



September 16, 2010

United States Nuclear Regulatory Commission
Attn: Mr. Keith McConnell, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management and Environmental
Protection
Office of Federal and State Materials and
Environmental Management Programs
Washington, D.C. 20555-0001

Dear Mr. McConnell:

I would like to take this opportunity to thank you for meeting with myself and my counsel, Mr. Anthony J. Thompson and Mr. Christopher S. Pugsley, attending on behalf of the National Mining Association (NMA) on Thursday, July 29, 2010, to discuss issues associated with improving the processes for preparing and reviewing license and license amendment applications for new and existing uranium recovery facilities. I believe the discussion was productive and resulted in a better understanding of the current status of the Nuclear Regulatory Commission's (NRC) processes for review of such applications and the manner in which license applicants and licensees can improve the quality of such applications. In an effort to ensure that my understanding of our discussion is accurate, the following items summarize my impression of the items discussed:

1. NMA raised a concern regarding modification of Commission-approved guidance documents such as NUREG-1569 and other Regulatory Guides by NRC Staff personnel reviewing current and past applications. Several NMA members have noted that aspects of these guidance documents are being modified unilaterally by NRC Staff without appropriate public notice and comment from industry. Essentially, NMA's position is that NRC Staff does not have the authority to unilaterally modify "Commission" documents and, accordingly, its members should not be required by NRC Staff to justify why they are relying on Commission-approved guidance documents. Thus, NMA requests that NRC Staff provide industry with revised guidance documents for public notice and comment and that any unilateral modifications proposed by NRC Staff be provided to industry for discussion and be endorsed by Commission action in some form of temporary addendum prior to using such modifications during application reviews. Again, NMA emphasizes that revisions to guidance must address "significant risks" to public health and safety—minor changes to reflect technical/procedural upgrades can await final Commission action on revised guidance.

2. NRC Staff inquired as to whether industry has been or will be pursuing the preparation of a model license application to provide applicants for new uranium recovery facilities with guidance on the preparation of high quality license/license amendment applications. NMA agrees that developing a standard format for such applications, with input from various relevant agencies (e.g., NRC, Bureau of Land Management (BLM), State environmental departments, etc.), would be a useful tool for applicants and that preparation of such a standard license application format will be discussed with NMA's members. However, in light of the impending revisions to NRC's Standard Review Plan for ISL facilities (NUREG-1569) and various Regulatory Guides, as well as the preparation of new guidance for conventional and heap leach uranium recovery facilities, NMA recommended that NRC consider, as an appropriate first step in developing a broader-scope standard format, immediately endorsing model restoration action plans (RAP), as approved by the Commission in the Hydro Resources, Inc. litigation, which also could be an appendix to the revised NUREG-1569.

Further, NRC Staff mentioned that at least three (3) license applications failed their acceptance reviews and were withdrawn and resubmitted by license applicants for a variety of reasons. While NMA understands the circumstances behind the withdrawal and re-submission of these license applications, it is important that NRC Staff provide license applicants with as much accurate guidance as possible so that future acceptance reviews can be satisfied on the first attempt. In that vein, NRC Staff referenced an internal checklist that is used to determine whether a license application satisfies an acceptance review. NMA believes that making this checklist available to license applicants will assist in the submission of higher quality applications that will satisfy acceptance reviews and reduce subsequent requests for additional information (RAI).

3. NRC Staff offered several suggestions as to how applicants can improve the quality of their applications. First, NRC Staff stated that, despite any indications otherwise, license applicants should follow NUREG-1569 exactly as published, presumably with the exception of guidance regarding 10 CFR Part 40, Appendix A, Criterion 5(B)(5). NRC Staff stated that several license applicants failed to follow NUREG-1569 exactly as written and, thus, failed acceptance reviews or generated significant additional RAIs. NMA will recommend to its members that they follow NUREG-1569 as written; however, NMA strongly suggests that NRC similarly strictly adhere to NUREG-1569 as written until and unless it undergoes formal revisions, including public notice and comment. If both parties follow suit, applicants will be able to prepare high quality applications that will be accepted for detailed technical and environmental review on the first attempt.

Second, NRC Staff recommended that applicants provide appropriate models for site-specific subsurface conditions such as geology and groundwater. According to NRC Staff, this type of modeling provides evidence of "critical thinking" on the part of an applicant with respect to potential subsurface impacts resulting from a proposed project and assists NRC Staff in "visualizing" subsurface conditions, which can be difficult without such modeling. While NMA agrees that preparing and submitting modeling can be useful, NMA does not believe that NRC Staff has provided industry with sufficient guidance to prepare properly the type of modeling that will satisfy agency evaluators. Thus, NMA believes that NRC Staff needs to provide industry

with “model” acceptance criteria for subsurface modeling. Without such guidance, NRC Staff runs the risk of receiving subsurface modeling that will not be useful and that may be extremely expensive for applicants. Further, NMA members with considerable experience in subsurface analyses continue to maintain that groundwater modeling is not as useful in understanding subsurface conditions as data from site-specific pump tests. NMA requests that NRC Staff provide additional clarification in the above-proposed model “acceptance criteria” as to how such a model will be useful absent detailed pump test data.

Third, NRC Staff recommended that applicants characterize *all* radionuclides in any application. In the event that no site-specific data is available for a given radionuclide, NRC Staff recommended that applicants utilize conservative assumptions regarding any such radionuclide(s) that can be modified after a license is issued and operational data becomes available. NMA agrees with this recommendation and will so inform its membership.

4. NMA provided NRC Staff with a series of concerns regarding the manner in which applications are being reviewed, as well as concerns about the manner in which existing licensees are inspected and regulated. The following items represent the substance of our discussions on these issues:

a. NMA suggested that the lines of communication between license applicants/licensees and NRC Staff have been severely constricted based on an apparently overly conservative interpretation of NRC’s public meeting policy/guidelines to the point that, as a result, inadequate applications and RAI responses are virtually inevitable. Numerous license applicants and licensees have raised concerns regarding the inability to communicate with relevant NRC Staff to obtain answers to questions regarding RAIs and other application items. In other words, some applicants have had difficulty obtaining clarification about exactly what information NRC Staff is seeking in particular RAIs and, as a result, are not in a position to provide NRC Staff with adequate responses. NMA believes that NRC Staff needs to be more flexible with respect to its public meeting policy so that license applicants can freely obtain complete and accurate *clarification* of NRC Staff’s questions about a specific application item. Given that there are multiple reviewers of an application with varying areas of expertise, it is important that NRC Staff make the relevant personnel available for discussion with the license applicant/licensee, because individual RAI issues and questions are based on specific technical or environmental issues that an NRC Staff project manager may not have the expertise to address. NMA believes that modification of the communication guidelines is imperative and will provide significant benefits to NRC Staff as it will help expedite the review process and minimize staff time spent on RAIs and “open items.”

b. Procedurally, NMA believes that, as previously suggested, NRC Staff should not wait until all technical and environmental RAIs are formulated to send them to a license applicant as one package. Rather, NRC Staff should send out a set of technical or environmental RAIs when they are completed so that applicant may commence preparing responses. In addition, NRC Staff has indicated that it would like one “package” of responses to technical (safety) related RAIs and one “package” of responses to environmental review RAIs. Based on past experience NRC Staff stated that this approach is easier to manage and facilitates a more efficient review process. NMA believes that, while this approach may make management of RAI responses more

efficient *in theory*, applicants should be permitted to respond to sets of RAIs by *subject-matter area*. Typically, NRC Staff issues RAIs based on topic areas such as health physics, geology, hydrology, and historic and cultural resources, each of which requires differing areas of expertise, levels of analysis, and times to respond. NMA believes that NRC Staff should permit applicants to respond to RAIs based on topic areas because NRC Staff personnel specializing in these areas of expertise will be able to focus their review and respond with any additional questions in a timely manner rather than wait until the applicant addresses *all* RAIs resulting from the technical or environmental reviews. In NMA's estimation, this approach will lead to a more timely review process and will result in conservation of valuable agency and company resources. It will require some additional administrative effort on NRC Staff's part to keep track of responses, but it should not be too difficult if appropriate data storage and archiving procedures are established.

c. NMA stated that NRC Staff's review of proposed licensing actions should be focused on potentially *significant* risks to public health and safety and not on minute details that do not pose any potentially significant risk.¹

Several license applicants have raised concerns regarding what is seemingly an "endless" stream of RAIs and "open items" on issues that have little or no relevance to potentially significant risks to public health and safety. The Commission has had a long-standing policy of risk-informed regulation which also focuses more regulatory oversight on significant risks to public health and safety and, correspondingly, less such oversight on issues involving minimal potential risk. This policy married with the Commission's endorsement of performance-based licensing as embodied in 10 C.F.R. § 50.59 and translated to 10 C.F.R. Part 40 for regulation of uranium recovery facilities. Based on this, the Commission has appropriately differentiated between significant and insignificant risks and has mandated that this be translated into NRC Staff's regulatory oversight. NMA believes that NRC Staff should review the previous lists of RAIs issued to applicants and determine which issues do not appropriately represent potentially significant risks to public health and safety to minimize or eliminate them from future RAIs. Several NMA members have noted that they are required to pay \$270 per hour for NRC Staff review time and that the payment of such monies for review and analysis of items that do not represent potentially significant risks to public health and safety should not be authorized. Thus, NMA requests that NRC Staff review its internal procedures for application reviews and minimize or eliminate the review of these types of items from its acceptance criteria review and license determinations.

d. NMA raised a concern with the manner in which NRC Staff regulates existing licensees in a number of ways. First, existing licensees have stated that NRC Staff personnel and inspectors are not adequately familiar with licensee files, prior licensee approvals, and past legal decisions such as the aforementioned Hydro Resources, Inc. case. NMA believes that many licensing delays result from NRC Staff's lack of familiarity with these items, and NMA requests that NRC Staff familiarize themselves with these items prior to getting involved in licensing actions for a particular licensee. NMA believes this will result in a more efficient and productive relationship between the licensee and the agency.

¹ See e.g., *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980); see also *Natural Resources Defense Council, Inc. v. U.S. EPA*, 824 F.2d 1146 (July 28, 1987).

Additionally, existing licensees have raised a concern regarding inspectors interpreting regulations on their own without consulting NRC Staff licensing personnel. If this practice continues, there will be little consistency and clarity in the regulatory process. Thus, NMA requests that NRC Staff make clear to its inspectors that they do not have the authority to unilaterally interpret NRC regulations during site inspections and that they also must be familiar with the items referenced above so that they properly understand what NRC has authorized previously for each licensee on a site-specific basis.

5. NMA raised a question regarding NRC Staff's application of 10 C.F.R. § 40.42 to newly proposed ISR facilities to require an "alternate schedule" for decommissioning if an applicant states that restoration of a specific well-field could exceed a two-year period. NMA noted that NUREG-1910 specifically differentiates between groundwater restoration and decommissioning of an ISR facility as different phases of a proposed operation. Additionally, site-specific draft SEISs also utilize this distinction. Given that groundwater restoration at ISR facilities occur simultaneously with operations in other well-fields (with the exception of the final well-field), NMA does not understand why a license applicant is required to comply with Part 40.42 timeliness in decommissioning requirements for the restoration phase of a project's lifecycle. Presumably, applicants should propose their best estimates for the time necessary for groundwater restoration, Part 40.42 requirements to the contrary notwithstanding. Thus, NMA respectfully requests clarification of this interpretation.

6. Recently, NRC Staff offered a position regarding its interpretation of 10 C.F.R. § 40.32(e) to the development of proposed ISR site facilities in which it states that the regulation does indeed apply to ISR facilities such that the installation of an entire well-field, including a complete monitor well network is prohibited by Part 40.32(e)'s provisions. In the current litigation over the proposed Powertech Dewey-Burdock ISR site, concerns have been raised by intervenors that complete baseline water quality has not been submitted for review pursuant to 10 C.F.R. Part 40, Appendix A, Criterion 7. However, as NRC Staff is well-aware and based on its interpretation of Part 40.32(e), *complete* baseline water quality data cannot be submitted during the license application process because the only way to obtain such data is to install a complete well-field, including monitor well network, which is only permitted for *licensees*. Only then can an ISR *licensee* obtain enough data to establish upper control limits (UCL) so that a system of monitor wells can be properly established for "early warning" of potential excursions. NUREG-1569 supports this approach based on the data requirements in Chapter 2 entitled *Site Characterization* (which sets forth data requirements pre-license issuance) versus Chapter 5 entitled *Operations* (which sets forth data requirements post-license issuance). But, given that NRC Staff's current interpretation of Part 40.32(e) prohibits the installation of an entire well-field, including a complete monitor well network, there is no possible way that a *license applicant* to satisfy the aforementioned interpretation of Criterion 7. NMA believes that NRC Staff needs to clearly articulate a position on this issue so that *license applicants* do not run afoul of Part 40.32(e)'s requirements and, at the same time, can satisfy Criterion 7 requirements.

7. NRC Staff raised the possibility of a workshop to be conducted after issuance of three (3) pending licenses to provide industry with additional understanding and clarification on issues associated with existing NRC guidance documents and application preparation. NMA supports

the concept of an NRC Staff workshop and would like to offer several recommendations on how the workshop could be conducted. First, NMA recommends that NRC Staff permit members of industry to prepare and present detailed technical presentations on aspects of NRC's license application review process that can provide insight as to how to make the review process more efficient and effective. NMA believes that industry can provide NRC Staff with a significant amount of information that will lead to productive discussion and considerable information that will result in progress towards more consistency and clarity in the licensing process. Second, NMA requests that NRC Staff prepare a slide presentation for the workshop that includes charts describing any guidance document to be discussed, the section of the document to be discussed, and any item proposed to be revised or altered with a detailed explanation of why the item needs to be revised or altered. NMA believes that this presentation will provide industry with an opportunity to better understand NRC's position on updating NUREG-1569 and other guidance. For example, if an NRC presentation addresses proposed changes to guidance that may have some *theoretical* justification in the broad scope of radiation protection but have little or no practical import in the context of ISR operations (i.e., involves no significant risk), the issue can be ignored for the present and modified later as a revision to existing guidance.

NMA once again thanks NRC Staff for the opportunity to meet with you and looks forward to any comments on this letter that you or your staff may have. If you have any questions regarding this letter or its contents, please do not hesitate to contact me at your convenience.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Katie Sweeney".

Katie Sweeney
General Counsel