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UNITED STATES

'87 DEC 21 P4:10

NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	Docket No. 030-13435
)	License No. 53-17854-01
FINLAY TESTING LABORATORIES, INC., Testing and Inspection Services; 99-940 Iwaena Street, Aiea, Hawaii 96701)	EA 87-186
)	MOTION FOR ORDER SETTING HEARING; MOTION FOR PREHEARING CONFERENCE; MOTION FOR SETTLEMENT CONFERENCE; MOTION FOR ORDER SHORTENING TIME FOR RESPONSE TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND OTHER DISCOVERY; CERTIFICATE OF SERVICE

MOTION FOR ORDER SETTING HEARING;
MOTION FOR PREHEARING CONFERENCE;
MOTION FOR SETTLEMENT CONFERENCE;
MOTION FOR ORDER SHORTENING TIME FOR
RESPONSE TO REQUEST FOR PRODUCTION
OF DOCUMENTS AND OTHER DISCOVERY

FINLAY TESTING LABORATORIES, INC. ("Licensee"),
by its counsel, TORKILDSON, KATZ, JOSSEM, FONSECA & MOORE,
requests that the Presiding Officer enter immediate orders
as follows:

I. ORDER SETTING HEARING

A. GROUNDS

1. The Licensee is entitled to an order setting
a hearing as a matter of right, pursuant to 10 C.F.R.
Section 2.202(c), which provides:

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If the answer demands a hearing, the Commission will issue an order designating the time and place of hearing.

The Order Suspending License (Effective Immediately), issued September 21, 1987, parrots this provision in the mandatory language of its concluding paragraph, page 5.

2. On October 5, 1987, the Licensee filed its Answer; Request for Rescission or Relaxation of Order; Request for Hearing. Since that time, the Licensee has been entitled to an order designating the time and place of hearing in this matter.

3. The Presiding Officer was designated on October 21, 1987, pursuant to the Licensee's October 5, 1987 Request for Hearing.

4. On November 3, 1987, a telephone conference among the parties and the Presiding Officer was held, and setting of the hearing was postponed pending settlement discussions between the Licensee and NRC staff. At that time, NRC staff, through its counsel, represented that prompt and meaningful discussion of settlement would occur on November 9, 1987, at a meeting in Walnut Creek, California, at Region V NRC headquarters.

5. On November 9, 1987, a meeting regarding settlement was held between the parties at Region V headquarters in Walnut Creek, California.

6. On November 12, 1987, another telephone conference was held among the parties and the Presiding Officer, regarding the status of settlement discussions in this matter, and setting a hearing and other procedural matters. It was agreed that setting a hearing be postponed pending the Licensee's presentation to Region V of a written settlement proposal.

7. On November 18, 1987, another telephone conference hearing among the parties and the Presiding Officer was held, and the status of settlement was discussed. Later that day, as represented during the telephone conference hearing, a written settlement proposal was provided to Region V by the Licensee. The proposal was made pursuant to the discussions held on November 9, 1987, at the meeting in Walnut Creek, California. It was again agreed that setting of a hearing was to be postponed pending NRC staff response to the Licensee's proposal, represented to occur by November 25, 1987.

8. On November 25, 1987, another telephone conference hearing among the parties and the Presiding Officer was held, at which NRC staff was ordered to respond specifically in writing to the Licensee's settlement proposal by Friday, December 4, 1987.

9. NRC staff failed to respond to Licensee's settlement proposal as ordered, and informed Licensee's counsel on December 4, 1987, that no specific NRC staff response was forthcoming at that time.

10. On December 7, 1987, another telephone conference hearing among the parties and the Presiding Officer was held. During that telephone conference, the Licensee's counsel specifically requested that the Presiding Officer immediately set the matter for hearing; establish a discovery schedule; set a motions hearing; and, set the matter for an immediate settlement conference.

11. On December 9, 1987, during another telephone conference hearing among the parties and the Presiding Officer, the Licensee's counsel again requested that a hearing be set; a discovery schedule be established; a motions hearing be set; and, a settlement conference and prehearing conference be set to occur promptly.

12. No action has been taken upon the Licensee's repeated requests, to the Licensee's severe prejudice, in violation of the Licensee's rights under applicable regulations, and the United States Constitution, to due process of law.

B. RELIEF REQUESTED

13. It is requested that the Presiding Officer enter an immediately effective order setting this matter for hearing during the first week of January, 1988, in Honolulu, Hawaii, or as soon thereafter as the matter may be expeditiously determined; and, enter such further orders as may be appropriate in the circumstances.

II. ORDER SETTING PREHEARING CONFERENCE

A. GROUNDS

14. The Presiding Officer has indicated an intention to schedule this matter for a prehearing conference; and, the Licensee is entitled to a prehearing conference under 10 C.F.R. Section 2.752.

15. A prehearing conference will serve to simplify, clarify and specify the issues; allow for stipulations and admissions of fact and avoid unnecessary proof; identify witnesses and other steps to expedite the presentation of evidence in the matter; assist in scheduling prompt discovery; and, create a stenographically reported record of the parties' positions in the matter.

B. RELIEF REQUESTED

16. The Licensee requests that the Presiding Officer enter an order setting a prompt prehearing conference, stenographically reported, in Honolulu, Hawaii, or at such other location as may be just and proper.

III. ORDER SETTING SCHEDULING CONFERENCE

A. GROUNDS

17. The Presiding Officer is empowered to hold and to participate in a settlement conference under 10 C.F.R. Section 2.718(h).

18. On November 9, 1987, the Licensee met with NRC staff at Region V headquarters in Walnut Creek, California, to discuss settlement; and, pursuant to that meeting, a settlement proposal was submitted by the Licensee to Region V on November 18, 1987.

19. Despite its representations to the contrary, and the order of the Presiding Officer, NRC staff has failed or refused to provide any specific response to the settlement proposal submitted by the Licensee; in fact, NRC staff refused on December 11, 1987 to discuss settlement in any way.

20. The Licensee's ability to conduct its business has been drastically affected, to its great prejudice. Prompt resolution of the issues raised by the Order Suspending License (Effective Immediately) entered September 21, 1987, is urgently required; and a settlement conference may accomplish total or partial settlement of the issues in this matter.

B. RELIEF REQUESTED

21. The Licensee requests that a Presiding Officer order a settlement conference to be held immediately in Honolulu, Hawaii, or at such other location as may be appropriate in the circumstances.

VI. ORDER SHORTENING TIME FOR RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS AND OTHER DISCOVERY

A. GROUNDS

22. The Presiding Officer is authorized to shorten the time prescribed for response to a request for production of documents and other discovery under 10 C.F.R. Section 2.740, et seq., pursuant to 10 C.F.R. Section 2.711(a).

23. This matter has been pending since September 21, 1987, and the investigation of the NRC staff

commenced in August, 1987. Since that time, NRC staff has acted in extremely dilatory fashion, and no meaningful progress has occurred in this matter, to the Licensee's great prejudice.

24. The Licensee has twice requested discovery of specific matters from NRC staff, on December 7 and again on December 9, 1987. A written request for production of documents and other discovery identical in form to that previously made by the Licensee's counsel is attached, and a copy of it is served pursuant to 10 C.F.R. Section 2.740, et seq.

25. This matter involves the validity of issuance of the September 21, 1987 suspension order, without prior notice; and, the Licensee is entitled to discover the facts upon which NRC staff relied in issuing the order effective immediately, and upon which NRC staff will seek to have the order sustained.

26. In an apparent last-minute attempt to avoid discovery and resolution of this matter promptly, NRC staff belatedly referred matters allegedly relating to this proceeding to the Department of Justice on December 8, 1987. Aside from the obvious tactical advantage that such a referral is intended to accomplish for NRC staff, a referral in and of itself is

meaningless. The Department of Justice has not necessarily made a decision to seek prosecution for any criminal conduct; and, even if such a decision were made, the secret grand jury proceedings in such a Department of Justice effort could not and would not be prejudiced by the discovery requests made by the Licensee in this matter.

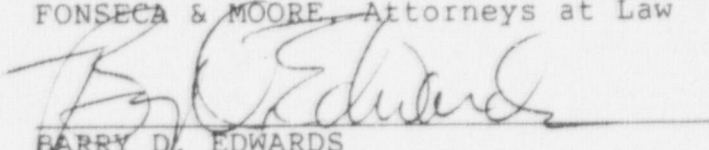
27. The Licensee has virtually been driven out of business by this dilatory conduct of NRC staff, and staff's apparent intention to avoid resolution of this matter expeditiously. The only equitable procedure to avoid such unfairness to the Licensee is to issue an order requiring an immediate and full response to the request for production of documents and other discovery.

B. RELIEF REQUESTED

28. The Licensee requests that the Presiding Officer order NRC staff to respond to the request for production of documents and other discovery on or before December 28, 1987.

DATED: Honolulu, Hawaii, December 14, 1987.

TORKILDSON, KATZ, JOSSEM,
FONSECA & MOORE, Attorneys at Law



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