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USNRC

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

May 8, 2003 (9:25AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Proposed Revision of Fee Schedules -- FY 2003

Dear Sir:

The National Mining Association (NMA) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2003. 68 Fed. Reg. 16373 (April 3, 2003). Due to a rebaselining this year, uranium recovery licensees will pay lower annual fees for FY 2003. Yet, as discussed below, NMA continues to have concerns about the underpinnings of the fee structure, in particular, the serious inequities caused by the Omnibus Budget Reconciliation Act of 1990 (OBRA) mandate that NRC recover close to 100 percent of its budget each year.

NMA represents producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are NRC licensees and who are adversely affected by the NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

NMA has commented extensively in the past on NRC's fee allocation system. The issues raised by the FY 2003 proposal are similar to those of prior years, and therefore, these comments incorporate by reference NMA's prior comments (and those of its predecessor organization the American Mining Congress).¹ We will not repeat all these comment here but will focus instead on two key issues, how to address fees given the dwindling number of uranium recovery licensees and project manager (PM) fees.

Annual Fees

Under the proposed rule, the new annual fee for uranium recovery licensees would decrease: the Class I fee would decrease from \$77,700 in FY 2002 to \$64,800 and the Class II

¹ These comments are dated May 13, 1991, May 29, 1992, February 4, 1993, May 24, 1993, July 19, 1993, August 18, 1993, June 9, 1994, April 19, 1995, February 27, 1996, March 27, 1997 and May 3, 1999.

fee would decrease from \$65,200 in FY 2002 to \$54,300. The decrease in annual fees is a result of NRC's proposal to rebaseline its annual fees. NMA supports the decision to rebaseline for FY 2003. In addition, NMA continues to support the continued implementation of last year's determination that the Department of Energy (DOE) must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program.

NMA's still has concerns about the annual fee, mainly, that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from such services. NMA acknowledges that the passage of the NRC Fairness in Funding Act, which could not have been accomplished without strong NRC support, addresses some of NMA's fairness and equity concerns regarding charging licensees for activities that provide licensees no direct benefit. That act amends OBRA by reducing the amount of NRC's budget that NRC must recover from its licensees. OBRA originally mandated that NRC recover approximately 100 percent of its budget authority each fiscal year (FY). This year, NRC is required to recover approximately 94 percent of its budget. The OBRA amendment further decreases the fee recovery amount by an additional two percent per year until the fee recovery amount is 90 percent by FY 2005. While this Act alleviates some of NMA's equity concerns, it will not guarantee a reasonable relationship between costs and benefits. NRC needs to continue to look for ways to ensure such a relationship is established.

This problem of the lack of reasonable relationship between annual fees and services rendered by NRC is exacerbated as more states become Agreement States and more sites are decommissioned, leaving fewer NRC licensees to bear an even greater share of the burden. NRC needs to continue to search for an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program. This scenario unfortunately appears to be playing out in the uranium recovery area as there are currently only two producing ISL facilities and three conventional mills licensed by NRC. Unless the price of uranium increases to a level to attract new development of domestic uranium properties, the number of licensees will continue to decrease through closures or acquisitions. Also, the State of Utah will soon become an Agreement State for uranium recovery facilities, further decreasing NRC's uranium recovery licensing base. This is a serious situation that needs to be carefully reviewed and addressed.

As noted in the final FY 2002 rule, "a decreasing licensee base . . . presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates." 67 Fed. Reg. 42617. Some of the possible solutions that were discussed in the FY 2002 rule were establishing arbitrary fee caps or thresholds for certain classes of licensees or combining fee categories. NRC rejected such options citing fairness and equity concerns since these solutions would result in increased fees for other licensees. The FY 2002 rule also correctly noted that NMA had rejected a NRC proposal that would have capped fees in FY 1999. If the uranium recovery licensee base continues to decrease, NRC and NMA may have to revisit the fee cap issue or the other potential solutions discussed in the FY 2002 rule. In the meantime, NMA supports and urges NRC to continue its efforts to seek cost efficiencies through its annual reviews conducted as part of the budget process.

Hourly Fees and PM Time

Under the proposal, the new hourly rate applicable to the uranium recovery category of licensees would increase from \$152 in FY 2002 to \$158. Given this increase in the hourly rate, it is even more important to ensure that the Nuclear Material Safety and Safeguards (NMSS) July 2001 policy about PM time is properly implemented. Under that policy, if a PM's duties to support a licensee/facility do not exceed 75 percent of the assigned person's time in 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 through annual fees, a more equitable result since it allows such costs to be spread across a range of licensees. The NMSS policy replaced the policy for full cost recovery under part 170 for PMs, which had become effective with the FY 1999 final fee rule in response to concerns expressed by materials licensees.

At first, the July 2001 policy appeared to address NMA's concerns about rising fees relating to PM time. There were fewer entries on licensees' bill regarding PM time and in general the hourly costs seemed to be decreasing. More recently, however, licensees have seen more PM time reflected on their quarterly bills even though the duties related to the site have not changed. We are uncertain why this is happening and request clarification on how the July 2001 policy is being implemented. NMA realizes that at heart the policy should result in decreased hourly fees and more costs allocated to annual fees. However, NMA's member licensees strongly prefer the fees to be allocated that way. It is much easier for licensees to plan and allocate resources related to annual fees. Licensees know these fees in advance and plan accordingly. Hourly fees, however, are much more unpredictable, and difficult to incorporate into a licensee's financial plan.

Some reduction of hourly fees could be achieved through streamlining of the regulatory process. Completion of Memorandums of Understanding (MOUs) between NRC and non-agreement states such as Wyoming or Nebraska regarding regulation of in-situ wellfields would help substantially to reduce costs to licensees. Expansion of performance based licensing and the use of Safety and Environmental Review Panels (SERPs) would also help in reducing hourly charges. Expansion of such concepts is justified due to the very low risks posed by uranium recovery licensees due to the relatively low activities of the materials that they handle.

NMA appreciates this opportunity to provide comments. If you have any questions, please contact me at 202/463-2627.

Sincerely,



Katie Sweeney
Associate General Counsel