National Mining Association
Foundation For America's Future

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BY ELECTRONIC AND U.S. REGULAR MAIL

U.S. Nuclear Regulatory Commission
Chief, Rules and Directives Branch
Mail Stop T6-D59
Washington, DC 20555-0001

Dear Sir or Madam:

Please find attached the National Mining Association's ("NMA") comments regarding the Nuclear Regulatory Commission's ("NRC") Request for Comment entitled *Termination of Uranium Milling Licenses in Agreement States; Opportunity to Comment on Draft Revision of NRC Procedure* as shown in a August 23, 2001 Federal Register notice from NRC on behalf of NMA's member licensees.

If you have any questions, please feel free to contact me at (202) 463-2627. Thank you for your time and consideration in this matter.

Sincerely,

Katie Sweeney

Katie Sweeney
General Counsel
National Mining Association

Enclosures

Template = ADM-013

E-RIDS = ADM-03
Add = K. Hsueh (KPH)

NATIONAL MINING ASSOCIATION'S COMMENTS ON THE

NUCLEAR REGULATORY COMMISSION'S TERMINATION OF URANIUM MILLING LICENSES IN AGREEMENT STATES; OPPORTUNITY TO COMMENT ON DRAFT REVISION OF NRC PROCEDURE

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I. General Comments

1. The National Mining Association (NMA) appreciates the Office of State and Tribal Program's (OSTP) efforts to streamline the process for Nuclear Regulatory Commission (NRC) concurrence determinations on license termination proposals for uranium recovery (UR) facilities located in Agreement States. Given that § 274(c) of the Atomic Energy Act (AEA), as amended, and 10 C.F.R. 150, 15a(a) require this unique "extra step" for license termination of UR licenses, which is not required for other Agreement State AEA licenses, it is important to make the process as efficient and cost-effective as possible. It is important for the Agreement State program itself and for all such UR licensees. Although, as NMA has noted previously,
§ 274(c) necessarily diminishes the normal scope of Agreement State license termination authority in the interests of "a uniform national program" for UR facilities, it still does not imply increased NRC involvement in such decisions "on a scale that results in duplicative regulation."[1] Any such detailed involvement by NRC in Agreement State regulatory oversight would run counter to the fundamental concept of "relinquishing" federal authority and as NRC recently stated:

> "It has never been the Commission's intent, or practice, to place itself into the position of regulating such activities conducted by Agreement State licensees. Any change of policy in this area would require the pervasive involvement by NRC in specific Agreement State Licensing activities. This would run afoul of one of the purposes of § 274 of the AEA, which is to promote an orderly pattern of regulation between the Commission and the States in a manner which will avoid dual or concurrent regulation."[2]

It would also plainly conflict with the purposes of, and thereby the need for, NRC's Integrated Materials Performance Evaluation Program (IMPEP) which purports to determine if Agreement State programs have the necessary economic/technical resources and compatible regulatory requirements to perform appropriate AEA regulatory oversight. Thus, anything that smacks of duplicative regulatory oversight, inappropriate interference or routine second-guessing must be avoided if the Agreement State concept

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[1] NMA May 2, 2000 comments on the Nuclear Regulatory Commission's (NRC) Guidance Regarding Termination of Uranium Recovery (UR) Licenses in Agreement States, p. 2.

[2] Id.

is to be meaningful. As a result, NMA believes that the proposed Draft Revision of Procedure SA-900 has some fundamental flaws that make it less likely to increase efficiency in spite of the good intentions of the drafters.

2. During various meetings over the last year or more, UR licensee/Agreement State/NRC discussions have consistently indicated that early full-scale NRC involvement in Agreement State license termination efforts would be far too costly and, thus, a questionable use of NRC Staff resources. Assuming that this conclusion is accurate, then on-going, full-scale NRC staff involvement in the evolution of such license termination plans would be even less appropriate. Therefore, in accordance with a suggestion made at the NMA/NRC Conference in Denver in June, 2001, NMA believes that the most efficient approach to streamlining this process while still fulfilling the statutory mandate of §274(c) is to place the responsibility on the Agreement State to seek NRC guidance early-on when a license termination proposal raises novel or unique issues or poses potentially significant incremental environmental or public health impacts that are atypical with normal, standard site closure proposals.

Thus, in situations where due to site specific conditions and/or particular license circumstances (e.g., financial resources) license termination involves something other than the standard 1,000 year closure pursuant to NRC's BTP on surface stabilization and ACL guidance, the Agreement State should actively seek NRC staff guidance. The Sherwood proposal is a good example of an atypical site closure proposal in several respects such as the amount of cover, the lack of rock armor on the top of the impoundment and the retention of liquids in the pile. Other examples of atypical closure proposals might be a 200 year closure plan, removal of all or part of the tailings to another site, a cover containing a synthetic liner or an Alternate Concentration Limit (ACL) proposal with multiple points of compliance and multiple points of exposure. Given the highly site-specific nature of site-closure activities and the right of Agreement States and their licensees to propose alternatives in accordance with § 84(a) of the AEA, as amended, the possibilities for unique or novel proposals is bounded only by the ingenuity of licensees and State regulators.

NRC involvement early-on in these types of situations would result in a more be focused and more cost-efficient approach to avoiding the problems encountered on the Sherwood license termination matter. Otherwise, assuming the Agreement State UR program is in good standing with OSTP, NRC concurrence should be a routine stamp of approval if the Completion Review Report (CRR) satisfies "fundamental completeness" requirements.

3. In keeping with NMA's comments in (2) above, NMA does not recommend that a *draft* CRR be submitted as proposed by the draft SA-900. On its face this suggests unnecessary and costly duplicative review of concurrence requests. Initially, NRC's CRR review should be for "completeness", as it is with all NRC licensee proposals. If the submission is incomplete NRC can send it back or request additional information to make it complete. Assuming unique, novel or potentially significant incremental environment or public health issues have been addressed early-on, barring highly unusual circumstances such as a blatant failure to fulfill regulatory requirements, final NRC concurrence should be routine – indeed, almost perfuntory. Again, a draft CRR fairly begs for bureaucratic interference that should be entirely unnecessary.

4. NMA believes that rather than using old CRR's that are themselves not entirely internally consistent OSTP should reference relevant Standard Review Plan (SRP) sections so that Agreement State regulators will look at the same things their NRC counterparts would for NRC licensees. By cross-referencing the Staffs SRP's for conventional mills and ISL UR facilities everyone will be operating from the same play book. Of course if some issues (eg. alternatives) merit additional discussion it should be included in SA-900.

5. Finally, state standards under other (i.e., non-AEA) programs that may be relevant to a given licensed site are not matters for NRC concurrence and should have no part in NRC's concurrence review or concurrence determination. These are matters between the State and its permittee and are not properly the subject of NRC regulatory oversight.

II. Specific Comments

1. In our May 2, 200 comments, NMA suggested that the title of SA-900, "Termination of Uranium Mill Licenses in Agreement States" was inappropriate. Specifically, NMA commented:

> This title is incorrect or at least ill conceived since SA-900 addresses *in situ* leach (ISL) UR operations which, although having some elements in common with portions of conventional milling, do not share the bulk of the potential health and safety issues associated with uranium mills and uranium mill tailings. This mischaracterization is compounded by the reference in Section III.A of the SA-900 document to the Commission's oversight determination being applicable to "material as defined in 10 CFR. 150.3(c)(2) (*i.e. uranium mill tailings*)" (emphasis added). The regulations at 10 C.F.R. § 150.3(c)(2) pertain to 11e.(2) byproduct material, and the Guidance document itself proceeds to address "11e.(2) byproduct material." Byproduct material as defined in AEA Section 11e.(2) includes uranium mill tailings, of course, but it also includes other wastes that are not *tailings* and that do not pose similar potential threats to public health and safety. This raises the question: is the Guidance attempting to draw a distinction between uranium mill tailings versus other kinds of 11e.(2) byproduct material, or is this merely careless use of terminology on the part of NRC?

NMA suggested that to avoid confusion or misunderstanding within the regulated community and among the interested or affected elements of the public at large, SA-900 and any accompanying SECY documents should distinguish between uranium mill tailings and other forms of 11e.(2) byproduct material which, as the discussion hereafter will demonstrate, are not necessarily subject to the same disposal requirements

In this latest version of SA-900, NRC has changed the name to "Termination of Uranium **Milling** Licenses in Agreement States." NMA does not believe that this adequately addresses its concern about the differences between conventional and ISL wastes.

2. In the May 2, 2000 comments, NMA expressed concern that SA-900 required "*non-conventional*" uranium mill licensee decommissioning documents to demonstrate

that "all contaminated materials have been removed from the site." NMA commented that:

> This statement is incorrect for either type of UR licensee (i.e., either "conventional" or "non-conventional" licensees). Criterion 6(b) of 10 C.F.R. Part 40, Appendix A, provides that site soils which do not contain in excess of 5 picocuries per gram (pCi/g) of radium-226 in the first 15 centimeters (cm) or 15 pCi/g in the second 15 cm and succeeding 15 cm soil horizons (the so-called 5/15 rule), may be released for unrestricted use. If soil levels satisfy this standard without remediation then no such contaminated material (i.e., 11e.(2) byproduct material) need be removed from the site. The recent modifications to Criterion 6 (6) contained in Radiological Criteria for License Termination of Uranium Recovery Facilities (64 Fed. Reg. 17506 (April 12, 1999)) also make it clear that uranium or thorium wastes from production activities may or may not have to be removed from the site.

STP revised Page 7 of SA-900 to reflect NMA's comment on this point but Appendix A (page 19) of SA-900 still contains the statement that the license must document that all contaminated material has been removed from the site.

3. NMA's May 2, 2000 comments stressed that the Guidance does not reflect the licensee's statutory (§ 84(c)) and regulatory (Introduction to 10 CFR 20, Appendix A) right to propose *alternatives* that provide equivalent or greater protection than NRC, Agreement State or even EPA requirements.

The revised SA-900 still does not reflect this point despite vague references on pages 4 and 14 of the guidance to alternative standards. The guidance must explicitly discuss the Agreement State's authority to propose different UR regulatory requirements (generally or on a site-specific basis) and the procedural requirements that must be satisfied for any such state or licensee actions. The AEA, as amended, provides these rights so they must be explicitly addressed.