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July 10, 2003

BY ELECTRONIC, FACSIMILE AND U.S. FIRST CLASS MAIL

U.S. Nuclear Regulatory Commission
Office of the Secretary
Attn: Rulemaking and Adjudications Staff
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Re: In the Matter of: CFC Logistics, Inc.
Docket No: 03036239

Dear Sir or Madam:

Please find attached for filing CFC Logistics, Inc.'s Response to Petitioners' Request for a Hearing Regarding the Application for a Materials License (Docket No. 03036239) and Notice of Appearance in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
Counsel of Record to CFC Logistics, Inc.

Enclosures

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

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In the Matter of:)	
CFC Logistics, Inc.)	Docket No.: 03036239
(Materials License Application))	Date: July 10, 2003
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RESPONSE OF CFC LOGISTICS, INC. TO PETITIONERS' REQUEST FOR A HEARING REGARDING THE APPLICATION FOR A MATERIALS LICENSE (DOCKET NO. 03036239)

I. BACKGROUND AND PROCEDURAL HISTORY

CFC Logistics, Inc. ("CFC"), by its undersigned counsel of record, hereby submits this Response to Petitioners' Request for a Hearing Regarding the Application for a Materials License for CFC's facility located in Milford Township, PA. Petitioners Tom Helt, Kelly Helt, and Andrew Ford, through their counsel of record, Sugarman & Associates, P.C. (hereinafter the "Petitioners"), have requested that the Nuclear Regulatory Commission ("NRC") grant them standing for a hearing conducted under NRC's Subpart L hearing procedures regarding CFC's pending NRC materials license application to operate a Gray*Star Genesis Category III irradiator (hereinafter the "Genesis irradiator") at its Milford Township facility. CFC respectfully requests that Petitioners' hearing request be denied as untimely based on Petitioners' failure to properly serve CFC in accordance with NRC regulations. Further, Petitioners' hearing

request should be denied because Petitioners have failed to demonstrate the requisite standing for a Subpart L hearing.

On January 27, 2003, CFC entered into a sales agreement with Gray*Star, Inc. located in Mt. Arlington, NJ, under which CFC would purchase a Genesis irradiator for the purposes of irradiating food and, potentially, other products. Under American National Standards Institute ("ANSI") standards, the Genesis irradiator is classified as a Category III irradiator meaning that it is defined as a self-contained, wet source storage, gamma irradiator.¹

In order to operate the Genesis irradiator, CFC is required to submit a complete materials license application to NRC's Region I office located in King of Prussia, PA. However, prior to submission of this license application, CFC contacted representatives of Milford Township, PA to inform them that CFC would be purchasing the Genesis irradiator. In response, Milford Township held a public meeting on February 4, 2003, at which members of the public and other entities were permitted to participate and representatives of CFC, Milford Township, and Gray*Star, Inc. attended. At this meeting, the Genesis irradiator technology was presented, the NRC regulations applicable to irradiators were reviewed, and public comments were received.

Then, by letter dated February 25, 2003, CFC submitted a license application to NRC's Region I office requesting that NRC authorize CFC to operate a Genesis irradiator using a cobalt-60 sealed source at its Milford Township facility. Since submission of its license application was completed, NRC Region I representatives performed site visits/inspections on five (5) separate occasions to ensure that the installation of the

¹ See ANSI/HPS N43.15-2001, *New American National Standard: Safe Design & Use of Self-Contained, Wet Source Storage Gamma Irradiators (Category III)* (June/July 2001).

Genesis irradiator was performed in accordance with NRC regulations.² A final site visit/inspection has been scheduled for July 10, 2003, to ensure that the completed Genesis irradiator operates in compliance with applicable NRC regulations for irradiators.

By letter dated June 23, 2003, Petitioners submitted a letter to NRC Region I requesting a hearing regarding CFC's pending license application to operate the Genesis irradiator. On June 30, 2003, CFC became aware of Petitioners' hearing request when it received a copy of such hearing request via facsimile from NRC's Region I office. To date, CFC has not received a copy of this hearing request from Petitioners' or their counsel, Sugarman & Associates.

Based on the above-mentioned facts, CFC respectfully requests that Petitioners' hearing request be rejected as untimely due to their, and their counsel's, inability to properly serve such hearing request on CFC. Further, CFC respectfully requests that Petitioners' hearing request be denied because they have failed to demonstrate adequate standing for a Subpart L hearing.

II. NRC REQUIREMENTS FOR PROPER SERVICE AND STANDING

A. NRC Requirements for Proper Service of a Subpart L Hearing Request

Prior to evaluating Petitioners' hearing request to decide whether they have adequately demonstrated standing for a Subpart L hearing, it must be determined whether or not Petitioners have properly complied with NRC regulations regarding the filing and

² For the record, NRC Region I representatives have conducted site visits/inspections on the following dates: (1) February 13, 2003 (Sattar Lodhi); (2) April 2, 2003 (Sattar Lodhi & Suresh Chaudhary); (3) June 5, 2003 (Neil Sheehan, John Kinneman, Frank Costello, Sattar Lodhi); (4) June 10, 2003 (Sattar Lodhi, Duncon White, John Kinneman) and; (5) June 25, 2003 (K. Farrar, Sattar Lodhi, J. Wiggins).

service of its hearing request. NRC's regulations regarding Subpart L hearings may be found at 10 CFR Part 2 entitled *Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders*.

With respect to compliance with NRC's procedural requirements regarding the submission of a request for a Subpart L hearing, NRC has stated that, "[t]he Commission may condition the exercise of that right [to intervention] upon the meeting of *reasonable procedural requirements*."³ *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 469 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983) (emphasis added). Regarding NRC's procedural requirements for proper service of a Subpart L hearing request, 10 CFR § 2.1205(f) & (f)(1) states, "[e]ach request for a hearing *must be served, by delivering it personally or by mail to—(1) the applicant...and (2) [t]he NRC Staff....*" (emphasis added). Should a petitioner fail to properly serve either the applicant or NRC Staff with a Subpart L hearing request, such hearing request should be deemed untimely and, ultimately, should be rejected.

B. NRC Legal Requirements for Standing in a Subpart L Hearing

When the administrative action requested by a petitioner is made subject to a request for a Subpart L hearing, the primary initial concern is whether the petitioner has fulfilled NRC's requirements for standing to be granted a Subpart L hearing. As stated in 10 CFR § 2.1205(h), the Presiding Officer:

shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The

³ The "right" to intervention in the above-cited quotation is referenced in Section 189(a) of the Atomic Energy Act of 1954, as amended. However, the Commission has explicitly stated that, "Section 189(a) of the Atomic Energy Act does not provide an unqualified right to a hearing." *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1045 (1983), *citing BPI v. AEC*, 502 F.2d 424 (D.C. Cir. 1974).

Presiding Officer also shall determine *that the requestor meets the judicial standards for standing* and shall consider, among other factors--,

The nature of the requestor's right under the Act ("AEA") to be made a party to the proceeding;

The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

10 C.F.R. § 2.1205(h) (*emphasis added*).

Standing is not a mere legal technicality. It is, in fact, an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body to deal with a particular grievance. *Westinghouse Electric Corporation*, 39 NRC 322, 331-2 (1994). Judicial concepts of standing should be applied by adjudicatory boards in determining whether a petitioner is entitled to intervene. *Portland General Electric Co.*, 3 NRC 804 (1976); *see also Niagra Mohawk Power Corp.*, 18 NRC 213, 215 (1983) (noting that contemporaneous judicial concepts should be used to determine whether petitioner has standing to intervene). Thus, the propriety of intervention involves both "constitutional limitations" on an adjudicatory body's jurisdiction and "prudential limitations" on its exercise. *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior*, 1997 U.S. Dist. LEXIS 4212, *6 (10th Cir. 1997), *citing Warth v. Seldin*, 422 U.S. 490, 498 (1975).

The "irreducible constitutional minimum" standing test requires a potential litigant to demonstrate that: 1) it has suffered actual or threatened injury, 2) that is caused by, or fairly traceable to, an act that the litigant challenges in the instant litigation, and 3) that is likely to be redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*,

504 U.S. 555, 560-61 (1992); *Georgia Institute of Technology*, 42 NRC 111, 115 (1995); *Envirocare of Utah, Inc.*, 35 NRC 167, 174-5 (1992). These three elements are commonly referred to as injury-in-fact, causation, and redressability. See *Coalition of Arizona/New Mexico Counties for Stable Economic Growth*, 1997 U.S. Dist. LEXIS at *6.

Beyond the constitutional standing test set forth above, “prudential limitations” are also imposed on a potential intervenor’s prospective standing. Prudential considerations include a party not being permitted to assert a generalized grievance and a party not being permitted to assert the rights of third parties. See *Warth*, 422 U.S. at 499. Specifically, prudential standing requirements require a showing that the injury is arguably within the “zone of interests” protected by statutes governing the proceeding. *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970); *Metropolitan Edison Co.*, 18 NRC 327, 332 (1983); *Gulf States Utilities Co.*, 40 NRC 43, 47 (1994).

With regard to injury-in-fact, which may be either actual or threatened, it must be both *concrete* and *particularized*, not *conjectural* or *hypothetical*. As a result, standing should be denied when the threat of injury is too speculative. See *Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994). To show the required injury-in-fact based on an assertion of future harm, NRC has held that future harm “must be threatened, certainly impending, and real and immediate.” *Babcock & Wilcox*, 1993 NRC LEXIS 6, **7-8 (1993). Specifically, prudential standing requirements require a showing that the injury is arguably within the “zone of interests” protected by statutes governing the proceeding. *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970);

Metropolitan Edison Co., 18 NRC 327, 332 (1983); *Gulf States Utilities Co.*, 40 NRC 43, 47 (1994).

III. PETITIONERS' HEARING REQUEST WAS NOT PROPERLY SERVED AND SHOULD BE REJECTED AS UNTIMELY

Based on the above-mentioned NRC regulations and the Commission's long-standing judicial policy, Petitioners' hearing request was not properly served upon CFC and, as such, Petitioners' hearing request should be rejected as untimely. As stated in Section II of this Response, NRC regulations require that a hearing requestor *must* serve a hearing request, either personally or by mail, on *both NRC Staff and the applicant*. See 10 CFR § 2.1205 (f)(1). In fact, as stated above, CFC became aware of Petitioners' hearing request only after receiving a copy of such hearing request via facsimile from NRC's Region I office on June 30, 2003.⁴ Petitioners' hearing request was filed in direct contravention of explicit NRC regulations regarding proper service of *the applicant* for an NRC materials license. Therefore, Petitioners' hearing request should be rejected as untimely.

Further, long-standing Commission judicial policy supports rejection of Petitioners' filing as untimely. It is well-known that, in NRC proceedings, "[c]urrent adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a *prompt yet fair* resolution of contested issues in adjudicatory proceedings." See *NRC Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12 at 3 (emphasis added). "The parties to a proceeding, therefore, are expected to adhere to the time frames

⁴ Even if this Panel does not reject Petitioners' hearing request as untimely, since CFC did not receive notice of the hearing request until June 30, 2003, CFC's Response is timely filed under 10 CFR § 2.1205(g).

specified in the Rules of Practice in 10 CFR Part 2 for filing and scheduling orders in the proceeding.”⁵ *Id.* at 6. Similarly, while it may be permissible to allow latitude to parties regarding *complicated matters* within any hearing process, it is *not permissible* to allow any party the ability to circumvent *simple procedural rules*, such as *service requirements*, whenever it sees fit. Such an abuse of the hearing process should not be tolerated and would set a precedent tempting parties to future NRC proceedings to routinely circumvent *simple procedural requirements*, such as *service requirements*. Therefore, Petitioners’ hearing request should be rejected as untimely, thereby, making it clear that the failure to follow *simple procedural rules* cannot and will not be tolerated.

In addition, CFC fully understands that, in many administrative proceedings, petitioners proceeding *pro se* should be given some latitude when filing hearing requests. Even the Commission has stated, “[p]ro se petitioners will be held to less rigid standards of clarity and precision with regard to the petition to intervene.” *Public Service Electric & Gas Co.* (Salem Nuclear Generating Station Units 1 & 2), ALAB-136, 6 AEC 487, 489 (1973). However, in this case, Petitioners are not petitioning *pro se* and have retained professional legal counsel. On this subject, the Commission has stated that lay representatives are not held to as high a standard as lawyers. *See Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981). Based on the fact that Petitioners violated explicit NRC procedural requirements regarding proper

⁵ Regardless of whether a party is represented by counsel or proceeding *pro se*, all potential litigants should be expected to adhere to the basic deadlines and procedures in the Subpart L hearing process. The Presiding Officer has recently stated in another materials licensing proceeding, “[m]anifestly... the obligation to be aware of the terms of all applicable Rules, and to comply fully with them, extends to all who appear in our adjudicatory proceedings—whether or not lawyers.” *International Uranium Corp.*, Docket No. 40-8681-MLA-11, ASLBP No. 02-795-02-MLA, at 2, fn. 2 (February 15, 2002).

service, despite the fact that they have retained *professional legal counsel*, CFC respectfully requests that Petitioners' hearing request be rejected as untimely.⁶

IV. PETITIONERS' HEARING REQUEST SHOULD BE DENIED BECAUSE PETITIONERS HAVE NOT DEMONSTRATED THE REQUISITE STANDING FOR A SUBPART L HEARING

While CFC asserts that its arguments in Section III of this Response warrant that Petitioners' hearing request should be rejected as untimely, in order to present a full and complete response to such hearing request, CFC also argues that Petitioners' June 23, 2003, hearing request does not sufficiently demonstrate that Petitioners possess the requisite standing for a Subpart L hearing.⁷ CFC will address each of Petitioners' allegations individually.

A. Petitioners Allegations Regarding Proximity to the CFC Facility Are Insufficient to Grant Them Standing

First, Petitioners allege that they have standing for a Subpart L hearing because, "they live approximately half a mile from the proposed irradiation facility."⁸ Petitioners June 23, 2003 Submission at 1. Essentially, Petitioners allege that mere proximity to the

⁶ It is also worth noting that Petitioners' *professional legal counsel* took the time to review NRC's regulations regarding whether their hearing request was filed within 10 CFR § 2.1205 prescribed time limits, but counsel apparently *did not* take the time to read and fulfill the otherwise *simple procedural requirements* regarding proper service.

⁷ CFC notes, for the record, that the arguments presented in Section IV of this Response do not, in any way, imply that CFC is abdicating its arguments regarding Petitioners' improper service of its June 23, 2003, hearing request.

⁸ With respect to the actual persons who are requesting standing for a Subpart L hearing in this case, Petitioners' June 23, 2003, hearing request does not specify exactly who has requested a hearing. The hearing request merely states, "[p]lease accept this letter as a request on behalf of several residents of Milford Township..." While the hearing request specifically alleges that the three persons referenced on page 1 of this Response potentially have standing for a hearing, the hearing request also states "[a]ll of the remaining requestors live less than two miles from the facility." Petitioners' June 23, 2003 Submission at 1. Since the letter does not specifically state who these "residents of Milford Township" are, CFC must assume that only the three (3) persons identified in paragraph 2 of the letter are requesting standing. However, each of CFC's arguments specifically tailored towards the three aforementioned persons may be expanded to address each of the broad concerns outlined in the hearing request.

CFC facility where the Genesis irradiator will be located is enough to demonstrate standing. However, as a general proposition, mere proximity to a facility utilizing nuclear materials is sufficient to grant standing only in cases involving the use of nuclear power reactors. See e.g., *Houston Lighting and Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 443 (1979); *Virginia Electric and Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-522, 9 NRC 54, 56 (1979). Thus, since the CFC facility will be utilizing only a cobalt-60 sealed source for irradiation purposes and not operating a nuclear power reactor, Petitioners argument regarding proximity to the CFC facility is not sufficient to grant standing.

NRC also has stated that, even in a nuclear power reactor proceeding, the fact that a petitioner may reside within a 50-mile radius of a facility will not always be sufficient to establish standing to intervene. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329-30 (1989). In cases outside the nuclear power reactor context, a Licensing Board will consider the nature of the proceeding, and will apply different standing considerations depending upon the type of proceeding. See *Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985). With respect to materials licensing proceedings, such as the instant case, the Commission has stated, "proximity alone does not suffice for standing in materials licensing cases,"⁹ and such a standard would only apply in licensing actions involving a "significant source of radioactivity producing an obvious potential for off-site consequences."¹⁰ Petitioners

⁹ *International Uranium (USA) Corp.*, CLI-98-6, 1998 NRC LEXIS 12, *2, n.1 (April 30, 1998).

¹⁰ *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75, n. 22 (1994) (emphasis added).

have not alleged that the Genesis irradiator involves utilization of a “*significant* source of radioactivity” which will “produce an *obvious* potential for off-site consequences.” In fact, Petitioners’ allegations regarding harm caused by *hypothetical* releases of cobalt-60 or ozone¹¹ merely claim that these *hypothetical* releases will cause harm and not *how* the alleged releases will happen or how much potential harm they will cause. Therefore, without more, Petitioners’ allegations regarding proximity to the CFC facility are not enough for a grant of standing.¹²

An additional important factor considered by NRC in this context is whether the petitioner can demonstrate that the risk of injury extends as far from the facility as petitioner resides. See e.g., *Boston Edison Co. (Pilgrim Nuclear Power Station)*, LBP-85-24, 22 NRC 97, 98-99 (1985), *aff’d on other grounds*, ALAB-816, 22 NRC 461 (1985). In this case, each of Petitioners’ “substantive” allegations is merely *conclusory* and establishes little more than their ability to cite articles or treatises. None of these “substantive” allegations demonstrate that the CFC facility, while it is operating the Genesis irradiator, will pose a significant risk of a release of radiological (cobalt-60) or hazardous (ozone) materials to Petitioners at the distance as far from the CFC facility as Petitioners reside. Even if Petitioners could demonstrate that the CFC facility posed a

¹¹ Petitioners’ make the generalized allegation that “high levels of ozone” will be generated and pose a threat to them because of “its close proximity to the ground.” Petitioners June 23, 2003 Submission at 2. However, nowhere in Petitioners’ hearing request do they allege that ozone will actually be released from the CFC facility, let alone that such ozone will actually reach them and cause them direct harm. Thus, this generalized allegation, without more, is insufficient for a grant of standing because standing will be denied when the threat of injury is too speculative. See *Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994).

¹² NRC has recognized that, in limited circumstances, mere proximity to a facility having cobalt-60, the sealed source used for irradiation in the Genesis irradiator, may be enough to grant standing to a petitioner. See *Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility)*, ALAB-682, 16 NRC 150, 154 (1982). However, this case involved a cobalt-60 *storage facility* and not an irradiator using a *sealed source* of cobalt-60.

potentially significant risk of a release of such materials, they have not alleged a *viable pathway* through which such materials would reach Petitioners at the distance from the facility where they reside. Without more, Petitioners' allegations with respect to proximity to the CFC facility are insufficient to grant them standing.¹³

B. Petitioners' Allegations Regarding a Lack of Regulatory Oversight and Security Measures for Irradiators Are Insufficient for a Grant of Standing

Second, Petitioners allege that "[b]ecause irradiation plants are relatively small, they are often unregulated and lack adequate security, posing a serious threat to national security and the local community." Petitioners' June 23, 2003 Submission at 2. Further, Petitioners state, "[t]here is no public evidence of any precautionary measures for this facility."¹⁴ *Id.* Each of these statements encompasses Petitioners' broad concern that either there are no regulations in effect to control the operation of the Genesis irradiator at the CFC facility or that such regulations, if they exist, are not being followed. However, it is well-settled that assertions of broad public interest in regulatory matters do not establish the *particularized* interest necessary for participation by an individual in NRC adjudicatory processes such as Subpart L hearings. *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983); *see also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)*, LBP-91-1, 33 NRC 15,

¹³ Petitioners state that "[t]he proposed irradiation facility is unsafe because it is not sufficiently isolated from residents of Milford Township." Petitioners do not have legal standing to raise concerns or make allegations on behalf of other citizens and, as such, CFC will not address claims regarding proximity to the CFC facility with respect to citizens other than Petitioners. *See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2)*, LBP-78-11, 7 NRC 381, 387 *aff'd* ALAB-470, 7 NRC 473 (1978).

¹⁴ With respect to this allegation, CFC notes that its license application, which was submitted to NRC more than five (5) months ago, is publicly available and contains each of the "precautionary measures" for the CFC facility.

28 (1991). Therefore, Petitioners' allegations regarding the lack of regulatory oversight and security measures for irradiators are insufficient for a grant of standing.

C. Petitioners' Allegations Regarding Transportation of Cobalt-60 to the CFC Facility are Insufficient for a Grant of Standing

Third, Petitioners allege that, "irradiation plants must be regularly replenished with cobalt, thereby increasing transportation hazards (nationally and locally) as frequent shipments of highly radioactive material must be made to the plant." Petitioners' June 23, 2003 Submission at 2. This allegation is not sufficient to grant Petitioners standing for a Subpart L hearing.

Initially, Petitioners' allegations regarding increases to transportation hazards from the shipment of cobalt-60 to the CFC facility on a *national* basis are not sufficient for a grant of standing. In Commission practice, a "generalized grievance" shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. See *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC at 333. Thus, Petitioners' cannot be granted standing solely on the basis of a *national* interest shared by a large class of citizens in transportation hazards.

In addition, Petitioners' allegations regarding increases to transportation hazards from the shipment of cobalt-60 to the CFC facility on a *local* basis are not sufficient for a grant of standing. While Petitioners go to great length to state that transportation of cobalt-60 to the CFC facility will increase local transportation hazards, they do not specifically allege that such transportation hazards will directly harm them. Petitioners do not describe how transportation of cobalt-60 to the CFC facility will directly affect them, how the cobalt-60 *can and will be* released from its United States Department of

Transportation (“DOT”)-approved transportation containers, and, if released, how the cobalt-60 will reach Petitioners and cause them a *concrete or particularized injury-in-fact*.¹⁵ Therefore, since Petitioners do not even allege, let alone prove, a *concrete or particularized injury-in-fact* from the transportation of cobalt-60 to the CFC facility, their allegations regarding an increase in transportation hazards on a *local* basis are insufficient for a grant of standing.

D. Petitioners’ Allegation that Residents Will Be Harmed By Release of Cobalt-60 Contaminated Water Is Insufficient for a Grant of Standing

Finally, Petitioners’ state that, “the public sewer system [will be] contaminated after introducing cobalt-60 contaminated water into the system [and] residents will be affected....”¹⁶ Petitioners’ June 23, 2003 Submission at 2. However, this allegation

¹⁵ Moreover, the preamble to 10 CFR Part 51 states explicitly that the transportation of radioactive materials does not pose any significant *radiological* threat to public health and safety. The DOT found in an EA on the transport of radioactive materials that “the risks of highway transport are so low that the regulations authorizing such transport will have no significant environmental impact.” In NUREG-0170, the Commission considered the environmental impacts of the transportation of all types of radioactive materials, and it set forth NRC’s conclusion that “the environmental impacts, radiological as well as non-radiological, of both the normal transportation of radioactive materials and of the risk and consequent environmental impacts attendant on accidents involving radioactive material shipments were sufficiently small that shipments by *all* modes of transport should be allowed to continue and no immediate changes to NRC regulations were needed.” These regulations dealt with the transport of *high-level radioactive waste or materials* while cobalt-60, as a sealed source, poses much less risk of radiological exposure during transportation. Therefore, the transportation of cobalt-60 materials to the CFC facility, in and of itself, does not pose any significant *radiological* threat to public health, safety or the environment. See 49 Fed. Reg. 9352, 9374 (March 12, 1984).

¹⁶ Petitioners also have alleged that “[s]ome irradiation facilities expose workers to dangerous levels of radiation when they frequently have to open irradiation chambers.” Petitioners’ June 23, 2003 Submission at 2. This allegation also includes citation to incidents in the State of New Jersey where workers were harmed by exposure to cobalt-60. See *id.* Petitioners do not have legal standing to raise concerns on behalf of workers who are not members of the group requesting a hearing. In fact, NRC has found that a petitioner cannot assert the rights of third parties as a basis for intervention. See *Detroit Edison Co.*, (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387 *aff’d* ALAB-470, 7 NRC 473 (1978). Further, with respect to facility workers, NRC has made clear that a group does not have standing to assert the interest of plant workers, where it has no such workers among its members. *Pacific Gas and Electric Co.*

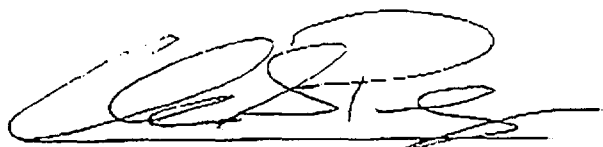
merely raises a generalized claim that, should cobalt-60 from the CFC facility enter the Milford Township sewer system, members of the public could be harmed. If Petitioners raise this generalized claim on a "township-wide" basis, then, as stated above, a "generalized grievance" shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC at 333. If Petitioners raise this generalized claim merely on the basis that it will harm them, then such a claim is insufficient because they do not allege how the cobalt-60 will be released from the CFC facility into the public sewer system, how the cobalt-60 will reach them through the public sewer system, and what specific potential harm the cobalt-60 will cause them. Therefore, without more, this speculative allegation of a *conjectural and hypothetical* injury is insufficient for a grant of standing because, as noted above, standing should be denied when the threat of injury is too speculative. *See Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994).

(Diablo Canyon Nuclear Plant, Units 1 & 2), LBP-93-1, 37 NRC 5, 11-12 (1993). While Petitioners do not seek organizational standing, this particular *group* of Petitioners cannot assert the rights of facility workers when no member of this *group* is a facility worker.

V. CONCLUSION

For the aforementioned reasons, CFC respectfully requests that Petitioners' hearing request be rejected as untimely based on their failure to properly serve such hearing request upon CFC. Further, CFC respectfully requests that Petitioners' hearing request be denied because Petitioners have not demonstrated the requisite standing for a Subpart L hearing.

Respectfully Submitted,



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

In the Matter of:
CFC Logistics, Inc.

(Materials License Application)

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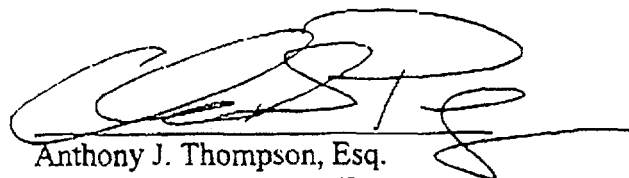
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NOTICE OF APPEARANCE

Anthony J. Thompson, Esq. and Christopher S. Pugsley, Esq., counsel to CFC Logistics, Inc. ("CFC"), in the above-captioned matter hereby submit their notice of appearance. Mr. Thompson's and Mr. Pugsley's firm name and address are as follows:

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Respectfully submitted,



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

In the Matter of:)
CFC Logistics, Inc.) Docket No. 03036239
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(Materials License Application)) July 10, 2003
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_____)

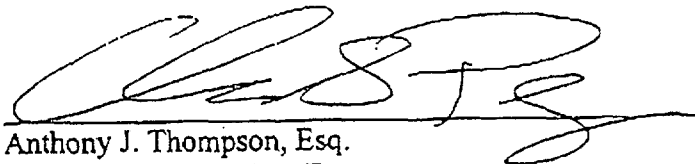
CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the foregoing Response of CFC Logistics, Inc. to Petitioners' Request for a Hearing Regarding the Application for a Materials License (Docket No. 03036239) and Notice of Appearance in the above-captioned matter have been served upon the following via electronic mail, facsimile and U.S. First Class Mail on this 10th day of July, 2003.

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