

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

June 28, 2006 (9:15am)

Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED June 28, 2006

In the Matter of

STEVEN P. MOFFITT

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

June 28, 2006

ORDER

(Governing Personal Privacy Materials)

In the discovery phase of this enforcement proceeding, some of the materials the NRC Staff is preparing to turn over involve matters of personal privacy that are to be protected from public disclosure. To that end, the parties jointly developed, and the Staff yesterday forwarded, a proposed Protective Order for recipients of such materials to sign, promising to guard against their disclosure. Given the parties' agreement on the form of such order, and finding that form suitable for the assigned purpose, we hereby APPROVE the proposed protective order (and the attached sample form of "Non-Disclosure Declaration") and append a copy thereof, signed by the Board's Chairman and dated this date, to this Order.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 28, 2006

Copies of this Order were sent this date by e-mail transmission to counsel for the parties.

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

Before Administrative Judges:
Michael Farrar
E. Roy Hawkens
Nicholas G. Trikouros

In the Matter of

STEVEN P. MOFFITT

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

mcf
~~PROPOSED~~ MEMORANDUM AND ORDER
(Protective Order Governing Personal Privacy Materials)

A. Upon consideration of the joint motion of the Staff of the Nuclear Regulatory Commission (Staff) and counsel for Mr. Steven P. Moffitt for approval of a proposed Protective Order to govern the use and dissemination of personal privacy materials in this proceeding, we grant the motion and adopt a Protective Order, the terms of which are as follows:

B. This Protective Order shall govern the use of all personal privacy materials produced by the Staff. Notwithstanding any order to terminate this proceeding, this Protective Order shall remain in effect until specifically modified by the Atomic Licensing and Safety Board or the Commission.

C. Definitions--For purposes of this Protective Order:

1. The term "party" shall mean Mr. Moffitt, his counsel, and other individuals assisting Mr. Moffitt in the challenge to the NRC enforcement order applicable to Mr. Moffitt. The term does not include the Staff. The terms of this Protective Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants. Disclosure of personal privacy material by the Staff, including staff counsel, is governed by 10 C.F.R. §§ 2.390, 2.709, 9.17, 9.25.

2. The term "materials" means any audio tape or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices, or any other medium, and includes without limitation, books, reports, transcripts, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

3. The term "personal privacy" means:

- a. documents produced by the NRC Staff that are clearly marked with indicators noting the personal privacy material and placed into separate envelopes;
- b. any information contained in or obtained from such designated personal privacy materials;
- c. any other materials that are made subject to this Protective Order by the Licensing Board, by the Commission, by any court or any other body having appropriate authority, or by agreement of the parties;
- d. notes of personal privacy material;
- e. copies of personal privacy material.

4. The term "notes of personal privacy material" means memoranda, handwritten notes, or any other form of information (including electronic form) that copies or discloses personal privacy materials described in paragraph C.3 above. Notes of personal privacy materials are subject to the same restrictions provided in this Protective Order for personal privacy materials except as specifically provided in this Protective Order.

5. The term "Non-Disclosure Declaration" shall mean the Declaration, as attached to this Protective Order, by which any person who has been granted access to personal privacy materials shall certify his or her understanding that such access to personal privacy materials is provided pursuant to the terms and restrictions of this Protective Order, and that such person has read the Protective Order and agrees to be bound by it. All Non-Disclosure Declarations shall be served on counsel for the Staff, as provided on the official service list for this proceeding.

6. The term "reviewing individuals" shall mean a person who has signed a Non-Disclosure Declaration and who is:

- a. Mr. Moffitt;
- b. counsel for Mr. Moffitt;
- c. assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt;
- d. a person designated as a reviewing representative by order of the Licensing Board or the Commission; or
- e. a court reporter engaged for depositions or record proceedings.

D. Personal privacy material shall be made available under the terms of this Protective Order only to Mr. Moffitt, counsel for Mr. Moffitt, and individuals assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt. The Staff shall produce personal privacy information separately from other information and shall clearly mark each page of personal privacy materials and place in separate envelopes.

E. Personal privacy material shall remain available to Mr. Moffitt, his counsel, and individuals assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding related to the

personal privacy material is concluded and no longer subject to judicial review. Mr. Moffitt, his counsel, and individuals assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt shall, within fifteen (15) days of the later date described above, return the produced materials to the NRC staff, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain personal privacy material, and notes of personal privacy material may be retained, if they are maintained in accordance with paragraph F below. Within such time period, Mr. Moffitt, his counsel, and individuals assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt shall submit to the Staff an affidavit stating that, to the best of their knowledge, all personal privacy materials and all notes of personal privacy materials have been returned or have been destroyed or will be maintained in accordance with paragraph F below. To the extent personal privacy materials are not destroyed, they shall remain subject to this Protective Order.

F. Mr. Moffitt, his counsel, and individuals assisting Mr. Moffitt in the challenge of the NRC enforcement order applicable to Mr. Moffitt shall maintain all personal privacy material in a secure place. Access to those materials shall be limited to those reviewing representatives specifically authorized pursuant to paragraphs G-J below.

G. Personal privacy materials shall be treated as confidential in accordance with the Declaration executed pursuant to paragraph I below. Personal privacy materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a reviewing representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing representatives may make copies of personal privacy materials, but such copies become personal privacy materials. Reviewing representatives may make notes of personal privacy materials, which shall be treated as notes of personal privacy materials if they disclose the contents of personal privacy materials.

H. If Mr. Moffitt or his counsel wish to designate as a reviewing representative a person not described in paragraph C.6 above, they shall seek the agreement of the Staff. If an agreement is reached, that person shall be a reviewing representative pursuant to paragraph C.6 above with respect to those materials. If no agreement is reached, the dispute shall be submitted to the Licensing Board for resolution.

I. A reviewing representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to personal privacy materials pursuant to this Protective Order unless that reviewing representative has first executed a Non-Disclosure Declaration. A copy of each executed Non-Disclosure Declaration shall be provided to the Staff prior to disclosure of any personal privacy material to that reviewing representative.

J. Attorneys qualified as reviewing representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

K. Any reviewing representative may disclose personal privacy materials to any other reviewing representative as long as the disclosing reviewing representative and the receiving representative have both executed the Non-Disclosure Declaration. If any reviewing representative to whom the personal privacy materials are disclosed ceases to be engaged in these proceedings, or employed or retained for a position whose occupant is not qualified to be a reviewing representative under paragraph C.6 above, access to personal privacy materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Declaration shall continue to be bound by the provisions of this Protective Order and the Declaration.

L. Subject to paragraph S below, the Licensing Board shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Licensing Board, counsel for the Staff and counsel for Mr. Moffitt shall use their best efforts to resolve the dispute.

M. All copies of documents reflecting personal privacy materials that are filed in this proceeding, including hearing testimony, the portion of exhibits, the portion of transcripts, the portion of pleadings, and the portion of documents that refer to personal privacy materials shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PERSONAL PRIVACY MATERIAL" and shall be served only on the Licensing Board, NRC's Office of the Secretary, and persons authorized to receive personal privacy materials under this Protective Order.

N. If Mr. Moffitt or his counsel desires to include, utilize, or refer to personal privacy information or information derived therefrom in a pleading, brief, testimony, exhibit, or other filing in this proceeding in such a manner that might require disclosure of such materials to persons other than the reviewing representatives, counsel for Mr. Moffitt shall notify the Staff and the Licensing Board of such a desire, identifying with particularity each of the personal privacy materials. Thereafter, such personal privacy materials will be governed by procedures determined by the Licensing Board.

O. Nothing in this Protective Order shall be construed as precluding objections to the use of personal privacy materials on any legal grounds.

P. Nothing in this Protective Order shall preclude a request that the Licensing Board, the Commission, or any other body having proper authority, find that this Protective Order should not apply to any or all materials previously designated as personal privacy materials pursuant to this Protective Order. The Licensing Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

Q. The parties to this Protective Order may seek changes in it as appropriate from the Licensing Board or the Commission.

R. Nothing in this Protective Order prevents a request for public disclosure of information designated as personal privacy, in accordance with NRC procedures.

S. If the Licensing Board finds at any time in the course of this proceeding that all or part of the personal privacy materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for ten (10) days from the date of issuance of the Licensing Board's decision, and if there is an interlocutory appeal or request that the issue be certified to the Commission, for an additional ten (10) days. The right to seek additional administrative or judicial remedies after the Licensing Board's decision respecting personal privacy materials or reviewing representatives, or the Commission's denial of any appeal is not waived.

T. Nothing in this Protective Order shall be deemed to preclude a party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

U. The right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of personal privacy material is not waived by this Protective Order.

V. Personal privacy materials or any other form of information that copies or discloses personal privacy materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Declaration executed hereunder shall constitute a violation of an order of the Commission. Any violation of this Protective Order may result in the imposition of sanctions as the Licensing Board or the Commission may deem appropriate, including, but not limited to, referral of the violation to appropriate bar associations

and other disciplinary authorities.

It is so ORDERED.

FOR ATOMIC SAFETY AND
LICENSING BOARD

June 28, 2006

Michael C. Lamm

Chairman

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

STEVEN P. MOFFITT)

) Docket No: IA-05-054

) ASLBP No. 06-847-03-EA

)
)
)
)
)
)

Non-Disclosure Declaration

Under penalty of perjury, I hereby certify my understanding that (1) access to personal privacy materials is provided to me pursuant to the terms and restrictions of the Atomic Licensing and Safety Board's June , 2006 Protective Order in this proceeding; (2) I have been given a copy of and have read the Protective Order; and (3) I agree to be bound by it. I understand that the contents of the personal privacy materials, any notes or other memoranda, or any other form of information that copies or discloses personal privacy materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this Declaration or the Protective Order, which incorporates the terms of this Declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Licensing Board or the Commission may deem appropriate, including, but not limited to, referral of the violation to the appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such personal privacy information as may be disclosed to me in this NRC proceeding, in accordance with the terms of this Declaration.

Name (printed): _____

Title: _____

Representing: _____

Signature: _____

Date: _____

