

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
JAMES CHAISSON ) Docket No. IA-14-025-EA  
 )  
 ) ASLBP No. 14-932-02-EA-BD01  
 )

NRC STAFF MOTION TO AMEND PROTECTIVE  
ORDER AND REQUEST FOR ADDITIONAL TIME

On October 27, 2014, the Atomic Safety and Licensing Board (Board) issued a Protective Order in this proceeding,<sup>1</sup> partly based on the parties' jointly proposed draft protective order.<sup>2</sup> Among other things, the Protective Order requires the Director of Enforcement to disclose all materials containing personal privacy information, and further requires the Director to disclose redacted copies of documents withheld under any other privilege.<sup>3</sup> The Staff hereby requests one exception to its obligation to disclosure personal privacy information, as well as additional time to produce redacted copies of privileged materials.

I. Request for Exception to Obligation to Disclose Privacy Information

The Protective Order provides that “[o]nce Mr. Chaisson has signed and served the Non-Disclosure Agreement, the Director shall promptly disclose and produce Personal Privacy Documents and Personal Privacy Material to Mr. Chaisson.” Further, the Protective Order states that the Director “shall not redact any information claimed to be Personal Privacy Material from her disclosures.”<sup>4</sup>

The Staff respectfully requests one exception from its obligation to produce all privacy information: Social Security Numbers. The Office of Investigations (OI) Report required to be

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<sup>1</sup> See Protective Order (Governing Personal Privacy Materials) (Oct. 27, 2014) (unpublished) [Protective Order].

<sup>2</sup> See NRC Staff's Report of Consultation Between the Parties, attach. 1, Proposed Protective Order (Governing Personal Privacy Materials) (Oct. 10, 2014).

<sup>3</sup> Protective Order at 3–4.

<sup>4</sup> *Id.* at 4.

disclosed to Mr. Chaisson pursuant to 10 C.F.R. § 2.709 contains an exhibit (Exhibit 18) entitled “Increased Controls for Texas Gamma Ray L.L.C. While Possessing Sources Containing Radioactive Material Quantities of Concern.” This document was requested and obtained by OI during its investigation and consists of a manual for licensee personnel who use radioactive material intended to supplement the licensee’s Operating and Emergency procedures. This manual includes a list of employees that have been approved by the Radiation Safety Officer as being trustworthy and reliable. The list of employees in this manual contains each employee’s Social Security Number. Although the manual was relevant to the investigation, OI did not specifically request the Social Security Numbers and they are of no relevance to the Staff.

The Staff is concerned that the release of individual Social Security Numbers to anyone, regardless of the protections afforded by a Protective Order, is unnecessary and unwarranted in this proceeding, and that the risk of dissemination or misuse outweighs the probative value, if any, of the information. Therefore, the Staff requests that the Board permit the Staff to redact this information. The Staff has hand delivered to the Board a copy of the applicable page of the Exhibit, under seal, for *in camera* review.<sup>5</sup>

## II. Requirement to Produce Redacted Copies of Privileged Documents

The Protective Order states that “[i]f the Director seeks to withhold any documents under claimed privileges not covered by this protective order, such as the attorney-client privilege or the deliberative process privilege, then the Director shall (a) produce a privilege log identifying the documents and provide ‘sufficient information for assessing the claim of privilege or protected status of the documents,’ as required by 10 C.F.R. § 2.709(a)(6)(i)(B); and (b) produce a redacted version of the document that has been withheld.”<sup>6</sup> With the exception of the OI Report, the Staff did not anticipate the need to produce redacted copies of documents contained in its privilege logs. Subpart G discovery requirements provide that privileged

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<sup>5</sup> The remainder of the exhibit will be provided to Mr. Chaisson, unredacted, as part of the Staff’s mandatory disclosures.

<sup>6</sup> Protective Order at 4.

documents be identified in a privilege log and subject to request pursuant to 10 C.F.R. 2.709(b). Accordingly, it is not the Staff's usual practice to redact documents containing privileged information in the same manner as it does pursuant to a Freedom of Information Act request as required by 10 C.F.R. § 9.19. Because of the substantial volume of privileged material, the Staff respectfully requests until Wednesday, November 12 to produce copies of the redacted documents to Mr. Chaisson. This extension would only apply to the Staff's disclosure of the redactions of documents contained in its privilege logs, and would not otherwise affect the Staff's initial disclosures required to be completed by November 4, 2014.<sup>7 8</sup>

Respectfully submitted,

**/Signed (electronically) by/**

Christopher C. Hair  
James L. Maltese

Counsel for NRC Staff

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<sup>7</sup> See Notice of Hearing Initial Scheduling Order, LBP-14-11 at 9 (Sept. 8, 2014).

<sup>8</sup> Pursuant to 10 C.F.R. 2.323(b), Staff counsel certifies that they attempted to contact Mr. Chaisson to discuss the issues raised in this motion, by phone and voicemail on October 28, and by phone and e-mail on October 29 and October 30, but were unable to reach him.

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JAMES CHAISSON

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Docket No. IA-14-025-EA  
ASLBP No. 14-932-02-EA-BD01  
Date: October 30, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NRC STAFF MOTION TO AMEND PROTECTIVE ORDER AND REQUEST FOR ADDITIONAL TIME, dated October 30, 2014, has been served over the Electronic Information Exchange, the NRC's E-Filing System, this 30th day of October, 2014.

**/Signed (electronically) by/**

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