

December 4, 2003 (2:41PM)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In matter of :  
CFC LOGISTICS, INC. : DOCKET NO. 30-36239-ML  
materials license application : ASLBP NO. 03-814-01-ML  
:  
:

REQUEST FOR REFERENCE TO COMMISSION

Intervenors have sought the documents underlying the application and approval, and the staff consideration thereof. Although CFC was consistently uncooperative, the Board instructed Intervenors to seek the documents informally. Intervenors have done so, and have been stone walled as expected. (Exhibits A and B).

Pursuant to the Board's Order, therefore, Intervenors now request that the Board refer the matter to the Commission, as an exception to the No Discovery rule, pursuant to 10 CFR section 2.1239(d).

The basis of the request includes the disclosure that the facility is still "developmental", while in operation. Moreover, the nuclear vendor, Reviss, objected to the facility layout, fearing that it might cause concerns for accidents through corrosion of plenum.

Moreover, the underlying contractual discussions, including documents referred to and relied on by the licensee in its November 21, 2003 Opposition to Stay, are admittedly not available. Therefore, CFC's assertion that the documents are irrelevant to whether the irradiator adequately protects public health and safety is unfounded because they are relevant to claims in the Opposition and are needed to confirm the claims.

The National Environmental Policy Act ("NEPA") 42 USC § 4321 requires that full disclosure be made of environmental impacts and documents considered or utilized in evaluating environmental impacts. Full disclosure is required under this section and case law authority. Regulation 10 CFR § 2.1231 stands in the way of NEPA and the Commission should reverse them so they are consistent.

This matter should also be treated with utmost urgency, due to its relevance to the pending stay application.

Respectfully submitted,



Robert J. Sugarman  
Counsel for Intervenors

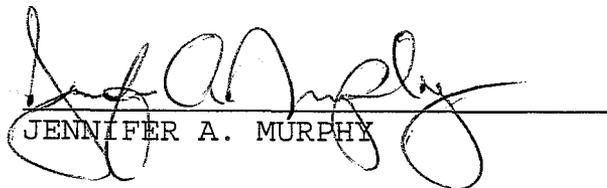
CERTIFICATE OF SERVICE

I, Jennifer A. Murphy, hereby certify that I have served a copy of Request for reference to Commission by first-class mail, email, and facsimile on the following persons on this date:

Anthony J. Thompson, Esquire  
Law Offices of Anthony J. Thompson, PC  
1225 19<sup>th</sup> Street, NW  
Suite 200  
Washington, DC 20036  
FAX 202-496-0783

Stephen H. Lewis, Esquire  
Office of General Counsel  
Mail Stop O - 15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
FAX 301-415-3725

U.S. Nuclear Regulatory Commission  
Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852  
FAX 301-415-1101

  
JENNIFER A. MURPHY

DATED: December 1, 2003

bj: CFC  
ite: 11/24/2003 11:45:00 AM Eastern Standard Time  
om: RJSugarman  
: cpugsley@athompsonlaw.com, ajthompson@athompsonlaw.com

## MEMORANDUM

: Anthony Thomas and Christopher Pugsley

om: Robert J. Sugarman

te: November 24, 2003

: CFC

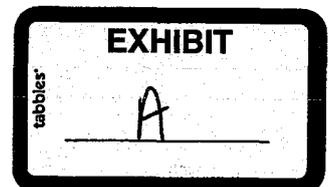
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MEMORANDUM

To: Anthony Thomas and Christopher Pugsley  
From: Robert J. Sugarman  
Date: November 24, 2003  
Re: CFC

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The obvious relevance of these documents is underlined by your selective reference to such matters including the nature of CFC's specifications as being operational, the valve change as being "a test", and other matters which you rely on, but which we have no opportunity to review the underlying documents.

In accordance with the Board's wishes, I am therefore making this request of you. Obviously, the protective order will

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I am surprised not to have heard from you in view of the Board direction that we consult, and in view of your undertaking to check with your client. Nevertheless I will wait until Wednesday, so that there will not be an issue as to who was supposed to contact who.

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

1225 19<sup>th</sup> Street, NW., Suite 200  
Washington, DC 20036  
202-496-0780  
Fax 202-496-0783  
(e-mail): ajthompson@athompsonlaw.com

November 26, 2003

**By Electronic Mail, Facsimile and First Class U.S. Mail**

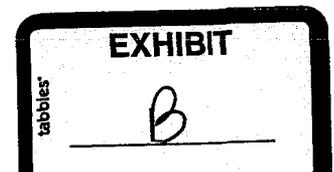
Mr. Robert J. Sugarman  
Sugarman & Associates  
Robert Morris Building-11<sup>th</sup> Floor  
100 North 17<sup>th</sup> Street  
Philadelphia, PA 19103

Dear Mr. Sugarman:

We are in receipt of your most recent electronic message of November 24, 2003 regarding your request for the production of certain documents pertaining to the CFC Logistics, Inc. (CFC Logistics) irradiator currently in operation in Quakertown, Pennsylvania. Specifically, your message requests that CFC Logistics provide you with copies of contractual and design documents and drawings, reviews of such design drawings, and correspondence between CFC Logistics, Gray\*Star, Inc., and REVISS Services Ltd.

As you are well-aware, NRC Subpart L "informal" hearing regulations prohibit discovery of matters that are outside the scope of the license application review process. See 10 CFR § 2.1231. All of the documents submitted by CFC Logistics in support of its license application and those documents submitted pursuant to a request by NRC Staff currently are available for your review either under an existing protective order or on NRC's public document database (ADAMS). None of the documents you have requested in your most recent message were required to be submitted to NRC by regulation or by NRC Staff request and, thus, requests for such documents would be considered "discovery." As such, requests for such documents fall within the purview of Section 2.1231's prohibition on discovery and, CFC Logistics is not required to release these documents to you. Further, since such documents were not required to be submitted by regulation nor were they requested by NRC Staff during its review of CFC Logistics license application, they are irrelevant to this proceeding's purpose which is an evaluation of whether, as licensed, the CFC Logistics irradiator is adequately protective of public health and safety.

With respect to the documents that are publicly available, I have received assurances from NRC Staff that such documents are available and any problems with

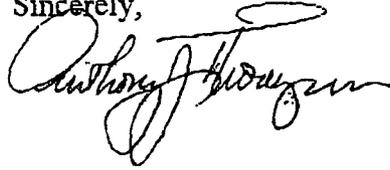


Mr. Robert J. Sugarman  
November 26, 2003  
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their access (i.e., typographical errors, incorrect ML numbers) have been resolved. If you or your expert has any problems retrieving these documents, please contact NRC's Public Document Room office for assistance.

Thank you for your time and consideration in this matter and please do not hesitate to contact me if you have any questions.

Sincerely,



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Anthony J. Thompson, Esq.  
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1225 19<sup>th</sup> Street, NW  
2<sup>nd</sup> Floor  
Washington, DC 20036

COUNSEL FOR CFC LOGISTICS, INC.

(CFClogisticslettersugarmandiscovery.doc)

# SUGARMAN & ASSOCIATES, PC

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BUCKS COUNTY OFFICE  
122 NORTH MAIN STREET  
DOYLESTOWN, PA 18901

215-348-8786 • FAX: 215-230-1922

\* Also admitted in NY, DC  
\*\* Also admitted in NJ

December 1, 2003

**VIA ELECTRONIC MAIL, 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: CFC Logistics, Inc.  
Docket No. 30-36239-ML  
ASLBP No. 03-814-01-ML

Dear Secretary:

Please find attached for filing Intervenors' Request for Reference to Commission 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 stamped envelope attached herewith.

Respectfully,

  
Robert J. Sugarman

RJS:saj  
Enclosure