

February 14, 1996

EA 95-220

Tennessee Valley Authority  
ATTN: Mr. Oliver D. Kingsley, Jr.  
President, TVA Nuclear and  
Chief Nuclear Officer  
6A Lookout Place  
1101 Market Street  
Chattanooga, TN 37402-2801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -  
\$80,000 (Department of Labor Case No. 93-ERA-044)

Dear Mr. Kingsley:

On August 22, 1995, the Secretary of Labor issued a Decision and Order, in Department of Labor (DOL) Case 93-ERA-044, which found that Stone & Webster Engineering Corporation (SWEC) discriminated against Mr. Douglas Harrison, a former ironworker general foreman at Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant, when Mr. Harrison was demoted because he raised concerns related to firewatch requirements. In addition, the Secretary of Labor found that the removal of Mr. Harrison to an outside work crew was also discriminatory and that Mr. Harrison's discussion with other ironworkers regarding management's lack of response to the fire protection concerns constituted protected activity. This Decision and Order overturned the DOL Administrative Law Judge's Recommended Decision and Order issued on November 8, 1994. The apparent violation and a copy of the Secretary of Labor's Decision and Order were transmitted to you by letter dated October 18, 1995. The information reviewed in this case included the record developed by the NRC Office of Investigations. A closed transcribed predecisional enforcement conference was conducted in the Region II office on October 30, 1995, to discuss the apparent violation, the root causes, and your corrective actions to preclude recurrence. The predecisional enforcement conference was a joint conference with TVA, SWEC, and the individual supervisor involved in this case. The report summarizing the conference was sent to you by letter dated November 8, 1995.

Based on the Secretary of Labor's decision, the NRC has concluded that a violation of NRC requirements occurred in this case; specifically, a violation of 10 CFR 50.7, which prohibits discrimination against an employee for engaging in activities protected by Section 211 of the Energy Reorganization Act (ERA). The activities which are protected include, but are not limited to, reporting of safety concerns by an employee to his employer. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

While discrimination against any person for engaging in protected activities is cause for concern to the NRC, this violation is considered to be a

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significant regulatory concern because it involved discrimination against an employee by a contract manager substantially above a first line supervisor. Licensees have a primary responsibility for ensuring that all employees engaged in or affiliated with licensed activities, including contract employees, can raise safety concerns in a work environment conducive to such protected activity and free of fear from retaliation. During the conference, your staff denied the violation. Despite that denial, it is our view, based on the Secretary of Labor decision, that the facts support the conclusion that SWEC's Chief Construction Supervisor violated the regulations applicable to employee protection in the wrongful demotion and transfer of Mr. Harrison. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy, NUREG-1600), at Severity Level II.

In accordance with the Enforcement Policy, a base civil penalty is considered for a Severity Level II violation and the *Identification and Corrective Actions* factors were considered. In this case, the NRC has concluded that it would not be appropriate to give credit for identification because the licensee did not identify the violation. Your corrective actions in response to this matter were also considered, which included an investigation of the complaint by TVA's Office of Inspector General (TVA/OIG) at the time the DOL complaint was filed and a September 19, 1995 letter issued to SWEC requesting a written response regarding SWEC's actions to ensure no chilling effect resulted from this case. In addition, the NRC conducted surveys of SWEC employees in late 1993 and the TVA/OIG conducted surveys in July 1994 and September 1995 and it appeared, in both sets of surveys, that employees generally felt free to raise safety concerns. SWEC also conducted additional periodic surveys, issued memoranda to its staff, and included information on the employee concerns programs in meetings with its staff with the most recent meeting occurring after the Secretary of Labor's Decision and Order. Finally, and importantly, SWEC has indicated that it has undertaken to compensate Mr. Harrison in compliance with the Secretary of Labor's Decision and Order. In view of these responses, we believe credit is warranted for corrective action.

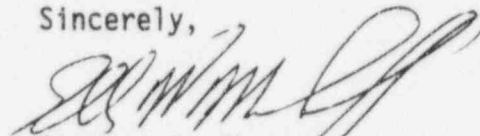
Therefore, to emphasize the importance of maintaining an environment where licensee and contractor employees feel free to raise safety concerns without fear of retaliation, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$80,000 for this Severity Level II violation.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved has already been adequately addressed during the predecisional enforcement conference and in your letter of January 4, 1996. Therefore, you are not required to respond to this letter on these issues, unless the information you have provided does not accurately reflect your corrective actions or your position. You are required to respond to the proposed imposition of civil penalty and should do so in accordance with the instructions in the Notice of Violation.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

We acknowledge that SWEC has stated that they will appeal the Secretary of Labor's Decision and Order in this case. In the event the Secretary of Labor's Decision and Order is reversed, reconsideration of this enforcement action would be appropriate.

Sincerely,

  
For Stewart D. Ebnetter  
Regional Administrator

Docket Nos. 50-259, -260, and -296  
License Nos. DPR-33, -52, and -68

Enclosure: Notice of Violation and Proposed Imposition  
of Civil Penalty

cc w/encl:

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cc w/encl (cont'd on Page 4)

TVA

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