

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ADVANCED MEDICAL SYSTEMS, INC.) Docket No. 30-16055-CP
One Factory Row)
Geneva, Ohio 44041) (Civil Penalty)

STIPULATION FOR SETTLEMENT OF THE PROCEEDING

I.

On May 30, 1989, the NRC staff (Staff) issued to Advanced Medical Systems, Inc. (AMS) an "Order Imposing Civil Monetary Penalties" (Order) in the amount of \$6,250.00, for four violations of NRC regulations, set out in a "Notice of Violation and Proposed Imposition of Civil Penalties" dated June 28, 1985. AMS requested a hearing on the Staff's Order on June 20, 1989. By Memorandum and Order dated March 19, 1991, the Atomic Safety and Licensing Board (Licensing Board) granted the Staff's motion for summary disposition of the proceeding and sustained the Staff's Order. *Advanced Medical Systems, Inc. (One Factory Row, Geneva, OH)*, LBP-91-9, 33 NRC 212 (1991). AMS appealed the Board's decision on April 26, 1991. By Memorandum and Order dated September 30, 1993, the Commission affirmed in part, and reversed and remanded in part, the Board's decision. *Id.*, CLI-93-22, 38 NRC 98 (1993). In its decision, the Commission directed the Board to give further consideration to the evidence concerning Violation 2 (inadequate survey) and to reconsider the severity level and civil

penalty imposed by the May 30, 1989 Order. Following the Commission's denial of motions for reconsideration filed by the Staff and AMS, the Licensing Board issued an order dated December 14, 1993, in accordance with the Commission's direction, requiring the Staff to file a "motion regarding the adequacy of the AMS survey and the possible termination of this proceeding." *Id.* at 3.

In December 1993 and January 1994, the Staff and representatives for AMS discussed the possibility of reaching an agreement concerning the civil penalty order and settlement of the proceeding. These discussions resulted in a verbal agreement between the parties that AMS would pay \$1800.00 in full settlement of the May 30, 1989 Order; and AMS does not admit or deny Violations 1-3 or the Severity Level classification in the Order and the "Notice of Violation and Proposed Imposition of Civil Penalties" dated June 28, 1985.

The parties have entered into this Stipulation for settlement of this proceeding, subject to the approval of the Atomic Safety and Licensing Board, in lieu of presenting testimony at trial and further adjudication of any issue of fact or law regarding Violation 2, the amount of civil penalty, or the Severity Level classification contained in the Staff's May 30, 1989 Order. The parties acknowledge that the terms and provisions of this Stipulation, once approved by the Atomic Safety and Licensing Board, shall be incorporated by reference into an order, as that term is used in subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. § 2201, and shall be subject to enforcement pursuant to the Commission's regulations.

II.

NOW THEREFORE, IT IS STIPULATED AND AGREED by and between the NRC Staff and Advanced Medical Systems, Inc. as follows:

1. Payment by Advanced Medical Systems, Inc. of a civil penalty of \$1800.00, in accordance with paragraph 2 below, shall constitute full satisfaction of the "Order Imposing Civil Monetary Penalty" issued to AMS on May 30, 1989.
2. Within 30 days of the date of approval of this Stipulation by the Atomic Safety and Licensing Board, Advanced Medical Systems, Inc. shall pay a civil penalty in the amount of \$1800.00, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States. Payment by mail shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.
3. Advanced Medical Systems, Inc. does not admit or deny Violations 1-3 or the Severity Level classification in the "Order Imposing Civil Monetary Penalties" dated May 30, 1989, and "Notice of Violation and Proposed Imposition of Civil Penalties" dated June 28, 1985.
4. The NRC Staff and Advanced Medical Systems, Inc. waive their rights to further hearings concerning Violation 2, the civil penalty, and the Severity Level classification described in the Staff's May 30, 1989 "Order Imposing Civil Monetary Penalties", and waive any right to contest or otherwise appeal this Stipulation in any

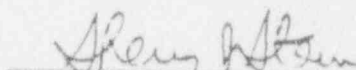
administrative or judicial forum, once approved by the Atomic Safety and Licensing Board.

FOR THE NRC STAFF:



Colleen P. Woodhead 2/1/94
Counsel for NRC Staff

FOR ADVANCED MEDICAL SYSTEMS, INC.:



Sherry J. Stein 2/4/94
Counsel for AMS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
ADVANCED MEDICAL SYSTEMS, INC.

Docket No.(s) 30-16055-CIVP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (LBP-94-10) TERMINATG 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
Robert M. Lazo, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Ernest E. Hill
Hill Associates
210 Montego Drive
Danville, CA 94526

Administrative Judge
Harry Foreman
1564 Burton Avenue
St. Paul, MN 55108

Colleen P. Woodhead, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Sherry J. Stein, Esq.
131 North Eagle Street
Geneva, OH 44041

Janet G. Aldrich, Esq.
9309 Colesville Road
Silver Spring, MD 20901

S. S. Stein
President
Advanced Medical Systems, Inc.
1020 London Road
Cleveland, OH 44110

Docket No.(s)30-16055-CIVP
LB ORDER (LBP-94-10) TERMINATG

Dated at Rockville, Md. this
1 day of April 1994

Kris Carter
Office of the Secretary of the Commission