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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 20, 1993

The Honorable Conrad Burns
United States Senator
321 First Avenue North
Great Falls, Montana 59401

Dear Senator Burns:

I am responding to your letter of October 21, 1993, written on behalf of your constituent, Mr. Gary Knudson, President of Delta Engineering, regarding an outstanding FY 1992 annual fee invoice.

As provided to your office in my letter of October 18, 1993 (copy enclosed), the Nuclear Regulatory Commission has determined that the amounts owed by Delta for the FY 1992 annual fee and the amendment fee were properly assessed. We did, however, cancel the FY 1993 annual fee invoice for \$2,120.

As you indicated, we had continued to pursue collection of the debt during the time frame that Delta was seeking relief from the fees. Our pursuit of the debt was consistent with the terms and conditions which were sent with the invoice and the fee regulations which state that requests to clarify the fees or requests for exemptions will not stop the accrual of interest, penalties and other charges. On a parallel track, Mr. Knudson was attempting to have his license amended in the hopes of reducing his annual fee while we were implementing the debt collection process of issuing first, second and final notices regarding the FY 1992 annual fee.

Specifically, the following sequence of events occurred:

- Mid-July 1992, Invoice AM05803-92 was issued to Delta Engineering with a due date of August 24, 1992;
- August 12, 1992, Mr. Knudson wrote to Region IV to have the name changed on the license from Delta Engineering to his name;
- September 24, 1992, second notices were sent out;
- October 24, 1992, final notices were sent out;
- On November 17, 1992, the NRC licensing staff informed Mr. Knudson of their denial of his amendment request. The enclosed letter also explains our position on the \$400.00 submitted for a license amendment;
- On December 14, 1992, Mr. Knudson returned the unpaid invoice indicating that Delta was terminating their license. (The license was subsequently terminated January 27, 1993);
- On February 9, 1993, NRC wrote to Mr. Knudson and informed him that the December 14, 1992, request was too late to avoid the FY 1992 annual fee;

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The Honorable Conrad Burns

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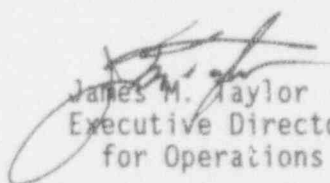
- After still not receiving payment, NRC contacted Mr. Knudson in June 1993 attempting to resolve the debt. The record of the June 28, 1993, conversation indicates that Mr. Knudson commented that he would not pay the FY 1992 fee of \$2,250;
- On July 14, 1993, the NRC began the process of referring the FY 1992 debt to our debt collection contractor since Delta had refused to pay NRC;
- On October 7, 1993, I wrote to Delta informing them the amendment fee was appropriate and that they still owed the FY 1992 annual fee. I also exempted them from the FY 1993 annual fee and offered them an additional 30 days to pay the FY 1992 annual fee without interest; and
- The debt collection contractor, CSC, sent their first demand letter to Delta on October 9, 1993. I have since apprised CSC to temporarily cease collection activity to give Delta an opportunity to settle the debt with NRC.

As indicated by the above, we believe that we have pursued the collection of debts in a responsible manner. With regard to the request for proration, the Commission regulations do not provide for any partial refund or prorating of annual fees. Furthermore, an amendment request filed after October 1 of each fiscal year to cancel a license does not cancel the annual fee invoice.

We realize, of course, that fees do have a financial impact on NRC licensees, particularly in smaller programs. Accordingly, in developing the Commission's fee schedules, every effort was made to establish fees that are fair and equitable. We believe that, to the maximum extent practicable, the fees established represent a fair and equitable implementation of the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of the NRC's budget authority.

If I can be of further assistance, please let me know.

Sincerely,


James M. Taylor
Executive Director
for Operations

Enclosure:
Letter of October 18, 1993

- After still not receiving payment, NRC contacted Mr. Knudson in June 1993 attempting to resolve the debt. The record of the June 28, 1993, conversation indicates that Mr. Knudson commented that he would not pay the FY 1992 fee of \$2,250;
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As indicated by the above, we believe that we have pursued the collection of debts in a responsible manner. With regard to the request for proration, the Commission regulations do not provide for any partial refund or prorating of annual fees. Furthermore, an amendment request filed after October 1 of each fiscal year to cancel a license does not cancel the annual fee invoice.

We realize, of course, that fees do have a financial impact on NRC licensees, particularly in smaller programs. Accordingly, in developing the Commission's fee schedules, every effort was made to establish fees that are fair and equitable. We believe that, to the maximum extent practicable, the fees established represent a fair and equitable implementation of the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of the NRC's budget authority. In addition, we believe that we have pursued the collection of debts in a responsible manner.

If I can be of further assistance, please let me know.

Sincerely,
Original signed by
James M. Taylor
 James M. Taylor
 Executive Director
 for Operations

Enclosure:
 Letter of October 18, 1993

Distribution:

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 18, 1993

The Honorable Conrad Burns
United States Senator
321 First Avenue North
Great Falls, Montana 59401

Dear Senator Burns:

I am responding to your letter dated August 23, 1993, written on behalf of your constituent, Mr. Gary L. Knudson, President, Delta Engineering P.C., concerning the Commission's fees assessed for their License 25-23156-01. The license authorized the possession and use of byproduct material in moisture/density gauges. In response to Delta's December 14, 1992, letter, the license was terminated January 27, 1993.

As you are aware, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) requires that the Commission recover 100 percent of its budget authority, less appropriations from the Department of Energy (DOE) administered Nuclear Waste Fund, for Fiscal Years 1991 through 1995 by assessing license and annual fees. The Commission was required to collect approximately \$445 million for FY 1991; approximately \$493 million for FY 1992; and approximately \$519 million for FY 1993. These budgeted amounts, which were appropriated, represent those resources necessary for NRC to perform its safety mission.

To recover the budget, the NRC assesses licensing and inspection fees under 10 CFR Part 170 and annual fees under 10 CFR Part 171. Fees assessed under 10 CFR Part 170 include license application fees, amendment fees, renewal fees, and inspection fees. Annual fees assessed under 10 CFR 171 are to recover NRC's generic and other costs that are not recovered as identifiable services to specific licensees and applicants under 10 CFR Part 170. The annual fees allocate the generic costs that are attributable to a given class of licensee to that class.

Under 10 CFR Part 171, the Commission offers reduced fees for licensees who qualify as a small entity. For FY 1991, Delta Engineering qualified under NRC's small business size standards and paid a reduced annual fee of \$1,400. For FY 1992 Delta Engineering held the license for the gauge and therefore is subject to the FY 1992 annual fee. The amount due as of September 30, 1993, is \$2,687.48. We have notified Delta via separate correspondence that they can file for a small entity classification and pay the appropriate reduced fee. For FY 1993, however, the Commission recognizes that Delta may have terminated their license sooner if they had known that the amendment request would likely have been denied. Therefore, I will grant an exemption from payment of the FY 1993 annual fee and am notifying Delta Engineering P.C. by separate letter.

We reviewed the issue raised by Delta that NRC kept the \$400 amendment fee and did not issue the name change from Delta Engineering P.C. to Gary L. Knudson, as requested by letters dated August 12 and September 29, 1992. NRC's legal

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October 18, 1993

counsel reviewed Mr. Knudson's requests and determined that the gauge continued to be used in the corporation's business activities and Delta still owned the gauge. A copy of the November 17, 1992, letter of denial is enclosed for your information. Section 170.12(a) of Part 170 of the Commission's regulations provides that application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application. This is so that the NRC can recover the cost of effort spent reviewing amendment requests such as the one submitted by your constituent.

In summary, the amendment fee and annual fees were properly assessed for Delta's license 25-23156-01. We are granting an exemption from the FY 1993 annual fee. If I can be of further assistance, please let me know.

Sincerely,

Original signed by
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
November 17, 1992, letter



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

911 HYANN PLAZA SUITE 400
ANN ARBOR, MICHIGAN 48106

NOV 17 1992

License No.: 25-23156-01
Docket No.: 030-20320
Control No.: 464355

Delta Engineering, P.C.
ATTN: Gary L. Knudson, P.E.
President
2701 16th Street Northeast
Black Eagle, Montana 59414

Gentlemen:

This is in reference to your letters dated August 12, 1992 and September 29, 1992, regarding your request to change the name of the licensee from Delta Engineering, P.C. to Gary L. Knudson.

Following the advice of our Regional Counsel, this request is hereby denied for the reason set forth below.

Delta Engineering, P.C., a corporation and the licensee, has requested that its license be transferred to Gary L. Knudson, Delta's owner, because it has transferred control of its gauge to Knudson. In reality, nothing has changed, for it is clear from Delta's response that the gauge will continue to be used in the corporation's business activities and that the corporation will still own the gauge. Since a corporation can only "control" an object such as a gauge through its employees, the proposed change alone is not sufficient, in and of itself, to approve a license transfer in accordance with 10 CFR 30.34(b), a copy of which is enclosed for your information.

As a result of the above denial, Delta Engineering remains the licensee, thus being responsible for the safe and compliant use of the licensed gauge(s) and for the payment of appropriate fees.

If you have questions or require clarification on any of the information stated above, we encourage you to contact us at (817) 860-8132.

Sincerely,

Jacqueline D. Burks
Jacqueline D. Burks, Health Physicist
Nuclear Materials Licensing Section

Enclosure:

10 CFR Part 30

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