



OFFICE OF THE  
CHIEF FINANCIAL  
OFFICER

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 20, 2017

Mr. Carmelo Melendez, Director  
Office of Legacy Management  
U.S. Department of Energy  
Washington, DC 20585

Dear Mr. Melendez:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your May 30, 2017, letter requesting the Department of Energy (DOE) be exempted from user or service fees assessed under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(b) and annual fees assessed under 10 CFR 171.11(c) for the DOE's general licenses covering both Title I and II sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA).

The NRC has established regulations for the granting of fee exemptions under 10 CFR 170.11, "Exemptions," and 10 CFR 171.11, "Exemptions," which licensees may apply for in accordance with 10 CFR 170.5, "Communications," and 10 CFR 171.9, "Communications." Therefore, the NRC staff has reviewed your request based on the following regulations, 10 CFR 170.11(b), 10 CFR 170.11(a)(13), and 10 CFR 171.11(c):

*10 CFR 170.11(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.*

*10 CFR 170.11(a)(13) All fee exemption requests must be submitted in writing to the Chief Financial Officer in accordance with § 170.5,<sup>1</sup> and the Chief Financial Officer will grant or deny such requests in writing.*

*10 CFR 171.11(c) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest.*

The Department of Energy, Office of Legacy Management, requests exemptions from the fee requirements of 10 CFR 170 and 10 CFR 171. In the letter, the DOE cites three reasons for the request for a fee waiver.

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<sup>1</sup> 10 CFR 170.5 provides that "[a]ll communications concerning the regulations in this part should be addressed to the NRC's Chief Financial Officer, either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM."

First, the DOE states that it is statutorily required to assume responsibility for the sites under the UMTRCA, and there is a lack of benefit to the DOE as the licensee for the UMTRCA sites. The NRC agrees that while entities generally pursue licensing with the expectation of realizing some economic benefit from the use of licensed material, the DOE is mandated by law to provide long-term stewardship of the UMTRCA sites under a general license. Also, the DOE is statutorily mandated to maintain long-term stewardship of these sites (for which they receive no economic benefit), and the NRC is statutorily mandated to provide regulatory oversight. The statute that authorizes the NRC to collect fees is the Omnibus Budget Reconciliation Act of 1990. While we agree that the DOE realizes no economic benefit from its license, this statute requires the NRC to equitably recover the costs of providing regulatory services. Furthermore, longstanding NRC fee policy dictates that fees assessed to licensees should—to the maximum extent practicable—reflect the actual costs that the NRC incurs when providing regulatory services. Implicit in this policy is the expectation that annual fees should be based on basic notions of fairness and equity.<sup>2</sup>

Second, the DOE asserts that it is in the public interest that the DOE maintain the sites and exempting the DOE from the fees could result in additional resources being available for the management of the other UMTRCA sites that the DOE manages. The NRC believes that this is predicated on the DOE continuing to request resources in the same amount as when they were subject to the 10 CFR 170 and 10 CFR 171 fees and that these resources will be used for other activities at UMTRCA sites. NRC staff agrees that the DOE maintaining the sites is in the public interest due to the long-term care and maintenance necessary for the sites. NRC staff also agrees that, assuming the DOE requests the same resources after the NRC were to grant the exemption as before the NRC grants the exemption, more resources could be devoted to managing the UMTRCA sites. However, if the resources that are used by the NRC to oversee the DOE as the general licensee that are currently provided to the NRC through the 10 CFR 170 and 10 CFR 171 fees are not paid by the DOE, they will need to be provided by the taxpayer or other NRC licensees due to a requirement in the Omnibus Budget Reconciliation Act of 1990 that the NRC recover 90% of its budget authority through fee recovery. The NRC must set its fees in accordance with its final budget authority. This could offset any benefit to the public because the resources that the NRC uses to oversee the DOE would be provided through NRC appropriations rather than through the DOE appropriations.

Finally, the DOE states that the DOE activities at the sites provide a benefit to the taxpayer because lessons learned at the sites reduce the DOE's future costs for managing the sites. While the DOE may glean process improvements through lessons learned from its management of the UMTRCA sites that could result in future cost savings to the DOE, and thus be in the public interest, it is not clear how this relates to exempting the DOE from the 10 CFR 170 or 10 CFR 171 fees. It is not clear why the DOE would not continue to realize these process improvements if the exemption request is denied.

The NRC continuously reviews the budgeted resources to ensure they reflect the work necessary to oversee the DOE's activities. We will continue to review the resources dedicated to oversight of the DOE activities at UMTRCA sites as we plan future budgets. Any reductions in future budget allocations would effectively reduce the DOE's annual fees.

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<sup>2</sup> See, e.g., 42 U.S.C. § 2214(c)(3)(noting that the Commission should establish “a schedule of charges fairly and equitably” and that fees should “have a reasonable relationship to the cost of providing regulatory services”).

The NRC staff concludes that the request that the DOE be exempted from user or service fees assessed under 10 CFR 170.11(b) and annual fees assessed under 10 CFR 171.11(c) for the DOE's general licenses covering both Title I and II sites under the UMTRCA does not meet the criteria required by 10 CFR 170.11(b) and 171.11(c); consequently, the fee waiver request is denied. If you have any technical questions regarding this matter, please contact Mr. Steve Koenick at (301) 415-6631. Please contact Mr. William Blaney, of my staff, at (301) 415-5092 for any fee-related questions.

Sincerely,

*/RA/*

Maureen E. Wylie  
Chief Financial Officer

SUBJECT: LETTER TO CARMELO MELENDEZ, DOE IN RESPONSE TO A FEE WAIVER,  
 dated November 20, 2017

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