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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'89 OCT 27 P4:21

In the Matter of:) Byproduct Material License
ADVANCED MEDICAL SYSTEMS, INC.) No. 34-19089-01
) Docket No. 30-16055-SP
) EA-85-155
) ASLBP No. 87-545-01-SP
) (Suspension Order)
)
) Date: October 24, 1989

AMS' REBUTTAL TO NRC STAFF'S RESPONSE
TO AMS' MOTION TO COMPEL

I. INTRODUCTION

By response dated October 10, 1989, the Nuclear Regulatory Commission Staff ("NRC") responded to Advanced Medical Systems, Inc., ("AMS") motion wherein AMS requested that the Atomic Safety and Licensing Board ("Board") order the NRC Staff to fully respond to AMS' Request for Admissions. The disputed requests are directly related to the litigable issues in the instant action, which are:

1. 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.
2. 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.
3. 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.
4. Whether or not the NRC had a substantial basis for concluding that pursuant to 10 C.F.R. Section 2.201(c) no prior notice was required as to its actions, and pursuant to 10 C.F.R. Section 2.202(f) that the Suspension Order of October 10, 1986 should be immediately effective.

As will be set forth below, the NRC has failed to demonstrate why it is not required to respond to AMS' Request for Admissions and therefore, AMS' Motion to Compel should be granted.

II. DISCUSSION

First, in response to NRC's 10 C.F.R. Section 2.740(b) defense, it is AMS' contention that the licensee must be informed of the intent of NRC's rules prior to the licensee taking action, or else, the licensee is at risk of being in violation of NRC rules without knowing how these rules will be interpreted by the NRC. Congress intended that the licensees know prior to NRC's interpretation of its rules and prior to the action of the licensee what these rules required. If the only time the agency prepares a legal interpretation of the Commission's rules of practice is in response to a request for admissions, then all licensees are in serious jeopardy because they can never know what the legal interpretation of the agency's rules are until after the conclusion of a lawsuit. This is certainly not in keeping with the intent of Congress.

Therefore, contrary to the NRC Staff position, the issues of NRC's harrassment of AMS, the lack of the NRC Staff's technical knowledge, and the NRC's inability to substantiate its past allegations against AMS, are specifically relevant to four (4) issues admitted for litigation.

Secondly, as will be set forth below, the information requested in Requests for Admission 1-9, 11-13, 17-19, 22, 24, 27-30, 34, 38, 39, 43-51, 53, and 57, are necessary because they deal with a past pattern and practice of the Agency and its inability to follow its own regulations either through inadvertence or lack of knowledge. In addition, these requests set forth facts demonstrating lack of substantial basis on the part of NRC for its harrassing actions taken against AMS.

Requests 1-9, 11, and 12, are relevant to Issue #1 because they demonstrate that the NRC did not have a substantial basis to conclude that it lacked the requisite reasonable assurances that AMS would comply with Commission requests in the future. They are also relevant to Issue #2 because they demonstrate that there was not a substantial basis for the NRC to conclude that continued conduct of certain licensed activities could pose a threat to the health and safety of the public. Similarly, they are relevant to Issue #3 in that the NRC did not have a substantial basis in concluding that the public health, safety, and interest required AMS' License Number 34-19089-01 be suspended; and finally, to Issue #4 in that the NRC did not have a substantial basis for concluding that pursuant to 10 C.F.R. Section 2.201(c) no prior notice was required as to its actions and pursuant to 10 C.F.R. Section 2.202(f) that the Suspension Order of October 10, 1986 should be immediately effective.

Request for Admission 13, is relevant in that it deals with a past pattern of harrassment on the part of NRC officials and thus relates to Issue #1.

Request for Admission 17 indicates that prior to the shutdown, the NRC issued a press release to assure full press coverage and it is therefore related to NRC's past history of harrassing AMS and to Issue #2. Requests for Admission 18 and 19 deal with NRC's refusal to acknowledge William Turbett as an isotope handler in a timely manner and are thus relevant to both Issue #2 and Issue #3 in that the NRC in further attempts to debilitate AMS prevented it from functioning properly as a company.

Request #22 relates to the past history of harrassment by the NRC of AMS, further demonstrating that allegations made by NRC officials were not substantiated. This is relevant to Issues #1, #2, #3, and #4 in that the NRC did not have a substantial basis for its actions.

Request for Admission #24 relates to the past pattern and practice of the agency and its ability to follow its own regulations either through inadvertence, lack of knowledge, or through its continued harrassment of AMS by requiring AMS to follow rules and regulations not required of other licensees. It is therefore relevant to Issues #1, #2, and #3. Requests 27-30 also deal with continued harrassment of AMS by the NRC, and are relevant to Issue #3 in that they demonstrate the fact that the NRC did not have a substantial basis for concluding that the public health, safety, and interest required that AMS' License Number 34-19089-01 be suspended, but rather the NRC's actions were taken purely for harrassment purposes.

Request for Admission 34 concerning the lack of training of NRC officials with respect to the hot cell, relates to all four (4) issues because it demonstrates once again that the NRC did not have a substantial basis for its actions and that the NRC had a past pattern or practice of an inability to follow its own regulations either through inadvertance, lack of knowledge, or as a result of harrassment.

Request 39 relates to continued harrassment by NRC by reopening an issue resolved in 1986 and reactivating it in response to AMS' refusal to dismiss the instant action.

Requests 43-51 relate to the continued ratcheting by NRC of AMS employees and demonstrate that the actions taken by NRC against AMS were unwarranted and were taken solely for the purposes of harrassment and abuse of process and are thus relevant to all four (4) issues. Request 53 relates directly to Issue #2 in demonstrating that there was no health or safety risk from actions taken by AMS employees. Request 57 is relevant to the NRC's discrimination against AMS and is thus relevant to all four (4) issues.


Thus, these requests are all relevant to the instant action because they show that there was no public health or safety risk caused by any actions on the part of AMS.

III. CONCLUSION

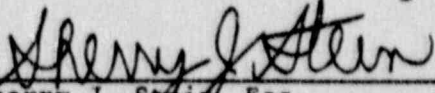
Therefore, the aforementioned Requests for Admission deal directly with the litigable issues in the instant action. Contrary to NRC's position, the fact that NRC took its actions through inadvertence, lack of knowledge, harrassment and/or the fact that the NRC staff is not properly trained or supervised, and that the NRC did not have a substantial basis for its actions based on any alleged health or safety risk or past performance, are all relevant to the instant action.

Thus, AMS' Motion to Compel should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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BRANCH

I hereby certify that the AMS' Rebuttal to NRC Staff's Response to AMS' Motion to Compel was served on the following by deposit in the United States Mail, first class on this 24th Day of October, 1989:

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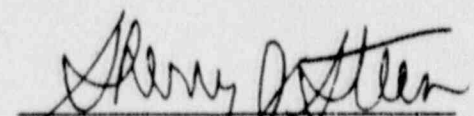
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