



Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 9 1987

Mr. James P. Murray
Associate General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Advanced Medical Systems, Inc.

Dear Mr. Murray:

The purpose of this letter is to request your assistance in resolving certain matters which have recently arisen relating to a criminal investigation of Advanced Medical Systems, Inc. (AMS), an NRC licensee. Specifically, we would request that you direct the attorneys on your staff who represent the NRC In the Matter of Advanced Medical Systems, Inc., EA-86-155, an Agency enforcement action, to seek a stay of that action from the Administrative Law Judge pending completion of our criminal investigation. As you may know, in August of 1986 the Criminal Division of the Department of Justice received a case referral from the NRC's Office of Investigations involving AMS. This referral involved allegations that certain AMS officials had falsified employee radiation exposure records required by NRC regulations.

Shortly after we received this referral we were informed by the NRC that an inspection at AMS had uncovered evidence of further regulatory violations by this licensee, violations involving the installation and repair of cobalt teletherapy units by unlicensed and unqualified individuals. In the NRC's view these new allegations presented an immediate threat to the public health and safety. Accordingly, the NRC advised us that it was moving immediately to take remedial action. On October 10, 1986 the NRC, through its Office of Inspection and Enforcement, issued an order suspending AMS' license to install and service cobalt teletherapy units. Because these new allegations relating to AMS presented immediate public health and safety concerns, we deferred any action pending completion of the NRC's administrative investigation into this matter.

However, recently we were informed of several developments in this case which significantly change the status of this matter and, in our view, call for reconsideration of the positions previously taken by our two agencies. First, we learned that the NRC has apparently resolved its immediate

9404130361

Ab

public health and safety concerns relating to this licensee since it has conditionally authorized AMS to resume its operations relating to the installation and maintenance of cobalt teletherapy units. In addition we learned that the NRC's Office of Investigations inquiry into these new allegations has advanced to the point where there is now reason to believe that AMS' actions warrant immediate criminal investigation. Finally, we were informed that the NRC's own administrative adjudicatory proceeding has reached the stage where AMS will have the right to make extensive demands for discovery of new information derived from the investigation which has continued since the completion of the Inspection Report on November 12, 1986. Thus, discovery proceedings in this pending civil enforcement action now threaten to permit additional disclosures to the subjects of the criminal investigation of new witness statements and other materials recently developed by the NRC's Office of Investigations jointly with the Office of Inspection and Enforcement.

We appreciate the NRC's concern that its administrative enforcement proceedings move forward without unnecessary interruption. However, as a general rule, absent an immediate health and safety concern, administrative enforcement proceeding should be deferred until the completion of the criminal investigation and the prosecution, if any. Therefore, in this case, since the NRC's immediate public health and safety concerns have apparently been resolved in that AMS has been permitted to resume operations, we believe that the needs of federal criminal law enforcement should take precedence over further NRC administrative proceedings. In our view, there currently exists a grave risk that additional witness statements and other information relating to possible criminal offenses which may have been committed by AMS and its officers may be unnecessarily and prematurely disclosed to the potential criminal targets in the course of these administrative proceedings. In the criminal case, witness statements would not be made available to potential targets or to anyone else during the criminal investigation. If an indictment were to be returned, the defendants would have severely restricted rights to witness statements pursuant to the provisions of the Jencks Act, 18 U.S.C. §3500, and Rule 16 of the Federal Rules of Criminal Procedure. Thus, premature disclosure of this information now, during the pending NRC administrative proceeding, could irreparably harm any criminal investigation and could fatally prejudice any prosecution.

We believe that it is in the interest of both of our agencies to see that criminal wrongdoing by NRC licensees is effectively investigated and swiftly and vigorously prosecuted. Accordingly, we request that you instruct your staff to take all appropriate steps to seek a stay of these adjudicatory

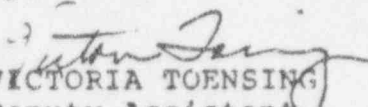
proceedings and all related discovery until we can complete our criminal investigation and any resulting prosecution.

Thank you for your assistance on this matter.

Sincerely,

WILLIAM F. WELD
Assistant Attorney General
Criminal Division

By:


VICTORIA TOENSING
Deputy Assistant
Attorney General