

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 03/06/04

BEFORE THE PRESIDING OFFICER

In the matter)	
)	Docket No. 302-362339-ML
CFC LOGISTICS, INC.)	
)	ASLBP No. 03-814-01-ML
(Materials License))	

NRC STAFF SUPPLEMENTAL BRIEF ON AREA OF CONCERN
REGARDING DECOMMISSIONING FINANCIAL ASSURANCE

BACKGROUND

This Brief supplements the "NRC Staff Brief on Area of Concern Regarding Decommissioning Financial Assurance," dated November 20, 2003, ("Staff Initial Brief"). In his "Prehearing Order (Regarding NRC Staff Participation and Other Matters)," ("Prehearing Order"), dated February 17, 2004, the Presiding Officer directed the Staff to provide additional information that can be grouped into three areas, as follows:

- (1) "Given the relatively large decommissioning expenses incurred at the [PermaGrain] site, the Staff should address thoroughly the reasons why the nature and operation of the facility that existed thereon are, or are not, thought to be analogous to the nature and proposed operation of the facility before us herein."
- (2) "To the extent that the [PermaGrain] site and facility are analogous, the Staff should go on to address whether the similarities between them would call for us to send the Commission the questions of whether (1) the decommissioning bond regulations -- cited by the [Staff and Licensee, CFC Logistics ("CFC-L")] as a reason to reject the intervenors' position -- can be expected in this instance to serve the purpose for which they were intended or (2) special circumstances exist that would make the applicability of those regulations inappropriate in this instance. See 10 C.F.R. §§ 2.1209(d), 2.1239(b), 2.1251(d)."
- (3) "... the Staff may wish to expand upon its abbreviated reference to the new financial assurance rule (68 FR 57327, October 3, 2003) by explaining with some specificity its future application herein."

Prehearing Order at 4. *Underlining in original; bracketing added.* The NRC Staff ("Staff") responds to these questions in the order listed.

DISCUSSION

A. Analogy between PermaGrain and CFC-L facilities and sites.

The design, use, and operations of the PermaGrain facility and site were so far different from the design and operation of the CFC-L facility that no analogy can be reasonably drawn between the conditions that PermaGrain and the governmental agencies faced at the time of its forced decommissioning, and the conditions that CFC-L is anticipated to face at the time of the decommissioning of its facility and site. The similarities between the two facilities are limited to: (1) the fact that both were, or are, Cobalt-60 irradiators; and (2) the fact that both were required by NRC regulations to provide financial assurance in the amount of \$75,000.00. See February 19, 2003 CFC-L Application (ML030630036), at 5, as amended by Certificate of Deposit, dated June 11, 2003, Exhibit 1 to Staff Initial Brief; and (3) SECY-03-0060, "Annual Report to the Commission on Performance in the Materials and Waste Arenas," Exhibit 2 to Staff Initial Brief.

Turning to the differences between the facilities, the PermaGrain facility was originally designed and operated as a pool type research reactor, and was subsequently converted to be used as an irradiator. See letter dated January 30, 2003 from John D. Kinneman, NRC Region I, to Jeffrey Kurtzman, Esq. and attached Inspection Report for Permagrain Products, Inc., dated December 18, 2002 (ML030340453) and Exhibit hereto, News Release by the Commonwealth of Pennsylvania, Department of Environmental Protection, "Cobalt-60 Removal Completed at Quehanna, Marking Milestone in Cleanup Efforts at the Site," dated September 29, 2003. In contrast, the CFC-L facility was designed, and is being operated, purely as an irradiator.

An additional significant difference is that the sealed sources being used at the CFC-L facility are registered pursuant to 10 C.F.R. § 32.210, whereas the earlier sealed sources used at the PermaGrain facility preceded the registration requirement. Compare CFC-L Application, at 3 (providing source model numbers), Figure 5-A, Puridec/Reviss Services Source RL-2089 (at 7); with ML030340453 at 3 (37 inch long "pencils" containing the Cobalt-60 sources), 4 (pencils not

registered), 4-5 (description of numbers of pencils that were in inventory), and 5 (problems associated with locating a cask to transport a “bent pencil.”) In contrast, CFC-L has constructed a new irradiator with registered sealed sources. It will use a design optimized for irradiator use. See, CFC-L Application. Decommissioning at PermaGrain presented a much more complex problem than can be reasonably anticipated at CFC-L.

For the reasons discussed above, the PermaGrain and the CFC-L facilities and sites are not analogous. These differences have a significant bearing upon the costs that were incurred in disposal of the PermaGrain Cobalt-60 sources (estimated by the United States Environmental Protection Agency at \$2.5 million, see Exhibit) and the current financial assurance requirement of \$75,000.00 for CFC-L. As indicated in both ML030340453 and the Exhibit hereto, the non-standardized and unregistered nature of the Cobalt-60 pencils from PermaGrain meant that they were not usable in the more modern irradiators in operation at the time of the PermaGrain site cleanup in 2003. Further the unusual length of the PermaGrain pencils (about 36 inches) necessitated specially designed and approved containers for transport to the disposal site. Hence, the sources all had to be disposed at a low-level waste burial site (Barnwell, South Carolina). This factor was a significant driver in the estimated \$2.5 million Cobalt-60 clean-up cost. By contrast, CFC-L states: “When practicable contractual arrangements will be made with the source supplier for the return of sealed sources.” CFC-L Application at 79. Additionally, the used CFC-L sources may be licensed for use at another facility and are not likely to become a liability. *Id.*

In conclusion, on Presiding Officer Question 1, the PermaGrain and CFC-L facilities and sites are not analogous. Furthermore, the unusual operational history at the PermaGrain facility and site, renders PermaGrain an inappropriate analogy to CFC-L in evaluating the adequacy of the financial assurance level maintained, pursuant to regulation, by CFC-L.

- B. If the analogy is valid, should the Presiding Officer certify a question regarding waiver of the financial assurance regulation to the Commission.

Since the Staff does not consider there to be a valid analogy between PermaGrain and CFC-L, there is no basis for certifying a question to the Commission.

- C. Expanded discussion of specific application of the recently updated financial assurance regulations for materials licensees to CFC-L.

On October 3, 2003, the Commission published a final rule on "Financial Assurance for Materials Licensees," 68 *Fed. Reg.* 57327. Based upon CFC's authorized possession limit of 1,000,000 curies of Cobalt-60,¹ CFC will have to increase its financial assurance amount to \$113,000 by June 2, 2005. *Id.* This result follows from the 50% inflation adjustment applied to the financial assurance certification amounts, and the eighteen month implementation period permitted for licensees that may use the \$75,000.00 certification level. *Id.* Thus, the Commission has established by regulation the revised financial assurance amount that CFC-L will have to provide, and the date by which it will have to provide that increased amount.

The CFC-L facility uses a modern irradiator, with a 1,000,000 Curie possession limit. A facility with a 1,000,000 Curie possession limit is expressly addressed in the updated regulations. *Id.* Accordingly, the regulations unambiguously address the level of financial assurance required of CFC-L and the means by which it may be provided (permitting use of the certification level). The Intervenor has not made a case that CFC-L represents "special circumstances" such that the application of the updated regulations in 10 C.F.R. § 30.35 should be waived in this proceeding.

¹ Revised 10 C.F.R. § 30.35(d) provides that licensees with authorized possession limits greater than 10^{10} and less than or equal to 10^{12} times the applicable quantities of Appendix B to 10 C.F.R. Part 30 in sealed sources must provide \$113,000 of financial assurance. 68 *Fed. Reg.* at 57336. The applicable quantity specified in Appendix B for Cobalt-60 is 1 microcurie. One microcurie $\times 10^{12} = 1,000,000$ curies.

CONCLUSION

The Staff continues to oppose the Intervenor's request that a referral or a certification be made to the Commission regarding the application of the decommissioning financial assurance regulations to this proceeding. The Staff rests for its exposition of the applicable law on its Initial Brief. For the additional reasons developed above in response to the Presiding Officer's questions, special circumstances do not exist such that the application of the Commission's decommissioning financial assurance regulations should be waived in this proceeding.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of March, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF SUPPLEMENTAL BRIEF ON AREA OF CONCERN REGARDING DECOMMISSIONING FINANCIAL ASSURANCE" have been served upon the persons listed below by 1st class U.S. mail, or through deposit in the Nuclear Regulatory Commission's internal mail system, as indicated with an asterisk, and by electronic mail, as indicated with a double asterisk, this 5th day of March, 2004.

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