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General Counsel

April 8, 2013

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

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OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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) 2013. 78 Fed. Reg. 14,880 (March 7, 2013). 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, particularly rising hourly rates, lack of cost containment measures, mounting delays, and inadequate billing details. These issues are even more pressing today as NRC encounters additional resource constraints. As revealed at the Feb. 20 Uranium Recovery Briefing of the Commission, these constraints are now severe enough to merit significant project deferrals in the upcoming years. NRC and industry must find some solutions to these problems including identifying additional ways for NRC to maximize its existing resources. NMA appreciates the opportunity to meet with NRC uranium recovery and financial office staff in the next few weeks to discuss these comments in more detail.

### **Annual Fees**

Under the proposed rule, the annual fees increase for most uranium recovery (UR) licensees, except the Department of the Energy and water treatment facilities. The fees for 2013 are as follows:

- Conventional and heap leach mills – from \$23,600 in FY 2013 to \$28,600;
- Basic *in situ* recovery facilities – from \$29,900 in FY 2012 to \$36,300;
- Expanded *in situ* recovery facilities – from \$33,800 in FY 2012 to \$41,000;
- 11e.(2) disposal incidental to existing tailings sites – from \$10,200 in FY 2012 to \$16,200; and
- Uranium water treatment – from \$7,100 in FY 2012 to \$4,800.

Over the last few years, most annual fees for UR facilities have decreased. NRC attributes the increase for FY 2013 annual fees primarily to rulemaking and licensing board activities. While there has been an uptick in licensing board activities, NMA is unaware of any ongoing rulemakings effecting UR facilities that would justify the proposed increases nor does NRC identify any in the proposed rule. In contrast, the proposal mentions specific rulemakings (e.g., related to updating the Waste Confidence rule and termination of the Private Fuel Storage license) in explaining the increased annual fees for the spent fuel storage/reactors in decommissioning fee class.

### **Hourly Fees**

While NMA has concerns about increases in annual fees, the costs associated with annual fees pale in comparison to the hourly fees. NRC is proposing to raise the hourly rate from \$274 to \$277. NRC anticipates the vast majority of UR fees will be recouped through hourly fees as opposed to annual fees. Of the estimated \$11.7 million budget for UR activities in FY 2013, approximately \$10.4 million will be recovered through annual fees. As the pace of activity has increased and the percentage of fees recovered for UR activities through hourly rates nears 90 percent, our most significant concerns relate to the hourly fees. While the actual hourly rate is important, it is the number of hours charged and lack of cost containment that trouble industry the most.

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 NRC resource constraints limit NRC's ability to provide timely results, accomplish streamlining efficiencies, or force NRC to favor processing of existing license maintenance activities over new applications, NMA is prepared to assist the agency in future budgeting initiatives. NMA is willing to help NRC secure needed additional resources by continuing communication with the commission on this issue or contacting Congress to advocate for additional resources for uranium recovery

activities. At the Feb. 20 UR briefing, NMA clearly conveyed its concerns about existing resource constraints to the commission and will follow up on potential solutions.

- 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. Particularly with the resource constraints facing the agency, NRC must find new ways to streamline processes in order to accomplish its legal and policy imperatives. 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. NRC needs to ensure these initiatives are effectively implemented in order to provide the promised benefits. NMA notes that the MOU has recently been revised to include provisions that cover compliance with the National Environmental Policy Act and section 106 of the National Historic Preservation Act (NHPA). As a process contributing significantly to licensing delays, NMA is pleased that NRC and BLM will be coordinating more to ensure the process is completed in a timely and efficient manner.

- 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. As NMA has recommended previously, 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.

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. NMA looks forward to discussing how this recommendation could be implemented at the upcoming meeting with NRC staff.

- Invoices

NRC needs to continue its efforts to provide invoices that contain more meaningful descriptions of the work done by staff and especially contractors. NMA raised this concern in comments on FY 2012 fees and then again in a letter to NRC's office of chief financial officer. NMA recently received a response from the CFO's office indicating a willingness to address NMA's concerns. Importantly, the letter noted that NRC's "experience with other licensees and applicants has shown that NRC invoices can be tailored to meet industry needs when coordinated communications occur between the licensee or applicant, the NRC Program Office and NRC Office of the Chief Financial Officer." NMA looks forward to determining the path forward to resolving our concerns with NRC invoices at the upcoming meeting with NRC staff.

### **Conclusion**

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,



Katie Sweeney

## **RulemakingComments Resource**

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**From:** Sweeney, Katie [KSweeney@nma.org]  
**Sent:** Tuesday, April 09, 2013 1:38 PM  
**To:** RulemakingComments Resource  
**Subject:** NMA Comments on FY 2013 Fees  
**Attachments:** Final NMA Comments on NRC FY 2013 Fees.pdf

Attached for your reference are the National Mining Association's comments on the proposed fee recovery rule for FY 2013. Please contact me if you have any questions. Thank you.

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