

Sweetwater Uranium Facility
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DOCKETED
USNRC

April 26, 2002 (11:22AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NUMBER
PROPOSED RULE
PR 190-171
(67FR 14818)

6



15 April 2002

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemaking and Adjudication Staff

Gentlemen:

**Subject: Kennecott Uranium Company'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**

Kennecott Uranium Company is a uranium recovery licensee and is the operator and manager of the Sweetwater Uranium Project, one (1) of the six (6) remaining conventional uranium mills in the United States. The Sweetwater Uranium Project is located in the Great Divide Basin in Sweetwater County, Wyoming and licensed under Source Materials License SUA-1350. The Sweetwater Uranium Project is not operating. It is in standby status awaiting an improved uranium market. Kennecott Uranium Company 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:

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

Kennecott Uranium Company supports this reduction in annual fees.

2. Fees Paid to Date by Kennecott Uranium Company

The table below lists the annual license fees paid to date by Kennecott Uranium Company to the NRC related to Source Material License 1350.

Kennecott Uranium Company is Manager of the Green Mountain Mining Venture

Kennecott Energy Company provides marketing and other services on behalf of Antelope Coal Company, Caballo Rojo, Inc., Colowyo Coal Company, L.P., Cordero Mining Co., Jacobs Ranch Coal Company, Kennecott Uranium Company, Spring Creek Coal Company and Wyoming Coal Resources Company

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SECY-02

Year	Annual Fees Paid	Hourly Charges Paid	Total
1990			0
1991	100,100		100,100
1992	167,500	22,070	189,570
1993	100,133	2,856	102,989
1994	74,670	20,026	94,696
1995	60,900	39,383	100,283
1996	57,000	8,688	65,688
1997	57,000	6,738	63,738
1998	61,800	46,509	108,309
1999	131,000	76,733	207,733
2000	131,000	18,882	149,882
2001	94,300	5,123	99,423
Total:	1,035,403	247,008	1,282,411

NRC license fees and hourly charges comprise a substantial portion of the Sweetwater Uranium Project's budget over the past eleven (11) years, in spite of the fact that the project has remained in standby status and generated no revenues due to a depressed uranium market. The Sweetwater Uranium Project has paid \$1,282,410.50 in fees and hourly charges to the NRC over the last eight (8) years. This is a large sum of money. Kennecott Uranium Company believes that it is excessively large in comparison to the regulatory services received from the agency.

3. Proposed Hourly Charges

The proposed hourly rate for uranium recovery licensees is \$152 per hour. This rate exceeds that for most technical and professional staff at major engineering consulting firms with the exception of certain highly paid staff and the firm's principals. The coupling of this exorbitant hourly rate with the annual license fees represents a burden to uranium recovery licensees.

3. Assessment of Project Managers' Time

Kennecott Uranium Company supports the language in 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."

A uranium recovery licensee in standby mode generally does not use much of a Project manager's time hence this change fairly allocates costs to the heaviest users of the Project Manager's time and reduces costs to those licensees who have infrequent dealings with Commission staff.

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). Kennecott Uranium Company 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 mean less regulatory oversight 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 less oversight 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, Kennecott Uranium Company 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 well fields 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.

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.

Kennecott Uranium Company 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".

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

Sincerely yours,



Oscar Paulson
Facility Supervisor
Fee Comments 2002.doc

cc: Katie Sweeney - NMA
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