

From: JShealA-Hearing Resource
Sent: Monday, February 15, 2021 9:16 PM
To: JShealA-HearingNPEm Resource
Subject: TVA corrective action writeup - OOU
Attachments: ML21040A289_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1269

Mail Envelope Properties (6e52211cea1f41a582951465e1d32b02)

Subject: TVA corrective action writeup - OUO
Sent Date: 2/15/2021 9:15:57 PM
Received Date: 2/15/2021 9:15:58 PM
From: JShealA-Hearing Resource

Created By: JShealA-Hearing.Resource@nrc.gov

Recipients:
"JShealA-HearingNPEM Resource" <JShealA-HearingNPEM.Resource@nrc.gov>
Tracking Status: None

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time
MESSAGE	3	2/15/2021 9:15:58 PM
ML21040A289_Redacted.pdf	446206	

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

From: Gifford, Ian
Sent: Thursday, July 30, 2020 11:34 AM
To: Wilson, George
Cc: Thompson, Catherine; Solorio, Dave; Hilton, Nick
Subject: RE: TVA corrective action writeup - OUO
Attachments: TVA Discrim one pager 7.30.20.docx

George,

The attached document incorporates the discussion of corrective action credit (starts on page 4 after the metro map).

Thanks,
Ian

From: Wilson, George
Sent: Thursday, July 30, 2020 11:03 AM
To: Gifford, Ian ; Hilton, Nick
Cc: Thompson, Catherine ; Solorio, Dave
Subject: RE: TVA corrective action writeup - OUO

Then please resend it to me thanks

From: Wilson, George
Sent: Thursday, July 30, 2020 11:02 AM
To: Gifford, Ian <Ian.Gifford@nrc.gov>; Hilton, Nick <Nick.Hilton@nrc.gov>
Cc: Thompson, Catherine <Catherine.Thompson@nrc.gov>; Solorio, Dave <Dave.Solorio@nrc.gov>
Subject: RE: TVA corrective action writeup - OUO

Please include this as a portion of the enforcement paper thanks

From: Gifford, Ian <Ian.Gifford@nrc.gov>
Sent: Tuesday, July 28, 2020 4:42 PM
To: Hilton, Nick <Nick.Hilton@nrc.gov>; Wilson, George <George.Wilson@nrc.gov>
Cc: Thompson, Catherine <Catherine.Thompson@nrc.gov>; Solorio, Dave <Dave.Solorio@nrc.gov>
Subject: TVA corrective action writeup - OUO

Attachment is OUO

George and Nick,

As requested, attached is the draft corrective action writeup that can be included in the overall TVA briefing paper. The corrective actions listed are compiled from the TVA PEC presentation and exhibits that they provided. We also included information about DOL settlements for each to answer any questions about remedies.

The final paragraph are my thoughts in whether CA credit is justified. This can of course be changed as needed, but I wanted to provide a starting point for discussion.

Please let Kitty and I know if any further information is needed.

Thanks,
Ian

Ian A. Gifford, Ph.D.
Differing Views Program Manager
Office of Enforcement
U.S. Nuclear Regulatory Commission
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ian.Gifford@nrc.gov

NEW [Differing Views Best Practices Guide!](#)

Hearing Identifier: JShea_IA_NonPublic
Email Number: 546

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Subject: RE: TVA corrective action writeup - OUO
Sent Date: 7/30/2020 11:33:52 AM
Received Date: 7/30/2020 11:33:54 AM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

Recipients:

"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Hilton, Nick" <Nick.Hilton@nrc.gov>
Tracking Status: None
"Wilson, George" <George.Wilson@nrc.gov>
Tracking Status: None

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Files	Size	Date & Time
MESSAGE	2372	7/30/2020 11:33:54 AM
TVA Discrim one pager 7.30.20.docx		329849

Options

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

Enforcement Summary for Tennessee Valley Authority Discrimination Cases

Comparison of Proposed Enforcement Actions Before and After Predecisional Enforcement Conferences

Final	Original
TVA: Four violations – 1 – SL I and 3 – SL II's wrapped up into 2 discrimination problems with a total civil penalty of \$606,942.	TVA: Proposed four violations, 4 X \$303,471 = \$1,213,884
[REDACTED]	[REDACTED]
Shea: 5-year ban	Shea: Proposed SL I NOV; 5-year ban
Henderson: 1 SL II NOV with two examples	Henderson: Proposed SL II NOV with two examples; 1-year ban

REGULATIONS

10 CFR 50.7 Employee Protection

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. 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.

10 CFR 50.5 Deliberate Misconduct

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

- (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There are 4 total violations associated with the 2 discriminations cases.

SEVERITY LEVELS - EXAMPLES

Enforcement Policy

6.10 Discrimination (page 66)

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated. Conversely, the severity level of a violation of an NRC employee protection regulation may be mitigated to a lower severity level based on factors unique to the specific facts and circumstances of the case.

a. *SL I* violations involve, for example:

2. A mid- or a senior-level plant manager (or equivalent) or a corporate-level line

manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and either a.1(a) or a.1(b) above is cited, or other unique factors are present.

Deliberate Call – Shea for terminating Wetzel

b. SL // violations involve, for example:

1. An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present.

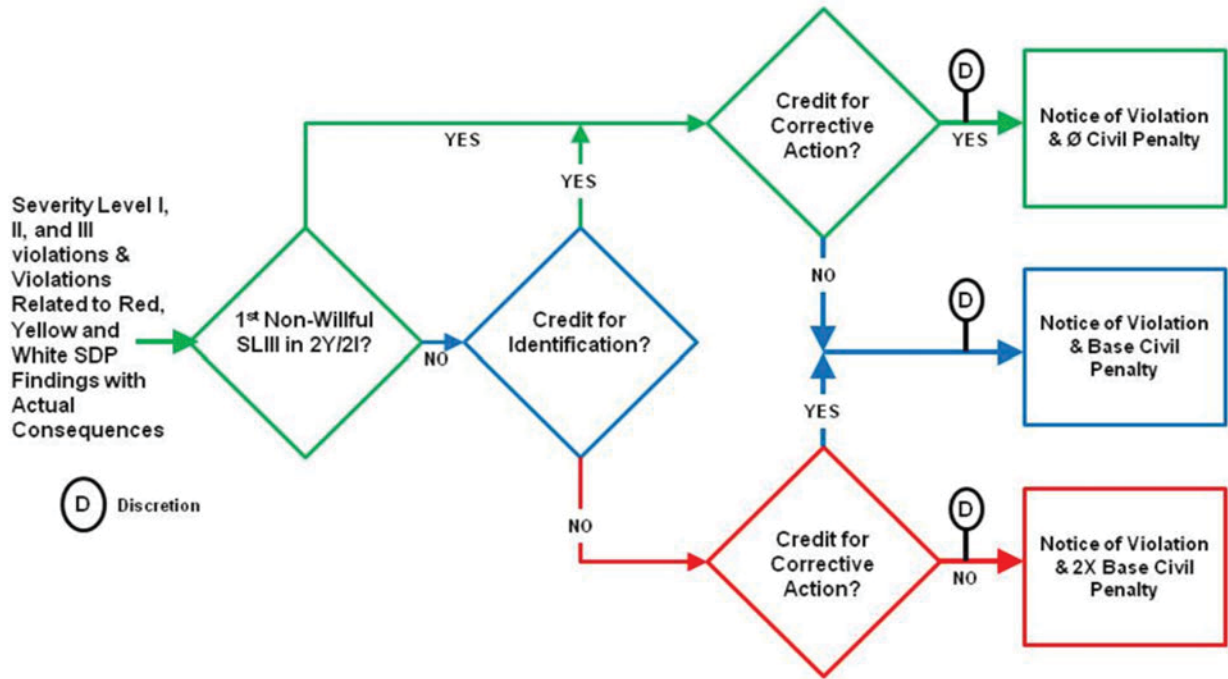
TVA for placing McBrearty on administrative leave

3. A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and either a.1(a) or a.1(b) above is cited, or other unique escalating factors are present.

Deliberate Call – Henderson for both Wetzel and McBrearty adverse actions

Enforcement Policy page 20

The civil penalty assessment process considers four decision points. Although each of these decision points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100 percent.



As we make our way through the metro map, TVA does not get credit for identification and they do not get credit for corrective actions; therefore, there is a Notice of Violation & 2X Base Civil Penalty.

Enforcement Policy (page 23)

c. Were the licensee’s corrective actions prompt and comprehensive?

Corrective action for violations involving discrimination should normally be considered comprehensive only if the licensee takes prompt, comprehensive corrective action that (1) appropriately addresses the broader environment for raising safety concerns in the workplace and (2) provides a remedy for the particular discrimination at issue.

TVA Corrective Actions:

- Fleet-wide communication on safety culture from CNO in August 2019 following DOL finding of discrimination.
- SCWE mitigation plan to Nuclear Regulatory Affairs personnel following DOL finding of discrimination.
 - Communication provided at Director of NRA All Hands Meeting in October 2019 which included statement that adverse action process was followed, TVA objects to the DOL finding, and staff are encouraged to raise concerns through various avenues.
- SCWE mitigation plan to Sequoyah licensing staff following NRC letter to TVA requesting additional information related to the DOL finding of discrimination.

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- Site VP met with licensing team to encourage raising concerns. Communication was not conducted more broadly based on positive nuclear safety culture surveys.
- Fleet-wide communication from CNO discussing NRC AV on March 4, 2020.
- NRC AV documented in CAP, CR 1593594
 - Fleet message from CNO
 - non-ERB SCWE mitigation screening and plan
 - No cause evaluation
 - Talking points briefed to WBN, SQN, and BFN site licensing staff
- CNL manager discussed AVs with CNL group and site licensing groups.
- December 2019 ERB procedure change to include denial of access as a non-ERB adverse action. Plan to revise policy to include administrative leave with similar treatment as denial of access.
- Pilot nuclear investigation protocol to conduct investigations for a joint intake process. Investigations Committee will refer matters to investigating body with standards for completion timing and reporting. This is intended to address extended administrative leave issue for McBrearty.

Credit for Corrective Actions is not warranted in this case. The licensee's actions are not comprehensive to address the broader environment for raising concerns nor do they address the root cause of the retaliation and discrimination. The SCWE plans and CNO communications are transparent in alerting staff to the concerns raised by DOL and NRC but fail to communicate corrective actions and state that TVA disagrees with the findings. No training is provided to increase awareness of SCWE, no corrective actions are presented to address employee termination without prior counseling, and failure to implement recommendations by ECP is not addressed. The corrective actions outlined by TVA regarding future updates to the non-ERB adverse action procedure and the pilot nuclear investigation protocol may be effective; however, their long-term impact and broad applicability throughout the nuclear fleet are not sufficient to credit as Corrective Actions when determining the civil penalty.

As we make our way through the metro map, TVA does not get credit for identification and they do not get credit for corrective actions; therefore, there is a Notice of Violation & 2X Base Civil Penalty.

Enforcement Manual (page 286)

In the determination of whether or not a remedy has been provided, the NRC considers whether a settlement has been reached or if a remedy ordered by DOL has been implemented.

1. Where a remedy has been accepted by DOL, NRC intends to defer to DOL on the adequacy of the remedy.

McBrearty settled with TVA on June 18, 2019, prior to a DOL finding. Wetzel settled with TVA on January 31, 2020, after DOL issued a finding of discrimination and after the ALJ suggested mediation.

Enforcement Policy

8.0 TABLE OF BASE CIVIL PENALTIES (Page 85)

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository \$300,000

Pursuant to the 2015 Improvements Act, the NRC published in the Rules section of the Federal Register a revision to § 2.205(j), increasing the maximum CMP for a violation of the AEA to **\$303,471 per violation, per day.**

Severity Level Base Civil Penalty Amount
(Percent of amount listed in Table A)

- I..... 100%
- II.....80%
- III.....50%

Based on the analyses above, the civil penalties would be 2x amount based on violation

- 4 total violations
- 1 – SL I violation
- 3 – SL II violations

SLI – \$300,000 x 2 = \$600,000 – **maximum civil monetary penalty \$303,471**
 SLII - \$300,000 x .8 x 2 = \$480,000 – **maximum civil monetary penalty \$303,471 for each x 3 = \$910,413**
 Total penalty **\$1,213,884** with the maximum civil monetary penalty provision

Even though there are 4 different violations, there are only two discrimination problems (one for each individual), therefore the overall civil penalty would be **2 x \$303,471 = \$606,942**

Total Violations would be 4 wrapped up into 2 problems for the civil penalty calculation
Problem 1 (McBrearty) – 2 SL II violations
Problem 2 (Wetzel) – SL I and SL II violations

INDIVIDUAL ORDERS

Enforcement Manual

C. Orders (page 305)

1. Generally, an Order to ban an individual should be issued to:

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a. An individual who engaged in deliberate misconduct after being put on notice regarding such acts, either by the NRC through an individual Notice of Violation or Order, or through the individual's employer, typically evidenced by disciplinary action related to prior wrongdoing constituting a violation of NRC requirements by the individual;

b. An individual who engaged in deliberate misconduct that resulted in actual safety or security consequences or a significant potential for safety or security consequences to occur;

c. An individual who engaged in deliberate misconduct and the evidence indicates that the individual deliberately intended to harm others or cause a safety or security problem, whether or not such harm or safety problem occurred; (Shea)(Originally all three)

d. An individual who engaged in deliberate misconduct and the evidence indicates that the individual succeeded in persuading, or attempted to persuade others to participate in wrongdoing; or

e. A NRC licensed individual whose actions were deliberate and resulted in the NRC no longer having reasonable assurance that licensed activities will be conducted in a manner that provides adequate protection to the public health and safety.

2. Determining the length of a ban

a. Typically, bans are fixed at one, three, or five years (unless the ban is in place until certain conditions are satisfied).

b. Factors which should be considered when determining the length of a ban include, but are not limited to:

- The position of the individual in the organization;
- The significance (or potential significance) of the underlying violation; and
- Other circumstances such as violations of 10 CFR Part 26, which specifies the length of time a licensee or other entity would restrict an individual from authorization to the facility, should be taken into account when deciding the length of the ban, for an individual, from NRC licensed activities.

	<u>Years Banned</u>		
Position in the Organization ↑	3	5	5
	1	3	5
	1	1	3

→

Safety Significance



Joseph Shea, Vice President, Regulatory Affairs - deliberate call issue individual action

Erin Henderson, Director, Corporate Nuclear Licensing - deliberate call issue individual action

Evaluation for the years of the Ban

Vice President high level in Company start out a 3-year ban
SLI violation moves the ban to a 5-year ban – **Top right corner - 5-year ban**

Corporate Nuclear Licensing Manager start out a 1-year ban
SL II violation could justify moving ban to 3 years but would stay at 1 year - **Middle bottom – 1-year ban, could also be middle, middle with 3-year ban**

Based on the outcome of the post PEC enforcement panel, the decision was made to issue Erin Henderson a SL II Notice of Violation with two examples. This key here is she was not a decisionmaker in the final actions taken against Wetzel and McBrearty.

Final Enforcement Actions

- a. Henderson: SL II Notice of Violation with two examples -Wetzel and McBrearty
- b. ; TVA still gets SLII violation - McBrearty
- c. Shea: 5-year prohibition order
- d. TVA: Four violations – 1 - SLI and 3 – SLII’s wrapped up into 2 discrimination issues with a total civil penalty of **\$606,942**.

Enforcement Policy – Commission Notification

2.3.10 Commission Notification and Consultation on Enforcement Actions

Certain enforcement actions require either advance written notification to the Commission or advance consultation with and approval by the Commission depending on the nature of the proposed sanction. Specific enforcement actions requiring prior Commission notification and consultation include, but are not limited to, the following:

a. **Enforcement Actions Requiring Written Notification to the Commission:**

- 1. **All enforcement actions involving civil penalties or Orders**

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b. Enforcement Actions Requiring Advance Consultation with the Commission

3. Any proposed enforcement action that involves a SL I violation (this will be performed via a negative consent paper)