

MARISOL SANCHEZ

Endress+Hauser, Inc. Greenwood, Indiana USA
www.us.endress.com

September 23, 2013

U.S. Nuclear Regulatory Commission
Office of the Chief Financial Officer
Attn: James Dyer
Mail Stop O-16G4
Washington, DC 20555-0001

Re: *Request for relief of the July 15, 2013 invoice issued by the NRC to Endress+Hauser, Inc. on July 15, 2013 relating to Docket No. 03037942 for back charges associated with the NRC's incorrect assessment of fee codes (hereinafter, "Back Fees").*

Dear Mr. Dyer:

I trust this finds you well. I write on behalf of Endress+Hauser, Inc. ("E+H") to follow-up on my previous email, submitted to Ms. Kelly Riner on August 12, 2013, requesting a 50% relief or adjustment to the Back Fees referenced above and further detailed below.

By way of background, on March 24, 2009, the NRC Region III office ("Regional Office") issued a material license (the "License") to E+H. Approximately 3 years later, in May 2013, E+H requested a license amendment. This request prompted a review of the License by the Regional Office. Upon the Regional Office's review, it came to light that the individual reviewer in 2009 (when the License was originally issued), who has since retired from employment with the NRC, failed to include the proper program codes that apply to the License based on the authorizations that were originally provided in 2009. In an effort to rectify its error, the Regional Office revised the License to reflect the program codes that the Regional Office mistakenly omitted when issuing the License. Consequently, this resulted in significant back charges for fees associated with the new program codes being assessed to E+H.

Specifically, due to the NRC's error, in June of 2013, E+H received a licensing invoice from the Washington office, which included back-charges going back to 2009 of fees for the newly assessed codes, namely 3N and 3P. See Exhibit A attached. After discussions between E+H and the NRC and further research into the matter by both parties, it was determined and agreed that Code 3P did not apply to the License, as those services were already included in Fee Category 3N, and hence the fees associated with Code 3P would not be assessed against the License. The NRC then sent E+H a revised invoice for \$57,650 for back-charges for fees associated with the new Code 3N, plus an application fee of \$6,100 for a total amount of back-charges of approximately **\$63,750** (hereinafter included in defined term "Back Fees"). (See Exhibit B, attached invoice and email detailing Fees.) With the inclusion of the fees for the new Code 3N, E+H's current License-related fee structure is based on the following program codes and fee categories:

- Program Code 03214; Fee Category 3B – "Manufacturing and Distribution Other"/Annual Fee
- Program Code 03225; Fee Category 3N (new) – "Other Services"/Annual Fee
- Fee Category 9A – "Device, product, or sealed source safety evaluation"/Annual SSDR fees.

I am sure you can appreciate the cause for concern associated with the newly assessed fees and the significant increase in costs associated therewith. This is a significant amount of Back Fees. E+H is a relatively small operating entity, with approximately 250 employees, and, obviously, this was not a budgeted expense. To say the least, this causes an undue hardship for E+H, particularly in light of the fact that the error in failing to assess and apply the appropriate program codes lies, admittedly, within the NRC, through no fault by E+H. The authorizations on the license have not changed since its issuance in 2009. There was

ample opportunity for the NRC to review and correct its error, but yet, this did not occur until 5 years later in May 2013. We have researched the regulations, as I know the NRC's accounts receivable branch has as well per our request, and neither party could find where in the regulations the NRC is entitled to assess back-charges, namely the Back Fees at issue here, particularly where admittedly, the fault lies within the NRC and not on the licensee, here E+H. We have yet to be provided any authority demonstrating such entitlement or right for the NRC to assess such back charges. The absence of a specific prohibition does not make the particular act an absolute right.

The responsibility and duty of assessing and applying the appropriate codes falls within the NRC's scope of authority. This is part of the NRC's regulatory processes, which includes the activities associated with licensing and assessment of licenses. The NRC's license reviewers handle the technical licensing reviews and license document preparation and they then have the responsibility of assigning appropriate program codes based upon the authorizations on the license. Once the reviewer analyzed what codes were to be applied, we were then provided an estimate or quote of the amount of fees that would be assessed based upon the authorizations provided. At that time, based on the representations of the estimated costs associated with the License, E+H made a business decision to proceed with this type of business and proceed with the license application. Had E+H known the full extent of the costs with all the appropriate codes, its decision may have been different or at least, E+H would have made its decision with the benefit of being fully informed as to the appropriate codes and costs associated therewith. It is reasonable for the licensee, here E+H, to rely upon the NRC's licensing assessment procedures and its expertise in advising licensees of the applicable program codes to be applied to the particular license at issue. As required, E+H provided the NRC with the uses and authorizations for the License and it was incumbent upon the NRC to apply the appropriate codes. While we appreciate the NRC's admitted mistake in failing to apply the appropriate program codes, it is unreasonable to expect E+H to bear the cost of this mistake. This is not a situation where E+H, the licensee, has been deliberately delinquent on amounts due, has engaged in any violations, or has engaged in any other act or omission that would give rise to the fees being assessed. Simply put, there was no error on E+H's part.

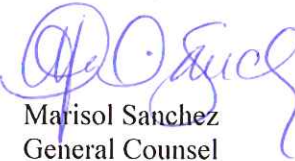
In light of the above, E+H would like to request a compromise, as allowed under 10 CFR 15.43. Specifically, E+H requests that the Back Fees and any charges or costs associated therewith be reduced by 50%, or \$31,875 ("Compromised Payment") due to the fact that, as acknowledged by the NRC, this occurrence of not being assessed the correct fees was not due to any fault on Endress+Hauser, Inc. While this situation is not attributable to E+H and E+H feels it is not and should not be solely responsible for the Back Fees, nevertheless, in a good faith effort to avoid incurring additional resources and time to resolve this matter and instead reach a compromise of this situation, E+H requests a 50% reduction in the Back Fees. We believe this request would reasonably apportion the cost of the error onto both sides as opposed to being solely borne by Endress+Hauser. We believe this is in line with the underlying intent of "Compromises" under the 10 CFR 15.41 (a). This is not a situation where continued collection is necessary to further an enforcement principle, such as pursuing aggressively defaulting and uncooperative debtors. See, e.g., 31 C.F.R. 902.2 (e). Much to the contrary, this situation did not arise through E+H's fault at all and E+H has not had any history of "aggressively defaulting". It would be against public policy, equity, and good conscience to impose upon E+H the entirety of the fees at all at this late date and due to no fault of E+H, but nevertheless, as a good faith effort to settle this matter, E+H is willing to compromise by paying half of the amount assessed.

In addition, due to the hardship this would impose on E+H, E+H's current budgetary constraints, and the fact that this matter is not attributable to E+H's error, E+H further requests that, should you decide not to agree with the Compromised Payment, it be allowed to pay the Back Fees in installments. E+H is currently on a run rate to come in 17% below our original revenue target. This has created a cash flow issue for the organization. We are spending below our expense budget to help offset the deficit in revenue, but the Back Fees are not expenses currently captured in E+H's expense budget. Therefore, this would be an over budget item in a year when the organization is trying to spend below budget due to sales projections and the current

revenue deficit. This, of course, is of utmost concern. Therefore, E+H requests that the payments be spread out over time. Specifically, E+H requests that a 4 year payment plan be applied with quarterly installments. We understand there is a 1% interest that will be applied as well as a \$7 per month account maintenance fee. E+H also requests that the interest and maintenance fee or other associated administrative costs be waived pursuant to 10 CFR 15.37(k)(4).

We appreciate the cooperation provided to E+H thus far to help resolve this matter and hope we can come to an expedient and compromised resolution. I look forward to hearing from you soon.

Very truly yours,



Marisol Sanchez
General Counsel
Endress + Hauser, Inc. (USA)

EXHIBIT A

ATTN: Kelly Riner

(Or Via Overnight Mail:
Gov't NRC Lockbox 979051
U S Bank - Mailcode SLMOC2GL
1005 Convention Plaza
St. Louis, MO 63101)

LICENSE FEE REQUIREMENTS

U.S. Nuclear Regulatory Commission
Accounts Receivable Team
P. O. Box 979051
St. Louis, MO 63197-9000

Endress+Hauser, Inc.
2350 Endress Place
Greenwood, IN 46143

TYPE OF ACTION

- NEW LICENSE
- RENEWAL OF LICENSE
- AMENDMENT TO LICENSE

REQUESTED DATE

March 14, 2013

LICENSE NUMBER

13-32721-01

CONTROL NUMBER

580877

I. APPLICATION FEE DUE

Your request for a licensing action is subject to the fee(s) in the category(ies) noted below in accordance with Section 170.31 of 10 CFR Part 170. Payment of the fee is required prior to the issuance of the license, renewal, or amendment.

FEE CATEGORY	APPLICATION	RENEWAL	AMENDMENT
3N	\$	\$	\$ 6,400.00
3P	\$	\$	\$ 1,500.00
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

FEE(S) DUE	\$	7,900.00
PAYMENT RECEIVED	\$	0.00
AMOUNT DUE	\$	7,900.00

Your request was received without the prescribed application fee.

Payment of the additional fee noted above is required.

We have received your payment of: \$

CHECK NUMBER

CREDIT CARD/DEBT CARD ELECTRONIC WIRE TRANSFER

Your request will increase the scope of your license program. Therefore, your request is subject to the application fee(s) noted above. Refer to Section 170.31 and Footnote 1(d)(2).

Your license expired prior to the receipt of your application for renewal. Therefore, your request is subject to the application fee(s) noted above. Refer to Section 170.31 and Footnote 1(a).

MAKE PAYMENT OF THE FEE(S) TO THE U.S. NUCLEAR REGULATORY COMMISSION AND MAIL THE PAYMENT TO THE ADDRESS LISTED AT THE TOP OF THIS FORM. IF WE DO NOT RECEIVE A REPLY FROM YOU WITHIN 30 CALENDAR DAYS FROM THE DATE LISTED BELOW, WE SHALL ASSUME THAT YOU DO NOT WISH TO PURSUE YOUR APPLICATION AND WILL VOID THIS ACTION.

SIGNATURE -- LICENSE FEE ANALYST

Kelly Riner

----- (LEAVE BLANK) -----

DATE

6/17/13

II. FEE NOT REQUIRED

- Check Number Enclosed is your check which accompanied your request. The fee is not required because:
- Check Number We received your check listed in payment of the fee.
- Date of Request The Licensing staff has informed us that your request is to be considered as a continuation of the request listed.
- Control Number
- Date of Request Your request was combined, prior to review, with the request listed.
- Control Number

III. CHECK RETURNED

- Check Amount Enclosed is your check which was returned to us by the bank for:
- INSUFFICIENT FUNDS
- ACCOUNT CLOSED
- OTHER--SPECIFY

MAIL THE REPLACEMENT CHECK TO THE ADDRESS LISTED AT THE TOP OF THIS FORM AND REFERENCE THE ABOVE CONTROL NUMBER.

IV. LICENSE ISSUED WITHOUT THE REQUIRED FEE

13-32721-01 License Number
5 Amendment Number
05/20/13 Date Issued
The listed license was issued without the required fee being collected. The fee required is noted in Section I of this form.

The scope of your licensed program was increased. Therefore, your request is subject to the application fee(s) noted in Section 1 of this form. Refer to Section 170.31 and Footnote 1(d)(2).

Because of the urgency of your request, the license was issued without remittance of the prescribed fee noted in Section 1 of this form.

EXHIBIT B



U.S. NRC

United States Nuclear Regulatory Commission

Protecting People and the Environment

Fiscal Year:

Quarter Period:

10/01/2012 - 09/30/2013

10/01/2012 - 09/30/2013

Vendor:

ENDRESS+HAUSER
2340 ENDERS PLACE
GREENWOOD, IN 46143

Remit To:

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

Invoices for Period:

Invoice Number	Date	Due Date	Amount	Docket
LFB 09-1001	Jul 15, 2013	Aug 14, 2013	\$3,250.00	03037942
LFB 10-1001	Jul 15, 2013	Aug 14, 2013	\$11,400.00	03037942
LFB 11-5898	Jul 15, 2013	Aug 14, 2013	\$13,800.00	03037942
LFB 12-5515	Jul 15, 2013	Aug 14, 2013	\$14,300.00	03037942
LFB 13-4910	Jul 15, 2013	Aug 14, 2013	\$14,900.00	03037942

For questions, contact (301) 415-7554 or by email at fees.resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105, AND 10 CFR 15. Additional terms and conditions are attached.
Make checks payable to The U.S. Nuclear Regulatory Commission. Interest will accrue from the invoice date at an annual rate of 1%. Interest will be waived if payment is received by the due date. Please reference the invoice number on the remittance.

Billing Details:

Docket #: 03037942

License #: 13-32721-01

Part 171:

Annual Fees:	LFB 12-5515	Aug 14, 2013	<u>3N</u>	\$14,300.00
Annual Fees:	LFB 13-4910	Aug 14, 2013	<u>3N</u>	\$14,900.00
Annual Fees:	LFB 10-1001	Aug 14, 2013	<u>3N</u>	\$11,400.00
Annual Fees:	LFB 09-1001	Aug 14, 2013	<u>3N</u>	\$3,250.00
Annual Fees:	LFB 11-5898	Aug 14, 2013	<u>3N</u>	\$13,800.00

TOTAL PART 171:

\$57,650.00

Total for License/Docket:

\$57,650.00

Remittance Information:

Remit To: Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

Invoice Number	Due Date	Docket	Amount
LFB 09-1001	Aug 14, 2013	03037942	\$3,250.00
LFB 10-1001	Aug 14, 2013	03037942	\$11,400.00
LFB 11-5898	Aug 14, 2013	03037942	\$13,800.00
LFB 12-5515	Aug 14, 2013	03037942	\$14,300.00
LFB 13-4910	Aug 14, 2013	03037942	\$14,900.00
Total Due:			\$57,650.00



RE: Endress+Hauser NRC licensing fees
Riner, Kelly to: marisol.sanchez@us.endress.com
Cc: "helmut.grohnert@us.endress.com"

09/09/2013 02:12 PM

History: This message has been replied to.

Marisol,

I am sorry to bother you – our legal dept. wants to meet regarding this so can you hold off on the formal request until we speak with them? Also, the invoices that were sent were for the annual fees; however, there would have been an application fee back in 2009 for \$6100. Do you want this amount included in the amount you are seeking partial relief? Thanks!

Kelly Riner

License Fee Analyst
Accounts Receivable Branch
Office of the Chief Financial Officer
Nuclear Regulatory Commission

kelly.riner@nrc.gov (e-mail, the BEST way to contact)
(301) 415-6246 (office)
(304) 725-6712 (alternative work location)

From: marisol.sanchez@us.endress.com [mailto:marisol.sanchez@us.endress.com]
Sent: Monday, September 09, 2013 8:54 AM
To: Riner, Kelly
Cc: helmut.grohnert@us.endress.com
Subject: RE: Endress+Hauser NRC licensing fees

Hi, Kelly -

Yes, I have started drafting it and will be finalizing it to send to you this week. I apologize for the delay. Thank you for the efforts on your part!

Warm regards,

Marisol

Marisol Sanchez | General Counsel, USA
Endress+Hauser, Inc. | 2350 Endress Place | Greenwood, IN 46143 | USA
Phone: +1 317-535-1457 | Mobile: +1 317-502-5746 | Fax: +1 317-535-2295
Marisol.Sanchez@us.endress.com | www.us.endress.com

From: "Riner, Kelly" <Kelly.Riner@nrc.gov>
To: "marisol.sanchez@us.endress.com" <marisol.sanchez@us.endress.com>

Cc: "helmut.grohnert@us.endress.com" <helmut.grohnert@us.endress.com>
Date: 09/09/2013 08:49 AM
Subject: RE: Endress+Hauser NRC licensing fees

Marisol,

It is soon going to be the end of the fiscal year, and those that have to do reporting for year end are wondering about the formal request on the subject matter below. Can you advise when your formal letter will be coming? Thanks!

Kelly Riner

License Fee Analyst
Accounts Receivable Branch
Office of the Chief Financial Officer
Nuclear Regulatory Commission

kelly.riner@nrc.gov (e-mail, the BEST way to contact)
(301) 415-6246 (office)
(304) 725-6712 (alternative work location)

From: marisol.sanchez@us.endress.com [<mailto:marisol.sanchez@us.endress.com>]
Sent: Tuesday, August 13, 2013 5:04 PM
To: Riner, Kelly
Cc: helmut.grohnert@us.endress.com
Subject: Endress+Hauser NRC licensing fees

Dear Kelly,

Thank you for your time yesterday in talking through the fee issues regarding our NRC license. As per our discussion, we would like to request that the back charges for fees associated with fee category 3N be reduced by 50% due to the fact that, as acknowledged by the NRC, this occurrence of not being assessed the correct fees was not due to any fault on Endress+Hauser, Inc. Our material license was issued by the NRC Region III office on 3/24/09. The authorizations on the license have not changed. However, after a recent review of our license prompted by a request on our part for a license amendment in May 2013, the regional office realized that the reviewer in 2009 (when our license was originally issued), who has since retired, failed to include the proper program codes that apply to our license. This then resulted in the regional office fixing their error and applying such codes which resulted in significant back charges for fees being assessed to Endress+Hauser. After discussions with you and additional research, ultimately the amount of back fees alone being assessed to Endress+Hauser, Inc. is approximately \$58,000. I have attached a copy of the relevant invoice for your ease of reference. As you can appreciate, that is a significant amount of fees. Endress+Hauser, Inc. is a small company and this was obviously not a budgeted expense. We have researched the regulations, as I know you have as well, and neither of us could find where in the regulations the NRC is entitled to assess backcharges, particularly where admittedly, the fault lies within the NRC and not on the licensee, here Endress+Hauser, Inc. I also understand that while the regulation does not specifically prohibit the NRC from assessing such backfees, by the same token, the regulations do not allow it. In order to reach a compromise of this

situation, we will be requesting a 50% reduction in the back fees. We believe this request would reasonably apportion the cost of the error onto both sides as opposed to being solely borne by Endress+Hauser.

I wanted to give you a heads up in this regard. I will be submitting a formal written request to this effect but wanted to give you the courtesy of this informal notification. We believe

Again, I appreciate all your efforts thus far on this issue. In the meantime, if you have any questions, please feel free to call me.

Thanks!

Best regards,

Marisol

Marisol Sanchez | General Counsel, USA
Endress+Hauser, Inc. | 2350 Endress Place | Greenwood, IN 46143 | USA
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Marisol.Sanchez@us.endress.com | www.us.endress.com

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