

NRC Response to Three Items Discussed in Strata's February 20, 2015, Letter

The three specific cost items mentioned in the February 20, 2015, letter relate to: (1) the National Historic Preservation Act (NHPA) activities; (2) the National Environmental Policy Act (NEPA) activities; and (3) the Uranium Recovery Branch Safety Review activities. Each of these is addressed below.

NHPA Activities

Issue:

NRC fees for revising the Tribal Survey Report which the Wyoming SHPO rejected NRC's eligibility determinations and not enlisting Strata to help revise the report

Response:

The Section 106 process of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and allow the Advisory Council on Historic Preservation (ACHP) an opportunity to review and comment on the undertaking. Federal agencies carry out the Section 106 process in consultation, as appropriate, with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, other Federal, State, and local governmental agencies, Indian Tribes, other interested parties, and the public. The Section 106 process, as described in Subpart B of 36 CFR 800, consists of four steps: (1) initiation of the Section 106 process; (2) identification of historic properties, including those of religious and cultural significance to Indian Tribes;¹ (3) assessment of the undertaking's effects on historic properties; and (4) evaluation of measures that could avoid, minimize or mitigate any adverse effects on historic properties. In April 2014, the NRC executed a Programmatic Agreement (PA) for Strata's Ross project, which was developed in consultation with the Bureau of Land Management (BLM), Wyoming SHPO (WySHPO), Strata, the ACHP, and Indian Tribes. The BLM, WySHPO, Strata, ACHP, and NRC signed the PA. The execution of the PA evidenced NRC's compliance with the Section 106 process and established the process to be followed for the identification of historic properties, assessment of adverse effects, and resolution of adverse effects to historic properties.

As discussed in your letter in March 2014, the NRC prepared the *Tribal Field Surveys in the Ross Project Area* report and submitted it to the WySHPO for review and concurrence on the NRC's eligibility determinations in accordance with 36 CFR 800.4(c). The WySHPO did not concur with the NRC's eligibility determinations because required components of the Wyoming Cultural Properties Forms were missing and because of concerns with NRC's methodology used in evaluating the sites for National Register of Historic Places (NRHP) eligibility. Although the NRC did not agree that the Wyoming Cultural Properties Forms were required as part of the Section 106 consultation, as a good faith effort to obtain concurrence from the WySHPO, the NRC revised the report to include the additional components and provided additional information in support of NRC's determinations. The NRC submitted the revised report to the WySHPO in December 2014. In January 2015, the WySHPO agreed with some of our eligibility determinations but disagreed on others, and recommended that the NRC refer the properties in question to the Keeper of the NRHP (Keeper) and request a formal determination of eligibility.

¹ The identification step includes the evaluation and determination of whether identified properties are eligible to be listed in the NRHP.

Enclosure

The NRC would like to clarify that a disagreement between NRC and WySHPO on eligibility is not an indication of technical weaknesses or a flawed report. The WySHPO did not reject the report. The WySHPO disagreed with NRC's eligibility determination for some sites. We concluded that some traditional cultural properties were eligible and the WySHPO disagreed. The NHPA regulations anticipate such disagreements and so the regulations establish a process for resolving such disagreements [see 36 CFR 800.4(c)(2)]. The executed PA also addresses such disagreements [see Stipulation B.4.f]. In accordance with the PA and the NHPA regulations, the NRC submitted a request for eligibility determinations to the Keeper on April 2, 2015. The Keeper's decision would be final. Also, in its January 2015 response, the WySHPO stated that our report met the Secretary of Interior's Standards for Archaeology and Historic Preservation. The NRC will continue to keep the licensee informed of the steps that are taken. With respect to the licensee's request to review the survey reports, the NRC has discussed the matter with Strata. The NRC has reviewed the request in accordance with the confidentiality stipulation in the PA and determined that the NRC would need to obtain permission to share the revised report with Strata from the tribes that participated in the field surveys that are documented in the report and would need to obtain written authorization from BLM to share certain portions of the revised report. Should Strata wish us to pursue the release with the tribes, please contact Ms. Jean Trefethen, Environmental Project Manager for Strata at (301) 415-0867.

NEPA Activities

Issue:

Lack of transparency in billing process with respect to a late-filed invoice involving a settlement charge

Response:

As you indicated in your letter, the charges in question were related to a settlement for a contractor invoice submitted to the NRC for work the contractor had performed in the past and for which they had not previously submitted an invoice. The contractor did not provide adequate information supporting the invoice, so the NRC Contracting Officer treated the invoice as a claim and denied that claim as a good steward of public resources. The contractor appealed to the Civilian Board of Contract Appeals. Through further examination of the matter during litigation, it appeared that the contractor was entitled to payment for that work under the terms of the contract. Therefore, the NRC settled the case. The total settlement amount was less than the invoiced amount.

Staff did not share financial information with the licensee while the settlement negotiation was ongoing because the NRC staff did not know what the outcome would be and the NRC staff does not usually discuss ongoing litigation matters with licensees. Subsequently, the NRC staff learned that although the claim was under litigation, the NRC staff could have shared some basic information with the licensee. The NRC staff will be more transparent and communicate more effectively with the licensee in the future.

Uranium Recovery Branch Safety Review Activities

Issue:

High contractor charges for analysis of meteorological data that have a low risk significance.

Response:

The costs to which you refer are listed under the review of the meteorological data by a contractor. NRC has contracted with Oak Ridge Associated Universities (ORAU) to evaluate Strata's and other licensee's submittals in an effort to develop guidance for Staff to use for future reviews and to address issues for staff's review of existing licensees. The contractor had not performed work on Strata's specific request to remove its license condition and, unfortunately, those costs were assessed by NRC in error. The costs were not documented in a final invoice but on an informal biweekly validation report sent to licensees by the NRC. The NRC Contracting Officer Representative overseeing the ORAU contract recognized this error prior to receipt of Strata's letter and was in the process of correcting this invoice. The staff understands that the costs have been removed from the final invoice that NRC recently sent out.

With regard to the work, Strata is required by License Condition 12.13 to receive NRC verification of a valid statistical analysis of its on-site meteorological data showing that the data are representative of long-term conditions before it may operate the Ross ISR facility. This license condition was imposed by NRC after initially accepting Strata's analysis. However, the rationale for imposing the license condition is documented in the Supplemental Safety Evaluation Report dated April 18, 2014 (ML14083A240). In brief, no NRC-approved guidance document or standard industry method for this type of representativeness analysis is available for the short-term data (generally 1 year) that most licensees deem is sufficient. Therefore, the staff has deferred approving licensees' analyses and required that licensees continue their meteorological monitoring programs until the staff completes, under a contract with ORAU, a generally acceptable method. The requirement imposed by License Condition 12.13 is consistent with acceptance criteria in the Standard Review Plan (NUREG-1569), Regulatory Guide 3.63, and requirements in 10 CFR Part 40, Appendix A, Criterion 7 regarding preoperational and operational monitoring programs.

With regard to the risk significance of this issue, Strata describes the one millirem per year (mrem/yr) maximum dose to the public, which it estimated using its on-site meteorological data, and states that the potential risks involved with the uncertainty in the meteorological data are insignificant (the regulatory limit is 100 mrem/yr). This one mrem/yr dose to the public is an estimate from MILDOS modeling, which in addition to the uncertainties noted above in the meteorological data, is derived from assumed effluent source terms for which the uncertainties have not been documented. When actual site specific effluent monitoring data from any facility are lacking or insufficient, the cumulative uncertainties in the MILDOS input data justifies continued on-site monitoring of meteorological data. If it is shown, following confirmation of the modeling input data, that the dose is indeed low, NRC will develop and apply risk-informed guidance that appropriately incorporates the safety significance as a consideration. In the interim, NRC, in an effort to ensure adequate protection and consistency, requires licensees to continue their meteorological monitoring programs regardless of the estimated dose values because of the potential uncertainties.