

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401

6N 38A Lookout Place

August 8, 1986

Mr. James M. Taylor, Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Taylor:

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Enclosed is TVA's response to your letter of July 10, 1986 transmitting the Notice of Violation and Proposed Imposition of Civil Penalty: EA 86-93, NRC Investigation Report No. 2-85-009. This response is based on a careful review of the Notice of Violation and attendant information. As a result of TVA's review of the past situations regarding intimidation and harassment, TVA does not contest the violation.

I fully understand and recognize the seriousness of past issues of intimidation and harassment which were in violation of longstanding Board policy. Furthermore, since I became TVA's Manager of Nuclear Power in January of 1986, I have emphasized that it is my policy that intimidation and harassment of any kind will not be tolerated. I will ensure that individuals who engage in intimidation and harassment will be subject to swift and appropriate disciplinary action. TVA's new Inspector General and I are in complete accord on this issue, and we are committed to cooperate fully in its implementation.

Fees in response to the civil penalty of \$150,000 are being wired to the NRC, Attention: Office of Inspection and Enforcement.

If you have any questions, please telephone R. L. Gridley at FTS 858-2729.

To the best of my knowledge, I declare the statements contained herein are complete and true.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

S. A. White
S. A. White
Manager of Nuclear Power

Enclosure

cc (Enclosure):

Dr. J. Nelson Grace, Regional Administrator
U.S. Nuclear Regulatory Commission, Region II
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

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ENCLOSURE

LEVEL III VIOLATIONS (\$150,000 CIVIL PENALTY) EA 86-93
NRC INVESTIGATION REPORT NO. 2-85-009

Item I. Violations Assessed Civil Penalties

10 CFR 50.7 prohibits discrimination by a Commission 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 activities protected include but are not limited to assisting in any manner in any proceeding or other action to carry out the purposes of the Energy Reorganization Act of 1974 as amended or the Atomic Energy Act of 1954, as amended.

- A. Contrary to the above, Stephen H. Mindel was the subject of discriminatory acts by TVA supervisory personnel in that he was treated unfairly in job assignments and performance appraisals and not selected for promotion during a reorganization of the TVA Office of Quality Assurance in November 1982 in retaliation for having supported and having agreed to testify on behalf of William D. DeFord in a proceeding before the Department of Labor regarding employee discrimination and in retaliation for having been vocal about quality assurance organizational problems at TVA. The discrimination continued through 1985.

This is a Severity Level III violation (Supplement VII)
Civil Penalty - \$50,000

- B. Contrary to the above, Lillard Blevins was the subject of discriminatory acts by TVA supervisory personnel in that he was treated unfairly in job assignments and performance appraisals and not selected for promotion during a reorganization of the TVA Office of Quality Assurance in November 1982 in retaliation for having supported William D. DeFord in his action against TVA regarding employee discrimination and in retaliation for having been vocal about quality assurance organizational problems at TVA. The discrimination continued through 1985.

This is a Severity Level III violation (Supplement VII)
Civil Penalty - \$50,000

- C. Contrary to the above, John French was the subject of discriminatory acts by TVA supervisory personnel in that he was treated unfairly in job assignments and performance appraisals and not selected for promotion during a reorganization of the TVA Office of Quality Assurance in November 1982 in retaliation for having supported and having agreed to testify on behalf of William D. DeFord in a proceeding before the Department of Labor regarding employee discrimination and in retaliation for having been vocal about quality assurance organizational problems at TVA. The discrimination continued through 1985.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$50,000

Item II. Violation Not Assessed a Civil Penalty

10 CFR 50.7 prohibits discrimination by a Commission 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 activities protected include but are not limited to assisting in any manner in any proceeding or other action to carry out the purposes of the Energy Reorganization Act of 1974 as amended or the Atomic Energy Act of 1954, as amended.

Contrary to the above, Anthony S. Doka, a former Instrument Engineer at the Watts Bar facility, was discharged on August 31, 1984 in retaliation for his having expressed differing views concerning a potential safety related problem regarding the slope of the tubing of System 68 at the Watts Bar facility.

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

TVA Response

TVA has elected to respond to the listed violations in a collective manner.

1. Admission or Denial of the Alleged Violations

TVA does not contest the violations as stated.

2. Reasons For the Violation

A. Stephan H. Mindel, Lillard Blevins, Johnny French

The three cases for which a violation was noticed and a civil penalty assessed had been thoroughly investigated by TVA's Office of the General Counsel and the report and record of that investigation (dated October 15, 1985) have been made available to NRC's Office of Investigations (OI). Subsequently, the conclusions reached by TVA's Office of General Counsel were summarized in the enforcement conference in Atlanta, Georgia on June 19, 1986.

The Office of the General Counsel concluded the following:

1. There was not a preponderance of evidence that any specific TVA manager had retaliated or otherwise discriminated against these employees.
2. There was evidence of various management performance weaknesses, including failing to make personnel decisions in a defensible way based on appropriate documentation; not identifying or, if so, not healing discord and divisions that existed in their organizations and which appeared to be related, at least in part, to QA issues; failing to address the perception that the discord within the organization was related to QA issues; and taking action that resulted in perceptions of favoritism to certain employees.

B. Anthony S. Doka

As set out in the Notice of Violation, NRC found there was a violation but, because of TVA's prompt corrective actions, the civil penalty was fully mitigated. Based on TVA's Office of the General Counsel's investigation of Mr. Doka's allegations, that office concluded there was evidence of reprisal by his supervisor.

3. Corrective Steps Which Have Been Taken and Results Achieved

General

TVA has hired Mr. S. A. White as the Manager of Nuclear Power. He has reorganized the Office of Nuclear Power (ONP) and obtained several experienced managers in key positions. Mr. White has met and will continue to meet with employees and managers to ensure that they understand his stated policy that safety and quality are the paramount consideration of every TVA employee; each individual must take responsibility for the quality and safety of his activities and for those under his direction; and that employees are not to be intimidated or harassed for expressing concerns.

In addition to establishing a strong position against intimidation and harassment, TVA has taken the following actions.

- a. Established the Watts Bar Nuclear Plant Employee Concern Special Program (ECSP) which interviewed all Watts Bar employees in confidence with over 5,000 concerns being expressed.
- b. Established a new Employee Concern Program (ECP) at all ONP locations to encourage reporting of employee concerns.
- c. The TVA Office of Inspector General has been established providing yet another means for employees to express their concerns.
- d. Where cases of intimidation and harassment have been proven, swift and appropriate disciplinary action has and will continue to be taken.
- e. A supervisor skills workshop has been developed and will be given to all ONP supervisors to develop their skills in handling employee concerns and interacting with employees.

The effectiveness of these programs and policies is and will be continually monitored by TVA.

Specific

TVA's specific corrective measures for Mr. Mindel, Mr. Blevins, and Mr. French are discussed below. Because of the different burdens of proof required in taking disciplinary action against individual employees and in defending a reprisal allegation against the agency, the Office of the General Counsel recognized that the management deficiencies cited in item 2 above would not permit TVA to successfully rebut a prima facie case of retaliation. Accordingly, that office recommended the Blevins and Mindel cases, then pending before DOL, be settled. TVA did settle with Mr. Blevins and Mr. Mindel who were promoted and received backpay. Mr. Mindel has since left TVA for other employment. Mr. French, whose complaint was filed after the General Counsel's report and was dismissed by DOL, has also been promoted.

With regard to Mr. Doka, the General Counsel advised that disciplinary action up to and including termination of the responsible manager was supportable. The retaliating manager was subsequently terminated by the Division of Nuclear Construction and appealed that decision to the Merit Systems Protection Board (MSPB). After a full evidentiary hearing, MSPB's Administrative Judge found that TVA's proof failed to show by a preponderance of the evidence that the manager took reprisal action against Mr. Doka for his expression of differing views. The judge stated that the manager perhaps could have exercised more sensitivity to the potential consequences of the reduction in force, but found no causal connection between the protected activity and the adverse action. TVA appealed that decision, and the case is pending. It is noted that the manager applied for unemployment compensation, however, the Tennessee Department of Employment Security found after reviewing the same facts that the evidence was sufficient to establish that the manager was discharged for misconduct connected with work.

4. Corrective Steps Which Will Be Taken To Avoid Further Violations

The actions discussed in response to item 3 above will be continued and expanded if required to ensure that TVA's policy regarding intimidation and harassment is maintained. It is our expectation that TVA's policies and actions, together with improved management and example, will restore the attitude, trust, and confidence of employees towards TVA management and policies.

5. Date When Full Compliance Will Be Achieved

Mr. White has set in place a philosophy that "Intimidation and Harassment will not be tolerated." He has also put in place two employee concern programs for employees to express their concerns. New management talent has been and will continue to be infused in the nuclear organization to provide leadership and example to gain employee confidence and cooperation.

The problems and root causes are understood. Although there is no way to guarantee that isolated instances of intimidation and harassment will not surface in the future, the appropriate program and policies are in place to prevent recurrence.

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