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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'94 FEB -1 P2:06

Before Administrative Judges:

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

ORDER BY ATOMIC SAFETY
AND LICENSING BOARD

SERVED FEB - 1 1994

In the Matter of

ONCOLOGY SERVICES CORPORATION

(Order Suspending
Byproduct Material
License No. 37-28540-01)

Docket No. 030-31765-EA
EA 93-006
ASLBP No. 93-674-03-EA
February 1, 1994

ORDER
(Prehearing Conference Order)

On January 26, 1994, the Board conducted a prehearing conference in this proceeding. During the course of that proceeding, after discussion with the parties, the Board made a number of rulings on discovery and other matters. Those rulings are as follows:

I. Discovery Matters

A. The January 4, 1994 motion for protective order filed by Oncology Services Corporation (OSC) is granted with respect to any OSC response to any portion of an NRC staff discovery request, including the staff's December 27, 1994 interrogatories and requests for production of documents and admissions, that involves matters concerning the January 20, 1993 suspension order that are or could be the subject of

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agency criminal referrals to the United States Department of Justice (DOJ). OSC's responses to such staff discovery requests are deferred until the time specified in paragraph I.C below.

B. The January 14, 1994 staff motion for protective order is granted in that its production of documents regarding the Incident Investigation Team (IIT) inquiry into the November 1992 incident at OSC's Indiana Regional Cancer Center specified on pages 23-24 of the staff's motion for protective order is postponed pending 1) a DOJ declination of agency criminal referrals involving the matters relating to the January 1993 suspension order that are or could be the basis for withholding those documents; 2) a DOJ determination that release of those documents will not harm its criminal proceeding; or 3) further order of the Board.

C. Promptly upon either of the DOJ determinations described in paragraph I.B. above, the staff shall produce the documents specified in that paragraph and notify the Board of the date upon which production is made. Following such production, OSC shall respond to any discovery requests for which its response previously was deferred in accordance with paragraph I.A above. Further, the parties shall complete all discovery in this proceeding within 120 days from the date of production of the staff documents referenced in paragraph I.B. above.

D. On or before Monday, February 7, 1994, the staff shall file the following:

1. A list denoting those individual interrogatories and requests for production of documents and admissions (or any particular part thereof) set forth in its December 1993 discovery request that do not involve matters concerning the January 20, 1993 suspension order that are or could be the subject of agency criminal referrals to DOJ.

2. A status report on any agency criminal referrals to DOJ involving matters concerning the January 1993 suspension order, including an explanation of when the sixty-day time frame for notification outlined in the DOJ/NRC memorandum of understanding on referrals begins to run. See 53 Fed. Reg. 50,317, 50,319 (1988). Every thirty days thereafter, the staff shall file a report on the status of any potential or actual agency criminal referrals to DOJ that may impact the conduct of this proceeding.

E. On or before Monday, February 14, 1994, the staff shall file 1) its answers to those interrogatories and requests for admissions in OSC's January 3, 1994 discovery request (as modified by OSC counsel during the prehearing conference) to which it does not have a pending objection, and 2) its specific objections to the production of individual documents covered by that discovery request, as

referenced in the staff's January 12, 1994 motion for extension of time.¹

F. On or before Monday, February 28, 1994, OSC shall provide its response (which may include any objections) to those portions of the staff's December 1993 discovery request that are identified by the staff in accordance with paragraph I.D.1 above.

II. Other Matters

A. The parties shall have thirty days from the date discovery closes within which to file any further dispositive motions relating to this proceeding. Any response to such a dispositive motion shall be filed within thirty days of service of the motion. The parties' dispositive motions and responses shall be served on the

¹ The parties may by agreement and without leave of the Board enlarge the time for providing answers to interrogatories or to admissions or for producing documents, so long as they comply with the overall deadline for completing discovery established by the Board. The times established in the NRC rules of practice for filing objections or a motion to compel regarding any discovery request may be extended only with leave of the Board.

Further, in accordance with 10 C.F.R. § 2.740b(a), a party's answers to interrogatories should be filed with the Secretary of the Commission and copies should be served on each Board member. A party's responses to a request for admissions also should be filed with the Secretary and served on the Board's members. In the absence of a specific Board request, a party should not file with the Secretary or serve the Board with any materials provided in response to a request for production of documents.

Board and the opposing party in a manner (e.g., express mail) that will ensure receipt by the next business day.

B. Any proposed transcript corrections relating to the January 26, 1994 prehearing conference shall be filed on or before Wednesday, February 9, 1994.

It is so ORDERED.²

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

February 1, 1994

² Copies of this order are being sent this date to OSC counsel by facsimile transmission and to staff counsel by E-Mail transmission through the agency's wide area network system.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ONCOLOGY SERVICES CORPORATION,
HARRISBURG, PA
(Byproduct Material License
No. 37-28540-C1 - EA 93-006)

Docket No.(s) 30-31765-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (PREH. CONF. ORDER) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

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

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

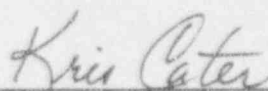
Administrative Judge
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State College, PA 16801

Dated at Pikesville, Md. this
1 day of February 1994


Office of the Secretary of the Commission