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## WYOMING MINING ASSOCIATION

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April 27, 2001

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
ATTN: Rulemakings and Adjudications Staff

Gentlemen:

**Subject: Wyoming Mining Association - Comments on the Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001.**

The Wyoming Mining Association (WMA) is an industry association of mining companies and associates (suppliers, contractors, service companies, vendors, etc.) in the State of Wyoming. The association's membership includes a number of uranium recovery licensees licensed by the Nuclear Regulatory Commission. The association has reviewed the above mentioned Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001 and has the following comments:

### **Annual Fee for Class I and II Facilities**

The WMA supports the proposed reduction in the Annual Fee for Class I facilities from \$132,000 per year (Fiscal Year 2000) to \$94,300 per year (Fiscal Year 2001) and for Class II facilities from \$111,000 per year (Fiscal Year 2000) to \$79,000 per year (Fiscal Year 2001). This is a positive step for the uranium recovery industry, however it does not go far enough, given the current state of the industry and its importance to the energy needs of the United States. In addition, the WMA supports the continued use of a quarterly billing schedule for Class I and Class II licenses.

The WMA also acknowledges that the passage of the Fairness in Funding Act, which could not have been accomplished without strong NRC support attempts to address some of the concerns of the uranium recovery licensees. It is however a fundamental principle of law that there must be a

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reasonable relationship between the costs to the uranium recovery licensees of a regulatory program and the benefit derived from the regulatory services delivered. The NRC's authority to prescribe fees for "regulatory services" under 10 CFR 170 is based upon the Independent Offices Appropriation Act of 1952 (IOAA), 31 USC 9701. To be valid under 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)). To heavy a burden is falling upon uranium recovery licensees. Sites that are on standby or awaiting approval of reclamation plans require minimal oversight yet must continue to pay an annual fee that is clearly not commensurate with the benefit of holding the license.

#### **Average Cost Per Professional Staff Hour**

The average cost per professional staff hour has been proposed at \$144 per hour (Fiscal Year 2001-proposed - Nuclear Materials and Nuclear Waste Program) which is an increase from the level of \$143 per hour (Fiscal Year 2000). The WMA does not support this increase.

#### **Project Manager Charges**

Beginning in Fiscal Year 2000, the Nuclear Regulatory Commission (NRC) began invoicing licensees for hourly charges for the licensees' Project Manager (PM), other than for work directly related to the license, such as training and general administrative work. In the case of a Project Manager (PM) who managed several licenses, the charges not directly related to license work were split among the licensees the Project Manager (PM) managed. These charges have become a significant additional expense that uranium recovery licensees, given the current state of the industry, can ill afford. This problem is further exacerbated when a PM "manages" few (only one or two licensees) with the result that the given licensee(s) must pay all of the overhead costs associated with this individual. The WMA supports the redesignation of Project Managers (PMs) assigned to uranium recovery licenses as Points of Contact (PCs) to avoid these charges. At the very least, this change should be made for those licensees who are currently not operating.

#### **Invoicing Procedures**

The WMA believes that the NRC should continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff and NRC Contractors. With hourly rates as high as \$144 per hour, the agency should be held to at least the same standard of accountability to its licensees as a private sector consultant is to its clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified.

#### **Status of the Uranium Recovery Industry**

Uranium prices are low. The current price is \$8.25 per pound (Uranium Exchange (UX) - April 23, 2001). The issue of fees was discussed in depth at the Commissioner's Briefing provided by the

National Mining Association (NMA) in Rockville, Maryland on April 10, 2001. At this briefing, the potential for regulatory relief from fees through a petition for rule making and/or legislative relief from fees in the form of a suspension of fees pending an improvement in the uranium market was discussed. The association would support an industry wide effort through the NMA to obtain some form of relief from licensee fees. In spite of the depressed uranium prices, fees charged to licensees have risen steadily since 1998 as shown in the chart entitled NRC Fees vs. Price U3O8 presented at the Commissioners Briefing on April 10, 2001. In addition, agency fees have increased steadily since 1998 in spite of declining uranium production.

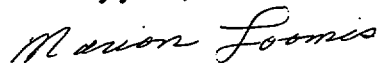
The uranium recovery industry is vital to the long term energy security of the United States especially given the recent renewed consideration of the nuclear option by utilities. Senate File 472 – A Bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States raises this issue stating, "... the United States must ensure that the domestic uranium mining, conversion and enrichment service industries remain viable." The fees levied against uranium recovery licensees threaten the viability of this vital industry. Licensees need relief from fees in order to survive to the time when the industry as a whole recovers.

Licensee fees, hourly charges, review charges, inspection costs, and PM costs have increased dramatically through the years. These charges have become a significant portion of operating costs as shown in the table entitled Rio Algom Mining Corporation – NRC Costs September 26, 1999 to December 30, 2000 prepared by Rio Algom Mining Corporation (RAMC) for its licensed facilities and presented at the Commissioners Briefing on April 10, 2001.

In summary, WMA supports the reduction in licensee fees proposed by NRC, but does not believe that the reduction goes far enough in providing the relief required by the industry. The uranium recovery industry is vital to the energy security of the United States especially given the current U.S. electricity situation. The industry should not be driven to extinction by excessive fees. The WMA believes that the hourly rate charged by the agency is excessive. In addition, the association believes that the PM charges invoiced by the agency have become an increasing burden on the industry and are especially unfair to those licensees who have a PM assigned solely to them. The WMA believes that current PMs could be redesignated as PCs at least for some (inactive or standby) licensees with a savings in PM charges for those licensees. The association believes that the agency should continue its efforts to produce invoices containing more meaningful descriptions of work performed.

WMA appreciates the opportunity to comment on this critical rule making. If you have any questions please do not hesitate to contact me.

Sincerely yours,



Marion Loomis  
Executive Director

Cc: Katie Sweeney – National Mining Association (NMA)