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FINAL REPLY:

Richard L. Lawson
National Mining Association

TO:

Chairman Meserve

FOR SIGNATURE OF :

** PRI **

CRC NO: 00-0610

Chairman

DESC:

Rulemaking Proceedings for Uranium Recovery
Facilities

ROUTING:

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DATE: 10/02/00

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SPECIAL INSTRUCTIONS OR REMARKS:

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AUTHOR: Richard Lawson (NMA)
AFFILIATION:
ADDRESSEE: CHRM Richard Meserve
SUBJECT: Concerns the National Mining Association's views regarding the recent decisions of the Commissioners relating to SECYs 99-011, 99-012, 99-013 and 99-277

ACTION: Signature of Chairman
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National Mining Association
Foundation For America's Future

Richard L. Lawson

President and Chief Executive Officer

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September 18, 2000

The Honorable Richard Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Meserve:

I am writing to express National Mining Association's (NMA) views regarding the recent decisions of the Commissioners relating to: 1) SECY-99-011, "Draft Rulemaking Plan: Domestic Licensing of Uranium and Thorium Recovery Facilities - Proposed New 10 CFR Part 41; 2) SECY-99-012, "Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other Than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other Than Natural Uranium Ores; 3) SECY-99-013, Recommendations on Ways to Improve the Efficiency of NRC Regulations at *In Situ* Leach Uranium Recovery Facilities and 4) SECY-99-277, Concurrent Jurisdiction of Non-Radiological Hazards of Uranium Mill Tailings." While NMA fully agrees with the Commission's decision that NRC has exclusive jurisdiction over both the potential radiological and non-radiological hazards associated with 11e.2 byproduct material, NMA has significant concerns about the other Commission decisions that may involve an extremely expensive rulemaking proceeding for uranium recovery (UR) facilities.

NMA has repeatedly stated that a Part 41 is not essential but has agreed that consideration of this rulemaking is appropriate as long as it would not result in a whole host of new prescriptive regulations for the UR industry. Now that the Commission has voted to move forward with a Part 41 rulemaking, and given the current economic state of the industry, NMA needs additional information to determine if NMA's UR members can bear the financial burden of developing a new Part 41. For example, a detailed rulemaking plan and cost-estimates must be made available to the industry including information pertaining to how much NRC has spent to date, the status of any current draft(s), full time equivalent (FTE) estimates for the future, the cost of any necessary memoranda of understanding (MOUs) and the number of UR licensees NRC anticipates there will be to pay for the rulemaking. Only armed with such information can NMA's UR members make informed judgments whether the potentially substantial increase in annual fees associated with the rulemaking will result in concomitant benefits. NRC must keep in mind that there are currently only 12 licensees to share these costs and the number of licensees

is expected to decrease over the next few years.¹ Also, given that once the rulemaking is complete, it can only be applied prospectively, NRC must consider whether there will be enough licensees left at that time to justify the regulations. Indeed, it is possible that the costs associated with the rulemaking may be enough in and of themselves to cause UR licensees to take a hard look at ceasing operations.

NMA cannot support any proposals that do not promote a more efficient and effective regulatory program that optimizes the protection of public health, safety and the environment. After reviewing the Commission's direction to the staff on these issues, NMA is not yet convinced that the benefits from the establishment of a new Part 41 will outweigh the disadvantages. NMA supports the resolution on the alternate feed issue and believes there has been a little forward movement on the disposal of non-11e.(2) materials in tailings piles, both of which could be of some economic benefit to some UR licensees if put into effect in a timely manner. Even if NRC decides not to pursue the new Part 41, NMA supports NRC proceeding with its decisions on alternate feed and non-11e.(2) disposal through guidance, as a less expensive and more timely alternative for reaching the stated goals of the Commission decisions on these issues. The most obvious potential negative impact of a new Part 41 would be the continuing dual regulation by NRC and Non-Agreement States of in-situ leach (ISL) wellfield operations and the new costs created by the Commission's decisions to treat all wastes (including restoration fluids and sludges) as 11e.(2) byproduct material, which could be the straw that breaks the camel's back.

Based on the Commissioners' comments regarding the dual regulation of ISL operations, it appears that the Commission does not fully understand the regulatory structure that regulates the ISL industry, including specifically, wellfield operations. Several Commissioners commented on the relationship between NRC's regulatory program and the underground injection control (UIC) program of "EPA or EPA authorized states." It must be recognized that regulation of ISL wellfields extends far beyond the requirements of the EPA's UIC program as there are separate state regulations specific to ISL mining, control of wellfield operations and groundwater restoration. This apparent lack of understanding may have resulted from the extent and breadth of the state regulatory framework not being fully communicated by NRC Staff in the SECY papers. Consistent with Commissioner McGaffigan's and other's concerns regarding NRC Staff resources and costs to the licensees, we believe that it is not necessary to reinvent the wheel, and NRC should recognize the states' right to regulate mining, negating the need for NRC involvement in wellfield and restoration operations, thereby minimizing the need for Part 41 regulations. NMA is assuming that despite this apparent confusion over the regulatory structure, the Commission is interested in reducing the duplicative regulation that currently exists. Dual jurisdiction over wellfields significantly increases the costs for uranium producers and is truly a waste of both licensee and NRC resources. Dual jurisdiction poses similar problems for state

¹ By NMA's estimates, for the next fiscal year only 10 UR licensees will pay annual fees. Of these 10 licensees, three likely will be actively producing via ISL and one producing uranium using alternate feed for the mill.

agencies responsible for regulating ISL mining. These states waste precious resources working with the licensees and NRC to resolve conflicting license and permit requirements. Given the extremely depressed price of uranium, production is only really taking place due to existing contracts, most of which are due to expire in the near term. Therefore, NMA is supportive of actions that reduce dual jurisdiction, including MOUs with other agencies, if the MOUs can be negotiated in a quick and cost-efficient manner.

NMA is concerned, however, that the Commission's decision to treat all ISL effluents as 11e.(2) byproduct material could potentially pose a barrier to reducing duplicative regulation over ISL wellfields given that the Commission also recently decided that Non-Agreement States have no jurisdiction over the non-radiological components of 11e.(2) byproduct material. If Non-Agreement States have no jurisdiction over 11e.(2) byproduct material or source material, it is not clear how NRC can promote reliance on state programs to avoid dual jurisdiction as contemplated in the Commissioners' decisions. NMA requests further clarification on how these two decisions interact.

NMA believes that the direction provided to the staff in the ISL decision to regulate all waste streams associated with ISL uranium mining as 11e.(2) byproduct material has other serious, unintended consequences. While it appears from the voting records of the individual Commissioners that they truly believe that this treatment of ISL waste streams will produce more efficient and consistent regulations, unfortunately the opposite is true. In fact, treating all effluents at ISL facilities as 11e.(2) byproduct material generates a whole new set of problems and inconsistencies. For example, the comments by the Commissioners in the voting record describe restoration fluids as 11e.(2) byproduct material, which raises concerns as to the current exclusion in the definition of byproduct material in 10 CFR 40.4 regarding depleted ore bodies. It is difficult to reconcile the logic of the Commissioners' decision that restoration fluids produced from restoring depleted ore bodies, which the regulations specifically state do not constitute 11e.(2) byproduct material, are somehow themselves 11e.(2) byproduct material. Presumably, the only basis for such a conclusion is that some uranium continues to be removed in ion exchange vessels from restoration fluids even though the removal of the uranium is not the "primary" purpose of the groundwater restoration operations.

If the aforementioned rationale is the basis for finding restoration fluids to be 11e.(2) byproduct material, consider the following. Frequently, underground uranium mines have to pump excess mine drainage to dewater the mines so that the miners can function. The ventilation required for the miners to function effectively and safely (e.g., radon removal) brings oxygen into contact with mine water and assists in the dissolution of uranium from the ore body. As a result, excess mine drainage often contains uranium concentrations that exceed discharge requirements under Clean Water Act National Pollutant Discharge Elimination Standards (NPDES) regulations, and additional treatment is required such as an ion exchange (IX) vessel to remove the uranium and a radium/barium settlement pond to remove excess radium. In the case of uranium, the ion exchange resin is stripped to concentrate the uranium for further processing as "refined and processed ore." (See, 57 Fed. Reg. 20532.) In the past, unless the IX vessel was

tied into the mill circuit by license amendment, the discharges and sludges (*i.e.*, radium/barium) from this treatment of mine waters have not been regulated by NRC as 11e.(2) byproduct material. This was because the discharges and sludges were not production effluent or sludges from the extraction of source material primarily for its source material content but rather were effluents and sludges from efforts to dewater the mine and to satisfy EPA NPDES release limits. In other words, the removal of source material under such circumstances was considered incidental to the treatment of the mine water for discharge. Indeed, under these circumstances, excess mine drainage that is treated to remove uranium and radium to satisfy NPDES purposes is similar to treating restoration fluids at an ISL facility to remove uranium in an IX vessel and radium in a radium/barium settlement pond to satisfy NPDES limits. In both cases, oxygen (that is not intentionally added to the water as in ISL production operations) in water dissolves uranium that is pumped to the surface, removed in an IX unit and the excess fluids must be disposed of frequently under an NPDES permit. It is inconsistent with NRC practices well prior to 1995 to deem such discharges 11e.(2) byproduct material.

Another example of a problem created by the decision to broaden the types of effluents that are 11e.(2) byproduct material is the potential impact on groundwater corrective action programs. Groundwater corrective action programs can use treated mine water discharged from the water treatment plant to seep into the alluvium and sweep the tailings seepage into an interceptor trench for collection and disposal in solar evaporation ponds. The minewater used for this action would be treated by ion exchange to remove the uranium to discharge limits under an NPDES permit. Under the most recent Commissioners' decisions, these discharges would be considered *production* effluents, which cannot be released pursuant to an NPDES permit. And even if releasable, would require increased treatment to meet lower discharge limits (2 mg/L to 0.44 mg/L) thereby significantly increasing the cost of the groundwater corrective action program. In fact, NRC has relatively recently taken the opposite position. In 1998, NRC conducted an inspection of one licensee's facility, and the inspector alleged that the treated minewater discharge was regulated material and the discharges were in violation of 10 CFR Part 20, Appendix B limits. The company challenged this allegation, and NRC agreed that the discharges were not regulated since the source material extraction was incidental to the treatment of the minewater prior to discharge. Based on the current decisions by the Commissioners, NMA is concerned that some member companies will be forced into a violation of NPDES regulations and NRC 10 C.F.R. 20, Appendix B limits for activities that in the past were not considered to be production activities.

Even if after review of the rulemaking plan and cost-estimates, NMA's UR licensees decide that the benefits to the industry outweigh the costs, NMA may still be unable to support the rulemaking without assurances from the Commission that the process will be a truly open one. Several of the Commissioners' decisions indicated that their positions could change based on stakeholder input to any proposed rules. NMA supports the proposition that a truly open and

effective rulemaking process requires an open mind to address matters not thoroughly considered at the preliminary states of the proceeding.

Sincerely

A handwritten signature in black ink, reading "Richard L. Lawson". The signature is written in a cursive style with a large, stylized "R" and "L".

Richard L. Lawson

Cc: The Honorable Greta Dicus
The Honorable Nils J. Diaz
The Honorable Edward McGaffigan, Jr.
The Honorable Jeffrey S. Merrifield
Dr. Donald A. Cool, NRC
Mr. Michael F. Weber, NRC
Mr. Daniel M. Gillen, NRC