

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

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

DOCKETED
USNRC

October 3, 2006 (1:35pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

**DAVID GEISEN'S OBJECTIONS AND ANSWERS TO
NRC STAFF'S FIRST REQUEST FOR ADMISSIONS**

David Geisen ("Geisen"), by counsel, and pursuant to 10 C.F.R. § § 2.708, objects and, where applicable, responds to the First Request for Admissions dated September 1, 2006 served by NRC Staff in the above-captioned action ("First Request for Admissions"), as follows:

OBJECTIONS TO EACH REQUEST FOR ADMISSION

1. Geisen objects to the Requests to the extent that the definitions or instructions set forth therein seek to impose requirements beyond those contained in the applicable rules governing the above-captioned action or the Board's orders.
2. Geisen objects to the Requests to the extent that they seek information which is not relevant to the claims, allegations and issues in the above-captioned action and that they are not reasonably calculated to lead to the discovery of admissible evidence.
3. Geisen objects to the Requests to the extent that any of the terms used by NRC Staff: (a) mischaracterize certain persons, events or documents; (b) are based on, or derive from,

allegations or statements by NRC Staff that are vague, ambiguous or misleading; (c) assume certain facts which have not been established; or (d) entail, assume or reflect conclusions of law.

4. Geisen objects to any Request that seeks: (a) information prepared in anticipation of litigation or for trial; (b) information protected from disclosure by the attorney-client privilege, the work-product doctrine or any other applicable statutory or common law privilege; (c) information pertaining to periods of time that are irrelevant to the issues and allegations in the above-captioned action; (d) disclosure of counsel's mental impressions, conclusions, opinions or legal theories; (e) information that is in any way duplicative, overbroad, annoying, oppressive, unduly burdensome or expensive; or (f) information that is otherwise beyond the scope of discovery under the applicable rules governing the above-captioned action or the Board's orders.

5. Geisen objects to the Requests to the extent that they are vague and ambiguous or fail to describe the information sought with sufficient clarity or specificity to enable Geisen to respond.

6. The response to any Request shall not be deemed a waiver of any objection Geisen may wish to interpose at any proceeding, hearing or trial with respect to the matters disclosed by that response or with respect to the relevancy, materiality or admissibility of the information referenced or contained in that response. Each response is without prejudice to, or any waiver of, any objection Geisen may make to any future use of such response.

7. Discovery in this matter is still on-going. Geisen objects to the Requests to the extent that they seek responses concerning facts that have yet to be disclosed during the discovery process and that are not yet in the possession of Geisen. Any responses by Geisen are based on the knowledge and information presently available to Geisen. Geisen reserves the right

to revise, alter, amend or supplement its responses to the Requests if and when relevant facts, information or documents become known to Geisen during discovery.

8. To the extent that any Request (or portion of a Request) is not specifically addressed by a response below, Geisen denies the Request (or portion of the Request).

GENERAL RESPONSE APPLICABLE TO EACH REQUEST

Geisen is currently awaiting trial on a five-count indictment in the U.S. District Court for the Northern District of Ohio in a criminal action styled, *United States v. David Geisen, et al.*, Case No. 3:06CR712 (N.D. Ohio) (Katz, J.). The indictment charges Mr. Geisen and two others with false statements to the NRC in violation of 18 U.S.C. §§ 1001 and 2 based upon the same or similar acts as those alleged in the NRC's January 4, 2006 Order that initiated the above-captioned proceeding. The Supreme Court has recognized that one of the Fifth Amendment's "basic functions...is to protect innocent men...who might otherwise be ensnared by ambiguous circumstances," *Grunewald v. United States*, 353 U.S. 391, 421 (1957)(quoting *Slochower v. Board of Higher Ed. of New York City*, 350 U.S. 551, 557-558 (1956)) (emphasis in original), and that "truthful responses of an innocent [person], as well as those of a wrongdoer, may provide the government with incriminating evidence from the speaker's own mouth." *Id.*; see also *Ohio v. Reiner*, 532 U.S. 17 (2001). Accordingly, Geisen asserts his rights under the Fifth Amendment to the U.S. Constitution and declines to answer NRC Staff's First Request for Admissions. See *Hoffman v. United States*, 341 U.S. 479 (1951).

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST FOR ADMISSION 1:

- a. On August 3, 2001, the NRC issued Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles" (Bulletin).
- b. In the Bulletin, the NRC requested that all holders of operating licenses for pressurized water nuclear power reactors (PWR), including FENOC for the Davis-Besse facility, provide information to the NRC relating to the structural integrity of the reactor pressure vessel (RPV) head penetration nozzles at their respective facilities.
- c. The information requested from the licensees included the following:
 - i. extent of RPV head penetration nozzle leakage and cracking that had been found to date,
 - iii. a description of the inspections and repairs undertaken to satisfy applicable regulatory requirements,
 - iii. and all legal and factual bases for concluding that a licensee's plans for future inspections would ensure compliance with applicable regulatory requirements.
- d. The NRC also required that all Bulletin addressees, including FENOC, submit a written response to the NRC in accordance with the provisions of 10 CFR 50.54(f).
- e. That regulation provides, in part, that upon request of the NRC, an NRC-licensee must submit written statements, signed under oath or affirmation, to enable the NRC to determine whether the license should be modified, suspended, or revoked.

RESPONSE:

With respect to Request No. 1 (a)-(e) above, Geisen incorporates herein by reference the foregoing Objections and General Response and declines to respond to Request No. 1(a)-(e) on the basis of his rights under the Fifth Amendment to the U.S. Constitution.

REQUEST FOR ADMISSION 2:

- a. On September 4, October 17, and October 30, 2001, the licensee
- b.. provided written responses to the Bulletin.
- c. Additionally, the licensee met with the NRC on numerous occasions during October and November of 2001 to provide clarifying information.
- d. The NRC staff allowed the licensee to continue operation of the Davis-Besse facility until February 2002, rather than requiring FENOC to shut the unit down to perform inspections by December 31, 2001, as provided in the Bulletin.
- e. This NRC Staff decision was based, in part, on the information provided by FENOC in its written responses to the Bulletin and during meetings with the NRC.

RESPONSE:

With respect to Request No. 2 (a)-(e) above, Geisen incorporates herein by reference the foregoing Objections and General Response and declines to respond to Request No. 2(a)-(e) on the basis of his rights under the Fifth Amendment to the U.S. Constitution.

REQUEST FOR ADMISSION 3:

- a. On February 16, 2002, FENOC shut down Davis-Besse for refueling and inspection of control rod drive mechanism (CRDM) RPV head penetration nozzles.
- b. Using ultrasonic testing, the licensee found cracks in three CRDM RPV head penetration nozzles.
- c. On March 6, 2002, the licensee discovered a cavity in the RPV head in the vicinity of CRDM Penetration Nozzle No. 3.
 - i. The cavity measured approximately 5 to 7 inches long, 4 to 5 inches wide, and penetrated through the 6.63 inch-thick low-alloy steel portion of the RPV head.
 - ii. This cavity left the stainless steel cladding material (measuring 0.202 to 0.314 inches-thick) as the sole reactor coolant system (RCS) pressure boundary.
- d. A smaller cavity was also found near CRDM Penetration Nozzle No. 2.

RESPONSE:

With respect to Request No. 3 (a)-(d) above, Geisen incorporates herein by reference the foregoing Objections and General Response and declines to respond to Request No. 3(a)-(d) on the basis of his rights under the Fifth Amendment to the U.S. Constitution.

REQUEST FOR ADMISSION 4:

Bulletin 2001-01, item 1.d requested each pressurized water reactor (PWR) licensee, including FENOC for Davis-Besse, to do the following:

- a. Provide a description of the RPV head penetration nozzles and RPV head inspection that were performed at PWRs in the 4 years preceding the date of the Bulletin. This description of the inspection would include the type, scope, qualification requirements, and acceptance criteria.
- b. Provide the findings resulting from the inspections.
- c. Describe any limitations (insulation or other impediments) to accessibility of the bare metal of the RPV head for visual examinations.

RESPONSE:

With respect to Request No. 4 (a)-(c) above, Geisen incorporates herein by reference the foregoing Objections and General Response and declines to respond to Request No. 4(a)-(c) on the basis of his rights under the Fifth Amendment to the U.S. Constitution.

REQUEST FOR ADMISSION 5:

With regard to the October 10, 2001, meeting with FENOC employees on October 10, 2001, referenced in paragraph 20 of the Order, the meeting was for the purposes of finalizing presentation slides for an October 11, 2001, meeting with the NRC Commissioners' Technical Assistants.

RESPONSE:

With respect to Request No. 5 above, Geisen incorporates herein by reference the foregoing Objections and General Response and declines to respond to Request No. 5 on the basis of his rights under the Fifth Amendment to the U.S. Constitution.

Respectfully Submitted,

Dated: October 3, 2006

A handwritten signature in cursive script, appearing to read "Richard A. Hibey", written over a horizontal line.

Richard A. Hibey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 3rd day of October, 2006, true and genuine copies of the foregoing were served on the following persons by electronic mail and, as indicated with an (*), first-class mail, postage prepaid:

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