

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License number

11-27408-01

Docket or Reference number

030-32459

Amendment No. 01

North Idaho Densometer Association
1119 Iron Wood Parkway
Coeur D'Alene, Id 83814

Concurrent with the issuance of License Numbers 11-27326-01, 11-27451-01, and 11-27449-01, License Number 11-27408-01 is hereby terminated.



FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Original Signed By
Jack E. Whitten

Date DEC 9 1992

130089

By

Nuclear Materials Licensing Section
Region IV
Arlington, Texas 76011

9301210272 921209
PDR ADOCK 03032459
C PDR

OFFICIAL RECORD COPY

12/14/92

RUEN-YEAGER & ASSOCIATES, INC.

1115 IRONWOOD PARKWAY, SUITE 200

COEUR D'ALENE, IDAHO 83814

(208) 667-2464

Jack Whitten
NRC

OCT - 6 1992

9-29-92

License No. 11-27408-01
Letter of Cancellation /
North Idaho Densometer
Association

Please find enclosed, a revised
letter of cancellation referencing Bruce's
capacity in the NIOA.

If you require any additional information,
please feel free to call.

Thank you!

Connie Brumbyer

SIGNED

011

TELEPHONE MEMO FORM

DATE: September 30, 1992

FROM: JEW

TO: Paul Franz, RSO
North Idaho Densometer Association, Inc.

Telephone No.: 208-765-1144

SUBJECT: TERMINATION OF NIDA LICENSE/FEEES

MESSAGE:

1. Licensed material must be covered by a license and a fee must be paid for that license.
2. If we terminate the NIDA license and issue all three member companies a license, all three will have to pay a fee, or if we issue only one license to one of the member companies it will be assessed a fee.
3. Another option is to transfer NIDA's material to a licensee who is authorized to possess the material and wait for the issuance of the individual member licenses.
4. A copy of the termination request must be received to day. If you have mailed a copy of the license termination, please fax us a copy 817-860-8188.

After explaing the above to Paul, he indicated that the Association should receive the bill. They had no plans to transfer materials to another licensee.



7/20/92

Jack:
Where do we
stand on NIDA?
Bill

July 1, 1992

Note to Joe Callan

From Gary Sanborn

SUBJECT: NORTH IDAHO DENSOMETER ASSOCIATION INC.

I have two problems with sending this letter:

- 1) Paragraph 2 implies that our concern lies with the ability of this association to pay a substantial civil penalty, or, to put a more mission-related face on it, pay a civil penalty and still meet its safety responsibilities. As far as I know, this has never been a criterion in licensing an outfit. If it were, how many small radiographers would be licensed? In this case, the size of any civil penalty would likely be much smaller than penalties facing radiographers. The base penalty for a Severity Level III for a gauge licensee is only \$500, one tenth what it would be for a radiography licensee.
- 2) The letter implies that this arrangement is somehow illegal and therefore must be changed. The only option provided to the association is to have its member companies seek individual licenses. I don't understand the basis for suggesting this as the only option for resolving our concerns. I also don't understand the legal basis for our concerns. At the last meeting we had on this subject, I asked whether this association was in noncompliance with any statute or NRC regulation. No one was able to state unequivocally that a violation was occurring. If this association were to refuse to accede to our wishes, would we have a basis for ordering them to do so?

I concede that there may be practical reasons for our concerns. Clearly, this association was formed solely to circumvent the necessity of each of its member companies paying our annual fees. But that's business, as they say, and probably not illegal. I am certain that the corporations that we have licensed take many forms. Taking a step like this, to undo what we have done (after all, we did license this outfit with our eyes open), is in my view a significant policy issue and should only be done with NMSS and HQ approval.

Gary Sanborn

cc:
Bill Brown
Bill Fisher



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

Draft

North Idaho Densometer Association, Inc.
ATTN: Paul Franz, P.E.
Radiation Safety Officer
845 W. Kathleen Avenue
Coeur D'Alene, Idaho 83814

Gentlemen:

On November 22, 1991, we sent you a CONFIRMATION OF ACTION LETTER (CAL) confirming the intentions of North Idaho Densometer Association, Inc. (NIDA) to amend its Articles of Incorporation and Bylaws to reflect that the responsibility and accountability for using licensed byproduct materials is that of the Association, not its individual members.

Your December 13, 1991, letter responding to the CAL attempted to reflect NIDA's responsibility for the actions of its individual members using a densometer under the license issued to the association. A review of these bylaws by our Regional Counsel and by NRC's Office of General Counsel indicates that the real accountability of radioactive materials resides with each member of the association, not with NIDA. Each of these nonlicensee members must indemnify and hold other members of NIDA, as well as the association itself, harmless from damage or expense incurred by the association as a result of action or inaction by the member. Such removal of the actual member corporations that own, possess, and use the byproduct material from direct regulatory accountability to the NRC is contrary to 10 CFR 30.3.

NRC must conclude that the provisions relating to liability in the restated articles of incorporation and bylaws are **unacceptable**. It is NRC's legal opinion that the "hold harmless" provision in the bylaws are problematic. It appears, for example, that should NRC need to issue a substantial civil penalty, the association, described in the articles and bylaws, could be undercapitalized. Although such undercapitalization would not relieve the association from responsibility for any violation which might arise from the actions or inactions of its individual members, it could prevent the association from being able to meet all of its NRC regulatory obligations.

In NRC's opinion, NIDA was created for the purpose of obtaining and holding an NRC license to circumvent the license fees of its member companies. Public Law 101-508, mandated by Congress, requires that the NRC recover approximately 100 percent of its budget authority in FY 91 and the four succeeding years through fees and annual charges. Congress intended that these fees fairly and equitably allocate the total amount of the charges to be recovered from Commission licensees. To the extent practicable, the law mandates that such charges must have a reasonable relationship to the cost of providing regulatory services. Allowing the above circumvention to continue would frustrate the very reason for the introduction of fees to satisfy this Congressional mandate.

After three attempts, NIDA has not successfully provided written confirmation that it maintains full and actual accountability and responsibility for licensed materials and activities occurring under the license. Additionally, NIDA has not demonstrated to NRC's satisfaction that it could meet NRC's licensing and other regulatory requirements. Based on the above considerations and the presently known circumstances, NRC will inform each member company of the association that individual licenses are required. Licenses for individual member companies of NIDA will be issued upon receipt of the appropriate supporting documentation and the receipt of the fees prescribed in 10 CFR 170. When the member companies of NIDA who elect to request individual NRC licenses do so, the NIDA license will be revoked. Revocation of the NIDA license will only occur after all regulatory requirements have been satisfied. ("revoked"???????)

NIDA members should be aware that willful violation of Commission regulations is a criminal offense under Sections 222 and 223 of the Atomic Energy Act of 1954, as amended. Also, the knowing and willful making of false, fictitious or fraudulent statements or representations to the NRC is a criminal offense pursuant to Title 18, Section 1001, of the U.S. Code.

Should you have any question concerning this action, please contact xxxxxxxxxxxxxxxxxxxxxxx at (817) 860-8100.

Sincerely,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

cc:

Welch, Comer and Associates

Rue-Yeager and Associates

Interstate Concrete and Asphalt Co.

Time limit: 30 days
to provide ^{account} schedule for resolving

- You haven't met your obligations
- You must do the following with X time limit

RIV:NMLS
JEWhitten
/ /92

C:NMLS
WLFisher
/ /92

RC
WLBrown
/ /92

EO
GFSanborn
/ /92

DD:DRSS
JPJaudon
/ /92

D:DRSS
LJCallan
/ /92

DATE: 11/22/91

REGION IV
ACTION ITEM NO. 91-451 I

SUBJECT: North Idaho Densometer Association, Inc CAL 91-07

PRINCIPAL ASSIGNEE: Callan

FOR
SIGNATURE OF: _____

SECONDARY ASSIGNEE(S): _____

SECONDARY ASSIGNEE
INPUT DUE DATE: _____

FOR INFO ONLY: _____

DIVISION/SECTION COPY ASSIGNMENT:

INPUT DUE DATE:

Fisher/Whitten

DUE DATE: 12/20/91

CORRECTED DUE DATE: 1/10/92 2/7/92

DATE ACTION COMPLETED: _____

REMARKS & CLOSEOUT:

Completed Date 4/1/92 - Pending Bill Brown review of documents
Completed Date 7/27/92 - Pending review by OGC
As of 7/27 OGC Review of proposed letter to NIDM - "first part of letter"

DEC 26 1991

- 1) Bill Whitehouse - *Bill Whitehouse* to be in *Bill Whitehouse*
Bill Whitehouse
- 2) *Bill Whitehouse* in *Bill Whitehouse*
- 3) Send to Bill Brown for review

NOV 22 1991

Docket No. 030-32459
License No. 11-27408-01
CAL 91-07

North Idaho Densometer Association, Inc.
ATTN: Paul Franz
Radiation Safety Officer
845 W. Kathleen Avenue
Coeur d'Alene, Idaho 83814

Gentlemen:

SUBJECT: CONFIRMATION OF ACTION LETTER

The purpose of this letter is to confirm the commitments made during a telephone conversation between Mr. Paul Franz of your staff and Mr. Johns Jaudon et al., of the NRC Region IV staff on November 21, 1991.

Based on this discussion, it is my understanding that North Idaho Densometer Association, Inc., will take the following actions:

1. Ensure that the responsibility for and accountability of licensed radioactive materials used by individual members of North Idaho Densometer Association, Inc., remain with the Association, not its individual members.
2. Provide the NRC staff with your schedule for amending the Association's Articles of Incorporation and Bylaws to reflect current operating procedures and the license. The Articles of Incorporation and Bylaws must reflect that the responsibility and accountability for the use of licensed byproduct materials is that of the Association, not its individual members.

If your understanding of these commitments differs from the foregoing description or if you decide for any reason to modify these corrective actions, please contact Jack E. Whitten of our staff immediately at 817-860-8197.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

*RIV:NMLS *C:NMLS
JWhitten WLFisher
/ / / /
*Previously concurred

D:DRSS
LJCallan
11/22/91

ED
GKS
11/22/91
RC (on A/L)
WLBrown
11/X/91

for
RDMartin
11/22/91

AI 91-451

IF-07

North Idaho Densometer Association, Inc. -2-

Issuance of this confirmation of action letter does not preclude the issuance of an order formalizing the above commitments or requiring other actions on the part of North Idaho Densometer Association, Inc. Nor does it preclude NRC from taking enforcement action for violations of NRC requirements that may have prompted the issuance of this letter.

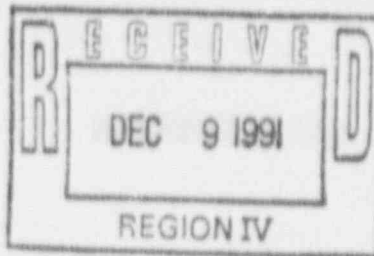
Sincerely,

ORIGINAL SIGNED BY
J.M. MONTGOMERY

Robert D. Martin
Regional Administrator

cc:
NRC Public Document Room
Idaho Radiation Control Program Director

bcc:
DMB - IE-07
J. M. Taylor, DEDR
J. L. Lieberman, D/OE
L. J. Chandler, Asst. GC/OGC
H. L. Thompson, DEDS
R. M. Bernero, D/NMSS
J. E. Glenn, AC/MACUS
B. Summers, OE
R. D. Martin, RA
L. J. Callan, D/DRSS
J. P. Jaudon
W. L. Fisher
C. L. Cain
G. F. Sanborn
J. Carson, RA Sect'y
RIV Files
NMLS File
NMSIS and NMLS Inspectors (14)



NORTH IDAHO DENSOMETER ASSOCIATION
=====

December 4, 1991

Robert D. Martin
Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

Subject: NRC Action Letter of 11/22/91

Gentlemen:

Our schedule for amending the Association's Articles of Incorporation and Bylaws to reflect the NRC's current requirements is as follows:

Rewrite documents as necessary	12/06/91
File amended documents with the State of Idaho	12/13/91
Forward amended and filed documents to the NRC	12/20/91

If this schedule does not meet the NRC's requirements, please contact me immediately at 208-765-1144.

Sincerely,

Paul Franz, P.E.
Radiation Safety Officer
North Idaho Densometer Association
W 845 Kathleen Avenue
Coeur d'Alene, ID 83814

AI 91-451
91-07

IE-07

Jack Whitten's & Bob Brown's Meeting with Paul Fanz, Bruce Grachal, and Larry E. Comer to Discuss Association Formation

Meeting with Association members to discuss conditions of association
June 28, 1991

Individual Members of the ASSOCIATION.

The member companies of the North Idaho Densometer Association, Inc. are: Welch, Comer and Associates, Inc.; Ruen-Yeager and Associates, Inc. and Interstate Concrete & Asphalt Co.

Telephone conversation of September 23, 1991, with Jack Whitten and Vivian Campbell of NMLS staff.

September 23, 1991, Facsimile from licensee.

September 25, 1991, licensed issued.

Letter dated October 22, 1991, for Michael M. Megaard, Esq., Lukins & Annis.

November 20, 1991, letter to Michael M. Megaard, Esq.

The stated purpose of the new association's incorporation is to obtain and hold a "single license" from the NRC while at the same time permitting the three member companies to "each separately own and use nuclear densometers in the conduct of their respective businesses, rather than each member separately obtaining a license." Your letter purports to address concerns that I had express to you when you discussed such an arrangement in general terms with me this past summer.

I informed you during that conversation that without seeing the details of what you were considering for your clients, I could not offer an opinion on whether such an arrangement would be acceptable to the Commission. I further informed you that the burden was on your licensee clients to demonstrate to the satisfaction of the Commission that such arrangement would meet Commission licensing requirements. At a minimum, I said that we expect a licensee to have full accountability and responsibility for licensed material and activities in order to be able to meet Commission licensing and other regulatory requirements. I stressed the fact that the Commission would not simply accept some kind of front association as a single licensee, having no accountability and responsibility, which was created for the sole purpose of avoiding increased license fees for its member companies. Your clients' association seems to do just that, however. Indeed, the bylaws explicitly

state that "[e]ach member shall be fully responsible for its own actions in using a nuclear densometer, [and] shall be accountable to the Nuclear Regulatory Commission for its use...." This is completely opposite from what our licensing staff had understood during its discussions with your client representatives prior to the termination of the three individual licenses and the issuance of a new license to the incorporated association made up of the three member companies.

The course of action your clients have taken appears to be one where the three member companies independently continue business as before in all ways except by separate license. In my opinion, this is not only unacceptable from a regulatory standpoint, but it is also contrary to what Congress intended in Public Law 101-508. This intent, as implemented by the NRC's recently amended regulations in 10 CFR 170 and 171, is that the NRC must recover approximately 100 percent of its budget authority in Fiscal Year 1991, and the four succeeding years, through the use of fees and annual charges. In summary, the arrangement you propose fails to meet minimum requirements for an NRC license. After consultation with the licensing staff, I suggest that this situation be corrected immediately to reflect full and actual accountability and responsibility in the association for licensed material and activities in order that the association will be able to truly meet Commission licensing and other regulatory requirements. In the alternative, the association should request a license termination coupled with requests from each of its three members for new individual licenses. Your clients should be aware of the fact that willful violation of Commission regulations is a criminal offense under Sections 222 and 223 of the Atomic Energy Act of 1954, as amended. Also, the knowing and willful making of false, fictitious or fraudulent statements or representations to the NRC is a criminal offense pursuant to Title 18, Section 1001, of the U.S. Code.

[Licensee requested to notify NMLS within 10 days of final action.]

November 21, 1991, Telephone call to Paul Franz from Johns Jaudon

November 22, 1991, CONFIRMATION OF ACTION LETTER

1. Ensure that the responsibility for and accountability of licensed radioactive materials used by individual members of North Idaho Densometer Association, Inc., remain with the Association, not its individual members.
2. Provide the NRC staff with your schedule for amending the Association's Articles of Incorporation and Bylaws to reflect current operating procedures and the license. The Articles of Incorporation and Bylaws must reflect that the responsibility and accountability for the use of licensed byproduct materials is that of the Association, not its individual members.

Response to CAL of December 4, 1991, and amended December 13, 1991.

Paraphrased paragraphs from BBrown May 1, 1992, memo.

The stated purpose of the association's amended and restated Articles of Incorporation is that the association was organized for the purpose of obtaining and holding a license from the NRC permitting its members to use nuclear densometers. As far as can be determined, that association has no other function. Neither the articles of incorporation nor the corporation's bylaws reflect any other function.

While the restated by laws have attempted to reflect the fact that the association will be responsible for the actions of any member in using a densometer under the license issued to the association, it is also clear that real accountability lies with each non-licensee member of the association who must indemnify and hold other members, as well as the association itself, harmless from damage or expense incurred by the association as a result of action or inaction by the member. The removal of the actual member corporations that own, possess, and use the byproduct material from direct regulatory accountability to the NRC is contrary to 10 CFR 30.3.

The incorporated association is what is frequently referred to as a "paper corporation." From all appearances, it was created for not only the stated purpose of obtaining and holding a license, but, in so doing, to circumvent the increased license fees which have been promulgated by the Commission pursuant to the policy mandates of Public Law 101-508. Allowing such a circumvention would frustrate the very reason the fees were increased, which was to adhere to the Congressional mandate that the NRC recover approximately 100 percent of its budget authority in FY 91 and the 4 succeeding years through fees and annual change that fairly and equitably allocate the total amount of the charges to be recovered from Commission licensees. To the maximum extent practicable, the law mandates that such charges must have a reasonable relationship to the cost of providing regulatory services.

It is, therefore, my opinion that each member company of the association should be informed that individual licenses for each company are required under the presently known circumstances. The license to the association should be revoked once the individual licenses are issued and all regulatory requirements have been met.

Paraphrased excerpts from BBrown's May 12, 1992, memo.

OGC has now confirmed that the provisions relating to liability in the restated articles of incorporation and bylaws for the subject corporate association are unacceptable. It is also OGC's opinion that the formation of such an association would have to do more than the subject association has done. For example, the "hold harmless" provision in the bylaws are problematic. While the provisions would not relieve the association from responsibility for any violation which might arise, in the event of a serious violation which resulted in the need for the NRC to issue a substantial civil penalty, the association's organizational structure as detailed in the articles and bylaws leaves the clear impression that the association itself

could be undercapitalized thereby preventing the association from being able to meet all NRC regulatory requirements.

It should also be noted that subsequent to the questions having been raised by your office, a small entity fee schedule has been published by the NRC in the Federal Register (57 FR 13625) which will be effective on May 18, 1992. The purpose of the new regulations containing the schedule is to improve NRC financial management and to further mitigate the impact of the annual fee on small licensees with relatively low annual gross receipts or supporting populations. Depending on the facts, it is thus conceivable that, under the new schedule, the annual fee of the association could be more than the cumulative annual fees of the former individual licensees that are attempting to band together to form the association for the purpose of obtaining one license.

NOTE TO: Bill Brown, R.C.
NOTE FROM: Jack E. Whitten, Senior H.P.
Nuclear Materials Licensing Section
SUBJECT: NORTH IDAHO DENSOMETER ASSOCIATION, INC.

The following documents were submitted by the North Idaho Densometer Association, Inc. (NIDA) in response to our Confirmation of Action Letter dated November 20, 1991. I have made a laymen's cursory examination of these documents and, based on the discussions we have had on this issue, I don't believe that NIDA has satisfied NRC's concerns. Please review these documents and provide comments. Now that we have issued this license to this Association, what should our next actions be, especially in lieu of our recent request for another such license. If we can't resolve NRC's concerns, what do you suggest as our next course of action. Is it possible that OI may have to become involved in this issue?

RIV:NMLS
JEWhitten
1/6/92

NMLS:C
WLFisher
1/7/92



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

MAY 12 1992

MEMORANDUM FOR: William Fisher, Chief
Nuclear Materials Licensing Section

FROM: William L. Brown
Regional Counsel

SUBJECT: NORTH IDAHO DENSOMETER ASSOCIATION, INC.

This is a follow-up to my same subject memorandum to you dated May 1, 1992.

OGC has now confirmed to me the fact that the provisions relating to liability in the restated articles of incorporation and bylaws for the subject corporate association are unacceptable. It is also OGC's opinion that the formation of such an association would have to do more than the subject association has done. For example, the "hold harmless" provisions in the bylaws are problematic as I had previously informed you. While the provisions would not relieve the association from responsibility for any violations of NRC regulations which might arise, in the event of a serious violation which resulted in the need for the NRC to issue a substantial civil penalty, the association's organizational structure as detailed in the articles and bylaws leaves the clear impression that the association itself could be undercapitalized thereby preventing the association from being able to meet all NRC regulatory requirements. One of the applicable regulatory requirements is having in place an acceptable decommissioning funding plan under applicable regulation in Parts 30, 40, or 70. There is no indication in the record before me that this has been done.

It should also be noted that subsequent to the questions having been raised by your office, a small entity fee schedule has been published by the NRC in the Federal Register (57 FR 13625) which will be effective on May 18, 1992. The purpose of the new regulations containing the schedule is to improve NRC financial management and to further mitigate the impact of the annual fee on small licensees with relatively low annual gross receipts or supporting populations. Depending on the facts, it is thus conceivable that, under the new schedule, the annual fee of the association could be more than the cumulative annual fees of the former individual licensees that are attempting to band together to form the association for the purpose of obtaining one license. This should be checked out. The new fee schedule is attached.

MAY 12 1992

William Fisher

-2-

Please let me know if I can be of any further assistance.



William L. Brown
Regional Counsel

Attachment:
As stated

cc:

R. Martin

✓ J. Whitten

Rules and Regulations

Federal Register

Vol. 57, No. 75

Friday, April 17, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AE13

Limited Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to make two limited changes to its assessment of license and annual fees. The final rule assesses license fees, which are based on the full-cost method, quarterly instead of semiannually and establishes a lower tier small entity annual fee for those licensees that are small entities with relatively low annual gross receipts or supporting populations. These final amendments are intended to improve NRC financial management and further mitigate the impact of the annual fee on small licensees with relatively low annual gross receipts or supporting populations.

EFFECTIVE DATE: May 18, 1992.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Responses to Comments.
- III. Final Action—Changes Included in Final Rule.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Certification/Analysis.
- IX. Backfit Analysis.

I. Background

The NRC assesses two types of fees:

(1) License and inspection fees are assessed under 10 CFR part 170 to recover the costs to the NRC of providing individual services (e.g., inspections and reviews of license applications) to specific applicants for, and holders of, NRC licenses and approvals.

(2) Annual fees are assessed under 10 CFR part 171 to recover NRC generic and other regulatory costs not recovered under 10 CFR part 170.

On July 10, 1991 (56 FR 31472), the Commission published a final rule that revised the fee schedules contained in 10 CFR parts 170 and 171. These revisions were necessary to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). This Public Law requires that the NRC recover approximately 100 percent of its budget authority for FY 1991 through 1995 from the assessment of license and annual fees. To reduce the economic impact of the annual fees on small entities, the NRC in accordance with the Regulatory Flexibility Act of 1980 (RFA) established a maximum annual fee of \$1,800 per licensed category for those licensees that qualify as small entities under the NRC's size standards.

The NRC adopted size standards for determining which NRC licensees qualify as small entities on December 8, 1985 (50 FR 50241), and clarified these size standards on November 8, 1991 (56 FR 56672). The NRC size standards for small entities are as follows:

1. A small business is a business with annual receipts of \$3.5 million or less except private practice physicians for which the standard is annual receipts of \$1 million or less.
2. A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of \$3.5 million or less.
3. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.
4. A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

The Commission stated clearly in establishing these size standards that the term "annual receipts" is used in the same manner as used by the Small Business Administration (SBA). In 13 CFR 121.402(b)(2) annual receipts are defined " * * " to include all revenue in whatever form received or accrued from whatever sources " * * " (54 FR 52647; December 21, 1989).

On January 8, 1992 (57 FR 847), the Commission published for comment proposed limited changes to its fee regulations in 10 CFR parts 170 and 171. The proposed change to part 170 would reduce the interval between the time the NRC provides a specific service and the time NRC issues a bill for that service. The proposed change would result in all licensing and inspection fees being billed at least quarterly. The proposed change to part 171 would further reduce the impact of the annual fees on some small entities.

The NRC continued the maximum annual fee of \$1,800 per licensed category established July 10, 1991 (56 FR 31472), for those materials licensees who could qualify as a small entity under the NRC's size standards. In addition, the NRC proposed a lower tier small entity fee of \$400 per licensed category for small businesses and nonprofit organizations with relatively low gross annual receipts of less than \$250,000 and small governmental jurisdictions with a relatively low population of less than 20,000. The Commission noted that this decision balanced the objective of OBRA-90 and RFA by reducing, but not eliminating, the impact of the annual fee on small entities.

The NRC emphasized that the scope of the proposed rule was narrowly focused; the proposed amendments were limited to the questions of (1) whether and how the part 170 license fee billing interval should be modified and (2) whether and how to further alleviate the impact of the part 171 annual fees on those materials licensees that meet the existing NRC size standards for a small entity. Thus, the Commission stated in the proposed rule that it would consider only those comments which addressed these two questions. The Commission also noted that it was not seeking, and would not consider, comments (1) relating to a change in the NRC's existing size standards under which a licensee could qualify as a small entity for annual fee purposes, (2) suggesting

changes in the structure of the specific fee categories, or (3) suggesting changes in the methods for allocating costs and calculating the annual fees.

The agency workpapers that support the final changes to 10 CFR parts 170 and 171 are available in the Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

II. Responses to Comments

Thirty-five public comments were received by the close of the comment period on February 10, 1992. The Commission has received and evaluated an additional seventeen comments which were received by close of business February 28, 1992, for a total of 52 public comments.

Of these 52 comments, 36 were from persons concerned with other than power reactors (including Federal and local government agencies), 15 were from utility licensees and their representatives and one from a Congressman. Copies of all comment letters are available for inspection at the Public Document Room.

There were several comments that were not within the limited scope of the proposed rule and, therefore, were not evaluated for the purpose of issuing this final rule. Briefly, these commenters suggested that—

(1) The part 171 annual fees for well loggers be eliminated and that the part 170 licensing and inspection fees be returned to 1986 levels;

(2) The proposed revisions do not solve the problems faced by medical licensees;

(3) The NRC consider taking possible alternative actions, e.g., eliminating the Regional offices and consolidating the personnel in the Washington, DC Metropolitan area, immediately instituting a hiring freeze and eliminate all unnecessary personnel, eliminate or defer lower priority research and generic rulemaking activity, etc., rather than changing the existing fee structure;

(4) The NRC assess fees based on the size of the company, the number of sources or amount or type of material possessed under the license and the frequency of use of the material; and

(5) The NRC make Congress aware of the unanticipated and undesirable impact of 100 percent fee recovery.

Many of the comments which were considered were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed in the context of the narrow focus of the rule.

A. Modification to 10 CFR Part 170 License Fee Billing Interval

1. *Comment.* Fifteen commenters addressed the proposed change to the part 170 license fee billing interval from semiannually to quarterly. Except for one, all of the fifteen commenters supported the proposed change. Most commenters indicated that the change will provide more rapid and valuable feedback, will permit licensees to more readily assess and budget for costs incurred by the NRC for licensing activities, and will provide more timely information on which to make business decisions. One commenter, however, preferred the existing semiannual interval for billing part 170 licensing fees and indicated that the company could make better use of financial resources. Another commenter indicated that if the change to the billing interval were made, it should be made effective for FY 1993 instead of FY 1992 because budgets for FY 1992 have already been established and are based on the semiannual cycle.

Response. Given the support by the commenters and the improvement to NRC financial management, the Commission is changing the billing interval for part 170 license fees from semiannually to quarterly. The Commission does not believe that the change needs to be deferred until FY 1993 because this change should affect only the timing of the bills and not the total amount to be paid from FY 1992 budgets. Therefore, the change will become effective 30 days after publication of the final rule.

B. Modification to 10 CFR Part 171 Annual Fees for Small Entities

The comments on the modification to the small entity annual fee ranged from urging adoption of the proposed change to opposing the proposal. Some commenters indicated that the Commission, while taking a step in the right direction, had not gone far enough to alleviate the economic impact of the annual fees on small entities. Other commenters indicated that the Commission had gone too far in proposing a lower tier small entity fee. Thus, the commenters raise two fundamental questions. First, should the Commission adopt a lower tier small entity fee? If the answer to this question is yes, then the second question is should the Commission modify the proposed lower tier proposal in the proposed rule? The comments, evaluation, and Commission decision concerning these questions are discussed below.

Should the Impact on Small Entities Be Further Reduced?

1. *Comment.* Ten commenters supported the proposed change to establish a lower tier small entity fee of \$400 for FY 1992. Another seven commenters also supported the proposed changes even though they believed additional reductions should be made. These commenters indicated that the change is reasonable, appropriate, and necessary to keep small businesses operating and people employed. These commenters indicated that without the reduction, it would not be cost effective to continue to operate. In addition, commenters indicated that the change would enable companies to remain competitive, would draw a distinction between "More and Pop" type operations with relatively low gross annual receipts and larger companies with receipts of up to \$3.5 million, and would permit "micro" businesses to continue to operate.

2. *Comment.* Sixteen commenters opposed the proposed change in the small entity annual fee. These commenters indicated that, while they were sympathetic with the plight of small entities and endorsed the concept of some program for relief to prevent small licensees from going out of business, they believed that other larger licensees, primarily utilities, should not be required to pay for the shortfall through an additional subsidy. Commenters argued that this is yet another example of the "deep pockets" argument applied by the NRC without recognition of (1) the unfairness of forcing one entity to pay for the services provided another; and (2) the potential impact of the proposed action, for example, the payment of the additional fees (estimated by the commenters at \$50,000 per operating reactor) from funds budgeted for plant improvement programs or from shareholder equity, thus affecting the financial position of the licensee. The commenters who opposed the proposed change noted that NRC research and generic regulatory activities associated with commercial applications of nuclear gauges, radiopharmaceuticals, and radiography, for example, are clearly linked to the associated categories of materials, licensees. Therefore, these commenters argue, any costs associated with those NRC activities should be recovered from those licensees. These commenters indicate that to do otherwise is unfair and a violation of the Congressional direction that annual charges be fairly and equitably allocated. One commenter argued that if an NRC license is

essential to a company and the NRC is providing benefits to the company commensurate with the annual fees, then fees equal to or greater than the current small entity fee of \$1,800 are not unreasonable, for example, the annual fee of \$1,800 for businesses with gross annual receipts of \$200,000 is less than one percent of the receipts. In addition, the commenters indicate that the current fee structure provides an adequate balance between OBRA-90 and RFA and that changing the fee structure to benefit one group of licensees at the expense of another moves away from the definitively recognized balance achieved in the original rulemaking. One commenter indicated that any restructuring of fees should not be put into effect until January 1, 1993, or later.

Response. After considering these comments for and against the proposed rule, the Commission has decided to further reduce the impact of the annual fees on certain licensees who qualify as small entities under the NRC size standards. As indicated by these comments, any reduction to the annual fees for one group of licensees results in increased annual fees for another group in order to meet the objectives of OBRA-90 to recover 100 percent of the budget authority. Therefore, the fee reduction for small entities may be perceived as unfair by those licensees whose fees would increase. However, the RFA requires the NRC to consider alternatives to minimize the significant economic impact on small entities that it regulates.

As indicated by the commenters, the impact of the existing annual fee on small entities with relatively low gross receipts or a relatively low population makes it difficult, if not impossible, for them to continue to operate. As indicated in the proposed rule, the Commission has previously received written and oral comments from small materials licensees about the impact of the part 171 annual fees. Clearly, some of the over 1,000 termination requests received by the NRC since the revised fees were implemented represent these relatively small entities. Members of Congress, in many of the more than 100 letters the NRC has received from them since the final rule was published, have expressed concern about the size of the annual fees and their economic impact on small entities. As indicated by this discussion, the July 10, 1991, final rule has negatively impacted some small licensees. Therefore, consistent with the RFA, the Commission believes further reducing the annual fee for those small licensees who are probably impacted

the most by the annual fee is appropriate.

Should the Proposed Lower Tier Approach and Fee Be Modified?

1. Comment. Several comments were received indicating that while NRC was taking a step in the right direction in establishing a lower tier small entity fee of \$400, the proposal did not go far enough in alleviating the economic impact of the annual fees on small entities. Commenters indicated that even more could be done to reduce the burden on small businesses without violating the Commission's statutory mandate. These commenters suggested that the NRC extend the tiering process to include all licensees who could qualify as a small entity. Under such a plan, commenters indicate that the NRC would establish additional tiers or levels of fees. Other comments suggested that the \$400 should be reduced. One comment suggested that the rule establish for companies with gross annual receipts of less than \$50,000 a lower tier small entity fee of either \$100 a year for the licensee or, in the alternative, the licensee be exempt from fees. Other commenters suggested that NRC adopt the \$400 fee for gross annual receipts under \$250,000 but establish a sliding scale or additional fees of \$800, \$1,200, and \$1,800, for gross annual receipts of \$500,000, \$750,000, and \$1 million, respectively. Small governmental jurisdictions also commented that additional tiers or levels of fees be established to reflect different levels of population between 20,000 and 50,000. Commenters argued that this type of fee schedule would more equitably distribute the burden on small businesses based on the licensee's ability to pay.

2. Comment. Several Commenters, however, believe that the proposed rule has gone too far and suggested that the NRC increase the small entity fee. These Commenters suggested that the NRC raise the current maximum annual fee of \$1,800, and/or raise the \$400 proposed lower tier small entity fee in order to reduce the cost burden for larger licensees. Another commenter suggested that the lower tier small entity fee be based on reducing the \$1,800 fee by only 30 or 50 percent instead of by 75 percent which was used to determine the proposed fee of \$400.

Response. After reviewing and evaluating these comments, the Commission has established one additional lower tier, small entity annual fee of \$400 per licensed category. While this change does not eliminate the impact of the fees on small entities, it substantially reduces the impact for

those licensees with relatively low gross annual receipts of less than \$250,000 and for small governmental jurisdictions with a relatively low population of less than 20,000. At the same time, this change does not substantially increase the amount of fees that large entities would be required to pay to subsidize the small entities. In response to comments that the Commission has gone too far in shifting cost to the larger licensees, the Commission notes that the amount of small entity subsidy under the proposed rule for FY 1992 is approximately \$6 million as compared to the \$5 million assumed in the FY 1991 final rule. With regard to the comments that the Commission has not gone far enough in reducing the impact on small entities, the Commission notes that, based on NRC, Department of Commerce, and National Association of Counties data, approximately 50 percent of small businesses and governmental jurisdictions would be eligible for a further reduction of the impact of the annual fees.

Any reduction in fees for small entities must be paid by other NRC licensees. Therefore, consistent with the Commission's goal of maintaining a reasonable balance between the OBRA-90 and the RFA, the Commission does not believe any other reductions to the fees should be made.

In summary, the Commission believes that this change to the small entity fees will result in a regulation that maintains a reasonable balance between the objectives of OBRA-90 and the RFA and is consistent with the requirements of these two laws.

Other Comments

Several other comments not directly related to whether to further reduce or modify the impact on small entities are discussed below.

1. Comment. A few commenters suggested that the lower tier small entity fee of \$400, if implemented for FY 1992, be made retroactive to FY 1991 because the \$400 fee would be below the annual fee levels paid in FY 1991. This is necessary, one commenter argues, because of the confusion surrounding the implementation of the initial materials annual fees. The fees, which came late in FY 1991, left many licensees at a loss as to how to pass these increases on to customers without losing business. Other commenters argued that they should either be given refunds for the difference between what was paid in FY 1991 and the revised \$400 fee or be given a credit toward the FY 1992 license fee based on the proposed \$400 fee. One commenter

asked whether or not a license that was terminated within the window of opportunity provided by the NRC in FY 1991 could be reinstated by paying the proposed \$400 lower tier small entity fee. Similarly, if the company applied for a new license, accompanied by the proper Part 170 application fee, would the applicant be subject to the FY 1991 annual fee?

Response. The recommended modification to the annual fees may not be made retroactive to FY 1991 because this would result in the NRC not assessing approximately 100 percent of its FY 1991 budget authority, which would be inconsistent with the requirements of OBRA-90. Therefore, the annual fees assessed for FY 1991 will not be changed. The \$400 lower tier small entity fee will apply to FY 1992 and subsequent years unless changed by rulemaking. If a licensee elected to terminate its license within the time permitted by the NRC and thereby avoided payment of the FY 1991 annual fee but now wishes to have the license reinstated, the licensee must file a new application with the NRC, accompanied by the appropriate application fee, as required by 10 CFR part 170, for the activities requested in the new application. Once a new license is issued, the license will become subject to the renewal, amendment, and inspection fees of 10 CFR part 170 and the annual fees in 10 CFR part 171. If the NRC terminated a license within the period allowed by the NRC and subsequently issued a new license after October 1, 1991, the NRC will not assess the licensee an annual fee for FY 1991. Licensees who wish to withdraw termination requests from the NRC that are pending termination on the effective date of this final rule and continue their license(s), may do so upon payment of the FY 1991 annual fee. The licensee will also be subject to the FY 1992 annual fees.

2. **Comment.** Several comments were received indicating that the term "gross annual receipts" should be redefined and limited to only the income derived from activities authorized by the licensee (e.g., nuclear medicine only) rather than receipts derived from all company activities. A group medical practice with total gross annual receipts of approximately \$2 million suggested that the annual fee be based on the receipts generated by only the nuclear activities authorized by the licensee. They indicate that 21 percent of the group practice income is from the office practice only and less than 10 percent of the office income is derived from specific nuclear medicine procedures. By considering the

entire private practice gross receipts in establishing the level for the small entity fee, commenters indicated that NRC is not considering the economic realities of a very small program, in particular small hospitals who may be forced to discontinue services for rural patients. Commenters argued that to include all gross annual receipts is not fair if the greater portion of that income has nothing to do with those individuals or departments using the nuclear license.

Response. The Commission disagrees with this proposal because it would result in a further subsidy from the larger entities for costs not directly related to them. This proposal would also result in NRC licensees subsidizing the nuclear portion of an organization's business, when the organization itself is not willing to use its non-nuclear revenue to subsidize its nuclear operations. The Commission does not believe that this would be appropriate. As previously indicated in Section I, Background, in applying the gross receipts criteria for determining whether or not a company qualifies as a small entity under the existing NRC size standards, the NRC used the term "receipts" as defined and used by the Small Business Administration (SBA) in the SBA size standards. SBA defines receipts " * * * to include all revenues in whatever form received or accrued from whatever source * * * "

III. Final Action—Changes Included In Final Rule

The following discussion addresses the final limited changes to 10 CFR parts 170 and 171. Most of these changes were presented in the proposed rule published on January 9, 1992 (57 FR 447).

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC is making one change to 10 CFR 170.12. This change would amend paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) of § 170.12 to reduce the billing interval from semiannually to quarterly for reactor and certain materials licensing actions.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses and Fuel Cycle Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed By NRC

The NRC has changed this regulation as follows:

1. The NRC is amending § 171.16 to further reduce the impact on small entities with relatively low gross annual

receipts. Although the NRC will continue the maximum annual fee of \$1,800 per licensed category for certain small entities for FY 1992, the NRC is adding a second, lower tier small entity fee of \$400 per licensed category. Small businesses and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with populations of less than 20,000 will qualify for the lower tier small entity fee. The basis for this change is discussed in detail in the Regulatory Flexibility Analysis included as Appendix A to this final rule.

The Commission believes that by defining relatively small gross annual receipts as less than \$250,000, a significant number of small entities (approximately 50%) are eligible for a further reduction of the impact of the annual fees. The Commission also believes that by defining a relatively small governmental jurisdiction as a population of less than 20,000, approximately 50 percent of the small governmental jurisdictions are eligible for a further reduction in fees. These annual gross receipt and population levels help ensure that those licensees who probably would be impacted the most by the annual fee would pay the lower fee. The Commission believes that the \$400 fee per licensed category will ensure that the lower tier small entities would receive a reduction (e.g., 75% for qualifying nuclear gauge licensees) substantial enough to mitigate any severe impact resulting from the annual fee. In addition, the amount of the small entity costs borne by other licensees are equivalent to the \$5.6 million estimated in the current rule, increased by 20% to account for the FY 1992 budget increase and the reduction in the number of material licensees due to license terminations.

In accordance with § 171.13, the NRC will continue to issue quarterly bills for the annual fees, for annual fees greater than \$100,000, which are based on the current 10 CFR part 171 annual fee schedule (56 FR 31506; July 10, 1991). In April 1992, the NRC plans to publish a proposed rule that would update the part 171 annual fees and the part 170 hourly rate and flat fees based on the NRC's FY 1992 appropriation.

IV. Section-By-Section Analysis

The following analysis of those sections affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 170**Section 170.12 Payment of Fees**

Paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) of this section are amended by changing the interval at which the NRC bills applicants and licensees from six months to quarterly. This change results in NRC billing fees for licensing and approval actions, based on the full cost method (i.e., professional staff hours and contractual costs), at quarterly intervals rather than every six months. This final amendment is applicable primarily to reactors and fuel cycle facilities and will result in all part 170 full cost fees being billed at least quarterly. Good financial management practice requires that fee billings be made as promptly as is possible. Licensees commenting on the proposed rule have supported the billing interval change, indicating that the change will provide more rapid and valuable feedback with the NRC, will permit licensees to more readily assess and budget for costs incurred for licensing activities, and will provide more timely information on which to make business decisions. The Commission, therefore, will bill license fees, based on the full cost method, at quarterly intervals, for example, December, March, June, and September.

Part 171**Section 171.16 Annual Fees**

Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

The introduction to paragraph (c) is amended (1) to provide for the continuation, in FY 1992, of a maximum annual fee of \$1,800 per licensed category for those NRC licensees that meet NRC small entity size standards and (2) to establish a lower tier small entity annual fee of \$400 per licensed category for those small businesses and non-profit organizations with gross annual receipts of less than \$250,000 and for those small governmental jurisdictions with a population of less than 20,000. Data from an NRC survey of materials licensees and the Department of Commerce industry census show that about 50 percent of small businesses with gross annual receipts of less than \$3.5 million have gross annual receipts of less than \$250,000. Thus, the Commission is defining a lower tier of small businesses with relatively low gross annual receipts as those with gross annual receipts of less than \$250,000. Under this definition, the Commission estimates that a significant

number of small entities would qualify for the further reduction of the annual fee. The eligibility criterion also helps ensure that those small businesses who would probably be impacted the most by the annual fee pay the lower fee.

The Commission has used a similar approach in establishing a reduced annual fee for the small governmental jurisdiction standard of populations of less than 50,000. Data provided by the National Association of Counties show that about 50 percent of the counties located in non-Agreement States have a population of less than 20,000. Therefore, the Commission is establishing a lower tier level of less than 20,000 population in order for a small governmental entity to qualify for the reduced annual fee of \$400 per licensed category. This action ensures that at least 50 percent of the cities, towns, townships, villages, school districts, and other special districts would also receive the benefit of a reduced annual fee because these jurisdictions are typically smaller than counties.

The Commission has not changed its basic definition of a small entity, that is, gross annual receipts of \$3.5 million or less for businesses and nonprofit organizations; private practice physicians with gross annual receipts of \$1 million or less, and small governmental jurisdiction with a population of less than 50,000. The Commission notes that these standards apply to the licensee, not individual authorized users listed in the license, and that a subsidiary of a large entity does not qualify as a small entity under the NRC's size standards.

Under this final rule, these three groups of NRC licensees would qualify for one of the two reduced annual fees depending on the level of the annual gross receipts or the respective population. A licensee with gross annual receipts of \$1.5 million will pay a maximum small entity annual fee of \$1,800 per licensed category. A licensee with annual gross receipts of \$200,000 will qualify for the lower tier small entity fee of \$400 per licensed category. Private practice physicians whose annual gross receipts are from \$250,000 to \$1 million will pay the maximum annual fee of \$1,800 per licensed category, while those private practice physicians with annual gross receipts of less than \$250,000 will pay the reduced annual fee of \$400 per licensed category. Licenses issued to city or county governments, for example, with a population of less than 20,000 will qualify for the lower tier small entity fee of \$400 per licensed category. The Commission believes that this two-

tiered approach will further alleviate the impact of fees on small entities with relatively low annual gross receipts and on smaller governmental jurisdictions.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) requires the NRC to recover approximately 100 percent of its budget authority for FY 1991 and the succeeding four years through the assessment of license and annual fees. With respect to part 170, this final rule was developed to title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. The limited change to part 170 revises the fee billing interval to quarterly for those license fees that are currently billed every six months. This will result in all part 170 fees being billed at least quarterly. With respect to the limited changes to part 171, the Commission is adjusting the maximum annual fee assessed to materials licensees who qualify as a small entity under the NRC's size standards. Although the Commission will continue the \$1,800 maximum annual fee per licensed category for small entities, it is establishing a lower tier annual fee of \$400 per licensed category for those small materials entities that have annual gross receipts of less than \$250,000 and for those small governmental jurisdictions with a population of less than 20,000. This constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification/Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of license and annual fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate

amount of these charges among licensees.

The NRC is amending its regulations governing the assessment of license and annual fees to make two limited revisions. The limited changes to 10 CFR part 170 assess license fees, which are based on the full cost method, quarterly instead of semiannually. This change affects only the frequency of the billings and not the amount of the fees to be billed. In addition, this change applies primarily to reactors and large fuel cycle facilities that are not small entities. Therefore, the Commission certifies that the change to 10 CFR part 170 does not have a significant economic impact on a substantial number of small entities.

This final rule continues the existing maximum annual fee of \$1,800 per licensed category for small entities in 10 CFR part 171 of the Commission's regulations. The final rule establishes a lower tier small entity annual fee of \$400 per licensed category for those NRC materials licensees who can qualify as a small entity under the existing NRC's size standards and whose annual gross receipts are less than \$250,000 or for those small governmental jurisdictions who have a population of less than 20,000. This reduced annual fee is established one level or tier below the current \$1,800 maximum annual fee per licensed category. The basis for this final amendment to 10 CFR part 171 is discussed in detail in the regulatory flexibility analysis which is included as appendix A to this final rule. The regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Consistent with the requirements of the Regulatory Flexibility Act, this change to 10 CFR part 171 further alleviates the impact of future annual fees on the smallest materials licensees.

IX. Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, import and export

licenses, intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, or approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 98 Stat. 1051, sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 80 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.12, paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) are revised to read as follows:

§ 170.12 Payment of fees.

(b) License fees. * * *

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. The NRC intends to bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and costs related to each.

(c) Amendment fees and other required approvals. * * *

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning, and termination of licensed activities that are subject to the full cost of the review are payable upon notification by the Commission. The NRC intends to bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed except for those

costs relating to amendment and other approvals for early site permits that were deferred before August 9, 1991. These costs will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) Renewal fees. * * *

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except for those costs deferred before August 9, 1991, as noted in paragraphs (d)(3) and (d)(4) of this section, the NRC intends to bill each applicant at quarterly intervals for all accumulated costs for each application that the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and the costs related to each.

(e) Approval fees. (1) Fees for applications for materials approvals that are not subject to full cost recovery of the review must accompany the application when it is filed. Fees for applications or preapplication consultations and reviews subject to the full cost of the review are payable upon notification by the Commission. The NRC intends to bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(f) Special Project Fees. Fees for applications for special projects such as topical reports are based on the full cost of the review and are payable upon notification by the Commission. The NRC intends to bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(i) Part 55 review fees. The costs for Part 55 review services will be subject to fees based on NRC time spent in administering the examinations and tests that are generally given at the reactor site and any related contractual costs. The costs also include related items such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC.

The priority citation for part 171 is revised to read as follows:

Authority: Section 7001, Pub. L. 89-272, 100 Stat. 1463, as amended by Sec. 5803, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3291, Pub. L. 101-239, 103 Stat. 2106 as amended by Sec. 8101, Pub. L. 101-508, 104 Stat. 1338 [42 U.S.C. 2021b, 2213]; sec. 301, Pub. L. 92-314, 86 Stat. 222 [42 U.S.C. 2254(w)]; sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 171.16, the introductory text of paragraph (c) is revised to read as follows:

§ 171.16 Annual Fee: Material Licensees, Holders of Certificates of Compliance, Holders of Backed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1992, based on gross annual receipts, or if the licensee is a small governmental jurisdiction based on population density, as follows:

Small businesses and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
\$250,000 to \$3.5 million	\$1,800
Less than \$250,000	400
Private practice physicians (gross annual receipts)	
\$250,000 to \$1.0 million	1,800
Less than \$250,000	400
Small governmental jurisdictions (population)	
20,000 to 50,000	1,800
Less than 20,000	400

**Appendix A to This Final Rule
Regulatory Flexibility Analysis for the
Limited Amendment to 10 CFR Part 171
(Annual Fees)**

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities on December 8, 1985 (50 FR 50241). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of \$3.5 million or less except private practice physicians for which the standard is annual receipts of \$1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of \$3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, (OBRA-90) requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991 the amount to be collected was approximately \$445 million, and for FY

1992, the amount to be collected is approximately \$493 million.

To comply with OBRA-90, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171 on April 12, 1991 (56 FR 14870). On the basis of a careful evaluation of over 400 comments, the Commission issued a final rule on July 10, 1991 (56 FR 31472). Consistent with the Commission Report accompanying the Public Notice, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities.

II. Impact on Small Entities

The comments received on the proposed FY 1991 fee rule revisions, and small entity certifications received in response to the final FY 1991 fee rule indicate that NRC licensees that qualify as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these material licensees, the NRC estimates that about 25 percent (approximately 2,000 licensees) would qualify as a small entity. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed FY 1991 rule. Comments were specifically requested on (1) how the proposed regulations would affect each class of licensee and (2) how the regulations could be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of OBRA-90.

For materials licensees, the increase in fees assessed in FY 1991 consisted of (1) an increase of 25 percent in the license and inspection fees assessed under 10 CFR Part 170 and (2) a new annual fee assessed under 10 CFR Part 171 that ranges from \$280 to over \$10,000. A number of small entities indicated that the 25 percent increase in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many other materials licensees commented that the new annual fee would have a negative economic impact on them. Therefore, the regulatory flexibility analysis prepared for the July 10, 1991, final rule, as well as this

Dated at Rockville, Maryland, this 13th day of April, 1992.

For the Nuclear Regulatory Commission,
Samuel J. Chalk,
Secretary of the Commission.

regulatory flexibility analysis, concentrates on the new annual fee.

The commenters indicated the following results if the annual fees proposed on April 12, 1991, were not modified:

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put them at an extreme disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

- Some firms would be forced to cancel their licenses. One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in around 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it was not clear to what extent these impacts would materialize at the time the July 10, 1991, final rule was promulgated, it was clear that the proposed annual fees would be a relatively high portion of the gross revenues of some licensees and far less of a portion for other larger material

licensees. After the final rule was published, approximately 1,000 license, approval, and registration terminations were requested. Although some of these terminations were requested because the license was no longer needed, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the \$3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

Members of Congress, in many of the more than 100 Congressional letters the NRC has received from them since the July 10, 1991, final rule was published, have expressed concern about the size of the NRC annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those licensees who conduct limited operations. The Small Business Administration (SBA), while commending the Commission for complying with and using the RFA in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the fees on small businesses. The American Nuclear Society (ANS) also expressed concern about the impact of the annual fees on small entities and suggested that the Commission examine alternatives to further reduce the impacts.

Therefore, the NRC concludes that it should consider additional alternatives, in accordance with the RFA because of the continuing significant impact of the annual fees on a substantial number of small entities.

III. Alternatives

Commenters on the proposed rule published April 12, 1991, and comments received subsequent to publication of the final rule on July 10, 1991, suggested alternatives to reduce the impact on small entities. These comments are categorized as follows:

- Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
- Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

- Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the RFA to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under 10 CFR part 170. Therefore, the NRC rejected this approach.

For similar reasons, basing the fee on the frequency of use of the licensed radioactive source, the second suggested alternative, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

- The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

1. Exempt all small entities that meet the size standards from annual fees.
2. Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.
3. Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. However, because small entities would not pay any of the generic costs attributable to their class of licensees this option could be viewed as inconsistent with the objectives of OBRA-90. Under this option, all the annual fees attributable to small entities would be paid by other NRC licensees.

Under Option 2, small entities would pay a percentage (e.g., 50 percent) of the proposed fee for each specific category of material license, regardless of how small or large the fee is. This option could result in a reduction in annual fees that are already relatively small and that do not have a significant impact on

a substantial number of small entities. However, for those fee categories assessed large annual fees, the percentage of reduction may result in assessing small entities licensed under those fee categories relatively large annual fees.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of OBRA-90 and the RFA, which are to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. Maximum Fee

To implement Option 3, the NRC established a maximum annual fee for small entities. The RFA and implementing guidance do not provide specific guidelines on the amount or the percent of gross receipts that should be charged to a small entity. To determine a maximum annual fee for a small entity, the NRC examined the NRC 10 CFR part 170 license and inspection fees established in 1991 and the 1991 Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities.

The maximum fees per year charged in 1991 by several Agreement States and by the NRC for materials license fee categories with a significant number of small entities are shown below.

	1991 Maximum average total fee per year
Washington	\$3,700
Texas	2,400
Alaska	2,000
NRC	1,500
Nebraska	1,400
New York	1,000
Utah	600

Table 1 shows the estimated total fees (Part 170 plus Part 171) for materials licensees, assuming maximum annual fees for small entities of \$2,000 or \$1,500 and an average number of licensing actions and inspections per year. If the

maximum annual fee for small entities is established at \$2,000, the average fee per year for all of the categories would be below the approximately \$3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad-scope medical licensees. The broad-scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a \$2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately \$3,800. If the maximum fee is reduced by \$200 (from \$2,000 to \$1,800), then all categories of material licensees, including radiographers, would pay no more for each category than the 1991 maximum Agreement State fee of about \$3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at \$1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, would pay for most of the FY 1991 costs (\$22.3 million of the total \$27.2 million) attributable to them. Therefore, the NRC has established and will continue, for FY 1992, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other material licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of \$1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission is proposing to further reduce the impact on small entities with relatively low gross annual receipts.

Commenters have suggested that the NRC could reduce the impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material. In adopting the July 10, 1991, final rule, the Commission recognized that inherent differences exist in the nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in section III of this analysis,

the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) or population is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the \$1,800 maximum annual fee per licensed category for small entities. In addition, the Commission proposes to create a lower tier annual fee per licensed category for small entities with relatively small gross annual receipts or with a relatively small population.

To implement this proposal, relatively small annual receipts must first be defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the following data shows the distribution of businesses with annual gross receipts of less than \$3.5 million.

Annual gross receipts	NRC survey	Department of Commerce (percent)
Less than \$250K	45	55
\$250-\$499K	14	22
\$500-\$749K	8	6
\$750-\$999K	9	8
\$1,000-\$3,500K	24	11

As this table shows, 45 to 55 percent (or about 50%) of small businesses with gross annual receipts of less than \$3.5 million have gross annual receipts that are less than \$250,000. Thus, by defining relatively small gross annual receipts as less than \$250,000, a significant number of small entities would be eligible for a further reduction of the impact of the annual fees. This level would also help ensure that those small businesses which probably would be impacted the most would pay the lower fee.

A similar approach has been used to define a relatively small governmental jurisdiction. Using 1990 data from the National Association of Counties, the distribution below for those counties located in non-Agreement States with a population of less than 50,000, shows that a population level of less than 20,000 would ensure that at least 50

percent of the small counties would be eligible for reduced fees. This would also ensure that at least 50 percent of other governmental jurisdictions (cities, towns, villages, school districts, etc.) could also receive the benefits because these other jurisdictions are typically smaller than counties.

Population	Percent of total
Less than 5,000	10
5,000-9,999	18
10,000-14,999	16
15,000-19,999	14
20,000-24,999	9
25,000-50,000	33

The NRC must also determine the amount of the annual fee that should be assessed to lower tier small entities (less than \$250,000 in gross annual receipts for small businesses and small non-profit organizations, or less than 20,000 population for small governmental jurisdictions). The RFA and its implementing guidance do not provide specific guidelines on the amount or percent of gross receipts that should be charged to a small entity. In determining the amount of the annual fee for lower tier small entities, the Commission believes that the reduced fee should retain a balance between the objectives of the FRA and OBRA. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users are used to measure the reduction in fees because they represent about 40 percent of the material licensees and most likely would include a larger percentage of lower tier small entities than other classes of materials licensees.

Before presenting alternative fees, the NRC notes that the number of licensees filing small entity certifications for the FY 1991 annual fees is lower than originally estimated. The NRC estimated 3,000 certifications in the current rule, which would have resulted in an estimated cost of about \$5 million in the small entity subsidy. On the basis of the response to the FY 1991 billings, the NRC's estimate now is that there are about 2,000 small entities.

The data below shows four different alternative lower tier small entity fees, their impact on the licensees, and their impact on the balance between OBRA and RFA.

Lower tier small entity annual fee	Reduction in fee for gauge users (percent)	Estimated FY 1992 small entity subsidy (dollars in millions)	Estimated FY 1992 annual fees paid by small entities (dollars in millions)
\$1,200	90	\$5.0	\$4.5
900	50	5.3	4.2
700	80	5.5	4.0
400	75	5.0	3.5

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission is establishing an annual fee of \$400 per licensed category for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (57% for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee would be equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduced number of material licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts that are less than \$250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

V. Summary

Comments received on the proposed rule dated April 12, 1991, and implementation of the final rule on July 10, 1991, provide evidence that the annual fee would significantly impact a substantial number of small entities. A maximum annual fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirements to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$1,800 per licensed category for small entities and a maximum lower tier small entity annual fee of \$400 per licensed category for small businesses and non-profit organizations with gross annual receipts of less than \$250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are

consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA.

TABLE 1.—1991 AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee ¹	
	Max annual fee = \$2K	Max annual fee = \$1.5K
Special nuclear material (SNM):		
1C. Industrial Gauges	\$1,672	\$1,672
1D. All other SNM	2,506	2,006
Source material:		
2B. Shielding	463	463
2C. Other Source Materials	2,967	2,967
Byproduct material:		
3A. Manufacturing—broad	3,560	3,060
3B. Manufacturing—other	3,343	2,643
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—manufacturing	2,677	2,177
3E. Irradiators—self-shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,640	3,340
3H. Exempt distribution—Device review	2,615	2,315
3I. Exempt distribution—No device review	2,662	2,182
3J. Gen. license—Device review	2,679	2,179
3K. Gen. license—No device review	2,706	2,206
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,650
3N. Service license	2,733	2,233
3O. Radiography	4,050	3,550
3P. All other byproduct materials	2,120	2,120
Waste disposal and processing:		
4B. Waste receipt/packaging	4,680	4,180
4C. Waste receipt—prepackaged	3,216	2,716
Well logging:		
5A. Well logging	3,207	2,707
Nuclear laundry:		
6A. Nuclear laundry	3,030	2,530
Human use of byproduct, source, or SNM:		
7A. Teletherapy	3,786	3,286
7B. Medical—broad	4,360	3,860
7C. Medical—other	3,130	2,630
Civil defense:		
8A. Civil defense	1,789	1,789
Device, product, or sealed source safety evaluation:		
9A. Device/product—Broad	3,200	2,700
9B. Device/product—Other	2,560	2,060
9C. Sealed sources—Broad	1,530	1,530
9D. Sealed sources—Other	770	770

¹ Based on average 10 CFR part 170 fees plus maximum annual fees.

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BILLING CODE 7590-01-02



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

MAY - 1 1992

MEMORANDUM FOR: William Fisher, Chief
Nuclear Materials Licensing Section

FROM: William L. Brown
Regional Counsel

SUBJECT: NORTH IDAHO DENSOMETER ASSOCIATION, INC.

5/1/92
Jack:
Pretty clear
guidance. Let's
draft the common
letter, get it approved,
and then plan our
course of action.
(e.g., call Mr. — of NIDA,
discuss w/ NMSS, etc.)
Bill

Pursuant to a request from Jack Whitten on your staff, I have reviewed the documents submitted by the North Idaho Densometer Association, Inc. in response to our Confirmatory Action Letter of November 20, 1992.

The stated purpose of the association's amended and restated Articles of Incorporation is that the association was organized for the purpose of obtaining and holding a license from the NRC permitting its members to use nuclear densometers. As far as I can determine, the association has no other function. Neither the articles of incorporation nor the corporation's bylaws reflect any other function.

While the restated bylaws have attempted to reflect the fact that the association will be responsible for the actions of any member in using a densometer under the license issued to the association, it is also clear that real accountability lies with each non-licensee member of the association who must indemnify and hold the other members, as well as the association itself, harmless from damage or expense incurred by the association as a result of action or inaction by the member. The removal of the actual member corporations that own, possess, and use the byproduct material from direct regulatory accountability to the NRC is contrary to 10 CFR 30.3.

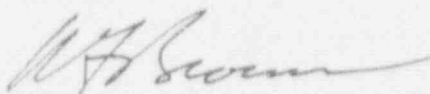
The incorporated association is what is frequently referred to as a "paper corporation." From all appearances, it was created for not only the stated purpose of obtaining and holding a license, but, in so doing, to circumvent the increased license fees which have been promulgated by the Commission pursuant to the policy mandates of Public Law 101-508. Allowing such a circumvention would frustrate the very reason the fees were increased, which was to adhere to the Congressional mandate that the NRC recover approximately 100 percent of its budget authority in FY 91 and the 4 succeeding years through fees and annual charges that fairly and equitably allocate the total amount of the charges to be recovered from Commission licensees. To the maximum extent practicable, the law mandates that such charges must have a reasonable relationship to the cost of providing regulatory services.

MAY - 1 1997

William Fisher

-2-

It is, therefore, my opinion that each member company of the association should be informed that individual licenses for each such company are required under the presently known circumstances. The license to the association should be revoked once the individual licenses are issued and all regulatory requirements have been met.



William L. Brown
Regional Counsel

cc: R. Martin
J. Whitten

Michael M. Megaard, Esq.
Lukins & Annis
Washington Trust Financial Center, Suite 1600
Spokane, Washington 99204

Dear Mr. Megaard:

This is in response to your letter to me dated October 22, 1991, in which you enclosed articles of incorporation, bylaws, and certain guarantee/consent forms covering the incorporation of a nonprofit association of three member companies, each of which was an NRC licensee. The member companies are: Welch, Comer & Associates, Inc.; Ruen-Yeager & Associates, Inc.; and Interstate Concrete & Asphalt Co. The name of the association is North Idaho Densometer Association, Inc.

The stated purpose of the new association's incorporation is to obtain and hold a "single license" from the NRC while at the same time permitting the three member companies to "each separately own and use nuclear densometers in the conduct of their respective businesses, rather than each member separately obtaining a license." Your letter purports to address concerns that I had expressed to you when you discussed such an arrangement in general terms with me this past summer.

I informed you during that conversation that without seeing the details of what you were considering for your clients, I could not offer an opinion on whether such an arrangement would be acceptable to the Commission. I further informed you that the burden was on your licensee clients to demonstrate to the satisfaction of the Commission that such an arrangement would meet Commission licensing requirements. At a minimum, I said that we expect a licensee to have full accountability and responsibility for licensed material and activities in order to be able to meet Commission licensing and other regulatory requirements. I stressed the fact that the Commission would not simply accept some kind of front association as a single licensee, having no accountability and responsibility, which was created for the sole purpose of avoiding increased license fees for its member companies. Your clients' association seems to do just that, however. Indeed, the bylaws explicitly state that "[e]ach member shall be fully responsible for its own actions in using a nuclear densometer, [and] shall be accountable to the Nuclear Regulatory Commission for its use...." This is completely opposite from what our licensing staff had understood during its discussions with your client representatives prior to the termination of the three individual licenses and the issuance of a new license to the incorporated association made up of the three member companies.

(*Previous Concurrence)

RIV:RC *WLB*
WLBrown:cms
11/20/91

C-NMLS/DRSS
*WFisher
11/20/91

D/DRSS
*LCallan
11/20/91

RA
RDMartin
/ /91

The course of action your clients have taken appears to be one where the three member companies independently continue business as before in all ways except by separate license. In my opinion, this is not only unacceptable from a regulatory standpoint, but it is also contrary to what Congress intended in Public Law 101-508. This intent, as implemented by the NRC's recently amended regulations in 10 CFR Parts 170 and 171, is that the NRC must recover approximately 100 percent of its budget authority in Fiscal Year 1991, and the four succeeding years, through user fees and annual charges. In summary, the arrangement you propose fails to meet minimum requirements for an NRC license. After consultation with the licensing staff, I suggest that this situation be corrected immediately to reflect full and actual accountability and responsibility in the association for licensed material and activities in order that the association will be able to truly meet Commission licensing and other regulatory requirements. In the alternative, the association should request a license termination coupled with requests from each of its three members for new individual licenses. Your clients should be aware of the fact that willful violation of Commission regulations is a criminal offense under Sections 222 and 223 of the Atomic Energy Act of 1954, as amended. Also, the knowing and willful making of false, fictitious or fraudulent statements or representations to the NRC is a criminal offense pursuant to Title 18, Section 1001, of the U.S. Code.

Please have your clients inform Mr. Jack Whitten of the Region IV licensing staff of their planned course of action within 10 days. Also, please let me know if you should have any questions concerning this matter.

Sincerely,

William L. Brown
Regional Counsel

cc
R. Martin

bcc:
DCS (Orig IE34)
RIV File: DRSS

Jack:

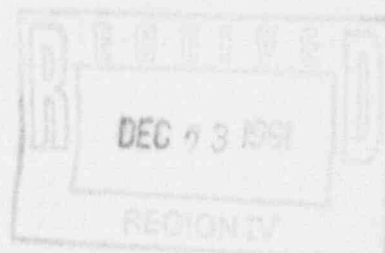
I assume this is
the submittal you
told me about. (Looks
like the original
for the dkt file etc.)

Bill

DHS

12/30 Bill Fisher

NORTH IDAHO DENSOMETER ASSOCIATION
=====



December 13, 1991

Robert D. Martin
Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

Subject: Incorporation Documents

Gentlemen:

It has become apparent that the schedule we forwarded to you on December 4, 1991 does not meet the needs of NIDA or the NRC. Therefore we propose the following adjusted schedule:

Rewrite documents as necessary	12/06/91
Forward amended documents to NRC for review	12/13/91
NRC document review, comment, and sign-off	1/03/92
File documents with State of Idaho	1/10/91

Enclosed are amended copies of our Articles of Incorporation, Bylaws, and Unanimous Consent documents for your review. Please review them for approval. Please contact us with your comments so that we may proceed with filing the documents with the State of Idaho.

Sincerely,

Paul Franz

Paul Franz, P.E.
Radiation Safety Officer
North Idaho Densometer Association
W 845 Kathleen Avenue
Coeur d'Alene, ID 83814

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
NORTH IDAHO DENSOMETER ASSOCIATION, INC.

Amended and Restated Articles of Incorporation of NORTH IDAHO DENSOMETER ASSOCIATION, INC., are herein executed by said Corporation pursuant to the provisions of Sections 30-326 and 30-327 of the Idaho Nonprofit Corporation Act, Title 30, Chapter 3, and Section 30-1-64 of the Idaho Business Corporation Act.

The Amended and Restated Articles of Incorporation correctly set forth without change, the corresponding provisions of the Articles of Incorporation, except for Article IV ("PURPOSE") which has been amended to read as set forth below. The Amended and Restated Articles of Incorporation, as herein amended, supersede the original Articles of Incorporation and all amendments thereto.

ARTICLE I.
NAME

The name of this Corporation shall be "NORTH IDAHO DENSOMETER ASSOCIATION, INC."

ARTICLE II.
NONPROFIT CORPORATION

This corporation is a nonprofit corporation.

ARTICLE III.
DURATION

The period of duration of this Corporation shall be perpetual.

ARTICLE IV.
PURPOSE

This Corporation is organized for the purpose of obtaining and holding a license from the Nuclear Regulatory Commission permitting its members to use nuclear densometers.

ARTICLE V.
MEMBERSHIP

This Corporation shall have members. The designation of classes, the manner of election or appointment, and the qualifications and rights of said members shall be set forth in the Bylaws of this Corporation.

ARTICLE VI.
REGISTERED OFFICE AND AGENT

The registered agent of this Corporation and the street address of the registered office are as follows:

Bruce M. Grachal, P.E.
1119 Ironwood Parkway
Coeur d'Alene, Idaho 83814

ARTICLE VII.
DIRECTORS

The affairs of this Corporation shall be managed by a Board of Directors. The number, qualifications, term, and method of appointment and removal of said directors shall be set forth in the Bylaws. The names and addresses of the initial directors of this Corporation are as follows:

<u>Name</u>	<u>Address</u>
LARRY E. COMER, P.E., L.S.	220 Harbor Plaza Northwest Boulevard and Lincoln Way Coeur d'Alene, Idaho 83814
BRUCE M. GRACHAL, P.E.	1119 Ironwood Parkway Coeur d'Alene, Idaho 83814
PAUL FRANZ, P.E.	845 W. Kathleen Coeur d'Alene, Idaho 83814

ARTICLE VIII.
DISSOLUTION

This Corporation may be dissolved or liquidated by majority vote of the members. In the event of such dissolution or final liquidation, all property and assets of the Corporation shall be distributed equally among the members.

ARTICLE IX.
LIMITATION ON LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages arising from any conduct as a director, except this limitation on liability shall not apply to (a) acts or omissions involving intentional misconduct by the director or a knowing violation of law by the director, (b) any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. This limitation shall not apply to any act or omission occurring before the effective date of this paragraph. If the Idaho Nonprofit Corporation Act and/or the Idaho Business Corporation Act is amended

to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Idaho Nonprofit Corporation Act and/or the Idaho Business Corporation Act, as so amended. Any repeal or modification of the foregoing paragraph by the members of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE X.
INDEMNIFICATION

The Corporation has the power to indemnify, and to purchase and maintain insurance for, its directors, officers, trustees, employees, and other persons and agents. Without limiting the generality of the foregoing, the Corporation shall indemnify its directors against all liability, damages, and costs or expenses (including attorney's fees) arising from or in connection with service for, employment by, or other affiliation with this Corporation to the maximum extent and under all circumstances permitted by law.

ARTICLE XI.
INCORPORATOR

The name and address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Larry E. Comer, P.E., L.S.	220 Harbor Plaza Northwest Boulevard and Lincoln Way Coeur d'Alene, Idaho 83814

The Amendment to and Restatement of the Articles of Incorporation were adopted by a consent in writing signed by all directors and members entitled to vote with respect thereto.

DATED this _____ day of December, 1991.

NORTH IDAHO DENSOMETER ASSOCIATION,
INC.

By _____
Its President

By _____
Its Secretary

SIGNATURES
MUST BE
NOTARIZED



STATE OF IDAHO)
 : ss
County of _____)

BRUCE M. GRACHAL, being first duly sworn on oath, deposes and says:

That I am the President of NORTH IDAHO DENSOMETER ASSOCIATION, INC.; that I have read the within and foregoing Amended and Restated Articles of Amendment to Articles of Incorporation; know the contents thereof, and believe the same to be true.

BRUCE M. GRACHAL

SUBSCRIBED AND SWORN to before me this _____ day of December, 1991.

Notary Public in and for the State
of Idaho, residing at _____

My commission expires: _____

RESTATED BYLAWS
OF
NORTH IDAHO DENSOMETER ASSOCIATION, INC.
An Idaho Nonprofit Corporation

ARTICLE I.
PURPOSE

This Corporation shall obtain and hold a license from the Nuclear Regulatory Commission permitting its members to use nuclear densometers. Each member shall hold the other members harmless from any liability for its own use of a nuclear densometer.

ARTICLE II.
MEMBERSHIP

Section 1. Membership. This Corporation shall have one class of members. Membership shall entitle the member to use a nuclear densometer under the license issued to the Corporation by the Nuclear Regulatory Commission (hereinafter referred to as "NRC"). New members shall be elected by the majority vote of the existing members of the Corporation, subject to approval of the NRC. The initial members shall consist of the following three Corporations:

Welch, Comer & Associates, Inc.
c/o Larry E. Comer, P.E./L.S.
220 Harbor Plaza
Northwest Blvd. & Lincoln Way
Coeur d'Alene, Idaho 83814

Ruen-Yeager & Associates, Inc.
c/o Bruce M. Grachal, P.E.
1119 Ironwood Parkway
Coeur d'Alene, Idaho 83814

Interstate Concrete & Asphalt Co.
c/o Paul Franz, P.E.
845 W. Kathleen
Coeur d'Alene, Idaho 83814

Section 2. Termination of Members. Membership of any member may be terminated, with or without cause, by the majority vote of the members or immediately upon a determination by the NRC that the member is not qualified to use a nuclear

densometer. Membership also will be terminated automatically if the member fails to comply with the requirements in Section 10 of this Article II, now.

Section 3. Annual Meeting. An annual meeting of the members shall be held at the office of the Corporation or at such other places designated by the directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. The annual meeting shall be held on the first business day of July each year, or at such other time and place as determined by the directors.

Section 4. Special Meetings. Special meetings of the members may be called by the President of the Corporation or by a majority of the Board of Directors, or upon written request of any two (2) members to the President. Special meetings may be held at such places as may be designated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the members shall be delivered either personally or by mail to each member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. Notice shall be deemed to be delivered when deposited in the United States mail addressed to the members at their addresses as they appear on the records of the Corporation, with postage thereon prepaid, or when personally delivered.

Section 6. Quorum. A majority of the members of the Corporation represented in person or by proxy shall constitute a quorum for the transaction of business at any meeting. The act of the majority of those present at a meeting at which a quorum is present shall be the act of the membership unless a greater vote is required by the Articles of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of the members, a majority present may adjourn the meeting until a quorum shall be present.

Section 7. Votes. Each member shall be entitled to one (1) vote on each matter submitted to a vote of the members. A member may vote in person or by proxy executed in writing by the member. No proxy shall be valid after eleven (11) months from the date of its execution. Each proxy shall be revocable at the pleasure of the member who executes it.

Section 8. Conference Telephone. Any regular or special meeting of the members may be effectuated by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting, for all purposes, including the right to vote and the right to waive notice of meeting.

Section 9. Action Without Meetings. Any action required under the provisions of any law or by the Articles of Incorporation or Bylaws, to be taken at a meeting of the members of this Corporation, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as unanimous vote and may be stated as such.

Section 10. Requirements. In order to remain a member in good standing of this Corporation, each member agrees to:

(a) Name the Corporation as an additional insured on its individual liability policy.

(b) Be responsible for and pay its pro rata share of all costs and expenses of the Corporation including but not limited to NRC inspection fees, licensing fees, clerical (Central File) fees, and legal fees. Any amendment fees payable to the NRC shall be charged to the individual member requesting such amendment.

(c) Help establish and maintain a Central File of the Corporation to consist of the following:

Required leak test;

Radiation measuring devices records (TLD badges);

Site storage locations;

Training certificates; and

List of operators.

(d) Appoint a Radiation Control Officer, who shall be responsible for maintaining the Central file on behalf of the Corporation. This position shall rotate from member to member at the time of each NRC amendment or license renewal.

(e) Update the Central File.

(f) Appoint a Safety Officer to make an annual inspection of the storage units.

(g) Conform to all NRC transportation requirements.

Section 11. Accountability and Liability. The Corporation shall be responsible for the actions of any member in using a densometer under the license issued to the Corporation. Each member shall indemnify and hold the other members and this

Corporation harmless from any and all damage or expense, including attorney fees, incurred as a result of action or inaction by the member.

ARTICLE III. BOARD OF DIRECTORS

Section 1. Powers. Subject to the provisions of the Idaho Nonprofit Corporation Act and the Articles of Incorporation, the Board of Directors shall establish policies and have the entire management, control, and direction of the business and affairs of the Corporation.

Section 2. Number. There shall be no less than three (3) nor more than five (5) directors of the Corporation who shall be called the "Board of Directors." The number of directors may be increased or decreased from time to time by resolution of the Board of Directors, provided that no decrease in the number of directors shall have the effect of shortening the term of any director then serving.

Section 3. Election--Term of Office. The Board of Directors shall be elected by the members at each annual members' meeting, to hold office until the next annual meeting of the members, or until their respective successors are elected and qualified.

Section 4. Annual and Regular Meetings. The annual meeting of the Board of Directors shall be held, without other notice, immediately after, and at the same place, as the annual meeting of members for the purpose of electing officers for the upcoming year and transacting other business. Regular meetings shall be held at such places and at such times as the Board by vote may determine, and, if so determined, no notice thereof need be given.

Section 5. Special Meetings. Special meetings of the Board of Directors may be held at any time or place whenever called by any officer or two or more directors, notice thereof being given to each director by the officer calling or by the officer directed to call the meeting.

Section 6. Notice. Notice of any special meeting of the Board of Directors shall be given at least three (3) days prior thereto by written notice delivered personally or sent by mail or telegram to each director at his or her address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any directors may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any special meeting shall be specified in the notice. Business transacted at any special meeting of the Board shall be limited to the purpose or purposes stated in the notice of the meeting;

provided, however, that if all the directors of the entire Board are present, other matters may be taken up by unanimous consent.

Section 7. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a majority of the directors are present at any meeting, one-third (1/3) of the directors present may adjourn the meeting from time to time without further notice.

Section 8. Board Decisions. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

Section 9. Votes. Each director of the Board of Directors shall possess one (1) vote in matters coming before the Board. All voting at meetings of the Board of Directors shall be by each member in person, whether by telephone or otherwise, and voting by proxy shall not be allowed. All tie votes may be broken by the President.

Section 10. Conference Telephone. Any regular or special meeting of the Board of Directors may be effectuated by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting, for all purposes, including the right to vote and the right to waive notice of meeting.

Section 11. Minutes. Minutes of all proceedings of the Board of Directors shall be maintained by the Secretary of the Corporation and shall not be disclosed to any person other than the directors except by direction of the Board of Directors. Unless changed by the Board of Directors, the Corporation's accountant and Corporation's attorney may inspect the Board of Directors' minutes in connection with their respective responsibilities.

Section 12. Compensation. Directors as such shall not receive any stated salaries for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at any regular or special meeting of the Board. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. Resignation; Removal.

(a) A director may resign his or her position as a director at any time by mailing or otherwise delivering a written resignation to the President. Such resignation may also include any office he or she holds as an officer of the Corporation.

(b) A director may be removed from office, with or without cause, by a two-thirds (2/3) vote of the members of the Corporation.

Section 14. Vacancies. Any vacancy occurring on the Board of Directors shall be filled by the affirmative vote of a majority of the remaining directors, at a regular or special directors' meeting, and the new director shall complete the term of the director he or she is replacing.

Section 15. Committees. The Board of Directors may designate and appoint such committees consisting of members of the Board, as it may deem necessary from time to time, either as special or permanent committees which shall have and exercise all the authority of the Board of Directors as authorized in the resolution establishing such committee.

Section 16. Consultants. The Board of Directors may invite additional individuals with expertise in a pertinent area to meet with and assist the Board. Such consultants shall not vote or be counted in determining the existence of a quorum and may be excluded from any executive session of the Board by a majority vote of the directors present or upon request from the President.

Section 17. Action Without Meeting. Any action required under the provisions of any law or by the Articles of Incorporation, or Bylaws, to be taken at a meeting of the directors of this Corporation, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such.

Section 18. Agents and Representatives. The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with these Bylaws and to the extent authorized or permitted by law.

Section 19. Contracts. The Board of Directors, except as otherwise provided in the Articles of Incorporation or these Bylaws, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation, and such authority may be general or confined to the specific instance; and unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose to any amount.

ARTICLE IV. OFFICERS

Section 1. Officers. The officers of the Corporation shall consist of a President, Vice-President, Secretary, and Treasurer. Any two (2) offices may be held by the same person except the offices of President and Secretary. All officers shall be members of the Board of Directors.

Section 2. President. The President shall preside at all meetings of the Board of Directors, and shall have general supervision over the affairs of the Corporation, shall sign or countersign all certificates, contracts and other instruments of the Corporation, as authorized by the Board of Directors, and shall make reports to the Board of Directors and shall perform all such duties as are incident to his or her office or as are required by the Board of Directors.

Section 3. Vice-President. The Vice-President shall act in place of the President in his or her absence or disability and shall perform such other duties as the President or Board of Directors may designate.

Section 4. Secretary. It shall be the duty of the Secretary to act as secretary of all meetings of the Board of Directors and to act as custodian of the minutes of all corporate meetings and proceedings; to keep all other records of the Board of Directors and of the Corporation, to issue such notices as may be required by the Articles of Incorporation and Bylaws; and to perform such other acts as the President or Board of Directors may direct.

Section 5. Treasurer. The Treasurer shall supervise the custody of the funds and securities of the Corporation; cause full and accurate accounting of receipts and disbursements to be kept; cause all funds and properties of the Corporation to be, or held, deposited in such depositories as may be designated by the Board of Directors; cause the funds of the Corporation to be disbursed as may be ordered by the Board of Directors; cause a report to be made at its regular meeting, or whenever the Board may require it, of all transactions and the financial condition of the Corporation; and perform such other duties as the Board of Directors from time to time shall prescribe.

Section 6. Appointment and Term of Office. The officers of the Corporation shall be appointed annually by the Board of Directors at the annual meeting of the Board of Directors. If officers are not appointed at such meeting, such appointment shall occur as soon as possible thereafter. New offices may be created and filled at any meeting of the Board of Directors at the discretion of the Board of Directors. Each officer shall hold office until his or her successor shall have been appointed and qualified.

Section 7. Removal. Any officer appointed by the Board of Directors may be removed by a vote of the majority of the Board of Directors whenever in its judgment the best interest of the Corporation would be served thereby.

Section 8. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 9. Powers and Duties. Each of the officers shall have such powers and duties as previously noted and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors.

ARTICLE V.
INDEMNIFICATION OF OFFICERS,
DIRECTORS, EMPLOYEES AND AGENTS

Section 1. Definitions. As used in this Article:

- a. "Act" means the Idaho Nonprofit Corporation Act and/or the Idaho Business Corporation Act, as now or hereafter amended.
- b. "Another enterprise" means a corporation (other than the Corporation), partnership, joint venture, trust, association, committee, employee benefit plan, or other group or entity.
- c. "Corporation" means NORTH IDAHO DENSOMETER ASSOCIATION, INC., and any domestic or foreign predecessor entity which, in merger or other transactions, ceased to exist.
- d. "Director" means each person who is or was a director of the Corporation or an individual who, while a director of the Corporation, is or was serving, at the request of the Corporation, as a director, officer, partner, trustee, employee, or agent of Another Enterprise.
- e. "Expenses" includes counsel fees.
- f. "Indemnitee" means each person who was, is, or is threatened to be made a party to or is involved (including without limitation as a witness) in any Proceeding because the person is or was a director, officer, employee, or agent of the Corporation and who possesses indemnification rights pursuant to the Articles, these Bylaws or other corporate action. The term shall also include, for officers, employees, or agents, service at the Corporation's request as a director, officer, partner, trustee, employee, or agent of Another Enterprise.
- g. "Loss" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable Expenses incurred with respect to a Proceeding.
- h. "Party" includes an individual who was, is, or is threatened to be named a defendant or respondent in a Proceeding.
- i. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

Section 2. Right to Indemnification. The Corporation shall indemnify and hold each director and officer harmless against any and all Loss except for Losses arising out of: (a) the Indemnitee's acts or omissions finally adjudged to be intentional misconduct or a knowing violation of law, (b) any transaction in which it is finally adjudged that the Indemnitee personally received a benefit in money, property, or services to which

the Indemnatee was not legally entitled. Except as provided in Section 5 of this Article, the Corporation shall not indemnify an Indemnatee in connection with a Proceeding (or part thereof) initiated by the Indemnatee unless such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. If, after the effective date of this Article, the Act is amended to authorize further indemnification of directors or officers, then directors and officers of this Corporation shall be indemnified to the fullest extent permitted by the Act, as so amended.

Section 3. Contribution. If the indemnification provided in Section 2 of this Article is not available to be paid to Indemnatee for any reason other than those set forth in subparagraphs (a), (b), and (c) of Section 2 of this Article (for example, because indemnification is held to be against public policy even though otherwise permitted under Section 2) then in respect of any Proceeding in which the Corporation is jointly liable with Indemnatee (or would be if joined in such Proceeding), the Corporation shall contribute to the amount of loss paid or payable by Indemnatee in such proportion as is appropriate to reflect (a) the relative benefits received by the Corporation on the one hand and the Indemnatee on the other hand from the transaction from which such Proceeding arose, and (b) the relative fault of the Corporation on the one hand and the Indemnatee on the other hand in connection with the events which resulted in such loss, as well as any other relevant equitable consideration. The relative fault of the Corporation on the one hand and the Indemnatee on the other shall be determined by a court of appropriate jurisdiction (which may be the same court in which the Proceeding took place) with reference to, among other things, the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such loss. Corporation agrees that it would not be just and equitable if contribution pursuant to this Section 3 was determined by pro rata allocation or any other method of allocation which does not take account of the foregoing equitable considerations.

Section 4. Notification and Defense of Claim. Promptly after receipt by Indemnatee of notice of commencement of any Proceeding, Indemnatee must, if a claim in respect thereof is to be made against the Corporation under this Article, notify the Corporation of the commencement thereof; with respect to any such Proceeding as to which Indemnatee has notified Corporation of the commencement thereof:

(a) The Corporation will be entitled to participate therein at its own expense;

(b) Except as otherwise provided below, to the extent that it may wish, the Corporation, jointly with any other indemnifying party similarly notified, will be entitled to assume the defense thereof, with counsel satisfactory to Indemnatee. After notice from the Corporation to Indemnatee of its election to assume the defense thereof, the Corporation will not be liable to Indemnatee under this Article for any legal or other expenses subsequently incurred by Indemnatee in connection with the defense thereof, other than reasonable costs of investigation or as otherwise provided below. Indemnatee shall have the right to employ its counsel in such Proceeding, but the fees and expenses of such counsel incurred

after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnatee unless (1) the employment of counsel by Indemnatee has been authorized by the Corporation, (2) Indemnatee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnatee in the conduct of the defense of such Proceeding, or (3) the Corporation shall not in fact have employed counsel to assume the defense of such Proceeding, in any of which cases the fees and expenses of counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Corporation or as to which Indemnatee shall have made the conclusion provided in (2) of this subparagraph; and

(c) The Corporation shall not be liable to indemnify Indemnatee under this Article for any amounts paid in settlement of any Proceeding affected without its written consent. The Corporation shall not settle any Proceeding in any manner which would impose any penalty or limitation on Indemnatee without Indemnatee's written consent. Neither the Corporation nor Indemnatee will unreasonably withhold its consent to a proposed settlement.

Section 5. Right of Indemnatee to Bring Suit. If a claim under this Article is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be twenty (20) days, the Indemnatee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the Indemnatee shall be entitled to be also paid the expense of prosecuting such claim. Neither the failure of the Corporation (including its Board of Directors, its members, or independent legal counsel) to have made a determination prior to the commencement of such Proceeding that indemnification or reimbursement or advancement of expenses to the Indemnatee is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, its members, or independent legal counsel) that the Indemnatee is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the Proceeding or create a presumption that the Indemnatee is not so entitled.

Section 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, by action of its Board of Directors from time to time, provide indemnification and pay expenses in advance of the final disposition of an action to employees and agents of the Corporation, with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation or pursuant to rights granted pursuant to, or provided by, the Act or otherwise.

Section 7. Contract Right. Rights of indemnification under this Article shall continue as to an Indemnatee who has ceased to be a director or officer, as long as Indemnatee shall be subject to any possible action, by reason of the fact that Indemnatee was a director or officer of the Corporation or serving in any other capacity referred to

herein, and shall inure to the benefit of his or her heirs, executors, and administrators. The right to indemnification conferred in this Article shall be a contract right upon which each director or officer shall be presumed to have relied in determining to serve or to continue to serve as such. Any amendment to or repeal of this Article shall not adversely affect any right or protection of a director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

Section 8. Severability. If any provision of this Article or any application thereof shall be invalid, unenforceable or contrary to applicable law, the remainder of this Article, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, unenforceable, or contrary to applicable law, shall not be affected thereby and shall continue in full force and effect.

ARTICLE VI. FISCAL YEAR

The fiscal year of the Corporation shall end on the 31st day of December of each year.

ARTICLE VII. BOOKS AND RECORDS

The Corporation shall keep correct and complete books of the minutes of all meetings and other reports and actions of its Board of Directors and committees having and exercising any of the authority of the Board of Directors, and shall keep at the principal office a record giving the names and addresses of the members of the Board of Directors entitled to vote.

ARTICLE VIII. CONSTRUCTION OF TERMS AND HEADINGS

Words used in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision of these Bylaws.

ARTICLE IX. WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the Idaho Nonprofit Corporation Act and/or the Idaho Business Corporation Act, or under the provisions of the Articles of Incorporation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether

before or after the time stated therein, shall be deemed equivalent to the giving of such notice. All such waivers shall be filed with the corporate records, or be made a part of the minutes of the relevant meeting.

ARTICLE X.
AMENDMENTS

The Bylaws may be amended or repealed by the affirmative vote of a majority of the Board of Directors at any meeting of the Board, if notice of the proposed amendment is contained in the notice of meeting. Any such amendments shall require the approval of the NRC.

The undersigned Secretary of NORTH IDAHO DENSOMETER ASSOCIATION, INC., does hereby certify that the above and foregoing Restated Bylaws of said corporation were duly adopted by the directors as the Restated Bylaws of NORTH IDAHO DENSOMETER ASSOCIATION, INC., and that the same do now constitute the Bylaws of this Corporation.

DATED this _____ day of _____, 1991.

Attest: _____
Secretary

APPROVED:

Welch, Comer & Associates, Inc.

By: _____
Title: _____

Ruen-Yeager & Associates, Inc.

By: _____
Title: _____

Interstate Concrete & Asphalt Co.

By: _____
Title: _____

"MEMBERS"

APPROVED THIS ____ DAY OF
_____, 1991

Nuclear Regulatory Commission

By: _____
Title: _____

"NRC"

UNANIMOUS CONSENT OF MEMBERS AND DIRECTORS
OF
NORTH IDAHO DENSOMETER ASSOCIATION, INC.

The undersigned members and directors, constituting all of the members and directors of NORTH IDAHO DENSOMETER ASSOCIATION, INC., in lieu of a special meeting and pursuant to Sections 30-1-145 and 30-1-44 of the Idaho Business Corporation Act, adopt the following resolutions:

1. RESOLVED, that Article IV ("PURPOSE") of the Articles of Incorporation of this Corporation be amended to read as follows:

ARTICLE IV.
PURPOSE

This Corporation is organized for the purpose of obtaining and holding a license from the Nuclear Regulatory Commission permitting its members to use nuclear densometers.

2. RESOLVED, that the Articles of Incorporation of this Corporation be restated as set forth on Exhibit "A" attached hereto and incorporated herein by reference.

RESOLVED FURTHER, that the president and Secretary of this Corporation are authorized and directed to execute said Amended and Restated Articles of Incorporation and all exhibits and other documents related thereto, to file said Articles with the Idaho Secretary of State, and to take any and all further action which they may deem necessary or proper in order to effectuate the filing of the Amended and Restated Articles of Incorporation hereinabove described and to effectuate the foregoing resolutions.

3. RESOLVED, that the Bylaws of this Corporation be amended as follows:

- (a) Article I "PURPOSE" shall be amended to read as follows:

ARTICLE I.
PURPOSE

This Corporation shall obtain and hold a license from the Nuclear Regulatory Commission permitting its members to use nuclear densometers. Each member shall hold the other members harmless from any liability for its own use of a nuclear densometer.

- (b) Sections 1, 2, 10(d), and 11 of Article II "MEMBERSHIP" shall amended to read as follows:

ARTICLE 2.
MEMBERSHIP

Section 1. Membership. This Corporation shall have one class of members. Membership shall entitle the member to use a nuclear densometer under the license issued to the Corporation by the Nuclear Regulatory Commission (hereinafter referred to as "NRC"). New members shall be elected by the majority vote of the existing members of the Corporation, subject to approval of the NRC. The initial members shall consist of the following three Corporations:

Welch, Comer & Associates, Inc.
c/o Larry E. Comer, P.E./L.S.
220 Harbor Plaza
Northwest Blvd. & Lincoln Way
Coeur d'Alene, Idaho 83814

Ruen-Yeager & Associates, Inc.
c/o Bruce M. Grachal, P.E.
1119 Ironwood Parkway
Coeur d'Alene, Idaho 83814

Interstate Concrete & Asphalt Co.
c/o Paul Franz, P.E.
845 W. Kathleen
Coeur d'Alene, Idaho 83814

Section 2. Termination of Members.
Membership of any member may be terminated, with or without cause, by the majority vote of the members or immedi-

ately upon a determination by the NRC that the member is not qualified to use a nuclear densometer. Membership also will be terminated automatically if the member fails to comply with the requirements in Section 10 of this Article II, below.

Section 10. (d) Appoint a Radiation Control Officer, who shall be responsible for maintaining the Central file on behalf of the Corporation. This position shall rotate from member to member at the time of each NRC amendment or license renewal.

Section 11. Accountability and Liability. The Corporation shall be responsible for the actions of any member in using a densometer under the license issued to the Corporation. Each member shall indemnify and hold the other members and this Corporation harmless from any and all damage or expense, including attorney fees, incurred as a result of action or inaction by the member.

(c) Section 12 of Article II "MEMBERSHIP" is hereby deleted.

RESOLVED FURTHER, that the Bylaws of this Corporation as amended herein be restated as set forth on Exhibit "B" attached hereto.

RESOLVED FURTHER, that the Secretary of the Corporation is hereby authorized and directed to execute said Restated Bylaws and any and all exhibits or other documents related thereto, and to take any and all further action which he may deem necessary or proper in order to effectuate the foregoing resolutions.

This Consent is signed in lieu of holding, conducting, and attending a members' and directors' meeting. This Consent shall have the same force and effect as the affirmative vote of said members and directors at a members' and directors' meeting.

DATED this _____ day of December, 1991.

LARRY E. COMER, P.E., L.S., Director

BRUCE M. GRACHAL, P.E., Director

PAUL FRANZ, P.E., Director

WELCH, COMER & ASSOCIATES, INC.

By: _____
Title: _____

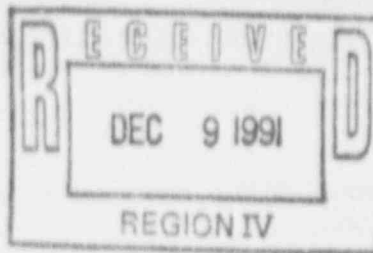
RUEN-YEAGER & ASSOCIATES, INC.

By: _____
Title: _____

INTERSTATE CONCRETE & ASPHALT CO.

By: _____
Title: _____

"Members"



Jack

NORTH IDAHO DENSOMETER ASSOCIATION
=====

December 4, 1991

Robert D. Martin
Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

Subject: NRC Action Letter of 11/22/91

Gentlemen:

Our schedule for amending the Association's Articles of Incorporation and Bylaws to reflect the NRC's current requirements is as follows:

Rewrite documents as necessary	12/06/91
File amended documents with the State of Idaho	12/13/91
Forward amended and filed documents to the NRC	12/20/91

If this schedule does not meet the NRC's requirements, please contact me immediately at 208-765-1144.

Sincerely,

Paul Franz, P.E.
Radiation Safety Officer
North Idaho Densometer Association
W 845 Kathleen Avenue
Coeur d'Alene, ID 83814

AI 91-451
CAL 91-07

IE-07

UPON COMPLETION OF ACTION, RETURN ORIGINAL AI FORM
& CLOSEOUT METHOD TO AI COORDINATOR (LORETTA WILLIAMS)

DATE: NOV 22 1991

REGION IV
ACTION ITEM NO: 91-451

SUBJECT: North Idaho Densometer Association, Inc. CAL 91-07

PRINCIPAL ASSIGNEE: Callan

FOR
SIGNATURE OF: _____

SECONDARY ASSIGNEE(S): _____

SECONDARY ASSIGNEE
INPUT DUE DATE: _____

FOR INFO ONLY: _____

DIVISION/SECTION COPY ASSIGNMENT:

INPUT DUE DATE:

Fisher/Whitten

DUE DATE: 12/20/91

CORRECTED DUE DATE: _____

DATE ACTION COMPLETED: _____

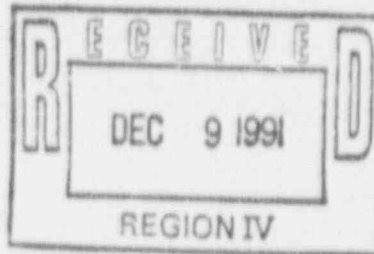
REMARKS & CLOSEOUT: Cancel - No action DEC 23 1991

required
[Signature]

DEC 23 1991

- 1) Contact - Paul Franz - 208-765-1144.
- 2) Fax/Send copy of accounts submitted to State of ID. Per conditions of 12/4/91 letter.
- 3) CAL-9107 FI # 91-451 Cancelled.
 require closest RA level.

DEC 23 1991



Jack

NORTH IDAHO DENSOMETER ASSOCIATION
=====

December 4, 1991

Robert D. Martin
Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

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Radiation Safety Officer
North Idaho Densometer Association
W 845 Kathleen Avenue
Coeur d'Alene, ID 83814

AI 91-451
91-07

IE-07

MAR 16 1992

MEMORANDUM FOR: Stuart A. Treby, Assistant General Counsel
for Rulemaking and Fuel Cycle

FROM: William L. Brown
Regional Counsel

SUBJECT: NORTH IDAHO DENSOMETER ASSOCIATION, INC.

On January 13, 1992, I transmitted to you by a Routing and Transmittal Slip a package pertaining to the subject association which was created for the sole purpose of holding a license for use by its members. I asked your opinion as to the legitimacy of such an approach.

The association has been asking about the matter. The Nuclear Materials Licensing Section in Region IV's Division of Radiation Safety and Safeguards has, in turn, asked me for a status report. Is there anything I can tell them at this time?

ORIGINAL SIGNED BY
WILLIAM L. BROWN

William L. Brown
Regional Counsel

bcc:
J. Whitten, DRSS

RIV:RC *WLB*
WLBrown:cms
3/16/92



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

FACSIMILE TRANSMITTAL

DATE/TIME:

Nov 22, 1991 3:25 PM

PRIORITY:

Immediately ☒

1 Hour ☐

2-4 Hours ☐

MESSAGE TO:

Paul Franz, RSO, North Tahan Densometer Assoc., Inc.

MESSAGE FROM:

Jack E. Viltken

NUMBER OF PAGES:

2

PLUS TRANSMITTAL SHEET

TELECOPY NUMBER:

208-765-3773

VERIFICATION NUMBER:

CONTACT:

Paul Franz 208-765-1144

SPECIAL INSTRUCTIONS/ATTACHMENTS(S):

Per our telephone discussion. If you have any question please contact us.

Transmitted & Verified by:

NAME

DATE

11/22/91

DISPOSITION:

Return to Originator ☒

Place in Mail ☐

Other ☐

NOV 22 1991

Docket No. 030-32459
License No. 11-27408-01
CAL 91-07

North Idaho Densometer Association, Inc.
ATTN: Paul Franz
Radiation Safety Officer
845 W. Kathleen Avenue
Coeur d'Alene, Idaho 83814

Gentlemen:

SUBJECT: CONFIRMATION OF ACTION LETTER

The purpose of this letter is to confirm the commitments made during a telephone conversation between Mr. Paul Franz of your staff and Mr. Johns Jaudon et al., of the NRC Region IV staff on November 21, 1991.

Based on this discussion, it is my understanding that North Idaho Densometer Association, Inc., will take the following actions:

1. Ensure that the responsibility for and accountability of licensed radioactive materials used by individual members of North Idaho Densometer Association, Inc., remain with the Association, not its individual members.
2. Provide the NRC staff with your schedule for amending the Association's Articles of Incorporation and Bylaws to reflect current operating procedures and the license. The Articles of Incorporation and Bylaws must reflect that the responsibility and accountability for the use of licensed byproduct materials is that of the Association, not its individual members.

If your understanding of these commitments differs from the foregoing description or if you decide for any reason to modify these corrective actions, please contact Jack E. Whitten of our staff immediately at 817-860-8197.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

*RIV:NMLS
JWhitten

*C:NMLS
WLFisher

D:DRSS
LJCallan

ED:J
GKS:J
11/22/91

RD Martin

41 91-451

*Previously concurred

RC (on A/L)
WLBrown
11/X/91

Jack

North Idaho Densometer Association, Inc. -2-

Issuance of this confirmation of action letter does not preclude the issuance of an order formalizing the above commitments or requiring other actions on the part of North Idaho Densometer Association, Inc. Nor does it preclude NRC from taking enforcement action for violations of NRC requirements that may have prompted the issuance of this letter.

Sincerely,

ORIGINAL SIGNED BY
J.M. MONTGOMERY

Robert D. Martin
Regional Administrator

cc:
NRC Public Document Room
Idaho Radiation Control Program Director

bcc:
DMB - 1E-07
J. M. Taylor, DEDR
J. L. Lieberman, D/OE
L. J. Chandler, Asst. GC/OGC
H. L. Thompson, DEDS
R. M. Bernero, D/NMSS
D. E. Glenn, AC/MACUS
B. Summers, OE
R. D. Martin, RA
L. J. Callan, D/DRSS
J. P. Jaudon
W. L. Fisher
D. J. Cain
G. F. Sanborn
J. Carson, RA Sect'y
RIV Files
NMLS File
NMSIS and NMLS Inspectors (14)

NUCLEAR MATERIALS LICENSING SECTION
JACK E. WHITTEN, SENIOR HP

DATE: NOV 21 1992

SUBJECT:

TO:	<input type="checkbox"/>	L.J. CALLAN	<input type="checkbox"/>	VIVIAN CAMPBELL
	<input type="checkbox"/>	JOHNS JAUDON	<input type="checkbox"/>	SELVAN RAJENDRAN
	<input type="checkbox"/>	BILL FISHER	<input type="checkbox"/>	WES HOLLEY
	<input type="checkbox"/>	CHUCK CAIN	<input type="checkbox"/>	JACKIE BURKS
	<input type="checkbox"/>	BILL BROWN	<input checked="" type="checkbox"/>	BILLIE GRUSZYNSKI
			<input type="checkbox"/>	DON GARRISON



☐ Provided for your information
☐ Information you requested
☐ Draft for your comments
☐ Final
☐ Concurrence requested

☐ Comment and return to me for corrections
☒ See comments section
☐ Comment and pass on
☐ Make a copy and forward to next person
☐ Note Action Item/Action Item Date Due
☐ See me ASAP reference this item
☐ Return to Bill Fisher
☐ Return to me
☐ Make necessary telephone contact
☐ File in Docket File

COMMENTS:

Hold this action until the licenses identified on the license have been issued. I have contacted Interstate Concrete; however, I was not able to get in touch with Welch Comer and Ruen Yeager.

Thx/Jack

Attached is the North Idaho termination and Interstate Concrete. We most likely will need a copy of the complete actions to close out the outstanding AI.

NORTH IDAHO DENSDMETER ASSOCIATION

September 30, 1992

SEP 30 1992

Jack E. Whitten
Nuclear Regulatory Commission
611 Ryan Plaza Dr., Suite 1000
Arlington, TX 76011

Subject: Termination of License 11-27408-01
North Idaho Densometer Association

Dear Mr. Whitten:

Please terminate our license 11-27408-01 concurrent with the issuance of individual licenses to Interstate Concrete and Asphalt Co., Ruen - Yeager & Associates, and Welch Comer & Associates. We will transfer all nuclear material from the NIDA license to the individual licenses at that time.

Thank you for your assistance.

Sincerely,

Paul Franz

Paul Franz, P.E.
Radiation Safety Officer
North Idaho Densometer Association
W 845 Kathleen Avenue
Coeur d'Alene, ID 83814

FEE EXEMPT

RECEIVED BY LFMS	
Date	10/5/92
Log	Sept 7 IV
By	<i>[Signature]</i>
Date Completed	10/7/92

464435

INTERSTATE

CONCRETE & ASPHALT

TELECOPIER COVER LETTER
(208) 765-3773

SEP 30 1992

DATE: 9/30/92

TO: Jack Whithen

COMPANY: NRE

FAX NUMBER: 817-860-8188

TOTAL NUMBER OF PAGES: 2 INCLUDING THIS COVER LETTER.

ADDED COMMENTS:

As requested

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CONTACT ME IMMEDIATELY AT
(208) 765-1144.

THANK YOU,

Paul

BETWEEN:

LICENSE FEE MANAGEMENT BRANCH, ARM
AND
REGIONAL LICENSING SECTIONS

(FOR LFMS USE)
INFORMATION FROM LTS

PROGRAM CODE: 03121
STATUS CODE: 0
FEE CATEGORY: 3P
EXP. DATE: 19960930
FEE COMMENTS:
DECOM FIN ASSUR REQ: N

LICENSE FEE TRANSMITTAL

A. REGION

1. APPLICATION ATTACHED
APPLICANT/LICENSEE: NORTH IDAHO DENSOMETER ASSOCIATION
RECEIVED DATE: 920930
DOCKET NO: 3032459
CONTROL NO: 464435
LICENSE NO: 11-27408-01
ACTION TYPE: TERMINATION

2. FEE ATTACHED
AMOUNT: 4
CHECK NO.: 4

3. COMMENTS

SIGNED
DATE

William Graszynski
40/1/92

B. LICENSE FEE MANAGEMENT BRANCH (CHECK WHEN FEE TYPE ONE OR SEVEN AND 1-1)

1. FEE CATEGORY AND AMOUNT: 3P

2. CORRECT FEE PA. ☒ APPLICATION MAY BE PROCESSED FOR:
AMENDMENT _____
RENEWAL _____
LICENSE _____

3. OTHER _____

SIGNED
DATE

Robert
10/1/92

OCT 13 1992

FEE EXEMPT

September 29, 1992

Mr. L.J. Callan, Director
Division of Reactor Safety and Safeguards
Nuclear Regulatory Commission Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011-8064

OCT 6 1992

Re: North Idaho Densometer Association
License No. 11-27408-01

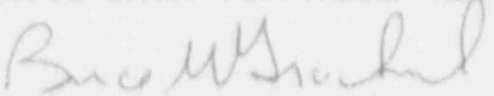
Dear Mr. Callan:

As per your letter dated August 24, 1992, the members of the above mentioned Association have applied for individual licenses and will consider the above mentioned License cancelled.

We would request written verification that the Association will not be charged the FY 93 Annual Material Fee, as we are considering the License cancelled before the NRC's FY 93 starts.

If you have any questions concerning the above, please feel free to contact me.

Yours truly,
NORTH IDAHO DENSOMETER ASSOCIATION


Bruce M. Grachal, President

BMG:cb
enc.
cc: Marnella Rodriguez
Bill Brown
011