



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 22, 1993

The Honorable Joseph R. Biden, Jr.  
United States Senator  
6209 Federal Building  
844 King Street  
Wilmington, Delaware 19801

Dear Senator Biden:

I am responding to your December 22, 1992, letter, written on behalf of your constituent, Captain Raymond W. Hancock, of the Delaware State Police, requesting explanation of the inspection fee assessed for License 07-28601-01. The license authorizes the possession and use of byproduct material in a nuclear densitometer.

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the Commission recover 100 percent of its budget authority, less appropriations from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF), for Fiscal Years 1991 through 1995 by assessing license and annual fees. In order to comply with the law, the Commission revised its fee regulations after careful evaluation of public comments. To recover 100 percent of the budget, the NRC assesses license/inspection and annual fees.

The \$1,200 inspection fee assessed to the Delaware State Police is required to recover the costs to the NRC of providing individually identifiable services to specific applicants for, and holders of NRC licenses and approvals. The NRC is obligated by the Atomic Energy Act of 1954, as amended, to determine that licensed radioactive material is used in a manner which protects the public and the licensee. This is accomplished by the Commission's ongoing inspection program. The Commission's policy of charging fees for inspections is based on Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which provides that the agency's inspection and licensing activities should be self-sustaining to the fullest extent possible. In developing the current fees, the NRC was obligated to examine the cost of health and safety inspections and to design a fee schedule to cover the NRC's costs of providing the services.

In developing and establishing the amount of the inspection fees to be assessed, the NRC examined the specific costs of inspecting the various types of nuclear material users. Because the Delaware State Police license authorizes the use of a gauge containing byproduct material, it falls within fee Category 3P. The inspection fee of \$1,200 for this category reflects the average cost to the NRC for inspecting a licensed operation in that category. In determining the average cost, the NRC took into account all professional staff-hours associated with the inspection, including the time to prepare for the inspection, conduct the on-site inspection, and prepare the required inspection report.

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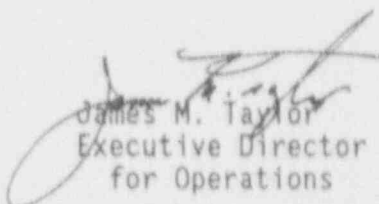
We realize, of course, that fees do have a financial impact on NRC licensees. Accordingly, in developing the Commission's fee schedules, every effort was made to establish fees that are fair and equitable. We believe that, to the maximum extent practicable, the fees established represent a fair and equitable implementation of OBRA-90 to recover 100 percent of the NRC's budget authority and the flat fees established are in accordance with guidance provided by the Congress and judicial interpretations of the IOAA.

In Captain Hancock's letter he states that the Delaware State Police Department is willing to register the equipment in the name of the Delaware State Police Training Academy in order to qualify as a nonprofit education institution and be exempt from the annual fee. On July 23, 1992, the NRC in its FY 1992 fee regulation added a definition of non-profit educational institutions to clarify and more specifically identify those licensees that are exempt from payment of the license and annual fees under §§170.11(a)(4) and 171.11(a). This clarification was added based on the public comments received by the NRC relating to the revised fee regulations. The NRC in §§170.3 and 171.5 of its regulations has defined the term "non-profit educational institution" as a public or non-profit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Based on the information we have, the Delaware State Police Training Academy would not meet the definition of a non-profit educational institution. As such, the Delaware State Police Training Academy does not qualify for an exemption under the provision of 10 CFR 171.11(a).

In summary, the inspection fee assessed to the Delaware State Police Department is correct and the fee is due and payable. If I can be of further assistance, please let me know.

Sincerely,

  
James M. Taylor  
Executive Director  
for Operations