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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	)	Byproduct Material License
	)	No. 34-19089-01
ADVANCED MEDICAL SYSTEMS, INC.	)	Docket No. 30-16055-SP
	)	EA-86-155
	)	ASLBP No. 87-545-01-SP
	)	(Suspension Order)
	)	
	)	Date: <u>October 25, 1989</u>

OFFICE OF STAFF ATTORNEY  
DOCKETING & RECORDS  
BRANCH

ADVANCED MEDICAL SYSTEMS INC's MOTION TO COMPEL

I. THE MOTION:

Advanced Medical Systems Inc. (AMS) moves the Atomic Safety and Licensing Board (the Board) to direct the Nuclear Regulatory Commission (NRC) to reply to AMS' Supplemental Request for Admission in compliance with 10 C.F.R. Section 2.742(b).

II. BACKGROUND:

On September 29, 1989 AMS filed Supplemental Requests for Admission on the NRC Staff and the Staff responded on October 12, 1989. This Supplemental Request was filed in response to the NRC Staff's claim that the original Requests for Admission 58 and 59 were overly broad and vague to answer. The Staff's response, however, does not conform to 10 C.F.R. Section 2.742(b).

III. DISCUSSION:

AMS sought to remove the broadness and vagueness in the two Requests for Admission by rewording them. It is obvious that this rewording did indeed narrow the scope of the questions because now the Staff objects to these questions by claiming they are not relevant.

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The NRC Staff is well aware that the "bad company" list is a list they produce every year in July and December for a public briefing. The list on which AMS has been placed, and continues to be placed, is titled by the NRC, "Priority NMSS Facilities". The most current list contains the names of the following companies: Combustion Engineering, Safety Light Corp., 3M Company, Advanced Medical Systems, and Radiation Sterilizers, Inc. Since this "bad company" list has been discussed so many times during discovery, it is impossible to believe that the NRC Staff does not know about this list.

This list is important to the discovery process because it is directly connected to several of the issues in litigation before the panel.

Litigable Issue one asks, whether or not there was a substantial basis for the NRC to conclude that it lacked the requisite reasonable assurances that AMS would comply with Commission requests in the future. In order to prove or disprove the question of whether or not the NRC had a substantial basis for concluding that there were no requisite reasonable assurances, full disclosure of the specific monitoring and record checks that the NRC performed in order to determine which companies should be placed on the list must be given.

Since the NRC has not been able to compile a list of what constitutes a violation of their regulations, even though this was promised many months ago, the only other approach to answering the question is to require the NRC to study the procedures it has used in determining whether a company failed to meet the requisite reasonable assurances and determine if this criteria was fairly applied to all the companies placed on the "bad company" list.

AMS is not requiring the NRC to turn over records of specific monitoring, but is merely requesting the NRC to evaluate certain of its records and establish a set of clear rules. These "rules", under which the NRC has been operating over the past six years or so, should not be hard to establish and may even exist. It is not overly broad or vague to request that such a records check be done. Since these records and procedures are totally in the control of the NRC, and since it would be incredibly burdensome for AMS to request discovery on what procedures are used and what records are kept, it is incumbent on the Panel to direct the NRC staff to answer the Requests for Admission with an admit or deny. The NRC should be well aware of these records and not consider a request for evaluation purposes to be overly broad or vague. If the NRC does consider these records and procedures to be overly broad and vague, then perhaps their evaluation of companies to be placed on the "bad company" list is too overly broad and vague.

Litigable Issue two asks, whether or not there was a substantial basis for the NRC to conclude that continued conduct of certain licensed activities by AMS could pose a threat to the health and safety of the public, to wit: the performance of installation, service, maintenance, or dismantling of radiography or teletherapy units. It is impossible to determine what criteria the NRC used to claim there was a substantial basis for a public health and safety concern without examining their own records and procedures which establishes what constitutes a public health and safety violation. The "bad company" list contains companies which were closed due to a concern for public health and safety. A study of the procedures used for these five companies should produce a clear pattern of criteria used to evaluate whether a violation

of public health and safety has occurred. AMS is only asking whether or not it was treated fairly as were the other companies. A simple yes or no, admit or deny is all that is required.

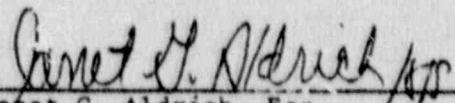
The same argument holds true for litigable Issue three, whether or not the NRC had a substantial basis for concluding that the public health, safety and interest required that AMS' License Number 34-19089-01 should be suspended. A clear set of criteria for evaluation of whether or not a license should be suspended must be available to the NRC for scrutiny. This criteria deals with the decision making process of the NRC Staff, from routine inspection to immediate licensee suspension of companies such as those contained on the "bad company" list. Surely such important criteria are well established and the documents to back up such drastic actions by the NRC must be readily available to NRC staff attorneys for use in an evaluation of all licensees.

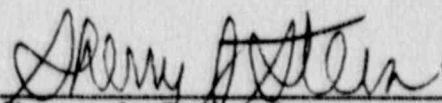
### III. CONCLUSION

It is tantamount to a proper defense of AMS in the upcoming litigation that full discovery take place. Even if the NRC claims it is burdensome for the NRC to compile a standard of evaluation for the "bad company" list so that it can admit or deny whether there are differences in the treatment of companies, this must be done. Otherwise the actions of the NRC would certainly appear to the public to be arbitrary and capricious. If one company can meet or fail to meet the substantial basis standard easier than another company, action must be taken to halt this discriminatory practice. The public health and safety demands that, and all the licensees deserve fair and impartial treatment, not to mention notice of possible violation.

For the foregoing reasons, AMS' Motion to Compel the NKC to properly respond to Requests for Admission 58 and 59, should be granted.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

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I hereby certify that Advanced Medical Systems Inc.'s Motion to Compel has been served on the following by deposit in the United States Mail, first class on this 25<sup>th</sup> Day of October, 1989.

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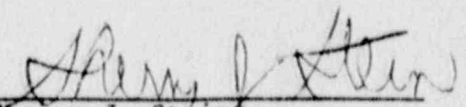
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