

RAS 10035

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

DOCKETED
USNRC

June 1, 2005 (2:45pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

May 31, 2005

**RESPONSE OF ANDREW SIEMASZKO TO
NRC STAFF MOTION FOR DELAY OF PROCEEDINGS**

Pursuant to 10 C.F.R. §2.342(d), and for the reasons set forth herein, Andrew Siemaszko opposes the May 17, 2005 request of the Staff (the Staff) of the Nuclear Regulatory Commission (NRC) for a delay of the hearing on the proposed enforcement action against him.¹ The fundamental issue to be decided by the ASLB is whether Mr. Siemaszko's due process rights under the 14th Amendment to the United States Constitution outweigh the NRC's assertion that the disclosure of the report of the NRC's Office of Investigations (OI) would jeopardize the criminal proceeding into alleged criminal misconduct.

FACTS

Mr. Siemaszko is a native of Poland, coming to the United States in his early 20s. He was employed as a systems engineer, from July 6, 1999 until his termination in September, 2002,

¹ The Atomic Safety and Licensing Board (ASLB) established May 31, 2005 as the date for filing Mr. Siemaszko's response. *See*, Order (Granting Licensee's Hearing Request), May 19, 2005, p. 2.

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SECY-02

at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (FENOC) near Oak Harbor, Ohio.

Mr. Siemaszko and other systems engineers before him, not FENOC management, identified the concern about the existence of excessive boric acid on the head of the reactor and devised a plan to clean it during the 12th Refueling Outage (12 RFO) in the spring of 2000. Although cleaning the head of the reactor was not even included in the original outage schedule work planning, Mr. Siemaszko convinced upper management to give him a chance to clean it. He undertook those activities with the full intention of completely cleaning the head, but as a result of the extensive build-up of the boric acid and the inability to access the center of the reactor vessel with appropriate tools before management stopped his clean-up activities, the boric acid was not completely removed. All leaking CRDM flanges were repaired.

The Staff's action in proposing to prohibit Mr. Siemaszko's involvement in NRC-licensed activities is based on a convoluted attempt to portray Mr. Siemaszko as creating a deception to his own management about the existence of remaining boric acid, succeeding at it, and also thereby deceiving the NRC. This is not true. Moreover, the NRC Staff knows it is not true.

Interviews conducted in connection with the FENOC Root Cause Analysis of the relevant events demonstrate that the knowledge about the remaining boric acid was known by others involved in 12 RFO. For example, Scott Coakley, one of the Outage Managers stated:

"Question # 25:

'Q - Was the reactor head cleaned?

Yes, but not completely cleaned. I knew it then. The engineer [Mr. Siemaszko] came in several days saying he needed more time and I said okay. At that time they could not use water. I don't know how he was performing his cleaning. I was told they were beating it with a steel rod and hammer. I didn't think we could use water. Up in the center, an area they couldn't get clean.'

Question # 26

'It's my belief they tried everything to get it off. It was pretty much cleaned for several days but the center part.'"

FENOC Root Cause, at FE-04502.

Glenn McIntyre, who supervised Mr. Siemaszko, stated in an interview logged by the FENOC Root Cause as 0052-F (FE-04456, narration of the interviewer):

"He understood that there was boric acid still on the head. Andrew had pushed very hard to get the process in place...Andrew was pretty determined to get it cleaned." FENOC Root Cause, at FE-04459.

After the discovery of the cavity in the reactor head during 13 RFO, Mr. Siemaszko was interviewed by OI. His original interview on March 15, 2002, was tape recorded, and was eventually transcribed at a later date. English is not Mr. Siemaszko's native language, and the tape is full of problems resulting from the communications between OI and Mr. Siemaszko. It is also incomplete. Notwithstanding Mr. Siemaszko's attempts to review and correct any mistakes in the original tape, and later to review and complete the interview process, OI declined to do so. (See, in general, Attachments 1 to 3) Now, as of the April 21, 2005 decision, Mr. Siemaszko finds himself a target of a criminal proceeding and an action to bar him from working in the industry, without even knowing what evidence is being used against him.² The NRC issued an

² In the Matter of Andrew Siemaszko, Order Prohibiting Involvement in NRC-Licensed Activities (April 21, 2005).

Order, and a press release. (Attachment 4) The announcement, understandably, received public distribution and, presumably, was widely read in the industry.

While the Order is allegedly not immediately effective, Mr. Siemaszko's reputation and his ability to obtain work in the industry has already been destroyed. The hearing requested by Mr. Siemaszko is critical to undoing the damage he has already suffered.

ARGUMENT

The NRC Staff is seeking extraordinary relief in this matter which delays, and effectively denies Mr. Siemaszko's due process rights guaranteed under the United States Constitution.

[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a criminal conviction, is a principle basic to our society.

Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (Frankfurter, J., concurring).

The Staff, on the basis of an OI report that Mr. Siemaszko has never seen or had any opportunity to review or respond to, has issued an Order barring Mr. Siemaszko from engaging in his livelihood as a nuclear power engineer for a period of five years, with five additional years of some sort of probation requiring notice to the NRC of where he is employed. EO, at 8-9. The EO sentence does not begin until 90 days after the conclusion of the enforcement proceeding, which charitably could take a year. Now the Staff seeks an initial 120-day delay, and discloses that it could require yet more time before it is prepared to even begin to support the action that it has started against Mr. Siemaszko.

In determining whether to grant or deny an application for a stay in these proceedings, the ASLB is to consider the following factors set forth in 10 C.F.R. §2.342(e):

- (1) whether the Staff has made a strong showing that it is likely to prevail on the merits;
- (2) whether the Staff will be irreparably injured unless a stay is granted;
- (3) whether the granting of the stay would harm Mr. Siemaszko; and
- (4) where the public interest lies.

The Staff suggests a modification of the above-stated standard is appropriate. However, it does not believe that the standards of 10 C.F.R. §2.202(2)(ii) should be applicable either. Under 10 C.F.R. §2.202(2)(ii), a presiding officer is permitted to delay a hearing on an immediately effective order when good cause exists.³ Of course, if the Order was immediately effective the standard from 10 C.F.R. §2.202 (2)(ii), provides that the ASLB may delay the proceedings “for such periods as are consistent with the due process rights of [Mr. Siemaszko].”
Id.

Due Process Rights Effectively Denied By Delay

If the Staff's request is granted, Mr. Siemaszko's entitlement to due process is effectively denied. He respectfully suggests that the ASLB should consider the immediate “real world” impact of the EO on his ability to find any employment in his professional field. In fact, the damage to Mr. Siemaszko's professional reputation and its impact on his ability to find new employment in the industry, has already become effective through the issuance and publication of

³ The standard developed by the ASLB recognized that in order to find good cause in delaying a proceeding, a balancing of competing interests must be accomplished. The five factors include: 1) the length of delay; 2) the reason for the delay; 3) the affected individual's assertion of his or her right to a hearing; 4) prejudice to the affected person; and 5) the risk of erroneous deprivation of due process property or liberty interest of the individual. *Oncology Servs. Corp.*, 38 NRC 44, 52-59. See also, *In the Matter of Aharon Ben-Haim*, 46 NRC 234.

the EO, related press releases, and the intense coverage that was afforded this story.⁴

Where, as here, a state actor, in this case the NRC Staff, “attacks a person’s good name in a manner that makes it ‘virtually impossible’ for the person to find new employment, that person’s liberty interest to pursue his occupation is infringed.” *Beishchel v. Stone Bank School District*, 362 F.3d 430, 439, citing *Townsend v. Vallas*, 256 F.3d 661 (7th Cir. 2001).

The Staff Can Not Make A Strong Showing Of Prevailing On the Merits

The Staff has not argued that it will prevail on the merits in its motion for a delay. *See*, Staff Motion, at 6. Instead it simply states that this criteria is inapplicable to the present request, and that its request is “a matter of deference to and cooperation with the DOJ, as DOJ proceeds with its criminal action in Federal Court. In fact, the Staff concedes that “[t]he final determination of the DOJ’s criminal proceedings are immaterial to the outcome of this case.” Staff’s Motion, at 6.

Mr. Siemaszko disagrees. This is a case in which the Staff is attempting to deprive him of his livelihood, and the Staff’s unwillingness to assert its case is fundamentally unfair. The Staff has put forth an EO which asserts a series of disjointed allegations to support its position that Mr. Siemaszko “deliberately provided materially incomplete and inaccurate information in CR No. 2000-1037 and Work Order No. 00-001846-000...” to his employer, FENOC. The Staff’s assertions in the EO are based on quoting snippets of documents, some of which were signed by Mr. Siemaszko, some of which were not; presenting the paper trail in the

⁴ *See*, Attachment 4 to this Response, the NRC Press Release; and Attachment 5, the Google Search for the coverage of the NRC’s issuance of the Enforcement Order.

incorrect order, and ignoring numerous other documents and information that support Mr. Siemaszko.

The NRC Staff apparently relies upon a lengthy, multiple-day OI interview, which Mr. Siemaszko was not permitted to complete or correct. As stated above, English is not his native language and his speech pattern is sometimes difficult to follow. Nor was he provided the opportunity to rebut the apparent erroneous conclusions that OI has stitched together. The first time he became aware of these conclusions was in the publicly released Enforcement Order.

In short, the assertions made against Mr. Siemaszko are not true, and the NRC Staff will not be able to prove its position. However, as the Staff correctly acknowledges, in order to defend himself he is going to have to read the OI report and discover what "facts" the Staff based its position on. That will, by necessity, require obtaining, reviewing, and probing the basis of the OI report, including documents, witness statements, and supporting evidence.

The NRC Staff Will Not Be Irreparably Injured

The essence of the request for a delay is the concern of the DOJ, and the Staff, that disclosing the documents upon which the action against Mr. Siemaszko is based will cause irreparable injury to the interests of the United States. This calamity will apparently result from the disclosure of NRC/OI documents, because, of course, Mr. Siemaszko would not be entitled to the grand jury proceedings and testimony.

This claim of irreparable injury is, in part, a legal fiction since most of the statements given by witnesses have already been made public through the FENOC Root Cause investigations and NRC inspections and other public meetings. Moreover, the public availability

of these documents did not preclude the initiation of the grand jury proceedings. While the OI investigation and supporting documents have not been disclosed, other key documents have.

The affidavit supplied by Thomas T. Ballentine, of the Environmental Crimes Section of the Environment and Natural Resources Division of the Department of Justice (DOJ), states that he is part of an investigative team "considering whether [FENOC], some of its employees, and/or contractors may have committed federal crimes in the course of responding to inquiries by the [NRC] from September 2001 through the end of 2002." Ballentine Affidavit, at 1. The Enforcement Order (EO) proposing to bar Mr. Siemaszko from work in the nuclear industry is based on Mr. Siemaszko's involvement during the spring of 2000, during 12 RFO. Apparently, the DOJ is not interested in pursuing the issues that are the foundation of the proposed EO against Mr. Siemaszko. Mr. Ballentine supports the NRC Staff's request for a delay in the enforcement proceeding simply on the basis of a review of the EO and a conversation with the Office of the General Counsel which leads him to believe that "facts and witnesses necessary for their resolution overlap." Affidavit, at 3. Mr. Ballentine opines that releasing the OI report that supports the EO would result in the release of prior statements of other government witnesses, which could be withheld under the Jencks Act until the witness testifies in a criminal proceeding. Although Mr. Ballentine expects "that the investigation will conclude with a charging decision soon," he is unable to describe any conclusion regarding whether Mr. Siemaszko will be charged with any criminal violation at all.

As noted above, there is a different scope of concern before the grand jury. According to the affidavit from Mr. Ballantine, the grand jury proceedings are focusing on the statements made

by FENOC to the NRC in the fall of 2001. Mr. Siemaszko is being barred from the industry because of things that allegedly happened in 2000, during 12 RFO.

While it may be applicable in some cases, the dire consequence portrayed by the Staff is a creation of the Staff's own making -- if it was going to publicly identify Mr. Siemaszko in its enforcement action, it should have the institutional integrity to proceed with its proof. The Staff could have protected the grand jury proceedings by simply waiving the civil action against Mr. Siemaszko. As a practical matter, if Mr. Siemaszko is indicted by the grand jury and subsequently convicted, he would be banned from the industry anyway. *See*, 10 C.F.R. 10.11(a)(9).

Moreover, given the difference in the scope of the grand jury proceeding and the enforcement action, it is not at all clear whether the disclosure of the necessary information for Mr. Siemaszko to defend himself regarding his actions in 12 RFO would undermine a grand jury investigation about events in the fall of 2001.

Granting Of The Stay Would Harm Mr. Siemaszko

The element clearly works in Mr. Siemaszko's favor, and the Staff apparently agrees since it does not argue this issue.

The Public Interest

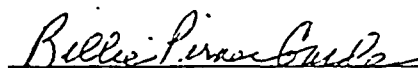
The Staff argues that the public interest is best served by the Board granting the requested delay, for essentially the same reasons as it asserts irreparable injury if the OI report is disclosed and discovery is provided. Mr. Siemaszko believes that there is a public interest advanced by providing timely due process to those who, like himself, have become the target of an NRC investigation. The "chilling effect" on the industry from OI investigations is well recognized.

See, Discrimination Task Group Report: Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues (April 2002).

CONCLUSION

For all the foregoing reasons, Mr. Siemaszko respectfully requests that the ASLB deny the NRC Staff's Motion for Delay of Proceeding and schedule the hearing in this matter as soon as is practicable, allowing the parties time for discovery.

Respectfully Submitted,



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Counsel for Andrew Siemaszko

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

Before Administrative Judges:
Lawrence G. McDade, Chairman
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In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

May 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Andrew Siemaszko's Response to NRC Staff Motion for Delay of Proceedings were served this 31st day of May, 2005, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***; messenger ****), on the following:

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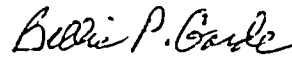
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January 22, 2003

(By Fax: 630-515-1438)

Joseph M. Ulie
Special Agent
Office of Investigations
U.S. NRC Region III
801 Warrenville Road
Lisle, IL 60532-4351

Dear Mr. Ulie:

Last week I reviewed the transcript of the interview conducted by the Office of Investigations of my client, Andrew Siemaszko, on March 15, 2002. As a preliminary matter, I would like to express my sincere thanks for the efforts of your office in making the review possible and for accommodating our request to do so in the Rockville offices. The assistance of Special Agents Fahey and Langon was extremely professional.

As you know, Mr. Siemaszko has not previously reviewed the tape or the transcript of the tape of his 4 hour interview by yourself and two other investigators. We reviewed the transcript for accuracy and errors. I have included a summary of the issues we addressed or have concerns with.

First, Mr. Siemaszko made some pen and ink changes to the transcript on minor items such as spelling errors. Of course he initialed and dated those changes.

Second, we also identified, but did not mark, numerous times that the tape was apparently inaudible to the transcribers. As a result, there are questions and answers that do not make sense as presently typed. As to those portions of the tape that were inaudible to the transcriber, we would like to arrange to listen to the tape, with the transcript present, in order to correct the transcript and include the actual question and answer session. Obviously this would best be done with you personally, since you were the primary examiner and can best assist in the recreation of a correct record.



ATTACHMENT 1

Third, the tape is started at 2:30 p.m., but it is my understanding that you and two additional investigators arrived, unannounced, at the home of Mr. Siemaszko sometime around 2:00 p.m., and talked to him for some period of time before you went on the record of this transcript. It is also my understanding, in part explained on the tape, that your initial statement to Mr. Siemaszko was that "all roads" led to him. As Mr. Siemaszko told you, and as is reflected in the transcript, that statement was very intimidating to him. It is my understanding that you did not explain to or advise Mr. Siemaszko that he was the target of a criminal investigation, that he had an opportunity to have counsel present, or to decline to talk to you at all. I would like to understand your version of the events and conversation that occurred prior to when the taping began.

Fourth, in reviewing the transcript, it is obvious that there were several instances of significant miscommunications between you and Mr. Siemaszko. As you know, English is not Mr. Siemaszko's primary language. He was raised in Poland and did not come to this country until his mid-20s. His speech pattern is sometimes difficult to follow, and in reviewing the transcript it is obvious that in several sections of the interview you and he were not discussing the same subject, or he was answering or explaining a previous answer and you had moved on to another topic. Given the complexity of the interview, it is difficult to easily correct those sections. It is my recommendation that OI not rely upon the initial interview with Mr. Siemaszko for anything that it considers significant enough to use as a basis for any agency decision, without clarification and verification of the facts with him.

I look forward to discussing this issue with you as soon as possible.

Sincerely,


Billie Pimer Garde


cc: Mr. Andrew Siemaszko



UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

February 10, 2003

Billie Pirner Garde
Clifford, Lyons & Garde
1620 L Street, NW
Suite 625
Washington, DC 20036-5600

Dear Ms. Garde,

I am writing in response to your January 22, 2003 letter. In the letter you requested a review of the audio tapes of the interview of your client, Andrew Siemaszko, and the opportunity to discuss the events and circumstances of the Andrew Siemaszko interview of March 15, 2002, with Senior Special Agent Joseph Ulie.

As you know, based on your initial request, your client was afforded the opportunity to review his transcript for completeness and accuracy, and was invited to address any errors which he identified. However, we are denying your most recent request for review of additional OI materials related to the interview and to a meeting with Senior Special Agent Joseph Ulie.

Sincerely,

A handwritten signature in cursive script, reading "Richard C. Paul".

Richard C. Paul, Director
Office of Investigations
Field Office, Region III

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February 14, 2003

(By FAX 301-415-2370
and Regular Mail)

Guy Caputo, Director
Office of Investigations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Caputo:

I represent Andrew Siemaszko, one of the Davis-Besse engineers that your office interviewed in connection with their ongoing investigation of potential wrongdoing by First Energy Operating Company.

Last month I requested, and was provided, an opportunity to review the transcript of the interview conducted by the Office of Investigations of my client on March 15, 2002. The efforts of your office in making the review possible and for accommodating our request to do so in the Rockville offices was appreciated and the assistance of Special Agents Fahey and Langon was extremely professional.

Mr. Siemaszko had not previously reviewed the tape or the transcript of the tape of his 4-hour interview by Joseph Ulie and two other OI investigators. We reviewed the transcript for accuracy and errors. Mr. Siemaszko made some pen and ink changes to the transcript on minor items such as spelling errors. Of course he initialed and dated those changes.

He also identified, but did not mark, numerous times that the tape was apparently inaudible to the transcribers. As a result, there are questions and answers that do not make sense as presently typed. By letter, dated January 22, 2003, we requested, for those portions of the tape that were inaudible to the transcriber, to listen to the tape, with the transcript present, in order to correct the transcript and include the actual question and answer session. We suggested that be done with Mr. Ulie personally, since he was the primary examiner and could best assist in the recreation of a correct record.

We also asked for an explanation of the statement by Mr. Ulie before the tape started. It is my understanding that he and two additional investigators arrived, unannounced, at the home of Mr. Siemaszko sometime around 2:00 p.m., and talked to him for some period of time before

ATTACHMENT 3

Guy Caputo
February 14, 2003
Page 2

they went on the record of this transcript. It is also my understanding, in part explained on the tape, that Mr. Ulie's initial statement to Mr. Siemaszko was that "all roads" led to him. As Mr. Siemaszko told him, and as is reflected in the transcript, that statement was very intimidating to him. It is my understanding that the agents did not explain to or advise Mr. Siemaszko that he was potentially the target of a criminal investigation, that he had an opportunity to have counsel present, or to decline to talk to them at all. I would like to understand OI's position on these events and the conversation that occurred prior to the time the taping began.

We also pointed out that it is obvious that there were several instances of significant miscommunications between the agents and Mr. Siemaszko. As you may know, English is not Mr. Siemaszko's primary language. He was raised in Poland and did not come to this country until his mid-20s. His speech pattern is sometimes difficult to follow, and in reviewing the transcript it is obvious that in several sections of the interview he and the investigators were not discussing the same subject, or he was answering or explaining a previous answer and the agents had moved on to another topic. Given the complexity of the interview, it is difficult to easily correct those sections. It is my recommendation that OI not rely upon the initial interview with Mr. Siemaszko for anything that it considers significant enough to use as a basis for any agency decision, without clarification and verification of the facts with him.

Today I received a letter from Mr. Richard Paul, of the Region III office. (Copy attached) He declines to provide any opportunity to correct the substantive errors and omissions in the transcript, or to provide any additional information regarding the initial contact with my client. I assume he consulted with you before advising me of his decision. Nonetheless, I would like to ask you to review the situation and reconsider the decision provided by Mr. Paul. It does not seem to me that is a good policy decision generally, or a prudent action in this case specifically.

In addition, it is clear that the interview was conducted at a time that the agency knew only limited information about the entire situation at Davis-Besse; much more has come to light about what FENOC knew, when they knew it, and who knew it. None of those issues were covered in much depth during the interview. Based on the information that is a matter of public record, I believe Mr. Siemaszko has additional information that would be helpful to your investigation.

I look forward to discussing this issue with you as soon as possible.

Sincerely,



Billie Pirner Garde

Guy Caputo
February 14, 2003
Page 3

cc: Richard Paul
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U.S. NRC Region III
801 Warrenville Road
Lisle, IL 60532-4351

Chairman Richard Meserve
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Mr. Andrew Siemaszko



NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION

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Web Site: <http://www.nrc.gov/OPA>

No. 05-070

April 21, 2005

\$5,450,000 FINE FOR DAVIS-BESSE REACTOR VESSEL HEAD VIOLATIONS

The Nuclear Regulatory Commission has proposed a \$5.45 million fine against FirstEnergy Nuclear Operating Company for violations of NRC regulations associated with the significant reactor vessel head damage discovered in March 2002 at the Davis-Besse Nuclear Power Plant. The plant is located at Oak Harbor, Ohio.

This is the largest single fine ever proposed by the NRC. The principal violation, assessed a \$5 million fine, was that the utility restarted and operated the Davis-Besse plant in May 2000 without fully characterizing and eliminating leakage from the reactor vessel head which led to significant corrosion damage. Additional violations (assessed \$450,000) included providing incomplete and inaccurate information to the NRC on the extent of cleaning and inspecting the reactor vessel head in 2000.

"This substantial fine emphasizes the very high safety and regulatory significance of FirstEnergy's failure to comply with NRC requirements and the company's willful failure to provide the NRC with complete and accurate information," said Luis Reyes, NRC Executive Director for Operations.

In addition to the fine proposed for the utility, the NRC has issued an Order to a system engineer, prohibiting his involvement in NRC-regulated activities for five years. Enforcement action may be taken against additional individuals in the near future.

The plant was started up on May 18, 2000, after a refueling and maintenance outage without a complete cleaning and inspection of the reactor vessel head, as required. During operation, leakage through tubes which penetrate the reactor head caused significant corrosion damage to the reactor vessel head.

In 2001 the NRC directed Davis-Besse and other plants to inspect by Dec. 3, 2001, the tubes which penetrate the reactor vessel head for possible leakage. FirstEnergy requested that it be permitted to operate an additional three months before shutting down for the inspection, and the NRC staff, based on information submitted by FirstEnergy, permitted the plant to operate until Feb. 16, 2002.

"FirstEnergy supported its request with inaccurate and incomplete information about the cleaning and inspection of the reactor vessel head in 2000," said Reyes. "Had the NRC known that the

plant was being operated with leakage through the reactor vessel head, the agency would have taken immediate action to shut down the plant.”

The corrosion damage to the reactor vessel head was discovered about three weeks after the plant shut down. The plant remained shut down for more than two years for replacement of the reactor vessel head and improvements to other safety systems. Significant changes were also made in the plant’s management.

After extensive inspections by the NRC of improvements to safety systems and the utility’s efforts to raise safety consciousness in the plant’s management and staff, the NRC determined that Davis-Besse could restart and operate safely. The NRC also required that the utility undertake annual independent assessments of important plant activities for five years.

“Since the plant’s restart in March 2004, it has operated safely and continues to operate safely,” Reyes said. “Davis-Besse’s performance has been closely monitored by a dedicated NRC oversight panel and the inspection staff, including three NRC resident inspectors that are assigned to that site.”

The NRC has issued an Order to Andrew Siemaszko, who was a system engineer at Davis-Besse, which prohibits his involvement in NRC-regulated activities for a five-year period. Siemaszko was responsible for ensuring that the reactor vessel head was cleaned and inspected during the 2000 outage.

Records prepared by Siemaszko indicated that the reactor vessel head was cleaned and that no damage to the head was found. The agency found that he had deliberately provided incomplete and inaccurate information in plant documents, which are required by the NRC. Siemaszko no longer works at Davis-Besse.

The enforcement actions are available on the NRC’s web site for Davis Besse at: <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/reactors/ea05071.html>; and for Siemaszko at: <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/individuals/ia05021.html>.

The utility and Siemaszko are required to respond to the enforcement actions within 90 days. They may request an extension of the response date. In addition to these actions, the NRC has previously referred Davis-Besse issues to the Department of Justice.

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


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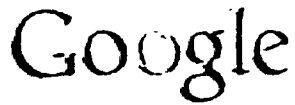
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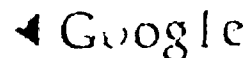
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