

RAS 11504

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

DOCKETED 04/06/06

SERVED 04/06/06

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-EA

ASLBP No. 05-839-02-EA

April 6, 2006

ORDER

(Directing The Filing Of A Status Report)

On March 2, 2006, this Board granted a Motion submitted by the NRC Staff¹ which sought to have this administrative enforcement proceeding held in abeyance pending the resolution of an ongoing criminal proceeding in the Northern District of Ohio in which Andrew Siemaszko, and two other individuals, are charged with willfully causing material facts to be concealed in a matter within the jurisdiction of the U.S. Nuclear Regulatory Commission (NRC).

In granting the stay, this Board directed the NRC Staff to file a status report on or before April 3, 2006, and thereafter at periodic intervals thereafter until this matter is resolved. More specifically, we directed that the initial report include the status of the criminal prosecution, including the trial date and the anticipated duration of the trial, and we further provided that Mr. Siemaszko could at any time – based on a showing of changed circumstances – move to terminate the stay and go forward with the administrative proceeding.

¹ NRC Staff Motion to Hold the Proceeding in Abeyance (Feb. 1, 2006).

The initial status report was filed by the NRC Staff on April 3, 2006. In that report the NRC Staff advised this Board that the Government and the Defense in the criminal proceeding had filed a Joint Motion on March 24, 2006, seeking additional time to complete discovery and for Mr. Siemaszko's new attorney to begin representation. That Motion specifically asked that the Court schedule a status conference for May 24, 2006, at which time counsel for the United States and the Defendants "would be in a better position to assess when their trial preparation would be complete."² The submission also indicated that the Magistrate neither granted nor denied the Joint Motion, but instead extended the filing deadline for Motions until May 24, 2006.

The Staff's Status Report did not, however, answer the questions posed in our Order of March 2, 2006, and did not provide any real insight into the likely schedule for the criminal proceeding. Accordingly, we direct that the Staff consult with the attorneys who are handling the criminal proceeding, and file a new Status Report on or before April 20, 2006. In that Status Report the NRC Staff will inform the Board of the following:

1) Given the variance between the content of the Joint Motion and the Order issued by the Magistrate Judge, is May 24, 2006, the date on which Motions are to be filed in the criminal proceeding or, alternatively, is May 24th merely the date of a status conference at which a Motions schedule will be set?

2) If May 24, 2006, is the date on which Motions are due, what is the briefing schedule for those Motions? Specifically, when will replies and responses be due and when will oral argument on those motions be held? If those dates have not yet been determined, when will they be determined?

3) If May 24, 2006, is merely the date of a status conference, has the agenda for that conference been determined? If so, provide the agenda and, if not, when will the agenda be

² Joint Motion, United States v. Geisen et al., ND Ohio, 3:06-CR-712-DAK (Mar. 28, 2006) at 1.

determined?

4) Has a trial date been determined and if not, when will it be set? If those dates are unknown at this time, provide government counsel's best estimate of (a) when a firm trial date will be set, (b) when government counsel believes that this case will be scheduled for trial, and (c) the estimated duration of the trial.

5) Is the Government aware of any other information that may shed light on the likely schedule for the criminal proceeding? If so, provide that additional information.

For each of the questions listed above, provide as part of the answer the source of the information on which the answer is based. For example, "The NRC Staff was told by AUSA W in a telephone conference on April Xth that he anticipates, based on the briefing schedule set for the motions, or based on a status conference on April Yth with Judge Z, that a trial date will be set in early September 2006, and that, given the Court's docket in the Northern District of Ohio, he believes that the case will be set down for trial in the summer of 2007, and should run three to four weeks." Future status reports should, at a minimum, include the information specified in numbered paragraphs 4 and 5 above.³

The length of the delay is one of the factors that must be weighed in determining the reasonableness of holding this proceeding in abeyance. The Board directed periodic status reports so that it can monitor the progress of the criminal case and thereby assess whether developing circumstances suggest that the stay should be continued or terminated.

³ We directed that future status reports be submitted at intervals not to exceed three months. This is not synonymous with filing an update every three months. Status reports are to be filed whenever an event occurs which materially affects the scheduling in the criminal proceeding.

Future status reports should focus on the purpose for which the report will be used.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

Lawrence G. McDade
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 6, 2006

⁴ Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to: (1) counsel for Mr. Siemaszko, (2) counsel for the NRC Staff, (3) David Lochbaum, Union of Concerned Scientists, and (4) Sandy Buchanan, Ohio Citizen Action.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ANDREW SIEMASZKO) Docket No. IA-05-021
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DIRECTING THE FILING OF A STATUS REPORT) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. IA-05-021
LB ORDER (DIRECTING THE FILING OF A
STATUS REPORT)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 6th day of April 2006