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March 27 1994  
DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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 MOTION TO COMPEL ANSWERS TO REQUESTS FOR ADMISSION

On March 1, 1994 OSC served its Second Set of Interrogatories, Request for Production of Documents and Requests for Admission on the Staff. Subsequently, the Staff responded only to the Requests for Admissions. Many of the Staff responses to proper discovery are non-responsive. Accordingly, OSC files this Motion to Compel.<sup>1</sup> Set forth below are the relevant requests, the Staff's response and OSC's argument.

A. REQUEST FOR ADMISSION 2

Failure of the wall mounted survey meter did not occur on November 16, 1992 at IRCC.

<sup>1</sup> OSC specifically reserves its right to move to compel further responses to any and all remaining Staff responses to OSC's Requests for Admissions dated March 1, 1994, as well as document requests and interrogatory answers yet to be provided.

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## RESPONSE

The Staff can neither admit nor deny this request. The IRCC technologists interviewed by the Incident Investigation Team (IIT) stated that the wall mounted PrimeAlert alarmed during the November 16, 1992 incident. The IIT determined that the source was exposed at the time the PrimeAlert alarmed. Subsequently, during the IIT investigation, Dr. Bauer, in the presence of Dr. Paperiello, was able to cause the PrimeAlert to alarm using Dr. Bauer's Sr-90 eye applicator. The alarm ceased when the source was removed. However, Rudy Balko state that he manipulated the power supply during, and perhaps subsequent to, the event on November 16, 1992. Therefore, Mr. Balko may have made the alarm inoperable for a certain period of time during the event.

## ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an admission. The Staff does admit that the PrimeAlert alarmed during the November 16, 1992 incident, that the source was exposed at the time of alarm and that the alarm ceased when a radioactive source was removed. The Staff does not even address the word "failure." The Staff's admissions therefore constitutes an unqualified admission that the wall mounted survey meter did not fail on November 16, 1992 at IRCC.

### B. REQUEST FOR ADMISSION 3

Rudy Balko has used a hand held survey meter at IRCC prior to November 16, 1992.

## RESPONSE

Admit in part. Mr. Balko had held and turned on a hand held survey meter at IRCC prior to November 16, 1992. However, Mr. Balko was not trained in its use at the IRCC prior to November 16, 1992. He told the IIT that he had a little bit of survey meter experience in therapy school and that he was uncomfortable in its use. He was not clear on the sensitivity of the various scales.

## ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an unqualified admission. The Staff does admit that Balko "held and turned on" a survey meter at IRCC prior to November 16, 1992. The request for admission has nothing to do with whether Balko was trained in its use or what his experience in therapy school included. The request deals only with "use" and the Staff admits he had used it. Therefore, the response should be deemed an unqualified admission.

C. REQUEST FOR ADMISSION 4

Sharon Rickett had used a hand held survey meter at IRCC prior to November 16, 1992.

RESPONSE

The Staff can neither admit or deny this request. The IIT does not know if Sharon Rickett had ever used a hand held survey meter at the IRCC prior to November 16, 1992. She told the IIT that no one in school showed her how to use the survey meter or what the readings meant.

ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an admission. The attempt by the Staff to limit the response to IIT is improper when the Staff is well aware that Rickett was deposed by OI and informed OI that she had used a hand held survey meter at IRCC prior to November 16, 1992. Therefore, this attempt to provide an evasive non-responsive answer constitutes bad faith by the Staff. Further, the request does not deal with the issue of what Rickett was shown during her schooling. The Staff's response should be deemed an unqualified admission.

D. REQUEST FOR ADMISSION 5

Greg Hay instructed Rudy Balko in the use of a hand held survey meter prior to November 16, 1992.

RESPONSE

Deny. Mr. Hay told the IIT that he had shown Mr. Balko how to use a survey meter, but that he did not train Rudy Balko in the use of the survey meter since he (Greg Hay) was not responsible for training.

ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an admission. The Staff does admit that Hay showed Balko how to use a survey meter. Clearly, the Staff cannot in good faith claim that instructing Balko in "usage" is different than showing Balko how to use the survey meter. Indeed, the Staff's own language in response to request for admission 4 above clearly demonstrates that the Staff equates the term "shown how to use" with the word "training." Further, the Staff completely ignores the fact that Balko informed OI that Hay did tell him how to use a hand held survey meter. Such an improper and intentionally misleading response by the Staff constitutes bad faith. Request for Admission 5 should be deemed as unqualified admission.

E. REQUEST FOR ADMISSION 13

10 CFR 35.21(a) does not require a level of frequency with respect to the RSO being physically present at a facility listed as a place of use.

RESPONSE

Deny, in part. Although no frequency is specifically prescribed in the regulation with respect to physical presence of the RSO, the regulation requires the RSO to ensure "that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program." Section 35.21(b) lists the various responsibilities of the radiation safety officer. Read together, section 35.21 requires that the radiation safety officer obtain, on a continued basis, knowledge of the compliance status of the daily operation of the licensee's byproduct material program that is sufficient to ensure that the requirements of the license and the regulations are met.

ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an unqualified admission. The Staff specifically admits that "no frequency is specifically prescribed in the regulation." Further, the request is very specific. The attempt by the Staff to read various sections "together" constitutes extreme bad faith and is an attempt not to answer proper discovery. The Staff's admission is a full admission.

F. REQUEST FOR ADMISSION 14

10 CFR 35.21(b) does not require a level of frequency with respect to the RSO being physically present at a facility listed as a place of use.

RESPONSE

See the Staff's response to request for admission 13.

ARGUMENT

See OSC's argument to Request for Admission 13.

G. REQUEST FOR ADMISSION 15

Regulatory Guide 10.8, Revision 2, appendix G does not specify either the manner or frequency of contact between the RSO and the users and workers.

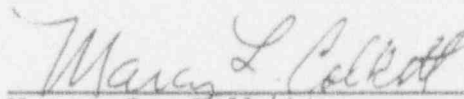
RESPONSE

Deny in part. Although the manner of contact between the RSO and the users and workers is not specified in Regulatory Guide 10.8, Revision 2, Appendix G, section 3.c.(1) states that "[t]he RSO will be in close contact with all users and workers. . . ." In order to comply with the Licensee's commitment, in its license, to follow Regulatory Guide 10.8, Revision 2, Appendix G, it would be necessary for the radiation safety officer to have frequent contact with the locations of use listed on the license.

ARGUMENT

OSC requests that the Board order that the Staff's response be deemed an unqualified admission. The Staff specifically admits that regulatory guide 10.8, revision 2, appendix G does not address the manner or frequency of contact between the RSO and the users and workers. The attempt by the Staff to provide "lots of words" in response to this very specific request demonstrates extreme bad faith. Request 15 should be deemed an unqualified admission.

Respectfully submitted,



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Dated: March 27, 1994



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

CERTIFICATE OF SERVICE

I hereby certify that copies of OSC's Motion to Compel Answers to Requests for Admission in the above-captioned proceeding have been served on the following via overnight UPS this 28th day of March 1994 unless otherwise noted:

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety and 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  
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Marian L. Zobler  
Michael H. Finkelstein  
U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Washington, D.C. 20555  
(via telecopy March 27, 1994)

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

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Mayle Collett