Rare Element Resources

May 6, 2015

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555–0001

Subject: Comments on NRC FY2015 Proposed Fee Rule

In response to the NRC's proposed fee rule, published on March 23, 2015, Rare Element Resources, Inc. (RER) provides the following comments on the fees applicable to our prospective NRC license.[1] The NRC's proposed rule proposes a new category of annual fees for rare earth facilities, which the agency anticipates will become operational in 2016 (*i.e.,* no such fees would be collected in 2015). Specifically, the NRC proposes an annual fee in the amount of $83,800 for rare earth facilities. As discussed below, RER believes this fee is excessive and unjustified.

The proposed annual fee for rare earth facilities is disproportionate to annual fees for other source material licensees of greater complexity and environmental risk, and creates competitive disadvantages for domestic rare earth production facilities in international markets. The proposed annual fee amount of $83,800 for rare earth facilities is more than double the proposed annual fee for conventional uranium mill facilities ($40,700) and significantly larger than that associated with *in situ* uranium recovery facilities ($51,500 and $58,300). In addition, the annual fee charged by the California Radiologic Health Branch for the Mountain Pass rare earth facility is capped at $29,418 — approximately one-third the NRC's proposed annual fee. Therefore, the basis for NRC's proposed rare earth facilities fee in Table XVI should be explained and justified in comparison to uranium recovery and other rare earth facilities.

The NRC's oversight of rare earth facilities should be much less complex than these types of facilities. In contrast to uranium mills and *in situ* uranium recovery facilities, rare earth facilities only recover rare earth elements (REE); they do not recover or concentrate uranium for use in the fuel cycle. Source material concentrations from REE recovery and waste processes generally fall below the NRC's threshold for licensing (0.05% by weight of uranium and thorium) except in limited process streams. Unlike *in situ* uranium recovery facilities, rare earth facilities do not involve the injection of mining fluids into, or extraction of mining fluids from, groundwater that may impact these water resources. RER's application for a source material possession license, which was submitted to the NRC on May 4, 2015, also is based on an existing regulatory framework in Part 40 and follows existing NRC guidance for source material possession licensees (*e.g.*, NUREG-1556 and NUREG-1748). Together, these factors imply that the annual fee for rare earth facilities should be *lower* than that for uranium mills and *in situ* recovery facilities, not greater.

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[1] 80 Fed. Reg. 51,476. Although the NRC's *Federal Register* notice requested public comment by April 22, 2015, RER requests that the NRC exercise its discretion to consider these limited-scope comments.

RER's planned Bull Hill Mine has great potential to bring a lost industry back to the United States (US). Over 90% of the world's production of rare earth elements comes from China. The US is dependent on China to supply the high tech and green energy components necessary to advance the economy. There is also a very real vision of a new direction for industry and technology where RER can take a significant national leadership role — even a global one — in a completely new area of both technology and natural resource development. Assessing a disproportionate annual fee on an emerging industry that is still in its infancy would likely slow the development of US rare earth projects.

In summary, the NRC should re-evaluate the annual fee basis for rare earth facilities to assure consistency with the NRC's statutory obligation to "fairly and equitably" allocate annual fees among licensees in a manner that has a reasonable relationship to the cost of providing regulatory services.[2] The agency should provide a more detailed explanation of the basis for its proposed resource allocations before promulgating a final annual fee for rare earth facilities.

RER appreciates the opportunity to comment on the proposed fee rule and encourages the NRC to carefully consider these comments. The viability of domestic rare earth production hinges, in part, on NRC's ability to be an effective and fiscally responsible regulator. Please contact me at 720-278-2460 should you have any questions.

Sincerely,

Jaye T. Pickarts, P.E.
Chief Operating Officer

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[2] 42 USC 2214(c)(3).