



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

MAY 15 1979

The Honorable James R. Jones
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Jones:

I am pleased to respond to your inquiry of April 27, 1979, concerning a letter from Dr. David S. Gooden, Saint Francis Hospital, Tulsa, Oklahoma, regarding the assessment of a fee for the inspection of the Hospital's radioisotopes program. Dr. Gooden questioned the Commission's authority to charge fees for inspection of NRC licensed facilities.

Section 81 of the Atomic Energy Act of 1954, as amended, gives the Commission the responsibility of regulating the receipt, possession, and use of byproduct material. Further, the Act authorizes the Commission to establish by rule, regulation, or order, such standards, instructions and procedures necessary or desirable to protect the health and safety of the public. Accordingly, the Commission has adopted regulations (10 CFR Parts 30 and 35, copies enclosed) which govern the licensing and use of byproduct material for medical purposes. In order for Saint Francis Hospital to possess and use radiopharmaceuticals for medical purposes, it must hold a specific license from the Commission. Such a license subjects the licensee to the conditions specified in Section 183 of the Act. Section 183 provides in part that "Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this Act....". Inspections are a requirement of holding a license from the Commission.

Section 161(o) of the Act, 42 U.S.C. §2201(o), provides that the Commission may "require by rule or regulation, or order, ... such inspections ... as may be necessary to effectuate the purposes of this Act." To implement this statutory provision, the Commission has promulgated regulations requiring licensees to permit inspections of records, premises and licensed activities. The purpose of such inspections is to assure that licensees conduct licensed activities in a manner that adequately protects the environment, health, safety, and security of the public, including that of the licensee's employees.

As mentioned in our March 15, 1979 letter to you, the scheduling and frequency for inspection of a particular licensee is based upon the scope and complexity of the program. For hospitals and other medical institutions, the frequency of inspection is once every three years. In addition to fulfilling a regulatory requirement, inspections frequently reveal situations, which, unless corrected, could have an adverse impact upon the licensee's operations.

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The Commission's fee program is based on the Independent Offices Appropriation Act of 1952, 31 U.S.C. §483(a), under which the Commission is authorized and encouraged to recover costs attributable to specific services provided to identifiable recipients. The Commission guidelines for fees also take into account several court decisions concerned with fees under the Independent Offices Appropriation Act (IOAA).

On March 4, 1974, the United States Supreme Court decided two cases challenging certain fees charged by the Federal Communications Commission and the Federal Power Commission under the IOAA. National Cable Television Association, Inc. v. United States, 415 U.S. 336 ("NCTA") and FPC v. New England Power Company ("NEP"), 415 U.S. 345. The Court ruled that the IOAA allowed an agency to charge fees only for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service.

On December 16, 1976, the District of Columbia Circuit Court held that an agency is authorized under the IOAA to charge a fee for providing services mandated by regulations. National Cable Television Association v. FCC, 554 F.2D 1094, 1101 (1976). The Circuit Court further held that federal agencies may recover the full cost of providing a service to an identifiable recipient, even though that service may also benefit -- even predominately -- the public. Electronic Industries Association v. FCC, 554 F.2D 1109, 1114 (1976). The Commission believes that the District of Columbia Circuit Court correctly interpreted the IOAA and that any other result would be inconsistent with the Congressional mandate expressed in the IOAA that "federal agencies be self-sustaining to the full extent possible".

Under the IOAA the Commission is authorized to recover the full cost of any expenses incurred in assisting an applicant or licensee to comply with statutory or regulatory requirements. Because inspections are considered as assisting an applicant or licensee in complying with statutory and regulatory requirements, inspection fees are assessed. Though hospitals and laboratories may not directly ask for unsolicited inspections in the same manner as filing for a license, an applicant or licensee, in effect, obligates himself to the requirements of the Act and Commission regulations at the time he makes application for a license. As you requested, we are enclosing a copy of the Federal Register notice which gives additional information pertaining to the establishment of NRC's schedule of fees.

In response to your question concerning whether the NRC is appropriated funds to cover inspection activities, the NRC appropriations do cover the total regulatory program, including inspection activities. All fees

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collected are deposited in the Treasury as miscellaneous receipts in accordance with the provisions of the IOAA.

If we can be of further assistance, please let us know.

Sincerely,

(Signed) Lee V. Gossick

Lee V. Gossick
Executive Director
for Operations

Enclosures:

1. 10 CFR 30 and 35
2. Federal Register Notice
3. 10 CFR 170

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