Rio Algom Mining Corp.

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Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
11555 Rockville Pike
Rockville, MD 20850

Re: Proposed Revision of Fee Schedules, 10 CFR §170 & §171

Dear Mr. Chilk:

Rio Algom Mining Corp. and its wholly owned subsidiary, Quivira Mining Company, are source material licensees and submit the following comments on the proposed revised fee schedules pursuant to the Federal Register notice at page 24065 dated May 10, 1994. The proposed regulations are intended to implement Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, which requires NRC to recover 100 percent of its budget authority.

Sincerely,

Bill Ferdinand

Bill Ferdinand, Manager
Radiation Safety, Licensing &
Regulatory Compliance

xc: file

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RIO ALGOM MINING CORP. AND QUIVIRA MINING COMPANY

COMMENTS ON THE PROPOSED FEE STRUCTURES 10 CFR §170, §171

These comments are submitted by Rio Algom Mining Corp. (Rio Algom) and Quivira Mining Company (Quivira) in response to the Nuclear Regulatory Commission's Proposed Rule for Revision of Fee Schedule, published in the Federal Register at 24065, dated May 10, 1994.

Rio Algom and its wholly owned subsidiary Quivira, are source material licensees with uranium mining and milling interest in Ambrosia Lake, New Mexico; Lisbon Valley, Utah; and South Powder River Basin, Wyoming. Quivira's facility at Ambrosia Lake is a uranium ore processing facility and due to sustained depressed market conditions, the mill and mine complex was placed on standby status in 1985 pending better market conditions. In late 1986, final reclamation on the facility's tailings impoundments commenced and the tailings impoundments are presently being reclaimed in accordance with an approved NRC reclamation plan. The Lisbon valley facility contains an underground mine and mill complex. The mine site has been reclaimed with the mill tailings impoundments reclaimed to meet current NRC regulatory standards. The South Powder River Basin area contains an uranium in-situ leaching facility. The in-situ leaching operation has been licensed but has not been fully developed and is currently in a deferred holding status pending improved market conditions.

Comments on the Annual Fees - Category 2 (A)(2)

Rio Algom and Quivira after review of the proposed rules affecting uranium recovery licensees believe the 62% increase in annual fees for Category 2 (A)(2), Class I (mills) and Class II (in-situ leaching and ion exchange) facilities is not equitable or reasonable. While we agree with the premise that the Commission should be reimbursed by the collection of reasonable fees commensurate with services provided, upon review of the revised fee schedule, we do not believe the proposed revised fee schedule has been implemented in a fair and equitable manner, nor do the proposed charges reflect a reasonable relationship to the cost of providing these regulatory services for uranium source material licensees.

NRC proposes to increase the uranium recovery licensee category 2(A)(2) Class I fee from $58,100 to $94,300 and the Class II fee from $25,400 to $41,200. NRC states that these increases are being caused by two reasons; (1) the completion of licensing of the Envirocare byproduct disposal facility and; (2) the decrease in the number of licensees to be assessed annual fees. After review of the previous year's budget authority for NRC's fiscal year 1993, Rio Algom and Quivira seriously question NRC's rational for the proposed dramatic increase in annual fees for source material licensees.

In NRC's budget authority for fiscal year 1993 for part §170 and §171 fees for uranium recovery facilities was $465,000.[1] In contrast, the 1994 proposed budget authority for part §170 and §171 fees for uranium recovery facilities is now $2,100,000.[2] This represents a budget authority increase for uranium recovery facilities of over 350%. Rio Algom and Quivira have difficulty in justifying the grounds upon which the budget requirement for uranium recovery facilities can increase over 350% as regulatory services to the industry have not increased from the 1993 to 1994 fiscal years. This is particularly troubling in that the costs associated with regulatory services provided to uranium recovery facilities should have decreased with the closure of NRC's Denver office, the Uranium Recovery Field Office, as this NRC office provided the oversight and regulation of uranium recovery licensees. The justification by NRC for its closure was as a cost reduction measure to uranium recovery licensees.

Rio Algom and Quivira's conclusion that source material licensee costs should have decreased during fiscal year 1994 is supported by testimony of NRC Chairman Ivan Selin, who before the U.S. Senate, Subcommittee on Clean Air and Nuclear Regulation, on March 9, 1994, stated that as part of closing its field office in Denver, NRC was tightening its financial operation and efficiency of program financing.[3] We believe that with the closure of NRC's uranium recovery office in Denver, if the Commission is tightening its financial operation and

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[1] Federal Register, Volume 58. No. 77, April 23, 1993, page 21668 & 21676

[2] Federal Register, Volume 59. No. 89, May 10, 1994, page 24068

[3] Atomic Energy Clearing House, Volume 40, No. 10, March 11, 1994, Congressional Informational Bureau, Inc., pages 1-2.

efficiency of program financing, then the annual fees for the uranium recovery category should decrease rather than almost double from the previous fiscal year.

Further, our conclusion is supported by a presentation by NRC officials concerning the closure of NRC's Denver office before representatives from uranium recovery industry on November 18, 1993. During the NRC presentation, the cost savings to the industry for the 1994 fiscal year resulting from the closure of the Denver office was estimated to be $420,000.[4] Rio Algom and Quivira do not see the cost savings from the Denver office closure within the proposed 1994 budget authority for the uranium recovery budget.

Rio Algom and Quivira also take issue with NRC's explanation that the 1994 fee increase for uranium recovery licensee category is due to the decrease of fees recovered through Part §170 fees because of the completion of the licensing of the Envirocare 11.e(2) byproduct disposal facility.[5] The Envirocare facility which recently completed NRC licensing, is not an uranium recovery licensee. An uranium recovery licensee per NRC's Category 2A(2) definition in 10 CFR §171.16 is stated as:

> *"Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode."*

Rather, the Envirocare facility has been classified as a 4D category facility, "Waste Disposal and Processing" in 10 CFR §171.16. Category 4D states these facilities are:

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[4] NRC Letter To State Officials and Uranium Recovery Licensees, Mr. Malcolm Knapp, NRC Transition Oversight Team, December 8, 1993, page 9.

[5] Federal Register, Volume 59, No. 89, May 10, 1994, Page 24076

"Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A(2)."

However, the licensing and regulatory services provided to Envirocare were performed by NRC staff typically associated with and now funded by the uranium recovery budget. Further, these same regulatory services funded by the uranium recovery budget will continue to be utilized by Category 4D facilities. Since Category 4D facilities will continue to equally utilize regulatory services funded by the uranium recovery budget, it is Rio Algom and Quivira's belief that Category 4D facilities should be included in the underlying basis to determine and allocate annual fees to Category 2A facilities. We further believe to be equitable that Category 4D facilities should be assessed the same annual fees as an operational Category 2A(2), Class I facilities, as they are analogous and essentially require the same regulatory services from NRC.

Presently, the proposed 1994 uranium recovery budget authority is determined by allocating the annual fees to recover the remaining budget needs not captured by the §170 fees to only twelve (12) uranium recovery facilities, even though Category 4D facilities equally use NRC staff which is now supported by the uranium recovery budget. To be equitable and fair, these Category 4D facilities need to be included in the basis for ultimately determining and allocating the annual license fees for Category 2A(2) facilities.

The unfairness and disparity of excluding Category 4D facilities to determine annual license fees for uranium recovery budget is readily apparent when examining the proposed annual fees for Category 4D licensees. As previously quoted, Category 4D facilities are authorized to receive and dispose of byproduct material that is produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content from other person. Category 2A(2), Class I facilities or mill tailings impoundments are also authorized to receive and dispose of byproduct material that is produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content from other persons. The proposed annual fee for Category 4D facilities is only $8,700 where as the proposed annual fee for a Category 2A(2) Class I facility is by comparison $94,300.

Category 4D facilities are identical to operational uranium recovery mill tailings impoundments [Category 2A(2), Class I facilities] who receive and dispose of byproduct material produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content from other persons. This fact is acknowledged by NRC in the description of Category 4D facilities in 10 CFR §171.16 which states that this category is applicable to all licenses authorized to receive byproduct material for possession and disposal except those licensees subject to fees in Category 2A(2).[6] The difference between these two fee categories is primarily in the annual fee assessment as operational uranium recovery facility would be charged an annual fee of $94,300 whereas the Category 4D facility to dispose of the same byproduct material is only assessed $8,700. This represents over a ten (10) fold increase in the annual fees being charged to an operational Category 2A(2) Class I facility for the same function. Surely, NRC cannot state this is an equitable and fair allocation of annual fees amongst the licensees.

It is our belief that Category 4D disposal facilities should be included and charged the same fees as operational Category 2A(2), Class I facilities since the commercial "byproduct disposal" sites are analogous to uranium recovery tailings impoundments and essentially require the same licensing and regulatory oversight. This would be consistent with previous NRC statements that both Category 2A(2) Class I and Category 4D facilities are regulated the same. NRC states:

> *"The costs allocated to the uranium recovery class of licensee are for safety generic and other regulatory activities that are attributable to this class of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. With respect to mill operations and the disposal of section 11.e.(2) byproduct material, the same NRC regulations (e.g. 10 CFR part 40), guidance (e.g. Regulatory Guides) and policies are applicable to both the license which authorizes milling and disposal of section 11.e.(2) byproduct material* [Category 2A(2) Class I] *and the license that only authorizes disposal of 11.e.(2) byproduct material* [Category 4D]. *The 10 CFR part 40 generic safety regulations are applied in the same manner to each license in the class independent of the source material activities authorized by the licensees."*[7] [Emphasis Added]

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[6] Federal Register, Volume 59, No. 89, May 10, 1994, at page 24088.

[7] Federal Register, Volume 58, Number 137, July 20, 1993, at page 38673.

The Conference Report of Congress regarding the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) directs the NRC in subsection (c)(3) to:

> *"establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the costs of providing services to such licensees or classes of licensees."* [Emphasis Added]

Applying a different and substantially lower annual fee (11 times lower) to the Category 4D facilities when they are basically the same as uranium mill licensees (Category 2A(2) Class I) would be in direct conflict with the intent of this subsection. To treat these categories differently in regards to annual fees would be arbitrary and capricious.

NRC states that another reason for the dramatic increase in the 1994 proposed budget is that there is a decrease in the number of licensees. Based on available information, the number of uranium recovery licensees being assessed the annual fee has decreased since the 1993 fiscal year from fourteen (14) to twelve (12). This is only a 16% drop in the number of uranium recovery licensees. While we recognized many factors go into creating the proposed annual fees, we do not believe two (2) less uranium recovery licensees being assessed annual fees would require a 62% fee increase for the remaining of the uranium recovery licensees.

This disbelief is further underscored when acknowledging that NRC for the first time is supplementing its uranium recovery budget by finally assessing the Department of Energy (DOE) for Commission regulatory services rendered for activities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The proposed annual fee being assessed to DOE by the Commission is $1.449 million.

While we support and have previously commented that governmental agencies such as DOE should be rightfully billed for regulatory services rendered by the Commission,[8]

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[8] Rio Algom Mining Corp. and Quivira Mining Company Comments To The U.S. Nuclear Regulatory Commission on Proposed Fees, May 8,1991; May 20, 1992; May 21, 1993; July 17, 1993.

Rio Algom and Quivira seriously question NRC's proposed uranium recovery budget increase in light of the DOE support combined with the stated cost savings from the Denver office closure through the reduction of four (4) FTE's that were associated with the uranium recovery budget.[9] In consideration of these two factors, we find it even more difficult to justify and support NRC's proposed increase from the 1993 budget authority of $0.5 million to the proposed 1994 budget authority of $2.1 million. Better justification and accounting for the cost allocation needs to be provided by NRC as it is unreasonable to expect uranium recovery licensees to support NRC's increased budget due to these measures which by all accounts, should actually decrease the uranium recovery budget and the annual fees to the uranium recovery licensees.

In conjunction with these points, NRC has stated that it can give consideration to the effects of the imposition of annual fees only when it is required to consider the effects by law (e.g. the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act).[10] Section 170B of the Atomic Energy Act of 1954, as amended by Public Law 97-415, requires the Secretary of Energy to annually assess the viability of the domestic uranium mining and milling industry. The Secretary of Energy has determined in each of the annual reports to Congress since 1984, that the industry has been non-viable.[11] This fact is readily apparent by comparing the number of licensed mills in operation in the late 1970's and early 1980's to those in operation today. A decade ago there were twenty-six (26) active and licensed mills.[12] Today there are no active conventional mining and milling operations in the United States.

The Commission needs to give full consideration to the effects of imposing significant annual fees on the domestic source material industry due to these decisions by the Secretary of

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[9] NRC Letter To State Officials and Uranium Recovery Licensees, Mr. Malcolm Knapp, NRC Transition Oversight Team, December 8, 1993, page 9.

[10] U.S. Nuclear Regulatory Commission, U.S. Mailing, Pre-Federal Register Final Notice of Rulemaking, July 10, 1991, Page 26

[11] Energy Information Administration, "Domestic Uranium Mining and Milling Industry 1989", DOE/EIA-0477(89), 1990, Page ix

[12] U.S. EPA, "Draft Environmental Impact Statement for Proposed NESHAPS for Radionuclides", EPA 520/1-89-007, 1989, Page 4-21

Energy, and the requirement of the Atomic Energy Act that this country maintain a viable domestic source material industry to sustain vital national security interests. This cannot be accomplished by continually increasing the annual fees to cover the increasing uranium recovery budget because of decreasing numbers of uranium recovery licensees. This is a self defeating mechanism as "more and more" of the cost burden is being shared by "fewer and fewer" uranium recovery licensees making the remaining licensees less competitive in the world market. This fee mechanism if carried to its conclusion, would be in essence, be a major contributor to the further demise of the domestic uranium recovery industry, much to the detriment of energy independence.

The Commission needs to be aware and factor into their budgeting process, the fact that the domestic uranium recovery mining and milling industry is participating in a global economy whose uranium producers are primarily owned by their respective governments. This includes non-market economy governments where the sales price of natural uranium appears to bear little or no relationship to the costs of its production.

The NRC fees impose a great financial strain on a company's ability to compete, not only globally, but also domestically. The Commission needs to appreciate that NRC licensed uranium recovery facilities are competing with Agreement State licensees which are not burdened with the same NRC imposed fees. These fees when only applied to NRC licensees and not to Agreement State licensees, are tantamount to a preferential tax and will adversely impact interstate commerce due to the imposition of the unevenly levied fees.

We believe that to meet and fulfill the responsibility entrusted to NRC and to assure equitable assessment of fees to all entities, the Commission needs to carefully examine and appropriately consider the facts that Rio Algom and Quivira have presented to assure the annual fees levied to uranium recovery licensees and to other categories of licensees are commensurate with services rendered.

Comments on the Professional Staff Hourly Rates

Rio Algom and Quivira believe that although the rate of increase in the proposed professional hour rate from $132 to $133/professional hour is more appropriate than it has been in previous fiscal years, we are still concerned about the quantity of direct FTE's in relationship to the number of actual NRC licensees requiring regulatory services.

When NRC implemented the fee structure to recover 100% of its budget in 1991, there were approximately 9,000 licensees.[13] As of 1993, the number of licensee had dropped to 6,800.[14] This number has further decreased today to approximately 6,500.[15] This represents a decrease of nearly 28% in the number of licensees over which to equitably distribute the fees. Conversely however, during the period from 1991 to 1993, the NRC Direct Full Time Equivalents (FTE) increased approximately 6% from 1,530 FTEs[16] to 1,619 FTEs.[17] Although there was another drop of approximately 300 licensees to 6,500 during the 1993 fiscal year or 4.5% reduction, the number of FTEs slightly increased to 1,629.[18]

Rio Algom and Quivira are also concerned that with the continuing trend of more States to become Agreement States under provision of the Atomic Energy Act (AEA), as amended, which results in fewer NRC licensees to absorb the cost burden to maintain existing NRC staff. This is especially true in light of the stated intentions of Pennsylvania, Ohio, Massachusetts and Oklahoma to become Agreement States along with their approximate 2,200 licensees.[19] If these State's become Agreement States, NRC will be losing over 30% of its existing licensee

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[13] Federal Register, Volume 57, Number 83, Wednesday, April 29, 1992, Page 18103

[14] Federal Register, Volume 58, Number 77, Friday, April 23, 1993, Page 21663

[15] Federal Register, Volume 59, Number 89, May 10, 1994, at page 24076

[16] NRC Notice Pre-Federal Register Notice, "Proposed Revision To 10 CFR 170 and 171 on License, Inspection and Annual Fees", April 5, 1991, Page 43

[17] Federal Register, Volume 58, Number 77, April 23, 1993, Page 21668

[18] Federal Register, Volume 59, Number 89, May 10, 1994, at page 24069

[19] Nuclear Regulatory Commission, "Information Digest", NUREG 1350, Volume 6.

base. The fees generated by these former NRC licensees will have to be made up by the remaining NRC licensees putting additional financial stress on an already greatly burdened industry. Unless Commission management or legislative measures are initiated to find another means of budgeting for NRC current staff to account for the continuation of the Agreement State trend, the regulatory costs to the remaining NRC licensees will spiral out of control which will ultimately force an accelerated rate of decline in the number of NRC licenses.

This continuing increase in the professional hour rates and direct FTEs at the same time the number of licensees continue to decrease remains one of the primary concerns of industry and demonstrates that governmental agencies or any program which collects its budget from a regulated community must be subject to some outside control or review system to contain costs. Without this independent oversight, increases in regulatory costs will continue occur and the increase will not reflect or in anyway relate to the benefits derived by the regulated community. We urge the Commission to re-examine its present fee system and propose the necessary legislative measures to Congress to rectify the inequitableness of the present fee system.

Comments on Budget Support

NRC has identified various activities for which regulatory services have been rendered by the Commission, but whose costs cannot be captured due to prohibitions from other legislative Acts and/or NRC policies. These include; (1) activities not associated with existing NRC licensee or class of licensee; (2) applicants not subject to fee assessment due to other Acts; (3) exemptions based on current Commission policies and; (4) activities that support both NRC and Agreement State applicants and licensees.[20]

In regards to item #1, "activities not associated with existing NRC licensee or class of licensee", Rio Algom and Quivira believe the Commission needs propose to Congress modifying language to OBRA-90 to include fees for those entities who are provided regulatory services by the Commission, but where NRC is limited from doing so because they are not an currently a NRC licensee. Modifying the language of OBRA-90 would allow the Commission to equitably

[20] Federal Register, Volume 58, Number 73, April 19, 1993, at pages 21117-21120

assess fees for activities not presently associated with existing NRC license or class of license. This modification would be consistent with the intent of the Act and allow the:

> *"collection of fees from 'any person' and all licensees"* and *"any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's cost in providing any such service or thing of value."*[21]

Section 111(s) of the Atomic Energy Act (AEA) defines "person" as:

> *"The term 'person' means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or political subdivision ...."*[22]

We believe that OBRA-90 needs to be modified to allow the Commission to recoup its costs associated with services rendered to be consistent with the Act's intent to allow the Commission to recover appropriate costs from "persons", including non-licensees. This modification would implement the intent of the Act and allow non-licensees, to be appropriately billed for services rendered by the Commission.

In regards to item #2, the prohibition of charging fees to licensees and other "persons" due to the Independent Offices Appropriation Act (IOAA), we believe the Commission, in conjunction with modifications to OBRA-90 to expand its fee collection ability beyond "NRC licensees", also needs to recommend to Congress that the IOAA be modified to allow those exempted entities which receive services from the Commission, to be fairly and equitably assessed fees for identifiable services rendered by the Commission. This would fittingly place the burden of Commission services on those entities receiving NRC services, including government agencies and departments.

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[21] U.S. Nuclear Regulatory Commission, Pre-Federal Register, Final Notice of Rulemaking, July 8, 1991, Page 17

[22] Atomic Energy Act of 1954, as amended, Section 111(s)

Rio Algom and Quivira in previous comments to the Commission regarding fee notices, has strongly held that the fee structure would be more equitable if governmental agencies such as the Department of Energy (DOE), Department of Defense (DOD) and the Environmental Protection Agency (EPA) were billed for their fair share of regulatory services rendered by the Commission.

We support the Commission's decision to assess fees to the DOE under provisions of the Uranium Mill Tailings Radiation Control Act (UMTRCA). However, we urge the Commission to propose modifying language to the IOAA and OBRA-90 to allow fees to be rightfully assessed to other agencies for rendered regulatory services irregardless whether they're general licensees.

This includes EPA as within Subpart T (National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings) and Subpart W (National Emission Standards for Radon Emissions From Operating Mill Tailings), where EPA established the regulatory requirements for source material licensees to dispose and operate uranium mill tailings facilities creating dual regulatory programs. Due to the dual regulatory status created by this promulgation, conflicting regulatory requirements between the two agencies now exist. We believe that costs incurred by NRC in resolving these differences should be borne by EPA, not the licensees.

In addition to allowing the Commission to recoup its costs on the domestic front, revision of the IOAA could also allow the Commission to appropriately bill and fund those necessary international activities including safety assistance to foreign counties and non-proliferation reviews. Since these items are typically channelled through and normally requested by the Federal Government, we believe that modification consistent with the intent of OBRA-90 would permit the Commission to assess the related costs to the Treasury Department since such services are rendered on behalf of the Federal Government.

In the third item, "exemptions based on current Commission policies", we concur with the Commission responsibilities to review and consider the impact of their actions on small entities. This is also consistent with the Conference Report of Congress which states that:

> *"annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and the annual fees be assessed to those licensees the Commission, in it discretion, determines can fairly, equitably, and practicably contribute to their payment."*[23]

While we generally support such action by the Commission, we believe the Commission needs to further examine the whole issue due to potential ramifications which may result from future Commission actions regarding the Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register (October 28, 1992, Volume 57, page 48749) on pertinent issues raised in 10 CFR §40.

Within this ANPR, the NRC requested comments regarding the expanding the term "ore" and various options in NUREG/CR-5881 which could significantly increase NRC's oversight and regulatory requirements of general licenses who are presently exempted from fees. Since the implementation of various options offered in the ANPR would create a significant expenditure of Commission resources and time, the Commission will have to re-think its present policy regarding its exemption for these types of licensees, as existing NRC licensees should not be held financially responsible for these additional costs.

Upon reviewing the fourth item, "activities that support both NRC and Agreement State applicants and licensees", Rio Algom and Quivira believe no single legislative option is uniquely suited to address equitableness of fee assessment. Rather, we believe a combination of legislative and policy changes are appropriate.

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[23] Federal Register, Volume 56, Number 71, Friday, April 12, 1991, Page 14496

Modifying OBRA-90 to exclude from the base fee calculated NRC costs associated with the items listed below would partially address the inappropriateness of imposing fees on NRC licensee who have neither requested nor will benefit from these activities. These items include; (1) activities not associated with an existing NRC licensee or class of licensee; (2) applicants and licensees not subject to fee assessment under the IOAA; (3) Commission policy exempting certain NRC licensees from regulatory fees and; (4) activities that support both NRC and Agreement States activities. We support the position that activities whose beneficiaries are not NRC licensees, should not bear the costs to fund such programs. This includes Agreement State programs and their associated costs incurred by NRC.

Rio Algom and Quivira believe that if costs associated with supporting Agreement States programs are not removed from the fee base, then facilities located in Agreement States should be charged comparable annual fees. Otherwise, it provides an unfair advantage to facilities located in Agreement States because in the current depressed market situation, NRC fees impose a great financial strain on a company's ability to compete, not only globally, but also domestically. These fees when applied only to NRC licensees, are tantamount to a preferential tax and adversely impact interstate commerce due to the imposition of unevenly levied fees. Further, Section 111 (s) of the AEA already provides the Commission authority to assess fees to *"any State or political subdivision"* who receives a service or thing of value from the Commission.

Recognizing that NRC licensees represent only 30 percent of NRC's generic regulatory costs while the other 70 percent is attributable to support of NRC/Agreement State applicants and licensees,[24] the Commission must implement some form of cost recovery program from agencies receiving those benefits to must be consistent with the intent and language in OBRA-90 and AEA to ensure fees are assessed equitably. This includes equitable treatment for Agreement States licensees.

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[24] Federal Register, Volume 58, Number 73, April 19, 1993, at page 21118

Comments On Footnote #3 and "10 CFR §171.13 - Notice"

A review of the requirements in "10 CFR §171.13 - Notice" indicates the Commission will publish a notice in the Federal Register during the first quarter of each fiscal year. Specifically, regulation 10 CFR §171.13 states:

> *"The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§171.15 and 171.16, will be published as a notice in the Federal Register during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission."* [Emphasis added]

We realize that it is sometimes beyond the control of NRC to publish its proposed annual fee and professional hourly rates within a given period, however, for the past four (4) years, the proposed annual fees have been published in the Federal Register during the third quarter of each fiscal year. A large portion of regulated entities have fiscal years that coincide with the calendar year and it would facilitate licensee's budgeting and planning process if this data were published in the first quarter of NRC's fiscal year. We urge NRC to publish the proposed annual fee and professional hourly rate as early as possible within NRC's fiscal year.