

November 25, 2008

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Atomic Safety and Licensing Board
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Washington, D.C. 20555

In the Matter of
SHAW AREVA MOX SERVICES
Mixed Oxide Fuel Fabrication Facility
Docket No. 70-3098-MLA

Dear Administrative Judges,

The NRC Staff provides notice that it has updated the hearing file for this proceeding pursuant to 10 C.F.R. § 2.336(d). The Staff produces herein as Supplement 4 to its Mandatory Disclosures: 1) an index of each item in the hearing file, 2) a deliberative due process privilege log as required by 10 C.F.R. § 2.336(b)(5), and 3) a sensitive information log. The Staff is continuing to preserve and maintain required privileged documents during the pendency of this proceeding. Also, attached are the Affidavit of Margie Kotzalas, as required by 10 C.F.R. § 2.336(c), and the Declaration of Marissa Bailey, Deputy Director of the Division of Fuel Cycle Safety and Safeguards, formally invoking the deliberative process privilege as to the documents so referenced herein.

Respectfully submitted,

/RA/

Brett Michael Patrick Klukan
Counsel for the NRC Staff

Farrar
McDade
Trikouros

Enclosures: Attachment 1: Hearing File Index
Attachment 2: Privilege Log - Deliberative Process
Attachment 3: Sensitive Information Log
Affidavit of Margie Kotzalas
Declaration of Marissa Bailey

cc: Attached Service List

Attachment 1**SHAW AREVA MOX SERVICES, LLC HEARING FILE AND MANDATORY DISCLOSURES
HEARING FILE INDEX
Supplemental Disclosure 4 – November 25, 2008**

ID #	Accession Number	Document Date	Title/ Description
04-01	ML082320259	11/13/2008	Approval of the Mixed Oxide Project Quality Assurance Plan, Revision 6, Change 1.
04-02	ML082590305	11/03/2008	Request for Additional Information Regarding the Review of the Radiological Protection Safety Aspects of the Mixed Oxide Fuel Fabrication Facility License Application Request.
04-03	ML082590361	11/13/2008	Memo to M. Kotzalas: In-office Review Summary: Mixed Oxide Fuel Fabrication Facility (Fire Safety).
04-04	ML083180048	11/12/2008	Assessment of Applicant Performance (AAP) of Authorized Activities for MOX Services, Mixed Oxide Fuel Fabrication Facility (MFFF), Docket Number 70-3098.
04-05	ML083180385	11/12/2008	12/15/2008 Meeting Notice, Meeting To Discuss the Results of the NRC review of the MOX Services Performance in Conducting NRC Authorized Activities at the Mixed Oxide Fuel Fabrication Facility Construction Project.

**ATTACHMENT 2 SHAW AREVA MOX SERVICES, LLC HEARING FILE AND MANDATORY DISCLOSURES
 DELIBERATIVE PROCESS LOG
 Supplemental Disclosure 4 – November 25, 2008**

PDP No.	Accession Number	Author Name/ Affiliation:	Title/Description:	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
DP-04-01	ML083230938	D. Tiktinsky, NRC/NMSS	2008/11/18 MFFF - 70.23 (a)8 revised write-up	11/18/2008	E-Mail	M. Kotzalas, W. Gloersen, K. Morrissey, NRC/NMSS	NRC Staff discussion of MFFF & PSSC verification.	16
DP-04-02	ML083230942	D. Tiktinsky, NRC/NMSS	2008/11/18 MFFF - RE: MOX document review- Amy-May 20- 22.doc	11/18/2008	E-Mail	M. Kotzalas, K. Morrissey, A. Luebbering, NRC/NMSS	NRC draft in-office review summary of chemical safety review. Also, OUO-SRI.	6
DP-04-03	ML083230949	A. Luebbering, NRC/NMSS	2008/11/17 MFFF - MOX document review-Amy-May 20-22.doc	11/17/2008	E-Mail	D. Tiktinsky, M. Kotzalas, NRC/NMSS	NRC draft in-office review summary of chemical safety review. Also, OUO-SRI.	6
DP-04-04	ML083230951	A. Luebbering, NRC/NMSS	2008/11/17 MFFF - Process description KCA Precipitation Unit.doc	11/17/2008	E-Mail	M. Kotzalas, NRC/NMSS	NRC staff discussion re: KCA Precipitation Unit. Also, OUO-SRI.	4
DP-04-05	ML083230957	M. Norato, NRC/NMSS	2008/11/13 MFFF - Red Oil Discussion Points	11/13/2008	E-Mail	M. Kotzalas, NRC/NMSS	NRC staff discussion re: red oil control. Also, OUO-SRI.	4

DP-04-06	ML083230960	D. Tiktinsky, NRC/NMSS	2008/11/14 MFFF - FW: Fire Protection and Loss of Confinement RAI Response Files	11/14/2008	E-Mail	K. Morrissey, M. Kotzalas, T. Johnson, R. Wescott, NRC/NMSS	NRC draft RAIs re: fire safety & confinement. Also, OUO-SRI.	425
DP-04-07	ML083230963	M. Norato, NRC/NMSS	2008/11/14 MFFF - Bill Troskoski 'Legacy' Files	11/14/2008	E-Mail	M. Kotzalas, J. DeJesus, NRC/NMSS	NRC staff discussion of MOX SER commitments re: chemical safety. Also, OUO-SRI.	16
DP-04-08	ML083230970	M. Norato, NRC/NMSS	2008/11/13 MFFF - Red Oil In-Office and On-site Review Summaries - Already Issued	11/13/2008	E-Mail	M. Kotzalas, K. Markham, NRC/NMSS	NRC draft in-office review summary of chemical safety / red oil prevention. Also, OUO-SRI.	31
DP-04-09	ML083230973	R. Reeves, NRC/NMSS	2008/11/12 MFFF - Review Summary for MOX Mtgs on May 6-8 and June 3-5	11/12/2008	E-Mail	M. Kotzalas, D. Tiktinsky, K. Morrissey, T. Hiltz, NRC/NMSS	NRC draft in-office review summary re: fuel handling equipment & heavy lifting cranes. Also, OUO-SRI.	11
DP-04-10	ML083230977	M. Norato, NRC/NMSS	2008/11/12 MFFF - RE: Draft In-Office Review Summary- Pu (VI) Oxalate	11/12/2008	E-Mail	A. Luebbering, NRC/NMSS	NRC draft in-office review summary of chemical safety review. Also, OUO-SRI.	6

DP-04-11	ML083230978	R. Reeves, NRC/NMSS	2008/11/11 MFFF - Review Summary for MOX Mtg on Sept 23	11/11/2008	E-Mail	M. Kotzalas, D. Tiktinsky, T. Hiltz, NRC/NMSS	NRC draft in-office review summary re: fuel handling equipment & heavy lifting cranes. Also, OUO-SRI.	8
DP-04-12	ML083230981	R. Reeves, NRC/NMSS	2008/11/11 MFFF - Review Summary for MOX Mtg on October 8-9	11/11/2008	E-Mail	M. Kotzalas, D. Tiktinsky, T. Hiltz, NRC/NMSS	NRC draft in-office review summary re: fuel handling equipment & heavy lifting cranes. Also, OUO-SRI.	8
DP-04-13	ML083230985	R. Reeves, NRC/NMSS	2008/11/10 MFFF - Acceptance Criteria for Material Handling Equipment	11/10/2008	E-Mail	M. Kotzalas, D. Tiktinsky, NRC/NMSS	NRC staff discussion of acceptance criteria for material handling equipment Also, OUO-SRI.	4
DP-04-14	ML083230987	D. Tiktinsky, NRC/NMSS	2008/11/11 MFFF - RE: ACTION NEEDED: - RAI's for review of Mixed Oxide Fuel Fabrication facility application	11/11/2008	E-Mail	M. Kotzalas, K. Morrissey, M. Bartlett, NRC/NMSS	NRC Staff discussion of MOX emergency plan.	3
DP-04-15	ML083230990	C. Roman, NRC/NMSS	2008/11/10 MFFF - RAI (updated)	11/10/2008	E-Mail	M. Kotzalas, D. Tiktinsky, K. Morrissey, NRC/NMSS	NRC draft RAIs re: hydrogen peroxide explosion. Also, OUO-SRI.	5

DP-04-16	ML083230991	C. Roman, NRC/NMSS	2008/11/10 MFFF - RAIs	11/10/2008	E-Mail	M. Kotzalas, D. Tiktinsky, K. Morrissey, NRC/NMSS	NRC draft RAIs re: hydrogen peroxide explosion. Also, OOU-SRI.	5
DP-04-17	ML083230997	D. Tiktinsky, NRC/NMSS	2008/11/06 MFFF - RE: ACTION NEEDED: - RAI's for review of Mixed Oxide Fuel Fabrication facility application	11/06/2008	E-Mail	M. Kotzalas, K. Morrissey, S. Echols, NRC/NMSS	NRC discussion re: MFFF review.	2
DP-04-18	ML083230999	T. Johnson, NRC/NMSS	2008/11/06 MFFF - RE: ACTION NEEDED - Documentation of MOX in-office reviews	11/06/2008	E-Mail	B. Smith, J. Downs, D. Tiktinsky, R. Wescott, NRC/NMSS	NRC draft in-office review summary re: confinement systems. Also, OOU-SRI.	4
DP-04-19	ML083231004	C. Roman, NRC/NMSS	2008/11/06 MFFF - In-office review summary	11/06/2008	E-Mail	M. Kotzalas, NRC/NMSS	NRC draft in-office review summary of chemical safety review. Also, OOU-SRI.	8
DP-04-20	ML083231015	M. Kotzalas, NRC/NMSS	2008/11/05 MFFF - Additional discussion material for Thurs' discussion	11/05/2008	E-Mail	C. Roman, S. Soto, M. Guardiola, NRC/NMSS	NRC staff discussion re: review plan for chemical safety review.	8
DP-04-21	ML083231021	C. Hrabal, NRC/NMSS	2008/11/04 MFFF - Addition MOX LA question	11/04/2008	E-Mail	C. Tripp, P. Silva, D. Tiktinsky, K. Morrissey, NRC/NMSS	NRC staff discussion re: independence of NCS function	3

DP-04-22	ML083231036	M. Guardiola, NRC/NMSS	2008/10/27 MFFF - In-office review summary	10/27/2008	E-Mail	D. Tiktinsky, M. Kotzalas, NRC/NMSS	NRC draft in-office review summary re: radiolysis. Also, OUO-SRI.	5
DP-04-23	ML083250617	D. Tiktinsky, NRC/NMSS	2008/11/20 MFFF - markup - RE: Review Summary for MOX Mtg on October 8-9, Sept 23-2	11/20/2008	E-Mail	M. Kotzalas, K. Morrissey, R. Reeves, T. Hiltz, NRC/NMSS	NRC draft in-office review summary re: fuel handling equipment & heavy lifting cranes. Also, OUO-SRI.	15
DP-04-24	ML083250633	C. Roman, NRC/NMSS	2008/11/19 MFFF - RE: Draft SER H2O2	11/19/2008	E-Mail	M. Kotzalas, NRC/NMSS	NRC draft RAIs re: hydrogen peroxide explosion. Also, OUO-SRI.	5
DP-04-25	ML083250645	C. Roman, NRC/NMSS	2008/11/19 MFFF - Draft SER H2O2	11/19/2008	E-Mail	M. Kotzalas, NRC/NMSS	NRC draft SER section re: hydrogen peroxide explosion. Also, OUO-SRI.	4
DP-04-26	ML083250649	A. Luebbering, NRC/NMSS	2008/11/19 MFFF - RE: MOX document review- Amy-May 20-22.doc	11/19/2008	E-Mail	K. Morrissey, M. Kotzalas, D. Tiktinsky, NRC/NMSS	NRC draft in-office review summary of chemical safety review. Also, OUO-SRI.	6

ATTACHMENT 3 SHAW AREVA MOX SERVICES, LLC HEARING FILE AND MANDATORY DISCLOSURES
SENSITIVE INFORMATION LOG
Supplemental Disclosure 4 – November 25, 2008

The NRC Staff has determined that certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding contain information subject to withholding from public disclosure as sensitive information pursuant to 10 C.F.R. §§ 2.390(a) and (d). Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents, withheld because of their “protected status.”

SE No.	Accession Number	Author Name/ Affiliation	Title/Description	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
SE-04-01	ML082590377	R. Wescott, NRC/NMSS/ FCSS	Enclosure 1: Summary of In-Office Review Fire Safety Technical Area, Integrated Safety Analysis Summary MOX Services Office, Aiken SC.	11/13/2008	Report	NMSS, MOX Services	This document contains detailed accident information and is withheld as security-related information. Also contains proprietary information.	3
SE-04-02	ML082590461	R. Wescott, K. Morrissey, NRC/NMSS/ FCSS/SPTS D/MOXB	Enclosure 3: Summary of Meeting Fire Safety Technical Area, Integrated Safety Analysis Summary.	11/13/2008	Report	NMSS, MOX Services	This document contains detailed accident information and is withheld as security-related information. Also contains proprietary information	3

SE-04-03	ML083230948	D. Tiktinsky, NRC/NMSS	2008/11/18 MFFF - FW: Additional question from BNL - red oil FW: Slab Settler	11/18/2008	E-Mail	K. Morrissey, M. Kotzalas, NRC/NMSS F. Gonzalez, BNL	This document contains detailed accident information and is withheld as security-related information.	7
SE-04-04	ML083230950	D. Tiktinsky, NRC/NMSS	2008/11/18 MFFF - FW: Additional question from BNL - red oil FW: Slab Settler	11/18/2008	E-Mail	D. Gwyn, MOX Services	This document contains detailed accident information and is withheld as security-related information.	2
SE-04-05	ML083230953	C. Gardner, DOE	2008/11/14 MFFF - Re: Red Oil Safety Experience at H-Canyon	11/14/2008	E-Mail	M. Norato, NRC/NMSS	This document contains detailed accident information and is withheld as security-related information.	3
SE-04-06	ML083230964	M. Norato, NRC/NMSS	2008/11/14 MFFF - Red Oil Safety Experience at H-Canyon	11/14/2008	E-Mail	C. Gardner, DOE	This document contains detailed accident information and is withheld as security-related information.	2
SE-04-07	ML083231009	D. Tiktinsky, NRC/NMSS	2008/11/05 MFFF - FW:	11/05/2008	E-Mail	M. Kotzalas, K. Morrissey, NRC/NMSS D. Gwyn, Mox Services	NRC RAIs re: criticality safety.	9
SE-04-08	ML083250624	D. Tiktinsky, NRC/NMSS	2008/11/20 MFFF - FW: Follow-up to LA RAI & Site Visit Plan	11/20/2008	E-Mail	M. Kotzalas, K. Morrissey, NRC/NMSS D. Gwyn, Mox Services	NRC discussion of criticality safety review.	4

SE-04-09	ML083250626	D. Tiktinsky, NRC/NMSS	2008/11/19 MFFF - Information request related to chemical consequences	11/19/2008	E-Mail	M. Kotzalas, K. Morrissey, NRC/NMSS D. Gwyn, Mox Services	NRC question re: chemical consequence analysis.	2
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November 25, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SHAW AREVA MOX SERVICES)	Docket No. 70-3098-MLA
)	
(Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 07-856-02-MLA-BD01


AFFIDAVIT OF MARGIE KOTZALAS CONCERNING
MANDATORY DISCLOSURE
REQUIREMENT OF 10 C.F.R. § 2.336(c)

I, Margie Kotzalas, do hereby state as follows:

1. I am employed as a Branch Chief in the Division of Fuel Cycle Safety and Safeguards in the Nuclear Regulatory Commission's ("NRC") Office of Nuclear Material Safety and Safeguards. I serve as the Branch Chief for the Mixed Oxide Fuel Fabrication Facility license application to possess and use special nuclear material. Among other things, I am managing the preparation of the hearing file and mandatory disclosures in connection with the license application issue in this proceeding.

2. I hereby certify that all relevant materials required to be disclosed pursuant to 10 C.F.R. § 2.336 (b) and (c) in the captioned proceeding have been disclosed, and that the disclosures are accurate and complete as of the date of this certification.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Margie Kotzalas

Executed in Rockville, MD
this 25th day of November, 2008

November 25, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SHAW AREVA MOX SERVICES)	Docket No. 70-3098-MLA
)	
(Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 07-856-02-MLA-BD01

DECLARATION OF MARISSA BAILEY

I, Marissa Bailey, do hereby state as follows:

1. I am employed as the Deputy Director of the Division of Fuel Cycle Safety and Safeguards in the Office Nuclear Material Safety and Safeguards of the United States Nuclear Regulatory Commission ("NRC"). My supervisory responsibilities include oversight of the NRC Staff's review and evaluation of the Shaw Areva Mixed Oxide Fuel Fabrication Facility License Application.

2. As part of their responsibilities in preparing the hearing file and mandatory disclosures for these proceedings, NRC Staff members under my supervision identified certain documents as privileged because they contained information concerning the Staff's deliberative process. Those documents are listed in Attachment 2 to the Mandatory Supplemental Disclosures submission of the Staff's Hearing File.

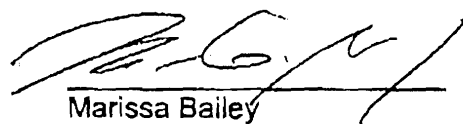
3. I have personally reviewed the documents identified as privileged in Attachment 2, and have determined, in accordance with the guidance set forth in Management Directive 3.4, that they contain predecisional information concerning the Staff's review of the license application. All documents contain either the Staff's analyses, recommendations, opinions, or evaluations, and may not necessarily reflect the final agency position with respect to the matters discussed therein. Each of the

documents comprises part of the deliberative process necessary to the Staff's review of the pending license application.

4. Further, I have determined that disclosures of these documents could result in harm to the agency, in that it would (a) prematurely disclose the preliminary views of individual Staff members and/or the Staff prior to reaching a final agency decision, and could thus create confusion as to the actual policy or views of the NRC Staff; (b) hinder the efficiency of the Staff, in that forced disclosure of its internal discussions on an unresolved issue would tend to chill all future deliberations and would interfere with the Staff's ability to engage in a free exchange of opinions and analyses prior to publishing its final review documents; and (c) imply or suggest incorrectly that the opinions of the Staff members involved in these communications are actually the final decisions of the agency, while no such final decision has yet been made.

5. Accordingly, I formally invoke the deliberative process privilege with respect to each of the documents listed in Attachment 2 to the Mandatory Supplemental Disclosures submission of the Staff's Hearing File.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Marissa Bailey

Executed in Rockville, MD
this 25th day of October, 2008.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SHAW AREVA MOX SERVICES)	Docket No. 70-3098-MLA
Mixed Oxide Fuel Fabrication Facility)	
)	
(License Application for Possession and)	ASLBP No. 07-856-02-MLA-BD01
Use of Byproduct, Source and Special)	
Nuclear Materials))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "LETTER IN THE MATTER OF SHAW AREVA MOX SERVICES, LLC" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk(*); and by electronic mail as indicated by a double asterisk (**) on this 25th day of November, 2008:

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/RA/

Brett Michael Patrick Klukan
Counsel for the NRC Staff