



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 22, 2022

Lawrence J. Corte, President
Western Nuclear, Inc.
333 North Central Avenue
Phoenix, AZ 5004

SUBJECT: WESTERN NUCLEAR, INC., PAYMENT OF LONG-TERM CARE FEE,
SPLIT ROCK URANIUM MILL TAILINGS DISPOSAL SITE, WYOMING

Dear Lawrence Corte:

I am responding to your letter to Chairman Hanson dated August 17, 2022.¹ Your letter informed the U.S. Nuclear Regulatory Commission (NRC) that Western Nuclear Incorporated (WNI) had determined to accept and pay the \$4.2 million long-term care fee (LTCF) for the Split Rock uranium mill tailings disposal site.² In your letter, you raised concerns that the fee determination for the Split Rock site represents a departure from past LTCF determinations, guidance, and policies, for which WNI had no prior notice.

Section 203 of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires a licensee to make funds available, as may be necessary, to assure cost of the long-term surveillance of the site. The regulatory requirements for the LTCF and long-term surveillance are found in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40, "[Domestic Licensing of Source Material](#)." Specifically, Appendix A, "[Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content](#)," Criterion 10 provides:

Criterion 10—A minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12 (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long-term surveillance must be such that, with an assumed 1 percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. [ML22230C088](#).

² [ML22230C088](#). In a letter dated August 26, 2022, the NRC Staff confirmed receipt of the payment from WNI, which NRC forwarded to the U.S. Treasury. [ML22237A030](#).

And Criterion 12 provides:

Criterion 12—The final disposition of tailings, residual radioactive material, or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency responsible for long-term care of the disposal site to confirm its integrity and to determine the need, if any, for maintenance and/or monitoring. Results of the inspections for all the sites under the licensee's jurisdiction will be reported to the Commission annually within 90 days of the last site inspection in that calendar year. Any site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary site inspection report to be submitted within 60 days. On the basis of a site specific evaluation, the Commission may require more frequent site inspections if necessary due to the features of a particular disposal site. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

The NRC promulgated guidance for setting the LTCF, such as NRC Regulatory Issue Summary (RIS) 2011-11, "[Regarding Long-Term Surveillance Charge for Conventional or Heap Leach Uranium Recovery Facilities Licensed Under 10 CFR Part 40](#)," dated September 29, 2011.³ The RIS notes that, as provided in Criterion 10, the NRC may increase the LTCF above the minimum amount, adjusted for inflation, if the site surveillance or control requirements are expected to be greater than those specified in Criterion 12 provided that there is a nexus to radiological health and safety.

Specifically, RIS 2011-11 provides:

The custodial agency or the applicant/licensee may propose to increase the [LTCF] above the minimum amount to cover those additional expected long-term surveillance and control activities, including groundwater monitoring, that the custodial agency or the applicant/licensee deems necessary for the performance of the tailing's impoundment.

For the Split Rock site, the U.S. Department of the Energy (DOE) developed and provided an estimate of the funds necessary to carry out its preliminary long-term surveillance plan (LTSP). The DOE based its estimate on the characteristics of the WNI site and incorporated decades of experience managing UMTRCA sites. WNI also provided its perspectives on the fee determination.⁴

During the NRC review, staff ensured WNI was kept informed of the status and process it was following in making the LTCF determination, including providing a public version of the DOE estimate on October 1, 2021,⁵ and holding three public meetings⁶ to provide status of the review and answer questions in October and December 2021, and August 2022. The NRC reviewed and considered the submissions by the DOE and WNI and determined that site surveillance and control requirements are greater than the minimum specified in Criterion 12 of Appendix A to 10 CFR Part 40. Therefore, the NRC staff established an

³ [ML111290381](#). Additional guidance is in NUREG-0706, Volume 3, "Final Generic Environmental Impact Statement on Uranium Milling," issued September 1980 ([ML032751669](#)), and NUREG-1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978," Revision 1, issued June 2003 ([ML032250190](#)).

⁴ Correspondence regarding DOE's LTCF estimate and WNI's perspectives on the fee determination are specifically cited in the NRC's Staffs Technical Evaluation Report, available at [ML22157A449](#).

⁵ [ML21277A124](#)

⁶ [ML21309A536](#), [ML22012A390](#), [ML22235A394](#)

LTCF that included some of the additional costs of site surveillance and control requirements. However, not all costs provided in the DOE estimate were included in the final LTCF determination, including indirect costs, costs of vegetation monitoring and controls outside of the tailing's impoundment, as well as other costs from adjustments to the method of LTCF calculation.

Your letter suggested that NRC update its guidance to staff for long-term care fee determinations to incorporate lessons learned from Split Rock. We will review the applicable staff guidance and make revisions, as appropriate.

Your letter also recommends that NRC initiate a rulemaking to address certain concerns related to costs included in the LTCF. Currently the NRC has no plans to do rulemaking in this area. The NRC's petition for rulemaking process can be found in 10 CFR 2.802, "[Petition for rulemaking – requirements for filing](#)," with additional information in 10 CFR .803, "[Petition for rulemaking – NRC action](#)." If you would like the NRC to consider your request as a petition for rulemaking, please review these requirements. Pursuant to 10 CFR 2.802(b), "[Consultation with the NRC](#)," you can also consult Cindy Bladey, Chief, Regulatory Analysis and Rulemaking Support Branch, by email at Cindy.Bladey@nrc.gov or by telephone at 301-415-3280 to discuss the petition for rulemaking process.

In accordance with 10 CFR 2.390, "[Public inspections, exemptions, requests for withholding](#)," of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's ADAMS. ADAMS is accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, please contact the WNI Split Rock Project Manager, Thomas Lancaster at 301-415-6563, or by sending an email to Thomas.Lancaster@nrc.gov.

Sincerely,



Signed by Lubinski, John
on 09/22/22

John W. Lubinski, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-1162

LTR-22-0236-1-NMSS - Letter to L. Corte, WNI, from J. Lubinski, NRC, re Western Nuclear, Inc. Payment of Long-Term Care Fee, Split Rock Uranium Mill Tailings Disposal Site, Wyoming DATE September 22, 2022

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