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Division of Health Service Regulation

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Office of the Director / Division Office

Dear Ms. Pfeiffer:

RE: Fee increase of over 400% for small enterprise, single instrument, single emitter, nuclear material license holders..

This is a slightly edited version of the letter sent to Mr. Lee Cox on September 20 and effectively represents both my position as well as recommendations that I will present in a more edited form at the meeting now scheduled on November 13 at 10am at the Edgerton Building in Dorothea Dix Park, Raleigh.

"I got a bit of a shock this year on opening the bill from your Section for my nuclear materials license. To say that I wasn't expecting an increase of any type would be true, as I had not had any communication from the Section or anyone else about the need for an increase. That said, had the increase been in the neighborhood of 20 or 25% I likely would have just paid it and gone on down the road. The fact that the increase is over 400% with no prior communication over the planned change is, for me, unreasonable and without foundation.

On contacting the Section, I find that there was a significant amount of discussion among many interested parties regarding what to do about the "shortfall" in operating capital for the Section. I have now read the documents included with the link <https://info.ncdhhs.gov/dhsr/rules/rps2018.html> and am more familiar with the thoughts, discussions, proposals and actions taken. I have no question regarding the need for increased funds to offset the needed personnel and support operations of the Section. No question also that we need to keep the NRC at a distance, if possible, for the stated reasons.

Consider that although there appears, in the documents above referenced, to have been some attempt to get input from license holders for nuclear gauges, etc. regarding the then proposed fee increase, there was no response. How were we, license holders, supposed to have been notified? In my case, I can state with some confidence that there was **zero notification of any opportunity to comment received here**. When I see an email or snail-mail communication from your department, I look at it with no exception. Had I been aware that you were planning such an increase in my fee and with an opportunity to comment, you can be absolutely certain you would have heard from me and very clearly so – just as you are here. If this same effectiveness in communication also holds for others like me, we can both understand why there was no comment on the proposed changes.



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I am the owner of one (1) nuclear gauge, a Troxler 3216 Roofreader which is exclusively a neutron emitter. At the same time, there are a number of enterprises that own many gauges most of which are both gamma and neutron emitters.

Arguably, these dual-emitter gauges are more dangerous and thus pose a greater risk to the general public than one like the Troxler 3216. I understand that paving contractors and others utilize these dual emitter gauges to measure both moisture and density of asphalt, etc. and that this use alone would have the gauges operational in many active locations that are subject to loss, damage, theft and the like.

It is also my understanding, and would make sense, that the Section spends quite a bit of time in support of these license holders given the level of activity that includes loss and theft as well as damage to the point of having radiological sources exposed.

In my case, in the years that I have had my license, there has been no loss, damage, theft or any other occurrence that required the time of the department/Section on my behalf. In fact, since the initial help with the creation of my nuclear materials Radiation Protection Program and the subsequent site inspection, there has been no contact with me or my company by the Section other than the issuance of a bill annually and one phone call to inquire about hurricane readiness. For these reasons I find it hard to justify an increase of 400+% for my business. Can you? Can anyone that has been involved in this increase in fee actually justify the increase in MY license fee other than that they just thought that since I was a "little guy" I couldn't or wouldn't put up much of a fuss so that they could get away with it? Either that or just didn't want to take the 15 minutes or so that it would have required to differentiate between the large/problematic and small to the point of miniscule license holders?

All States have a division, department or Section similar yours or are under the supervision of the NRC. A significant number of these self-regulated states provide a distinction between those license holders that require significant support time from the Section as compared to one like Armco Inspections LLC which requires virtually zero.

It would seem a relatively simple matter to make a distinction between major and minor nuclear material equipped instrument users. This distinction would provide a basis for a fee schedule such that those license holders that occupy the most support time by the Section pay the most for license maintenance. And, vice-versa.

The necessary differentiation could very easily be made on the basis of taxable income (or gross for that matter) for the business. In any case, the numbers are easily verifiable from the NCDR. For ease of distinction, a basis with clear break points as, say \$100k, \$250k, \$500k and over \$1mm annually can be created. Beyond that, the additional requirement might be that the business is the possessor of a graduated number of emitters as in 1, 2, 5, 10, 30 and over and whether or not the instrument is single (neutron) or dual (neutron and gamma). However it is done, the argument overall is that some users cost the Section a significant amount of support time while others do not and the more costly users should pay for the privilege. Further that a small user, like yours truly, that is the possessor of one (1) single emitter instrument, has a business income of less than \$100k and costs the Section approximately Zero to support should pay a minimum fee.



I understand the operational "Rules" for the Section do not currently allow for such distinctions as above described be made by the Section. And, further that the governing Statute under which the Section is organized does not specify that the Section can actually charge the license holders based on the cost that they create.

This lack of foresight (or whatever motivation or lack thereof) by the creators of the Section Statute and subsequent operational Rules has, I submit, resulted in a lack of responsible behavior on the part of some users that affects the financial status of the Section and ultimately, now, all of the rest of us large and small. These "irresponsible" license holders are financially driven and at this point, have no financial incentive to "take care of business." I am suggesting that the governing statutes and/or rules be changed to an extent that creates that financial incentive by allowing:

1. The Section to charge license holder user fees based on the amount of time and materials required by the Section for support of their particular operation. The basis for fees would seem a very simple matter to determine as would be the minimal support staff to make it work.
2. License renewal fee levels be based on user business income and the number/type of gauges or instruments employed under a license and that the Rules be changed to allow the Section to make the distinction.
3. Specifically, as in my case, to have a classification and license holder fee for the smallest user that is in proportion to the amount of support required by the Section for said small user which is as described above, miniscule.

This letter is my formal request that your Section, or the responsible entity, realize the distinction between large and small users and create a pro-rated fee schedule accordingly. I am in agreement that all license holders need to contribute to the financial stability and success of the Section – just proportionately so.
Regards,



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