

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 6:35 PM
To: JSheaIA-HearingNPEm Resource
Subject: final TVA 1 pager
Attachments: ML21040A565_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1311

Mail Envelope Properties (e08521f1b4854b73ad5fda5724dda5f2)

Subject: final TVA 1 pager
Sent Date: 2/17/2021 6:34:32 PM
Received Date: 2/17/2021 6:34:33 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	2/17/2021 6:34:33 PM
ML21040A565_Redacted.pdf	389077	

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

From: Wilson, George
Sent: Tuesday, July 28, 2020 6:09 AM
To: Gifford, Ian; Thompson, Catherine; Hilton, Nick
Subject: final TVA 1 pager
Attachments: TVA Discrim one pager modifiedf.docx

Here is the final one pager with all comments incorporated, the only exception is we will have to remove names

George Wilson
Director, Office of Enforcement
United States Nuclear Regulatory Commission
O14-B01
301-415-1711

Hearing Identifier: JShea_IA_NonPublic
Email Number: 621

Mail Envelope Properties (BL0PR0901MB4337463EA8771D6F2ED1B50DE6730)

Subject: final TVA 1 pager
Sent Date: 7/28/2020 6:08:41 AM
Received Date: 7/28/2020 6:08:43 AM
From: Wilson, George

Created By: George.Wilson@nrc.gov

Recipients:

"Gifford, Ian" <Ian.Gifford@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Hilton, Nick" <Nick.Hilton@nrc.gov>
Tracking Status: None

Post Office: BL0PR0901MB4337.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	238	7/28/2020 6:08:43 AM
TVA Discrim one pager modifiedf.docx		327344

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.

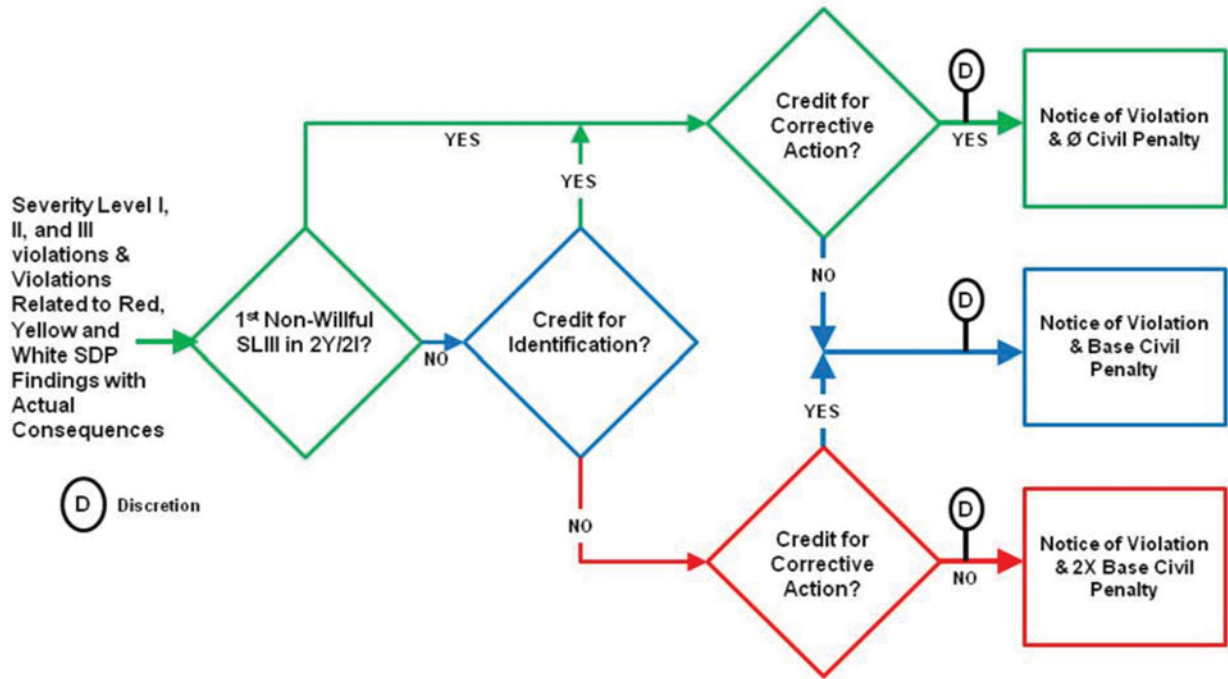
TVA for placing McBrearty on administrative leave

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

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 $2 \times \$303,471 = \$606,942$

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:

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).

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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 →		

██ – no deliberate call therefore no individual action

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.

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Final Enforcement Actions

- a. Henderson: SL II Notice of Violation with two examples -Wetzel and McBrearty
- b. [REDACTED] 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

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)