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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Peter S. Lam
Dr. George F. Tidey

In the Matter of

ST. JOSEPH RADIOLOGY
ASSOCIATES, INC., and
JOSEPH L. FISHER, M.D.
(d.b.a. ST. JOSEPH
RADIOLOGY ASSOCIATES, INC.,
and FISHER RADIOLOGICAL
CLINIC)

Docket Nos. 030-00320-EA
999-90003-EA

ASLBP No. 93-672-02-EA

January 28, 1993

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ORDER

In LBP-92-32, ___ NRC ___ (1992), we denied the request of Joseph L. Fisher, M.D., to set aside the immediate effectiveness of an October 16, 1992 NRC staff enforcement order directing Dr. Fisher to transfer all byproduct material in his possession to an authorized recipient. See 57 Fed. Reg. 48,404 (1992). Dr. Fisher's set-aside request was contained in a brief five-sentence, five-paragraph letter dated October 22, 1992. We found that his request failed to meet the requirements of 10 C.F.R. § 2.202(c)(2)(i) and sustain his burden as the movant

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seeking to set aside the immediate effectiveness of a staff enforcement order.

In forwarding to us for appropriate action Dr. Fisher's set-aside request, the Secretary of the Commission opined that Dr. Fisher's letter also contained "an implicit request for hearing."¹ Assuming, without deciding, that Dr. Fisher's letter contains such a request, that request, without more, is insufficient to initiate a challenge to the staff's enforcement order. The Commission's regulations require that a person served with an enforcement order must file a written answer responding to the order within twenty days of its date or such other time as specified in the order.² Further, the regulations provide that the answer must be under oath and "specifically admit or deny each allegation or charge made in the order."³ Additionally, the answer must "set forth the matters of fact and law on which the ... person relies, and ... the reasons as to why the order should not have been issued."⁴

¹ Memorandum from Samuel J. Chilk, Secretary, to B. Paul Cotter, Chief Administrative Judge, ASLBP (Nov. 9, 1992).

² 10 C.F.R. § 2.202(a)(2).

³ 10 C.F.R. § 2.202(b).

⁴ Id.

Here, other than the brief October 22, 1992 letter containing his set-aside request, Dr. Fisher has filed no other pleadings. Although that letter was filed within the time specified in the enforcement order, it fails, on its face, to conform to the other requirements for an answer set forth in 10 C.F.R. § 2.202. That October 22, 1992 letter was not submitted under oath and it neither admits nor denies each of the many charges contained in the staff's enforcement order. Further, that letter does not set forth the matters of fact and law Dr. Fisher relies upon in challenging the staff enforcement order. Accordingly, Dr. Fisher has until March 1, 1993 to show cause why this proceeding should not be dismissed for his failure to comply with the requirement of 10 C.F.R. § 2.202(b). The staff shall have thirty days to respond to Dr. Fisher's filing. In addition, the staff's response should contain a current

status report on Dr. Fisher's compliance with the staff's order.

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Thomas S. Moore

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Peter S. Lam

Peter S. Lam
ADMINISTRATIVE JUDGE

George F. Tidey by TSM

George F. Tidey*
ADMINISTRATIVE JUDGE

Bethesda, Maryland

January 28, 1993.

*Judge Tidey approved the Memorandum and Order but was unavailable to sign it.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ST. JOSEPH RADIOLOGY ASSOCIATES,
INC. AND JOSEPH L. FISHER, M.D.
(Materials License No. 24-05592-01
EA 92-172)

Docket No.(s) 30-320/999-90003-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED 1/28/93
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
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

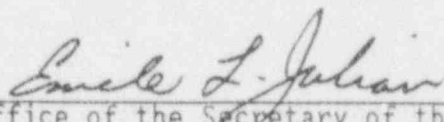
Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
George F. Tidey
ASLBP
6431 Fannin Street, Suite 3.204
Houston, TX 77030

Janice E. Moore, Esq.
Marian L. Zobler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Joseph L. Fisher, M.D.
Fisher Radiological Clinic
702 Jules Street
Saint Joseph, MO 64501

Dated at Rockville, Md. this
29 day of January 1993


Office of the Secretary of the Commission