



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 2, 2010

OFFICE OF THE
GENERAL COUNSEL

Eric J. Artrip, Esq.
Watson, McKinney & Artrip, LLP
203 Greene Street,
Huntsville, Alabama 35801

RE: *Etta Henry v. GE Healthcare*, Civil No. 10-CV-378 MJD/SRN (D. Mn.);
NRC File No. TR-10-02.

Counselor;

You have caused a subpoena *duces tecum* to be served on the NRC seeking certain documents in connection with the above-captioned litigation. This subpoena is considered a "demand for information" within the meaning of 10 C.F.R. § 9.200 *et seq.* of the Commission's regulations and has been forwarded to the Office of the General Counsel in accordance with 10 C.F.R. § 9.201. This Office has assigned the processing number "TR-10-02" to your request; please refer to that number in future communications regarding this matter.

Your subpoena seeks NRC records related to the agency's "investigation of excessive exposure due to CT scans at Huntsville Hospital ... conducted using equipment manufactured by General Electric or any of its parents or subsidiaries." Initially, this Office finds the subpoena vague and confusing. First, the subpoena does not specify the range of dates of the documents sought by the subpoena; thus, for example, it is not clear whether the subpoena seeks records dating from the founding of the NRC (in 1974); from the founding of its predecessor, the Atomic Energy Commission (in 1954); or from some more recent – and thus, more reasonable – date. Second, it is not clear whether the subpoena seeks records of "investigations," which are conducted by the NRC's Office of Investigations into allegations of "wrongdoing" or deliberate violations of regulations; or whether it seeks records of "inspections," which are performed by the NRC technical Staff and which review the Hospital's compliance with NRC technical regulations.

More fundamentally, the subpoena is not supported by an affidavit explaining why you are requesting this information. See 10 C.F.R. § 9.202. This regulation requires that a subpoena or other "demand for information" be supported by a "statement or affidavit" by the requesting attorney explaining (1) what information is sought by the request; (2) what issues are involved in the litigation; (3) how the information sought is relevant to the issues in litigation; and (4) why the information is not available from another source. Upon your request, the NRC will treat the affidavit as "confidential" within the scope of Exemption 4 of the Freedom of Information Act.

If the requesting party does not comply with the agency's regulations governing these requests, the agency may deny the request. *United States ex rel Touhy v. Ragen*, 340 U.S. 462 (1951); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194, 1197 (11th Cir. 1991) (citing cases). See, e.g., *Boron Oil Company v. Downie*, 873 F.2d 67 (4th Cir. 1989); *Davis Enterprises v. U.S. EPA*, 877 F.2d 1118 (3d Cir. 1989), *cert. denied*, 473 U.S. 1070 (1990). Thus, unless you submit an appropriate affidavit within a reasonable time, your request will be denied.

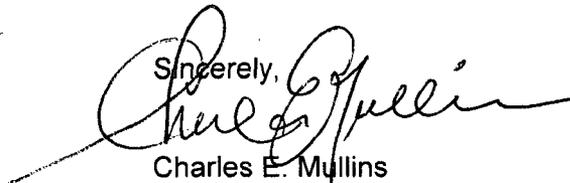
In this case, you have not submitted an affidavit supporting the subpoena that you served on the NRC. Please prepare an affidavit addressing the criteria described above and submit it to:

Stephen G. Burns, General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852
ATTENTION: Charles E. Mullins, Senior Attorney

In the interests of timely action, you may fax an advance copy of your request to me at 301-415-3200 or email it to me at charles.mullins@nrc.gov on the internet. This Office will hold your request in abeyance pending your response. Please feel free to call me at 301-415-1618 with any questions regarding this matter.

In addition, the *Moore* Court noted that an agency could consider the burden placed in the agency when responding to a request. 917 F.2d at 1198. Thus, we recommend that you describe the documents sought by your subpoena with more specificity, as requested above.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Mullins", written over the word "Sincerely,".

Charles E. Mullins
Senior Attorney
Office of the General Counsel