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Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

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Dear Mr. Chilk:

Re: Proposed Revision of License
Fee Schedules, 47 Fed.Reg. 52454
(November 22, 1982), as corrected,
47 Fed.Reg. 56505, December 17, 1982

The Uranium Environmental Subcommittee of the American Mining Congress (AMC) has reviewed the Nuclear Regulatory Commission's proposed revision to the license fee schedules and submits the attached comments.

AMC is a trade association whose membership includes companies that process a large proportion of this nation's uranium. The Uranium Environmental Subcommittee is a technical committee composed of uranium member company representatives.

AMC strongly suggests that NRC reconsider its proposal. In reconsidering the proposal, NRC should be mindful of the substantial benefit received by the public from operations within the nuclear fuel cycle and require the public, through NRC's budget, to share a reasonable measure of the costs of licensing.

Sincerely,
Larry A. Boggs
Larry A. Boggs
Senior Counsel

Attachment

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add. A. Cabell
AR-2015
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Acknowledged by card... *1/14/83 emp*

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AMC COMMENTS TO NRC PROPOSED REVISION TO
10 CFR Part 170 (License Fees)

GENERAL COMMENTS

- The proposed procedures completely ignore the uranium industry problems--i.e., depressed uranium industry and the impact of foreign imports, by not considering competitive reality in the marketplace and by not considering competitive foreign pressure in the area of costs.

- For NRC to unilaterally and arbitrarily determine and state, in general, that these are the fees to be charged to licensees lacks fundamental license justification and attention to sound management accounting practices.

- The procedures do not:

- (a) Provide to the licensee a detailed accounting of the costs,
- (b) Provide procedures for the licensee to control, audit, or contest the costs generated by the NRC activities,
- (c) Consider the taxes presently paid by the licensees to State and Federal governments as an offset to any increased licensing fees,
- (d) Consider and work within the spirit of Presidential Order 12291 requiring a cost analysis by OMB,
- (e) Provide time limits or work schedules to complete licensing and inspection activities to avoid establishing an "open-ended cost approach,"
- (f) Establish upper limits for fees, or
- (g) Establish time charges or cost limitations for contractual services.

- The uranium industry is being saddled with additional costs to support a regulatory agency which has already imposed severe costs through regulations and license conditions, thereby substantially contributing to the present plight of the domestic uranium industry.

SPECIFIC COMMENTS

TEXT: Supplementary Information, Page 52454, 3rd column.

"The guidelines provide that: 1. Fees may be assessed to persons who are identifiable recipients of special benefits conferred by specifically identified activities of the U.S. Nuclear Regulatory Commission. Special benefits include services rendered at the request of a recipient and encompass activities such as the review of an application or request for a permit, license, approval, amendment, renewal, or special project, and all services necessary to assist a recipient in complying with statutory obligations or obligations under the Commission's regulations:..."

COMMENT:

Heretofore, licensees have also been billed for any NRC service rendered resulting from license conditions or requirements imposed by NRC. This administrative process has also resulted in the licensee paying the expenses for consultants contracted by NRC to enforce license conditions imposed by NRC. In other words, the licensee has not been billed only for "services rendered at the request of the recipient."

The statement, "Fees may be assessed to persons..." should be clarified. Heretofore, fees have been assessed and unless the fees are paid in advance, no activities are undertaken on behalf of the licensee by NRC. We believe NRC "will" assess the licensees and therefore the wording "may" should be explained.

Regarding the statement, "Fees may be assessed to persons who are identifiable recipients of special benefits...", it is questionable that the ultimate beneficiary is the uranium mining and milling industry due to NRC's arbitrary, costly, and extremely stringent licensing activities, team inspections, enforcement fees, branch position papers, Uranium Mill Licensing requirements published October 3, 1981 in 45 Fed. Reg. 65521, etc. without due and proper consideration to the cost/benefit principle.

TEXT: Supplementary Information, Page 52455, 2nd column.

"The House of Representatives Committee on Appropriations in a report concerning FY 1983 appropriations has proposed to make the collection of fees as an offset to the

NRC budget. That is, the money collected from fees would not be deposited into the Treasury as miscellaneous receipts but rather would be an offset to the Commission's appropriation. This would benefit the public in that tax dollars are reduced in direct proportion to the license fees received by the Commission."

COMMENT:

It may be correct the proposal would benefit the public in tax dollars in that tax dollars are reduced, but the costs for the licensee are increased drastically, which have a direct effect on the startup, continuance, and/or profitability of an operation.

TEXT: Fees for Construction Permits and Operating Licenses, Page 52456, 1st column.

"This limit reflected fiscal year 1977 costs associated with the type of plant (custom or standard) being reviewed and the number of units at a site. A ceiling was appropriate only at the time imposed and in the final analysis prevents full cost recovery for most applications. In certain instances, fiscal year 1981 costs are greater because of increased licensing effort and contractual costs; therefore, we are proposing to remove the ceiling or upper limit on fees for reactor permits and licenses. Fees or charges would be based on actual cost expended for the review."

COMMENT:

In certain instances, 1981 costs were higher due to NRC's unrestricted ability to utilize expenses of unwarranted contractual services. NRC personnel normally utilized in Source Material License activities were transferred to nuclear reactor areas--i.e., Three Mile Island problem, resulting in a substantial increase of contractual services. This remark is substantiated by the statement in the above text, "...1981 costs are greater because of increased licensing effort and contractual costs..." (Emphasis supplied.) Licensees should be provided pertinent data from NRC's budget and accounting records to support the justification for increased fees. There is no economic justification for the proposed annual review of costs. Since the licensing process is time-consuming, "annual" should be changed to "every two years."

Furthermore, it is questionable, in fact, there was increased licensing activity in the reactor area or in the Source Material License Area. The uranium mining and

milling industry, starting with early 1981, has experienced a 75% to 80% reduction in operations.

TEXT: Inspections, Page 52457, 2nd column.

"This is to include inspections that previously were not subject to fees under the March 1978 fee schedule because the inspection was non-routine in nature or the inspection exceeded the billing frequency. Non-routine inspections would include reactive inspections, investigations, incident/accident response, performance appraisal inspections, enforcement activities, special emergency preparedness inspections, and systematic appraisal of licensee performance. Fees would be assessed for investigations only when the allegations are substantiated."

COMMENT: Clarification is required. Does this mean the uranium companies would be assessed fees for the following?

- NRC review of reports, notifications to NRC filed with NRC pursuant to 10 CFR 20.402, 20.403, or 20.405, and 10 CFR 21 even if no NRC inspection representative is dispatched to the site?
- NRC review of semiannual environmental monitoring data required pursuant to 10 CFR 40.65 - since copies are directed to both NRC Licensing (NMSS) and Inspection? Which fee would be assessed--\$58/hour or \$53/hour?
- Review of licensee material required to be submitted to NRC in accordance with Source Materials License Conditions--e.g., audit/ALARA memoranda, land-use surveys, 40 CFR 190 dose assessment for compliance purposes, technical evaluations of tailings retention system, assessments of seepage control measures and resultant environmental impacts?
- How does NRC mill licensing (NMSS) division, incorporated under Region IV Inspection and Enforcement, affect the administration and increase of fees?
- Since the technical staff will continue to be located in Maryland, will the licensee be charged for costs of travel, housing, and other expenses when utilized to support the Denver, Colorado-based staff?

TEXT: Table 9, Page 52458, Summary of Change in Material Inspection Fees and Costs Based on Total Annual Assessment.

COMMENT:

Costs of 2.A., Source Material Inspection Fees for FY 1981 appear to have been based on two-day inspections by two

persons. However, during 1980-1981, special Health Physics Inspection teams devoted at least one week to milling facilities. These costs are not included in Table 9.

Furthermore, licensees have no control over the number of Inspectors assigned to routine inspections. With mill licensing (NMSS) included in Region IV now, will the number of inspectors increase, thereby unnecessarily increasing costs to the operator?

TEXT: Materials Licenses, Page 52458, 1st column.

"Table 10 compares the March 23, 1978 schedule of licensing fees with the current range of costs for these licenses. This table is only included for illustrative purposes so that licensees who are currently subject to fees based on actual costs may use the table as a guide to determine what they might expect to pay for new licenses, approvals, amendments, and renewals under the proposed schedule. Since fees will be based on actual costs, the final costs could be less or more than the fee ranges shown in the table."

COMMENT:

The ranges in Table 10, Summary of Materials Fees and Costs Action, 2A. Source Material for New Applications, Uranium Milling, increased from March 1978 schedule of \$107,700 to Range of Fiscal Year 1981 Costs from \$208,000 to \$343,000, increases of 93% and 218%, respectively. Prior to utilizing Table 10, a more thorough justification and explanation is warranted because industry has no reason to believe the highest range will not be utilized in setting the pattern for new applications for uranium milling and for In Situ Leaching, regardless of the above statement, "The table is only for illustrative purposes..." (Emphasis supplied.)

Furthermore, for Item 2A, Source Material, included in Table 10, the number of professional staff hours involved is not provided. It is, therefore, impossible for a licensee to estimate the number of hours to be spent by NRC on a license review. A licensee must develop a budget of anticipated costs required for licensing procedures.

To aid licensees in estimating their costs, NRC should provide data on the estimated time (hours) required to complete the process of a NEPA review as well as the licensing review.

TEXT: Professional Rate, Page 52459, 1st column.

"The rates for the professional staff in the Offices of

Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, Inspection Enforcement, and the Advisory Committee on Reactor Safeguards, Atomic Safety and Licensing Board Panel and Atomic Safety and Licensing Appeal Panel have been revised and are based on the actual costs for Fiscal Year as shown in proposed new §170.20. These rates will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission."

COMMENT:

Current Part 170 regulations do not specify Professional Rates as proposed.

Licensees should be presented the opportunity to review an outline of these positions and their salaries to support the fee schedule.

TEXT: Fee Collection, Page 52460, 3rd column.

"Any professional staff-hours expended in the review of applications filed on or after the effective date of the proposed rule will be assessed at the rate shown in the proposed schedule (10 CFR 170.20) plus any contractual services costs."

COMMENT:

We presume contractual services would include consultant fees for which NRC provides no estimate of potential costs in the proposed fee schedule. It is possible the costs estimated in Table 10 could double or triple when contractors are utilized.

It seems possible a uranium company, in applying for a new Source Material License Application, could experience costs in the area of \$500,000-\$1,000,000 solely to license an uranium mill. Such application fees and other subsequent fees could significantly increase project and production costs.

NRC should discuss with the licensees the need and justification for contractual services. On past occasions, in the opinion of licensees, contractual services have not been warranted and/or justified.

TEXT: Pages 52459-52460, Tables 11-16.

COMMENT:

It is not clear if PTS (Program Technical Support) includes consultant fees. Please clarify.

TEXT: §170.12, Payment of Fees.

"(b) License fees. Fees for review of applications for permits, licenses, and facility reference standardized design approvals are payable upon notification by the Commission. Each application for which the review charges are based on actual costs and the application has been pending with the Commission for six months or longer, the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each."

COMMENT:

The proposed process presents an undue burden on companies with respect to the budgeting and planning process. With such a proposed open-ended approach to cost determinations, sound business practices could be disrupted.

There does not appear to be any wording to establish a clear incentive or motivation for an NRC employee or contractor to perform efficiently or expeditiously.

The proposal defines a professional staff year as 1800 staff hours. This appears to be considerably lower than the 2080 hours utilized in the private sector.

Itemized billing is stipulated; however, there is insufficient detail as to the nature of the form.

TEXT: §170.20, Average Cost per Professional Staff-Hour.

"(a) Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification examination and replacement examination, or other required approvals under §§170.21 and 170.31 will be calculated based upon the actual costs for the review using the following applicable professional staff rates:..."

COMMENT:

Average professional staff rates are provided which range from \$58/hour to \$66/hour and will be modified on an annual basis as necessary. These professional staff rates are higher than rates utilized by consulting firms who are operating on a profit foundation.

TEXT: §170.31, Schedule of Fees for Materials Licenses and Other Regulatory Services.

"Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay the following fees:..."

COMMENT:

New license/renewal/amendment fee applications will be charged a \$150 filing fee with final fee determined by actual costs based on time involved in NRC reviewing the applications. In 1978, maximum fees corresponded to \$107,700 (new applications), \$100,800 (renewals), and \$150-\$20,800 (amendments) and are anticipated to at least double (see Table 10, page 52459) based on FY 1981 cost estimates. Costs for contractual services are not included (page 52460, 3rd column) and could even further substantially increase all costs.

The excessive fee schedules applicable to mills on an economic standby basis as well as during the shutdown period prior to final decommissioning and reclamation do not appear warranted.

Under the proposed "actual cost concept," the licensee has absolutely no control over costs to be incurred. It is essential an upper limit be imposed upon fees to avoid an "open-ended" cost situation.

Furthermore, consultants engaged by NRC are required for supportive and/or consulting services to NRC. The licensee should not be required to pay for contractual services unilaterally determined essential by NRC staff.

Inspections defined in §170.3 now include non-routine inspections and no time estimates are provided for such inspections. The potential for abuse and fee costs are enormous and should not be included.

TEXT: §170.32, Footnote². Inspection fees can now include fees for "...contractual support service costs incurred..."

COMMENT:

We do not understand the need for contractual support services to inspect a uranium mill and its facilities. Professional staff persons should be sufficiently competent to perform this routine and repetitive function.
