FISH & RICHARDSON P.C.

1425 K STREET, N.W.
11TH FLOOR
WASHINGTON, DC 20005

Telephone
202 783-5070

Facsimile
202 783-2331

Web Site
www.fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

October 22, 2002

Randy Ortanez
PC Labs
6660-B Dobbin Road
Columbia, MD 21004

Re: Part 15 Certification for AMETEK Drexelbrook

Dear Randy:

BOSTON
DALLAS
DELAWARE
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

As we discussed, I am providing you with information concerning applications for equipment authorization for Part 15 devices pursuant to Section 2.933(b) of the Commission's rules. The two devices will be manufactured by Krohne, Inc. for AMETEK Drexelbrook.

The two fluid level measuring devices were granted previous certifications, DR22X0 and DR3X00 under Part 90 of the Commission's rules. (Copies of these certifications are attached). Subsequently, on October 26, 2001, Krohne received a waiver of Part 15 to permit Part 15 Certification of the devices. Krohne received Part 15 Certifications accordingly. (Copies of Krohne's Certifications are also enclosed and a copy of the Commission's waiver is enclosed).

Now AMETEK Drexelbrook is also requesting Part 15 Certification of the devices under its own name. Krohne will continue to manufacture the devices, and, other than labeling, the devices will not be modified in any way. The Krohne Part 15 test results are directly applicable to the devices sold under the AMETEK name.

Attached are photographs showing the exterior appearance of the devices. Images 1 and 2 are of the PLE 22X0. Images 8 and 9 are of the PLE 3X00.

We request that the following new FCC identifiers be issued for the AMETEK Drexelbrook devices: AMETEK Drexelbrook PLE3X00 is the Krohne JH5-70. AMETEK Drexelbrook PLE22X0 is the Krohne JH5-702.

It should be noted that the following condition, attached to the Krohne Part 15 Certifications, also be attached to Part 15 Certifications for the AMETEK Drexelbrook devices:

Grant waiver dated October 26, 2001 applies to this device. Under the terms of this waiver, this device must be installed in a steel tank and a report must be submitted by the grantee annually to the National

Telecommunications and Information Agency (NTIA) identifying the geographic locations where this device has been installed during the previous year.

The address and contact information for AMETEK Drexelbrook is as follows:

Attention: Don Koeneman, Product Manager
AMETEK Drexelbrook
205 Keith Valley
Horsham, PA 19044
(215) 674-4375 Ext. 2223
(215) 674-2731 (Fax)
don.koeneman@drexelbrook.com

Please send all bills to Fish & Richardson. Any questions concerning these applications should be directed to this office.

Very truly yours,

Robert J. Ungar

Federal Communications Commission
Washington, D.C. 20554

October 26, 2001

Fish & Richardson P.C.
601 Thirteenth Street, N.W.
Washington, D.C. 20005

Attn: Mr. Terry G. Mahn

Dear Mr. Mahn:

This is in reply to your February 26, 2001 request for a waiver of Section 15.205 of the Commission's rules, 47 C.F.R. § 15.205. Specifically, you request that the Commission allow P.C. Krohne, Inc. ("Krohne") to obtain certification under Part 15 of the rules for certain fluid level measuring devices that transmit swept frequency signals that fall into restricted bands listed in Section 15.205.

You state that Krohne manufactures two wireless fluid level measuring instruments, model numbers BM70 and BM702. These devices are used to measure the levels within tanks in the chemical, petrochemical, paper, food, pharmaceutical and similar industries where conventional measuring methods will not work, or are unreliable or inaccurate.

The Krohne BM70 devices are currently licensed under Part 90 of the Commission's rules. These devices transmit signals that fall into bands allocated to the U.S. Government, so coordination of each individual license application with the National Telecommunications and Information Administration (NTIA) would normally be required. However, in 1992, Krohne received permission for blanket coordination from NTIA, subject to certain conditions, so coordination of each individual license application is not required.

After receiving permission from NTIA for blanket coordination, in 1992 Krohne requested that the Commission waive certain Part 90 licensing requirements. The Commission granted Krohne's waiver request to allow for "conditional authorization" of the Krohne BM70 devices, which permits their operation for up to 180 days while their license applications are pending. The waiver also permits licensing these devices as "temporary stations", which allows their operation anywhere within an authorized radius around a point rather than only at specific geographic coordinates. A Part 90 license must be obtained for each facility where the equipment is used, and each license application must be accompanied by a waiver request to allow conditional authorization and licensing as a temporary station, if so desired.

You state that there are now BM70 devices in operation at approximately 400 locations, and the continuing requirement for Part 90 licensing costs Krohne tens of thousands of

dollars annually in government "red tape". You request that we permit these devices to be authorized on an unlicensed basis under Part 15 of the Commission's rules, which would eliminate the requirement for individual licensing. You also request that the newer BM702 device be authorized under Part 15. In support of this request, you submitted a test report to demonstrate that the BM702 produces emission levels that are lower in magnitude than the older BM70 devices.

Because both the BM70 and BM702 devices intentionally transmit in restricted frequency bands at 9.0-9.2 GHz and 9.3-9.5 GHz, you have requested a waiver of Section 15.205 to allow transmissions in these bands.

Frequency bands are designated as restricted to protect certain radio services from interference, such as those services that protect safety-of-life or use very low received levels, such as satellite downlinks or radio astronomy. The emission limits in restricted bands are the same as the general Part 15 radiated emission limits in Section 15.209 of the Commission's rules, 47 C.F.R. § 15.209. However, only spurious emissions as defined in Section 2.1 are permitted in restricted bands. Intentional transmissions in restricted bands such as the transmissions from the Krohne devices are prohibited.

Because the two restricted frequency bands in which the devices operate are allocated to the U.S. Government, we coordinated the waiver request with NTIA. On September 5, 2001, NTIA informed us that they do not object to the grant of the requested waiver, subject to certain conditions, and we are imposing conditions consistent with NTIA's concerns.

It is a well-established principle that the Commission will waive its rules only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy which the rule in question is intended to serve. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). In discussing the treatment of requests for waivers of established rules, the court in *WAIT Radio* emphasized that the agency's discretion in applying general rules is intimately linked to the existence of "a safety valve procedure" to permit consideration of an application for exemption based on special circumstances. *Id.* Indeed, the court considered a rule most likely to be undercut if it does not take into account "considerations of hardship, equity, or more effective implementation of overall policy . . . " *Id.* at 1159.

We find that the conditional grant of this waiver would not undermine the purpose of Section 15.205. This rule is intended to protect sensitive services, including certain government operations, from interference by prohibiting intentional transmissions in designated restricted bands. The restricted bands in question were designated to protect government radar systems from interference, and NTIA has determined that operation of the BM70 and BM702 devices subject to the conditions specified below will not result in interference to these radar systems. We also find that the requested waiver will reduce the regulatory burden on users of the BM70 and BM702 devices and on the FCC. Allowing these devices to be operated on an unlicensed basis will eliminate the need to

file license applications accompanied by waiver requests for each individual site where the equipment is used, thus streamlining deployment and reducing administrative costs. For these reasons, we find that the grant of the requested waiver is in the public interest.

Accordingly, under the authority contained in Sections 0.31(i), 0.31(j), and 0.241(a) of the rules, a waiver of Section 15.205 is hereby granted to Krohne for two swept frequency fluid level measuring devices (Models BM70 and BM702) that operate in the frequency ranges 8.5-10 GHz and 9-9.5 GHz, respectively, under the following conditions:

1. Krohne shall obtain FCC equipment certification under Part 15 of the Commission's rules for the devices to operate pursuant to this waiver;

2. The model BM702 devices marketed must operate in a manner consistent with the test data presented in the January 4, 2001 report filed with the Krohne waiver request in order to be certified and used pursuant to this waiver;

3. The only operations of the model BM70 and BM702 devices authorized under this waiver of Section 15.205 of the rules are those conducted inside steel tanks; and

4. A report must be submitted by Krohne, Inc., annually to the NTIA identifying the geographic locations where BM70 and BM702 devices have been installed during the previous year.

Please include a copy of this grant of waiver with your equipment authorization application. If you have any further questions, please contact Mr. Hugh L. Van Tuyl at (202) 418-7506.

Sincerely,

Bruce A. Franca
Acting Chief
Office of Engineering and Technology

Enclosure
September 5, 2001 NTIA letter

cc: William Hatch, NTIA