

RAS 6636

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DOYLESTOWN, PA 18901

215-348-8786 • FAX: 215-230-1922

\* Also admitted in NY, DC

July 15, 2003

DOCKETED  
USNRC

U.S. Nuclear Regulatory Commission  
Office of the Secretary  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

July 18, 2003 (3:07PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF


RE: In the Matter of CFC Logistics, Inc.  
Materials license application  
Docket No. 03036239

Dear Sir or Madam:

Please find the enclosed Contingent Motion for Waiver of Regulation pursuant to the above matter. Copies of the enclosed have been also been served on CFC Logistics, Inc. and John Kinneman of the U.S. Nuclear Regulatory Commission, Region I. Please return a file-stamped copy in the enclosed envelope.

Thank you for your time and consideration in this matter.

Sincerely,



Robert J. Sugarman  
Counsel for Requestors

Enclosures

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In matter of :  
CFC LOGISTICS, INC. : DOCKET NO. 03036239  
materials license application :  
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CONTINGENT MOTION FOR WAIVER OF REGULATION

Pursuant to 10 C.F.R. § 2.730 (Motions) and 10 C.F.R. § 2.1329 (Waiver of a rule or regulation), requestors move that the Commission waive 10 C.F.R. § 2.1205(f)(1) requiring service of their hearing request by requestors upon CFC Logistics, Inc. and aver as the basis thereof the following:

1. Applicant CFC Logistics, Inc. has requested that the Commission dismiss the hearing request because it was not served on CFC Logistics, Inc. by requestors, but by the Commission staff.

2. Initially, requestors believe they did not violate 10 C.F.R. § 2.1205(f)(1) (service required). The rule states, "[h]earing requests...must be served [to] ensure receipt by close of the business day on the due date for the filing." 10 C.F.R. § 2.1313(a). Further, a requestor "...shall file a request for a hearing within - ...(2) If a Federal Register notice is not published in accordance with paragraph (d)(1), the earliest of (i) Thirty days after the requestor receives actual notice of a pending

application..." 10 C.F.R. § 2.1205(d). Some requestors did not become aware of the CFC Logistics, Inc. application and its status until less than thirty days ago. Applicant received service on June 30 and again today (See Certificate attached) - less than 30 days before the "due date" (See list of such requestors attached as Exhibit A and Affidavits of B. Zerbert, J. Grabowski, and C. Fletcher attached as Exhibits B, C, and D respectively). In other words, notice of the pending application was not published in the Federal Register, and because some requestors are still within the thirty day time period to file a hearing request, they timely served CFC Logistics, Inc. in compliance with 10 C.F.R. § 2.1205(f)(1).

3. In the alternative, relief should be granted because of special circumstances concerning the subject of the hearing, application of 10 C.F.R. § 2.1205(f)(1) to the service of the hearing request by requestors upon CFC Logistics, Inc. does not serve the purpose for which it was created, as follows:

a. The requested license to use cobalt-60 is for a proposed irradiation facility within two miles of the requestors.

b. Requestors have had no opportunity to present evidence relative to this application, and may have no such opportunity if the Commission does not grant this motion.

4. CFC Logistics, Inc. will not be prejudiced by this waiver because it received notice of the hearing request from the

Commission shortly after the Commission received notice; CFC Logistics, Inc. subsequently filed a lengthy answer to the hearing request, and did so within ten (10) days of receiving notice of the hearing in compliance with 10 C.F.R. § 2.1307.

5. Requestors were not knowingly in default, and followed Commission advice in filing the petition. Counsel was retained and given direction to file just at the thirty days period after some of the clients (Philip Stein and Judy Szela) became aware of the application and the status. In filing the request for a hearing, requestors consulted Karl Farrar Esq., NRC General Counsel in King of Prussia, PA, for guidance and direction as to procedures to follow.

a. Mr. Farrar directed respondents that a letter requesting the hearing should be addressed to John Kinneman at the NRC in King of Prussia, PA, and the NRC Office of General Counsel in Rockville, MD.

b. Mr. Farrar did not inform respondents that they must or should send a copy of this letter to CFC Logistics, Inc. (Affidavit of C. Bryan attached as Exhibit E).

c. Respondents attempted in good faith to provide adequate and proper service, assuming the Commission would provide further notice or direction.

6. Strict enforcement of 10 C.F.R. § 2.1205(f)(1) as it applies to the service of the hearing request by requestors upon

CFC Logistics, Inc. would needlessly prevent the Commission from examining the hearing request on the merits, and would prevent requestors from presenting evidence due to a mere non-prejudicial technicality.

WHEREFORE, requestors respectfully move that the Commission waive 10 C.F.R. § 2.1205(f)(1) as it applies to the service of the hearing request upon CFC Logistics, Inc.



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ROBERT J. SUGARMAN  
I.D. No. 03332  
Counsel for Respondent

OF COUNSEL:

SUGARMAN & ASSOCIATES  
11<sup>th</sup> Floor Robert Morris Building  
100 North 17<sup>th</sup> Street  
Philadelphia, PA 19103  
215-864-2500

DATED: July 15, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In matter of  
CFC LOGISTICS, INC.  
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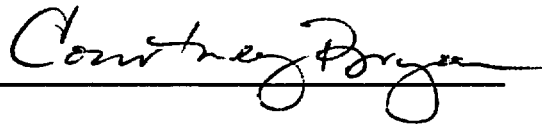
DOCKET NO. 03036239

CERTIFICATION OF SERVICE

This is to certify that in this case complete copies of all  
papers contained in the Request for Hearing have been served upon  
the following persons, by first class mail and facsimile on

July 15, 2003:

Anthony J. Thompson, Esq.  
Christopher S. Pugsley, Esq.  
Law Offices of Anthony J. Thompson, P.C.  
1225 19<sup>th</sup> Street, N.W.  
Second Floor  
Washington, DC 20036  
Facsimile: (202) 496-0783



COURTNEY BRYAN

SUGARMAN & ASSOCIATES  
100 N. 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 864-2500

Exhibit A

Hearing requestors within thirty day time period<sup>1</sup>

Anita Boyer  
2006 Huber Drive  
Quakertown, PA 18951  
(215) 538-7441

Christina Butcher  
1999 Huber Drive  
Quakertown, PA 18951  
(215) 536-6274

Nancy Comfort  
Huber Drive  
Quakertown, PA 18951  
(215) 804-0163

Cliff Evan  
2017 Huber Drive  
Quakertown, PA 18951

David Fhl  
2067 Huber Drive  
Quakertown, PA 18951

Catherine Fletcher  
2086 Huber Drive  
Quakertown, PA 18951  
(215) 529-4749

Suzi Glowaski  
2007 Huber Drive  
Quakertown, PA 18951  
(215) 538-2525

John Grabowski  
2065 Huber Drive  
Quakertown, PA 18951  
(215) 538-9155

Jennifer Howlett  
2000 Huber Drive  
Quakertown, PA 18951  
(215) 538-7945

Roseanne Kelsall  
2083 Huber Drive  
Quakertown, PA 18951  
(215) 529-4756

Barbara Lorman  
2082 Huber Drive  
Quakertown, PA 18951  
(215) 529-1306

Robert G. Urich  
Jennifer Urich  
2013 Huber Drive  
Quakertown, PA 18951  
(215) 529-1630

Brian Zerbert (originally  
misspelled as Zunt)  
2066 Huber Drive  
Quakertown, PA 18951  
(215) 536-0565

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<sup>1</sup>Requestor Judy Szela told these individuals about the CFC Logistics, Inc. license application on June 19, 2003.

BRIAN ZEBERT, Pursuant to 28 USC Section 1746,  
States as follows:

- 1 I live at 2066 Huber Dr., Quakertown, PA 18951
- 2 On, June 19th, I became aware of the CFC Logistics, Inc. license Application for a proposed irradiation facility.
3. I learned of the license application on June 19th because a lady knocked on my door.

I don't want this in my neighborhood because of accidents, terrorism, and the lowering of my property value.

The foregoing is true and correct, subject to the penalties for unsworn perjury.

Executed this day July 14, 2003.

Brian Zebert  
Brian Zebert.

215 536-0565 (H)

267-246-7972 (W)



Exhibit C

7-14-03

## Affidavit

John GRABOWSKI pursuant to 28 USC Section  
1746, STATES AS FOLLOWS:

- 1- I LIVE AT 2065 HUBER DR. QUAKERTOWN PA 18951  
John GRABOWSKI 215-529-9978  
215-538-9155
- 2- ON JUNE 19TH, I BECAME AWARE OF THE CFC  
LOGISTIC, INC. LICENSE APPLICATION FOR A PROPOSED  
IRRADIATION FACILITY
- 3- I LEARNED OF THE LICENSE ON JUNE 19TH WHEN A  
LADY CAME TO MY DOOR.

BECAUSE OF THE DANGER OF THE PLANT  
REDUCE HOME VALUES AND TERRORISM

THE FOREGOING IS TRUE AND CORRECT, SUBJECT TO  
THE PENALTIES FOR UNSWORN PERJURY.

EXECUTED THIS JULY 14TH 2003.

John Grabowski

Exhibit D

## Affidavit

Catherine Fletcher, pursuant to 28 USC Section 1746, states as follows:

1. I live at 2086 Huber Dr 215-529-4749
2. On 6-19-03 I became aware of the food irradiation facility.

3. I learned of this license application because ~~Quoniam knocked at the door~~

Reasons don't want: Because its <sup>they plant</sup> dangerous + I don't want that done to my food. I'm afraid of terrorist attacks. It will affect my property value.

The above is true subject to penalties for unsworn perjury.

7/14/03

Catherine Fletcher

Exhibit E

**AFFIDAVIT**

Courtney Bryan, pursuant to 28 USC Section 1746, states as follows:

1. I am employed as a legal intern in the office of Sugarman & Associates.

2. On or around June 20, 2003, I called Karl Farrar, Esq., NRC General Counsel in King of Prussia, PA, and asked for assistance in filing a request for a hearing pursuant to a license application from CFC Logistics, Inc.

3. I spoke to Mr. Farrar, and he instructed me to send the request for a hearing in the form of a letter addressed to John Kinneman, Branch Chief, NRC in King of Prussia and the NRC Office of General Counsel in Rockville, MD.

4. Mr. Farrar did not direct me to send a copy of this letter to CFC Logistics, Inc.

The foregoing is true and correct, subject to the penalties for unsworn perjury.

Executed this 15<sup>th</sup> day of July, 2003.

  
Courtney Bryan

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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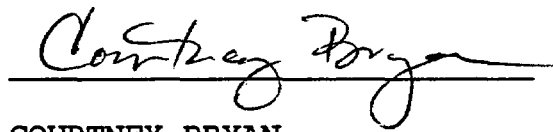
CERTIFICATION OF SERVICE

This is to certify that in this case complete copies of all  
papers contained in the Contingent Motion for Waiver of  
Regulation have been served upon the following persons, by first  
class mail and facsimile on July 15, 2003:

Anthony J. Thompson, Esq.  
Christopher S. Pugsley, Esq.  
Law Offices of Anthony J. Thompson, P.C.  
1225 19<sup>th</sup> Street, N.W.  
Second Floor  
Washington, DC 20036  
Facsimile: (202) 496-0783

U.S. Nuclear Regulatory Commission  
Office of the Secretary  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20851  
Facsimile: (301) 415-1101

John Kinneman  
Branch Chief, Region I  
U.S. Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, PA 19406  
Facsimile: (610) 337-5269

A handwritten signature in cursive script, reading "Courtney Bryan", is written over a horizontal line.

COURTNEY BRYAN

SUGARMAN & ASSOCIATES  
100 N. 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 864-2500