

RAS 6636

SUGARMAN & ASSOCIATES, PC

ATTORNEYS AT LAW
ROBERT MORRIS BUILDING - 11TH FLOOR
100 NORTH 17TH STREET
PHILADELPHIA, PENNSYLVANIA 19103

ROBERT J. SUGARMAN *
CARL W. EWALD
DEBBIE L. GOLDBERG
HEATHER R. BRINTON

215-864-2500 • FAX: 215-864-2501
EMAIL: RJSUGARMAN@AOL.COM

BUCKS COUNTY OFFICE
122 NORTH MAIN STREET
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.
materials license application

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DOCKET NO. 03036239

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.



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

OF COUNSEL:

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

DATED: July 15, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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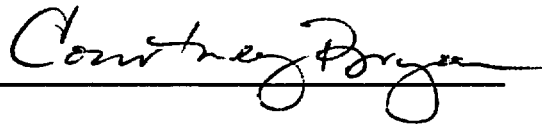
DOCKET NO. 03036239

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 19th Street, N.W.
Second Floor
Washington, DC 20036
Facsimile: (202) 496-0783



COURTNEY BRYAN

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

Exhibit A

Hearing requestors within thirty day time period¹

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

¹Requestor 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 ^{they plant} 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 15th day of July, 2003.


Courtney Bryan

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In matter of :
CFC LOGISTICS, INC. : DOCKET NO. 03036239
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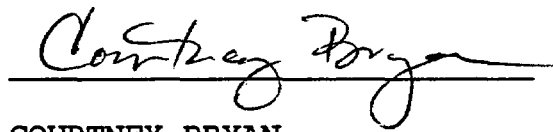
CERTIFICATION OF SERVICE

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 19th 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 positioned above a horizontal line.

COURTNEY BRYAN

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