

September 20, 2010

Michael C. Farrar, Chair
Atomic Safety and Licensing Board
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Nicholas Trikouros, Administrative Judge
Atomic Safety and Licensing Board
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Lawrence G. McDade, Administrative Judge
Atomic Safety and Licensing Board
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U.S. Nuclear Regulatory Commission
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 26 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 David Tiktinsky 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/

Kimberly A. Sexton
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 David Tiktinsky
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 26 – September 20, 2010

ID #	Accession Number	Document Date	Title/ Description
26-01	ML102510833	08/17/2010	2010/08/17 MFFF - FW: Circuit Analysis NUREG
26-02	ML102510834	08/18/2010	2010/08/18 MFFF - FW: 575th ACRS Meeting Agenda
26-03	ML102371207	08/25/2010	Press Release-10-148: NRC Issues Draft Safety Evaluation Report for Proposed Mixed-Oxide Fuel Fabrication Facility at Savannah River.
26-04	ML102371259	08/25/2010	Press Release-10-148: NRC Issues Draft Safety Evaluation Report for Proposed Mixed-Oxide Fuel Fabrication Facility at Savannah River.

**ATTACHMENT 2 SHAW AREVA MOX SERVICES, LLC HEARING FILE AND MANDATORY DISCLOSURES
 DELIBERATIVE PROCESS LOG
 Supplemental Disclosure 26 – September 20, 2010**

DP No.	Accession Number	Author Name/ Affiliation	Title/Description	Document Date	Document Type	Addressee / Addressee Affiliation	Comment	Page Count
DP-26-01	ML102630336	J. DeJesus, NRC/NMSS	2010/08/17 MFFF - RE: Did you send over the slides and DOE doc? <eom>	08/17/2010	E-Mail	M. Norato, NRC/NRO	Internal staff communication about hydrazoic acid. Also, OUO.	62
DP-26-02	ML102510831	J. DeJesus, NRC/NMSS	2010/08/17 MFFF - RE: Did you send over the slides and DOE doc? <eom>	08/17/2010	E-Mail	M. Norato, NRC/NRO D. Tiktinsky, L. Campbell, NRC/NMSS/FCSS	Internal staff communication about hydrazoic acid. Also, OUO.	3
DP-26-03	ML102510830	B. Wray, NRC/NSIR	2010/09/02 MFFF - MOX RAIs	09/02/2010	E-Mail	D. Tiktinsky, NRC/NMSS/FCSS	Draft RAIs for the SER chapters on the physical protection, safeguards contingency response plan, and the training & qualification plan. Also, OUO.	11

ATTACHMENT 3 SHAW AREVA MOX SERVICES, LLC HEARING FILE AND MANDATORY DISCLOSURES
SENSITIVE INFORMATION LOG
Supplemental Disclosure 26 – September 20, 2010

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-26-01	ML102510828	D. Tiktinsky, NRC/NMSS	2010/09/03 MFFF - a few additional questions related to physical security plans (ouo)	09/03/2010	E-Mail	D. Gwyn, D. Adkins, MOX Services K. Morrissey, NRC/NMSS/FCSS B. Wray, NRC/NSIR	Document contains questions related to physical security plans which are OUO-SRI.	4
SE-26-02	ML102510829	D. Tiktinsky, NRC/NMSS	2010/09/03 MFFF - security comments (ouo)	09/03/2010	E-Mail	D. Gwyn, D. Adkins, MOX Services K. Morrissey, NRC/NMSS/FCSS	Document contains OUO-SRI discussion of security requirements in Part 73.	9

September 20, 2010

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 DAVID TIKTINSKY CONCERNING
MANDATORY DISCLOSURE
REQUIREMENT OF 10 C.F.R. § 2.336(c)

I, David Tiktinsky, do hereby state as follows:

1. I am employed as a Senior Project Manager 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 Senior Project Manager 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.

/Original Signed By/

David Tiktinsky

Executed in Rockville, MD
this 20th day of September, 2010.

September 20, 2010

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.

/Original Signed By/

Marissa Bailey

Executed in Rockville, MD
this 20th day of September, 2010.

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

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 20th day of September, 2010:

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/RA/

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