

December 4, 2003 (2:41PM)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

REQUEST FOR REFERENCE TO COMMISSION

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

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

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

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

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert J. Sugarman', with a stylized flourish at the end.

Robert J. Sugarman
Counsel for Intervenors

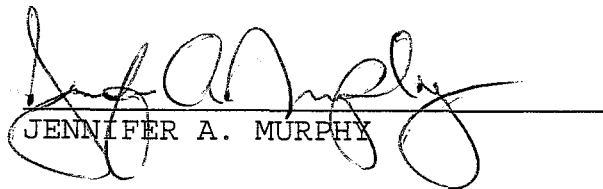
CERTIFICATE OF SERVICE

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

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

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

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


JENNIFER A. MURPHY

DATED: December 1, 2003

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

MEMORANDUM

: Anthony Thomas and Christopher Pugsley

om: Robert J. Sugarman

te: November 24, 2003

: CFC

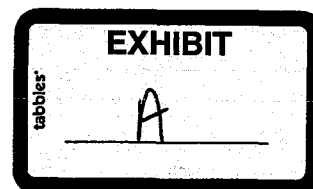
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m surprised not to have heard from you in view of the Board direction that we consult, and in view of your undertaking to check th your client. Nevertheless I will wait until Wednesday, so that there will not be an issue as to who ws supposed to contact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



Monday, November 24, 2003 America Online: RJSugarman

MEMORANDUM

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

Pursuant to the Board's direction, I am requesting copies of the underlying contractual documents, design memoranda, reviews of design, and other interaction between CFC, Gray*Star and Reaviss, regarding the design and implementation of the CFC facility. This would include the CFC specifications and other exhibits to the sale agreement.

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

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

continue to apply to any documents that you so designate.

I would appreciate your contacting me in writing rather than verbally, so there will be no confusion over what was said, and so that there will be no issue as to when responses are made, etc.

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

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

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

November 26, 2003

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

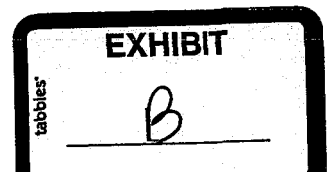
Mr. Robert J. Sugarman
Sugarman & Associates
Robert Morris Building-11th Floor
100 North 17th Street
Philadelphia, PA 19103

Dear Mr. Sugarman:

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

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

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

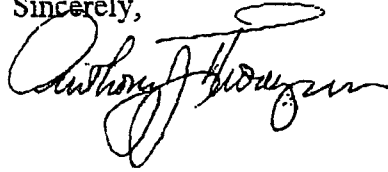


Mr. Robert J. Sugarman
November 26, 2003
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their access (i.e., typographical errors, incorrect ML numbers) have been resolved. If you or your expert has any problems retrieving these documents, please contact NRC's Public Document Room office for assistance.

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

Sincerely,



Anthony J. Thompson, Esq.
Law Offices of Anthony J. Thompson, P.C.
1225 19th Street, NW
2nd Floor
Washington, DC 20036

COUNSEL FOR CFC LOGISTICS, INC.

(CFClogisticslettersugarmandiscovery.doc)

SUGARMAN & ASSOCIATES, PC

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100 NORTH 17TH STREET
PHILADELPHIA, PENNSYLVANIA 19103

ROBERT J. SUGARMAN *
JENNIFER A. MURPHY**
DEBBIE L. GOLDBERG
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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
** Also admitted in NJ

December 1, 2003

VIA ELECTRONIC MAIL, FACSIMILE AND U.S. FIRST CLASS MAIL


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

RE: CFC Logistics, Inc.
Docket No. 30-36239-ML
ASLBP No. 03-814-01-ML

Dear Secretary:

Please find attached for filing Intervenors' Request for Reference to Commission in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed stamped envelope attached herewith.

Respectfully,


Robert J. Sugarman

RJS:saj
Enclosure