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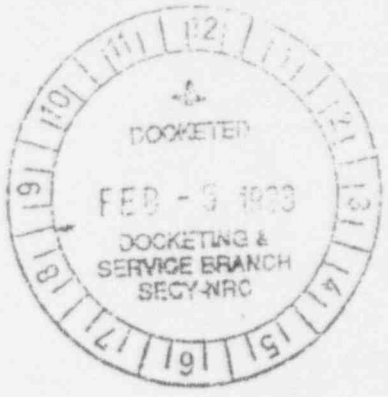
February 4, 1993



BY HAND DELIVERY

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Office of the Secretary
Washington, D.C. 20555

Re: Petition for Rulemaking on the NRC Fee System for NRC Licensees

Dear Mr. Chilk:

The American Mining Congress ("AMC") hereby petitions the Nuclear Regulatory Commission ("NRC" or "Commission") to conduct a rulemaking to develop information and ideas on how to create a more equitable system for the licensing, inspection and annual fees charged to NRC licensees. Currently, the NRC is required by legislation to recover 100 percent of its budget through the imposition of fees on its licensees. AMC believes it is necessary to bring to Congress' attention the inequities and problems with the present fee scheme and the need to change the underlying legislation. To get Congress' attention and develop the necessary information to make changes to the fee system, AMC strongly urges NRC to publish a Notice of Proposed Rulemaking ("NPR") or an Advanced Notice of Proposed Rulemaking ("ANPR") to consider fee issues.

AMC is a national trade association of mining and mineral processing companies whose membership encompasses: (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies;

and (3) engineering and consulting firms and financial institutions that serve the mining industry. This petition is submitted by AMC on behalf of its member companies who are NRC licensees and who are adversely affected by the current NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

AMC is well aware that NRC believes that "the public was provided an opportunity to comment on the basic approach, policies and methodology used in the July 10, 1991 final rule" and that the Commission has addressed those comments. 57 Fed. Reg. 32691, 32692 (July 23, 1992). AMC disagrees with this contention. AMC strongly believes that it is imperative that NRC and its licensees conduct an open dialogue to develop solutions to the problems of the NRC fee structure to present to Congress. NRC must report back to Congress that a system requiring 100% budget recovery without any quality controls or oversight in place simply creates more problems than it solves.

I. Background

A. NRC Fees

NRC imposes licensing, inspection and annual fees on its licensees under the Omnibus Budget Reconciliation Act of 1990 ("OBRA") which requires NRC to recover 100 percent of its budget authority, except for specified allowances. Under OBRA "the charges shall have a reasonable relationship to the cost of providing regulatory services." § 6101(c)(3)-- a concept which seems to be directly at odds with the 100 percent recovery directive.

On July 10, 1991, the NRC issued the following fee structure for its licensees.

> 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 licenses 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.
>
> Class I facilities . . . $100,000
> Other facilities . . . . $ 67,000
> Surcharge . . . . . $ 100

NRC set hourly charges at $115 per hour for NRC staff time. The purpose for these fees was to allow "the NRC [to] recover approximately 100 percent of its budget authority ($465 million) in Fiscal Year (FY) 1991 and the four succeeding years." 56 Fed. Reg. 31472 (July 19, 1991). NRC's budget for FY 1992 was $492.5 million, an increase of approximately 6%.

Recently, NRC increased the fees for Class I facilities (uranium mills) by 67%, raising the fee from $100,000 to $167,500. The Commission also increased the hourly charge to licensees for the regulatory service of NRC employees to $123.[1]

B. Uranium Industry

For the past eight years, the Department of Energy ("DOE") has determined that the domestic uranium industry is economically "non-viable." Ten years ago, there were 26 active, licensed uranium mills. There are no longer any active conventional mining and milling operations in the United States. There has been no increase in the number of facilities or expansion of

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[1]AMC submitted comments on the NRC's proposed rule on May 13, 1992.

facility operations for uranium recovery facilities. Many of the Class I uranium recovery sites have ceased operations and are awaiting NRC approval of reclamation plans or are on standby. These facilities require very little NRC supervision and some of the facilities have been waiting for NRC approval of final reclamation plans for as long as six or seven years. Until approval is granted, these facilities must continue to pay NRC an annual fee.

II. Problems with NRC's Fee System

AMC's central concern with the NRC fee system is that it has no built-in safeguards to prevent overzealous imposition of fees or to ensure that the fee schedule bears a rational relationship to the benefit provided by NRC oversight and regulation. A system that allows an agency to recover 100% of its costs, in essence, is an invitation to regulatory abuse.

A. Lack of Oversight

Under the present fee system the Commission has no accountability to anyone. There is no oversight and no quality control. These are serious flaws that can lead to gross inequities in the system. For example, facilities are charged an hourly rate for inspections, but there are no limits for how often a facility can be inspected, leaving open the possibility for excessive inspections and, accordingly, excessive fees.

The regulations have no provisions to allow licensees to object to unreasonable costs. Without such a mechanism, the licensees are at the mercy of the regulators and must pay for services rendered regardless of the necessity, efficiency, advisability or value of such "service". There is no assurance that any given regulatory function performed by the NRC will be completed expeditiously, efficiently or within a reasonable range of costs.

The fees charged by NRC are intended to recover operating costs. The licensees, accordingly, should be given the ability to oversee and have input into the NRC budget. If licensees are to be charged for the costs incurred by the regulatory agency for their own regulation, the licensees should be able to have some control over the costs incurred by that agency through, for example, a licensee review board established to review NRC fees annually.

B. Lack of a Rational Relationship Between Fees and Regulatory Services

It is a fundamental principle of law that there must be a reasonable relationship between the cost to licensees of a regulatory program and the benefit derived from the regulatory services.[2] The NRC fee system essentially has violated this cardinal principle in a number of respects.

First, NRC has raised the annual fee for Class 1 facilities to $167,500, a 67% increase over the prior year. This increase exceeds the annual growth in the consumer price index ("CPI") and the 6% increase from FY 1991 to FY 1992 in the NRC budget. If the purpose of the annual fee for FY 1991 was to recover operating costs, then it should be increased in proportion to normal inflation rates as overall budget increases to keep pace with rising costs, not far exceed them. Such an increase would be consistent with NRC's practice of using the CPI for annual adjustment of surety bonds.

Second, the annual fee is entirely out-of-line with the amount of NRC involvement with Class 1 uranium recovery sites,

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[2]NRC's authority to prescribe fees for "regulatory services" under 10 C.F.R. Part 170 is based on the Independent Offices Appropriations Act of 1952 ("IOAA"), 31 U.S.C. § 9701. To be valid under the IOAA, a fee must "be reasonably related to, and may not exceed the value of the service to the recipient, whatever the agency's costs may be." Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985).

particularly those sites that have ceased operations and are waiting NRC approval of reclamation plans or are on standby. Very little NRC supervision is required and, yet, NRC insists, without adequate explanation, that a 67% increase in the annual fee was necessary. Such an increase clearly is not warranted.

This arbitrary fee is even more egregious for those sites who have been waiting years for NRC approval of reclamation plans, all the while paying exorbitant annual fees. Once the plans are approved, the facility moves into a category where no annual fee would be assessed. The delays in plan approval are due primarily, if not completely, to NRC. The fee regulations should recognize NRC's own failure to complete review as the only reason these sites are in an annual fee category and compensate for this problem, by either exempting these facilities from the annual fee or establishing a credit that is rebated upon approval of the plan.

Third, NRC also has set a $123 hourly charge for regulatory services, an amount that is equivalent to the hourly charges of a senior consultant, principal or project manager at a nationally recognized consulting firm. As AMC has argued in the past, such a fee is excessive for NRC staff. Nonetheless, at a minimum, NRC should set certain standards for the "services" provided by the Commission. For example, the following standards should be implemented:

i. Consistency in Charges

Similar types of work (i.e., processing a simple amendment request) submitted by different licensees to different NRC project managers should be completed in similar lengths of time resulting in similar hourly charges. Currently, some URFO staff members charge more hours than others for handling similar requests. The NRC should develop and distribute to its licensees

a cost sheet describing sample charges for different types of work.

ii. Deadlines for Completion

Time limits for processing of amendment requests by the NRC should be established. When the NRC requests a submittal from a licensee there is a deadline for response (usually 30, 60 or 90 days). The NRC should be held to a thirty (30) day response period for a simple amendment request. Other types of responses could be given other maximum time limits. The response time should be established in a table and copies given to all licensees.

iii. Itemization of Bills

Presently NRC bills merely show the hours spent and the charge per hour. No private consulting firm or law firm can get away with that kind of billing in today's world. It is, therefore, patently unacceptable for a government agency to do so. NRC bills should be itemized to show:

- Hours spent
- Hourly charges
- Description of the work
- Name of the individual who completed the work
- Dates on which the work was done

C. Disparate Treatment of Licensees

The NRC system is filled with inequities regarding who bears the largest burden of fees. AMC strongly believes that NRC should waive the fees for any licensed facility that is serving solely as a cost center and not generating revenues, such as non-operational uranium fuel cycle facilities undergoing reclamation.

Indeed, Congress, in enacting OBRA, expected that non-power reactor licensees would be exempt for the most part, from annual fees. The OBRA legislative history provides that "[t]he conferees also understand that the direct cost of regulating non-power-reactor licensees amounts to approximately three percent of NRC's cost and that a substantial percentage of the cost of providing regulatory services to non-power-reactor licensees are recovered through fees assessed under the [IOAA]." H.R. Conf. Rep. No. 964, supra, at 961.

Another inequity is exemplified by the NRC position that it cannot assess costs to the Department of Energy ("DOE") under the Uranium Mill Tailings Radiation Control Act ("UMTRCA") because the NRC review of DOE sites is essentially completed prior to DOE formally becoming a licensee of NRC. This position is untenable. Under the OBRA regulations, being a "licensee" is not a pre-condition for fee assessment. The threshold is whether "any person" receives a service or thing of value from NRC. If so, that person may pay the fees to cover the Commission's costs. The DOE qualifies as a "person." It is inequitable and improper for DOE to receive oversight and review of its mill tailings site reclamation activities without contributing anything to the NRC budget. This is particularly true when NRC attention to DOE sites has prevented the commitment of adequate NRC resources to address private sector licensing matters for years.

III. Importance of a Rulemaking

The above discussion illustrates, but does not exhaustively discuss, the nature of the problems with the current NRC fee regulations. These problems are significant and have had a substantial impact on the regulated facilities. As AMC has noted before, the NRC fees impose a significant financial burden on uranium recovery facilities which already face economic problems resulting from the demise of domestic uranium production. The fees will make it even more difficult for this industry to become

viable again. Even in the case of nuclear facilities, it does not make sense to impose such unreasonably large fees during a time when all are concerned about deficits and world markets.

This petition, therefore, seeks a rulemaking procedure to develop more facts on the uranium industry's (and others) ability to handle the current fee schedule and to develop ideas for resolving the problems inherent in the present system. NRC can, and indeed must, go back to Congress and alert them to the inadequacies and inequities in a law, and its implementing regulations, that require 100 percent recovery of its budget.

This petition seeks a broader review and more sweeping changes to the NRC fee system than requested by the American College of Nuclear Physicians and the Society of Nuclear Medicine ("ACNP" and "SMN"). 57 Fed. Reg. 46818 (October 13, 1992). The concerns raised by the ACNP and the SMN illustrate AMC's position that there are inherent problems with the fee system that must be addressed. Thus, AMC supports the ACNP and SMN petition.

The rulemaking AMC requests, however, should re-examine the present system and propose modifications to the regulatory and legislative scheme. The end result, ideally, would be a fee system that addresses both the Commission's and the licensees' concerns and is equitable and efficient in practice.

AMC appreciates the breadth of the task it is proposing to place before NRC. However, this rulemaking is well within the parameters of NRC's regulatory function. Indeed, NRC has the responsibility to ensure that it is operating with quality controls in place. The rulemaking would give all interested parties and experts in the field an opportunity to present their ideas and to work with the Commission toward a fair and improved fee system.

Accordingly, AMC respectfully requests NRC to initiate a rulemaking within the next 180 days to consider modifications to the existing NRC fee system.

If you have any questions or require assistance, please contact me (202) 861-2800, or AMC's counsel, Anthony J. Thompson of Perkins Coie at (202) 628-6600.

Yours very truly,

James E. Gilchrist
Vice President
for Environmental Affairs

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May 24, 1993

BY HAND DELIVERY

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

Re: Proposed Revisions of Fee Schedules

Dear Mr. Chilk:

The American Mining Congress (AMC) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed rule to amend the licensing, inspection, and annual fees charged to its applicants and licensees. 58 Fed. Reg. 21662 (April 23, 1993). While AMC supports the proposed reduction in fees for Class I and Class II facility licensees, AMC believes that there are still many problems with the NRC fee system. These comments focus on the annual fees and the hourly rate charged for regulatory services by NRC staff.[1] AMC intends to comment more fully on NRC's fee policy when it responds in July to the NRC's request for comments on NRC's fee system, 58 Fed. Reg. 21116 (April 19, 1993).

AMC is a national trade association of mining and mineral processing companies whose membership encompasses: (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry.

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[1]AMC incorporates by reference its prior comments to NRC on the NRC fee system.

Reduction in Fees for Class I and Class II Facility Licensees

NRC proposes to reduce the fees for Class I and Class II licensees under 10 C.F.R. Pt. 171 for fiscal year 1993 from $167,500 to $58,100 for Class I facilities and from $73,200 to $25,400 for Class II facilities. AMC supports this reduction in fees. The proposed lower fees are more reasonable and appear to better reflect the costs associated with NRC's regulatory services than prior annual fees. This is particularly true for Class I uranium recovery sites that have ceased operation and are awaiting NRC approval of reclamation plans or are on standby. AMC, however, believes that NRC should provide a detailed explanation of its sources of revenue and allocation of costs to allow licensees to understand the basis for the proposed annual fees.

The proposed rule does not provide a means for reimbursement or credit for licensees for overpayment of fiscal year 1993 annual fees that already have been paid to the Commission. For many facilities, their first, second and third quarter payments for 1993 will have been paid before the final rule becomes effective and, thus, these facilities will have overpaid their fees. NRC needs to provide a mechanism to account for and credit licensees for this overpayment.

Proposed Increase in Hourly Fees

NRC proposes to increase its hourly charge for regulatory services from $123 an hour to $132 an hour. As AMC has stated to NRC many times in the past, an hourly rule of $123 much less $132 is excessive. The specific increase proposed in this rulemaking, moreover, exceeds the inflation rate for the period. The proposed hourly service charge equals or exceeds the hourly charges of senior consultants at major private consulting organizations and exceeds the generally accepted rate for similar types of services in private industry. Such a fee is entirely unwarranted for NRC staff.

Fee Setting Procedures

AMC needs more information regarding the methods by which NRC establishes licensee fees, both annual and hourly rates, and the basis for these fees. In the past three years, there have been wide fluctuations in fees. Since NRC allegedly uses a consistent methodology, it is not clear why there have been such wide fluctuations in fees from year to year. A better understanding of NRC's methodology and standards is necessary so that licensees can better anticipate and budget for their

license fees without the high degree of uncertainty that presently exists.

Cost Pass-through

In response to the D.C. Circuit's decision in Allied-Signal, Inc. v. NRC, No. 91-1407, the Commission has sought comments on its proposal to abandon the cost pass-through concept and determine whether an exemption for nonprofit educational institutions is justifiable. AMC believes that NRC should take into account a facility's ability to pass-through regulatory burdens in determining whether an exemption is warranted.

The cost pass-through issue affects not only nonprofit educational institutions but is also of particular importance to the uranium industry. For the past eight years, the Department of Energy has determined that the domestic uranium industry is economically "non-viable." Ten years ago, there were twenty-six active, licensed uranium mills. There are no longer any consistently producing conventional mining and milling operations in this country. As AMC often has explained, the NRC fees impose a significant financial burden on uranium recovery facilities that face economic problems from increased foreign competition, the demise of domestic uranium production and the ever-growing expense of the regulatory burden.

It is always a questionable proposition that costs consistently can be passed through in international commodities markets, but the state of the domestic uranium market makes it essentially impossible to pass-through costs. AMC encourages NRC to consider the "pass-through ability" of any entity so that annual fees can be assessed in a fair and equitable manner. AMC appreciates the administrative difficulty that making such an assessment may pose, but believes standards and criteria can be developed for a reasoned treatment of pass-through-based claims. AMC requests that NRC "take pass-through into account for those licensees for whom it can be done, as the court put it, 'with reasonable accuracy and at reasonable cost.'" 58 Fed. Reg. at 21663.

* * *

As noted above, AMC intends to submit extensive comments on NRC's fee system in response to the Commission's April 19 Federal Register notice. In the meantime, if you have any questions or if we can be of assistance, please contact me at

(202) 861-2876, or AMC's counsel for this matter, Anthony J. Thompson of Perkins Coie, at (202) 628-6600.

Yours very truly,

James E. Gilchrist
Vice President
Environmental Affairs

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July 19, 1993

BY HAND DELIVERY

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Re: Proposed Changes to NRC's Fee Policy

Dear Mr. Chilk:

The American Mining Congress (AMC) submits these comments in response to the Nuclear Regulatory Commission's (NRC) request for comment on the need for changes to its fee policy and associated legislation. 58 Fed. Reg. 21116 (April 19, 1993). This Federal Register notice also seeks comments in response to AMC's petition for a rulemaking to develop information and ideas on how to create a more equitable system for licensing, inspection and annual fees charged to NRC licensees. AMC supports NRC's efforts to examine its fee system to consider changes to both its legislative and regulatory framework and to its fee policies. In this regard, AMC strongly urges the Commission to carefully evaluate the suggestions its receives and bring to Congress a proposal that substantially modifies the present fee system to address the inequities and problems resulting from the present scheme.

AMC is a national trade association of mining and mineral processing companies whose membership encompasses: (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry. These comments are submitted by AMC on behalf of its member companies who are NRC licensees and who are adversely affected by the current NRC fee regulations. These members include the owners

and operators of uranium mills and mill tailings site and in situ uranium production facilities.

These comments address the four major areas of concern identified by NRC in its request for public comment: (1) annual fee surcharge and regulatory costs that support the agreement states, (2) fluctuating annual fees, (3) development of annual fees, and (4) recovery of certain costs for identifiable services through annual fees. In addition, AMC has several suggestions for improving the NRC fee scheme. AMC incorporates by reference herein the comments contained in its petition for rulemaking on the NRC fee system for NRC licensees dated February 4, 1993, as well as comments filed with the Commission on May 24, 1993, May 29, 1992, and May 13, 1991.

I. Annual Fee Surcharge and Regulatory Costs for Agreement States

Under the present fee system NRC must recover 100 percent of its budget authority pursuant to the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). NRC acknowledges that "to implement 100 percent fee recovery, the NRC must impose the cost of some activities on licensees who neither requested nor derive direct benefit from those activities." 58 Fed. Reg. at 21117. As AMC, and others, have explained at length in the past, such a cost-recovery system creates significant inequities among those who must bear the cost sharing burden. To address these problems, NRC has proposed three legislative options for modifying OBRA-90. As a general matter, AMC fully agrees that OBRA-90 must be modified to make the fee system more equitable. These comments address each of the NRC's options and propose several additional ones.

Removal of Costs from Fee Base

First, NRC suggests that OBRA-90 be modified "to eliminate the costs of certain activities from the fee base so that the NRC is required to collect approximately 100 percent of its budget, less appropriations from the Nuclear Waste Fund (NWF) and the budgeted costs for other activities that would be specified by the NRC." 58 Fed. Reg. at 21119. NRC indicates that it would remove from the fee base activities not associated with an existing NRC licensee or class of licensees (agreement states, generic low-level waste (LLW) and generic uranium enrichment activities), specific applicants and licensees or classes of licensees that are not subject to fee assessment under the Independent Offices Appropriations Act of 1952 (IOAA) or other law (such as TVA, DOD/DOE),

activities relating to applicants and licensees currently exempt from 10 C.F.R. parts 170 and 171 fees or assess reduced annual fees for small entities based on current Commission policy (such as nonprofit educational institutions, certain nonpower reactor and nuclear material users), and activities that support both NRC and agreement state applicants and licensees.

For the most part, AMC agrees that these enumerated activities should be excluded from the fee base that NRC must recover or NRC should be authorized to charge appropriate fees. NRC spends considerable time and resources on these enumerated activities.

To modify OBRA-90 in such a fashion brings the annual fee system closer to Congressional intent that "the charges shall have a reasonable relationship to the cost of providing regulatory services." Pub. l. No. 101-508, § 6101(c)(3). NRC has proposed eliminating many activities from the fee base. AMC supports that idea provided that NRC licensees do not need to contribute to financing NRC's involvement with those activities.

Assessment of Department of Energy

In the alternative, as recognized by NRC's legislative option 3 in this section, NRC could include certain federal agencies, such as the Departments of Defense and Energy (DOD and DOE), in the fee system. DOD and DOE receive substantial benefits from NRC programs outside of their licensed activities. Therefore, they should bear a greater portion of NRC's cost recovery. For example, DOE sites subject to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) require considerable NRC oversight prior to final closure and, even though not currently licensed, eventually will be licensed in perpetuity by NRC. There is no reason, if the costs to NRC are included in the cost-recovery fee base, DOE should not share the burden with NRC licensees in light of the substantial oversight of DOE radiological operations by NRC. This is particularly true when for years NRC attention to DOE mill tailings site reclamation activities has prevented the commitment of adequate NRC resources to address private sector licensing matters.

Assessment of Organizations Other than NRC Licensees

As a second alternative, NRC proposes that OBRA-90 be modified to allow NRC to assess annual fees to organizations other than NRC licensees and approval holders that benefit

from NRC regulatory activities. As presently drafted, this proposal appears too broad and is too vague to be meaningful. NRC notes that this alternative could lead to applicants being charged annual fees such that "the first applicant for a new class of license could be required to pay for all NRC regulation development and research costs to put a regulatory program in place to regulate an entire class of licensee." 58 Fed. Reg. at 21119. Such a system would impose too great a financial burden on a licensee applicant and could serve as a deterrent to the development of new programs as it is unlikely any one applicant, or group of applicants, would be willing or able to take on such a burden. It is the government's responsibility to pay for development and research costs to put a regulatory program in place.

Assessment of UMTRCA Title II Sites

NRC's third alternative is to "modify the Atomic Energy Act to permit the NRC to assess 10 C.F.R. part 170 fees to Federal agencies, other than those that already are subject to such assessments for identifiable services such as reviews, approvals and inspections where direct recovery for these costs is currently prohibited by IOAA." 58 Fed. Reg. at 21119. As discussed above, AMC agrees with this proposal, particularly with respect to the DOE. In addition, power reactors should be charged for UMTRCA Title II sites. These sites indirectly, if not directly, benefit civilian nuclear power reactors by generating the fuel for those facilities. Since uranium is an international commodity, uranium producers cannot pass the incremental costs of final reclamation on to their customers. As in the initial fee proposal, if the costs of Title I sites are charged to nuclear power reactors, then an appropriate portion of the fees for Title II sites, particularly where there are commingled tailings present, also should be charged to reactors. GAO has consistently acknowledged the government's moral obligation to pay for its share of the reclamation costs at these sites. Significant portions of the tailings at these sites were created pursuant to contracts with the Atomic Energy Commission which directed the creation of a domestic nuclear power industry and thus benefited reactors. NRC should include a fee shifting requirement for these sites.

Assessment of Agreement States

AMC further believes that if the costs associated with agreement states are not removed from the fee base, then facilities located in agreement states must be charged comparable annual fees as NRC licensees. Under the present

fee system, the result is discriminatory treatment between licensees located in agreement and non-agreement states because of the uneven fee relationship. NRC spends substantial resources on oversight and training for agreement state regulatory programs and, accordingly, agreement states should be charged appropriate fees. Failure to do so has imposed additional costs on the NRC licensees who are being asked to pay for NRC's regulation of their facilities and NRC's oversight of agreement state programs. Given that the NRC is ultimately responsible for assuring that agreement state programs provide an equivalent level of protection to public health and safety, NRC must charge those states for its services. For these reasons, too, the costs of NRC oversight of the agreement state programs should not be included in the fee base for the annual fees charged NRC licensees. NRC's regulations, and if the Commission deems necessary, OBRA should reflect this type of a policy toward agreement states.[1]

Civil Fines Credited Against Fee Base

In addition to NRC's proposed modifications, AMC proposes that OBRA-90 be modified to expressly provide that civil fines and penalties paid by licensees will be credited against annual fees. These penalties are revenue-producing payments to the United States. As such, any fines or penalties paid by licensees should be off-set against the total costs that NRC must recover. The licensee need not receive an individual credit for penalties it pays, but the total budgeted amount to be collected from all licensees should be reduced to account for this revenue.

Ability to Pass-Through Costs

Finally, AMC urges NRC to take into account a facility's ability to pass-through regulatory burdens in determining whether an exemption for annual fees is warranted. The cost pass-through issue affects not only nonprofit educational institutions but is also of particular importance to the uranium industry. Since 1984, DOE has determined that the domestic uranium industry is economically non-viable. In

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[1]AMC has argued in the past that the agreement state programs fall within the scope of OBRA and the AEA. Section 111(s) of the AEA includes "any state" within the definition of "person" subject to the Act. While AMC continues to believe that agreement states are covered under present law, AMC supports any modifications to the underlying statutes or regulations that make this clear to the Commission and the public.

contrast to the twenty-six active licensed uranium mills in existence ten years ago, today there are no consistently producing conventional mining and milling operations in the United States. NRC fees impose a significant financial burden on uranium recovery facilities that face economic problems from increased foreign competition, the demise of domestic uranium production, and the increasing expense of the regulatory burden.

The nature of the international marketplace coupled with the state of the domestic uranium market makes it impossible to pass-through costs. AMC once again encourages NRC to consider the "pass-through ability" of any entity so that annual fees can be assessed in a fair and equitable manner. AMC believes that standards and criteria can be developed for a reasoned treatment of pass-through based claims.

II. Fluctuating Annual Fees

NRC also proposes as a solution to the widely fluctuating fees of prior years and the problems that has created for licensees to modify OBRA-90 to limit the annual fee increase allowed for each class of licensees. NRC suggests that the limit could be based on the Consumer Price Index (CPI) or a fixed percentage such as 25 percent. As an initial matter, AMC is concerned that this proposal locks NRC into increasing its fees each year and does not allow the Commission the flexibility to decrease fees. For example, recently NRC proposed to reduce the fees for Class I and Class II facility licensees. As explained in AMC's May 24 comments, AMC supports the reduction in fees as more reasonably reflecting the costs associated with NRC's regulatory services than prior annual fees.

To the extent any fixed increase would be permitted, assuming it allows for reduced fees, then adopting the CPI is a sound approach. If the purpose of the annual fee is to recover operating costs, then it should be increased (if appropriate) in proportion to normal inflation rates as overall budget increases to keep pace with rising costs, not far exceed them as has been in the case for certain classes of licenses in the past. A fixed percentage year after year would be too rigid a system that would not give NRC sufficient flexibility. A system based on normal inflation rates (the CPI) would be consistent with NRC's practice of using the CPI for annual adjustment of surety bonds.

With respect to hourly fees for regulating services a fixed increase assumes that an increase is even warranted - a proposition that AMC strongly opposes. As AMC has commented

in the past, NRC's increases in hourly fees has equaled or exceeded the hourly charges of senior consultants at major private consulting organizations and exceeded the generally accepted rate for similar types of services in private industry. Such fees are entirely unwarranted for NRC staff. Once the Commission establishes, after notice and comment, an hourly rate that is appropriate,[2] then annual increases, to the extent any are necessary or warranted, should not exceed the inflation rate for the period.

III. Development of Annual Fees

In an effort to simplify the process of establishing annual fees, NRC has suggested that OBRA-90 be modified to allow annual publication of the fee schedule without seeking public comments assuming the basic methodology remains unchanged. While AMC supports the idea that NRC's basic methodology for establishing annual fees (once some of the potential changes discussed above are implemented) should be basically the same from year to year, AMC opposes issuance of annual fees without providing the public notice and an opportunity to comment. Moreover, AMC wants to clearly understand NRC's basic methodology which requires its publication.

Notice and opportunity to comment provide the regulated community an opportunity to raise issues that might have developed into problems over the previous year that actually affect implementation of the fee system. In a sense, an opportunity to comment provides some minimal "oversight" of the Commission's fee activities. While opportunity for comment is not really sufficient as a means of oversight, it does allow at least some interaction with the NRC, the regulated community and the public in a public forum.

In addition, as noted, NRC's legislative options with respect to fluctuating annual fees and development of annual fees appear to contemplate that fees will increase each year. As demonstrated by the proposal for fiscal year 1993, NRC has proposed a reduction in fees for Class I and Class II licensees under 10 C.F.R. Pt. 171. 58 Fed. Reg. 21662 (April 23, 1993). The proposed rule does not provide a means for reimbursement or credit for licensees for overpayment of fiscal year 1993 annual fees that already have been paid to the Commission. This is the type of issue that may arise in

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[2]As explained in prior submissions to the Commission, AMC believes that a charge of $123 or $132 an hour is excessive for NRC staff.

any given year and that the public should be able to call to the Commission's attention through public comment. Thus, the underlying assumption of NRC's legislative options appears invalid.

Further, NRC needs to provide a detailed explanation of its sources of revenue, allocation of costs and fee setting methodology or standards to allow licensees to understand the basis for the annual fees. Indeed, the Part 171 annual charges could amount to a "tax" rather than a "fee." NRC may permissibly collect a tax from licensees only if Congress has provided the Commission with intelligible standards and guidelines to govern the Commission's discretion in setting such charges. Skinner v. Mid-America Pipeline Co., 490 U.S. 212, 216 (1989). OBRA should be modified to set forth adequate standards to guide NRC's discretion in setting annual charges under Part 171.

Since NRC allegedly uses a consistent methodology, it is not clear why there have been such wide fluctuations in fees, both annual and hourly rates, in the past three years. OBRA requires that "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services." § 6101(c)(3). OBRA's legislative history shows that Congress intended that "licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charge." H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 962 (1990). As AMC has explained at length in the past, NRC has not imposed annual or hourly fees that bear a reasonable relationship or that spread the costs in an equitable manner.

The fee regulations should provide a mechanism to allow licensees to object to unreasonable costs. Without such provisions, the licensees are subject to the whims of the regulators and must pay for services rendered regardless of the necessity, efficiency, or value of the service. Since the fees charged by NRC are intended to recover operating costs, the regulated community needs some type of assurance that any given regulatory function performed by NRC will be completed expeditiously, efficiently or within a reasonable range of costs. Indeed, AMC urges the Commission to give licensees some ability to oversee and have input into the NRC budget. If licensees are to be charged for their own regulation, the licensees should be able to have some control over the costs incurred by that agency through a licensee review board established to review NRC fees annually or a similar type of participatory mechanism.

IV. Recovery of Certain Costs for Identifiable Services

AMC supports NRC's proposal to broaden the scope of 10 C.F.R. Part 170 to recover costs incurred for specific services for identifiable recipients. These costs then would not be recovered under the annual fees assessed to all licensees in a particular class under 10 C.F.R. Pt. 171, thereby decreasing the annual fees. NRC has identified the following as specific actions for which individual companies would pay the cost: incident investigation teams, vendor inspections, investigations from allegations, site decommissioning management plan, reviews that do not result in formal NRC approvals, orders to licensees and amendments resulting from those specific orders, and contested hearings. AMC generally agrees that the costs for these specific action items should be borne by the recipient with certain limitations. This type of a system partially addresses AMC's concerns that uranium recovery facilities, particularly those that are not producing and are waiting for NRC approval of reclamation plans, are bearing an unfair burden of NRC's costs.

AMC cautions, however, that many of its concerns noted above apply to costs levied for particular NRC services. NRC regulations need to provide for some oversight and quality control and to allow licensees to object to unreasonable costs. Without a specific mechanism in place, the recipients are at the mercy of the regulators and must pay for the service regardless of its necessity, advisability or value. Indeed at present there is no assurance that any of these services will be completed expeditiously, efficiently or within a reasonable range of costs. For example, a mechanism should be created to allow licensees to challenge bills for unnecessary delays and unwarranted charges with respect to reviews for formal NRC approvals, regardless of whether they are denied or granted. Similarly, licensees who are successful at contest hearings should not have to pay any costs associated with the hearing or the citation.

In addition, as with the hourly charges for regulatory services, NRC should set standards for these services for which it intends to recover costs from identifiable recipients. These standards should require consistency in charges for similar types of work, deadlines for completion of activities by NRC, and routine (rather than by request) itemization of bills to show charges and timeframes. If NRC is going to charge fees that exceed those for experts from the commercial sector, then it must provide the same kind of billing information required in the commercial sector.

V. Non-Power-Reactor Licensees

AMC requests that NRC exempt from its annual fees uranium recovery sites that have ceased operations and are waiting NRC approval of reclamation plans or are on standby. Under the 1991 regulations, there is no charge for "byproduct, source or special nuclear licenses" authorizing site reclamation. 56 Fed. Reg. 31,481, 31,510 (category 14). Apparently this is because these facilities "are charged an annual fee in other categories while they are operating." Id. at 31,510, n.7. This is a valid conclusion which recognizes that there are no benefits derived from sites under reclamation - they are only cost centers.

NRC's rationale should be extended to apply to sites that are also not producing and are merely costs centers while awaiting NRC approval of their final reclamation plans. These facilities require very little NRC supervision. Several of these sites have been waiting for as long as six or seven years for NRC approval of reclamation plans, all the while paying exorbitant annual fees. Once the plans are approved, the facility moves into a category where no annual fee would be assessed. In most cases, the delays in plan approval have been due primarily, if not completely, to NRC. NRC should recognize its own failure to complete review as the only reason these sites are in an annual fee category and compensate in fee charges accordingly, by either exempting these facilities from the annual fee or establishing a credit that is rebated upon approval of the plan.[3]

Indeed, AMC strongly believes that NRC should waive the fees for any licensed facility that is serving solely as a cost center and not generating revenues, such as non-operational uranium fuel facilities undergoing reclamation. In enacting OBRA, Congress expected that non-power-reactor licensees would be exempt for the most part from annual fees. The legislative history notes that NRC, in the past, "found that 'the large number of small licensees, the relatively small fees that would be collected, and the costs of administering such a collection program,' make imposition of an annual charge on all of NRC's approximately 8,000 non-power reactor licensees impractical." H.R. Conf. Rep. No. 964, supra at 961. The report further states that "[t]he conferees also understand that the direct cost of regulating non-power-

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[3]NRC already has recognized this distinction by segregating Class II facilities which do not generate tailings (i.e., in situ and heap leach facilities) for lower fees. Mills on standby or undergoing reclamation also "do not generate tailings" and involve lower costs.

reactor-licensees amounts to approximately three percent of NRC's cost and that a substantial percentage of the cost of providing regulatory services to non-power-reactor licensees are recovered through fees assessed under the [IOAA]." Id. Thus, Congress contemplated that annual charges would be imposed primarily on power reactor licensees. NRC should make this clear in its regulations and policies and exempt the non-power-reactor licensees from the annual fees.[4]

* * *

If you have any questions or if we can be of assistance, please contact me at (202) 861-2876, or AMC's counsel for this matter, Anthony J. Thompson of Perkins Coie, at (202) 628-6600.

Yours very truly,

James E. Gilchrist,
Vice President
Environmental Affairs

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[4]In addition, AMC is concerned that for Category 2(A), Class I sites that are undergoing reclamation, the annual fees amount to double-charging. These facilities are already charged with the full costs of regulatory services associated with the reclamation process under 10 C.F.R. Part 40, Appendix A pursuant of the Part 170 hourly charge. Thus, the annual fees are added to those charges, even though all costs of services rendered would be recouped under the hourly fee. There is no justification for double-charging, and the annual fees have no "reasonable relationship to the cost of providing regulatory services."

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August 18, 1993

BY HAND DELIVERY

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

Re: Proposed Changes to NRC's Fee Policy

Dear Mr. Chilk:

On April 19, 1993, the Nuclear Regulatory Commission (NRC or Commission) requested comments by July 19, 1993, on the need for changes to its fee policy and related legislation. 58 Fed. Reg. 21116. On July 19, 1993, the American Mining Congress (AMC) filed comments in response to the NRC's April Federal Register notice. On July 20, 1993, NRC issued its final rule regarding annual fees for fiscal year (FY) 1993.[1] 58 Fed. Reg. 38666. This final rule addresses and, indeed, appears to resolve several of the issues that the public had been asked to comment on by July 19th, the day prior to release of the final 1993 fee rule. Subsequently, NRC extended the comment period on its April 19 request for comment on its fee policy to allow the public to comment on the July 20 final rule as it pertains to the review of NRC's fee system. 58 Fed. Reg. 39174 (July 22, 1993). AMC, accordingly, submits these supplemental comments to its July 19 comments.

AMC is a national trade association representing: (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry. These comments are submitted by AMC on behalf of its member companies who are NRC licensees and who are adversely affected by the current NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

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[1] AMC had filed comments on the proposed rule regarding the 1993 annual fees on May 24, 1993.

These comments incorporate by reference herein all of AMC's prior submissions regarding NRC's fee system.[2] Those prior comments have discussed at length, among other issues, disparate treatment of licensees, assessments on the Department of Energy (DOE) and agreement states, ability to pass through costs, and fluctuating annual fees. AMC stands by its prior comments and requests that NRC carefully consider them and adopt AMC's recommendations.

This letter specifically addresses only two of AMC's concerns regarding the July 20 final rule: (1) NRC's assertion that it will assess annual fees to any licensee who holds a valid NRC license authorizing possession and use of radioactive material regardless of whether or not the licensee is actually engaged in operations using the material; and (2) NRC's explanation for the increase in its hourly rate. As a supplemental issue, this letter also comments on some remarks made by G. Wayne Kerr, Chairman of the Organization of Agreement States and Representative of the Executive Board of the Conference of Radiation Control Program Directors, before the Subcommittee on Environment, Energy and Natural Resources of the House Committee on Government Operation on July 30, 1993 regarding assessment of fees on agreement states.

Assessment of Fees on Non-Operational Facilities

The final rule for FY 1993 provides that "annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material." 58 Fed. Reg. at 38673. NRC further notes that in assessing this fee, it will not consider whether or not a licensee is actually conducting operations using this type of material as that "is a matter of licensee discretion." Id. AMC strongly objects to the NRC's position and believes it is a fundamentally unfair policy.

NRC should not assess the same fees (as those charged to operating facilities) on sites that are not in operation and are awaiting NRC approval of their final reclamation plans or are on standby. The fees imposed on a licensed facility that is serving solely as a cost center and not generating revenues, such as non-operational uranium fuel facilities undergoing reclamation, should be adjusted accordingly.

To state that it is merely a "matter of discretion" on the part of the licensee as to whether the facility is conducting operations with radioactive materials appears to be somewhat disingenuous on the part of the Commission and ignores the requirements of the licensing process and the state of the domestic uranium market. As AMC has explained many times in the past, sites that are not producing and are waiting NRC approval

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[2] AMC has filed comments on the fee issue on July 19, 1993, May 24, 1993, February 4, 1993, May 29, 1992 and May 13, 1991.

of their final reclamation plans require very little NRC supervision. Several of these sites have been waiting as long as six or seven years for NRC approval of reclamation plans. In the meantime, these facilities are non-operational and paying a very high annual fee. NRC, in many instances, is primarily responsible for these delays in plan approval. These facilities, accordingly, should either be exempt from an annual fee or given a credit that is rebated upon approval of the plan.

Indeed, the need to consider whether a facility is operational and using the radioactive materials for which it is licensed, is particularly great given the economic state of the domestic uranium industry -- an industry DOE has officially determined to be economically non-viable. Presently there are no consistently producing conventional mining and milling operations in the United States. Uranium recovery facilities face economic problems from increased foreign competition and increased regulatory costs in spite of the demise of the market for domestic uranium products. NRC should not aggravate these problems by imposing an unwarranted regulatory burden in terms of the annual fee.

While it is true as NRC states that it "cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC," 58 Fed. Reg. at 38678, considering whether a facility is operating and using or possessing radioactive material is not only pertinent, but crucial to a fair assessment of fees to ensure that fees bear some rational relationship to the cost of the regulatory services provided by NRC. It is not enough merely to find that a facility has a certain type of license, the Commission must also consider whether it is operating or using the radioactive materials, as that is directly related to the amount of services and oversight NRC must provide. Making a determination of whether a site is operational is readily accomplished and does not pose any significant additional regulatory burdens on NRC. Indeed, under the Subpart T regulations and the timeliness in decommissioning proposals, licensees will be notifying the Commission as they reach milestones in decommissioning and proceed to closure, and licensees routinely notify NRC about their operational status. AMC, accordingly, urges NRC to modify footnotes 1 and 7 to 10 C.F.R. § 171.16 to clarify that annual fees will be imposed only if the licensee is conducting operations using the radioactive material. To the extent that a licensee goes from standby to operational (or vice versa) during a given year, NRC can modify licensee fees accordingly to reduce (rebate) or increase them as appropriate. This would assure the necessary ongoing relationship between licensee activities and the cost of NRC regulatory oversight.

Hourly Rates

As justification for increasing the hourly rate for NRC services from $123 to $132, the final rule states that "[g]iven the increase in the [NRC] budget, it is necessary to increase the

1993 hourly rate to recover 100 percent of the budget as required by OBRA-90." 58 Fed. Reg. at 38674. NRC further notes that using the Consumer Price Index (CPI) as a guide would not generate sufficient funds to cover the budget. AMC objects to NRC's reasoning and final action.

The issue of hourly rates should be part of NRC's overall review of potential modifications to improve NRC's fee system and should not be tied solely to FY 1993. NRC needs to look at this issue in a broader context and consider whether the present approach is rational. AMC contends that it is unfair to increase hourly rates to pay for an increase in the NRC budget that is at least partially attributable to inefficient management of NRC licensing oversight activities. This is particularly true given that NRC's fee system is without accountability to the public or to the licensees assessed the hourly service charges.

As AMC has repeatedly commented in the past, NRC's hourly fees are entirely unwarranted for NRC staff. The $132 hourly rate equals or exceeds the hourly charges of senior consultants, principals or project managers at major private consulting firms and exceeds the generally accepted rate for similar types of work in private industry. There are no standards for NRC services and no accountability. For example, there is no consistency in charges for similar types of work rendered by different NRC project managers. There are no time limits for processing license amendment requests. Nor does the NRC staff routinely itemize its bills as private consultants do. Indeed, there are no standards for measuring the quality of NRC staff services or means to assure accountability -- a licensee cannot fire an NRC staff member for poor job performance as it can a private consultant. If NRC is going to charge the same hourly rates as the private sector, then it should follow generally accepted business practices and provide quality service with accountability to licensees and the public.

To say that NRC must increase the hourly rate to meet its budget recovery obligations fails to address these concerns nor does it explain why recovery must come from the hourly charges. These hourly charges should be directly related solely to the services provided. Individual licensees requiring a specific service from NRC should not be the prime source for increased funds necessary to solve NRC's generic budgeting shortfalls. The result is an arbitrary, unwarranted and unsupported rate.

Assessment of Agreement States

As AMC explained in its July 19 comments, if the costs associated with agreement states are not removed from the fee base, then facilities located in agreement states should be charged comparable annual fees as NRC licensees. At a hearing before the House Subcommittee on Environment, Energy and Natural Resources on July 30, 1993, Mr. Kerr, Chairman of the Organization of Agreement States, objected to the proposal that fees be assessed on agreement state licensees. Mr. Kerr noted

that agreement state licensees should not pay for regulatory development costs because "NRC would expend the same resources on development of a given regulation no matter whether they regulate 7,000 licensees (NRC regulated) or 24,000 licensees (total NRC and Agreement State regulated)." Transcript at 7. Mr. Kerr's statement, however, fails to address why only NRC licensed facilities should pay for developing regulations that are applicable to agreement state licensees as well. The costs should be shared by all licensees, not borne just by those facilities in NRC states.

Moreover, as AMC has noted in its prior comments, NRC spends substantial resources on oversight and training for agreement state regulatory programs. Failure to charge agreement states appropriate fees has imposed additional costs on NRC licensees. NRC is responsible for assuring that agreement state programs provide an equivalent level of protection to public health and safety as NRC programs. Therefore, NRC should charge the agreement states for its services.

* * *

AMC realizes that the Commission felt some time constraints to issue the final rule for the FY 1993 fees. Even though the final rule has been published, however, AMC urges the Commission to carefully evaluate the comments it received on July 19 with respect to improving NRC's overall fee system. The Commission needs to be willing to be flexible and to modify its course of action, even if it is contrary to its July 20 final rule. It is in the best interest of NRC, its licensees and the public that a fair fee system be implemented.

If you have any questions or if we can be of assistance, please contact me at (202) 861-2876, or AMC's counsel for this matter, Anthony J. Thompson of Perkins Coie, at (202) 628-6600.

Yours very truly,

James E. Gilchrist
Vice President
Environmental Affairs

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May 27, 1994

The Honorable Alan K. Simpson
United States Senate
261 Dirksen Building
Washington, DC 20510

Dear Senator Simpson:

I am writing on behalf of the American Mining Congress (AMC) regarding the user fees assessed by the Nuclear Regulatory Commission (NRC) on its licensees. Enclosed is a copy of the letter to Senator Joseph Lieberman summarizing AMC's uranium production facility licensee members' views on NRC's fee system.

The enclosed letter addresses the testimony of Chairman Selin on March 9, 1994, before the Subcommittee on Clean Air and Nuclear Regulation and NRC's February 1994 "Report to the Congress on the U.S. Nuclear Regulatory Commission's Licensee Fee Policy Review Required by the Energy Policy Act of 1992." Both Chairman Selin's testimony and the Commission's report describe the inequities in the present fee system. Many of the problems of the current fee system stem from the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which requires NRC to recover 100 percent of its budget authority through annual fees.

To further demonstrate the inequities of the NRC fee structure, NRC recently issued a proposed rule that would increase fees for Fiscal Year 1994 for Class I and Class II uranium recovery facilities from $58,100 to $94,300 for Class I facilities and from $25,400 to $41,200 for Class II facilities -- an increase of approximately 60 percent from Fiscal Year 1993. These annual fees apply to licensees of operating in situ facilities as well as other material licensees in Wyoming.

AMC urges you to suggest to Senator Lieberman that markup of NRC authorization legislation be delayed until NRC submits proposed legislation that would remedy the problems in the current fee system. Otherwise, it is likely that NRC will not move aggressively to address legislative changes and it will be "business as usual" in spite of the obvious inequities in the system. Congress needs to give NRC the

flexibility to equitably apportion fees by either reducing the amount of the budget that must be recovered through fees or by adding other potential fee payers to the NRC fee pool.

Yours very truly,

James E. Gilchrist
Vice President

Enclosure

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May 27, 1994

The Honorable Joseph I. Lieberman
Chairman, Subcommittee on Clean Air
and Nuclear Regulation of the
Senate Committee on Environment and
Public Works
316 Hart Building
Washington, DC 20510

Dear Chairman Lieberman:

I am writing on behalf of the American Mining Congress (AMC) Uranium Policy Council's (UPC) uranium production facility licensee members to present the UPC members' views on NRC user fees.

On March 9, 1994, the Subcommittee on Clean Air and Nuclear Regulation held a hearing on the Nuclear Regulatory Commission's (NRC) user fees. AMC did not testify at those hearings for a variety of logistical reasons, however, AMC monitored the presentation of testimony at the hearing and has reviewed the written testimony as submitted to the subcommittee. As a result, AMC would like to take this opportunity to express to you and the Subcommittee its support for much of what is contained in Chairman Selin's testimony and in NRC's "Report to the Congress on the U.S. Nuclear Regulation Commission's Licensee Fee Policy Review Required by the Energy Policy Act of 1992 (February 1994).

The issue of NRC user fees has become a matter of major importance to AMC's uranium production licensees, as the domestic uranium industry has been declared "nonviable" by the Department of Energy every year since the early 1980's. As a result, any circumstances that contribute to increased license fees has an inordinate impact on the domestic uranium production industry.

AMC has commented on every NRC rulemaking proposal regarding user fees since the enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) required NRC to recover approximately one hundred percent of its budget authority through fees each fiscal year from 1991 through 1998. AMC agrees with the Commission's conclusion that the root cause of concern about the NRC fee recovery process is the requirement for recovery of one hundred

percent of NRC's budget. As a result, AMC agrees with NRC that there must be changes to OBRA or the Atomic Energy Act (AEA) to provide more flexibility in order to insure fairness and equity in the allocation of NRC fees.

The NRC study indicates that licensees have raised concerns about being held accountable for NRC costs that are not directly related to services provided to them. This particular category of concerns is attributable to such things as international activities, oversight of and generic regulatory support for agreement state programs, the legislative fee exemption for federal agencies, the commission fee exemption for nonprofit educational institutions, and the commission fee reductions for small entities. As AMC has pointed out to NRC, allowing agreement state licensees to avoid payment of commensurate fees provides an unfair commercial advantage to licensees in agreement states. This inequity will only get worse if additional states chose to become agreement states thereby diminishing further the number of licensees in the pool who will have to reimburse NRC costs. The fact that some agreement states have indicated they would give up the program rather than pay NRC fees demonstrates that they recognize a good thing when they see it.

The issue of regulatory charges to other federal agencies is particularly important to AMC's uranium production licensees. The Department of Energy (DOE) requires license reviews by NRC for closure plans at Title I Uranium Mill Tailings Radiation Control Act (UMTRCA) facilities just as AMC member licensees do for Title II UMTRCA facilities. Yet, DOE pays no fee for such oversight. Indeed, the allocation of resources to DOE reviews takes resources from review of Title II licensees causing delays that can increase Title II licensee costs.

The second major concern of AMC member companies and other NRC licensees is that the benefits are not commensurate with the fees. This can be most easily demonstrated by the fact that fees can go up significantly merely by other licensees either terminating licenses, by decommissioning their facilities or by giving up their licenses. This automatically increases the fees for the remaining licensees because of the one hundred percent recovery requirement, although there is no increased benefit to such licensees.

Finally, AMC agrees with NRC's assumption that perhaps a simpler fee structure with a single annual fee would be more appropriate as long as the bases for developing such fees are clearly understood and stated on the record and the allocation of fees is equitable. As it is, licensees are currently charged an annual fee and then the costs of licensee inspections and license application reviews are tacked on at the rate of $132 per hour. The $132 per hour figure is grossly out of proportion with the value received and higher than the hourly rates of highly qualified private industry consultants. Additionally, NRC does not provide detailed bills setting forth the description of the tasks performed and the hours allocated thereto when it sends bills to licensees. Thus, the federal government through NRC is indulging in a practice that it would never accept from a private industry contractor or other private entity being audited by the government with respect to charges and fees. Indeed, private consultants and law firms routinely provide detailed breakouts in their bills to

their customers. Therefore, to the extent there are going to be charges for hourly fees there must be that routine accountability.

AMC's UPC members urge the Congress to take appropriate action to provide necessary flexibility to NRC to equitably apportion fees by either reducing the amount of the budget that must be recovered through fees or by adding additional potential fee payers to the NRC pool.

Yours very truly,

James E. Gilchrist
Vice President

C

POLICY ISSUE
(Information)

July 26, 1993 SECY-93-207

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: STAFF EVALUATION OF RELOCATING THE ENTIRE URANIUM RECOVERY FIELD OFFICE OPERATION TO REGION IV

PURPOSE:

To provide the Commission information on the staff's evaluation of the option of relocating the entire Uranium Recovery Field Office (URFO) operation, including the inspection and licensing functions, to Region IV. This action is in response to the Staff Requirements Memorandum (SRM) for SECY-93-150, dealing with the plan of action for closure of URFO.

BACKGROUND:

SECY-93-078 outlined the broad plan for closing URFO pursuant to the Commission's decision to consolidate the activities and staff of the uranium recovery licensing and inspection program in Headquarters and Region IV, respectively.

Based on the Commission's April 24, 1993, discussion and vote, the staff was requested to provide a more detailed plan of action to carry out the closure. This was accomplished by issuance of SECY-93-150, on May 28, 1993. The Commission approved the plan and schedule, as noted in the SRM for SECY-93-150, dated June 28, 1993.

Contact: Dwight D. Chamberlain, NMSS
504-3439

NOTE: TO BE MADE PUBLICLY AVAILABLE IN 10 WORKING DAYS FROM THE DATE OF THIS PAPER

DISCUSSION:

The staff solicited and evaluated views from the Office of Nuclear Material Safety and Safeguards (NMSS), Region IV, the Office of Personnel, and individual members of the Transition Oversight Team, regarding the positive and negative aspects of relocating the entire URFO operation to Region IV, instead of relocating the licensing function to Headquarters and the inspection function to Region IV, as planned. In addition, the numerous comments received from industry and States expressing concern about URFO closure were reviewed. The staff concluded that greater efficiency and consistency would be realized by relocating the licensing function to Headquarters as planned.

While manageable, the present alignment with Title I and Title II licensing actions split between Headquarters and URFO has resulted in inefficiencies. The uranium recovery licensing program inefficiencies would continue by having two small licensing staffs; one for Title I in Headquarters and one for Title II programs in Region IV. The Title I and Title II programs are very similar with regard to technical requirements, with some minor differences in groundwater standards. The majority of the reviewers are geoscience and hydrology specialists and the need for such specialists in each location for licensing reviews would tend to increase the full-time equivalent (FTE) needs. A small licensing staff in Region IV for Title II licensing actions would continue to require Headquarters resources for oversight and guidance to ensure consistency between Region IV and Headquarters on Title I and Title II actions.

The total uranium recovery program is relatively small. The current budget for FY94 includes 5.8 direct FTE for Headquarters Title I review activities and 3.6 direct FTE for Title II licensing activities. The budget for FY95 includes 5.9 direct FTE for Headquarters Title I review activities and a decrease to 2.6 direct FTE for Title II licensing activities. Some potential for future FTE savings exist with the plan to relocate the URFO licensing function to Headquarters. This potential for savings would be reduced if the URFO licensing function were relocated to Region IV, because of the need to maintain a viable review staff in each location and maintain Headquarters oversight.

Locating the entire licensing staff in Headquarters would not only promote efficiency by maintaining staff specialists in one location, it would also allow for better interaction with other groups within NMSS on technical and policy issues. Policy issues could be dealt with more efficiently and consistently with all licensing functions located in Headquarters. The types of specialists needed for uranium recovery licensing activities would have a broad potential for use in other areas in Headquarters, such as technical reviews of geoscience issues associated with the low-level waste management program, Site Decommissioning Management Plan site remediation, and the high-level waste management program. Such opportunities would be limited in Region IV. This broader potential in Headquarters for specialist use would be

important to ensure effective utilization of personnel as the Title II licensing workload declines over the next few years.

The principal positive aspect of relocating the entire URFO operation to Region IV appears to deal with the perception that industry interactions would be more readily accessible and therefore enhanced. Although it is true that location in Region IV would result in smaller travel distances for the licensees in some instances, accessibility for issue resolution would only be marginally affected. Headquarters oversight and involvement would be required regardless of the location and would likely require meetings in Headquarters, in some instances. The regulatory impact associated with the travel distance issue and the accessibility of reviewers could be addressed on a case-by-case basis, with possible adjustments in meeting locations.

The other potential positive aspects of relocating URFO operations to Region IV included the greater potential for staff retention because of the lower cost of living in Region IV and potential benefits to licensing actions based on perspectives gained from field inspection with the use of technical specialists and project managers for inspection activities. Management perception of individual employee preferences indicate that little if any increased potential for staff retention would result from relocating URFO operations to Region IV. Also, the field inspection perspective could be gained regardless of the location of the licensing function, since licensing project managers could also visit sites periodically and accompany inspectors on some inspections.

In conclusion, the staff believes that the gains in efficiency and consistency of actions and the improved flexibility with staff utilization provide sufficient incentive to move the URFO licensing functions to Headquarters and to move the URFO inspection function to Region IV as planned.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

James M. Taylor
Executive Director
for Operations

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OCAA
OIG
OCA
OPP
REGION IV
EDO
SECY