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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of	Docket No. IA-05-021
ANDREW SIEMASZKO	ASLBP No. 05-839-02-EA
	August 15, 2005

RESPONSE OF ANDREW SIEMASZKO TO NRC STAFF PARTIAL OBJECTION TO JULY 22, 2005 MEMORANDUM AND ORDER GRANTING THE NRC STAFF'S MOTION

Andrew Siemaszko opposes the NRC Staff's August 5, 2005 Partial Objection to the July 22, 2005 Memorandum and Order Granting the NRC's Motion for a 120-Day Delay of Proceedings and Setting Case Schedule, whereby the Staff seeks to diminish its burden of proof in the case at bar.

The Staff issued an Enforcement Order prohibiting Mr. Siemaszko from involvement in licensed activities because, according to the Order, he engaged in "***deliberate misconduct as defined in 10 C.F.R. 50.5***, causing FirstEnergy Nuclear Operating Company (FENOC) to be in violation of 10 C.F.R. 50.9 ..." at Davis-Besse. See, April 21, 2005 Enforcement Order cover letter from Ellis Merschoff to Andrew Siemaszko, at 1. (emphasis added). The Order itself repeats the same charge, i.e., that Mr. Siemaszko engaged in "deliberate misconduct" as defined

Template = SECY-037

SECY-02

by 10 C.F.R. 50.5. [1]

The ASLB Legal Standard Is Correct

Mr. Siemaszko agrees with, and accepts, the standard identified by the Board. In support of this position, Mr. Siemaszko points out that there is only one definition of "deliberate misconduct" contained within 10 C.F.R 50.5,[2] and it is the same standard that the ASLB applied in defining the issue for this enforcement action, as set out in its July 22, 2005 Memorandum and Order (Granting The NRC's Staff Motion For a 120-Day Delay of Proceedings and Setting Case Schedule). As the Board noted:

> More specifically, the NRC Staff must prove that in preparing CR No. 2000-1037 and WO No. 00-001846-000, Mr. Siemaszko intentionally provided an incomplete and inaccurate description of the work activities and corrective actions taken relative to the presence of boric acid deposits on the RPV head knowing that by doing so he would cause FENOC to be in violation of NRC regulations.

Order, at 2.

However, the Staff asserts that the Board's statement of the legal standard is based on an "apparent misapprehension of the legal standard applicable to the case." Staff's Partial

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[1] The Order was issued publicly, accompanied by a press release, into a feeding frenzy of media coverage anxiously awaiting the long-anticipated results of the three-year long, and counting, results of the Office of Investigation's search for a culprit.

[2] The only use of the term **deliberate misconduct** in 10 C.F.R. 50.5, is the definition provided in (C)(1) which states:

> (C) For the purposes of paragraph (a) (1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows;
>
> > (1) 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; or (2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee....

Objection, at 1. The Staff apparently wants to prove only a violation of subpart (a)(2), a far less onerous burden. The Staff can not have it both ways -- painting Mr. Siemaszko with the broad brush as the mastermind of the plan to deceive the NRC of the true state of the boric acid left on the RPV head, making him the only FENOC employee barred from the industry; and, at the same time, seeking to prove its case by simply showing that he submitted information that he knew to be incomplete or inaccurate in some respect, that he should have known was material to the NRC.

A review of Work Order No. 00-001846-000 is illustrative of the problem the Staff seeks to remedy by changing the legal standard it is required to prove to sustain the Enforcement Order. The Work Order was closed on April 25, 2000 by a statement from Mr. Siemaszko -- "work performed without deviations." (Attachment 1) The Work Order was obviously written to identify the pre-work needed to be done to prepare for the larger task of cleaning the head. The Work Order was signed on April 25, 2000, several days before the cleaning was even started. The Work Order identified the following sub-steps to be accomplished:

"1) Raise lead blankets as required to provide access to weep holes. All blankets will have to be raised to provide access 360 degrees around head at weep hole level.

2) Install protective covering on reactor head bolt holes. This is required to prevent water run off from draining through bolt holes.

3) Cover weep holes and provide drain.

4) Power wash reactor vessel head.

5) Remove plastic and protective covers.

6) Restore lead blankets as directed by RP."

WO No. 00-001846-000, at 2.

When Mr. Siemaszko, along with at least eight others, signed the Work Order as being complete, he was acknowledging that these six preliminary steps were, in fact, completed without deviation. That was a truthful statement. Moreover, it was signed BEFORE the actual cleaning of the head began, and there is nothing on the Work Order that talks about the results of the actual cleaning exercise itself. In fact, there is a comment in the Special Instructions section on page one, by another employee, that states "Ensure water does not enter Refueling Cavity," also made on April 25, 2000. The attached write up is obviously prospective, not retroactive. The actual cleaning work was done, as it should have been, under the Radiation Protection work processes.

Taken in the context of the events of late April 2000, it would have been impossible for anyone to rely upon this Work Order as signifying anything other than what it did, i.e., planning for the work to be done. In retrospect, Mr. Siemaszko might have protected himself from the current witch-hunt had he specified, "Steps 1-6 performed without deviation," but, why would he have done so, when the system and processes did not require such tautology, nor was he ever trained to do so? In any event, such flaws would not be a violation of 10 C.F.R. 50.5. He is certainly not guilty of writing "work performed without deviation" on a work order, as part of a masterminded scheme to deceive the NRC by causing FENOC to be in violation of a rule or regulation.

As the evidence will eventually show, a work order is essentially the lowest form of paper trail on the site. Mr. Siemaszko, employed for less than nine months at the time of these events, was at the bottom of the engineering and outage management food chain. While Mr. Siemaszko agrees all licensee documents should be accurate and complete, to assert that this Work Order

played a material role in the FENOC Outage Management's decision to stop the cleaning effort of the boric acid during 12 RFO is ludicrous.

The Staff's Arguments Are Meaningless and Misguided

The Staff references the Rulemaking History of "deliberate misconduct" throughout its brief, but its citations miss the mark. This is not a question requiring referral to the history of 10 C.F.R. 50.5. While Mr. Siemaszko reserves his right to challenge the authority of the Commission in its Enforcement Authority against individuals under 10 C.F.R. 50.5 on various constitutional grounds, if it comes to that, he is anxious to face this case on the merits. He wants to review the facts and evidence contained in the OI report, to understand the Staff's analysis of those facts against the nine factors set out in NUREG-1600, Section VIII,[3] and to present his

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[3] Mr. Siemaszko anticipates and expects full disclosure by September 19 of the Staff's analysis of nine factors that should have been considered in arriving at the decision to issue an Enforcement Action against him, an unlicensed individual:

1. The level of the individual in the organization;
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing;
3. The safety consequences of the misconduct;
4. The benefit to the wrongdoer, e.g., personal or corporate gain;
5. The degree of supervision of the individual, e.g., how closely the individual is monitored or audited, and the likelihood of detection;
6. The employer's response, e.g., the disciplinary action taken;
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility;
8. The degree of management responsibility or culpability; and
9. Who identified the misconduct.

(See, also, *In the Matter Of Aharon Ben-Haim, PhD., Upper Montclair, New Jersey, Order Superceding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)* Docket No. IA 97-068, ASLB No. 97-731-01-EA; LBP-99-4, issued February 8, 1999, p. 29.)

evidence to the ASLB, in defense of the charge of which he is accused. He believes it is the only way to vindicate himself from the position the Staff has put him in.

The Staff's boldness in dictating to the Board what the appropriate statute should be in this proceeding is dazzling. The Staff finally acknowledged in its final paragraph, almost as an afterthought, that the Enforcement Order did "note that Mr. Siemaszko's actions caused the licensee to be in violation of NRC requirements," but then asserted that the Board should only require the Staff to prove the "operative part of the phrase addressing Mr. Siemaszko's specific conduct" in providing incomplete or inaccurate information.

The Board's definition of the legal standard is the law, it is correctly applied in this case, it was chosen – either by mistake or design – when the Staff issued its enforcement order and press release against Mr. Siemaszko. The Staff should not now be permitted to prove a lesser charge under the same Enforcement Order.

Respectfully Submitted,

Billie Pirner Garde

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of	Docket No. IA-05-021
ANDREW SIEMASZKO	ASLBP No. 05-839-02-EA
	August 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **RESPONSE OF ANDREW SIEMASZKO TO NRC STAFF PARTIAL OBJECTION TO JULY 22, 2005 MEMORANDUM AND ORDER GRANTING THE NRC STAFF'S MOTION** were served this 15th day of August, 2005, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***; messenger ****), on the following:

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Billie P. Garde
Counsel for Andrew Siemaszko

FEARMS DAVIS-BESSE PLANT

T1*RC

Work Order 00-001846-000

Subsystem: SUB062-01

Asset: T1*RC REACTOR VESSEL 1-1
Problem Locn: CTMT9_213*_565

Action: ROUTINE MAINTENANCE	Work Class:
WO Type:	Mat.Acct: 4537.4537.IS.NP13A.DBRX.00000.00
Clearance: N	Printed: 25-APR-00 15:51 D2L

Clearance number: ______________	Quality Class: Q
Tech Spec: N	Environmental Qualification: N
Test Requirements: N	ASME Component: ASMEXI
Lead Craft: RADIATION TEST	Repair Tag Number: U0896
	Train:

Permission to Commence Work

SS/SM Authorization: N/A [signature] DATE ______

SUPERVISOR [signature] DATE 5/2

Requested by: ANDREW SIEMASZKO	Phone: 7341
Planner: DENNIS A LISKA	Phone: 8338

Problem Description:
LARGE BORON ACCUMULATION WAS NOTED ON THE TOP OF THE RX HEAD AND ON TOP OF THE INSULATION. BORIC ACID CORROSION MAY OCCUR

NO TAGS HUNG (IN CONTAINMENT)
SS/SM APPROVED BY: GARY MELSSEN
FAILURE DATE: 04-21-00
JDA04-21-00

Work Description:
CLEAN BORON ACCUMULATION FROM TOP OF REACTOR HEAD AND ON TOP OF INSULATION.
SEE ANDREW SIEMASZKO (PLANT ENGINEERING), EXT 7341 FOR ADDITIONAL DETAILS.

Work Order Review

Plant Engineering	Andrew Siemaszko [signature]	DATE 4/25/00
SRO	Randy Patrick [signature]	DATE 4/28/00
ALARA	Jim Fechky [signature]	DATE 4/25/00
QC Mechanical	Jim Conn... / Hal Hurley [signature]	DATE 4/25/00
Lead Shop Review	Billy Sutton [signature]	DATE 5/2/00

Special Instructions: Randy Patrick

Ensure water does not enter Refueling Canal. R.Patrick 4/28/00

Attachment 1

FEARMS DAVIS-BESSE PLANT

T1*RC

Work Order 00-001846-000
Subsystem: SUB062-01

Permits

RWP
Transient Combustible

Steps

	Craft	Crew Size	Crew Name	Hrs
1	RADIATION TEST	4		10

CLEAN BORON ACCUMULATION FROM TOP OF REACTOR HEAD AND ON TOP OF INSULATION.

SEE ANDREW SIEMASZKO (PLANT ENGINEERING), EXT 7341 FOR ADDITIONAL DETAILS.

1) RAISE LEAD BLANKETS AS REQUIRED TO PROVIDE ACCESS TO WEEP HOLES. ALL BLANKETS WILL HAVE TO BE RAISED TO PROVIDE ACCESS 360 DEGREES AROUND HEAD AT WEEP HOLE LEVEL.

2) INSTALL PROTECTIVE COVERING ON REACTOR HEAD BOLT HOLES. THIS IS REQUIRED TO PREVENT WATER RUN OFF FROM DRAINING THROUGH BOLT HOLES.

3) COVER WEEP HOLES AND PROVIDE DRAIN.

4) POWER WASH REACTOR VESSEL HEAD.

5) REMOVE PLASTIC AND PROTECTIVE COVERS.

6) RESTORE LEAD BLANKETS AS DIRECTED BY RP

Carl Tipton

SIGNATURE: C A Tipton DATE: 4/25/00

2	MECHANICAL	4		4

REMOVE AND REPLACE LEXAN COVERS ON REACTOR VESSEL HEAD TO FACILITATE CLEANING.

SIGNATURE: N/A. A Siemaszko DATE: 4/25/00

3	MAINTENANCE SERVICES	1		6

IF NECESSARY MANUFACTURE REPLACEMENT LEXAN COVERS

SIGNATURE: N/A. A Siemaszko DATE: 4/25/00

Closeout

Lead Shop / MDT Removed: C A Tipton Date: 5/2/00 5/4/00 4/25 OFF

SS/SM Authorization: N/A per 5/6 Date:

QC Mechanical: N/A per 4/25/00 Date:

Planner Review: D L Litton Dennis Litton Date: 5/6/00

Completion Date: 4/25/00 Completed By: Tipton

Attachment 1

FEARMS DAVIS-BESSE PLANT

T1*RC

Work Order 00-001846-000

Subsystem: SUB062-01

Notes: _____

_____

Attachment 1

[illegible]	[illegible] NO. 00-001846-000

FAILURE EVALUATION/DESCRIPTION OF WORK PERFORMED

Work performed without deviations.

[signature]
4/25/00

CONTINUED ON BACK SIDE

Attachment 1

FAILURE EVALUATION/DESCRIPTION OF WORK PERFORMED

PERSONNEL RECORD

USE INITIAL OF FIRST AND MIDDLE NAME AND ENTIRE LAST NAME (Print)		DATE																								
NAME	DISCIPLINE																									

MATERIAL DISPOSITION

ITEM DESCRIPTION	STOCK CODE NO.	MIT/P.O./ PIC TICKET	QUANTITY USED	COMMENTS

Attachment 1

00-1846-00

Reactor Vessel Head cleaning.

Large deposits of boron have accumulated on the top of the insulation and on the Reactor Vessel Head. Nuclear Regulatory Commission (NRC) issued Generic Letter 97-01 to holders of operating licenses for pressurized water reactors (PWR's). The letter requires to maintain the program for ensuring the timely inspection of the control rod drive mechanism (CRDM) and other vessel closure head penetrations The program is required due to degradation of the CRDM nozzle caused by Primary Water Stress Corrosion Cracking process. In order to perform required inspections the nozzles as well as the penetrations must be free of boron deposits Once the head is free from the boron new boron deposits may be easily noted and remedial actions taken.

Background and technical information.
Beginning in 1986, Alloy 6000 CRDM nozzle leaks have been reported

Overview of the cleaning effort.
There are two areas requiring cleaning. The area above the insulation and the area below the insulation on the top of the reactor vessel head. The area above the insulation is accessible through the ventilation duct openings located approximately seven feet above the head flange. Scaffolding (movable platform) will be utilized to gain access to the ventilation duct openings after Lexan covers will be removed. The area below the insulation on the top of the reactor vessel head will be accessible via the weep holes (other name is mouse holes). The cleaning media will be pressurized de-mineralized water heated to approximately 175 °F. Water will be sprayed on the boron deposits through the ventilation duct openings and through the weep holes. One weep hole will be used to drain the liquid out of the head to the plastic drums. The remaining weep holes will be blocked with a plastic tape. The plastic drums will be located outside of the head stand area at the base of the water shield tanks. Two inch diameter corrugated plastic hose will provide means of transporting the liquid from the weep hole to the plastic drums. Accumulated liquid will be disposed off as directed by Health Physics and or Decontamination Department personnel. The estimated volume of water used will be between 100 and 600 gallons. Some boron deposits are hardened and soaking time may be required.

Attachment 1

00-001896-000

Major challenges of the cleaning effort will be associated with the spill protection. Recently installed Inner and outer Reactor Vessel Head gaskets can not become soaked with the boric acid solution. To protect the gaskets number of protective measures will be taken.

- All but one weep hole will be blocked with the plastic cover. In the event the water is escaping from the covered weep hole the cleaning effort will be stopped and spill contained.
- All stud holes will be covered with the plastic covers and secured with the black tape. Should the liquid escape from the weep hole it will float toward the edge of the head and drip down on the floor surface. It is not likely that the liquid would continue its flow under the flange for approximately 30 inches to reach the gaskets.
- The spray and drain process will be coordinated such that when the sill is noted the spraying operation is stopped immediately. Only small amount of water will be used at a time.

Another challenge of the cleaning effort will be associated with the protection of the CRDM motors. To prevent water damage to the motors the only area where water will be permitted and sprayed is located between the flange plain and the top of the insulation. The spray operator will be briefed about the need to control the spray and not to create any splashing. The operator will be briefed not to spray any water on the motor assemblies. Motor assemblies are sealed and are not easily impregnable with water.

ALARA considerations include time/distance principle. The cleaning effort will mainly consist of preparation work. The cleaning effort is scheduled to last approximately 4 hours. With majority of time devoted to the head area. The dose is significantly lower at the weep hole area in comparison with the ventilation duct openings area. Equipment operator will minimize stay time in the "shine" area while spraying. If feasible a mirror will be utilized to inspect the results of spray at the ventilation duct openings area. After initial cleaning a video inspection will be performed by the Framatome Technologies. Should additional cleaning be required the process will be repeated until most boric acid deposits are removed or as directed by HP.

Work Order instructions.

The following items are required for support of head cleaning effort.

Scaffolding- the scaffold is needed on the North side of the head. The scaffold is needed for wrapping the head with the plastic to block all weep holes. In addition to scaffolding a movable platform will be constructed to enable access to the Lexan covers.

Uncover the weep holes- this can be accomplished by partially rising the bottom portion the lead blankets presently installed on the head. All blankets will need to be raised since plastic tape will be strapped all around the head.

Cover the Reactor Head bolt holes- this can be accomplished by rising the plywood decking and covering the holes with plastic or wrap. Cover each hole

Attachment 1

separately by cutting square piece of plastic and tape it to the flange with the black tape. Reinstall the plywood flooring.

Removal of Lexan covers- Lexan covers are bolted to the ventilation duct openings. The Lexan material is fragile. Special care should be taken during removal and re-installation not to chip any corners and not to overtorque the bolts. This will result in cracks, and covers will have to be replaced. As a precaution, more Lexan sheet material should be ordered in the event that replacement covers are needed. Verify Lexan sheets are available in stores. Materials required to perform the work are: plastic, tarpaulin, black tape, and stainless steel hooks for rising the lead shielding.

Attachment 1