



KATIE SWEENEY
General Counsel

April 22, 2016

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

Dear Sir/Madam:

The National Mining Association (NMA) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2016. 81 Fed. Reg. 15,457 (March 23, 2016). NMA represents producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are current or prospective NRC licensees and who are adversely affected by the NRC fee regulations. These members include the current and prospective owners and operators of uranium mills and mill tailings sites and *in situ* uranium production facilities.

NMA has commented extensively in the past on NRC's fee allocation system, particularly rising fees, lack of cost containment measures and inadequate billing details. While the proposed increases in the annual fees for FY 2016 are troubling, more concerning is the fact that even without these new fees, increasing costs and delays continue to plague most major uranium recovery licensing actions. Frankly, NMA's members are frustrated that permitting efficiencies have not been realized over time as NRC staff gained additional experience with certain licensing activities. If the FY 2016 fee increases were accompanied by more timely licensing actions, then the trade-off might be more acceptable.

Delays were slightly more understandable in the mid-2000s, when there was a significant uptick in licensing new uranium recovery projects after many quiet years for NRC's uranium program meaning that many NRC staff were relatively new to uranium recovery and did not have much institutional memory. However, the agency offered, what industry perceived to be a strong solution to promote efficient licensing of the new uranium recovery operations: the development of a generic environmental impact

statement (GEIS) to assess the potential environmental impacts associated with uranium recovery at milling facilities employing the in-situ recovery (ISR) process.

The intent of the GEIS was and is to streamline licensing actions for *in situ* recovery (ISR) operations by using the GEIS as the starting point for site-specific environmental reviews of license applications for new ISR facilities, as well as applications to renew or amend existing ISR licenses. Specifically, the GEIS addresses common environmental issues associated with the construction, operation, and decommissioning of ISR facilities, as well as the ground water restoration at such facilities, if they are located in particular regions of the western United States. In the press release announcing the GEIS, NRC indicated:

The GEIS will improve the efficiency of the agency's environmental reviews of these applications by serving as a starting point for site-specific environmental reviews of these applications. The agency expects to complete most licensing reviews within two years, subject to available resources.

NRC June 4, 2009 Press Release, No. 09-103.

NMA strongly supported this effort as a way to contain costs for licensees/applicants and save NRC resources. In fact, NMA spent nearly three-quarter of a million dollars to provide technical information to support the GEIS. The promised efficiencies have yet to be realized – the most recently licensed facilities experienced lengthy and unexpected delays as have licensees engaged in expansion or license renewal. NRC needs to redouble its efforts to capitalize on the GEIS as a tool to more expeditiously review licensing actions.

The development of the GEIS and subsequent guidance documents as well as the completion of the first new licenses in the uranium program in decades should have ameliorated problems with NRC staff not having institutional knowledge to efficiently review licensing actions. However, while the staff have gained experience and knowledge since the development of the GEIS, the staffs' tendency to continually reopen settled issues and failure to employ risk-informed policies have compounded the problems of delays and increased costs.

NMA believes that recent decisions made by the agency on their approach to regulating uranium recovery licensees are legally flawed in that they deviate from existing Commission regulations, guidance and policy and advocate approaches not merited by the risks. Perhaps the best and most recent example of this problem is certain NRC staffs' positions on health physics issues related to effluent monitoring and public dose calculations specific to Radon-222 and its decay products. NMA extensively detailed these problems in the attached Jan. 2015 letter to NRC. The issues addressed in that letter were ones that industry believed were previously settled, either by guidance,

policy or past agency practice but were now being “reopened” by NRC staff without any evidence that reopening was necessitated by potential or actual risk. NMA’s letter urged NRC staff to use a risk-informed performance based approach to regulating the uranium recovery industry. Such an approach is good public policy as it promotes efficient use of agency, licensee and other stakeholder resources. Unfortunately, the letter had the unintended consequence of adding to delays in licensing actions. During the six months it took NRC to respond, several NMA members were told that their licensing actions were delayed as NRC staff were busy developing a response to the NMA letter. Yet, the bills some of those very same NMA members received during that period months were not commensurate with fewer NRC staff hours. In fact, some of the billings during this period were mysteriously higher than other quarters.

NMA believes the majority of its concerns with NRC fees would be addressed by the NRC’s adherence to a risk informed performance based approach to regulations as contemplated by the Atomic Energy Act of 1954, as amended (AEA). The AEA mandates consideration of risk for management of byproduct material such as is produced by uranium recovery facilities. In fact, Section 84(a)(1) of the AEA specifically states management of 11e2 byproduct material is to be carried out in such a manner as the Commission deems appropriate to protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material **taking into account the risk to the public health, safety, and the environment**, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate.

Additionally risk-informed, performance-based approaches are well suited to the low risk nature of UR activities. If risk-informed, performance based regulation is appropriate for licensed nuclear reactors, which pose the highest potential risk to public health, safety, and the environment in the nuclear fuel cycle, it is even more appropriate for the licensed fuel cycle facilities posing the lowest potential risks (i.e., conventional and ISR uranium recovery facilities). As explained in NUREG/CR-6733:

Regulatory programs that are RIPB [risk-informed, performance-based] consider, among other factors, the degree of risk associated with specific operations in defining the nature of the applicable regulatory requirements. In general, operations that pose a high risk to public health and safety or the environment would be subject to more stringent regulatory requirements. Conversely, those operations that pose a low risk to public health and safety or the environment would be regulated less stringently. Risk considerations may also help determine which aspects of a facility should be regulated. RIPB regulatory programs typically identify performance measures as the basis for regulatory requirements.

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Finally, in addition to adhering to a risk-informed, performance based approach, NRC should revise the proposed FY 2016 fee rule to require more efficient processing of services. As currently written, the rule fails to promote opportunities for cost containment. As NMA has recommended previously, NRC should establish typical timeframes for activities and promote use of deadlines and cost estimates. Deadlines are particularly important for documents where fees are calculated on a case-by-case basis and NRC should be required to provide at least a preliminary cost estimate. Not only would such efforts likely reduce hourly fees they would have the added benefit of encouraging more timely actions by NRC.

Conclusion

In conclusion, NMA believes that NRC needs to not only make sure the agency is effectively using its resources by focusing on actual risks but additionally needs to capitalize on its existing streamlining efforts to maximize efficiencies, minimize costs, and establish accountability. NMA appreciates this opportunity to provide comments. If you have any questions, please contact me at 202/463-2627.

Sincerely,

A handwritten signature in black ink that reads "Katie Sweeney". The signature is written in a cursive, flowing style.

Katie Sweeney