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May 7, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 MAY -8 A11 :15

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. 30-31373-CivP
CONAM INSPECTION, INC	)	
Itasca, Illinois	)	ASLBP No. 98-735-01-CivP
	)	
(Order Imposing Civil Monetary Penalty)	)	

NRC STAFF MOTION FOR AN ORDER COMPELLING ANSWER TO STAFF INTERROGATORY

MOTION

The NRC Staff moves, pursuant to 10 C.F.R. §2.740(f), the Licensing Board for an order compelling Carol D. Berger, Conam Inspection, Inc.'s radiation consultant, to answer Staff Interrogatory number nine.

BACKGROUND

On April 9, 1998, the Staff served interrogatories upon Ms. Carol D. Berger, Conam Inspection, Inc.'s (Conam) consultant in radiology. Ms. Berger on December 10, 1996 transmitted to Conam an analysis she had made of the radiological dose received by Mr. William Chastain in February 1996. Ms. Berger's analysis utilized and was premised upon "(draft) ANSI N13-41," which is American National Standards Institute, "Criteria for Performing Multiple Dosimetry, hereafter "(draft) HPS N13.41-1997." Letter to Carol D. Berger to Robert Slack, dated December 10, 1996 at page 5, Appendix A, Methodology. The Staff's Interrogatories, particularly Interrogatory number nine asked certain questions of Ms. Berger regarding the use and application of the draft ANSI N13.41. Ms. Berger did not answer interrogatory number nine.

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10 C.F.R. § 2.740 (f) provides for a motion within ten days of service for an order compelling response. Ms. Berger's answers were received by fax at the NRC on April 29, 1998. The Interrogatory and Ms. Berger's answer are set forth at length immediately *infra*.

> INTERROGATORY NUMBER nine:
>
> If the answer to Interrogatory number 7 is yes, please describe in detail how HPS N13, 41-1997 is used in accident situations such as the case with Mr. William Chastain's exposure.
>
> RESPONSE:
>
> The purpose of NPS N13.41 is to provide guidance for when to monitor with multiple dosimeters and where to place such dosimeters when their use is deemed necessary, and how to interpret and record dosimeter results after they are processed/evaluated. The standard was specifically developed to address non-uniform external exposures, which is at the heart of the Conam matter.
>
> Since multiple dosimeters were not involved in the Conam matter, issues of when and how to use them are not pertinent. However, the way in which the whole body dose is inferred from multiple dosimetry (specifically the use of compartment factors) does have applicability to Conam since, in both the standard and the Conam matter, non-uniform irradiation of the whole body is assumed.
>
> The standard's reference to accident conditions refers to global conditions wherein the results of dosimetry processing cannot be assumed to be similar to the dose distribution that was assumed when dosimeter placement was initially determined (*i.e.*, the relationship between the dose in a given compartment to the whole body dose may not remain constant over the monitoring period). The standard does not preclude the use of the compartment weighting factors for assessing the effective dose equivalent under any circumstances, accident or routine, if the dose to a compartment can be reasonably estimated (such as was done by Conam in reconstructing the sequence of events).

Response to NRC Staff Interrogatories to Carol D. Berger, Consultant to Conam Inspection, Inc., dated April 29, 1998. (Berger Response at 5).

ARGUMENT

The answer by Ms. Berger is not responsive to the question posed by the Staff. Ms. Berger was the Chair for the writing of ANSI N13.41-1997 which became final in December 1996. In view of the fact

that Ms. Berger sent her analysis to Conam in December, and her reference to draft ANSI standard and the standard becoming final subsequent to her analyses, the Staff's first Interrogatory asked if any changes should be made in her December 1996 analysis and she replied: "The December 10, 1996 letter and Appendix A through D and their attachment are complete, true and correct as written." Berger Response at 1.

The Staff's Interrogatory number nine asked how the ANSI N13.41 "is used in accident situations, such as the case with Mr. William Chastain's exposure." The Staff asked this question knowing that Ms. Berger was the Chair of the Health Physics Society Standards Committee Working Group responsible for generating the N13.41 standard and knowing that the standards Scope specifically excluded accident conditions, stating: "SCOPE. Sudden or unexpected changes in the radiation environment as might occur during **accidents** are beyond the scope of this standard." Page nine of the final standard, emphasis supplied.

Ms. Berger failed to answer this interrogatory and to address its substance. She, as the Chair of the drafting committee, and a past President of the American Board of Health Physics, is uniquely qualified to respond with a cogent answer. The answer is important to the disposition of this proceeding and to the Staff's position. Conam now contends that Mr. Chastain's exposure was an accident, an "inadvertence." Conam's Reply to Notice of Violation, dated July 7, 1997 at 7, ¶5. This being so, the Staff needs to know how and upon what justification Conam's radiation consultant calculated the dose. Mr. Chastain's received based upon ANSI HPS N13.41-1997, which Ms. Berger asserts caused no changes in her calculations from the draft standard.

The Staff needs an answer to Interrogatory number nine, and so moves the Licensing Board for an Order compelling Ms. Berger to respond as to how and upon what bases she made her analysis based upon ANSI N13.41 which by its scope states it does not apply to accidents.

Respectfully submitted,

Charles A. Barth
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of May 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR AN ORDER COMPELLING ANSWER TO STAFF INTERROGATORY" in the above-captioned proceedings 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 7th day of May 1998.

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