



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

OCT 16 1978

Martin A. Welt, Ph.D
President
Radiation Technology, Inc.
Lake Denmark Road
Rockaway, New Jersey 07866

Dear Dr. Welt:

This is in reference to the claim you filed on behalf of Radiation Technology, Inc. (hereafter "RTI") in the amount of \$1,000 for alleged damage to RTI's area monitor. In your letter presenting the claim, you request that "NRC replace the defective instrument with another instrument of the same type or equivalent, or that NRC authorize us to replace the instrument with the charges being sent to NRC for payment."

According to your letter, the incident giving rise to RTI's claim occurred on October 12, 1977. You state that on that day, you took the monitor to NUCOR, an independent laboratory in Denville, New Jersey, in order to demonstrate to NRC inspectors that the monitor operated properly. You further state that it appears that during the return trip from NUCOR the instrument was jarred, which created an intermittent short in the instrument.

Since the incident giving rise to RTI's claim involved NRC employees, RTI's claim has been processed and evaluated pursuant to the Federal Tort Claims Act and NRC's regulations implementing the Act at 10 CFR Part 14, "ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT."

Pursuant to 10 CFR 14.6, I have considered this claim and I have determined that the claim should be denied. In accordance with 10 CFR 14.9, my authority to consider and determine claims has been exercised only after review by legal officers. As provided in 10 CFR 14.10(a), this notification of denial includes the following statement of the reasons for denial of RTI's claim:

NRC records indicate that the inspection in question occurred on October 10, 1977. As part of that inspection, RTI was required to demonstrate that the area monitor functioned properly, since it is a condition of RTI's license that the monitor be operational. RTI was not able to demonstrate that it was in fact operational. NRC inspectors using an 8 microcurie cesium-137 source were unable to confirm instrument function. Following discussions with NRC inspectors, RTI decided to confirm operability of the monitor by taking it to NUCOR in Denville, New Jersey.

CERTIFIED MAIL

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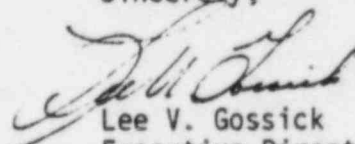
Your letter states that you personally took the instrument to NUCOR in your car. According to NRC records, an NRC inspector traveled to NUCOR in another vehicle to witness the tests to be performed by NUCOR. In your letter you also state that it appears that jarring of the instrument on the return trip from NUCOR created an intermittent short in the monitor.

I find no basis to conclude that NRC inspectors were responsible for the alleged damage to the area monitor. It was your decision to take the monitor to an independent laboratory in order to ascertain whether it functioned properly. In addition, there is no indication that the alleged jarring of the instrument on the return trip was attributable to any actions on the part of NRC inspectors. In view of the foregoing, I have determined that NRC is not liable under the Federal Tort Claims Act for the alleged damage to the monitor.

The foregoing constitutes a final denial of Radiation Technology's claim. In accordance with 10 CFR 14.10(a) if Radiation Technology is dissatisfied with my decision denying this claim, suit may be filed in an appropriate U.S. District Court not later than six months after the mailing of this notification. However, under 10 CFR 14.10(b), prior to commencement of suit and prior to the expiration of the six month period provided in 28 U.S.C. 2401(b), a claimant, his or her duly authorized agent or representative, may file a written request with the Commission for reconsideration of a final denial of a claim. Upon the timely filing of a request for reconsideration the Commission shall have six months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of a request for reconsideration. Final Commission action on a request for reconsideration shall be effected in accordance with the provisions of 10 CFR 14.10(a).

A copy of 10 CFR Part 14 is enclosed for your information.

Sincerely,


Lee V. Gossick
Executive Director
for Operations

Enclosure:
10 CFR Part 14

cc: See Page 3

Martin A. Welt, Ph.D

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cc: The Honorable Clifford P. Case
United States Senate
Washington, D.C. 20510

The Honorable Harrison A. Williams, Jr.
United States Senate
Washington, D.C. 20510