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OFFICE OF SECRETARY  
DOCKETING & SERVICE

Secretary  
U. S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852

DOCKET NUMBER  
PROPOSED RULE PR 170 & 171  
(59FR 24065)

ATTN: Docketing and Service Branch

Subject: **Comments on Proposed Rule for Amending Annual Fees for FY 1994**

Contained herein are General Atomics' (GA's) comments regarding the Nuclear Regulatory Commission's (NRC's) proposed rule amending 10 CFR Parts 170 and 171 as published in the May 10, 1994 issue of the Federal Register (Vol. 59, No. 89, Tuesday, May 10, 1994, p. 24065).

A. GA strenuously objects to the proposed reclassification of GA as a Category 1.A.(1) licensee. This would have the effect of retroactively imposing, for FY 1994 an annual fee of \$1,484,770 for GA's license as compared with the \$172,220 which was assessed for FY 1993. GA's only current fuel fabrication business is the manufacture of a limited number of TRIGA research reactor fuel elements. The proposed fee reclassification and fee increase is expected to have the further effect of forcing GA to shutdown that activity, thereby eliminating any U.S. source for such research reactor fuel. GA contends that it should properly and rightfully remain a Category 1.A.(2) licensee and presents the following comments in support of this position:

- 1) GA is not a "fuel facility" in the same sense as the Category 1.A.(1) licensees. All of the licensees in Category 1.A.(1) are large suppliers of light water reactor (LWR) fuel to the commercial power industry or the U.S. Navy; GA is not. GA's license only allows it to conduct fuel related research and development activities and to manufacture TRIGA research reactor fuel elements. GA had been a manufacturer of fuel elements for High Temperature Gas Cooled Reactors (HTGRs) until the mid 1980's. GA's capability and NRC authorization to be a "fuel facility" terminated with GA's notification to the Commission, in 1989, that it was going to decommission and dismantle its HTGR fuel fabrication facility and requested that its SNM possession limits be lowered (Ref. 1). GA's HTGR fuel fabrication facility has, in fact, been decontaminated and demolished following an NRC approved decommissioning plan (Refs. 2 & 3); and the facility no longer exists. In order to re-establish its HTGR fuel fabrication capability and become a "fuel facility", GA would, as its license explicitly requires, have to obtain an amendment to its license authorizing construction and use of a new building to replace the facility that has been demolished. Thus, as it presently stands, GA's license does not authorize it to operate as a "fuel facility" as the Category 1.A.(1) licensees do.

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- 2) When the Commission first proposed to impose Part 171 annual fees on materials licensees, it discussed the category of "Major Fuel Facilities" as holders of "licenses authorizing them to possess and use significant quantities of special nuclear materials in fuel processing and fabrication or significant quantities of source material in the conversion of uranium hexafluoride  $UF_6$ " (Ref. 4 [p. 14874]). It identified 10 licensees in this category, consisting of six manufacturers of low-enriched fuel, two manufacturers of high-enriched fuel, and who operate  $UF_6$  conversion facilities. GA was not included in this category of "major fuel facilities." Obviously, GA was not included because, as discussed elsewhere in these comments, it had requested a downgrade of its license, had ceased fabrication of fuel for HTGRs, and had commenced decontamination and decommissioning of its facility for fabrication of such fuel under an NRC approved decommissioning plan. Its continuing activities under license SNM-696 were limited, as discussed elsewhere, to possession of relatively small quantities of special nuclear materials and throughputs of a fraction of one percent of those processed by the major fuel fabricators. It was perfectly logical and sensible that the NRC would propose to include GA under Category 1.A(2), that consisted of other licensees authorized to possess plutonium, U-235 or U-233 in unsealed form, rather than in Category 1.A(1). GA is not aware of any suggestion by any commenter on the proposed NRC regulation that GA be included in Category 1.A(1).

The NRC reaffirmed the propriety of including GA in Category 1.A(2) when it adopted the final Part 171 rule in 1991. It added one additional facility to the high-enriched fuel fabricator facilities, making a total of eleven major fuel facilities (Ref. 5 [pp. 31480, 31496, 31508]). It recognized that there were nine "small fuel facilities" (emphasis added), which were charged an appropriate fee of \$100,000 plus surcharges. For the reasons discussed above, inclusion of GA within the "small fuel facilities" was fully appropriate in 1991. There has been no change of any kind in GA's activities or licensing status since 1991 that would warrant consideration of reclassification of GA's facility.

- 3) Reclassifying GA as a Category 1.A(1) licensee is inconsistent with the NRC's stated underlying basis of "charging a class of licensees for NRC costs attributable to that class of licensees." By any measure of comparison, e.g., SNM throughput, facility size, employment numbers, complexity of processes, chemical/physical forms of SNM, number of process steps, etc., GA's licensed activities are no where close to being in the same class as the licensees listed in Category 1.A(1). GA's licensed facility is significantly smaller in size and capacity; its licensed processes are simple small batch-wise operations, there are no processes involving solutions or powders (the fuel is a uranium-zirconium metal alloy), and the fuel elements produced are specifically for use in research reactors. They cannot be used in existing commercial power or naval reactors.

To illustrate the vast differences between GA and the Category 1.A.(1) licensees, consider the comparison of annual capacity and throughput in the table below:

| COMPARISON OF GA AND LICENSEES IN CATEGORY 1.A.(1) |                           |                             |
|--|---------------------------|-----------------------------|
|  | Annual Capacity<br>(kg U) | Annual Throughput<br>(kg U) |
| GA TRIGA   | 100                       | 25 <sup>(1)</sup>           |
| OTHER (avg.)                                       | 650,000 <sup>(2)</sup>    | 325,000 <sup>(3)</sup>      |
| RATIO OF GA TO OTHER                               | 0.02%                     | <0.1%                       |

<sup>(1)</sup>Average of throughput for years 1984 through 1993  
<sup>(2)</sup>Estimated average annual capacity of Category 1.A.(1) licensees  
<sup>(3)</sup>Estimated average annual throughput based on operating at 50% of capacity

It is seen that GA's annual capacity and throughput are only 0.02% and <0.01%, respectively, of the corresponding estimated average values for the licensees in Category 1.A.(1). Clearly, GA does not belong in the same class with the Category 1.A.(1) licensees.

- 4) In addition, the Commission must recognize that GA relied upon the Commission's classification of its facility in 1991 as a "small fuel facility" rather than a "major fuel facility" and has continued to rely on the Commission's adherence to such classification in subsequent fiscal years. When the Commission first applied Part 171 to materials licensees in 1991, it recognized that many licensees might wish to avoid or minimize such fees by terminating or modifying their licenses. Thus, rather than making the final rule effective immediately upon publication in the Federal Register, it specified an effective date 30 days after publication (Ref. 5 [pp. 31472, 31475]). Moreover, it provided that a materials licensee could avoid such fees for the initial year that it was being proposed (FY-1991), by relinquishing its license or obtaining a Possession Only License, as long as it notified the NRC under applicable regulations within the 30-day period before the effective date of the rule and permanently ceased licensed activities entirely by September 30, 1991 (Ref. 5 [pp. 31475, 31485]). GA, of course, had no reason to do so because both in the proposed rule and the final rule it was properly classified as a "small fuels facility." If, however, it had been improperly classified as a "major fuel facility" it could have taken advantage of the initial 1991 provisions in order

to terminate or downgrade its activities before it became liable for licensing fees that were totally disproportionate to the purpose, scope and economics of its limited fuel related R&D activities and its research-reactor related fuel activities.

GA's reliance on the NRC's 1991 classification of its activities is particularly significant because, in subsequent fiscal years, fees became payable based on a licensee's status at the beginning of a fiscal year (October 1, although the amount of fees would not be announced until late in the fiscal year. Thus, the Commission's currently proposed belated reclassification of GA's facility would result in a retroactive imposition of a more than eight-fold increase in GA's fees without GA having had an opportunity to take licensing action to avoid such fee. In fact, if the Commission were to persist in this unwarranted reclassification, GA will have to take hasty action at this time to terminate its TRIGA-related activities by September 30, 1994 in order to avoid these prohibitive fees for the next fiscal year.

After three **precedent-setting** years of being classified as a Category 1.A.(2) licensee, there is no justification for suddenly and arbitrarily reclassifying GA as a Category 1.A.(1) "fuel facility."

- 5) Notwithstanding the NRC practice of making revisions to its Part 170 and Part 171 fees, on a per category basis, late in the applicable fiscal year, GA contends that it is patently unfair to singularly and unwarrantably reclassify General Atomics after the beginning of the fiscal year and to impose the higher fee associated with the new category. It is simply not right to correctly classify GA as a Category 1.A.(2) licensee for three years and then near the end of the fourth year change the classification and retroactively impose an increased (by more than eight-fold) annual fee. It makes no sense to suggest that GA should have filed for a downgrading of its license before October 1, 1993 in order to avoid the fee associated with GA's "reclassification" when GA was never forewarned or informed and had no idea that it might be reclassified later in the year; rather, in fact, GA had three years of precedent as a basis for assuring that it was indeed classified properly as a Category 1.A.(2) licensee.
- 6) Reclassifying GA as a Category 1.A.(1) licensee would be inconsistent with the Congressional guidance in the Conference Committee Report on the Omnibus Budget Reconciliation Act of 1990 which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692-93). Again, by any measure of comparison, GA does not belong in the same Category as those licensees already in Category 1.A.(1).

Because GA's HTGR fuel facility has been decontaminated, decommissioned and demolished and because its license no longer permits it to produce significant quantities of HTGR fuel, the generic costs of regulation of GA's fuel production are obviously a small fraction of those for the facilities operated by the Category 1.A(1) licensees. The annual fee for fuel facilities is based on the NRC's budgeted costs for "generic and other research activities directly related to the regulation of materials licenses" and "other safety, environmental, and safeguards activities for materials licenses" (10 CFR 171.16(b)). These are further explained as including: rulemaking, upgrading safeguards requirements, modifying the Standard Review Plans, overseeing regional programs, developing inspection programs, event and allegation follow up, contested hearings and responses to Part 2.206 petitions (Ref. 5 [pp. 31472, 31484]). Clearly, these costs have little or no relationship to a decontaminated, decommissioned, and demolished facility or to a facility producing only a limited amount of fuel for research purposes.

- 7) Reclassifying GA as a Category 1.A.(1) licensee would be inconsistent with those portions of OBRA-90 and the Conference Committee Report which specifically states that:

"The 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 its discretion, determines can fairly, equitably, and practicably contribute to their payment."

It is not reasonable to assume that the cost of regulatory services required by, and therefore provided to GA, for its limited fuel related R&D activities and as a small supplier of research reactor fuel are comparable to those of large suppliers of commercial power or naval reactor fuel. It is not fair nor equitable to assess a licensee of a small facility fabricating replacement fuel elements for research reactors the same fee as is assessed to those fuel facilities that service the commercial power reactor industry.

GA also would like to call your attention to the following observations regarding the consequences that would result if the proposed reclassification of GA is not reversed:

TRIGA reactors represent the premier, and the United State's only, research reactor on the world market. TRIGA type research reactors are located on university campuses, in hospitals, research institutions and government installations in the United States and in countries in Europe, Asia, Africa and South America.

GA's customers for research reactor fuel are typically low budget research facilities, many of which are operated by non-profit educational institutions such as university research reactors. The imposition of the proposed annual fee on GA's facility would force GA to significantly raise the unit fuel prices to recover the more than eight-fold increase. The net effect would be to make the fuel unaffordable to many, if not all, of GA's potential

customers, threatening the eventual shutdown of up to nearly one-half of the research reactors in the United States (considered a national resource by the Atomic Energy Act), or the export of yet another U.S. business/technology (i.e., TRIGA fuel fabrication) overseas. Additionally, deterioration of its customer base would force GA to shut down its TRIGA fuel fabrication operations. That, in turn, would have the impact of seriously limiting the U.S.'s ability to carry out high enriched uranium (HEU) fuel to low enriched uranium (LEU) fuel conversions for research reactors in the U.S. and abroad, since there would be no U.S. facility to fabricate the LEU fuel.

Reclassifying GA as a Category 1.A.(1) licensee, will result in significant increased costs to the research reactor community for U.S. supplied fuel, negating, in large measure, the benefit the Commission sought when it restored the generic exemption from annual fees for nonprofit educational institutions (Ref. 6).

The demise of the United States as a supplier of research reactor fuel would represent further erosion of the United States' position as a reliable leader in nuclear technology.

- B. GA also objects to the annual increase of the annual fees, and in particular, the magnitude of the proposed increase in the annual fee for the Category 1.A.(2) licensees. The latest increase from \$175,300 to \$309,770 (including surcharge) is grossly out of proportion to any warranted increase in the effort by the Commission to regulate this class of licensees. The same can be said for each of the last four annual increases. It seems quite apparent that the increases do not reflect an increased need for, or level of, regulatory effort, but rather are simply the result of allocating essentially the same total costs over a decreasing population of licensees. The situation is not consistent with that portion of OBRA-90 and the Conference Committee Report that specifically states that:

"The 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 its discretion, determines can fairly, equitably, and practicably contribute to their payment."

Clearly, when licensees are relinquishing their licenses because they cannot afford to pay their annual fees, that is a sign that they cannot "practicably contribute to their payment". Again this situation is contrary to the above quoted guidance of OBRA-90 and the Conference Committee Report. Accordingly, the subject annual fee should not be increased, instead, the Commission should make commensurate spending cuts.

If the trend of annual fee increases is not reversed, soon only government agencies and licensees with government (or utility) contracts will be able to afford to be licensees in the U.S.

Should you have any questions regarding GA's position or its comments, please contact me at (619) 455-2823.

Very truly yours,



Keith E. Asmussen, Director  
Licensing, Safety and Nuclear Compliance

KEA:shs

cc: The Commissioners, U.S. NRC, Washington, D.C.

Chairman Ivan Selin  
Commissioner Kenneth C. Rogers  
Commissioner Forrest J. Remick  
Commissioner E. Gail de Planque

**References:**

1. Asmussen, Keith E., Letter No. 696-1482, to Mr. Leland C. Rouse, "Docket 70-734; SNM-696; Application for Renewal," dated November 22, 1989
2. Asmussen, Keith E., Letter No. 696-1534, to Mr. Charles J. Haughney, "Docket 70-734; SNM-696; Submittal of SVA Decommissioning Plan," dated March 30, 1990
3. Haughney, Charles J., Letter to General Atomics, ATTN: Dr. Keith E. Asmussen, transmitting Amendment No. 16 incorporating the "SVA Decommissioning Plan" into Materials License No. SNM-696, dated November 13, 1990
4. Federal Register, Vol. 6, No. 71, dated Friday, April 10, 1991, Proposed Rule
5. Federal Register, Vol. 56, No. 132, dated Wednesday, July 10, 1991, U.S. NRC Final Rule
6. Federal Register, Vol. 59, No. 52, dated Thursday, March 17, 1994, p. 12539