

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: 202.739.3000  
Fax: 202.739.3001  
www.morganlewis.com

Morgan Lewis  
COUNSELORS AT LAW

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Alvin H. Gutterman  
Senior Counsel  
202.739.5468  
agutterman@morganlewis.com

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March 24, 2005 (4:15pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

March 24, 2005

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention: Rulemaking and Adjudication Staff

RE: RIN 3150-AH61 Revision of Fee Schedules; Fee Recovery for FY 2005

Dear Sir or Madam:

This comment on behalf of Kaiser Aluminum and Chemical Company (KACC) concerns the Proposed Rule on the Revision of Fee Schedules, which was published at 70 FR 8678 (February 22, 2005). KACC opposes the imposition of fees on unlicensed companies currently in site decommissioning. This aspect of the Proposed Rule would generally apply to unlicensed companies like KACC that conducted and terminated licensed activities decades ago, when the Commission applied decommissioning standards that were very different from the current requirements. Years later, when the Commission called upon these former licensees to decommission to current decommissioning standards, KACC and others agreed to do so voluntarily. The NRC should not impose fees on these companies because: (1) companies are not receiving a benefit from the NRC; (2) imposing such fees would discourage voluntary decommissioning; (3) these companies should not have to shoulder all of the costs associated

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with decommissioning to changed government decommissioning standards; and (4) even if the NRC decides to impose such fees, the fees should not apply to companies currently in decommissioning.

The NRC should not impose the proposed fees on unlicensed companies in decommissioning because the NRC does not provide a benefit to them. The Proposed Rule relies on the Independent Offices Appropriations Act of 1952 (IOAA). The Office of Management and Budget's (OMB) guidance for the IOAA states that a user charge "will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." OMB Circular No. A-25 (revised) "General Policy". Unlike current licensees, who benefit by earning revenue from licensed activities, these former licenses receive no benefit from the NRC. Instead, the decommissioning of a formerly utilized site provides a public good. The public, as a whole, is served by reducing contamination, and the nuclear industry is benefited by demonstrating that the nuclear community will address legacy waste.

Imposition of the proposed fees would discourage companies from undertaking decommissioning voluntarily. It is counter to sound public policy to discourage companies from volunteering to clean up sites by increasing the already substantial costs of decommissioning. It is in the public interest to encourage voluntary actions that avoid the need for litigation and its associated government costs, which could not be recovered through fees.

It is appropriate for the government to bear the costs of its reviews in these instances because the government's past actions contributed to increased costs for these decommissioning projects. Licensed activities at the sites were generally concluded decades ago, when

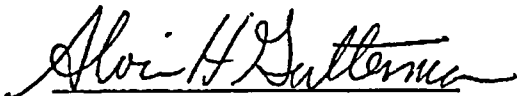
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decommissioning standards were substantially less stringent. If the current NRC decommissioning standards had been adopted during the licensed activities, the cost of compliance would have been much less than the costs to mobilize a decommissioning effort long after the activities were discontinued and memories of the extent of past activities have faded. Furthermore, these companies factored into the pricing of their products only the decommissioning standards applicable at the time they operated. Unlike current licensees who must set aside money from current income to fund decommissioning, these previous licensees cannot recover the decommissioning costs from their customers. Since the cost increase is due, in large part, to the government's past failure to set appropriate standards, the government should at least bear its own resulting costs.

Finally, even if the NRC decides to impose such fees, it should not apply them to companies that voluntarily agreed to undertake decommissioning with the understanding that the NRC would shoulder its own costs. It is unfair for the NRC to change the fee structure midstream for companies that could not have anticipated these costs.

For these reasons, the NRC should not impose fees on unlicensed companies currently in site decommissioning.

Sincerely,



Alvin Gutterman  
Counsel for Kaiser Aluminum & Chemical Corporation

**From:** <agutterman@morganlewis.com>  
**To:** <SECY@nrc.gov>  
**Date:** Thu, Mar 24, 2005 2:34 PM  
**Subject:** comments on RIN 3150-AH61 -- Revision of Fee Schedules; Fee Recovery for FY 2005

The attachment to this message is a letter commenting on RIN 3150-AH61 -- Revision of Fee Schedules; Fee Recovery for FY 2005 (70 Fed. Reg. 8678 (Feb. 22, 2005)).

Al Gutterman  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
Tel: 202.739.5468  
Fax: 877-432-9652  
Home: 703-979-6635  
Cell: 703-472-3794

agutterman@morganlewis.com

(See attached file: RIN 3150-AH61 Revision of Fee Schedules.PDF)

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**CC:** <Bill.Vinzant@kaiseral.com>, "Crawford, Roger" <Roger.Crawford@kaiseral.com>, <dsilverman@morganlewis.com>, "Donnan, John" <John.Donnan@kaiseral.com>

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**Created By:** [agutterman@morganlewis.com](mailto:agutterman@morganlewis.com)

**Recipients**

nrc.gov  
 owf5\_po.OWFN\_DO  
 SECY (SECY)

kaiseral.com  
 John.Donnan CC (John Donnan)  
 Roger.Crawford CC (Roger 'Crawford')  
 Bill.Vinzant CC

morganlewis.com  
 dsilverman CC

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