



Department of Energy
Office of Legacy Management

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USNRC

April 2, 2009 (3:40pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Attn: Rulemakings and Adjudications Staff

Subject: 10 CFR Parts 170 and 171, RIN 3150-AI52
U.S. Department of Energy Comments on Revision of Fee Schedules; Fee Recovery
for FY 2009: Proposed Rule

To Whom It May Concern:

The U.S. Department of Energy (DOE) Office of Legacy Management (LM) appreciates the opportunity to comment on the subject NRC-proposed rule for FY 2009. Our comments pertain to the annual fee assessed to DOE LM for licensing its Title I and Title II sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA), listed as fee category 18.B in 10 CFR 171.16 (pages 9137 and 9138 of the proposed rule). Our specific concerns relate to the following elements:

- The labor rate used for well-established programs same as for new licensed facilities
- The basis for the generic/other budgeted uranium recovery costs
- Adequate resource allocation to cover the work anticipated for the year

II.A. Amendments to 10 CFR Part 170, Item 1: Hourly Rate (9132)

In this section of the proposed rule, NRC proposes an hourly rate of \$257, an 8 percent increase from the \$238 in hourly rate established in the FY 2008 final fee rule. In justifying the increase, NRC states:

The increase is primarily due to the higher FY 2009 budget supporting increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities.

DOE LM acknowledges that the hourly rates that are established each year reflect NRC's fee recovery process, as required by law. However, we question the universal application of that fee across all licensees. DOE LM submits the workload increase for uranium recovery facilities is 1) only a small amount of the increased NRC workload, 2) represents routine work the Commission has been conducting since the early 1990s, and 3) is not related to the recent NRC efforts to establish and staff the Office of New Reactors and other initiatives to provide licensing oversight to existing and proposed nuclear power plants and fuel-cycle facilities. DOE LM requests that

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232 Energy Way, N. Las Vegas, NV 89030	❖	

REPLY TO: Grand Junction Office

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NRC consider developing several labor rates to account for the more complex licensing tasks¹ noted above (and corresponding allocation of NRC staff resources) and that commercial operators bear a greater portion of the fee recovery burden.

II.B. Proposed Action, Amendments to 10 CFR Part 171, Item 3b: Revised Annual Fees for Uranium Recovery Facilities (9137–9138)

DOE LM's comments on this section of the proposed rule relate primarily to the basis for the UMTRCA Title I budgeted costs and the basis for the allocation of generic fees summarized in Table X (9138).

DOE LM did not find a basis for the UMTRCA Title I budgeted costs of \$246,563 in the working papers associated with the proposed rule. Because the total cost of this budget item has been decreasing since 2006, DOE LM wishes to ensure the level of NRC support to sites under the general licenses remains adequate for timely resolution of license issues, although it is recognized that several sites under active review were withdrawn during the year to complete NRC-required documentation. DOE LM requests that NRC provide a site-specific basis for the \$246,563.

DOE LM is invoiced for site-specific license support, in addition to the \$246,563 specifically budgeted for UMTRCA Title I license support. DOE wishes to ensure that the reduced proportion of the generic fees allocated to DOE will 1) not result in reduced NRC support to UMTRCA license actions, and 2) continue to reflect NRC "generic" resources allocation to the UMTRCA Program based on the "reduced effort expended for DOE UMTRCA."

General Comments Regarding Fee Basis and Documentation

NRC states that the work papers supporting the proposed rule "show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated" (9135). However, DOE LM found that the only other additional documentation provided in the work papers, beyond that already documented in Table X of the rules, is the resulting FTE allocation (1.1 and 0.7 FTE for FY 2008 and FY 2009, respectively).

DOE LM requests that NRC supplement their documentation to include, at a minimum, the following:

- (1) Additional documentation of the scope and assumptions underlying the budgeted costs of \$246,563 for UMTRCA license support, so DOE LM can determine if the level of support is appropriate to anticipated licensing issues; and

¹ In Section II of the June 6, 2008 Final Rule (Response to Comments, *Federal Register* Vol. 73, No. 110, 32387), NRC acknowledges that the decrease in lower estimated direct staff hours per FTE reflected, in part, the fact that NRC was "recruiting new staff due to the projected increase in its workload, particularly as it relates to new reactors."

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- (2) The basis for the total “generic/other uranium recovery budgeted costs,” which have varied greatly since FY 2006.

Conclusion

DOE LM appreciates the NRC staff’s professionalism and cooperation in assisting DOE with UMTRCA long-term custody and site transfer activities. To assist with budgeting and projecting resource needs, DOE LM requests that the comments and concerns raised herein be reflected in the implementation of the Final Rule, as well as in the documentation provided in future published work papers.

Should you have any questions on these comments, please contact Thomas Pauling at (970) 248-6048.

Sincerely,

Raymond M. Plienness

Digitally signed by Raymond M. Plienness
DN: cn=Raymond M. Plienness, c=us, o=U.S. government,
ou=Department of Energy, headquarters, people
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Raymond M. Plienness, Director
Office of Site Operations

cc:

R. Bush, DOE-LM-20

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Project File ADM 030.10 (R. Burrows)

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Rulemaking Comments

From: McArthur, Linda [Linda.Mcarthur@lm.doe.gov]
Sent: Thursday, April 02, 2009 3:21 PM
To: Rulemaking Comments
Subject: 10 CFRParts 170 and 171, RIN 3150-A152
Attachments: 3-26nrc rule3.pdf

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