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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF



April 18, 2011

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

**Re: Proposed Revision of Fee Schedules -- FY 2011**

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) 2011. 76 Fed. Reg. 14748 (March 17, 2011). 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 current or prospective NRC licensees and who are adversely affected by the NRC fee regulations. These members include the current and prospective 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. NMA acknowledges that the 1999 amendments (NRC Fairness in Funding Act) to the Omnibus Budget Reconciliation Act of 1990 (OBRA) addressed some of NMA's fairness and equity concerns regarding charging licensees for activities that provide licensees no direct benefit. Yet NMA remains concerned about NRC fees, particularly rising hourly rates, lack of cost containment measures, mounting delays, and inadequate billing details.

NRC announced in the proposed rule:

In FY 2011 the NRC revised its budget structure. This new structure allows the agency to accurately identify all its direct and overhead costs. Under this new FY 2011 structure, more of the budgeted resources have been identified as overhead costs. The agency is using this information to further streamline its costs and make efficient use of all its resources.

76 Fed. Reg. 14750. Despite statements about availability of information on the new budget structure, NMA could not find many details in either the proposal itself or the associated work papers, so it was difficult to determine

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what, if any, affect the change had on fees associated with uranium recovery but generally NMA supports efforts that assist NRC in streamlining costs and making more efficient use of resources.

### **Annual Fees**

Under the proposed rule, the annual fees for all categories of uranium recovery activities decrease. The annual fees decrease as follows:

- Conventional and heap leach mills – from \$38,300 in FY 2010 to \$31,900;
- Basic *in situ* recovery facilities – from \$36,300 in FY 2010 to \$30,300;
- Expanded *in situ* recovery facilities – from \$41,100 in FY 2010 to \$34,300;
- *In situ* recovery resin facilities – from \$34,400 in FY 2010 to \$28,800;
- 11e.(2) disposal incidental to existing tailings sites – from \$12,400 in FY 2010 to \$10,400; and
- Uranium water treatment – from \$8,600 in FY 2010 to \$7,200.

NMA supports the decrease in the annual fee category but notes that these costs pale in comparison to the hourly fees.

### **Hourly Fees**

The new hourly rate will increase from \$259 in FY 2010 to \$273. This 5.4% increase is more than double the current rate of inflation. The increase in the hourly rate is reportedly due to higher FY 2011 agency overhead budgeted resources as well as a small reduction in the number of full time equivalents (FTE). NMA understands that without additional legislative changes, NRC is required by existing law to collect 90 percent of its budget through fees. Applicants and licensees are well aware they must pay for NRC services that convey an identifiable benefit to them but in return, applicants and licensees expect fair, efficient and timely results.

Understandably, applicants and licensees would like to be able to budget services subject to hourly fees, such as licensing and renewal actions. While the steady increases in hourly rates over the last decade have made budgeting difficult, of equal concern is that the number of hours involved in reviews have followed the same pattern. NRC may not be able to completely control the budget amount it must recover through fees, but the agency certainly should be able to exercise better management and oversight of the hourly fees and investigate ways to reduce those fees by streamlining regulatory processes.

- Better Management and Oversight

NRC should revise the proposed rule to require more efficient processing of services subject to hourly fees. As currently written, the rule fails to promote opportunities for cost containment. NRC should establish typical timeframes for activities and

promote use of deadlines and cost estimates. Deadlines are particularly important for documents where fees are calculated on a case-by-case basis and NRC should be required to provide at least a preliminary cost estimate. Not only would such efforts likely reduce hourly fees they would have the added benefit of encouraging more timely actions by NRC.

For example, one licensee has been charged over \$144,000 to date for a pre-operational inspection, with the final report still to be charged for. NMA is not questioning that \$144,000 reflects the number of hours NRC staff spent on the inspection but on its face, \$144,000 (representing over 550 hours) seems excessive, especially given the low risk nature of the operations involved. NMA questions whether reasonable cost containment measures could have been implemented to still allow an appropriately thorough inspection commensurate with the risk posed but at more reasonable cost. Could fewer staff (5 actually participated) have been sent on the inspection? Were 550 hours really necessary for inspection of an existing facility? Did the inspectors make the most efficient use of their time? Did newer staff receive the necessary background information prior to the inspection to allow them to be appropriately familiar with the site?

Another way for NRC to provide greater certainty regarding fees would be to establish more flat fees for activities at uranium recovery operations. NRC may not yet have the needed information and experience on number of hours and typical timeframes to establish flat fees but NRC's goal should be to move to flat fees for routine activities. While the flat fees would fluctuate as hourly rates are recalculated each fiscal year, flat fees would at least result in a better ability to plan and budget.

- Streamlining Processes

As NRC has recognized, streamlining of processes can maximize efficient use of agency resources. An added benefit is reduction in hourly fees and maximizing use of licensee or applicant resources. Two examples of streamlining efforts NRC initiated in the uranium recovery area are preparation of a "Generic Environmental Impact Statement (GEIS) for *In Situ* Leach Uranium Milling Facilities" (GEIS) and establishment of a Memorandum of Understanding (MOU) between the Commission and the Bureau of Land Management (BLM) regarding cooperation on environmental analyses. NMA strongly supported both efforts as ways to contain costs for licensees/applicants and save NRC resources. As promising as both these efforts are, they have not been as effectively implemented as needed to achieve the desired results.

The intent of the GEIS is to streamline licensing actions for *in situ* recovery (ISR) operations by using the GEIS as the starting point for site-specific environmental reviews of license applications for new ISR facilities, as well as applications to renew or amend existing ISR licenses. Specifically, the GEIS addresses common environmental issues associated with the construction, operation, and decommissioning of ISL facilities, as well as the ground water restoration at such

facilities, if they are located in particular regions of the western United States. In the press release announcing the GEIS, NRC indicated:

The GEIS will improve the efficiency of the agency's environmental reviews of these applications by serving as a starting point for site-specific environmental reviews of these applications. The agency expects to complete most licensing reviews within two years, subject to available resources.

NRC June 4, 2009 Press Release, No. 09-103.

The promised efficiencies have yet to be realized - the existing applicants in the licensing pipeline have experienced lengthy and unexpected delays as have licensees engaged in expansion or license renewal. Not all these delays are attributable to NRC but some significant delays have been. NRC needs to redouble its efforts to capitalize on the GEIS, more expeditiously review licensing actions and better allocate its time and resources.

Similarly, the NRC/BLM MOU has not resulted in the promised efficiencies. The MOU outlines how the agencies will coordinate on environmental analyses related to development of uranium resources on public lands. While obviously, NRC cannot alone, without the BLM, take full advantage of the MOU, NRC is partially responsible for failing to push for better implementation. For example, the MOU establishes a NRC/BLM Steering Committee comprised of senior level representatives from each agency to ensure that the MOU is effectively promoting coordination and to address issues that may arise as the MOU is being implemented. It is NMA's understanding that not all steering committee representatives have been named, nor have there been any meetings. This problem should be remedied immediately to allow use of the MOU to the fullest.

- Invoices

While improvements have been made over the last decade, NRC needs to continue its efforts to provide invoices that contain more meaningful descriptions of the work done by staff and especially contractors. With proposed hourly rates at \$273 per hour, the agency should be held to at least the same standard of accountability to its licensees as a private sector consultant is to its clients. In the private sector, adequate explanations, dates and time are provided to clients in order for clients to fully understand what was done, when it was done and how long it took. This type of billing system allows costs to be specifically identified. Enhanced billing details would also better allow NRC to review bills with an eye toward cost-containment and gaining information necessary to determine appropriate flat fees for certain activities.

In conclusion, NMA believes that NRC needs to not only make sure the agency is effectively using its resources but needs to evaluate alternative approaches that would maximize efficiencies, minimize costs, and establish accountability. NMA

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

Sincerely,

A handwritten signature in black ink that reads "Katie Sweeney". The signature is written in a cursive, flowing style.

Katie Sweeney  
Associate General Counsel

## Rulemaking Comments

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**From:** Sweeney,Katie [KSweeney@nma.org]  
**Sent:** Tuesday, April 19, 2011 8:23 AM  
**To:** Rulemaking Comments  
**Subject:** National Mining Association comments on the FY 2011 Proposed Fee Rule  
**Attachments:** Final FY 2011 Fee Comments.PDF

Attached are the comments of the National Mining Association in response to the Nuclear Regulatory Commission's proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2011. 76 Fed. Reg. 14748 (March 17, 2011). If you any questions, please contact me.

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