



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

September 19, 1996

Mr. Stewart D. Ebner (Federal Express)
Regional Administrator
NRC Region II
United States Nuclear Regulatory Commission
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Dear Mr. Ebner:

This letter and the enclosed declaration are filed in support of Joseph R. Bynum insofar as the NRC is considering enforcement action against him in his individual capacity. As set forth in this document, and as will be discussed in more detail at the upcoming enforcement conference, neither the facts nor the law support NRC enforcement action against Mr. Bynum. First, as a matter of law, the only regulatory basis for taking enforcement action against a nonlicensed individual such as Mr. Bynum is 10 CFR § 50.5 (Section 50.5). Mr. Bynum did not violate Section 50.5 because he did not deliberately engage in any misconduct in deciding to take employment action against Mr. Jocher—he did not deliberately violate any NRC rule, regulation, or order. Second, there are a number of extenuating and mitigating circumstances which we urge the NRC to consider before it decides whether or not to take any enforcement action against Mr. Bynum.

I. Mr. Bynum did not violate 10 CFR § 50.5.

A. Section 50.5 requires that an individual deliberately violate an NRC regulation.

Section 50.5 gives the NRC authority to take enforcement action directly against unlicensed persons, such as employees of licensees, when those individuals "engage in deliberate misconduct . . .," which is defined as "an intentional act or omission that the person knows . . . would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission"

When the Commission promulgated Section 50.5, it repeatedly made clear that the regulation reached deliberate misconduct, and only deliberate misconduct. 56 Fed. Reg. 40,664, *et seq.* (Aug. 15, 1991). The Commission emphasized that "the rule does not apply in cases of negligence, honest mistake, or ignorance." *Id.* at 40,675. Moreover, in no uncertain terms, the Commission described how narrow the rule's application would be:



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the range of actions that would subject an individual to action by the Commission *does not differ significantly from the range of actions that might subject the individual to criminal prosecution* (*Id.*; emphasis added).

As the Commission further elaborated:

It would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed (*Id.* at 40,681).

Thus, in the present case, the NRC must first find that Mr. Bynum deliberately violated Section 50.7 before it can find that he violated Section 50.5.

B. Mr. Bynum did not deliberately violate Section 50.7.

Enclosed with this letter is a personal declaration offered by Mr. Bynum which clearly and conclusively sets forth a full explanation and understanding of the events which led to employment action against Mr. Jocher. At bottom, while mistakes were made in the process which was followed in seeking Mr. Jocher's resignation, Mr. Bynum did not take employment action against Mr. Jocher for raising safety concerns. We ask that the NRC carefully consider Mr. Bynum's declaration.

II. Extenuating and mitigating circumstances make this the wrong case for individual enforcement action.

Even in cases of deliberate misconduct, the Commission has recognized "that enforcement actions against individuals are significant actions that need to be closely controlled and judiciously applied." 56 Fed. Reg. 40,676. To this end it has promised to temper its enforcement power with justice and to withhold enforcement action against an individual based upon various extenuating and mitigating circumstances. Mr. Bynum asks the NRC to consider the following extenuating and mitigating factors.

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A. Mr. Bynum acted in complete good faith, for no personal benefit or gain.

In deciding whether to take enforcement action against an individual, the NRC will consider "[t]he benefit to the wrongdoer, *e.g.*, personal or corporate gain." Enforcement Policy at § VIII, paragraph 4. Mr. Bynum's actions were not taken for any personal gain or benefit.

As clearly set forth in the enclosed declaration, Mr. Bynum took the action he did because he believed it was the right thing to do for TVA. He was leaving the nuclear organization and felt that he could not leave what he clearly perceived as an obvious personnel problem behind. In the end, however, taking action would not make Mr. Bynum's situation any easier or benefit him in any way whatsoever because he knew that he was leaving TVA's nuclear program.

In short, this is not a case where someone has sought personal profit by cutting corners and avoiding regulatory requirements. If Mr. Bynum made mistakes in taking employment action involving Mr. Jocher, they were mistakes made in good faith, while he was acting in what he believed to be the best interest of the chemistry program and TVA.

B. Mr. Bynum has fully cooperated with all investigations and has made no effort to hide any of his actions which are the subject of this enforcement conference.

Mr. Bynum has fully cooperated with all investigations into the matters which are at issue here. He has answered all questions concerning each of these matters, including questions raised by TVA's Office of the Inspector General, the NRC, and the Department of Labor. He will continue to cooperate fully; he intends to answer all questions that may be asked of him at the September 23, 1996, enforcement conference. Mr. Bynum has made no effort to cover up any actions that are the subject of this enforcement action.

C. Mr. Bynum volunteered to take a polygraph examination to help convince NRC that he did not deliberately violate NRC regulations.

Mr. Bynum volunteered to take a polygraph examination to help convince the NRC that he did not take retaliatory action against Mr. Jocher for raising safety concerns in violation of NRC regulations. The results of that examination did not turn out as he had expected. However, it is, and continues to be, Mr. Bynum's firm position that he did not purposely, consciously, or intentionally take any action against Mr. Jocher for raising safety concerns. As Mr. Bynum states in his declaration and

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will explain at his enforcement conference, there was no intentional violation of NRC regulations on his behalf in the Jocher matter.

Mr. Bynum knew that submitting to a polygraph posed some element of risk, but was confident that in telling the truth all would come out for the best. Because he was telling the truth, he never seriously considered that the results would be anything but favorable. When he requested to take the test, Mr. Bynum was not aware that polygraph examination results are unreliable and biased in favor of showing guilt and against innocent persons. For instance, it is well established that "In situations where there is genuine concern about the outcome of a . . . polygraph examination, a substantial proportion of innocent subjects may react more strongly to the relevant questions, producing deceptive test results."¹ In one study only 56%,² and in another only 53%³ of the subjects shown later to be innocent were correctly classified as truthful. Therefore, almost half of the innocent persons who undergo a polygraph examination will incorrectly be classified as being deceptive; the random toss of a coin will give similar results.⁴ This is certainly not sufficient evidence to show that Mr. Bynum deliberately violated NRC regulations.

1 William G. Iacono and Christopher J. Patrick, *Psychopathy, Threat, and Polygraph Test Accuracy*, JOURNAL OF APPLIED PSYCHOLOGY, Vol. 79, No. 2, 347, 353-54 (1994). "This finding is consistent with preliminary results from a large-scale field study recently reported . . . in which the blind hit rate for confession-verified innocent subjects tested by experienced police examiners was only 55%. It is also consistent with the results of three other field studies . . . that collectively indicate about chance-level accuracy with innocent subjects."

2 *Id.* at 353.

3 David T. Lykken, *Polygraph Tests, Urine Tests: A Debate. The Validity of Tests: Caveat Emptor*, 27 JURIMETRICS J. 263, 267 (1987). "[T]he [polygraph examination] is strongly biased against the innocent person"

4 See also William G. Iacono and Christopher J. Patrick, *Validity of the Control Question Polygraph Test: The Problem of Sampling Bias*, JOURNAL OF APPLIED PSYCHOLOGY, Vol. 76, No. 2, 229, 237 (1991). "[O]urs is not the first . . . study to report a substantial error rate for innocent subjects: Barland and Raskin (1976), Horvath (1977), and Kleinmuntz and Szucko (1984) reported false-positive rates of 55%, 49%, and 37% respectively. . . . Our own findings indicate that when solid criterion evidence is acquired for all possible cases and classifications are based on

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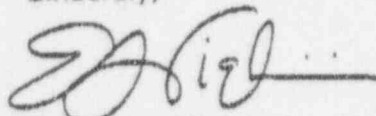
D. Mr. Bynum's conduct has been addressed by TVA's remedial program.

Mr. Bynum did not deliberately violate any NRC regulation. "In cases involving non-deliberate conduct, action against the individual may be more appropriately handled within the licensee's remedial program." 56 Fed. Reg. 40,884. TVA itself has addressed Mr. Bynum's conduct in this matter by taking strong, individual corrective action. These actions will be fully addressed in his individual enforcement conference.

For the reasons set forth herein, and for such further reasons that may come before the NRC at the September 23, 1996, enforcement conference, we urge the NRC not to take any individual enforcement action against Mr. Bynum.

This letter and its enclosure contain sensitive, personal information that is confidential and not part of any public record. It is also submitted for consideration as part of Mr. Bynum's enforcement conference which is closed to the public. For these reasons, I ask that you not place this document in NRC's Public Document Room or in any way release its contents to the public.

Sincerely,



Edward J. Viglucci
Senior Attorney

Enclosure

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[continued . . .] blind numerical scoring of the polygraph charts, chance-level accuracy figures are observed for innocent subjects."

DECLARATION OF JOSEPH R. BYNUM

I, Joseph R. Bynum, submit this sworn Declaration to the Nuclear Regulatory Commission ("NRC") for its consideration in connection with the upcoming September 23, 1996, predecisional enforcement conference.

INTRODUCTION

1. I am filing this Declaration to provide information for the NRC to consider in its determination whether to take enforcement action against me personally because of my professional dealings with William Jocher. I look forward to elaborating on the matters discussed in this Declaration at the September 23, 1996, predecisional enforcement conference, to answering all questions the NRC may have about my conduct, and to explaining further the devastating effect that this matter has had on my professional and personal life.

2. At the beginning, I want to emphasize two things of overriding importance. First, I did not deliberately take any action against Mr. Jocher because he raised safety concerns. Second, Mr. Jocher's allegations that I did take such action against him have been a catastrophe for me, both professionally and personally.

a. As set forth more fully below, and as I will explain in greater detail on September 23, I acted in what I thought was the best interest of TVA and its nuclear operations.

(1) Mr. Jocher had significant management shortcomings that were reported to me by his supervisors, his peers, and others, and it was these shortcomings that led to his departure from TVA. No one ever suggested to me that Mr. Jocher was likely to improve his performance or that TVA should continue to keep him employed. Although my decisions were intended to be made in the best

interest of the company and its nuclear program, in hindsight, it is clear to me that I made mistakes in how I handled Mr. Jocher and his departure from TVA. I readily admit these mistakes, and I cannot begin to tell you how much I wish that they had not occurred.

(2) Regardless of the mistakes I made, however, I did not deliberately take any action against Mr. Jocher because of any safety concerns he may have raised. Neither I nor any other person that I am aware of ever discussed taking any action against Mr. Jocher because he had raised safety concerns. Indeed, I was largely unaware of any specific safety concerns that Mr. Jocher raised; I never considered (much less deliberately took) any action against Mr. Jocher because he had raised safety concerns.

b. This entire matter has been very difficult for me. Prior to this instance, my record in the nuclear industry was spotless. I feel that my career has been irreparably harmed. My integrity has been questioned and found to be wanting by the administrative law judge (ALJ) that considered this matter; my actions have been questioned by the NRC, TVA's Office of Inspector General, and undoubtedly many of my friends and colleagues who have heard about the allegations against me and the findings of the ALJ; I will never be able to repair the damage that this matter has done to my reputation.

3. Part I gives a brief summary of my background. Part II describes my dealings with Mr. Jocher. I am prepared to discuss anything related to my involvement with him in greater detail at the September 23 enforcement conference. Part III sets forth some extenuating and mitigating facts that I request the NRC to consider before it decides whether to take any enforcement action against me. Again, I am prepared to discuss each of these matters in greater detail on September 23.

DISCUSSION

L. Background

4. From September 1972 until April 1993 I worked in the nuclear power industry. I spent the first 10 years of my nuclear experience at TVA as a Startup Engineer, Section Supervisor, and Assistant Plant Manager at the Sequoyah (SQN) and Browns Ferry (BFN) Nuclear Plants. I then spent 5 years at Arizona Public Service where I was Plant Manager at the Palo Verde Nuclear Generating Station. After that, I returned to TVA to assist with its nuclear program recovery.

5. At the time of the events at issue here, in March and April 1993, I was TVA's Vice President of Nuclear Operations. I reported to Oliver D. Kingsley, Jr., who, in turn, reported to the TVA Board. Reporting to me were the Site Vice Presidents of SQN and BFN and Dan Keuter, the Vice President of Operations Services, as well as some staff functions.

6. For reasons entirely unrelated to the matter at issue here, I left TVA Nuclear in April 1993 when I moved to TVA's Fossil and Hydro Power organization. Since February 1994 I have been the Vice President of Fossil Operations for TVA. I report to Joseph W. Dickey, Chief Operating Officer, who reports to the TVA Board of Directors. TVA Nuclear has a separate reporting chain to the TVA Board of Directors through Mr. Kingsley. While I am not in TVA Nuclear, my organization does provide some support services to TVA Nuclear, such as turbine maintenance, motor repairs, and instrument calibration.

II. The Decisions Relating to Mr. Jocher's departure from TVA.

7. In this section I would like to tell you what I knew and what I did not know in March-April 1993, when the decision was made to ask Mr. Jocher to resign.

A. Mr. Jocher's tenure with TVA

8. Mr. Jocher was first employed by TVA in November 1990 as the Manager of Chemistry and Environmental Programs in the corporate organization. While he served in that position, he reported to Dr. Wilson McArthur, the Manager of Technical Programs, who reported to Mr. Keuter, who reported to me. In February 1992 Mr. Jocher was temporarily assigned to serve as the SQN Chemistry Manager. In that position he reported to the SQN Operations Manager, who reported to the SQN Plant Manager, who reported to the SQN Site Vice President, who in turn reported to me. In March 1993 Mr. Jocher's temporary assignment at SQN ended, and he returned to his position in the corporate organization.

B. My knowledge of Mr. Jocher's performance

(1) Mr. Jocher's performance while in corporate

9. It was the function of the corporate organization to provide oversight and support and to ensure consistency between the sites. As Manager of Chemistry and Environmental Programs, it was essential that Mr. Jocher have a good relationship with the sites in order to be a consensus builder and achieve consistency at the sites.

10. During Mr. Jocher's initial stint in the corporate organization (from November 1990 - February 1992), I received information about his technical

ability and his management style from various persons. Dr. McArthur and Mr. Keuter informed me that there were problems with Mr. Jocher's management style. They advised me that he had difficulty getting along with others, at corporate and BFN. He was arrogant, condescending, and combative. At one point, I approved Dr. McArthur's request to remove Mr. Jocher's responsibilities to manage the corporate environmental program because of his lack of technical competence in that area as well as his inability to get along with his subordinates in that part of the organization. At a different point in time, Mr. Jocher's responsibilities to manage offsite dose calculations were removed because of his inability to get along with the responsible subordinate.

11. I also received complaints from BFN about Mr. Jocher's lack of support on the hydrogen water chemistry issue. This was characterized to me as being more than a technical disagreement in that Mr. Jocher was being very stubborn and creating personal animosity with his counterparts at the site. These complaints came from the site chemistry manager all the way up to the site vice president.

12. Dr. McArthur and Mr. Keuter proposed that Mr. Jocher be temporarily assigned to work at SQN as the Chemistry Manager. SQN was having problems in chemistry. The individual who was serving as the SQN Chemistry Manager was not viewed as a take-charge individual. Since Mr. Jocher had not worked out well in the corporate position, Dr. McArthur, Mr. Keuter, and I were hopeful that Mr. Jocher might be better suited as a site chemistry manager with line responsibility. Once Mr. Jocher was assigned to SQN, I specifically asked Mr. Keuter if Mr. Jocher knew that he had not been sent there as a reward but as an opportunity to show that he could perform. Mr. Keuter assured me that he had had such a discussion with Mr. Jocher. Everyone, including Mr. Jocher, understood that his assignment to

SQN was temporary and would last only one year unless SQN and Mr. Jocher wanted to make the assignment permanent.

(2) Mr. Jocher's performance while at SQN

13. While Mr. Jocher was at SQN, I spent a considerable amount of time at that plant and received feedback from a number of people about his management style. I was informed by the plant manager, Rob Beecken, that Mr. Jocher was having a hard time getting along with other SQN managers, particularly close to the end of his one-year assignment. At that time, Mr. Beecken made it clear that he was not interested in extending Mr. Jocher's assignment at SQN and asked for him to be returned to corporate.

14. I was also informed by the SQN Human Resource Manager and another Human Resource Officer, both of whom I had worked with and whose opinions I respected, that Mr. Jocher had not treated the people in their organization with appropriate respect. I also learned that Mr. Jocher had treated the Human Resource Manager in a condescending and chauvinistic manner. At one point the SQN Human Resource Manager informed me that Mr. Jocher was insistent that he be allowed to reorganize without regard to established procedures, claiming that I had given him carte blanche to do so. I informed her that I had not given him carte blanche and that he would be required to follow established procedures. I also was informed of other personnel and union-management problems that Mr. Jocher had caused because of his failure to follow established personnel practices. For example, Mr. Jocher announced, on separate occasions and without approval from upper management or Human Resources, that chemistry supervisors would be eliminated, and that maintenance people would be transferred to his organization.

15. The manager of the maintenance organization also complained to me about his frustration with Mr. Jocher's failure to understand that the maintenance of chemistry instruments had to be prioritized with other plant maintenance. He complained that Mr. Jocher made little or no attempt to understand the organization's need to address the overall maintenance situation. I held the maintenance manager in high regard and gave credence to his criticism since it was unusual to hear him speak about anyone in a negative fashion.

16. The corporate steam generator expert complained to me that Mr. Jocher did not appear to understand good steam generator water chemistry and that Mr. Jocher was unwilling to work with him to get the correct steam generator water chemistry. This involved more than a technical disagreement; Mr. Jocher was unwilling to sit down, understand, and try to reach a workable solution.

17. Even while Mr. Jocher was assigned to SQN, I continued to receive complaints from BFN about him. The BFN chemistry manager complained that Mr. Jocher was attempting to force an organization change (which I felt was unsound) on the BFN chemistry organization. Even the BFN Plant Manager complained that Mr. Jocher had tried to interfere after the fact in the selection of the BFN chemistry manager although Mr. Jocher had been invited to participate in the selection process but did not show up.

18. When Mr. Jocher's one-year SQN assignment had come to a close, I was informed that Sam Harvey, a good employee and a senior chemistry program manager in the corporate organization, did not want to work for Mr. Jocher.

19. Since Mr. Jocher was several levels of management removed from me, most of the information I had about him was reported to me by others. Nevertheless, my personal observations confirmed that there were problems with his management style, for example:

a. I personally attended an all-hands meeting of the SQN chemistry organization. During that meeting Mr. Jocher's demeanor towards his subordinates was condescending and inappropriate.

b. During a presentation to TVA officials and NRC Commissioner Gail DePlanque, Mr. Jocher made self-serving comments that were embarrassing to me and other TVA officials.

c. Mr. Jocher had a personal conversation with me about the elimination of the chemistry supervisors. While I had no problem with him raising the subject, it was clear that he was not listening to any viewpoint other than his own.

d. At an SQN site meeting which I attended, Mr. Jocher proposed an expensive long-term program to correct procedural problems. However, evaluation of the problem, which was done at my request, showed that this matter could be resolved quickly and with minimal expense.

C. My role in Mr. Jocher's departure from TVA

20. Sometime in March 1993, while Mr. Jocher was still assigned to SQN, Dr. McArthur, Mr. Keuter, and I had a meeting during which one of the subjects discussed was Mr. Jocher's impending return to corporate. During that meeting, we discussed the fact that Mr. Jocher had not been successful when he was first at corporate, and the fact that SQN did not want to retain him. During this meeting, Dr. McArthur, Mr. Keuter, and I agreed that Mr. Jocher was not capable of performing as corporate chemistry manager. During that meeting, no one stated that there was a realistic possibility that Mr. Jocher's performance might improve. At that time, we did not agree on any specific course of action other than to bring him back into the corporate chemistry manager position for an unspecified period in order to give him time to find another job. I have no recollection that anyone even suggested a six-month probationary period.

During that meeting, there was no criticism of Mr. Jocher because he had raised any safety issues and there was no expression of resentment towards him for raising safety issues.

21. At or around the time of this meeting, Dr. McArthur told me that Mr. Jocher had assured him that if management did not feel he fit in he would leave TVA. When I asked if Mr. Jocher knew that he needed to be looking for a job, Dr. McArthur replied that Mr. Jocher knew that management did not have confidence in his ability to perform as corporate chemistry manager. Based on these conversations, I believed that Mr. Jocher was looking for another job and would resign.

22. Late in March or in early April 1993, Dr. McArthur, Mr. Keuter, and I were again having another meeting where Mr. Jocher's continued employment with TVA was one of the matters that we discussed. There were at least three related personnel issues involving chemistry that were on my mind in that timeframe. First, by that time I knew that I would be leaving TVA Nuclear, although I was not free to share that with them. Because of this I felt that I should not leave my successor with Mr. Jocher in the corporate chemistry manager job. Second, SQN did not want Mr. Jocher or the previous site chemistry manager to return to the plant. Third, Dr. McArthur and Mr. Keuter were recommending hiring a talented outside candidate for a chemistry position. However, because of headcount restrictions we could not hire that person as long as Mr. Jocher and another high level chemistry employee were in their positions. During the meeting, I asked if either Dr. McArthur or Mr. Keuter realistically thought that Mr. Jocher would change and successfully perform as the corporate chemistry manager. Both of them indicated that they did not think he would change. I asked them what they thought should be done in light of his inability to perform. Dr. McArthur again suggested that he thought that if Mr. Jocher was asked to do so, he would resign. I agreed with that course of action. However, I asked Dr. McArthur if he

was prepared to terminate Mr. Jocher if he did not agree to resign. Dr. McArthur told me that he was, and that he had counseled Mr. Jocher and had notes of those sessions.

23. No one disagreed with asking Mr. Jocher to resign; no one said that Mr. Jocher should be given another chance to improve; and no one said that Mr. Jocher should not be terminated if he refused to resign. There was absolutely no discussion during the second meeting of any safety concern Mr. Jocher had raised and no one suggested to me that he was being asked to resign or would be terminated for having raised any safety concern.

24. Sometime later, Dr. McArthur returned to me with a resignation signed by Mr. Jocher that was effective six months in the future. I was aware that a previous employee at Mr. Jocher's grade, who had agreed to resign, was not allowed a six-month notice period. Therefore, I suggested to Dr. McArthur that he attempt to get Mr. Jocher to agree to a three-month period, which he did. Importantly, I was never told that the resignation was anything other than voluntary. Indeed, I did not learn until the DOL proceeding was under way that Dr. McArthur had informed Mr. Jocher that he would be terminated if he did not resign and had showed him a notice of termination.

D. My knowledge of safety concerns raised by Mr. Jocher

25. At the time that it was decided to ask Mr. Jocher to resign, I was generally aware that Mr. Jocher had raised issues with respect to the SQN chemistry program. That was part of his job, and I would have expected anyone in that job to do that. However, I did not know the details of any particular issues he had raised. At that time, I believed that he was only reiterating long-standing issues, such as instrumentation, training, and procedures. I was not aware that Mr. Jocher had initiated any corrective action documents such as a significant corrective action report (SCAR) since SCARs were not normally sent to me, nor did I recall ever requesting one. I was not aware that

he had raised an issue to the Nuclear Safety Review Board (NSRB) about chemical traffic control. I was not concerned and no one ever complained to me about Mr. Jocher using the corrective action process to draw attention to the chemistry program. I would not have held use of that process against anyone. To me, it is clearly appropriate to use the corrective action process to raise issues.

E. Related matters

(1) The ALJ's decision

25. On July 31, 1996, the ALJ issued a decision that ruled against TVA in this matter. I am painfully aware that some of the ALJ's findings do not accept the facts as I know them to be. I am prepared to discuss any and all aspects of the ALJ's decision that the NRC wants to discuss on September 23; however, I specifically want to take issue with one of the ALJ's critical findings in this Declaration.

26. At several places during his decision, the ALJ states that I unilaterally canceled a six-month improvement plan for Mr. Jocher when I learned that the NRC was interested in some safety concerns that he had raised. For example, the ALJ found:

Bynum, Keuter and McArthur met two times concerning Jocher's status at TVA. During the first meeting, all three agreed that Jocher would be given six months to improve his performance. Bynum alone abandoned the six month plan in the second meeting and ordered Jocher terminated. Keuter's and McArthur's answers to the TVA OIG questions concerning the events surrounding Jocher's departure were consistent and credible. Bynum's abandoning of the improvement plan (in early April of 1993) after being told by the NRC on March 22, 1993 that they were going to investigate Jocher's on-line instrumentation SCAR is suspect as I find the timing too coincidental [ALJ Decision at 27. See also, ALJ Decision at 30, 36, 38].

28. The ALJ's decision does not accurately reflect the events that occurred in March and April 1993, nor does it accurately reflect what facts I knew during that time period.

a. I never knew that Mr. Jocher had been offered a six-month improvement plan in March 1993. My understanding was that Mr. Jocher would resign when he was advised that management did not think he was doing the job. I did not understand that Dr. McArthur was going to suggest to Mr. Jocher that he be placed on a six-month improvement plan in March 1993; nor did I understand during that time period that Dr. McArthur did, in fact, suggest such a plan to Mr. Jocher in March 1993. Accordingly, I did not deliberately or even consciously "abandon" a six-month improvement plan in April 1993 because I did not know at that time that Dr. McArthur intended to present or had presented such a plan to Mr. Jocher.

b. Moreover, in this timeframe, I was not made aware that the NRC was taking action on a safety concern that Mr. Jocher had previously raised in an on-line instrumentation SCAR. I do not recall seeing the March 22, 1993, NRC correspondence during that timeframe; I certainly did not study it at that time such that it made an impression on me; and I did not know that Mr. Jocher had initiated one of the SCARs which are referred to in the NRC's March 22 correspondence. Indeed, I am confident that I never even saw the SCAR at issue until long after Mr. Jocher resigned from TVA and filed his DOL complaint. The NRC correspondence is a lengthy, routine monthly report that mentions many different safety issues. It does not even mention Mr. Jocher's name and from its text there is no way to know of Mr. Jocher's involvement in any of the many issues mentioned in the correspondence.

Accordingly, I did not deliberately or even consciously do anything against Mr. Jocher because of the NRC's March 22 correspondence.

(2) The Lie Detector Results

29. In an effort to disprove the allegations against me, I volunteered to take a lie detector test. To my shock and complete surprise, the results of that test indicated that I was being deceptive when I stated that Mr. Jocher's safety concerns had no bearing on his departure from TVA.

30. I have little experience with lie detectors. I do not know how they work. But I was so intent on proving to the NRC that the allegations against me were wrong that I offered to take such a test. I did not know anything about the reliability of lie detectors at that time; I simply assumed that because I was telling the truth the lie detector results would support me. I cannot explain why the lie detector results are what they are. I know that this has been a very emotional and difficult experience for me. I know that I am feeling an incredible amount of stress over this entire matter. Perhaps these things had an effect on the lie detector results.

31. While I do not know why the lie detector results are what they are, what I do know--and what I swear under oath is the truth--is the following:

a. I was not a party to any discussions with anyone in which dissatisfaction was expressed with Mr. Jocher because he had raised safety concerns--either when we were considering his continued employment at TVA or at any other time.

b. I never consciously had a critical thought about Mr. Jocher for raising any safety concerns--either when we were considering his continued employment at TVA or at any other time.

c. During my entire career, I have been firmly committed to the principle that a nuclear organization must develop an atmosphere where everyone is free to raise safety concerns without fear of reprisal. I am strongly committed to this principle and I have never deliberately taken any action that is not fully in keeping with this principle--including any involvement I have ever had with Mr. Jocher.

d. I certainly did not deliberately take action against Mr. Jocher because he raised safety concerns.

III. Extenuating and Mitigating Circumstances

32. I realize that we are here today because of mistakes I made in the last month of a 21-year career in the nuclear industry. These mistakes were not characteristic of my previous 21 years in the nuclear industry; nor are they characteristic of my career at TVA since April 1993. I ask the NRC to keep my entire career and my entire record in mind as it considers whether to take enforcement action against me for my role in this matter.

33. My mistakes were that I did not communicate clearly with my subordinates to ensure that we all had a common understanding of the facts related to the decisionmaking and not utilizing all available resources to ensure that the basis for our action was fully understood, communicated, and documented. If I had done these things right, I would not be in these terrible circumstances.

34. I fully accept that these mistakes were made. I believe that several unusual personal circumstances contributed to these errors. I was leaving TVA Nuclear after 21 years in the industry. Frankly, this major career move was distracting during this time period. Additionally, the two other managers involved in this matter had personal problems to deal with at the same time. Dr. McArthur had been diagnosed with cancer and knew that he would be having surgery and chemotherapy treatments immediately after Mr. Jocher's resignation. Mr. Keuter was concerned about pending downsizing (he was losing 25% of his workforce) and the focus being placed on the support organizations. I do not offer these as excuses for mistakes; but they were undoubtedly factors that made us less careful than we should have been in communicating with each other, documenting what we were doing, and fully utilizing personnel and legal

resources that were available to us and that would undoubtedly have made our decisions clearer, better, and more defensible.

35. While I admit that my handling of Mr. Jocher's departure from TVA was not good, my intentions and motives were sound. My concerns were that Mr. Jocher lacked the management skills necessary to improve TVA's chemistry performance. He was arrogant and condescending to his subordinates. He lacked the consensus building skills necessary for a corporate chemistry manager. He simply was unable or unwilling to supervise in a way that would get the job done through his subordinates and peers.

36. Whatever mistakes I may have made, I did not deliberately take any action against Mr. Jocher for raising safety concerns. My job for 21 years was to raise and resolve safety concerns and to make sure those working for and with me did likewise. Both now and in 1993, I was fully aware of the requirements of Section 211 of the Energy Reorganization Act and 10 C.F.R. § 50.7. I understand and believe in these requirements. I have built my reputation on being open and approachable on any issue and encouraging my employees to bring safety concerns forward in any manner they see fit.

37. I have paid a high personal and professional price for my mistakes. I have suffered an enormous emotional toll. I have lost sleep, worried over my future, and been under terrible stress because of the countless investigations, hearings, and inquiries. This has been the most difficult professional experience of my career. My integrity has been called into question by the ALJ and the NRC. TVA has had to spend huge amounts of time and money because of the way I handled Mr. Jocher's departure from the company.

38. I urge the NRC to let me put this whole matter behind me. I have learned much from the experience, and I do not need further punishment from the NRC.

to teach me any more lessons about it. The events that are at issue here are an aberration. Nothing like them ever occurred before or since. Nothing like them will ever occur again. I want to move on with my life and my career, and I hope that this will be over soon so that I can concentrate on using my abilities and experiences (both good and bad) to help TVA in any area that I am needed.

CONCLUSION

39. I appreciate the opportunity to file this statement with the NRC. I ask the agency to accept my assurances that I have not acted deliberately to retaliate against Mr. Jocher for raising any safety concerns with anyone. And I ask the agency to recognize the extenuating and mitigating circumstances that I have identified and to let me begin rebuilding my career and personal life. I look forward to discussing these matters at greater length at the September 23 conference.

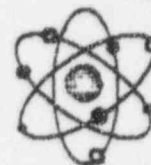
I declare under penalty of perjury that the foregoing is true and correct.

September 19, 1996


JOSEPH R. BYNUM



OGC Nuclear Fax



TO: Bruno Uryc, Jr. Date: September 20, 1996
Company: NRC Region II Fax No: 404.331.4449
Number of pages including this page: 22 Phone: 404.331.5505
Subject: Individual Enforcement Conference of Joe Bynum

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Comments: We ask that the NRC consider the attached letter and declaration in connection with Mr. Bynum's upcoming individual enforcement conference. I placed six copies of the attached in Fed-Ex mail to Mr. Ebnetter yesterday evening for distribution today to those who may be involved in the conference.

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