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PETITION RULE PRM 170-5
(66FR 55604)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

January 4, 2002

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: NATIONAL MINING ASSOCIATION PETITION, PRM-170-5

Although the petition does not directly affect Colorado, the U.S. Nuclear Regulatory Commission's action on the petition may impact on how state radiation control programs establish their fees. For example:

- Uranium recovery licensees may ask for similar fee reductions in Agreement States.
- The criteria the Commission uses to rule on this case may set a model for other industries to petition both the NRC and Agreement for additional fee reductions.
- If a state bases fees on a percentage of NRC fees, the reduction in fees for the uranium recovery licensees may translate to an increase for all other licensees, including small gauge owners.

In its decision, the Commission should answer the fundamental questions: "What is fair?" and "What is in the public interest?" The answers should be suitable to be used for any other petition for relief, regardless of the fee category or the business sector. Can the bases that the National Mining Association suggest for a fee reduction be applied to other industries, e.g. stock prices plummet, or being a laboratory for research and development? Should the basis for sustaining economic viability be stock price, the value of a parent company, the percent of licensees in a category that are a Small Entity, or the percent of licensees in a category that file for bankruptcy? If there is a need to have a domestic source of uranium, are there other isotopes that also deserve price breaks so that there will be a domestic supply?

The statement by the petitioner that a license provides an "implicit benefit" to the public by "the assumption that the licensee will be able to use the licensed material in a useful and cost-effective manner" should be rejected, as it implies that the NRC, and Agreement States, considers cost-effectiveness as part of the licensing process. This is not necessarily true. Were licensing authorities under the assumption that the use of radioactive materials would be in a cost-effective manner, they would not need to require financial warranties.

In regard to waiving fees associated with rulemaking, again the criteria should be applicable to any fee category. Conceptually, if a regulatory change would safely reduce the regulatory burden, or provide a public benefit, the Commission should proceed with the rulemaking. The Commission should not refrain because there are few licensees in a category, and the resulting fee increase would be large because of the small number of licensees. In such cases NRC should seek other options for funding the regulatory revisions.

States have direct regulatory responsibility for low-activity radioactive waste disposition, and lead experience in regulating diffuse uranium, thorium and their decay products. Therefore, in regard to the uranium recovery regulations, the Commissioners may wish to reconsider the states offer to take the lead on developing a new Part 41.

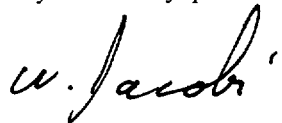
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The petitioner notes that a public benefit would be realized if uranium recovery licensees were allowed to accept materials other than 11e.(2) for disposal. Colorado concurs that for certain 11e.(2)-like materials, uranium mill tailings impoundments could offer a useful alternative to other disposal options.

If you have any questions, please contact me at 303.692.3036.

A handwritten signature in cursive script, appearing to read "W. Jacobi".

W. Jacobi, Program Manager
Radiation Services.