

July 31, 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:

This letter provides the present status of the State of Nevada's request for security clearances for four individuals for access to classified information, as was previously discussed in the letter sent to you from Lawrence E. Kokajko, of the U.S. Nuclear Regulatory Commission (NRC), dated April 29, 2008. This request for access to classified information is for their possible participation in anticipated proceedings on a license application from the U.S. Department of Energy (DOE), for a high-level waste repository at Yucca Mountain, Nevada.

The State of Nevada has previously requested clearances for Messrs. Martin Malsch and Allen Messenger, and Drs. Victor Gilinsky and Michael Thorne. The status of each request is as follows:

As noted in the previous letter, Mr. Malsch successfully completed his "Questionnaire for National Security Positions" (SF-86) form electronically, and NRC staff has received his Applicant Fingerprint Card and payment for the cost associated with processing the L-Clearance. NRC, with the assistance of the U.S. Office of Personnel Management, is processing his background investigation for the L-Clearance.

Although the previous letter indicated that Mr. Gilinsky's application was proceeding, he apparently has not successfully completed the SF-86 form electronically. The clearance process cannot move forward until he does so. The NRC staff advised him of the need to complete the SF-86 by e-mail and voicemail on June 12, 2008, and this letter serves as a further reminder.

Since the previous letter, Mr. Messenger has indicated, by e-mail on June 12, 2008, to Mr. Kien Chang of my staff, that his interest is in accessing only sensitive, unclassified information, not classified information. As part of, and accompanying, its license application, DOE submitted information that is non-public, sensitive unclassified non-safeguards information, marked as DOE-Official Use Only. Access to this type of information does not require a security clearance. The process to obtain access to this type of information is given in the Third Case Management Order issued by the NRC Atomic Safety Licensing Board, Pre-Application Presiding Officer, on August 30, 2007. If Mr. Messenger no longer requests access to classified information, he does not need to go forward with the clearance process. Unless otherwise advised by you, the NRC staff will assume that Mr. Messenger is not requesting security clearance.

As stated in the previous letter, since Dr. Thorne is a foreign national, and is not covered by any Government-to-Government agreement, he would be prohibited by law from accessing Restricted Data or Naval Nuclear Propulsion information, even if he had obtained the appropriate clearance. The previous letter asked that the State of Nevada advise NRC if it wished to proceed with the clearance process for Dr. Thorne. Since the State has provided no response, NRC staff considers that Dr. Thorne is no longer requesting a security clearance, and is taking no further action on his original request.

If you have other 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/

Aby Mohseni, Deputy Director
Licensing and Inspection Directorate
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: Martin G. Malsch, Esq.
Charles J. Fitzpatrick, Esq.

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