



## U.S. Department of Justice

Environment and Natural Resources Division

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April 26, 2007

Re: United States v. David Geisen, et al., Case No. 3:06-CR-00712 (N.D. OH)

Lisa Clark, Senior Attorney  
Office of the General Counsel / Mail Stop O15-D21  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Dear Ms. Clark:


At a recent hearing regarding the above-referenced criminal case, the Court asked counsel for the United States to inquire about the Nuclear Regulatory Commission's intended course of action in a matter which may impact that case.

At the hearing, the Court granted a motion for a continuance by defense counsel to enable them to retain experts to study the recent report entitled Review and Analysis of the Davis-Besse March 2002 Reactor Vessel Head Wastage Event ("Wastage Event Report") prepared by Exponent Failure Analysis Associates. Defense counsel argued that the report appears to contain compelling, exculpatory evidence which they might wish to present at trial. Counsel for the United States disagree that the report constitutes exculpatory evidence, but do believe that it may be relevant to cross examination of a government expert witness, NRC employee James Davis.

The Court expressed a concern that the Wastage Event Report could result in further studies, analyses or hearings by the NRC which could change the scientific consensus regarding the corrosion mechanisms that caused the wastage of the Davis Besse reactor vessel head. The Court asked undersigned counsel to inquire whether the agency planned to undertake further such actions, which could cause it to materially reexamine its conclusions regarding the Davis-Besse wastage event.

We ask that you inform us whether the agency intends to take such action so that we may report back to the Court by May 4, 2007. In the event that you are unable to determine the likelihood of such action by that date, we would appreciate your furnishing a timetable setting forth when that decision will be made.

Sincerely,

  
Richard Poole  
Senior Trial Attorney