

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Title: Piping Specialists, Inc.
(Byproduct Materials License
No. 24-24826-01)

Docket No. 030-29626-0M
E. A. 91-136
ASLBP No. 92-653-02-0M

LOCATION: Bethesda, Maryland

DATE: Wednesday, February 12, 1992 PAGES: 38 - 51

TR-01

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: : Docket No. 030-29626-OM
PIPING SPECIALISTS, INC. : E. A. 91-136
: ASLBP No. 92-653-02-OM
(Byproduct Materials License :
No. 24-24826-01) :

Room 442
East-West Towers, Fourth Floor
4350 East-West Highway
Bethesda, Maryland
Wednesday, February 12, 1992

The above-entitled matter convened for telephone
conference, pursuant to notice, at 3:00 p.m.

BEFORE: PETER B. BLOCH, Chairman
Administrative Judge
PETER LAM
Administrative Judge
JERRY KLINE
Administrative Judge

1 APPEARANCES:

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For the Licensee:

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STEPHANIE HAZELTON, Esquire

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601 West 47th Street

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Kansas City, Missouri 64112

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For the NRC Staff:

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13

OFFICE OF THE GENERAL COUNSEL

14

BY: MICHAEL FINKELSTEIN, Esquire

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BERNARD BORDENICK, Esquire

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JANICE E. MOORE, Esquire

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U. S. Nuclear Regulatory Commission

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Washington, D.C. 20555

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P R O C E E D I N G S

[3:00 p.m.]

JUDGE BLOCH: This is Peter Bloch. On behalf of the Licensing Board, with great respect I welcome both parties to this telephone status conference. We've already taken an informal roll and have it reflected in the record.

The parties have agreed that the agenda can be straightforward: I will ask the Staff to state its concept of the status of the case and what it knows about its readiness to go to hearing; then I will ask the Licensee to comment.

Would the Staff begin?

MR. FINKELSTEIN: Yes, Judge Bloch. Since the January 8, 1992, prehearing conference, the Licensing Board issued an order requesting that, in order for the stay to be implemented, a reasonably complete application, evidence supporting claim of financial harm, and federal tax returns needed to be submitted. We received an application on January 27, 1992, and the evidence supporting financial harm and federal tax returns were received by us on February 6, 1992. We have problems with all of the things that have been submitted by the Licensee.

Region III wrote back to the Licensee on February 11, 1992, a deficiency letter, in which they illustrated what was necessary in order for them to even begin to review

1 the license application.

2 I was just on the phone with the Office of
3 Investigations, which is a different track of what we're
4 talking about here, and DOJ is making a referral to the U.S.
5 Attorney's office for the western district of Missouri. The
6 Office of Investigations will be briefing the U.S.
7 Attorney's office at the beginning of March.

8 JUDGE BLOCH: What is the meaning of their making
9 a referral?

10 MR. FINKELSTEIN: The meaning is that they're
11 going to the U.S. Attorney in Missouri, and this will
12 probably be going to a grand jury for criminal proceedings.

13 JUDGE BLOCH: Is there anything discretionary left
14 about that, or not?

15 MR. FINKELSTEIN: With the U.S. Attorney's office
16 in Missouri?

17 JUDGE BLOCH: Yes.

18 MR. FINKELSTEIN: Yes, I believe there is
19 discretion there.

20 JUDGE BLOCH: They do have some discretion.

21 MR. FINKELSTEIN: Yes.

22 JUDGE BLOCH: Okay. On the two branches of the
23 status of the case, you're saying that, on the first, which
24 has to do with the processing of the amendment --

25 MR. FINKELSTEIN: We feel the stay has not been

1 implemented as of yet, because the Licensee has not
2 submitted a reasonably complete application.

3 JUDGE BLOCH: That the event for triggering the
4 hearing has not occurred.

5 MR. FINKELSTEIN: Correct.

6 JUDGE BLOCH: On the other part, you're saying
7 that, even if that time were to expire, you would anticipate
8 moving for a further postponement, anyway.

9 MR. FINKELSTEIN: Correct, with an affidavit
10 supplied by the U.S. Attorney's office in Kansas City.

11 JUDGE BLOCH: Okay. Is that the end of your
12 statement?

13 MR. FINKELSTEIN: Yes, Judge Bloch.

14 JUDGE BLOCH: Would the Licensee like to comment?

15 MS. HAZELTON: Yes.

16 First, there was a little delay in filing our
17 application because, in our last conference, the NRC
18 indicated that they were going to amend the order suspending
19 the license. There was confusion, because we got some phone
20 messages that, they were, as I understood it, about to file
21 an amendment. Apparently what they were really talking
22 about was to find out when we were going to file our license
23 amendment. It turns out that they don't intend to amend the
24 order. At that point, when we --

25 JUDGE BLOCH: Well, let me ask if the Staff agrees

1 with that. Is it true that the Staff has decided not to
2 amend the order?

3 MR. FINKELSTEIN: Well, as we mentioned at the
4 previous prehearing conference, we were not going to amend
5 the order currently. We were going to wait and see how this
6 case progressed and, if we were to go to hearing, then to
7 amend the order.

8 JUDGE BLOCH: You'd amend it prior to the hearing.

9 MR. FINKELSTEIN: Correct, because you gave us 10
10 days prior to the end of the stay in which to amend the
11 order. The stay, in our opinion, hasn't been implemented
12 yet.

13 MS. HAZELTON: Well, okay. I certainly disagree
14 with that, that the stay hasn't been implemented yet.

15 JUDGE BLOCH: I would use the language that I used
16 earlier, which is that -- As I thought about it, I don't
17 need to stay my own actions, anyway. What we've done is to
18 postpone the hearing. It's in the nature of a stay, as the
19 liturgy describes, but the event for tolling the end of the
20 stay has, in the Staff's opinion, not occurred. What do you
21 think about that, Ms. Hazelton?

22 MS. HAZELTON: Well, I'm surprised to hear that
23 position. We filed the application, as they indicated, and
24 they received it January 27, 1992. I believe that you
25 received a copy of it, Judge Bloch, and it was pretty

1 comprehensive. In fact, when they received it, they called
2 and said, Now wait a minute; is this just an amendment, or
3 what is going on here? This is more paper than we ever get.

4 We did get a letter faxed to us -- I think Monday
5 -- stating some additional information they needed. None of
6 that information is hard to get. Perhaps you have that
7 letter in front of you. I don't, but I can get it real
8 quickly. But it was things like, What grade did you get in
9 this course?

10 JUDGE BLOCH: When do you anticipate filing the
11 requested information?

12 MS. HAZELTON: We faxed it to our consultant in
13 St. Louis, and the client picked it up the same day we got
14 it. I would say by Tuesday of next week or Monday of next
15 week we'll have it all filed. I mean, unless there's
16 something there that people have to get from someplace else,
17 I don't -- none of it looked to me like it was that onerous.

18 JUDGE BLOCH: I'd like to ask the Staff two
19 things. One is, how long do you anticipate that it will
20 take to process the application once that requested
21 information is furnished? The second is, was there guidance
22 or some application available, so that the applicant knew
23 that that level of detail was required?

24 MR. FINKELSTEIN: Yes, Judge Bloch. We have
25 published regulatory guide 10.6 with two revisions, revision

1 1 and revision 2, which is a guide to the preparation of
2 applications for the sealed sources and devices for
3 performing industrial radiography. This application is more
4 deficient than Ms. Hazelton is letting us on. It doesn't
5 even show that Mr. Forrest Roudebush is a radiographer.
6 According to our guidance, he would have to be a
7 radiographer for at least one year before he could take over
8 the management of a radiographic program.

9 JUDGE BLOCH: Okay. And now the second question,
10 which is the one I asked first: how long does the Staff
11 think it would take from the time it receives the additional
12 information next Monday or Tuesday to finish processing the
13 amendment?

14 MR. FINKELSTEIN: If the Staff received the
15 information Monday or Tuesday, they could turn around by the
16 end of the week.

17 JUDGE BLOCH: Okay. In terms of the purposes of
18 the postponement, which was to give the Staff time to
19 process the amendment, does that mean that the date that the
20 postponement expires would be the end of the week --
21 approximately, let's say, five business days after you
22 receive the completed amendment?

23 MR. FINKELSTEIN: Judge Bloch, we asked for a stay
24 based on DOJ's affidavit. I'm confused here, because I seem
25 to think that you're assuming that the stay is based on how

1 long it takes the region to process the application.

2 JUDGE BLOCH: That was what we decided, if you'll
3 read the order. Then you were going to be given an
4 opportunity to request an additional stay if you had
5 additional reasons.

6 MR. FINKELSTEIN: Yes. The Department of Justice
7 criminal proceeding is still progressing.

8 JUDGE BLOCH: Well, you would have to state
9 revised, additional reasons for the stay and why. We still
10 haven't gotten into the substance of weighing the additional
11 stay against the disadvantages to the Intervenor, which is
12 why some of the information -- excuse me, the Licensee.
13 That's why the Licensee was asked to make some of the
14 additional filings.

15 MR. FINKELSTEIN: I understand that, and again I
16 would have to say that then we would have to go and make an
17 in camera, ex parte presentation to the Licensing Board --
18 back to where we started.

19 JUDGE BLOCH: Ms. Hazelton, do you understand the
20 Staff's position about that? I don't think you've addressed
21 that in the filing you made on ex parte presentations. You
22 were addressing a situation in which the stay had already
23 been granted.

24 MS. HAZELTON: Right, but that was my
25 understanding of what had happened, and so it seemed

1 premature to get into any other area, when I didn't know
2 that it was even going to come up.

3 I guess I'd like to file a brief next week on that
4 point. I guess the issue would be -- let's say the license
5 amendment is processed by Friday -- where is my calendar --

6 JUDGE BLOCH: Are you actually promising that
7 you'll have it by Tuesday?

8 MS. HAZELTON: Well, I have to talk to this guy in
9 St. Louis -- Richard Tiefenauer -- but I didn't think that
10 the list looked like it was that cumbersome.

11 JUDGE BLOCH: Okay. Could I ask the Staff if
12 seven calendar days from the time of receipt is a fair
13 deadline for concluding the work on the amendment?

14 MR. FINKELSTEIN: According to the region -- and I
15 asked them that question a couple of weeks ago -- they can
16 turn around a license application, if you put it on the top
17 of the pile and you expedite it, in a few days.

18 JUDGE BLOCH: So then seven days is certainly
19 fair.

20 MR. FINKELSTEIN: Yes. They have a 60-day
21 requirement imposed upon them for a general application that
22 comes in, and it's put in the pile with all the other
23 applications, but for an expedited case they can turn it
24 around in a few days.

25 JUDGE BLOCH: How difficult would it be for the

1 Staff to file its request for a continued postponement by
2 next Monday?

3 MR. FINKELSTEIN: I'm not sure I quite understand
4 that. You're saying the stay would be lifted when?

5 JUDGE BLOCH: No. The postponement or stay that
6 we already granted will expire at the end of the processing
7 time of the amendment.

8 Hold on a second. Let me have conference with my
9 boys.

10 [Pause for Judges to confer.]

11 JUDGE BLOCH: Back on the record.

12 The Licensing Board has had a conference about the
13 meaning of its last order, and now I'd like the Staff to
14 comment, if it would -- not on what we've said --

15 [Laughter.]

16 JUDGE BLOCH: -- but on what you think about the
17 possibility of filing the request for a further postpone by
18 next Monday.

19 MR. FINKELSTEIN: I don't see how we can file that
20 by next Monday.

21 JUDGE BLOCH: So when can you file it by?

22 MR. FINKELSTEIN: I would request that the
23 previous order be still in effect, that, when Ms. Hazelton
24 files and the license is substantially complete, 45 days
25 then is triggered.

1 JUDGE BLOCH: Mr. Finkelstein, do you understand
2 why that annoys me a great deal? Do you understand that the
3 position of the Staff on what's required to process the
4 amendment has shifted dramatically and that what we were
5 told originally appears now to be false?

6 MR. FINKELSTEIN: No. Judge Bloch, let me explain
7 something. When I say they can do it in seven days, I do
8 not have a firm commitment from the region. I am not the
9 reviewer, and I am not the licensing branch person who can
10 make that decision. I was told by the region that, in an
11 emergency, they can expedite an application request -- for
12 public safety reasons, for a whole bunch of reasons --

13 JUDGE BLOCH: As I understand what the Staff is
14 representing about its ability to turn the amendment around
15 if it gives it priority, it's a lot less than 45 days. If,
16 in fact, you have a proof problem with whether I'm correct
17 on that, I would suggest that you should file a motion for
18 reconsideration, with an affidavit, because it sounds to me
19 like you said it would take just a few days, and the seven
20 days is actually a liberal statement.

21 MR. FINKELSTEIN: I can't answer that. I really
22 can't answer that. I do not have a firm commitment from
23 Region III --

24 JUDGE BLOCH: Well, you don't need a firm
25 commitment. You've got an estimate. You can ask for an

1 extension if it's required.

2 MR. FINKELSTEIN: Okay.

3 JUDGE BLOCH: The question is, when can you
4 comfortably and reasonably be expected to file the request
5 for a continued postponement or stay?

6 MR. FINKELSTEIN: Judge Bloch, can we have two
7 weeks for that.

8 JUDGE BLOCH: I'd like Ms. Hazelton's comment
9 about that.

10 MS. HAZELTON: Two weeks from today? Is that what
11 you're saying, Mike?

12 JUDGE BLOCH: That's what the suggestion was.

13 MR. FINKELSTEIN: Yes, two weeks from today.

14 MS. HAZELTON: That sounds fair.

15 JUDGE BLOCH: So that would be the 26th of
16 February.

17 MR. FINKELSTEIN: Yes.

18 JUDGE BLOCH: Ms. Hazelton, how much time do you
19 need to respond?

20 MS. HAZELTON: Five days.

21 JUDGE BLOCH: Okay. We'll permit you seven
22 business days, but if we receive it earlier then we may be
23 able to take action based on the filings even earlier than
24 the seven days.

25 MR. FINKELSTEIN: Judge Bloch, what happens in the

1 case where what we need to see for the application, to fix
2 the deficiency letter, is not submitted by Tuesday?

3 MS. HAZELTON: Is not submitted within the two
4 weeks, you mean?

5 MR. FINKELSTEIN: Yes. Is not submitted within
6 the two weeks.

7 JUDGE BLOCH: If the Staff should require a
8 further period of time for processing the amendment, they
9 should file a request for an extension of the time to do
10 that, based on reasonable grounds.

11 MR. FINKELSTEIN: Okay.

12 JUDGE BLOCH: That may or may not push it to after
13 the time of the completed filings on the request for
14 postponement, but that we could go forward on two tracks at
15 the same time will expedite matters.

16 Are there any further comments about the status of
17 the case?

18 MR. FINKELSTEIN: Not at this time, Judge Bloch.

19 MS. HAZELTON: No, Your Honor, there isn't.

20 JUDGE BLOCH: I want to thank the parties for
21 their participation. The conference is adjourned. If the
22 parties would like to stay on the line to order transcripts,
23 they may do so.

24 [Whereupon, at 3:20 p.m., the telephone conference
25 was concluded.]

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Piping Specialists, Inc.

DOCKET NUMBER: 030-29626-OM

PLACE OF PROCEEDING: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Mark D. Handy

Official Reporter
Ann Riley & Associates, Ltd.