

February 1, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	IA-05-021
)	
ANDREW SIEMASZKO)	ASLBP No. 05-839-02-EA
)	

NRC STAFF MOTION TO HOLD THE PROCEEDING IN ABEYANCE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the Staff of the Nuclear Regulatory Commission (Staff) moves the Atomic Safety and Licensing Board for an order holding the above-captioned proceeding in abeyance until the conclusion of a criminal proceeding involving matters related to the enforcement action that is the subject of this proceeding.¹

BACKGROUND

Andrew Siemaszko, was previously employed as a system engineer at the Davis-Besse Nuclear Power Station (Davis-Besse) operated by FirstEnergy Nuclear Operating Company (FENOC). On April 21, 2005, the Staff issued an "Order Prohibiting Involvement in NRC-Licensed Activities" (Order) to Mr. Siemaszko. 83 Fed. Reg. 22719 (2005). The Order prohibits Mr. Siemaszko from any involvement in NRC-licensed activities for a period of five years from the effective date of the Order.²

On April 22, 2005, Mr. Siemaszko filed his "Request for a Hearing in Response to Order

¹ Pursuant to 10 C.F.R. § 2.323(b), counsel for the Staff contacted counsel for Mr. Siemaszko to attempt to resolve the issue. Counsel for Mr. Siemaszko opposes a further stay of this proceeding. The Staff was unable to reach David Lochbaum, representative for the Union of Concerned Scientists and Ohio Citizen Action.

² Since the Order was not immediately effective and a hearing was requested, the Order is not effective until the conclusion of the hearing process.

Prohibiting Involvement in NRC-Licensed Activities,” (Hearing Request) and denied the allegations contained in the Order. After several previous motions to stay the proceeding were granted on the basis of an ongoing grand jury investigation, the Board on December 22, 2005 issued an Omnibus Order “Granting the NRC Staff’s Motion for Stay” through February 1, 2006. (December 22 Order).

On January 19, 2006, Mr. Siemaszko, along with another former FENOC employee and a former FENOC contractor were indicted in the United States District Court for the Northern District of Ohio. See Attachment A, *United States v. David Geisen, et al.* Mr. Siemaszko was arraigned on January 27, 2006, and pled not guilty to the charges against him.

On January 25, 2006, the Board issued a Scheduling Order, requiring the Staff to request any further stay by February 1, 2006. For the reasons set forth below, the Staff moves the Board for an order holding the above captioned proceeding in abeyance.

DISCUSSION

A. Legal Standards Governing Stays of Proceedings

The Commission’s regulations at 10 C.F.R. § 2.202(c)(2)(ii), permit a presiding officer to stay a hearing of an immediately effective order when good cause exists.³ The Commission has previously held that the determination of whether good cause exists for a stay requires a balancing of competing interests. *Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 50 (1993). In balancing these interests, the Board should consider the reason for the stay, the length of the stay, the affected individual’s assertion of his right to a hearing, harm to the affected person, and the risk of an erroneous deprivation. *Id.* Those factors are discussed below.

³ The instant case does not involve an immediately effective order. When the Staff has issued an immediately effective order and requests a stay, a person subject to the order suffers a legally cognizable harm during the pendency of the stay request and hearing. In that situation, the affected person would have an opportunity, pursuant to 10 C.F.R. § 2.202 (c)(2), to move that the immediate effectiveness be set aside. In the instant case, Mr. Siemaszko has not yet suffered any legally cognizable harm.

1. Reason for the Stay

Mr. Siemaszko's recent indictment and pending trial are the reasons a stay of this proceeding is necessary. See Attachment B *Affidavit of Thomas T. Ballantine*, February 1, 2006 (Ballantine Affidavit). The staff has consistently argued that discovery in this enforcement hearing would have a detrimental effect on the ongoing criminal investigation into the Davis-Besse matter. The Board granted the Staff's stay requests during the investigation, and now that Mr. Siemaszko has been indicted the need for similar precautions is heightened.

In addressing previous stay requests, the Board repeatedly cited three cases to support its expectation that the staff should provide it with a detailed explanation of how "on the facts of this case, some aspect of our proceeding could facilitate witness intimidation, perjury, or the manufacture of evidence." See, e.g., December 22 Order at 12, citing *Founding Church of Scientology, Inc., v. Kelley*, 77 F.R.D. 378, 380-81 (D.D.C. 1977); *Nakash v. Dep't of Justice*, 708 F. Supp. 1354, 1365-66 (S.D.N.Y. 1988); *United States v. Hugo Key & Son, Inc.*, 672 F. Supp. 656, 658 (D.R.I. 1987).

Importantly though, in addition to the reasons for staying a case raised by the Board, each of the cited cases also mention an additional ground why a stay of a civil case would be appropriate in light of a parallel criminal case. In particular, these courts noted that "since the self-incrimination privilege would effectively block any attempts to discover from the defendant, he would retain the opportunity to surprise the prosecution whereas the state would be unable to obtain additional facts. This procedural advantage over the prosecution is thought to be undesirable in light of the defendant's existing advantages." *Founding Church of Scientology*, 77 F.R.D. at 381. See also *Nakash*, 708 F. Supp. at 1366; *Hugo Key & Son*, 672 F. Supp. at 658. The fifth amendment right against self-incrimination, coupled with the prosecution's burden of proving guilt beyond a reasonable doubt, tilts the balance of criminal discovery in favor of defendants. The limited scope of discovery represents an attempt to balance against

these advantages. The seminal case on staying parallel civil proceedings, *Campbell v. Eastland*, cited this concern while explaining the traditional justifications for the narrower scope of discovery in criminal litigation. 307 F.2d 478, 487 (5th Cir. 1962). If this enforcement proceeding is not stayed, Mr. Siemaszko's ability to obtain discovery in this proceeding while potentially asserting the self-incrimination privilege at the same time could irrevocably alter the careful balance of discovery in his ongoing criminal case.

At oral argument on a previous stay request, a question arose regarding how civil discovery could jeopardize the prosecution in light of the government's obligations under *Brady*,⁴ *Giglio*,⁵ the Jencks Act,⁶ and Rule 16 of the Federal Rules of Criminal Procedure. The staff certainly expects that the criminal prosecutors will abide by their duties to provide any exculpatory evidence under *Brady* and any impeachment evidence under *Giglio*, as well as their duties under Rule 16 and the Jencks Act. There remains, however, an important distinction between these obligations and the scope of discovery under 10 C.F.R § 2.336(b).

The scope of discovery in a civil proceeding, such as the instant matter, vastly exceeds the scope of discovery in the criminal case. Pursuant to 10 CFR § 2.705-2.708, a litigant in an NRC enforcement proceeding is entitled to a full range of discovery methods including interrogatories, document requests, and depositions. The parties in the instant case anticipate utilizing these discovery methods. See Scheduling Order Setting a 120 Day Discovery Schedule, August 11, 2005. Interrogatories are not allowed in criminal cases. See Rule 16, Fed. R. Crim. P. Further, depositions in criminal proceedings are not taken as a matter of right, as in civil cases. A party wishing to depose a witness in a criminal case must move for a court

⁴ *Brady v. Maryland*, 373 U.S. 83, 86-88 (1963).

⁵ *Giglio v. United States*, 405 U.S. 150, 153-55 (1972).

⁶ 18 U.S.C. § 3500.

order that a deposition be taken in order to preserve testimony for trial. See Rule 15, Fed. R. Crim. P. Administrative policy gives priority to the public interest in law enforcement and a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims. See *Campbell*, 307 F.2d at 487; *Hugo Key and Son*, 672 F. Supp. at 658; *Benevolence Intern. Foundation v. Ashcroft*, 200 F.Supp. 2d 935 (N.D. Ill. 2002).⁷

Many courts, even when unwilling to grant a stay during the grand jury investigation, have found a stay necessary following indictment. *Trs. of Plumbers and Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct”). See also *In re Par Pharmaceutical, Inc.*, 133 F.R.D. 12, 13 (S.D.N.Y. 1990) (“The weight of the authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment”).

An analogous situation arises when civil enforcement actions are brought by the Securities and Exchange Commission and DOJ initiates parallel criminal proceedings. Those cases are often stayed to prevent discovery in the civil case from being used to circumvent the more limited scope of discovery in parallel criminal proceedings once an indictment has issued. See *Securities and Exchange Comm'n v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375-76, (D.C. Cir. 1980). (“[T]he strongest case for deferring civil proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter”). *Dresser* acknowledged that sometimes the interests of justice require a stay at the request of the prosecution because the noncriminal proceeding, if not deferred, might

⁷ The government's discovery obligations in the criminal case are expected to be completed by the end of March. See Ballantine Affidavit. This will include much of the same document and record discovery to which Mr. Siemaszko is entitled in this enforcement proceeding. Any prejudice to Mr. Siemaszko from delaying discovery in this proceeding is mostly limited to the delay of his ability to serve interrogatories and take depositions.

expand rights of criminal discovery. *Id.* See also *Maloney v. Gordon*, 328 F. Supp. 2d 508 (D.Del. 2004); *Securities and Exchange Comm'n v. Mutuals.com*, (unreported decision N.D.Tx. 2004) 2004 U.S. Dist. Lexis 13718.

Counsel for Mr. Siemaszko has previously argued that a stay of this case is not justified because the issues involved in this proceeding and those in the criminal proceeding are distinguishable. While Mr. Siemaszko was not specifically indicted for his actions during the twelfth refueling outage ("12RFO"), the time period of concern for this enforcement order, the indictment intertwines many of the essentially same issues of fact. For instance, Count 2 of the indictment cites an October 17, 2001 letter from FENOC to the NRC ("Serial 2735"), signed by Mr. Siemaszko, which stated

'[t]he inspections performed during the 10th, 11th, and 12th Refueling Outage . . . consisted of a whole head visual inspection of the RPV head in accordance with the DBNPS Boric Acid Corrosion Control Program,' whereas, as the defendants then well knew, areas covered by boric acid had not been inspected, nor had other required steps in the Boric Acid Corrosion Control Program been taken.

United States v. David Geisen, et al.

Counts 3 and 4 of the indictment similarly reference Mr. Siemaszko's knowledge of the cleaning and inspection of the reactor pressure vessel head during 12RFO. *Id.* While the indictment and the NRC enforcement order do not involve identical issues, there is substantial overlap, as both involve Mr. Siemaszko's knowledge of the condition of the reactor pressure vessel head during 12 RFO, and allege Mr. Siemaszko misrepresented both this condition and the extent of his efforts to clean the head. Any documents or statements relevant to this enforcement proceeding would likely also be relevant to establishing Mr. Siemaszko's state of mind for the purpose of the criminal proceeding.

In promulgating its rules on challenges to orders, the Commission explicitly included a provision allowing the presiding officer to stay a hearing for good cause. See Revisions to Procedures to Issue Orders: Challenges to Orders That Are Made Immediately Effective,

57 Fed. Reg. 20194, 20197 (May 12, 1992). The Commission specifically noted that the pendency of a criminal investigation was an example of good cause for staying an administrative hearing.⁸ *Id.*

2. Length of Stay

The Staff must request the Board hold this proceeding in abeyance rather than proposing a stay of any set duration because it is unable to provide the Board with a firm date by which the criminal proceedings involving Mr. Siemaszko will be finished. This stay would need to last until the earliest of (1) the completion of Mr. Siemaszko's criminal trial, (2) a guilty plea or other agreement between Mr. Siemaszko and DOJ, or (3) advice from DOJ that a stay is no longer necessary in the public interest. Although no trial date has been set, the court has set a motions date of March 24, 2006. See Ballantine Affidavit. The actual trial date is obviously subject to influences beyond the Staff's control, but Mr. Siemaszko's Sixth Amendment right to a speedy trial and the protections of the Speedy Trial Act help to minimize the length of time this proceeding would need to be held in abeyance. 18 U.S.C. § 3161.

The length of time between the issuance of the enforcement order and the beginning of the proceeding is reasonable in light of the overriding public interest in protecting the scope of criminal discovery and, as discussed below, the lack of an immediately effective order in this case. See *United States v. U.S. Currency in the Amount of \$228,536.00*, 895 F.2d 908, 917 (2nd Cir. 1990) (forfeiture action commenced after stay of almost four years).

3. Mr. Siemaszko's Assertion of His Right to a Hearing

The third factor in the *Oncology* balancing test is Mr. Siemaszko's assertion of the right

⁸ Moreover, the Staff's request to stay the instant proceeding is consistent with the Memorandum of Understanding between the NRC and the Department of Justice, which reflects that the Staff will seek a stay of discovery and hearing rights during the regulatory proceeding to accommodate the needs of a criminal investigation or prosecution. See MOU Between the NRC and DOJ, 53 Fed. Reg. 50317, 50319 (Dec. 14, 1988).

to a hearing. The Staff does not dispute that Mr. Siemaszko has requested a prompt hearing, therefore this factor weighs against the grant of any further stay. However, this factor should be examined in conjunction with two factors its is meant to protect, the possible prejudicial effect of the stay to Mr. Siemaszko, and the risk of erroneous deprivation. Further, as the Board noted, this factor is “in the nature of required compliance with procedural requirements” and should “not weigh heavily on the scales in this case.” September 29 Order at 5.

4. Prejudice to Mr. Siemaszko

The fourth factor, the potential for prejudice to Mr. Siemaszko, weighs in favor of the Staff’s stay request. Mr. Siemaszko is not prejudiced by a stay in the proceeding. In past decisions, the Board has indicated that the Order left Mr. Siemaszko *de facto* unemployable. This inference prompted the Board to consider the Order the functional equivalent of an immediately effective order. July 22 Order at 3. But even assuming, *arguendo*, that the order against Mr. Siemaszko made him *de facto* unemployable, the effect of Mr. Siemaszko’s indictment on his employment prospects certainly outweighs that of the NRC’s order. The Board itself previously recognized this, noting: “the adverse impact of the indictment on the petitioner’s ability to obtain employment in the nuclear industry may wholly eclipse the adverse impact of the enforcement order on his ability to obtain such employment. If so, the strength of petitioner’s objection to further delays would be substantially weakened.” September 29 Order at 4 n.6.⁹

5. Risk of Erroneous Deprivation

The final *Oncology* factor for the Board to consider is the risk of erroneous deprivation.

⁹ For example, as a condition of his release from custody, Mr. Siemaszko is not currently permitted to travel anywhere other than the Northern District of Ohio, the Southern District of Texas, the Middle District of Florida, and Louisiana. These travel restrictions further impact his employment prospects. See Attachment C, Order Setting Conditions of Release, January 27, 2006.

This factor weighs heavily in favor of the Staff. Since the Order was not immediately effective, Mr. Siemaszko has not yet been legally deprived of anything. Mr. Siemaszko has not yet suffered a change in legal status or any other legally cognizable harm as a result of the Order. As discussed above, any speculative effect of the Order in this regard is eclipsed by the impact of his recent indictment. Therefore, this factor weighs in favor of the Staff's request to hold the proceeding in abeyance.

CONCLUSION

On balance, the factors establish that good cause exists to hold the proceeding in abeyance. There is an overriding public interest, the pending criminal trial of Mr. Siemaszko, which justifies the length of time, and there is no risk of erroneous deprivation because the order is not immediately effective. Therefore, the Staff's motion should be granted.

Respectfully submitted,

/RA/

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 1st day of February, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) IA-05-021
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ANDREW SIEMASZKO) ASLBP No. 05-839-02-EA
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION TO HOLD THE PROCEEDING IN ABEYANCE" in the above captioned proceeding have been served on the following persons by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 1st day of February, 2006.

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/RA/

Steven C. Hamrick
Counsel for NRC Staff

Attachment A

2006 JAN 19 PM 4:21
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID GEISEN,
RODNEY COOK, and
ANDREW SIEMASZKO,

Defendants.

INDICTMENT

3:06CR712
CASE NO.

JUDGE

JUDGE KATZ

Title 18, Sections 1001 and 2, United
States Code

The Grand Jury charges:

Introduction

At all times relevant to this Indictment:

1. The Davis-Besse Nuclear Power Station ("Davis-Besse") was a nuclear power plant, located in Oak Harbor, Ohio, in the Northern District of Ohio, operated by the FirstEnergy Nuclear Operating Company, Inc. ("FENOC"), an Ohio Corporation. FENOC held a license to operate Davis-Besse, issued by the Nuclear Regulatory Commission ("NRC").

2. The defendant, DAVID GEISEN, was employed by FENOC as an engineering manager.

3. The defendant, ANDREW SIEMASZKO, was employed by FENOC as a Systems Engineer with responsibility for the reactor coolant system at Davis-Besse.

4. The defendant, RODNEY COOK, was a contractor-consultant employed by FENOC over several years, in part to assist with regulatory compliance matters at Davis-Besse.

5. When operating, Davis-Besse generated energy by using a nuclear chain reaction to heat a solution of water and boric acid, called "reactor coolant," to approximately 600 degrees Fahrenheit. The reactor coolant was contained in a "reactor pressure vessel" and maintained at approximately 2,000 pounds per square inch of pressure. Heat from the reactor coolant was used to make steam to drive turbines that turned electric generators.

6. Davis-Besse's normal operating cycle included outages at approximately two-year intervals, during which the lid to the reactor vessel, called the "reactor vessel head," was removed to allow the removal of spent nuclear fuel rods and the insertion of new fuel rods. The reactor vessel head was removed from the vessel during the 10th refueling outage ("RFO") in 1996, the 11th RFO in 1998, the 12th RFO in 2000, and the 13th RFO in 2002.

7. Operators used control rods to regulate the plant's energy output. When lowered into the reactor core, the control rods absorbed neutrons that would have otherwise sustained the nuclear chain reaction. Control rod drive mechanisms ("CRDM" or "CRDMs") were used to raise and lower the control rods within the reactor core through nozzles that penetrated and were welded to the reactor vessel head. There were sixty-nine nozzles in total, but only sixty-one nozzles had CRDMs attached to them.

8. On August 3, 2001, the NRC issued Bulletin 2001-01, which addressed a problem with CRDM nozzles that could lead to unsafe conditions at pressurized water reactors, like Davis-Besse. The Bulletin explained that the kind of weld used to attach CRDM nozzles to the

reactor vessel head could cause nozzles to crack. It also explained that this problem had been seen in France in the early 1990's and had been found in the United States in December 2000. In 2001, other plants in the United States also discovered cracked CRDM nozzles.

9. Although the NRC and the nuclear industry had considered the impact of nozzle cracks in the early 1990's, the Bulletin noted that recent discoveries had changed the NRC's understanding of the problem for two reasons. First, dangerous circumferential cracks had shown up earlier than expected. Second, the cracks caused only small deposits of boric acid residue on the reactor vessel head, contrary to previous NRC guidance that had suggested that leaking nozzles would produce substantial amounts of boric acid residue. The deposits were left behind when water evaporated from reactor coolant that had leaked onto the head. Small boric acid deposits came to be known as "popcorn" deposits, because of their size and shape. In light of this new information, the NRC Bulletin questioned whether the visual examinations then in use were adequate to detect nozzle cracking.

10. The Bulletin explained NRC expectations regarding future nozzle inspections and required plants to answer questions to help the NRC determine the extent of the nozzle crack problem at reactors in the United States. All facilities holding licenses to operate pressurized water reactors were required to report their nozzle inspection history and plans for future inspections. Facilities deemed to have the highest risk of nozzle cracking—including Davis-Besse—were required to provide detailed information about recent inspections of their reactor vessel heads and a description of anything that impeded those inspections. The highest-risk facilities were also required to report whether they intended to inspect their reactor vessel heads prior to December 31, 2001, and, if not, to provide information demonstrating that continued operation beyond that date would not violate regulatory requirements.

11. The defendants, DAVID GEISEN, ANDREW SIEMASZKO, and RODNEY COOK, together with others known to the grand jury, prepared responses to the Bulletin which were submitted to the NRC on the dates listed below. These responses were part of a scheme to persuade the NRC to agree that Davis-Besse could operate safely after December 31, 2001. The scheme involved making false and misleading statements and concealing material information about both the quality of past reactor vessel head inspections and the condition of the reactor vessel head. Before they were submitted, the responses were forwarded for review and approval to the defendants listed below, among others, and each signed an "NRC Letters Review and Approval Report" (also called a "greensheet") that indicated that he had received and approved the submission:

Date	Title	Signed By
September 4, 2001	Serial Letter 2731, Response to NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Head Penetration Nozzles" ("Serial Letter 2731")	DAVID GEISEN RODNEY COOK
October 17, 2001	Serial Letter 2735, Supplemental Information in Response to NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Head Penetration Nozzles" ("Serial Letter 2735")	DAVID GEISEN ANDREW SIEMASZKO RODNEY COOK
October 30, 2001	Serial Letter 2741, Responses to Requests for Additional Information Concerning NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles" ("Serial Letter 2741")	DAVID GEISEN RODNEY COOK
October 30, 2001	Serial Letter 2744, Submittal of Results of Reactor Pressure Vessel Head Control Rod Drive Mechanism Nozzle Penetration Visual Examinations for the Davis-Besse Nuclear Power Station ("Serial Letter 2744")	DAVID GEISEN RODNEY COOK

Date	Title	Signed By
November 1, 2001	Serial Letter 2745, Transmittal of Davis-Besse Nuclear Power Station Risk Assessment of Control Rod Drive Mechanism Nozzle Cracks ("Serial Letter 2745")	DAVID GEISEN RODNEY COOK

12. Based on the information contained in the Serial Letters, the NRC agreed to FENOC's proposal that it be allowed to operate Davis-Besse beyond December 31, 2001. On December 4, 2001, the NRC sent FENOC a letter agreeing to Davis-Besse's continued operation until February 16, 2002.

13. On February 16, 2002, Davis-Besse shut down for refueling and inspection. On March 8, 2002, the reactor vessel head was discovered to have significant degradation, in the form of a corrosion hole. Subsequent investigation revealed that a crack in nozzle three, at the top of the reactor pressure vessel head, had allowed boric acid to leak onto the head, where it attacked the carbon steel head, causing a six-inch deep corrosion cavity.

14. NRC regulations required its licensees to ensure that information provided to the NRC be complete and accurate in all material respects. Title 10, Code of Federal Regulations, §50.9.

15. These introductory allegations are hereby re-alleged and incorporated by reference in Counts 1 through 5 of this Indictment.

COUNT 1

The Grand Jury charges:

1. From on or about September 4, 2001, through on or about February 16, 2002, in Oak Harbor, Ohio, in the Northern District of Ohio and elsewhere, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, did knowingly and willfully conceal and cover up, and cause to be concealed and covered up, by tricks, schemes and devices, material facts in a matter within the jurisdiction of the executive branch of the government of the United States, to wit, the condition of Davis-Besse's reactor vessel head, and the nature and findings of previous inspections of the reactor vessel head.

Manner and Means of Scheme

The defendants employed the following tricks, schemes and devices:

2. On or about September 4, 2001, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, caused Serial Letter 2731 to be forwarded to the NRC. The defendant, ANDREW SIEMASZKO, drafted portions of the Serial Letter, which were reviewed and approved by the defendants, DAVID GEISEN and RODNEY COOK. In Serial Letter 2731, the defendants described reactor vessel nozzle and head inspections, and limitations to accessibility of the bare metal of the reactor vessel head for visual examinations. In so doing, they deliberately omitted critical facts concerning the inspections and limitations on accessibility. In addition, they also falsely stated that the inspections complied with the requirements of Davis-Besse's "Boric Acid Corrosion Control Program."

3. On or about October 3, 2001, the defendants, DAVID GEISEN and RODNEY COOK, and other FENOC employees, held a telephone conference with NRC staff employees to discuss concerns of the staff regarding inspections described in Serial Letter 2731, which were

conducted during the 11th RFO (in 1998) and the 12th RFO (in 2000). During this telephone conference, the defendant, DAVID GEISEN, falsely stated that in 2000 FENOC had conducted a "100% inspection" of the reactor vessel head with the exception of some areas [five or six nozzles] where inspection was precluded because of "flange leakage." In fact, at least twenty-four nozzles were blocked from view because of boric acid.

4. On or about October 11, 2001, in Rockville, Maryland, the defendant, DAVID GEISEN, and others met with Technical Assistants of NRC Commissioners and falsely represented as a "fact" that "[a]ll CRDM penetrations were verified to be free from 'popcorn' type deposits using video recordings from 11RFO or 12RFO."

5. On or about October 16, 2001, the defendant, RODNEY COOK, sought information from Davis-Besse personnel about whether it was true that visual inspections of some nozzles had been done during 11 RFO and 12 RFO, but had not been recorded on videotape. In 11 RFO the entire inspection was recorded on videotape and there were no unrecorded visual inspections. On or about October 17, 2001, the defendants, RODNEY COOK and ANDREW SIEMASZKO, approved Serial Letter 2735 with an attached table that falsely stated that there were 10 nozzles that had satisfactory visual inspections during 11 RFO, such that no video record was required of the nozzles.

6. On or about October 17, 2001, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, caused Serial Letter 2735 to be forwarded to the NRC. This submission conceded that portions of the reactor vessel head were obscured by boric acid in inspections during the 11th RFO (in 1998) and 12th RFO (in 2000) but falsely represented that in the inspection during the 10th RFO (in 1996) the entire reactor pressure vessel head was inspected. The submission attached a table prepared by the defendant, ANDREW SIEMASZKO,

that falsely stated that the entire reactor pressure vessel head was inspected during the 10th RFO and that the video recording of that inspection was void of head orientation narration.

7. On or about October 24, 2001, in Rockville, Maryland, the defendant, DAVID GEISEN, and other FENOC employees met with NRC staff employees and represented that "all but 4 nozzle penetrations were inspected in 1996," and "[a]ll CRDM penetrations were verified to be free from 'popcorn' type boron deposits using video recordings from 10 RFO, 11RFO or 12RFO," and "[a] review of visual recordings as well as eye-witness accounts served as the means of the inspection."

8. Between on or about October 22, 2001, and October 30, 2001, the defendant, RODNEY COOK, deleted sections of Serial Letter 2741 that he was drafting, which truthfully stated that areas of the reactor pressure vessel head would not be viewable in the upcoming 13 RFO because of "pre-existing boric acid crystal deposits."

9. On or about October 30, 2001, the defendants, DAVID GEISEN and RODNEY COOK, caused Serial Letter 2741 to be forwarded to the NRC. The submission repeated and expanded on representations made in Serial Letters 2731 and 2735, including the representations that inspections were made in accordance with Davis-Besse's Boric Acid Corrosion Control Program, and included representations contained in a table prepared by the defendant, ANDREW SIEMASZKO, that the entire reactor vessel head was inspected during the 10th RFO and that the video of that inspection was void of head orientation narration. Serial Letter 2741 also stated that "[f]ollowing 12RFO, the [reactor pressure vessel] head was cleaned with demineralized water to the extent possible to provide a clean head for evaluating future inspection results."

10. On or about October 30, 2001, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, caused Serial Letter Number 2744 to be forwarded to the NRC. This submission included photographs taken from the videotapes of the inspections of the reactor vessel head, indicating that the photographs were "representative" of the condition of the reactor vessel head, but which omitted portions of the videos showing substantial deposits of boric acid.

11. On or about November 1, 2001, the defendants, DAVID GEISEN and RODNEY COOK, caused Serial Letter 2745 to be forwarded to the NRC. This submission, entitled "Davis-Besse Nuclear Power Station Risk Assessment of Control Rod Drive Mechanism Nozzle Cracks," expressly relied on false representations about the 1996 head inspection that were previously made in Serial Letters 2735 and 2741. The "risk assessment" contained in this submission used statistical techniques to convince the NRC that allowing Davis-Besse to operate until the Spring of 2002 would pose little risk of damage to the reactor core. The risk assessment was based, in part, on the stated, false assumption that "100% of the CRDM nozzles were inspected with the exception of four nozzles in the center of the head."

12. On or about November 14, 2001, in Rockville, Maryland, the defendants, DAVID GEISEN and ANDREW SIEMASZKO, and other FENOC employees met with NRC staff employees at NRC headquarters to discuss prior head inspections, among other things.

13. On or about November 28, 2001, in Rockville, Maryland, the defendant, DAVID GEISEN, and other FENOC employees made a presentation to the NRC staff to propose a February 16, 2002, shutdown date, and provided statistical information expressly relying on false representations previously made in Serial Letters 2735 and 2741 to argue that the risk of damage to the reactor core was low.

14. On or about November 29, 2001, the defendant, DAVID GEISEN, made a presentation to the FENOC Company Nuclear Review Board ("CNRB"), and falsely represented that a qualified visual inspection was performed in 1996 and that all but four CRDM nozzle penetrations were inspected.

All in violation of Title 18 United States Code, Sections 1001 and 2.

COUNT 2

The Grand Jury further charges:

On or before October 17, 2001, in Oak Harbor, Ohio, in the Northern District of Ohio, and elsewhere, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, did knowingly and willfully make, use, and cause others to make and use a false writing, that is, a letter to the Nuclear Regulatory Commission identified as Serial Letter 2735, knowing that it contained the following material statements, which were fraudulent in the manners described below, in a matter within the jurisdiction of the executive branch of the government of the United States:

- A. "[d]uring 10RFO, 65 of 69 nozzles were viewed," whereas, as the defendants then well knew, significantly fewer than 65 nozzles were viewed;
- B. "[i]n 1996, during 10 RFO, the entire RPV head was inspected," whereas, as the defendants then well knew, the entire head had not been inspected during the 10th refueling outage;
- C. "[s]ince the [10th refueling outage inspection] video was void of head orientation narration, each specific nozzle view could not be correlated," whereas, as the defendants then well knew, the 10th refueling outage inspection video included head orientation narration;

- D. “[t]he inspections performed during the 10th, 11th, and 12th Refueling Outage . . . consisted of a whole head visual inspection of the RPV head in accordance with the DBNPS Boric Acid Control Program,” whereas, as the defendants then well knew, areas covered by boric acid had not been inspected, nor had other required steps in the Boric Acid Corrosion Control Program been taken; and
- E. “[f]ollowing 12RFO, the RPV head was cleaned with demineralized water to the extent possible to provide a clean head for evaluating future inspection results,” whereas, as the defendants then well knew, a substantial layer of boric acid remained, which would impede future inspections.

All in violation of Title 18 United States Code, Sections 1001 and 2.

COUNT 3

The Grand Jury further charges:

On or before October 30, 2001, in the Northern District of Ohio, the defendants, ANDREW SIEMASZKO, DAVID GEISEN, and RODNEY COOK, did knowingly and willfully make, use, and cause others to make and use a false writing, that is, a letter to the Nuclear Regulatory Commission identified as Serial Letter 2741, knowing that it contained the following material statements, which were fraudulent in the manners described below, in a matter within the jurisdiction of the executive branch of the government of the United States:

- A. “[d]uring 10RFO, 65 of 69 nozzles were viewed,” whereas, as the defendants then well knew, significantly fewer than 65 nozzles were viewed.
- B. “[i]n 1996 during 10 RFO, the entire RPV head was inspected,” whereas, as the defendants then well knew, the entire reactor vessel head had not been inspected during the 10th refueling outage;

- C. “[s]ince the [10th refueling outage inspection] video was void of head orientation narration, each specific nozzle view could not be correlated,” whereas, as the defendants then well knew, the 10th refueling outage inspection video included the head orientation narration;
- D. “[t]he inspections performed during the 10th, 11th, and 12th Refueling Outage . . . consisted of a whole head visual inspection of the RPV head in accordance with the DBNPS Boric Acid Control Program,” whereas, as the defendants then well knew, areas covered by boric acid had not been inspected, nor had other required steps in the Boric Acid Corrosion Control Program been taken; and
- E. “[f]ollowing 12RFO, the RPV head was cleaned with demineralized water to the extent possible to provide a clean head for evaluating future inspection results,” whereas, as the defendants then well knew, a substantial layer of boric acid remained, which would impede future inspections.

All in violation of Title 18 United States Code, Sections 1001 and 2.

COUNT 4

The Grand Jury further charges:

On or before October 30, 2001, in the Northern District of Ohio, the defendants, ANDREW SIEMASZKO and DAVID GEISEN, did knowingly and willfully make, use, and cause others to make and use a false writing, that is, a letter to the Nuclear Regulatory Commission identified as Serial Letter 2744, knowing that it contained the following material statements, which were fraudulent in the manners described below, in a matter within the jurisdiction of the executive branch of the government of the United States:

- A. “[i]n 1996 during 10 RFO, 100% of nozzles were inspected by visual examination,” whereas, as the defendants then well knew, significantly fewer than 100 percent of the nozzles were inspected during the 10th refueling outage;
- B. “[s]ince the [10th refueling outage inspection] video was void of head orientation narration, each specific nozzle view could not be correlated by nozzle number,” whereas, as the defendants then well knew, the 10th refueling outage inspection video included head orientation narration;
- C. “[t]he following pictures are representative of the head in the Spring 1996 Outage. The head was relatively clean and afforded a generally good inspection,” whereas, as the defendants then well knew, the pictures were not representative, the head was not relatively clean in 1996, and a good inspection was not completed;
- D. “[b]ecause of its location on the head, [a pile of boric acid] could not be removed by mechanical cleaning but was verified to not be active or wet and therefore did not pose a threat to the head from a corrosion standpoint,” whereas, as the defendants then well knew, no action had been taken in 1996 to verify whether the boric acid was active or wet and, thus, not a corrosion threat;
- E. “these attached pictures are representative of the condition of the drives and the heads” during the inspection during the 11th refueling outage, whereas, as the defendants then well knew, the referenced pictures were not representative of that inspection; and
- F. “[t]he photo for No. 19 depicts in the background the extent of boron buildup on the head and is the reason no credit is taken for being able to visually inspect the remainder of the drives,” whereas, as the defendants then well knew, other images

from the 2000 inspection showed that the extent of boron buildup on the head was much greater than what was depicted in the photo of nozzle number 19.

All in violation of Title 18 United States Code, Sections 1001 and 2.

COUNT 5

The Grand Jury further charges:

On or before November 1, 2001, in the Northern District of Ohio, the defendants, RODNEY COOK, ANDREW SIEMASZKO, and DAVID GEISEN, did knowingly and willfully cause others to make and use a false writing, that is, a letter to the Nuclear Regulatory Commission identified as Serial Letter 2745, that contained the following material statements, which were fraudulent in the manners described below, in a matter within the jurisdiction of the executive branch of the government of the United States:

“[d]uring 10RFO, in spring of 1996, the entire head was visible so 100% of the CRDM nozzles were inspected with the exception of four nozzles in the center of the head,” whereas, as defendants then well knew, many more than the center four nozzles were not inspected.

All in violation of Title 18 United States Code, Sections 1001 and 2.

United States v. David Geisen, et al.

A TRUE BILL.

FOREPERSON

GREGORY A. WHITE
UNITED STATES ATTORNEY

February 1, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ANDREW SIEMASZKO) IA-05-021
)
)

AFFIDAVIT OF THOMAS T. BALLANTINE, TRIAL ATTORNEY

1. I am employed by the United States Department of Justice and have served as a Trial Attorney in the Environmental Crimes Section of the Environment and Natural Resources Division since October of 2000. Among my assignments, I am part of a trial team prosecuting employees and a contractor of the FirstEnergy Nuclear Operating Company (FENOC) for concealing material information and presenting false documents to the Nuclear Regulatory Commission (NRC). I submit this affidavit in support of the application of the staff of the NRC to extend a stay of the above captioned proceeding. I have submitted four previous affidavits to this Board regarding this matter, dated May 17, August 18, September 8, and December 6, 2005. Further background concerning this investigation is contained in those affidavits.

2. On January 19, 2006, a federal grand jury in the Northern District of Ohio returned an Indictment in United States v. David Geisen et al. Andrew Siemaszko is named as a defendant in all five counts of that Indictment. The Indictment alleges that Mr. Siemaszko and others concealed material information from the NRC and provided the NRC with false documents in response to NRC's Bulletin 2001-01. That Bulletin sought information regarding past inspections of control rod drive mechanism nozzles at FENOC's Davis-Besse Nuclear Power Station and other pressurized water reactors. Reactor vessel head inspections and

February 1, 2006

cleaning efforts at Davis-Besse during its twelfth refueling outage are germane to the prosecution against Mr. Siemaszko and his co-defendants, as alleged in the Indictment. I understand that those inspection and cleaning activities also form the basis for the above-captioned proceeding.

3. On January 27, 2006, Mr. Siemaszko was arraigned. The magistrate judge set a motions date of March 24, 2006. No trial date has been set. "Open-file" discovery has begun and the government expects it will be able to complete the bulk of its discovery obligations in advance of the motions date. These will include the obligation to provide: general discovery under Rule 16 of the Federal Rules of Criminal Procedure, exculpatory Brady material (if any), and witness statements under the Jencks Act.

4. In my September 8, 2005, affidavit I was guided by Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962), in providing facts militating against permitting civil discovery while a grand jury investigation was pending. Benevolence Intern. Foundation v. Ashcroft, 200 F.Supp. 2d 935 (N.D. Ill. 2002), considered Campbell in a case where an indictment had been filed. The Benevolence decision concluded that the civil matter in that case should be stayed in its entirety while the criminal case went forward. Guided by the factors addressed in the Benevolence decision, I present the following facts in support of a similar stay here.

5. The Benevolence court looked to whether civil discovery would allow a criminal defendant to circumvent the "restrictive rules of criminal discovery." Id. at 940. The rules of criminal procedure have carefully balanced the rights and obligations of the parties to a criminal case, in the shadow of the government's ultimate obligation to prove its case beyond a reasonable doubt. I understand that Mr. Siemaszko may issue interrogatories and depose witnesses prior to his hearing before this Board. Neither of these discovery tools are contemplated by the Federal Rules of Criminal Procedure (except for Rule 15 depositions in extraordinary circumstances) or by the other discovery obligations set out in paragraph 3. The use of interrogatories and depositions would allow a Mr. Siemaszko to make an end run around

February 1, 2006

the well-established criminal discovery process that the United States has already begun.

6. The Benevolence court next looked to the convenience of the courts in the management of their cases, noting that a criminal proceeding could moot a related civil proceeding. Id. The Indictment charges that Mr. Siemaszko was involved with deliberate lying to the NRC, but does not charge the precise conduct associated with the above-captioned matter. I know of no other fact related to the convenience of the courts in this matter.

7. Finally, the Benevolence court considered that "administrative policy gives priority to the public interest in law enforcement." Id. at 941 (quoting Campbell). A grand jury voted to indict Mr. Siemaszko for intentionally lying to the NRC, demonstrating an unambiguous law enforcement interest.

8. For these reasons, the trial team believes that a further stay of this matter is warranted until the criminal trial is finished. I will inform the NRC staff immediately when a trial date is set.

9. Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Thomas T. Ballantine
Trial Attorney
Environmental Crimes Section
United States Department of Justice

Feb 1, 2006

Date

Attachment C

UNITED STATES DISTRICT COURT

Northern

District of

Ohio, Western Division

United States of America

v.

ORDER SETTING CONDITIONS OF RELEASE

Andrew Siemaszko
Defendant

Case Number: 3:06 CR 712-03

IT IS ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing before any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) _____

Place

on _____

Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- (✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of Ten Thousand dollars (\$ 10,000.⁰⁰) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

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Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community.

IT IS FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

() (6) The defendant is placed in the custody of:

(Name of person or organization) _____

(Address) _____

(City and state) _____

(Tel. No.) _____

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

Date

(/) (7) The defendant shall:

(/) (a) report to the Pretrial Services,
telephone number _____, not later than _____.

() (b) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property: _____

() (c) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described _____

() (d) execute a bail bond with solvent sureties in the amount of \$ _____.

() (e) maintain or actively seek employment.

() (f) maintain or commence an education program.

(/) (g) surrender any passport to: Clerk of Court no later than today

(/) (h) obtain no passport.

(/) (i) abide by the following restrictions on personal association, place of abode, or travel:

Travel restricted to Northern District of Ohio Southern District of Texas & middle District of Florida or as approved by Pretrial Services

() (j) avoid all contact, directly or indirectly, with any persons who are or who may become a victim or potential witness in the subject investigation or prosecution, including but not limited to: _____

() (k) undergo medical or psychiatric treatment and/or remain in an institution as follows: _____

() (l) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____

() (m) maintain residence at a halfway house or community corrections center, as deemed necessary by the pretrial services office or supervising officer.

(/) (n) refrain from possessing a firearm, destructive device, or other dangerous weapons.

(/) (o) ~~refrain from () any () excessive use of alcohol.~~

(/) (p) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

() (q) submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing.

() (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the pretrial services office or supervising officer.

() (s) refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or electronic monitoring which is (are) required as a condition(s) of release.

() (t) participate in one of the following home confinement program components and abide by all the requirements of the program which () will or () will not include electronic monitoring or other location verification system. You shall pay all or part of the cost of the program based upon your ability to pay as determined by the pretrial services office or supervising officer.

() (i) **Curfew.** You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or

() (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the pretrial services office or supervising officer; or

() (iii) **Home Incarceration.** You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the pretrial services office or supervising officer.

() (u) report as soon as possible, to the pretrial services office or supervising officer any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.

() (v)

() (w)

() (x)

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Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Andrew Simaschus

 Signature of Defendant

SPRING TX

 City and State

Directions to United States Marshal

- The defendant is ORDERED released after processing.
- The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judge at the time and place specified, if still in custody.

Date:

1/27/2006

Signature of Judge
Vernice K. Cumbly

 Name and Title of Judge

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

AO83 (Rev. 10/03) Summons in a Criminal Case

UNITED STATES DISTRICT COURT

Northern

DISTRICT OF

Ohio, Western Division

UNITED STATES OF AMERICA
V.

SUMMONS IN A CRIMINAL CASE

Andrew Siemaszko,

Case Number: 3:06CR712-03

(Name and Address of Defendant)

YOU ARE HEREBY SUMMONED to appear before the United States District Court at the place, date and time set forth below.

Place 1716 Spielbusch Avenue Toledo, Ohio 43624	Room 312
	Date and Time 1/27/2006 2:30 pm

Before: Magistrate Judge Vernelis K. Armstrong

To answer a(n)

- Indictment
- Information
- Complaint
- Probation Violation Petition
- Supervised Release Violation Petition
- Violation Notice

Charging you with a violation of Title 18 United States Code, Section(s) 1001 and 2

Brief description of offense:

Counts 1-5 False Statements

s/ Pamela A. Armstrong

Signature of Issuing Officer

1/24/2006

Date

Deputy Clerk

Name and Title of Issuing Officer