



OFFICE OF THE
CHIEF FINANCIAL
OFFICER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 14, 2016

Mr. Brian J. Festa
General Manager
Empire Paving, Inc.
30 Bernhard Road
North Haven, CT 06473

Dear Mr. Festa:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated June 15, 2016, requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 171.11 with regards to the annual licensing fee of \$8,000 that was invoiced to Empire Paving, Inc.

The NRC has established regulations for the granting of fee exemptions under 10 CFR 171.11, "Exemptions," for which licensees may apply in accordance with 10 CFR 171.9, "Communications." The NRC staff has reviewed your request based on the following regulations, 10 CFR 170.11(e)(1)-(3):

- 10 CFR 171.11 Exemptions, (e) The Commission may grant a materials licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:
 - (1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; or
 - (2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decisions; or
 - (3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

In your letter you state that Empire Paving, Inc. is a medium sized construction corporation and is primarily a general road contractor working for the State of Connecticut, Department of Transportation. You also state that to establish the density and/or compaction of new pavement installed, Empire Paving, Inc. uses one of two of the Troxler Model 3440 Nuclear Density Gauges, which contain Cs-137(0.3 Gbq & 8mCi) & Am- 241:Be(1.48 Gbq & 40 mCi) of radioactive material. Finally, you state that Empire Paving, Inc. possesses its own gauges to

ensure the results attained by the Connecticut Department of Transportation's 3rd party tests are accurate, and that these gauges are used once or twice every three months.

The fees assessed to licensees and applicants by the NRC must conform to Omnibus Budget Reconciliation Act of 1990, which requires the NRC to collect approximately 90 percent of its annual budget authority (less certain excluded items) through both user fees and annual fees. The NRC assesses these annual fees only to licensees or certificate holders, and the annual fee schedule must be fair and must equitably allocate annual fees among the NRC's many licensees. Finally, annual fees are assessed based on the license authorization, not the licensee's actual use of licensed material.

Your waiver request does not present data indicating that the annual fee would result in a significantly disproportionate allocation of costs to you. For that reason I conclude that your request does not fulfill the factors as determined by the Commission for an exemption to be granted pursuant to 10 CFR 171.11(e)(1)-(3). Therefore, your license is subject to the annual fees in 10 CFR 171.16, "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," under Category 3P of the Commission's annual fee regulations.

If payment of the annual fee in one lump sum represents an undue financial burden, you may request a payment plan for future invoices. As per 10 CFR 15.35(b), "Payments," a debtor may arrange an installment plan with the NRC for payment of fees if the debtor is unable to pay the invoice in one lump sum. Please note that currently all installment agreements require the payment of interest at 1 percent annually and an administrative charge of \$7.00 per period.

Please contact Mr. Dylan Oursler, of my staff at (301) 415-5825 for any payment plan related questions. Please contact Ms. Jo Simpson of my staff, at (301) 415-8388, for any fee-related questions.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

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Your waiver request does not fulfill the factors as determined by the Commission for an exemption to be granted pursuant to 10 CFR 171.11(e)(1)-(3), therefore, your license is subject to the annual fees in 10 CFR 171.16, "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," under Category 3P of the Commission's annual fee regulations.

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Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

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***via email**

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OFFICE	DPB	DCFO	CFO		
NAME	BFicks	MCMuessle	MEWylie		
DATE	07/12/16	07/13/16	07/14/16		

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