From: Chin, Steven C <scchin@tva.gov>
Sent: Monday, April 15, 2019 12:53 PM
To: Fehlman, Lauren - OSHA
Cc: Alan Kabat; Bernier, Michael Vincent; Rhinehart, Carol B
Subject: Tennessee Valley Authority/Wetzel/4-1760-19-025
Attachments: Ex 01 - Wetzle 2017 Perf Eval.pdf; Ex 02 - NRC Findings.pdf; Ex 04 - Henderson Compl.pdf; Ex 05 - TVA-SPP-11.316 - Employee Discipline.pdf; 2019-04-15 TVA Position Stmt - Wetzel.pdf

Dear Ms. Fehlman,

TVA and Ms. Wetzel formally engaged in mediation on April 9, 2019. The parties were unsuccessful at reaching a settlement. As a result, TVA files the following position statement in response to Ms. Wetzel's complaint. Mr. Kabat, attorney for Ms. Wetzel, is carbon copied on this email.

Please find attached with this email an electronic copy of TVA's position statement in the above-referenced matter and exhibits 1, 2, 4, and 5. Because the file size for exhibits 3 and 6 are large, they will be sent separately to prevent this email from being bounced.

A complete physical set will follow by U.S. mail, and a physical copy will be sent to Mr. Kabat as well.

If you have any difficulty opening these PDF files, please let me know and I will make the proper arrangements.

Respectfully submitted,
Steve

Steve C. Chin
Attorney
Office of the General Counsel

Tennessee Valley Authority
400 West Summit Hill Drive, WT6
Knoxville, TN 37902

865.632.3052 (w)
scchin@tva.gov

Hearing Identifier: JShea_IA_NonPublic
Email Number: 815

Mail Envelope Properties (BN6PR09MB136441711C8A8A757995B375D52B0)

Subject: Tennessee Valley Authority/Wetzel/4-1760-19-025
Sent Date: 4/15/2019 12:53:08 PM
Received Date: 4/15/2019 12:55:03 PM
From: Chin, Steven C

Created By: scchin@tva.gov

Recipients:
"Alan Kabat" <kabat@bernabeipllc.com>
Tracking Status: None
"Bernier, Michael Vincent" <mvbernier@tva.gov>
Tracking Status: None
"Rhinehart, Carol B" <cbrhinehart@tva.gov>
Tracking Status: None
"Fehlman, Lauren - OSHA" <>
Tracking Status: None

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Files	Size	Date & Time
MESSAGE	3672	4/15/2019 12:55:03 PM
image001.png	2604	
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image003.png	1971	
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image005.png	2065	
image006.png	2130	
image007.png	1985	
image008.png	1922	
Ex 01 - Wetzle 2017 Perf Eval.pdf	27925	
Ex 02 - NRC Findings.pdf	106817	
Ex 04 - Henderson Compl.pdf	1930772	
Ex 05 - TVA-SPP-11.316 - Employee Discipline.pdf	157782	
2019-04-15 TVA Position Stmt - Wetzel.pdf	70173	

Options
Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:


TVA

Wetzel, Beth A, Mgr, Emerging Regulatory Issue
TVA Year End Review, 10/01/2016 - 09/30/2017

Author: Henderson,Erin Kathleen
Role: Manager
Status: Completed
Due Date: 09/30/2017
Approval: Not Required
The document status is Completed.

Section 1 - TVA Values

Safety

Description We share a professional and personal commitment to protect the safety of our employees, our contractors, our customers, and those in the communities that we serve.

Created By : Template 07/26/2017 11:52AM

Service

Description We are privileged to be able to make life better for the people of the Valley by creating value for our customers, employees and other stakeholders, being good stewards of the resources that have been entrusted to us, and by being a good neighbor in the communities in which we operate.

Created By : Template 07/26/2017 11:52AM

Integrity

Description We conduct our business according to the highest ethical standards and seek to earn the trust of others through words and actions that are open, honest, and respectful.

Created By : Template 07/26/2017 11:52AM

Accountability

Description We take personal responsibility for our actions, our decisions, and the effectiveness of our results, which must be achieved in alignment with our company values.

Created By : Template 07/26/2017 11:52AM

Collaboration

Description We're committed to fostering teamwork, developing effective partnerships, and valuing diversity as we work together to achieve results.

Created By : Template 07/26/2017 11:52AM

Section 2 - Performance Objectives

Emerging Regulatory Issues

Description Achieve "industry best" in the management of emerging regulatory issues, including written products

Employee Measurement - Implement the Emerging Regulatory Issues process, including: ensuring BP-247 and NPG-SPP-03.8 are followed, ensuring industry periodicals, NRC website and other pertinent sources are monitored for ERIs on a routine basis, and performing CNL functions as assigned.

- Create documents that meet or exceed goals/expectations of senior TVA management.

- Participate on industry working groups, including RUG II and RITF to keep informed and influence emerging regulatory issues.
- Due Date : 09/30/2017

Rating: 2 - Inconsistent Performance

Weight: 30%

Comments: The ERI team has adequately been implementing the ERI process by ensuring BP-247 and NPG-SPP-03.8 are followed and monitoring ERIs on a routine basis. The pre-NSIAC briefings with the executives have been a helpful addition to the ways in which the ERI team communicates industry initiatives.

The ERI team has actively participated in industry working groups, including RUG II and RITF to keep informed and influence emerging regulatory issues.There have been a couple of instances where the ERI team made a direct impact such as the gas accumulation letter and contributions to TMP.

While the ERI team has had solid performance in aspects of this goal, this goal is rated inconsistent because the ERI team had licensing responsibilities for multiple significant regulatory submittals that were inadequate in the week in which they were due. (GL and SPRA submittals). This required significant rework right up to the due date.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:46AM

Emerging Regulatory Issues Strategic Plan

Description Develop a strategic plan for influencing NRC on various emerging regulatory issues.
Employee Measurement - Develop and implement improved methods for communicating emerging regulatory issues to management.
- Leverage executive communications/drop-ins with NRC to influence specific issues and a communication feedback loop.
- Develop strategy by February 15, 2017.
- Implement strategy by March 31, 2017.
- Due Date : 09/30/2017

Rating: 3 - Solid Performance

Weight: 15%

Comments: In the second half of the fiscal year the ERI team developed and implemented a new method for communicating emerging regulatory issues to management.

While the ERI team has not conducted drop ins to influence specific issues, the team has recommended a couple of drop ins on specific topics to senior management or areas that would be beneficial to highlight during industry meetings with the NRC.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/08/2017 8:55PM

Emerging Regulatory Issues Program Visibility

Description Improve Emerging Regulatory Issues program visibility.
Employee Measurement - Maintain green indicator for implementation of the Emerging Regulatory Issues communications plan.

- Ensure appropriate TVA (either line or licensing) engagement on High impact ERIs.
- Due Date : 09/30/2017

Rating: 4 - Strong Performance

Weight: 15%

Comments: The ERI team maintained a green indicator for implementation of the Emerging Regulatory Issues communications plan. The ERI team quickly revisited this communication plan and was able to made a good recommendation after a change in staffing level.

The ERI team has generally worked to ensure appropriate TVA (either line or licensing) engagement on High impact ERIs. The team is currently working to with the line to ensure better accuracy and categorization of the ERIs on the impact sheets. It will be beneficial to continue these kind of alignment efforts in FY18.Through more recent preparations for the ERI executive briefing, the ERI team has improved the alignment between licensing and primarily engineering with regard to the impacts to TVA of several issues. Beth is also able to bring a good perspective to those conversations from her industry group participation. This improved engagement with Engineering above and beyond what is specifically recommended by the communication plan should continue in FY18.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:10AM

Workforce Development and Effectiveness

Description OE.01 Enhance Nuclear Safety Culture
WE.02 Improve Leadership Development, Effectiveness & Engagement
WE.03 Implement Hiring, Retention and Transition Strategies
WE.04 Improve Workforce Diversity and Inclusion
WE.05 Improve Workforce Skills & Productivity Through Training

Employee Measurement - Demonstrate safety as the highest priority. Coach others to correct improper safety behaviors. Discuss safety in meetings. No CNL personnel injuries.

- Work to improve licensing work environment by 1) consistently holding individuals accountable by correcting negative behaviors and recognizing and reinforcing positive behaviors, 2) demonstrating a high level of engagement in staff work by observing and coaching employees, 3) effectively communicating the basis for decisions.

- Proactively work to improve the CNL safety conscience work environment by 1) encouraging individuals to raise problems and concerns 2) taking timely action on concerns brought to manager attention, 3) provide timely communication about actions taken to address employee concerns and 4) recognize individuals for raising concerns.

- Create and execute forward looking plan to provide formal and informal developmental opportunities to support knowledge transfer and IDP goals. Drive implementation of CNL knowledge transfer business plan.

- To meet this goal, ECP pulsing survey results and skip level meeting feedback will be used to continue to monitor performance improvement. Additionally, managers should document specific examples of each attribute of the goal.

- Due Date : 09/30/2017

Rating: 3 - Solid Performance

Weight: 10%

Comments: Beth provides positive and critical feedback to her staff and has encouraged them to write CRs. Beth has supported her staff in developmental opportunities including one staff member who was promoted to another group during the course of the year. The ERI group did a good job submitting several items through the TCIP process for recognition.

In FY18, Beth should focus on working with her staff to understand when they are escalating an issue to her in order for her to aggressively take action to address issues brought to her attention. Beth should actively engage with site and corporate managers to address those issues and escalate if she is then unable to resolve.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/08/2017 8:55PM

Regulatory Excellence

Description OE.10 Achieve Excellence in Licensing
OE.09 Achieve Excellence in Performance Improvement
Employee Measurement Training: All employee training is completed on time.

Budget: Meet CNL budget.

Functional Area Improvement: Develop and implement a strategic plan for each CNL functional area to 1) Drive performance to industry best and 2) Identify and implement process improvements/efficiencies and submit for recognition

CNL performance: Conduct critiques to identify CNL performance shortfalls and document plan to improve performance.

Oversight: Ensure a high level of site performance by demonstrating strong corporate oversight utilizing CFAM processes such as escalations, elevations, and missed opportunity reviews to mitigate significant regulatory issues at the sites.
- Due Date : 09/30/2016

Rating: 3 - Solid Performance

Weight: 15%

Comments:

The ERI team has supported group improvement initiatives over the year and identified several improvements that were submitted through the TCIP process.

Beth's group did conduct two critiques addressing significant performance shortfalls in her team. Both related to significant regulatory submittals. The team should evaluate how the learnings from the first submittal did not prevent the second submittal issue from occurring.

The ERI team did not inititate any elevations, escalations or corporate missed opportunity reviews. However, the ERI team did write several CRs identifying issues at the sites that needed to be addressed, demonstrating a good questioning attitude in several cases. Beth is an active participant in MRC and her contribution has resulted in positive feedback.

From an oversight perspective, improved engagement with the sites in person will help Beth and her team more efficiently and effectively drive some challenges (like some of those experienced in TMP) to resolution. If unsuccesful, utilizing the GOES tools through the CFAM should be considered as a tool for the ERI team to utilize.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/15/2017 9:52AM

Regulatory Support for Fleet Issues

Description Provide regulatory support for fleet issues such as fleet inspections and the Fukushima project
Employee Measurement - Effectively manage TVA preparation for and response to NRC fleet-wide inspections following the requirements of BP-03.9
- Effectively manage regulatory support for the Fukushima project, ensuring both technical and licensing personnel are effectively engaged and responsive to NRC issues and concerns
- Due Date : 09/30/2017

Rating: 3 - Solid Performance

Weight: 15%

Comments: The ERI team managed several inspections during the course of the year including a

corporate cyber inspection, oversight for a flex inspection, and a BFN triennial inspection.

The ERI team has also provided good regulatory support for a AWA topical report submittal that has required NRC and technical interface.

Created By :	Wetzel, Beth A	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/08/2017 9:04PM

Performance Objectives Summary

Rating: 3 - Solid Performance

Summary Weight: 50%

Comments:

Section 3 - Competencies

Competency 1: Accountability&Driving Results

Description Exhibits ownership for own and team performance. Translates strategic priorities into operational reality. Aligns accountabilities, resource capabilities, internal processes, and uses an ongoing measurement system to ensure priorities yield measureable and sustainable results. Demonstrates drive to improve conditions and performance.

Rating: 2 - Inconsistent Performance

Weight: 10%

Comments: As discussed in the goals section, there have been a couple of significant near-misses this year in ERI. Lessons learned reviews identified a number of learnings included in those was the need for improvement in the the level of engagement from Beth in her staff's work-identifying points at which she will check quality, challenge timeliness, etc. Implementing a 'trust but verify' approach to her leadership would help Beth better exhibit consistent ownership for her own and team performance to demonstrate sustainable results.

There have been a couple of recent instances where Beth and the ERI team have shown strong accountability and driving for results such as the level of engagement in AWA review. Beth and the team should reflect on their individual performance in Accountability to see what additional changes to their approach or Beth's individual leadership approach can be implemented to drive additional improvement in this competency.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:25AM

Competency 2: Continuous Improvement

Description Challenges the status quo to identify and leverage opportunities to improve existing conditions and processes. Able to generate ideas and creative solutions. Analyzes potential impact of solutions. Tests and implements improvements.

Rating: 3 - Solid Performance

Weight: 10%

Comments: I agree with the assessment in Beth's self evaluation relative to this competency.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:43AM

Competency 3: Leveraging Diversity

Description Deliberately involves and embraces others when developing solutions and establishing direction. Values diversity of perspectives, experiences, and talents to promote learning, growth, and team performance. Actions and words demonstrate a respect for individuals with diverse cultures, abilities, motivations, and backgrounds.

Rating: 4 - Strong Performance

Weight: 10%

Comments: Beth actively seeks out the opinions of others when developing solutions. It is evident that Beth values the input of her experienced team.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:43AM

Competency 4: Adaptability

Description Maintains effectiveness throughout major changes in priorities, responsibilities, or environment. Handles crisis and unexpected issues with poise. Effectively adjusts behaviors to deal with changes in the work environment.

Rating: 3 - Solid Performance

Weight: 10%

Comments: I agreewith much of Beth's self evaluation with regard to this competency. Beth and the ERI team did make adjustments to reflect the reduced headcount, reflecting overall solid performance.

There are instances where the ERI team or Licensing team need to contribute to the overall priorities and risk areas of the broader corporate organization. Seeking to understand those priorities and identifying ways in which we can utilize the full experience of our experienced team to ensure the success of the broader team will continue to be important at the reduced headcounts we have achieved in the past two years.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 8:43AM

Competency 5: Effective Communication

Description Communicates honestly and effectively with individuals and groups in a manner that helps them understand rationale behind decisions. Fosters an environment where communication is valued and concerns that are raised receive frank responses, empathy, and follow-up. Seeks inputs, checks for understanding, and gains commitment for goals.

Rating: 3 - Solid Performance

Weight: 10%

Comments: Beth communicates openly and frequently with her team reflecting overall solid performance.

It will be critical in this year that Beth focuses on clarity of communications upward by clearly laying out the actions she's taken as a manager to address concerns or issues brought to her attention by her team, taking clear and decisive action to address those by engaging with other leaders in person if needed, and then clearly communicating when she has not had success and what actions she recommends her leadership take in that escalation process. This was discussed as part of a lesson learned review and needs to be a key focus for Beth and her team in the upcoming year.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 9:11AM

Competency 6: Leadership Courage

Description Courage of leaders is manifested in three key ways: the courage to take initiative and action; the courage to let go of the need to control, to trust others, and to be open to feedback and change; and the courage to raise difficult issues or voice unpopular opinions and to provide honest and critical feedback.

Rating: 3 - Solid Performance

Weight: 10%

Comments: I agree with Beth's self evaluation that she demonstrates leadership courage and is willing to raise difficult issues. In reviewing Beth's self evaluation, there is an aspect that I am not necessarily aligned with however. Beth's view on the chilled work environment was not viewed as raising an 'unpopular opinion', and has been a view shared by many members of the corporate regulatory team including myself. While the site is taking significant action to address the work environment, documentation has not been always been adequate as evidenced by a recent corporate assessment. Corporate is continuing to engage with the site to ensure a successful near term inspection and all corporate regulatory employees should continue to identify gaps and actions the site should take to improve in that area.

It is a positive contribution to the overall TVA success that Beth is willing to utilize her vast regulatory experience to identify areas where the fleet can perform better. There may be an opportunity for Beth to consider whether there are more opportunities to demonstrate leadership courage through taking initiative and action to drive an issue to resolution. Beth should continue to seek opportunities for us all to become better through doing that.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/15/2017 9:52AM

Competency 7: Vision,Innovation&Strtgc Excn

Description Designs and articulates a clear vision and strategy of the organization's long-term success. Delivers a thoughtful and creative approach to executing the plan to achieve goals, utilizing all resources and innovative techniques available. Executes a long-term business direction based on an analysis of company and external factors, systematic information, identification of improvement opportunities, and consideration of resources and market drivers.

Rating: 3 - Solid Performance

Weight: 10%

Comments: Agree with Beth's self evaluation relative to this competency.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 9:11AM

Competency 8: Business Acumen

Description Maintains a deep understanding of industry and business trends and a knowledge of financial, market, and economic data that can support the development of external-oriented stretch goals, strategy, and action to preserve and improve TVA's position. Stays abreast of emerging ideas and technologies to apply advances that improve business results. Understands customer needs to institute systems, processes, and procedures to ensure customer satisfaction.

Rating: 3 - Solid Performance

Weight: 10%

Comments: Agree with Beth's self evaluation relative to this competency.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 9:11AM

Competency 9: Building Organizational Talent

Description Uses knowledge of current and future business needs and challenges to actively select, develop, engage, and retain talented individuals. Identifies high potential individuals and deliberately develops them to reach full potential. Demonstrates self awareness of personal developmental needs and regularly seeks and capitalizes on learning opportunities.

Rating: 2 - Inconsistent Performance

Weight: 10%

Comments: Beth has been supportive of her staff's developmental areas, relative to that area, Beth's performance is solid.

Regularly seeking to capitalize on Beth's individual learning opportunities is an area where Beth needs to focus. There have been instances where, instead of immediately demonstrating full ownership and reflecting on how to improve, Beth has been defensive in responding to that feedback. This behavior was noted after the WBN SPRA submittal and more recently after a lessons learned review. For Beth to be solid relative to this competency, demonstrating a self awareness of personal developmental needs, capturing those in her IDP, putting together a plan to demonstrate she is actively working on it, and then regularly capitalizing on every learning opportunity to improve will be necessary to achieve solid performance in this area.

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/14/2017 9:11AM

Competency 10: Inspiring Trust & Engagement

Description With an awareness of the impact of own behaviors on others, builds a positive environment that motivates others to achieve and exceed organizational goals and team aspirations. Functions as a "servant leader," putting the needs of others ahead of own advancement, engages organizations in decision making and problem solving, and ensures teams and individuals have the resources they need to learn, grow, be more autonomous, and more disposed to lead themselves.

Rating: 3 - Solid Performance

Weight: 10%

Comments:

Created By :	Template	07/26/2017 11:52AM
Last Modified By :	Henderson, Erin Kathleen	09/15/2017 12:33PM

Competencies Summary

Rating: 3 - Solid Performance

Summary Weight: 50%

Comments:

Section 4 - Overall Summary

Rating: 3 - Solid Performance

Comments: Overall, ERI team performance this year was solid relative to the goals set.

The ERI team need to really ensure there are actions to prevent recurrence of gaps in submittal quality that occurred during the course of the year through Overall the ERI team's performance for the year is rated as solid. The team made some good progress in identifying a new strategy for engaging with executives on industry initiatives and staying engaged and/.or leading industry groups even when the staffing level changed late in the

year. The ERI team also made several positive contributions to the industry on behalf of TVA.

For the upcoming year, the team needs to work to improve submittal quality, leadership engagement and clear communications related to escalating when attempts to solve problems at the lowest level possible are unsuccessful. Improving the engagement and driving increased ownership by going to the sites on issues will help the ERI team be more efficient and effective in driving issues to resolution. There are also a couple competencies where Beth needs to focus her attention by developing a plan and incorporating those focus areas into her IDP.

Section 5 - Manager Comments

Comments:

Section 6 - Employee Comments

Comments:

Section 7 - eSignature Section

Wetzel, Beth A **11/27/2017 4:04:46PM**

Employee Signature Date

Henderson, Erin Kathleen **12/19/2017 11:16:48AM**

Manager Signature Date

Audit History

Created By :	Henderson, Erin Kathleen	07/26/2017 11:52:54AM
Last Updated By :	Henderson, Erin Kathleen	12/19/2017 11:16:48AM
Acknowledged By :	Wetzel, Beth A	11/27/2017 4:04:46PM
Completed By :	Henderson, Erin Kathleen	12/19/2017 11:16:48AM

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

December 4, 2018

Mr. Joseph W. Shea, Vice President
Nuclear Regulatory Affairs and
Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A
Chattanooga, TN 37402-2801

SUBJECT: SEQUOYAH NUCLEAR PLANT – NUCLEAR REGULATORY COMMISSION INSPECTION REPORT 05000327/2018013 AND 05000328/2018013

Dear Mr. Shea:

On October 23, 2018, the U.S. Nuclear Regulatory Commission (NRC) completed an inspection pursuant to Inspection Procedure 92702, "Followup on Traditional Enforcement Actions Including Violations, Deviations, Confirmatory Action Letters, Confirmatory Orders, And Alternative Dispute Resolution Confirmatory Orders," and Inspection Procedure 93100, "Safety-Conscious Work Environment Issue of Concern Followup," at your Sequoyah Nuclear Plant, Units 1 and 2. The enclosed inspection report documents the inspection results which were discussed on October 23, 2018, with Mr. Matt Rasmussen, and other members of your staff.

The inspectors reviewed selected procedures and records, and interviewed personnel. The NRC inspectors did not identify any finding or violation of more than minor significance.

This letter, its enclosure, and your response (if any) will be made available for public inspection and copying at http://www.nrc.gov/reading-rm/adams.html and at the NRC Public Document Room in accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding."

This letter, its enclosure, and your response (if any) will be made available for public inspection and copying at http://www.nrc.gov/reading-rm/adams.html and at the NRC Public Document Room in accordance with 10 CFR 2.390, “Public Inspections, Exemptions, Requests for Withholding.”

Sincerely,

/RA/

Anthony D. Masters, Chief
Reactor Projects Branch 5
Division of Reactor Projects

Docket Nos.: 50-327, 50-328
License Nos.: DPR-77, DPR-79

Enclosure:
IR 05000327/2018013, 05000328/2018013

cc Distribution via ListServ

U.S. NUCLEAR REGULATORY COMMISSION

REGION II

Docket Numbers:	50-327, 50-328
License Numbers:	DPR-77, DPR-79
Report Numbers:	05000327/2018013 and 05000328/2018013
Enterprise Identifier:	I-2018-013-0010
Facility:	Sequoyah Nuclear Plant
Location:	Soddy-Daisy, TN 37379
Dates:	October 15, 2018 – October 23, 2018
Inspectors:	R. Taylor, Senior Project Engineer R. Sigmon, Reactor Systems Engineer
Approved By:	Anthony D. Masters, Chief Reactor Projects Branch 5 Division of Reactor Projects

Enclosure

SUMMARY

The U.S. Nuclear Regulatory Commission (NRC) monitored the licensee's performance by conducting an inspection at Sequoyah Nuclear Plant, Units 1 and 2, in accordance with the Reactor Oversight Process. The Reactor Oversight Process is the NRC's program for overseeing the safe operation of commercial nuclear power reactors. Refer to https://www.nrc.gov/reactors/operating/oversight.html for more information. A licensee-identified non-cited violation is documented in the inspection results section of the report.

List of Findings and Violations

No NRC findings were identified

REPORT DETAILS

INSPECTION SCOPE

Inspections were conducted using the appropriate portions of inspection procedures (IPs) in effect at the beginning of the inspection. Currently approved IPs with their attached revision histories are located on the public website at http://www.nrc.gov/reading-rm/doc-collections/insp-manual/inspection-procedure/index.html. The inspectors reviewed selected procedures and records, observed activities, and interviewed personnel to assess licensee performance and compliance with Commission rules and regulations, license conditions, site procedures, and standards.

OTHER ACTIVITIES – TEMPORARY INSTRUCTIONS, INFREQUENT AND ABNORMAL

92702 - Follow-up on Traditional Enforcement Actions Including Violations, Deviations, Confirmatory Action Letters, Confirmatory Orders, and Alternative Dispute Resolution Confirmatory Orders

Tennessee Valley Authority (TVA) Confirmatory Order (CO) EA-17-022 issued to TVA on July 27, 2017, (Section V.1.e.1) required, in part, that:

> *TVA shall perform an independent NSC assessment consistent with industry practices, at... Sequoyah Nuclear Plant and Corporate Nuclear... TVA shall compare the result of the assessment with prior years' survey results in an effort to identify trends. TVA shall evaluate the results and develop, implement, and track to completion corrective actions to address weaknesses identified through the assessments. TVA shall make the results of each survey and the planned corrective actions available for NRC review after the development of the planned corrective actions.*

During the October 2018 inspection for follow-up of NRC CO EA-17-022, inspectors reviewed the independent safety culture assessments performed for Sequoyah Nuclear Plant in April 2018 and for TVA Corporate Nuclear in May 2018.

The inspectors reviewed samples of various Executive Review Board packages along with safety conscious word environment (SCWE) screening and mitigation plans associated with actions taken under the Adverse Employee Action and Executive Review Board process to ensure that the Adverse Actions were being identified and reviewed in accordance with the applicable procedures and met the requirements of the CO.

93100 - Safety-Conscious Work Environment Issue of Concern Followup

As part of inspection activities to sample SCWE issue follow-up, inspectors interviewed 15 TVA employees in the Licensing and Regulatory Affairs organizations at Sequoyah Nuclear Plant and TVA Corporate Nuclear, approximately 94% of the workforce in those groups.

Based on responses from the sampled group, personnel stated that they felt free to raise nuclear safety concerns without fear of retaliation.

INSPECTION RESULTS

None

EXIT MEETINGS AND DEBRIEFS

The inspectors confirmed that proprietary information was controlled to protect from public disclosure.

On October 26, 2018, the inspectors presented the final inspection results to Mr. Matt Rasmussen, and other members of the licensee's staff.

DOCUMENTS REVIEWED

4OA5 Other Activities: Follow-up of Confirmatory Order Commitments (IP 92702)

NPG-SPP-01.7.4, Adverse Employment Action and Executive Review Board, Rev. 02, dated 8/13/2018
Sequoyah Nuclear Plant Nuclear Safety Culture Evaluation, April 2018
TVA Corporate Office Nuclear Safety Culture Evaluation, May 2018
Watts Bar Nuclear Plant Nuclear Safety Culture Site Leadership Team Report, dated 1/11/2018
CR 1404011 Sequoyah Response to ORAU Report
CR 1416534 Track Corporate's Response to NSC Assessment
CR 1421112 SQN 1Q2QF18 SLT NSCMP Meeting
CR 1432088 SQN 3QF18 NSCMP Meeting
TVA Nuclear Organizational Chart, September 7, 2018

March 9, 2018

Joe Shea, Vice President Nuclear Regulatory Affairs and Support Services
Amanda Poland, Director Human Resources

FORMAL COMPLAINT

This is a formal complaint related employees (including manager level personnel) who are complicit in workplace bullying and creating a hostile work environment for me. Over the course of multiple years, this behavior has been both repetitive and pervasive. Individuals have either directly or indirectly acted in attempt to intimidate and undermine me in my role as a senior regulatory leader. There are indications that several individuals are contributing to this environment including Mike McBrearty, Michelle Conner, Beth Wetzel, Ed Schrull, and Alesia Justice. Mike McBrearty, the primary instigator, has also allowed, if not encouraged, his own employees to engage with me and my staff in a similar manner. This has resulted in, among other things, repeated investigations and an NRC inspection where the accusations were determined to be unsubstantiated.

In addition to the open hostility and repeated accusations being the source of a great deal of personal stress (to the point of expressing my intention to leave the company) and damage to my professional reputation by people who are aware of the repeated investigations, the behavior of these individuals has resulted in my fear to address or challenge individual or site performance due to the potential repercussions. By my having to limit my interactions with one site in particular and/or not being able to performance manage individuals within my own organization, I perceive that my ability to fully perform the responsibilities outlined in my job description has been impacted. Some relevant background information and specific points supporting the claim are provided below.

Background Information:

- June 2014: I was notified by my supervisor at the time (Gary Mauldin) that I was being moved to SQN to be the Site Licensing Manager. I succeeded Mike in that role. Mike insisted that he continue to have responsibility for interfacing on a technical specification conversion project at SQN, lead by Michelle Conner.
- September 2015: I was promoted to Senior Manager, Corporate Nuclear Licensing. I again succeeded Mike in that role. The organization was viewed as low performing and I was asked to focus on performance management as there were known performance gaps that had gone unaddressed for the past several years. When I started in the organization, I reviewed the previous results to assess the overall organizational health and nuclear safety culture. Many of the organizational scores were very low (November 2014 Synergy Survey, July 2015 Gelfond Survey). Corporate Licensing was an outlier with very low scores in many questions. I conducted one on ones with the entire organization (approx. 20 people at that time) to better understand the results and developed a department improvement plan to improve the organization. Based on the feedback and my review, I concluded there was a significant need to establish clearer roles and responsibilities, improve

communications and take action on individual performance (both recognition and critical performance feedback). There was also feedback about leadership presence because Mike continued to engage on the technical specification conversion while in the corporate senior manager role. ECP pulsings were included in the overall strategy for monitoring effectiveness and included an additional set of questions above the standard ECP template to assess the organizational health questions.

- January 2016: Conducted an ECP pulsing survey (initiated by me as part of a department improvement plan); Results indicated some improvement in communications and performance management; comments indicated a 'wait and see' attitude. Conclusion was that there is no chilled work environment.
- February 2016: I hired a new CFAM, Michelle Conner. In that capacity, Michelle assumed responsibility for providing unbiased oversight of the site regulatory organizations.
- April 2016: an investigation into the nature of the personal relationship between Michelle and Mike was initiated. That investigation concluded in June 2016. Because of ongoing issues with Michelle, I was advised by legal and HR to limit my direct interaction with her. This continued through October 2016.
- May 2016: ECP pulsing survey conducted (initiated by me as part of a department improvement plan); Comments noted overall improvements and conclusion was that there was no chilled work environment.
- October 2016: Michelle was placed on a rotational assignment in another organization and simultaneously placed on a performance improvement plan to be managed by her new manager, Paul DiGiovanna. Jim Polickoski replaced Michelle as the temporary CFAM in the organization and has remained in that capacity since.
- December 2016: Michelle filed a DOJ/NRC complaint which was resolved in November 2017. Michelle then commenced a role in the Small Modular Reactor organization working for Dan Stout and her cubicle is adjacent to (shares a cubicle wall) with individuals in my organization. Settling with Michelle was done, in part, to alleviate some of the challenges I faced with both her and Mike.
- February 2017: At this point in time, I realized that Mike's open hostility toward me was not going to stop and I started to keep notes regarding the various interactions and feedback I was receiving.
- February 2017: Additional ECP pulsing survey conducted which demonstrated improvement in the following areas: the work environment encouraging the voluntary expression of concerns and differing views, perception of CAP, management communications and timely resolution of issues and significant improvement in the

following areas: communicating basis for decisions, holding individuals accountable or recognizing positive performance, engaging in and coaching related to staff work.

- As a result of the challenges in interfacing with Mike, at various points over the past year my supervisor and I agreed to limit both my time spent at SQN and my direct engagement with the peer team (site licensing managers) even though there was a significant need to engage in that forum to improve performance.
- While I have taken some performance management related actions at various points in time, because of ongoing challenges I have not be able to aggressively resolve all of the performance challenges (Beth Wetzel and Ed Schrull). More details can be provided on this.

Specific Examples:

- There have been repeated assertions that I have created a chilled work environment. The assertions have been contrary to independent ECP pulsing survey data, increased Condition Report initiation data since I have been in the organization and a very recent independent SCWE inspection by the Nuclear Regulatory Commission. Several complaints were filed as a means of retaliation/intimidation after addressing individual performance issues or behaviors .
    - 07/16: ECP concern NEC-16-00638 filed asserting harassment and retaliation for protected activity and a chilled work environment within the organization. Report was issued in 09/16 and did not substantiate claims of harassment and retaliation or a chilled work environment within corporate licensing.
    - 12/23/16: received DOJ/NRC complaint related to CFAM; I provided a complete response to each assertion along with documentation (texts, emails, performance noted) as to why the claims were unfounded.
    - 4/21/17: After several months of engaging with site and corporate leadership related to Mike's behaviors, he filed an ECP complaint that I was creating a hostile work environment. I was later briefed that this claim was not substantiated and ECP had found 'the exact opposite' to be true.
    - 7/14/17: Mike contacted ECP regarding a new concern on a CR that I closed.
    - 7/25/17: I was informed of another ECP complaint for retaliation resulting from a meeting with only my direct reports (on 7/21/17), where I discussed the closure of the previous ECP concern as part of SCWE mitigation.
    - 9/18/17- 9/22/18: NRC conducted an inspection at corporate. They conveyed it was part of a follow up to WBN's CWEL and wanted to do a corporate pulsing. During the discussions with inspector and regional

leadership, they conveyed that it was related to issue follow up. They interviewed 100% of my organization and several individuals in corporate engineering. They concluded that there was not a chilled work environment and management encourages the raising of issues and condition report initiation. The NRC documented this conclusion in WBN inspection report 2017003 dated November 22, 2017. (ML17326A222).

- 3/6/18: Despite the history described above, in a text exchange with one of my direct reports, Mike again asserted that people are scared of me so they will not raise issues and there is a SCWE problem in my organization.

- There are examples of Mike speaking negatively to my direct reports, leaving me off of emails, including individuals on emails that are not involved with the issue so as to intimidate me, and sending emails regarding my performance to a large population including my direct reports. This behavior is the direct result of me 'interfering' with his potentially unprofessional relationship with another manager (Michelle). This behavior became most evident after Michelle was moved to a new role (October 2016). Mike has repeatedly excused his behavior as being due to the corporate handling of two narrow technical issues that are a couple of years old.
  - 2/13/17: Mike sent an email requesting feedback on a draft CR. I sent my response which he then forwarded my response to a population of people, removing me and his immediate supervisor. He left my supervisor on the email. He then responded abruptly and forwarded my response and his email to a new group of people including individuals that were not at all involved in the discussion. He again left me off of the emails. I received texts from a direct report and my supervisor to let me know that my email was being forwarded.
  - 2/14/17: During a conversation with my direct report regarding the evening before. He noted that Mike is obviously being childish in a way that he cannot understand. He also noted that Mike is open about his hostility toward me and he had counseled him about it.
  - 2/16/17: At our licensing counterpart meeting, I was speaking in a room of all of the regulatory personnel in the fleet including all of my managers and most of my individual contributors. I acknowledged work that was done by several individuals in the room to make a point about us all having extraordinary experiences to share. When I was done talking, Mike stated, 'Erin, Michelle Conner lead the ITS conversion and I think that should be acknowledged and recognized.' After he did that, it was noted by multiple people in the room as

being 'irrelevant' and 'unnecessary'. He had previously done this same thing several other times including once via email when I was acknowledging individuals for a positive behavior and he responded that this behavior was the result of good work by Michelle. An additional time he recognized Michelle on the fleet phone call for work that she was not involved in. That fact was noted when I returned from the fleet phone call and an individual asked why he mentioned her as she was not even involved in the fire header recovery issue at SQN. It was odd behavior for someone who was so concerned about an investigation into his relationship with her and it appeared as though he was attempting to openly antagonize me given that Michelle had recently been moved.

- 2/16/17: Received feedback from a direct report that Mike speaks very openly about me and says some 'pretty awful things' about me. He commented that if he s that open with him, he 'can't imagine what Mike says about me to other people'.
- 3/16/17: Received feedback from two directs that Mike was being hostile toward corporate on phone calls. They believed the 'hostility' was directed at me. I asked why and was told that Mike thought 'Michelle Conner was done wrong.' They both agreed and said that he discusses that with them frequently.
- 4/7/17: Received feedback from a direct that Mike indicated I've ruined 'Michelle Conner's career and her life.' I asked why he thought he is so invested in Michelle Conner's situation and he said its obvious 'they are **very** close.' The individual further stated that Mike only gets one side of the story from Michelle Conner.
- 4/25/17: Received feedback from a direct that it appeared Mike was looking to 'publicly poke you in the eye' and is 'on a rampage against you.'
- 10/4/17: My supervisor noted that Mike was leaving me off of emails again related to security issue.
- 3/2/18: In an email sent to a broad audience including all of my directs, Mike appeared to assert issues related to my performance. This was noted by one of my directs who forwarded the email to Mike's supervisor and discussed the issues with the supervisor over the weekend. There was a follow up email exchange between Mike and my supervisor (addressing me again), which Mike then proceeded to forward to another one of my direct reports.

- There are some indications that other individuals (Michelle Conner, Beth Wetzel, Ed Schrull, and Alesia Justice) may potentially be contributing to this environment or colluding with each other to facilitate creating a hostile work environment as described below:
    - 04/2016: I challenged Michelle and another one of my directs related to performance at SQN on a specific issue. Michelle had a significant emotional reaction to the challenge related specifically to Mike's performance. Based on follow up discussions with Mike, it became evident quickly that Michelle Conner had very quickly told Mike about the discussion related to his performance.
    - 06/16: After repeatedly prompting and engaging with HR regarding the status of the investigation into the potential ethics violation (nature of Michelle and Mike's relationship), they completed the investigation report. The investigation concluded that it was unclear, although the investigation concluded that they have a very close personal relationship. Michelle was coached regarding managing the perception of the relationship and it's potential effect on impartiality. During the meeting, which included HR, Michelle said she would not change her relationship with Mike for work.
    - 7/25/17: Within a couple of days of having a closed door discussion with only my direct reports (Ed was not present), Mike was informed of this discussion and a new ECP investigation was filed. When I met with ECP on 8/8/17 to discuss the conclusion, ECP noted that she was going to provide feedback to Mike that the information he got from the meeting was 'exaggerated'. It was also evident from the briefing with ECP that one of my direct reports was not honest during her interview where she claimed to have 'coached' me during the meeting on 7/21/17. I had taken notes from the meeting and knew that Beth had not done that in that meeting, as a matter of fact, she indicated she thought the discussion was appropriate. The other attendees also told ECP that they not recall occurring. Nonetheless, she told ECP that had occurred when interviewed. This is indicative that one of my directs passed the information to Mike and was also dishonest during her interview in a way so as to make it appear that she had attempted to intervene during the meeting.
    - 10/2016: Michelle was moved to RMD assignment in different organization based upon her numerous requests. She was also placed on a PIP at this time. I received feedback after the fact that Michelle had been openly complaining about me and her being placed on a PIP with employees. My

understanding was it included both Beth Wetzel and Alesia Justice and was done in the open office area where other employees were.

- 12/23/16: DOJ/NRC complaint related to CFAM; The complaint also asserted that when Michelle had discussed her PIP with Beth Wetzel she 'exclaimed' that Michelle was being retaliated against.
- 9/11/17: Received feedback from a direct related to a discussion with a SQN employee, during which the SQN employee (a direct report to Mike) had noticed that there has been a drastic increase in the amount of communications' between Beth and Mike in the past couple of months. (Note, Beth has the least interface with the Site Managers of all of my corporate managers. Her IDP for 2018 includes a developmental area to go to the sites more often.) The SQN employee said he thought they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization.
- 10/27/18: After a meeting related to seismic submittals, Beth mentioned she had a conflict that would impact her attending the next month's ROP task force meeting. I let Beth know that I would attend in her place as I was actively working to get more involved in industry initiatives. I asked her to forward me the information for that meeting which she said she would. Contrary to that direction to Beth and without any other discussion about it with others, the next day (Saturday morning 10/28) Mike sent an email to both me and my supervisor stating that he understood we needed someone to support the ROPTF meeting and that he would be available to attend, even though his organization had a significant inspection that week. While Beth was not included on the email Mike sent to us, Beth forwarded his email (deleted his forwarding it to her) recommending Mike's attendance at the meeting and that he be our primary for representative and she'd be the back up.
- 2/21/18: During meeting with ERI, the briefing package included a change where Michelle was recently added to an industry task force. When Beth had previously raised this several times, Joe provided feedback that we would not have TVA support that industry initiative. After the meeting I talked to Dan Stout (Michelle's new supervisor) who explained Michelle came to him because it would provide info related to SMRs. It was evident that Beth had gone to Michelle again, who then went to her supervisor and got him to agree to it without his realizing the history.
- 2/21/18: During a discussion with one of my directs, he noted that he realizes he needs to watch what he says in the office area. He had said something

about me during a conversation with another employee and my direct report received a text message from Mike about it 'within 30 minutes'. (Alesia Justice, Beth Wetzel and Michelle Conner sit on opposite sides of the employee.) He assumed it was Michelle Conner who quickly texted Mike McBrearty related to his comment. I did not ask exactly what he said. I noted that others have told me (and I have observed myself), Beth and Michelle Conner or Michelle Conner and Alesia together often. He also stated that he believed Alesia was 'feeding' information to Mike.

- 3/6/18: In an email exchange over the weekend with Mike McBrearty and my supervisor, Mike continued to assert performance issues. On 3/6/18, I was informed by one of my directs that Mike had also proceeded to forward that email to one of my other directs (Ed Schrull) after they talked on the phone about the email exchange.

In summary, I perceive that there are demonstrating behaviors that are, at the very minimum, inconsistent with TVA competencies and core values in an attempt to continuously undermine, harass and intimidate me. This is resulting in a hostile work environment. I believe that Mike McBrearty has intentionally targeted me because I, as a function of my role and in conjunction with my leadership and HR, initiated an investigation into Michelle Conner's relationship with Mike McBrearty. Michelle, who is married to a SQN Shift Manager, had been in a role requiring oversight of the sites including the work of Mike McBrearty. Despite being a confidential investigation, they were both aware of the investigation from the day it began. After taking action to address Michelle's performance gaps, Mike's tactics primarily escalated. Additionally, Mike has fostered such an environment within his own department making interactions with the SQN Licensing organization extremely challenging. Lastly, additional employees within my organization, whose performance issues I have attempted to address in many cases, have colluded with Mike and Michelle either directly or indirectly, in an attempt to further create a hostile work environment for me and mitigate the potential for me to address their individual gaps.

So as not to create further stress, I would appreciate an expeditious assessment of these issues and timely feedback regarding the timeline to resolve.

Erin Henderson
Director, Nuclear Regulatory Affairs

TVA **TVA Standard Programs and Processes**	**Employee Discipline**	**TVA-SPP-11.316** **Rev. 0006** **Page 1 of 25**
		Validation Date 09-11-2018 Review Frequency 2 years Validated By Jesi Shahan
		Effective Date 09-11-2018

Level of Use: Information Use

Responsible Executive Organization: Human Resources

Approved by: Megan T. Flynn, Vice President, Human Resources — 09-11-2018 Date

Revision Log

Revision or Change Number	Effective Date	Affected Page Numbers	Description of Revision/Change
0004	09-12-2016	All	Update roles and responsibilities to reflect current organization structure.
		7	Clarify use of progressive discipline.
		10	Reference Adverse Employment Action process. (NPG PER 768180)
		Appendix B	Added new sections an/or provisions regarding the following: 3.2.1 Prior offenses 3.2.2 Fitness for Duty Added new section Recording in the Workplace (2.41). Clarified sections 2.1 Abusive or Unprofessional Language or Conduct, 2.2 Arriving Late, 2.13 Personnel Error, 2.24 Violation of EO Policy or Remedial Actions, 2.29 Falsification or Failure to Correct TVA Documents, 2.34 Refusal or Failure to Cooperate with OIG and Other Groups, 2.35 Unsafe Work Practices 2.3 Added section to include Critical and General Safety Offenses 2.5 Respectful Workplace
0005	07-03-2017	Appendix A	Clarification on Douglas Factor application
		Appendix B	Clarification 3.2.1 - Critical Unsafe Work Practice
		8	Clarification on 3.2.2
0006	09-11-2018	9	Correction to SPP reference: NPG-SPP-11.10 was superseded by NPG-SPP-01.7.4.

Table of Contents

1.0 PURPOSE

This SPP describes work conduct expectations of employees and provides guidelines to management on the application of disciplinary actions. TVA recognizes that the effective discipline practices come from strong leadership and firm, fair supervision at all employment levels. TVA's primary emphasis is preventing situations that require discipline through effective employee-management relations and appropriate internal controls.

2.0 SCOPE

To the extent the contents of this document are inconsistent with any other TVA or organizational policies, this document is controlling, with the exception of TVA Police and Emergency Management Work Instructions and the policies of the Office of the Inspector General.

Disciplinary actions and/or issues not addressed herein should be directed through the management chain and coordinated with Human Resources (HR) in order to promote appropriate disciplinary action.

3.0 PROCESS

3.1 Roles and Responsibilities

3.1.1 Vice President, Human Resources

Governance & Oversight Role

Serves as the owner of the Employee Discipline Process. Provides governance and oversight of the Employee Discipline Process and makes necessary delegation for its implementation.

3.1.2 Human Resource Generalists

Execution Role

A. Communicates the employee discipline policy and processes to managers and employees throughout TVA organizations.

Support Role

B. Consults on its application of discipline policy and processes with managers and employees.

C. Consults with Labor Relations and Office of General Counsel (OGC) to promote consistent application of discipline.

3.1.3 Executive Vice Presidents, Chief Officers, and Managers

Execute Role

A. Determines appropriate disciplinary measures based on the facts of each case, findings of any investigation (including those conducted by the Office of the Inspector General and their respective organizations) and guidance provided by the Human Resources staff.

Oversight Role

B. Ensures disciplinary measures are appropriately applied for similarly situated employees committing similar offenses while recognizing that individual circumstances may vary and disciplinary actions for particular offenses may not always be identical even within work groups.

3.1.4 Supervisors

Execute Role

A. Establishes a mechanism to ensure emphasis of the guidelines' contents including application of discipline within their respective organizations.

B. Coordinates disciplinary actions with their HR Generalist.

C. Notifies employees when revisions are issued to TVA's Code of Conduct and discipline guidelines.

D. Follows applicable Fitness for Duty guidelines in conjunction with disciplinary actions.

E. Maintains performance, feedback and coaching documentation.

3.1.5 Employees

Execute Role

A. Achieves desired work results and maintain appropriate behavior.

B. Maintains an understanding of this Employee Discipline policy and operate within its guidelines.

NOTE

Please see the applicable collective bargaining agreements for related work conduct expectations and guidelines.

3.2 Instructions

3.2.1 Guidelines for Progressive Discipline

A. Progressive Discipline - TVA generally supports the concept of progressive discipline, believing that the major purpose of disciplinary action is to rehabilitate the employee, prevent recurrence, and encourage the employee involved to render future satisfactory service. An effective system emphasizes correcting the problem rather than punishing the offender. Therefore, TVA's focus is on communicating an expectation of change and improvement rather than an expectation of future problems and eventual termination. However, in some circumstances, more rigorous disciplinary action may be warranted. Such action is intended to deter more extreme unsafe and inappropriate behaviors. TVA encourages active cooperation between managers and employees aimed at positively reinforcing the rules and regulations of the organization. While progressive action may include counseling, a verbal warning, a written warning and disciplinary suspension preceding termination, the specific approach taken in each case will depend upon all circumstances.

Prior offenses, even in unrelated areas, may influence the level of disciplinary action. See Appendix A, "Factors to Consider Before Taking Disciplinary Actions." Typically, but not always, prior offenses that occurred more than two years previously are not considered for progressive discipline purposes.

TVA's practice is that the progressive discipline process does not apply to non-disciplinary actions. See section 3.2.3 for more information on non-disciplinary actions.

B. Suspension Without Pay - It is the policy of TVA to issue a suspension without pay in cases that warrant this level of discipline. A suspension serves to put the employee on notice of the seriousness of his or her conduct and that further instances of similar behavior will result in termination. A suspension may vary in length from less than a week to several weeks or more, depending upon the circumstances surrounding the offense(s). For employees who are exempt from the Fair Labor Standards Act (FLSA), suspensions will be in full day increments, generally Monday-Sunday, unless a violation of a major safety rule or an infraction of a written workplace policy applicable to all employees occurred. Organizations should contact their HR Generalist regarding FLSA-related questions, including what constitutes a critical safety violation.

C. Individual Circumstances - Although recognizing the value of progressive disciplinary steps to encourage improved behavior, all levels of progressive discipline may not be used in every disciplinary situation. In some situations, the offense(s) may be sufficiently serious to warrant beginning the progressive discipline process at a more advanced level than a verbal warning. For some serious offenses termination remains an appropriate initial disciplinary action. However, TVA's decision to impose discipline on an employee will include a consideration of the relevant circumstances affecting the employee and the agency. This consideration will include both the circumstances of each situation as well as the overall objectives and policies of TVA.

%cr%3.2.1Guidelines for Progressive Discipline (continued)

D. Discipline and Performance Management - Progressive discipline may be appropriate in addressing some problems related to poor performance, but any such actions are intended to supplement, not replace, the continual evaluation process and the periodic performance appraisal which documents employee performance, including conduct matters. A service review, which on the basis of unacceptable performance supports demotion or other removal from a position (including termination), should be consistent with TVA policy regarding evaluation of employee service.

3.2.2 Taking Disciplinary Action

A. To safely and efficiently conduct activities in TVA, proper behavior and strict compliance with policies, procedures, and regulations is required. The purpose of the TVA disciplinary procedure and guidelines is to establish the process and general disciplinary levels used when it is necessary to take disciplinary action.

B. All disciplinary and non-disciplinary incidents cited in these guidelines should be investigated prior to action being administered. Managers/supervisors shall refer to the Douglas Factors Disciplinary Action Checklist prior to administering discipline. In matters that are referred to the Office of the Inspector General for investigation, the organization should carefully review the report and, as appropriate, the underlying evidence to assure itself that disciplinary action is warranted.

C. Alternative disciplinary actions that provides additional focus on the corrective, rehabilitative process may be utilized with appropriate coordination and approval. An alternative process typically is a verbal warning for the first offense. Management shall consult with HR to identify alternative disciplinary actions and to ensure appropriate application. Verbal warnings should be documented in supervisor records for tracking purposes.

D. Fitness For Duty procedures “Fitness for Duty Program for Non-Nuclear Organizations” and NPG’s “Fitness for Duty and Fatigue Management,” shall be followed when a fitness for duty violation occurs.

E. Prior to implementing disciplinary action, the circumstances of the incident should be reviewed with the appropriate HR Generalist. The appropriate union official should be notified prior to taking disciplinary action against a job steward.

1. A non-temporary Engineering Association (EA) or Office and Professional Employees International Union (OPEIU) represented employee should be given written notice as far in advance of the effective date of suspension as possible, although such notice may be effective immediately when necessary to protect the health of the employee or the interests of the Government, other employees, or the general public.

   If the suspension is for 30 days or less, said employee should be given at least 5 days notice and for disciplinary suspensions of more than 30 calendar days, the beginning date should be no less than 30 full calendar days after said employee receives the notice.

   For Trades & Labor employees, if a suspension is for more than 30 calendar days, the beginning date should be no less than 30 full calendar days after said employee receives the notice.

%cr%3.2.2 Taking Disciplinary Action (continued)

2. Management is required to provide a 30-day notice of proposed action to any preference eligible veteran employee who has one or more years of current, continuous TVA service in the same or similar job position prior to issuing any adverse action, i.e., disciplinary or non-disciplinary suspension for more than 14 days, furlough up to 30 days, reduction in pay/pay grade or discharge (but excluding termination of a temporary appointment). Organizations should contact their HR Generalist regarding adverse actions involving veterans.

F. Suspension Pending Investigation

1. Employees may be suspended from work during an investigation of the alleged incident under certain circumstances, particularly if the presence of the employee could:

   a. Seriously affect the conduct of the investigation,

   b. Constitute a danger to the employee or other workers,

   c. Compromise security, or

   d. Seriously affect the work of the organization.

2. However, employees are generally in non-work, non-pay status with notification that they may take available leave. Care should be taken when suspending employees because of Federal and contractual obligations, including providing advance notice of the suspension for EA or OPEIU represented employees and special procedures for employees who are veterans, and FLSA considerations described above. Managers/supervisors shall contact their HR Generalist prior to suspending an employee.

G. Determination of Appropriate Disciplinary Action

1. When determining appropriate disciplinary action, managers and supervisors should consider the relevant factors of each situation. See Appendix A, “Factors to Consider Before Taking Disciplinary Actions” for factors to consider.

2. Guidelines for appropriate actions for various offenses are outlined in Appendix B, “Disciplinary Guidelines: Range of Penalties.” The disciplinary actions indicated for each offense is a range of action; however TVA management may modify the steps as warranted based on the offense(s) and circumstances surrounding the offense(s).

3. Managers/Supervisors should consult with their HR Generalist prior to taking disciplinary action. Managers and HR should consult with the Office of the General Counsel (OGC) before taking disciplinary action for a veteran.

4. For employees in Nuclear Power or employees badged for nuclear site access, proposed personnel actions involving a suspension or termination will be reviewed to ensure the actions comply with employee protection regulations and do not negatively impact the Safety Conscious Work Environment. NPG-SPP-01.7.4, Adverse Employment Action and the Executive Review Board should be followed in conducting these reviews.

%cr%3.2.2 Taking Disciplinary Action (continued)

NOTE

The imposition of disciplinary action does not preclude management from referring an employee for criminal prosecution for the same actions, in appropriate circumstances

3.2.3 Non-Disciplinary Corrective Actions and Termination

There are non-disciplinary situations that may result in an employee's placement in non-work and/or non-pay status, demotion or termination depending on the requirements of the individual employee's position. Managers/Supervisors should retain proper documentation of all warnings and contact their HR Generalist before taking any corrective actions.

A. Failure to Meet Performance Expectations - All employees are expected to meet the performance expectations established by management. If, after management has informed an employee of such expectations, the employee fails to perform satisfactorily, management may warn, demote or terminate said employee, as circumstances warrant.

B. Failure to Meet Position Requirements - A requirement of all positions is that employees successfully meet medical, physical, psychological, background investigation and/or other checks relative to their position. Should an employee fail to meet the medical, physical, or psychological requirements of the position, employees will undergo an accommodation review. As a result of their failure to meet position requirements, they may be terminated. This may include, but is not limited to, failure of the employee to meet General Employee Training (GET) pass/fail requirements in TVA Nuclear organizations and failure to maintain necessary security clearances including unescorted access authorization.

C. Failure to Maintain Suitability for Employment - It is an employee's responsibility to remain suitable for employment. Employees must report arrests and criminal charges upon arrival the next business day. (Failure to properly report arrests or charges is grounds for disciplinary action. See Appendix B, 2.2.6.) Upon notification of an arrest or charges, management may hold the employee off work in non-work non-pay status and an investigation will be conducted to assess the employee's suitability for employment. If found to be unsuitable, the employee will be placed on non-disciplinary suspension pending adjudication of the charges by the court.

   TVA cannot hold open the jobs of employees under pending charges indefinitely and will review the status of the employee on a case by case basis. Failure to keep TVA informed of the status of the case or long term unavailability/uncertainty without disposition of the charges may result in a decision to terminate the employee. Employees who are incarcerated and not available for work may be terminated for unavailability.

%cr%3.2.3Non-Disciplinary Corrective Actions and Termination (continued)

D. Unavailability for Work - Employees are entitled to use sick leave, but they must follow their respective TVA organization's policies in requesting leave, keeping management informed of their status, and providing acceptable medical certification as to incapacitation. As a general rule, an agency is not required to indefinitely retain an employee who cannot work due to continuing medical conditions. Termination for unavailability for work generally is taken when the employee has been unavailable for work because of a prolonged absence or excessive absenteeism due to continuing effects of an injury or illness. Supervisors/Managers should contact their HR Generalist prior to taking any action regarding an employee who is unavailable for work.

4.0 RECORDS

4.1 QA Records

None

4.2 Non-QA Records

Records of disciplinary action, beginning with a written warning, will be placed in the employee's Personal History Record and maintained in the Human Resources Information System. Copies are also sent to the Central Office of the appropriate union for a represented employee. The responsible HR Generalist should receive a copy of disciplinary letters for all employees.

5.0 DEFINITIONS

Classified Information — Official information that has been determined to require, in the interests of national security, protection against unauthorized disclosure and which has been so designated under the authority of Executive Order 13526 "Classified National Security Information" or other applicable law. [R.4]

Intimidation — Offensive, abusive, insulting behavior or unfair actions directed at another individual or group of individuals, causing the recipient to feel threatened, abused, humiliated or vulnerable.

Harassment — Harassment is unwelcome conduct that is based on race, color, religion, sex (e.g., pregnancy, gender identity, or sexual orientation), national origin, age (40 and over), mental and/or physical disability, genetic information, and reprisal. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider, intimidating, hostile, or abusive.

Misconduct — A violation of the TVA Code of Conduct, any Executive Order, Federal or State law, or other TVA-approved policy or procedure prescribing a standard of conduct or ethics.

Network Access — This terminology encompasses NT ID as well as Unix ID and other mediums that could provide an access point to the TVA network.

Represented Employee — An employee who is represented by a union.

%cr%5.0 DEFINITIONS (continued)

Texting or Text Messaging — Reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, emailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

TVA Property — Any TVA owned, leased or rented property or vehicle. This includes property where TVA has an easement.

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Factors to Consider Before Taking Disciplinary Actions (Douglas Factors)

Consider the following before deciding upon a course of action for all disciplinary actions, and secure documentation where available (e.g. employee's version of the events, previous disciplinary letters, performance appraisals, evidence of disciplinary violation, other employees' disciplinary letters if violations are the same, etc.).

Before taking an adverse action against a preference eligible veteran, consult with your HR Generalist and OGC.

A. What is the nature and seriousness of the offense(s)?

B. What is the employee's job level and type of employment?

C. What is the employee's past disciplinary record?

D. What is the employee's past work record?

E. What is the effect of the offense(s) upon the employee's ability to perform their job and their supervisor's confidence in that ability?

F. What is the consistency with penalties imposed on other employees similarly situated for the same or similar offenses?

G. What is the consistency of the penalty with the TVA's disciplinary policy and organizational disciplinary guidelines?

H. What is the notoriety or its impact upon the agency's reputation?

I. Was the employee clearly on notice of any rules that were violated or had the employee been warned?

J. What is the potential for the employee's rehabilitation?

K. What are the mitigating circumstances surrounding the offense(s)?

L. What is the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others?

M. What is the impact of the offense(s) on the overall effectiveness and efficiency of the organization and/or employees?

Appendix B
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Disciplinary Guidelines: Range of Penalties*

SUMMARY OF DISCIPLINARY GUIDELINES

Offense	**Verbal Warning	Written Warning	Suspension	Discharge
1. Ethical Violation				
1.1 Violation of Ethical Laws or TVA Code of Conduct	X	X	X	X
1.2 Refusal or Failure to Cooperate with Investigation	X	X	X	X
1.3 Violation of Equal Opportunity (EO) Policy or Remedial Actions	X	X	X	X
1.4 Mishandling of Classified Information, Privacy Information, and Security Incidents	X	X	X	X
1.5 Misuse of Government Property	X	X	X	X
1.6 Misuse of Work Time	X	X	X	X
1.7 Theft or Unauthorized possession of property			X	X
1.8 Falsification of Quality Assurance (QA) or Other Safety-Related Documents				X
1.9 Falsification or Failure to Correct TVA Documents		X	X	X
2. Employment Standards				
2.1 Fighting, Violence, or Threats of Violence			X	X
2.2 Deliberate Misconduct Causing TVA to Violate NRC Regulations or Plant License				X
2.3 Inattentiveness to Duty	X	X	X	X
2.4 Recording in the Workplace		X	X	X
2.5 Possession of Firearms/Weapons or Other Unauthorized Substances			X	X
2.6 Failure to Report Criminal Charges or Off Duty Misconduct		X	X	X
2.7 Violation of Fitness for Duty Requirements			X	X
2.8 Policy and Procedure Violation	X	X	X	X
2.9 Personnel Error	X	X	X	X
3. Violation of Safety Standards				
3.1 Critical Unsafe Work Practices			X	X
3.2 General Unsafe Work Practices	X	X	X	X

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Disciplinary Guidelines: Range of Penalties*

4. Leave Misuse				
4.1 Arriving Late or Leaving Early Without Approval	X	X	X	X
4.2 Leave Misuse	X	X	X	X
5. Respectful Workplace				
5.1 Harassment/Intimidation/Retaliation/ Discrimination (HIRD)		X	X	X
5.2 Abusive or Unprofessional Language or Conduct		X	X	X
5.3 Insubordination		X	X	X

* Reference Appendix A

** Proper documentation should be maintained for all verbal warnings.

NOTES

1) The disciplinary action indicated for the offenses is a range of action; however, TVA management may modify the steps as warranted based on the offense(s) and circumstances surrounding the offense(s). The guidelines are not intended to cover all potential disciplinary offenses. Human Resources should be consulted for review on a case-by-case basis to assist in determining the appropriate action to be administered for offenses not listed herein.
2) Some offenses may lead to additional consequences including criminal prosecution or restrictions on future employment with TVA or within the Nuclear industry.

1.0 DISCIPLINARY GUIDELINES

1.1 Ethical Violation

Employees must adhere to federal ethical laws and standards of conduct and TVA related ethics policies. Employee should not engage in activity including but not limited to gambling, theft, misuse of work time, political activity in the workplace. In general, employees should avoid any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. [R.2]

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Disciplinary Guidelines: Range of Penalties*

1.1.1 Violation of Ethical Laws or Standards

A. Employees must adhere to ethical laws and standards of conduct, including, but not limited to those limiting gifts from outside sources and gifts between employees; avoiding conflicting financial interests; impartiality in performing official duties; and avoiding any criminal, infamous, dishonest, immoral, or notorious disgraceful conduct or other conduct prejudicial to the Government.

B. The level of discipline for this offense will be commensurate with the seriousness of the charge and the connection to TVA employment.

C. Specific information regarding Ethical Conduct requirements are contained in the United States Code of Federal Regulations, TVA Code of Conduct, and TVA Executive Code of Conduct, and TVA ethics related policies.

1.1.2 Refusal or Failure to Cooperate with Investigation

A. Employees are required to cooperate and comply with any investigation, audit, review, or inquiry by the Office of the Inspector General, TVA Equal Opportunity Compliance Office, TVA Employee Concerns, or any other groups with oversight or investigatory responsibility as provided by law or as directed by management. Here, “cooperate” includes but is not limited to making oneself available in a timely manner for questioning or testimony, providing documents or other recorded information in a timely manner, being truthful, and providing complete responses to any written or verbal questions or other inquiries.

B. Employees are also required to cooperate and comply with requests by security personnel. TVA employees, including their persons, vehicles, and personal belongings are subject to visual or hands-on search when entering or exiting the sites. Failure to comply with search requests may subject the employee to denial of access to the sites and/or disciplinary action up to and including termination.

1.1.3 Violation of Equal Opportunity (EO) Policy or Remedial Actions

Every TVA employee must actively support TVA’s EO policy and help ensure a working environment free from all types of discrimination (overt or inadvertent) and hostility or harassment or retaliation that may result. Items or words such as racial slurs, offensive symbols (e.g., nooses or swastikas), ethnic jokes, or sexually explicit and/or offensive jokes, comments, or photos will not be tolerated.

Failure to comply with the TVA EO policy or with required remedial actions resulting from an Equal Opportunity Compliance case, or retaliation for raising an EO concern will result in disciplinary action up to and including termination.

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Disciplinary Guidelines: Range of Penalties*

1.1.4 Mishandling of Classified Information, Privacy Information, and Security Incidents

A. Employees are prohibited from the unauthorized disclosure of classified information and are required to appropriately safeguard classified materials. In addition to being subject to TVA disciplinary action for a violation of this section, those who willfully and knowingly furnish, communicate, transmit or otherwise make available classified information to an unauthorized person are subject to prosecution for violation of Title 18, U.S. Law.

B. Employees are required to protect the security of personal information, especially Personally Identifiable Information (PII) and Restricted Personally Identifiable Information (RPII). In addition to being subject to TVA disciplinary action for a violation of this section, persons who willfully disclose information protected by the Privacy Act of 1974 to any person or agency not entitled to receive it may be subject to prosecution.

C. The following are examples of mishandling privacy information:

1. Leaving PII/RPII unsecured, unattended, or unlocked in desks, tables, filing cabinets, or elsewhere in work areas open to the general employee or visitor population either during or after normal working hours.

2. Storing or transmitting PII/RPII on TVA systems or applications in violation of TVA-SPP-12.002, TVA Information Management Policy.

3. Publically posting PII/RPII.

4. Disseminating PII/RPII information to unauthorized persons in any manner.

D. TVA employees are also subject to discipline for unauthorized dissemination of certain other types of information, including but not limited to nuclear safeguards information and any other information that an employee knows or should know is confidential or sensitive, either by markings on the information or by the subject matter content.

E. For additional information, see TVA-SPP-12.002, “TVA Information Management Policy” and NPG-SPP-14.3 “Safeguards and Security Sensitive Information.”

1.1.5 Misuse of Government Property

A. TVA tools, equipment, and other property are provided for the use of TVA employees for the conduct of TVA’s business. TVA tools, equipment, and vehicles are for business use only, unless prior approval has been obtained. Unauthorized use of TVA property is prohibited. Employees are responsible for the proper care and accountability of tools, equipment, and other property assigned to them during or after normal work hours. TVA tools, equipment, and property may include but are not limited to TVA vehicles, copiers, computers, office phones, cell phones, TVA-issued credit cards, physical security components, etc.

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Disciplinary Guidelines: Range of Penalties*
%cr%1.1.5Misuse of Government Property (continued)

B. Physical Access credentials (employee badges) are the property of the U.S. Government and are issued for the official and exclusive use of the designated holder to gain access to TVA facilities and may be used as proof of identity for official TVA business purposes. Use or possession of TVA issued access credentials by individuals other than the designated holder is considered misuse and unlawful. Anyone suspected of misuse of TVA issued access credentials is subject to penalty under 18 U.S.C. 499, 506, and 701, and TVA-SPP-14.200, Physical Access and Visitor Management policy.

C. Vehicles, both leased and rental, are provided for the use of TVA employees for the conduct of TVA's business. Unauthorized use of vehicles is prohibited. Employees are responsible for the proper care and accountability for vehicles assigned or provided to them during or after normal work hours. Willful misuse of a TVA vehicle will result in a minimum of a 30 day suspension. Refer to 31 U.S.C. Section 1349. [R.1]

1.1.6 Misuse of Work Time

Employees are expected to be productive in their work assignments. Loafing or wasting time while on working hours will not be tolerated. Employees without a work assignment are to contact their supervisor immediately.

1.1.7 Theft or unauthorized possession or removal of TVA property

A. Theft or attempted theft of TVA property, or the property of TVA employees, visitors or contractors, will not be tolerated. An employee who steals is subject to the maximum disciplinary action of discharge for a single offense. Attempted theft includes, but is not limited to, the staging of material for later retrieval.

B. Unauthorized possession or removal of TVA property, or the property of TVA employees, visitors or contractors, will not be tolerated. Unauthorized possession or removal includes instances where it cannot be substantiated that theft was intended or performed.

C. Supervisors should contact their HR Generalist before implementing discipline for this offense.

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Disciplinary Guidelines: Range of Penalties*

1.1.8 Falsification of Quality Assurance (QA) or Other Safety-Related Documents

This includes falsification of any documents that are designated as Quality Assurance Records (QA). This also includes falsification of any documents related to industrial safety that could result in jeopardizing the safety of employees, contractors, or visitors to TVA sites.

1.1.9 Falsification or Failure to Correct TVA Documents

This includes falsification of any documents not covered above (e.g., employment or other work documents). It also includes failing to promptly correct records (e.g., leave or pay records) which the employees knows, or should know, to be in error.

1.2 Employment Standards

Employment standards are necessary to guide our work activities and assure a safe and orderly work environment. The standards by which we operate apply to all employees and contractors. Employment standards include, but are not limited to, policy and procedure adherence, fighting, threats of violence, inattentiveness to duty, and possession of unauthorized substances.

1.2.1 Fighting, Violence, or Threats of Violence

Fighting, violence, and threats of violence, including but not limited to physical or verbal acts that threaten aggression toward people or property will not be tolerated and will result in disciplinary action up to and including termination.

See TVA Workplace Violence policy TVA-SPP-14.100 “Workplace Violence Prevention and Prohibited Items.”

1.2.2 Deliberate Misconduct Causing TVA to Violate NRC Regulations or Plant License

An employee who deliberately and/or maliciously causes TVA to violate Nuclear Regulatory Commission (NRC) regulations or plant license requirements shall be terminated.

1.2.3 Inattentiveness to Duty

A. Inattentiveness to duty is prohibited and serious incidents may result in termination of employment. Employees are expected to be fully alert and cognizant of their work environment. Employees who are not fully alert and attentive to their work assignments or duty station responsibilities cannot be tolerated. Employees found in any physical position or location which precludes them from performing their job duties and responsibilities will be considered to be inattentive to duty. This includes but is not limited to being asleep or physically being in a state or bodily position from which a work assignment cannot be effectively carried out.

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Disciplinary Guidelines: Range of Penalties*
%cr%1.2.3 Inattentiveness to Duty (continued)

B. Employees are subject to immediate suspension if they are found to be inattentive to duty while performing work that does not affect personnel safety or safe operation of the plant. However, a repeated instance of being inattentive to duty may result in termination of employment, regardless of the nature of the work being performed or its effect on plant operation.

C. Employees are subject to immediate termination if they are found to be inattentive to duty while performing safety-related work such as fire watch, operation of equipment, or any activity which could affect the safety of the employee, other employees, contractors, visitors, or the safe operation of the plant. Additionally, employees are subject to immediate termination if they have taken efforts to conceal or pre-plan being inattentive to duty.

1.2.4 Recording in the Workplace

A. TVA prohibits the recording of confidential, proprietary or personal information and personal images or voices belonging to TVA employees, contractors and/or visitors unless approved by management. Employees are also prohibited from recording any aspect of TVA's facilities or properties without prior management approval. Employees are required to provide consent for personal images to be captured.

B. "Recording" means the use of any device, whether work-issued or personal, to capture images or voices, regardless of whether in person, by telephone or by other means. This prohibition applies at TVA facilities and properties, while operating TVA owned, leased or rented vehicles, as well as off-site or during travel while in work status.

C. Employees who record in violation of this prohibition will be subject to disciplinary action up to and including termination.

1.2.5 Possession of Firearms/Weapons and Other Unauthorized Substances

A. The possession, use, or sale of alcohol and/or illegal drugs (including prescription drugs for which the employee does not have a current, valid prescription) on TVA property is prohibited and may result in termination of employment. Employees who use or are suspected of use of alcohol or illegal drugs on TVA property are subject to investigation, medical examination, testing, and disciplinary action.

B. Unauthorized firearms, weapons, explosives, or fireworks shall not be permitted on TVA property. For additional information, see TVA-SPP-14.100 "Workplace Violence Prevention & Prohibited Items."

C. Specific information regarding the Fitness for Duty Program requirements are contained in TVA-SPP-11.511 "Fitness for Duty Program for Non-Nuclear Organizations" and NPG-SPP-14.1 "Fitness for Duty and Fatigue Management."

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Disciplinary Guidelines: Range of Penalties*
%cr%1.2.5Possession of Firearms/Weapons and Other Unauthorized Substances (continued)

Fitness for Duty requirements for employees required to possess a Commercial Drivers License as a condition of employment are contained in TVA-SPP-11.512 "TVA Department of Transportation (DOT) Alcohol and Drug (A&D) Testing Program." (To the extent this document establishes standards above the DOT policy, this document is controlling.)

1.2.6 Failure to Report Criminal Charges and Off Duty Misconduct

A. Employees who engage in conduct away from TVA property which, because of its illegality, notoriety, or impact upon the agency's reputation, results in the need to deter such conduct in the future by the employee or other employees, will be subject to disciplinary action up to and including termination. These determinations are made in conjunction with the Employment Suitability standards.

B. Employees are required under TVA's personnel security procedures to report via form TVA 9871 "Data on Convictions" upon arrival the next business day whenever they are arrested or charged with any criminal act. Specific information regarding the reporting requirements are contained in TVA's personnel security procedure, TVA-SPP-14.410 "Adjudication of Employee Criminal Charges".

C. Determinations on level of discipline for failing to report arrests or charges will consider the seriousness of the charge and the connection to TVA employment.

1.2.7 Violation of Fitness for Duty Requirements

A. Employees who are suspected of use or being under the influence of illegal drugs or alcohol on TVA property or on TVA work time are subject to investigation, medical and/or psychological examination, and disciplinary action. Employees working at a TVA nuclear site will be subject to termination for first offense violations of Fitness for Duty Program requirements regarding "For Cause" testing.

B. Fitness for Duty requirements for employees required to possess a Commercial Drivers License as a condition of employment are contained in TVA-SPP-11.511 "Fitness for Duty Program for Non-Nuclear Organizations." (To the extent this document establishes standards above the DOT policy, this document is controlling.)

C. Employees who fail or refuse to fully cooperate with any part of a Fitness for Duty assessment or refuse, tamper/attempt to tamper with or subvert an alcohol/drug test will be terminated.

D. Specific information regarding the Fitness for Duty Program requirements and consequences are contained in TVA-SPP-11.511 "Fitness for Duty Program for Non-Nuclear Organizations" and NPG-SPP-14.1 "Fitness for Duty and Fatigue Management."

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Disciplinary Guidelines: Range of Penalties*

NOTE
Violations of fitness for duty requirements may result in additional consequences beyond these disciplinary actions. Consequences may include restrictions on future employment with TVA and/or within the nuclear industry. Consult the fitness for duty procedures for additional information.

1.2.8 Policy and Procedure Violation

Policy and Procedure violation includes willful violations of known or established TVA policies or subset of those policies (TVA Safety Manual, NPG policies, site specific procedures, etc.). This includes but is not limited to policies such as Vehicle Safety, Cyber Security, NERC standards, etc. Failure to comply with these policies can place TVA's employees, network, information, the public, etc. at risk.

1.2.9 Personnel Error

Personnel error occurs when an employee has the procedures, knowledge, and equipment to properly perform an assignment and fails to do so. Personnel errors may be intentional or unintentional. Personnel errors may result in disciplinary action up to and including termination. Personnel errors that result in incidents such as reportable events, violations of technical specifications, nuclear regulatory identified violations, or other procedures, etc., may also be a basis for disciplinary action. An attempt to conceal or failure to report a personnel error may result in disciplinary action up to and including termination. HR Generalist should be consulted for review on a case-by-case basis to assist in determining the appropriate action to be taken.

1.3 Violation of Safety Standards

Employees are accountable for working safely each and every day. Employees are expected to follow safe work practices. If an employee violates our safe work practices, progressive discipline will apply.

1.3.1 Critical Unsafe Work Practice

Critical unsafe work practices include, but are not limited to behaviors that violate TVA safety procedures and lead to or have high potential to lead to death or serious injury to personnel or significant damage that might impair the performance of a TVA plant or TVA equipment.

- Energy clearance boundaries / lockout-tag out and protective grounding requirements must be followed
- Confined space entry requirements must be met
- Fall protection requirements must be met
- Radiation boundaries must not be violated

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Disciplinary Guidelines: Range of Penalties*

%cr%1.3.1 Critical Unsafe Work Practice (continued)

- Protective barriers for suspended loads must not be breached
- Arc-flash protective requirements (de-metal, protective clothing, proper tooling, stand off distances) must be met

1.3.2 General Unsafe Work Practice

General unsafe work practices are violations of those Safety Expectations, Procedures, Policies, and/or OSHA rules which are not designated as Critical Safety Rules. These behaviors include, but are not limited to, behaviors that lead to or have the potential to lead to injury to personnel or damage to TVA equipment. It also includes an employee's failure to notify his/her supervisor or appropriate TVA medical staff of any medication or changes in medication that might impact the employee's ability to work safely. Managers and supervisors should consider the risk and intentions to determine the appropriate level of discipline.

Level I - Safety violation that could cause an accident or illness that would most likely result in serious physical harm. Risk is medium to high and intent may have been willful in nature. The list below contains examples only and is not all inclusive. Level I safety violations will be addressed through the progressive discipline process, ranging from a written warning to termination.

- Use of unapproved climbing devices
- Misuse of tools/using the wrong tool for the job
- Failure to complete or review an approved safety briefing or plan prior to beginning high hazard work
- Use of cell phones other electronic devices, other than in hands free mode, while driving a TVA owned or rented vehicle or while driving a personal vehicle on TVA business. (Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving, 10/01/2009) [R.3]

Level II - Safety violation that has a direct relationship to job safety and health, but not serious in nature. Risk is very low and intent may or may not have been willful in nature. The list below contains examples only and is not all inclusive. Level II violations use the progressive discipline policy and normally begin at verbal warning as a first step.

- Failure to wear PPE (gloves, hard hat, hearing protection, safety glasses, etc.) as required by safety rules or regulations
- Failure to maintain a neat and clean work area adversely impacting work safety
- Failure to meet established safe work expectations

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Disciplinary Guidelines: Range of Penalties*

1.4 Leave Misuse

Employees are expected to be at work unless they have previously-approved leave, a bona fide emergency exists, or valid medical reasons dictate an absences from work.

1.4.1 Arriving Late or Leaving Early Without Approval

All employees are required to gain approval from their supervisor when arriving late, including returning from lunch or breaks late, or leaving from their scheduled shift early. Situations may arise where an employee will have to come in late or leave early in order to attend to personal business. Employees are required to provide notice and obtain approval as soon as possible when they have to attend a scheduled appointment during work hours. If requested by the supervisor, employees must state the specific need for the absence before approval may be given. For non-prearranged absences, where an employee must arrive late or leave early, or when the employee is going to leave the work area or job site, it is the employee's responsibility to ensure they are approved by providing satisfactory information to their supervisor/manager as soon as he/she reports to work. If appropriate, as determined by a supervisor or manager, employees must enter leave for the time.

1.4.2 Sick Leave and Annual Leave Misuse

Employees shall report to their supervisor or up to an appropriate level of management when employee is scheduled to be at work unless the employee has a previously approved leave, a bona fide emergency exists, or valid medical reasons dictate their absence from work. The supervisor may, at his/her discretion, inform the employee that administratively acceptable documentation, i.e. doctor's note associated with one's medical condition or other appropriate documentation is required for the absence to be approved. For absences that are ≥40 consecutive hours, or ≥48 consecutive hours for employees working 12-hour shifts, the employee will be required to provide acceptable medical evidence supporting the absence and the circumstances must be evaluated by an assigned medical case manager.

A. If the supervisor suspects sick leave abuse/misuse, the supervisor will review the sick leave report(s) and document the days in question.

B. If the supervisor suspects potential sick leave abuse/misuse, the supervisor will meet with the employee to express the concern and ask for an explanation. If, as a result of this discussion, the supervisor identifies misuse/abuse or questionable use of sick leave, the supervisor will proceed immediately, or after further investigation and discussion with HR, with a formal counseling session. If, following formal counseling, the employee fails to follow sick leave expectations or if they continue to have questionable leave usage, the supervisor shall issue a Leave Control Letter/verbal warning. If the employee continues to violate the leave control restrictions and/or receives additional unapproved absence(s), more progressive discipline will ensue, up to and including termination.

C. Managers/Supervisors should contact their HR Generalist prior to taking disciplinary action and for assistance in preparing proper documentation.

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Disciplinary Guidelines: Range of Penalties*
%cr%1.4.2Sick Leave and Annual Leave Misuse (continued)

D. An unapproved absence is one in which the supervisor or manager was not contacted and/or given an acceptable reason for the absence, or the employee did not provide acceptable documentation to support the absence. For non-prearranged absences, it is the employee's responsibility to ensure approval by contacting their supervisor as soon as possible at the beginning of the work day/period for which they are absent and by providing satisfactory information to the supervisor/manager as soon as practical at the beginning of the work day/period for which they are absent and by providing acceptable and satisfactory evidence to the medical case manager as soon as he/she returns to work. Prior to initiating disciplinary action a supervisor/manager must ensure the employee's absence was not approved.

1.5 Respectful Workplace

Everyone at TVA is responsible for helping maintain a safe, professional, and respectful workplace. It is core to our TVA Values and it is what we expect of each other each and every day.

1.5.1 Harassment/Intimidation/Retaliation/Discrimination (HIRD)

Incidents involving HIRD of any nature are strictly prohibited. Individuals who engage in any form of HIRD will be subject to disciplinary action up to and including termination.

1.5.2 Abusive or Unprofessional Language or Conduct

Abusive or unprofessional language and/or behavior directed toward other employees or others, or abusive or unprofessional conduct that adversely affects the work environment will result in disciplinary action up to and including termination.

1.5.3 Insubordination

Insubordination by an employee will not be tolerated. A willful failure or refusal to carry out or comply with a direct order, verbal/written instruction, or TVA policy is classified as insubordination. Abusive or unprofessional language or behavior toward an employee's supervisor or others in the chain of management is also considered insubordination.

* Reference Appendix A

** Proper documentation should be maintained for all verbal warnings.

Source Notes
(Page 1 of 1)

Requirements Statement	Source Document	Implementing Statement
Use of vehicles for official and authorized purposes only.	31 U.S.C. Section 1349	[R.1]
Refrain from prohibited political activity for federal employees.	5 U.S.C. Sections 1501 – 1508 ("Hatch Act")	[R.2]
Prohibition on the use of cell phones and other electronic devices in other than hands free mode while driving a TVA owned vehicle, a rented vehicle on TVA business or when driving a personal vehicle on TVA business and specified penalties.	Executive Order 13513 "Federal Leadership on Reducing Text Messaging while Driving," 10/01/2009	[R.3]
Protection against and unauthorized disclosure of official information that has been determined to require, in the interests of national security	Executive Order 13526 "Classified National Security Information"	[R.4]

Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

April 15, 2019

Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor - OSHA
2296 Henderson Mill Road, NE, Suite 200
Atlanta, Georgia 30345
Telephone: (404) 772-8046
Fehlman.Lauren@dol.gov

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

TENNESSEE VALLEY AUTHORITY'S POSITION STATEMENT

Dear Ms. Fehlman:

On December 18, 2018, Ms. Beth Wetzel filed a Complaint alleging that Tennessee Valley Authority ("TVA"), through the actions of Wetzel's supervisors, Ms. Erin Henderson (Director of Nuclear Regulatory Affairs) and Mr. Joseph Shea (Vice President of Regulatory Affairs and Henderson's supervisor), retaliated against Wetzel because she engaged in protected activities. She alleged that TVA violated the whistleblower provisions of Section 211 of the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851, and Nuclear Regulatory Commission ("NRC") Regulation 10 C.F.R. § 50.7. (Wetzel's December 18, 2018 Complaint, at 1, 12-18 ("Wetzel Compl.").)

On January 14, 2019, Wetzel amended her Complaint to include an additional allegation of adverse employment action because between the time of her initial complaint on December 18, 2018 and January 14, 2019, TVA formally terminated Wetzel's employment. (Wetzel's January 14, 2019 Amended Complaint ("Wetzel Am. Compl.").) She alleged additional damages of lost wages and reduced retirement benefits because of the termination.

As set forth below, Wetzel cannot establish a *prima facie* case because she has not and cannot identify any specific "protected activity" that caused her termination. Wetzel's claims are baseless and should be dismissed.

I. Wetzel's "Protected Activities" Are Part of Her Job

While Wetzel's Complaint characterizes her activities as selfless reporting, stifled by management, that could not be further from the truth. Not only were her "protected activities" a central and required function of her job, but Wetzel was consistently encouraged to—and in some cases lauded for—those activities.[1]

In 2006, Wetzel joined TVA and served as Manager in the Nuclear Licensing and Industry Affairs division. (Wetzel Compl., at 2.) Between 2006 and 2018, Wetzel was promoted within TVA a few times. (*Id.*) While her duties and responsibilities increased in relation to her promotions, the nature of her work for each successive promotion still entailed providing governance and oversight within the Nuclear Power Group. (*Id.*) In Wetzel's most recent role as Manager,[2] Emerging Regulatory Issues, one of her key responsibilities as part of her oversight duties was to "[p]roactively work to improve" the **safety culture** of the Corporate Nuclear Licensing business unit. (Wetzel, TVA Year End Review, 10/01/2016 – 09/30/2017, attached as Exhibit 1 ("Wetzel 2017 Eval.") (emphasis added).)

In other words, reporting safety issues, which Wetzel alleged as her "protected activities," was an important and required part of Wetzel's job. That TVA retaliated against Wetzel for doing her job both defies logic and is belied by the evidence to the contrary, which shows that Henderson encouraged Wetzel to exercise oversight and lauded her when she did so. When Henderson completed Wetzel's 2017 performance evaluation more than one year before Wetzel's Complaint, (Ex. 1.), Henderson positively evaluated Wetzel's performance of so-called "protected activities." In fact, Henderson encouraged Wetzel by rating her with a "Solid Performance" on the category of "Enhance Nuclear Safety Culture." (*Id.* at 3.) Henderson wrote: "Beth provides positive and critical feedback to her staff and has encouraged them to write [condition reports]." (*Id.*)

Furthermore, Henderson encouraged Wetzel to escalate issues and to have her staff do likewise. In Wetzel's 2017 performance evaluation, Henderson commented that "In FY18, Beth should focus on working with her staff to understand when they are escalating an issue to her in order for her to aggressively take action to address issues brought to her attention. Beth should actively engage with site and corporate managers to address those issues and escalate if she is then unable to resolve." (*Id.*)

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[1] TVA does not take the position that protected activity occurring in the course of one's job functions cannot qualify as predicate protected activity within Section 211 of the ERA. Rather, there is no presumption of causation based on temporal promixity as discussed below.

[2] During the relevant periods in Wetzel's Complaint, Wetzel served as Manager of Regulatory Programs, and worked directly under Henderson. Henderson served as the Director of Nuclear Regulatory Affairs and worked directly under Shea, who was the Vice President of Nuclear Regulatory Affairs and Support Services.

If Wetzel did not engage in "protected activities" by raising issues and writing condition reports and did not encourage her team to do the same, she would not be doing her job.

II. Wetzel's Complaint of "Chilled Work Environment" is Meritless

Wetzel's complaints about alleged violations at Watts Bar nuclear plant and Sequoyah nuclear plant are red herrings. First, Wetzel did not work at either site and was not subject to an allegedly "chilled work environment." She worked in the TVA Corporate Nuclear Licensing business unit, where as shown above, she was encouraged to raise concerns. Second, the NRC found that there was no chilled work environment at TVA Corporate Nuclear Licensing, where Wetzel worked, or at Sequoyah nuclear plant.

In December 2018, NRC completed an investigation into whether there was a safety-conscious work environment ("SCWE") issue at both Sequoyah Nuclear Plant and TVA Corporate Nuclear. NRC "[i]nspectors reviewed the independent safety culture assessments performed for Sequoyah Nuclear Plant in April 2018 and for TVA Corporate Nuclear in May 2018." (December 4, 2018 Letter from Anthony D. Masters to Joseph W. Shea regarding NRC Inspection Report, at 1 & 3, attached as Exhibit 2 ("December 2018 NRC Inspection Rep.").) The NRC inspectors "interviewed 15 TVA employees in the Licensing and Regulatory Affairs organizations at Sequoyah Nuclear Plant and TVA Corporate Nuclear, approximately 94% of the workforce in those groups." (*Id.* at 3.) "Based on responses from the sampled group, personnel stated that they felt free to raise nuclear safety concerns without fear of retaliation." (*Id.*)

Ultimately, in its December 4, 2018 letter to TVA, the NRC concluded that the "NRC inspectors did not identify any finding or violation of more than minor significance." (*Id.*)

Thus, Wetzel's claims of chilled work environment for raising safety concerns at TVA Corporate Nuclear and Sequoyah Nuclear Plant are completely meritless.

III. Wetzel Cannot Establish a *Prima Facie* Case of Retaliation

Wetzel has the burden to establish a *prima facie* case under the ERA, which requires the following four elements: "(1) that [s]he engaged in protected activity; (2) that the employer was aware of the protected activity; (3) that the employer took some adverse action against [her]; and (4) that the evidence is sufficient to permit an inference that the protected activity was the likely reason for the adverse action." *Macktal v. U.S. Dep't of Labor*, 171 F.3d 323, 327 (5th Cir. 1999) (citing *Couty v. Dole*, 886 F.2d 147, 148 (8th Cir. 1989)). If Wetzel makes this showing, the burdens shifts to TVA to present clear and convincing evidence that it would have taken the same personnel action absent protected conduct. *See Trimmer v. U.S. Dep't of Labor*, 174 F.3d 1098, 1101 (10th Cir. 1999) (citing 42 U.S.C. § 5851(b)(3)(B)).

A. Vague Allegations of Protected Activity

Although Wetzel's allegations of protected activities are vague, it appears she alleges the following protected activites in her Complaint:

1. In 2016, Wetzel vaguely addressed some issue related to NRC's fatigue rule requirement. (Wetzel Compl., at 5-6.)

2. Without any relevant time frame, Wetzel protested the failure to comply with "Fukushima" requirements at the Sequoyah nuclear power plant. (Wetzel Compl., at 6.)

3. In July 2016, Wetzel initiated a condition report to protest TVA's inadequate response to NRC's 2016 chilled work environment letter. (Wetzel Compl., at 7.)

4. In 2016 and 2017, Wetzel protested the failure to perform technical specification surveillances. (Wetzel Compl., at 8.)

5. In December 2017, Wetzel protested failures at TVA's Browns Ferry nuclear plant on two issues. (Wetzel Compl., at 8.)

Among these five alleged "protected activities," Wetzel initiated only one condition report. That report, however, was made back in July 2016, about two and a half years before her termination. The only alleged protected activity that is close to one year preceding her termination is that she purportedly protested failures at Browns Ferry nuclear plant.

B. Wetzel Has Not Sufficiently Alleged Causation and Cannot Do So

Wetzel failed to establish that any alleged "protected activity" contributed to her termination. *Benson v. N. Ala. Radiopharmacy, Inc.*, ARB Case No. 08-037, 2010 WL 1776977, at *3 (Apr. 9, 2010) (holding that plaintiff has the burden to establish causation). Wetzel offers no evidence of causation except temporal proximity, but even then all but one of her alleged "protected activities" occurred more than one year before her termination. (Wetzel Compl., at 5-8.)

In Wetzel's case, where her alleged protected activity is part and parcel to her central responsibilities, temporal proximity by itself, is insufficient to make a *prima facie* case. *Bartlik v. U.S. Dep't of Labor*, 73 F.3d 100, 103 (6th Cir. 1996). Wetzel's primary responsibility in Corporate Nuclear Licensing was to identify and report issues, which by its nature is considered protected activity. As discussed above, Wetzel received financial compensation for engaging in protected activities and encouraging her team to engage in protected activities.

The Sixth Circuit has explained why temporal proximity *by itself* is insufficient to establish a *prima facie* case where an employee's primary job is to identify safety issues, and her performance was evaluated on that basis.

> Holding temporal proximity *by itself* to be sufficient to make a *prima facie* case on these facts is not justified. Essentially, anyone hired to identify safety problems who does his job and does identify problems, whose contract is not renewed would make a *prima facie* case of discriminatory retaliation. . . . [T]he making of a *prima facie* case must not be onerous, but we nonetheless think it must be something more than temporal proximity under circumstances such as those that exist in this case.

Bartlik, 73 F.3d at 103, n.7 (emphasis in original). Without more, temporal proximity is insufficient to establish causation.

Wetzel has not provided anything more than temporal proximity to support the necessary element for causation. In short, Wetzel has not and cannot allege that any specific protected activity contributed to her termination. All her alleged activities were vague and insignificant and lagged in time from her termination. She cannot establish both elements of protected activity and causation.

IV. Wetzel Routinely Sought to Undermine Her Supervisor's Authority

TVA conducted an internal investigation into a complaint filed with Human Resources by Henderson, which implicated Wetzel. The internal investigation found that Wetzel violated TVA policy against insubordination, among other policies. TVA then worked through its procedures and engaged Wetzel in discussions for a no fault separation agreement, which Wetzel initially signed and agreed but then rescinded. Ultimately, Wetzel was terminated for insubordination.

A. From the Outset, Wetzel Did Not Want Henderson to Be Wetzel's Supervisor, and It Had Nothing to Do With Protected Activities.

In 2015, TVA Corporate Nuclear had an opening for Senior Manager for Corporate Nuclear Licensing. Shea asked the Corporate Licensing Managers, including Wetzel, about whether different candidates would be qualified for the Senior Manager role. (Wetzel Compl., at 4.)

Wetzel was adamantly against Henderson's promotion to that role. As Wetzel readily admits in her Complaint, she responded that Henderson, who only had six years of experience at TVA and two years in the chemistry department at Salem/Hope Creek, lacked the necessary experience to be Senior Manager. (*Id.*) By contrast, Wetzel has over 32 years of experience in the nuclear power industry. (*Id.* at 1.) Again, two years later in 2018, after Henderson was promoted to the role of Director because of her continuously high performance, Wetzel maintained her position that Henderson was still not qualified for her job. (*Id.* at 9.)

B. TVA's Internal Investigation Substantiated Henderson's Complaint Against A Group of Insubordinate Employees, Including Wetzel

On March 9, 2018, Henderson filed a complaint with TVA, alleging a coordinated effort by multiple employees to retaliate against, harass and/or subject her to a hostile work environment and to otherwise undermine her professional authority (March 9, 2018 Complaint by Henderson, attached as Exhibit 4 (hereinafter, the "Henderson Compl.")).

In response to Henderson's complaint, the Office of the General Counsel ("OGC") for TVA, by Senior Attorney John Slater, conducted an internal investigation of this group of employees, including Wetzel (August 10, 2018 Report of Investigation by John Slater, attached as Exhibit B (hereinafter, the "Slater Report")).[3]

In the course of Slater's investigation, he interviewed Henderson three times as well as sixteen other individuals, including members of Henderson's staff, members of other groups with knowledge of the allegations regarding Wetzel. (*See* Slater Report, at p. 3, for a full list of names and titles.) Slater also reviewed emails, text messages, Employee Concerns Program ("ECP") reports and related documents, and a Report of Investigation prepared by Human Resources. (*Id.*)

TVA Standard Programs and Processes include employee discipline policies that employees are expected to respect and support their supervisors in the performance of their duties and not to engage in conduct to undermine that work relationship. TVA Policy, TVA-SPP-11.316 Employee Discipline, Sections 1.5 through 1.5.3, provides the following:

> **1.5. Respectful Workplace.**
>
> Everyone at TVA is responsible for helping maintain a safe, professional, and respectful workplace. It is core to our TVA Values and it is what we expect of each other each and every day.
>
> **1.5.1. Harassment/Intimidation/Retaliation/Discrimination (HIRD).**
>
> Incidents involving HIRD of any nature are strictly prohibited. Individuals who engage in any form of HIRD will be subject to disciplinary action up to and including termination.

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[3] **Please take notice** that information in the Slater Report, ECP reports, and other attached exhibits, contain confidential personnel files, the public disclosure of which would constitute an invasion of personal privacy and which would trigger TVA's reporting responsibilities under the Privacy Act. Any privileged and/or confidential information which may be visible should not be considered to constitute a waiver of the attorney client privilege or work product protection.

> **1.5.2. Abusive or Unprofessional Language or Conduct.**
>
> Abusive or unprofessional language and/or behavior directed toward other employees or others, or abusive or unprofessional conduct that adversely affects the work environment will result in disciplinary action up to and including termination.
>
> **1.5.3. Insubordination.**
>
> Insubordination by an employee will not be tolerated. A willful failure or refusal to carry out or comply with a direct order, verbal/written instruction, or TVA policy is classified as insubordination. Abusive or unprofessional language or behavior toward an employee's supervisor or others in the chain of management is also considered insubordination.

TVA-SPP-11.316, Employee Discipline, Section 1.5 through 1.5.3, at p. 24, attached as Exhibit 5.

Slater concluded that a group of employees, including Wetzel, harassed, retaliated against, and created a hostile work environment for Henderson. As for Wetzel, Slater determined she held open animosity toward Henderson and had since Henderson was selected for the supervisor job. In fact, Wetzel candidly stated that she had serious problems with Henderson, leading Slater to conclude:

> [Wetzel] had a problem with Henderson from the time Henderson was selected [as Senior Manager] because, in her view, Henderson was "too young," "too inexperienced," and "did not have enough nuclear experience." Wetzel also stated that her working relationship with Henderson was strained; in fact, she had been placed on a Performance Improvement Plan (PIP). Wetzel further noted that she "does not trust" Henderson and that, in her view, Henderson is "vindictive," and Wetzel does not understand what motivates a person to pull people's gate records and have them investigated. Moreover, Wetzel describes Corporate Licensing as "toxic" and will "only work better if [Henderson] is moved out." Finally, Wetzel said that she took the NEI loan assignment to get away from Henderson.

(Slater Report, at 19.)

Similarly, Wetzel readily admitted in her Complaint that she believes that "Henderson was vindictive" and that even by April 2018, Henderson was not qualified for her job. (Wetzel Compl., at 9.) Wetzel also admitted that she wanted either Henderson to be moved out of Corporate Nuclear (Slater Report, at 19) or Wetzel would move to the Nuclear Energy Institute ("NEI") "in order to get away from Henderson" (Wetzel Compl., at 9).

It is not surprising that by Wetzel's own admission she had continuously disrespected Henderson from the time Henderson became Wetzel's supervisor to the time Wetzel filed her Complaint.

C. Wetzel Sustained a Campaign of Disrespect Toward Henderson

Wetzel's animosity toward Henderson appears to have manifested itself in multiple ways. According to Slater's report, Wetzel repeatedly communicated her beliefs that Henderson is vindictive and unqualified to others in the organization in an effort to undermine Henderson's authority. Wetzel took actions contributing to a hostile work environment for Henderson. For example,

1. Without substantiation, Wetzel repeatedly told others that Henderson had retaliated against Ms. Michelle Conner by having Ms. Conner's relationship with McBrearty investigated by Human Resources. (Slater Report, at 18-19; see also Henderson Compl., at 6-7.)

2. Wetzel was supposed to attend a work meeting but indicated that she could not attend because of a conflict. (Henderson Compl., at 7.) Henderson informed Wetzel that she will take her place, but Wetzel worked with McBrearty and behind Henderson's back to insert McBrearty into the same work meeting in Henderson's organization where his presence would be more than unusual. (Henderson Compl., at 6-7 ("While [Wetzel] was not included on the email [McBrearty] sent to us, [Wetzel] forwarded his email (deleting his forwarding it to her) recommending [McBrearty's] attendance at the meeting and that he be our primary for representative and she'd be the back up.").) And by that time, as detailed in Slater's report, McBrearty had been harassing Henderson. (See generally Slater Report.)

3. Wetzel admitted that she did not trust Henderson. (Slater Report, at 19.) Based on her mistrust, Wetzel has refused to enter travel expenses into TVA's travel reimbursement system under the guise that Henderson would misuse that information against Wetzel. Moreover, she continued to engage in disrespectful conduct, a form of insubordination, by directing baseless comments to Henderson's supervisor regarding Henderson's supposed vindictiveness.

Put simply, Wetzel's continuous actions of insubordination and disrespectful conduct toward her supervisor, interfered with the ability of Ms.Henderson and others to perform their jobs. Based on that, not any protected activity, Wetzel was ultimately terminated.

V. Wetzel's Termination Had Already Been Decided Before She Filed Her Complaint

Wetzel's alleged protected activities and her Complaint to the Occupational Safety and Health Administration ("OSHA") did not contribute to her termination. As explained above, her alleged "protected activities" were required as part of her job, and her efforts to pursue them were encouraged through performance evaluations.

As admitted by Wetzel, through mischaracterized, TVA and Wetzel engaged in discussions in October 2018 (two months before Wetzel's Complaint) regarding her voluntary departure from TVA. (Wetzel Compl., at 10-11.) At that time, TVA had already informed her about TVA's findings of her insubordination towards Henderson. (*Id.*) It was clear from these discussions that if an agreement could not be reached, Wetzel would be terminated.

After these discussions, TVA and Wetzel signed and executed the voluntary resignation agreement, which is attached as Exhibit 6 (November 15, 2018 Lettered Agreement of Voluntary Resignation ("Resignation Agreement")). The Resignation Agreement provided a seven day cancellation period. Wetzel had signed the November 15, 2018 Resignation Agreement on December 5, 2018. She exercised her right to rescind the agreement within the allotted time.

Even Wetzel acknowledged that it was her rescinding the Resignation Agreement that let to her termination. "Wetzel rejected that offer [in the Resignation Agreement], and believes that TVA is now working to terminate her employment without severance benefits." (Wetzel Compl., at 12.) Wetzel was not terminated because she filed her OSHA Complaint; it was a direct consequence of her rescinding the Resignation Agreement.

VI. TVA's Termination of Wetzel Was Appropriate Because Her Disrespectful Conduct Hindered Henderson's Ability to Perform Her Responsibilities in Leading the Nuclear Corporate Group

As discussed above, TVA had legitimate and nondiscriminatory reasons for terminating Wetzel. While Wetzel argues that TVA's reasons for terminating her were pretextual, she fails to connect a causal chain from any alleged protected activity and her termination. On the other hand, TVA determined, Wetzel engaged in a sustained campaign to disrespect Henderson, undermining Henderson's authority, poisoning Henderson's relationship with her staff, and hindering Henderson's ability to do her job. Wetzel's disrespectful and harassing conduct directed at Henderson is actionable. "[D]isrespectful conduct is unacceptable and not conducive to a stable working atmosphere, and . . . agencies are entitled to expect employees to conduct themselves in conformance with accepted standards. *Ray v. Dep't of the Army*, 97 M.S.P.R. 101, ¶ 58 (2004), *aff'd*, 176 F. App'x 110 (Fed. Cir. 2006) (internal citations omitted). "[I]nsolent disrespect towards supervisors so seriously undermines the capacity of management to maintain employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once." *Lewis v. Dep't of Veterans Affairs*, 80 M.S.P.R. 472, ¶ 8 (1998).

Wetzel's alleged protected activity did not give her "carte blanche to ignore the usual obligations involved in an employer-employee relationship." *Lopez v. W. Texas Utils.*, No. 86-ERA-25, 1988 WL 524363, at *4-5 (ARB July 26, 1988). *See also Makam v. Pub. Serv. Elec. & Gas Co.*, ARB No. 99-045, ALJ No. 1998-ERA-22, 2001 WL 111607, at *4 (ARB Jan. 30, 2001) (holding that whistleblower protections are not "intended to be used by employees to shield themselves from termination actions for non-discriminatory reasons"); *Kahn v. U.S. Sec'y of Labor*, 64 F.3d 271, 279 (7th Cir. 1995) ("We have consistently held that an employee's insubordination toward

supervisors and coworkers, even when engaged in protected activity, is justification for termination.").

VII. Wetzel's Complaint and Amended Complaint Should Be Dismissed.

Wetzel's Complaint should be dismissed under either 42 U.S.C. § 5851(b)(3)(A) or 42 U.S.C. § 5851(b)(3)(B). Sections 5815(b)(3)(A) and 5815(b)(3)(B) of the Energy Reorganization Act provides:

> (3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.
>
> (B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

42 U.S.C. §§ 5851(b)(3)(A) and (3)(B).

Wetzel's Complaint consists of a narrative of her primary responsibilities combined with mischaracterizations of what actually occurred. She fails to provide any evidence of causation or any reasonable inference based on temporal proximity that any alleged protected activity contributed to her termination. Accordingly, her Complaint should be dismissed under 42 U.S.C. § 5851(b)(3)(A) for failure to establish a *prima facie* case.

Alternatively, based on Slater's detailed and thorough report, TVA has established by clear and convincing evidence that TVA would have nevertheless terminated Wetzel for serious and sustained disrespectful conduct. Accordingly, Wetzel's Complaint should be dismissed without further investigation under 42 U.S.C. § 5851(b)(3)(B).

Respectfully submitted,

Steven C. Chin
Attorney
Telephone 865.632.3052
Email scchin@tva.gov

Enclosures
cc (Enclosures):
Alan R. Kabat, Esq.
Bernabei & Kabat, PLLC
1400 16th Street, NW, Suite 500
Washington, DC 20036
Kabat@Bernabeipllc.com

82224425