

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 2089**

ATOMIC SAFETY AND LICENSING BOARD PANEL

**DOCKETED 08/14/00**

**SERVED 08/14/00**

Before Administrative Judges:

Ann Marshall Young, Presiding Officer  
Frederick J. Shon, Special Assistant

In the Matter of

GRAYSTAR, INC.

(Suite 103, 200 Valley Road,  
Mt. Arlington, NJ 07856 )

Docket No. SSD 99-27

ASLBP No. 00-778-06-ML

August 14, 2000

ORDER

(Requesting Statement of Intent of Donald W. Thayer, Ph.D., and the U.S. Department of Agriculture, Agricultural Research Service, Regarding Participation in Proceedings)

1. This proceeding concerns the request of GrayStar, Inc., (GrayStar) for a hearing to challenge the NRC staff's May 24, 2000, denial of its application to register its Model GS-42 sealed source and Model 1 irradiator. A telephone conference is presently scheduled for Tuesday, August 15, 2000, from 10:00 a.m. to 12:00 noon as necessary, to clarify the issues to be addressed and determined in this proceeding, to set deadlines for the filing of written presentations under 10 C.F.R. §2.1233, and to discuss other matters related to the proceeding.

2. On the afternoon of August 11, 2000, Atomic Safety and Licensing Board Panel employee Alice Katoski received by e-mail a letter addressed to the undersigned from Donald W. Thayer, Ph.D., Research Leader, indicating among other things that the U.S. Department of Agriculture, Agricultural Research Service (ARS), has signed a Cooperative Research and Development Agreement with GrayStar, Inc., for the evaluation of the GrayStar Irradiator that is the subject of this proceeding; that the ARS has certain interests relating to the GrayStar Irradiator; and that he hopes that the value of properly contained Cs-137 sources is not overlooked.

3. From Dr. Thayer's letter, it is unclear in what capacity, if any, Dr. Thayer and/or the ARS wishes to participate in this proceeding. Therefore, Dr. Thayer or other representative of ARS is requested to provide a statement outlining whether ARS wishes through this letter to petition for leave to intervene in this proceeding under 10 CFR §2.1205, or to have the letter treated as a limited appearance under 10 CFR §2.1211, or to appear in an amicus or other capacity. See 65 Fed. Reg. 43789 (July 14, 2000). The original of any such statement should, by Tuesday, August 15, 2000, be sent to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555-0001, Attention: Docketing and Service Branch, by the deadline stated; copies should be provided to the Presiding Officer, the Special Assistant, and counsel for GrayStar and the NRC staff. Notification by email should also be provided on the Presiding Officer, the Special Assistant, counsel for GrayStar and the NRC staff, and the Office of the Secretary for actual receipt by 9:45 a.m. EDT, Tuesday, August 15, 2000.<sup>1</sup> After receipt of any such statement, counsel for NRC Staff and GrayStar will be given opportunity to respond as appropriate.

4. Alternatively, if Dr. Thayer or any other representative of the ARS wishes to provide the Presiding Officer with the intention requested in paragraph 3 above through participation in the telephone conference currently scheduled for Tuesday, August 15, 2000, at 10:00 a.m. EDT, such person shall notify Ms. Katoski, at 301/415-7409 or [AJK2@nrc.gov](mailto:AJK2@nrc.gov), no later than the close of

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<sup>1</sup>Email service should include service to the following e-mail addresses:

<a href="mailto:AMY@nrc.gov">AMY@nrc.gov</a>	(Ann Marshall Young)
<a href="mailto:FJS@nrc.gov">FJS@nrc.gov</a>	(Frederick J. Shon)
<a href="mailto:TDM@nrc.gov">TDM@nrc.gov</a>	(Thomas D. Murphy)
<a href="mailto:HEARINGDOCKET@nrc.gov">HEARINGDOCKET@nrc.gov</a>	(Office of the NRC Secretary)
<a href="mailto:JMC3@nrc.gov">JMC3@nrc.gov</a>	(James Cutchin in ASLBP Office)
<a href="mailto:JTH@nrc.gov">JTH@nrc.gov</a>	(John T. Hull)
<a href="mailto:anthony.thompson@shawpittman.com">anthony.thompson@shawpittman.com</a>	
<a href="mailto:warren.lehrenbaum@shattpittman.com">warren.lehrenbaum@shattpittman.com</a>	
<a href="mailto:david.lashway@shawpittman.com">david.lashway@shawpittman.com</a>	
<a href="mailto:william.hollaway@shawpittman.com">william.hollaway@shawpittman.com</a>	

business today, or call in to the conference at 10:00 a.m. EDT on August 15, 2000, at the following number: 301-231-5539 (code: 1089).

It is so ORDERED.

BY THE PRESIDING OFFICER<sup>2</sup>

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Ann Marshall Young  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 14, 2000

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<sup>2</sup>Copies of this Order were sent this date by Internet e-mail transmission to counsel for GrayStar, Inc., and counsel for the NRC staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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GRAYSTAR, INC. ) Docket No. SSD 99-27  
)  
(Suite 103, 200 Valley Road, )  
Mt. Arlington, NJ 07856) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REQUESTING STATEMENT OF INTENT OF DONALD W. THAYER, PH.D., AND THE U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, REGARDING PARTICIPATION IN PROCEEDINGS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann M. Young, Presiding Officer  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Frederick J. Shon, Special Assistant  
Atomic Safety and Licensing Board Panel  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

John T. Hull, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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GrayStar, Inc.  
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Anthony J. Thompson, Esq.  
Warren U. Lehrenbaum, Esq.  
David C. Lashway, Esq.  
William R. Hollaway, Esq.  
Shaw Pittman  
2300 N Street, NW  
Washington, DC 20037

Docket No. SSD 99-27  
LB ORDER (REQUESTING STATEMENT  
OF INTENT OF DONALD W. THAYER, PH.D.,  
AND THE U.S. DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL RESEARCH SERVICE,  
REGARDING PARTICIPATION IN PROCEEDINGS)

[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 14<sup>th</sup> day of August 2000