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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SEVERED MAY 26 1994

In the Matter of

ONCOLOGY SERVICES CORPORATION

(Order Suspending
Byproduct Material
License No. 37-28540-01)

Docket No. 030-31765-EA

EA 93-006

ASLBP No. 93-674-03-EA

May 26, 1994

ORDER

(Ruling on Discovery Matters)

Pending before the Board are a number of pleadings seeking relief relative to several discovery requests. Upon consideration of the parties' filings referenced below, the Board makes the following rulings:

I. Oncology Services Corporation (OSC) Motion to Compel Answers to March 1, 1994 OSC Second Request for Admissions

A. Pertinent Pleadings

1. OSC's Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions (Mar. 1, 1994)
2. NRC Staff Responses and Objections to Licensee's Second Request for Admissions and NRC Staff Motion for Protective Order (Mar. 21, 1994)
3. OSC's Motion to Compel Answers to Requests for Admission (Mar. 28, 1994)

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4. NRC Staff's Response to OSC's Motion to Compel Answers to Requests for Admissions (Apr. 11, 1994)

B. Board Rulings

1. There being no opposition thereto, the staff's March 21, 1994 motion for protective order relative to Admission 18 is granted.
2. Relative to the March 28, 1994 OSC motion to compel answers to requests for admissions:
 - a. Admission 2 -- Motion to compel is denied.
 - b. Admission 3 -- Motion to compel is denied. The Board finds, however, that the staff admits this statement to the extent that the term "used" is defined to encompass holding and turning on a survey meter.
 - c. Admission 4 -- Motion to compel is denied.
 - d. Admission 5 -- Motion to compel is denied.
 - e. Admission 13 -- Motion to compel is denied.
 - f. Admission 14 -- Motion to compel is denied.
 - g. Admission 15 -- Motion to compel is denied.

II. OSC Motion to Compel Staff Responses to March 1, 1994 OSC Second Interrogatories and Requests for Production of Documents

A. Pertinent Documents

1. OSC's Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions (Mar. 1, 1994)
2. NRC Staff Responses and Objections to Licensee's Second Set of Interrogatories and

Request for Production of Documents and NRC
Staff Motion for Protective Order (Mar. 31,
1994)

3. Motion to Compel NRC Staff Responses to OSC's Second Set of Interrogatories and Production of Documents (Apr. 11, 1994)
4. NRC Staff's Response to OSC's Motion to Compel Answers to Requests for Admissions (Apr. 25, 1994)¹

B. Board Rulings²

1. Interrogatory/Production Request 5 -- Motion to compel is granted, but action identification is limited to NRC actions instituted by issuance of a staff enforcement order on or before January 20, 1993, and document production is limited to those NRC records and documents concerning the identified actions that 1) analyze or otherwise discuss the factual or legal basis for the agency's allegations that a licensee has failed to disseminate appropriately a corporate radiation safety communication, and 2) are not available in WESTLAW data base "FEN-NRCEA."

¹ This pleading apparently is mislabeled because it responds to OSC's motion to compel regarding its second set of interrogatories and requests for document production rather than admissions.

² Under NRC practice, a motion for protective order generally is to be utilized to present a broad-based exception to most or all of a discovery request, while opposition to a particular portion of a discovery request (e.g., a particular interrogatory or document production request) is posed through a specific objection. Compare 10 C.F.R. § 2.740(c) with id. § 2.740b(b) and id. § 2.741(d). See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982). Nonetheless, the staff's March 31, 1994 motion for protective order asks that it not be required to respond to certain specific interrogatories and document production requests. Because these are the same interrogatories and document production requests that are the subject of OSC's April 11, 1994 motion to compel, our rulings on that motion essentially moot the staff's protective order request.

2. Interrogatory 7 -- Motion to compel is denied.
3. Interrogatory/Production Request 9 -- Motion to compel is granted, but case identification is limited to NRC cases instituted by issuance of a staff enforcement order on or before January 20, 1993, and document production is limited to those NRC records or documents concerning the identified cases that 1) analyze or otherwise discuss the factual or legal basis for taking an escalated enforcement action for failure of a Radiation Safety Officer (RSO) and/or other management officials to exercise appropriate oversight and control over licensed activities, and 2) are not available in WESTLAW data base "FEN-NRCEA."
4. Interrogatory/Production Request 10 -- Motion to compel is granted, but case identification is limited to NRC cases instituted by issuance of a staff enforcement order on or before January 20, 1993, and document production is limited to those NRC records and documents concerning the identified cases that 1) analyze or otherwise discuss the factual or legal basis for taking an escalated enforcement action because the RSO attempted to delegate his responsibilities, and 2) are not available in WESTLAW data base "FEN-NRCEA."
5. Production Request 11 -- Motion to compel is granted in that for any of the medical-related NRC training (including inspection training) provided to Judith A. Joustra and Jenny M. Johansen, the staff shall 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.
7. Production Request 13 -- Motion to compel is denied.
6. Interrogatory 14 -- Motion to compel is denied.

III. April 22, 1994 OSC Motion to Compel and Reply to April 7, 1994 Staff Response and Objections to March 8, 1994 OSC Request for Document Production and Motion for Protective Order

A. Pertinent Documents

1. [OSC] Request for Production of Documents Dated March 8, 1994 (Mar. 8, 1994)
2. NRC Staff's Response and Objections to Licensee's Request for Production of Documents Dated March 8, 1994 and NRC Staff's Motion for Protective Order (Apr. 7, 1994)
3. OSC Motion to Compel and Reply to NRC Staff's Response and Objections to Licensee's Request for Production of Documents Dated March 8, 1994 and NRC Staff's Motion for Protective Order (Apr. 22, 1994)
4. NRC Staff's Response to Motion to Compel and Reply to NRC Staff's Response and Objections to Licensee's Request for Production of Documents Dated March 8, 1994 and NRC Staff's Motion for Protective Order (May 9, 1994) [hereinafter Staff Response to Motion to Compel]

B. Board Rulings

1. With regard to the November 9, 1993 report of interview referenced on page 9 of the staff's April 7, 1994 response and objections, the staff shall file with the Office of the Secretary under seal and provide the Board in camera, ex parte one copy of:
 - a) the November 9, 1993 report; and
 - b) a pleading addressing fully the issues of:
 - i) whether the report is relevant to this proceeding;
 - ii) whether the report is exempt from disclosure under 10 C.F.R. § 2.790;

- iii) whether disclosure of the report is necessary to a proper decision in this proceeding;
- iv) whether the information in the report is reasonably obtainable from another source;
- v) whether the staff anticipates that the report can be disclosed to OSC prior to an evidentiary hearing in this proceeding and, if not, whether nondisclosure is consistent with the standards established in Roviaro v. United States, 353 U.S. 53, 60-61 (1957); and
- vi) whether the staff's pleading or any part thereof can be made part of the public record of this proceeding so as to provide OSC an opportunity to respond to its contents.

See 10 C.F.R. § 2.744(b)-(c); 50 Fed. Reg. 48,506, 48,508-09 (1985). See also 49 Fed. Reg. 36,032 (1984).

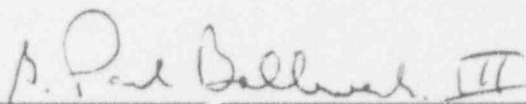
2. Regarding OSC's assertions that the staff has transcripts, statements, notes, and/or summaries of statements made by NRC in connection with its investigation of OSC that the staff has failed to identify and turn over, and given the staff's statement that Incident Investigation Team (IIT) members and the Exton and Mahoning Valley inspectors "did not retain any notes which may be responsive to [OSC's] Request," Staff Response to Motion to Compel at 4, the staff should:
 - a) identify any IIT member and inspector notes that were retained but which the staff has identified as not responsive to OSC's request, and
 - b) explain why those notes are not responsive to OSC's request.


IV. Filing Dates

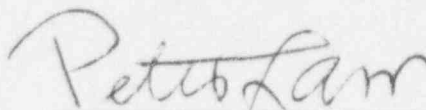
The staff shall provide the additional responses required under section II.B of this order within twenty-one days of service of this order, absent an agreement between the parties establishing a different response date. The staff shall provide the filings required under section III.B.1 of this order within fourteen days of the date of service of this order. The staff shall provide the additional filing required by section III.B.2 of this order within ten days of the date of service of this order and OSC shall have ten days from the date of service of such an additional staff filing within which to file a response.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD


G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE


Charles N. Kelber
ADMINISTRATIVE JUDGE


Peter S. Lam
ADMINISTRATIVE JUDGE

Bethesda, Maryland

May 26, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ONCOLOGY SERVICES CORPORATION,
HARRISBURG, PA
(Byproduct Material License
No. 37-28540-01 - EA 93-006)

Docket No.(s) 30-31765-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (RULING ON DISCOVERY) 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
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles M. Kelber
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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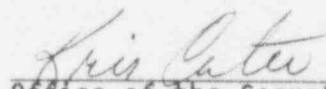
Administrative Judge
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Dated at Rockville, Md. this
26 day of May 1994


Office of the Secretary of the Commission