

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette L. Vietti-Cook, Secretary

FROM: Commissioner Caputo

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 XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve the recommendation to close petition PRM-170-7 for rulemaking. As noted in SECY-19-0126, two of the three petition requests concerning the fee categories for uranium water treatment facilities were evaluated by the staff and revised, resulting in approval of these requests and a subsequent clarification in the FY2019 fee rule. Regarding the third petition, as the *Federal Register* notice explains, I agree with its denial because the 90-day timing requirement for those seeking fee exemptions does not apply to applicants or licensees that submit an application for the licensing activities that were addressed in the petition. As the regulations allow, an applicant or licensee may request an exemption at any time.

Entered in STARS

Yes X
No _____

Signature

DATE

AC 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, 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

II. Public Comments on the Petition

The notice of docketing of PRM-170-7 did not request public comments, but the NRC requested comment 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), from the petitioner, expressing support of 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~~ds~~ 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 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, the petitioner must pass the costs of its NRC fees to community water systems which then bear the costs for both treatment and licensing to effectively remediate their water systems. ~~its licensed material is not sold for profit; rather, the licensed material is a waste product from its water treatment process. These types of "uranium recovery" licensees that remove uranium from drinking water at community systems~~ are, therefore, distinguishable from those licensees that process ores primarily for their source material content ~~profit from concentrating uranium as source material.~~

Based on its review, the NRC concluded that full-cost recovery was not warranted for licensees that remove uranium from drinking water ~~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~~ ing fee category 2.A.(5) under §§ 170.31 and 171.16, and ~~re-categoriz~~ ing existing and future uranium water treatment licensees ~~to~~ as 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. ~~Since the small entity regulations pertain to 10 CFR part 171 annual fees~~Moreover, licensees in the 2.F. fee category, including WRT, ~~now applied to WRT, the annual fee for uranium water treatment, licensees~~ may now qualify for the small entity reduced fee. 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 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 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.

V. Conclusion

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

Dated at Rockville, Maryland, this day of , ~~2019-2020~~.

For the Nuclear Regulatory Commission.

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



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

AC 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 NRC to address consistency issues between 10 CFR Parts 170 and 171 for small entities. Lastly, the petition also asked 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.

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) 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. ~~Since the small entity regulations pertain to 10 CFR Part 171 annual fees now applied to~~ Moreover, licensees in the 2.F. fee category, including Water Remediation Technology, ~~LLC, the annual fee for uranium water treatment, licensees~~ may now qualify 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