

LBP-98-12
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the matter of:

Conam Inspection, Inc.
Itasca, Illinois
(License No. 12-16559-01)

Order Imposing Civil
Monetary Penalty

Docket No. 30-31373-CivP

ASLBP No. 98-735-01-CivP

EA 97-207

January 21, 1998

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FIRST PREHEARING CONFERENCE ORDER
(Telephone Conference, 1/14/98)

This proceeding concerns the challenge of Conam Inspection, Inc. (Conam or Licensee) to the NRC Staff's November 5, 1997 Order Imposing Civil Monetary Penalty on the Licensee (published at 62 Fed. Reg. 60923, November 13, 1997) in the amount of \$16,000. By Memorandum and Order dated December 17, 1997, this Licensing Board granted Conam's request for a hearing. A Notice of Hearing was issued on December 18, 1997 (published at 62 Fed. Reg. 67416, December 24, 1997).

On January 14, 1998, the Atomic Safety and Licensing Board conducted, by way of a telephone conference call, the initial prehearing conference in this proceeding. Participating, in addition to the three members of the Licensing Board, were Clifton A. Lake, Esq., counsel for Conam Inspection, Inc. (Licensee); Charles A. Barth, Esq.,

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counsel for the NRC Staff (Staff), accompanied by Nader L. Mamish, Senior Enforcement Officer, NRC Office of Enforcement; and Lee S. Dewey, Esq., counsel for the Atomic Safety and Licensing Board Panel. The conference was transcribed (Tr. 1-28).

1. Issues. The Licensing Board first reviewed the issues that were to be litigated. The Board indicated that the Commission had designated the issues to be considered, and those issues had been set forth in the Board's December 17, 1997 Memorandum and Order and in the December 18, 1998 Notice of Hearing--specifically: (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.B and I.C of the Notice of Violation and Proposed Imposition of Civil Penalty (NOV), dated June 9, 1997; and (b) whether, on the basis of such violations and the additional violations set forth in the NOV that the Licensee admitted, the Order should be sustained.

The Licensee indicated that it wished to litigate all of the issues that formed the basis for the civil penalties (Tr. 6). It emphasized Issues I.B, I.C., and the penalty aspects of Issue I.A (the facts of which had previously been admitted, but as to which the penalties and intent could be challenged under broad issue (b)).

The Board raised a question concerning the apparent differences in methods being used by the Licensee and Staff, respectively, for calculating dose limits and effective dose

equivalents under 10 C.F.R. § 20.1201. The Board requested that the Licensee and Staff each present expert witnesses as to their respective methods of calculating effective dose equivalents, and they agreed to do so (Tr. 7, 8).

In its December 17, 1997 Memorandum and Order, the Board had requested the Staff to provide copies to the Board and parties of Inspection Report 030-31373 (DNMS) and Investigation Report 3-96-014 (OI Report), both of which were explicitly referenced in the NOV. On January 8, 1998, the Staff provided the Inspection Report but not the OI Report, claiming the enforcement action was not premised on the OI investigation. During the prehearing conference, the Licensee claimed that certain portions of the NOV were explicitly premised on the OI investigation, particularly concerning the alleged intent of the various personnel involved in various incidents and alleged practices engaged in by various unnamed employees or agents of Conam (Tr. 14-15). The Licensee, as well as the Board, also questioned the Staff's refusal to produce the OI Report. The Board indicated that the OI Report could be redacted to protect the identities of confidential informants (Tr. 11).

Although still asserting lack of relevance, the Staff agreed to produce the report in redacted form to the Licensee and Board members (Tr. 15). On January 16, 1998, the Staff provided the redacted report.

2. Discovery. The Licensee requested a 60-day

discovery period, from the date of its receipt of the OI Report, and the Staff agreed, noting that further developments might warrant a change. The Board set an initial discovery period of 60 days, running from receipt of the OI Report (Tr. 16). Because the report was transmitted on January 16, 1998, the Board presumes it was received by the Licensee on January 21, 1998 (see 10 C.F.R. § 2.710). The discovery period will expire on Monday, March 23, 1998. Shortly thereafter, the Board will conduct another telephone prehearing conference to set further schedules and determine arrangements for the remainder of the proceeding. The Board also indicated, and both parties agreed, that, if necessary, telephone conferences would be used to resolve discovery disputes that may arise (Tr. 17).

3. Other matters.

a. The Board inquired whether a transcript of the December 13, 1996 enforcement conference had been provided to the Licensee. The Staff indicated it had been provided and Conam acknowledged it had been received (Tr. 17-18).

b. The Board inquired whether the parties wished to use prepared testimony, noting that it was generally used in licensing proceedings (10 C.F.R. § 2.743(b)) but that there was no requirement to do so in enforcement proceedings such as this one. 10 C.F.R. § 2.743(b)(3); Tulsa Gamma Ray, Inc., 33 NRC 535 (1991). Conam expressed a preference not to use prepared testimony, but the Staff asked us to impose

such a requirement, based on our authority to control the proceeding. The Board declined to require prepared testimony, although it indicated that either party could elect to file prepared testimony if it desired. The Board ruled it would require the filing of lists of documents and witnesses, on a schedule to be determined later. Tr. 19-22.

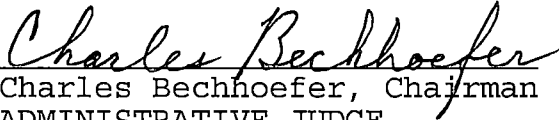
c. The Board stated that the hearing would be held in Chicago, Illinois, at a location and on a schedule to be determined later (Tr. 22-23).

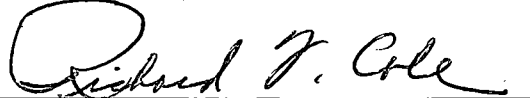
d. The Board indicated that various filings should be in electronic form, to the extent feasible, as well as in paper form as required by the Rules of Practice (Tr. 23-24).

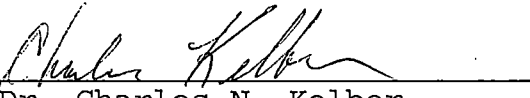
e. The Staff requested, and the Board acknowledged, that Mr. Lake should file a Notice of Appearance, as required by 10 C.F.R. § 2.713.

IT IS SO ORDERED.

The Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE


Dr. Richard F. Cole
ADMINISTRATIVE JUDGE


Dr. Charles N. Kelber
ADMINISTRATIVE JUDGE

Rockville, MD
January 21, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

CONAM INSPECTION, INC.

(Order Imposing Civil Monetary
Penalty)

Docket No.(s) 30-31373-CIVP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING ORDER (LBP-98-2) 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
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U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

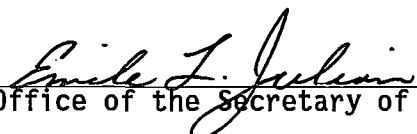
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McBride Baker & Coles
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Chicago, IL 60661

Dated at Rockville, Md. this
21 day of January 1998


Office of the Secretary of the Commission