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LBP-98-31 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
RULEMAKING AND
ADJUDICATIONS STAFF

SERVED DEC 17 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

December 16, 1998

MEMORANDUM AND ORDER
(Approval of Settlement Agreement and
Dismissal of Proceeding)

On December 14, 1998, both parties to this civil penalty proceeding--Conam Inspection, Inc. and the NRC Staff--filed a joint motion for this Atomic Safety and Licensing Board to approve a settlement agreement (a copy of which is attached to this Order) and dismiss the proceeding. The NRC Staff initially sought a civil penalty of \$16,000.00. The proposed settlement that we have before us would require Conam to pay \$15,000.00 but would also have the Order of November 5, 1997 imposing a civil monetary penalty rescinded.

The Licensing Board has, of course, already conducted a five-day evidentiary hearing on the Order. Pursuant to 10 C.F.R. § 2.203, we are authorized at any time following

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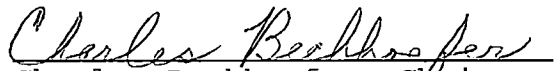
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issuance of a notice of hearing, and without regard as to whether a hearing has already been held, to entertain a compromise and to approve a settlement, according "due weight" to the position of the Staff. By its December 14, 1998 motion for us to approve the settlement agreement, the Staff has indicated its approval of that agreement.

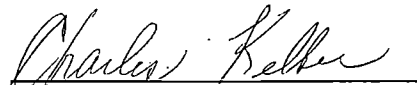
According due weight to the position of the Staff, we hereby approve the attached settlement agreement and dismiss the proceeding.

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

Attachment: Settlement Agreement

Rockville, Maryland
December 16, 1998

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

CONAM INSPECTION, INC.
Itasca, Illinois

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Docket No. 30-31373-CivP

ASLB No. 98-735-01-CivP

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

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--..SETTLEM'T..-LBP-98-31 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
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Washington, DC 20555

Administrative Judge
Richard F. Cole
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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
17 day of December 1998

Adria T. Byrdson
Office of the Secretary of the Commission