

January 13, 1997

EA 95-199

Tennessee Valley Authority
ATTN: Mr. Oliver D. Kingsley, Jr.
President, TVA Nuclear and
Chief Nuclear Officer
6A Lookout Place
1101 Market Street
Chattanooga, Tennessee 37402-2801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$100,000
(NRC Office of Investigation Report No. 2-93-015 and Department of
Labor Administrative Law Judge Recommended Decision and Order,
dated July 31, 1996)

Dear Mr. Kingsley:

This refers to the investigation conducted by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) during the period July 7, 1994, through August 31, 1995, and the Department of Labor (DOL) Recommended Decision and Order (RDO) issued on July 31, 1996, in DOL Case No. 94-ERA-24, William F. Jocher v. Tennessee Valley Authority (TVA). Both the NRC investigation and the DOL Administrative Law Judge (ALJ) concluded that TVA discriminated against Mr. Jocher, the former Manager, Chemistry and Environmental Protection in the corporate organization and a former Chemistry Manager at the Sequoyah Nuclear Plant, when he was forced to resign under threat of termination on April 5, 1993, because he had engaged in protected activities. Mr. Jocher's protected activities were primarily associated with operations at the Sequoyah Nuclear Plant and included: (1) raising questions about the licensee's ability to acquire a timely sample from the post-accident sampling system; (2) voicing concerns regarding the operation of on-line chemistry instrumentation; and (3) questioning the accuracy of training commitments associated with the chemical traffic control program.

In a letter dated August 16, 1996, the NRC discussed the apparent violation and requested that TVA attend a predecisional enforcement conference. By letter dated August 27, 1996, TVA declined the opportunity to participate in a conference and committed to provide a written response to the apparent violation by September 26, 1996. Based on TVA's declination of a conference and NRC's need to acquire additional information prior to making a final enforcement decision in the case, the NRC, by letter of September 10, 1996, requested TVA to respond to five specific questions pursuant to 10 CFR 50.54(f). By letter dated September 25, 1996, TVA provided its response and set forth its position on the apparent violation, described its assessment of the current work environment at TVA, and delineated the

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corrective actions implemented in response to Mr. Jocher's employment action. We have reviewed this response, the DOL decision, and OI investigation findings in this case and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed in this case, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and involves the failure of TVA to adhere to the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against employees for engaging in protected activities. In its response of September 25, 1996, TVA stated that mistakes were made by TVA personnel who failed to follow appropriate personnel practices with respect to Mr. Jocher's resignation; however, TVA denied that a violation of Section 211 of the Energy Reorganization Act or 10 CFR 50.7 occurred. Despite TVA's denial, it is our view, based on a review of the decision of the DOL ALJ and the evidence gathered by the NRC's independent investigation, that the facts support the conclusions that Mr. Jocher's involvement in protected activities was a factor in the adverse employment action taken against him and that TVA violated the regulations applicable to employee protection as stated above.

The violation is of very significant regulatory concern because it involved an act of employee discrimination by a senior corporate manager. Although discrimination by any licensee employee is of concern, discrimination by a senior official, in this case the Vice President of Nuclear Operations, cannot be tolerated. The sphere of influence of such an individual is significant, and the impact of discrimination committed at this level has the potential to affect the environment throughout the company. The NRC places a high value on the freedom of nuclear industry employees to raise potential safety concerns to licensee management or to the NRC. The Energy Reorganization Act and 10 CFR 50.7 establish strict requirements for the protection of employees against discrimination for raising nuclear safety issues, and the NRC Enforcement Policy calls for significant enforcement action in cases where senior corporate management violate these requirements. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level I.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$100,000 is considered for a Severity Level I violation. In this case, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. The NRC determined that credit for *Identification* was not appropriate because the violation was identified by the DOL and NRC OI, not by the licensee. In TVA's letter of September 25, 1996, the violation was denied; however, a description of the actions taken to improve the work environment as well as those initiated in response to this case were provided. These actions included: (1) additional training and guidance for senior managers in the proper handling of personnel matters; (2) institution of a leadership development program for managers and supervisors at the Sequoyah Plant in March 1996; (3) initiation of efforts to

comply with the ALJ's RDO and/or to resolve the case to avoid further litigation; (4) issuance of an August 7, 1996, communication to all TVA employees emphasizing open communications and transmittal of specific guidance concerning this topic to senior managers on August 14, 1996; and (5) issuance of letters of reprimand following the DOL ALJ decision to the officer and the other managers involved in this case for failure to follow personnel practices.

Notwithstanding the actions mentioned above, the NRC has determined that credit is not warranted for the factor of *Corrective Action* in that the corrective action implemented in response to Mr. Jocher's case addressed the root cause identified by TVA (i.e., the failure to adhere to personnel practices) rather than discrimination. In addition, the actions taken were not timely. Specifically, the actions implemented in response to Mr. Jocher's case were not taken until after the ALJ's decision was issued on July 31, 1996, when in fact, TVA was put on notice of the discrimination finding much earlier by the DOL District Director's Decision issued on April 29, 1994, and the conclusions of the OI investigation transmitted to TVA by NRC letter dated November 9, 1995. Your failure to comply with the remedy prescribed by the DOL District Director does not lead the NRC to conclude that timely and comprehensive corrective action was taken in this case.

Based on the severity level of the violation and NRC's determinations regarding *Identification* and *Corrective Action*, a civil penalty in an amount twice the base would normally be assessed. However, consistent with Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, the maximum civil penalty for a single violation, at the time of this violation, may not exceed \$100,000 per day. Therefore, to emphasize the importance of ensuring that employees who raise real or perceived safety concerns are not subject to discrimination for raising those concerns and that every effort is made to provide an environment in which all employees may freely identify safety issues without fear of retaliation or discrimination, I have been authorized, after consultation with the Commission to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the maximum amount of \$100,000 for the Severity Level I violation.

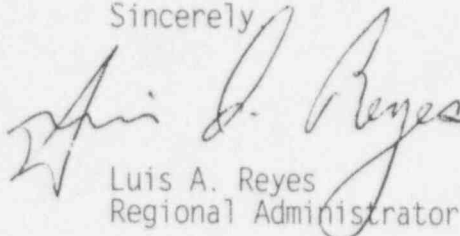
In addition, you should be aware that an Order was also issued to the senior corporate officer responsible for the discrimination in this case prohibiting his involvement in NRC-licensed activities for a period of five years. However, the Order is retroactive to May 1, 1993, the general time period in which he was transferred out of TVA-Nuclear to a non-nuclear position, and will be effective until April 30, 1998.

The NRC has concluded that information regarding TVA's position on the violation and the corrective actions taken and planned is addressed on the docket in the licensee's letter to NRC, dated September 25, 1996. Therefore, TVA is not required to respond to the Notice as required by 10 CFR 2.201

unless the description therein does not accurately reflect TVA's corrective actions or position. 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 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response you may provide will be placed in the NRC Public Document Room (PDR).

Sincerely



Luis A. Reyes
Regional Administrator

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

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

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