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July 28, 2003

DOCKETED  
USNRC

July 31, 2003 (3:13PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**BY ELECTRONIC, 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

Dear Sir or Madam:

Please find attached for filing CFC Logistics, Inc.'s Response to Petitioners' Second Request for a Hearing Regarding the Application for a Materials License (Docket No. 3036239-ML) 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

CFCCOVERLETTTER.DOC)

Template = SECY - 037

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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)  
) Docket No.: 30-36239-ML  
)  
) ASLBP No.: 03-814-01-ML  
)  
) Date: July 28, 2003  
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**RESPONSE OF CFC LOGISTICS, INC. TO PETITIONERS' SECOND  
REQUEST FOR A HEARING REGARDING THE APPLICATION  
FOR A MATERIALS LICENSE  
(DOCKET NO. 30-36239-ML)**

**I. BACKGROUND AND PROCEDURAL HISTORY**

CFC Logistics, Inc. ("CFC"), by its undersigned counsel of record, hereby submits this Response to Petitioners' Request for a Hearing Regarding the Application for a Materials License for CFC's facility located in Quakertown, PA. Through their counsel of record, Sugarman & Associates, P.C., eighteen (18) petitioners (hereinafter the "Petitioners") have requested that the Nuclear Regulatory Commission ("NRC") grant them standing for a hearing conducted under NRC's Subpart L hearing procedures regarding CFC's pending NRC materials license application to operate a Gray\*Star Genesis self-contained, underwater irradiator (hereinafter the "Genesis irradiator") at its Quakertown, PA facility. For the reasons discussed below, CFC respectfully requests

that the Presiding Officer reject Petitioners' hearing request as untimely. In the alternative, CFC respectfully requests that Petitioners' hearing request be denied because Petitioners have failed to demonstrate the requisite standing for a Subpart L hearing.

On January 27, 2003, CFC entered into a sales agreement with Gray\*Star, Inc. located in Mt. Arlington, NJ, under which CFC would purchase a Genesis irradiator for the purposes of irradiating food and, potentially, other products. Under American National Standards Institute ("ANSI") standards, the Genesis irradiator is classified as a Category III irradiator meaning that it is defined as a self-contained, wet source storage, gamma irradiator.<sup>1</sup>

In order to possess the cobalt-60 "sealed source" for the Genesis irradiator, CFC is required to submit a complete materials license application to NRC's Region I office located in King of Prussia, PA, because NRC has the sole authority to regulate such "sealed sources." However, prior to submission of this license application, CFC contacted representatives of Milford Township, PA to inform them that CFC would be purchasing the Genesis irradiator. In response, Milford Township held a public meeting on February 4, 2003, at which members of the public and other entities were permitted to participate and representatives of CFC, Milford Township, and Gray\*Star, Inc. attended. At this meeting, the Genesis irradiator technology was presented, the NRC regulations applicable to irradiators were reviewed, and public comments were received. Later, Milford Township supervisors established the appropriate procedure for permits and approvals and, unanimously, voted that a mechanical permit be granted for construction

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<sup>1</sup> See ANSI/HPS N43.15-2001, New American National Standard: *Safe Design & Use of Self-Contained, Wet Source Storage Gamma Irradiators (Category III)* (June/July 2001).

of the pool and that a “use” permit would be granted in conjunction with CFC’s receipt of an NRC materials license.

Then, by letter dated February 25, 2003, CFC submitted its completed license application to NRC’s Region I office requesting that NRC authorize CFC to possess the cobalt-60 “sealed source” at its Quakertown, PA facility which was posted in NRC’s public document room for public viewing. Since submission of its license application was completed, NRC Region I representatives have performed site visits/inspections on nine (9) separate occasions to ensure that the installation and operation of the Genesis irradiator is being performed in accordance with NRC regulations. On July 16, 2003, a special public meeting sponsored by Milford Township was held at which members of NRC Region I, representatives of Gray\*Star and CFC and members of the public attended.

By letter dated June 23, 2003, Petitioners’ counsel of record submitted a letter on behalf of three petitioners (hereinafter the “Initial Hearing Request”) to NRC Region I requesting a hearing regarding CFC’s pending license application to operate the Genesis irradiator. On June 30, 2003, CFC became aware of this Initial Hearing Request when it received a copy of such hearing request via facsimile from NRC’s Region I office. Even though it did not receive a copy of this Initial Hearing Request from Petitioners’ counsel of record, CFC timely responded to this hearing request on July 11, 2003, served both NRC’s Office of the Secretary and Petitioners’ counsel of record.

After CFC filed its response, on July 15, 2003, Petitioners’ counsel of record filed a second hearing request on behalf of Petitioners (hereinafter the “Second Hearing Request”) in which they challenged CFC’s initial response and reiterated the areas of

concern alleged in the Initial Hearing Request. For the following reasons, CFC respectfully requests that the Presiding Officer reject Petitioners' Second Hearing Request as untimely. In the alternative, CFC respectfully requests that the Presiding Officer deny Petitioners' Second Hearing Request because they have failed to demonstrate the requisite standing for a Subpart L hearing.

## **II. NRC REQUIREMENTS FOR STANDING IN SUBPART L HEARINGS**

### **A. NRC General Requirements for Timely Hearing Requests in Subpart L Hearings**

Before it may be determined whether or not a petitioner has standing for a Subpart L hearing, it first must be determined whether that petitioner's hearing request is timely. Under NRC's hearing procedures, when a notice of a pending or completed licensing action is not published in the Federal Register, entities seeking to request a hearing on such licensing action must file its hearing request on the earliest of the following dates:

- (1) Thirty days after the requester receives *actual notice* of a pending application;
- (2) Thirty days after the requester receives *actual notice* of an agency action granting an application in whole or in part, or;
- (3) One hundred and eighty days after agency action granting an application whole or in part.

10 CFR § 2.1205(d)(2)(i-iii).

To determine which of these three potential deadlines would apply to a given licensing action, it must be determined what constitutes *actual notice*. As a general proposition, *actual notice* has been referred to in NRC hearings as the time at which a petitioner "became aware" of a pending or completed licensing action. *See International Uranium (USA) Corp. (White Mesa Mill)*, 48 NRC 137 (September 1, 1998). Thus, if a petitioner received *actual notice* of a pending licensing action before the licensing action

was completed, then the appropriate deadline for filing a hearing request would fall under subsection Section 2.1205(d)(2)(i).

#### **B. NRC General Requirements for Standing**

When the administrative action requested by a petitioner is made subject to a request for a Subpart L hearing and a petitioner's hearing request is deemed timely, the next concern is whether the petitioner has fulfilled NRC's requirements for standing. As stated in 10 CFR § 2.1205(h), the Presiding Officer:

shall determine that the specified areas of concern are *germane to the subject matter of the proceeding* and that the petition is timely. The Presiding Officer also shall determine *that the requestor meets the judicial standards for standing* and shall consider, among other factors--,

The nature of the requestor's right under the Act ("AEA") to be made a party to the proceeding;

The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

10 C.F.R. § 2.1205(h) (*emphasis added*).

Standing is not a mere legal technicality. It is, in fact, an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body to deal with a particular grievance. *Westinghouse Electric Corporation*, 39 NRC 322, 331-2 (1994). Judicial concepts of standing should be applied by adjudicatory boards in determining whether a petitioner is entitled to intervene. *Portland General Electric Co.*, 3 NRC 804 (1976); *see also Niagara Mohawk Power Corp.*, 18 NRC 213, 215 (1983) (noting that contemporaneous judicial concepts should be used to determine whether petitioner has standing to intervene). Thus, the propriety of intervention

involves both “constitutional limitations” on an adjudicatory body’s jurisdiction and “prudential limitations” on its exercise. *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior*, 1997 U.S. Dist. LEXIS 4212, \*6 (10<sup>th</sup> Cir. 1997), citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

The “irreducible constitutional minimum” standing test requires a potential litigant to demonstrate that: 1) it has suffered actual or threatened injury, 2) that is caused by, or fairly traceable to, an act that the litigant challenges in the instant litigation, and 3) that is likely to be redressed by a favorable decision.” See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Georgia Institute of Technology*, 42 NRC 111, 115 (1995); *Envirocare of Utah, Inc.*, 35 NRC 167, 174-5 (1992). These three elements are commonly referred to as injury-in-fact, causation, and redressability. See *Coalition of Arizona/New Mexico Counties for Stable Economic Growth*, 1997 U.S. Dist. LEXIS at \*6.

Beyond the constitutional standing test set forth above, “prudential limitations” are also imposed on a potential intervenor’s prospective standing. Prudential considerations include a party not being permitted to assert a generalized grievance and a party not being permitted to assert the rights of third parties. See *Warth*, 422 U.S. at 499. Specifically, prudential standing requirements require a showing that the injury is arguably within the “zone of interests” protected by statutes governing the proceeding. *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970); *Metropolitan Edison Co.*, 18 NRC 327, 332 (1983); *Gulf States Utilities Co.*, 40 NRC 43, 47 (1994).

With regard to injury-in-fact, which may be either actual or threatened, it must be both *concrete* and *particularized*, not *conjectural* or *hypothetical*. As a result, standing

should be denied when the threat of injury is too speculative. *See Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994). To show the required injury-in-fact based on an assertion of future harm, NRC has held that future harm “must be threatened, certainly impending, and real and immediate.” *Babcock & Wilcox*, 1993 NRC LEXIS 6, \*\*7-8 (1993). Specifically, prudential standing requirements require a showing that the injury is arguably within the “zone of interests” protected by statutes governing the proceeding. *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970); *Metropolitan Edison Co.*, 18 NRC 327, 332 (1983); *Gulf States Utilities Co.*, 40 NRC 43, 47 (1994). Additionally, the interests to which injury-in-fact are alleged, must be germane to the proceeding at hand. *International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York)*, Docket No. 40-8681-MLA-4, December 17, 1998; *International Uranium (USA) Corporation (Receipt of Additional Material from Tonawanda, New York)*, LBP-99-8, February 19, 1999.

### **C. Standing As a Result of Proximity to Facilities Utilizing Radioactive Materials**

In some cases, potential intervenors have been granted standing in an NRC hearing based solely on their proximity to a facility utilizing nuclear or radioactive materials. In such a case, a petitioner/intervenor bases its standing upon a showing that his or her residence is within the geographical zone that might be affected by an accidental release of fission products. *See Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979).

With respect to proximity to a facility as a basis for standing, NRC has stated, “[i]n certain types of proceedings, the agency has recognized a proximity or geographical presumption that presumes a petitioner has standing to intervene without the need



specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity.”<sup>2</sup> *Florida Power and Light Co.* (Turkey Point, Units 3 and 4), 2001 NRC LEXIS 38 (February 26, 2001). However, this “proximity presumption” has applied only in cases where the licensing activity involved had “clear implications for the offsite environment, or major alterations of the facility with a clear potential for offsite consequences.” *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). When the licensing action does not involve such circumstances, the Commission has stated that, “[a]bsent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific ‘injury in fact’” *Id.* at 329-30.

NRC has stated that the fact that a petitioner may reside even within a 50-mile radius of a *nuclear power reactor facility* will not always be sufficient to invoke the proximity presumption and establish standing to intervene. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329-30 (1989). For cases outside the nuclear power reactor context, a Licensing Board will consider the nature of the proceeding, and will apply different standing considerations depending upon the type of proceeding. *See Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), *aff’d on other grounds*, ALAB-816, 22 NRC 461 (1985). A presumption of standing based on geographic proximity (proximity presumption) may be applied in cases involving *non-power* reactors where there is a determination that the proposed action involves a *significant amount of radioactivity*

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<sup>2</sup> Further, “[a] presumption of standing may exist if one is frequently within a few hundred feet of a site.” *Northern States Power Co.*, 30 NRC 311, \*11 (October 24, 1989).

*producing an obvious potential for off-site consequences. See Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116 (1995).

Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source. *See id.*

With respect to licenses involving byproduct materials covered under 10 CFR Part 30 of NRC's regulations, such as the instant case, the Licensing Board has stated, "[t]he proximity of a person's home or property can be relevant to standing *depending on the radiological materials and the potential hazard involved*. There must be sufficient information provided to determine that there is a possibility of injury. *Northern States Power Company* (Pathfinder Atomic Plant, Byproduct Material License), 30 NRC 311, \*11 (October 24, 1989). An additional important factor considered by NRC in this context is whether the petitioner can demonstrate that the risk of injury extends as far from the facility as petitioner resides. *See e.g., Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985).

**III. PETITIONERS' HEARING REQUEST SHOULD BE REJECTED AS UNTIMELY OR, IN THE ALTERNATIVE, SHOULD BE DENIED BECAUSE THEY HAVE FAILED TO DEMONSTRATE THE REQUISITE STANDING FOR A SUBPART L HEARING**

For the following reasons, CFC respectfully requests that Petitioners' Second Hearing Request be rejected as untimely or, in the alternative, should be denied because Petitioners have failed to demonstrate the requisite standing for a Subpart L hearing.

**A. Petitioners Hearing Request is Untimely Because It Is Reasonable to Assume that They Had Actual Notice of CFC's Pending License Application**

Prior to evaluating whether Petitioners have met their burden of establishing standing to intervene, it must be determined whether or not their hearing request was timely filed. Since a Federal Register notice was not issued for CFC's license application, the appropriate standard for timeliness, as described above, can be found at 10 CFR § 2.1205(d)(2)(i). This regulation mandates that a petitioner's hearing request must be filed within thirty days of receiving *actual notice* of an applicant's pending licensing action. In the instant case, Petitioners claim they received *actual notice* of CFC's pending license application on June 19, 2003, which necessitated that their Second Hearing Request be filed by July 19, 2003. If Petitioners' assertions and "affidavits" are accepted as written, then Petitioners' filing date of July 17, 2003 would make their Second Hearing Request timely.

However, based on the sequence of events in this case, it is reasonable to conclude that Petitioners received *actual notice* of CFC's pending license application prior to June 19, 2003. Initially, as noted above, CFC notified representatives of Milford Township of its purchase of the Genesis irradiator prior to submitting its license application to NRC. As a result, on February 4, 2003, Milford Township officials sponsored a public meeting at which the issue of the CFC purchase was discussed by members of the public and representatives of CFC, Milford Township, and Gray\*Star. After the meeting, minutes were prepared which were made publicly available.

Then, on February 5, 2003, CFC submitted its initial license application to NRC for review. On the same day, *The Morning Call* newspaper circulated out of Allentown,

PA published a newspaper article which stated that CFC officials announced that CFC had submitted its license application to NRC.<sup>3</sup> After reviewing CFC's initial license application, NRC returned it to CFC requesting that specific revisions be made and recommended that such application be re-submitted when all such revisions were complete. By letter dated February 25, 2003, CFC re-submitted its license application to NRC which was placed on NRC's public document room database for public viewing. Then, on May 30, 2003, *The Morning Call* published another article regarding CFC's purchase of the Genesis irradiator in which it was announced that local members of the public were planning to meet with an advocacy group to organize opposition to CFC's irradiator purchase.<sup>4</sup> Following the publication of this article,<sup>5</sup> on June 2, 2003, *The Philadelphia Intelligencer* published an article regarding CFC's irradiator purchase in which it was announced that CFC would be installing the Genesis irradiator at its facility.<sup>6</sup> On June 3, 2003, Milford Township held a supervisors meeting<sup>7</sup> at which 50 local residents attended, and, again, it was stated that CFC was purchasing the Genesis irradiator. Finally, on June 5, 2003, *The Morning Call* published another article regarding CFC's irradiator purchase and summarized statements and events from the June 3<sup>rd</sup> Milford Township supervisors meeting.<sup>8</sup>

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<sup>3</sup> See Attachment A.

<sup>4</sup> See Attachment B.

<sup>5</sup> In addition, on May 28, 29, and 31, 2003, WFMZ Channel 69 displayed extensive coverage of the installation of the Genesis irradiator at the CFC facility. For the transcripts of these broadcasts, *please see* [www.wfmz.com](http://www.wfmz.com). KYM Channel 3 also provided a television broadcast in May regarding the Genesis irradiator as a "breaking" story.

<sup>6</sup> See Attachment C.

<sup>7</sup> It is worth noting that, in a June 18, 2003 article in *The Philadelphia Inquirer*, Terry Clemons, solicitor for Milford Township, stated that public comment had been heard on the CFC irradiator purchase at *three* (3) supervisors meetings since February 5, 2003. *See id.*

<sup>8</sup> See Attachment D.

Given the number of public supervisors and open meetings held, the public availability of CFC's license application almost four months prior to Petitioners' alleged date of receiving *actual notice*, and the amount of press coverage given to CFC irradiator purchase, including at least four (4) newspaper articles in local and state-wide newspapers, it is reasonable to conclude that Petitioners received *actual notice* prior to June 19, 2003.

In addition, Petitioners have failed to demonstrate through properly sworn and notarized affidavits that they indeed received *actual notice* of CFC's pending license application on June 19, 2003. Petitioners' counsel of record filed his Initial Hearing Request in direct contravention of express NRC hearing requirements for service of process and without any supporting, "notarized" affidavits demonstrating that counsel's initial group of petitioners resided near the CFC facility or received *actual notice* on a certain date. Indeed, had it not been for NRC Region I sending this Initial Hearing Request to CFC, it is possible that this Initial Hearing Request would have gone unopposed. However, when CFC did file a response on July 10, 2003, to this Initial Hearing Request, on July 15, 2003, Petitioners' counsel of record re-filed the same Initial Hearing Request with a new list of 18 petitioners and, once again, no supporting "notarized" affidavits. Then, on July 17, 2003, Petitioners counsel of record filed a reply to CFC's July 10<sup>th</sup> response and included *both* the list of 18 petitioners from his July 15<sup>th</sup> filing and a *new* list of 14 petitioners. Petitioners' July 17, 2003, filing also included three handwritten affidavits which were not sworn under oath or notarized.<sup>9</sup>

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<sup>9</sup> It is apparent that these affidavits were not sworn under oath or notarized because the signature line states, "the foregoing is true and correct, subject to the penalties for *unsworn perjury*." See Petitioners' Second Hearing Request, Exhibit B (emphasis added).

Based on Petitioners' apparent inability to demonstrate, under oath, that they received *actual notice* on June 19, 2003 of CFC's pending license application, Petitioners' counsel of record's failure to follow express NRC hearing procedures, the public availability of CFC's license application on February 25, 2003, and the large amount of public attention given to CFC's irradiator purchase, CFC asserts that it is reasonable to conclude that Petitioners received *actual notice* of CFC pending license application prior to June 19, 2003. As a result, Petitioners' Second Hearing request should have been filed well before July 19, 2003. Therefore, CFC respectfully requests that the Presiding Officer reject Petitioners' Second Hearing Request as untimely.

**B. Petitioners Allegation Regarding Proximity to the CFC Facility Is Insufficient to Grant Them Standing**

Even if the Presiding Officer does not find that Petitioners' Second Hearing Request is untimely, such hearing request should be denied because Petitioners have not demonstrated the requisite standing for a Subpart L hearing. First, in their Second Hearing Request, Petitioners allege that they, "clearly have standing because they live in close proximity to the proposed irradiation facility and their health, safety and property will be harmed if the Commission grants the license."<sup>10</sup> Petitioners' Second Hearing Request at 10.<sup>11</sup> In essence, Petitioners argue that a so-called "proximity presumption" of

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<sup>10</sup> Petitioners' Initial and Second Hearing Requests have alleged that various members of the public represented by Petitioners' counsel of record reside anywhere from one-half (1/2) mile to two (2) miles from the facility. CFC notes for the record that none of Petitioners' affidavits allege that Petitioners' live one-half mile or two miles from the CFC facility.

<sup>11</sup> CFC notes for the record that each of the three (3) affidavits provided by Petitioners as Exhibit B are handwritten and not notarized. Thus, CFC challenges the validity of these affidavits and the assertions set forth therein. Additionally, as with the Initial Hearing Request, Petitioners provide references to approximately 14-18 potential intervenors while only submitting the aforementioned three (3) affidavits. It is also worth noting that Petitioners' unsworn affidavits do not even allege how far such affiants reside from the CFC facility. Based on this, CFC asserts that Petitioners' hearing request is deficient because the affidavits neither set forth with

standing should apply to them because they live between one-half (1/2) and two (2) miles from the CFC facility.

**1. Petitioners Do Not Meet NRC's Standards for Application of a "Proximity Presumption" of Standing**

While Petitioners go to great length to argue that mere proximity (without properly establishing such proximity through sworn affidavits) to a facility using radioactive materials is enough for a grant of standing, NRC policy and jurisprudence raise significant questions about that "blanket" assumption.

In 1989, as a general proposition, the Commission stated, "the standing decision should be based upon an analysis of the particular material that was the subject to the licensing action and not the 'fifty mile radius' rule that had developed with respect to power reactor licensing proceedings. *See* 52 Fed. Reg. 20089, 20090 (May 29, 1987). Therefore, by expressly rejecting the "fifty-mile radius" rule, the Commission concluded, "[t]he standing of a petitioner in each case should be determined based upon the circumstances of that case...." 54 Fed. Reg. 8269 (February 28, 1989).

For example, when dealing with radioactive materials containing radioisotopes such as uranium-235, thorium-232, and thorium-230, , the Commission has stated, "proximity alone does not suffice for standing in materials licensing cases," and such a standard would only apply in licensing actions involving a "*significant* source of radioactivity producing an *obvious* potential for off-site consequences." *See International Uranium (USA) Corp.*, CLI-98-6, 1998 NRC LEXIS 12, \*2, n.1 (April 30, 1998); *see also Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site)*, CLI-

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particularity the areas of concern of Petitioners nor do they sufficiently allege, under oath, that Petitioners reside within a given distance from the CFC facility.

94-12, 40 NRC 64, 75, n. 22 (1994) (emphasis added). *International Uranium* addressed the case of so-called “alternate feed materials” contaminated with varying levels of uranium-235, thorium-232, and thorium-230 to be transported to an NRC-licensed facility for uranium recovery processing. *Sequoyah Fuels* addressed the decommissioning of a conversion facility which is the second step in the process for creating commercial nuclear fuel or “fissionable” material. In both these cases, the Commission determined that a blanket “proximity presumption” should not be invoked without further inquiry into the nature of the radioactive material to be used and whether such material incites an “obvious potential for offsite consequences.” *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75, n. 22 (1994)

The case of *Georgia Institute of Technology* addressed the use of a research nuclear reactor to conduct experiments using “fissionable” material. In this case, the Commission held that:

“A presumption of standing based on geographic proximity may be applied in cases involving nonpower reactors where there is a determination that the proposed action involves a *significant* source of radioactivity producing an *obvious* potential for offsite consequences. *Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.*”

42 NRC at 11, \*2 (emphasis added).

Like the cases of *International Uranium* and *Sequoyah Fuels*, the Commission has determined that petitioners challenging licensing actions for facilities utilizing radioactive materials, including “fissionable” material, are not entitled to standing as a result of mere proximity to such facilities without further inquiry into the nature of the radioactive



material to be used and whether there is an *obvious potential* for off-site consequences at the distance at which petitioner(s) reside is close enough to the facility to cause such petitioner(s) a *concrete and particularized* potential injury-in-fact.

Finally, the case of *Northern States Power Company* addressed a byproduct material licensed granted under 10 CFR Part 30 of NRC's regulations. *See generally* 30 NRC 11 (October 24, 1989). In *Northern States Power Company*, the licensee sought to amend its license to allow for final decommissioning activities to occur, including the dismantling of buildings formerly used to store commercial nuclear fuel (fissionable material) and a nuclear power reactor. *Id.* at \*1-\*2. In its decision, the Licensing Board stated, as noted above, that the proximity of a petitioner's home or property may be relevant to standing *depending on the radiological materials and the potential hazard involved*. *Id.* at \*11. As a result of the need for inquiry into these factors to determine if the "proximity presumption" applies, the Licensing Board stated that, in order for standing to be granted, "[t]here must be sufficient information provided to determine that there is a possibility of injury." *Id.* Thus, based on the decision in *Northern States*, Petitioners cannot assert that they have standing *per se* because, as the Commission and the Licensing Board have stated that further inquiry must be into Petitioners' hearing request to determine if injury-in-fact has been adequately pleaded.

## **2. Petitioners' Argument that *Armed Forces* is Controlling is Incorrect**

Petitioners cite the 1982 case of *Armed Forces Radiobiology Research Institute* as support for their claim that mere proximity to an irradiation facility is enough for a grant

of standing.<sup>12</sup> In *Armed Forces*, intervenors were granted standing based on the fact that they resided within five miles of the Armed Forces Radiobiology Research Institute which was licensed to possess up to 320,000 curies of cobalt-60 sealed source materials for use in an irradiator. However, *Armed Forces* was decided well before 1989 where, as noted above, the Commission explicitly rejected the “fifty-mile radius” as applied to nuclear power reactor proceedings and stated that “[t]he standing of a petitioner in each case should be determined based upon the circumstances of that case....” 54 Fed. Reg. 8269 (February 28, 1989). Based on this Policy Statement, the *International Uranium*, *Sequoyah Fuels*, and *Northern States* cases, which were all decided after the *Armed Forces* case, held that proximity alone is not sufficient to demonstrate standing and required an inquiry into the nature of the potential hazards from the radioactive materials involved in each case given the proximity of the potential intervenors before a decision on standing can be made.<sup>13</sup> Therefore, based on the Commission’s 1989 Policy Statement and the subsequent cases endorsing that Policy Statement, Petitioners allegation that they have standing *per se* based on their proximity to the CFC facility is insufficient for a grant of standing.

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<sup>12</sup> It is worth noting that the rest of the cases cited by Petitioners in Section III(A) of their Second Hearing Request in support of their allegation that they have standing *per se* based on the “proximity presumption” all address issues associated with commercial nuclear power reactors involving the use of fissionable material. Since cobalt-60 is not a “fissionable” material and is not capable of causing a nuclear criticality event, as will be discussed below, Petitioners’ citation to these cases is inapplicable and irrelevant.

<sup>13</sup> In addition, the *Georgia Institute* case requires that cases involving the potential application of a proximity presumption to a *research nuclear reactor* must be done on a case-by-case basis. See 42 NRC 11, \*2.

### **3. The Nature of Cobalt-60 Sealed Sources Does Not Mandate Standing Based on the “Proximity Presumption”**

Like the radioactive materials used in the *Northern States Power Co.* and *Georgia Institute of Technology* cases, the nature of cobalt-60 “sealed sources” does not require the application of a “proximity presumption” for standing. Cobalt-60 used for commercial purposes is a radioactive material most commonly created by exposing cobalt-59, a *non*-radioactive, stable substance which occurs naturally in several minerals, to neutrons in nuclear reactors. The resulting material, cobalt-60, emits gamma rays which have been used in many common industrial and medical applications such as leveling devices, thickness gauges, radiotherapy in hospitals, and irradiators. Cobalt-60 sources used in Category III self-contained, underwater irradiators are in the form of a “sealed source.” Before “sealed sources” may be used for commercial purposes, such sources are required, by regulation, to be approved for use by and registered with NRC,<sup>14</sup> independent of the possessor.<sup>15</sup> In the past, NRC has issued thousands of these types of licenses.

With respect to the use of cobalt-60 “sealed sources,” there are two (2) exposure pathways through which members of the public potentially could be exposed to such sources: (1) release of the radioactive material cobalt-60 itself and (2) release of radiation in the form of direct gamma rays from the “sealed source.” In the instant case, neither of these potential pathways are viable pathways through which Petitioners may be exposed to injury-in-fact.

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<sup>14</sup> See 10 CFR § 36.21.

<sup>15</sup> For a better description of the facts regarding cobalt-60, *please see* [www.epa.gov/radiation/radionuclides/cobalt.htm](http://www.epa.gov/radiation/radionuclides/cobalt.htm).

**a. Petitioners Will Not Suffer Any Injury-In-Fact From A Release of Radioactive Material from the Cobalt-60 “Sealed Source”**

Initially, Petitioners will not suffer any injury-in-fact from a potential release of cobalt-60 from the Genesis irradiator or the CFC facility.<sup>16</sup> As stated above, the cobalt-60 “sealed source” must be approved for use by and registered with NRC independent of the possessor before it may be used in an irradiator. Then, the cobalt-60 “sealed source” itself is subject to several layers of protection to prevent the release of any radioactive material. The cobalt-60 is nickel-plated and is contained within a series of two (2) stainless steel tubes which are tested to ensure that there is no leakage. When the “sealed sources” arrive at the CFC facility, they are placed in a stainless steel plenum which also is tested prior to use to ensure that there is no leakage.<sup>17</sup> The plenum is then filled with air and sealed to provide an additional layer of protection. While sealed inside the plenum, a continuous radiation monitor observes the plenum air for radioactive material to alert trained workers at the CFC facility of any release of cobalt-60 into the plenum.

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<sup>16</sup> With respect to the Genesis irradiator, Petitioners cite an expert preliminary report from Mr. Robert Alvarez contained in an electronic mail message dated July 11, 2003. In this report, Mr. Alvarez states that the capacity of 1,000,000 curies makes the Genesis irradiator “not typical of the 60 or so radiation-source irradiators in the US.” See Petitioner Second Hearing Request, Exhibit D. Mr. Alvarez’s assessment is correct in two ways. First, the Genesis irradiator is specifically designed to provide additional shielding (water) and protection for the sealed source below ground level and to provide the operator with redundant security and safety measures. Secondly, the Genesis irradiator is different because the amount of curies it is to be licensed for is far less than other commercial irradiators currently in operation or previously operated in the United States. For example, in 1960, the United States Army built and operated a food irradiation facility in Natick, Massachusetts that was built to hold up to 2,000,000 curies. In 1964, the Johnson & Johnson Ethicon facility built and operated an irradiator in Somerset, New Jersey which could hold 2,000,000 curies which is about to decommissioned. Other commercial irradiators exceed 10,000,000 contained curies. In total, there are more than 60 commercially operated cobalt-60 irradiators in the United States, and they average approximately 4,000,000 contained curies per unit.

<sup>17</sup> A filter sample (concentration point) of the plenum air is sent off-site every six (6) months for testing using highly-calibrated machines to determine if any concentrations of cobalt-60 are present within the plenum.

The “sealed sources” are stored in the plenum and the plenum is located at the bottom of a tank which is 22 feet deep (18.5 feet beneath ground level). The tank (pool) is filled with a minimum of 14.5 feet of water above the “sealed source” which acts as a shield (not as a coolant) to prevent any emission of radiation from the irradiator. This pool “shielding” also is subject to a safety monitor which tracks any presence of radioactive material in the tank water. However, except for a very limited time period every year, the cobalt-60 “sealed source” is never in direct contact with the tank water.

The tank water (which is not radioactive) is contained in a tank which itself contains several protective layers designed to prevent migration of *non*-radioactive (shielding) tank water from the irradiator. The tank begins with a 1/4-inch thick stainless steel liner which, to the best of Petitioners’ knowledge, is the thickest stainless steel liner used in commercial irradiators. This liner is tested prior to installation to ensure that there is no leakage. Then, the stainless steel liner is followed by 6 inches of concrete and an additional 1/4-inch thick carbon steel liner which is also tested before installation to ensure that there is no leakage. These protective layers are enclosed in three (3) feet of concrete to provide yet another protective layer to prevent the migration of water from the irradiator. Finally, the tank itself does not have any pipes or other fittings through which water may escape and migrate outside the irradiator and the CFC facility. Therefore, the Genesis irradiator, which is designed to be inherently safe, demonstrates that Petitioners will not be subject to any potential, significant impacts to from the release of cobalt-60 material from the CFC facility.

**b. Petitioners Will Not Suffer Any Injury-In-Fact From An Emission of Gamma Radiation From the Genesis Irradiator**

Petitioners also will not suffer any injury-in-fact from an emission of gamma radiation from the Genesis irradiator or the CFC facility. As stated above, the Genesis irradiator specifically is designed to be inherently safe by including protective layers to prevent the emission of gamma radiation from the irradiator itself.

Further, Petitioners have not properly articulated any *concrete or particularized* injury-in-fact sufficient for a grant of standing. Petitioners have not articulated, in any way: (1) how gamma radiation will be emitted from the shielding tank water; (2) through what pathway gamma radiation will be emitted from the Genesis irradiator; (3) through what pathway gamma radiation will be emitted from the CFC facility; and (4) how such gamma radiation will negatively affect Petitioners' health or property. Therefore, without more, Petitioners have not articulated sufficient injury-in-fact for a grant of standing.

**c. Cobalt-60 Is Not "Fissionable" Material**

Additionally, as noted above, cobalt-60 is not "fissionable" material. While cobalt-60 may be created in a nuclear reactor, it does not possess the ability to create a nuclear criticality event and cause widespread radiological damage over great distances. Cobalt-60 merely emits gamma radiation which, when properly shielded, cannot result in harmful doses to workers or members of the public. As described above, based on existing NRC jurisprudence, Petitioners cannot argue that the mere presence of cobalt-60 at the CFC facility triggers the application of a "proximity presumption" of standing. Therefore, for the foregoing reasons, Petitioners' allegation that they have standing *per se* based on proximity to the CFC facility is incorrect.

### **C. Petitioners Allegations Do Not Sufficiently Plead Injury-in-Fact For a Grant of Standing**

Since Petitioners cannot claim that they are entitled to standing *per se* based on their proximity to the CFC facility, according to the *Northern States Power Co.* standard, Petitioners must sufficiently plead injury-in-fact in order to be granted standing. As will be demonstrated below, Petitioners have failed to meet this standard.

#### **1. Petitioners' Allegation Regarding a Lack of Regulatory Oversight and Security Measures Is Insufficient for a Grant of Standing**

First, Petitioners allege that “[b]ecause irradiation plants are relatively small, they are often unregulated and lack adequate security, posing a serious threat to national security and the local community.”<sup>18</sup> Petitioners’ Initial Hearing Request at 2. Further, Petitioners state, “[t]here is no public evidence of any precautionary measures for this facility.” *Id.* Each of these statements encompass Petitioners’ broad concern that either there are no regulations in effect to control the operation of the Genesis irradiator at the CFC facility or that such regulations, if they exist, are not being followed.<sup>19</sup> However, it is well-settled that assertions of broad public interest in regulatory matters do not establish the *particularized* interest necessary for participation by an individual in NRC

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<sup>18</sup> Petitioners even go so far as to allege that security concerns have not been addressed because, “these concerns are not addressed in the license application because applicant requested that security measures not be made publicly available.” Petitioners’ Second Hearing Request at 16. However, it would stand to reason that, given the heightened security standards being pursued by agencies like NRC in the name of Homeland Security, CFC proposed that security measures be kept confidential. In addition, given the same heightened security standards after the attacks of September 11, 2001, CFC has achieved a greater level of security than that previously required because NRC will have subjected CFC’s security measures to greater scrutiny.

<sup>19</sup> For the record, CFC notes that there are applicable regulations for protection of public health and safety and the environment from the potential hazards of cobalt-60 and its use in irradiators. *See generally* 10 CFR Part 36. Additionally, the Genesis irradiator complies with each of these regulations and, as noted above, offers additional protections above and beyond that required in such regulations.

adjudicatory processes such as Subpart L hearings. *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983); *see also Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC 15, 28 (1991). Therefore, Petitioners' allegations regarding the lack of regulatory oversight and security measures for irradiators are insufficient for a grant of standing.

**2. Petitioners' Allegations Regarding Transportation of Cobalt-60 to the CFC Facility are Insufficient for a Grant of Standing**

Second, Petitioners allege that, "irradiation plants must be regularly replenished with cobalt, thereby increasing transportation hazards (nationally and locally) as frequent shipments of highly radioactive material must be made to the plant." Petitioners' June 23, 2003 Submission at 2. This allegation is not sufficient to grant Petitioners standing for a Subpart L hearing.

Initially, Petitioners' allegations regarding increases to transportation hazards from the shipment of cobalt-60 to the CFC facility on a *national* basis are not sufficient for a grant of standing. In Commission practice, a "generalized grievance" shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC at 333. Thus, Petitioners' cannot be granted standing solely on the basis of a *national* interest shared by a large class of citizens in transportation hazards.

In addition, Petitioners' allegations regarding increases to transportation hazards from the shipment of cobalt-60 to the CFC facility on a *local* basis are not sufficient for a



grant of standing.<sup>20</sup> While Petitioners go to great length to state that transportation of cobalt-60 to the CFC facility will increase local transportation hazards, they do not specifically allege that such transportation hazards will directly harm them. Petitioners do not describe how transportation of cobalt-60 to the CFC facility will directly affect them, how the cobalt-60 *can and will be* released from its United States Department of Transportation (“DOT”)-approved transportation containers, and, if released, how the cobalt-60 will reach Petitioners and cause them a *concrete or particularized* injury-in-fact.<sup>21</sup> Therefore, since Petitioners do not even allege, let alone prove, a *concrete or particularized* injury-in-fact from the transportation of cobalt-60 to the CFC facility, their allegations regarding an increase in transportation hazards on a *local* basis are insufficient for a grant of standing.

### **3. Petitioners’ Allegation that Residents Will Be Harmed By a Release of Cobalt-60 Is Insufficient for a Grant of Standing**

Finally, Petitioners’ allege that “a causal connection exists between the Commission granting the license and the threat of injury to Requestors’ health, safety and

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<sup>20</sup> To the best of CFC’s knowledge, there has never been an instance where members of the public or property suffered harm as a result of the transportation of cobalt-60.

<sup>21</sup> Moreover, the preamble to 10 CFR Part 51 states explicitly that the transportation of radioactive materials does not pose any significant *radiological* threat to public health and safety. The DOT found in an EA on the transport of radioactive materials that “the risks of highway transport are so low that the regulations authorizing such transport will have no significant environmental impact.” In NUREG-0170, the Commission considered the environmental impacts of the transportation of all types of radioactive materials, and it set forth NRC’s conclusion that “the environmental impacts, radiological as well as non-radiological, of both the normal transportation of radioactive materials and of the risk and consequent environmental impacts attendant on accidents involving radioactive material shipments were sufficiently small that shipments by *all* modes of transport should be allowed to continue and no immediate changes to NRC regulations were needed.” These regulations dealt with the transport of *high-level radioactive waste or materials* while cobalt-60, as a sealed source, poses much less risk of radiological exposure during transportation. Therefore, the transportation of cobalt-60 materials to the CFC facility, in and of itself, does not pose any significant *radiological* threat to public health, safety or the environment. See 49 Fed. Reg. 9352, 9374 (March 12, 1984).

property through possible negligent or intentional exposure to radiation and radioactive materials.” Petitioners’ Second Hearing Request at 14. This allegation is nothing more than *conjecture* in that it does not allege or describe the following: (1) what type of negligent or intentional act on the part of the licensee will cause a release of cobalt-60 or gamma radiation from the Genesis irradiator or the CFC facility; (2) how cobalt-60 or gamma radiation will reach Petitioners two (2) miles from the CFC facility; (3) what type of harm Petitioners will suffer as a result of such cobalt-60 or gamma radiation; or (4) how Petitioners property will be affected negatively. Without more substantive allegations, Petitioners have not met the requirement that a *concrete and particularized injury* must be pleaded before standing is granted. Again, as noted above, standing should be denied when the threat of injury is too speculative. *See Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994).

Petitioners’ also allege that, “the public sewer system [will be] contaminated after introducing cobalt-60 contaminated water into the system [and] residents will be affected....”<sup>22</sup> Petitioners’ Initial Hearing Request at 2. However, this allegation merely raises a generalized claim that, should cobalt-60 from the CFC facility enter the Milford

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<sup>22</sup> Petitioners also have alleged that “[s]ome irradiation facilities expose workers to dangerous levels of radiation when they frequently have to open irradiation chambers.” Petitioners’ June 23, 2003 Submission at 2. This allegation also includes citation to incidents in the State of New Jersey where workers were harmed by exposure to cobalt-60. *See id.* However, Petitioners do not have legal standing to raise concerns on behalf of workers who are not members of the group requesting a hearing. In fact, NRC has found that a petitioner cannot assert the rights of third parties as a basis for intervention. *See Detroit Edison Co.*, (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387 *aff’d* ALAB-470, 7 NRC 473 (1978). Further, with respect to facility workers, NRC has made clear that a group does not have standing to assert the interest of plant workers, where it has no such workers among its members. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Plant, Units 1 & 2), LBP-93-1, 37 NRC 5, 11-12 (1993). While Petitioners do not seek organizational standing, this particular *group* of Petitioners cannot assert the rights of facility workers when no member of this *group* is a facility worker. In addition, the New Jersey case cited by Petitioners involved a Category IV irradiator. Such an event cannot occur in a Category III irradiator because such irradiators do not have irradiation chambers.

Township sewer system, members of the public could be harmed. If Petitioners raise this generalized claim on a “township-wide” basis, then, as stated above, a “generalized grievance” shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC at 333. If Petitioners raise this generalized claim merely on the basis that it will harm them, then such a claim is insufficient because they do not allege how the cobalt-60 will be released from the CFC facility into the public sewer system, how the cobalt-60 will reach them through the public sewer system, and what specific potential harm the cobalt-60 will cause them. Therefore, without more, this speculative allegation of a *conjectural and hypothetical* injury is insufficient for a grant of standing because, as noted above, standing should be denied when the threat of injury is too speculative. *See Sequoyah Fuels Corp. and General Atomics*, 40 NRC 64, 72 (1994).

In addition, as stated above, the design of the “sealed source” and the Genesis irradiator purposefully utilize several protective layers to prevent the migration of any radioactive material into public water systems, including sewer systems. These safety precautions minimize, if not eliminate any potential for radioactive material to migrate from the “sealed source’s” protective layers and safety monitors, through the tank water shielding, its safety monitors, and the tank itself, and into a public water supply where it potentially could reach Petitioners.<sup>23</sup> Therefore, Petitioners’ allegation regarding a

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<sup>23</sup> Petitioners also allege that there have been several instances where members of the public have suffered harm as a result of the release of radioactive materials to public water systems from irradiators. It is important to note that, in each case, the irradiators in question were either Category IV irradiators and, in one case, did not even utilize cobalt-60. In fact, to the best of CFC’s knowledge, there has never been an instance where a cobalt-60 Category III self-

release of cobalt-60 into a public water system is insufficient to demonstrate injury-in-fact.

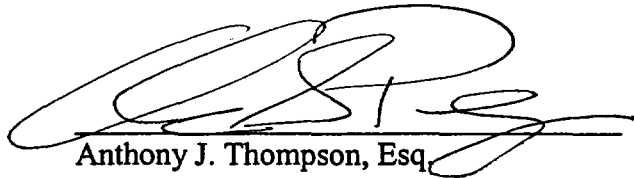
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contained, underwater irradiator has released radioactive material or radiation on-site or off-site. In addition, each of the cases cited by Petitioners occurred prior to the enactment of NRC's 10 CFR Part 36 regulations for irradiators in February, 1993. Indeed, these regulations specifically were designed to address the safety problems with some types of irradiators.

## V. CONCLUSION

For the aforementioned reasons, CFC respectfully requests that Petitioners' hearing request be rejected as untimely based on their failure to properly serve such hearing request upon CFC. Further, CFC respectfully requests that Petitioners' hearing request be denied because Petitioners have not demonstrated the requisite standing for a Subpart L hearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'AJT', is written over a horizontal line.

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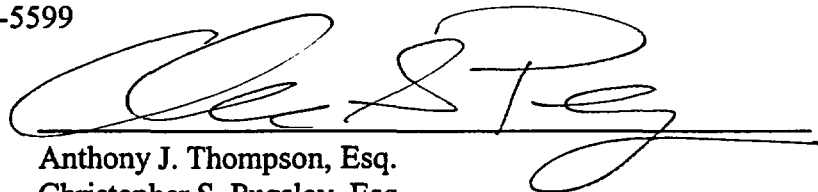
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# **ATTACHMENT**

## **“A”**



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**Company hopes to irradiate meat \*\* CFC of Bucks seeks NRC license to kill bacteria with cobalt-60.: [SECOND Edition]**

*Frank Devlin Of The Morning Call. Morning Call. Allentown, Pa.: Feb 5, 2003. pg. B.1*

**Abstract (Article Summary)**

Officials for the warehouse, CFC Logistics in Milford Township, announced Tuesday they have applied for a federal Nuclear Regulatory Commission license to irradiate meat and other foods with gamma rays derived from radioactive cobalt-60.

[Russell N. Stein] said he designed the irradiator CFC wants to install. It would use hundreds of thin, 18-inch-long cobalt cylinders submerged in a pool of water 22 feet deep. A conveyor system would lower water-tight crates containing food into the water and put them "right next to the cobalt" until the food is properly irradiated, he said.

Photo by Catherine Meredith, The Morning Call; OFFICIALS OF THE CFC LOGISTICS warehouse in Milford Township have applied to become one of only three sites in the United States where meat is irradiated with a bacteria-killing radioactive source.

**Full Text (967 words)**

*Copyright Morning Call Feb 5, 2003*

An Upper Bucks cold storage warehouse that's part of the same corporation that owns Hatfield Quality Meats could become one of the few U.S. sites where meat is irradiated to kill bacteria.

Officials for the warehouse, CFC Logistics in Milford Township, announced Tuesday they have applied for a federal Nuclear Regulatory Commission license to irradiate meat and other foods with gamma rays derived from radioactive cobalt-60.

"We're making the commitment, we're definitely going to do this," said CFC President Jim Wood. "Our decision has a lot to do with the need for this kind of service to improve food safety."

CFC would be the third site in the country where gamma rays are used to kill or slow the growth of disease-causing bacteria and parasites in meat, according to irradiation industry officials. The others are in Chicago and central Florida.

Four other irradiation plants in the country use electricity instead of nuclear material and are not regulated by the NRC.

Several U.S. government agencies and the meat industry tout irradiation as a safe way to prevent tragedies like the fatal listeriosis outbreak linked last fall to deli meat from the Wampler Foods plant in Franconia Township.

Irradiation kills listeria, e. coli, salmonella and other pathogens -- or keeps them from growing -- by disrupting their DNA. Industry officials say the process doesn't sap food's vitamins any more than cooking or pasteurization does, and that it barely alters taste and consistency, if at all.

CFC, which is part of the Clemens Family Corp. of Hatfield Township, opened its 150,000-square-foot warehouse in October on Am Drive, off Route 663 just east of the Turnpike interchange. The corporation is not connected to the Clemens Family Markets supermarket chain.

Wood, who wants to have the irradiator installed by the end of the year, announced his company's plans at the Milford supervisors meeting Tuesday. He was joined by representatives of GrayStar Inc. of Mount Arlington, N.J., which is selling CFC the \$1.5 million irradiator.

Township officials acknowledged that Milford has no jurisdiction in the licensing or operation of irradiators. That's strictly up to the NRC.

GrayStar Vice President Russell N. Stein said the township's involvement would probably be limited to issuing an occupancy permit.

The U.S. Department of Agriculture approved the irradiation of beef and chicken two years ago. Certain fruits and vegetables can also be irradiated. More and more supermarkets have been introducing irradiated ground beef since the Wampler outbreak, which according to the Centers for Disease Control in Atlanta killed eight people in the Northeast.

Medical and health products, such as Band-Aids and tampons, have been irradiated for years. So have spices. Across the nation, about 50 gamma-ray irradiators treat spices and health products.

Several environmental and consumer watchdog groups oppose irradiation. They warn that meat suppliers will rely on irradiation instead of cleanliness to keep pathogens out of the food supply. They also warn of accidents and terrorism at irradiation sites.

Patricia Lovera of the consumer group Public Citizen said the irradiation industry has a "track record" of accidents. It includes a worker at a New Jersey plant being hospitalized for a month after being exposed to radiation in 1974, and workers from a Georgia irradiator going into their homes and communities in 1988 wearing radioactive clothing, she said.

She's also worried that radioactive material could be tempting to a terrorist who wants to make a "dirty bomb." "The community has a right to ask, "What kind of security is there going to be?" she said.

Officials at the NRC and in the irradiation industry said terrorists would have trouble getting the cobalt -- the only radioactive material in the process -- either from inside an irradiator or when the cobalt is being transported.

Any group that manages to get past security, NRC spokesman Neil Sheehan said, still must use "remote handling tools, weighing hundreds to thousands of pounds to move radioactive sources from irradiators."

Sheehan said the cobalt is transported in protective casks and that with satellite technology, "the whereabouts of the vehicle carrying the sources remain known during transit."

"You'd have to have an incredibly clever terrorist," Stein said Tuesday.

As for the past accidents, Stein said, "everyone learns from their mistakes, even the NRC."

Stein said accidents have led to safety improvements in the irradiation industry. The most recent accident at a cobalt-60 plant was in the 1970s, he said. The 1988 Georgia incident took place at a plant using cesium-137. There have been no deaths attributed to U.S. irradiation plants, Stein said.

A resident at the meeting asked if the cobalt could explode. Stein said cobalt is a metal similar to nickel in the way it looks and feels. It can't explode, he said.

Milford Supervisor Thomas Courduff was the most vocal of the three supervisors. When Township Manager Jeffrey Vey spoke of the advantages of irradiation to consumers, Courduff said the township is concerned about the environmental risk.

Courduff said he hoped NRC regulators prove to be as thorough as Stein said they are.

Stein said he designed the irradiator CFC wants to install. It would use hundreds of thin, 18-inch-long cobalt cylinders submerged in a pool of water 22 feet deep. A conveyor system would lower water-tight crates containing food into the water and put them "right next to the cobalt" until the food is properly irradiated, he said.

Wood said CFC plans to irradiate meat for any company that wants the service, and also would irradiate spices until it lines up meat customers. It doesn't plan to irradiate medical products.

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**[Illustration]**

Photo by Catherine Meredith, The Morning Call; Caption: OFFICIALS OF THE CFC LOGISTICS warehouse in Milford Township have applied to become one of only three sites in the United States where meat is irradiated with a bacteria-killing radioactive source.

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Companies: Nuclear Regulatory Commission (NAICS: 926130 )

Author(s): Frank Devlin Of The Morning Call

Article types: LOCAL

Section: LOCAL

Publication title: Morning Call, Allentown, Pa.: Feb 5, 2003. pg. B.1

Source Type: Newspaper

ProQuest document ID: 283623711

# **ATTACHMENT “B”**

May 30


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From The Morning Call -- May 30, 2003

# Irradiation plant facing opposition

Upper Bucks residents meeting with activist to plan strategy.

By Hal Marcovitz  
Of The Morning Call

A group of Upper Bucks residents hopes to generate opposition to a meat irradiation plant in Milford Township when it meets Saturday with an activist from Public Citizen, the Washington-based advocacy organization founded by Ralph Nader.

Charles Moyer, a Milford Township resident who is helping to organize the meeting, said he hopes the group can begin formulating a strategy to oppose the plant, which will use gamma rays derived from radioactive cobalt-60 to purify meat.

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"I'm no expert, but it seems like a pretty big risk to be taking for cheap meat."

Moyer said he isn't sure what course the group will take. He'd like to see members organize an informational drive to alert the community to what the group perceives are the plant's hazards. Moyer said the group could also begin laying the groundwork for a legal challenge.

The irradiator, which is under construction, is owned by CFC Logistics, a subsidiary of Clemens Family Corp. of Hatfield, owners of Hatfield Quality Meats Inc. The Clemens Family Markets supermarket chain is owned by a separate corporation.

Contractors are building the irradiator inside a 150,000-square-foot cold-

The group, called "NOCOBALT-4-FOOD," which stands for Nuclear Objecting Citizens Opposed to Bucks Acquiring Lethal Treatments for Food, will meet at noon Saturday at the James A. Michener Library, 229 California Road, Richland Township.

Moyer said he questions the safety of the irradiation process.

"It's radioactive and it's scary," he said.

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## Spotlight

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storage warehouse on Am Drive, just off Route 663 near the Pennsylvania Turnpike interchange.

The CFC plant would be the third facility in the country that uses gamma rays to kill or slow the growth of disease-causing bacteria and parasites in meat. Other irradiation plants use electricity. Last fall, the U.S. Department of Agriculture approved the use of irradiated meat in the national school lunch program.

Monique Mikhail, the Public Citizen organizer who will address the group, said she intends to urge members to seek a public hearing before the Milford Township supervisors. Mikhail said Public Citizen believes food irradiators are unnecessary if farmers and slaughterhouses observe proper sanitation procedures.

"Most people don't know what's going in there," she said. "They don't know what cobalt-60 is. They don't know what food irradiation is. They don't know what's going on in their back yard."

CFC President Jim Wood said it may be too late to ask for a public hearing. The company has already received a zoning permit, he said. A public hearing was held in March, he said, and township supervisors indicated the company has permission to occupy the building once the U.S. Nuclear Regulatory Commission grants CFC a license to operate the irradiator.

Wood said CFC is in the late stages of the licensing procedure and all that remains is to submit some final documents to the federal agency. It is expected that the project will be completed this summer, he said.

Milford Township Manager Jeffrey A. Vey said he doesn't believe further hearings before supervisors are possible or that supervisors have any further say in the regulatory process.

Vey added that the township is satisfied that all safety measures are being followed by

"I live within 4,800 feet of that building," Vey said. "I'm the president of the fire company. Something happens, it's my guys who are the responders. It isn't like people are taking it casually."

Wood said the company must abide by safety standards similar to what hospitals observe in nuclear medicine departments. The cobalt is transported under guidelines established by the International Atomic Energy Agency as well as rules enforced by the state government.

Wood said construction of the \$1.5 million irradiator is nearly finished. At some point, the company would like to hold an open house to show people how the irradiator operates and the plant's safety features.

"We feel very confident this is safe and it doesn't impact on the environment," he said. "We don't think 'nuclear' and they think nuclear waste and meltdown. We recognize there are certain people not going to like it; they have to speak their peace."

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# ATTACHMENT

## “C”

June 2

# Area firm to install irradiator

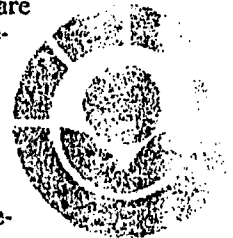
*CFC Logistics of Milford will use the machine to kill food-borne bacteria. Some are concerned about the safety of the process.*

BY HILARY BENTMAN  
Staff Writer

MILFORD — Highly publicized cases of mad cow disease and major meat recalls in recent months are enough to turn any die-hard meat eater into a vegetarian.

For years the food industry has tried to find ways to rid food, particularly meat, of harmful food-borne bacteria. One local company is employing a relatively new technology to sanitize foods, but it has created some stir from area residents and consumer advocates.

CFC Logistics Inc. in



Since 1986, all irradiated products must carry the international symbol called a radura.

See FOOD, Page A 2

## Food

Continued from Page A 1

ard Township is planning to install an irradiator machine at an old storage warehouse near Pennsylvania Turnpike mile on Route 663. The radiation exposes food to ionizing radiation or gamma rays — the case of CFC it's cobalt-60 that can kill harmful bacteria such as *e. coli*, salmonella and listeria without altering taste, texture, appearance or nutritional value of food. The process, similar to milk pasteurization, can also kill insects and extend the

shelf life of certain foods.

Some consumer advocate groups oppose the practice, fearing studies are not conclusive on the health risks to both consumers or residents living near an irradiation facility.

The process, however, has been endorsed by major national and international agencies. The Centers for Disease Control and Prevention, for example, estimates that if half of the nation's ground beef, pork, poultry and processed luncheon meats were irradiated, there would be 880,000 fewer cases of food-borne illness, 8,500 fewer hospitalizations and 352 lives saved a

year.

Last week, the U.S. Department of Agriculture released specifications for the purchase of irradiated beef for the National School Lunch Program, which feeds more than 25 million children each school day, by 2004. The USDA will supply school districts with educational materials on irradiation for parents and the community. The ultimate decision will be made by the school district.

But a recently formed citizens group NOCOBALT 4-FOOD, which stands for Nuclear Objecting Citizens Opposed to Bucks Acquiring Lethal Treatments for Food — held a meeting Saturday to learn about CFC Logistics' application to operate an irradiator.

The group is concerned that many people in the community don't really know about the plans and it "got through on a real low level," said Skip Moyer of the group. And what if something goes wrong, a leak, for instance, or the site becomes a terrorist target?

"It's one more thing we have to think about it. It doesn't really make our lives better," said Moyer. "We realize there is concern about meat that has germs but it's a quick fix. Maybe there are some good things but we don't know enough."

Among the representatives at the meeting was Public Citizen, a national, nonprofit consumer advocacy organization founded by Ralph Nader in the 1970s to represent consumer interests in government. Monique Mikhail, an organizer with Public Citizen, said the group opposes irradiation

## The process

The product is lowered into a pool of water via an overhead hoist and trolley system where it passes through a field of ionizing energy of gamma rays. The rays are produced by cobalt-60 radiation, which never leaves the shielded pool. This process destroys bacteria, fungus or parasites that cause disease or food to spoil, including *e. coli*, salmonella and listeria.

because it's an unnecessary technology that creates chemicals suspected to cause cancer, genetic damage and birth defects.

"It hasn't been proven safe and the industry has not taken off. We do acknowledge that it does kill bacteria, but not 100 percent, and most people who have endorsed it do it on FDA approval and the (World Health Organization) but there are flaws of those approval processes," said Mikhail.

She also said that irradiation is a way for slaughterhouses and meatpacking plants to cover up dirty meats, "instead of cleaning up facilities, which cuts into their profits."

Bob Pierson, a professor of food science and management at Delaware Valley College, acknowledges that argument but says cleaning facilities will only eliminate 80 percent of bacteria,

"It's like a dish towel on a sink. Soap and water kills only 70 percent bacteria; bleach kills 90 percent... a microwave for a minute and a half kills 100 percent."

CFC is hoping to have running by fall, contingent upon approval from the Nuclear Regulatory Commission. Wood said the decision to purchase an irradiator — the machine is called Genesis and it's from the New Jersey-based Graystar Inc. — came last year after several incidents indicated it was a good opportunity.

The company began to hear about regulatory agencies such as the USDA employing stricter meat inspection guidelines. There were a number of major food recalls, including Pilgrim's Pride nationwide recall of more than 27 million pounds of deli meat after tests found the potentially fatal listeria bacteria in floor drains at its Wampler Foods plant in Franconia.

This was the same strain found in an outbreak that killed eight people and sickened dozens more.

And a few retailers, including Wegmans stores, began promoting irradiated ground beef, so "there was a consumer acceptance we felt didn't exist before," Wood said.

Federal regulations require irradiated food sold in stores to carry a label — the radura symbol, green petals in a broken circle.

"It's a process that is heavily regulated," said Wood. "We are not a nuclear plant. We're not splitting atoms. It's similar to what hospitals are using and no one's picketing them. We're under the same strict guidelines.

Every spice in your irradiated, instruments) have been botanicals, health technology has been 50 years or more most studied food.

There are only a few facilities in the country devices.

Wood said the process. The cobalt-60 source leaves a shielded pool with Genesis beam is so inherently safe create waste or water," he said.

Pierson says meat can be irradiated. "The usual radiation. It's less than getting an X-ray.

So convinced in Pierson, who comes from meat cutters, recalled irradiated hamburger at Wegmans. "Now you as rare as you like. the other day and it is delicious."

CFC Logistics is the Clemens Family field, which owns Italy Meats.

Wood said the nothing do with it and CFC wouldn't irradiate Hatfield. CFC's first customers will be botanicals and

CFC is planning open house when ready. An information also been set up.

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Hilary Bentman can be e-mailed at [hbentman@pj.com](mailto:hbentman@pj.com)



# **ATTACHMENT**

## **“D”**

June 5

**Safety is questioned for irradiation plant \*\* When finished, Milford plant will use gamma rays to clean food.:[SECOND Edition]**

Nancy Williams Special to The Morning Call - Freelance. Morning Call. Allentown, Pa.: Jun 5, 2003. pg. B.5

**Abstract (Article Summary)**

The facility is part of a 150,000-square-foot cold-storage warehouse that will be owned and operated by the Clemens Family Corp. of Hatfield, owners of Hatfield Quality Meats Inc. The irradiator under construction is owned by CFC Logistics, a subsidiary of the corporation. It is on Am Drive, just off Route 663 near the Turnpike interchange. The Clemens Family Markets supermarket chain is owned by a separate corporation.

The CFC plant would be the third facility in the country that uses gamma rays to kill or slow the growth of disease-causing bacteria and parasites in food. Other irradiation plants use electricity. Last fall, the U.S. Department of Agriculture approved the use of irradiated meat in the national school lunch program.

**Full Text (427 words)**

*Copyright Morning Call Jun 5, 2003*

Concerns about the safety and planning of a food irradiation plant drew about 50 area residents to the Milford Township supervisors meeting Tuesday night.

Supervisors agreed that safety was a concern but maintained that the authority of the municipality did not include regulating nuclear devices.

"The [Nuclear Regulatory Commission] handles all licensing of the process," said Supervisor Chairman Charles Strunk. The township, he said, is only responsible for land development issues, which have been resolved.

The facility is part of a 150,000-square-foot cold-storage warehouse that will be owned and operated by the Clemens Family Corp. of Hatfield, owners of Hatfield Quality Meats Inc. The irradiator under construction is owned by CFC Logistics, a subsidiary of the corporation. It is on Am Drive, just off Route 663 near the Turnpike interchange. The Clemens Family Markets supermarket chain is owned by a separate corporation.

The CFC plant would be the third facility in the country that uses gamma rays to kill or slow the growth of disease-causing bacteria and parasites in food. Other irradiation plants use electricity. Last fall, the U.S. Department of Agriculture approved the use of irradiated meat in the national school lunch program.

In February, CFC applied for a building permit to bring in the cobalt-60 irradiation technology. The work included cutting a hole in the floor and digging about 18 feet deep.

"When they came to us about this, we weren't sure whether we actually needed to grant them a permit," said Township Manager Jeffrey A. Vey.

Residents claimed that the township moved ahead with the plans without public notice. But township solicitor Terry W. Clemons said at least two public hearings were held.

Tom Clemens, a CFC representative, was at Tuesday night's meeting and addressed criticism of the technology.

"There are only a few of these in operation now in this country," he said. "The technology for this type of facility is very new." He invited the public to come and view the plant in operation once the NRC has granted the final licenses.

Clemens also explained how the equipment is maintained.

"The product comes in already packed in boxes on skids. We put it on an overhead conveyor, and then it goes on a crane, which lowers it into a water tank in an air-tight bell. No water actually touches the product," he said.

Clemens added that the water is kept pure and is never contaminated by the radioactive material, and therefore poses no health risk.

The first delivery of the radioactive material could occur in July.

Nancy Williams is a freelance writer.

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Author(s): Nancy Williams Special to The Morning Call - Freelance

Article types: LOCAL

Section: *COMMUNITY REPORT*

Publication title: Morning Call. Allentown, Pa.: Jun 5, 2003. pg. B.5

Source Type: Newspaper

ProQuest document ID: 344267841

Text Word Count 427