

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawken
Nicholas G. Trikouros

In the Matter of

ANDREW J. SIEMASZKO

Docket No. IA-05-021-EA

ASLBP No. 05-839-02-EA

July 16, 2009

ORDER

(Approving Proposed Settlement Agreement and Dismissing Proceeding)

1. On April 21, 2005, the Nuclear Regulatory Commission (NRC) Staff issued an Order to Mr. Andrew J. Siemaszko, a former employee of the Davis-Besse Nuclear Power Plant, that prohibited his involvement in NRC-licensed activities for a period of 5 years. This Order, however, was not made immediately effective¹ and is not yet in force. On April 22, 2005, Mr. Siemaszko filed a timely answer in which he denied the allegations in the NRC Staff's Order and requested a hearing.²

2. On May 18, 2005, this Atomic Safety and Licensing Board was established to preside over Mr. Siemaszko's hearing request and, on May 19, 2005, the Board granted his

¹ The NRC Staff Order would become effective if Mr. Siemaszko did not request a hearing within 90 days after the Order was issued or, alternatively, if Mr. Siemaszko did request a hearing, the Order would be effective if and when it was upheld at the conclusion of the administrative hearing proceeding. See Andrew Siemaszko, Order Barring Participation in NRC-Licensed Activities, 70 Fed. Reg. 22,716 (May 2, 2005).

² Request for Hearing in Response to Order Prohibiting Involvement in NRC-Licensed Activities In the Matter of Andrew Siemaszko, IA-05-021 (Apr. 22, 2005).

hearing request.³

3. At the request of the United States Department of Justice (DOJ), the NRC Staff asked that this proceeding be stayed so it would not interfere with an ongoing criminal investigation.⁴ Mr. Siemaszko vigorously opposed the Staff's request for a stay, citing his strong interest in a prompt resolution of this proceeding.⁵ On July 22, 2005, over Mr. Siemaszko's objection, the Board granted the NRC Staff's request for a 120-day delay of this enforcement proceeding.⁶ Thereafter, the NRC Staff requested an extension of the stay through November 30, 2005, by which time, based on representations from DOJ, it believed that the ongoing criminal investigation would be complete.⁷ Mr. Siemaszko also opposed this request for a further delay of the proceeding.⁸ On September 29, 2005, by majority vote, the Board granted the NRC Staff's request.⁹

4. On January 19, 2006, a grand jury empaneled by the U. S. District Court for the Northern District of Ohio handed up an Indictment in which Mr. Siemaszko was charged with knowingly and willfully causing material facts to be concealed in a matter within the jurisdiction

³ See 70 Fed. Reg. 29,783 (May 24, 2005); see also Licensing Board Order (Granting Licensee's Hearing Request) at 2 (May 19, 2005) (unpublished).

⁴ NRC Staff Motion for Delay of Proceeding at 4 (May 17, 2005).

⁵ Response of Andrew Siemaszko to NRC Staff Motion for Delay of Proceedings at 1 (May 31, 2005).

⁶ Licensing Board Order (Granting the NRC Staff's Motion for a 120-Day Delay of Proceedings and Setting Case Schedule) at 4 (July 22, 2005) (unpublished).

⁷ NRC Staff Motion to Extend the Stay of the Proceeding at 1, 4 (Aug. 19, 2005).

⁸ Id. at 1.

⁹ Licensing Board Order (Granting the NRC Staff's Motion for a Stay of this Proceeding until November 30, 2005) at 6 (Sept. 29, 2005) (unpublished).

of the NRC, an agency of the United States.¹⁰ Based on that felony indictment, the NRC Staff asked that this administrative enforcement proceeding be held in abeyance until the conclusion of the criminal proceeding.¹¹ Mr. Siemaszko opposed the NRC Staff's request to delay this proceeding and reiterated that he wished to resolve this enforcement proceeding as expeditiously as possible.¹² The majority of the Board concluded that the NRC Staff's Motion to hold this proceeding in abeyance had merit and granted it.¹³ Mr Siemaszko appealed the Board's decision to the Commission,¹⁴ which affirmed the Board's March 2, 2006 Order.¹⁵

5. On October 17, 2006, the NRC Staff amended the April 21, 2005, Order prohibiting Mr. Siemaszko's involvement in NRC-licensed activities.¹⁶ On October 31, 2006, Mr. Siemaszko answered the amendment, denied the additional allegations in the amendment, and requested consolidation of the pending matters for a hearing on the proposed enforcement

¹⁰ United States v. David Geisen, et al. (Jan. 19, 2006).

¹¹ NRC Staff Motion to Hold the Proceeding in Abeyance at 7 (Feb. 1, 2006).

¹² Response of Andrew Siemaszko to NRC Staff Motion to Hold the Enforcement Proceeding in Abeyance (Feb. 10, 2006).

¹³ Licensing Board Order (Granting the NRC Staff's Motion to Hold this Proceeding in Abeyance) at 2, 4 (Mar. 2, 2006).

¹⁴ Appeal of the Atomic Safety and Licensing Board's March 2, 2006, Order to Hold the Enforcement Proceeding Against Andrew J. Siemaszko in Abeyance (Mar. 10, 2006).

¹⁵ In the Matter of Andrew Siemaszko, CLI-06-12, 63 NRC 495, 498 (2006). In affirming the Board's Order, Commissioner (now Chairman) Jaczko stated: "I believe that in the limited instances such as this where the record establishes that moving forward with the NRC's administrative proceeding could potentially damage a criminal proceeding because of the overlapping nature of the issues involved, and the Staff's Order is not made immediately effective, any employment ban, if one is ultimately imposed on Mr. Siemaszko, should be reduced by the amount of time the proceeding was placed in abeyance." Id. at 507 (concurring Opinion by Commissioner Gregory B. Jaczko).

¹⁶ Amendment of Order Prohibiting Involvement in NRC-Licensed Activities (NRC Special Inspection Report No. 50-346/2002-08 (DRS)) (Oct. 17, 2006).

action.¹⁷ On November 15, 2006, the Board granted the request for consolidation.¹⁸

6. On August 26, 2008, Mr. Siemaszko was convicted by a jury empaneled in the United States District Court for the Northern District of Ohio on three felony counts which charged him with making false statements to, and concealing material information from, the NRC, an agency of the United States, in violation of 18 U.S.C. § 1001. On February 9, 2009, Mr. Siemaszko was sentenced to three years probation on each count, to run concurrently, and was fined \$4,500. As a condition of his probation, without the prior approval of his probation officer Mr. Siemaszko is prohibited from working in any capacity in the nuclear industry for a period of three years from the date of sentencing.¹⁹

7. Subsequent to his conviction and sentencing in the United States District Court, the NRC Staff and Mr. Siemaszko engaged in discussions that have resulted in a Settlement Agreement dated June 23, 2009, a copy of which is attached to and incorporated into this Order. Pursuant to the proposed Settlement Agreement, Mr. Siemaszko's five-year debarment would be effective from the date of the April 21, 2005 Order, terminating on April 21, 2010. All other terms of the Order would remain in effect.

8. Upon review of the Settlement Agreement, and our discussion with the parties at a conference held via telephone on July 10, 2009, the Board is satisfied that the terms of the proposed Settlement Agreement reflect a fair and reasonable resolution of this matter and is in keeping with the objectives of the NRC's Enforcement Policy and satisfies the requirements of 10 C.F.R. § 2.338(g) and (h). Accordingly, the Settlement Agreement is approved pursuant to

¹⁷ Response to NRC Staff's October 17, 2006 Amendment to Order Prohibiting Involvement in NRC-Licensed Activities, Appeal, and Request for Consolidation with Hearing In the Matter of Andrew Siemaszko, IA-05-021, ASLBP No. 05-839-02-EA (Oct. 21, 2006).

¹⁸ See Licensing Board Order (Granting Consolidation) (Nov. 15, 2006) (unpublished).

¹⁹ Judgment and Commitment Order, Case No. 3:06CR712, USDC, ND Ohio, (Feb. 9, 2009).

10 C.F.R. § 2.338(i). The Enforcement Order issued to Mr. Andrew Siemaszko on April 21, 2005, and amended on October 17, 2006, is hereby modified consistent with the terms of the Settlement Agreement.

9. In addition, the Board is satisfied that no further adjudication of this matter is required in the public interest and, given that all matters required to be adjudicated as part of this proceeding have been resolved, this proceeding is dismissed.²⁰

IT IS SO ORDERED.

/RA/

Lawrence G. McDade
ADMINISTRATIVE JUDGE

/RA/

E. Roy Hawkens
ADMINISTRATIVE JUDGE

/RA/

Nicolas G. Trikouros
ADMINISTRATIVE JUDGE

Dated in Rockville, MD
this 16th day of July, 2009

* Copies of this Order were sent on this date by e-mail transmission to: (1) counsel for Mr. Siemaszko; and (2) counsel for the NRC Staff.

²⁰ See 10 C.F.R. § 2.203.

ATTACHMENT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

ANDREW SIEMASZKO

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)

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

SETTLEMENT AGREEMENT

1. On April 21, 2005, the Staff issued an Order Prohibiting Involvement in NRC-Licensed Activities ("Order") to Mr. Andrew Siemaszko, a former employee of Davis-Besse Nuclear Power Plant. The NRC Staff alleged that Mr. Siemaszko engaged in deliberate misconduct that caused inaccurate and incomplete information to be provided to the NRC concerning conditions at the Davis-Besse reactor in violation of 10 C.F.R. § 50.5, "Deliberate misconduct," and the Order prohibited Mr. Siemaszko from engaging in NRC-licensed activities for a period of five years. By the terms of the Order, the prohibition was to be effective 90 days from the date of the Order unless a hearing request was granted by the Atomic Safety and Licensing Board ("Board").

2. Mr. Siemaszko answered the Order, denied the allegations in the Order, and requested a hearing. On May 19, 2005, the Atomic Safety and Licensing Board established by the Commission to preside over Mr. Siemaszko's enforcement proceeding granted Mr. Siemaszko's hearing request.

3. On October 17, 2006, the NRC Staff amended the Order prohibiting Mr. Siemaszko's involvement in NRC-licensed activities to include additional allegations wherein Mr. Siemaszko caused inaccurate and incomplete information to be provided to the NRC. These instances were cited to provide additional support for the 10 C.F.R. § 50.5, "Deliberate misconduct," violation and the five year ban imposed by the original Order. On October 30,

2006, Mr. Siemaszko answered the amendment, denied the additional allegations in the amendment, and requested consolidation of the pending matters for a hearing on the proposed enforcement action. Mr. Siemaszko's request for hearing on the additional charges and consolidation was granted by the Board.

4. Mr. Siemaszko was criminally indicted for making false statements and concealing material information concerning some of the same matters that were the subject of the Order. At the Staff's request, the hearing on the Order was deferred pending the outcome of the criminal proceeding. On August 26, 2008, Mr. Siemaszko was convicted by a federal district court jury of three counts of the indictment and acquitted on two. On February 6, 2009, he was sentenced to three years probation on each count, to run concurrently, and fined \$4,500. As a condition of his probation, he may not work in any capacity in the nuclear industry for three years without prior approval of his probation officer.

5. The Staff and Mr. Siemaszko have engaged in negotiations and determined that it is in the public interest to terminate this proceeding without further litigation subject to the following stipulations.

THE PARTIES AGREE AND STIPULATE AS FOLLOWS:

A. Mr. Siemaszko's five year debarment will be effective from the date of the April 21, 2005 Order, terminating on April 21, 2010. All other terms of the Order remain in effect, including the requirement that Mr. Siemaszko notify the Director, Office of Enforcement, U.S. NRC, within 20 days of accepting his first employment offer involving NRC-licensed activities following the termination of the debarment. In this notification, Mr. Siemaszko shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

B. Mr. Siemaszko has not worked in any capacity, paid or unpaid, in NRC-licensed activities from September 18, 2002 through the date of this Settlement Agreement. Pursuant to

this Settlement Agreement, Mr. Siemaszko will continue not working in any capacity, paid or unpaid, in NRC-licensed activities through April 21, 2010.

C. The parties will submit this Settlement Agreement to the Board for approval with a joint motion requesting approval of the settlement and termination of the proceeding with prejudice based on the resolution of matters in this settlement agreement. This Settlement Agreement will become effective upon its execution by both parties; however, the agreement is contingent upon approval by the Board pursuant to 10 C.F.R. § 2.203. Upon approval by the Board, this Settlement Agreement will have the same force and effect as an Order made after a full hearing.

D. The parties agree that all further procedural steps before the Licensing Board and any right to challenge or contest the validity of the Order entered into in accordance with the Settlement Agreement, and all rights to seek judicial review or otherwise to contest the validity of the Order are expressly waived.

IN WITNESS WHEREOF, Mr. Siemaszko and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on this 23rd day of June, 2009.

/RA/

Kimberly A. Sexton
Counsel for the NRC Staff

/Original Signed By/

Billie Pirner Garde
Counsel for Andrew Siemaszko

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ANDREW SIEMASZKO)	Docket No. IA-05-021
)	
)	
)	
(Enforcement Action))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (APPROVING PROPOSED SETTLEMENT AGREEMENT AND DISMISSING PROCEEDING) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Washington, DC 20555-0001

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Administrative Judge
Lawrence G. McDade, Chair

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
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Administrative Judge
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Administrative Judge
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DOCKET NO. IA-05-021
ORDER (APPROVING PROPOSED SETTLEMENT AGREEMENT AND DISMISSING
PROCEEDING)

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[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 16th day of July 2009