

RAS 12342

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

October 3, 2006 (1:35pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

**DAVID GEISEN'S OBJECTIONS AND RESPONSES TO NRC
STAFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

David Geisen ("Geisen"), by counsel, and pursuant to 10 C.F.R. § § 2.707, objects and, where applicable, responds to the First Request for Production of Documents dated September 1, 2006 served by NRC Staff in the above-captioned action ("First Request for Production of Documents"), as follows:

OBJECTIONS APPLICABLE TO EACH OF THE REQUESTS

1. Geisen objects to the Requests to the extent that the definitions or instructions set forth therein seek to impose requirements for production beyond those contained in the applicable rules governing the above-captioned action and the Board's orders.
2. Geisen objects to the Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest doctrine or any other applicable statutory or common law privilege. With respect to those Requests to which Geisen does not specifically object and which seek the identification or disclosure of privileged information or documents, Geisen will identify

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SECY-02

such information and documents in the manner and to the extent required under the applicable rules governing the above-captioned action and the Board's orders.

3. Geisen objects to the Requests to the extent that they seek information and documents which are not relevant to the claims and issues in this action and that they are not reasonably calculated to lead to the discovery of admissible evidence.

4. Geisen objects to the Requests to the extent that they are oppressive, overly burdensome and/or would involve undue financial expense to Geisen.

5. Geisen objects to the Requests to the extent that the information and documents requested are equally accessible and available to NRC Staff from other sources (including as a matter of public record) and that the production of such information by Geisen would entail unreasonable burden and expense to Geisen.

6. Geisen objects to the Requests to the extent they seek the identification or disclosure of information or documents that are not within Geisen's possession, custody or control.

7. Geisen objects to the Requests to the extent that they are vague or ambiguous or fail to describe the information or documents sought with sufficient particularity to allow for a meaningful response by Geisen.

8. Geisen objects to any of the Requests that prematurely seek disclosure of information or documents relating to Geisen's contentions, opinions or allegations. Moreover, because of any failure by NRC Staff to plead and identify its claims with the required specificity (see General Objection No. 7), or to comply in a timely and complete manner with its discovery and disclosure obligations in the above-captioned action, it is premature for NRC Staff to seek such information regarding Geisen's contentions, opinions and allegations.

9. Geisen objects to the date and location specified for the production as being unduly burdensome and unreasonable. Geisen reserves its right to produce any non-privileged, responsive documents at the offices of his counsel on a date that is reasonable and mutually convenient to all parties.

10. Geisen objects to the manner specified for the production as being unduly burdensome and unreasonable. Geisen reserves their right to produce any non-privileged, responsive documents according to the requirements of the applicable rules governing the above-captioned action and the Board's orders.

11. Geisen objects to the Requests to the extent that they lack any date or time period definition or restriction. Geisen will interpret and respond to the Requests as and to the extent they relate to any events and circumstances properly alleged in the January 4, 2006 Order issued by the NRC which is the subject of the above-captioned action.

INTRODUCTION

1. Any responses contained herein are based on certain non-privileged information or documents presently available to Geisen or his counsel, as well as non-privileged information or documents that are publicly available, including pleadings and motions in this case. The responses may not necessarily reflect information or documents that are currently within the possession, custody or control of other persons or entities. The investigation and/or discovery of this action is ongoing, and Geisen reserves the right to amend or supplement his responses in accordance with the applicable rules governing the above-captioned action and the Board's orders.

2. The exact wording of any responses contained herein may be that of Geisen's counsel and does not necessarily purport to be that of Geisen.

3. To the extent that any of the Requests seek the disclosure of information or documents protected from disclosure by any applicable privilege (including, but not limited to, the attorney-client privilege, the work product doctrine or the joint defense privilege), Geisen objects to such Requests and will identify the information or documents in the manner and to the extent required by the applicable rules governing the above-captioned action and the Board's orders.

4. To the extent that the NRC Staff have failed to specify its claims at all or to the degree necessary to determine a proper scope of request and to identify information responsive thereto (*see* General Objection Nos. 7 and 8), Geisen reserves the right to modify, amend or supplement his responses to these Requests accordingly.

5. To the extent that certain of the Requests would require responses relating to opinions or contentions that relate to fact or the application of law to fact, Geisen reserves his right to respond to those Requests after (or later in) the discovery period. *See* General Objection No. 8.

6. Geisen is prepared to discuss with the NRC Staff alternative reasonable arrangements for the production and inspection of any non-privileged, responsive documents referenced herein.

7. Any documents produced by Geisen in this action are being produced subject to the terms and conditions of any Protective Order entered in this case.

SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUEST 1:

Produce all documents that are relevant to any of the items below or that could possibly lead to information relevant to any of the items below. For each document indicate which item(s) the document is relevant to. Also, unless otherwise specified, items requesting

information on Mr. Geisen's knowledge of a fact(s) refers to knowledge he acquired at any time up to and including the time of the discovery of the Davis-Besse reactor vessel head degradation.

- a. The existence, extent, location, and/or color of boric acid left on the Reactor Vessel Head after any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of any of these facts.
- b. The existence, extent, location, and/or color of boric acid found on the Reactor Vessel Head during inspections of Reactor Vessel Head in any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of any of these facts.
- c. The existence, amount, and/or identity of Control Rod Drive Mechanism (CRDM) nozzles that could not be inspected during any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO and/or 12 RFO) and/or Mr. Geisen's knowledge of any of these facts.
- d. Any obstacles or difficulties (including surmountable ones) to inspection of the Reactor Vessel Head (and/or the CRDM nozzles) in any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of any of these facts.
- e. The existence, amount, and/or identity of CRDM flanges that were identified as leaking during, or were repaired during, any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of any of these facts.
- f. The activities performed in inspections or cleanings of the Reactor vessel head during any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of these facts, as well as documentation related to the inspections or cleanings.
- g. The activities performed in inspections of the CRDM flanges during any refueling outage at Davis-Besse prior to 2002 (including but not limited to, 10 RFO, 11 RFO, and/or 12 RFO) and/or Mr. Geisen's knowledge of these facts, as well as documentation related to the inspections.
- h. Mr. Geisen's knowledge of Primary Water Stress Corrosion Cracking (PWSCC).
- i. Mr. Geisen's knowledge of the effects of, the prevention of, and/or the mitigation of boric acid corrosion.
- j. Mr. Geisen's knowledge of cracking in CRDM nozzles.

- k. Mr. Geisen's knowledge of the unidentified Reactor Coolant System Leakage experienced at Davis-Besse.
- l. Mr. Geisen's knowledge of the RC-2 event at Davis-Besse.
- m. Drafting, providing input for, doing technical work for, reviewing, revising, meeting on, communicating about, discussing, commenting on, and/or other actions taken with respect to the following: Serial 2731 and issues related to or covered by Serial 2731.
- n. Drafting, providing input for, doing technical work for, reviewing, revising, meeting on, communicating about, discussing, commenting on, and/or other actions taken with respect to the following: Serial 2735 and issues related to or covered by Serial 2735.
- o. Drafting, providing input for, doing technical work for, reviewing, revising, meeting on, communicating about, discussing, commenting on, and/or other actions taken with respect to the following: Serial 2741 and issues related to or covered by Serial 2741.
- p. Drafting, providing input for, doing technical work for, reviewing, revising, meeting on, communicating about, discussing, commenting on, Mr. Geisen's actions with respect to, and/or other actions taken with respect to the following: Serial 2744 and issues related to or covered by Serial 2744.
- q. Preparing for, communicating about, preparing slides or agenda for, discussing, meeting on, providing input for, doing technical work for, documents presented during, presentations made during, Mr. Geisen's actions with respect to, and/or other actions taken with respect to the following: the teleconference with the NRC on October 3, 2001, and issues related to or covered in the teleconference.
- r. Preparing for, communicating about, preparing slides or agenda for, discussing, meeting on, providing input for, doing technical work for, documents presented during, presentations made during, Mr. Geisen's actions with respect to, and/or other actions taken with respect to the following: meeting with the Commissioners' TAs on October 11, 2001, and issues related to or covered in the meeting.
- s. Preparing for, communicating about, preparing slides or agenda for, discussing, meeting on, providing input for, doing technical work for, documents presented during, presentations made during, Mr. Geisen's actions with respect to, and/or other actions taken with respect to the following: the presentation made to the ACRS on November 9, 2001, and issues related to or covered in the presentation.
- t. The correction of, updating of, clarifying of, and/or materiality of any of Davis-Besse's statements, impressions, or omissions that are identified by the Order.

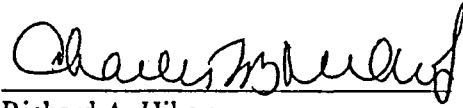
- u. Other than the issues identified above, Mr. Geisen's threat, or lack thereof, to the health and safety of the public, involving issues such as his general work history, competence, diligence, and character for truthfulness.

RESPONSE:

Geisen incorporates herein by reference the foregoing Objections. In addition, Geisen objects to Request No. 1(a)-(u) on the grounds: (a) that the Request assumes or asserts the existence of certain alleged facts, circumstances or events; (b) that, as potentially construed, various terms and phrases used in the Request are vague and ambiguous, including, without limitation, the phrase "general work history, competence, diligence and character for truthfulness"; (c) that, as potentially construed, the Request (including, without limitation, subparagraph u), is overly broad and unduly burdensome; (d) that, as potentially construed, the Request (including, without limitation, subparagraph t) calls for legal conclusions; and (e) that, as potentially construed, the Request seeks information and documents that are not relevant to the above-captioned action or is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing Objections, Geisen states that he will produce, for inspection and copying at a reasonable date, time and place mutually agreeable to him and NRC Staff, any non-privileged documents in his possession, custody or control (a) that are responsive to a reasonable scope and understanding of the above-referenced Request, (b) that relate to a reasonable scope and understanding of the allegations in the January 4, 2006 Order issued by the NRC which is the subject of the above-captioned action and (c) that have not been previously produced or disclosed in the above-captioned action.

Respectfully Submitted,



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Dated: October 3, 2006

