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March 23 1994
DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 MAR 29 P3:03

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
ONCOLOGY SERVICES CORPORATION)	Docket No. 030-31765-EA
)	
(Byproduct Material)	EA No. 93-006
License No. 37-28540-01))	

OSC'S MEMORANDUM TO THE BOARD

OSC respectfully files this Memorandum to the Board regarding its Response to the March 14, 1994 Staff Motion to Compel and Motion for Protective Order ("Motions"). On March 10, 1994 Federal Judge Donald J. Lee of the Western District of Pennsylvania denied the Government's Motion to Reconsider that Court's prior order requiring the NRC to turn over to OSC any and all transcripts relating to 32 individuals who submitted affidavits. In so ordering, Judge Lee held:

The defendants (the "Government") responded to the motion to compel on that same day, and on February 7, 1994, filed their Reply in Opposition to Plaintiff's Motion for Summary Judgment (Document No. 26). Neither of these pleadings even remotely suggests that the 32 employees identified by Oncology and specifically relief upon by it in its motion for summary judgment were not covered by plaintiff's FOIA requests, nor does either pleading even remotely suggest that Oncology had limited its FOIA request to interview transcripts of the NRC's Incident Investigation Team only and that Oncology did not request transcript notes of interviews conducted by NRC's "Office of Investigations." The defendants merely relief on their categorical Exemption 7 claim of

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privilege as to the 5,000 pages of interview notes identified only as "B-1".

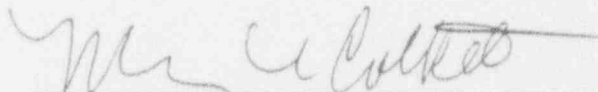
Apparently, the defendants neglected to check B-1 to see whether any of the 32 employees and their interviews by NRC personnel specifically identified by Oncology were actually covered by that blanket description and claim of exemption. The defendants only thought to do that after they received this Court's opinion of February 7, 1994, as they candidly confesses in their Motion for Reconsideration which states: "Through inadvertence and mistake, the NRC did not perceive plaintiff's inaccurate inference that its 32 verified statements described the NRC's Incident Investigation Team interviews until after the NRC filed its Reply and after it studied this Court's February 7th Order and Opinion. The above-described errors were discovered upon further review of Document B-1, in compliance with this Court's Opinion and Order obeying document disclosure to the 32 verified statements." United States' Motion for Reconsideration and Stay of Order (Document No. 30) (emphasis supplied).

The defendants now rely on their own negligence in suggesting Oncology mislead the Court to "err" in ordering the NRC to release all 32 employees' transcripts. Having stood pat on their right to rely on a categorical Exemption 7 claim against disclosure of these 32 employees' interviews and the rest of the 5,000 pages of transcribed interviews, defendants only now, after they read and were dissatisfied with the Court's ruling, have decided to look a little more closely at B-1 and have "discovered" a new distinction they believe entitle them to exemption. The Court agrees with Oncology that these belated arguments are somewhat disingenuous and offer no legitimate reason why this Court should reconsider its ruling of February 7, 1994. Moreover, under all of the circumstances of record, the Court construes Oncology's FOIA requests as covering all investigative interview of transcripts, certainly the 32 employees' transcribed interviews.

Counsel for OSC was informed this morning that despite Judge Lee's March 10, 1994 holding all of the court ordered transcripts have yet to be produced. It is anticipated that such documents will be produced to OSC within a few days time. Because of this recent and anticipated production and the fact that the

Board has ordered a Joint Discovery Status Report to be filed by Tuesday, March 29, 1994, OSC will, in order to avoid the filing of yet another pleading in this matter and the further burdening of this Board, respond to the Motions in the Joint Discovery Status Report.

Respectfully submitted,



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Dated: March 23, 1994

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CERTIFICATE OF SERVICE

I hereby certify that copies of OSC's Memorandum To The Board in the above-captioned proceeding have been served on the following via two-day UPS this 23rd day of March 1994:

G. Paul Bollwerk, III, Chairman
Administrative Judge
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Washington, D.C. 20555

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