



August 16, 2017

Via NRC Electronic Information Exchange

Document Control Desk
Attn: Ms. Maureen Wylie, Director
Office of the Chief Financial Officer
U.S. Regulatory Commission
Washington DC 20555-0001

Re: **Source Material License SUC-1591** – Dispute of Current Invoices and Request for Exemption or Relief from 10 CFR 170 Fees

Dear Ms. Wylie:

Water Remediation Technology LLC (WRT) currently is going through the renewal process with NRC Staff (“Staff”) for the first 10-year renewal of its license referenced above, for uranium water treatment, primarily drinking water treatment. The renewal application was submitted in December 2016, and since then WRT has received two quarterly invoices for Staff hours under the regulatory-services fees prescribed in 10 CFR 170.31. Based on a series of conversations between WRT and representatives of NRC/OCFO in August 2009, WRT was surprised to find it is still being invoiced on a full-cost-recovery basis for the renewal review. WRT understood that in 2009 the NRC Program Code for its drinking water/groundwater treatment process had been changed to another code that was associated with a flat fee for the Part 170 regulatory services. Therefore, WRT hereby makes the two following requests.

1. WRT disputes the current invoice – Docket No. 04009059, Invoice No. LFB 17-4164, Invoice Date July 20, 2017, for \$33,721.25 – until the cost basis is resolved. If possible, WRT also disputes the previous quarterly invoice for the renewal review (which has already been paid) – Invoice No. LFB 17-2969, Invoice Date April 13, 2017, for \$29,812.50. WRT understands that this request will put the current invoice, with payment due by August 19, 2017, in suspense and the payment now will not be due until these appeal issues are resolved.
2. In accordance with 10 CFR 170.11(b), *Exemptions*, WRT applies for an exemption or relief from the full-cost-recovery license classification to which its treatment process has, apparently, been re-assigned. WRT requests that the earlier discussions with OCFO, in 2009, be formally re-opened, and the Agency consider changing WRT’s Program Code to either 11200 or 11300, with the associated Materials Fee classification of 2.F., Source Material, All Other Source Material Licenses.

In August 2009, WRT Senior Vice President Michael LaFleur had a series of conversations with representatives of the OCFO, regarding the excessive Part 170 fees that WRT had paid to get its

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initial NRC license, and how to reduce those fees to a level that a small company like WRT could tolerate. From the time that the license application was submitted in fourth quarter 2005 until the license was issued in first quarter 2007, WRT's records showed that it had paid over \$136,000 in Part 170 fees for the application review. During the remainder of 2007, for some unexplained reason (not detailed in the NRC invoices), WRT was billed an additional approximately \$39,000 in follow-on Part 170 costs, after the license was issued. Being a novice to the NRC licensing process, WRT was unaware and astounded that the license would cost this much, which is what prompted Mike LaFleur to informally talk with the agency financial staff about getting some relief. The idea that a small start-up company would be put into the same full-cost-recovery fee bases as uranium mills, ISR facilities, and UF₆ processing facilities seemed unthinkable.

The result of these discussions in 2009 was that Mr. LaFleur was told that WRT's Program Code had been change to one of either 11200, Source Material, Other, Less than 150 kg, or 11300, Source Material, Other, More than 150 kg, both of which had an associated flat fee. That fee was for the fee classification that is listed in the current Schedule of Materials Fees in §170.31 as 2.F., Source Material, All Other Source Material Licenses. According to Mr. LaFleur's notes, Mr. Billy Blaney (NRC/OCFO) said that the Agency was not just thinking of changing WRT's Program Code; he checked and confirmed that the change had already been made.

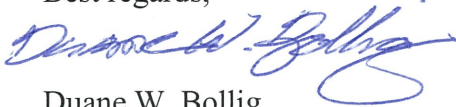
To document the various phone conversations that Mr. LaFleur had with the OCFO Staff, I have Mr. LaFleur's internal e-mail and detailed phone notes. Unfortunately, it seems WRT does not have any written documentation from the NRC regarding the discussions and adjustments made in 2009. On August 1, 2017, I raised this entire issue of the excessive renewal review charges, and the apparent change of Program Code back in 2009, in a phone call to Mr. Chris Grossman, WRT's current NRC Project Manager. I followed-up with an e-mail to Mr. Grossman that included Mr. LaFleur's detailed phone notes. Mr. Grossman made informal inquiries regarding this issue, but when the answers to these inquiries did not satisfy WRT, we decided to submit this formal request to re-open discussions. Rather than repeat all the details of Mr. LaFleur's notes in this letter, I instead include as Attachment 1, both my e-mail to Mr. Grossman of August 1, 2017 and Mr. LaFleur's e-mail and phone notes, circa August 2009, for your review.

Mr. Grossman's inquiry revealed that WRT's license currently is assigned Program Code 11820, and the associated materials fee category is 2.A.(5), for licenses authorized possession of source material for removing contaminants from drinking water – again, back to a full-cost recovery. At the time of Mr. LaFleur's discussions in 2009, this Program Code 11820 didn't exist, because it is not listed in the December 2000 version of NUREG-1556, Vol. 20, *Consolidated Guidance About Materials Licenses, Guidance About Administrative Licensing Procedures*, the version that is currently available on the NRC website. If what Mr. LaFleur was told in 2009 was accurate – that WRT's license had, in fact, been moved to a Program Code that had an associated flat-fee category – then this current Program Code 11820 was created sometime after 2000, and WRT was moved back to a full-cost fee? If so, this move back to full-cost recovery seems unjustifiable, especially considering that WRT is consistently granted relief on the Part 171 annual license fees, by the NRC recognizing it as a small-entity manufacturer. It seems incredibly inconsistent that the same agency would give WRT relief on one portion of the overall fee, recognizing it as a small entity, and then lump it together with uranium mills and ISR production facilities for the other portion of the fees.

Regardless of if the NRC has a record of Mr. LaFleur's discussions and finding from 2009, WRT has his notes as its record that some level of discussion took place. These notes indicate that the NRC was sympathetic to WRT's informal appeal at the time, to the point of apparently making some adjustments. WRT feels that this record is enough to ask the NRC to re-open discussions and re-evaluate WRT's Part 170 license fee category. In my recent discussions with Mr. Grossman, he indicated that NRC currently has an initiative to look at ways to offer its smaller licensees relief on excessive fees. WRT requests to be considered under any of these initiatives or programs. Unfortunately, not through anyone's fault (certainly not the NRC's), WRT does not now have a uranium treatment system operating under its NRC multi-site license. This license is a necessary contingency at this time, if effect and awaiting an applicable water-treatment situation in a non-Agreement State. However, we certainly recognize the inherent value of having the NRC license, especially with respect to the Agreement States looking to the NRC for guidance, in their similar licensing situations. The facts are, though, that including the current outstanding invoice, WRT's records show that the NRC has billed WRT almost \$319,000 in Parts 170 and 171 fees since late 2005, and WRT is not treating a single drop of water under the license in any non-Agreement State. Even with the prospects of future systems, a small company cannot absorb these costs and have economically viable operations.

WRT enjoys a good working relationship with the NRC, a relationship that has resulted in many licensing "firsts"; a relationship that has helped address a national drinking water quality issue. We know that the NRC recognizes WRT as a different type of entity in its group of licensees. WRT appreciates your considerations with our request to re-open discussions on adjusting the basis for the Part 170 license fees. We are available to conference-call or meet with you at your convenience. Feel free to contact me (303.424.5355 x108, dbollig@wrt.net) if you have any questions or need additional information related to this item.

Best regards,



Duane W. Bollig
Director – Environmental & Regulatory Affairs

cc: Mike Dimitriou
Chris Pugsley, Esq.
Chris Grossman, NRC
file NRC 1.20

Attachment 1

Duane Bollig

From: Duane Bollig
Sent: Tuesday, August 1, 2017 3:31 PM
To: Chris Grossman (christopher.grossman@nrc.gov)
Subject: 2017-0801_FW: NRC Fees, as of Aug 2009
Attachments: Thoughts.doc

Re: **License SUC-1591** – Re-structuring of 10 CFR 170.31 Regulatory-Services Fees for WRT

Chris –

This e-mail is a follow-up to our phone call of this afternoon, in which I raised WRT's surprise that it is still being charged, for the renewal review of its license SUC-1591, under a "full-cost" recovery license classification for the 10 CFR 170.31 regulatory services portion of the fee that the agency charges. The attachment and the e-mail text below indicate that, as early as August 2009, the NRC had already moved WRT out of a "full cost" recovery license classification, with respect to the 10 CFR 170.31 fees that the Agency charged to WRT yearly. Also by that time, the Agency recognized WRT as a small-entity manufacturer, for a reduction of the annual license fee prescribed in 10 CFR 171, thereby recognizing WRT as one of its smaller source material licensee, and eligible for cost savings.

In 2009, Mr. Michael LaFleur, WRT Senior Vice President, talked with a number of individuals in the NRC's financial/accounting division, including Mr. Billy Blaney, who is still with the Agency today. The text below, and especially the attachment, are Mike LaFleur's compilation of his notes of his multiple conversations with Agency personnel on this subject. WRT had been moved to one of two Program Codes – either 11200 – *Source Material Other Less Than 150 Kilograms*, or 11300 – *Source Material Other Greater Than 150 Kilograms*. Both of these program codes would move WRT out of the full-cost license categories, and into the "All Other source Material Licenses" category, a category that has a fixed fee for regulatory services. From Mike LaFleur's notes, Mr. Blaney checked and confirmed that WRT had already been assigned to these new project codes, and he explained that the project code determined the associated license category. Reading all of Mike LaFleur's notes, this change to a flat fee for WRT had all but become final.

I offer the two following observations on Mike LaFleur's notes on the flat fee, based on the current language of §170.31.

-- Mike LaFleur referred to source Material - All other source material as being category 2.C. The current Schedule of Materials Fees in §170.31 shows this category as being 2.F.

-- Mike LaFleur mentions that the flat fee for All other source material, circa August 2009, as being about \$10,000. The current Schedule of Materials Fee shows this fee at \$2,500.

While this issue of regulatory service charges has really come to light with the first two quarterly NRC invoices for WRT's license renewal, this apparent overbilling appears to have continued since the fourth quarter of 2009 to the present. My brief review of the NRC's invoices to WRT seem to show that full-cost invoicing for Part 170 regulatory services continued.

I know this all took place well before you became WRT's project manager. I very much appreciate you informally looking into this issue and working with me to resolve it. Depending on what you find, however, I may have to request a formal re-opening and review by the Agency on the reclassification of WRT's license category and associated fee structure. In 2009, the NRC had recognized WRT as a small entity manufacturer, and appeared more than willing to grant WRT relief of excessive fees. WRT still needs this relief to make

uranium water treatment in the non-Agreement States viable. I am ready to talk with anyone you suggest to resolve this issue, at their convenience. Once again, thank you for your help with this item.

Best regards,

Duane W. Bollig

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Forwarded Message Begins Hereafter:

From: lafleurmf@aol.com [mailto:lafleurmf@aol.com]

Sent: Wednesday, August 26, 2009 1:20 PM

To: Duane Bollig <dbollig@wrtnet.com>; Charlie Williams <cwilliams@wrtnet.com>; Scott Heffner <sheffner@wrtnet.com>; cpugsley@athompsonlaw.com

Subject: NRC Fees

It looks like WRT will get a reduction in all fees paid to NRC. First, Brenda Brown said yesterday that NRC has approved the request for a refund for the 2007 annual fee, from \$11,200 down to \$2,300, since WRT qualifies as a small manufacturing entity. This refund should be sent out in about 4 to 6 weeks. We had already paid only \$2,300 for 2008. The small entity fee for 2009 will be \$1,900. So, WRT has the lowest possible Part 171 annual fee.

Second, the NRC's fees for services provided, Part 170 fees, have been billed to WRT on the basis of an hourly rate times the hours spent by NRC (usually just Ted Carter), since the license was issued in early 2007. This is called "full cost" billing. These bills have sometimes amounted to \$10,000 to \$15,000 per quarter. It turns out that NRC had assigned WRT's license to the program code 11200, which would qualify for a flat fee of about \$10,000 per year under the All Other category. See my notes attached.

While we have not yet finalized the Part 170 service fees issue, we now are in a good position to argue this case and have the lowest possible service fees. I will let everyone know as soon as I hear back from NRC.

I have not heard back from Ted Carter about our requested meeting at NRC.

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Thoughts – NRC Fees

(MFL Notes)

There are two kinds of licensee fees charged by the NRC:

1. Annual Fees – 10 CFR 171.16
2. Regulatory services, including inspections – 10 CFR 170.31

The Part 171 annual fees are based on the average professional staff hours anticipated for new applications for uranium recovery licenses. The annual fees for uranium water treatment facilities (Category 2.A(5), first introduced for fiscal year 2007), groups water treatment with conventional mills, solution mining and 11e.(2) disposal. Based on the number of licensees and an effort factor, NRC determines the annual fees. The effort factor for water treatment is 45, compared with 75 for the other three types of licenses, or about 60%. In FY 2009, NRC added a second factor that identifies the types of NRC operational activities that benefit these licensees. This time, water treatment is about 23% of the others.

Two comments: first, it is ludicrous for water treatment to be included with solution mining when water treatment was explicitly excluded from the scope of the GEIS for ISLs, while the loaded resins from water treatment are identical to those from a remote ISL well field. They can not have it both ways. Second, WRT qualifies as a small entity, thus getting a reduced annual fee. Instead of the regular annual fees of \$11,200 for FY 2007 and \$6,200 for FY 2008, WRT's small entity annual fee was only \$2,300. This will go down to \$1,900 for FY 2009 vs. \$7,000 for the regular 2.A(5) fee. Therefore, not much to complain about the annual fee, except some of NRC's logic.

Under the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), NRC is required to recover 90% of its budget through fees billed to licensees. After the NRC budget is established, and 90% is calculated, the recoverable amount is reduced by the Part 171 annual fees calculated above. This remaining amount is then divided by the number of full-time equivalent (FTE) staff, times their average billable hours, to arrive at the hourly rate - \$258 for FY 2007, \$238 for FY 2008, and \$257 for FY 2009.

After all of the above is calculated, each year the NRC issues a proposed revised rule for Part 170 and Part 171 in February, with a 30 day comment period. The final rule is usually issued in June.

To determine the license and inspection fees under Part 170, NRC assigns fees for each Program Code. These fees are based on planned activity levels and on historical hours spent. In some cases, this could indicate a flat fee that has in the past and would continue to cover the cost of services to that Program Code or group of Program Codes.

All other Program Codes are assessed at “full cost”, in other words, at the hourly rate times the hours actually spent.

For Source Material licensees, all categories are assigned “full cost,” except when used for shielding (\$260), and a group of Program Codes called All Other (\$9,400) for FY 2008 and \$570 and \$10,100, respectfully, for FY 2009. All Other category includes:

(Program Codes for **Fee Category 2C – All Other Source Material Licenses** – the Codes found in NUREG 1556 Vol. 20. Appendix G)

11200 Source Material Other Less Than 150 Kilograms

11220 Source Material Military Munitions – Indoor Testing

11221 Source Material Military Munitions – Outdoor Testing

11230 Source Material General License Distribution – 40.34

11300 Source Material Other Greater Than 150 Kilograms

11800 Source Material Possession Only – Permanent Shutdown

11810 Source Material Standby – No Operations

Program Codes 11200 and 11300 are defined to cover Source Material licenses “issued for the possession and use of source material for fabrication, research, or manufacture of consumer products.” It would appear that WRT does not qualify under these Program Codes, unless it qualifies under manufacture of consumer products. WRT manufactures equipment that provides safe water to consumers of its clients.

In NRC’s final rule for FY 2008 (72 FR 32390 – June 6, 2008, NRC said:

3. Administrative Amendments

The NRC is adding program codes next to the materials users fee categories in § 170.31. At the time NRC receives a materials users license application, a five-digit program code number is assigned by the agency to each license to designate the major activity or principal use authorized in the license. More than one code may apply to a given license. The fee amount for the license under 10 CFR parts 170 and 171 is determined by the fee category, which is also based on the authorized usage contained on the license. To reduce the risk of misinterpretation of material uses authorized in the license while establishing a fee category, the NRC is implementing a process that links a

program code directly to a fee category.

Once a program code is assigned to the

license, it will assist the licensee to

correctly identify the fee amount(s) by

looking up the program code(s) in

§ 170.31.

? Brown, Ellen B (Brenda)? CFO/DPB/IAPB
301.415.0677

So, in order to find the Program Code assigned to WRT, I called Rebecca Erickson, who said to call Brenda Brown, who said to call Billy Blaney, the NRC accountant that sends out the invoices.

(301.415.5092, TWFN)

Billy looked up the Program Code for the WRT license. It was assigned the Program Code of 11200 – Source Material Other Less Than 150 Kilograms. If we get over 150 kilograms, we would be in Program Code 11300, which is also included in the All Other category.

This means that WRT's license falls under Category 2C – All other source material licenses, at a flat fee for Part 170 fees.

Why, then, has NRC been billing WRT at the full cost hourly rate? Billy is going to check. I have not heard back from him yet.

If NRC decides to change their mind, at least we now have a position to argue for, since NRC originally arrived at that position.

MFL 8/26/09