Allied Signal

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October 4, 1991

Mr. Ronald M. Scroggins
Acting Deputy Chief Financial Officer/Controller
U.S. Nuclear Regulatory Commission
Washington, D.C. 20055

Dear Mr. Scroggins:

We understand that the Commission has directed Staff to prepare a lessons-learned analysis of the consequences of the imposition of Part 171 fees on its licensees pursuant to the rule published on July 10, 1991. We are pleased that the Commission has seen fit to analyze the effects of its new rule. The manner in which the fee allocation impacts Allied-Signal highlights several aspects of the fee structure which we believe the Commission should reexamine. The lessons-learned process is particularly important because the Commission did not have adequate time this summer to implement P.L. 101-508. We hope the Commission now will examine the structure of the fee allocation in more depth.

1. Allied-Signal believes the Commission should reconsider its decision not to impose all of the fees upon the nuclear power reactor licensees.

Trade periodicals report that Staff proposed a fee structure that would have allocated 96% of the Part 171 fees to the nuclear utilities; the plan adopted by the Commission apparently results in 88% of the fees being allocated to the power reactors and the remainder to its other licensees. Allied-Signal believes that the Commission should consider whether the public interest is served by collecting any of the fees from the non-power reactor licensees.

Allocating a portion of the fees to the multitude of non-power reactor licensees imposes administrative burdens upon the Commission and its licensees which are entirely disproportionate to the total amount of money at issue, while at the same time imposing substantial sums on individual licensees, such as Allied-Signal, which cannot pass on the cost of the fee. Imposing all of the fees on the nuclear utilities, on the other hand, would tap into the existing efficient mechanism for recovering utility costs and would permit the cost of the fee to be spread broadly

among those who benefit from the nuclear industry. It would alleviate the administrative burden and attendant costs incurred by the Commission in attempting to allocate the fee among the approximately 7800 other NRC licensees.

2. The adverse impact of the Commission's decision to impose fees on the non-power reactor licensees is demonstrated by the effect on Allied-Signal's Metropolis plant.

The uranium hexafluoride conversion business is highly competitive. Allied-Signal competes with one U.S. processor (Sequoyah Fuels Corporation), and with three foreign converters, which are instrumentalities of the nuclear power programs of the Canadian, British, and French governments. The European governments' nuclear power industries provide those foreign converters a ready source of captive business, through captive uranium production and captive power reactor consumption. Any additional, non-captive business is essentially gravy to them. Because they are part of a government-supported integrated system, the European converters are able to quote low prices for their incremental conversion services supplied to third parties.[1/]

American utilities, subject to pressures from their public service commissions to obtain nuclear fuel at the lowest possible price, purchase on the basis of price; they do not "buy American." Contracts to provide uranium hexafluoride conversion services consequently are awarded on the basis of small differentials in price, even less than one cent per pound. The Part 171 fees imposed by the Commission, which are totally beyond the control of Allied-Signal, and do not relate to the manner in which it operates its facility, will cost Allied-Signal approximately 5¢ per

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1/ The nuclear power plant technology used in Canada does not require enriched uranium and thus does not require UF_6. However, it requires high purity uranium oxide, which is an initial step in the UF_6 conversion process. The need to supply uranium oxide stimulates and helps subsidize the cost of UF_6 conversion.

pound (based upon the 14 million pounds produced in 1990). Allied-Signal's foreign competitors will not be subject to this cost increase. The fee, therefore, gives the foreign competitors, who already benefit from being adjuncts of nationalized industries, an added advantage over the domestic converters, who are dependent solely on economic success for their continued existence.

Because of the competitive situation in which it operates, Allied-Signal cannot pass on the cost of the fee to its customers. It can be expected that the American converters will lose substantial amounts of business to their foreign competitors or that their profit margins will be further eroded by having to absorb the cost increase. In either event the domestic uranium hexafluoride conversion industry is threatened by the Commission's fees.

Both the Department of Energy and the Commission have recognized that Metropolis is "an important national asset essential to maintaining the common defense and security of the United States."[2/] The threat to the plant posed by the fee structure is inconsistent with that recognition.

In the preamble to the final rule, the Commission stated there was "insufficient evidence" of significant adverse effects on the conversion industry (56 Fed. Reg. 31476). We believe the impact of the fees on the domestic conversion industry is clear. However, we would be pleased to provide any additional information, subject to necessary protection for proprietary information, which the Commission needs to understand the consequence of the fees on the operations of the Metropolis plant.

The impact of the fee structure would not be only on the conversion industry. If more UF_6 conversion services are provided offshore, this also will adversely affect the domestic enrichment industry, because enrichment services usually are performed in proximity to the UF_6 conversion

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2/ Allied-Chemical Corporation, Docket No. 0400-3392, Order to Protect the Common Defense and Security, May 14, 1987.

services. The shift of conversion offshore to Europe will result in increases in enrichment service business for Urenco, Eurodif and Techsnabaxport (U.S.S.R.) and the loss of large potential enrichment revenues for the United States, adversely affecting the balance of payments and the national security.

Imposition of the fee on the domestic conversion industry is inconsistent with the Congressional intent that the Commission impose the fees on non-power reactor licensees only if it can "fairly, equitably, and practicably do so" and in a way that permits the cost to be spread as broadly as possible.[3/] The Commission exempted nonprofit institutions from the fee because they "have a limited ability to pass these costs on to others."[4/] It is not clear why the same factors should not apply in the circumstances presented by the conversion industry.

Because of their need to compete in an international market, imposing the fee on converters, rather than limiting it to nuclear power reactor licensees, threatens that essential business. The Commission should take the opportunity to examine whether charging the fee to non-power reactor licensees is consistent with Congressional purpose and the public interest, and whether the public interest would not better be served by imposing the fee solely on the nuclear power industry.

3. Even if the Commission were to continue to impose the fee upon other than reactor licensees, it would be appropriate to reexamine the allocation methods used.

It appears that the classification system was based more upon budgetary categories developed by the Commission for other purposes than on the relative complexity and thus costs of the Commission's regulatory structure for various licensees. Specifically, Allied-Signal believes that the

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3/ H.R. Rept. No. 964, 101st Cong., 2d Sess. 961 (1990).

4/ 56 Fed. Reg. 31477.

Commission should consider whether it would not be more accurate to include the uranium hexafluoride converters as part of the uranium recovery category, rather than as a separate class of two (and placed with the fuel fabricator facilities).

The operations of converters are more similar to millers than to fuel fabricators. Converters take the output of uranium concentrate manufactured by the millers, convert it by chemical process from a solid to a gas, and purify it. Nothing is changed other than the chemical form. The quantity of uranium and the isotopic ratio are identical to the uranium concentrates delivered for conversion.

The low enriched fuel licensees and the high enriched fuel licensees, on the other hand, work with the much higher risk product of the enrichment plants. The enrichment facilities operate on a much larger scale than the converters, with in-process inventories of uranium as much as 50 times as large as those at Metropolis. The larger volumes and the criticality of the product handled by the enrichment facilities pose much greater risks than the product handled by the converters.

The Commission's regulatory focus necessarily turns on the degree of risk and danger. The fact that the Commission regulates both the milling operators and the converters in the same Part of its regulations (Part 40), while there is a separate Part for the fuel fabricator facilities, is evidence of the difference in function and regulatory concern between converters and fuel fabricators. The Commission has included converters with fuel fabricators in its budget. But the budgetary allocations made at another time and for other purposes, without participation by industry, should not determine the allocation of fees imposed on the industry. Including converters with the fuel fabricators has resulted in a separate category for the two converters. This would not be necessary if converters were included as an integral part of the uranium recovery class into which they appropriately fit.

4. Even if a separate class for converters were retained, it also would be appropriate for the Commission to reexamine its decision to equally allocate costs to the two members of the conversion class.

The basis on which the Commission decided that $1,080,000 should be allocated to the UF_6 conversion class is not ascertainable by us. But regardless of how that figure was reached, the decision to divide it equally between Allied-Signal and Sequoyah warrants reappraisal.

The Commission has been required to give far more regulatory attention to Sequoyah's operations at Gore than to Allied-Signal's plant at Metropolis, as NMSS will confirm. Additional evidence of this can be found in the relevant Part 170 fees paid by the two facilities. Sequoyah has paid approximately five times as much as Allied-Signal for inspection fees under Part 170 in the years 1986 through 1991 (partial). The direct costs recovered by Part 170 fees provide an easily ascertainable and accurate method for allocating indirect costs under Part 171.

Congress directed that in allocating the Part 171 fee, licensees "who require the greatest expenditures of the agency's resources should pay the greatest annual charge"; the fees should be imposed on non-power reactor licensees only if this could be done "fairly, equitably, and practicably"; and the charges should bear, to the maximum extent practicable, "'a reasonable relationship to the cost of providing regulatory services' to the licensees."[5/]

The Commission should consider whether it is equitable to impose a fee equally upon two members of a class, Allied-Signal and Sequoyah, when its expenditures are disproportionately required by the activities of one. In effect, by equally dividing the fees required to recover the cost of regulating UF_6 converters, the Commission is permitting the party whose conduct is responsible for most of the Commission's costs of regulating converters

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5/ H.R. Rept. No. 964, 101st Cong., 2d Sess. 962 (1990).

(Sequoyah) to escape the financial consequences for its actions by forcing its competitor, namely Allied-Signal, to bear half of the fee burden it generates. This sends the wrong signal with respect to regulatory compliance and is inconsistent with Congressional intent. The licensee who causes an increase in the Commission's regulatory activities should pay more for the cost of those activities.

When Congress stated its intent in the OBRA 1990 Conference Report that the licensees who require the greatest expenditures of resources should pay the largest annual charges, it was referring to the impact on individual licensees. The Commission itself has expressed its understanding that this phrase requires allocation based on individual licensees' relative contribution to regulatory costs.

The phrase in the Conference Report comes directly from representations made by Chairman Zech, by letter dated April 10, 1987, in response to questions posed by Chairman Burdick. In response to Question 12, Chairman Zech stated that the Part 171 regulations, which had been promulgated in 1986, imposed the fee equally on power reactor licensees, but that the Commission would develop a fee structure based on individual licensees' regulatory requirements. He said that the

> "Commission believes that it can develop a revised Part 171 that provides for tying fees more closely to the cost of providing <u>specific</u> services rendered to specific licensees."

Chairman Zech further stated that the Commission

> "after further reflection, now recognizes that it would be preferable to base its annual fee on the principle that those licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. The NRC staff is now developing a proposed rule that would implement this approach. This should result in a rule which

> ties regulatory fees more closely to the cost of providing services to each individual licensee."

Similarly, in response to Question 15, Chairman Zech stated that the revised Part 171

> "would depart from the current practice of assessing a flat fee to all licensees and make the annual fees more closely related to the cost of providing specific regulatory services to individual licensees."

And in response to Question 16, which had asked whether the fees should be related to the services the Commission provided "to individual licensees," he stated that the Commission supported the Senate's legislation that fees should be related to the services provided to individual licensees:

> "The Commission prefers the approach that those licensees that receive the greatest level of regulatory services from the NRC would pay higher fees than those who receive less."

Thus, in response to three different questions, the Commission in 1987 used the phrase that "licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charge" or its equivalent to mean explicitly that this judgment should be made on the basis of individual licensees, not classes of licensees. Congress, by using the same terminology in explaining the intent of the 1990 OBRA, incorporated the meaning the Commission itself already had given the phrase.

As I mentioned above, it is clear that Sequoyah has required a greater use of the Commission resources than has Allied-Signal. The greater regulatory burden can readily be ascertained. It is apparent to NMSS and is reflected in the Part 170 fees. The cause for the differential may be in management practices. In addition, there are two undisputed and objective factors which may have caused the differential; these should be considered in the Commission's

determination of the appropriateness of the allocation system.

a. Sequoyah uses a process which results in the creation of liquid radioactive materials; these can spill and cause regulatory concern. Allied-Signal, on the other hand, uses a completely dry process which does not create those liquids and thus presents less risk of spills and effluent problems.

b. There is a further difference of which the Commission apparently was not aware when it allocated the fees equally. The Sequoyah site at Gore is a multiuse facility; one plant is used in UF_6 conversion, and a separate plant at the facility and under the same license deconverts UF_6 tails to UF_4. Allied-Signal, however, provides only UF_6 conversion under its license for Metropolis. The second activity by Sequoyah at Gore increases the Commission's regulatory activity.

The Commission's preamble to the July 10, 1991, rule states that where a license authorizes "more than one activity on a single license ... annual fees will be assessed for each fee category applicable to the license." 56 Fed. Reg. at 21496. The Commission, however, did not allocates fees to Sequoyah's deconversion activities. The Commission may well wish to consider the appropriateness of changing the allocation of fees within the class of converters (if that class is retained) to reflect the additional, deconversion activities operated by Sequoyah under its license.

5. The Commission may wish to reconsider the appropriateness of recovering its indirect costs from its licensees and consider requesting Congressional repeal of that requirement. The licensees must bear the cost of increases in NRC expenditures over which they have no control. Allied-Signal is subject to an open-ended fee structure over which it has no control and which increasingly can make its services non-competitive on the world market. If, however, the Part 171 fee is not repealed, Allied-Signal suggests that the Commission

consider at least revising its invoices to state that the fee is imposed by the Commission in order to collect its costs and that the fee is not within the control of the licensee and is not determined by the licensee's activities. This would assist licensees in explaining the basis for the fee to their customers.

The Part 171 fees impact directly on Allied-Signal's future business decisions. I hope by these comments to indicate to the Commission the importance of those fees to Allied-Signal, and to present suggestions for the Commission's examination of the fee structure. We hope the Commission will, as a result of the lessons-learned process, eliminate the fees entirely, limit their applicability to nuclear power plant utilities, better reflect the categorization of licensees, or at least more accurately differentiate among members of a class.

We welcome the opportunity to answer any questions or to discuss our experience with the fees if the Commission should desire.

Sincerely yours,

W. Scott Nix

cc: Jesse L. Funches

BCC: K. Cole - A-S Washington, D. C.
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Sanford I. Rock
Director, Nuclear Services

July 19, 1993

Secretary
U.S. Nuclear Regulatory Commission
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ATTN: Docketing & Service Branch

Re: **RIN 3150-AE54**

Dear Sir:

AlliedSignal Inc. hereby responds to the Commission's request for comments on its fee policy, published in the Federal Register on April 19, 1993, 58 Fed. Reg. 21116 et seq.

I. THE COMMISSION SHOULD EXERCISE ITS DISCRETION TO IMPOSE THE ANNUAL FEE ON UTILITIES ONLY

The Commission should return to its previous policy and impose the annual fee only on nuclear power reactor licensees.

For the first four years during which it had authority to impose the annual fee, the Commission determined not to extend the fee beyond nuclear power reactor licensees. As it said in promulgating the 1989 annual fee, the Commission did not extend the fee beyond the utilities because of the "relatively minor resources devoted to regulating" its other licensees and "the obvious administrative difficulties in determining how to calculate appropriate annual fees for this large, diverse class of licensees."[1/]

In continuing the authority to impose the annual fee in the Omnibus Budget Reconciliation Act of 1990, Congress contemplated that the Commission would maintain its policy to assess only the utilities. It noted that the Commission had reported that it would be "impracticable" to impose the annual fee on all of its approximately 8,000 non-power reactor licensees, and that the cost of regulating the non-power reactor licensees amounted to only 3% of the Commission's costs, much of which was in any event recovered through the fees assessed through Part 170 pursuant to the IOAA.[2/]

1/ 53 Fed. Reg. 52,632 at 52,634 (December 29, 1988).

2/ H.R. Conf. Rept. No. 964, 101st Cong., 2nd Sess. (1990), at 961.

Although Congress was dubious about extending the fee beyond the power reactor licensees, it retained that authority for the Commission if it could do so "fairly, equitably, and practicably." Congress made it clear that it intended the Commission to consider in this regard whether the fee could be passed on to the ultimate consumers of nuclear power.[3/]

Experience has now shown that extension of the fee to non-nuclear power reactor licensees is not good policy. It causes disruption and increased administrative costs for the Commission. It poses problems of fairness and competitiveness for licensees.

AlliedSignal believes that the intent of Congress could most efficiently and appropriately be carried out if the Commission were again to impose the annual fee under Part 171 only on the operating reactor licensees. There are several considerations which favor this result.

First, the utilities are the beneficiaries of the services provided by most of the Commission's licensees, which perform various functions in the fuel generation process.[4/] The utilities are an efficient collection point for a fee based on the services provided by these licensees. There are far fewer utilities than the thousands of materials licensees, and the Commission is accustomed to dealing with the utilities on an ongoing and intensive basis.

As discussed below in Item 8, AlliedSignal does not have information on the amount it costs the Commission to assess the annual fee on the non-power reactor licensees and to collect it from these thousands of licensees, but we believe it is substantial. In addition to having to determine its policy on collection of its costs and to allocate its costs among these licensees, the Commission has had, as it says, to evaluate over 500 comments on proposed rules; respond to "several hundred"

[3/] Statement of Managers of Consolidated Omnibus Budget Reconciliation Act of 1985, 132 Cong. Rec. H879 (March 6, 1986), referenced in H.R. Conf. Rept. No. 964, 101st Cong., 2nd Sess. (1990), at 961.

[4/] The only exception to this are licensees who use radioactive materials for medical or other particular uses. These licensees are small and account for only a tiny percentage of the fees collected by the Commission at considerable administrative effort. Many of these licensees are already in effect exempt from the fee pursuant to Commission policy.

requests for exemption, letters from licensees, and letters from Congress; and answer thousands of telephone calls.[2/] Most of this expense could be saved if the fee were imposed only on the utilities.

Further, the utilities can pass on the cost of the fee to their customers and thus place the burden of the fee, as Congress intended, on the people who ultimately benefit from the Commission's regulations, namely the consumers of nuclear-generated power. Unlike the utilities, many materials licensees, such as the uranium hexafluoride converters, are engaged in commercial competition with foreign firms, which restricts their ability to pass on the fee as Congress intended. The competitive effect of the annual fee is demonstrated by the fact, as AlliedSignal believes, that the fee was one factor that recently persuaded a foreign converter to reenter the U.S. market. Imposition of the fee on licensees subject to foreign competition threatens their competitive viability.

Imposing the fee on utilities ensures that it can be distributed broadly among the millions of beneficiaries of nuclear power, and avoids placing additional competitive handicaps on licensees of the American nuclear fuel industry.

II. IF THE COMMISSION NEVERTHELESS CONTINUES TO IMPOSE THE ANNUAL FEE UPON MATERIALS LICENSEES, SEVERAL IMPROVEMENTS IN THE FEE STRUCTURE SHOULD BE MADE

1. The fee should not be uniform

AlliedSignal does not support the assessment of one uniform annual fee for all power reactors and one uniform fee for all fuel facilities. Different types of fuel facilities require different levels of regulatory oversight by the Commission. It would be unfair for a conversion facility, which requires low regulatory oversight in the absence of unique problems, to bear a portion of the Commission's costs incurred in regulating a fuel fabrication facility, which poses more complex issues of regulation because of criticality.

2. Converters should be included in the uranium recovery class

The Commission has created a separate class for uranium hexafluoride converters. At the present time, there are two

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2/ 58 Fed. Reg. 21116, at 21117 (April 19, 1993).

licensees in this class, AlliedSignal and Sequoyah Fuel Corporation. However, Sequoyah will soon relinquish its operating license, leaving AlliedSignal as the only operating licensee in this category.

A class of one (or even two) operating licensees is not truly a class. The UF_6 converters should be included in the uranium recovery class even if there were two licensees, and the reasons for doing so are even stronger if there is only one.

The operations of a UF_6 converter are similar to those of the uranium mills, and both regulated under the same section of the regulations (Part 40). The UF_6 converter takes the output of uranium concentrate manufactured by the millers, converts it by chemical process from a solid to gas, and purifies it. The quantity of uranium and the isotopic ratio of the product created by the converter are identical to the uranium concentrates delivered to it for conversion. Since the level of radioactivity is the touchstone of the Commission's concern, its regulatory attention and the attendant cost are ultimately a function of relative radioactivity. A UF_6 converter should be included with other licensees which deal with materials presenting comparable risk.

In its request for exemption from the annual fee, AlliedSignal described the similarities between the UF_6 converters and the millers and requested that it be put in the uranium recovery category.[6/] The only explanation the Commission gave for rejecting this approach was that it had included the UF_6 converters in the fuel facility class for "budget development purposes."[7/] It is unclear what this means; are these preexisting budget categories or were they created for purposes of allocating the annual fee? In any event, the point is circular. The budget categories can be changed to include UF_6 converters within the uranium recovery category. Since this would be a more appropriate allocation, the Commission's budget categories should be amended accordingly.

6/ Letter of John S. Hoff to James M. Taylor, October 21, 1991.

7/ Letter from James M. Taylor to John S. Hoff, January 9, 1992.

3. The base on which the Part 171 fees are calculated should be changed

As the Commission suggested in its publication, the cost of activities that do not benefit licensees should not be allocated to them through the annual fee, as the Commission now does. These are:

a. Activities not associated with an existing NRC licensee or class of licensees, such as international programs, administering the Agreement State Program, LLW regulatory activities, and activities benefitting future licensees (such as in uranium enrichment).

Since these activities are not attributable to licensees, the costs should not be recovered under Part 171, but from general revenues.

b. Activities relating to applicants that are not subject to fee assessment under IOAA.

The law should be amended to end the exemption for Federal agencies from fees imposed under IOAA; Section 161w should be expanded, and the Commission should assess Part 170 fees on Federal agencies, including the United States Enrichment Corporation.

The Commission is authorized to impose the annual fee on Federal licensees, and it has done so, 56 Fed. Reg. 31,471, at 31,474-5 (July 10, 1991); 10 CFR §171.13. However, it should be made clear that the Part 171 fee will be imposed on the United States Enrichment Corporation, which will be granted a certificate from the Commission and should be considered to be or treated as a licensee. In addition to enrichment services, this entity will be providing an enriched uranium product to U.S. utilities, which includes the added values of mining/milling, conversion, and enrichment. The UEC will not have to supply or purchase those services; they are included in the value of the product which UEC will derive from U.S. or Soviet weapons dismantlement without payment of the Commission's fees. To avoid furtner exacerbating the competitive advantage UEC will hold over the private firms in the fuel generation cycle, it should be subject to Part 171 fees as if it were a licensee. It should be required to pay an annual fee that reflects the equivalent amount that miners/millers, UF_6 converters, and fuel enrichers would have had to pay to supply the enriched uranium product which UEC

obtains from weapons dismantlement, in addition to a fee based on its services as an enricher.

c. Activities relating to applicants and licensees which are exempt from Part 170 and 171 fees such as non-profit educational institutions and licensees which are charged reduced annual fees as small entities.

Congress has not authorized an educational exemption (other than the specific and limited one recently provided by Section 2903(a) of the Energy Policy Act), and it is not appropriate for the Commission to pick and choose among licensees to favor some at the expense of others. Such an exemption, if it is to be made, should be made by Congress.

If, instead of setting a cap on the fee for small entities, the fee were adjusted to reflect actual usage of Commission resources (as discussed in Item 6), small entities would pay a proportionate and fair share of any annual fees imposed on non-power generator licensees, and a limit on their fees would not be necessary.

d. Regulatory activities that benefit state applicants and licensees as well as Commission licensees.

The purpose of the fee is to impose the fee on licensees for the cost of regulation which benefits them (and ultimately the consumers of nuclear power). It is inappropriate for current licensees to pay for the cost of Commission activities which do not involve their activities and from which they do not derive any benefits.

4. Applicants

AlliedSignal supports the suggestion of the Commission that OBRA be amended to allow the Commission to assess generic regulatory costs on applicants. Whether successful or not, an applicant benefits from the regulatory structure which governs its application. If there is no existing class, the applicant should be required to pay a reasonable amount of the costs that would be attributable to that class. If these costs are not imposed on applicants, they should be paid for by the taxpayer. They should not be paid by current licensees.

5. Many costs presently allocated to Part 171 should be collected under Part 170

To the extent possible, Commission costs should be allocated to the individual licensee which occasions Commission activity. A number of the costs which the Commission currently allocates to the Part 171 fee more properly could be allocated to a Part 170 direct fee, as mentioned by the Commission. The following costs are occasioned by actions of individual licensees and should be charged to them under Part 170:

- incident investigation teams;
- investigations of allegations of wrongdoing by licensees,
- reviews and inspections in connection with site decommissioning management plans;
- reviews of individual licensees, even if they do not result in formal NRC approvals or license amendment;
- conduct of contested hearings relating to an individual licensee.

These costs are attributable to individual licensees' actions, are ascertainable, and should therefore be collected under Part 170.

6. Part 170 fees should be used as a surrogate for allocating Part 171 fees

Generic costs that are included in the base after the adjustments discussed in Item 3 and that cannot be attributed to individual licensee activities under Part 170 as discussed in Item 5, should be allocated among individual licensees rather than being divided equally among members of a class. Generic costs by definition are not directly attributable to an individual licensee. Nevertheless, the benefit of the Commission's generic regulation is related to individual licensees' call on the Commission's regulatory activities, and the generic costs should be allocated to individual licensees correspondingly.

Part 170 fees indicate the extent to which the Commission uses its resources with respect to particular licensees. It is reasonable to infer that a licensee which has required a greater use of the Commission's resources (which is reflected in its Part 170 fee) than another licensee receives a greater benefit from the generic regulation which underpins the particular activities for which a Part 170 fee is assessed. As the Commission itself

has recognized, "the application and inspection fees are indicative of the complexity of the license."[8/]

AlliedSignal believes, therefore, that rather than making an equal, and therefore arbitrary, division of generic costs among members of a class, the Commission should allocate those costs on the basis of the percentage of Part 170 fees incurred by each licensee in the class during the previous year. The Commission has the discretion to use a licensee's relative amount of Part 170 fees compared to other members of its class as a measure of the allocation of costs through the annual fee. It should do so.[9/]

7. Fluctuating fees

AlliedSignal supports the Commission's suggestion that OBRA-90 be modified to limit the annual fee increase, but believes the limit should apply to individual licensees (which actually pay the fee), not merely to classes, unless the suggestion concerning use of Part 170 fees to allocate the fee (discussed in Item 6) is adopted. Currently licensees are at the mercy of unpredictable fees based upon the Commission's budget, over which they have no control, and upon the number of licensees in a class. A licensee should be able to have some predictability in estimating its costs. The annual fee is now a large and totally unpredictable cost. The regulations should be amended to provide that no licensee's annual fee may increase above a certain amount (such as the percentage change in the Consumer Price Index) -- unless the fee increase is related to that licensee's regulatory activity as evidenced by Part 170 fees. Any shortfall should be funded from tax revenues.

8. Costs of fee collection

AlliedSignal suggests that it would be appropriate for the Commission to calculate and to publicly disclose on a separate basis the costs it incurs in administering the Part 170 and Part 171 fee program. It is important for the licensees who pay these

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8/ 56 Fed. Reg. 31,471, at 31,496 (July 10, 1991).

9/ The low level waste surcharge also should be allocated to individual licensees' activities. As AlliedSignal suggested in its comments on the proposed 1993 rule (filed May 24, 1993), the surcharge should (if not excluded from the fee base, as discussed in Item 3) be based on individual licensees' disposal, as the class allocation currently is.

fees to be assured that the program is being efficiently managed. It is also important for Congress to know the costs the Commission must incur in generating revenue through the user fee. To facilitate this, it would be helpful if the Commission organized an advisory board of licensees to assist the Commission on an ongoing basis in evaluating the fee programs and in developing the most efficient and fair way to collect the fees, and to ensure that the Commission activities giving rise to costs recovered under Part 170 and Part 171 are appropriate in scope and volume.

Respectfully submitted,

Sanford I. Rock