

May 29, 2014

Ms. Katie Sweeney, Esq.
General Counsel
National Mining Association
101 Constitution Avenue, NW, Suite 500 East
Washington, DC 20001

SUBJECT: RESPONSE TO DECEMBER 2, 2013, NATIONAL MINING ASSOCIATION
LETTER

Dear Ms. Sweeney:

I am writing in response to your letter to the U.S. Nuclear Regulatory Commission (NRC) dated December 2, 2013 (found in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML13337A259), regarding the various uranium recovery industry regulatory issues that you raised in anticipation of the December 5, 2013, meeting between the National Mining Association (NMA) and the NRC. In your letter, you identified nine longstanding issues which you wanted to discuss at the December 5, 2013, meeting. A summary of this meeting with action items was issued on January 16, 2014. (This meeting summary may be found in ADAMS under Accession No. ML14014A342).

Staff has reviewed NMA's comments in your December 2, 2013, letter and provides the following feedback.

(1) NRC Billing Practices

NMA asked the NRC for more details regarding billing practices. The NRC previously responded that applicants and licensees will be provided more detailed invoices upon request to the Office of the Chief Financial Officer (OCFO) and project managers. At the December 5, 2013, meeting, members from the OCFO explained the process and level of detail that can be provided upon request. However, representatives from OCFO noted that to date, no requests from the uranium recovery industry have been received. To ensure that the process was clear to everyone, the NRC agreed to provide the NMA a written summary of the process that includes the level of detail that one can obtain regarding billing information. This written summary is provided in the enclosure to this letter.

(2) Pre-Licensing Construction Rule

In its December 2013 letter, NMA reiterated that because it believes that industry remains confused about the types of site preparation activities that would not be considered construction it was agreeing to provide the NRC with a list of activities on which the uranium recovery industry would like additional clarification regarding whether they may be undertaken under 10 CFR 40.32(e). Staff understood that NMA would provide this list of activities sometime in the first quarter of calendar year 2014. To date, staff has not yet received this list. Without this list, it is difficult for the staff to understand industry's confusion regarding the applicability of 10 CFR 40.32(e). As noted in the NRC's response to NMA's January 2, 2013, letter on this topic

(ADAMS Accession No. ML13011A326), users of nuclear materials and nuclear materials facilities are not standardized, and as such, the regulations needed to be able to accommodate and address the variety of nuclear materials users and facilities that exist. As such, certain site preparation activities for one type of user may be considered construction because the activity has a radiological health or safety or common defense and security nexus within the context of that user's specific license, whereas for another type of user it may not be considered a construction activity because for that user the activity lacks a radiological health or safety or common defense and security nexus.

At the December 5, 2013, meeting with staff, when the topic of the pre-licensing Construction Rule was discussed, NMA proposed that the NRC consider "allowing" industry to start preconstruction at industry's own risk before the licensing process is complete; specifically, before the Environmental Impact Statement (EIS) or Supplemental EIS is completed. NMA communicated that it would be beneficial if the NRC could provide industry with guidance on the level of risk an applicant would incur if an applicant were to start construction, such as a foundation of the central process building or installation of well fields. NMA also expressed interest in where the NRC draws the line with respect to the completeness of an environmental review with respect to preconstruction activities and stated that more discussion is necessary on this subject. With regard to providing guidance on the level of risk an applicant would incur if an applicant were to start construction, the NRC assesses safety risk and not economic or enforcement risk to its applicants and licensees. With regard to where the NRC draws the line with respect to the completeness of an environmental review for preconstruction activities, the NRC position is that the environmental review is not complete until the final environmental review document, i.e., the environmental assessment or the EIS, has been issued. Applicants and licensees must follow the applicable regulations. If the staff have misunderstood NMA's request, please let us know. If NMA wishes to clarify its request in writing and submit it to the NRC, the NRC will evaluate it and respond to it, accordingly.

(3) Structure and Focus of Licensing Reviews

NMA suggested having a lessons-learned workshop as an important tool to promote efficient and timely licensing. The December 5, 2013, meeting was productive in that among other things, the participants agreed to hold a public lessons-learned workshop in the Washington D.C. area in advance of the NMA's next annual meeting (which will be held in June 2014 in Denver, Colorado) for that purpose. Besides promoting efficient and timely licensing, staff believes that this workshop could also provide a forum on various topics that warrant continued discussion. On January 28, 2014, NMA provided a list of topics, weighted by importance to NMA, for the lessons-learned workshop. This workshop was held on April 3, 2014 at NRC Headquarters. The meeting report is found at ADAMS Accession No. ML14091A276.

(4) Agency Resources

NMA expressed concerns about NRC's resources and indicated that NRC should exercise better management and oversight of the hourly fees and investigate additional ways to reduce those fees by streamlining regulatory processes. Further, NMA said that it looks forward to the upcoming lessons-learned workshop as an opportunity to ascertain whether the additional experience gained by the staff has resulted in more efficient and less resource-intensive licensing.

As discussed previously with NMA, the NRC staff takes its fiduciary responsibilities seriously and maintains that it is doing an excellent job with its management and oversight of the NRC's uranium recovery licensing review process. The staff charges the hours necessary to complete its actions, and it makes a considerable effort to only charge productive hours to a licensee or applicant. Resources expended by the staff are necessary to draw the necessary safety and environmental conclusions and document its reviews. The staff continues to search for efficiencies in its reviews and welcomes meaningful suggestions from industry. Looking at staff review experience combined with applicant responsiveness and the pre-licensing process, it can be shown that efficiency has been gained. NRC encourages industry to follow the example of those applicants and licensees who have been timely, as well as resolute in providing submittals of high quality.

(5) Guidance documents

NMA communicated that it is particularly interested in the status of the radon dose calculation guidance and would like the opportunity to present some new data on dose calculations and suggested a technical workshop on such issues prior to NRC finalizing its guidance. On December 19, 2013, staff held a publicly noticed teleconference with NMA for NMA to discuss what it considered new information that it believes may impact issuance of FSME-ISG-01, "Interim Staff Guidance for Evaluation of Uranium Recovery Facilities Surveys of Radon and Radon Progeny in Air Demonstrations of Compliance with 10 CFR 20.1301" (Radon ISG (ADAMS Accession Number ML112720481)). The teleconference was summarized and a meeting summary was issued on January 6, 2014 (ADAMS Accession No. ML13364A259).

The NRC planned to hold a technical workshop once the Radon ISG was issued; however based on the December 19th teleconference, it was evident that there was confusion stemming from the fact that the NRC and NMA were each referring to a different document. The NRC was referring to the version it was preparing to issue which considered public comments on the draft Radon ISG and NMA was referring to the draft Radon ISG as if it were the final ISG. The NRC has decided to issue a second draft of the ISG for public comment. Prior to the expiration of the comment period, the NRC scheduled a technical workshop on the draft ISG during which time industry could provide oral comments on the draft. The NRC will consider any comments received prior to issuing a final ISG. The technical workshop was held on April 2, 2014 at NRC Headquarters. The meeting report is found at ADAMS Accession No. ML14112A309.

In NMA's December 2, 2013, letter, NMA notes that it is evaluating whether to develop drafts of other guidance documents in the hopes of expediting timeframes for development/update, and indicated that it would let staff know what it decides regarding moving forward in this area. The letter requests that NMA be notified of any changes to the NRC schedule for developing and updating key guidance documents. At this time, there are no changes to the guidance document development schedule that has already been shared with NMA. The NRC staff will communicate with NMA in a timely manner, if there are any key changes to the guidance document development schedule.

(6) Subpart W Rulemaking

As explained at the December 5, 2013, meeting, staff indicated that it is aware that the U.S. Environmental Protection Agency (EPA) is working towards updating its regulations in 40 CFR Part 61, Subpart W, which address radon emission standards at uranium mill tailings sites. The NRC appreciates the information you shared with staff about your recent visit to OMB and the copy of the associated presentation you provided (ADAMS Accession No. ML14043A445). NRC also appreciates your candor in explaining to us your desire to minimize any dual jurisdiction issues and your desire to maintain needed flexibility for implementation. NMA urged the NRC to work with EPA to these ends. Staff participated in the interagency review process led by the Office of Management and Budget for the draft Rule.

(7) Part 192 Rulemaking

After EPA finalizes its rulemaking for 40 CFR Part 192, "Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium *In Situ* Leaching Process," the NRC will propose a rule to conform its existing regulations, as appropriate. In addition to the foregoing, there may be opportunities to address other items of interest to the uranium recovery industry through the NRC rulemaking process. NMA presented its suggestions regarding updating Part 40 at the Lessons Learned Workshop held on April 3, 2014, for NRC's consideration. NRC welcomes NMA's, as well as other stakeholders' ideas on this subject.

(8) Section 106 Process

In NMA's letter, NMA shared that NMA remains concerned about how the NRC conducts the National Historic Preservation Act's Section 106 review process and asked for an update on the staff's efforts to prepare Section 106 guidance. As NMA is aware, the staff is developing guidance to reflect a more predictable process for Section 106 reviews of uranium recovery projects that incorporates the licensing review experiences gained over the past few years. Staff plans on issuing a draft Section 106 guidance document for public comment. Currently, the draft guidance is expected to be issued in June 2014. The NRC appreciates NMA's interest in our work in this area and welcomes an open discussion on how to more efficiently conduct these important consultations. The NRC wants to hear NMA's, as well as other stakeholder's, ideas regarding how the process can be improved and lead to more efficient licensing.

(9) NRC Inspector General Report

NMA communicated that it disagrees with the NRC Office of Inspector General (OIG) audit report conclusions regarding the National Environmental Policy Act work the NRC has recently completed for *in situ* uranium recovery facilities and would like to discuss the OIG's report (OIG-13-A-20) (ADAMS Accession No. ML13232A192) with staff. As explained in the December 5, 2013, meeting with NMA, staff cannot discuss its comments on this report because at that time staff's comments were not public. The NRC appreciates receiving the copy of NMA's comments on this report to the OIG (ADAMS Accession No. ML14043A445) to have a better understanding of NMA's perspective on this issue.

K. Sweeney

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The NRC appreciates NMA's interest in our regulatory process and welcomes its ideas regarding efficiency in our licensing process. If NMA has any questions, please contact Amy Snyder, Team Leader, in the Uranium Recovery. Ms. Snyder can be reached at (301) 415-6822 or amy.snyder@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Andrew Persinko, 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

Enclosure:
Process for Requests Fee Billing
Implementation

K. Sweeney

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Sincerely,

/RA/

Andrew Persinko, 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

Enclosure:
Process for Requests Fee Billing
Implementation

ML14022A253

OFC	DWMEP	DWMEP	DWMEP	OGC	DWMEP	DWMEP
NAME	ASnyder	SAchten	DMandeville for BVonTill	T.Stokes	AMohseni	DPersinko
DATE	1/22/14	1/23/14	1/ /14	3/3/14	5/29/14	5/29/14

OFFICIAL RECORD COPY

Process for Requests Fee Billing Implementation

The U.S. Nuclear Regulatory Commission (NRC) asks that any company wishing to be added to our standard list of companies that receive bi-weekly estimates can contact the NRC as a one-time request at FEES.Resource@nrc.gov.

The request should include docket number as well as contact information for the individuals the estimates should be provided.

Bi-weekly estimates are typically sent out at the end of a pay period and are sent in excel format. These estimates are uncertified NRC staff time and contract costs in a lump sum. The costs are considered estimates due to that we have not completed formal end of quarter certification. The detailed format is not provided until the end of the quarter after NRC staff time and contract costs are certified. A sample of an estimate is shown below.

Docket Number	Estimated Costs for Pay Period Ending 10/05/2013	Estimated Costs for Pay Period Ending 10/19/2013	Estimated Costs for Pay Period Ending 11/2/2013	Estimated Costs for Pay Period Ending 11/16/2013	Estimated Costs for Pay Period Ending 11/30/2013	Estimated Costs for Pay Period Ending 12/14/2013	Estimated Costs for Pay Period Ending 12/28/2013	Total Estimated Costs for Quarter
04012345	\$16,145.00	\$3,530.00	\$12,325.00	\$22,325.00	\$16,143.00	\$31,322.35	\$64,989.77	\$166,780.12

The NRC asks that any company that would like additional detail on an invoice make these requests each time an invoice is received. The request for additional information on an invoice that has been received can be requested via email at FEES.Resource@nrc.gov. Additional detail will be provided in the format below. In the example below, the Vendor NM heading represents the name of the NRC reviewer and TAC IR header represents the technical assignment control (TAC) Inspection Report Number (IR). Any TAC numbers used for the requested docket during the requested period will be listed in table similar to the one in the example below. A TAC number is used at the NRC to assure that the work performed by staff is properly identified for labor-hour tracking and reporting purposes. TACs are established using a coding schema recognized by many of the agency's information systems for: capturing time and labor information, cost analysis, recovering fees from applicants, licensees, or other government entities, capitalizing IT software development activities, and resource management and budgeting.

TAC_IR	TAC_IR_NM	ACMP_DT	VEND_NM	RATE	REG_HRS	NONREG_HR	AMOUNT	DOCKET
J12345	XXXXXXXX	16-NOV-13	Smith, John	272	1.5	0	\$ 408.00	04012345
J23456	XXXXXXXX	02-NOV-13	Smith, John	272	2	0	\$ 544.00	04012345

Any inquiries on the work that is performed should be directed to the NRC Project Manager.

Enclosure