

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Monday, January 14, 2019 2:53 PM
To: Fehlman, Lauren - OSHA
Subject: TVA / Wetzel, 4-1760-19-025
Attachments: 2019 01 14 OSHA Supplemental complaint (Wetzel).pdf

Ms. Fehlman,

The attached amendment to the OSHA complaint is also being sent to you (and to TVA) by regular mail.

Sincerely,

Alan

Alan R. Kabat
Bernabei & Kabat, PLLC
1400 - 16th Street, N.W., Suite 500
Washington, D.C. 20036-2223
tel. (202) 745-1942 (ext. 242)
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From: Alan Kabat

Created By: kabat@bernabeipllc.com

Recipients:
"Fehlman, Lauren - OSHA" <>
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Post Office: BW-Ex.bernabeipllc.local

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Reply Requested: No
Sensitivity: Normal
Expiration Date:

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KAIYA LYONS*

*ADMITTED IN MN ONLY

By Email and First Class Mail

January 14, 2019

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

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

Dear Ms. Fehlman:

On behalf of my client, Beth Wetzel, I write to supplement the complaint that she filed on December 18, 2018 with the Department of Labor, Occupational Safety and Health Administration, under Section 211 of the Energy Reorganization Act (“ERA”), 42 U.S.C. § 5851 *et seq.*, and NRC Regulation 10 C.F.R. § 50.7, against the Tennessee Valley Authority (“TVA”) for its retaliation against Ms. Wetzel, because she engaged in activities protected under the ERA.

As you know, TVA removed Ms. Wetzel from her detail to the Nuclear Energy Institute (NEI) and placed her on paid administrative leave on October 15, 2018. *See* Wetzel, OSHA Complaint, at 10-11. Subsequently, TVA tried to force her to resign effective March 23, 2019. *Id.* at 11-12. The result is that Ms. Wetzel was not only denied career opportunities at NEI and elsewhere at TVA, but also she was no longer in a position to continue reporting safety issues, including the ongoing chilled work environment at TVA. Ms. Wetzel filed her OSHA complaint on December 18, 2018, and provided the complaint to both TVA and the NRC on that same day.

On January 14, 2019, only four weeks after TVA learned that Ms. Wetzel had filed her OSHA complaint, TVA formally terminated Ms. Wetzel’s employment, instead of waiting until the March 23, 2019 date that TVA had originally proposed. In addition to resulting in lost pay,

Ms. Wetzel will also suffer significantly reduced retirement benefits as a result of this termination. Termination is, of course, an adverse employment action in violation of the ERA and the NRC regulations. *Id.* at 12-15.

During the termination meeting on January 14, 2019, Joseph Shea (Vice President of Regulatory Affairs) claimed that she was being terminated because she had allegedly created a “disrespectful work environment” for Erin Henderson – the supervisor who has a track record of retaliating against those such as Ms. Wetzel who reported safety issues. Ms. Wetzel promptly told Mr. Shea that she had done no such thing to Ms. Henderson, and that the termination was retaliation for having filed the OSHA complaint. TVA’s attempt to argue that Ms. Henderson was somehow the victim of a hostile work environment does not survive any scrutiny, given that it was Ms. Henderson who engaged in actual misconduct by retaliating against others, and that TVA promoted both her (despite her lack of qualifications) and Mr. Shea after TVA’s own Employee Concerns Program determined that Mr. Shea had created a Chilled Work Environment within TVA. *Id.* at 16-17.

TVA’s placing Ms. Wetzel on paid administrative leave after she persisted in reporting safety issues, including the chilled work environment, had the intended effect of retaliating against her for her protected conduct, and to deter her from continuing to do so. The NRC recently found that another nuclear power plant licensee retaliated against a contract employee when it placed that person on paid administrative leave after he raised nuclear safety concerns. *See* NRC, “Wolf Creek Nuclear Operating Corporation, Notice of Violation and Proposed Imposition of Civil Penalty, \$232,000 (Office of Investigations Report No. 4-2017-020)” (Dec. 17, 2018) (attached and incorporated hereto). The NRC rejected the employer’s assertion that placing someone on paid administrative leave was not an adverse action. *Id.* at 1-2. The NRC also found that Wolf Creek improperly devoted its efforts to investigating the employee instead of investigating the concerns reported by the employee. *Id.* at 2. The NRC stated that this was a significant violation, since it would deter the employee and others from reporting safety issues:

Based on the information gathered by the NRC, Wolf Creek’s investigation did not focus on the concerns raised by the contract employee. Instead, Wolf Creek’s investigation focused primarily on the contract employee’s behavior and did not review the employee’s claim of retaliation. The NRC investigation further revealed that Wolf Creek was focused on removing the contract employee from the site to effectively remove the employee from working during the remainder of the scheduled outage. This action took place before the contract employee could provide further views of their safety and retaliation concerns and before those issues could be substantively addressed. **As a result, the NRC determined that Wolf Creek subjected the contract employee to an adverse employment action that effected the individual’s conditions of employment.**

In making its determination, the NRC considered that Wolf Creek's use of paid administrative leave in this specific context constitutes an adverse employment action. Specifically, the contract employee was removed from the site with the employee's badge placed on "supervisor hold," placed on paid leave, and made the subject of a Wolf Creek investigation because the contract employee raised several safety and retaliation concerns to Wolf Creek management.

The NRC considers violations of 10 CFR 50.7 significant because of the potential that individuals might not raise safety issues for fear of retaliation. Based on the level of management involved in the adverse action, this violation has been categorized in accordance with the "NRC Enforcement Policy", at Severity Level II. See NRC Enforcement Policy, Violation Example 6.10.b.1.

Id. at 2 (emphasis added). As a result, the NRC imposed a sizable civil penalty of \$232,000 on Wolf Creek. *Id.* at 2-3.

During the termination meeting on January 14, 2019, Ms. Wetzel specifically asked Mr. Shea whether he was aware of this Wolf Creek violation, but he remained silent and did not deny knowing about the NRC's determination. (As this enforcement action was widely reported, including in the nuclear energy trade press, Mr. Shea would have been aware of it). Indeed, what the NRC said about Wolf Creek could equally well have been said about TVA with respect to the actions TVA took against Ms. Wetzel.

Therefore, Ms. Wetzel requests that OSHA accept this amendment to her complaint, and that OSHA investigate the termination as an additional act of retaliation.

Thank you for your assistance with this amendment to Ms. Wetzel's OSHA complaint.

Sincerely,



Alan R. Kabat
Attorney for Beth Wetzel

Enc.

cc: Ms. Beth Wetzel
Mr. Kurt Petermeyer, Director, Region IV
TVA Office of General Counsel



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 17, 2018

EA-18-037

Mr. Cleve Reasoner, Chief Nuclear Officer
Wolf Creek Nuclear Operating Corporation
P. O. Box 411
Burlington, KS 66839

SUBJECT: WOLF CREEK NUCLEAR OPERATING CORPORATION – NOTICE OF
VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$232,000
(OFFICE OF INVESTIGATIONS REPORT NO. 4-2017-020)

Dear Mr. Reasoner:

This letter refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to Wolf Creek Nuclear Operating Corporation (Wolf Creek) in Burlington, Kansas. The purpose of the investigation was to determine whether a contract employee, a former site superintendent for Kan-Seal, at Wolf Creek was the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee protection." Specifically, the contract employee engaged in protected activity when the employee initiated a condition report for an incident during the 2016 refueling outage, communicated related concerns directly to Wolf Creek management, and raised retaliation and Safety Conscious Work Environment (SCWE) concerns directly to Wolf Creek management. Subsequently, the former contractor was placed on paid administrative leave.

In a letter dated July 12, 2018, Agencywide Documents Access and Management System (ADAMS) Accession No. ML18136A501, the NRC notified Wolf Creek of an apparent violation of 10 CFR 50.7, "Employee protection," which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC provided Wolf Creek the opportunity to address the apparent violation by either attending a predecisional enforcement conference (PEC) or participating in alternative dispute resolution (ADR). Wolf Creek requested a PEC.

On September 10, 2018, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with members of your staff to discuss the apparent violation, its significance, the root cause(s), and any corrective actions. In accordance with the NRC's practice as described in the NRC Enforcement Manual, the former contract employee, who was the subject of the discrimination, also attended the PEC and provided a statement. The conference was closed to public observations pursuant to NRC practice regarding cases involving potential discrimination.

During the PEC, Wolf Creek denied that a violation of 10 CFR 50.7 occurred, based, in large part, on Wolf Creek's position that placing an individual on administrative leave with pay is not an adverse action. In addition, the NRC staff requested Wolf Creek to provide information regarding any corrective actions taken or planned. As a result, Wolf Creek agreed to

subsequently provide its corrective actions in writing. In a letter dated September 17, 2018, Wolf Creek provided its corrective actions to the NRC.

Based on the information developed during the investigation, the information that you provided during the PEC, and the supplemental information you provided in a letter dated September 17, 2018, the NRC has determined that Wolf Creek violated an NRC requirement, 10 CFR 50.7, by placing the contract employee on paid administrative leave and taking related actions, at least in part, for him raising nuclear safety concerns.

In summary, the circumstances of this case occurred on October 31, 2016, when the contract employee initiated a condition report for an incident during the 2016 refueling outage and on November 2, 2016, when the contract employee communicated related concerns directly to Wolf Creek management, including claims of retaliation, a chilled work environment and SCWE issues. The contract employee also raised a concern that a Wolf Creek employee had attempted to cover up an incident that occurred in containment. Wolf Creek management conducted several meetings with the contract employee and, on November 3, 2016, initiated an investigation which was allegedly intended to address the contract employee's concerns. During this investigation, Wolf Creek placed the contract employee's badge on a "supervisor hold," thus denying the employee's access to the plant, and also instructed senior Kan-Seal management to place the contract employee on paid administrative leave.

Based on the information gathered by the NRC, Wolf Creek's investigation did not focus on the concerns raised by the contract employee. Instead, Wolf Creek's investigation focused primarily on the contract employee's behavior and did not review the employee's claim of retaliation. The NRC investigation further revealed that Wolf Creek was focused on removing the contract employee from the site to effectively remove the employee from working during the remainder of the scheduled outage. This action took place before the contract employee could provide further views of their safety and retaliation concerns and before those issues could be substantively addressed. As a result, the NRC determined that Wolf Creek subjected the contract employee to an adverse employment action that effected the individual's conditions of employment. In making its determination, the NRC considered that Wolf Creek's use of paid administrative leave in this specific context constitutes an adverse employment action. Specifically, the contract employee was removed from the site with the employee's badge placed on "supervisor hold," placed on paid leave, and made the subject of a Wolf Creek investigation because the contract employee raised several safety and retaliation concerns to Wolf Creek management.

The NRC considers violations of 10 CFR 50.7 significant because of the potential that individuals might not raise safety issues for fear of retaliation. Based on the level of management involved in the adverse action, this violation has been categorized in accordance with the "NRC Enforcement Policy", at Severity Level II. See NRC Enforcement Policy, Violation Example 6.10.b.1.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$232,000 is considered for a Severity Level II violation. The NRC considered both the Identification and Corrective Action factors with respect to this violation in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. Credit for Identification is not appropriate, since the violation was identified by the NRC.

After the concerned individual raised the concerns, Wolf Creek conducted both an internal Human Resource-led investigation and third party investigation related to the underlying issues associated with the concerned individual's allegations. These investigations were self-initiated and prompt, as they were initiated shortly after the contract employee raised the concerns within Wolf Creek. However, the NRC does not consider these investigations as comprehensive as they failed to address or document the contract employee's allegation of retaliation. After the conduct of the PEC, Wolf Creek provided, in the September 17, 2018 letter, additional corrective actions, completed and planned, that were both comprehensive and having long-term impact, including the: (1) conduct of SCWE training for executives; (2) formal evaluation of prior SCWE actions; (3) formulation of the SCWE strategy initiative; (4) planned enhancements to Wolf Creek's personnel action review board (PARB) process; and (5) planned enhancements to processes involving specific employment status changes. Notwithstanding the NRC's views on Wolf Creek's initial corrective actions, and based on the additional actions listed above, the NRC determined that credit was warranted for Corrective Action.

Therefore, to emphasize the importance of prompt identification and correction of violations, the NRC has determined, as provided for in Section 2.3.4 of the NRC Enforcement Policy, to issue the enclosed Notice of Violation (Notice) and Proposed Imposition of Civil Penalty of \$232,000, which is the base civil penalty amount for the Severity Level II violation.

If you disagree with this enforcement sanction, you may deny the violation, as described in the enclosed Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Nicole Coleman at (301) 287-9007 within 10 days of the date of this letter. You may also contact both ICR and Ms. Coleman for additional information. If you decide to participate in ADR, your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty until the ADR process is completed.

Although Wolf Creek denied the apparent violation at the PEC, the NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken; and (4) the date when full compliance was achieved is already adequately addressed on the docket in the letter from you dated September 17, 2018. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also make available, within ADAMS, the letter describing the apparent violation, dated July 12, 2018, the NRC presentation from the PEC held on September 10, 2018 and the Wolf Creek September 17, 2018, letter outlining their corrective actions with appropriate redactions. To the extent possible, your response, if provided, should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at http://www.nrc.gov/reading_rm/doc_collections/enforcement/actions/.

If you have any questions concerning this matter, please contact Nicole Coleman of my staff at (301) 287-9007.

Sincerely,

/RA/

Anne T. Boland, Director
Office of Enforcement

Docket No. 050-00482
License No. NPF-042

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317 Rev. 2, Enforcement Alternative Dispute Resolution Program

SUBJECT: WOLF CREEK NUCLEAR OPERATING CORPORATION – NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$232,000 (OI REPORT 4-2017-020). DATED: DECEMBER 17, 2018.

ADAMS ACCESSION NO: ML18333A043

OFC	OE/CRB	OE/CRB	OE
NAME	NColeman	DSolorio	ABoland
DATE	12/10/18	12/06/18	12/17/18

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Wolf Creek Nuclear Operating Corporation
Burlington, Kansas

Docket No. 050-00482
License No. NPF-42
EA-18-037

Based on the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) Report 4-2017-020 and information gathered during the September 10, 2018, predecisional enforcement conference, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 50.7(a) prohibits discrimination by a licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, between October 31 and November 10, 2016, Wolf Creek Nuclear Operating Corporation (licensee) discriminated against a contract employee, former site superintendent for Kan-Seal, for engaging in protected activities. Specifically, the contract employee was removed from the site, placed on paid administrative leave, and made the subject of an investigation, at least in part, for (1) submitting a condition report within the licensee's corrective action program related to alleged polar crane contact with equipment while operating within containment; (2) raising the safety concern during a safety stand down meeting; and (3) raising retaliation concerns directly to Wolf Creek management.

This is a Severity Level II violation (Example 6.10.b.1).
Civil Penalty - \$232,000.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in letter from the licensee, dated September 17, 2018. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation – EA-18-037", and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511, and the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001. The licensee may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating

when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should the licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation – EA-18-037" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the NRC Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511, and the U.S. Nuclear Regulatory Commission, ATTN: Document Control Center, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS). To the extent possible, your response should not include any personal privacy or proprietary information. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 17th day of December 2018.