

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401

6N 38A Lookout Place

May 14, 1990

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

Gentlemen:

In the Matter of)
Tennessee Valley Authority)

Docket Nos. 50-390
50-391

REPLY AND ANSWER TO NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY EA 89-201 (NRC INVESTIGATION REPORT NO. 2-85-031)

This is in response to the NRC's April 12, 1990 Notice of Violation and Proposed Imposition of Civil Penalty regarding alleged acts of discrimination against members of TVA's Nuclear Safety Review Staff as a result of their participation in a December 19, 1985 briefing of NRC Commissioner James Asselstine.

The events giving rise to the Notice of Violation occurred more than four years ago, in February 1986, while TVA's nuclear recovery program was still in its formative stage. The initial steps in this recovery effort were described to the NRC in TVA's Revised Corporate Nuclear Performance Plan (Volume 1) which was submitted to the NRC on March 10, 1986. Given these facts, TVA believes that no purpose would be served by contesting the alleged violations, and thus has chosen to neither contest nor challenge the Notice of Violation.

TVA contends, however, that a civil penalty in these circumstances would be inappropriate. Because the events giving rise to this notice occurred over four years ago and in view of TVA's extensive corrective action, which the NRC acknowledges, TVA believes no regulatory purpose is served by imposing a civil penalty. The inappropriateness of a civil penalty under these circumstances is underscored by the existence of investigative findings which differ from those of the Department of Labor Wage and Hour Division on which the NRC relies, which includes a TVA Inspector General's report which did not substantiate Mr. Washer's allegations of harassment and intimidation. Accordingly, TVA requests that, in view of these factors, the proposed civil penalty be mitigated in its entirety.

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U.S. Nuclear Regulatory Commission

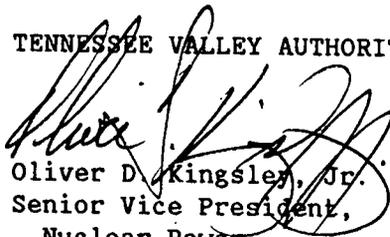
May 14, 1990

In the event the NRC determines that mitigation of the penalty is not warranted, TVA requests a senior level meeting be arranged to discuss the matter further. Such a meeting can be arranged by contacting Mark O. Medford, Vice President, Nuclear Technology and Licensing, at (615) 751-4776.

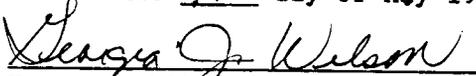
TVA's specific response to the alleged violations and corrective action are set forth in Enclosure 1. TVA's request for mitigation of the civil penalty is set forth in Enclosure 2.

Very truly yours,

TENNESSEE VALLEY AUTHORITY


Oliver D. Kingsley, Jr.
Senior Vice President,
Nuclear Power

Subscribed and sworn to before
me on this 14th day of May 1990


Notary Public

My Commission Expires 10-9-90

Enclosure

cc (Enclosure):

Mr. Dennis M. Crutchfield
Associate Director for Special Projects
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Enclosure 1

Reply to Notice of Violation (EA 89-201)

NRC Statement of the Alleged Violations

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities include providing information to the Commission about possible violations of requirements imposed under the Atomic Energy Act of 1954, as amended.

On December 19, 1985, a Commissioner of the Nuclear Regulatory Commission and members of the NRC staff were briefed by members of the TVA NSRS staff including Jerry D. Smith, Phillip Washer, and Robert C. Sauer, regarding their perceptions of noncompliance with the Commission's regulations, specifically 10 CFR Part 50, Appendix B, in the construction of Watts Bar.

- A. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Jerry D. Smith, who had participated in the preparation or delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created, leaderless section. This action constituted discrimination in retaliation for his participation in the briefing of the Commissioner.

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

Civil Penalty - \$80,000

- B. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Phillip Washer, who had participated in the preparation or delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created, leaderless section. This action constituted discrimination in retaliation for his participation in the briefing of the Commissioner.

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

Civil Penalty - \$80,000

- C. Contrary to the above, in February 1986, NSRS was reorganized and, in the reorganization, the supervisory duties of Robert C. Sauer, who had participated in the preparation or delivery of the December 19, 1985 briefing, were eliminated. He was assigned to a newly created, leaderless section. This action constituted discrimination in retaliation for his participation in the briefing of the Commissioner.

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

Civil Penalty - \$80,000

Admission or Denial of the Alleged Violations

TVA admits that the Nuclear Safety Review Staff (NSRS) engineers identified in the Notice of Violation (Messrs. Smith, Washer, and Sauer) were either present at the December 19, 1985 briefing of Commissioner Asselstine or assisted in the preparation of the briefing, and that they were removed from supervisory duties and placed in a newly-created section when NSRS was reorganized in February 1986.

The events giving rise to the Notice of Violation occurred over four years ago, at the time TVA's nuclear recovery program was still being formulated. TVA's Revised Corporate Nuclear Performance Plan (Volume 1) was submitted to the NRC on March 10, 1986. TVA has taken extensive corrective actions since that time including actions to further the policy of providing for the expression of safety concerns without fear of discrimination for having done so. In view of these considerations, and even though, as discussed below, investigative findings exist which differ with those of the Department of Labor (DOL) Wage and Hour Division on which this Notice is based, TVA believes no purpose would be served by contesting the alleged violations.

Information Relating to the Alleged Violations

Violations A, B, and C are based on what are essentially a common set of facts. The NRC has alleged that the participation of three members of NSRS in the preparation or delivery of a briefing to NRC Commissioner James Asselstine on December 19, 1985, resulted in certain retaliatory actions being taken against them when NSRS was reorganized in February 1986. The specific discriminatory acts alleged were the removal of these individuals from their supervisory duties and their assignment to a newly-created, leaderless section within NSRS. The cover letter accompanying the Notice of Violation indicates that these discriminatory actions were taken by a senior TVA official, the Director of NSRS.

The NRC Office of Investigations' report dated August 29, 1988 (Report No. 2-85-031) released to TVA indicates that the factual bases for this Notice of Violation are the investigatory reports prepared by the DOL Wage and Hour Division on the Section 210 complaints filed by Messrs. Smith, Washer, and Sauer. These investigatory reports were not provided to TVA by the NRC. As part of its preparation in 1986 for the administrative hearings on the Smith and Sauer complaints (the Washer case had already been settled), TVA's Office of the General Counsel (OGC) sought to obtain the DOL investigatory reports evaluating the Sauer and Smith complaints. In response to TVA's request, DOL informed TVA that the Smith investigatory report had not been prepared; however, DOL did provide TVA with a copy of the Sauer investigatory report. Because the copy provided to TVA had been substantially redacted (see attachment), it provided no investigatory information about the acts of

discrimination alleged in the Notice of Violation. Therefore, TVA's response is based on (a) facts gathered by OGC in 1986, and (b) facts gathered by TVA's Office of the Inspector General (OIG) as set forth in a report dated March 11, 1988.

In 1986, OGC investigated the Smith, Washer, and Sauer complaints. From its investigations, OGC determined that when NSRS was reorganized in February 1986, Messrs. Smith, Washer, and Sauer were placed in a new and separate organization, the Investigations Analysis and Assessment Task Group (IAATG), and that the supervisory duties of Messrs. Smith, Washer, and Sauer were removed. Because no supervisor was appointed over the newly created section, each member of the section reported to the acting chief of the Investigations Branch. OGC did not conclude that these actions were discriminatory. However, TVA recognized that a substantial risk existed that an Administrative Law Judge could infer that discrimination had occurred and for this and other reasons, the Section 210 cases of these three individuals were settled.

OGC issued a report on the results of its investigations of the Smith and Sauer complaints. (OGC's report did not specifically address Mr. Washer's complaint.) Based on its review of the OGC report and supporting evidence, TVA's OIG decided that further investigation of the Smith and Sauer complaints was not warranted. However, in response to a request from the former Senior Vice President of Nuclear Power, the OIG did investigate Mr. Washer's allegations, including his allegation that he had been harassed and intimidated because of his involvement in the December 19 briefing. In its

March 11, 1988 report, OIG concluded that the evidence did not support Mr. Washer's allegation that TVA removed his supervisory and investigative responsibilities and assigned him to the newly-formed IAATG because of his involvement in the December 19, 1985 NRC presentation. Instead, OIG concluded:

[t]o the contrary, Washer's supervisory and investigative responsibilities were no longer necessary when NSRS was reorganized and relieved of responsibility for investigating employee concerns at WBN.

Notwithstanding the above conclusions reached by the OGC and the OIG, TVA is not contesting or challenging the alleged violations.

Corrective Steps That Have Been Taken and Results Achieved

As the NRC acknowledges in its cover letter accompanying the Notice of Violation, TVA has taken considerable effort to end intimidation and harassment or any other form of discrimination against persons expressing safety concerns. As noted above, TVA's Revised Corporate Nuclear Performance Plan was originally submitted on March 10, 1986, and was last revised on May 5, 1989. Section V of that plan, "Restoring Employee Confidence in TVA Nuclear Management," extensively addressed measures to ensure employees can express their concerns regarding quality and safety without fear of reprisal and to establish a policy which promotes quality and to ensure employees are aware of their role in promoting this policy. In recent months TVA's efforts in this area have focused on employee communication, prompt investigation of intimidation and harassment allegations, and corrective action when warranted.

Substantial efforts have been made to convey to employees and supervisors that intimidation, harassment, or any other form of discrimination for raising safety concerns is illegal and will not be tolerated by TVA management. Through the use of internal communications on three separate occasions (September 1989, February 1990, and March 1990), the Senior Vice President, Nuclear Power has emphasized that it is his goal to establish and maintain an atmosphere within Nuclear Power which is free of intimidation and harassment. TVA's commitments to professionalism, safety, regulatory requirements, and support of TVA's well-established policies against intimidation, harassment, or any other form of discrimination have also been reemphasized through this medium. In March 1990, TVA announced to Nuclear Power employees the availability of an updated handbook discussing TVA's policy against intimidation and harassment. (This handbook was first published in October 1986.) Included in this handbook are examples of intimidation, harassment, and other forms of discrimination to assist employees and supervisors in understanding what constitutes prohibited activities.

Because of the number of Section 210 cases filed by employees at Watts Bar Nuclear Plant, this topic has received particular emphasis at that site. A specialized orientation program was established at Watts Bar intended to heighten the sensitivity of managers to employees who have expressed safety concerns to the provisions of Section 210 of the Energy Reorganization Act, and the procedures of the DOL under that law. This orientation, which was developed to supplement the more general training dealing with this subject

conducted for Nuclear Power supervisors, was given to middle- and upper-level Watts Bar managers in August and September 1989. Similar sessions have recently begun for lower-level Watts Bar managers and supervisors.

Prompt investigation of allegations of intimidation, harassment, and other forms of discrimination is being accomplished by early involvement of senior Nuclear Power management in these situations. The role of TVA's OIG in these matters has also been enhanced. Allegations of misconduct, including those connected with Section 210 complaints, are referred for investigation to TVA's OIG. The OIG has established a goal of completing investigations of misconduct connected with Section 210 complaints within ten working days of their referral from Nuclear Power. This short time period is intended in part to ensure that if Nuclear Power senior management concludes that improper management conduct occurred, prompt corrective action will be taken, including any needed disciplinary or other corrective action with respect to the responsible individuals.

TVA has been aggressive in taking prompt corrective action against individuals found to have violated TVA's policies encouraging the expression of employee concerns about quality and safety. These actions have included issuance of warning letters, removal from supervision, short-term suspensions, and removal from current positions.

TVA has seen recent indications that its efforts to encourage employees to raise safety concerns, without fear of reprisal, are working. The NRC

recently completed an inspection of the TVA Employee Concern Program at Watts Bar. The inspection findings, issued in a report dated March 19, 1990, indicate that the Employee Concern Program is being successfully implemented at Watts Bar. Based on interviews with nonmanagement employees and first-line supervisors, the NRC inspection team concluded, among other things, that Watts Bar personnel would generally bring safety concerns to their supervisors and were confident that issues would be resolved by their supervisors, would use the Employee Concern Program if their issues could not be resolved by their supervisors, and were aware of their right to bring safety concerns to the NRC.

TVA is fully committed to a policy against intimidation, harassment, or any other form of improper discrimination, and will continue to take aggressive action to prevent discrimination of any kind against anyone in connection with the expression of safety concerns.

Corrective Steps That Will Be Taken to Avoid Further Violations

TVA will continue to look for ways to enhance its Employee Concern Program and to create and maintain an atmosphere which is free of discrimination in violation of Section 210 and 10 CFR 50.7. As stated above, TVA will continue to take aggressive actions in appropriate circumstances to prevent discrimination.

Date When Full Compliance Will Be Achieved

TVA considers that the policies and programs it has instituted against discrimination meet the requirements of Section 210 of the Energy Reorganization Act, as implemented by 10 CFR 50.7 of the Commission's regulations. TVA will continue its efforts to ensure that employees are not intimidated, harassed, or otherwise subjected to discriminatory action for raising safety concerns.

Enclosure 2

Answer to Notice of Violation (EA 89-201)

Pursuant to 10 CFR 2.205, TVA submits its answer to the Notice of Violation and Proposed Imposition of Civil Penalty.

TVA has reviewed the escalation and mitigation factors set forth in Section V.B. of the "General Statement of Policy and Procedure for NRC Enforcement Actions" (10 CFR Part 2, Appendix C) in effect at the time the alleged violations occurred in 1986. TVA contends that no regulatory purpose is served by imposing a civil penalty for events which occurred over four years ago and for which extensive corrective action has been instituted. Penalizing TVA in this case provides no incentive for corrective action beyond what TVA has already taken and continues to take. Accordingly, TVA requests that, in view of these factors, the proposed civil penalty be mitigated in its entirety.

Mitigation of the Civil Penalty for Corrective Action is Warranted

The NRC Enforcement Policy in effect at the time the alleged violations occurred (on or about February 3, 1986) indicates that in evaluating the corrective action of a licensee for purposes of mitigation or escalation, consideration will be given to, among other things, "the timeliness of the corrective action, degree of licensee initiatives, and comprehensiveness of the corrective action"

The events which form the basis for this enforcement action occurred at the time TVA's entire nuclear program was being examined to determine what

TVA is acutely aware of the importance of creating an atmosphere which is free of discrimination in violation of Section 210 and 10 CFR 50.7. The number of Section 210 cases filed against TVA by its employees, and the NRC's past and continued scrutiny of TVA with regard to issues of intimidation and harassment serve to frequently and forcefully remind TVA senior management of the importance of ensuring that its managers do not discriminate against employees for raising safety concerns. In view of the emphasis that has been given to issues of discrimination by both TVA and the NRC over the last several years, TVA believes no regulatory purpose is furthered by imposition of this civil penalty. Because the events which form the basis for this enforcement action occurred over four years ago, TVA does not believe that a civil penalty here furthers the NRC's objective of obtaining prompt correction of violations.

Moreover, in view of the length of time which has passed since the alleged violations occurred, imposition of a civil penalty appears to be punitive, and not in furtherance of the stated purpose of monetary penalties "to emphasize the need for lasting remedial action and to deter future violations." TVA has implemented a nuclear recovery program which includes extensive corrective action to prevent discrimination of the kind cited here. The effect of a civil penalty for actions taken during the course of TVA's nuclear recovery program is that TVA must pay twice to address the same problem.

TVA believes that this is an appropriate instance for the exercise of regulatory discretion by the NRC. Accordingly, TVA requests that the proposed civil penalty be mitigated in its entirety on the basis of the extensiveness of the corrective actions taken predating the Notice of Violation.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Regional Office
Berry Building, Suite 301
2015 North Second Avenue
Birmingham, Alabama 35203

ATTACHMENT



July 30, 1986

Mr. Herbert S. Sanger, Jr.
General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902

Subject: Robert C. Sauer v. Tennessee Valley
Authority - Case No. 86-ERA-21

Jerry D. Smith v. Tennessee Valley
Authority - Case No. 86-ERA-22

In accordance with the request in your letter to our Ms. Coleman and Mr. Gerig dated May 5, 1986, Mr. Gerig has asked us to furnish you the enclosed material from our investigation reports involving the "whistleblower" complaints of Mr. Sauer and Mr. Smith.

With respect to the Sauer report, we are furnishing copies of all the information we consider disclosable under the Freedom of Information Act (FOIA) except for the disclosable documents which we are confident TVA already holds. The attached Sauer material includes a list of those excepted documents. In addition, and for the same reason (you already hold copies), we are not furnishing copies of the following material:

1. Notice of Hearing from Deputy Chief Judge Thomas dated 7-3-86.
2. Order from Deputy Chief Judge Thomas dated 6-24-86.
3. Telegram from TVA to Chief Administrative Law Judge Litt dated 3-14-86.
4. Letter from Area Director Edwards to TVA's Mr. White dated 3-10-86.
5. Letter from Area Director Edwards to Attorney Lynne Bernabei dated 2-11-86 (acknowledging complaint from Sauer).
6. Letter from Area Director Edwards to TVA's Herbert Sanger dated 2-11-86.
7. Letter from Attorney Lynne Bernabei to the Administrator of the Wage and Hour Division dated 2-7-86.

With respect to the Smith report, we are furnishing copies of only the statements given to our Compliance Officer. Our Field Office Supervisor Merchant, in Knoxville, says she has already discussed this matter with your Mr. Marquand, and that you understand that this is all you will be receiving. As she explained, the reason is that the Compliance Officers have not yet had time to prepare the complete report because of the pressure to complete other "whistleblower" investigations in time to meet the deadlines imposed.

Also, as discussed and agreed between your Mr. Marquand and our Ms. Merchant, where you have already been furnished a statement from a person, we are not furnishing you a second copy of the same thing. For example, if the statement of a given person is exactly the same in both our investigation report involving the Guity complaint and our investigation report involving the Sauer complaint, and has already been furnished you in response to your request regarding Guity, we are not furnishing another copy now. And, if the statement of a given person is exactly the same in both our investigation report involving the Sauer complaint and our investigation report involving the Smith complaint, and is being furnished you in enclosures here with respect to Sauer, a second copy is not here enclosed.

With respect to all the enclosed copies, we have made certain deletions to protect confidential sources and to eliminate intra-agency expressions of conclusions, opinions, and recommendations. Such material is exempt from disclosure under the FOIA by Section 552(b) (4), (5), 7(A), 7(C), and 7(D).

Sterling B. Williams

Sterling B. Williams
Assistant Regional Administrator
for Wage-Hour

Enclosure

cc: Mr. Carl W. Gerig, Nashville
Mr. Bennie L. Edwards, Nashville
Ms. Carol Merchant, Knoxville

Index of Exhibits

Organization chart of the Tennessee Valley Authority

NSRS Organization Chart

Memorandum from H. G. Parris to K. W. Whitt, 9/12/86, re NSRS expedited investigations of employee expressed safety concerns

Memoranda from R. C. Sauer to M. S. Kidd, 10/8/85, 10/18/85, re employee concerns

Memoranda from R. C. Sauer to K. W. Whitt, 10/18/85, 11/12/85, re employee concern priorities and investigation report writing

Additional memoranda, etc. re Employee Concern Program

Memorandum from K. W. Whitt to NSRS staff members, 12/6/85, re reassignments within NSRS

Agenda for Commissioner Asselstine's meeting with TVA NSRS

Notes [by employee - not disclosable]

Robert Sauer's Asselstine presentation on Employee Concern Program

Knoxville Journal, 1/6/86, "TVA Engineer's N-Plant Report Surprises Boss"

Draft letter to Harold Denton, NRC, re Appendix B requirements at Watts Bar

Letter [from employee - not disclosable]

Revision of draft letter to Harold Denton

Further revisions of draft letter to Harold Denton

NSRS summary information on Watts Bar Nuclear Plant Appendix B compliance

Final Appendix B letter

NSRS final information package on Appendix B compliance

NSRS organizational charts showing changes on 1/30/86

Robert Sauer's investigation turnover information to Douglas Stevens

Cover sheets from Sauer's employee concern investigations used by Stevens

Robert C. Sauer vs. Tennessee Valley Authority
Investigation Report
Wage-Hour Compliance Actions Under
Public Law 95-604 Sec. 210 Energy Reorganization Act

Coverage

The Tennessee Valley Authority is a public corporation which is involved in the construction and operation of several nuclear facilities. It is covered under the Energy Reorganization Act. The main office of the Tennessee Valley Authority (TVA) is located at 400 West Summitt Hill Drive, Knoxville, TN, 37902. The ERA complaint by Robert Sauer involved the main office location.

Complaint

On February 10, 1986, the Wage and Hour Division received a complaint under the Energy Reorganization Act from TVA Nuclear Safety Review Staff (NSRS) engineer Robert C. Sauer. The complaint was filed by Sauer's attorney, Lynne Bernabei (Newman & Owens, 1619 New Hampshire Avenue N.W., Washington, D.C. 20009). Sauer believed that he had suffered discrimination because of his disclosure, during a presentation on December 19, 1985 to Nuclear Regulatory Commission (NRC) representative James Asselstine, of safety problems at TVA's nuclear power plants. He felt that further discrimination ensued because of his thorough approach to safety concerns in general. During the Asselstine presentation, Sauer stated that the bottom line of some safety problems at the Watts Bar Nuclear Plant was that TVA was violating Appendix B safety requirements in the construction of that plant.

Sauer charged that after the presentation he was pressured to change his professional opinion and harrassed by being assigned more work than he could properly handle with the number of people assigned to assist him. Eventually he was removed from all responsibilities to investigate safety concerns at the Sequoyah Nuclear Plant and relieved of all supervisory duties within NSRS.

By the time Sauer filed his complaint under the Energy Reorganization Act, Steven A. White and Stone and Webster Engineering Company had been hired by TVA to manage the nuclear program. The Office of the General Counsel (OGC) relinquished administrative jurisdiction over 210 complaints, but White's organization was not, as yet, prepared to deal with them. The OGC had informed White that it was standard procedure to appeal Department of Labor decisions as a means of obtaining the information necessary to determine how the complaint should be settled. When compliance officers met with White they informed him that this was not really the case. But time was too short at that

point to commence a conciliation effort before the decision letter was due.

Although no conciliation on Sauer was initiated prior to the decision, on May 8, 1986 Field Office Supervisor Carol Merchant and Compliance Officer Sandra Seeley met with White to discuss the facts in the case. After this meeting Seeley and Merchant conveyed White's conciliation offer of a permanent M-6 to Sauer who was at Sequoyah. During the meeting with Sauer they talked by speaker phone with Lynne Bernabei and Marilyn Taylor, Manager of Human Resources, Office of Nuclear Power. Sauer asked Taylor to supply him with a list of job openings outside NSRS. Later Bernabei mentioned that there was going to be a conciliation meeting and White requested the presence of the Department of Labor. Merchant and Seeley attended the meeting in Chattanooga on 06-04-86. Others present included James Fox of the Office of General Counsel, White, Bernabei, and Sauer. The meeting did not produce a conciliation agreement. As part of the settlement Sauer wanted a guaranteed offer of a job other than the one he had. White would not agree to this. It was White's position that if Sauer located a job outside the Nuclear Manager's Safety Review Group (the new name of NSRS), he would not oppose Sauer's leaving. At that time Sauer was working on loan outside the group under Richard Denise in the employee concern program. Sauer said he would not be finished with that work until December 1986.

Robert C. Sauer vs. Tennessee Valley Authority

The investigation of Sauer's complaint pointed to problems which resulted from pressures accompanying the employee concern program and NRC Appendix B issues as they related to potential plant start-ups. These were outside pressures placed on the Nuclear Safety Review Staff (NSRS).

At the time he filed his complaint, Sauer was a member of NSRS. An independent overview organization for the nuclear program, NSRS reported to the board and the general manager (C-1). From its inception in 1979 following the accident at Three Mile Island, NSRS had done reviews and investigations, many of which were related to quality assurance (since that function was not working well at TVA). In the spring of 1985, prior to fuel loading at Watts Bar Nuclear Plant, some serious TVA employee concerns were taken to the Nuclear Regulatory Commission (NRC). As a result, at the urging of the NRC, TVA established an employee concern program by contracting with Quality Technology Company (QTC) to handle employee interviews at Watts Bar. The NSRS became the contract administrators for that program and remained involved in the Watts Bar employee concern program until February 1986.

Sauer, who had begun his TVA career in NSRS in 1980, returned to the staff in September 1985 from a position as quality assurance supervisor at Watts Bar. By this time NSRS had abandoned many of its traditional reviews and investigations in order to expedite the employee concern program. As well as administering the contract, NSRS was also responsible for investigating safety concerns raised as a result of the program. During the QTC interview period from April until about October 1985, a total of 1200-1500 concerns were identified.

When NSRS began employee concern investigations in May 1985 there were only a few complaints and each one was tackled individually. Later there were many complaints which needed somehow to be sorted into categories and prioritized so those affecting fuel loading or start-up of the other idle plants could be done first.

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Sauer became supervisor of the NSRS investigations group as a temporary grade level M-6 (C-2) on September 16, 1985. The investigations group had been expanded and reorganized to handle unresolved employee concerns (C-2a,2b,2c). These had to be completed to the satisfaction of the NRC before progress with Watts Bar start-up could proceed.

William Wegner, White's advisor, stated that during the Stone and Webster assessment of the situation about October 1985, the line had indicated that Quality Technology Company and NSRS themselves could be considered problems.

William Willis and the board communicated their unhappiness over the slow progress in the employee concern program.

The organization of investigations in NSRS was under Michael Kidd, investigations branch chief. Michael Harrison was the investigations group head responsible for administering the contract with Quality Technology Company and for supervision of the three investigative sections at Watts Bar, each of which had a section leader (C-2). The organizational chart showed a vacant group head position for "other plants" since it was anticipated that these would develop. This position was left vacant, however, since there was only one section under that position to supervise. Sauer stepped into the position of section leader for the "other plants" when he came to NRSR in September 1985 and immediately began organizing the efforts of his section to address identified concerns at Sequoyah and elsewhere. He used a methodical system of classifying complaints by areas, which he felt would be more efficient in the long run although it might take longer initially.

In the process of working on Sequoyah concerns, Sauer became involved in providing statistics on concerns at Sequoyah, Brown's Ferry, and Bellefonte. He also was helping Sequoyah plant manager Herbert Abercrombie with some start-up problems.

It was as a section leader in NSRS employee concern investigations that Sauer became involved in his fateful Asselstine presentation. On December 6, 1985, TVA received a letter from Nuclear Regulatory Commissioner James Asselstine announcing that he would visit TVA. The line organization immediately began preparing and rehearsing presentations. It was not known initially that NSRS would make a presentation. About December 12, however, a request came to NSRS for it to prepare a presentation for December 19. Kermit Whitt turned over the portion of the presentation dealing with Watts Bar employee concerns to NSRS member Bruce Siefkin who was responsible for NSRS statistical tracking of the concerns.

On December 18, when Kermit Whitt and Michael Harrison were out of the office, Bruce Siefkin became ill about 11:00 or 11:30am. He asked Bob Sauer to make the employee concern presentation to Asselstine the next day. After checking with Richard Smith, who was acting NSRS director, Sauer began assembling a presentation. He spoke to people in NSRS, QTC, and especially to the Watts Bar NSRS section leaders, Phillip Washer, Jerry Smith, and Douglas Stevens.

Sauer spent most of the night organizing his presentation. One of the NSRS secretaries typed it the next morning. He offered Kermit Whitt an opportunity to look at the presentation on the morning of the nineteenth, but Whitt was too busy and refused.

Sauer's actual presentation to Asselstine was quite thorough and lasted one hour instead of the scheduled twenty minutes. At the end of his presentation Sauer had a slide which encapsulated the employee concern issues. Before he put the slide on the screen, he announced in front of Asselstine that the slide contained an item that his management had not yet seen. He asked Kermit Whitt if he wanted to preview it but Whitt said no.

On Saturday December 21, Sauer was asked to meet with plant personnel at Sequoyah. Sauer said he summarized what he had said to Asselstine. Deputy Manager of Nuclear Power Charles Mason was on the phone. Mason asked Sauer if he had spoken about a QA program breakdown. Sauer stated that he did not take this as intimidation. He answered indirectly but later called Herbert Abercrombie, site manager at Sequoyah, and told him that, in substance, he had talked about QA breakdown

On Monday, December 23, Kermit Whitt told Sauer that General Manager Bill Willis wanted to see a copy of his presentation. Sauer says Whitt asked if he wanted to change anything. The only thing that he changed were some incorrect dollar figures concerning the QTC contract.

On January 2, 1986, Whitt informed Sauer that the NRC was going to want back-up information for the bullets in the Asselstine presentation. Jerry Smith and Phil Washer were to work on the issues. On January 3, 1986 TVA received a letter from the NRC asking for the TVA corporate position on the Appendix B issue

On January 6, Kermit Whitt, Gerald Brantley, Mike Harrison, Jerry Smith, Phil Washer, Doug Stevens, and Sauer had a conference discussion on the Appendix B position. Whitt had written a letter saying the non-compliance on Appendix B was in the past. He wanted Sauer to write a letter stating his position and said the line managers were coming in for a meeting (B-17i). Sauer said he wrote a letter and gave it to Whitt who gave it to Harrison. Harrison then came up with his version.

On January 7, 1986 there was a meeting at NSRS called by Robert Mullin, the director of the Division of Quality Assurance for Nuclear Power. He had been assigned the responsibility for coordinating a response to the NRC inquiry. Attendees at the meeting included Mullin, Whitt, Harrison, Sauer, William Brown (Watts Bar Project Manager), Lew Wallace of the Office of General Counsel, Bill Cottle (Watts Bar Site Director), and Keith Warren (assistant to Brown). The purpose of the meeting was to reach a consensus position on the Appendix B question. Harrison read his version of a response.

Sauer wanted the other people who had contributed to his presentation involved in the meeting. Sauer called Washer and Smith. He said that Douglas Stevens did not want to have anything to do with the issue. Scott Schum and Karen Whittlesay of Quality Technology Company were brought into the meeting. The response letter was repeatedly revised during the meeting, which lasted from 9:00 am to 6:00 pm.

There was to be a board meeting January 8, 1985.

when Robert Mullin presented the letter, it was as an NSRS position. The only person who had left the meeting was William Brown.

At the January 8, 1985 board meeting, Sauer gave his presentation to the TVA Board of Directors and other attendees as he had given it to the NRC Commissioner Asselstine.

On January 13, 1986 Steven White had assumed responsibility for the TVA nuclear program and, with it, the task of answering the Appendix B letter. On January 16 there was a meeting in Chattanooga which Kermit Whitt wanted Robert Sauer to attend.

The meeting was intended as a forum to discuss the Appendix B issue. Sauer did not attend. Michael Harrison and Kermit Whitt met with a fairly large group which included Bill Cottle, Charles Mason, William Brown, Laurence Sullivan, William Wegner, Richard Denise, and Robert Mullin. NSRS had a general outline of its position. Steven White's advisor, William Wegner, repeatedly asked Harrison where the problems with material traceability were.

White's people made it known that they wanted each side to present its position. No deadline was set by either White or Wegner. Robert Mullin was to collect the responses from each side, NSRS and the line.

asked each side to prepare its position in writing. Mason wanted the positions by 8:00 am on January 17 and that they were probably told about this around noon on January 16. When the deadline was imposed and exactly what was expected remained unclear; at least it seemed so to NSRS throughout the entire ordeal, which ultimately lasted until February 3 in NSRS. At first there seemed to be a great hurry to get the information - there was a feeling that every day of delay made the whole situation more questionable to the NRC.

meeting. The general impression was that answers were expected by close of business on the 17th.

Mullin claimed that he had to have a response to the NSRS position by 8:00 am on the 17th so he had to get the NSRS position prior to that so the line could respond.

Whitt had already that day given the line some information on the ten bullets in the Asselstine presentation to which they were to respond.

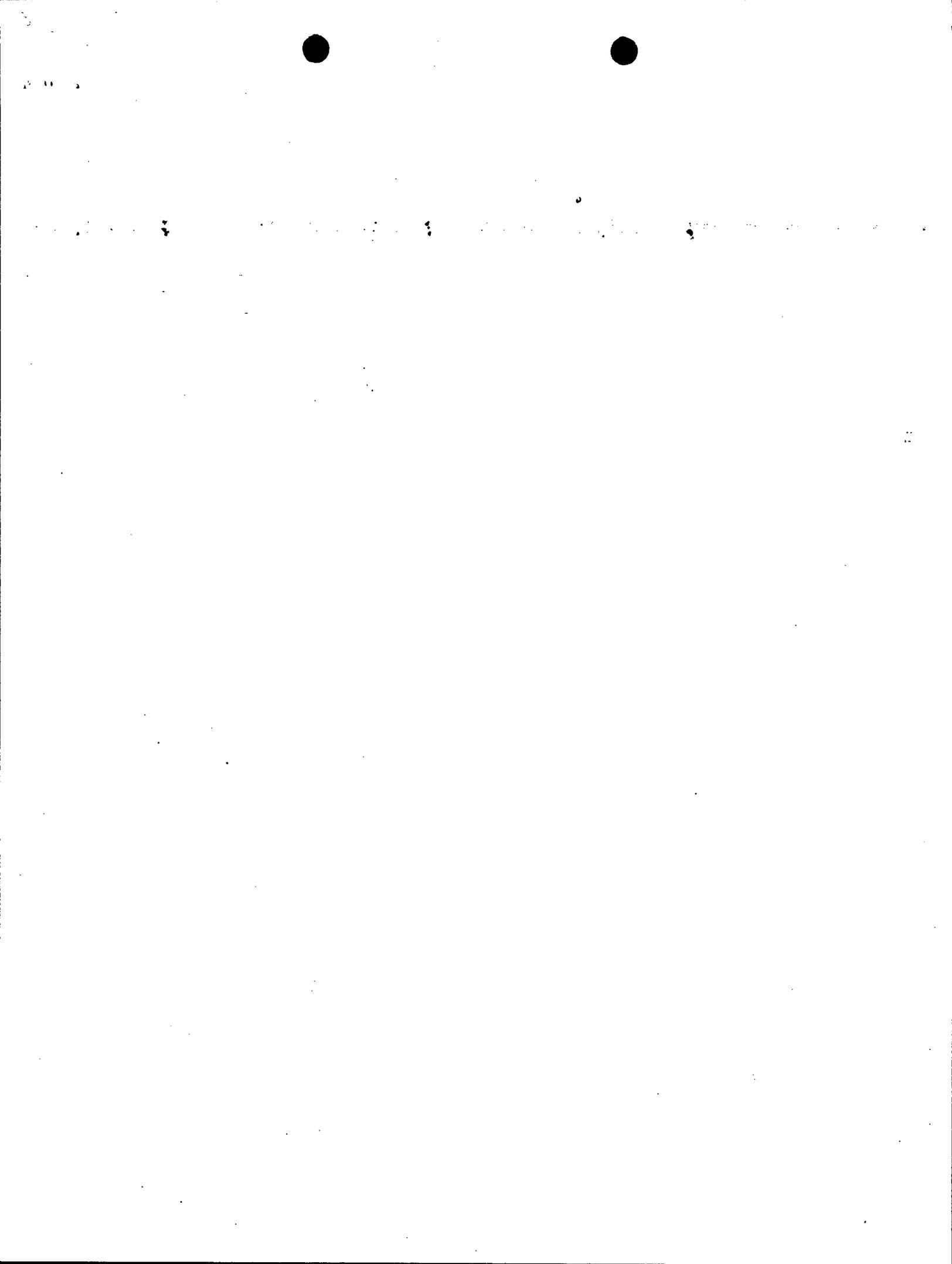
White had set an example soon after he arrived at TVA by firing someone who did not meet a deadline. White said he fired the person because he was incompetent, but the message to TVA employees was that White's deadlines were to be met. knew exactly where the deadlines were coming from, but they assumed they were coming from White.

On the afternoon of January 16, 1986 Bob Sauer, Phil Washer, Jerry Smith, and Kermit Whitt got to work on the NSRS Appendix B position. Since the NSRS difference with the line hinged on material traceability and corrective action, these were the two they prepared.

The NSRS people finally finished the work about 2:30 am on January 17.

After this Washer and Smith continued to work on substantiating the Appendix B position fully on all the items since they thought they were supposed to have all their information in by February 3. Sauer was only helping marginally on this since he was supposed to expedite the employee concern reports on Sequoyah. The final NSRS package was transmitted 02-03-86. Since Whitt did not agree with and did not send the cover letter written by Sauer, Smith, and Washer (nor did he write his own letter), the information was considered "unofficial" by Mullin.

On January 31, Craig Lundeen, one of the Stone and Webster contract people (a QA/QC person), stopped by NSRS with Robert Mullin.



the Board of Directors of TVA established an employee concern program in the spring of 1985 in which they contracted with Quality Technology Company to interview all employees at the Watts Bar Nuclear Plant with regard to any safety concerns they might have. The Nuclear Safety Review Staff was charged with the responsibility of administering this contract and with investigating safety concerns raised as a result of this program. By October, 1985, 1200 - 1500 concerns were identified.

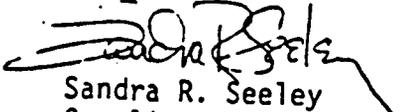
In September, 1985, to improve their efficiency in handling these concerns, NSRS restructured its staff, establishing five Section Leader positions at the temporary M-6 Level. These were filled by Gerald Brantley, Phillip Washer, Paul Border, Robert Sauer and Bruce Siefkin. (Siefkin's position was almost immediately downgraded to the M-5 level because his job carried lesser responsibilities.) For Brantley, Washer and Sauer, this resulted in a promotion as they were all M-5s. Brantley, Washer and Border and their sections were assigned to Watts Bar. Sauer and his section were in charge of the employee concerns at the other nuclear facilities.

In November, 1985, Brantley and Border were transferred to other positions and were replaced by Jerry Smith and Douglas Stevens. Smith and Stevens also thereby achieved temporary promotions from M-5 to M-6. (These M-6 slots were considered temporary as it was felt the positions would only be needed for the time the employee concern program continued generating such large numbers of concerns -- a situation expected to end within a reasonably short period of time.)

On December 6, 1985, James Asselstine, Nuclear Regulatory Commissioner, notified TVA that he would visit them on December 19. NSRS was subsequently asked to make a presentation to Asselstine dealing with the Watts Bar employee concern program. Bruce Siefkin was given the assignment.

On December 18, Siefkin became ill, and Robert Sauer was asked to make the presentation. As Watts Bar had not been his assignment, Sauer requested input from those with such knowledge.

Sauer's presentation laid out various areas of concern and ended with the startling conclusion that Watts Bar was not meeting the Appendix B safety criteria put out by the Nuclear Regulatory Commission.



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