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Petition for Rulemaking Submitted by the National Mining Association Requesting that Uranium Recovery Licensees be Exempted from PR-170 and 171 Fees

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Attached please find the National Mining Association's petition for rulemaking on fees. If you have any questions, please contact me.

Katie Sweeney
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National Mining Association
202/463-2627

September 11, 2001

BY HAND DELIVERY

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Office of the Secretary
Attn: Rulemakings and Adjudication Staff
Washington, D.C. 20555

Re: Petition for Rulemaking to Exempt Uranium Recovery Licensees from Nuclear Regulatory Commission Part 170 and 171 Fees

Dear Ms. Vietti-Cook

The National Mining Association ("NMA") hereby petitions the Nuclear Regulatory Commission ("NRC" or "Commission") to conduct a rulemaking to establish the basis and timeframe for waiving the assessment of all annual and periodic inspection and licensing fees of NRC uranium recovery ("UR") licensees or, in the alternative, to establish the basis for waiving fees associated with a 10 CFR Part 41 rulemaking proceeding. NMA submits that maintenance of a viable domestic UR industry, including specifically maintenance of its substantial waste disposal capacity, as an important component of a viable domestic nuclear fuel cycle is demonstrably "*in the public interest*" of the United States of America.

NMA is an organization composed of companies engaged in mining and mineral processing. Member companies include (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of

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mining and mineral processing machinery, equipment, and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry. NMA submits this petition on behalf of its member companies who are NRC uranium recovery licensees and are adversely affected by the existing fee scheme. These members include the owners and operators of uranium mills and mill tailings sites and *in situ leach* ("ISL") uranium recovery facilities.

Since 1990, NRC has been required by legislation to recover 100 percent of its budget through the imposition of fees on its licensees. Subsequently, pursuant to the Fiscal Year (FY) 2001 Energy and Water Development Appropriations Act, this percentage is to decrease by two percent per year until 2005. As a result, for fiscal year 2001, NRC is only required to recover 98 percent of its budget. Although the two percent decrease in recovery requirements and subsequent annual decreases up to ten percent are better than nothing for the domestic UR industry, they may be a classic example of "too little, too late." Therefore, NMA respectfully requests that the Commission publish a Notice of Proposed Rulemaking ("NPR") to address the fee issues raised by this petition.

It is undisputed that the Commission has the authority to waive fees if it can be established that it would be "*in the public interest*" to do so (e.g., non-profit licensees)[1]. NMA recognizes that any waiver of fees for UR licensees means that the burden of those fees will have to be shifted to other categories of licensees. Only if it can be established that it is "*in the public interest*" can such a burden shift be justified. NMA believes that it can establish that such a burden shift is not only, in a broad sense, "*in the public interest*", but also, in a narrow sense, in the interest of other NRC licensees and, in particular,

[1] *See* 66 FR 32455-6, June 14, 2001

nuclear fuel cycle licensees, including commercial nuclear reactors. Indeed, serious consideration of this petition may serve to stimulate some further Congressional consideration of the importance of maintaining a viable UR industry.

I. Background

A. NRC Fees

Presently, NRC imposes annual and periodic inspection and licensing fees on its licensees pursuant to the Omnibus Budget Reconciliation Act of 1990 ("OBRA"). Originally, OBRA required NRC to recover 100 percent of its budget with specified exceptions. Inspection and licensing fees are administered under 10 CFR part 170 pursuant to the Independent Offices Appropriation Act of 1952. These fees reimburse NRC for activities such as review of license applications. Annual fees are established under 10 CFR Part 171 and cover reimbursement for all other costs not covered under 10 CFR part 170. OBRA, Section 6101(c)(3) states that fees "shall have a reasonable relationship to the cost of providing regulatory services."

The FY 2001 Energy and Water Development Appropriations Act altered NRC's original requirement for a 100 percent budget reimbursement, reducing it to a 98 percent recovery requirement for FY 2001. Further, NRC's recovery requirement will be reduced by two percent each year until FY 2005 which ultimately will result in a 90 percent recovery requirement. This eventual ten percent exemption, along with a $3.2 million appropriation from the General Fund, was implemented to cover certain agency expenses (e.g., regulatory reviews provided to other Federal agencies and States) because no *direct benefit* from these activities were realized by NRC licensees.

On June 14, 2001, in a Federal Register Notice, NRC issued another annual Final Rule on the *Revision of Fee Schedules; Fee Recovery from FY 2001* based on the mandatory budget recovery figure of 98 percent. The Commission noted that it must recover approximately $453.3 million dollars for FY 2001. For FY 2001, the Commission imposed the following fee scheme for its UR licensees:

Annual Fees for Uranium Recovery Licensees:

Class I Facilities (uranium mill licensees) $94,300
Class II Facilities (ISL licensees) $79,000
11e(2) Disposal.....$58,200
11e(2) Disposal Incident to Existing Tailings Sites.....$9,200

Class I & II sites will be billed on a quarterly schedule.

Additionally, NRC levies inspection fees on an increased hourly basis of $144 per hour for UR facilities, an increase from FY 2000's rate of $143 per hour.

It is important to note that NRC fees are not levied universally for all types of licensees. For example, NRC waives the annual fee requirement for those licensees who have relinquished their authority to operate and have permanently ceased operations. Small business entities also benefit from their status with the imposition of lower fee rates. Non-profit educational institutions are fully exempt from fees otherwise required. Acting "*in the public interest*" so that sources that create valuable knowledge for the public at large and the fuel cycle specifically may be preserved, NRC allows most colleges and universities to be exempt from Part 170 and 171 fees based on the undue burden placed on their ability to hold and maintain a license and their positive benefits for "*the public interest.*"[2]

[2] *See* 10 CFR 170.11(a)(4) and 10 CFR 171.11(a)(1).

B. Uranium Recovery Industry

For the past several years, the domestic UR industry has suffered the ramifications of a severely depressed uranium market. Low spot-market prices for uranium coupled with the lack of long-term contracts for domestic UR operations have caused the entire industry to experience significant economic downturns. Employment in the uranium recovery sector has decreased by almost 50% since 1996. At the beginning of this year, the spot-market price of uranium dipped below eight dollars per pound based on poor demand for, and an oversupply of, uranium. As a result, most if not all domestic UR companies have seen the value of their stock plummet and, indeed their financial stability, undermined to the point of threatening their continued existence. Current uranium spot-market prices cannot sustain domestic UR conventional or non-conventional (i.e., ISL) capacity. The rapid decline in uranium price and production levels have caused companies such as Power Resources, Inc. ("PRI") and others to lay-off one-third of its recent workforce thus potentially losing irreplaceable human resources. Others like Rio Algom have experienced similar significant economic problems while producing at its Smith Ranch ISL mine due to significant NRC fees (e.g., annual and inspection fees), International Uranium Company ("IUC") has survived to operate its conventional mill at Blanding, Utah by processing alternate feeds and receiving recycling fees but still has difficulty maintaining any consistent operating levels. All have

experienced significant NRC fees in part because there are so few active UR licensees due to market conditions. The result is a vicious circle, with fees going ever upwards as the number of licensees goes down, that threatens to destroy domestic UR capacity, including conventional mill tailings.

Regulatory inefficiencies have also contributed to the domestic UR industry's problems. As detailed in NMA's White Paper[3], several events have caused UR licensees to suffer even more pronounced adverse cost impacts. In 1993-4, the Commission decided to close the Uranium Recovery Field Office ("URFO") in Denver to allegedly achieve cost-cutting benefits. Unfortunately, the closure benefits not only were not recognized, but UR licensees paid significantly higher fees due to the loss of virtually all institutional knowledge of UR licensed operations with the URFO's closure and the subsequent need to re-educate new NRC personnel. None of the URFO staff relocated to the Rockville, Maryland NRC offices. The most dramatic example of the increased costs to UR licensees as a result of this loss of all hands-on staff experience is manifested in the Hydro Resources, Inc. ("HRI") licensing proceeding. Post-URFO, NRC staff's inexperience with licensing ISL operations led to an excrusiately long and drawn out licensing process culminating in a so-called "*informal*" hearing that began several years ago and continues presently in which intervenors picking on every staff inconsistency have filed in excess of 15,000 pages.[4]

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[3] *See generally* "Recommendations for a Coordinated Approach to Regulating the Uranium Recovery Industry, A White Paper Presented by NMA."

[4] See also the attached slide regarding the costs to HRI, some significant component of which can be directly attributed to staff inexperience.

III. By Helping to Restore the Domestic UR Industry to Viability, NRC Serves the *Public Interest*

A. NRC Fee Policies Currently Provide for Fee Reductions and Waivers that are "*in the Public Interest*"

As noted above, the present NRC fee scheme allows certain waivers or reductions in fee payments for certain types of licensees. Although not relying solely, or even explicitly, on the existence of adverse economic impacts on licensees based on the prior 100 percent recovery program, the Commission has made *public interest* findings that effectively granted economic relief through fee waivers or reductions.

First, the NRC has provided a reduction in annual fees paid by licensees that are recognized as *small entities* under the Regulatory Flexibility Act. As noted in 66 Federal Register 115, an in-situ licensee paid a reduced annual fee of $400, a decrease of approximately $26,850 from the regular annual fee based on its status as a small entity.

Second, NRC waives the annual fee requirement for licensees that have relinquished their authority to operate and ceased operations permanently, provided that proper notifications have been filed pursuant to fee regulations. Despite the fact that reclamation plans must be filed with NRC to terminate a license, these plans need not be approved to trigger the fee waiver provision.

Third, non-profit educational institutions are also granted fee waivers. NRC found that waiving fees for colleges or universities applying for or holding a license would be "*in the public interest*" because these institutions provide the potential for creating important scientific information and the formulation of new innovative

techniques. Though some exceptions do apply, most non-profit educational institutions are exempt from *all* NRC fees.

Every NRC action to benefit certain licensees with reductions or waivers of fee requirements creates burdens on other licensees because it must recover those lost funds from other licensees. In the past, NRC has refused to rely solely on economic hardship to justify fee waivers because to do so would require shifting the burden of increased fees on other licensees which mere economic hardship cannot justify. Thus, imposing additional fees on other licensees can only be justified if it can be shown to benefit the "*public interest*." Reducing the economic impact on an economically challenged segment of NRC's licensees is merely a collateral benefit to such burden shifting.

B. NRC Must Alter Fee Requirements for Domestic UR Licensees to Preserve the Benefits They Can Provide to *The General Public Interest* and NRC Licensees, Including Fuel Cycle Facilities

NRC has demonstrated that acting "*in the public interest*" is a valid justification for the reduction and/or waiver of fee obligations. NMA asserts that shifting reasonable economic burdens from UR licensees to other licensees can be justified based on several significant *public interest* factors. Thus, the issue to be explored is whether the burden to be shifted is reasonable in light of the *public interest* benefits.

Shifting a *reasonable* burden of fees from UR licensees to other fuel cycle licensees would be "*in the public interest*." Currently, if domestic UR licensees are exempted from fees, NRC would have to shift approximately $4-5 million in fees.[5]

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[5] *See* Nuclear Regulatory Commission, "Public Meeting on Rulemaking and Guidance Development for Uranium Recovery Industry", Official Transcript of Proceedings, p. 34-5.

Spread over 100 fuel cucle licensees, each fuel cycle licensee would pay approximately $40,000 in fees per year.[6] A shift of only $40,000 per year, when weighed against the actual and potential benefits domestic UR licensees can and will provide, is a modest amount. Additionally, this fee shifting may only be necessary for a very short time depending on projected increases in the demand for and price of uranium in the near term. Thus, fuel cycle licensees would bear a *reasonable* burden both in terms of the amount and the duration of the increased fees so that UR licensees may retain their licenses and protect valuable fuel cycle resources.

The *public's interest* in UR begins with the benefit NRC confers with the issuance of a license. By providing a licensee with a license to utilize certain materials, NRC confers a presumptive benefit. The benefit is the authority for the licensee to decide when and how best to use the material authorized by the license. Implicit in this benefit is the assumption that the licensee will be able to use the licensed materials in a useful and cost-effective manner. Indeed, NRC's current focus on risk-informed, performance-based regulatory oversight is designed to enhance cost-effective regulation by focusing more licensee and NRC resources on more serious potential hazards and less resources on less serious potential hazards. Thus, imposing unreasonable regulatory burdens on such licensees runs counter to prevailing Commission policy and threatens their short-term economic viability at a time of national energy crisis which suggests the potential for significantly increasing demand for a variety of UR services in the finite future.

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[6] *See id.*

As noted in NMA's White Paper[7], subsequent staff papers, Commission Staff Requirements Memoranda, and meetings with staff and the Commission, dual regulation and unresolved inefficiencies in NRC's UR regulatory program are providing a significant drag on UR licensees' economic well-being in the face of a severely depressed uranium market. Dual regulation and regulatory inefficiencies result in increased internal operating costs as well as increased NRC fees. Indeed, NMA was forced to request that NRC forego developing a potentially more efficient regulatory program through a new Part 41 because the cost of developing such a program is prohibitive at present due to the increased fee impact on UR licensees.

Moreover, increased costs have led to, and may lead to again in the future, the loss of virtually irreplaceable human resources to other walks of life. This, in turn, will adversely impact the UR sector's ability to rebound economically as the price of uranium rises to levels that can support profitable domestic production. ISL production can become profitable with relatively limited increases in the price of yellowcake (i.e., $13-16/ lb range). Conventional mills, however, present a different story because of their increased operating costs. Modest price increases will not be sufficient to support continuing production of yellowcake by conventional milling. Yet, conventional mills hold the promise of providing significant new benefits to the ISL licensees, other fuel cycle licensees, including reactors, and other NRC licensees.

Conventional mills already provide a place for long-term containment and care of ISL UR wastes. Additionally, by processing so-called alternate feed materials containing

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[7] *See generally* "Recommendations for a Coordinated Approach to Regulating the Uranium Recovery Industry, A White Paper Presented by NMA."

recoverable uranium, conventional mills have developed a new market niche that hopefully can sustain their viability even if the price of uranium produced from conventional ore alone cannot. Alternate feed processing provides a valuable source to other parties, including NRC licensees, DOE, and others, that can divest themselves of materials that are wastes to them. Conventional mills can recycle such wastes and recover valuable energy resources that would be lost by direct disposal yet assure that the post-UR wastes will be contained and controlled in accordance with EPA/NRC UMTRCA regulations in perpetuity.

Only by processing alternate feeds and receiving recycling fees can conventional mills produce yellowcake profitably without a huge increase in the price of yellowcake. More efficient regulatory oversight through performance-based license conditions authorized under a new Part 41 could support viability of such operations and the benefits provided to waste generators and national energy interests.

Additionally, conventional mill tailings impoundments with approximately 20 million tons of disposal capacity offer the potential to assist in solving major radioactive waste disposal problems for "similar" high volume, low activity wastes. The stringent regulatory controls for both radiological and non-radiological wastes including a long-term governmental custodian with long-term stewardship costs funded by the licensee make such sites extremely valuable potential resources to address waste disposal options of NRC licensees including fuel cycle licensees. The full scope of their value to the *general public interest* in permanent disposal, as opposed to temporary storage, and that of NRC licensees has only just begun to be examined in detail. Losing the significant low-level radioactive waste disposal options that such facilities may offer before those

options have been fully explored by NRC, licensees, States, and the general public would be a blow to the *national public interest.*

Finally, the UMTRCA UR regulatory program has provided, and will continue to provide, and invaluable "living laboratory" addressing both operating and decommissioning impacts of nuclear fuel cycle facilities. The information and experience gained on constructing and maintaining engineered barriers, groundwater corrective action, including ISL aquifer restoration, and site cleanup verification to name a few can only help to reduce the impact of future operations and future site closures which is demonstrably "*in the public interest.*"

Allowing the domestic UR industry to wither to the point of virtual extinction or to disappear completely cannot be in the *national public interest* because of the benefits it provides and the potential benefits it could provide. Domestic UR operations provide value to the U.S. by producing energy-generating yellowcake and reducing reliance on foreign supplies from potentially politically unstable areas. Domestic UR operations can recycle waste products, generate yellowcake, and provide additional waste disposal options to radioactive waste generators. UR operations also have the potential for a dramatic increase in LLRW waste disposal options. But, only a viable UR industry can produce these types of societal benefits.

Several bills currently pending before Congress recognize the importance of a viable domestic UR industry. For example, Congress is considering S.472 entitled, "*Nuclear Energy Electricity Supply Assurance Act of 2001*", Section 126 "*Prohibition of Commercial Sales of Uranium and Conversion held by the Department of Energy until 2001*" and H.R.4, referred to the Senate, entitled, "*Securing America's Future Energy Act*

of 2001", Section 309, "*Prohibition of Commercial Sales of Uranium by the United States until 2009.*" Both pieces of legislation effectively acknowledge the importance of UR as a part of the domestic energy market. Consideration of these legislative initiatives demonstrates Congressional interest in maintaining a viable domestic UR industry as an important national resource that should be preserved.

Indeed, NRC has recently explicitly noted ongoing Congressional concerns about a viable domestic UR industry.[8] In discussing factors that may provide a *public interest* basis for an extension of the time period for initiating decommissioning under NRC's "Timeliness in Decommissioning" rules[9] the timeliness in D&D SRP cites the following factors: (1) Federal concern for the impact on the domestic uranium mining industry; (2) future need for services provided by material licensees to the electric utility industry; (3) future needs of the national defense industry; (4) a substantial increase in the efficiency of decommissioning thus reducing anticipated dose to workers; and (5) reduced decommissioning costs for Federal facilities.

Another example of "*how the public interest will be served*" by an extension to begin D&D to go on standby is "whether decommissioning of the facility will require dismantlement, such that the facility will no longer be available for nuclear purposes."[10] The SRP goes on to provide examples of staff findings that demonstrate it would be "*in the public interest*" to grant an extension as follows:

"[T]he standby period will allow economic conditions in the uranium market

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[8] *See* "NRC Regulatory Issue Summary 2000-09, Standard Review Plan for Licensee Requests to Extend the Time Periods Established for Initiation of Decommissioning Activities", Attachment 1, p. 4, Section 4.1.3.

[9] *See* 10 CFR 30.36, 40.42, 70.38, and 72.54.

[10] Timeliness in D&D SRP, p. 5, section 4.1.3(a).

> to improve. Existing statutes oblige the Secretary of Energy to gather information on the uranium mining industry and to have a continuing responsibility for the domestic industry, to encourage the use of domestic uranium. See 42 U.S.C. §§ 2201(b) & 2296(b)(3). Although this responsibility is not NRC's, we recognize that the viability of the industry is a Federal concern, or an alternate schedule involving some of the Federal licensee's other facilities would better take into account the Federal licensee's overall decommissioning needs, thereby reducing public funds needed for the ultimate decommissioning of the facility, etc."[11]

Moreover, a July 17, 2001 NRC staff letter to Kennecott Uranium Company regarding the postponement of the Timeliness in D&D requirements' implementation at its Sweetwater Uranium Facility stated explicitly that, "[t]he continued existence of the mill is in the public interest..." and "maintaining the domestic capacity to provide the raw material for nuclear power is in the public interest."[12] Thus, it can be fairly said that NRC staff recognizes that maintaining a viable domestic UR industry is "*in the public interest*" of the United States generally. As NMA has noted above, it is also specifically in the interest of the NRC licensees, potentially including reactor licensees, within and without the nuclear fuel cycle.

During these difficult economic times for the domestic UR industry, NRC fees could have, and have had, a significant negative impact on this sector of the fuel cycle's viability. An example would be the loss of the knowledge and talent base necessary to allow the UR industry to develop and progress. Burdensome fees force UR licensees to expend resources that could otherwise be used to hire new staff or maintain the high caliber of existing workers. The URFO closure experience demonstrates just how costly

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[11] *Id.* at 6, Section 5.2.

[12] *See Staff Letter to Oscar Paulson, Kennecott Uranium Company,* (July 17, 2001)

is it to lose skilled staff and then to have to staff up and retrain personnel capable of effectively working with UR regulatory issues.

Shifting *reasonable* economic burdens to other licensees can serve "*the public interest*" if the alternative is to lose all or even some of UR's valuable resources including ISL and conventional uranium mill facilities. D&D activities have become increasingly important at fuel cycle facilities in part because of NRC's timeliness in D&D and final site D&D standards set forth in 10 CFR 20.1401 et seq. As a result, many sites or, portions thereof, are addressing reclamation activities to meet regulatory standards. NRC has estimated that site D&D activities will generate large volumes of new LLRW that will need a home for disposal.[13] Licensed sites and government facilities will require the disposal of large volumes of LLRW in the form of soils, sludges, and debris. Economically viable disposal options will be vital to final site closure and license termination at many complex sites. Conventional UR facilities can provide new alternatives to current disposal options for fuel cycle facilities with large volumes of LLRW. Waste disposal for non-fuel cycle facilities generating technologically enhanced naturally occurring radioactive materials ("TENORM") may also benefit from more numerous and competing options for disposal. It would be "*in the public interest*" to help to assure that the resources will not be lost while these important waste disposal opportunities are being debated, perhaps in a Part 41 rulemaking process.

UR industry licensees can continue to develop information, techniques, and systems that will add to ongoing protection of workers and the environment at "active" sites and assure long-term post-closure protection at UR mill tailings impoundments,

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[13] *See generally id.*

particularly if additional alternate feeds are processed and *other than 11e.(2) materials* are disposed there. Research in groundwater restoration at ISL sites, which is explicitly recognized in H.R.4, Section 309, can lead to new or refined methods for efficient, low-impact UR. Shifting a *reasonable* burden of fees to other licensees will allow UR licensees to continue developing such information in anticipation of a better uranium market and the reinstatement of production activities.

IV. Conclusion

For several years, the UR industry has suffered through the effects of a severely depressed uranium market. Despite the fact that prices have remained low enough to threaten the loss of domestic UR capability, it is likely that the market for uranium will recover somewhat in the near term. However, until that happens, UR licensees must survive without adequate revenues. Even without such revenues, UR licensees must still find a way to pay NRC fees imposed or face loss of their licenses which would truly put the nail in the coffin. As NMA has demonstrated and NRC has recognized, it would be "*in the public interest*" to relieve the fee pressure on UR licensees, at least in the near term, by exempting them from all fees until the price of uranium reaches $13-16/ lb. for at least one year or, in the alternative, to exempt UR licensees from some fees, including fees for development of a new Part 41 which ultimately would lead to more cost-effective regulatory oversight. Given that the fee burden to be shifted (i.e., $40,000 per fuel cycle licensee) and the likely time frame during which burden shifting would be necessary are not excessive and that the *public interest* benefits, existing and potential, are significant. The burden shift would be reasonable and prudent.