

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Tuesday, June 11, 2019 6:05 PM
To: Fehlman, Lauren - OSHA
Cc: Chin, Steven C
Subject: Wetzel / TVA, 4-1760-19-025.
Attachments: 2019 06 11 Kabat to OSHA (update).pdf

Ms. Fehlman,

The attached is also being sent by regular mail.

Sincerely,

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By Email and First Class Mail

June 11, 2019

Lauren Fehlman, Regional Investigator
U.S. Department of Labor-OSHA
2296 Henderson Mill Road, NE,
Suite 200
Atlanta, GA 30345-2739

Re: Beth Wetzel / Tennessee Valley Authority, 4-1760-19-025.

Dear Ms. Fehlman:

On behalf of my client, Beth Wetzel, I write to provide an update on several recent developments at TVA that are relevant to Ms. Wetzel's OSHA claim.

First, earlier this month, TVA fired the entire Nuclear Employee Concerns Program (Nuclear ECP) staff, and replaced the Nuclear ECP with a new program under which the responsible supervisor or manager will be notified of any complaints and will be allowed to remedy the complaints. See J. Satterfield, "Nuclear whistleblower program managers say TVA fired them to silence workers," *Knoxville News* (June 5, 2019) (enclosed as Exhibit 1). This means that instead of Nuclear ECP conducting an independent investigation of safety and retaliation complaints, TVA will allow the supervisors who were responsible for the safety or retaliation violations to "investigate" the violations, which is likely to lead to covering up the problems. This will also allow the supervisors to identify at the outset the individual(s) who likely reported the complaints, which can lead to further retaliation against those individuals. This is similar to what happened to Ms. Wetzel, in which Licensing and the Office of General Counsel investigated her, instead of having Nuclear ECP or an independent investigator investigate her complaints.

This reorganization took place within days of the filing of a Condition Report (CR), which Nuclear ECP filed on behalf of an employee "to document and stop a sham investigation


Lauren Fehlman, Regional Investigator
Occupational Safety and Health Administration
June 11, 2019
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into Nuclear Oversight (NOS) Safety Culture.” *See* Condition Report, BFN 15210111 (May 30, 2019) (enclosed as Exhibit 2). This CR explained that having Corporate Licensing and the Office of General Counsel conduct this “review” of the Nuclear Oversight Safety Culture created a conflict of interest, since those individuals routinely favor TVA’s management (who are adamant that there is no chilled work environment at TVA) and they refuse to identify and report problems. *Id.*

Second, also earlier this month, TVA transferred Erin Henderson from her position as Director of Regulatory Affairs (where she reported to Joe Shea) to a position at one of TVA’s nuclear plants (we do not know the exact position at this time). Ms. Henderson was identified in Ms. Wetzel’s OSHA complaint as having retaliated against Ms. Wetzel and others at TVA. We do not know the reason for this transfer, although it may have been done in response to the parallel investigations of both OSHA and the Nuclear Regulatory Commission.

Finally, as requested, Ms. Wetzel will be submitting a response to TVA’s latest submission to OSHA.

Sincerely,



Alan R. Kabat
Attorney for Beth Wetzel

Enc.

cc: Ms. Beth Wetzel
TVA Office of General Counsel

Nuclear whistleblower program managers say TVA fired them to silence workers

[Jamie Satterfield](#), Knoxville News Sentinel Published 2:59 p.m. ET June 5, 2019 | Updated 5:05 p.m. ET June 5, 2019

Story Highlights

- Some managers of a TVA nuclear whistleblowing program say they were fired to quell complaints.
- Their attorney is asking the U.S. Nuclear Regulatory Commission to halt a new whistleblower program.
- TVA says the changes were prompted by employee concerns about the effectiveness of the program.
- The firings took place at nuclear facilities in Alabama and Tennessee.

Correction: A previous version of this story misspelled Bille P. Garde's name.

The Tennessee Valley Authority has fired some of its nuclear employee whistleblowing program managers in a move their attorney says is intentionally designed to quell safety complaints and silence workers.

Attorney Billie P. Garde is urging the [U.S. Nuclear Regulatory Commission](#) to stop TVA from implementing its new “chain-of-command” whistleblowing program without review by the commission and the public.

In a letter filed Tuesday with the Nuclear Regulatory Commission, Garde reveals TVA fired four managers from its Nuclear Employee Concerns Program, or Nuclear ECP, earlier this month. A fifth, she says, was forced to retire.

TVA then announced it was scrapping the independent whistleblowing program in favor of a “better” one.

TVA says in a statement to the Knoxville News Sentinel that the utility isn’t trying to silence workers’ safety concerns or retaliate against the fired whistleblowing program managers.

“The primary goal of TVA Nuclear’s Employee Concerns program is to reinforce a healthy Nuclear Safety Culture by providing employees with one of several avenues for reporting issues

involving nuclear safety, quality or technical impacts to the safe operation of our plants,” spokesman William Scott Gureck wrote in an email.

Garde says the move is a sham.

Nuclear oversight 'eviscerated'

“(The change) completely eviscerated its employee concerns program by publicly removing every single member of the ECP staff, announcing fundamental changes to the program structure itself that undermines the entire concept of an independent alternative avenue, and destroying whatever shred of program credibility was left,” Garde wrote.

TVA, she wrote, fired managers working in the whistleblowing program at all three of its nuclear plants: Browns Ferry in Athens, Alabama; Sequoyah in Soddy-Daisy, Tennessee; and Watts Bar in Spring City, Tennessee — and at its corporate headquarters.

Under the old program, employees worried about nuclear and radiological safety violations could blow the whistle to independent Nuclear ECP managers who would maintain the employees’ anonymity and launch their own investigation.

Under the new program, TVA’s new Nuclear ECP managers will “ask the employee if they wish to remain anonymous or not” and then report the employees' safety concerns to their bosses rather than independently investigate, according to TVA’s own presentation of the program to Sequoyah plant workers.

Gureck, the TVA spokesman, said employees wanted a different program.

TVA: New program better

“Based on employee feedback, the current ECP program is not viewed as an effective avenue for resolving issues,” he wrote. “As a result, TVA Nuclear will be changing the Nuclear ECP program to better achieve issue resolution.

“The changes are based on benchmarking with other utilities that have a high performing Nuclear ECP program,” he wrote. “ECP staff members remain independent from management in its reporting structure, and will continue to respect and preserve employee anonymity as requested.”

Garde says TVA is simply paying “lip service” to Nuclear Regulatory Commission regulations with its description of the new program and is misrepresenting what employees actually said about it.

“The ECP’s actions have often been the only honest insight into the dysfunctional organization, and TVA’s repeated, persistent inability to develop a strong safety culture,” Garde wrote.

Garde says TVA has a long history of trying to silence employee safety concerns and has been forced by the Nuclear Regulatory Commission in the past to correct “chilled work environments,” situations in which staffers were afraid to raise safety concerns for fear of retaliation from senior TVA management.

In a presentation to Sequoyah nuclear workers about the new program, TVA said it will help build a “trust bank” between bosses and workers.

“Success is defined by employees understanding that their leadership is the one solving their issues and that their manager is the primary path for getting their issues resolved,” according to a PowerPoint slide provided to the Knoxville News Sentinel. “(The whistleblowing program) is truly a secondary path.”

'Chain-of-command' a familiar one

TVA’s Gureck did not answer Knoxville News Sentinel questions about the similarity between its “new” nuclear “chain-of-command” safety reporting system and the “chain-of-command” safety reporting system employed by the utility and its prime contractor for the cleanup of TVA’s 2008 spill of 7.3 million tons of coal ash from a busted dike at its Kingston coal-fired electricity plant.

The news organization has been investigating the spill — the nation’s largest human-created environmental disaster — and the alleged sickening of cleanup workers since 2017.

The investigation revealed there was no independent oversight of worker safety during the cleanup. Safety managers for one contractor, Jacobs Engineering Group, repeatedly cited a “chain-of-command” safety oversight program in defending themselves against a lawsuit filed by workers in U.S. District Court, according to testimony and depositions.

At least 40 disaster workers have died from ailments and 400 are sick from ailments they say are linked scientifically to long-term exposure to the toxins and metals in coal ash, according to a tally pulled by the Knoxville News Sentinel from court records.

In 2013, 53 workers and their relatives filed a lawsuit in U.S. District Court in Knoxville against Jacobs, alleging the firm’s safety managers lied about the dangers of coal ash and denied them adequate protective gear.

The Knoxville News Sentinel and other journalists in USA TODAY Network - Tennessee launched an independent investigation of the cleanup in 2017.

In March 2018, an additional 180 workers and survivors of deceased employees filed a lawsuit against Jacobs in Roane County Circuit Court.

That case and a third filed this year on behalf of 119 workers and survivors remain pending.

A jury ruled in November 2018 in the U.S. District Court case that Jacobs breached its contract with TVA and its duty of care to protect the workers. The jury also ruled Jacobs' breach was capable of causing the sicknesses claimed by the workers.

Chief U.S. District Judge Tom Varlan has ordered Jacobs to try to negotiate a settlement, noting many of the sickened workers do not have health insurance. Jacobs is trying to appeal. Varlan has refused the firm's request for an appeal, and the firm is now trying to appeal Varlan's refusal.

Dig Deeper

TVA coal ash investigation

[Some contract workers say video shows they're not protected from toxic elements](#)

[TVA's own tests revealed radium in coal ash before 2008 spill](#)

[Workers say undercover video shows unsafe conditions inside TVA plant](#)

[TVA coal ash victims see support in Rep. Tim Burchett](#)

[News Sentinel's Jamie Satterfield wins Scripps Howard Award for coal ash stories](#)



