

15208

June 16, 1994

RELATED CORRESPONDENCE

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'94 JUN 17 11:00

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
FOR ENERGY

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

NRC STAFF'S SECOND SET OF RESPONSES TO  
LICENSEE'S SECOND SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's Order (Ruling on Discovery Matters), dated May 26, 1994 (Board Order), the Staff of the Nuclear Regulatory Commission (Staff) files its response to those portions of "OSC's Second Set of Interrogatories, Request for Production of Documents and Requests for Admissions" which are the subject of the Board Order.<sup>1</sup>

<sup>1</sup> On June 8, 1994, at the request of the Staff, a telephone conference call was held in order to clarify certain portions of the Board's Order. As a result of the conference call, the parties agreed to certain arrangements regarding the Staff's responses to the above discovery requests. These agreements are discussed in detail as they relate to each interrogatory and document production request.

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INTERROGATORY 5

Identify any other action in which the NRC has alleged that a licensee failed to appropriately disseminate a corporate radiation safety communication. If any such actions exist, produce any and all documents relating to said failure.<sup>2</sup>

STAFF'S RESPONSE

In order to assist the Licensee's counsel, pursuant to an agreement between the parties, the Staff's counsel performed a WESTLAW search in the FEN-NRCEA database. See Transcript of Prehearing Telephone Conference Call, June 8, 1994 (Telephone Transcript) at 186-187. A search using the search term "corporate w/25 radiation w/25 safety w/25 communication" in the FEN-NRCEA database did not identify any enforcement actions. In addition, Staff members from the NRC's Headquarters and Regional enforcement offices were questioned, and no one was aware of any enforcement action based, in part, on a licensee's failure to appropriately disseminate a corporate radiation safety communication.

A search, however, using the search term "radiation w/25 safety w/25 communication" identified 15 actions. A review of these actions indicates that the

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<sup>2</sup> This interrogatory/production request was limited to NRC actions instituted by issuance of a staff enforcement order on or before January 20, 1993 and document production was limited to those documents which analyze or otherwise discuss the factual or legal basis for the agency's allegations and are not available in WESTLAW. Board's Order at 3. In addition, it is the Staff's understanding that this request was further limited in the telephone conference call to documents generated by the NRC. Telephone Transcript at 175.

following enforcement actions were based, in part, on a licensee's failure to communicate effectively with its staff regarding information related to radiation safety:

- 1) Cleveland Clinic Foundation, Docket Number 030-14577, EA 92-110, NUREG-0940 Volume 12, No. 2.
- 2) Lancaster General Hospital, Docket Number 030-03151, EA 91-137, NUREG-0940, Volume 10, No. 4.
- 3) University of Cincinnati, Docket Number 030-02764, EA 91-097, NUREG-0940, Volume 10, No. 3.
- 4) Cleveland Clinic Foundation, Docket Number 030-00394, EA 90-074, NUREG-0940, Volume 9, No. 3.
- 5) San Juan Cement Company, Inc., Docket Number 030-31302, EA 09-016, NUREG-0940, Volume 9, No. 2.
- 6) St. Clares Riverside Medical Center, Docket Number 030-09606, EA 89-170, NUREG-0940, Volume 8, No. 4.
- 7) Alabama Power Company, Docket Numbers 50-348, 50-364, EA 88-33, NUREG-0940, Volume 7, No. 1.
- 8) St. Luke's Radiologists, Inc., Docket Number 030-18979, EA 87-113, NUREG-0940, Volume 6, No. 3.
- 9) Cleveland Clinic Foundation, Docket Number 030-00394, EA 87-42, NUREG-0940, Volume 6, No. 2.

#### INTERROGATORY 9

Identify in specificity all prior cases "the Staff was generally aware of" where escalated enforcement action was taken for failure of the RSO and/or other management officials to exercise appropriate oversight and control over licensed activities and produce all relevant documents related thereto.<sup>3</sup>

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<sup>3</sup> This interrogatory/production request was limited to the same extent as interrogatory/production request 5.

### STAFF'S RESPONSE

The Staff's counsel agreed, during the telephone conference call, to meet with the Licensee's counsel at the NRC's Public Document Room (PDR) in Washington, D.C. at a mutually convenient time to assist the Licensee's Counsel in retrieving documents responsive to this request. Telephone Transcript at 178. The Staff also agreed to help the Licensee's counsel obtain certain volumes of NUREG-0940. *Id.* at 178-79. To the extent that the Licensee's counsel is unable to obtain certain volumes of NUREG-0940, the Staff agreed to provide the Licensee with copies of documents contained in NUREG-0940 related to those enforcement actions identified in the "NRC Staff Responses and Objections to Licensee's Second Set of Interrogatories, and Requests for Production of Documents, and NRC Staff Motion for Protective Order," March 31, 1994 (Staff's Response). In addition, the Staff agreed, in a telephone call with the Licensee's counsel on June 14, 1994, to provide docket numbers for those enforcement actions listed in the Staff's Response which do not contain a reference to NUREG-0940.

### INTERROGATORY 10

Identify in specificity all prior cases "the Staff was generally aware of" where escalated enforcement action was taken because the RSO attempted to delegate his responsibilities and produce all relevant documents related thereto.<sup>4</sup>

### STAFF'S RESPONSE

See the Staff's Response to interrogatory 9.

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<sup>4</sup> This interrogatory/production request was limited to the same extent interrogatory/production request 5.

INTERROGATORY 11

Produce the agenda, any handouts, any notes and any existing videotapes for the NRC training (1984-1992) for Judith A. Joustra and NRC training (1980-1992) for Jenny M. Johansen previously identified by the Staff.

STAFF'S RESPONSE

The Board's Order limited this interrogatory to only those courses related to medical-related training and inspection training. Board's Order at 4. The Board further stated that the Staff should produce the agenda, handouts, instructor notes, notes taken by Ms. Joustra and Ms. Johansen, and any existing videotapes for the training regardless of whether those documents are now in the possession of either Ms. Joustra or Ms. Johansen. *Id.*

The Staff's Counsel has been informed that the agency did not retain course material for the following courses related to medical training or inspections:

- 1) Fundamentals of Inspection (1980, 1985)
- 2) Colbalt Teletherapy (1981)
- 3) Interviewing Techniques (Gathering Information)(1988)
- 4) Medical Use of Radioisotopes (1984)
- 5) Medical Uses of Radionuclides for State Regulatory Personnel (1981)
- 6) Teletherapy and Brachytherapy (1989).<sup>5</sup>

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<sup>5</sup> The Licensee has been provided with course material from the Teletherapy and Brachytherapy course for the years 1990, 1991, and 1992.

In its March 31, 1994 response to the Licensee's discovery requests, the Staff made available for inspection and copying, if appropriate, at the NRC's Region I Offices, King of Prussia, Pennsylvania, the following documents:

Training for Judith A. Joustra:

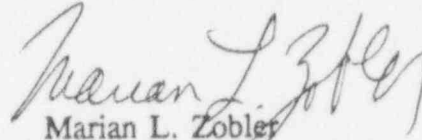
- 1) Medical Use of Radioisotopes (course binder)(1984)
- 2) Fundamentals of Inspection (course binder)(1985)
- 3) Health Physics Training (HPS Chapter D.V.S.R.S.) - two course binders
- 4) Teletherapy and Brachytherapy (two course binders)(1989)
- 5) Interviewing Techniques (Gathering Information)(two course binders)  
(1988)

Training for Jenny Johansen:

- 1) Fundamentals of Inspection (1980) - Fundamentals of Inspection Course  
Inspection Manual
- 2) Medical Uses of Radionuclides for State Regulatory Personnel (1981):  
Manual of Nuclear Medicine, CRC Press, 3rd Ed., 1978. (Note: Due to copyright concerns, the Staff is unable to permit the Licensee to copy this manual, however, the Licensee is free to inspect the manual at the NRC's Region I Offices, King of Prussia, Pennsylvania.). Staff's Response at 9-10. Although the Staff indicated that it would make available for inspection and copying course material related to Health Physics Training (HPS Chapter D.V.S.R.S.), this course is not related to medical training, nor was this course offered by the NRC. The course material listed as being available for inspection

and copying at the NRC's Region I Offices for this course, however, will still be made available to the Licensee.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marian L. Zoble".

Marian L. Zoble  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 16th day of June, 1994

June 16, 1994

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
ONCOLOGY SERVICES CORPORATION ) Docket No. 030-3176  
 )  
(Byproduct Material ) EA No. 93-006  
License No. 37-28540-01) )

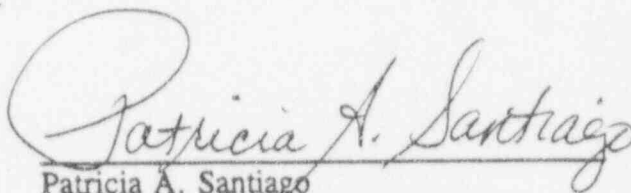
AFFIDAVIT OF PATRICIA A. SANTIAGO

I, Patricia A. Santiago, first being duly sworn, depose and state:

1. I am currently employed as the Assistant Director for Materials, Office of Enforcement, U.S. Nuclear Regulatory Commission.
2. I have participated and assisted in the preparation of the attached NRC Staff response to interrogatory 5 filed by Oncology Services Corporation in the above-captioned proceeding.

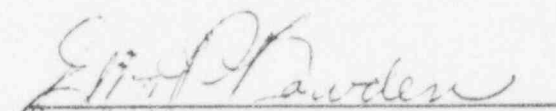


3. I hereby certify that the answer to the above-numbered interrogatory is true and correct to the best of my information and belief.



Patricia A. Santiago  
Assistant Director for Materials  
Office of Enforcement

Subscribed and sworn to before me  
this 16 of June, 1994

  
Notary Public

My commission expires: 12/1/95

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 94 JUN 17 11:00

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ONCOLOGY SERVICES CORPORATION ) Docket No. 030-31765-EA  
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License No. 37-28540-01) )  
 )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S SECOND SET OF RESPONSES TO LICENSEE'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 16th day of June 1994:

G. Paul Bollwerk, III, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Peter S. Lam\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Charles N. Kelber\*  
Administrative Judge  
Atomic Safety and Licensing Board  
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Marcy L. Colkitt, Esq.  
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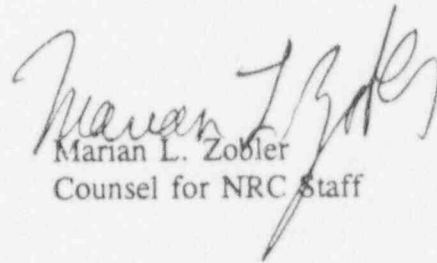
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Adjudicatory File (2)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary (2)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attn: Docketing and Service Branch

Atomic Safety and Licensing Board\*  
Panel (1)  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of Commission Appellate\*  
Adjudication (1)  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
Marian L. Zabler  
Counsel for NRC Staff