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# WYOMING MINING ASSOCIATION

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Gentlemen:

**Subject: Wyoming Mining Association's (WMA's) Comments on Revision of Fee Schedules; Fee Recovery for FY 2002; Proposed Rule Federal Register March 27, 2002 (Volume 67, Number 59) Pages 14817-14841**

The Wyoming Mining Association (WMA) is an organization of mining companies and mining related vendors, suppliers, and contractors in the State of Wyoming. Among the association's members are a number of uranium recovery (UR) licensees including the three producing in-situ leach uranium recovery facilities remaining in the U.S. The WMA also represents uranium in-situ leach operations in restoration, several conventional uranium mill tailings sites in reclamation, and a single conventional uranium mill currently in standby. The WMA has reviewed the above described Federal Register notice and has the following comments concerning the proposed revision of the fee schedules:

**1. Proposed Annual Fees for Uranium Recovery Licensees**

The Fiscal Year 2001 fees and the proposed annual fees for Fiscal Year 2002 are as follows:

<b>Nuclear Regulatory Commission Fees</b>			
<b>Facility Class</b>	<b>Facility Type</b>	<b>Fiscal Year 2001 Fees</b>	<b>Proposed Fiscal Year 2002 Fees</b>
Class I	Conventional mills	\$94,300	\$77,700
Class II	In-situ mills	\$79,000	\$65,100

The WMA supports this reduction in annual fees for conventional uranium mills and in-situ uranium recovery facilities.

**2. Fees Paid by Uranium Recovery Licensees Represented by the Wyoming Mining Association (WMA)**

The WMA completed a survey of the uranium recovery licensees it represents in Wyoming and Nebraska. A total of five (5) licensees representing eight (8) source material licenses and one (1) license application responded. This group paid a total of approximately \$6.5 million in annual fees and hourly charges since the inception of fee recovery. It should be noted that this group does not

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represent all of the Wyoming uranium recovery licensees and source material licenses. The remaining conventional uranium mill in Wyoming, which is in standby status, has paid over \$1.2 million dollars in annual fees and hourly charges from 1991 to 2001. These charges represent a tremendous and stifling burden to the uranium recovery industry in the State of Wyoming.

### **3. Proposed Hourly Charges**

The proposed hourly rate for uranium recovery licensees is \$152 per hour. This increased hourly rate appears counterproductive to NRC's apparent efforts to reduce the total fee burden to uranium recovery licensees.

### **3. Assessment of Project Managers' Time**

The proposed rule that states:

*"In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a "Point of Contact." As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171."*

This language benefits uranium recovery licensees in standby mode since they generally do not use much of a Project Manager's time. The WMA supports this language.

### **4. Solicitation of Additional Comments on the National Mining Association's (NMA's) Petition for Rulemaking**

The proposed rulemaking contains the following language:

*"The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between \$3.0 and \$4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs not attributable to those licensees paying annual fees. Thus, the NRC is inviting those who have arguments to place before the Commission that were not submitted in response to the November 2, 2001, Federal Register document requesting public comment on the*

*petition to do so now."*

The comment period for the petition for rulemaking expired on January 16, 2002. The number of comments received was limited, numbering less than fifteen (15). The WMA believes that once the comment period closed, it should remain closed and not be arbitrarily reopened in this proposed rulemaking.

## **5. Uranium Recovery Issues**

### **5.1 Economic Condition of the Uranium Recovery Industry**

The domestic uranium recovery industry is experiencing economically difficult times. The current spot market price for uranium is \$9.90 per pound (Uranium Exchange – April 1, 2002). This is very low. Increases in hourly rates place an undue burden upon an industry already suffering from a depressed market.

### **5.2 Contrary to the National Interest**

The preservation of a uranium recovery industry and the capability to produce uranium in the United States is in the national interest. Imposing high fees and hourly rates on operating facilities and facilities which are on standby awaiting an improved uranium market discourages present uranium production and discourages companies from holding existing licensed facilities in standby status pending an improved market. This is against the national interest of preserving a domestic energy production infrastructure.

In a letter to Kennecott Uranium Company, approving a postponement of the requirements of timeliness in decommissioning for the Sweetwater Uranium Project dated July 17, 2001, the Commission stated, "*...The continued existence of the mill is in the public interest...*" and "*...Maintaining the domestic capacity to provide the raw materials for nuclear power is in the public interest*". This letter is included by reference.

### **5.3 Performance-Based Licenses in the Uranium Recovery Industry**

The uranium recovery industry is moving toward performance-based licenses. Performance-Based licenses should result in less licensing actions and billable hours, since many issues formerly addressed by amendment requests submitted to the agency are now handled by the licensee's Safety and Environmental Review Panel (SERP). This should translate into lower licensee fees for uranium recovery licensees, since fewer licensing actions should be required.

### **5.4 Excessive Regulatory Oversight**

In some cases the NRC engages in what appears to be excessive regulatory oversight of uranium recovery licensees, specifically:

5.4.1 Conducting two (2) annual inspections of uranium in-situ mining operations.

5.4.2 Requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments.

As described under the Uranium Recovery Matrix, the WMA questions the NRC's need for significantly increased efforts related to ground water issues at in-situ uranium recovery

operations, when it is questionable if the NRC should even be regulating ISL wellfields and associated ground water issues.

The NRC should consider a more balanced approach to uranium recovery regulation. A more balanced approach would result in less regulatory oversight and lower costs. This is especially reasonable in light of the very low risks posed by uranium extraction operations and uranium mill tailings impoundments and the fact that the State of Wyoming regulates ISL operations in accordance with detailed State regulations required by statute.

## 6. Agreement State Issues

As additional states become Agreement States, the licensees in those states cease to pay annual fees and hourly charges to the Nuclear Regulatory Commission. A policy of forcing a dwindling number of licensees to shoulder the costs of the NRC cannot continue forever. The agency cannot continue to compensate for a shrinking licensee base by increasing fees for the remainder. At some point, if forty-nine (49) of the fifty (50) states become Agreement States, the nuclear reactor community plus the licensees in the remaining state will be forced to subsidize the entire NRC. Wyoming, for example, has stated that it will never become an Agreement State. Does this mean that at some point in the future the nuclear reactor community plus the NRC licensees in Wyoming will be forced to shoulder the entire cost of the NRC?

The NRC needs to develop a means of addressing the issue of a dwindling number of licensees (due to individual states becoming Agreement States) being forced to shoulder the costs of the agency through steadily increasing fees.

The Wyoming Mining Association believes that the NRC has unfairly targeted the uranium recovery industry in its fee structure especially in light of the diminished level of oversight required by the uranium recovery industry given the low level of risk associated with it, its excellent compliance record, the recent movement toward performance based licensing and statements by the Commission that "maintaining the domestic capacity to provide the raw materials for nuclear power is in the public interest". The continued NRC fee structure is particularly disheartening in Wyoming where there exists a comprehensive State regulatory program required by statute for uranium ISL mining. This concern is further supported by the fact that current NRC involvement in ISL wellfields exceeds that of the former Uranium Recovery Field Office (URFO) that relied more heavily on the existing State of Wyoming regulations specific to ISL mining, which minimized dual jurisdiction issues, and associated costs to licensees.

The WMA appreciates the opportunity to comment on this proposed rule. If you have any questions please do not hesitate to contact me.

Sincerely yours,



Marion Loomis  
Executive Director

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cc: Katie Sweeney - NMA