

RAS 6824

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

DOCKETED
USNRC

September 16, 2003 (2:46PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:

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

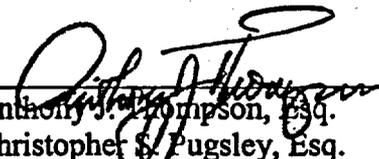
In the Matter of:
CFC Logistics, Inc.
(Materials License Application)

)
) Docket No.: 30-36239-ML
)
) ASLBP No.: 03-814-01-ML
)
) Date: September 12, 2003
)
) License Control No. 132825
)

CFC LOGISTICS, INC.'S FILING OF PROTECTIVE ORDER FOR PRESIDING
OFFICER'S APPROVAL

CFC Logistics, Inc. (CFC), by its undersigned counsel of record, hereby submits this Protective Order entered into by and between Robert Sugarman of Sugarman & Associates and CFC for the purpose of providing confidentiality protection for certain documents in this proceeding for the Presiding Officer's approval and signature.

Respectfully Submitted,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
COUNSEL FOR CFC LOGISTICS, INC.

Template = SECY-049

SECY-02

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:**

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

In the Matter of:
CFC Logistics, Inc.
(Materials License Application)

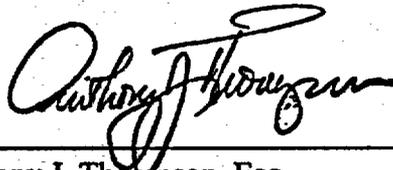
)
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)
) License No. 132825
)
)
) Date: September 12, 2003
)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing CFC Logistics, Inc.'s Filing of Protective Order for Presiding Officer's Approval in the above-captioned matter has been served upon the following via Facsimile, U.S. First Class Mail and Messenger as indicated by an asterisk on this 12th day of September, 2003.

1. Robert J. Sugarman, Esq.
Sugarman & Associates, P.C.
100 North 17th Street
Philadelphia, PA 19103
Facsimile: 215.864.2501
Email: RJSugarman@aol.com
2. Office of the Secretary
Attn: Rulemaking and Adjudication
Staff
U.S. Nuclear Regulatory
Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20851
Facsimile: 301.415.1101
Email: secy@nrc.gov

3. Stephen H. Lewis, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Mail Stop #0-15D21
Washington, DC 20555-0001
Facsimile: 301.415.3725
Email: shl@nrc.gov
4. Administrative Judge Michael C. Farrar*
Presiding Officer
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Two White Flint Building
Rockville, MD 20852
Facsimile: 301-415-5599
Email: mcf@nrc.gov
5. Dr. Charles N. Kelber
Special Assistant
Atomic Safety and Licensing Board
Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory
Commission
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6. Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
7. Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
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8. Diane Curran, Esq.
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(CFCERTIFICATEOFSERVICENOEMAIL.COM)



RECEIVED
SEP 08 2003

BY:.....

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") entered into as of this twenty-eighth (28th) day of August in the year 2003, by and among CFC Logistics, Inc., a Pennsylvania corporation ("CFC"); Sugarman & Associates, a privately-held entity (Sugarman).

WHEREAS: The Presiding Officer of the NRC's Atomic Safety and Licensing Board in the case of *In the Matter of CFC Logistics, Inc.* (Docket No. 30-36239-ML) (ASLBP No. 03-814-01-ML) has ordered that certain documents be produced,

WHEREAS: CFC and Sugarman intend to provide adequate protections for such documents, and

WHEREAS: CFC and Sugarman intend to enter into a contract providing for such protections,

In consideration of the mutual promises contained herein, the parties, CFC and Sugarman agree as follows:

1. CFC intends to disclose to Sugarman the following proprietary materials, prepared and/or submitted to the NRC in support of CFC's license application for the operation of a Category III irradiator at its cold-storage facility located in Quakertown, PA dated February 19, 2003:

a. The following proprietary drawings, submitted to the NRC:

- CHL: 33248-201-000-REV02**
- CHL: 33248-202-000-REV03**
- CHL: 33248-203-000-REV01**
- CHL: 33248-204-000-REV02**
- CHL: 33248-205-000-REV04**
- CHL: 33248-206-000-REV04**
- CHL: 33248-207-000-REV01**
- CHL: 33248-208-000-REV00**

which currently are labeled as "trade secrets" by NRC under 10 CFR § 2.790 (a)(4).

CFC LOGISTICS, INC

4000 AM Drive, Quakertown, Pennsylvania 18951 (T) 215.529.1500 (F) 215.529.6514

- b. **The following proprietary documents, submitted to the NRC with CFC's February 19, 2003 license application: (1) Pages 74 & 75 entitled *Radiation Safety Program- Security* and (2) procedures GI-201 entitled *Source Repositioning*, GI-202 entitled *Source Loading*, and GI-203 entitled *Source Unloading*.**

which are currently labeled as "privileged and confidential" by NRC under 10 CFR § 2.790(a)(4).

2. With respect to the materials referenced in Section 1 of this Agreement, such materials (hereinafter "Protected Information") shall include but are not limited to the following: original or reproduced copies of any and all proprietary drawings, documents, procedures or any other proprietary materials disclosed to Sugarman under this Agreement; any legal pleadings, motions, memoranda or other documents or materials prepared or used by Sugarman which include, reference, implicate, cite or, in any other way, mention the Protected Information; and any and all verbal, electronic, printed or other communications which include, reference, implicate, cite or, in any other way, mention the Protected Information .

3. With respect to the Protected Information referenced in Section 2 of this Agreement, Sugarman agrees to:

- a. **restrict disclosure of all Protected Information only to Sugarman's employees or representatives with a need-to-know basis and designated experts for such Information for purposes of evaluating the Protected Information and only after advising them of the requirements of this Agreement and having them sign an undertaking in the form of Attachment A agreeing to be bound by the terms of this Agreement;**
- b. **not disclose any of the Protected Information to any other third party unless required to do so by law, regulation or legal process and only after notifying CFC and NRC prior to disclosure of the requirement and providing CFC with the opportunity to seek an appropriate protective order;**
- c. **use the Protected Information only for the purposes of evaluating the CFC license application of February 19, 2003;**
- d. **use the same degree of care with respect to the Protected Information as it uses to protect its own confidential and private information which standard of care shall be no less than reasonable care;**

- e. **return the Protected Information to CFC within 15 days after the date of final NRC action on the CFC license application and/or Court of Appeals, including all original and reproduced copies containing Protected Information then in the possession of Sugarman or its representatives or experts and shall ensure the destruction of any summaries, notes or extracts thereof;**

4. Should Sugarman desire to rely upon, reference, or cite any of the Protected Information, or part thereof, in any comments to the NRC or other administrative agency or judicial tribunal or proceeding at the NRC or other administrative agency or judicial body in connection with the CFC license application of February 19, 2003, Sugarman agrees to utilize appropriate NRC procedures, including those outlined in 10 CFR § 2.790, to assure that the Protected Information is treated as confidential proprietary information;

5. Sugarman agrees that any threatened or existing violation of this Agreement would cause CFC irreparable harm for which it would not have an adequate remedy at law, and that CFC shall be entitled to seek immediate injunctive relief prohibiting such violation in addition to any other rights or remedies. If a party is liable to the other on account of this Agreement, the measure of damages shall include any amount for indirect, incidental, consequential or punitive damages and/or lost profits.

6. The parties recognize that the NRC has been asked by CFC to decide on the confidential status of the Protected Information, and all parties will undertake to provide the level of confidentiality determined by the NRC to be appropriate. CFC, Sugarman, and NRC each has the right to seek changes in the level of confidentiality to be afforded by the NRC, subject to the following:

- a. **Nothing in this Agreement shall be deemed to preclude Sugarman from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement. Accordingly, nothing in this Agreement shall be deemed to preclude any party in any other administrative or judicial proceeding from seeking protected status for any such information or materials;**
- b. **Nothing in this Agreement shall be deemed to preclude any party from pursuing any available administrative or judicial appeals with respect to any NRC decision regarding the appropriate confidential treatment to be afforded the Protected Information by the NRC under 10 CFR § 2.790. If, at any time, the NRC finds that the Protected Information need not be protected, Sugarman agrees that the Protected Information will continue to be protected under this Agreement for an additional (30) days pending an appeal of the NRC decision. Nothing in this Agreement shall be deemed to preclude any**

party from seeking additional administrative or judicial appeals of NRC decisions with respect to the confidential treatment of Protected Information;

7. This Agreement shall be governed and construed in accordance with the laws of the State of Pennsylvania, without giving effect to its principles of conflict of laws. The parties shall submit to the exclusive jurisdiction of the State and federal courts located in the State of Pennsylvania for any dispute arising out of this Agreement.

8. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Agreement shall be construed as if the illegal, invalid or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall be given full force and effect.

9. No party shall assign its right or delegate its duties hereunder to a third party without the prior written consent of the other party.

10. a. Gray*Star and CHL shall retain all rights, title, and interest in and to the Protected Information referenced under Section 1(a) of this Agreement that is transmitted subject to this Agreement.

b. CFC shall retain all rights, title, and interest in and to the Protected Information referenced under Section 1(b) of this Agreement that is transmitted subject to this Agreement.

11. This Agreement shall become effective as of the date first written above. This Agreement contains the entire agreement between the parties concerning the confidentiality and non-disclosure of the Protected Information and no modifications of this Agreement or waiver of its terms and conditions shall be binding unless agreed to in writing by each party hereto.

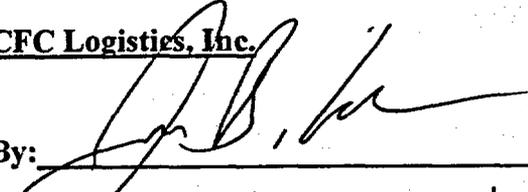
12. The parties agree that its representatives executing this Agreement have the full and complete authority to bind all members of its organization, agency, or company.

CFC Logistics, Inc.

By: _____

Name: _____

Title: _____


James B. Wood
President

Sugarman & Associates

By: 

Name: Robert J Sugarman

Title: Attorney

Atomic Safety and Licensing Board

By: _____

Name: _____

Title: _____

ATTACHMENT A

CONFIDENTIALITY UNDERTAKING

With reference to the Confidentiality and Non-Disclosure Agreement by and among CFC Logistics, Inc. and Sugarman & Associates dated as of August 28, 2003 ("Agreement"), the undersigned affirms that he has read the Agreement and agrees to be bound by the terms and provisions and potential penalties therein as if he/she were himself a party thereto.

Date: 9/2/03

By: 

Name: Michael L. Galbraith

Title: Associate

ATTACHMENT A

CONFIDENTIALITY UNDERTAKING

With reference to the Confidentiality and Non-Disclosure Agreement by and among CFC Logistics, Inc. and Sugarman & Associates dated as of August 28, 2003 ("Agreement"), the undersigned affirms that he has read the Agreement and agrees to be bound by the terms and provisions and potential penalties therein as if he/she were himself a party thereto.

Date: 9/3/03

By: *Mikhail Resnikoff*

Name: Mikhail Resnikoff

Title: Sr. Associates

ATTACHMENT ACONFIDENTIALITY UNDERTAKING

With reference to the Confidentiality and Non-Disclosure Agreement by and among CFC Logistics, Inc. and Sugarman & Associates dated as of August 28, 2003 ("Agreement"), the undersigned affirms that he has read the Agreement and agrees to be bound by the terms and provisions and potential penalties therein as if he/she were himself a party thereto.

Date: 9/3/03

By: 

Name: Diane Curran

Title: attorney for petitioners

Law Offices of Anthony J. Thompson, P.C.

1225 19th Street, NW., Suite 200
Washington, DC 20036
202-496-0780
Fax 202-496-0783
(e-mail): ajthompson@attglobal.net

September 12, 2003

MESSENGER, 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: 3036239-ML
ASLBP No. 03-814-01-ML
License No. 132825

Dear Sir or Madam:

Please find attached for filing CFC Logistics, Inc.'s Filing of Protective Order for Presiding Officer's Approval 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 IUSA

Enclosures

CFCCOVERLETTER1.DOC)