

materials sign Non-Disclosure Declarations. Please let me know if you have a contrary position in that regard.¹

NRC Staff never communicated a contrary position to counsel for Mr. Geisen regarding the June 1, 2006 Protective Order, and counsel for Mr. Geisen proceeded accordingly.²

Over four months later, during the negotiation of the protective order required by the Board's Memorandum and Order dated October 31, 2006, NRC Staff counsel new to the case argued for the first time that all employees of counsel for Mr. Geisen who might come into contact with Personal Privacy Materials, including secretarial and clerical staff performing routine administrative or copying functions, were required to sign Non-Disclosure Declarations and that NRC Staff was entitled to receive copies of all Non-Disclosure Declarations signed by any employees of counsel for Mr. Geisen. Counsel for Mr. Geisen disagreed with NRC Staff's position, and the parties subsequently submitted their respective versions of the protective order that will govern personal privacy materials.³ The following day, NRC Staff filed their Motion for Adoption of Protective Order, which should be denied for several reasons.

First, after tacitly accepting Mr. Geisen's clearly stated understanding and application of the June 1, 2006 Protective Order, NRC Staff should be estopped from advocating a contrary position over four months later.

¹ See Letter from Richard A. Hibey to Sara E. Brock (June 30, 2006) (attached as Exhibit 1).

² NRC Staff now refers to provisions in the June 1, 2006 Protective Order that they contend apply to incidental administrative staff, including certain language that NRC Staff *excluded* from the current proposed protective order. Those provisions in the June 1, 2006 Protective Order either do not expressly apply to such persons or, at best, are ambiguous, which is why counsel for Mr. Geisen sent their June 30, 2006 letter to NRC Staff. As for NRC Staff's gratuitous speculation over whether counsel for Mr. Geisen is in compliance with the June 1, 2006 Protective Order, NRC Staff can be assured that counsel for Mr. Geisen is in compliance with the June 1, 2006 Protective Order.

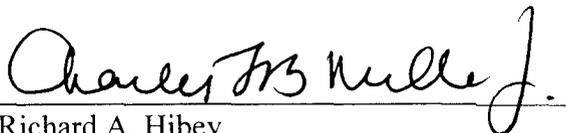
³ See E-mail Charles F.B. McAleer, Jr. to Board (November 15, 2006) (attaching alternative versions of paragraphs 2(e) and 9 of the proposed protective order).

Second, NRC Staff's position regarding paragraphs 2(e) and 9 of the proposed protective order is neither appropriate nor practical. Contrary to NRC Staff's argument, it is not typical in civil litigation to require secretarial or clerical staff who might have incidental contact with protected materials during the course of performing routine administrative functions such as copying to sign non-disclosure declarations. Imposing such an obligation in a protective order would render strict compliance with the protective order extremely difficult and time-consuming, with little practical benefit. Given the seriousness and importance of protective orders, the most direct and practical approach to achieving the desired protection is embodied in the basic obligation that counsel has to ensure compliance by persons in his office with the restrictions on the use and disclosure of the protected material. *See* paragraph 10 in both proposed protective orders.

With respect to service of the Non-Disclosure Agreements, NRC Staff has no demonstrable or practical need to know how many attorneys, paralegals and administrative personnel are performing tasks on behalf of Mr. Geisen relating to this proceeding or to know the names of those individuals. Moreover, identifying those persons who *have* signed Non-Disclosure Declarations has no nexus to NRC Staff's now-stated desire for everyone who might have even incidental contact with protected material has signed such a declaration. Again, the legitimate goal of protecting unauthorized use and disclosure of the covered material is achieved through counsel's compliance with their obligations under paragraph 10 of the Protective Order - - obligations that counsel for Mr. Geisen take quite seriously. Finally, NRC Staff has not explained what use, if any, they intend to make of any Non-Disclosure Declarations. In the absence of such information, the personal interests of anyone other than counsel of record who is required to sign a Non-Disclosure Declaration are potentially implicated.

For the foregoing reasons, counsel for Mr. Geisen respectfully submits that the version of the Protective Order they have proposed (*see* Attachment B to the November 16, 2006 E-Mail) is the appropriate, fair and reasonable version for entry.

Respectfully Submitted,



Dated: November 17, 2006

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Charles F. B. McAleer, Jr.
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Matthew T. Reinhard
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(202) 626-5800
Counsel for David Geisen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 17th day of November, 2006, copies of the foregoing were served on the following persons by first-class mail, postage prepaid, as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**):

Michael C. Farrar * **
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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E-mail: mcf@nrc.gov

E. Roy Hawkens * **
Chief Administrative Judge
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Nicholas G. Trikouros * **
Administrative Judge
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Office of the Secretary * **
Attn: Rulemaking and Adjudications Staff
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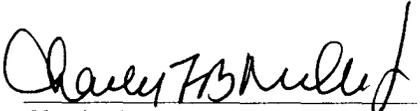

Charles F. B. McAleer, Jr.
Counsel for Mr. David Geisen

EXHIBIT 1



MILLER & CHEVALIER
CHARTERED

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RICHARD A. HIBEY
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June 30, 2006

**BY E-MAIL
AND REGULAR MAIL**

Sara E. Brock, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O-15 D21
Washington, D.C. 20555-0001

Re: *In The Matter Of David Geisen*
IA-05-052, ASLBP No. 05-839-02-EA
Before the Atomic Safety and Licensing Board

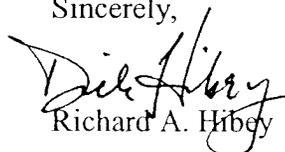
Dear Sara:

As you requested in our telephone conversation on June 21, 2006, and pursuant to the Protective Order dated June 1, 2006 in the above-referenced matter, I am enclosing Non-Disclosure Declarations signed by Andy Wise, Matt Reinhard, Chas McAleer and me. We will have any Miller & Chevalier Chartered paralegals working on this matter sign Non-Disclosure Declarations, and we will maintain those declarations in our files. We do not intend to have any Miller & Chevalier Chartered staff persons who might come into contact with designated materials sign Non-Disclosure Declarations. Please let me know if you have a contrary position in that regard.

I would appreciate receiving as soon as possible copies of the documents and materials listed on NRC Staff's June 5, 2006 Proprietary Document List and any other documents or materials that NRC Staff has withheld from production pending execution of the Non-Disclosure Agreements. At your earliest opportunity, please advise me when those documents and materials will be delivered to our offices.

Please let me know if you have any questions regarding the foregoing.

Sincerely,


Richard A. Hibey

Enclosures