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USNRC

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February 7, 2000

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

IA 99-044

Thomas J. McGrath
[HOME ADDRESS REMOVED
PER 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

CLEAR REGULATORY COMMISSION

Locket No. 01-791-01 Official Exh. No. Joint 49

In the matter of TVA

Staff _____	IDENTIFIED <input checked="" type="checkbox"/>
Applicant _____	RECEIVED <input checked="" type="checkbox"/>
Intervenor _____	REJECTED _____
Other _____	WITHDRAWN _____

DATE 9-11-08 Witness McGrath

Clerk R. Davis

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.

Mr. McGrath

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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
IRAH

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/encs 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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*EA - 99-234
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NAME	ABoland	CEVANS	WICKULTY	LPLISCO	MStein	CDambly	JJohnson		
DATE	1/199	1/199	1/199	1/199	1/20/00	1/27/00	1/27/00		
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1/27/2000	2/1/2000

** See prior concurrence 01/13/00*

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DATE	/ / 199	/ / 199	/ / 199	/ / 199	1 / 20 / 00	1 / 27 / 00	1 / 27 / 00
COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OE:D <i>B</i>	DEDR
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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

ENCLOSURE 1

PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

THOMAS J. McGRATH

NOVEMBER 22, 1999, 1:00 PM

NRC REGION II OFFICE, ATLANTA, GEORGIA

- I. OPENING REMARKS AND INTRODUCTIONS
L. Reyes, Regional Administrator
- II. NRC ENFORCEMENT POLICY
A. Boland, Region II Enforcement Officer
- III. SUMMARY OF THE ISSUE AND APPARENT VIOLATION
L. Plisco, Director
Division of Reactor Projects
- IV. INDIVIDUAL PRESENTATION
- V. BREAK / NRC CAUCUS
- VI. NRC FOLLOWUP QUESTIONS
- VII. CLOSING REMARKS
L. Reyes, Regional Administrator

NOTE: The apparent violation discussed at this predecisional enforcement conference is subject to further review and subject to change prior to any resulting enforcement decision.

Enclosure 2

ISSUE TO BE DISCUSSED

10 CFR 50.5, Deliberate Misconduct, requires, in part, that any employee 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, Employee Protection, 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, 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.

In July 1996, Mr. Thomas J. McGrath engaged in deliberate misconduct that caused TVA, an NRC licensee, to be in violation of 10 CFR 50.7, in that you discriminated against Mr. Gary L. Fiser, a former TVA employee, 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 which caused his nonselection to the position of Chemistry Program Manager within TVA corporate Operations Support after a reorganization. Your actions were taken, at least in part, in retaliation of Mr. Fiser's previous Department of Labor complaint of September 1993, in which he claimed that TVA discriminated against him for raising safety concerns involving various chemistry related matters.

NOTE: The apparent violation discussed at this predecisional enforcement conference is subject to further review and subject to change prior to any resulting enforcement decision.

SEP 27 1993 10:04 AM
Gary L. Fiser
[REDACTED]

September 23, 1993

Mrs. Carol Merchant
Department of Labor
Wage and Hour Division
Room #123
710 Locust Street
Knoxville, Tennessee 37902

Re: Gary L. Fiser v. Tennessee Valley Authority

Dear Mrs. Merchant:

I was hired by the Tennessee Valley Authority (TVA) in August of 1987, as an M6 Program Manager in the corporate chemistry group. In April 1988, I was promoted to the position of Superintendent of Chemistry and Environmental, Sequoyah Nuclear Plant, a PG-9 position which I held until April 2, 1993, when, in violation of Federal Regulations pertaining to reductions in force, I was personally surplused but my job continued on. Since that day, I have been in a non-work status in TVA's Employee Transition Program (ETP). It has now become apparent that TVA's reason for lying about "surplusing" my position at Sequoyah Nuclear Plant, which essentially resulted in my termination, was unlawful and was in violation of 42 U.S.C. § 5851. In actuality, TVA determined to surplus me because of the fact that I or people under my direction had found and/or documented and/or reported and/or corrected problems which affected plant safety at Sequoyah. My basis for arriving at this conclusion is the result of numerous interviews with my manager, Dr. Wilson McArthur; the past Plant Manager of Sequoyah, Mr. Robert Beecken; the past Vice President of Sequoyah, Mr. Jack Wilson; and my Human Resource Officer, Mr. Ben Easley; and others.

On April 2, 1993, my supervisor, Mr. W. F. Jocher, presented me with a letter from Mr. Joe Bynum, Vice President, Nuclear Power Operations, stating that I was being placed in ETP because my position as Superintendent of the Chemistry and Environmental group at Sequoyah was determined to be surplus (Exhibit A). (Both my immediate supervisor, Mr. W. F. Jocher, and his supervisor, Dr. Wilson McArthur, were very dismayed about the decision to place me in ETP, and expressed their disagreement with this decision publicly and in front of witnesses.) If that

Enclosure 3

Mrs. Carol Merchant
September 23, 1993
Page 2

position was abolished, it was done so in name only and as a pretext to get rid of me. An April 27, 1993, memo also authored by Mr. Synum clearly stated that there would be a Chemistry Manager at Sequoyah (Exhibit B).

The new position of Chemistry Manager is for all practical purposes the same as that of Superintendent of Chemistry and Environmental, a job which I held for several years at Sequoyah. This fact was borne out when I was offered the Chemistry Manager job at Sequoyah on July 6, 1993 by the Rad/Chem Manager Mr. Charles Kent, and the new Sequoyah Plant Manager Mr. Ken Powers. This offer was in fact coordinated through ETP management, specifically Mr. Ron Brock and Mr. Jim Manis, but was withdrawn when, according to Sequoyah's Personnel Manager, Mr. Al Black, "It was blocked at the highest level".

In an interview with Plant Manager, Mr. Rob Beecken, on December 9, 1992, Mr. Beecken stated that one of the reasons that he did not want me back at Sequoyah--I had been rotated to a position in corporate chemistry in March 1992 but without a change of job title or description and was scheduled to return to my position at Sequoyah in March 1993--was because of "[t]he radmonitor effluent calculations not accounting for the vacuum." In 1982 the Nuclear Regulatory Commission (NRC) sent technical information to all nuclear sites (I&E Bulletin) that warned of conditions that could compromise containment radiation monitor setpoints. The bulletin was distributed to chemistry and engineering for an evaluation. The 1982 evaluation was not adequately performed since personnel at Sequoyah did not consider the impact that negative pressure in the noble gas chamber would have on monitor readings. They apparently only considered the impact on monitor flow indication and radioactive iodine readings. This erroneous evaluation was performed fully five years before I accepted employment with TVA. After I assumed my position at Sequoyah, I was informed several times by plant chemistry and engineering personnel in direct response to my questions that radiation monitor readings had been properly established, and did in fact correct for negative pressure. Subsequently, a Significant Corrective Action Report (SCAR) was initiated delineating the problem as well as the necessary corrective actions to bring the monitor into compliance.

Mr. Beecken was not at all pleased with the fact that the issue was reported and documented, his position being that he wanted it fixed without reporting it.

Another reason Mr. Beecken cited for not wanting me back was "[t]he filter change-out scenario". In this case, personnel who

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September 23, 1993
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may or may not have been under my supervision--they reported to me on the organization chart but I was on another temporary assignment in the plant at the time--discovered that a containment radiation monitor had been improperly aligned after sampling activities. Once the problem was discovered, appropriate notifications were made as I had previously instructed them, and the incident was entered into the corrective action process using the SCAR. This action is required by Sequoyah procedures as well as federal law. Mr. Beecken was upset because the radiation monitor could have been reset without being reported and no one would have been the wiser. Doing so would have avoided the SCAR process but would have been irresponsible and counter to NRC and TVA regulations.

Thus, even though I was not directly responsible for either of the underlying conditions leading to those situations, I was charged with them by Mr. Beecken. However, whether or not I was actually responsible for them, Mr. Beecken thought I was, and he determined to deny me my job because of the reporting process having been initiated. Therefore, I am suffering reprisals for finding, documenting, reporting and fixing a preexisting problem associated with a radiation monitor required to be operable by USNRC Technical Specifications. Further, to take action against me for reporting problems via the corrective action process is an example of a repressive management structure that seeks to conceal problems. This can only result in problems being suppressed instead of being handled in a forthright manner which would seek to address the root cause and prevent recurrence.

As another example, Bill Jocher and I determined that Sequoyah chemistry personnel could not meet NRC's three-hour requirement for conducting post-accident sampling analyses (Exhibit C). It was our view that NRC had established a three-hour requirement while others in higher positions at SQN, including Site Vice President Jack Wilson, disagreed. Mr. Jocher requested permission from his supervisor, Dr. McArthur, to contact NRC through corporate licensing for clarification on the three-hour constraint. NRC confirmed the three-hour limit, and we conducted exercises to determine the training level of the chemistry staff. Seventy-five percent of the chemistry technicians failed to perform their post accident sampling/analysis activities within the three-hour requirement, and some of them were not able to complete these critical activities at all. These test results were anticipated and predictable in that management had previously surplused all degreed chemistry instructors and converted the training lab into a storage room in an ill-advised attempt to cut costs. Without recurring training to reinforce fundamental concepts, post accident sampling proficiency as well

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Page 4

as other technician skills deteriorated to alarming levels. Subsequent measurements by the Institute of Nuclear Power Operations (INPO) as well as Corporate Chemistry confirmed this condition at considerable cost to TVA Nuclear Program head Mr. O. D. Kingsley, who had previously advised the TVA Board of Directors to the contrary.

Our test results revealed the bankruptcy of management's efforts at cost cutting, and the findings were reported. Such revelations are not well received at TVA.

Further, I was constantly in the position of being understaffed and under-budgeted. My pointing this out at various times to my superiors met with rebuke, notwithstanding Mr. Kingsley's promises to TVA Chairman Mr. John Waters that certain equipment deficiencies noted by INPO would be corrected. Including these items in the budget time after time only to have them deleted or deferred by higher management brought about a recurrent finding condition by various audit groups that kept opening and closing this particular item. Bringing up the sorry state of TVA's equipment maintenance repair program was always met with disfavor and contributed to my current situation.

Denial of my job at Sequoyah and my being surplusd were actions taken by the highest levels in the TVA nuclear management structure. In early July 1993, I was offered the position of Chemistry Manager at Sequoyah by the Chemistry Radcon Manager, Mr. Charles Kent, after I had interviewed with the new plant manager, Mr. Ken Powers. I was given a start date, a salary, and the proceedings were coordinated through the appropriate ETP Managers. A few days later, I was told that I apparently had a "target" on my back because persons high up in the nuclear organization had protested my job offer directly to the new Sequoyah Site Vice President, Mr. Fennech. I believe that TVA's decision to not consummate my job offer as Chemistry Manager at Sequoyah in July was another violation of 42 U.S.C. § 5851.

Also, at one point in the personnel evaluation process, my manager, Dr. McArthur, had me rated very high in comparison to his other direct reports, only to have Mr. Dan Keuter, Vice President of Operations Services, personally intervene and mandate that I be given no pay increase. In spite of the opposition raised by my direct supervisor, and in the presence of my Human Resource Officer, Mr. Ben Easley, Keuter ordered Dr. McArthur to place me in a position which would result in no pay increase, and made it clear that it was his (Keuter's) decision. Two other senior chemistry managers from two different TVA locations were victimized by similar retaliatory actions on

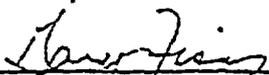
Mrs. Carol Merchant
September 23, 1993
Page 5

the part of TVA management for reporting and documenting safety-related issues. Actions of this type appear to be the norm as contrasted to the exception and receive their impetus from the highest levels of TVA nuclear management. This is indicative of a systemic problem within the agency versus an isolated occurrence. Interestingly, while I was the Chemistry and Environmental Superintendent at Sequoyah, the program received outstanding grades as a result of each INPO evaluation. Nevertheless, the types of events recorded above were deemed by upper management as either embarrassing to them or of greater significance than running a good overall chemistry program.

As an employee in TVA's nuclear power program, I am required by federal law to report and document issues related to the safe operation of the facility. To do so at TVA's Sequoyah Nuclear Plant is to invite reprisals in the form of unexplained demotions (Exhibit D), pay cuts in spite of one's performance and irrespective of the direct input from one's supervisor, and eventually the loss of employment. TVA has historically taken action against employees for reporting safety issues with apparent immunity from NRC, an agency for whom they have patent disregard.

As I mentioned earlier, the facts and issues are extremely well documented, and I look forward to sharing this with you, as well as imparting other insights into this case to you and/or members of your staff.

Sincerely yours,



Gary L. Fiser

I hereby designate Mr. Charles W. Van Beke, Wagner, Myers, and Sanger, P.C., 1801 Plaza Tower, 800 S. Gay Street, Knoxville, Tennessee, 37929, as my attorney in this matter.



Gary L. Fiser

Date: 9-25-93

April 2, 1993

Gary L. Fizer, LP 5D-C
[REDACTED]

NOTICE OF TRANSFER TO EMPLOYEE TRANSITION PROGRAM (ETP)

This is to notify you that, as a result of reorganization, your position of Manager, Chemistry, PG-9, Sequoyah Nuclear Plant, has been determined to be surplus.

As a surplus employee, you have the following options available to you.

1. You may resign your TVA position. If you do so, you will be eligible for the following benefits:
 - a. If you resign and separate from TVA within 30 days of the date of this notice, TVA will pay you a lump-sum incentive payment of \$5,000. This payment will only be available to you if you resign within that 30-day period. This payment is in addition to any other benefits you may be entitled to as described below.
 - b. You will be paid severance pay if you qualify under the terms of the Articles of Agreement. Severance pay is computed as set out in the Articles of Agreement.
 - c. You are eligible to continue the medical insurance you have currently in effect for up to 18 months from the end of the month that you separate from TVA, provided that you pay the full cost of such coverage at the applicable group rate.
 - d. You are eligible for immediate retirement benefits, if you are vested in the TVA Retirement System, in accordance with the rules of that system.
 - e. You will be paid project life severance pay if you qualify under the terms of the Articles of Agreement.
2. If you do not resign your position by close of business on April 2, 1993, you will be temporarily assigned to the ETP April 5, 1993. You should report at your normal work time to the ETP office at OSB 1A-C, Riverside Drive. This program is designed to provide assistance to employees in finding vacant TVA positions, and, if necessary, to assist in finding jobs outside TVA. If you resign from the ETP, the benefits listed above will be available to you, except that you will be eligible for the \$5,000 lump-sum payment only if you resign within 30 days of the date of this notice.

Gary L. Fizer
Page 2
April 2, 1993

If you choose to enter the ETP and at the end of six months you have not been placed in a permanent TVA position or entered a training program which will qualify you for another TVA position, your employment will be terminated through reduction-in-force procedures.

If you have questions about the options or benefits available to you, please talk to your human resources manager.



J. R. Bynum
Vice President
Nuclear Operations
LP 3B-C

I received a copy of this notice on _____
DATE

NAME

MDP:GLR
cc: Payroll Operations, WT 5D-K
PMU, ET 5R-K
M. D. Pope, LP 3A-C
J. M. Raines, ET 5P-K
S. E. Rathjen, LP 2B-C

6238u

ADMINISTRATIVELY CONFIDENTIAL

-il 27, 1993

Those listed

RADCON/CHEMISTRY/ENVIRONMENTAL ORGANIZATION - SEQUOYAH (SQN) AND BROWNS FERRY (BFN)

The operating plants have evaluated several organizational concepts regarding bringing the Radcon, Chemistry and Environmental groups together. The organization outlined in the attached organization chart represents the consensus of our operating plants. The Radcon/Chemistry/Environmental Managers will be allowed to manage as opposed to running the day-to-day operations. This will allow for time to evaluate problem areas and to look at trends. The Radcon Manager, Chemistry Manager, and the Environmental Manager can pay full attention to the functional operating aspects of their respective organization. The additions of radioactive waste and hazardous waste disciplines reporting to the Environmental Manager will also be a positive change in that some regulations (i.e., DOT, OSHA, EPA) are common to both, and the use of laborers will be maximized.

The addition of an Environmental Manager will address the issue of a major commitment by TVA to the environment and the overwhelming number of regulatory requirements that are coming forth in environmental legislation.

Please implement this Radcon/Chemistry/Environmental organization as quickly as possible at your site. As plants become operational, they will implement this organization. Please advise R. M. Eytchison of your implementation date.


J. R. Bynum
Vice President
Nuclear Operations
LP 3B-C

R. J. Beecken, POB 2B-SQN
R. A. Fenech, OPS 4A-SQN
H. F. McCluskey, OSA 1A-BLN
W. J. Museler, FSB 1A-WBN
J. A. Scalice, POB 2C-BFN
O. J. Zeringue, PAB 1E-BFN

WCM:JMB

Attachment

cc (Attachment):

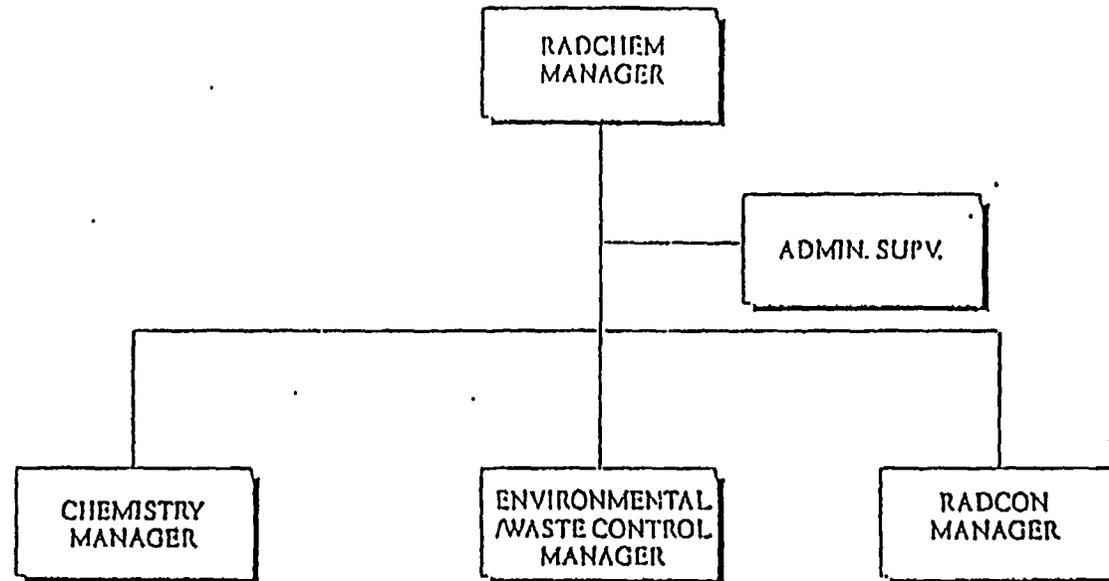
R. M. Eytchison, LP 3B-C
M. O. Medford, LP 3B-C
D. E. Nunn, LP 3B-C

RECEIVED
CHATTANOOGA TANK

APR 28 1993

OFFICE
VICE PRES.
NUCLEAR OPS

Concept 1 (Three Direct Reports to Rad/Chem Manager)



Laboratory Management
 Primary Chemistry Management
 Secondary Chemistry Management
 Chemistry Surveillance
 Radio-analytical Program
 Analytical Chemistry Program
 Process Monitoring
 Chemistry Data and Trending
 Performance Monitoring/Reporting
 Instrumentation Calibration & Maintenance
 Rad Environmental Program
 Effluent Monitoring
 Procedure Dev. and Maintenance
 Internal Assessment
 QA/QC Program
 Contract Management
 Emergency Response

Environmental Program Mgmt.
 Hazardous Waste Mgmt.
 Transportation & Shipping Haz. Waste
 PCB Mitigation
 Haz. Waste Minimization
 Emergency Response
 Environmental Compliance
 NPDES Permits
 Waste Stream Reporting
 Radwaste Program Mgmt.
 Rad Area and Equipment Decon
 Radwaste Transportation & Shipping
 Contract Mgmt.
 Rad Waste Minimization Program
 Rad Materials Storage
 Plant Support Services
 Plant Housekeeping
 Chemical Traffic Control

ALARA Planning
 RAD Program Development
 Procedure Dev. and Maint.
 Internal Assessment
 REXS Program Maintenance
 Outage Planning
 Contract Management
 Dosimetry Program
 Bioassay Program
 Respiratory Protection Prog.
 Rad Instrumentation
 Radiological Surveillance
 Rad Work Control
 Rad Materials Control
 Emergency Response

February 19, 1992

Chemistry Response to NSRB A132-6

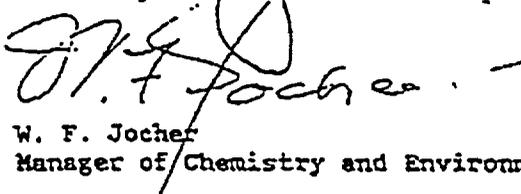
Since the previous NSRB meeting IMPO has completely revised their Post Accident Sampling good practice 88-005. The new good practice is 91-019. Site chemistry just received these guidelines in mid-January. A review of these guidelines for incorporation into site procedures is in progress.

Timed exercises have not previously been conducted to ensure that all personnel can meet the three hour requirement of NUREG 0737.

Currently, site chemistry has incorporated a semi-annual timed exercise into the training program. Sampling and analysis times exceeding three hours will be investigated and documented to determine if problems are a result of personnel actions, equipment malfunctions or other isolated causes. Causes will be addressed with corrective actions.

Documentation proving that all personnel can meet the three hour sampling requirement will be established and the above actions will be incorporated into the training procedures by July 30, 1992 by the Chemistry Training Section.


G. L. Fiser
Chemistry and Environmental Superintendent


W. F. Jocher
Manager of Chemistry and Environmental Protection

DJB

FL020201/3066/58

Exhibit C

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
IA 99-043

DECLARATION OF SAM L. HARVEY

Sam L. Harvey declares and says:

1. I am making this declaration to document the facts surrounding the Gary Fiser case and my involvement. First let me state that the conclusion that TVA was at fault was already made by the Department of Labor (DOL) prior to its investigation. The DOL investigator was biased and never could get my statement correct. From the first time I met with him, he couched the questions in such a way as to slant them toward a conclusion that Gary Fiser was treated badly. Every time the investigator brought my statement back to me for review and approval, the sentences were reworded to support this conclusion. At no time was the investigator ever objective in wanting "just the facts." I finally marked up the last draft copy of my statement in red and signed it since it was patently obvious that he was not going to state it the way I gave it to him.
2. I was never interviewed by the Nuclear Regulatory Commission about the Gary Fiser case and/or my involvement in the case.
3. Regarding the events in question, I was, from the very beginning (1991), told that the Corporate Chemistry staff would continue to shrink as improvements were made and the redesign of programs were brought up to industry standards. This was obvious also from the fact that Gary Fiser and E. S. Chandrasekaran were told to rewrite the job descriptions for only a PWR Program Manager and a BWR Program Manager just prior to the announcement of a reorganization. When the new job descriptions were sent to me for review (I was on assignment at Sequoyah for steam generator chemical cleaning), I protested to Ron Grover (my manager at the time) that the job descriptions were intentionally written to exclude me because the responsibilities that I had were divided between the two positions and were written strongly in favor of Gary Fiser and E. S. Chandrasekaran. It should have come as no surprise to anyone when it was announced that the Corporate Radiation Protection and Chemistry staffs would be merged into a single group and that there would only be two chemistry positions.

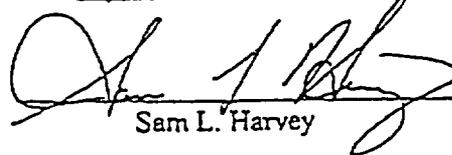
4. Several very interesting things were occurring at this time that need to be brought to light. First, prior to the announcement of the new Corporate Radiation Protection and Chemistry organization, Ron Grover came to me and stated that I needed to talk to Wilson McArthur about "wasn't he ready to retire," and, secondly, Sequoyah wanted me to move to the site. Ron Grover thought this was a good idea so everyone would have a job. After the announcement, Gary Fiser came up to me and stated that the jobs were predetermined and, further, that Tom McGrath was out to get him because of a previous incident between them. Gary Fiser made no mention of any problems he had with Wilson McArthur. Gary Fiser also stated that "he did not care because he knew how the system worked and he was going to get his licks in." I informed Gary that I knew no such thing about the job being predetermined (because I had been on assignment at Sequoyah for the last six months) except that it seemed to me he was the one being pre-selected because he wrote the job-description. Gary Fiser stated, "that was right because Ron Grover told him to because I was not supposed to come back from Sequoyah." I believe this statement, that I was not supposed to come back from Sequoyah, makes it clear that there were some maneuverings going on here and that the problems for Gary Fiser started to arise when it was discovered my staying at Sequoyah was not going to be the case.
5. Gary Fiser then proceeded to tell me and others around him that he did not want to work for TVA, and that he was going to take the year's salary and leave. I believe that Gary Fiser took the action of filing a DOL complaint prior to the jobs being posted in order to obtain financial gain and to manipulate the system for this end, as he had originally stated.
6. I believe that Gary Fiser had to post on the job, and then not get the job, in order to support his DOL complaint. I believe that Gary Fiser purposely did not prepare for and address the review board with his best effort. I believe his intention all along was to put on a show to get what he wanted, which was to get out of TVA with as much money as possible.
7. Finally, the statement by Dave Voeller, who was at that time the Chemistry Manager at Watts Bar, and who stated that prior to the interviews I told him the job was mine, was simply not true. My statement was, "I will be seeing more of you or not at all and I believe it will be more." I do not believe that statement translates to the fact that I was promised the job. Arrogance on my part, maybe. But remember that Gary Fiser was making it known at this point that he does not want to work for TVA anymore. I was assuming that I would not have much competition for the PWR position because Gary Fiser was saying he did not want the job. The week after I made this statement to Dave Voeller I was informed that he was saying that I told him I was promised the job. I made a point of contacting Voeller again and explained it in no uncertain terms that I was not promised anything by anybody, and I repeated my

statement to him, "I will be seeing more of you or not at all."

8. The sad part of all this is that this type of behavior at TVA is one of the main reasons I sought employment elsewhere. It was a mockery to me that this type of behavior could go on year after year, to make a joke out of the truth and to abuse a system put in place to deal with real injustices. During my tenure at TVA, there were only a few people I met with high moral standards and dealt with me with integrity. One of these people was Wilson McArthur. He was always straight with me and never pulled his punches. Because of my respect for him, I listened - even when it was not what I wanted to hear - because I knew he truly cared for the people who worked for him and wanted to help make them better employees and better people. Throughout this whole Gary Fiser matter, Wilson McArthur was the only manager that took the time to sit me down and look me in the eye and ask me if these allegations and statements were true. I will forever respect him for that.

Pursuant to 28 U.S.C. Section 1746 (1994), I declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and correct.

This 19th day of November, 1999.


Sam L. Harvey

Wilson C. McArthur was appointed Manager, Technical Programs, Operations Services, from 12/20/90 to 8/10/94. Technical Programs included the following:

Rad Con
Chemistry & Environmental
Protective Services (Fire Protection & Security)
Emergency Preparedness
ERMI
Industrial Safety

During this period (approximately in June 1992), Chemistry and Environmental was separated into a Chemistry group and an Environmental Protection group which included a Chemistry Manager, PG-10, Ron Grover, and an Environmental Protection Manager, PG-10, David Sorrelle.

On August 21, 1994, there was a reorganization where Technical Programs was eliminated and the positions of Rad Control Manager, PG-11, and Chemistry and Environmental Protection Managers were established, reporting to the Manager of Operations Support.

Under the Rad Con Manager were three Rad Control Specialists, PG-8, positions. Under the Chemistry and Environmental Manager were three Chemistry and Environmental Specialists, PG-8, and one Environmental Specialist, PG-7.

In June of 1996, another reorganization took place in Technical Support and a Radiological and Chemistry Control Manager, PG-SR, position was established. The Rad Chem organization was made up of the following:

Rad Con	2 PG-8 positions
Chemistry	2 PG-8 positions
Environmental/Radwaste	1 PG-8 position
ERMI	16 positions

These positions were initially under the Technical Programs organization.

2407Y

Allen Sorrell Temp/rotational over Rad Con Chem.

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. Vigluicci, Office of General Counsel, TVA