

RAS 12940

DOCKETED  
USNRC

January 22, 2007 (10:43am)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

---

In the Matter of

Docket No. IA-05-052

DAVID GEISEN

ASLBP No. 06-845-01-EA

January 22, 2007

---

**PRAECIPE**

David Geisen files the following Praecipe attaching the affidavits and correspondence referred to in his Application for the Issuance of Subpoenas, filed Friday, January 19, 2007. In that Application, Mr. Geisen made clear the attached affidavits and correspondence would be filed separately. See David Geisen's Application for the Issuance of Subpoenas, n. 1.

Respectfully Submitted,

/s/

Richard A. Hibey  
Charles F. B. McAleer, Jr.  
Andrew T. Wise  
Matthew T. Reinhard  
MILLER & CHEVALIER CHARTERED  
655 15<sup>TH</sup> Street, N.W., Suite 900  
Washington, D.C. 20005  
(202) 626-5800  
*Counsel for David Geisen*

Dated: January 22, 2007

TEMPLATE = SECY - 023

SECY - 02

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22d day of January, 2007, 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  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [mcf@nrc.gov](mailto:mcf@nrc.gov)

E. Roy Hawken \* \*\*  
Chief Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [erh@nrc.gov](mailto:erh@nrc.gov)

Nicholas G. Trikouros \* \*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-mail: [ngr@nrc.gov](mailto:ngr@nrc.gov)

Adjudicatory File \*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555

Margaret Parish \* \*\*  
Board Law Clerk  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555  
E-Mail: [map4@nrc.gov](mailto:map4@nrc.gov)

Office of the Secretary \* \*\*  
Attn: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555  
E-Mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Office of Commission Appellate Adjudication \*

U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555

Lisa Clark \* \*\*

[LBC@nrc.gov](mailto:LBC@nrc.gov)

Michael A. Spencer

[MAS8@nrc.gov](mailto:MAS8@nrc.gov)

U.S. Nuclear Regulatory Commission

Office of the General Counsel

Mail Stop: O-15 D21

Washington, DC 20555-0001

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Matthew T. Reinhard  
Counsel for Mr. David Geisen

October 2, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DAVID GEISEN

)  
)  
)  
)  
)  
)

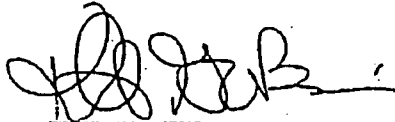
Docket No. IA-05-052

ASLBP No.06-845-01-EA

AFFIDAVIT OF KENNETH O'BRIEN

I, Kenneth O'Brien, being duly sworn, do hereby state as follows:

1. I am currently employed as Enforcement and Investigations Officer in Region III of the U.S. Nuclear Regulatory Commission.
2. I have reviewed the answers to Interrogatories 13-27 in David Geisen's first set of interrogatories and hereby certify that the answers are correct to the best of my information and belief.



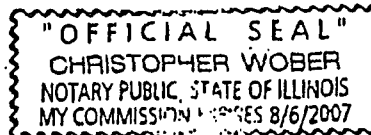
Kenneth G. O'Brien

Subscribed and sworn to before me

this 2nd day of October, 2006

  
Notary Public

My Commission Expires: 8/6/07



October 2, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DAVID GEISEN

)  
)  
)  
)  
)

Docket No. 1A-05-052

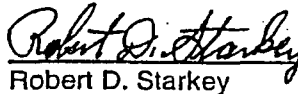
ASLBP No.06-845-01-EA

AFFIDAVIT OF ROBERT D. STARKEY

I, Robert D. Starkey, being duly sworn, do hereby state as follows:

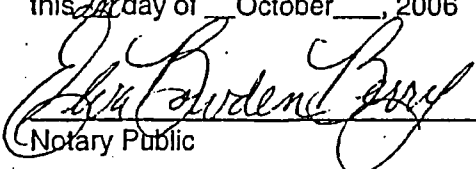
1. I am currently employed as Senior Enforcement Specialist in the U.S. Nuclear  
Regulatory Commission Headquarters.

2. I have reviewed the answers to Interrogatories 1, 2, 5-7, 9-12, 28, and 29 in David  
Geisen's first set of interrogatories and hereby certify that the answers are correct to the best of  
my information and belief.

  
Robert D. Starkey

Subscribed and sworn to before me

this 1st day of October, 2006

  
Notary Public

My Commission Expires: \_\_\_\_\_

Elva Bowden Berry  
NOTARY PUBLIC  
Montgomery County, Maryland  
My Commission Expires 12/1/07



MILLER & CHEVALIER  
CHARTERED

655 FIFTEENTH STREET, N.W., SUITE 900  
WASHINGTON, D.C. 20005-5701  
202.626.5800 FAX: 202.628.0858  
WWW.MILLERCHEVALIER.COM

CHARLES F.B. MCALEER, JR.  
202.626.5963  
cmcaleer@milchev.com

January 10, 2007

**BY ELECTRONIC**  
**AND REGULAR MAIL**

Lisa B. Clark, 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 Lisa:

We are writing to you as directed by the Board in paragraph 4 of its Order dated January 8, 2007.

In an e-mail from Brett Klukan dated December 29, 2006, NRC Staff stated its intent to depose the following persons in this matter:

1. David Geisen
2. Steven Moffitt
3. Dale Miller
4. Prassoon Goyal
5. Guy Campbell
6. Steve Fyitch
7. Mark McLaughlin
8. David Lockwood
9. Ken Byrd
10. Peter Mainhardt
11. John Martin
12. Randall Rossomme
13. Charles Daft

As we have indicated, Mr. Geisen will invoke his Fifth Amendment rights in the event that he is deposed. Given NRC Staff's intent to depose the remaining twelve individuals, counsel for Mr. Geisen accordingly deems them as "central witnesses" to Mr. Geisen's defense,

whether through cross-examination in NRC Staff's case-in-chief or direct examination in Mr. Geisen's case-in-chief.

In addition to the deponents whom NRC Staff has identified so far, it appears that the following additional persons might also be relevant and/or important to Mr. Geisen's defense at the hearing in the above-referenced matter, either because NRC Staff apparently intends to call such witnesses or there is a substantial possibility that counsel for Mr. Geisen will call such witnesses should the need for a defense case-in-chief arise after NRC Staff has rested its case:

1. Andrea D. (Lee) Valentin
2. Allen Hiser
3. Melvin Holmberg
4. Stephen Sands
5. Robert Rishel
6. John Cunnings
7. William Bateman
8. Andrew Siemaszko
9. Rodney Cook
10. Kevin Zellers
11. Douglas Simpkins
12. Dale Wuokko
13. Glenn McIntyre

Counsel for Mr. Geisen may depose each of the foregoing persons in this matter, and we would appreciate receiving from you available dates for the NRC witnesses listed above.

With respect to Messrs. McIntyre and Wuokko, we understand that they were informed approximately two months ago that the NRC Office of Investigations had made a decision not to take enforcement action against them relating to the events at Davis-Besse that are involved in this matter. Based on our review of NRC Staff's disclosures, document production and interrogatory responses in this matter, it appears that NRC Staff has never disclosed or produced to us any information or documents relating in any way to the decision by the NRC Office of Investigations concerning Messrs. McIntyre and Wuokko, including any communications with them or their representatives. If you believe NRC Staff has done so, please provide us the date and reference information for such disclosure or production. If NRC Staff has not done so, we request immediate disclosure and production of any such information or documents pertaining to Messrs. McIntyre and Wuokko and any other person whose testimony or interview NRC Staff may seek to introduce at the hearing in this matter.

The following individuals were cited by the Staff for their involvement in the preparation and/or review of documents pertaining to this proceeding. In the event that the veracity or content of those documents become an issue, their roles may become relevant.

1. Kenneth G. O'Brien

2. Robert D. Starkey
3. James Gavula
4. Joseph Ulie
5. Michele Janicki
6. James G. Luehman

NRC Staff also identified in their answers to Interrogatories the following additional persons:

1. Theo S. Swim
2. Richard Mattson
3. Michael Shepherd
4. Dave Gudger
5. Gregory Gibbs
6. Howard W. Bergendahl
7. Gerald M. Wolf
8. David R. Cofflin
9. Douglas E. Kilian
10. Robert E. Donnellon
11. Roger W. Huston

Since NRC Staff did not provide any information in their Answers to Interrogatories identifying the portions of the cited interviews and documents that allegedly contain relevant information, we are unable at this time to determine whether such persons might be central witnesses for Mr. Geisen's defense, whether through direct or cross examination. Please let us know by close of business on Friday, January 12 the following: (a) whether NRC Staff intends to call the foregoing persons as witnesses in NRC Staff's case-in-chief; (b) the specific topics or issues as to which those persons are expected to testify; and (c) the specific portion(s) of the cited interviews, testimony or documents of such persons that are allegedly relevant to the issues in this matter.

The information contained in this letter is subject to the following conditions and qualifications:

1. Counsel for Mr. Geisen reserves the right to identify additional "central witnesses" as deposition and other discovery in this matter proceeds. It is quite possible that the identities and/or significance of additional witnesses which are unknown or uncertain at this time might become known or certain only as additional discovery, including deposition testimony, occurs.

2. Counsel for Mr. Geisen has not sought to identify herein any witnesses whose testimony will be used solely for impeachment or rebuttal purposes. Obviously, until we know what testimony is actually presented at the hearing in this matter, we cannot make such determinations.



Lisa B. Clark, Esq.  
January 10, 2007  
Page 4

3. By identifying persons in this letter, counsel for Mr. Geisen does not admit or concede that such persons, in fact, have relevant and admissible testimony regarding the issues for the hearing in this matter. Counsel for Mr. Geisen expressly reserves the right to object to and oppose the introduction of any testimony or evidence that is neither relevant nor properly admissible at the hearing in this matter.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Chas", with a long horizontal stroke extending to the right.

Charles F. B. McAleer, Jr.

cc: Richard A. Hibey, Esq.  
Andrew T. Wise, Esq.  
Matthew T. Reinhard, Esq.

January 12, 2007

Charles F.B. McAleer, Jr.  
Miller & Chevalier  
665 15<sup>th</sup> St. N.W., Suite 900  
Washington, D.C. 20005

Dear Chas:

I writing to you in an attempt to respond to the three principal inquiries made in your January 10, 2007 letter addressed to Lisa Clark: (1) the availability for deposition of NRC personnel you identified in your January 10 letter; (2) information or documents pertaining to a decision not to proceed with enforcement actions against Messrs. Wuokko and McIntyre; and (3) additional information regarding each person in a list of eleven individuals previously identified by the NRC Staff in its discovery responses.

**1. The availability for deposition of identified NRC personnel.**

On page 2 of your January 10 letter, you identified several NRC personnel: (1) Andrea D. (Lee) Valetin, (2) Allen Hiser, (3) Melvin Holmberg, (4) Stephen Sands, (5) William Bateman, and (6) Douglas Simpkins. We believe Kevin Zellers was an employee of the NRC, but, as of the writing of this letter, we have been unable to verify whether Mr. Zellers is still so employed—we will proceed with all available speed to make that determination and alert you as to Mr. Zellers' current employment status. As to the other listed individuals, Counsel for the NRC Staff is currently engaged in the process of assessing when these individuals will be available for deposition. As soon we have compiled the schedules of these individuals, we will offer that information to you.

**2. Inquiry concerning enforcement decisions taken concerning Messrs. Wuokko and McIntyre.**

On page 2 of your letter, you reference Messrs. McIntyre and Wuokko, and state that you understand that they were notified two months ago that the NRC Office of Investigations had made a decision not to take enforcement action against them relating to the events at Davis-Besse that are involved in this matter. You further state that based on your review of the Staff's disclosures, document production, and interrogatory responses, it did not appear that we had produced documents relating to this decision or to communications with these individuals and their representatives.

First, it is the Office of Enforcement, not the Office of Investigations, that makes enforcement decisions. Second, we do not believe that a decision not to take enforcement action against individuals is relevant to the matters at issue in this case—which involves the culpability of Mr. Geisen—and is not information in support of or in opposition to our Enforcement Order. Subject to the objections stated in our responses to your interrogatories and document requests, we do not believe documents relating to these decisions are discoverable information falling within a

reasonable interpretation of the scope of those discovery requests.

**3. Additional information regarding each person on a list of eleven individuals previously identified by the NRC Staff in its discovery responses.**

On page 3 of your January 10 letter, you requested by close of business on January 12 the following regarding a list of 11 persons: "(a) whether NRC Staff intends to call the foregoing persons as witnesses in NRC Staffs case-in-chief; (b) the specific topics or issues as to which those persons are expected to testify; and (c) the specific portions of the cited interviews, testimony or documents of such persons that are allegedly relevant to the issues in this matter."

As stated in the case schedule, jointly proposed by the parties on December 15, 2006, on February 22, 2007, "parties file their respective pre-hearing statements containing a roadmap of their case-in-chief, including names and addresses of all witnesses (exclusive of impeachment and rebuttal witnesses), deposition testimony to be presented, identification of hearing exhibits(exclusive of impeachment and rebuttal exhibits), identification of any non-rebuttal or non-impeachment evidence permitted under 10 C.F.R. § 2.711 and stipulations by the parties, if any." The NRC Staff will reveal information concerning its witness per the manner and time contemplated by the case schedule approved by the Board. Thus, the information you requested--information regarding the persons Counsel for the NRC Staff will call as witnesses--is premature at this time.

If you have any questions or concerns, you can contact me at [mas8@nrc.gov](mailto:mas8@nrc.gov) or at 301-415-4073.

Sincerely,

/RA/

Michael A. Spencer  
Counsel for NRC Staff



MILLER & CHEVALIER  
CHARTERED

655 FIFTEENTH STREET, N.W., SUITE 900  
WASHINGTON, D.C. 20005-5701  
202.626.5800 FAX: 202.628.0858  
WWW.MILLERCHEVALIER.COM

CHARLES F.B. MCALEER, JR.  
202.626.5963  
cmcaleer@milchev.com

January 15, 2007

**BY ELECTRONIC MAIL**

Michael Spencer, 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 Michael:

I am hereby responding to the letter you sent me by e-mail at 7:13 p.m. on Friday, January 12, regarding several deposition issues that I had raised in my January 10 letter to Lisa Clark. I am also addressing several issues from my January 12 telephone call with Brett Klukan and other NRC Staff attorneys regarding deposition scheduling.

**Depositions By NRC Staff:** At 3:12 p.m. on January 12, Brett forwarded me an e-mail summarizing the status of NRC Staff's scheduling efforts for the depositions you plan to conduct. I called Brett later that afternoon to discuss the information in his e-mail. Several issues arose during that call which I briefly summary as follows.

First, NRC Staff has selected depositions dates for the thirteen deponents listed in Brett's December 29 e-mail. According to Brett, NRC Staff has been able to confirm dates for only two of the depositions: Dale Miller (January 29) and Stephen Moffitt (January 30). The rest of the scheduling is tentative, and I encouraged Brett to keep me involved in that scheduling process to enable more efficient and effective planning. He agreed to do so.

Second, I asked Brett why NRC Staff has apparently decided not to schedule any depositions during the first two weeks of the deposition period, i.e., January 16-19 and 22-26. In fact, I noted to Brett that, after NRC Staff initially stated their intent to depose Messrs. Moffitt and Miller on January 18-19 (e.g., Brett's December 29 e-mail and attached list of deponents) and received confirmation of availability from the their counsel (Jane Penny) and us for those dates, NRC Staff has now inexplicably rescheduled those two depositions for January 29-30. During the telephone call, Brett offered no substantive explanation for that sudden scheduling shift or NRC Staff's decision not to use the first two weeks of the deposition period. I cautioned Brett that NRC Staff's tactical decision to cede that time is squarely inconsistent with the general

scheduling concerns Lisa Clark expressed to the Board at the January 11 hearing and, as a practical matter, would foreclose NRC Staff from any subsequent argument that deposition discovery cannot be completed within the currently allotted time. I urged Brett to utilize as much of the first two weeks of the deposition period as possible. He said that he would inform Lisa Clark of our discussions on this issue but made no other commitments.

**Depositions By Counsel for Mr. Geisen:** In my January 10 letter to Lisa Clark, I identified thirteen persons whom counsel for Mr. Geisen might depose in this matter, including six current NRC employees and one possibly former NRC employee. I asked NRC Staff for available deposition dates for those current and former NRC employees.

In my January 12 telephone conversation with Brett, he said that NRC Staff had begun checking on the availability of the seven current and former NRC employees on our list but had not dates yet for me. Your January 12 letter also does not include any proposed dates. We look forward to receiving from you as soon as possible proposed dates for those individuals.

Our efforts to schedule the depositions of Messrs. Wuokko and McIntyre are inhibited by the position you have taken in your January 12 letter regarding production of the documents relating to them that I requested in my January 10 letter. Your contention that such documents are not relevant is wrong in several respects. For example, as the Board implicitly found in overruling NRC Staff's personal privacy redactions to the August 2003 OI Report, such information may be relevant to whether those witnesses have any potential bias when testifying in this case and whether the NRC has applied enforcement criteria against individuals at Davis-Besse in an unfair, inconsistent and arbitrary manner. I urge you to reconsider your position on this issue, and to let me know your final position by Wednesday, January 17. Any continuing efforts by NRC Staff to withhold such discovery from us will be further evidence that NRC Staff is not interested in reaching a just resolution of this matter but instead orchestrating a process to Mr. Geisen's disadvantage and prejudice.

With respect to the eleven individuals I listed on page 3 of my January 10 letter, I asked you for additional information in order to make a determination whether it would be necessary to depose such persons. Each of those persons was referenced in NRC Staff's answers to interrogatories, but without any specific indication why NRC Staff believes those witnesses might have relevant information or what their alleged knowledge is. If, for example, NRC does not intend to call those witnesses or to introduce any documents sent by or to those witnesses, then it might not be necessary to depose them. In your January 12 letter, however, you categorically refuse at this time to provide us with the requested information, including whether NRC Staff might call those persons at the hearing in this case. Your refusal is not in good faith and will simply complicate the discovery process. If you do not withdraw your position on this issue, then we will have no choice but to oppose any effort by NRC Staff to call such witnesses at the hearing or to introduce in NRC Staff's case-in-chief any documents sent to or from those witnesses cited by NRC Staff in its answers to interrogatories. Under the circumstances, we also will depose Messrs. O'Brien and Starkey who verified the answers to interrogatories referencing

Michael Spencer, Esq.  
January 15, 2007  
Page 3

those individuals. We would appreciate receiving as soon as possible available deposition dates for Messrs. O'Brien and Starkey.

It is my hope that we will be able to resolve the foregoing deposition issues and cooperate in a manner that will facilitate the completion of all necessary depositions by February 20. I am hopeful that you will reconsider the positions you have taken in your January 12 letter in light of the foregoing information. I await your response.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Chas", followed by a horizontal line.

Charles F. B. McAleer, Jr.

cc: Richard A. Hibey, Esq.  
Andrew T. Wise, Esq.  
Matthew T. Reinhard, Esq.



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 17, 2007

Via E-mail

Charles (Chas) F. B. McAleer, Jr.  
Counsel for David Geisen  
Miller & Chevalier, Chartered  
cmcaleer@milchev.com

Re: January 15 Letters from Charles F. B. McAleer, Jr. to Michael Spencer

Dear Chas:

On January 15, 2007, you sent two letters to me regarding discovery in the David Geisen enforcement proceeding. These letters requested responses on certain items, which are contained herein.

*First January 15 Letter*

The first January 15 letter I will respond to (First January 15 Letter) concerns the list of ten witnesses most central to Mr. Geisen's defense that the Board, in its Order of January 8, 2007, directed Mr. Geisen to provide to the NRC Staff. After reviewing your letter of January 10, 2007, which purported to comply with the Board's Order, we called you on January 12 to point out that your January 10 letter did not in fact comply with the plain directions in the Board's Order. In that call, we requested compliance with the simple directions of the Board. Your First January 15 Letter contained descriptions of this interaction, and others, between counsel for Mr. Geisen and the NRC Staff. These descriptions are misleading in several respects, but I will not waste time correcting them in detail. It suffices to say that your January 10 letter did not identify the ten witnesses "central" to Mr. Geisen's defense, and that we requested this information per the Board's Order. The information we requested is just the sort of information necessary to ensure that we do not waste time and resources during this truncated deposition period in taking unnecessary depositions.

I find your "'gotcha' litigation" comment curious since this is your province, not ours. A recent instance of gotcha litigation was exhibited in today's filing of fundamental documents. Although the Board ordered consultations between the parties and we emailed you a list of our proposed documents on January 11, you did not share your list with us until the afternoon of January 16, the scheduled day of filing. The filing was later pushed off until today, but when sending us your proposed list this afternoon, you said, "I believe we have resolved all of the questions you posed regarding the list" without mentioning that you inserted another document into it. You came back yet again this afternoon proposing to add another document at the last minute.

Your "gotcha" litigation comment is one of several instances in which you have misconstrued our actions to accuse us of engaging in negative tactics. As an initial matter, it seems odd that a letter writer would spin facts to cast the recipient of that letter in a bad light. It is clear that you wrote that letter, as you do other letters, for another audience, fully intending to file them with the Board at some point as supposed "evidence" of our bad faith and your good faith. I would not be surprised if your First January 15 Letter is some day included with a filing as "evidence" that the NRC Staff is not working with you in good faith and that we regularly engage in "gotcha" litigation."

As for the request made at the end of your First January 15 Letter, the NRC Staff does not intend to provide you with a list of the ten witnesses central to its case. The direction in the Board's January 8 order was directed to you, not us, for reasons explained in the Order. We find this entirely fair in consideration of the history of discovery in this proceeding and in light of the fact that you have access, through Mr. Geisen and grand jury documents, to information unavailable to the NRC Staff.

#### *Second January 15 Letter*

Moving to the other January 15 letter (Second January 15 Letter), there are several issues to respond to. The first issue regards the scheduling of the depositions the NRC Staff wishes to take. A second issue concerns the availability of six current NRC employees and one former NRC employee that you said you may wish to depose. You will receive the latest information we have concerning those issues by email today.

A third issue is your complaint regarding our scheduling of our depositions. We see no cause for complaint here. We are simply scheduling depositions within the timeframe agreed by the parties.

A fourth issue concerns your request that we reconsider our decision not to disclose documents related to enforcement decisions against individuals other than Mr. Geisen. We still believe such documents to be irrelevant to this enforcement proceeding and strenuously take exception with your statements to the effect that the Staff's enforcement decisions regarding individuals other than Mr. Geisen are in any way relevant to this proceeding.

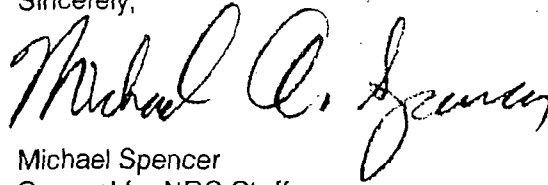
A fifth issue involves information you requested concerning eleven people you identified on page 3 of your January 10 letter. As we pointed out before, it is premature for you to request such information. Such information will be provided in the time and in the manner provided for in the schedule agreed to by you and approved by the Board.

The sixth issue concerns your expressed intent to depose NRC employees Ken O'Brien and Doug Starkey because they verified the NRC Staff's answers to your interrogatories, which in some unspecified way concern the eleven individuals identified on page three of your January 10 letter. Messrs. O'Brien and Starkey are enforcement officers who were involved in the enforcement decision concerning Mr. Geisen, but I am not aware of any information that would suggest that they were directly involved in the Fall 2001 events underlying our enforcement order. Therefore, they do not have direct knowledge of matters relevant to this enforcement proceeding, and we would oppose your attempts to depose them. See 10 C.F.R. § 2.709(a).



This concludes our responses to your two letters of January 15. I am available at 301-415-4073 or at mas8@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Spencer". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael Spencer  
Counsel for NRC Staff



MILLER & CHEVALIER  
CHARTERED

655 FIFTEENTH STREET, N.W., SUITE 900  
WASHINGTON, D.C. 20005-5701  
202.626.5800 FAX: 202.628.0858  
WWW.MILLERCHEVALIER.COM

CHARLES F.B. MCALEER, JR.  
202.626.5963  
cmcaleer@milchev.com

January 18, 2007

**BY ELECTRONIC MAIL**

Michael Spencer, 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 Michael:

I received the letter you sent me by e-mail at 8:06 p.m. yesterday evening responding to my letters to you dated January 15.

I was hoping that we could agree on a mutually convenient date and location for us to depose Messrs. Starkey and O'Brien. Since you have declined to provide me with proposed dates for them, please be advised that we will convene their depositions on a date that is available for us. Specifically, we will convene the deposition of Mr. Starkey on Wednesday, January 24 commencing at 9:00 a.m. in our offices, and we will convene the deposition of Mr. O'Brien that same day immediately following the completion of Mr. Starkey's deposition. I am enclosing a Notice of Deposition for those depositions.

If you will refuse to produce Messrs. O'Brien and Starkey for their depositions on January 24, please let me know immediately. In that event, we will seek appropriate action from the Board compelling their attendance. I hope that it will not be necessary to do so.

I will respond in detail to the remaining portions of your January 17 letter under separate cover. In the meantime, please be advised that I do not agree with the positions you have taken, including for the reasons that I have previously outlined in my letters to you.

Sincerely,

  
Charles F. B. McAleer, Jr.

Enclosure

cc: Richard A. Hibey, Esq.  
Andrew T. Wise, Esq.  
Matthew T. Reinhard, Esq.

**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

\_\_\_\_\_  
In the Matter of )  
 )  
DAVID GEISEN )  
 )  
\_\_\_\_\_ )

Docket No. IA-05-052  
ASLBP No. 06-845-01-EA

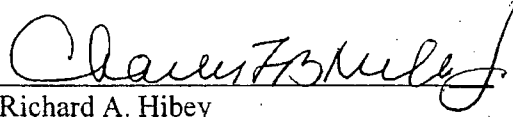
**NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE that, pursuant to 10 C.F.R. § 2.709 and otherwise, Mr. David Geisen, by counsel, shall take the deposition upon oral examination of the following persons commencing on the date and at the times noted below:

Robert D. Starkey	January 24, 2007	9:00 a.m.
Kenneth O'Brien	January 24, 2007	1:00 p.m.

The depositions shall continue from day-to-day thereafter until completed. The depositions shall be conducted before a Notary Public or other duly qualified officer and shall be recorded by stenographic or similar means. The depositions shall be held at the offices of Counsel for Mr. Geisen, Miller & Chevalier Chartered, 655 15<sup>th</sup> Street, N.W., Suite 900, Washington, D.C. 20005 (attention: Richard A. Hibey, Esq.).

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Charles F. B. McAleer, Jr.", written in dark ink.

Richard A. Hibey

Charles F. B. McAleer, Jr.

Andrew T. Wise

Matthew T. Reinhard

MILLER & CHEVALIER CHARTERED

655 15<sup>TH</sup> Street, N.W., Suite 900

Washington, D.C. 20005

(202) 626-5800

*Counsel for David Geisen*

Dated: January 18, 2007

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 18<sup>th</sup> day of January, 2007, a copy of the foregoing was 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 (\*\*):

Lisa Clark \* \*\*

LBC@nrc.gov

Michael A. Spencer \* \*\*

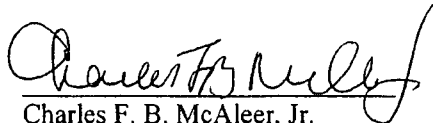
MAS8@nrc.gov

U.S. Nuclear Regulatory Commission

Office of the General Counsel

Mail Stop: O-15 D21

Washington, DC 20555-0001



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

**Reinhard, Matthew**

---

**From:** McAleer, Chas  
**Sent:** Friday, January 19, 2007 1:06 PM  
**To:** 'Michael Spencer'  
**Cc:** Wise, Andrew; Reinhard, Matthew; Hibey, Richard; 'Brett Klukan'; 'Lisa Clark'; 'Mary Baty'; 'Michael Clark'  
**Subject:** RE: In re David Geisen

Michael:

I have not received a response from you to my letter and the Notice of Deposition that I sent you by e-mail at 2:55 pm yesterday.

I interpret your silence in the face of that communication as an indication by you that Messrs. Starkey and O'Brien will appear for their depositions next Wednesday, January 24 as noticed. Accordingly, we will proceed to arrange for a court reporter for those depositions.

If, in fact, you will refuse to present Messrs. Starkey and O'Brien for their depositions next week, I again request that you immediately inform me (with copies to my colleagues) so that we at least can avoid the appearance fee of the court reporter. We will then proceed to seek appropriate relief from the Board regarding your refusal to present those gentlemen for their depositions.

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

Regards,

--Chas McAleer

Charles F. B. McAleer, Jr.  
MILLER & CHEVALIER, CHARTERED  
655 15th Street, N.W., Suite 900  
Washington, D.C. 20005  
(Direct) 202.626.5963  
(Main) 202.626.5800  
(Cell) 571.216.9584  
(Fax) 202.626.5801  
cmcaleer@milchev.com  
www.milchev.com

-----Original Message-----

**From:** McAleer, Chas  
**Sent:** Thursday, January 18, 2007 2:55 PM  
**To:** 'Michael Spencer'  
**Cc:** Wise, Andrew; Reinhard, Matthew; Hibey, Richard; 'Brett Klukan'; 'Lisa Clark'; 'Mary Baty'; 'Michael Clark'  
**Subject:** In re David Geisen

Michael:

Attached is a letter regarding the depositions of Messrs. Starkey and O'Brien, including a Notice of

Deposition for January 24, 2007. Please let me know if you have any questions.

Regards,

--Chas

Charles F. B. McAleer, Jr.  
MILLER & CHEVALIER, CHARTERED  
655 15th Street, N.W., Suite 900  
Washington, D.C. 20005  
(Direct) 202.626.5963  
(Main) 202.626.5800  
(Cell) 571.216.9584  
(Fax) 202.626.5801  
cmcaleer@milchev.com  
www.milchev.com

## Reinhard, Matthew

---

**From:** Michael Spencer [MAS8@nrc.gov]  
**Sent:** Friday, January 19, 2007 3:02 PM  
**To:** McAleer, Chas  
**Cc:** Wise, Andrew; Reinhard, Matthew; Hibey, Richard; Brett Klukan; Lisa Clark; Mary Baty; Michael Clark  
**Subject:** RE: In re David Geisen

Chas,

As we stated in our letter of January 17, we oppose you taking depositions of Doug Starkey and Ken O'Brien and they will not appear for deposition on Wednesday, January 24. We maintain that position.

Michael Spencer  
NRC Staff counsel

>>> "McAleer, Chas" <CMcAleer@milchev.com> 01/19/2007 1:05 PM >>>  
Michael:

I have not received a response from you to my letter and the Notice of Deposition that I sent you by e-mail at 2:55 pm yesterday.

I interpret your silence in the face of that communication as an indication by you that Messrs. Starkey and O'Brien will appear for their depositions next Wednesday, January 24 as noticed. Accordingly, we will proceed to arrange for a court reporter for those depositions.

If, in fact, you will refuse to present Messrs. Starkey and O'Brien for their depositions next week, I again request that you immediately inform me (with copies to my colleagues) so that we at least can avoid the appearance fee of the court reporter. We will then proceed to seek appropriate relief from the Board regarding your refusal to present those gentlemen for their depositions.

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

Regards,

--Chas McAleer

Charles F. B. McAleer, Jr.  
MILLER & CHEVALIER, CHARTERED  
655 15th Street, N.W., Suite 900  
Washington, D.C. 20005  
(Direct) 202.626.5963



(Main) 202.626.5800  
(Cell) 571.216.9584  
(Fax) 202.626.5801  
cmcaleer@milchev.com  
www.milchev.com

-----Original Message-----

From: McAleer, Chas  
Sent: Thursday, January 18, 2007 2:55 PM  
To: 'Michael Spencer'  
Cc: Wise, Andrew; Reinhard, Matthew; Hibey, Richard; 'Brett Klukan';  
'Lisa Clark'; 'Mary Baty'; 'Michael Clark'  
Subject: In re David Geisen

Michael:

Attached is a letter regarding the depositions of Messrs. Starkey and  
O'Brien, including a Notice of Deposition for January 24, 2007.

Please  
let me know if you have any questions.

Regards,

--Chas

Charles F. B. McAleer, Jr.  
MILLER & CHEVALIER, CHARTERED  
655 15th Street, N.W., Suite 900  
Washington, D.C. 20005  
(Direct) 202.626.5963  
(Main) 202.626.5800  
(Cell) 571.216.9584  
(Fax) 202.626.5801  
cmcaleer@milchev.com  
www.milchev.com