

# NUCLEAR REGULATORY COMMISSION ISSUANCES

January 1998

This report includes the issuances received during the specified period from the Commission (CLI), the Atomic Safety and Licensing Boards (LBP), the Administrative Law Judges (ALJ), the Directors' Decisions (DD), and the Decisions on Petitions for Rulemaking (DPRM)

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or have any independent legal significance.

U.S. NUCLEAR REGULATORY COMMISSION

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**MASTER**

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B. Paul Cotter, Jr., Chief Administrative Judge, Atomic Safety & Licensing Board Panel

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# Atomic Safety and Licensing Boards Issuances

## ATOMIC SAFETY AND LICENSING BOARD PANEL

B. Paul Cotter, Jr.,\* *Chief Administrative Judge*  
James P. Gleason,\* *Deputy Chief Administrative Judge (Executive)*  
Frederick J. Shon,\* *Deputy Chief Administrative Judge (Technical)*

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\*Permanent panel members

LICENSING BOARDS

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**Thomas S. Moore, Chairman  
Dr. Jerry R. Kline  
Lester S. Rubenstein**

**In the Matter of**

**Docket No. 030-30266-CivP  
(ASLBP No. 97-729-01-CivP)**

**21ST CENTURY TECHNOLOGIES, INC.  
(Fort Worth, Texas)**

**January 12, 1998**

In this civil penalty enforcement proceeding, the Licensing Board accepts the parties' proffered settlement agreement.

**MEMORANDUM AND ORDER**

The NRC Staff and 21st Century Technologies, Inc. ("Technologies"), the holder of a materials license, have filed a joint motion for the approval of the settlement agreement reached in this civil penalty proceeding. The proceeding stems from the Staff's issuance of an order imposing a civil penalty on Technologies in the amount of \$2500 for its failure to conduct licensed activities involving the manufacture of various tritium luminous gunsights in full compliance with NRC requirements. Under the proposed settlement, Technologies agrees to pay a civil penalty in the amount of \$2000 pursuant to a prescribed installment payment schedule. The agreement also reiterates the parties' rights in the event of a breach of the settlement agreement.

The Commission looks with favor upon settlements and, pursuant to 10 C.F.R. § 2.203, the Licensing Board, in approving a proposed settlement of an

enforcement action, must give due consideration to the public interest. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 205-06 (1997). Here, the parties' settlement agreement is in full accord with the public interest and there is no reason not to approve the settlement in its entirety. Accordingly, the Board approves the proffered settlement agreement, incorporates it into this Order, and terminates this civil penalty enforcement proceeding.

It is so ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Dr. Jerry R. Kline  
ADMINISTRATIVE JUDGE

Lester S. Rubenstein (by TSM)  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 12, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

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

**In the Matter of**

**Docket No. 30-31373-CivP  
(ASLBP No. 98-735-01-CivP)  
(EA 97-207)  
(License No. 12-16559-01)  
(Order Imposing Civil  
Monetary Penalty)**

**CONAM INSPECTION, INC.  
(Itasca, Illinois)**

**January 21, 1998**

The Atomic Safety and Licensing Board in a civil penalty proceeding issues an initial prehearing conference order setting forth rulings made during a telephone prehearing conference on January 14, 1998.

**RULES OF PRACTICE: PREPARED TESTIMONY**

Prepared testimony is generally used in licensing proceedings, but there is no requirement to do so in enforcement proceedings.

**FIRST PREHEARING CONFERENCE ORDER  
(Telephone Conference, 1/14/98)**

This proceeding concerns the challenge of Conam Inspection, Inc. (Conam or Licensee), to the NRC Staff's November 5, 1997 Order Imposing Civil Monetary

Penalty on the Licensee (published at 62 Fed. Reg. 60,923 (Nov. 13, 1997)) in the amount of \$16,000. By Memorandum and Order dated December 17, 1997, this Licensing Board granted Conam's request for a hearing. A Notice of Hearing was issued on December 18, 1997 (published at 62 Fed. Reg. 67,416 (Dec. 24, 1997)).

On January 14, 1998, the Atomic Safety and Licensing Board conducted, by way of a telephone conference call, the initial prehearing conference in this proceeding. Participating, in addition to the three members of the Licensing Board, were Clifton A. Lake, Esq., counsel for Conam Inspection, Inc. (Licensee); Charles A. Barth, Esq., counsel for the NRC Staff (Staff), accompanied by Nader L. Mamish, Senior Enforcement Officer, NRC Office of Enforcement; and Lee S. Dewey, Esq., counsel for the Atomic Safety and Licensing Board Panel. The conference was transcribed (Tr. 1-28).

### *1. Issues*

The Licensing Board first reviewed the issues that were to be litigated. The Board indicated that the Commission had designated the issues to be considered, and those issues had been set forth in the Board's December 17, 1997 Memorandum and Order and in the December 18, 1998 Notice of Hearing — specifically: (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.B and I.C of the Notice of Violation and Proposed Imposition of Civil Penalty (NOV), dated June 9, 1997; and (b) whether, on the basis of such violations and the additional violations set forth in the NOV that the Licensee admitted, the Order should be sustained.

The Licensee indicated that it wished to litigate all of the issues that formed the basis for the civil penalties (Tr. 6). It emphasized Issues I.B, I.C., and the penalty aspects of Issue I.A (the facts of which had previously been admitted, but as to which the penalties and intent could be challenged under broad issue (b)).

The Board raised a question concerning the apparent differences in methods being used by the Licensee and Staff, respectively, for calculating dose limits and effective dose equivalents under 10 C.F.R. § 20.1201. The Board requested that the Licensee and Staff each present expert witnesses as to their respective methods of calculating effective dose equivalents, and they agreed to do so (Tr. 7, 8).

In its December 17, 1997 Memorandum and Order, the Board had requested the Staff to provide copies to the Board and parties of Inspection Report 030-31373 (DNMS) and Investigation Report 3-96-014 (OI Report), both of which were explicitly referenced in the NOV. On January 8, 1998, the Staff provided the Inspection Report but not the OI Report, claiming the enforcement action was not premised on the OI investigation. During the prehearing conference,

the Licensee claimed that certain portions of the NOV were explicitly premised on the OI investigation, particularly concerning the alleged intent of the various personnel involved in various incidents and alleged practices engaged in by various unnamed employees or agents of Conam (Tr. 14-15). The Licensee, as well as the Board, also questioned the Staff's refusal to produce the OI Report. The Board indicated that the OI Report could be redacted to protect the identities of confidential informants (Tr. 11).

Although still asserting lack of relevance, the Staff agreed to produce the report in redacted form to the Licensee and Board members (Tr. 15). On January 16, 1998, the Staff provided the redacted report.

## 2. *Discovery*

The Licensee requested a 60-day discovery period, from the date of its receipt of the OI Report, and the Staff agreed, noting that further developments might warrant a change. The Board set an initial discovery period of 60 days, running from receipt of the OI Report (Tr. 16). Because the report was transmitted on January 16, 1998, the Board presumes it was received by the Licensee on January 21, 1998 (*see* 10 C.F.R. § 2.710). The discovery period will expire on Monday, March 23, 1998. Shortly thereafter, the Board will conduct another telephone prehearing conference to set further schedules and determine arrangements for the remainder of the proceeding. The Board also indicated, and both parties agreed, that, if necessary, telephone conferences would be used to resolve discovery disputes that may arise (Tr. 17).

## 3. *Other Matters*

a. The Board inquired whether a transcript of the December 13, 1996 enforcement conference had been provided to the Licensee. The Staff indicated it had been provided and Conam acknowledged it had been received (Tr. 17-18).

b. The Board inquired whether the parties wished to use prepared testimony, noting that it was generally used in licensing proceedings (10 C.F.R. § 2.743(b)) but that there was no requirement to do so in enforcement proceedings such as this one. 10 C.F.R. § 2.743(b)(3); *Tulsa Gamma Ray, Inc.*, 33 NRC 535 (1991). Conam expressed a preference not to use prepared testimony, but the Staff asked us to impose such a requirement, based on our authority to control the proceeding. The Board declined to require prepared testimony, although it indicated that either party could elect to file prepared testimony if it desired. The Board ruled it would require the filing of lists of documents and witnesses, on a schedule to be determined later. Tr. 19-22.

c. The Board stated that the hearing would be held in Chicago, Illinois, at a location and on a schedule to be determined later (Tr. 22-23).

d. The Board indicated that various filings should be in electronic form, to the extent feasible, as well as in paper form as required by the Rules of Practice (Tr. 23-24).

e. The Staff requested, and the Board acknowledged, that Mr. Lake should file a Notice of Appearance, as required by 10 C.F.R. § 2.713.

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

Rockville, Maryland  
January 21, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

B. Paul Cotter, Jr., Presiding Officer  
Thomas D. Murphy, Special Assistant

In the Matter of

Docket No. 40-8968-ML  
(ASLBP No. 95-706-01-ML)

HYDRO RESOURCES, INC.  
(2929 Coors Road, Suite 101,  
Albuquerque, NM 87120)

January 23, 1998

**RULES AND REGULATIONS: INTERPRETATION; TEMPORARY  
STAY OF STAFF LICENSING ACTION; 10 C.F.R. §§ 2.788(f)  
AND 2.1263**

Claims of irreparable injury to natural, historic, and religious resources from premining ground clearing activities present the type of potentially harmful activities the temporary stay provision (10 C.F.R. § 2.788(f)) was meant to prevent.

**RULES AND REGULATIONS: INTERPRETATION; TEMPORARY  
STAY OF STAFF LICENSING ACTION; 10 C.F.R. §§ 2.788(f)  
AND 2.1263**

Potentially harmful action may be stayed until such time as a ruling can be made on the merits of a motion to stay the effectiveness of a Staff licensing action, usually until such time as the other parties have been given an opportunity to provide their answers.

**MEMORANDUM AND ORDER**  
**(Granting Temporary Stay of Staff Licensing Action**  
**and Ruling on Motions)**

On January 15, 1998, Petitioners Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) (Petitioners) filed a request entitled "ENDAUM's and SRIC's Motion for Stay, Request for Prior Hearing, and Request for Temporary Stay" (Stay Motion). The motion requests the Presiding Officer to stay the effectiveness of the Staff's issuance on January 5, 1998, of a materials license to Hydro Resources, Inc. (HRI or Applicant), for an *in situ* leach mine and milling operation in Church Rock and Crownpoint, New Mexico, pending the completion of: (1) a hearing on the application; and (2) an historic properties review. Petitioners further request in their motion that the Presiding Officer immediately grant a temporary stay to preserve the status quo without waiting for the filing of any answers to the Stay Motion.

Two other filings are relevant here. On January 21, 1998, Petitioner Mervyn Tilden filed a multipurpose pleading which included a request for a temporary restraining order. Mr. Tilden filed a similar, second pleading by telefax on January 20, 1998. In addition, on January 5, 1998, a Petition for Leave to Intervene was faxed to the Presiding Officer on behalf of the Eastern Navajo Allottees Association (Allottees). Members of the Allottees have leased a portion of their land at issue here to HRI for the production of uranium concentrates.

Subsequent to the filing of the Petitioners' Stay Motion, the NRC Staff filed with the Presiding Officer a Request for Extension of Time dated January 20, 1998 (Staff Request). The Staff Request seeks an extension of time until Friday, February 20, 1998, in which to: (1) file a response to the Intervention Petition of the Eastern Navajo Allottees Association; and (2) file a response to the merits of the ENDAUM/SRIC Stay Motion. Staff's Request also argues against the Petitioners' request for an immediate temporary stay to preserve the status quo.

By Telefax copy dated January 20, 1998, Petitioners ENDAUM and SRIC filed a second request entitled "ENDAUM's and SRIC's Motion for Leave to Respond to Eastern Navajo Allottees Association's Intervention Petition and Response to NRC Staff's Request for Extension of Time" (Petitioners' Motion). In its second motion, Petitioners request that they also be given until February 20, 1998, to respond to the Allottees Intervention Petition, the same extended response date the NRC Staff seeks in its request. Petitioners' Motion also responds to the Staff's objection to the Petitioners' request for a temporary stay.

## TEMPORARY STAY REQUEST

Petitioners' January 15, 1998 Motion for Stay requests the Presiding Officer to grant, pursuant to 10 C.F.R. §§ 2.1263 and 2.788(f) (1997), a temporary stay to preserve the status quo without waiting for the filing of any answers to their Stay Motion by the Staff or the Applicant. Section 2.1263 provides in pertinent part that "Applications for a stay of . . . any action by the NRC staff in issuing a license in accordance with § 2.1205(m) are governed by § 2.788 . . . ." Section 2.788 specifies the requirements for an application for a stay. In addition, section 2.788(f) authorizes the Presiding Officer to grant a temporary stay to preserve the status quo without waiting for the filing of answers "[i]n extraordinary cases, where prompt application is made under this section." 10 C.F.R. § 2.788(f); *see also* 10 C.F.R. § 2.1263 (1997).

Petitioners allege in their Stay Motion that historic surveys have not been completed in violation of selected provisions of the National Historic Preservation Act, 16 U.S.C. § 470 (1966). Petitioners find the absence of these surveys to present the necessary "extraordinary" case justifying a temporary stay. Petitioners allege that there will be potential irreparable harm to natural, historic, and religious resources resulting from ground clearing operations which they further allege may take place prior to the Applicant receiving all the approvals it needs to commence its mining activities. Stay Motion at 7-8 & n.9 and 10 n.11; Petitioners' Motion at 6 & n.3.

Applicant has not offered any response to Petitioners' stay request, and Staff's response is at best conclusory. According to Staff,

SRIC/ENDAUM provided no basis showing that, pursuant to 10 C.F.R. § 2.788(f), this is an "extraordinary" case requiring a temporary stay "to preserve the status quo," and since the Stay Request does not specify the length of the requested temporary stay, Staff opposes the SRIC/ENDAUM request for a temporary stay.

Staff Request at 3 n.5. Staff's filing is silent on Petitioners' claims of irreparable injury as a result of noncompliance with the NHPA. Moreover, Staff cites no regulatory basis for a petitioner to establish the length of time for a temporary stay.

At present, neither Petitioners' Motion nor the Staff Request alleges that premining clearing activities are currently under way, nor that a temporary stay would adversely affect Applicant's premining activities. As noted, Applicant has not offered any objection to the temporary stay request.

On the other hand, Petitioners' claims of irreparable injury to natural, historic, and religious resources from premining ground clearing activities presents the type of potentially harmful activities the temporary stay provision was meant to prevent. Potentially harmful action may be stayed until such time as a ruling can

be made on the merits of a motion to stay the effectiveness of a Staff action, usually until such time as the other parties have been given an opportunity to provide their answers. With respect to the temporary stay relief sought, Petitioners' Stay Motion is supported by affidavits and otherwise meets the pertinent requirements as to contents specified in 10 C.F.R. § 2.788 (1997).

Therefore, the effectiveness of the Staff's action in granting Hydro Resources, Inc., a license for its proposed *in situ* mining operations at Church Rock and Crownpoint, New Mexico, shall be temporarily stayed until such time as the Presiding Officer has ruled on the Petitioners' Stay Motion or if, in the Presiding Officer's judgment, intervening circumstances warrant lifting the temporary stay. If the Presiding Officer rules in favor of Petitioners' Stay Motion, the temporary stay could automatically evolve into a stay pending completion of the hearing on the merits of the Applicant's license application.

#### **EXTENSION OF TIME TO ANSWER PETITIONERS' STAY MOTION**

Staff's Request for an extension of time in which to answer the Petitioners' Stay Motion gives as its sole justification that the motion contains over 220 pages of material. Accordingly, Staff states that the "voluminous nature of the Stay Request justifies a liberal extension of time to make an adequate response." Staff Request at 3. Staff further tells the Presiding Officer that Allottees' Attorney does not object to this extension (Staff Request at 2 n.4), that Applicant intends to file its answer on January 26, 1998 (the regulatory filing date), but that Applicant has no objection to the extension for the Staff. Staff Request at 3. Staff tried to negotiate approval from Petitioners for the extension, but the effort was not successful because Staff refused to approve Petitioners' temporary stay request. Staff Request at 3 n.5; Petitioners' Motion at 5-7. Staff's posture is somewhat peculiar since the potential harm from a temporary stay would affect Applicant's planned activities and not the activities of the Staff.

The grant of Petitioners' request for a temporary stay effectively eliminates its reasons for objecting to the extension the Staff seeks. Accordingly, Staff shall have until February 20, 1998, to answer Petitioners' Stay Motion.

#### **PETITIONERS' MOTION TO RESPOND TO ALLOTTEES' INTERVENTION PETITION**

Petitioners move the Presiding Officer to allow them to respond to the Allottees' Intervention Petition. Allottees seek intervention in support of Applicant's

license application. Because the Commission's regulations do not specifically address intervention by proponents of licensing actions, the regulations are silent with regard to the filing of responses to these petitions from parties other than the Applicant and the NRC Staff. See 10 C.F.R. § 2.1205(g). Allottees request participation because no other party is likely to address the issues Allottees may raise as proponents of the mining operations. Significantly, Petitioners also advise that none of the other potential parties objects to its filing a response. Petitioners' Motion at 3-4. Under these circumstances, Petitioners' Motion to file a response to the Allottees' intervention petition is granted.

#### **EXTENSION OF TIME TO RESPOND TO ALLOTTEES' INTERVENTION PETITION**

Petitioners approve of Staff's request to extend the time for responding to the Allottees' Intervention Petition as long as Petitioners are granted the same time for their response. There are no objections to these requests from the other potential parties. Petitioners and the NRC Staff shall have until close of business, Friday, February 20, to have in the hands of the Presiding Officer and the other potential parties to the proceeding their responses to the Allottees' Intervention Petition.

#### **APPROPRIATE HEADING FOR PROCEEDING**

As a further housekeeping matter, by Notice dated December 13, 1996, Jep Hill, Esquire, Counsel for HRI informed the potential parties to this proceeding that the address for Hydro Resources, Inc., had changed from its Dallas, Texas location to one in Albuquerque, New Mexico. The style for the papers filed in this proceeding should have reflected that change, but they have been inconsistent over the last year. Therefore, all potential parties to this proceeding shall adopt the caption with the HRI address in Albuquerque, New Mexico, as set out at the top of this Memorandum and Order.

#### **ORDER**

For all the foregoing reasons, it is, this 23d day of January 1998, ORDERED:

1. Pursuant to 10 C.F.R. §§ 2.1263 and 2.788(f), effective immediately, the effectiveness of the NRC Staff's action in granting Hydro Resources, Inc., a license to conduct *in situ* leach mining activities at Church Rock and Crownpoint, New Mexico, is temporarily stayed until such time as the Presiding Officer rules

on the Petitioners' Stay Motion or intervening circumstances cause the Presiding Officer to lift this temporary stay;

2. NRC Staff shall have until close of business, Friday, February 20, 1998, to have in the hands of the Presiding Officer and the other potential parties to the proceeding its response to the Petitioners' Stay Motion;

3. Petitioners ENDAUM and SRIC may respond to the intervention petition of the Eastern Navajo Allottees Association, and they and the NRC Staff shall have until close of business, Friday, February 20, 1998, to have in the hands of the Presiding Officer and the other potential parties to the proceeding their responses to the Allottees' Intervention Petition;

4. All potential parties to this proceeding shall reflect the address of Hydro Resources, Inc., in the caption of their pleadings as:

HYDRO RESOURCES, INC.  
2929 Coors Road, Suite 101  
Albuquerque, New Mexico 87120

B. Paul Cotter, Jr., Presiding Officer  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 23, 1998