

DOCKETED
USNRC

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DOCKET NUMBER
PRM-170-5
(66FR 55604)

January 23, 2002 (11:56AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF



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January 23, 2002

Ms. Annette L. Vietti-Cook, Secretary
Office of the Secretary of the Commission
Mail Stop O16-C1
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

REFERENCE: **Comments on the Petition for Rulemaking Submitted by the
National Mining Association (Docket No. PRM-170-5) [66 Fed.
Reg. p.55604 - November 2, 2001]**

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)¹ on behalf of its industry members has reviewed Petition for Rulemaking PRM-170-5 that was submitted by the National Mining Association (NMA) to the U.S. Nuclear Regulatory Commission (NRC). This PRM seeks financial assistance for uranium recovery licensees, either through a waiver of all annual fees (10 CFR 171) and inspection and licensing fees (10 CFR 170) until the domestic price of U₃O₈ reaches \$13-16/pound for at least one year or through a waiver of the fees to conduct a 10 CFR 41 rulemaking.

NEI recommends that the NRC deny PRM-170-05. The PRM proposes remedies that would require the NRC to act far outside of its regulatory authority and that would be unfair and inequitable to other NRC licensees. The NRC should not base its fees on economic and market factors, the economic health of a licensee or the ability of a licensee to pass along fees to its customers. Fees should continue to be based on the costs of regulatory services rendered to its licensees. The NRC lacks authority to decide whether maintenance of a domestic uranium recovery industry is "in the public interest." The NRC must demonstrate fairness and equity in its setting fees and has no

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all nuclear companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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legal or regulatory authority to preferentially grant subsidies to maintain a domestic uranium recovery industry and to, thereby, increase all other licensee class fees in fulfillment of this goal.

As an alternative to the financial remedies proposed in the PRM, NEI strongly supports various regulatory and legislative initiatives to reduce unnecessary regulatory burden, to place a greater onus on individual licensees for self-monitoring and regulatory compliance assessment, to make regulations more risk-informed and performance-based and to end dual regulation of Class II licensee *in-situ* mining activities. Such improvements would enable licensees to realize equivalent, if not greater, cost savings than could be offered by fee waiver subsidies.

NEI supports, for example, the NRC's initiatives to facilitate the processing of alternate feeds in Class I conventional uranium mills and to use tailings impoundments for disposal of non-11e.(2) by-product materials. Clarification of NRC regulations to explicitly authorize the direct disposal of non-11e.(2) wastes into tailings impoundments would alleviate the frequent legal challenges and allegations of "sham disposal" that are raised by competing RCRA-licensed disposal facility operators. NEI is a strong proponent of expansion of the new risk-informed, performance-based regulatory philosophy beyond the Part 50 licensees, to Part 70 licensees and, through the auspices of the NMSS *Working Group to Examine the Use of Risk Information in the Materials and Waste Arenas*, to uranium recovery licensees. By shouldering more regulatory responsibility through regular self-assessment and reporting of performance data to the NRC, licensees should realize reduced regulatory oversight costs. The NRC should rely on state programs for protection of ground water quality and reconsider its claims of jurisdictional primacy over such state *in-situ* programs. Finally, NEI concurs with the stated need to revise the timeliness rule for uranium recovery and other licensees. Licensees that temporarily suspend operations for economic or other reasons should not be forced into involuntary decommissioning after only 2 years in a stand-by mode of operation.

A new 10 CFR 41 would be a useful compendium of regulations solely applicable to *in-situ* solution mining and the disposal of 11e.(2) by-product material. However, for all NRC licensees to shoulder several million dollars of costs for a rulemaking that would benefit a very few number of uranium recovery licensees would be unfair and inequitable. NEI recommends that the NRC proceed with updates of existing guidance including, for example, consideration of draft regulations under development by the Council of Radiation Control Program Directors (CRCPD) for the regulation of radioactive materials.

For the above reasons, NEI recommends that the NRC deny PRM-170-05. NEI is particularly concerned that the recommended remedies would require the NRC to act far outside of its regulatory authority and in a manner that would be unfair and inequitable to other NRC licensees. The proposed remedies would establish a poor public policy precedent of regulating for-profit licensees by exception and by basing

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regulatory oversight on non-human health and safety concerns. NEI does support regulatory changes that would reduce the financial burden of regulatory compliance and that are mentioned in the PRM (e.g. timeliness rule, dual jurisdiction, stand-by status fee relief). There is also merit in certain legislative actions that would, for example, expedite the use of uranium tailings impoundments as repositories for radioactively contaminated waste. NEI encourages the Commission to abide by its decision regarding SECY-01-0026 in which earlier requests for uranium recovery licenses to be considered non-profit institutions and to receive NRC fee waivers were deemed to be inequitable and were denied.

NEI appreciates the opportunity to comment on PRM-170-5 and should be pleased to answer any questions that you may have with this submission. Please feel free to contact me or Dr. Clifton W. Farrell (202-739-8098) to further discuss our concerns.

Sincerely,



Felix M. Killar, Jr.