

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

September 16, 2005 (3:10pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:

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

In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

September 16, 2005

ANDREW J. SIEMASZKO'S PROPOSED PROTECTIVE ORDERS

Andrew J. Siemaszko, through counsel, hereby submits his request for access to information necessary to defend himself against the Nuclear Regulatory Commission (NRC) Staff's Order prohibiting his involvement in NRC-licensed activities. Pursuant to the request of the Atomic Safety and Licensing Board (Board), Andrew J. Siemaszko, through counsel, submitted to the NRC Staff a proposed protective order which, if agreed to and executed, would have permitted Mr. Siemaszko and his counsel to review the contents of the Affidavits of Thomas T. Ballantine, dated August 19 and September 8, 2005. Counsel for Mr. Siemaszko and the NRC Staff conferred about the proposed affidavit and exchanged proposed drafts. Unfortunately, counsel were unable to reach an agreement on the limitations of an Order.

Therefore, pursuant to the instruction of the Board, counsel for Mr. Siemaszko is submitting proposed protective orders to address both the Ballantine Affidavits (Attachment 1)

TEMPLATE = SECY-037

SECY-02

and the mandatory document disclosures that would be required if the Board did not grant, in its entirety, the August 19, 2005 request of the NRC Staff for a *Temporary Staff To Preserve the Status Quo*. (Attachment 2)

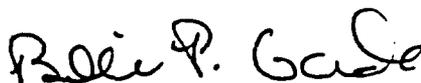
The principle disagreements over the Proposed Order were twofold; first, Mr. Siemaszko disagreed with the limitation proposed by the Staff that any disclosure of the information covered by the Protective Order be limited to Mr. Siemaszko and his counsel in this proceeding, thus forbidding Mr. Siemaszko to advise or consult with his criminal counsel with respect to any information he reviewed in the context of this proceeding; and, second, Mr. Siemaszko proposed that the Order would expire automatically with the completion of the DOJ investigation into potential criminal violations, or upon notice by the Staff or Order of the Board. The Staff disagreed with those fundamental elements. There was also some disagreement over the inclusion of a discussion of potential penalties in the event of a breach; but Mr. Siemaszko believes that language on that topic could have been resolved.

As has already been stated, it is Mr. Siemaszko's position that he is entitled to a public hearing on the public accusations that the NRC Staff has made against him, and opposes any effort to conduct these proceedings in secret. That said, as discussed during the pre-hearing conference, Mr. Siemaszko does not object to a temporary Protective Order, limited in scope and duration, that would provide him and his counsel access to the Ballantine Affidavits and discovery documents, as long as Mr. Siemaszko is not restricted from consulting with all of his counsel regarding information disclosed; and, as long as it does not extend beyond the narrowest

limitations necessary to protect the government's interest.¹ As discussed during the August 31, 2005 pre-hearing conference, counsel for Mr. Siemaszko believe they are ethically obligated to advise Mr. Siemaszko of the contents of the Ballantine Affidavits and any documents that are reviewed and that he would, in turn, be obligated to advise his counsel in the criminal proceeding of any relevant information that would be important to his status in that matter.

For the reasons discussed, Mr. Siemaszko seeks disclosure of the Ballantine Affidavits and discovery documents under such conditions as the Board deems appropriate.

Respectfully submitted,



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Counsel for Andrew J. Siemaszko

¹ Mr. Siemaszko does not waive or abandon his argument that no such limitations are appropriate in this case, since the NRC Staff initiated the action against him, publicly, and knew that he would be entitled to discovery to defend himself. He believes that the consequences of any necessary disclosures to him should be borne by the government. He specifically rejects the argument that he should be required to wait until the criminal matter is concluded.

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**STIPULATED PROTECTIVE ORDER
(DEPARTMENT OF JUSTICE AFFIDAVITS)**

WHEREAS the Nuclear Regulatory Commission (NRC) Staff has submitted for *in camera* review an Affidavit from U.S. Attorney Thomas T. Ballantine in support of its August 19, 2005 Motion To Stay Proceedings; and, on September 8, 2005, submitted an additional Affidavit from Mr. Ballantine in further support of its Motion, as well as in response to inquiries made by the Atomic Safety and Licensing Board (Board) during the August 31, 2005 pre-hearing conference call;

WHEREAS the NRC Staff has requested that the Affidavits only be made available to Mr. Siemaszko or his counsel in this proceeding under a proposed Protective Order;

WHEREAS Mr. Siemaszko and his counsel cannot respond to the Staff's argument in support of its request for an additional stay without reviewing the Affidavits and evaluating their contents, and desire to do so;

Now, therefore, the parties by and through their counsel agree as follows:

1. Mr. Siemaszko and his counsel will receive a copy of the August 18 and September 8, 2005 Affidavits, and any supplemental affidavits from Mr. Ballantine in support of the NRC Staff's request for a stay of these proceedings;

ATTACHMENT 1

2. Distribution of the Affidavit, and disclosure of its contents, will be limited to Mr. Siemaszko and his counsel, and their legal support staff, which shall also be bound by this Protective Order;
3. Mr. Siemaszko and his counsel agree to maintain the Affidavits and their contents in strict confidence and will not disclose them, or their contents, directly or indirectly, in whole or in part, to anyone except the minimum number of counsel and legal support staff engaged to represent Mr. Siemaszko, or the NRC staff;
4. Mr. Siemaszko and his representatives, and the NRC Staff and its representatives, who have access to the Affidavits shall take all reasonable precautions to ensure that the Affidavits are not distributed to unauthorized persons. Reasonable precautions include maintaining the Affidavits in a secure place and limited access to the Affidavits to persons authorized to receive access to them. Any person who has access to the Affidavits shall take all reasonable precautions to ensure that persons under their supervision or control comply with this Protective Order;
5. The Affidavits shall remain confidential until such time as the Department of Justice completes its investigation of potential criminal violations of law arising out of the Davis-Besse near miss event; the NRC Staff notifies Mr. Siemaszko and his counsel that there is no longer any necessity for compliance with the Order; or, until lifted by an Order of this Atomic Safety and Licensing Board.;
6. In the event that either party believes that a breach of this Protective Order has occurred, it will notify the other party and attempt to informally determine whether such breach has happened, and to cure the issue; and, if necessary, request that the Board hold a hearing to determine whether a breach has occurred and, if so, what the appropriate penalty shall be.

For Mr. Siemaszko:

For the NRC Staff:

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September 16, 2005

**STIPULATED PROTECTIVE ORDER
(DISCOVERY DOCUMENTS)**

WHEREAS on April 21, 2005 the Nuclear Regulatory Commission (NRC) Staff issued an Order prohibiting Andrew J. Siemaszko from involvement in NRC-licensed activities;¹ and, on April 22, 2005, Mr. Siemaszko requested, and on May 19, 2005, the Atomic Safety and Licensing Board (ASLB) granted, his request for a hearing on that proposed action;

WHEREAS, 10 C.F.R. § 2.336 (b), requires the NRC Staff to produce “all documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff’s review of the application or proposed action that is the subject of the proceeding; [and] any NRC Staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC Staff’s determination on the application or proposal that is the subject of the proceeding.” *Id.*, at 3 & 4.

WHEREAS, on May 23, 2005, and again on August 19, 2005, the NRC Staff filed motions requesting a *Temporary Stay To Preserve the Status Quo* in the proceedings, alleging “irreparable injury” to the potential criminal proceedings if document production occurred; and requesting a

¹ See, *Order Prohibiting Involvement in NRC Licensed Activities: Andrew Siemaszko*, 70 FedReg. 22,719 (May 2, 2005).

ATTACHMENT 2

delay until such time as the U.S. Department of Justice concludes its grand jury investigation of the relevant issues. The heart of the Staff request being to relieve the Staff of the obligation to produce any discovery materials or documents to Mr. Siemaszko, including the Office of Investigation report that is the foundation of the charge against him, out of an asserted concern that disclosure of the documents outside of the proceeding could impact the grand jury proceedings;

WHEREAS Mr. Siemaszko has opposed any delay in the proceedings, and asserts that continued delay is causing him continued harm in his ability to seek employment as an engineer in the nuclear industry, and requests that the proceedings proceed without further delay;

WHEREAS, in order to expedite the barring proceedings without impacting the criminal proceedings, the NRC Staff has agreed to produce the OI report and other relevant documents to Mr. Siemaszko and his counsel under the terms of this Protective Order;

Now, therefore, the parties by and through their counsel agree as follows:

1. The NRC Staff will produce documents required to be produced by 10 C.F.R. §2.336 (b) to Mr. Siemaszko and his counsel within five days of execution of this Protective Order;
2. Distribution of the documents, and their content, will be limited to Mr. Siemaszko and his counsel, and their legal support staff, which shall also be bound by this Protective Order;
3. Mr. Siemaszko and his counsel agree to maintain the documents and their contents in strict confidence and will not disclose them, or their contents, directly or indirectly, in whole or in part, to anyone except the minimum number of counsel and legal support staff engaged to represent Mr. Siemaszko, or the NRC staff;
4. Mr. Siemaszko and his representatives, and the NRC Staff and its representatives, who have access to the documents shall take all reasonable precautions to ensure that the documents are not distributed to unauthorized persons. Reasonable precautions include maintaining the documents in a secure place and limiting access to the documents only to persons authorized to receive access to them. Any person who has access to the documents shall take all reasonable precautions to ensure that persons under their supervision or control comply with this Protective Order;
5. The documents shall remain confidential until such time as the Department of Justice completes its investigation of potential criminal violations of law arising out of the Davis-Besse near miss event; the Staff notifies Mr. Siemaszko and his counsel that there is no longer any necessity for compliance with the Order; or, until lifted by an Order of this Atomic Safety and Licensing Board (ASLB);

6. In the event that either party believes that a breach of this Protective Order has occurred, it will notify the other party and attempt to informally determine whether such breach has happened, and to cure the issue; and, if necessary, request that the Board hold a hearing to determine whether a breach has occurred and, if so, what the appropriate penalty shall be.

For Mr. Siemaszko:

For the NRC Staff:

Billie Pirner Garde
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CERTIFICATE OF SERVICE

I hereby certify that copies of ANDREW J. SIEMASZKO'S PROPOSED PROTECTIVE ORDERS and attached proposed Stipulated Protective Orders were served this 16th day of September, 2005, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***; messenger ****), on the following:

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