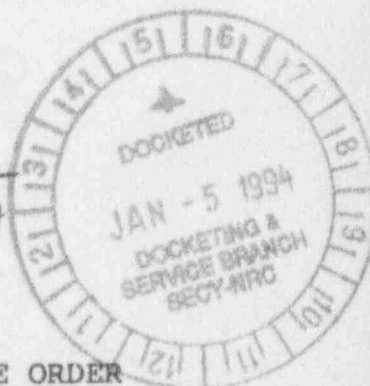


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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF: )  
 ) Docket No. 030-31765  
Oncology Services Corporation )  
(Byproduct Material License ) EA No. 93-006  
No. 37-28540-01) )



ONCOLOGY SERVICES CORPORATION MOTION FOR A PROTECTIVE ORDER

NOW COMES Oncology Services Corporation ("OSC") by and through its counsel Reed Smith Shaw & McClay and pursuant to 10 C.F.R. §2.740(c) moves the Atomic Safety and Licensing Board (the "Board") for a protective order staying all responses by OSC to the NRC Staff's (the "Staff") Interrogatories And Request For Production Of Documents And Request For Admissions (the Staff's "Discovery Requests") until following such time as (i) a discovery management order and timetable can be developed at the forthcoming prehearing conference in this proceeding scheduled for January 26, 1994, (ii) the Staff makes available certain witness transcripts and other discoverable material which it is presently withholding, and (iii) OSC has a reasonable opportunity to review the same. In support of its motion, OSC states as follows:

1. On November 16, 1992 an incident occurred at OSC's Indiana Regional Cancer Center ("IRCC") involving the loss of an Iridium source during an HDR Brachytherapy treatment.
2. During an investigation of this incident in December 1992, Staff members of the NRC Incident Investigation Team interviewed employees at IRCC regarding this incident and have transcriptions of those interviews.
3. These interviews are crucial in this proceeding since they formed, in part, the basis for the allegations contained in a

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3. These interviews are crucial in this proceeding since they formed, in part, the basis for the allegations contained in a January 20, 1993 Staff order suspending OSC's Byproduct Material License No. 37-28540-01 issued pursuant to 10 C.F.R. Parts 30 and 35 effective immediately (the "Order").

4. By letters dated January 29, February 10, and February 25, 1993, OSC requested the complete interviews and transcripts of the employees from the Staff.

5. In response to Staff motions the Board has granted orders staying OSC's discovery in this matter on March 26, 1993, June 23, 1993 and on September 21, 1993.

6. The Staff additionally denied OSC access to the requested interviews and transcripts pursuant to the Freedom of Information Act, 5 U.S.C. § 552 as amended; said denial currently is the subject of a suit for injunctive relief in the United States District Court for the Western District of Pennsylvania at Civil Action No. 93-0939.

7. In March of 1993 the Staff compelled the interviews of approximately 24 OSC employees at various locations throughout Pennsylvania and denied both the subject employees and OSC access to the transcriptions of said testimony.

8. By Memorandum and Order dated December 17, 1993 the Board indicated that the Staff stay had expired and that discovery could proceed. That December 17, 1993 Board Memorandum and Order additionally set January 26, 1994 as the date for a prehearing conference at which, among other matters, the Board will consider discovery issues.

9. On December 27, 1993 the Staff served OSC via regular mail a document styled "NRC Staff's Interrogatories And Request And Request For Production Of Documents And Admissions" pursuant to 10 C.F.R. §§ 2.740b, 2.741 and 2.742. OSC received the Staff's discovery requests on December 30, 1993.

10. In the absence of a protective order, OSC believes that, pursuant to 10 C.F.R. §§ 2.742(b), 2.740b(b), 2.741(d) and 2.710 it would have to begin to respond to the Staff's discovery requests by January 11, 1994.

11. On January 3, 1994, OSC served the Staff with certain discovery requesting, inter alia, the witness transcripts and interviews described above. Even absent a Staff objection to production, OSC does not expect to receive responses to its requests prior to the prehearing conference scheduled for January 26, 1994 and at any rate does not anticipate Staff production of the transcripts in time to answer the Staff's Discovery Requests under the present time frame.

12. In order to properly and adequately respond to the Staff's discovery requests which are primarily focused on the events and circumstances of the IRCC November 16, 1993 incident (the sequence of events of which is almost entirely based on the recollections of the employees present during the incident) as well as various statements taken from OSC employees at other OSC facilities, fundamental fairness dictates that OSC be permitted adequate time to receive and review the statements given by its employees over a year ago to the Staff so that OSC can properly respond to the Staff Discovery Requests.

13. As a threshold matter, requiring OSC to go through the task of eliciting information necessary to respond to the

interrogatories from an interview process of all its employees without the aid of the transcripts is needlessly burdensome. Indeed, open interviews of all the pertinent employees may now be impossible because some are no longer employed at OSC and because of intervening litigation or potential litigation in which an employee's defense may hamper the employee's full cooperation with OSC.

14. Moreover, because the events giving rise to the Order and the subject interviews occurred over one year ago it is additionally unfair and prejudicial to require OSC to rely on the potentially faded employee memories of these past events and testimony in attempting to provide discovery responses to the Staff which could bind OSC. In short, absent these transcripts, OSC will not be able to adequately or fairly respond.

15. OSC submits that the upcoming prehearing conference on January 26, 1994 provides the most efficient and fair forum for establishing a discovery management order and schedule providing both parties with a situation in which they can fairly both acquire and produce pertinent discovery.

16. Pursuant to Section I, subsection B, paragraph 1 of the Board's December 17, 1993 Memorandum and Order OSC has informed the Staff of its intent to present this motion for a protective order and the Staff intends to oppose this motion.

17. Having not received the transcripts, OSC cannot be assured that any response it makes to any Staff discovery request will be complete or adequate absent prior review of the transcripts.

18. In accordance with Section I, subsection B, paragraph 2 of the Board's December 17, 1993 Memorandum and Order OSC files this motion at least three business days prior to the time that any response to the Staff is required.

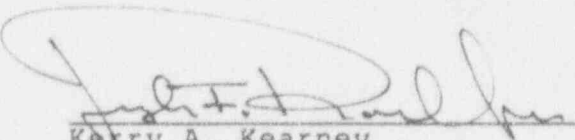
THEREFORE for the reasons set forth above OSC respectfully requests that the Board enter a protective order pursuant to 10 C.F.R. § 2.740(c)(2) staying any and all responses by OSC to the Staff's Discovery Requests until following such time as (i) a discovery management order and timetable can be developed at the forthcoming prehearing conference in this proceeding scheduled for January 26, 1994, (ii) the Staff makes available certain witness transcripts and other discoverable material which it is presently withholding, and (iii) OSC has a reasonable opportunity to review the same.

Respectfully submitted,

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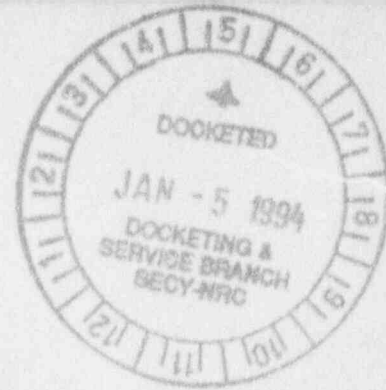
  
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DATED: January 4, 1994



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF:

No. 37-28540-01  
Docket No. 30-31765-EA  
E.A. No. 93-006

ONCOLOGY SERVICES, CORPORATION  
BY-PRODUCT MATERIAL LICENSE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within was furnished to the following this 4th day of January, 1994:

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Charles N. Kelber  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

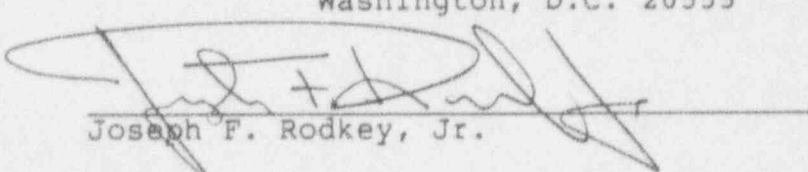
Adjudicatory File (2)  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Marian L. Zobler  
Michael H. Finkelstein  
U.S. Nuclear Regulatory Commission  
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Washington, D.C. 20555

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Appellate Adjudication (1)  
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Washington, D.C. 20555

  
Joseph F. Rodkey, Jr.

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

G. Paul Bollwerk, III Chairman  
Dr. Charles N. Kelber  
Dr. Peter S. Lam

IN THE MATTER OF: )  
 ) Docket No. 030-31765  
Oncology Services Corporation )  
(Byproduct Material License ) EA No. 93-006  
No. 37-28540-01) )

MEMORANDUM AND ORDER

(Granting Licensee Oncology Services Corporation Motion For A Protective Order Staying Responses to NRC Staff's Discovery Requests Pending Pretrial Conference And NRC Staff Production OF Certain Transcripts To OSC)

For the reasons set forth in the Licensee, Oncology Services Corporation's ("OSC") **MOTION FOR A PROTECTIVE ORDER** filed with this Atomic Safety and Licensing Board (the "Board") on January 3, 1994 the Board GRANTS OSC's Motion For A Protective Order and hereby ORDERS that pursuant to 10 C.F.R. § 2.740(c)(2) all discovery responses by OSC to the NRC Staff's Interrogatories and Request For Production Of Documents And Request For Admissions

are STAYED until following such time as (i) a discovery management order and timetable can be developed at the forthcoming prehearing conference in this proceeding scheduled for January 26, 1994, (ii) the Staff makes available certain witness transcripts and other discoverable material which it is presently withholding, and (iii) OSC has a reasonable opportunity to review the same.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

---

G. PAUL BOLLWERK, III, CHAIRMAN  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

January \_\_, 1994