

RulemakingComments Resource

From: Duane Bollig <dbollig@wrtnet.com>
Sent: Sunday, February 25, 2018 11:03 PM
To: RulemakingComments Resource
Cc: Duane Bollig; Chris Pugsley Esq./Thompson & Pugsley Law
Subject: [External_Sender] 18-0225_WRT Comments to Part 170-171 Rulemaking
Attachments: 18-0225_WRT Comments to Part 170 Rule_signed.pdf

Re: WRT Comments to Proposed Federal Rulemaking, Docket NRC-2017-0026,
Revision of Fee Schedule: Fee Recovery for Fiscal Year 2018

To Whom It My Concern:

Water Remediation Technology LLC (WRT) appreciates the opportunity to submit its comments attached herein on the above-referenced rulemaking for FY 2018 fees. Feel free to contact me if you have any questions related to these comments.

Sincerely,

Duane W. Bollig

Director – Environmental & Regulatory Affairs
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February 25, 2018

Via e-mail, rulemaking.comments@nrc.gov

U.S. Nuclear Regulatory Commission
Washington DC 20555

Re: WRT Comments to Proposed Federal Rulemaking, Docket NRC-2017-0026,
Revision of Fee Schedule: Fee Recovery for Fiscal Year 2018

To Whom It May Concern:

Water Remediation Technology LLC (WRT) appreciates the opportunity to submit the following comments to the proposed rulemaking for the FY 2018 fees prescribed in 10 CFR Parts 170 and 171, published in the Federal Register on January 25, 2018. As a general matter, WRT is a 10 CFR Part 40 source material possession and use licensee and the holder of United States Nuclear Regulatory Commission (NRC) License No. SUC-1591, which is a performance-based, multi-site license allowing the conduct of removal of uranium as a contaminant for public and private community water systems from drinking water sources in compliance with appropriate United States Environmental Protection Agency (EPA) Safe Drinking Water Act (SDWA) standards for uranium in drinking water. Per a recently-filed license renewal application, WRT is seeking to expand its licensed activities to include assisting companies in meeting water discharge standards for uranium. WRT is currently in timely renewal under NRC regulations for its existing license. WRT also is the holder of multiple Atomic Energy Act (AEA) Agreement State licenses for the conduct of similar such licensed activities, for uranium and/or radium water treatment.

10 CFR 170 Fees

1. §170.31, *Schedule of Materials Fees* (for materials and other regulatory services)

WRT asserts that the fee category for uranium drinking water treatment licensees should be changed from its current designation 2.A.(5), with the associated “full-cost” fee, to a category with a fixed annual fee. WRT suggests category 2.F. (Program Codes 11200 or 11300), *All Other Source Material Licenses*, or similar. Charging a full-cost fee to either a company like WRT, or an individual community water system (CWS) is unsustainable for them to comply with the radionuclide-treatment mandate of the SDWA. These types of costs, licensing or otherwise, likely are a primary reason why many CWSs do not treat their water or resort to alternative and, potentially less protective, approaches such as blending water.

The basic premise that uranium drinking water treatment should be in the same overall fee category (the 2.A. activities) with uranium recovery activities is misguided. All the licensed activities in this category are identified as licensees processing and/or recovering uranium source

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material for the inherent value of the source material, primarily for introduction to or refining in the commercial nuclear fuel cycle – that is where these activities derive their income. Many of these identified licensees also generate 11e.(2) byproduct material and other kinds of regulated wastes, whereas WRT does not. The action phrases of these various identified licensees and/or activities listed in the 2.A. category of the Schedule speak directly to this point – refining uranium mill concentrates, uranium recovery operations such as milling, ISR, etc. Even the source-material byproduct activities of 2.A.(3) and (4) are activities that are subsequent to uranium recovery or processing operations. All such licensed activities are designed for the licensee to derive their income from the value of the uranium source material and are fuel-cycle or similar such facilities. Further, the level of risk associated with these licensed activities are very low, but those associated with WRT are even lower, and this low level of risk has been demonstrated through the Agreement State-licensed uranium water treatment systems data submitted in WRT’s 2016 license renewal application.

Now, compare these activities above with the action phrase of drinking water treatment currently in category 2.A.(5) – “removal of source material contaminants”. This uranium source material has no inherent value; EPA deemed it a contaminant under the SDWA that needed to be removed (not recovered) from drinking water sources based on concerns for public health and safety. The public and private CWSs that must deal with this issue derive no income from the uranium, but instead, it costs them to comply with an unfunded federal mandate. Thus, either WRT or a CWS choosing to perform its own uranium water treatment must bear these costs. As a result, WRT cannot sustain these full-cost fees on its own based on the business model used by the licensee, and CWSs cannot sustain such costs on their own, whether WRT passes such costs on to them for payment, or if such CWSs elect to perform such activities themselves and are forced to pay such costs as an NRC licensee.

It can similarly be argued that WRT is not a “producer” of source material, but rather a “service provider” consistent with NRC regulations and guidance. Indeed, WRT’s initial license application and the format of its current license shows that the identified licensed activities in this license are services provided to third-party entities such as CWSs and not as a part of a mining/milling operation conducted by the same licensee.

Therefore, WRT believes it would be a great source of relief to CWSs requiring uranium water treatment in accord with an unfunded federal mandate or entities such as WRT seeking to assist such CWSs in these endeavors if the fee category for WRT or other similar licensees was revised to a reasonable fixed fee amount.

In the case of WRT’s license, support for using the “other source material” designation of fee category 2.F. comes from the fact that nearly all of the Agreement State licenses (seven (7) – CA, GA, IL, NM, NC, TX, WI) that WRT holds for uranium and/or radium water treatment have both a fee category similar to NRC’s “other” category 2.F., and a reasonable fixed fee. Two other Agreement States, Colorado and New Jersey, have issued WRT service-provider licenses, both with reasonable fixed annual fees, also similar to that of NRC fee category 2.F. Indeed, the use of the term “other” when describing certain source material licensees fits squarely within the way NRC regulations address WRT. For example, in addition to having the only NRC license of its kind through its performance-based, multi-site nature, NRC’s most recent rulemaking regarding small quantities of source material or the rule that address the amount of source material that may be possessed at any one time and during a calendar year in total (i.e.,

10 CFR Part 40.22) reduced the amount of such possessed source material from fifteen (15) pounds at any one time and 150 pounds in a calendar year to much lower limits based on identified entities that were not considered in previous rulemaking and in an attempt to protect public health and safety. However, in this rulemaking, NRC specifically identified licensees such as WRT as excluded from such lower limits and allowed a general license to remain in effect under the previous 15/150 limits. Thus, by this exclusion, NRC specifically identified WRT as a licensee with extremely low risk and capable of handling such levels of source material. Further, the low level of risk and low requirements for license maintenance (e.g., site registration) are further supported by technical and environmental data in WRT's license renewal application showing the previously projected health and safety risks are indeed extremely conservative and the actual risk is much lower. These unique factors further support treating WRT in a manner different from other 2.A licensees.

2. To ensure consistency between Part 171 and Part 170 annual fees, NRC/OCFO should enact a process that addresses whether NRC has recognized a uranium water treatment licensee as a small entity for Part 171 fees, and if so, these licensees should be billed for the Part 170 annual fees in an amount that is commensurate with its small-entity designation. WRT is currently designated as a small entity under NRC regulations. It makes logical sense to designate small entities for fixed-fee amounts as they have limited employees, market share, and revenue. Coupled with the items noted above, the argument for changing the Part 170 fee category to a fixed-fee amount for entities such as WRT appears to make sense.

3. FY 2018 – *Administrative Changes*, Item 4. – Amend language under 10 CFR 170.11, *Exemptions* (page 3418 of the Federal Register notice): WRT disagrees with NRC's proposal that would limit the timeframe in which a request for a fee exemption must be submitted; limiting it to within ninety (90) days of the date of the NRC's receipt of the work. An applicant or a licensee should not be restricted regarding when it can request an exemption. In the case of a full-cost fee category, if the limit was set at within 90 days of receipt of an application or the work, that would allow for no more than one (1) quarterly invoice cycle from NRC. That is not enough time into the work for the applicant to assess billings and whether it has a need to request an exemption. An applicant should not be restricted as to when in the timeline it can request an exemption. In the alternative, if NRC sees fit to establish a timeline, a licensee should be permitted 180 days to appeal thereby allowing for a thorough review of two quarterly invoices. Without such a timeframe, any licensee would have the incentive to dispute every single quarterly invoice and delay payment until a ruling is rendered by OCFO. WRT does not support abuse of the appeal process and believes this solution provides a disincentive to do so while maintaining fairness in the process.

4. WRT is also aware of a planned pilot program to be initiated for several of NRC's classes of licensees to establish fixed fees for certain activities such as National Environmental Policy Act (NEPA) processes. WRT fully supports the use of fixed fee programs to assure licensees or would-be-licensees of the amount of human and financial resources that will be necessary for obtaining and maintaining an NRC license, especially in the case of where a company such as WRT generates no revenue from the uranium source material generated by its services and the CWSs that are being forced to comply with an unfunded federal mandate. To the extent practicable, WRT would like to offer its input and/or participate in this program to determine what accommodations can be made for it in the future in the event license amendments are sought or the next license renewal is required.

WRT appreciates NRC's time and considerations in reviewing these comments. Feel free to contact me, 303.424.5355 x108 dbollig@wrtnet.com, if you have any questions related to these items.

Sincerely,

//**RA**//

Duane W. Bollig
Director – Environmental & Regulatory Affairs

cc: Chris Pugsley, Esq.
file NRC 1.20