

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 1806

DOCKETED 6/13/00

COMMISSIONERS:

SERVED 6/13/00

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)

GRAYSTAR, Inc.)

Docket No. SSD 99-27

(Suite 103, 200 Valley Road,)
Mt. Arlington, NJ 07856))

CLI-00-10

MEMORANDUM AND ORDER

On May 24, 2000, the NRC staff denied an application by GrayStar, Inc., for registration of its Model GS-42 sealed source and the Model 1 irradiator. The staff found GrayStar's Model GS-42 source design "not acceptable for registration and licensing under 10 C.F.R. 32.210 and 10 C.F.R. 36.21." The staff offered GrayStar an opportunity for a hearing pursuant to 10 C.F.R. § 2.103(b).¹ On June 1, 2000, GrayStar asked the staff to reconsider its denial decision and, in the alternative, sought an agency hearing. The staff recently declined to reconsider its denial decision. This renders GrayStar's hearing request ripe for consideration.

Although the NRC staff's denial of the application for registration relates to Part 32 of our rules, the staff denial decision and GrayStar's request for a hearing appear to arise as well under Part 36, which covers the licensing of irradiators, a form of materials licensing. Part 36

¹ Section 2.103(b) provides that when the NRC staff denies an application it must give the applicant notice of the reasons for the denial and inform the applicant of its "right ... to demand a hearing within twenty (20) days from the date of the notice or such longer period as may be specified in the notice."

does not specify which of the several hearing processes set out in 10 C.F.R. Part 2 applies to irradiator adjudications. Part 2 itself also contains no provision on what hearing process to apply to Part 36 cases. Under our agency's general regulatory scheme, however, the "informal" hearing process set out in Part 2's "Subpart L" ordinarily governs materials licensing cases, including NRC staff denials of requested agency approvals. See Safety Light Corp. (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79 (1992). It is sensible to apply Subpart L to Part 36 cases as well. Like the general run of Subpart L cases, Part 36 involves materials licenses. Moreover, Part 36 specifically refers to Part 30 of our rules and provides that Part 30's general requirements on byproduct material remain applicable. See 10 C.F.R. § 36.1(a). Subpart L expressly covers agency licensing actions "subject to" Part 30. See 10 C.F.R. § 2.1201(a).

For the foregoing reasons, we refer GrayStar's request for a hearing to the Chief Judge of the Atomic Safety and Licensing Board Panel, and direct him to designate a member of the panel to rule on GrayStar's request for a hearing, and if necessary to serve as presiding officer to conduct the hearing itself, pursuant to Subpart L. See 10 C.F.R. § 2.1207(a).

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of June, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-00-10) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
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Washington, DC 20555

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of June 2000