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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 DEC 14 P2:52

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
OF STATE REGULATORY AND
ADJUDICATIONS STAFF

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 TO APPROVE SETTLEMENT AGREEMENT
AND DISMISS THE PROCEEDING

Conam Inspection, Inc. and the NRC Staff have reached a settlement regarding Enforcement Action 97-207. A copy of the Settlement Agreement is enclosed. The Staff moves the Licensing Board to approve the Settlement Agreement and dismiss this pending administrative proceeding. Counsel for Conam Inspection, Inc. concurs with this Motion.

Respectfully Submitted,

Charles A. Barth
Charles A. Barth
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of December, 1998

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

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CONAM INSPECTION, INC.)	
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SETTLEMENT AGREEMENT

The United States Nuclear Regulatory Commission ("NRC") and Conam Inspection, Inc. ("Conam"), through their respective counsel, each of whom is authorized to execute this document, in consideration of the promises and representations contained in this document, hereby agree as follows:

1. On November 5, 1997, the NRC issued an "Order Imposing Civil Monetary Penalty" (the "Order") in Enforcement Action 97-207 ("EA 97-207) with respect to certain alleged violations by Conam. The Order asserted that (a) a Conam radiographer had willfully failed to secure a sealed source assembly in the shielded position; (b) the Conam radiographer failed to conduct a survey of the entire circumference of the radiographic exposure device; and (c) the Conam radiographer received a radiation dose that brought his annual dose in excess of 5 rems total effective dose equivalent. The Order sought to aggregate these alleged violations to a Severity Level II problem.

2. On December 1, 1997, Conam requested an enforcement hearing in response to the Order entered in EA-97-207 in order to present to an Atomic Safety and Licensing Board (the "Board") testimony and evidence to contest the alleged violations and the Order as not justified under the evidence and applicable regulations. In connection therewith, Conam (a) admitted that the radiographer had failed to secure the sealed source assembly in the shielded position, but denied that this failure was willful; (b) denied that the radiographer failed to perform a survey as required in the regulations; and (c) denied that the radiographer's annual dose exceeded 5 rems total

effective dose equivalent. Conam denied that there was any basis for aggregating the alleged violations to a Severity Level II problem.

3. After the depositions, admission of documents in evidence, the filing of a number of briefs, and one week of oral testimony during the hearing in this matter, Conam and the NRC have concluded it is in their respective interests, as well as the public interest, to settle the disputes at issue in and related to EA 97-207. Therefore, the NRC and Conam agree as follows:

- A. The NRC (through NRC Staff) and Conam will jointly move the Board to approve this Settlement Agreement and to terminate this proceeding.
- B. Upon approval of this Settlement Agreement by the Board,
 - 1. the Order dated November 5, 1997, regarding the Notice of Violation and Proposed Imposition of Civil Penalty dated June 9, 1997, is and shall be rescinded and the ongoing litigation in EA 97-207 is and shall be terminated by agreement of the parties; and
 - 2. within five (5) business days of such approval, Conam will pay \$15,000, to be paid to the Treasurer of the United States.
- C. This Settlement Agreement constitutes final disposition of the matters giving rise to EA 97-207 and to this litigation. In consideration of the terms of this Agreement, the NRC Staff will assert no further enforcement claims, in any form or forum, related to the matters addressed in EA 97-207 and the underlying inspection and investigation reports; and CONAM will not pursue any further hearings on, or judicial review of, this matter.

4. The parties continue to maintain their respective positions in regard to the November 5, 1997 Order Imposing Civil Monetary Penalty. The parties agree that there remain differences of opinion on many of the issues raised by EA-97-207, the resolution of which involve factual and legal issues which have not yet been resolved.

Accordingly, the parties understand and acknowledge that this Settlement Agreement is the result of compromise and shall not for any purpose be construed as an admission of the regulatory violations that Conam denies or as a concession by the NRC that no such violations occurred. Instead, this Settlement Agreement has been entered into in order to terminate further litigation without resolving the alleged violations and severity level disputed by Conam. Each party shall bear its own fees and costs.

IN WITNESS WHEREOF, Conam and the NRC have caused this Settlement Agreement to be executed by their duly authorized representatives.

United States Nuclear Regulatory Commission

By: Charles A. Barth 12-14-98
Charles A. Barth
Office of the General Counsel

Conam Inspection, Inc.

By: Malcolm H. Brooks 12-8-98
Malcolm H. Brooks
McBride Baker & Coles
Chicago, Illinois

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)
)
CONAM INSPECTION, INC.)
Itasca, Illinois)
)
(Order Imposing Civil Monetary Penalty))

Docket No. 30-31373-CivP
ASLBP No. 98-735-01-CivP

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION TO APPROVE SETTLEMENT AGREEMENT AND DISMISS THE PROCEEDING" in the above-captioned proceeding 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 14th day of December, 1998:

Charles Bechhoefer, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
Fax: 301-415-5599

Dr. Richard F. Cole*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
Fax: 301-415-5599

Dr. Charles N. Kelber*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
Fax: 301-415-5599

Clifton A. Lake, Esq.
McBride Baker & Coles
500 West Madison Street, 40th Floor
Chicago, Illinois 60661-9350

Regional Administrator*
US Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532

Office of Commission Appellate
Adjudication*
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Adjudicatory File* (2)
Atomic Safety and Licensing Board
Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Board
Panel*
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Secretary* (2)
Attn: Rulemakings and
Adjudications Staff
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555



Charles A. Barth
Counsel for NRC Staff