

April 9, 2003

U. S. Environmental Protection Agency
Attn: Garmon B. Smith, Jr., Radiation Safety Officer
National Risk Management Research Laboratory
Subsurface Protection and Remediation Division
P. O. Box 1198
Ada, OK 74820

Dear Mr. Smith:

This is in reply to your letter of December 4, 2002, seeking relief for the Fiscal Year (FY) 2002 and FY 2003 annual fees for the Sealed Source and Device Registration Certificate No. NR-01652-D-101-S (the Certificate). The Certificate was for a custom device, Model EPA 91197 fixed moisture density gauge, for use only by the Environmental Protection Agency (EPA) in Ada, Oklahoma. Because we had no record of receiving your letter, you faxed a copy to my staff on January 24, 2003.

In support of your request, your letter gave a synopsis of major events surrounding the history of the Certificate from 1993.

Bases for EPA's request

From mid-1999 when it was determined that EPA, Ada, Oklahoma, no longer had the researchers who were involved in the work using the Gamma Attenuation System, until late 2001, you were operating under the assumption that EPA could transfer the radioactive gauges to the Colorado School of Mines (CSM) under their Colorado Materials License. This was corroborated in an October 3, 2001, telephone conversation with NRC, when you were advised the only way EPA could inactivate the Certificate was to donate the device to the CSM. You then were advised by the EPA property management that the transfer of "excess government property" had to be approved by GSA. The following year was spent in negotiations, deliberations and the paper flow to affect the transfer of the device to GSA and the subsequent "sale" to the CSM.

On June 29, 1999, a 5-year Revocable License Agreement between the EPA, Region 8, in Denver, Colorado, and the CSM was signed. This agreement, in essence, permitted the CSM to use the Gamma Attenuation System which was delivered to them on June 21, 1999, without the radioactive sources.

On November 17, 1999, the CSM License Colo. 627-01 was amended to add the two sources to their license (Cesium 137 in sealed source CDC 709 and Americium 241 in sealed source AMC 26).

On January 12, 2000, the density gauge containing the two radioactive sources was shipped to the CSM in accordance with the U. S. Department of Transportation regulations.

On April 25, 2000, NRC removed the sources from your Materials License No. 35-11581-02.

On August 30, 2002, you received a facsimile from EPA Region 8 that the sale had transpired on July 29, 2002. You again contacted NRC to determine how to inactivate the Certificate. On September 26, 2002, NRC advised you how to proceed with inactivation. You filed for inactivation on November 19, 2002, and NR-0162-D-101-S was made inactive on December 4, 2002. At that time the Certificate number was changed to NR-8132-D-801-S.

EPA has paid annual fees to NRC for the device registration for fiscal years 1994-2001 for a total of \$31,570. Of which \$12,400 (annual fees for 1999-2001), would have been avoided had EPA disposed of the sources through a decommissioning firm for a cost of \$2,400.

You subsequently learned in conversations with NRC, that during the period January 12, 2000, when the radioactive sources were shipped to the CSM, and July 29, 2002, the date of the sale of the "excess government property" from GSA to CSM, EPA had to maintain the device registration certificate, as it was a custom device registration.

EPA has no funds in its FY 2002 or FY 2003 budget to pay any additional NRC annual fees for the radioactive sources which were shipped, albeit prematurely, on January 12, 2000, to the CSM. In an effort to make the most environmentally sound move, EPA sought out an organization that could make productive use of the instrumentation.

NRC Response

Based on the unique circumstances surrounding the transfer of the radioactive gauges to CSM and the apparent confusion about whether EPA was able to avoid the NRC annual fees for the Certificate until the actual sale of the property from GSA to CSM, I am granting an extension of time to file to inactivate Certificate No. NR-01652-D-101-S, for purposes of avoiding the FY 2002 annual fee of \$5,800 and the prorated FY 2003 annual fee of \$2,900.

This decision is based on the following: 1) the CSM Colorado License was amended November 17, 1999, to add the sources; 2) CSM took possession of the gauges in January 2000; 3) NRC removed the gauges from your materials license on April 25, 2000; 4) CSM purchased the gauges from GSA on July 29, 2002; 5) you have made a concerted and deliberate effort to transfer the devices and thus the requirement to maintain the Certificate since early in calendar year 2000; and 6) it was through no fault of EPA or oversight that caused you to continue to be subject to annual fees for the device registration Certificate for several years after its usefulness to EPA. Furthermore, we have been advised by the State of Colorado that they do not need to issue a device registration Certificate to the Colorado School of Mines as the sources are listed on their Colorado materials license.

G. Smith

-3-

Based on the above, I have canceled the FY 2002 annual fee invoice AM3507-02 and the prorated FY 2003 annual fee invoice AM1839-03. I believe this resolves a complicated and protracted issue with EPA. Should you have any questions, please contact Mr. Robert D. Carlson of my staff at 301-415-8165.

Sincerely,

/RA/

Jesse L. Funches
Chief Financial Officer

G. Smith

-3-

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Jesse L. Funches
Chief Financial Officer

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