

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401

400 Chestnut Street Tower II

USNRC REGION II
ATLANTA, GEORGIA

February 10 1982 AIO: 39

U.S. Nuclear Regulatory Commission
Region II
Attn: Mr. James P. O'Reilly, Regional Administrator
101 Marietta Street, Suite 3100
Atlanta, Georgia 30303

TE HQ FILE COPY

Dear Mr. O'Reilly:

BELLEFONTE NUCLEAR PLANT UNITS 1 AND 2 - RESPONSE TO VIOLATIONS
50-438, 50-439/81-26-01 - EMPLOYEE TERMINATION FOR REPORTING TO NRC
AND 50-438, 50-439/81-26-02 - EMPLOYEE SIGNED NAME OF ANOTHER EMPLOYEE
ON QA DOCUMENT

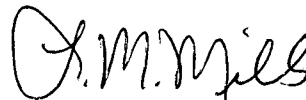
This is in response to your letter dated January 11, 1982, report numbers
50-438/81-26, 50-439/81-26, concerning activities at the Bellefonte Nuclear
Plant which appeared to have been in violation of NRC regulations.
Enclosed is our response to the citations.

If you have any questions concerning this matter, please get in touch with
R. H. Shell at FTS 858-2688.

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

Very truly yours,

TENNESSEE VALLEY AUTHORITY



L. M. Mills, Manager
Nuclear Regulation and Safety

Enclosure

cc: Mr. Richard C. DeYoung, Director (Enclosure)
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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ENCLOSURE
BELLEFONTE NUCLEAR PLANT UNITS 1 AND 2
RESPONSE TO VIOLATIONS

Severity Level III Violation 50-438, 50-439/81-26-01
Employee Termination for Reporting to NRC

Description of Violation

Section 210(a), Title II of the Energy Reorganization Act of 1974, as amended, prohibits any Commission licensee or contractor or subcontractor of a Commission licensee from discharging any employee or otherwise discriminating against any employee with respect to his compensation, terms, conditions or privileges of employment because the employee:

1. Commenced, or caused to be commenced, enforcement of any requirement imposed under the Atomic Energy Act of 1954, as amended;
2. Testified or is about to testify in any such proceeding or;
3. Assisted or participated or is about to assist or participate in any manner in such a proceeding.

Contrary to the above, an employee of H. L. Yoh Company, a licensee contractor, was discharged from employment at the Bellefonte site on September 4, 1981. The reason given to the employee for his discharge was poor job performance. However, an investigation conducted by the U.S. Department of Labor under the authority of Section 210(b) of the Energy Reorganization Act concluded that the employee's inspection rate per day compared favorably with other inspectors and that the action taken against the employee was a result of his threat to report TVA to the NRC. Further, two licensee employees responsible for overseeing the on-shift work activities of the employee, provided signed statements to the NRC investigator indicating that the employee was considered average in productivity and quality of hanger inspections, when compared with other hanger inspectors at the Bellefonte site.

Admission or Denial of the Alleged Violation

TVA denies the alleged violation.

Reason for Denial

TVA denies that individual H was terminated in violation of section 210 of the Energy Reorganization Act of 1974, as amended. The sole reason that TVA determined that it would no longer accept the services of individual H under a personal services contract was that his performance was not up to the standards required by TVA.

Individual H was an employee of H. L. Yoh (Yoh), an independent contractor who provides services to TVA under a personal services contract. TVA has entered into a personal services contract with Yoh under which Yoh makes available its employees, when and as requested by TVA, to provide engineering support, including field inspection services. Under this contract, TVA retains the right to accept or reject the services of individual Yoh employees. Yoh referred individual H to TVA to perform services under this contract, effective June 28, 1981. Within a relatively short time it became clear that individual H was not performing satisfactorily. Specifically, the inspection reports that he prepared were sometimes illegible, ungrammatical, and unclear; his productivity was not entirely satisfactory; and he created undesirable working relationships with his coworkers and group leaders, including threats of bodily harm made to coworkers and others. The fact that a TVA supervisor found it necessary to rewrite some inspection reports prepared by individual H, without changing their substance, supports the conclusion that they were not properly prepared. Individual H's unsatisfactory productivity was documented through the notes of a supervisor responsible for overseeing his work and who was very familiar with his work. The NRC has relied on the opinions of two supervisors whose degree of familiarity with individual H's work is not clear. However, TVA is relying on the observations and opinions of those who were responsible for and very familiar with individual H's work. He was given specific warnings about his productivity and paperwork mistakes on August 17, 22, 24, 25, and 28, 1981. It is clear that these performance problems and warnings began before individual H's complaints about his name being signed on inspection reports by others. Individual H stated in his complaint to the Secretary of Labor that he did not even notice these signatures until approximately August 18, 1981. The supervisor who was documenting his performance and warning him did not become aware of these complaints until August 21, 1981. During some of the discussions and warnings mentioned above, individual H was clearly informed of TVA's policy not to take reprisals against persons who make complaints about quality control or other matters. On August 28, individual H was specifically instructed to make a full written report of his complaint of quality assurance violations and was given worktime during which to prepare the report, so that TVA could fully investigate and resolve the matter. However, he failed to follow this instruction on August 28 or on any subsequent date.

TVA uses its contract with Yoh to obtain the services of persons who have training and experience that will make them more productive than inexperienced employees. These persons are compensated by Yoh at higher hourly rates than TVA's own employees who perform the same work. Persons such as individual H whose records show considerable experience are expected to perform at a level that reflects that experience. If they do not, TVA has the option of no longer accepting their services, which it chose to exercise in individual H's case on September 4, 1981. This action was solely a reflection on individual H's performance and was not taken in any way as a reprisal against individual H for complaining of a perceived violation of quality assurance procedures.

Pursuant to individual H's complaint about his termination, a preliminary investigation of an alleged violation of the Energy Reorganization Act was initiated by the DOL which has jurisdiction under 42 U.S.C. Section 5851 (Supp. III, 1979) to investigate such complaints. A preliminary investigation report was issued by DOL on November 2, 1981. This report was not to become final until five days after issuance, and would never become final if appealed by either party or if a settlement was reached by the parties within that period. TVA firmly disagreed with the conclusions contained in this report and was prepared to file an appeal that would entitle it to a full evidentiary hearing on the issue before an Administrative Law Judge, consideration by the Secretary of Labor, and a subsequent appeal to the United States Circuit Court of Appeals. However, within five days of the date of the preliminary report, the parties had agreed to the terms of a settlement and the matter was dropped by DOL, pursuant to 42 U.S.C. Section 5851(b)(2)(A) (Supp. III, 1979). TVA was informed in a November 6, 1981 letter from Lloyd L. Christopher that DOL was terminating its involvement in the matter.

In attempting to resolve this complaint, individual H agreed to accept much less than he would have received if the complaint had been finally resolved in his favor. The settlement was reached by all parties in the interests of avoiding further litigation on the issue and was not in any way an admission of liability, as the NRC noted in its report.

The NRC's reliance on a preliminary investigative report of the Department of Labor (DOL) and on the settlement that was reached between the parties does not support its conclusion that TVA violated the statute. This preliminary report and settlement cannot and should not be relied on to indicate liability. The report itself never became final either with DOL or TVA. In TVA's view, the report was erroneous and would not have been permitted to become final. Finally, for NRC to rely on this preliminary report in a settled case would discourage any possibility of a settlement in such cases since an appeal would always be necessary to avoid a finding of violation by the NRC.

TVA expressly encourages employees to express differing views on TVA policy and actions. The Board of Directors has adopted a policy specifically encouraging 'expression of safety views involving all aspects of its operations, particularly those associated with the design, construction, and operation of TVA nuclear plants' (TVA Code II EXPRESSION OF STAFF VIEWS). It is also TVA's policy to take no reprisal against any employees who express differing views or raise questions with the NRC.

TVA will fully cooperate with the NRC in any further actions that are necessary on this matter.

Severity Level VI Violation 50-438, 50-439/81-26-02
Employee Signed Name of Another Employee on QA Document

Description of Violation

Criterion V of 10CFR50, Appendix B, as implemented by Section 17.1A.5 of the Bellefonte FSAR, requires the activities affecting quality be accomplished in accordance with documented instructions.

Contrary to the above, activities affecting quality were not accomplished in accordance with TVA Division of Construction procedure QAP-17.1 (Rev. 4), in that the procedure specifies in paragraph 2.1.C.4 that an acceptable record of inspection must be stamped, initialed, signed or otherwise authenticated by the inspector; however, sometime during August 1981 a hanger inspector's name was written on a Support Inspection Checklist by someone other than the inspector.

Admission or Denial of Alleged Violation

TVA admits the violation occurred as stated.

Reason for Violation

There was a lack of quality control procedures containing specific requirements onsite to preclude an employee from signing another's signature on QC/QA documents. It should be noted that the Support Inspection Checklist was initiated for information and for tracking of an associated QCIR only. The checklist was not generated as the result of an inspection.

Corrective Action Taken and Results Achieved

The onsite quality control procedure, Bellefonte Quality Control Procedure BNP-QCP-10.7, 'Quality Assurance Records,' was revised to prevent an employee from signing another's signature on QC/QA documents. Nonconformance report 1578 was generated on August 26, 1981 to document the problem.

Corrective Steps Taken to Avoid Further Violations

The procedure revisions, as stated above, will prevent recurrence of this condition.

Date of Full Compliance

The Bellefonte project was in full compliance on October 23, 1981 when Addendum No. 1 was issued to BNP-QCP-10.7 R4, 'Quality Assurance Records.'