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December 20, 2005 (4:09pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

JOHN M. CLIFFORD*
BILLIE PIRNER GARDE**

*ALSO ADMITTED IN MD
**ALSO ADMITTED IN TX, WI

December 20, 2005

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

E. Roy Hawkens
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

Dear Administrative Judges:

We have reviewed the three affidavits of Mr. Ballantine. We find precious little in the affidavits that merits confidentiality or entitles the Staff to be presenting *ex parte* arguments to the Board, except the disclosure of the date on which the prosecutor may seek an indictment against one or more unnamed subject(s). Thus, there is nothing in the affidavits that changes our position.

We were disturbed, however, to note that the affidavits contain more argument than disclosure. By way of example is Mr. Ballantine's discussion of Mr. Siemaszko's assertion of Fifth Amendment privilege in the Department of Labor proceeding. We note that the Board was presented an argument in the September 8, 2005 (p. 7, ¶ 10) Affidavit that Mr. Siemaszko was likely to plead the Fifth Amendment in this case, since he had asserted such a privilege in his DOL case. This argument was not made in the Staff's companion filing, thus we could not respond to it at that time. This put Mr. Siemaszko at a disadvantage for months, on the basis of information that was not secret and had no business being presented *ex parte* to the Board. This is even more egregious in light of the fact that Richard Poole, of the Department of Justice, called Mr. Siemaszko's criminal counsel prior to the affidavit being filed and asked criminal counsel to stipulate that Mr. Siemaszko would assert his Fifth Amendment privilege if the NRC

TEMPLATE = SECY-037


SECY-02

action went forward. Nothing about that contact between the Department of Justice and Mr. Siemaszko's criminal counsel was included in the Ballantine Affidavit or the filing by the Staff.¹

We object to any further *ex parte* contacts with the Board, and under the present terms of the Protective Order established by the Board, do not expect that to occur.

Thank you again for the opportunity to respond. In the spirit of the season, we wish you a happy and safe holiday.

Sincerely,

A handwritten signature in dark ink, appearing to read "Billie Pirner Garde". The signature is fluid and cursive, with the first name "Billie" being the most prominent.

Billie Pirner Garde
John M. Clifford

cc: Service List

¹ It is ironic that the NRC Staff has continued to insist that Mr. Siemaszko's counsel in this proceeding not share affidavit information with Mr. Siemaszko's criminal counsel, while at the same time, NRC Staff counsel and the Department of Justice are working hand-in-glove.

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

Before Administrative Judges:
Lawrence G. McDade, Chairman
E. Roy Hawken
Dr. Peter S. Lam

In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

December 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Andrew Siemaszko's Letter to Board were served this 20th day of December, 2005, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***), on the following:

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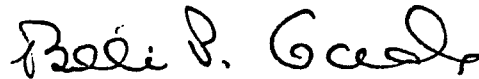
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