

September 16, 2005

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

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

Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
ANDREW SIEMASZKO
IA-05-021; ASLB No. 05-839-02-EA

Dear Administrative Judges:

As requested during the prehearing conference on August 30, 2005 the NRC Staff consulted with counsel to Mr. Siemaszko regarding a protective order governing the NRC Staff documents released pursuant to 10 C.F.R. § 2.336. The parties were unable to agree on a protective order. Therefore, the NRC Staff is submitting its proposed protective order. The NRC Staff continues to assert that no documents should be released to Mr. Siemaszko at this time, regardless of any protective order.

Sincerely,

/RA/
Sara E. Brock
Counsel for NRC Staff

Attachment: As stated

cc w/atts: Billie Pirner Garde
Sandy Shepherd
John Clifford
David Lochbaum
Sandy Buchanan
Jonathan Rund
Atomic Safety and Licensing Board
Adjudicatory File
Office of the Secretary
Office of Commission Appellate Adjudication

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

Before Administrative Judges:
Lawrence McDade, Chairman
Peter S. Lam
E. Roy Hawkins

In the Matter of

ANDREW SIEMASZKO

IA 05-021

ASLBP No. 05-839-02-EA

PROPOSED MEMORANDUM AND ORDER
(Protective Order)

A. This Protective Order governs the disclosure and use of all documents provided by the NRC Staff pursuant to 10 C.F.R. 2.336. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by this Board.

B. Only Mr. Siemaszko and his counsel, who have executed the attached Non-Disclosure Declaration may have access to the documents. The documents shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except to the minimum number of counsel, assistants, or other participant representatives who are engaged in the conduct of this proceeding on behalf of Mr. Siemaszko or the NRC Staff and who need to know the information in the documents in order to carry out their responsibilities in this proceeding.

C. Mr. Siemaszko and his representative who have any access to the documents shall maintain their confidentiality as required in the attached Non-Disclosure Declaration, the terms of which are hereby incorporated in this Protective Order.

D. Mr. Siemaszko and his representative who have access to the documents shall take all reasonable precautions necessary to ensure that the documents are not distributed to unauthorized persons. Reasonable precautions include maintaining the documents in a secure

place and limiting access to the documents to persons authorized to receive access to them. Any person who has access to the documents shall take all reasonable precaution to ensure that persons under their supervision or control comply with this Protective Order.

E. Any violation of the terms of this Protective Order may result in the imposition of sanctions as this Board may deem appropriate. Such sanctions may include, but are not limited to: refusal to consider a filing by the offending participant; denial of the right to receive documents under this or any other protective order in this proceeding; denial of the right to cross-examine or present evidence; or refusal to allow the counsel, assistant or other representative of a party to participate in this proceeding. In addition, sanctions may include referral of the violation to appropriate bar associations and/or other disciplinary authorities, including the U.S. Department of Justice for criminal prosecution, if appropriate.

F. This Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding. The parties shall be afforded notice and an opportunity to be heard before any such alteration or amendment comes into effect.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

NON-DISCLOSURE DECLARATION

Under penalty of perjury, I hereby certify my understanding that access to the documents provided by the NRC Staff pursuant to 10 C.F.R. 2.336 are provided to me pursuant to the terms and restrictions of the Protective Order, dated ____; that I have been given a copy of and have read this Protective Order; and that I agree to be bound by it. I understand that the contents of the documents shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of the Declaration or the Protective Order, which incorporates the terms of this Declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Board determines to be appropriate. Such sanctions may include, but are not limited to: refusal to consider a filing by the offending participant; denial of the right to receive documents under this or any other protective order in this proceeding; denial of the right to cross-examine or present evidence; or refusal to allow the counsel, assistant or other representative of a party to participate in this proceeding. In addition, sanctions may include referral of the violation to appropriate bar associations and/or other disciplinary authorities, including the U.S. Department of Justice for criminal prosecution, if appropriate.

WHEREFORE, I do solemnly agree to protect such information in the documents as may be disclosed to me in this NRC proceeding, in accordance with the terms of this declaration.

Name (printed: _____

Title: _____

Representing: _____

Signature: _____

Date: _____