

RAS 6063

50-390-CIV Pet. al. Joint Exhibit 45-Rec'd 5/2/02

DOCKETED
USNRC

2003 MAR -4 PM 3: 21

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 20, 1999

IA 99-043

Wilson C. McArthur
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: CONFIRMATION OF CLOSED ENFORCEMENT CONFERENCE
ARRANGEMENTS (OFFICE OF INVESTIGATIONS REPORT NO. 2-98-013)

Dear Mr. McArthur:

This is in reference to an investigation conducted by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) initiated on April 29, 1998, and completed on August 4, 1999. The purpose of the OI investigation was to determine whether a former Tennessee Valley Authority (TVA) employee was subjected to discrimination as a result of engaging in protected activities. The investigation found that you discriminated against an individual employed by TVA, as a result of his engaging in protected activity. A copy of the synopsis to OI Report No. 2-98-013 is included as Enclosure 1 to this letter.

Based on our review of the investigative report, an apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5, has been identified. 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. A summary of the OI report, which forms the basis for the NRC's conclusion that an apparent violation occurred, is included as Enclosure 2.

On September 9, 1999, the conclusions of the investigation and the NRC's intention to conduct a closed predecisional enforcement conference were discussed with you. The NRC will contact you at a future date to determine a mutually agreeable time and date to conduct the closed conference. This conference will be closed in accordance with the NRC's Enforcement Policy, and will be transcribed.

The purpose of the conference is to discuss the apparent violation and the circumstances surrounding it, and give you an opportunity to provide your perspective on this issue and any other information that you believe is relevant to the NRC's enforcement determination. You are specifically invited to address the factors that the NRC would consider in determining whether enforcement action should be taken against you. These factors are described in Section VIII, "Enforcement Actions Involving Individuals," of the enclosed copy of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, (Enclosure 3).

Certified Mail No. Z 013 415 638
RETURN RECEIPT REQUESTED

Template = SECY-028

SECY-02 7E01

CLEAR REGULATORY COMMISSION

License No. 50-390 ~~Order No.~~ Joint 45

In the matter of TRA

Staff Joint IDENTIFIED

Applicant Joint RECEIVED

Intervenor _____ REJECTED _____

Other _____ WITHDRAWN _____

DATE 5/2/02 Witness _____

Clerk BHM

Vertical text on the right margin, possibly a file number or date stamp, including the number 1000.

If the NRC concludes that you deliberately caused or committed a violation of NRC requirements, the possible sanctions which may be pursued include a Notice of Violation, a civil penalty¹, or an order. An order may prohibit your involvement in NRC-licensed activities, require notice to the NRC before resuming involvement in NRC-licensed activities, or require other action. Accordingly, you should be prepared to address why the NRC should not issue an Order prohibiting you from participation in NRC-licensed activities.

An agenda for the conference is included as Enclosure 4. Although not required, you may provide the NRC a written reply to the apparent violation prior to or during the conference. In addition, as discussed with you, you may have an attorney or personal representative attend the conference but it should be understood that the NRC will address its questions to you. Furthermore, you are not required to attend the conference, but you should understand that if you do not, the NRC will make an enforcement decision on the basis of the information developed during the investigation.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures (with the home address removed) will be placed in the NRC Public Document Room. However, the NRC will delay placing a copy of this letter and the enclosures in the NRC Public Document Room (PDR) until an enforcement decision has been made. At that time, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and the enclosures, will be placed in the PDR.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Original signed by C. Casto for LRP

Loren R. Plisco, Director
Division of Reactor Projects

Docket Nos. 50-390, 50-327, 50-328,
50-269, 50-260, 50-296
License Nos. NPF-90, DPR-77, DPR-79,
DPR-33, DPR-52, DPR-68

Enclosures: 1. OI Synopsis
2. Summary of OI Report
3. NRC Enforcement Policy
4. Agenda

¹ Civil penalties are not normally imposed on unlicensed individuals. See Footnote 10 of the NRC Enforcement Policy.

W. McArthur

3

cc w/encls and home address removed (EICS TO HOLD):

Mr. J. A. Scalice

Chief Nuclear Officer and

Executive Vice President

Tennessee Valley Authority

6A Lookout Place

1101 Market Street

Chattanooga, TN 37402-2801

Distribution w/encl 1 and 2 only [HOME ADDRESS REMOVED]:

IMMEDIATE DISTRIBUTION

DDambly, OGC
GCaputo, OI
LPlisco, RII
RBorchardt, OE
CEvans, RII
ABoland, RII
MSatorius PEDO
OE:EA File (BSummers, OE)
OE:IA File (BSummers, OE)

RELEASE AFTER 45 DAY HOLD AND OE APPROVAL - EICS ACTION

WTravers, EDO
FMiraglia, DEDOR
MKnapp, DEDMRS
SCollins, NRR
JZwolinski, NRR
BKeeling, CA
EJulian, SECY
Enforcement Coordinators
RI, RIII, RIV
WBeecher, OPA
KClark, RII
RTrojanowski, RII
PUBLIC

THIS ACTION MAY NOT BE RELEASED TO THE PDR OR OUTSIDE THE AGENCY WITHOUT THE APPROVAL OF OE

Distribution w/ encls [HOME ADDRESS]

ABoland, RII

* SEE PREVIOUS

*Concurrence via M. Stimp
for RBorchardt by telephone*

| SEND TO PUBLIC DOCUMENT ROOM? | | | | | | | | NO | |
|-------------------------------|--------------------|-----------|--------------------|------------|--------|--------|--------|--------|--------|
| OFFICE | RII | ORA | 01 | OE | | | | | |
| Signature | <i>[Signature]</i> | <i>NO</i> | <i>[Signature]</i> | * | | | | | |
| NAME | ABoland | CEVANS | WMCNULTY | RBORCHARDT | | | | | |
| DATE | 4/20/99 | 9/20/99 | / / 99 | 9/16/99 | / / 99 | / / 99 | / / 99 | / / 99 | / / 99 |
| COPY? | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO |

OFFICIAL RECORD COPY DOCUMENT NAME:M:\ENFORCE\99CASES\99235mca.1a\mcartpec.wpd

SYNOPSIS

On April 29, 1998, the Office of Investigations, U.S. Nuclear Regulatory Commission, Region II, initiated this investigation to determine whether a former Tennessee Valley Authority (TVA) Corporate Chemistry manager was forced to resign from his position in 1996, as a result of engaging in protected activities.

Based upon the evidence developed during this investigation, it was determined that discrimination by two corporate level TVA managers was intentional and deliberate and was a factor in the nonselection of the alleged for a Chemistry position in 1996. Furthermore, discrimination was substantiated through a showing of disparate treatment of the alleged.

Approved for release on 9/16/99

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II~~

Case No. 2-1998-013

1

Enclosure 1

SUMMARY OF OFFICE OF INVESTIGATIONS (OI) REPORT 2-98-013

OI Report 2-98-013 involves a former Tennessee Valley Authority (TVA) Corporate Chemistry and Environmental Specialist (employee), who was not selected to fill one of two Chemistry Program Manager positions created during a 1996 reorganization at TVA. The employee allegedly was not selected to fill the position for engaging in protected activity.

The protected activity involved the employee's filing of a discrimination complaint with the Department of Labor (DOL) in September 1993, in which he alleged that TVA discriminated against him for raising safety concerns related to his activities as Chemistry and Environmental Superintendent at the Sequoyah Nuclear Power Plant. In his DOL complaint, the employee named as a party to his discrimination the individual who served as Committee Member, Nuclear Safety Review Board (NSRB) in 1993.

The employee settled his 1993 DOL action with TVA prior to completion of a DOL fact finding investigation. As part of his settlement, the employee was appointed to the position of Corporate Program Manager, Technical Support in April 1994. During a July 1994 reorganization, this position was eliminated. However, the employee applied for and was selected to fill the position of Chemistry and Environmental Protection Program Manager, Operations Support at TVA corporate.

In late 1995 and early 1996, the individual who served as NSRB Committee Member in 1993 and who was named as a culpable party in the employee's 1993 DOL complaint was placed as Radcon Chemistry Manager, Operations Support, the employee's first level management superior.

Thereafter, in July 1996, the Operations Support group was reorganized. The three Chemistry and Environmental Protection Program Manager positions were eliminated. Two new Chemistry Program Manager positions were created and competitively posted. The employee applied for one of the two positions, but was not selected.

The evidence indicated that, as the employee's first line management superior, the Radcon Chemistry Manager assisted in implementing and influencing the selection process to preclude the selection of the employee to one of the Chemistry Program Manager positions. The evidence indicated that these actions were taken in retaliation for the employee's engagement in protected activity.

Enclosure 2