

RAS 11169

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

DOCKETED
USNRC

February 10, 2006 (3:16pm)

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

February 10, 2006

**RESPONSE OF ANDREW SIEMASZKO TO NRC STAFF MOTION
TO HOLD THE ENFORCEMENT PROCEEDING IN ABEYANCE**

The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.

Coffin v. United States, 15 S.Ct. 394, 403 (U.S. 1895).

Andrew Siemaszko maintains his innocence of the charges against him. Under the law, that is the posture in which this case has been, and must be, approached by the Board and the parties.

Pursuant to 10 C.F.R. §2.342(d), and for the reasons set forth herein, Mr. Siemaszko opposes the request of the Nuclear Regulatory Commission (NRC) Staff (the Staff) to hold the enforcement hearing in abeyance until the criminal matter has reached final resolution.

I. The Enforcement Proceeding Should Not Be Held In Abeyance

Admittedly these circumstances present the Board with a conundrum, but not without a framework to arrive at the answer.

TEMPLATE = SECY-037

SECY-02

Courts are often asked to limit civil proceedings arising out of the same or related transactions as those involved in a pending criminal proceeding.... The determination of how best to address these considerations is within the discretion of the court and should be made in light of the particular circumstances of each case.

Avi Nakash, et al. v. United States Department of Justice, 708 F.Supp. 1354, 1366 (S.D.N.Y., 1988), citations omitted.

The guiding question is whether the civil enforcement action can proceed without doing harm to the criminal case. That decision should be based on the facts, and a balancing of the various factors the Board and the parties have considered before, now revisited in light of the indictment.

The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable under our jurisprudence.”

SEC v. Dresser Industries, Inc., 202 U.S. App. D.C 345 (D.D.C., 1980).

A. Applicable Legal Standards

Mr. Siemaszko agrees with the legal guidance cited by the Staff as to the applicable agency regulations and authority, i.e., 10 C.F.R. §2.202(c)(2)(ii), permitting a presiding officer to stay a hearing of an immediately effective order and *Oncology Services Corp.*, CLI-93-17, 38 NRC 44, 50 (1993). Under this authority the Board should consider the reason for the stay request, the length of time of the requested stay, Mr. Siemaszko’s right to a hearing, and harm to Mr. Siemaszko from an erroneous deprivation. *Id.* Mr. Siemaszko asserts that all of the reasons now lean in his favor, and the arguments advanced by the Staff should be critically considered and rejected.

1. The Reason for the Request

The Staff's position is straightforward -- Mr. Siemaszko has been indicted and is awaiting a trial, so "a stay of this proceeding is necessary." (Staff Motion, at 3.) In support of its argument the Staff offers Affidavit Number Five from Mr. Ballentine, who claims that "the use of interrogatories and depositions would allow Mr. Siemaszko to make an end run around the well-established criminal discovery process that the United States has already begun." (Ballentine Affidavit, at 2-3.) The argument has changed little, if at all, from the argument that the government has made since seeking its first delay of this case. However, the Staff has yet to explain why the discovery to which Mr. Siemaszko would be entitled in the enforcement case would, in any way, present any risk to the prosecution of the criminal case.

In fact, now that the perimeters of the criminal prosecution have been established, it is less clear why Mr. Siemaszko's right to discovery in this case would undermine the criminal case. In the absence of some showing of harm, not yet advanced by the Staff, there is no reason that the case cannot now proceed.

As Judge Wisdom from the Fifth Circuit acknowledged: "In some situations it may be appropriate to stay the civil proceeding.... In others it may be preferable for the civil suit to proceed -- unstayed." *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir., 1962). That decision is within the discretion of the trial court, and should be guided by an analysis of the facts and circumstances unique to the case at bar.

It is not sufficient to simply list a string of other courts that have stayed civil proceedings in favor of a criminal case. The majority of those cases cited by the Staff involve civil suits brought by a plaintiff in anticipation of a criminal case. Mr. Siemaszko did not initiate this civil

proceeding, the government did. He is not seeking to do an "end run" around the Federal Rules of Criminal Procedure to obtain forbidden insight into the government's criminal case.

Unstated, but implicit in the Staff's argument, is the proposition that it would be more difficult for the United States to convict Mr. Siemaszko if he received the information to which he would be entitled under the NRC discovery rules. The basis for the narrower discovery rules in a criminal proceeding is to ensure a defendant cannot manufacture evidence, formulate perjury, intimidate witnesses, or hide behind his Fifth Amendment rights to create an unfair advantage. However, unlike a normal criminal proceeding in which the prosecution is constrained by the Fifth Amendment, Mr. Siemaszko has already given two lengthy statements to the NRC OI investigators, over 37 interviews, and numerous statements to other NRC inspectors, independent investigators, FENOC lawyers, those conducting root cause investigations, the Inspector General's office, the Department of Labor, and others. He has already complied with several substantial subpoenas and document requests from the NRC, the DOJ, and FENOC. There are no surprises here. As to potential witness intimidation, he lives in Texas. He has no money. He has never done anything but cooperate with all the investigations that have been conducted of this event. It is way too late for him to manufacture evidence or perjury, even if he were inclined to do so. And, while it is premature to address the question of taking the Fifth Amendment on specific charges identified in the indictment, he will not be claiming it for the year 2000 issues raised by the Staff in this enforcement action.

Given the circumstances of this case, the Staff's persistence in delaying its action begs the question: "Why?" We think it is time to acknowledge the obvious – a strategy where the NRC, working closely with the Justice Department, seeks to have the proverbial "two bites at the apple." It seeks an unlimited stay in the enforcement proceeding to make its criminal case; however, if it cannot make its criminal case against Mr. Siemaszko "beyond a reasonable doubt," it would still be able to come back and proceed against him, under a lesser standard, in the enforcement case.

Undoubtedly, it would be more advantageous for the government to proceed in this fashion. Frankly, it would be easier for Mr. Siemaszko to proceed with one case at a time. But, if the Staff wants a stay of this case it should have the burden of identifying specific evidence, both documents and witnesses, whose disclosure would adversely impact the criminal case under the three considerations articulated above.¹ In the absence of a showing of substantial, or at least some cognizable harm, Mr. Siemaszko should be entitled to proceed with the enforcement case.

In considering this matter, Mr. Siemaszko suggests that the Board's determination should turn on an analysis of the relevant and material facts at issue in both cases, and a determination on whether these facts substantially overlap. The following chart is offered for illustrative purposes to the Board:

¹ The Board has posed the same questions, and the Staff has still not answered the Board's questions, which are even more relevant now, about how "on the facts of this case, some aspect of our proceeding could facilitate witness intimidation, perjury, or the manufacture of evidence." December 22, 2005 Order, at 12.

Enforcement Action	Criminal Indictment
"...Mr. Andrew Siemaszko engaged in deliberate misconduct that caused the Licensee to be in violation of the NRC requirement to maintain and provide to the NRC materially complete and accurate information."	Mr. Andrew Siemaszko [along with Geisen and Cook] "prepared responses to the [NRC Bulletin] [that] "were part of a scheme to persuade the NRC to agree that Davis-Besse could operate safely after December 31, 2001."...by making false and misleading statements and concealing material information about the quality of the past reactor head inspections and condition of the reactor head.
Burden of Proof: Preponderance of the Evidence	Burden of Proof: Beyond a Reasonable Doubt
April 2000 – RFO 12	
Alleged inaccurate document: Condition Report No. 2000-1037; Created April 17, 2000	
Alleged inaccurate document: Work Order No. 00-001846-000; Created April 25, 2000	
	Fall 2001 - 2001-01 Bulletin Response
	Alleged false statement: Serial Letter 2731; September 4, 2001
	Alleged false statement Serial Letter 2735 October 17, 2001
	Alleged false statement; Serial Letter 2741 October 30, 2001
	Alleged false statement: Serial Letter 2744; October 30, 2001
	Alleged false statement: Serial Letter 2745; November 1, 2001

The criminal indictment, provided to the Board as Attachment A to the Staff's motion, is based on a theory that Mr. Siemaszko engaged in a criminal conspiracy with others, initiated after August, 2001 to conceal material facts from the NRC about the condition of Davis-Besse's reactor vessel head. The alleged purpose for this scheme was to obtain the NRC's permission for the plant to operate beyond December 31, 2001. While no personal motive is alleged, indicated or logical, that is the claim. The conspiracy is not alleged to have begun until after August, 2001 – well over a year beyond the date of the 12 RFO work documents that the Staff has alleged contained information material to the NRC and were prepared by Mr. Siemaszko knowing they were false. Nowhere in the indictment does the government reference, rely upon, or even mention the documents prepared during 12 RFO cited in the enforcement action. Rather, the references to the condition of the head of the reactor, the videos and the descriptions quoted were all excerpted from materials created, edited, modified and utilized in the fall of 2001.²

In contrast, the two 2000 documents at the heart of the enforcement proceeding describe work done during 12 RFO, were not submitted to the NRC, are not mentioned or relied upon in the 2001 documents, and were prepared almost two years before the NRC issued the Bulletin (2001-01) which allegedly generated the conspiracy. While there may be some overlap between Mr. Siemaszko's knowledge of the boric acid on the reactor head after 12 RFO, that knowledge is already well documented.

The Staff's only new argument is its concern that Mr. Siemaszko may, at some future deposition or the hearing, invoke his Fifth Amendment right against self-incrimination to some

² It is important to note that Mr. Siemaszko did not start work at Davis-Besse until the fall of 1999. He was not there during 11 RFO, and had no personal knowledge of anything related to the reactor head until 12 RFO.

question, which it has not articulated, which may be material to the case at bar. Under the facts and circumstances of this proceeding, which focuses on two documents from 12 RFO in the spring of 2000, such a concern is ill-founded.³ Moreover, the Board has already cautioned that the claim of privilege may, depending on the circumstances, lead to an inference against Mr. Siemaszko. If he is willing to risk that chance, and the Staff does not abuse its discovery rights in this case, then the speculative concern should not be dispositive.

Simply put, the Staff's purported basis for holding this proceeding in abeyance until the close of the criminal proceeding, i.e., to protect the criminal proceeding from overly broad discovery and therefore potential tampering by Mr. Siemaszko, does not withstand scrutiny. The Board can craft and monitor discovery to prevent any potential abuse by either party by holding the scope of discovery to the facts from 12 RFO surrounding the enforcement action, and not the facts from the fall of 2001 giving rise to the criminal proceeding.

2. Length of Stay

The Staff does not even speculate about the length of a stay under its request; it simply seeks to hold the matter in abeyance until a final conclusion of a criminal case through some means. That is completely unreasonable, since the length of time of a criminal case is unknowable and could stretch well beyond the career life of this Board, the lawyers, and Mr. Siemaszko.

³ The Staff's reference to Counts 2, 3 and 4 of the indictment misstate the record. In the fall of 2001, Mr. Siemaszko did not sign ANY letters to the NRC or cause any letters to be sent. As the Staff and the DOJ are well aware he signed a "green sheet" to one draft of a letter, which was significantly altered after the green sheet was signed and before it was sent to the NRC. Nothing about the 2001 letters, Mr. Siemaszko's limited role in the "development" of the letters, or the alleged conspiracy with which he is charged, are relevant to the enforcement action initiated by the Staff over the Work Order or CAR from the Spring of 2000.

The Board should not countenance such an unreasonable request by the Staff. It is fundamentally unfair for the NRC to bring this action against Mr. Siemaszko, with public fanfare, and then seek to have it stayed indefinitely while it seeks another remedy in another forum. The events that are at the heart of the enforcement proceeding are already six years old. Given the Staff's proposal, it may well be several more years before it will be prepared to proceed with the action it initiated. Should Mr. Siemaszko prevail in the criminal matter, and then have to litigate this issue, his ability to do so will be irreparably harmed by the lengthy delay.

3. Mr. Siemaszko's Assertion of a Right to a Hearing

The Staff has conceded that Mr. Siemaszko has asserted his right to a hearing, that he is entitled to one, and that this element inures to his argument for a hearing.

4. Prejudice to Mr. Siemaszko

This issue has changed since the arguments previously made before the Board. Heretofore Mr. Siemaszko has argued that the Enforcement Action taken against him has destroyed his ability to find work in the industry. The Staff now argues that the criminal indictment has eclipsed the Enforcement Action in the influencing factor argument. The Staff is correct -- the indictment and pending criminal action will obviously be the leading indicator in any analysis of why Mr. Siemaszko is now unable to find work in the nuclear industry. But, that makes Mr. Siemaszko's need to vindicate himself from wrongdoing in this forum, as soon as possible, even more pressing.

Mr. Siemaszko is prejudiced in a most basic way by having the later filed criminal matter proceed first. If the civil matter goes first and the Staff fails to carry its burden of proof, then the government will be precluded from relitigating any of those facts. Clearly, if the government can't meet its lesser civil burden, then it can't meet the criminal burden. However, if the government proceeds with the criminal case first, and fails to prove it beyond a reasonable doubt, then the Staff would still be able to "take a second bite at the apple", as it may be possible for it to prevail on the civil case despite a criminal acquittal. Of course, if the government gets a conviction, that would prevent Mr. Siemaszko from challenging the same issues in a subsequent civil case, and he would be barred from employment anyway.⁴

B. The Practical Reality of Conviction

Mr. Siemaszko understands that if he is actually convicted of the offenses for which he has been indicted, that the outcome of this enforcement proceeding will become moot. He also understands that proceeding with this enforcement hearing presents both additional burdens and risks to his already precarious financial and legal situation. However, he believes that he is innocent of all the charges, and that the fastest way to vindication is to proceed with all due haste to present the facts to independent decision-makers.⁵

⁴ Perhaps the Staff would agree to drop the civil action in the event of a criminal acquittal.

⁵ The Staff continues to point out that the Enforcement Order that initiated these proceedings is not immediately effective. (Staff Motion, at 2 and fn 3.) The Staff clarified the language of the Order and its intent during the December 15, 2005 hearing, and agreed that the language of the Order could easily be read as implying immediate effectiveness, and agreed to issue a clarification or amendment. (12/15/05 Hearing Transcript, at 146.) **No clarification or amendment has yet been issued.**

II. Proposal for Continuation of the Hearing

Mr. Siemaszko proposes that this Enforcement Proceeding should proceed in tandem with the criminal case. The subject of this proceeding are two documents, prepared in 2000, in part by Mr. Siemaszko, almost two years before the events that give rise to the indictment. The 2001 events are not probative of the documents Mr. Siemaszko signed in April, 2000. While the reverse may be true, that would not be a reason to delay this proceeding. The Staff wants to delay the Enforcement Proceeding, allegedly to avoid providing discovery to Mr. Siemaszko of information that he is not entitled to in the criminal proceeding. Principally, we believe that would involve the disclosure of the complete OI report, all attachments and supporting documents, interviews, statements, and similar material. Pursuant to the applicable discovery rules, the mandatory disclosures would be followed by Mr. Siemaszko propounding interrogatories and noticing depositions. The government also has an obligation of mandatory disclosure in the criminal case, and is expected to disclose its information not later than the end of March. (Ballentine Affidavit, at 2, and Staff Motion at fn 7.) Presumably the disclosure in the criminal case will contain the OI report and much of the information that would be relevant to the Staff's case against Mr. Siemaszko.

It is very possible that, upon disclosure of the material, in conjunction with the information already known to Mr. Siemaszko, that no additional interrogatories or document requests would be necessary at all. In that event, a hearing could be scheduled without delay, to consider the Staff's enforcement action against him.⁶

⁶ The issue of depositions would, of course, have to be considered carefully. For example, while the Enforcement Order accuses Mr. Siemaszko of providing information upon which, in part, the Mode 4 restraint was lifted (Enforcement Order at 5), the Mode 4 Restraint

Mr. Siemaszko believes and proposes that this proceeding can continue with the information that will be made available to him through the Staff's mandatory disclosures. He understands that the disclosure may be tempered by the Staff seeking protective orders on some information, which the Board may review *in camera* against the scope of this proceeding, and is prepared to proceed within that framework.⁷ Likewise, if the Staff would seek information from Mr. Siemaszko that would be beyond the scope of this proceeding, and for which Mr. Siemaszko may assert a claim of Fifth Amendment privilege, the Board could rule on the materiality of the question, the applicability of the privilege and the inferences that asserting the privilege may lead to.

With respect to the NRC Staff's discovery from Mr. Siemaszko, the Board should be aware that the NRC Staff through its Office of Investigation has already "discovered" all that it could possibly learn from Mr. Siemaszko. It has taken two lengthy statements from him, has collected substantial documents, and most recently sought and received virtually everything that Mr. Siemaszko has in his possession. (See, Attachment 2, Subpoena issued to Mr. Siemaszko directing him to provide information to the NRC OI investigators, with which Mr. Siemaszko complied by providing all documents requested.) There is very little the Staff could have left to

was actually lifted on the signature of David Geisen. (See, Attachment 1.) Mr. Geisen was one of the individuals indicted along with Mr. Siemaszko, and who is also now the subject of an Enforcement Action. However, neither the indictment nor the Enforcement Action are about Mr. Geisen's activities during 12 RFO, and the statute of limitations has run on those events as to Mr. Geisen.

⁷ Since the indictment did not cover the Work Order or Corrective Action Report that are the subject of this Enforcement Proceeding, Mr. Siemaszko believes that there will be information not disclosed in the criminal proceeding mandatory disclosures, that is relevant to this matter, and for which there can be no objection to providing.

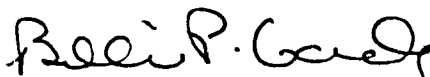
ask of Mr. Siemaszko, and what it needs to ask him, again, about the Work Order and Corrective Action documents, are not germane to the conspiracy charge at all. (See, Indictment, *passim*.)

It is Mr. Siemaszko's belief that the Board can manage the discovery in this case to ensure that it remains focused on the issues in this proceeding, and that neither party abuses the discovery process and strays into the subjects of the criminal case, or hides behind it to avoid legitimate discovery.

CONCLUSION

For all the foregoing reasons, Mr. Siemaszko respectfully requests that the Board deny the NRC Staff's Motion To Hold the Proceedings In Abeyance, and fashion a reasonable path forward for discovery that meets the needs of the parties and serves the interest of the public.

Respectfully submitted,



Billie Pirner Garde
John M. Clifford
Clifford & Garde
1707 L Street, NW, Suite 500
Washington, DC 20036
(202) 289-8990 - Phone
(202) 289-8992 - Fax

Counsel for Andrew Siemaszko

Dated: February 10, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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Dr. Peter S. Lam

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Docket No. IA-05-021

ASLBP No. 05-839-02-EA

February 10, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response of Andrew Siemaszko Response to NRC Staff Motion To Hold the Enforcement Proceeding In Abeyance were served this 10th day of February, 2006, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***; messenger ****), on the following:

Administrative Judge * * *
Lawrence G. McDade, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: LGM1@nrc.gov

Administrative Judge * * *
Dr. Peter S. Lam
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: PSL@nrc.gov

Administrative Judge * * *
E. Roy Hawken
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ERH@nrc.gov

Office of the Secretary * * * * *
ATTN: Rulemakings & Adjudication Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-mail: HearingDocket@nrc.gov
Fax: (301-415-1101)


Sara Brock, Esq. * **
E-mail: SEB2@nrc.gov
Steven C. Hamrick, Esq. * **
E-mail: schl@nrc.gov
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O 15-D21
Washington, DC 20555

David Lochbaum * **
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street, NW, Suite 600
Washington, DC 20006
E-mail: dlochbaum@ucsusa.org

Marcia Carpentier * **
Law Clerk
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001
E-mail: mx7@nrc.gov

Jonathan Rund * **
Law Clerk
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001
E-mail: JMR3@nrc.gov

Sandy Buchanan * **
Executive Director
Ohio Citizen Action
614 W. Superior Avenue, Suite 1200
Cleveland, OH 44113
E-mail: sbuchanan@ohiocitizen.org



Billie P. Garde
Counsel for Andrew Siemaszko

CONDITION REPORT

EC 6428

NO. 2000-1037

Page of

CAUSE/ACTIONS

Removal From Mode Restraint List:

CR2000-0782 addressed the concern of boron on the Reactor Vessel Head. This CR was written for boron on the CRD nozzles on the head, but the review performed under CR2000-0782 encompassed this area. No separate review or evaluation is necessary. The Reactor Vessel Head will be cleaned of all boron deposits following completion of CRD flange repairs by FTI. The cleaning is scheduled and will occur prior to the head is moved from the head stand. No evaluation is needed to support a Mode 4 entry, therefore this CR can be removed from the Mode 4 restraint list.


David C. Geisen

4/27/00

Attachment 1

☐ Continued

COPY

1000

PLT ENGR

RECEIVED 1051 CONT. Sheet
BY 888 DATE 14/10/02 4/19/02 CR2000-0782
FROM: TE PLEUNE
05/22/2002 FRI 12:35 FAX 419 248 2340
Page 1 of 1 EIT



U.S. Department of Justice

*United States Attorney
Northern District of Ohio*

*United States Court House
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113-1852*

November 30, 2005

VIA FACSIMILE & US MAIL

James M. Burge, Esq.
James M. Burge Co., L.P.A.
600 Broadway St.
Lorain, Ohio 44052

Re: Andrew Siemaszko

Dear Mr. Burge:

Pursuant to our conversation yesterday, I am sending you a copy of the subpoena for your client, Andrew Siemaszko, which you indicated you would accept on his behalf. Please note that the documents requested may be turned over directly to Joe Ulic, Senior Special Agent, or Michelle Janicki, Special Agent, without requiring your client to produce the records before the grand jury. Please contact me in advance of the return date to make arrangements to turn any documents over.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Christian H. Stickan
Assistant United States Attorney
(216) 622-3818
Christian.Stickan@usdoj.gov

Enclosure

AO110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

OHIO, EASTERN DIVISION

TO:

Andrew Siemaszko

SUBPOENA TO TESTIFY
BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

Carl B. Stokes U.S. Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113

COURTROOM

Grand Jury Suite, Lower Level 1

DATE AND TIME

12/20/05 at 9:00 AM

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

See Attachment.

YOU MAY TURN OVER THE AFOREMENTIONED DOCUMENTS TO THE SPECIAL AGENT SERVING THE SUBPOENA AND THEREBY AUTHORIZE THE SPECIAL AGENT TO PRESENT THE DOCUMENTS TO THE GRAND JURY ON YOUR BEHALF.

Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK

GERI M. SMITH, CLERK

DATE

(By) Deputy Clerk

November 29, 2005

This subpoena is issued on application
of the United States of America

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

Christian H. Stickan, Assistant U.S. Attorney
400 United States Court House, 801 West Superior Avenue
Cleveland, Ohio 44113 Telephone: (216) 622-3818

* If not applicable, enter "none".

2003R00114

ATTACHMENT

1. Any and all correspondence, notes, diaries, memoranda, calendars, journals, disks, reports, records, files, tapes, CDs, documents, recordings or data stored in any format or media, relating to the following:
 - A. The Davis Besse reactor vessel head cleaning and inspection in 2000 and any preparations for doing the same;
 - B. The responses and presentations to and communications with the NRC concerning NRC Bulletin 2001-01;
 - C. Any inspections of control rod drive mechanisms and any control rod drive mechanism leakage;
 - D. Any investigations of any unidentified reactor coolant leakage; and
 - E. Any and all records, documents, or items belonging to the FirstEnergy Nuclear Operating Company (FENOC) and any and all records, documents, or items which you received or prepared while employed at Davis Besse, which you took with you when you were terminated by FENOC in 2002.
2. In addition, any and all records, documents, or items responsive to a subpoena issued to you by the Nuclear Regulatory Commission on March 18, 2003 that you have not already produced. That subpoena sought:
 - A. Any records, documents, and electronic media including videotape(s), compact discs, logs, or other records concerning or relating to the Reactor Pressure Vessel Head and flange inspections conducted during the 1996, 1998, or 2000 refueling outages or the 1999 mid-cycle outage;
 - B. Any Reactor Coolant System Engineers Notebooks or related information;
 - C. Any other documents, records, or information that you provided to FENOC outage management, as alleged and described on Page 24 of your U.S. Department of Labor complaint, including but not limited to outage notes and VHS tapes;
 - D. The original drafts you provided to FENOC officials for input into the September 4, 2001, and October 17, 2001, FENOC responses to NRC Bulletin 2001-01.