

September 5, 2008

Lawrence McDade, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

E. Roy Hawkens
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Nicholas G. Trikourous
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
ANDREW SIEMASZKO
Docket No. IA-05-021
ASLBP No. 05-839-02-EA

Dear Administrative Judges:

On September 3, 2008, counsel for Andrew Siemaszko sent a letter to the Board requesting that the enforcement proceeding pending against Mr. Siemaszko continue in abeyance for at least the next month while counsel files post-trial motions and assesses the outcome of the criminal verdict on this proceeding. The Staff would have no objection to granting counsel's request but believes that there is no need for the Board to take action because the criminal proceeding against Mr. Siemaszko has not yet concluded.

The enforcement proceeding before this Board was placed in abeyance until the conclusion of the criminal proceeding.¹ The Staff understands that the criminal trial is not concluded until

¹ On March 2, 2006, the Board granted a Staff motion, holding the administrative proceeding "in abeyance until the conclusion of the pending criminal proceeding, or until the NRC Staff advises the Board that this proceeding may move forward without having an inappropriate impact on the criminal proceeding." *Andrew Siemaszko*, No. 05-839-02-EA, 2006 NRC LEXIS 52, *2 (LBP Mar. 2, 2006) (unpublished memorandum and order). On March 10, 2006, Mr. Siemaszko appealed the decision. On May 3, 2006, the Commission affirmed the Board's decision, holding "this proceeding in abeyance to await the outcome of the parallel criminal proceeding or other developments that might warrant lifting the March 2 Order." *Andrew Siemaszko*, CLI-06-12, 63 NRC 495, 500-01 (2006).

Judge Lawrence McDade
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Judge E. Roy Hawkens

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sentencing.² Therefore, absent any further action by this Board, the enforcement proceeding would remain in abeyance until post trial motions are resolved and Mr. Siemaszko is sentenced.

Sincerely,

/RA/

Lisa B. Clark
Counsel for the NRC Staff

cc: Office of the Secretary
Billie Pirner Garde
Johanna Thibault
Libby Perch

² "Final judgment in a criminal case means sentence. The sentence is the judgment." *Berman v. US*, 302 U.S. 211, 212 (1937).