

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Presiding Officer
Dr. Charles N. Kelber, Special Assistant

In the Matter of
CFC LOGISTICS, INC.
(Materials License)

Docket No. 30-36239-ML
ASLBP No. 03-814-01-ML
August 13, 2003

PREHEARING ORDER

(Scheduling Additional Filings and Possible Oral Argument)

As contemplated by our July 31 Order, a prehearing teleconference in which all the litigants participated was held on August 7 in this Subpart L proceeding involving a proposed food processing irradiator in Quakertown, Pennsylvania. The July 31 Order indicated that “counsel should be prepared to discuss, among other things, whether . . . proceedings [to resolve this matter] should include any supplemental filings and/or an oral argument on the legal issues thus far raised.” During the August 7 conference call, those and a number of other subjects were discussed, all of which are reflected in the Transcript (except, of course, for the potential settlement discussions initiated by the Presiding Officer pursuant to 10 C.F.R. § 2.1241 (see Tr. 84-85)).

As a result of that conference, and to focus more sharply the matters touched on in the disparate filings thus far presented by the Petitioners (certain named residents of Milford Township) and the Applicant CFC Logistics,¹ the following schedule was set for resolving the

¹ The NRC Staff having previously elected, as is its right, not to participate in the proceeding, it had at the time of the call made no filings with us. As a result of our July 31 Order (under the authority of 10 C.F.R. § 2.1213) and the prehearing conference call, we will have the benefit of the Staff’s views, at least on the preliminary matters that are the subject of this Order. See second bulleted item on page 2 below.

preliminary issues of (1) the standing of the various Petitioners (see 10 C.F.R. § 2.1205(e),(h) and Tr. 27-29, 33-34, 36-38, 42-43, 74-75, 79-81), and (2) the germaneness of the “areas of concern” they seek to raise (see 10 C.F.R. § 2.1205(e)(3), (h) and Tr. 43-45):

- The Petitioners will file by Thursday, August 14 a statement providing (1) the “as the crow flies” distance, as near as can be readily determined, of the residences of the various Petitioners from the Applicant’s site, and (2) a more focused statement of the “areas of concern” intended to be presented in the earlier filings.
- The NRC Staff will file by Monday, August 25, a brief on the questions of standing and germaneness. That brief is to pay particular attention to the question the parties have raised as to whether, for standing purposes, the radioactive source is to be considered in the shielded position it would occupy in the irradiator or, as the Applicant characterized the opposing viewpoint, in unshielded “isolation” (see Tr. 74-75, 79-81), and will then provide the Staff’s view on whether, applying the standards the Staff believes appropriate, the Petitioners have standing and which, if any, of their issues are germane to this proceeding.
- The Petitioners and the Applicant will file on Wednesday, September 3 (simultaneously by electronic transmission at 5:00 PM) responses to the Staff’s brief.
- If, after reviewing the aforementioned documents, the Presiding Officer determines it useful to reaching a decision in the matter, oral argument on the issues of standing and germaneness will be held -- at a suitable location in

- Quakertown, Allentown or Doylestown to be determined -- beginning at 5:30 PM on Wednesday, September 10 and concluding by 8:00 PM (see Tr. 49-70).²

We take this opportunity also to note for the record that the litigants requested the Presiding Officer to participate yesterday afternoon in an impromptu (and therefore not transcribed) conference call involving a disagreement among the parties -- arising after the August 7 call -- about the availability to Petitioners' counsel of certain pages of the pending Application which may be generally protected from disclosure because they either contain trade secrets or involve national security matters, or both (cf. Tr. 75-76, 80). The NRC Staff represented that it would be making an early determination on those counts, and the Presiding Officer and the parties agreed on the procedure that would follow depending on the nature of those determinations. Other matters, generally involving clarifying the nature of the filings the litigants are about to make, were also discussed.

The Staff will notify the Presiding Officer and the other litigants when it makes the determinations referred to in the previous paragraph. The Presiding Officer will notify the litigants as soon as appropriate space for the possible September 10 oral argument is reserved.

It is so ORDERED.

BY THE PRESIDING OFFICER

/RA/

Rockville, Maryland
August 13, 2003

Michael C. Farrar
ADMINISTRATIVE JUDGE

² As is customary, oral argument will be presented by counsel for the three litigants, with members of the public welcome to attend this evening session as observers, not as participants. At the oral argument, the views of those opposed to the Applicant's proposal will in effect be represented by counsel for the Petitioners, who triggered this matter by presenting their opposition in the formal request they filed seeking a hearing. If a hearing is granted on their pending formal request, others will thereafter also have the opportunity to seek to participate formally therein (see 10 C.F.R. § 2.1205(j), (k)).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CFC LOGISTICS, INC.) Docket No. 30-36239-ML
QUAKERTOWN, PENNSYLVANIA)
)
(Materials License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING ORDER (SCHEDULING ADDITIONAL FILINGS AND POSSIBLE ORAL ARGUMENT) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 30-36239-ML

LB PREHEARING ORDER (SCHEDULING ADDITIONAL
FILINGS AND POSSIBLE ORAL ARGUMENT)

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of August 2003