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February 27, 2017

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

Subject: Wyoming Mining Association (WMA) Comments on the Proposed Rule - Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017– (Federal Register Volume 82, Number 18 - Wednesday, Monday, January 30, 2017 - Proposed Rules)

Gentlemen:

The Wyoming Mining Association (WMA) is an industry association representing mining companies, contractors, vendors, suppliers and consultants in the State of Wyoming. Among its mining industry members are uranium recovery licensees, including five (5) operating in-situ uranium recovery licensees, one conventional uranium recovery operator in standby, several companies planning new uranium recovery operations that are currently in the permitting process and several companies conducting final reclamation/restoration operations.

Total uranium concentrate production in the United States in 2015 was 3,700,000 pounds (U.S. Energy Information Administration - *2015 Domestic Uranium Production Report*). 2015 Wyoming uranium production was 2,600,000 pounds (World Nuclear Association), accounting for 69% of United States production. Wyoming contributes the largest share of any state to the total production of uranium in the United States. As such the issues raised in this Proposed Rule are of special concern to the WMA and its uranium recovery industry members.

The following are the Association's comments on the ***Proposed Rule Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017***:

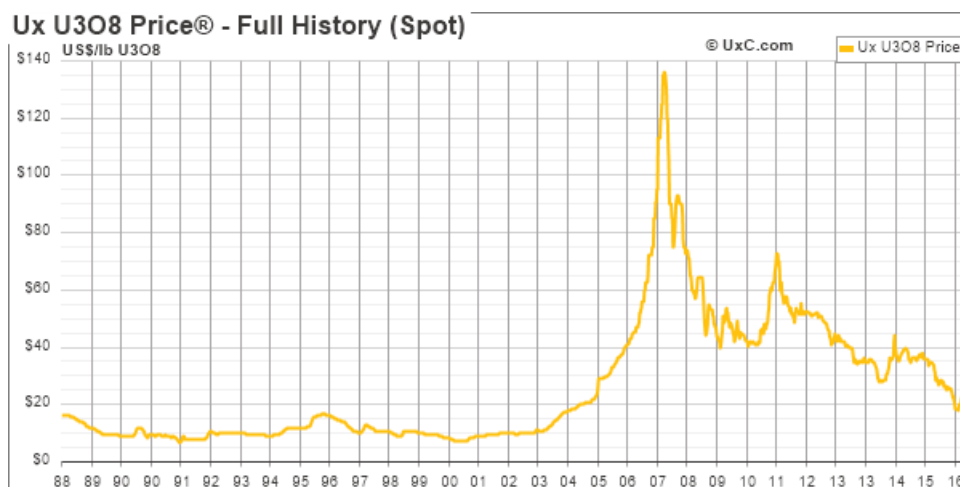
Changes in Uranium Recovery Fees (Proposed 2017 versus Fiscal Year 2016 Fees)

The table below shows the proposed changes in the fee structure:

License Type	Fiscal Year 2016 Annual Fee	Proposed Fiscal Year 2017 Annual Fee	Proposed Percentage Increase
Conventional and heap leach mills	\$38,900.	\$42,300.	8.7%
Basic <i>in situ</i> recovery facilities	\$49,300.	\$53,600.	8.7%
Expanded <i>in situ</i> recovery facilities	\$55,800.	\$60,700.	8.9%
<i>In situ</i> recovery resin facilities	N/A	N/A	N/A
11e.(2) disposal incidental to existing tailings sites	\$22,000.	\$24,000.	9.1%
Uranium water treatment	\$6,500.	\$7,100.	9.2%

Comments on the Proposed Fee Increases and Regulatory Streamlining Issues

The increases for each category of uranium recovery license over the 2016 annual fees exceed 8 percent. This increase exceeds the current rate of inflation and increases in costs from vendors, suppliers and contractors with which the uranium recovery industry does business. It exceeds annual salary increases for uranium recovery workers as well. Uranium prices have been in overall decline for the past five (5) years as shown in the chart below:



Source: The Ux Consulting Company, LLC
<http://www.uxc.com/>

The uranium recovery industry fails to see how increases of this magnitude can be justified. In the preamble to the proposed rule NRC states:

Overall, in comparison to FY 2016, the FY 2017 budgetary resources for uranium recovery licensees increased due to additional work expected for new environmental reviews and licensing actions. Further, the estimated 10 CFR part 170 billings increased from the previous year due to the Ludeman expansion, the Willow Creek groundwater restoration review, and the Marsland environmental assessment.

The WMA questions why work on specific projects should increase fees for all licensees. Costs related to specific projects should be recovered through hourly charges.

The WMA is concerned that other actions taken by NRC over time to streamline the regulatory process and by extension reduce fees and hourly costs have not been effective. These actions include:

- Preparation of NUREG-1910 - *Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities* dated May 2009; and
- Performance Based Licensing for Uranium Recovery Licensees

It was believed that when implemented these two (2) actions would result in lower costs to licensees and a general streamlining of the regulatory process. Specifically, NUREG-1910 was prepared in the belief that it would result in a faster and less costly license application process. Instead, licensing a uranium recovery facility now takes longer and costs more in NRC fees than ever before. Performance based licensing was initiated in the belief that it would reduce the number of amendment requests and NRC review costs. In recent years NRC staff has restricted the use of Safety and Environmental Review Panels (SERPs) to perform routine reviews such as those associated with development of new wellfields, resulting in more amendment requests that result in additional costs.

Uranium recovery is the lowest risk sector of the nuclear fuel cycle and should require the least oversight. Increasingly it is clear that the uranium recovery industry is enduring more (and costlier) oversight.

WMA recognizes as well that industry plays a role in controlling the costs associated with licensing reviews through providing robust licensing documents and responding to agency requests in a timely manner. However, these efforts have been hamstrung by changing requirements made unilaterally by NRC staff without the benefit of industry or public input. NRC staff should work under existing Commission-approved guidance until staff prepares new guidance and solicits stakeholder comments.

The majority of the increased costs for licensing actions are not related to technical design reviews by NRC staff. The increases are due to reinterpreted safety standards and huge increases in the costs of environmental and cultural resource reviews. An example of this sort of problem is the LC 12.10 Technical Evaluation Report (ADAMS Accession Number: ML14289A148) received by a Wyoming uranium recovery licensee. The National Mining Association (NMA) responded to this document with a letter to Mr. Larry W. Camper (now retired), Director, Division of Decommissioning, Uranium Recovery and Waste Programs dated January 23, 2015. The Wyoming Mining Association (WMA) sent a similar letter dated on or about February 9, 2015. The guidance discussed in these letters pertained to radon and its progeny at uranium recovery facilities and calculation of dose from them. The guidance has not yet been made final and exists only as draft guidance. The National Mining Association (NMA) received a response to its letter in June 2015, promising additional discussion and an additional workshop to try to resolve these outstanding issues and ultimately finalize the radon guidance. A workshop regarding these issues has now finally been tentatively scheduled by the Nuclear Regulatory Commission (NRC) for the Spring or Summer of 2017 in Denver, Colorado. The longer it takes to resolve issues of this kind, the more its costs, since more staff time becomes involved. Ultimately these issues involve consideration of risk. Section 84 of the Atomic Energy Act of 1954 as amended discusses 11(e).2 byproduct and by extension uranium recovery stating:

- a. The Commission shall insure that the management of any byproduct material, as defined in section 11e.(2), is carried out in such manner as—*
 - (1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological 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,*

A consideration of the low risks associated with uranium recovery would ultimately lead to lower regulatory costs.

Comments on the Hourly Rate

An increase to the hourly rate is also proposed. For FY 2017, the NRC is proposing to increase the hourly rate from \$265 to \$267. The Preamble states:

For FY 2017, the NRC is proposing to increase the hourly rate from \$265 to \$267. The 0.8 percent increase in the FY 2017 hourly rate is due primarily to the decline in the number of mission-direct FTE compared to FY 2016, partially offset by decreases in the budgetary resources. The FY 2017 estimated annual direct hours per staff is 1,500 hours, up from 1,440 hours in FY 2016. The productive hours assumption reflects the average number of hours that a mission-direct employee spends on mission-direct work in a given year.

Of a 2080 hour working year, for 2017 only 1,500 of those hours are deemed to be spent *on mission-direct work* which is considered to be an improvement over Fiscal Year 2016 when only 1,440 hours were deemed spent *on mission-direct work*. The remaining hours (the 580 hours in Fiscal Year 2016 spent on non-mission direct work) are “... *charged to annual leave, sick leave, holidays, training and general administration tasks.*”

The WMA considers the proportion of hours (28%) spent on non-mission direct work to be excessive and that a much smaller portion of time should be devoted to non-mission direct work.

The hourly rate remains very high especially in comparison to the hourly rates of consultants working for the uranium recovery industry. The primary issue that WMA has with the hourly rate is that the large number of hours expended by NRC staff on licensing reviews for the lowest risk sector in the nuclear power cycle results in huge regulatory costs that have become an existential threat to some operators.

Comments on Invoicing

WMA continues to be concerned about the agency's invoicing process. In her January 7, 2013 letter, Katie Sweeney of the National Mining Association (NMA) stated:

NRC invoices have been wholly lacking in standard detail that every consultant, law or accounting firm in the private sector must provide and NRC's hourly rates exceed those of many of these organizations in the Western part of the country. Accordingly, NRC's invoices do not offer industry any opportunity to gauge the reasonableness of fees incurred for different phases of the licensing process which, in turn, makes a lessons learned approach for future licensing actions virtually impossible to implement.

There have been some recent improvements regarding invoicing however, problems remain. In addition, there is no predictability for budgeting purposes regarding the magnitude of these invoices in regards to the review of a given submittal. The uranium recovery industry needs, for budgeting purposes, to be able to estimate the total value of future review invoices for a given submittal. Members of the uranium recovery industry have no idea of the magnitude of the quarterly review invoices until they arrive and must be paid. This creates a difficult situation in the form of large unanticipated expenses for uranium recovery operators. If the agency as part of its completeness review were to provide an approximate and non-binding estimate of cost to complete the review of a given submittal it would be very helpful to uranium recovery operators.

In its comments dated May 4, 2016 on the *Request for Information - Fees Development and Communications*— (Federal Register Volume 81, Number. 55 / Tuesday, March 22, 2016 / Notices) the WMA commented extensively on invoicing and concluded:

The WMA believes that a substantial problem with the agency's invoicing is the lack of predictability in the invoice amounts. This could be mitigated to some extent by flat fee invoicing for some items however for others, it would require that the agency prepare a non-binding estimate of cost to complete the review.

The May 4, 2016 comment set on the *Request for Information - Fees Development and Communications*— (Federal Register Volume 81, Number. 55 / Tuesday, March 22, 2016 / Notices) is included by reference and may be found at:

<https://www.regulations.gov/document?D=NRC-2016-0056-0005>

Request for Information - Fees Development and Communications ((Federal Register / Volume 81, Number 55 / Tuesday, March 22, 2016 / Notices – pages 15352 to 15353)

WMA commented on the *Request for Information - Fees Development and Communications– (Federal Register Volume 81, Number. 55 / Tuesday, March 22, 2016 / Notices)*. The Association strongly supports this effort and views it as an excellent first step toward resolving some long term issues regarding agency fees and the means by which they are assessed.

Regarding this effort, *STAFF REQUIREMENTS MEMORANDUM - SECY-16-0097 - FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED FEE RULE*. dated October 19, 2016 stated;

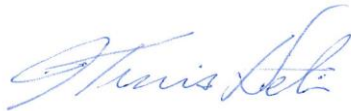
The Commission has disapproved the staffs' recommendation to engage in additional analysis of four long-term improvements, with the exception of a voluntary pilot initiative to explore whether a flat fee structure could be established for routine licensing matters in the area of uranium recovery.

The staff should begin the activities described in the section of the Fee Transformation List starting on page 5, headed "Process Changes Recommended for Future Consideration – FY 2018 and Beyond," as soon as possible, rather than delaying their consideration.

WMA believes that consideration of a flat fee structure for routine uranium recovery licensing matters is an excellent first step toward resolving issues regarding predictability in invoicing.

The Wyoming Mining Association appreciates the opportunity to comment on this proposed rule. If you have any questions, please do not hesitate to contact me.

Best regards,



Travis Deti
Executive Director

Cc: Katie Sweeney – National Mining Association (NMA)

From: [Travis Deti](#)
To: [RulemakingComments Resource](#)
Cc: [Oscar Paulson](#); [Paulson, Oscar \(RTE\)](#); ["Katie Sweeney"](#); pjoyce@wyomingminning.org
Subject: [External_Sender] WMA Comments on NRC Proposed 2017 Fee Schedule
Date: Monday, February 27, 2017 10:32:39 AM
Attachments: [170227 WMA NRC 2017 Fee Schedule Comments.pdf](#)

To whom it may concern,

Attached please find comments of the Wyoming Mining Association on the Nuclear Regulatory Commission's proposed FY2017 Fee Schedule.

Thank you for your kind attention.

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