



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 9, 1995

First	Second
RA	NC
ORA	EIC
ORP	SCA
DRS	OI
DRSS	PAO
DRMA	

FILE \_\_\_\_\_

MEMORANDUM TO: John C. Hoyle  
Acting Secretary  
Office of the Secretary

FROM: Lawrence J. Chandler  
Assistant General Counsel for  
Hearings and Enforcement  
Office of the General Counsel

SUBJECT: REQUEST FOR HEARING

Attached is a hearing request, dated December 29, 1994, from the Northeast Ohio Regional Sewer District concerning the renewal of an operating license held by the Advanced Medical Systems, Inc. Since the letter does not indicate that a copy was sent to the Office of the Secretary, I am providing you with a copy for appropriate action.

Attachment: As stated

*Snider*

B/8  
JAN 12 1995



# Northeast Ohio Regional Sewer District

3826 Euclid Avenue • Cleveland, Ohio 44115-2504

216 • 881 • 6600

FAX: 216 • 881 • 9709

December 29, 1994

VIA REGULAR U.S. MAIL

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C.

✓ VIA DELIVERY

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Re: 10 C.F.R. 2.1205 Request For A Hearing  
On License Number 34-19089-01

Dear Executive Director:

The operating license held by the Advanced Medical Systems, Inc. ("AMS") for possession of radioactive materials, including Cobalt-60, at the facility at 1020 London Road, Cleveland, Ohio ("Facility") expires on December 31, 1994. It is our understanding that AMS filed an application for renewal of this license, NRC number 34-19089-01 ("License"), sometime after December 1, 1994.

The Northeast Ohio Regional Sewer District ("District") has previously requested a copy of all renewal related documents under the Freedom Of Information Act. Although the District has not received the requested documents as of the date of this letter, the District hereby requests that a public hearing be held regarding the renewal of the License.

This petition for a hearing is being filed in accordance with 10 C.F.R. 2.1205 and is being filed within thirty days of the District receiving actual notice of a pending application. This petition is therefor timely filed. Upon receipt of a copy of the renewal application pursuant to our pending request therefor, the District may amend this Request For a Hearing if a review of the actual application shows such amendment is appropriate.

The following information is provided by the District in accordance with 10 C.F.R. 2.1205(c):

## Interest Of The Requester

The Facility is within the service area of the District's wastewater collection and treatment system. Prior discharges of Cobalt-60 to the

EDO --- 010758

*The mission of the Northeast Ohio Regional Sewer District is to enhance public health and welfare through the efficient, cost-effective conveyance and treatment of wastewater. This is accomplished by an organization dedicated to professionalism, fairness and consistency that anticipates and responds to the changing environmental needs of the community.*

4702050007 6PP

sanitary sewer system from the Facility have resulted in radioactive contamination of District facilities and are the subject of ongoing litigation between AMS and the District. These discharges of Cobalt-60 occurred as recently as November 22, 1994.

The District therefore has an interest in any possible future releases of radioactive material from the Facility that could reach the wastewater collection system. These releases could be the result of intentional acts or be the result of accidents or natural disasters at the Facility.

The District has already incurred well in excess of one million dollars in costs associated with the previous discharges from the Facility and therefor has a significant financial interest in the future regulation and control of radioactive material at this Facility. In addition, large tracts of the District's property are no longer available for unrestricted use. The current Cobalt-60 contamination at the District's Southerly Wastewater Treatment Plant is proof of the prior failure to control this material under the current license.

Prior releases of Cobalt-60 to the District's system have apparently not resulted in health and safety risks to District employees or the public. The District is very concerned, however, that an accident or natural disaster at the Facility may result in a release of radioactive material of sufficient magnitude to threaten the safety of its employees as well as the public. Legal counsel for AMS has agreed in court proceedings that accidents at the Facility would present a threat to the public. In sworn testimony, Carol Berger, Certified Health Physicist, has also stated that accidental releases from this Facility could present a public threat.

Radioactive material discharged to the wastewater collection system may also ultimately be discharged into Lake Erie (from the Easterly Treatment Facility) or into the Cuyahoga River (from the Southerly Treatment Facility). The District therefor has an interest in the protection of the environment from releases of the radioactive material in the possession of AMS under the License.

For the above stated reasons, the District has very significant and broad-based interests in the license renewal process as it relates to the AMS License.

#### **How That Interest May Be Affected**

The District is entitled to a hearing, as a party, on any NRC proceedings relating to the renewal of the AMS License pursuant to the Atomic Energy Act (42 U.S.C. 2239) and regulations promulgated thereunder as set forth in 10 C.F.R. 2.1205. The District is an interested party as

defined in such Statute and Regulation for the reasons set forth above.

The property interest of the District in this matter is substantial. The London Road interceptor sewer, into which the Facility formerly discharged sanitary, storm and process water, is owned and operated by the District. This interceptor sewer is already contaminated with Cobalt-60 from the Facility.

The London Road sewer is tributary to the Easterly Wastewater Treatment Plant. The possibility of future discharges contaminating this plant are very real, and the District is in the process of installing a detection system to alert employees if a major release reaches the plant.

Solids removed from the wastewater at the Easterly plant are pumped via an underground pipeline to the Southerly plant for further treatment. Radioactive material that reaches the Easterly plant thus also has the potential to contaminate the Southerly plant.

The Southerly plant was in fact contaminated by Cobalt-60 on an on-going basis throughout much of AMS's operating history. As indicated above, the District has already expended well over one million dollars as a result of this contamination. If off-site disposal of the estimated four million cubic feet of contaminated material is required, the cost is expected to rise to over 40 million dollars.

As described above, the majority of the District's property is directly affected by the release of radioactive material from the Facility. In addition to the large financial burden already incurred by the District's ratepayers as a result of AMS discharges, large areas within the Southerly facility are now radiologically restricted areas and are thus not available for future plant expansions that may be necessary to meet the needs of wastewater treatment for the Cleveland area. The nature of the District's property interest as related to the License renewal proceeding clearly justifies the right of the District to be a party to a public hearing regarding such renewal.

The District's financial interest in the License renewal proceedings is at least as great as the property interest. As stated above, the District has already incurred costs of well over a million dollars as the result of prior AMS discharges. These costs continue and ultimately could exceed 40 million dollars if off-site disposal is required by a regulatory authority or becomes necessary to make the currently restricted areas available for wastewater treatment operations. These costs have all been incurred as the result of the discharge of a small amount of Cobalt-60 estimated to be around a curie. A release of much larger amounts of radioactive material could contaminate the collection system, Easterly and Southerly, and the sludge line between the two plants. This devastating financial burden, based upon current NRC stated policy, would fall



entirely on the District and its ratepayers.

Unlike the prior AMS releases of Cobalt-60 to the District, a sudden large release, such as may occur during a fire at the Facility, would cause a major concern regarding the health and safety of District employees at the treatment plants and in the collection system. To the extent that a major release of radioactive material passes through the wastewater treatment process and is discharged in the effluent, the public and the environment may also be impacted.

In summary, the District's property, financial, and health and safety interests in the License proceedings overwhelmingly support the District's right to a hearing on this matter.

The effect of granting a renewal of the License (or issuing a new license to replace the expired License) without including appropriate terms and conditions to adequately safeguard the District's interests should be obvious to the NRC. The District's Southerly facility is on the NRC's Site Decommissioning Management Plan due to Cobalt-60 contamination resulting from prior failures to control material at the AMS Facility. Failure to correct these problems at AMS may lead to additional multi-million dollar cleanups of District property, or worse.

#### Areas Of Concern

In accordance with the requirements of 10 C.F.R. 2.1205, the District's areas of concern regarding the License renewal are identified below in a general nature. As stated previously, the actual application has yet to be forwarded to the District by the NRC. Specific deficiencies in the License will be set forth, along with documentary evidence and such other evidence as is authorized under 10 C.F.R. 2.1233, as part of the District's written presentation to the presiding officer.

The District's primary concern is the control of radioactive material at the Facility. AMS has consistently demonstrated an inability to maintain proper control over its radioactive material at the Facility. There is no reason to believe that AMS will maintain control in the future unless forced to do so.

For example, the NRC has previously determined that radioactive materials will be flushed into the sewers in the event of a Facility fire. As a result of this determination, the NRC recommended that AMS construct a water runoff and collection system to prevent such an off-site release. AMS has refused to take such action. Construction of such a collection system is one of but many requirements that must be built into an acceptable license for this Facility.

Closely related to the issue of control of radioactive material is

the matter of a lack of realistic emergency planning by AMS and the NRC. In addition to threatening the health and safety of the residents living near the Facility, much of the radioactive material that may be released in a fire or other disaster would ultimately be washed into the sewer system. Therefore, a realistic assessment of the potential for release from all parts of the Facility presently harboring radioactive materials under various scenarios must be completed.

A third major concern of the District is the failure of AMS to post adequate financial assurance for decommissioning. AMS was previously placed on the NRC's Site Decommissioning Management Plan for this very reason. Until recently, the amount set aside to decontaminate the Facility in the event AMS ceased to be a licensee was the ridiculous sum of \$20,000. The NRC has already indicated that AMS must increase this amount to \$750,000. Based on the District's experience with the cost of radiological decontamination and controls, and based on the information in the District's possession regarding the condition of the Facility, it is apparent that even \$750,000 is grossly inadequate to accomplish proper decommissioning.

If the Facility is abandoned, the District is concerned that the possibility of releases of material to the sewer will be even greater than at present. Without an adequate decommissioning fund, the only alternative in such a case will be the use of public funds, under a program such as Superfund, to remediate the site. Such an expenditure of public funds would be outrageous.

AMS has also not been required by the NRC to maintain financial protection to cover public liability claims. The NRC has explicit authority to make such requirement a license condition under 42 U.S.C. 2210. The NRC has made this decision to forego requiring AMS to secure and maintain financial protection despite its own statements that a public liability action, such as the District has filed against AMS, is an injured party's only recourse to recover damages in the event of an off-site release from the Facility. In fact, in a Director's Decision on a District petition on this subject, the NRC has admitted that this Facility poses an on-going threat of an off-site release. This risk, however, (according to the NRC) is not as great as the risk posed by a nuclear power plant. Neither the District nor the residents living near the Facility can take much comfort in such assurances. Clearly a mechanism to provide for remediation of off-site releases must be included in any license renewal. The current NRC policy of holding the unlucky landowner of contaminated property fully responsible is absolutely unacceptable.

#### **Timeliness Of Petition**

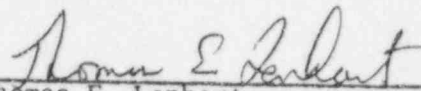
This Petition For A Hearing, filed in accordance with 10 C.F.R.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
December 29, 1994  
Page Six

2.1205 has been filed within 30 days of the submission of an application for the renewal of the License by AMS. This filing is therefor timely under any and all of the scenarios presented in such regulation.

Please contact the undersigned at 216-881-6600 with any questions or comments regarding this Petition.

A true and accurate copy of this Request for Hearing has been duly served by U.S. Mail this 29th day of December, 1994, upon the licensee and applicant, Advanced Medical Systems, Inc., 1020 London Road, Cleveland, Ohio 44110, pursuant to 10 C.F.R. 2.0205(e)(1).

  
\_\_\_\_\_  
Thomas E. Lenhart  
Assistant General Counsel

cc: David Cesar, AMS  
Mayor Michael White, City of Cleveland  
Mike Kalstrom, Local Emergency Planning Commission  
Chris Trepal, Earth Day Coalition  
Betty Long, NEO Sierra Club  
Erwin Odeal, NEORS  
William Schatz, NEORS

(licpet)