

April 6, 2006

Michael C. Farrar, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

E. Roy Hawkens
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Nicholas G. Trikouros
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
DAVID GEISEN
IA 05-052, ASLBP No. 06-845-01

Dear Administrative Judges:

Pursuant to the request of the Board, the Staff asked the DOJ whether an attorney on the criminal case could attend the oral argument scheduled for April 11, 2006. The DOJ attorney has asked that we advise the Board that he respectfully declines to appear for the following reasons. The affidavits filed by DOJ in support of the Staff's efforts to seek a stay are reviewed by the Professional Responsibility Officer of the Environmental Crimes Section to ensure there are no violations of ethics rules or DOJ policies. Both the Department's United States Attorney's Manual, which governs attorney conduct internally, and the Rules of Professional Conduct applicable to the pending criminal matters, specify the categories of information a prosecutor may properly disclose about a pending criminal case. (USAM 1-7.500 & 1-7.520, Ohio Disciplinary Rule 7-107). At oral argument, the Professional Responsibility Officer's review of the prosecutor's statements, which the Environmental Crimes Section believes to be necessary, would be impossible.

Both the NRC Staff and DOJ wish to provide the Board with all the information it needs to resolve the pending motion to hold the proceeding in abeyance. To the extent the Board has

Judge Farrar
Judge Trikouros
Judge Hawkens

-2-

April 6, 2006

additional questions for DOJ that have not been answered in previous filings, the Staff and DOJ are willing to supplement the previous motion if requested by the Board.

Sincerely,

/RA/

Michael A. Spencer
Sara E. Brock
Counsel for the NRC Staff

cc: Richard Hibey
Matthew Reinhard
Andrew Wise
OCAA
SECY
Adjudicatory File/ASLB