

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette L. Vietti-Cook, Secretary
FROM: Commissioner Wright
SUBJECT: SECY-19-0126: Closure of Petition for Rulemaking on Categorization of the Licensee Fee Category for Full-Cost Recovery (PRM-170-7; NRC-2018-0172)

Approved X Disapproved Abstain Not Participating

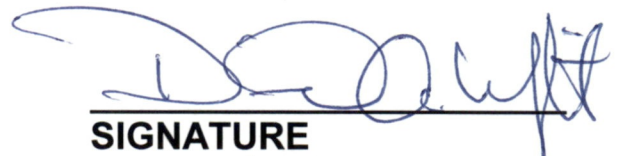
COMMENTS: Below X Attached X None

I approve the staff's recommendation to close the petition for rulemaking. I also approve publication of the *Federal Register* notice and issuance of the accompanying letter, subject to the attached edits.

Entered in STARS

Yes ✓

No



SIGNATURE

3/12/2020

DATE

DAW Edits

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

[Docket No. PRM-170-7; NRC-2018-0172]

Categorization of the Licensee Fee Category for Full-Cost Recovery

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; closure of petition.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has partially granted and partially denied a request to amend the NRC's regulations for licensing fees assessed to certain water treatment facilities. The request was submitted by Christopher S. Pugsley, Esq., on behalf of Water Remediation Technology, LLC (WRT), in a petition for rulemaking. This action closes the petition docket.

DATES: The docket for the petition for rulemaking, PRM-170-7, closed on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID NRC-2018-0172 when contacting the NRC about the availability of information for this petition. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this petition can be found at <https://www.regulations.gov> by searching on the petition Docket ID NRC-2018-0172 or the fiscal year (FY) 2019 proposed and final fee

rules Docket ID NRC-2017-0032. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **The NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Document collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-Based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **The NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Rossi, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-7341; e-mail: Anthony.Rossi@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. The Petition

The NRC received and docketed a petition for rulemaking (PRM) (ADAMS Accession No. ML18214A757), PRM-170-7, dated July 2, 2018, filed by the petitioner on

behalf of ~~Water Remediation Technology, LLC (WRT)~~. On November 2, 2018 (83 FR 55113), the NRC published a notice of docketing. The NRC did not institute a public comment period for this PRM because the NRC considered the issues raised in the petition in the FY 2019 proposed fee rule (84 FR 578; January 31, 2019), and the public had an opportunity to comment during that process.

The NRC identified three issues in the petition, as follows:

Issue 1: The petitioner requested that the NRC amend its regulations under part 171 of title 10 of the *Code of Federal Regulations* (10 CFR), “Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” to re-categorize licensees performing water treatment services (e.g., WRT) from a full-cost recovery category to a category with a fixed annual fee.

Issue 2: The petitioner requested that the NRC address consistency issues between 10 CFR part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended,” and 10 CFR part 171 for small entities.

Issue 3: The petitioner requested that the NRC consider amending language under § 170.11, “Exemptions,” to extend the timeframe within which a licensee may appeal the assessment of fees and apply for a fee exemption from 90 days to 180 days.

Before filing this petition, the petitioner had made similar requests in public comments (ADAMS Accession No. ML18057B073) submitted on the FY 2018 proposed fee rule (83 FR 29622; June 25, 2018). In PRM-170-7, the petitioner asked the NRC to consider the rule changes within the context of the NRC’s rulemaking to amend 10 CFR parts 170 and 171 to collect FY 2019 fees.

II. Public Comments on the Petition

The notice of docketing of PRM-170-7 did not request public comments; ~~however, but~~ the NRC ~~did~~ request ~~ed~~ comments on the issues raised in the petition in the FY 2019 proposed fee rule. The comment period closed on March 4, 2019, and the NRC received one comment submission (ADAMS Accession No. ML19064B347); ~~that~~ ~~was~~ from the petitioner ~~and, expressing expressed~~ support ~~of for~~ the proposed changes with respect to PRM-170-7.

III. Reasons for Consideration

The petitioner assists small community water systems with compliance with uranium drinking water standards. The petitioner asserts that its licensed operations are not intended to produce source material for its commercial value, thereby reducing the financial benefit to the licensee as compared to uranium recovery facilities that process ores primarily for their source material. Further, the petitioner states that it treats the source material as a contaminant, rather than a commodity. The petitioner explained that it only receives payment for services to remove uranium from drinking water or other water sources; therefore, it does not profit from the source material itself. The petitioner asserts that uranium water treatment licensees should be re-categorized from their current designation of full-cost fee recovery licensees under fee category 2.A.(5), "Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water," to the annual fee category 2.F, "All other source material licenses," of 10 CFR 170.31 and 171.16.

Additionally, the petitioner asserts that, because small entities have limited employees, market share, and revenue, it makes sense to charge small entities fixed fee

amounts. The petitioner concludes that because of its current small entity designation for 10 CFR part 171 annual fees under the NRC's regulations, and the nature of its licensed operations, it should be re-designated under the 10 CFR part 170 fee category and charged a fixed-fee amount.

The NRC reviewed PRM-170-7, WRT's public comment on the FY 2018 proposed fee rule, and related documentation. For the following reasons the NRC finds that it ~~and~~ addressed the first two requests raised in the petition in its FY 2019 fee rule, issued on May 17, 2019 (84 FR 22331). At the time of filing of the petition, an entity that removed uranium from drinking water at community water systems (e.g., WRT) was viewed as a fee category 2.A.(5) licensee under §§ 170.31 and 171.16. Additionally, at that time, fee category 2.A.(5) required full-cost recovery of fees under 10 CFR part 170 for all licensing and inspection activities and assessed an annual fee. Although the petitioner recovers sufficient quantities of uranium to require an NRC license, its licensed material is not sold for profit; rather, the licensed material is a ~~waste-product~~ from contaminant that is removed during its water treatment process. These types of "uranium recovery" licensees are, therefore, distinguishable from those licensees that profit from concentrating uranium as source material.

Based on its review, the NRC concluded that full-cost recovery was not warranted for licensees that do not profit from concentrating uranium. Therefore, in its FY 2019 proposed fee rule, the NRC addressed the first two of the three petition requests by proposing to eliminate fee category 2.A.(5) under §§ 170.31 and 171.16, and re-categorized existing and future uranium water treatment licensees to fee category 2.F. Because of the elimination of fee category 2.A.(5) and respective re-categorization to fee category 2.F., uranium water treatment licensees such as WRT shifted from a 10-CFR part 170 full-cost fee category to a flat-fee category. For licensees charged flat application fees under 10 CFR part 170, the cost of additional licensing actions and

inspections are included in the calculation of the corresponding annual fees under 10 CFR part 171. Licensees in the 10 CFR part 171 fee category 2.F., including WRT. Since the small entity regulations pertain to 10 CFR part 171 annual fees now applied to WRT, ~~the annual fee for uranium water treatment, licensees may now qualify apply~~ for the small entity reduced fee. Therefore, ~~the NRC finds this action addresses the first two issues submitted in the petition; the NRC is denying the third change requested by the petitioner.~~

IV. Reasons for Denial

The NRC is denying the third change requested by the petitioner, which~~The petitioner's third request in the petition~~ was related to the timeframe to appeal the assessment of fees under § 170.11(c). The petitioner stated that it disagrees with the timeframe to appeal the assessment of fees under § 170.11(c), as revised in the FY 2018 fee rule, and requested that the NRC extend the timeframe to apply for a fee exemption from 90 to 180 days. The petitioner asserted that the current regulation does not allow an applicant or licensee enough time to assess NRC's billings, its progress on an application or other work, and whether there are grounds for an exemption request. The petitioner also stated that an applicant or licensee should not be restricted regarding when it can request an exemption.

The 90-day timing requirement only applies to those exemption requests for special projects submitted under § 170.11(a)(1), which states that no application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for a special project that is a request/report submitted to the NRC. Therefore, the 90-day timeframe is limited to only those who are seeking fee exemptions after submitting a request or report to the NRC. This timing requirement does not apply to applicants or

licensees that submit an application for the routine licensing activities addressed in the petition ~~(i.e., license amendments, license renewal, and inspections)~~. For these licensing activities, an applicant or licensee may request an exemption at any time. In addition, pursuant to § 15.31, "Disputed debts," the NRC provides the regulatory framework, including the timing requirement, by which a debtor may dispute a debt. Under § 15.31(a), "[a] debtor who disputes a debt shall explain why the debt is incorrect in fact or in law within 30 days from the date that the initial demand letter was mailed or hand-delivered. The debtor may support the explanation by affidavits, cancelled checks, or other relevant evidence," and the petitioner did not indicate any concerns related to ~~changing~~ this requirement. For these reasons, the NRC is denying ~~Issue 3~~ the third change requested by the petitioner.

V. Conclusion

For the reasons cited in this document, the NRC has ~~granted-addressed Issues 1 and 2~~ the first two requested changes in ~~of~~ PRM-170-7 in the FY 2019 final fee rule, and is denying ~~Issue 3~~ the third requested change. This action closes docket PRM-170-7.

Dated at Rockville, Maryland, this day of , 2019~~20~~.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

DAW Edits

Christopher S. Pugsley Esq., on behalf of
Water Remediation Technology, LLC
Environmental and Regulatory Affairs
5525 West 56th Avenue, Suite 100
Arvada, CO 80002

Dear Mr. Pugsley:

I am responding to the petition for rulemaking (PRM) submitted on behalf of Water Remediation Technology, LLC, to the U.S. Nuclear Regulatory Commission (NRC) dated July 2, 2018 (Accession No. ML18214A757 in the NRC's Agencywide Documents Access and Management System). The petition requested that the NRC amend its regulations under Part 171 of Title 10 of the *Code of Federal Regulations* (10 CFR) to re-categorize licensees performing water treatment services from a full-cost recovery category to a category with fixed annual fees. Secondly, the petition ~~also~~ asked the NRC to address consistency issues between 10 CFR Parts 170 and 171 for small entities. Lastly, the petition ~~also~~ asked the NRC to consider amending language under 10 CFR 170.11 to extend the timeframe ~~from 90 to 180 days~~ in which a licensee may appeal the assessment of fees and apply for a fee exemption from 90 to 180 days.

The petition was docketed as PRM-170-7 on August 2, 2018, and the NRC published a notice of docketing in the *Federal Register* (FR) on November 2, 2018 (83 FR 55113). The NRC received one comment on ~~the petition regarding~~ the NRC's consideration of the petition in the fiscal year (FY) 2019 proposed fee rule (84 FR 578; January 31, 2019) that was in favor of the changes as proposed.

Based on its review, the NRC concluded that full-cost recovery was not warranted for licensees that do not profit from concentrating uranium. Therefore, in its FY 2019 proposed fee rule, the NRC addressed the first two of the three petition requests by proposing to eliminate fee category 2.A.(5) under §§ 170.31 and 171.16 and re-categorize existing and future uranium water treatment licensees to fee category 2.F. Because of the elimination of fee category 2.A.(5) and respective re-categorization to fee category 2.F., uranium water treatment licensees such as Water Remediation Technology shifted from a 10 CFR Part 170 full-cost fee category to a flat-fee category. For licensees charged flat application fees under 10 CFR part 170, the cost of additional licensing actions and inspections are included in the calculation of the corresponding annual fees under 10 CFR part 171. Licensees in the 10 CFR part 171 fee category 2.F., including ~~Since the small entity regulations pertain to 10 CFR Part 171 annual fees now applied to~~ Water Remediation Technology, ~~the annual fee for uranium water treatment, licensees~~ may now qualify/apply for the small entity reduced fee. The NRC finds this action addresses the first two issues submitted in the petition.

The third petition request was related to the timeframe to appeal the assessment of fees under 10 CFR 170.11(c). The 90-day timing requirement only applies to those exemption requests for special projects submitted under § 170.11(a)(1), which states that no application fees, license

fees, renewal fees, inspection fees, or special project fees shall be required for a special project that is a request/report submitted to the NRC. Therefore, the 90-day timeframe is limited to only those who are seeking fee exemptions after submitting a request or report to the NRC. This timing requirement does not apply to applicants or licensees that submit an application for the licensing activities addressed in the petition (i.e., license amendments, license renewal, and inspections). For these licensing activities, an applicant or licensee may request an exemption at any time. In addition, pursuant to § 15.31, "Disputed debts," the NRC provides the regulatory framework, including the timing requirement, by which a debtor may dispute a debt. Under § 15.31(a), "[a] debtor who disputes a debt shall explain why the debt is incorrect in fact or in law within 30 days from the date that the initial demand letter was mailed or hand-delivered. The debtor may support the explanation by affidavits, cancelled checks, or other relevant evidence," and the petition did not indicate any concerns related to changing this requirement. For these reasons, the NRC is denying the third change request by the petition~~er~~.

Upon publication of the enclosed notice, the NRC will close the docket for PRM-170-7. You may direct any questions regarding this matter to Gregory Trussell by calling 301-415-6244 or by e-mailing Gregory.Trussell@nrc.gov.

Sincerely,

Annette L. Vietti-Cook,
Secretary of the Commission

Enclosure:
Federal Register notice