

November 5, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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|---------------------|---|--------------------------|
| In the matter |) | |
| |) | Docket No. 302-362339-ML |
| CFC LOGISTICS, INC. |) | |
| |) | ASLBP No. 03-814-01-ML |
| (Materials License) |) | |

NRC STAFF MOTION FOR MODIFICATION OF LBP-03-20
WITH RESPECT TO DIRECTIONS REGARDING HEARING FILE

INTRODUCTION

Currently in this proceeding the Presiding Officer has required that the Hearing File be provided in the form of paper copies. The Nuclear Regulatory Commission Staff ("Staff") respectfully moves that the procedure be modified to provide that the Hearing File will be created and maintained by a readily accessible list of the documents, with their Agencywide Documents Access and Management System ("ADAMS") accession numbers, dates, and titles. That is an option permitted by the Nuclear Regulatory Commission's ("NRC" or "Commission") regulations. The Staff far prefers to use that procedure for reasons discussed below.

DISCUSSION

In his October 29, 2003 Memorandum and Order (Ruling on Petitioners' Request for an Evidentiary Hearing)¹ the Presiding Officer directed the Staff to file by November 28, 2003 the Hearing File required under 10 C.F.R. § 2.1231(a) "...in the manner prescribed by that Rule and in the form prescribed in the margin." *Slip op.*, at 32. In footnote 42, the Presiding Officer stated:

The hearing file shall be chronologically arranged and prefaced with a numbered index of each item therein, which index shall reflect the name (or in lieu thereof a brief indication of the substance) and the date of each item. Each item in the hearing file shall be separated from the other hearing file items by a substantial colored sheet of paper, to which colored sheet shall be attached the numbered tab

¹ CFC Logistics, Inc. (Materials License), LBP-03-20, 58 NRC __ (2003); hereinafter *slip op.*

for the hearing file item that follows it. The hearing file shall be contained in binders that allow for ready inclusion of any supplements to the original material that may later be located. Any subsequent additions to the hearing file shall contain an index and be organized in the same manner as the original.

51 NRC at 161. Although the footnote does not use the term "paper copies," the Staff considers that requirement to be inherent in the reference to binders and to an index.

Wording very similar to that used in the Memorandum and Order was used in a proceeding that pre-dated the 1999 final rule² that resulted in the current wording of 10 C.F.R. § 2.1231(a)(1).³ Substantially the same wording used in LBP-03-20 has been carried forward in several other proceedings that post-date the final rule.⁴

Section 2.1231(a)(1) permits the Hearing File requirement to be met by reference to the documents through an identification of their availability through the NRC website. Specifically, 10 C.F.R. § 2.1231(a)(1) states that the Hearing File may be provided by "making the file available at the NRC website, <http://www.nrc.gov>."

This provision of 10 C.F.R. § 2.1231 came into effect through the 1999 final rule referenced in footnote 2, above. As explained in the Notice of Proposed Rulemaking ("NOPR"):⁵

When ADAMS becomes operational, NRC intends to discontinue furnishing paper and microfiche copies of its publicly available records to the NRC Public Document

² Final Rule: Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program, 64 Federal Register 48942 (1999).

³ Department of the Army (Aberdeen Proving Ground, Maryland), unpublished, slip opinion, page 1. (Exhibit 1).

⁴ Fansteel, Inc. (Muskogee, Oklahoma Facility), LBP-99-47, 50 NRC 409, 417 (1999); Atlas Corporation (Moab, Utah), LBP-00-04, 51 NRC 53, 63 (2000); U.S. Army (Jefferson Proving Ground), LBP-00-09, 51 NRC 159 (2000); International Uranium (USA) Corporation (White Mesa Uranium Mill), LBP-02-6, 55 NRC 147, 154 (2002). In the Jefferson Proving Ground proceeding, listed above, the Staff filed on November 3, 2003, a motion requesting the same action as requested in this motion. As of the time of filing of the motion in this proceeding, the similar motion in Jefferson Proving Ground is still pending before the Presiding Officer.

⁵ 64 Federal Register 24531 (May 7, 1999).

Room (PDR), located in Washington, D.C., and the Local Public Document Rooms (LPDRs), located near nuclear power plants and other nuclear facilities.

The NOPR further stated that “[t]o reflect the anticipated discontinuance of NRC support of libraries serving as LPDRs, references to NRC LPDRs would be deleted in 10 CFR 2.1231(a)(1)(ii), and (b)...” and in numerous other sections of the Commission’s regulations. 64 *Federal Register* at 24532. Since the September 9, 1999 publication of the Final Rule, ADAMS has become the NRC’s official record keeping system. See Exhibit 2, NRC Office of Public Affairs news release, “NRC Implementation of ADAMS Document Management System,” dated March 31, 2000.

The NRC Staff wishes to create the Hearing File and notify the Presiding Officer, Special Assistant, and parties of its contents through specifically identified ADAMS “packages” that list each document that has been placed into the Hearing File by its ADAMS accession number, its date, and its title. The same format would be used for updates to the Hearing File. Since each document would be listed in the package by its ADAMS accession number, the document would be readily retrievable using the “ADAMS Find” function. Service of the Hearing File may apparently also be accomplished, under the Commission’s regulations, by providing the documents in hard copy, as directed by the Presiding Officer. See, 10 C.F.R. §§ 2.1231(a)(1)(i), 2.1203(e), 2.1205(f) and (k), and 2.712. However, requiring the reproduction, assembling, and distribution of what often is a large volume of documents, in hard copy, is a burden that is no longer required in light of the 1999 modification of the regulations. Staff use of the ADAMS option is also consistent with the intention of the Commission reflected in the 1999 amendment and Exhibit 2 to make ADAMS the NRC’s official record keeping system. Furthermore, the ADAMS option will almost certainly result in more timely provision of the Hearing File and its updates.

The Staff is taking all steps available to it to enable a determination by the Presiding Officer as to this motion well in advance of November 28, 2003, so that the Staff will be able to meet the Hearing File due date, whichever way the Presiding Officer rules. To that end, the NRC Staff has

provided this motion, in draft, to counsel for both Intervenors (certain identified citizens of Quakertown, Pennsylvania) and the Licensee, CFC Logistics. The Staff has requested both parties to e-mail their positions on the motion. The Staff may still receive the parties' e-mail responses later today, in which event the Staff will forward those responses to the Presiding Officer and place them into ADAMS. If the responses are not received that promptly, the Staff would respectfully request the Presiding Officer to designate an appropriate date for the other parties' responses.

CONCLUSION

The NRC Staff, therefore, respectfully moves that the Presiding Officer amend LBP-03-20 to reflect that the Hearing File will be created and maintained by identified ADAMS packages listing each of the documents by its ADAMS Accession Number, its date, and its title.

Respectfully submitted,



Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of November, 2003

*2592 IN THE MATTER OF:
DEPARTMENT OF THE ARMY
Aberdeen Proving Ground, Maryland
Denial of Materials License for M22/GID-3
Automatic Chemical Agent Detector/Alarm

Nuclear Regulatory Commission

Atomic Safety and Licensing Board Panel

Docket No. 030-34610-ML

ASLBP No. 99-768-02-ML

July 12, 1999

Before Administrative Judges: Charles Bechhoefer,
Presiding Officer; Dr. Linda W. Little, Special
Assistant

MEMORANDUM AND ORDER

(Request for Hearing)

By letter dated May 17, 1999, the NRC Staff denied the application for registration and licensing of the model M22/GID-3 Automatic Chemical Agent Detector-Alarm, filed by the Department of the Army (Army or Applicant). If granted, the license would have authorized the distribution of the device under 10 C.F.R. § 32.26.

On June 4, 1999, the Army filed a timely request for a hearing. On June 22, 1999, Administrative Judge Charles Bechhoefer was designated Presiding Officer in this proceeding that is subject to the requirements of 10 C.F.R. Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Also, Administrative Judge Linda W. Little was appointed as a Special Assistant, to assist in taking evidence and preparing a suitable record for review. 64 Fed. Reg. 34690 (June 28, 1999).

Under 10 C.F.R. § 2.1205(b), an applicant for a byproduct materials license (such as the Army) that has been denied a license and files a timely hearing request is entitled to a hearing. Because the Army's June 4, 1999 request for a hearing was timely filed, that request is hereby being granted. Pursuant to 10 C.F.R. § 2.1205(i), the Department of the Army and the NRC Staff are parties to this proceeding.

The Presiding Officer is at this time issuing a Notice of Hearing that will be published in the Federal Register. That Notice will advise of the grant of the

hearing request as well as other matters specified by 10 C.F.R. § 2.1205(j). Inasmuch as no previous notice of opportunity for hearing has been published, the Notice, pursuant to 10 C.F.R. § 2.1205(j)(4), will set a time within which any other person whose interest may be affected may petition for leave to intervene. In addition, the Notice will advise that representatives of interested States, counties, municipalities, or agencies thereof, may request an opportunity to participate pursuant to 10 C.F.R. § 2.1211(b) within thirty days of publication of the Notice, and will also establish conditions under which persons not parties may make limited appearance statements in accordance with 10 C.F.R. § 2.1211(a).

The NRC Staff must provide the Presiding Officer, the Special Assistant and all current parties with a hearing file, consisting of documents of the type described in 10 C.F.R. § 2.1231(b). (The hearing file should contain an index and each document in the hearing file should be separately numbered and tabbed.) Normally, the hearing file would be submitted (mailed) to the Presiding Officer, the Special Assistant and the parties within 30 days of the Presiding Officer's grant of a request for a hearing (which is included in this Memorandum and Order). (Should the Presiding Officer admit additional parties, additional hearing files must be provided or made available to those additional parties within 10 days of the grant of a petition. 10 C.F.R. § 2.1231(a).)

In its response to the designation of a Presiding Officer, the NRC Staff reported that the Army wishes to discuss settlement with the Staff. Given the desirability of settlement, if feasible, I will postpone the filing of a hearing file in this proceeding until three weeks subsequent to the termination of settlement negotiations (if unsuccessful). The parties are directed, jointly or severally as they may wish, to advise me by Monday, August 2, 1999, and thereafter (as necessary) on August 23, 1999 and later dates to be established, of the progress of negotiations. Subject to those conditions, this proceeding will be held in abeyance, as requested by the Staff.

If settlement is not successful, subsequent to receipt of the hearing file (on the schedule outlined above), the Presiding Officer plans to conduct a prehearing conference to define the issues for hearing and establish schedules for further filings in the proceeding. The conference will be conducted either by telephone or in the Atomic Safety and Licensing Board Panel Hearing Room in Rockville, Maryland. Parties are invited to state their preference. In addition, five days prior to any prehearing conference,

the Army (and Staff if it wishes) is requested to have in our hands an outline of disputed issues.

ADMINISTRATIVE JUDGE

*2593 IT IS SO ORDERED.

Rockville, MD.

Charles Bechhoefer,

July 12, 1999

Presiding Officer

1999 WL 516265

Exhibit 2

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No. 00-056

March 31, 2000

NRC Implementation of ADAMS Document Management System

The Nuclear Regulatory Commission will implement its new Agency-wide Documents Access and Management System (ADAMS) as the agency's official record keeping system starting tomorrow. The advent of ADAMS marks the NRC's transition in the management of unclassified, official program and administrative records from a paper-based to an electronic environment. The system offers members of the public faster and broader access to agency documents directly from individual personal computers or through the NRC's Public Document Room in Washington, D.C.

Although the new system will become fully operational tomorrow, the NRC staff has used a phased-in approach to the system. Since November, the NRC has made agency documents available to the public in electronic form through ADAMS. In addition, the Commission has and will continue to provide paper copies of certain publicly-available documents to the Public Document Room until further notice.

Because of this transition period, NRC officials expect the public to experience no major new difficulties in using this system. However, ADAMS has exhibited some technical and procedural problems in its initial period of operation. The agency is currently making improvements to the system to address many of these problems.

The Commission has expressed the hope that members of the public will bear with us and not become frustrated with the new system as technical problems are identified and resolved.

The agency's Public Document Room will continue to assist the public in using ADAMS, performing searches for the public and arranging for reproduction of its documents. Information about ADAMS is available to the public on the NRC web site at <http://www.nrc.gov>.

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NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the matter

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Docket No. 302-362339-ML

ASLBP No. 03-814-01-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF MOTION FOR MODIFICATION OF LBP-03-20 WITH RESPECT TO DIRECTIONS REGARDING HEARING FILE" have been served upon the persons listed below by 1st class U.S. mail, or through deposit in the Nuclear Regulatory Commission's internal mail system, as indicated with an asterisk, and by electronic mail, as indicated with a double asterisk, this 5th day of November, 2003.

Administrative Judge * **

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