

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'98 JUN -4 P3:52

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

SERVED JUN - 5 1998

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

June 4, 1998

MEMORANDUM AND ORDER
(Telephone Conference Call, 6/2/98)

On Tuesday, June 2, 1998, the Atomic Safety and Licensing Board conducted a telephone conference. Participating, in addition to the three Licensing Board Administrative Judges, were Lee S. Dewey, Esq., Chief Counsel of the Atomic Safety and Licensing Board Panel; Clifton A. Lake, Esq. and Malcolm H. Brooks, Esq., on behalf of the Licensee, Conam Inspection, Inc.; and Charles A. Barth, Esq. and Dennis C. Dambly, Esq., for the NRC Staff.

1. The conference had earlier been scheduled to discuss various matters (such as estimating the time of appearance of particular witnesses and methods for marking exhibits) bearing on the hearing, which was scheduled to commence on Tuesday, June 23, 1998, in Chicago, Illinois. See Memorandum and Order (Scheduling Prehearing Conference and Evidentiary Hearing), dated May 1, 1998. By motion

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dated May 29, 1998, however, Conam moved to postpone the hearing as a result of physical injuries to Mr. Lake, its lead attorney, emanating from an automobile accident.

Conam advises that Mr. Lake had been unable to work from March 18, 1998 through April 8, 1998, and that beginning April 9 he was able to work part time. One of his partners, Mr. Brooks, had assisted in one deposition, but Conam advises that Mr. Lake continues to experience dizziness and blurred vision and has not been able to return to work on a full-time basis. For this reason, Mr. Lake has requested Mr. Brooks assume primary responsibility for conducting the hearing on Conam's behalf.

Mr. Brooks indicated that, both because of prior planned commitments and lack of familiarity with the record, he would be unable to participate in the hearing on the designated dates. The Staff did not oppose the change in dates, although it expressed a need for an extended time in which it could question and prepare its own witnesses for the hearing. The Board therefore granted Conam's motion to postpone the hearing.

In considering potential dates for the postponed hearing, the Board suggested a one-week period in July and a two-week period in late August, but neither period was satisfactory to the Staff because of availability of its witnesses. After extended discussion, the Board set Monday, September 14, 1998, at 9:30 a.m. CDT, for the commencement

of the hearing, with further hearings, to the extent necessary, to be held beginning at 9:00 a.m. CDT, on September 15-18, at a location in Chicago, IL to be announced. The parties are to file lists of witnesses and documents to be utilized to be in our hands by Wednesday, September 9, 1998.

2. During the conference call, the Board also discussed Conam's Motion to Authorize Weighted Dose Calculations, also filed on May 29, 1998, asking the Licensing Board "to either approve, or to hold a hearing on the approval of, the external dose weighting factors specified in ICRP 26 and ANSI N113.41." It appeared to the Board that this motion might be a motion for summary disposition on a major issue in the case, but, as the Staff pointed out, it was not filed in the proper form for such a motion. cursory examination by the Board suggested that there might well be factual differences between the Licensee and NRC Staff concerning the issue raised by the motion. For that reason, the Board determined that it would consider the material set forth in the motion as an evidentiary matter at the hearing. For that reason, the Staff was advised that it need not submit a formal response to that motion.

In that connection, however, the Licensing Board requests that both parties, prior to the hearing, address a question arising from Conam's motion. Specifically, the

motion refers to the deposition of Monte Phillips, Chief of Materials Inspection Branch 2 during the inspection. In particular, on page 13, paragraph 33 of the motion, the following Questions and Answers are cited:

Q. But aren't you calling the result that you're calculating for the thigh a whole body result?

A. I'm calling that a legal whole body value.

* * *

Q. So there's a discrepancy between the legal definition of whole body dose and the whole body dose--

A. What part of the body would actually get.

Q. Is that correct?

A. Yes,

Deposition of Monte Phillips, May 14, 1998, at 132-136, attached as Exhibit F to Conam's motion.

This dialogue appears to put a different emphasis on the weighting factors cited in 10 C.F.R. § 20.1004 than one would glean from the underlying technical publication, ICRP Publication 26. We request each of the parties, prior to the evidentiary hearing, to brief the Board on the distinction drawn by Mr. Phillips between the "legal definition of whole body dose and the whole body dose" and the relation of these two concepts to the dose determination recommendation in ICRP Publication 26. Such briefs should be filed (mailed) by Friday, August 21, 1998.

3. During the conference call, the Board asked the parties to number their exhibits (to be identified in their

prefiled lists of exhibits) consecutively, by party and number--i.e., Conam Exhibits as CON-1, CON-2, etc., and Staff Exhibits as S-1, S-2, etc. Seven copies of each exhibit should be furnished: three for the Court reporter (see 10 C.F.R. § 2.743(f), one for the opposing party, and three for the Licensing Board. (To the extent a party wishes to furnish its documentary exhibits instead of a list of exhibits to the Board and opposing party by September 9, 1998, that party need only bring the three copies for the Court reporter to the hearing.)

* * *

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 4, 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 M&O (TELECON, 6/2/98) 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
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

Charles A. Barth, Esq.
Dennis C. Dambly, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Clifton A. Lake, Esq.
Malcolm H. Brooks, Esq.
McBride Baker & Coles
500 West Madison Street, 40th Floor
Chicago, IL 60661

Dated at Rockville, Md. this
5 day of June 1998

Adria T. Byrdson
Office of the Secretary of the Commission