

February 1, 2008

Robert R. Loux, Executive Director
Agency for Nuclear Projects
Office of the Governor
State of Nevada
1761 E. College Parkway, Suite 118
Carson City, Nevada 89706

Dear Mr. Loux:

I am responding to your letters of May 9, 2007, and November 2, 2007, in which you requested security clearances for Messrs. Victor Gilinsky, Martin Malsch, Michael Thorne, and Allen Messenger. In your letters, you stated that the purpose of these security clearances was to allow these individuals to participate, on behalf of the State of Nevada, in the anticipated proceedings regarding the potential license application from the U.S. Department of Energy (DOE) for a high-level waste repository at Yucca Mountain, Nevada.

Regarding Messrs. Gilinsky and Malsch, they have completed their SF-86 forms electronically, via the internet, and the U.S. Nuclear Regulatory Commission (NRC) has received their Finger Print Cards (FD-258) and checks (each in the amount of \$370.00), to cover the costs associated with processing L-clearances. At this time, background investigations associated with L-Clearances are being processed by the NRC, with the assistance of the U.S. Office of Personnel Management (OPM).

Regarding Dr. Thorne, NRC has received his personal information, which was requested in an NRC letter of August 8, 2007 (L. Kokajko to R. Loux). The information Dr. Thorne provided indicates that he is not a United States citizen. Therefore, NRC considers him a foreign national. NRC stated, in its August 8, 2007, letter, that foreign nationals are not routinely granted access to classified information. However, the NRC Executive Director for Operations has the discretion to grant a foreign national, who possesses a special expertise, limited access to classified information, for specific programs, projects, contracts, licenses, certificates, or grants, if there are compelling reasons that the individual's access to classified information is needed to further NRC's mission. In accordance with Executive Order 12968, limited access may be approved only if the prior 10 years of the individual's background can be appropriately investigated. In addition, there are additional restrictions on the level of access that may be granted to foreign nationals, and to the types of information made accessible. This is true even if the individual has the required security clearance, has demonstrated the need-to-know, and has signed non-disclosure agreements.

In order for this process to move forward for Dr. Thorne, NRC needs additional information. Please send, to Mr. Kien Chang of my staff, the following information about Dr. Thorne:

1. Relevant work history and expertise, with respect to anticipation of duties that this individual will fulfill for the State of Nevada, in the anticipated proceedings regarding the potential license application from DOE;
2. Education;
3. Justification of why this individual's expertise is needed by the State of Nevada for the anticipated proceedings on the potential license application from DOE; and,
4. Reasons why the State of Nevada cannot engage a U.S. citizen to assume the type of duties that Dr. Thorne will perform in the anticipated proceedings on the potential license application from DOE.

Mr. Chang's address is:

Mr. Kien Chang, Project Manager
U.S. Nuclear Regulatory Commission
Division of High-Level Waste Repository Safety
11555 Rockville Pike
Mailstop: EBB-2-B02
Rockville, MD 20852

Regarding Mr. Messenger obtaining a security clearance, enclosed is the security package for him, containing the following items: (1) instructions on completing the Standard Form (SF) 86 electronically (via the internet); (2) Finger Print Cards (FD-258); (3) NRC Form 176; and (4) the form titled "Fair Credit Reporting Act of 1970, as amended." These are the items needed for an NRC L-Clearance. At this time, Mr. Messenger may fill out and complete the Finger Print Cards (FD-258), NRC Form 176, and the form titled "Fair Credit Reporting Act of 1970, as amended", and submit these forms to NRC. Please note that the SF-86 must be completed electronically (via the internet). However, before completing the SF-86 form electronically, the following information must be provided to NRC:

1. Full Name
2. Social Security Number
3. Date of Birth
4. Place of Birth
5. Telephone Number
6. E-mail Address.

Please contact Mr. Kien Chang, at (301) 492-3171, and provide him with the information requested above. This information will be entered into a database that will grant Mr. Messenger access to the electronic SF-86 form via the internet. When NRC has received the information requested above and entered it into the database, Mr. Messenger will be notified that he can proceed with completing the SF-86 form electronically. Mr. Messenger must follow the instructions contained in the security packages to ensure that the forms are completed correctly. Please note that these security packages must be completed promptly, because background investigations associated with an L-Clearance may take up to one year to complete. In addition, each completed security package should include a check payable to the U.S. Nuclear Regulatory Commission, in the amount of \$398.00, to cover the current costs associated with the processing of each L-Clearance requested. Once completed, the items in the security

package [i.e., Finger Print Cards (FD-258), NRC Form 176, and the form titled "Fair Credit Reporting Act of 1970, as amended"] should be sent to Mr. Chang, at the address given above.

Please note that, in the future, if the State of Nevada identifies any additional individuals for whom it intends to request a security clearance, the State must forward their names and contact information (e.g., telephone numbers, e-mail address and mailing address) to Mr. Chang. NRC will contact the individuals to obtain the personal information requested above (the same as requested for Mr. Messenger); send them the security package to complete; and notify them of the processing costs associated with each L-Clearance request. If the State of Nevada elects to engage foreign nationals to participate in the anticipated proceedings regarding the potential license application from DOE, NRC will need the same information as it has requested for Dr. Thorne (see above).

Finally, as a reminder, NRC stated in its August 8, 2007, letter (L. Kokajko to R. Loux) that the State of Nevada must make a decision, and notify NRC, as to whether these individuals, if granted the appropriate security clearances and found to have a need-to-know this information, would view classified information, related to anticipated proceedings on the potential license application or actually possess the classified information. If these individuals only wish to view the classified information, this would occur at a secure and approved government facility for handling and storing classified information. On the other hand, if these individuals wish to possess the classified information, the State of Nevada must establish and maintain a classified information program, per 10 CFR Part 95, before receiving any classified information. This includes submitting a Protection-of-Classified-Matter Security Plan, regarding the facility selected in the U.S., for approval by NRC, and making the facility available for NRC inspections. NRC is waiting for the State of Nevada's decision regarding this matter, since review, inspection, and approval of a Protection-of-Classified-Matter Security Plan may take several months.

If you have any questions about this matter, please contact Mr. Kien Chang, of my staff, at (301) 492-3171, or by e-mail, at kcc@nrc.gov.

Sincerely,

/RA/

Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See attached list.

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Sincerely,
/RA/

Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See attached list.

Distribution:

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OFC	NMSS/HLWRS	NMSS/HLWRS	Tech Ed.	NSIR/ISB	ADM	ADM
NAME	ASapountzis	KChang	EKraus	LSilvious	APretzello	SSchoenmann
DATE	11/28/07	12/17/07	1/14/08	1/17/08	1/9/08	1/17/08
OFC	HLWRS	HLWRS	OGC	HLWRS		
NAME	JRubenstone	AMohseni	MZobler/NLO	LKokajko		
DATE	1/24/08	1/28/08	1/28/08	2/1/08		

OFFICIAL RECORD COPY

Letter to R. Loux from L. Kokajko dated: February 1, 2008

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
R. Massey, Churchill/Lander County, NV	J. Treichel, Nuclear Waste Task Force
I. Navis, Clark County, NV	W. Briggs, Ross, Dixon & Bell
E. von Tiesenhausen, Clark County, NV	R. Murray, DOE/OCRWM
J. Birchim, Yomba Shoshone Tribe	G. Runkle, DOE/Washington, D.C.
R. Damele, Eureka County, NV	S. Bokhari, DOE/RW
L. Marshall, Eureka County, NV	S. Gomberg, DOE/Washington, D.C.
A. Johnson, Eureka County, NV	D. Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P.
S. Schubert, Sen. Reid's Office	R. Dyer, DOE/OCRWM
M. Yarbro, Lander County, NV	J. Espinoza, GAO
J. Donnell, DOE/OCRWM	A. Gil, DOE/OCRWM
M. Baughman, Lincoln County, NV	W. Boyle, DOE/OCRWM
L. Mathias, Mineral County, NV	M. Ulshafer, DOE/OCRWM
J. Saldarini, BSC	S.A. Wade, DOE/OCRWM
V. Prothro, Cong. Heller's Office	C. Hanlon, DOE/OCRWM
D. Swanson, Nye County, NV	T. Gunter, DOE/OCRWM
M. Simon, White Pine County, NV	A. Benson, DOE/OCRWM
E. Sproat, DOE/OCRWM	N. Hunemuller, DOE/OCRWM
D. Cornwall, NV Congressional Delegation	P. Harrington, OPM&E
T. Story, NV Congressional Delegation	M. Mason, BSC
R. Herbert, NV Sen. Reid's Office	S. Cereghino, BSC
M. Murphy, Nye County, NV	B. Gattoni, Burns & Roe
R. Lambe, NV Congressional Delegation	E. Mueller, Esmeralda County, NV
K. Kirkeby, NV Congressional Delegation	J. Gervers, Clark County, NV
R. Loux, State of NV	D. Beckman, BSC/B&A
S. Frishman, State of NV	J. Raleigh, SNL
S. Lynch, State of NV	J. Kennedy, Timbisha Shoshone Tribe
P. Guinan, Legislative Counsel Bureau	B. Durham, Timbisha Shoshone Tribe
R. Clark, EPA	R. Arnold, Pahrump Paiute Tribe
R. Anderson, NEI	

cc: (Continued)

R. McCullum, NEI

S. Kraft, NEI

J. Kessler, EPRI

D. Duncan, USGS

K. Skipper, USGS

W. Booth, Engineering Svcs, LTD

C. Marden, BNFL Inc.

J. Bacooh, Big Pine Paiute Tribe of Owens Valley

P. Thompson, Duckwater Shoshone Tribe

J. Egan, Esq.

D. Feehan, GAO

E. Hiruo, Platts Nuclear Publications

G. Hernandez, Las Vegas Paiute Tribe

K. Finfrock, NV Congressional Delegation

P. Johnson, Citizen Alert

M. Williams, DOE/OCRWM

J. Williams, DOE/Washington, DC

A. Robinson, Robinson-Seidler

M. Plaster, City of Las Vegas

S. Rayborn, Sen. Reid's Office

L. Lehman, T-REG, Inc.

B.J. Garrick, NWTRB

T. Feigenbaum, BSC

M. Urie, DOE

J. Brandt, Lander County

R. Holland, Inyo County

B. Sagar, CNWRA

V. Trebules, RW/DOE

R. Warther, DOE/OCRWM

Connie Simkins, Lincoln County

S.A. Orrell, SNL

R. Holden, NCAI

Moapa Paiute Indian Tribe

C. Dahlberg, Fort Independence Indian Tribe

D. Vega, Bishop Paiute Indian Tribe

Egan, Fitzpatrick, Malsch, PLLC

J. Leeds, Las Vegas Indian Center

J. C. Saulque, Benton Paiute Indian Tribe

C. Bradley, Kaibab Band of Southern Paiutes

R. Joseph, Lone Pine Paiute-Shoshone Tribe

L. Tom, Paiute Indian Tribes of Utah

E. Smith, Chemehuevi Indian Tribe

D. Buckner, Ely Shoshone Tribe

V. Guzman, Walker River Paiute

D. Eddy, Jr., Colorado River Indian Tribes

M. Boyd, Public Citizen

J. Wells, Western Shoshone National Council

D. Crawford, Inter-Tribal Council of NV

I. Zabarte, Western Shoshone National Council

S. Devlin

G. Hudlow

D. Irwin, Hunton & Williams

J. Hollrith, DOE

M. Rice, Lincoln County, NV

G. Hellstrom, DOE

S. Joya, Sen. Ensign's Office

M. Gaffney, Inyo County

L. Desell, RW/DOE

P. Nair, SNL

B. Neuman, Carter Ledyard & Milburn L.L.P.

E. Bonano, SNL

L. Newman, DOE/OCRWM