

UNITED STATES NUCLEAR REGULATORY COMMISSION

Docket No. 03016055

ADVANCED MEDICAL SYSTEMS, INC.

(Byproduct Materials License No. 34-19089-01)

RECEIPT OF PETITION FOR DIRECTOR'S
DECISION UNDER 10 CFR § 2.206

Notice is hereby given that the Nuclear Regulatory Commission Staff has received a Petition dated August 2, 1993, filed by William B. Schatz on behalf of the Northeast Ohio Regional Sewer District ("Petitioner" or "District"). The Petition requests, pursuant to 10 CFR § 2.206, that the NRC institute a proceeding to modify the license of Advanced Medical Systems, Inc. ("AMS") to require, *inter alia*, that AMS provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2210. The District alleges the following bases for this request: 1) there is a large volume of evidence indicating prior discharge of cobalt-60 to the sanitary sewer, and 2) hundreds of curies of loose cobalt-60 remain in AMS's London Road facility.

This portion of Petitioner's request is being treated as a separate matter from the District's Petition pursuant to 10 CFR § 2.206 of March 3, 1993, receipt of which was published in the Federal Register on April 13, 1993 (58 FR 19282). The NRC will take appropriate action on the Petition within a reasonable time.

The August 2, 1993, Petition raises another issue that is separate from its request for action against AMS, regarding advance notification to the District from NRC licensees in its service area before release of radioactivity into the sanitary sewer. In view of the similarity of this issue to the subject of a

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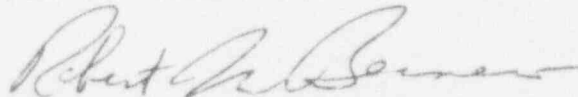
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rulemaking petition already filed by the District, also dated August 2, 1993, the NRC staff is consolidating this request for advance notice of sewer disposal of radioactive material with that rulemaking petition.

A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room, Perry Public Library, 3753 Main Street, Perry, Ohio, 44081.

Dated at Rockville, Maryland this 24 day of November 1993.

FOR THE NUCLEAR REGULATORY COMMISSION



Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards



Northeast Ohio Regional Sewer District

3826 Euclid Avenue • Cleveland, Ohio 44115-2504

216 • 881 • 6600

FAX: 216 • 881 • 9709

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

August 2, 1993

Mr. James Taylor
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Request for action pursuant to 10 CFR 2.206

Dear Mr. Taylor:

The Northeast Ohio Regional Sewer District ("District") Southerly Wastewater Treatment Center has been contaminated by disposal of Cobalt-60 into the sanitary sewer system. The characterization and remediation of this contamination is ongoing and will cost the District, at a minimum, in excess of one million dollars. The remediation costs could rise into the billions of dollars if off-site disposal is required.

Although the NRC has been cooperative in this remediation effort, the Agency has consistently stated that the costs must be absorbed by the District and its ratepayers, despite the District's innocence in this matter. Chairman Ivan Selin recently stated that the NRC is completely powerless to seek cost recovery from the source of this material regardless of the degree of culpability of the licensee. Mr. Selin further stated that the victim in an off-site contamination case such as the Southerly Treatment Center must rely on state tort law to recover costs from the licensee. Unfortunately for the victim, tort law will only provide an adequate remedy if a judgment can be obtained against a licensee with the financial resources to pay the judgment. In many situations, the judgment in contamination cases may force the licensee into bankruptcy leaving the victim to cover the remediation costs plus the additional cost of the legal action. The NRC may in such cases be left with an abandoned, contaminated facility.

In addition to requiring financial assurance for site decommissioning, the Atomic Energy Act, in 42 U.S.C. Section 2210,

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The mission of the Northeast Ohio Regional Sewer District is to enhance public health and welfare through the efficient, cost-effective conveyance and treatment of wastewater. This is accomplished by an organization dedicated to professionalism, fairness and consistency that anticipates and responds to the changing environmental needs of the community.

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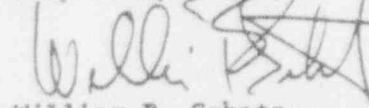
permits the NRC to require financial protection to cover public liability claims as a license condition of most licensees. The District has been informed by the NRC, however, that such financial protection has never been required of a licensee other than in the nuclear power industry, where it is mandatory. As a result of this NRC policy, publicly owned treatment works across the nation, as well as other potential victims, may find themselves in a position similar to that of the District and its ratepayers. In the event of an abandoned, contaminated facility, the impact on a municipality could be devastating.

The District therefore requests, pursuant to 10 CFR 2.206, that the NRC require financial protection, available in the form of insurance, of certain of its materials licensees. The amount of such financial protection could vary based upon the risk to the public posed by the licensee. The District specifically requests that adequate financial assurance to cover public liability be required of Advanced Medical Systems, Inc. due to the large volume of evidence indicating prior discharge of Cobalt-60 to the sanitary sewer, and due to the hundreds of curies of loose Cobalt-60 that remain in the London Road facility.

In addition to requiring adequate financial protection, the District also requests that the NRC license of all generators of radiological waste located within Cuyahoga County and Summit County, Ohio, be amended to require that licensees provide not less than 24 hours advance notice to the appropriate sewage treatment plant prior to releasing radioactive material to the sanitary sewer. In a separate petition for rulemaking pursuant to 10 CFR 2.802, the District is requesting that 10 CFR 20.303 (and 10 CFR 20.2003) be revised to require the same notification provision in all licenses issued by the NRC.

Your prompt response to this petition would be appreciated as this is a matter of great concern to the District.

Very truly yours,



William B. Schatz
General Counsel

WBS/ydm

cc: Richard Bangart
Philip Olson
John Martin
Ken Kirk
Senator Glenn
Senator Metzenbaum
Representative Hoke
Representative Stokes
Erwin Odeal
Thomas Lenhart
Barry Koh
Law Director, City of Cleveland