

applicator source by an accredited calibration laboratory, but the calibration laboratory has a backlog of requests and cannot send the transportation container needed to ship the source at this time. The calibration is expected to be completed by December 31, 2002. Dr. Gandulla does not have the authorization or equipment to perform the calibration and the strontium-90 source manufacturer cannot provide the calibration because the manufacturer is no longer in business. Dr. Gandulla requested an exemption that would permit her to continue to perform patient treatments until the required recalibration can be performed.

#### *Need for the Proposed Action*

The exemption is needed so that Dr. Gandulla can continue to provide optimum medical treatment to her patients. The exemption would allow Dr. Gandulla to use the activity from the 1988 calibration certificate (corrected for decay) to determine the treatment times for ophthalmic conditions. This would permit continued use of the source prior to its recalibration and provide needed timely patient therapeutic services without interruption. Recalibration of the licensed strontium-90 eye applicator is expected to be performed by December 31, 2002. The 90-day duration of the exemption allows for flexibility if there is a delay in the calibration laboratory's ability to supply the transportation container necessary to ship the source. NRC inspections since 1988 have not identified any medical events associated with the use of the source or the treatment times developed using the existing activity values.

#### *Environmental Impacts of the Proposed Action*

The strontium-90 eye applicator source is a sealed source and no material will be released into the environment. All the strontium-90 is contained within the brachytherapy source, as verified by periodic source leak tests performed by the licensee. The proposed action does not increase public radiation exposure. There will be no impact on the environment as a result of the proposed action.

#### *Alternatives to the Proposed Action*

As required by section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. The alternatives are to deny the exemption request and to require the licensee to: (1) return the source for calibration to the manufacturer, (2) have another calibration laboratory perform

the measurements, (3) perform the calibration measurements, or (4) put the sources in storage until the calibration can be performed. The sources cannot be returned to the manufacturer because the manufacturer is no longer in business. Dr. Gandulla has already requested calibration by an accredited calibration laboratory. The licensee does not have the qualifications, authorization, or equipment to perform the calibration. The only other possible option is to require that the licensee place the source in storage. This option would not produce a gain in protecting the human environment, and it would negatively impact the licensee-physician's provision of medical care to her patients.

#### *Alternative Use of Resources*

No alternative use of resources was considered due to the reasons stated above.

#### *Agencies and Persons Consulted*

No other agencies or persons were contacted regarding this proposed action.

#### *Identification of Source Used*

Letter from Ilia Ruiz Gandulla, M.D., to U.S. Nuclear Regulatory Commission, Region II, dated November 21, 2002.

#### **Finding of No Significant Impact**

Based on the above environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate and preparation of an environmental impact statement is not warranted.

The licensee's letter is available for inspection, and/or copying for a fee, in the Region II Public Document Room, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303. The document is available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's Documents Access and Management System (ADAMS), accession number ML023250443. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

**Frederick Brown,**

*Section Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

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## **NUCLEAR REGULATORY COMMISSION**

### **Final Finding of No Significant Impact and Availability of the Environmental Assessment Regarding Troxler Electronic Laboratories, Inc., Request for Exemption**

#### **I. Introduction**

NRC is considering the granting of an exemption from the provisions in 10 CFR 32.14, to allow Troxler Electronic Laboratories, Inc. (hereafter Troxler) to manufacture and distribute the Model CoreReader density gauge as an exempt product. The NRC staff performed an Environmental Assessment (EA) in support of its review of Troxler's request, in accordance with the requirements in 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

#### **II. Supplementary Information**

##### *Background*

Troxler has requested a license to manufacture and distribute an ionizing measuring instrument for density readings (CoreReader) as an exempt product. This licensing action requires an exemption from the provisions of 10 CFR 32.14, which specify that licensees can incorporate byproduct material into products that meet the requirements found in 10 CFR 30.15.

The CoreReader is an ionizing radiation measurement instrument that determines the specific gravity of a compacted asphalt sample. The construction of the CoreReader is all metal housing and includes lead shielding around the source. It is a bench top laboratory instrument containing eight exempt-quantity cesium-137 sources (10 microcuries/0.37 MBq each) installed in plexiglass which is filled and sealed with an epoxy. The sources are held in a subassembly inside the device which is mounted inside the lower third of the device below the sample chamber. It is not removable and is completely inaccessible to the user. The total activity is 80 microcuries (3 MBq).

Troxler has requested an exemption from 10 CFR 32.14, to allow it to distribute the CoreReader as an exempt

device instead of a generally licensed device. The use of the CoreReader would be one element in the implementation of the Strategic Highway Research Program (SHRP), established by Congress in 1987 to develop and evaluate innovative technologies for roadway construction, maintenance, and operations. The SHRP program produced Superpave, a more reliable asphalt-mix design, analysis, and quality control methodology that utilizes an advanced technology approach to pavement design.

Implementation of the Superpave-mix design has resulted in superior performing asphalt pavements. However, the coarser mixtures resulting from Superpave-mix designs have caused problems with the accuracy and precision to measure the specific gravity of laboratory specimens and pavement core samples. The overestimation of density results in premature pavement distress and permeability related problems. Troxler's CoreReader is a technology improvement that overcomes the shortcomings of current water displacement methods for measuring the specific gravity of asphalt samples. Unlike current methods, the CoreReader uses radiation from a distribution of sources to probe the entire volume of an asphalt sample. By doing so, it can accurately measure the coarser Superpave-mixes. The CoreReader reduces operator dependence, improves accuracy and precision, and reduces laboratory differences in measurements to produce better pavement designs.

Troxler's experience with the distribution of generally licensed gauges shows that despite the CoreReader's advantages, it would be attractive to end-users only if it could be distributed nationally under uniform licensing with low quantities of radioactive material contained in it. Many potential users have indicated that they are unwilling to deal with additional regulatory burdens associated with generally licensed devices. Therefore, Troxler has asserted in its request that the CoreReader's benefits can be fully realized only if it is licensed for exempt distribution.

#### *Summary of the Environmental Assessment*

The NRC staff performed an appraisal of the environmental impacts associated with the exemption, in accordance with 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The exemption would authorize Troxler to manufacture and

distribute the CoreReader as an exempt product.

The results of the staff's assessment of potential environmental impacts are documented in an EA which, as noted above, has been placed in the Publicly Available Records component of NRC's document system (ADAMS). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

#### *Alternatives to the Proposed Action*

The proposed action that the NRC is considering is to issue an exemption from 10 CFR 32.14. The proposed action allows Troxler to distribute the CoreReader density gauge as an exempt device. The alternatives available to the NRC are:

1. Approve the exemption request as submitted; or
2. Deny the request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the exemption request. The staff considers that Alternative 1 is the appropriate alternative for selection.

#### *Conclusion*

The NRC staff considered the risk to human health from distribution and transportation, routine use, disposal, and accidents and misuse, as well as the environmental consequences of approving an exemption from 10 CFR 32.14 for the Troxler CoreReader, and has determined that the approval of this exemption is (1) authorized by law; (2) will not endanger life or property or the common defense and security; and (3) is otherwise in the public interest.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared an EA for the proposed exemption from 10 CFR 32.14. On the basis of the assessment, the NRC staff has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, a Finding of No Significant Impact is appropriate.

#### **IV. Further Information**

The EA and the documents related to this proposed action are available for public inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. The accession number of the electronic file for the related documents is ML023190183; the direct accession number of the EA within this file is ML023450624. Documents may also be

examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions regarding this action can be directed to Dr. John P. Jankovich at (301) 415-7904 or by e-mail at [JPJ2@nrc.gov](mailto:JPJ2@nrc.gov).

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

**Thomas H. Essig,**

*Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 25847; 812-12678]**

### **Cohen & Steers Advantage Income Realty Fund, Inc., et al.; Notice of Application**

December 12, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

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#### **SUMMARY OF THE APPLICATION:**

Applicants request an order to permit certain registered closed-end management investment companies to make long-term capital gains distributions to holders of shares of their preferred stock.

**APPLICANTS:** Cohen & Steers Advantage Income Realty Fund, Inc. ("RLF"), Cohen & Steers Quality Income Realty Fund, Inc. ("RQI"), Cohen & Steers Premium Income Realty Fund, Inc. ("RPF"; each of RPF, RQI and RLF, an "Existing Fund" and collectively, the "Existing Funds"), Cohen & Steers Capital Management, Inc. (including any successor in interest<sup>1</sup>, the "Adviser") and each registered closed-end management investment company to be advised in the future by the Adviser or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser (such

<sup>1</sup> A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.