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National Mining Association  
Foundation For America's Future

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

April 26, 2001

Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852

**Re: Proposed Revision of Fee Schedules -- FY 2001**

Dear Sir:

The National Mining Association (NMA) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2001. 66 Fed. Reg. 16982 (March 28, 2000). NMA notes that the annual fees for uranium recovery licensees will decrease for FY 2001. Yet NMA remains concerned about the underpinnings of the fee structure, in particular, the serious inequities caused by the Omnibus Budget Reconciliation Act of 1990 (OBRA) mandate that NRC recover close to 100 percent of its budget each year. Even though the decrease in Annual Fees for uranium recovery facilities is substantial, the licensees will likely still experience significant fee increases due to the recovery of Project Manager costs via the hourly fees. In light of the current circumstances facing the uranium recovery industry, NMA is very concerned by the proposal's potential impact on the uranium recovery industry. NRC must immediately revise the Project Manager cost recovery system and pay careful attention to the potential further adverse impact of these new fees on the financial health of the uranium recovery industry as it proceeds with this rulemaking process.

NMA represents producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are NRC licensees and who are adversely affected by the NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

NMA has commented extensively in the past on NRC's fee allocation system. The issues raised by the FY 2001 proposal are similar to those of prior years, and therefore, these comments

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incorporate by reference NMA's prior comments (and those of its predecessor organization the American Mining Congress).<sup>1</sup>

### Annual Fees

NMA's primary concern with the fee system continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from such services. As NMA has commented in the past, it is a fundamental principle of law that there must be a reasonable relationship between the cost to licensees of a regulatory program and the benefit derived from regulatory services.<sup>2</sup>

NMA acknowledges that the passage of the NRC Fairness in Funding Act, which could not have been accomplished without strong NRC support, attempts to address some of NMA's fairness and equity concerns regarding charging licensees for activities that provide licensees no direct benefit. That act amends OBRA by reducing the amount of NRC's budget that NRC must recover from its licensees. OBRA originally mandated that NRC recover approximately 100 percent of its budget authority each fiscal year (FY). This year, NRC is required to recover approximately 98 percent of its budget. The OBRA amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery amount is 90 percent by FY 2005. While this Act will alleviate some of NMA's equity concerns, it will not guarantee a reasonable relationship between costs and benefits.

Too heavy a burden is falling on uranium recovery facilities, particularly those sites awaiting NRC approval of reclamation plans or those on "standby." Given the complex regulatory scheme and numerous license conditions imposed on these sites, it is rarely a matter of licensee discretion when to operate or finalize closure of a site. Indeed, the realities of the uranium market are a large determinant in whether a licensee ceases operations, goes on standby or begins decommissioning. Sites that are on standby or awaiting approval of reclamation plans require minimal oversight yet must continue to pay an annual fee that is clearly not commensurate with the benefit of holding the license.

In addition, NRC needs to determine an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program that is beginning to play out

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<sup>1</sup> These comments are dated May 13, 1991, May 29, 1992, February 4, 1993, May 24, 1993, July 19, 1993, August 18, 1993, June 9, 1994, April 19, 1995, February 27, 1996, March 27, 1997, May 3, 1999 and April 26, 2000.

<sup>2</sup> NRC's authority to prescribe fees for "regulatory services" under 10 CFR 170 is based on the Independent Offices Appropriation Act of 1952 (IOAA), 31 USC 9701. To be valid under the IOAA, a fee must "be reasonably related to, and may not exceed the value of the service to the recipient, whatever the agency's costs may be." Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985).

in the uranium recovery area. For example, there are only three conventional mills and the number of in-situ leach licensees has decreased since 2000.

**Project Manager Costs**

Under the proposed rule, the hourly rate applicable to the uranium recovery category of licensees will increase from \$143 in FY 2000 to \$144 for FY 2001. NMA outlined concerns regarding charging licensees for “Project Manager Costs” in its comments on the FY 1999 and FY 2000 fee proposals. More specifically, NMA was concerned that the changes to “Project Manager Costs” could double the hourly rate costs incurred by licensees. As evidenced by licensees’ bills for 2000 and in the chart below, such “Project Manager Costs” far exceed our most conservative estimates of such costs, mostly due to the fact that licensees are being charged for Project Managers’ (PM) “generic activities” in spite of the fact that the final 1999 fee rule indicated licensees would not be charged for PM involvement in such “generic activities.”

Facility	9/26/99- 12/30/00 Review Costs	9/26/99- 12/30/00 Project Manager	9/26/99- 12/30/00 Total
Smith Ranch	\$71,628	\$65,137	\$136,765
Ambrosia Lake	\$65,210	\$47,302	\$112,512
Lisbon	\$49,095	\$47,302	\$96,397

(See attached April 10, 2001 NMA Briefing of the Commission for additional detailed information on impacts of PM fees on licensees.)

Specifically, the final FY 1999 rule gave a fairly detailed example of the new types of activities subject to cost recovery:

Examples of PM activities which will be subject to Part 170 cost recovery are **those associated with oversight of the assigned license or plant** (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. (Emphasis added.)

64 Fed. Reg. 31460. Certainly, nothing in the final rule indicates that licensees would be charged for PMs’ activities such as work on the Starfire accounting program or work for another branch/office. The only time the final rule mentions “other NRC offices” is in the above quoted language where interfacing with other NRC offices is given as an example of an activity associated with oversight of the assigned license or plant. In no way can that language be stretched to mean the licensee should expect to pay for their Project Manager’s activities to

support other offices having nothing to do with the assigned license. In reviewing the NRC directive on "Fee Billing for DWM Project Managers," it seems virtually no activities the PM engages in are excluded from cost recovery. Despite the language in the FY 1999 final rule that rulemaking activities will not be subject to PM fee recovery, in the directive there is a RITS [Regulatory Information Tracking System] code for "rulemaking oversight."

As discussed in some detail in these comments, costs that have no relationship to, nor provide no benefit to the licensee should not be charged to the licensee. To the extent that NRC is required to recover such costs under the Omnibus Budget Reconciliation Act, these costs are more appropriately recovered via the Annual Fee. Recovery through the Annual Fee allows such costs to be spread more equitably across a range of licensees, rather than punishing a licensee who, though no fault of its own, has been assigned a PM engaged in a lot of "extracurricular activities." This problem is further exacerbated when a PM "manages" only one licensee with the result that the licensee must pick up all of the overhead type costs associated with this individual PM. A similar inequity results when a licensee's PM is only a "part-time" PM, a technical person who has been assigned a licensee or two but who spends the majority of his/her time doing technical work not related to the licensed site(s) they manage. If that technical person was not also a part-time PM, the licensee would not be charged for the technical work that does not relate to its license but under this new rule, it appears the licensee(s) will be charged all of it.

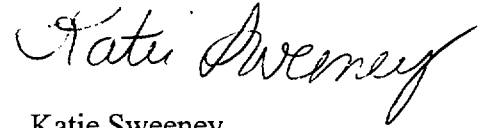
NRC is supposed to be working to solve the current inequities with its fee system, not creating new inequities. NRC cannot defend this proposal on any reasonable basis much less as an attempt to shift costs from Annual Fees to Hourly Fees since there is no offsetting decrease in Annual Fees that corresponds to the incredible increase in hourly fees that licensees discovered in the latest quarterly bills. NRC must cease this wholly unjustified and *ultra vires* implementation of its OBRA responsibilities at once. NRC needs to investigate further designating PMs as "points of contact" under certain circumstances to reduce PM charges

NMA requests that NRC continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff *and NRC Contractors*. With hourly rates as high as \$144, NRC should be held to at least the same standard of accountability to its licensees as the private sector is to its clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified. NMA recognizes that implementing such a system would require major revisions to NRC's entire computer billing program, but it is a change that would serve well NRC, its licensees and the public. NRC will not accept licensee inconvenience as an excuse for failure to properly fulfill its license responsibilities so inconvenience provides NRC with no excuse either.

The Commission must revise the PM cost recovery system because that system is contrary to OBRA and is creating unexpected additional inequities. Given the current state of the domestic uranium recovery industry, the new inequities posed by the PM cost recovery system

could be the last nail in the coffin. If you have any questions or if we can be of assistance, please contact me at 202/463-2627.

Sincerely,

A handwritten signature in cursive script that reads "Katie Sweeney". The signature is written in black ink and is positioned above the printed name.

Katie Sweeney

Attachment

# NMA Briefing on Selected Uranium Recovery Issues

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## NMA Views on Alternatives for Rulemaking

Staff Paper Presents Three Options

- National Materials Program Pilot
- Continue to Develop Part 41 Rulemaking
- Discontinue the Part 41 Rulemaking

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## Views on Option 1: Pilot Program

### NMA Concerns

- Cost
- Timing
- Uncertain Expertise
- Consensus Format Inappropriate for Addressing Complex Technical and Legal Issues

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## Views on Option 2: Continue to Develop Part 41

### Part 41 Would Have Some Advantages

- Codification of Performance Based License Concept
- Rulemaking Provides Legal Certainty
- Reorganize to Delete Inappropriate or Unnecessary Requirements
- Add Appropriate and Necessary Requirements

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## Views on Option 2 (Con't)

### Concerns Regarding Development of Part 41

- Costs Overwhelms Advantages
- Industry Cannot Afford

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## Views on Option 3: Discontinue the Part 41 Rulemaking

- NMA's Preferred Approach
  - Discontinue Rulemaking Efforts
  - Update Existing Guidance Documents

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## Going Forward --Updating Guidance Documents

- NMA Will Provide NRC with Information Pertinent to Updating the Non-11e.(2) Guidance
- NRC Can Address Listed Hazardous Concern in Updated Alternate Feed Guidance



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## Going Forward --Non 11e.(2) Guidance

- NMA and Fuel Cycle Facilities Forum Developing Generic Criteria for Acceptance of Non-11e.(2) Material for Disposal in Tailings Piles
  - Criteria Will Ensure No Greater Health and Safety Concerns Will Be Presented by Added Materials
  - Criteria Will Identify Potential Jurisdictional Hurdles



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## Going Forward -- Alternate Feed Guidance

- NRC Has Expressed Concerns About Listed Hazardous Wastes
  - Staff Should Review the State of Utah/IUC Protocol on Listed Hazardous Waste

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## Dual Regulation Issues

- Non-Agreement State/NRC Jurisdiction in Light of Concurrent Jurisdiction Decision
- Jurisdiction over *In Situ* Leach Facilities
  - EPA/NRC Jurisdiction
  - State/NRC Jurisdiction

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## Non-Agreement State Jurisdiction Over the Nonradiological Components of 11e.(2) Byproduct Material

- Some Non-Agreement States Appear Unwilling to Accept Commission Decision on Preemption
- NRC Should Clarify By Letter that the Commission's Preemption Decision is in Effect

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## Dual Regulation of *In Situ* Leach Uranium Recovery Facilities

- Overlapping Regulation by NRC/EPA (or State with Delegated UIC Program)
- Overlapping NRC Regulations and State ISL Regulations
  - Some States Have Extensive ISL Regulatory Programs
  - Submittals to State under ISL Program and to NRC Are Often Almost Identical

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## Moving Forward --Dual Regulation of ISL Facilities (con't)

- MOUs
- Reliance on State ISL Program
  - Wyoming Governor Geringer Letter and Wyoming DEQ Letter
- Reconsideration of NRC Jurisdiction Over ISL Program
  - Asserting Jurisdiction Over All Wellfields Created Problems
  - Making All Fluids 11e.(2) Created Additional Problems

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## Consequences of Effluent Disposal Decision

- Decision to Treat Process and Restoration Fluids as 11e.(2) Byproduct Material is Inconsistent with Definitions of Byproduct Material, NPDES Regulations, and Ignores §62 of the AEA
- Distinction Between Process Fluids and Restorations Fluids is Not “Artificial”
- Ore Body is Not 11e.(2) Byproduct Material

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## Consequences of Effluent Disposal Decision Con't

- NPDES Regulations Do Not Allow Discharge of Process Fluids From Mills or ISL Operations, but Do Allow Discharge of ISL Restoration Fluids, 40 C.F.R. §440.34.
- §62 Requirement Regarding “Removal from Its Place of Deposit in Nature” and Exemption for “Unimportant” Quantities



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## Consequences of Effluent Disposal Decision Con't

- Decision Creates Complex, Burdensome and Unlawful Regulatory Scheme
  - Places All ISL Operations with NPDES Permits in Violation of Those Permits Ex Post Facto
  - Impacts Conventional Tailings Sites Also
  - Some Uranium Recovery Operators Have Received Implied NOVs
  - Requires NRC to Regulate Ore Body as 11e.(2) Byproduct Material until Restoration is Complete



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## Moving Forward -- Effluent Disposal

Move Forward by Moving Back – Reconsider Decision That All ISL Fluids Are 11e.(2) Byproduct Material

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## Fee Structure for Uranium Recovery Licensees

- Economic State of the Industry
- Fees
  - Annual
  - Hourly
  - Project Manager Designation
- Possible Solutions

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## Economic State of the Industry

- Price of  $U_3O_8$
- Uranium Production
- NRC Fees
- What Fees Represent

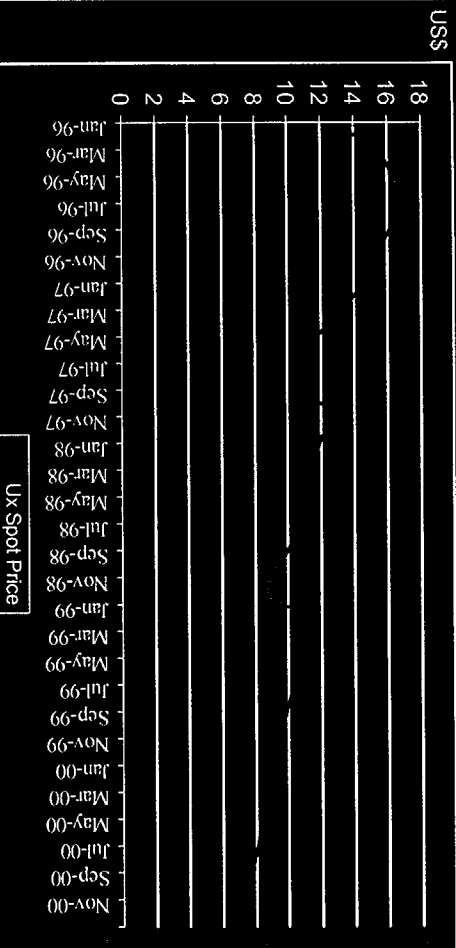
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## Price of $U_3O_8$

- Price Currently Hovers Around \$8/lb
- NRC Fees May Be Last Nail in Coffin for Companies Just Holding On

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## Decline of Uranium Spot Price Since Mid 1996



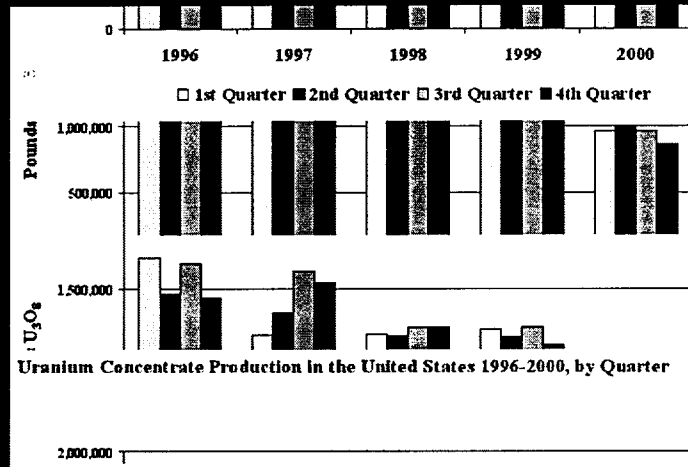
## Uranium Production

Total Production of Uranium Concentrate in the United States  
(Pounds U<sub>3</sub>O<sub>8</sub>)

Calendar-Year Quarter	1996	1997	1998	1999	2000*
1st Quarter	1,734,427	1,149,050	1,151,587	1,196,225	960,386
2nd Quarter	1,460,058	1,321,079	1,143,942	1,132,566	1,004,090
3rd Quarter	1,691,796	1,631,384	1,203,042	1,204,984	959,296
4th Quarter	1,434,425	1,541,052	1,206,003	1,076,897	860,389
Calendar-Year Total	6,320,706	5,642,565	4,704,574	4,610,672	3,784,161

Source: Energy Information Agency  
P - indicates preliminary data





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## NRC Fees

- NRC Required by Law to Recover Nearly 100 % of Costs -- Results in Licensees Charged for Activities Not Related to the License (Recent Changes are Not Enough)
- Hourly Fees Are Site-Specific but Are Quite High
- Project Manager Fees -- Recovery Began Last Year -- Bills Skyrocketed
- Unnecessary Duplication Further Boosts Fees Without Commensurate Benefit

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## What Fees Represent

### Example 1 -- Operating ISL Facility

- 2000 Fees Represent Approximately 12% Actual Payroll of All Site Employees
- 2000 Fees Represent Approximately 31% of the Actual Site Administrative Costs
- 2000 Fees Represent Approximately \$0.25 Per Pound of Direct Production Costs
- 2000 Fees Represent Approximately 7.8 FTEs

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## What Fees Represent -- Con't

### Example 2 -- Tailings Site in Reclamation

- 2000 Fees Represent Approximately 8% of Entire Site Reclamation Costs
- 2000 Fees Represent Approximately 32% of Actual Payroll for All Site Employees
- 2000 Fees Represent Approximately 7 FTEs

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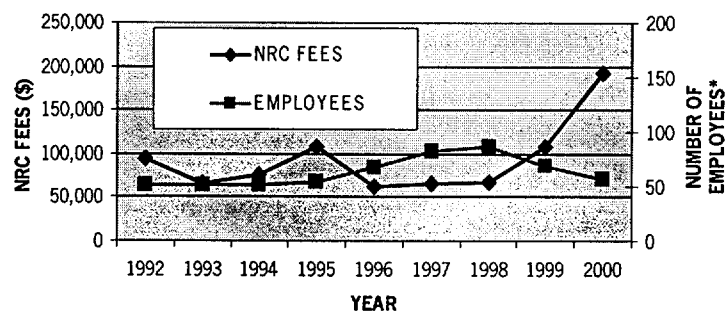
## What Fees Represent -- Con't

### Example 3 -- Tailings Site in Reclamation

- 2000 Fees Represent Approximately 12% of Entire Site Reclamation Costs
- 2000 Fees Represent Approximately 43% of Actual Payroll for All Site Employees
- 2000 Fees Represent Approximately 1.2 FTEs

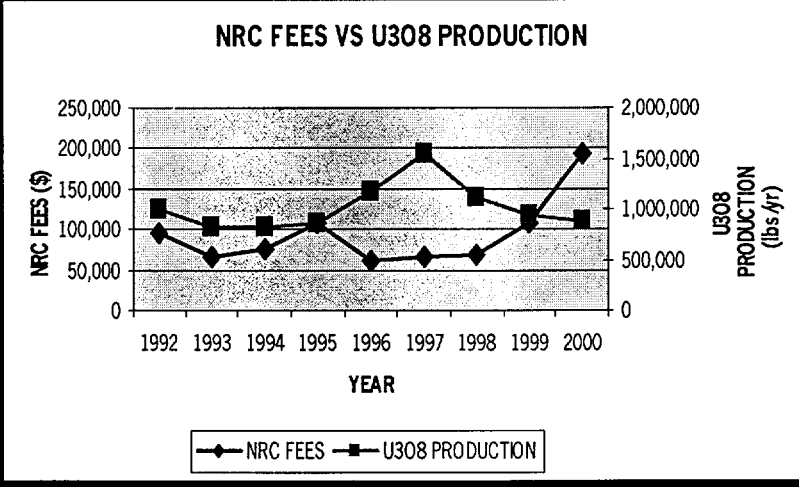
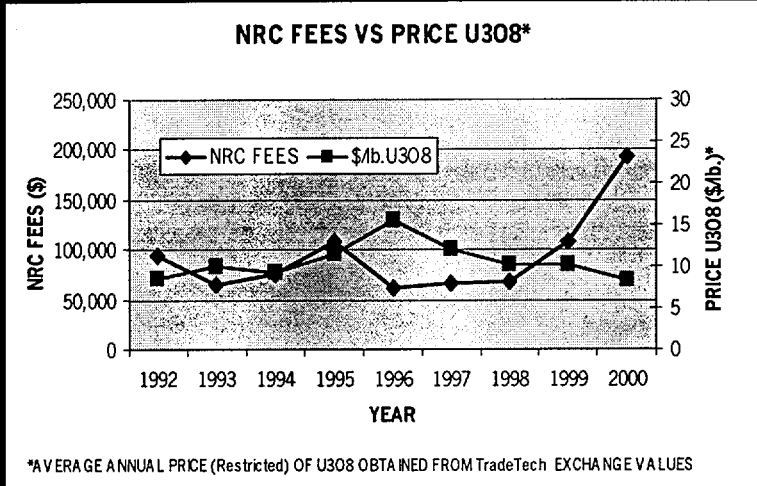
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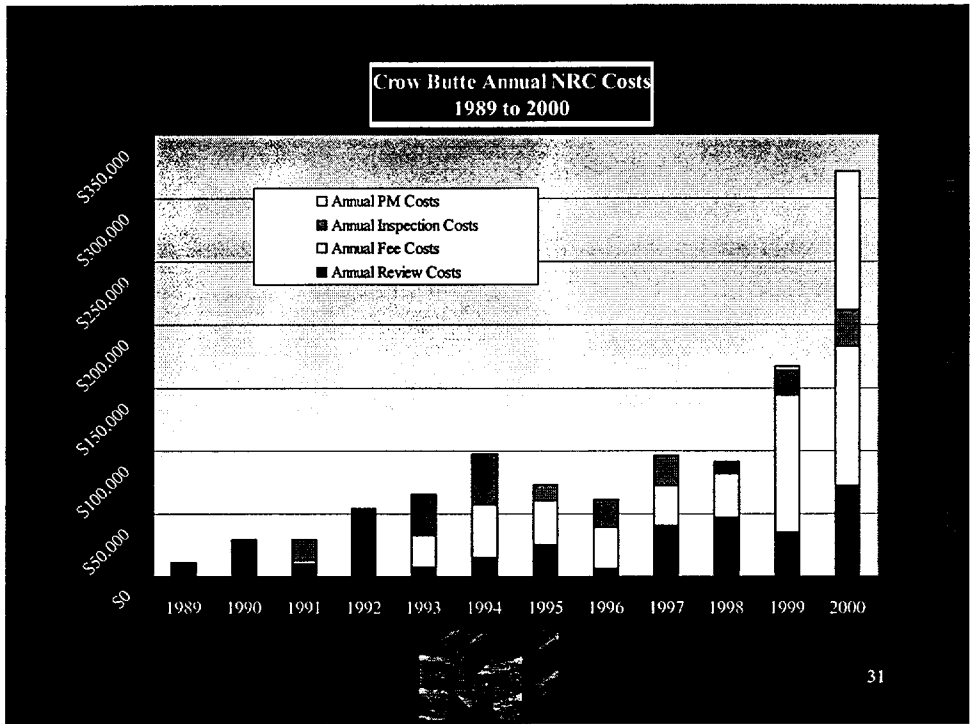
**NRC FEES VS NUMBER OF PRI EMPLOYEES\***



\* NUMBER OF PRIEMPLOYEES INCLUDES THE HUP AND CASPER OFFICE (Closed in Sep 2000)

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### Fees 1996-2001

Fiscal Year	1996	1997	1998	1999	2000	2001
Class I Annual Fee	\$57,000	\$61,600	\$61,800	\$131,109	\$132,000	\$94,300
Class II Annual Fee	\$32,200	\$34,800	\$34,900	\$109,000	\$111,000	\$79,000
Hourly Rate	\$120	\$125	\$121	\$140	\$143	\$144

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## Project Manager Fees -- 2000

Project Manager Fees Are Significant Portion  
of Hourly Fees

Facility	9/26/99- 12/30/00 Review Costs	9/26/99- 12/30/00 Project Manager	9/26/99- 12/30/00 Total
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## Moving Forward -- NRC Fees

- NMA Will Pursue Legislative Solution
- NMA Will Pursue Regulatory Exemption
- NRC Should Further Investigate Coding of Project Managers' Time
- NRC Should Eliminate Unnecessary Duplicative Oversight to Minimum Necessary to Fulfill Its Responsibilities

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