

April 29, 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

This letter is in response to your letter to Mr. Kien Chang, dated February 15, 2008, about security clearances for Messrs. Malsch and Messenger, and Drs. Gilinsky and Thorne, to serve as experts for Nevada's participation in the U.S. Nuclear Regulatory Commission's (NRC's) Yucca Mountain repository licensing proceeding.

NRC is processing the applications under the assumption that in performing their service for Nevada, cleared individuals would view, but not possess, the classified information contained in the Yucca Mountain proceeding. Suitable arrangements will need to be made with the U.S. Department of Energy (DOE) for access and use of DOE-approved facilities by cleared individuals.

The following summarizes the status of the four clearance applications:

Mr. Malsch and Dr. Gilinsky have completed their "Questionnaire for National Security Positions" (SF-86) forms electronically, via the internet, and NRC has received their Applicant Fingerprint Cards (FD-258) and checks, each in the amount of \$370 to cover the cost associated with processing L-clearances. NRC, with the assistance of the U.S. Office of Personnel Management, is processing their background investigations associated with L-Clearances.

Mr. Messenger has received the NRC security package containing the FD-258 cards, the "Security Acknowledgment/Access Authorization" form (NRC-176), and the "Fair Credit Reporting Act of 1970, as Amended" form. As the security package instructs, he should complete the SF-86 form electronically, via the internet, and return the other completed forms and fingerprint cards to NRC, along with a check (payable to NRC) in the amount of \$398.00 for processing costs, so that his L-Clearance application can proceed.

NRC has received the additional information that you provided for Dr. Thorne. As discussed in previous correspondence, Dr. Thorne's status as a citizen of a foreign country adds additional complexity to the review process for a security clearance. In particular, the depth of background investigation for such an individual may prolong the duration of the clearance process well beyond that routinely expected for U.S. citizens. As previously stated, the clearance process for a U.S. citizen is generally more straightforward.

Previous correspondence related to Dr. Thorne's clearance explained that access to classified information is granted to foreign nationals only in limited circumstances. In addition, before proceeding further, the Staff wishes to clarify that even if Dr. Thorne were to receive a security clearance, Federal statutes, including the Atomic Energy Act, prohibit release of Restricted Data (including Naval Nuclear Propulsion information) to foreign nationals except as made pursuant to an approved Government-to-Government agreement. Since Dr. Thorne is a foreign national, and is not covered by any Government-to-Government agreement, Dr. Thorne would be prohibited by law from accessing Restricted Data or Naval Nuclear Propulsion information.

Given these circumstances, please advise us if the State of Nevada wishes NRC to proceed with the clearance process for Dr. Thorne. If you have further questions about this matter, please contact Kien Chang, of my staff, at (301) 492-3171, or by e-mail, at Kien.Chang@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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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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Letter to R. Loux from L. Kokajko dated: April 29, 2008

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D. Eddy, Jr., Colorado River Indian Tribes

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J. Wells, Western Shoshone National Council

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