

Rio Algom Mining Corp.

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May 15, 1991

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

Re: Proposed Fee Schedules, 10 CFR §71, §170, §171

Dear Sir or Madam:

Rio Algom Mining Corp. and its wholly owned subsidiary, Quivira Mining Company, by way of its letter dated May 8, 1991, previously submitted comments for consideration on the proposed fee schedules pursuant to the Federal Register notice at 14870 on April 12, 1991.

Although the comment period officially closed on May 13, due to the short review and comment period, Rio Algom would like to submit this supplemental letter with additional comments for the Commission's consideration.

Sincerely,

Bill Ferdinand

Bill Ferdinand, Manager
Radiation Safety, Licensing
& Regulatory Compliance

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SUPPLEMENTAL COMMENTS

RIO ALGOM MINING CORP. AND QUIVIRA MINING COMPANY

COMMENTS ON THE PROPOSED FEE STRUCTURES 10 CFR §71, §170, §171

These supplemental comments are submitted by Rio Algom Mining Corp. (Rio Algom) and Quivira Mining Company (Quivira) in response to the Nuclear Regulatory Commission's Proposed Rule for Revision of Fee Schedule, published at Federal Register 14870 on April 12, 1990. The proposed rule would set the fee schedules to collect and recover 100% of NRC's budget authority.

Rio Algom and its subsidiary Quivira Mining Company are source material licensees with uranium mining and milling interest in Ambrosia Lake, New Mexico; Lisbon Valley, Utah; and South Powder River Basin, Wyoming.

The Commission is proposing to revoke the exemption provisions in 10 CFR §170.11 (a)(1) and (2) regarding fees for export and import licenses. As such, fees on export and import licenses would now be imposed. In our belief, the imposition of fees for export or import licenses is tantamount to imposing a tax or duty. Webster's Dictionary includes as a definition of tax, "a sum levied on members of an organization to defray expenses".⁽¹⁾ It is clear and evident that the fee charges are to support Commission expenses. In addition to perhaps being in violation of the Constitutional restrictions banning the imposition of taxes and duties on exports as described in Article I, section 9, clause 5, it may well be in violation of the Free Trade Agreement with Canada. The U.S.-Canada Free Trade Agreement specifically prohibits the restriction of imports and exports, including the imposition of export or import taxes. As previously stated within our May 8 letter and reiterated, if these new schedules are implemented as proposed, it will further weaken an already stressed the domestic uranium mining and milling industry and its ability to compete in the world market.

Rio Algom and Quivira also believes the proposed section §171.17, "Proration", is neither fair or equitable for source material licensees. The Conference Report directs NRC to establish charges that fairly and equitably allocates the charges among the licensees.⁽²⁾ The proposed section §171.17 does not equitably allocate the charges among the licensees, as this section proposes to grant proration of fees only to new power reactor licensees. The Commission has not demonstrated or justified the fairness of granting only to power reactors the proration fee schedule. The Commission's only statement pertaining to the proration fee schedule is on page 14885 which reads:

"This section is being revised to indicate that only the annual fees for operating power reactors that may be issued a license during the FY will be prorated depending on when the license is issued. The annual fee for all other licenses, certificates and registrations, and QA program approvals issued during the year will not be prorated." . . . "For material licensees, this system [non-proration] will reduce the NRC's administrative burden of tracking the numerous licenses, certificates, registrations, and approvals issued during the FY".⁰¹

We disagree with the last statement that there will be an increased administrative burden on NRC if non-power reactor licensees are prorated. We believe that since source material licensees are being charged at full cost for the regulatory services during the licensing process, there will not be an increased administrative burden on NRC. Thus, we believe it to be only fair and equitable that all licensees be charged on a prorated basis for newly issued licenses.

As proposed within section §171.19, Payments, annual license fees in which are in excess of \$100,000, are to be paid in quarterly installments. Fees totalling less than this become due 30 days after invoice. However, the proposal is unclear whether the \$100,000 threshold limit differentiating the time period for payment is per license or for the total sum of licensing fees for a company.

Several source material companies, including Rio Algom, have facilities located throughout the western United States, licensed by the Commission. The aggregate, annual license fees for these facilities will result in a total sum in excess of \$100,000. Recognizing the current non-viable state of the domestic mining and milling industry, Rio Algom proposes that section §171.19 be amended to reflect that quarterly installments are acceptable for those companies whose aggregate total of annual license fees are in excess of \$100,000. As such, Rio Algom proposes that section §171.19 (b) be amended to allow companies whose aggregate annual fees are in excess of \$100,000, pay in quarterly installments. The new proposed section would read:

"(b) For FYs 1992 through 1995, annual fees in the aggregate amount of \$100,000 or more for a company and described in the Federal Register notice pursuant to §171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1, and July 1 of each FY. Annual Fees of less than \$100,000 shall be paid once a year during the first quarter of the FY as billed by the Commission. Where specific payment instructions are provided on the bills to licensees, payment must be made accordingly, e.g. bills of \$5,000 or more will normally indicate payment by electronic fund transfer."

Finally, the preamble states 60% of the uranium recovery budget is attributable to uranium mills in operation, standby, or with reclamation under review, and in-situ leach facilities.⁽⁴⁾ It is difficult to understand how uranium mills or commercial in-situ facilities that are on standby or in reclamation, require regulatory services that are equal to mills and in-situ facilities that are in operation. We believe that a further breakdown in the proposed fee structure for uranium recovery facilities is needed

which will equitably recover Commission costs relative to their relationship to the cost of providing the necessary regulatory services.

REFERENCES

- (1) Merriam-Webster, "Webster's Ninth New Collegiate Dictionary", 1988, Page 1209
- (2) 101st Congress, 2nd Session, 136 Congressional Record, at H12692-12693, Subsection (c)(3)
- (3) Federal Register, Volume 56, Number 71, Friday, April 12, 1991, Page 14885
- (4) Federal Register, Volume 56, Number 71, Friday, April 12, 1991, Page 14884