

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

December 21, 2006 (11:47am)

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFFMichael 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 SUPPLEMENTAL RESPONSES TO  
NRC STAFF'S FIRST REQUEST FOR ADMISSIONS NOS. 1-4**

David Geisen ("Geisen"), by counsel, and pursuant to 10 C.F.R. § § 2.708, supplements his responses to Requests for Admission Nos. 1-4 in the First Set of Requests for Admissions dated September 1, 2006 served by NRC Staff in the above-captioned action ("First Set of Requests for Admissions"), as follows:

**OBJECTIONS TO EACH REQUEST FOR ADMISSION**

Mr. Geisen incorporates herein by reference his Objections dated October 3, 2006 to NRC Staff's First Set of Requests for Admission. The supplemental responses are subject to, and without waiving, the Objections dated October 3, 2006.

**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

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SEL4-02

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).

## **SUPPLEMENTAL 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.

**10/3/06 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.

**SUPPLEMENTAL RESPONSE:**

- 1(a): Admitted
- 1(b): Admitted
- 1(c): Admit that the Bulletin asked for information and that the requests are set forth completely on pages 11 through 13 of the Bulletin. Admit request 2(a) requested information regarding the extent of RPV head penetration nozzle leakage and cracking that had been found to date, and that 2(b) requested a description of the inspections and repairs undertaken to satisfy applicable regulatory requirements. Admit that 2(d) requested FENOC's basis for concluding that its plans for future inspections would ensure compliance with applicable regulatory requirements, but deny that the words "legal and factual" were used or that any legal analysis was necessarily contemplated by the language of the Bulletin.
- 1(d): Admitted
- 1(e): Admit that 10 CFR 50.54(f) includes that and other language addressed to licensees.

**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.

**10/3/06 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.

**SUPPLEMENTAL RESPONSE:**

- 2(a): Admitted
- 2(b): Admitted
- 2(c): Admitted
- 2(d): Admitted
- 2(e): Admit that the NRC's decision was based upon the cumulated information gathered from FENOC and other sources during the course of the on-going dialogue that followed the issuance of the Bulletin.

**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.

**10/3/06 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.

**SUPPLEMENTAL RESPONSE:**

3(a)-(d): Admitted.

**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.

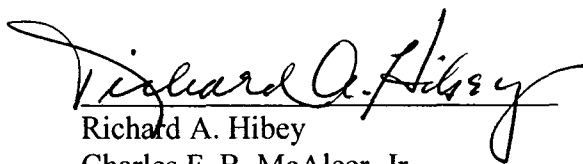
**10/3/06 RESPONSE:**

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.

**10/3/06 RESPONSE:**

4(a)-(c): Admitted.

Respectfully Submitted,



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*Counsel for David Geisen*

Dated: December 15, 2006

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 15<sup>th</sup> day of December, 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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