



National Mining Association
Foundation For America's Future

Richard L. Lawson

President and Chief Executive Officer

(202) 463-2647

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DOCKET

November 4, 1996

Secretary
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, D.C. 20555

DOCKET NUMBER
PETITION RULE PRM 30-61
(61 FR 43193)

RE: Nuclear Energy Institute Petition for Rulemaking, Docket No. PRM 30-61

Dear Sir:

On August 21, 1996, the Nuclear Regulatory Commission (NRC) published a receipt of petition for rulemaking from the Nuclear Energy Institute (NEI). 61 Fed. Reg. 43,193. NEI's petition requests that NRC amend its timeliness in decommissioning regulations governing monitoring and maintenance programs for the decommissioning process at facilities of special nuclear materials licensees. The requested amendments would allow materials licensees to continue monitoring and maintaining facilities, separate buildings, or outside storage areas that have not been used for 24 months rather than requiring licensees to begin the decommissioning process after 24 months of inactivity. Specifically, NEI asks NRC to amend its timeliness in decommissioning regulations to provide a "standby" period. The National Mining Association (NMA) agrees with the reasons advanced in support of a standby provision that are set forth in NEI's petition and supports NEI's petition in the context of the comments that follow.

NMA's members represent producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are NRC licensees. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

In support of its petition, NEI asserts that NRC's final timeliness in decommissioning requirements have the potential to eliminate important components from the nuclear industry infrastructure as a result of the lack of an alternative monitoring and maintenance program. NEI maintains that materials licensees understand the marketplace and are willing to assume the holding costs to keep facilities in standby mode. Further, NEI contends that NRC should

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not have jurisdiction over the "commercial decisions" of its licensees and that NRC's concerns regarding failed financial assurance and transfers in licensee ownership which could affect public health and safety are unsound. NMA supports NEI's rulemaking petition and the reasons upon which it is based; in the interim of a decision on the petition, however, perhaps the understandings developed between NMA and NRC that resulted in the dismissal of NMA's litigations challenging the final timeliness in decommissioning rule can provide some guidance to NEI's (and other) materials licensees who seek to maintain standby status.

On September 6, 1996, the American Mining Congress (now the National Mining Association) filed suit in the United States Circuit Court of Appeals for the District of Columbia (Docket No. 94-1619) challenging NRC's final timeliness in decommissioning rules on behalf of its uranium recovery licensee members. Subsequently, NMA and NRC entered into negotiations to address issues of concern to NMA's members and the litigation was accordingly held in abeyance. (See Attachments A-D.) Some of the matters discussed in these negotiations were discrete uranium recovery issues. Others, including specifically the lack of a provision allowing for standby status, were more generic in nature. NMA's members expressed virtually identical concerns to those of NEI's materials licensees with respect to the lack of a provision for standby operation. For example, NMA's licensees also suggested that NRC should not involve itself in the commercial decisions of uranium recovery licensees since the international commodity market for minerals frequently result in mining/milling operations being put on standby for years. Additionally, NMA suggested that NRC's concerns about standby operations over extended timeframes (i.e., that standby status for longer than 24 months could lead to loss of key licensee personnel, laxity in management interest, bankruptcy, etc.) essentially suggest that during the standby timeframe, NRC would not be fulfilling its regulatory responsibilities. During the negotiations, NRC remained adamant that the final rules provide flexibility to address standby operations because licensees are able to request an exemption to the requirement to commence decommissioning after 24 months of inactivity.

Although the practice of granting exemptions is not currently in favor at NRC, nevertheless, within the context of the negotiations that resulted in settlement of the litigation, NRC and NMA reached agreement on several points that are directly related to the issue of standby status:

- a. To the extent that specific licensee provisions regarding the completion of decommissioning activities exist or are required in the future, these specific licensee timetables will be controlling rather than the general requirements of the timeliness rule;
- b. A licensee in good standing may reference relevant records (inspection reports, amendment requests, responses to NRC inquiries etc.) to demonstrate standby status will not jeopardize public health and safety, along with economic (e.g., viable contracts for product) and "public interest" justifications (e.g., future needs of the electric utility industry) for allowing a facility to remain on

standby. While the demonstration that public health and safety will be protected should be straightforward, the demonstration of "otherwise in the public interest" is more complex but licensees will have considerable freedom to develop a rationale;

- c. An exemption can be granted for a period longer than 24 months (i.e., currently five years¹) and there is no limit on the number of consecutive exemptions that can be requested by a licensee and granted by NRC.

In conclusion, NMA notes that if current anti-exemption policy pressures at NRC in any way suggest that exemptions for standby status may be disfavored, then the bases for dismissal of NMA's challenge to the timeliness in decommissioning regulations could be called into question. Good faith considerations would, at a minimum, require reconsideration of NRC's final rules to specifically allow for standby status as requested in NEI's petition. NMA appreciates the opportunity to comment on this matter. If you have any questions or if we can be of assistance, please contact Katie Sweeney, NMA Associate General Counsel at 202/463-2627.

Sincerely,

A handwritten signature in cursive script that reads "Richard L. Lawson".

Richard L. Lawson

¹ In light of NRC's decision to extend certain uranium recovery licenses from five to ten years (SECY-96-112, May 21, 1996) the standby exemption time period of five years should be reevaluated.