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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF



April 16, 2012

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

Dear Sir/Madam:

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) 2012. 77 Fed. Reg. 15,530 (March 15, 2012). 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. Together, NRC and industry must find some solutions to these problems.

Annual Fees

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

- Conventional and heap leach mills – from \$31,900 in FY 2011 to \$23,600;
- Basic *in situ* recovery facilities – from \$30,300 in FY 2011 to \$29,900;
- Expanded *in situ* recovery facilities – from \$34,300 in FY 2011 to \$33,800;
- *In situ* recovery resin facilities – from \$28,800 in FY 2011 to \$28,300;

- 11e.(2) disposal incidental to existing tailings sites – from \$10,400 in FY 2011 to \$10,200; and
- Uranium water treatment – from \$7,200 in FY 2011 to \$7,100.

NMA supports the decrease in the annual fee category but notes that these costs pale in comparison to the hourly fees. Admittedly, in years past NMA's fee comments focused primarily on annual fees because (1) the level of UR activity was such that for most companies the annual fees overshadowed hourly fees and (2) NRC was less vigilant about assessing hourly fees for certain licensee-specific actions. As the pace of activity has increased and the percentage of fees recovered for UR activities through hourly rates nears 90 percent, our concerns logically have shifted to the hourly fees. As explained below, however, while the actual hourly rate is important, it is the number of hours charged and lack of cost containment that trouble industry the most.

Hourly Fees

While the increase in the new hourly rate is slight, from \$273 in FY2011 to \$274, it continues the steady increase in hourly rates over the last decade. 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. 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.

To the extent that lack of NRC staff resources limits NRC's ability to provide timely results or accomplish streamlining efficiencies, NMA is prepared to assist the agency in future budgeting initiatives. From industry's perspective, it appears as if the agency is attempting a juggling act between processing new applications and performing needed actions related to existing licenses including license renewals. Unfortunately for NRC, both types of actions must be able to move forward in a timely manner otherwise companies are left in limbo, unable to plan and budget and vulnerable to losing investment backing. If resource constraints are forcing NRC to favor processing of new licenses over existing license maintenance or vice versa, NRC needs to seek additional resources with appropriate expertise to allow the agency to perform its job. NMA is willing to speak to the commission or contact Congress to advocate for additional resources for uranium recovery activities. Though first, the agency should ensure that it is wisely using the resources it does have.

- 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. Three 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), performance based licensing 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 all of these efforts as ways to contain costs for licensees/applicants and save NRC resources. In fact, NMA spent near three-quarter of a million dollars to provide technical information to support the GEIS and allocated resources to support the MOU. 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 most recently licensed facilities 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 could do more to ensure better implementation.

Performance Based Licensing was instituted for uranium recovery licensees over a decade ago. Licensees have yet to realize substantial benefits from this policy as NRC has made too many operational activities at licensed sites subject to license

conditions. Therefore, licensees are required to submit relatively minor changes to NRC for approval, thereby subjecting the action to NRC review, time delays and excessive fees.

Expansion of Performance Based Licensing and the increased use of Safety and Environmental Review Panels (SERPs) would help in reducing review costs. Expansion of the use of Performance Based Licensing is justified due to the very low risks posed by uranium recovery licensees considering the low specific activity of the materials that they handle. Contrary to this approach, staff has restricted actions that can be approved by a SERP in recent draft licenses.

Another process contributing to licensing delays is the National Historic Preservation Act section 106 process. It is NMA's understanding that NRC is developing a draft protocol to guide the agency's section 106 process. We urge NRC to move forward quickly to provide a draft for public comment so the process can be implemented smoothly. NRC should also look to other federal agencies, such as BLM, that more routinely and proficiently conduct section 106 reviews for examples of best practices.

- 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. These are standard practice in industry. Not only would such efforts likely reduce hourly fees they would have the added benefit of encouraging more timely actions by NRC.

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. This idea was discussed at the NMA/NRC 2011 workshop but, as yet, have not been acted upon.

Improved oversight of NRC staff by managers also would provide an opportunity to ensure proper allocation of resources. Managers need to review staff responses to applicants and licensees to ascertain that requests for additional information are pertinent, consistent with NRC regulations and policies and not duplicative.

- Invoices

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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 \$274 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 also would better allow NRC to review bills with an eye toward cost-containment and gaining information necessary to determine appropriate flat fees for certain activities. Again, this issue was discussed at the last NMA/NRC workshop but never acted upon.

In conclusion, NMA believes that NRC needs to not only make sure the agency is using its resources effectively 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,

PUBLIC SUBMISSION

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Revision of Fee Schedules; Fee Recovery for Fiscal Year 2012

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Comment on FR Doc # 2012-06153

Submitter Information

Name: Katie Sweeney
Organization: National Mining Association

General Comment

Attached are the comments of the National Mining Association.

Attachments

Final 2012 NRC Fee comments

Rulemaking Comments

From: Gallagher, Carol
Sent: Thursday, April 19, 2012 9:19 AM
To: Rulemaking Comments
Subject: Comment on Revision of Fee Schedules
Attachments: NRC-2011-0207-DRAFT-0006.pdf - Adobe Acrobat Pro.pdf

Attached for docketing is a comment from Katie Sweeney on the above noted proposed rule (77 FR 15530; 3/15/12) that I received via the regulations.gov website on 4/16/12.

Thanks,
Carol