effective October 15, 1993.
- August 19, 1993 Vacancy announcement for SQN Chemistry Manager position closed with two applicants. Fiser did not apply for it.
- August 20, 1993 Rich selected for SQN Chemistry Manager position.

Below we further discuss some of the events preceding Fiser's RIF.

Fiser's Transfer to Corporate Chemistry

During March 1992, management decided to have Fiser (SQN Chemistry and Environmental Superintendent) and Jocher (Corporate Chemistry Manager) swap

²The Operations Services managers included Beecken, McArthur, Bynum, and Jack L. Wilson, then SQN Site Vice President.

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positions.³ According to a March 16, 1992, agreement between the Operations Services managers and Fiser, Fiser was entitled to return to his original official station, classification, schedule and grade (PG-9) on or before the appointment ending date of March 4, 1993.⁴ McArthur coordinated the temporary transfer and Bynum approved and signed the agreement.

Management statements about this swap were as follows.

- Bynum stated that Beecken (former SQN Plant Manager) and Wilson (former SQN Site Vice President) considered Fiser a poor performer and they proposed to Bynum that Jocher and Fiser swap positions. Although Bynum was not involved in the details of the swap, he approved it. Bynum stated his main concern was that Fiser might get the wrong idea that he was performing adequately because the Corporate Chemistry Manager position was higher than the SQN position.
- According to Beecken, there were two reasons for Jocher and Fiser to swap positions: (1) to see if Jocher could fix the chemistry problems at SQN, and (2) he had not been happy with Fiser's performance at SQN and the swap would give Fiser a chance to perform under a different manager, which would assist him (Beecken) in seeing if he was judging Fiser's management abilities correctly.
- Keuter (former Vice President, Operations Services) stated that when he came to SQN during September 1991, several past assessments had shown that significant problems in SQN's Chemistry Program were not being addressed, and he was dissatisfied with Fiser as SQN Chemistry Manager. Accordingly, someone (unknown) recommended Jocher be brought to SQN to implement corrective action and put Fiser in Corporate to see if he could do better in a corporate environment rather than a site environment. According to Keuter, the swap was not a disciplinary action. Keuter also stated Fiser was not a strong manager at SQN and did not pursue problems. As a result, several individuals were against Fiser going to Corporate because it was a higher position and gave the appearance of rewarding Fiser. Keuter said he made the decision to give Fiser a chance as Corporate Chemistry Manager.

³Lydon (former SQN Operations Manager) stated Bynum and Beecken wanted him to fire Fiser because he (Fiser) was not competent. However, Lydon had only been at TVA since November 1991 and he told them he could not fire Fiser because he did not have any documented justification to take such action.

⁴Mike Pope, former Nuclear Human Resources Manager, stated Fiser's "position of record" was still SQN Chemistry Manager even though he was assigned to Corporate Chemistry. According to Pope, the swap was an "informal rotational assignment" and there was no paperwork filed to change Fiser's title.

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- McArthur stated that before Fiser and Jocher swapped positions, Jocher and the Nuclear Safety Review Board had identified problems (some long-term) in SQN's Chemistry Program. According to McArthur, Fiser was held responsible for causing the problems.

Fiser's Transfer to Program Manager Position in Corporate Chemistry

During November 1992, Fiser was moved to a Program Manager position in Corporate Chemistry. Our investigation revealed the following regarding this transfer.

- Fiser stated that before he was "demoted" during November 1992, McArthur told him that on one evaluation McArthur had rated him very high in comparison with his other direct reports. However, Keuter intervened and ordered McArthur to put Fiser in a position where he would not have a pay increase. Ben G. Easley, Employee Relations and Development Human Resource Officer, witnessed the conversation.

(Easley, McArthur, and Keuter could not remember the incident. However, Keuter stated he {Keuter} would have put Fiser "at the bottom of the list." McArthur added that Keuter was dissatisfied with Fiser only after McArthur complained about his performance.)

- According to McArthur, about three months after Fiser began serving as Corporate Chemistry Manager, McArthur prepared Fiser's service review and it was "the worst performance appraisal" he'd ever written.⁵ McArthur stated that between 3-6 months into Fiser's term, he told Keuter that Fiser was not working out. Subsequently, he demoted Fiser to a Program Manager and appointed Harvey as the Acting Corporate Chemistry Manager.⁶

(Keuter confirmed McArthur's statements. According to Keuter, Fiser was a poor performer as Corporate Chemistry Manager.)

⁵In Fiser's evaluation dated September 4, 1992, McArthur stated Fiser "has attempted to manage the Chemistry Group under the cloud of the previous manager's strong influence. This has been a difficult task. Efforts to bring this group into full cooperation have been slow and the technical leadership needs attention. This has been a difficult experience by an individual that has performed well in some other efforts (U1C5 Outage Management Team at SQN)." Further, McArthur ranked Fiser in the middle (not high or low) on all the behavior standards, including the overall evaluation.

⁶Fiser stated that even though he retained his title and pay grade, he was very upset about the "demotion." Pope (former Human Resources Manager) stated that Fiser never went through a demotion in the traditional sense where his level and pay were cut. Rather, Fiser was taken out of the "top job" and Harvey took over.

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- Harvey believed Fiser was "technically inadequate" and had difficulty handling more than one issue at a time.

Decision Not to Allow Fiser to Return to SQN

In the Temporary Transfer Agreement dated March 16, 1992, Fiser, Bynum, McArthur, Wilson, and Beecken agreed that Fiser would be "entitled to return to his original official station, classification, schedule, and grade (PG-9), on or before the appointment ending date of March 4, 1993." The agreement further provided that "A decision to place [Fiser] permanently in Operations Services, Technical Programs, Chattanooga, shall be agreed upon by the above mentioned parties."

Fiser made the following statements about not being allowed to return to SQN.

- After he learned he was being demoted, he began hearing rumors that SQN management did not want him back at SQN. Subsequently, he talked to Albert V. Black, SQN Human Resource Officer (HRO), and Lagergren, Operations Manager. Black assured him no one was dissatisfied with Fiser's performance. Lagergren said he was happy with Fiser's performance. In fact, Lagergren awarded Fiser a bonus because Fiser was a successful performer.⁷
- Initially, he did not believe the rumors that Beecken and Wilson did not want him back at SQN because the three of them had informally met in the stairwell before Fiser went to Corporate. During the meeting, Beecken and Wilson "went out of their way to express their appreciation for the job" he had done at SQN. Further, they told him that the move to Corporate was a good move professionally because it would make him more promotable.

(Beecken could not remember having a specific conversation with Fiser in the stairwell. However, he stated it was possible they had talked. According to Beecken, he said "something to the effect that you {Fiser} have done a good job, but there are a lot of problems in the Chemistry Program and here is a good offer for you to go downtown--a good career move." He denied telling Fiser that his move to Corporate would make him more promotable. Rather, he told Fiser that it would be a good idea for him to go to prove himself because of the problems in the SQN Chemistry Program.)

⁷According to Fiser's performance evaluation for fiscal year 1990, Lagergren stated Fiser's management performance was "very good" and he ranked Fiser high in all the behavior standards. Further, Fiser received a lump sum program award of \$3,795 during 1990. According to Fiser's FY 1991 evaluation, for the first quarter summary Lagergren stated Fiser was "very organized and has potential to perform at a higher management level than Chemistry Superintendent. Will rotate to Outage Manager position . . . to observe leadership skills outside of his area of expertise." In the fourth quarter summary, Lagergren stated Fiser "is having difficulty operating independently outside the Chemistry area. Is not using the authority of his position as an Outage Manager effectively."

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- On November 16, 1992, McArthur told him that they (Beecken, Wilson, Keuter, and Bynum) did not want Fiser to return to SQN.
- On November 21, 1992, Fiser talked to Wilson about Fiser's return to SQN. Wilson told him that he was not aggressive enough and that the chemistry manager needed to demand that upgrades occur.
- During a December 9, 1992, meeting with Beecken, Beecken told Fiser that he (Fiser) was not coming back to SQN because Beecken wanted a perfect Institute of Nuclear Power Operations (INPO) evaluation. Further, Beecken told him that he blamed Fiser for SQN problems although Beecken acknowledged that the instrumentation problem was not in Fiser's ability to control.
- While he was at SQN, there was never a finding in an INPO evaluation against the SQN Chemistry Program. As a result, Fiser was named Outage Manager as a reward for his good work at SQN's Chemistry Program.

(However, contrary to Fiser's statements, INPO evaluations did have findings against the Chemistry Program. For example, in the 1988 INPO evaluation, there were six findings in Chemistry, and during the 1991 evaluation there was one new finding and a finding that several past findings had not received sufficient management emphasis. Further, Keuter stated that when he came to SQN during September 1991, several past assessments had shown that significant problems in SQN's Chemistry Program were not being addressed.⁸)

Beecken stated the decision not to bring Fiser back to SQN had nothing to do with Fiser raising safety issues. Rather, Fiser was a "good chemist" but not a good manager. Beecken made the following statements about Fiser.

- The longer Jocher was at SQN as Chemistry Manager, the more it became apparent that Fiser had not been doing his job as SQN's Chemistry Manager. Accordingly, he told McArthur that he did not want Fiser to return as the SQN Chemistry Manager because the underlying performance problems showed Fiser was not the "right guy" to run SQN's Chemistry Program. (McArthur confirmed Beecken told him that the site did not want Fiser to return to SQN. McArthur stated Beecken did not give a reason for Fiser not being allowed to return.)

⁸However, on Fiser's FY 1992 evaluation, McArthur said that while Fiser was at SQN there had been no chemistry related findings by INPO for SQN. "This is a record for SQN." He also wrote that during the recent INPO assist trip, no items were identified that had not already been assigned action to resolve.

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- He was concerned with Fiser's performance because although Fiser's technical ability was good, Fiser was a weak manager. One of Fiser's problems was that he had been too quiet and not aggressive.
- He told Fiser during the December 1992 meeting that he did not want him back at SQN because there were so many problems in the SQN Chemistry Program that Beecken did not see how Fiser could be effective. The decision not to allow Fiser to return to SQN was not made because he raised safety issues but rather because Fiser did not raise issues.

Bynum stated he considered Fiser to be a "very, very weak manager" and technically incompetent. Further, Bynum stated that he never intended for Fiser to return to SQN. Bynum could not remember signing the March 1992 agreement with Fiser that he could return to SQN in one year. According to Bynum, he must have made a mistake issuing the letter because he knew at the time (i.e., March 1992) that Fiser would not continue as the SQN Chemistry Manager because of his poor performance. He stated Fiser never got involved or made decisions and it was evident to him that Fiser was "not strong or decisive."

Keuter started out a few months after Fiser went to Corporate. McArthur told him that SQN management did not want Fiser back because he had not done a good job at SQN. At that time, he thought Fiser would go back to SQN at a lower level position.

FISER'S ALLEGED SAFETY CONCERNS

Fiser stated the basis for his DOL complaint was that Beecken blamed him for the problems at SQN even though he was not responsible for the underlying conditions. More specifically, Beecken allegedly blamed Fiser for SQN's training problems, the "filter change-out scenario," and the radiation monitor set points. Fiser added INPO did not have a finding against the SQN Chemistry Program while he was the manager there, and he made a "clean break" when he was named Outage Manager. (Fiser served as Outage Manager during 1991 and the early part of 1992.)⁹

Beecken acknowledged holding Fiser responsible for these three areas. (Beecken was not holding Fiser responsible for raising concerns in these three areas, but for not fixing them as the responsible manager.) Beecken stated Fiser's performance problems and the Chemistry Program's problems had not just developed in the one year that Fiser was assigned to the Outage Team. Rather, they were long-

⁹In his DOL complaint, Fiser alleged Beecken was upset because he (Fiser) "reported" these concerns. We found no evidence to support Fiser's assertion. Management consistently testified that Fiser was held responsible for not identifying and fixing the problems.

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standing. While Fiser was on the Outage Team, he was still on-site and should have been aware of what was happening in the chemistry program. (Keuter said Beecken never talked to him about Fiser's performance problems in this area.)

Each of these three areas is discussed below.

SQN Training Problems

According to Fiser, during a December 9, 1992, meeting, Beecken "hammered" him on the training issue. He (Fiser) knew the training was weak because the training facility had been changed to a storage room and they had lost almost all of the degreed instructors. Fiser acknowledged he set up mock question/answer sessions with the technicians before an INPO evaluation and he "covered up" that SQN had inadequate training resources by conducting these sessions. Jocher, who replaced Fiser at SQN, did not have the mock sessions and therefore the technicians "blew it" during the INPO evaluation. As a result, there was a finding against the technician training in the 1992 INPO evaluation report. He believed Beecken was holding this (the training problems and eventual INPO finding) against him.

Beecken acknowledged he was "real upset about training." Beecken was not aware that SQN had a chemistry lab at the training center until Jocher (who swapped positions with Fiser during March 1992) took him to see it. When Beecken saw the lab, it was "locked up with cobwebs." Even though he knew the resources for training had been cut, he believed Fiser should have been more resourceful with what was there instead of "whining that he didn't have any instructors."

Beecken also stated Fiser would "pump" up the technicians prior to an INPO evaluation. He told Fiser that the technicians should know the basics instead of being told before the test. Beecken denied ever telling Fiser he wanted a perfect INPO evaluation. Rather, he may have said something like he wanted an "improved INPO evaluation." According to Beecken, there were continuous findings against Chemistry by INPO while Fiser was the SQN Chemistry Manager. In our opinion, there would be nothing improper for Beecken to tell Fiser he wanted a perfect INPO evaluation.

Kent stated the training issues became more widely known after Jocher went to SQN. According to Kent, the training program was far from where it should have been and it was reasonable to hold Fiser and the previous management accountable. Kent added that after INPO's findings against Chemistry in 1988, Fiser and prior managers should have been more specific in finding and fixing problems.

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Filter Change-Out Scenario

According to Fiser, another reason Beecken cited for not wanting Fiser back at SQN was the "filter change-out scenario." According to Fiser, technicians are required by federal law to change a chemistry filter daily. During one of the changes, a technician realized that a valve which was supposed to remain open was closed. The technician reported the closed valve and the incident eventually led to a Licensee Event Report (LER). This occurred when Fiser was on temporary loan to the Outage group and he was not in SQN Chemistry. He believed Beecken unfairly blamed him for the incident.

Beecken stated he held Fiser accountable for the technicians misaligning valves and misassembling filters. In the "filter change-out scenario" there was a problem with supervisory oversight. The root cause of the problem was the technicians were not using the correct procedures and there was supervisory acceptance of them using these incorrect procedures. Fiser did not let the technicians know what was expected or what might occur if they did not use the correct procedures. Fiser would have been held accountable even though he was not working in Chemistry at the time because of the tone that Fiser had previously set for the chemistry department.

Radiation Monitor Set Points

Fiser stated that during a December 9, 1992, meeting, Beecken told Fiser that one of the reasons he did not want Fiser back at SQN was because of the radiation monitor set points—a problem which, according to Fiser, was identified five years before he came to TVA. When he came to TVA, he repeatedly asked the technicians if the radiation monitor set points were correct, and his staff continually assured him the problem was corrected. However, while Fiser was at Corporate Chemistry, the radiation monitor set points were found to be incorrect and a LER was issued. Fiser stated that after his meeting with Beecken, Don Amos, an SQN Chemistry Technician, confirmed that Amos gave Fiser the wrong information about the radiation monitor set points.

Beecken stated he held Fiser accountable for the problems with the radiation monitor set points because Fiser was the Chemistry Manager during much of the time the monitors were "out of whack."

FISER'S RIF

Our investigation revealed that Fiser's RIF was due primarily to miscommunication and misunderstanding among managers regarding what position was being RIF'd; specifically, whether his job as a Program Manager in the Corporate Chemistry Group or as SQN Chemistry Manager was being RIF'd. (Because the evidence

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does not show a motive based on retaliation and Fiser settled his DOL complaint, we are not resolving whether Fiser's RIF was procedurally valid.)

Background

During January 1993, SQN Radiation Protection and Chemistry were combined and Kent was selected as the group's manager. Kent made the following statements about the new group.

- He did not believe the old Chemistry organization provided sufficient management or technical resources. Accordingly, he began creating a new organizational structure and he decided to do away with Chemistry and Radiological Control Manager positions. He made this decision because: (1) the industry trend is to reduce levels of managers, and (2) the program would be better served by having two more technical people as opposed to managers.
- During February 1993, after receiving approval from Beecken and Fenech, he implemented an interim organization which did not have a Chemistry Manager position. Kent wrote new position descriptions and during March 1993 submitted them to the Hay committee for approval. However, Hay refused to approve the proposed position descriptions pending Corporate approval of the new organization.
- No one told him to implement an organization without a Chemistry Manager and the organization was not created and implemented to get rid of Fiser. When he implemented the new organization, he believed Fiser had a permanent position at Corporate.¹⁰

(Fenech confirmed he originally gave Kent permission to implement an organization without a Chemistry Manager and at the time Fiser was RIF'd there was "definitely not going to be a Chemistry Manager at SQN." Beecken (former SQN Plant Manager) stated he gave Kent the freedom to change the group's structure and Beecken was not fully aware of the organizational changes because he knew Kent had it under control.)

- Until the end of April 1993, Fenech and Bynum were discussing whether SQN should eliminate the plant Chemistry Manager level of management. Because Fenech was backing Kent's proposed organization, Kent continued to work under the new organizational structure. In addition, McArthur was tasked with coordinating a standardized organizational structure. At the end of April,

¹⁰Keuter stated he never agreed with Kent's plan to eliminate the Chemistry Manager position at SQN. According to Keuter, Kent implemented the organization without a Chemistry Manager because Fenech agreed with him.

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Bynum approved the standardized organization and it was implemented at SQN. McArthur's organization contained Chemistry and Radiological Control managers.

- Once it became apparent that SQN would have a Chemistry Manager position he decided to change the position. (The position changed from a PG-9 to a PG-10.) He added more stringent experience and educational requirements and increased the accountability and technical knowledge/skills.¹¹ However, the new position lacked some of the responsibility of the old position because the environmental program was removed from under Chemistry. (Black, SQN HRO, stated the Chemistry Manager position was not changed to get rid of Fiser. Rather, there was a general consensus that the position needed to be more accountable.)

Bynum stated he blessed the initial decision to combine radiological control and chemistry together under one manager. However, he said "absolutely not" to Kent's plan of eliminating the Chemistry Manager position. Bynum told Beecken and Fenech that he would not agree to eliminate the Chemistry Manager position because Kent did not know anything about chemistry and the Chemistry Program had extensive problems which needed attention. According to Bynum, "no organization without a chemistry manager had been implemented at SQN." After he disagreed with Kent's plan, there were no discussions about implementing an organization without a Chemistry Manager. During April 1993, he announced there would be a chemistry manager at SQN.

The RIF

Our investigation revealed that there was miscommunication and misunderstanding among managers concerning Fiser's RIF; specifically, whether Fiser was being RIF'd for a Corporate Program Manager position or from the SQN Chemistry Manager position. The basis for our conclusions is outlined below.

On April 2, 1993, Fiser was notified that his position as Manager, Chemistry, PG-9, SQN, was being surplusd. The letter was signed by Bynum and gave Fiser the option of resigning or entering the ETP for six months. On August 13, 1993, he was advised that his position of Manager, Chemistry, PG-9, SQN, was being eliminated in a reorganization and he was being RIF'd. It was the only position in the competitive level and area.¹² The letter was signed by Ronald M. Eytchison.

¹¹According to the position descriptions, the PG-9 position (Fiser's old job) reported directly to the Plant Manager and required 5 years' experience in Chemistry. The new PG-10 position reported directly to the Radiology and Chemical Control Manager and required 8 years' experience in Chemistry. (However, the former position, in fact, reported to the Operations Manager.)

¹²According to Fiser's personal history record, Fiser's position at SQN was Chemistry and Environmental Manager.

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Fiser stated that on April 2, 1993, Jocher, his immediate supervisor, gave him a letter from Bynum stating that he was being placed in the ETP because his position as SQN Chemistry Manager was determined to be surplus. In his DOL complaint, Fiser stated Jocher and McArthur were very dismayed about the decision to place him in ETP and expressed their disagreements publicly. Fiser stated that TVA management "lied" about his position being abolished. "If that position was abolished it was done so in name only and as a pretext to get rid of me." Fiser stated the upgraded SQN Chemistry Manager position was "for all practical purposes" the same as his old job. He further stated he never had a discussion with Keuter, Bynum, or Beecken about his performance prior to his RIF. McArthur told him that he (McArthur) felt like Beecken was giving Keuter and Bynum a bad picture of Fiser.

Jocher stated that during January 1993 Beecken told him (Jocher) that he (Beecken) did not have a place for Fiser and did not want Fiser back at SQN. According to Jocher, around March 10, 1993, McArthur and Easley told Jocher that Fiser was going to be terminated. (Easley recalled having a discussion with Jocher about what would happen to Fiser, but he does not specifically remember telling Jocher that Fiser was going to be let go.) Jocher never told Fiser that his job was in jeopardy. However, he told McArthur that it was unfair and that he (Jocher) had an open position that Fiser could fill.

McArthur stated Bynum told him to put Fiser in ETP and McArthur did not have the "foggiest idea" of why Bynum wanted Fiser put in ETP. McArthur made the following additional statements.

- Around March 1993, Bynum told McArthur to put Fiser in the ETP but did not indicate which position Fiser was to be RIF'd from. He assumed Bynum meant from the SQN Chemistry Manager position because Fiser was on loan from that position. However, Bynum did not make it clear.
- The actual organization in SQN Chemistry was "up in the air" when Fiser was RIF'd. It did not seem logical to RIF Fiser because there was potentially a slot open if Don Adams decided to go to SQN. He told Bynum that Fiser could fill Adams' position but Bynum said to put Fiser in ETP. (Adams officially began reporting to SQN on May 31, 1993.)¹³
- He assumed Easley handled the RIF but he could not remember any specific details.

¹³E. S. Chandrasekaran, Program Manager, Corporate Chemistry, also stated there was an open Program Manager's position after Adams went to SQN.

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Easley stated Fiser was surplused because his position at SQN was revised and was not the same position he previously held. Easley stated he dealt with McArthur on surplusing Fiser. According to Easley, Beecken and Fenech did not want Fiser to return to SQN and wanted Corporate Chemistry to find a position for him. Since Fiser was being surplused from an SQN position, Easley told SQN's HRO to surplus Fiser. However, Pope (Easley's supervisor) told Easley to do it. Easley stated he told Pope that they (Corporate HR) should not be doing this (handling the surplus of an SQN position). Pope stated Fiser was RIF'd because his position was going away due to a reorganization. He made the following statements.

- He and McArthur discussed what would happen to Fiser and the options ranged from terminating him for poor performance to surplusing his position. He told McArthur that since the scope of work for the SQN Chemistry Manager was increased and the position was upgraded to a PG-10 and the old position no longer existed, surplusing Fiser was a viable option.
- He and McArthur jointly decided to handle the RIF from the central Human Resources Office even though the position being RIF'd was the SQN Chemistry Manager position. According to Pope, McArthur has corporate oversight and support of the plant's chemical and radiological control programs. In turn, the central Human Resource Office, managed by Pope, services McArthur's Corporate organization.
- He did not see a problem with McArthur's authority in carrying out the RIF since Kent was new to the position and not as familiar with Fiser. McArthur had the experience even if he was not Fiser's supervisor of record and therefore it was more logical for McArthur to take the action.
- He never spoke with Kent about the RIF but he did inform SQN HR about Fiser's impending RIF. (Black, SQN HRO, stated he was not involved in Fiser's RIF because Easley told him that Corporate HR was handling it. According to Black, it was unusual for Corporate to handle the RIF of an SQN position. However, he believed Corporate handled it because they felt responsible for Fiser being downtown without a position.)
- He would never have agreed to RIF Fiser if he believed the position was being surplused in order to get rid of Fiser.

Bynum stated it was clear to him that Keuter and McArthur wanted to get rid of Fiser. According to Bynum, he could not have told McArthur to RIF Fiser from an SQN position because McArthur only has the authority to RIF Corporate positions. Bynum stated he believed Fiser was RIF'd from a Corporate position. He made the following additional statements.

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- He confirmed he signed the letter to Fiser which indicated Fiser's position as the SQN Chemistry Manager was being surplusd. However, he stated he signed all such letters from the sites and did not notice that the SQN Chemistry Manager position was being surplusd.
- Initially, Bynum stated it was Keuter's decision to RIF Fiser and he (Bynum) did not know how McArthur could say that Bynum ordered McArthur to RIF Fiser. However, Bynum later stated he believed that he and Keuter discussed who Keuter would be keeping in the Corporate Program Manager positions. At the time, Bynum believed that Fiser occupied one of the Program Manager positions, and when Keuter did not mention Fiser's name as being one of the Program Managers they were keeping, Bynum assumed that they were RIF'ing Fiser's Program Manager position.

(Keuter stated Fiser's name was not mentioned during discussions with Bynum about the downsizing because Keuter was not aware Fiser was still at Corporate. According to Keuter, he "probably didn't mention Fiser because [Keuter] thought he [Fiser] was going to be at Sequoyah." Keuter stated Bynum could have assumed Fiser's position was being RIF'd because Keuter did not mention Fiser by name.)

- In a subsequent discussion with McArthur, Bynum told McArthur that Fiser was going to be RIF'd. He based this statement on his previous discussion with Keuter in which he assumed that Fiser was being RIF'd from a Program Manager position--not the Chemistry Manager position. Since McArthur was not involved in the downsizing and had no knowledge of the potential RIF's, it is understandable that McArthur believed that Bynum made the decision to RIF Fiser.
- Bynum "was never consciously aware that they were RIFing Fiser out of the SQN Chemistry Manager job." He would not have taken the stand that SQN needed a site Chemistry Manager if he had known Fiser had been RIF'd from the site Chemistry Manager position because "you can't fill a position that you've RIF'd. He "would not have knowingly RIF'd the SQN Chemistry Manager position because [he] was arguing with Charles Kent to fill it." He knew that positions are RIF'd and not people.¹⁴

¹⁴Brock stated that according to federal guidelines, management is permitted to determine which positions are no longer needed and they must then identify those positions and the type of work no longer needed. Management cannot RIF an individual because they do not like him or because he is a bad performer but rather the job has to go away. Brock also stated that he did not believe a position should be surplusd from a temporary organization which did not have final approval.

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- Further, Human Resources should not have allowed the RIF to happen since McArthur did not have the authority. He does not remember McArthur telling him that Fiser could fill Adams' Program Manager position. It is possible that McArthur mentioned Adams' position. However, he would not have considered it because it would have meant keeping a position when they were trying to downsize.
- The decision to RIF Fiser was based on downsizing the corporate organization and not with Fiser raising safety concerns.

Keuter stated he was not involved in Fiser's RIF because he was no longer in Nuclear Operations.¹⁵ In fact, Keuter did not know Fiser was being RIF'd until after it had occurred. Keuter stated he was not aware that Fiser was still in Corporate when Jocher returned as Corporate Chemistry Manager during March 1993. Although he knew SQN management did not want Fiser to return to SQN, he believed Fiser would return to SQN in a lower level position. Keuter stated McArthur handled Fiser's RIF and he never spoke with McArthur about what to do with Fiser. According to Keuter, McArthur was asked to do SQN's "dirty work" by RIFing Fiser and it was an example of McArthur being overaccommodating. He stated Fiser was RIF'd rather than being terminated because the RIF was "convenient."

Harvey stated that after Jocher returned as the Corporate Chemistry Manager, Harvey, Jocher, and McArthur discussed the ETP for Fiser because they all agreed that Fiser had been promoted above his ability but was not a candidate for termination.

Beecken (former SQN Plant Manager) stated he believed Fiser was RIF'd from a Corporate position, not from the SQN Chemistry Manager position. McArthur may have told him Fiser was being RIF'd but it "didn't even dawn on [him] that it was from the SQN Chemistry Manager position." He did not realize that SQN's Chemistry Manager position had officially gone away. He originally told McArthur he did not want Fiser at SQN. Once the decision was made that Fiser would not be returning to SQN, Fiser was a Corporate person and Beecken did not worry about what had happened to him. He talked to Bynum about Fiser's performance problems and probably told Bynum (and Keuter) he did not want Fiser back at SQN. However, Beecken denied he told Bynum they needed to do away with Fiser.

Kent stated he did not know who decided to RIF Fiser and he (Kent) was not contacted or advised about the decision. He made the following additional statements.

¹⁵During early April 1993, Keuter was assigned to head Nuclear Readiness.

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- The Chemistry organizational structure was "in limbo" for several weeks. However, Kent felt confident that it would be implemented because the site was holding firm that it would be set up his way.
- Under Kent's new organizational structure, Kent felt that the Chemistry Technical Support Manager would be the key position in the Chemistry Program. Prior to Fiser's RIF, Kent asked Fiser about taking the Technical Support Manager position. However, Fiser told Kent that he (Fiser) did not want the job because it would be a lower level position. (Black stated Kent said he had talked to Fiser about the position and Fiser was not interested.)
- When he asked Fiser about the Technical Support Manager position, Fiser was aware that the Chemistry Manager position was being eliminated. However, Fiser believed he was going to stay in Corporate. About this same time, he and Black were working to get Fiser under the Corporate headcount.
- He had no knowledge of Beecken or Fenech being involved in the decision to RIF Fiser.
- Fiser's position was the only Chemistry position eliminated when the new organization was implemented. Kent was the Radiological Control Manager before he became the combined group's new manager so there was no one to RIF from his former position.
- Fiser was not RIF'd for reporting safety concerns. Rather, Kent believed Fiser was RIF'd because Fiser was not the right person for the Chemistry Program which had numerous problems. (Kent's statement supports a conclusion that Fiser's RIF was improper. However, Kent was not actually involved in the RIF decision, and there is insufficient evidence to support Kent's statement.)

THE SQN CHEMISTRY MANAGER POSITION

Our investigation revealed Kent discussed the SQN Chemistry Manager position with Fiser while he was in the ETP. However, Kent subsequently told Fiser management felt he could not perform adequately in that position. (Fiser did not apply on the posted vacancy.) The evidence shows management's concerns about Fiser were based on his past performance, not on his raising safety concerns. The bases for our conclusions are outlined below.

Fiser's Statements

Fiser made the following statements about the SQN Chemistry Manager's position.

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- On May 10, 1993, Kent told Fiser that the new organization had been standardized and the organization contained a Chemistry Manager position. Fiser told Kent that management may not want him back because Beecken did not consider him aggressive enough. Kent told him that he had never heard Beecken say that about Fiser.
- On July 3, 1993, Kent asked Fiser if he was willing to come to SQN to meet with the new plant manager, Ken Powers. (On June 28, 1993, Powers replaced Beecken as SQN's Plant Manager.)
- On July 6, 1993, he met with Kent and Powers. At the end of the meeting, Powers said he had no objections to hiring Fiser. Kent then offered Fiser the PG-10 Chemistry Manager position with a salary of \$81,000.
- He told Kent to deal with the ETP managers, Ron Brock and Jim Manis. Kent contacted them and arranged for Fiser to report to SQN on July 8. Kent told him to lay low so he (Kent) could work out the details of the offer. Kent said he was going to ask McArthur to "talk to the right people" to make sure the coast was clear.
- On the evening of July 6, Kent told him that Fenech had approved of hiring Fiser and McArthur seemed supportive, and the plan was still for Fiser to report on July 8, 1993. However, Kent added that if Kingsley had a target on Fiser's back, he (Kent) would have to rethink the whole thing.
- He tried to call Kent on July 7 to see if the coast was clear and never received a reply. Accordingly, he did not report to work on July 8.
- On July 9, Kent told him that the offer was not going to work out. Fiser told him that McArthur had talked to some people and as a result Kent and Fenech decided it was not in Fiser's best interest to take the position because he was "doomed from the start."
- On July 14, McArthur told him that he had talked to Keuter and Bynum about Kent's plan to hire Fiser, and Bynum had approached Fenech about the offer.
- On July 16, Brock contacted Black because he had not heard anything official withdrawing the offer. Black told Brock on a speakerphone that it (Fiser's offer) was "blocked at the highest level." Fiser and Manis heard his response.

Brock confirmed Kent told him Fiser's proposed job title, salary quote, and the grade level of the position. Further, Kent stated the job they were offering Fiser was his old job. Since Brock knew Kent was not authorized to make an official offer, he called Black (SQN HRO). Black was unaware of Kent's intentions of hiring Fiser. Later, Black told him that they would not be able to hire Fiser. He

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went on to say it had been "squashed." When Brock asked who had stopped the offer, Black said something to the effect that the offer was stopped "at a higher level than Charlie (Kent)." Brock confirmed that this conversation took place on a speakerphone with Fiser present. Although Brock could not "swear to his exact words," Black said "somebody higher than Charlie" had gotten involved and the offer was withdrawn. According to Brock, Fiser never had an "official" offer, but rather, had an offer from a supervisor who did not have the authority to make offers.

Manis stated Brock told him that he (Brock) did not feel comfortable with the offer because it came from a manager instead of through the Human Resource Office. Since Manis agreed, he told Brock to call Black to "check out" the particulars of the offer. He was present when Brock initially called Black and Manis heard Black say on the speakerphone that he would look into the offer. According to Manis, this was the only time he was present when the offer was discussed with Black. Manis denied he heard Black say that the attempt to hire Fiser was blocked at the highest level.

Black denied he said that hiring Fiser was "blocked at the highest level." Rather, he stated he may have said something to the effect that "this thing is bigger than me." According to Black, he did not mean to imply that Fiser's hiring was blocked and he believed his comment was misunderstood.

Kent's Statements

Kent acknowledged he talked to Fiser about the new Chemistry Manager position. However, he denied he offered the position to Fiser. Kent stated he had no personal knowledge of Fiser's performance but he knew Beecken did not consider Fiser to be a strong manager. He made the following statements.

- During July 1993, he was receiving "significant" pressure from his management to fill the Chemistry Manager position. He had tried to find someone for the Chemistry Manager position and did not feel comfortable with his choices. He talked to his staff about the possibility of rehiring Fiser and his staff seemed supportive of it. He added that Fiser was not considered until July because Beecken had such a low opinion of Fiser, and Powers, the new SQN Plant Manager, did not take over until July 3.
- On July 6, 1993, Kent met with Fiser in Kent's office. This was not a formal interview because the job had not been posted. Kent denied Powers was in the meeting. However, during the meeting, Powers walked by Kent's office and Kent introduced him to Fiser. They talked about 5 to 10 minutes. Fiser told Kent that hiring Fiser could be a liability and suggested that Kent "test it out with Corporate." Fiser did not want to do anything that would harm the SQN program. (In an outline of events surrounding the reorganization, Kent

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stated that during the meeting Fiser stated that he was concerned that his reputation or relations with Corporate management would inhibit the success of the program.)

- After Fiser left, Kent talked to Powers about Fiser. Powers told Kent that he would support any decision Kent made regarding filling the Chemistry Manager position. Powers did not tell him not to hire Fiser.

(Powers confirmed he talked to Fiser for 5-10 minutes. Powers said it was not an interview, but rather Kent pulled him over to say hello. However, he denied telling Kent to hire Fiser as SQN's Chemistry Manager. Rather, he delegated the responsibility of selecting the new Chemistry Manager to Kent. He had no knowledge of Fiser receiving any formal offer, salary quote, or report date. No one told him not to hire Fiser.)

- Kent then talked with Fiser about the possibility of Fiser coming out to help Kent on loan from ETP. He wanted Fiser to come to SQN immediately while he (Kent) went about seeing if he could hire Fiser as the Chemistry Manager. He asked Fiser that if they could work it out that he could come to SQN either on loan or permanent, when could he come to work? Fiser told him the next Thursday (July 8).
- He denied telling Fiser that he was going to hire him. He originally interviewed Fiser to find out if he had a negative attitude toward TVA or SQN. He denied he quoted Fiser a salary. It was not accurate to say that Fiser had an offer and/or report date.
- Since Fiser voiced a concern about his own hiring, Kent talked to McArthur who told him that he would support Kent's consideration of hiring Fiser. However, McArthur was going to check around to see if there was a problem in rehiring Fiser. He would not have checked with Corporate about hiring Fiser if Fiser had not raised a concern that hiring him was a liability.

(Fenech stated he told Kent to check with McArthur about rehiring Fiser. According to Fenech, it was Fiser's decision who to hire and if Kent had really pushed Fenech he would have approved Fiser's hiring. No one ordered him to keep Fiser from coming back to SQN.)

- On July 7, 1993, McArthur told him that although Fiser was considered pretty good technically, management (names unknown) did not believe Fiser had the managerial ability for the Chemistry Manager position.
- On July 8, 1993, he told Fiser that McArthur checked around and the word was that management did not have much confidence in his ability.

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McArthur confirmed Kent told him he wanted to rehire Fiser. According to McArthur, he told Kent he would support the hiring but Kent needed to check with "everyone." McArthur stated he only talked to Kent and Fenech about rehiring Fiser. He told Fenech that Fiser was not a good performer and Fenech needed to evaluate if SQN management wanted Fiser as its lead Chemistry person. He did not tell Keuter or Bynum of the attempt to rehire Fiser. However, he told Keuter after it was determined Fiser would not be returning to SQN.

Bynum and Keuter stated McArthur talked to them about Kent trying to rehire Fiser.. Bynum, who was no longer in NP at that time, stated he told McArthur he could not believe Kent would select Fiser because of the problems in the Chemistry program, but he did not tell McArthur not to hire Fiser. Keuter stated he may have told Fenech or Kent that based on Keuter's observations of Fiser's performance, it would be a problem rehiring Fiser.

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RECOMMENDATIONS

Based on our investigative findings, no recommendations are warranted.

REMARKS

Our investigation of this matter is closed.

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