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City of Cleveland

MICHAEL R. WHITE, MAYOR

DEPARTMENT OF LAW
SHARON SOBEL JORDAN
DIRECTOR

January 13, 1995

VIA REGULAR U.S. MAIL

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

RE: Request for Hearing on
License Number 34-19089-01
Pursuant to 10 C.F.R. §2.1205

Dear Executive Director:

Pursuant to 10 C.F.R. §2.1205, the City of Cleveland ("City") hereby requests a hearing on the application for renewal of Nuclear Regulatory Commission (NRC) Material License number 34-19089-01 filed by Advanced Medical Systems, Inc. ("AMS"). AMS is located at 1020 London Road, Cleveland, Ohio. AMS applied to renew its NRC license to possess radioactive Cobalt-60 on November 29, 1994, and it is the City's understanding that this application was received by the NRC on or about December 2, 1994.

The City requests a hearing on AMS's renewal application under 10 C.F.R. §2.1205(c)(2), since notice of AMS's application for license renewal was not published in the Federal Register. Under the guidelines set forth in this section: "A person other than an applicant shall file a request for a hearing within . . . Thirty (30) days after the requestor receives actual notice of a pending application or an agency decision granting an application." The City received actual notice of AMS's license renewal application on December 16, 1994. Therefore, this petition is timely filed. See attached affidavits of City of Cleveland Attorneys Lisa Mehringer and Martha McCorkle regarding the City's actual notice of AMS' application. The City reserves the right to supplement this request as necessary, based on supplementary materials filed with the NRC by AMS.

The following information is provided pursuant to the guidelines set forth in 10 C.F.R. §2.1205(d).

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INTEREST OF THE REQUESTER

AMS's facility is located in the City of Cleveland, in an area zoned for commercial use. Directly across the street, within seventy five (75) feet of the AMS building, is a residential neighborhood made up of several hundred single-family and double-family homes. The AMS property is also immediately adjacent to two other commercial businesses to the north, and abuts the Conrail tracks to the south.

The City's primary interest in the license renewal process as it relates to AMS is to ensure the health and safety of the citizens of Cleveland. The AMS property sits in the middle of a Cleveland neighborhood, and any accident, spill or release of radioactive contamination will necessarily effect the lives and health of these citizens more immediately than any other group. The City is concerned that the emergency plan proposed by AMS does not address such issues as the means of neighborhood notification in the event of a release, proposed routes of evacuation in case of an emergency, or methods of containing the radioactively contaminated water in the event of a fire or accident at the facility. Because of their close physical proximity to the facility, Cleveland residents would be exposed to both short and long-term effects in the event of any accidental release, and the welfare of our citizens is one of the City's significant interests in the AMS license renewal.

An equally important interest to the City is the safety and well-being of the City's Police, Fire, Emergency Medical Technicians, and other City employees who would be the first to respond in case of accidents, spills or break-ins at the AMS facility. Given that the emergency plan proposed by AMS in its recent application is outdated and inadequate as noted by the NRC in its request for supplemental information in a letter to AMS dated December 22, 1994, given that AMS's current Radiation Safety Officer (RSO) is recalcitrant when dealing with City officials authorized to inspect the plant and oversee and carry out emergency response, and given the history of radioactive contamination at the site, the City's interest in, and concern for, the safety of our citizens, our employees, and our environment is well-founded.

Examples of the problems faced by City employees in dealing with AMS include failure of AMS personnel to make scheduled inspection appointments, failure of AMS personnel to provide basic information on materials storage and fire suppression systems, and failure of AMS personnel to adequately plan for emergency response. For over a year, the City

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requested an on-site inspection of the facility to familiarize City Fire and Police personnel with the floor plan of the building, the areas of contamination, and the fire suppression systems. Until the last week in December 1994, City Fire inspectors were essentially denied access to the facility; the RSO and Company president failed to meet on at least three scheduled inspections. Once on the site, the RSO was evasive in answering the Fire Chief's basic questions about material storage and handling, the type of fire suppression and water containment equipment, and AMS's plans for backup containment in an emergency.

In addition to the City's interest in protecting the health of the surrounding community and City staff, the City is also interested in the economic viability of the neighborhoods around this site. Currently we face concerns raised by both residential and commercial neighbors who are trying to sell, rent or lease property next to, or near, this radioactively contaminated site. The recent radioactive releases discovered and documented by the NRC staff, the sealing of the sewer lines pursuant to a request by the Northeast Ohio Regional Sewer District (NEORS), and the deteriorating exterior of the building make the sale or leasing of property in this area virtually impossible.

Another concern relates to AMS's failure to provide sufficient financial assurance for either decommissioning the site in the event the property is abandoned, or for off-site remediation in the event of a release. Under either of these scenarios, the City has a significant interest in seeing that money is available to effectuate immediate clean-up. The City is concerned that the NRC licenses issued to date have not required AMS to provide financial assurance in sufficient quantities to cover either of these very possible occurrences.

The NRC has documented that the privately owned lateral sewer line running along the north boundary of the AMS property has been radioactively contaminated. Although this line is now plugged, the City retains an interest in ensuring that this line is decontaminated. The NRC has documented that the manhole leading to this line is also radioactively contaminated, and the manhole has been locked to protect the public. The building housing AMS is in disrepair. There are broken and missing window panes in several areas, and the building looks generally run-down, making it a more likely target for break-ins. AMS has done nothing to address these problems. The City has an interest in monitoring AMS's license requirements as they relate to these concerns.

According to the reports issued by the NRC, AMS has had a long and well-documented history of poor management, lax oversight, incomplete materials tracking and documentation, and insufficient emergency planning. City residents and City personnel would be the first exposed and most significantly effected populations if an accident were to occur at the property. The City clearly has interests in the licensing process as it relates to AMS's license renewal.

HOW THESE INTERESTS ARE AFFECTED

The City 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 the regulations promulgated thereunder as set forth in 10 C.F.R. §2.1205. The City is an interested party as defined in these statutes and regulations for the reasons set forth above.

The City has a significant and ongoing property interest in the licensing of this facility since AMS is located in the City of Cleveland. The AMS building contains the highest concentrations of contamination created by AMS's past violations of its NRC permit. Because of its location within the City limits, the decontamination and/or decommissioning of this site will potentially effect Cleveland residents, businesses and City employees more directly than any other group. Any future releases from this facility which result from an accident, fire or break-in will affect the citizens of Cleveland more than any other group, simply because of the neighbors proximity to the site.

The City has both present and future financial interests in the licensing of this facility. Currently the City is expending staff and resources to develop an emergency response plan in case of an accident at AMS. AMS, not the City and local governmental agencies, should be responsible for developing this plan pursuant to NRC requirements. However, because AMS has failed to provide a sufficient plan, the equipment necessary to carry out a plan, or the assistance of a knowledgeable, responsible RSO who is willing to work with City staff, the City is forced to take on these additional responsibilities.

Members of the City's Fire Department, Police and Emergency Medical Technicians must allocate hours to touring the facility, familiarizing themselves with the areas of highest radioactive contamination, identifying potential problems and coming up with appropriate responses. Under the NRC licensing requirements, AMS should be responsible for

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identifying and investigating all these issues, and then presenting a plan for emergency response to local authorities based upon AMS's knowledge and expertise.

In the event of an accident at this facility, the City would spend significant resources, both staff and financial, on containment and remediation. The City wants to ensure that AMS designates sufficient amounts to repay the City, and any potentially affected local residents, for what would inevitably be extraordinary expenses. The fact that the City has been forced to assemble a Task Force of governmental agencies to come up with an adequate emergency response plan for this site is a financial drain on already stretched City resources, and intensifies the City's concerns in these areas.

The effect of granting a renewal license without including sufficient terms and conditions to safeguard the City's citizens, staff and interests would leave the City with the lion's share of the responsibility for dealing with existing and future problems at AMS, without allowing us a voice in recommending and ensuring that useful and enforceable controls are placed on AMS's activities and procedures through the appropriate mechanism, its NRC license.

AREAS OF CONCERN

In a letter dated December 22, 1994, John Grobe, NRC Chief of Nuclear Materials Inspection, Section 2, set forth nine general areas in which his staff found AMS's application deficient. Mr. Grobe wrote:

We have reviewed your application dated November 29, 1994, and are disappointed to find that you did not provide sufficient information to evaluate your program activities and procedures. Consequently, you will need to resubmit your application with the following subject areas appropriately addressed without any reference to previous correspondence

The City's areas of concern are identical to the nine areas listed by the NRC staff, as well as those concerns outlined by the NEORSD in its Request for a Hearing. Of most immediate concern to the City are Items number 7 and 8 in the NRC's December 22, 1994 letter regarding AMS's Emergency Plan (Item No. 7), and the Decommissioning Funding Plan and Financial Assurance Mechanism (Item No. 8).

In its December 22, 1994 letter the NRC states that AMS failed to follow NRC guidelines, and did not prepare a current Emergency Plan as part of its application. This failure to

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provide an Emergency Plan is one more reflection of AMS's poor management, and lax attitude towards NRC license requirements and Federal guidelines, and lack of concern for safeguarding the neighbors and area surrounding its contaminated site.

Regarding the Emergency Plan (Item No. 7), the City is concerned that AMS's RSO and AMS's President both live over an hour from the site. These individuals who are supposedly responsible for initiating emergency procedures could not be on site until long after a release occurs. The City was startled to hear the RSO state to City Fire Department officials only a few weeks ago that AMS's Emergency Plan is to "call the City's Fire Department." Moreover, AMS has not provided any of the on-site emergency equipment recommended by the City's Fire Prevention Bureau, which included purchasing temporary dikes to contain the runoff of any contaminated water in the event of a fire at the site, or making heavy equipment such as booms and cranes available on-site in the event it is necessary to fight a fire and/or contain radioactive contamination at the facility.

Regarding the Decommissioning Funding Plan (Item No. 8) and Financial Assurance, the City is concerned on a number of points. First, the current financial assurance of \$20,000 is totally insufficient to cover even the basic requirements of decommissioning the site. Next, the proposed financial assurance requirement of \$750,000 is also inadequate to cover decommissioning and cleanup of this site should AMS abandon the property. Finally, the City is concerned that the NRC has not required AMS to establish a fund that would cover all local costs of decommissioning of this site. If this site is abandoned, remediation would still be necessary, and without an established fund set aside for this purpose, the City is concerned that local taxpayers would end up paying for cleanup of this privately owned site. The NRC's failure to establish a sufficient amount of funding for this purpose is puzzling, since the Agency has the power to make adequate funding a condition of the license.

Additionally, the City is concerned that the \$750,000 in financial assurance which the NRC plans to require of AMS is not money that will be available for decontamination of neighboring properties should there be off-site contamination. Therefore, in addition to an adequate bond for decommissioning the site, the City believes that AMS should be required to maintain financial protection to cover public liability claims pursuant to 42 U.S.C. 2210. Under this provision, the NRC has the absolute authority to make acquisition of such financial protection a condition of AMS's license. Since requiring this sort of financial coverage is within the power of the NRC, and given AMS's unwillingness or inability to work with the City to

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provide even the most basic protections, the City is concerned that these issues be addressed during this licensing procedure.

TIMELINESS OF PETITION

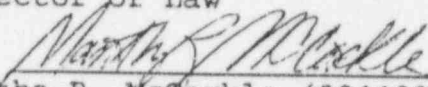
This Request for a Hearing, filed in accordance with 10 C.F.R. §2.1205(c) has been filed within 30 days after the requester, the City of Cleveland, received actual notice of a pending application for renewal of the License by AMS. This filing is therefore timely under 10 C.F.R. §2.1205(c).

Please contact the undersigned at 216-664-4332 with any questions or comments regarding this Request.

A true and accurate copy of this Request for a Hearing has been duly served by U.S. Mail this 13th day of January, 1995, 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).

Respectfully submitted,

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By: 
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ATTORNEYS FOR REQUESTER
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cc: Judith Zimomra, Director of Public Health
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