

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

DOCKETED
USNRC

December 18, 2003 (11:26AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:) Docket No.: 30-36239-ML
CFC Logistics, Inc.) ASLBP No.: 03-814-01-ML
(Materials License Application)) Date: December 16, 2003
) License Control No. 132825

RESPONSE OF CFC LOGISTICS, INC. TO PRESIDING OFFICER'S REQUEST
FOR INFORMATION REGARDING NRC STAFF RESPONSES

CFC Logistics, Inc. (CFC Logistics), by its undersigned counsel of record, hereby submits this Response to Presiding Officer's Request for Information Regarding the Nuclear Regulatory Commission (NRC) Staff Responses.

I. BACKGROUND

On December 11, 2003, the Presiding Officer held a pre-hearing conference in Milford Township, Pennsylvania in which representatives of CFC Logistics and several members of the public (hereinafter "Intervenors") participated. This pre-hearing conference was held to allow all parties to this Subpart L proceeding to discuss, *inter alia*, issues related to two (2) motions filed by Intervenors for a stay of the effectiveness of CFC Logistics' NRC materials license and for document production and reference to the Commission. During this discussion, the Presiding Officer raised the possibility of directing NRC Staff to respond to the arguments presented in the two aforementioned motions. As a result, the Presiding Officer requested that both CFC Logistics and

Intervenors submit papers identifying the issues NRC Staff should address in their response. This Response details CFC Logistics' response to the Presiding Officer's request.

II. PROPOSED QUESTIONS FOR NRC STAFF RESPONSE

With respect to the potential questions for NRC Staff's response to Intervenors' November 10, 2003 motion for a stay of the effectiveness of CFC Logistics' NRC materials license, CFC Logistics asserts that NRC Staff should be directed to address the following questions in conjunction with a response to arguments presented in CFC Logistics' and Intervenors' previously filed briefs:

- (1) Was NRC Staff aware that the CFC Logistics Category III underwater irradiator is a "prototype" (i.e., "the first of its kind")?;
- (2) Assuming NRC Staff was aware of this fact during its review of CFC Logistics' license application, does this fact represent a health and safety issue?;
- (3) Does NRC Staff agree that dry storage of the NRC-approved cobalt-60 "sealed sources" in the plenum at the bottom of the shielding pool is the primary "prototypical" difference between the CFC Logistics Category III underwater irradiator and other previously licensed Category III underwater irradiators?;
- (4) If so, does dry storage of the NRC-approved cobalt-60 "sealed sources" in the plenum at the bottom of the shielding pool represent a health and safety issue (i.e., wet versus dry storage) or a production efficiency issue related to the ability to irradiate bulk product effectively?;

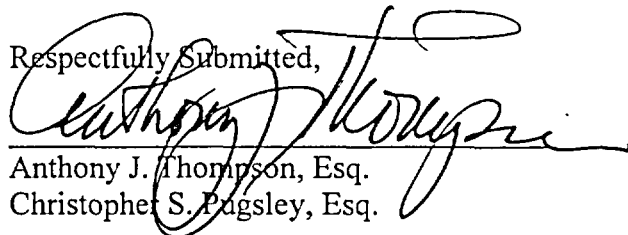
- (5) Is the CFC Logistics Category III underwater irradiator, as licensed with the presence of a "check valve" on the plenum, adequately protective of public health and safety?;
- (6) Does the presence of the "check valve" on the plenum pose a health and safety issue?;
- (7) Does the presence of water in the plenum pose a health and safety issue?;
- (8) Was NRC Staff ever told by REVISS Services, Ltd. (REVISS) or any other party that the presence of a "check valve" on the plenum represented a health and safety issue?;
- (9) Was NRC Staff ever told by REVISS or any other party that removal of the "check valve" made the plenum "safer" as opposed to "no less safe"?

With respect to the potential questions for NRC Staff's response to Intervenor's December 1, 2003 request for document production and reference to the Commission, CFC Logistics asserts that NRC Staff should be directed to address the following questions in conjunction with a response to arguments presented in CFC Logistics' and Intervenor's previously filed briefs:

- (1) Is "discovery" prohibited in Subpart L proceedings?;
- (2) Does NRC Staff agree that the Commission's February 28, 1989 Final Rule regarding Subpart L proceedings states that parties do not have a right to discovery unless authorized by agency regulations and that the hearing file is the source of documents available to parties in Subpart L hearings?;

- (3) Were Subpart L proceedings designed primarily to address Atomic Energy Act of 1954 issues that pose less potential threats to public health and safety and, thus, obviate the need for more formal, detailed adjudicatory proceedings?;
- (4) Does the production of documents and information which were not previously known to a party and were not requested by NRC Staff during its review of a license application or required to be submitted by regulation constitute "discovery?";
- (5) In a scenario where information was provided to NRC Staff indicating that violations of NRC requirements were occurring at an NRC-licensed facility during an ongoing Subpart L proceeding, would such information trigger the need for "discovery" or would such information require immediate investigation by NRC's Office of Enforcement?

CFC Logistics respectfully requests that the Presiding Officer direct NRC Staff to respond to the issues listed above and that CFC Logistics be given an opportunity to respond to NRC Staff's response in turn.

Respectfully Submitted,

Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.

COUNSEL FOR CFC LOGISTICS, INC.

**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
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) ASLBP No.: 03-814-01-ML
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) License No. 132825
)
) Date: December 16, 2003
)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Response of CFC Logistics, Inc. to Presiding Officer's Request for Information Regarding NRC Staff Responses in the above-captioned matter has been served upon the following via electronic mail, facsimile and U.S. First Class Mail on this 16th day of December, 2003.

1. Robert J. Sugarman, Esq.
Sugarman & Associates, P.C.
100 North 17th Street
Philadelphia, PA 19103
Facsimile: 215.864.2501
Email: RJSugarman@aol.com

2. Office of the Secretary
Attn: Rulemaking and Adjudication
Staff
U.S. Nuclear Regulatory
Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20851
Facsimile: 301.415.1101
Email: secy@nrc.gov

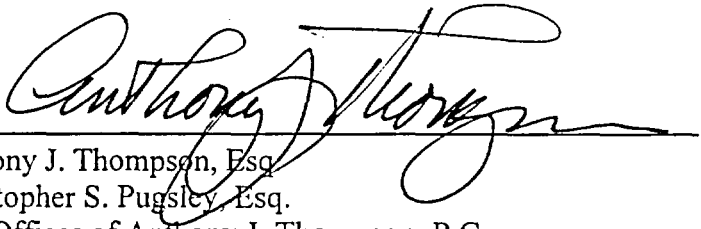
3. Stephen H. Lewis, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Mail Stop #0-15D21
Washington, DC 20555-0001
Facsimile: 301.415.3725
Email: shl@nrc.gov

4. Administrative Judge Michael C. Farrar
Presiding Officer
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Mail Stop #T-3 F23
Washington DC 20555-0001
Facsimile: 301-415-5599
Email: mcf@nrc.gov

5. Dr. Charles N. Kelber
Special Assistant
Atomic Safety and Licensing Board
Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory
Commission
Washington, DC 20555-0001
Facsimile: 301.415.5599
Email: cnk@nrc.gov

6. Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

7. Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
Facsimile: 301-415-5599



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
1225 19th Street, N.W., 2nd Floor
Washington, DC 20036
(202) 496-0780
Facsimile: (202) 496-0783
Email: ajthompson@athompsonlaw.com

(CFCCERTIFICATEOFSERVICE.DOC)

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

December 16, 2003

BY 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

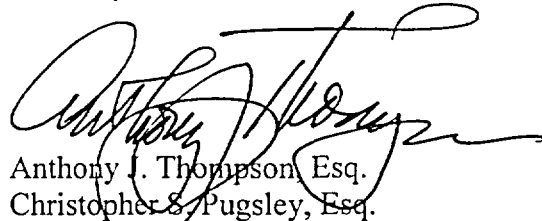
Re: In the Matter of: CFC Logistics, Inc.
Docket No: 3036239-ML
ASLBP No. 03-814-01-ML
License No. 132825

Dear Sir or Madam:

Please find attached for filing Response of CFC Logistics, Inc. to Presiding Officer's Request for Information Regarding NRC Staff Responses 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

(CFCCOVERLETTTER1.DOC)