Attachment A

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August 25, 1995

By Hand Delivery

Steven F. Crockett, Esq.
U.S. Nuclear Regulatory Commission
One Whiteflint North
11555 Rockville Pike
Mail Stop #0-15-B-18
Rockville, MD 20852

Re: American Mining Congress v. Nuclear Regulatory Commission and The United States, Docket No. 94-1619 - Challenge to Final Timeliness in Decommissioning Rule

Dear Mr. Crockett:

Thank you and your colleagues for taking the time to meet with us on January 10, and again on July 6, 1995 to discuss resolution of the American Mining Congress' (AMC) judicial challenge to the Nuclear Regulatory Commission's (NRC) final timeliness in decommissioning rule (59 Fed. Reg. 36,026, July 15, 1994). As you know, on February 13, 1995, AMC merged with the National Coal Association to establish the National Mining Association (NMA) so henceforth your dealings on these issues will be with the new organization.

NMA believes that the meetings made significant progress towards addressing its concerns with the final rule. NMA does, however, wish to take this opportunity to express its ongoing objection to routine regulation by waiver, exemption, or exception. This type of regulatory practice poses the continuing potential for inconsistent decisions over

time, particularly, when there are major changes in agency personnel.

This letter, written on behalf of NMA, sets forth its uranium recovery facility licensee members' understanding of how NRC will apply the requirements of the timeliness rule to their facilities. NMA requests that NRC confirm in writing whether NMA's understanding is correct. Assuming NMA's understanding is correct, NRC's response should provide an adequate basis to settle and dismiss the above-referenced action. If there are aspects of NMA's understanding that NRC deems incorrect, further discussions may be necessary.

(1) First, with respect to the 24-month timeframe for completion of decommissioning activities, NMA recognizes that this requirement is intended to apply only to the mill areas and not to the tailings. The final rule notes that "§40.42 applies to the uranium processing facilities." 59 Fed. Reg. at 36,031. It also states in 10 C.F.R. §40.42(k): "Specific licenses for uranium and thorium mills are exempt from paragraphs (d)(4)(f) and (g) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas." Id. at 3603. At many sites, however, it may not be possible to dispose of the mill within 24 months because of site specific license requirements that schedule burial at some appropriate time which may not be within the 24-month period. Site reclamation is an integrated process based on site specific circumstances, management decisions and approved plans and submittals.[1] It is inappropriate to simply assume that mill disposal can automatically be completed within 24 months from the beginning of the site closure process. Thus,

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[1] In addition, not all mills are disposed in the tailings pile but may be buried somewhere else on site. To the extent that any such portion of a site is being "used for disposal of byproduct material" it, along with the tailings, will be transferred to the state or federal government for perpetual licensing as a restricted site and, thus, would not be subject to the decommissioning requirements in Part 20 but rather would be subject to the requirements of 10 C.F.R. Part 40, Appendix A.

specific timetables for the various components of site closure must be and are established in site licenses.

NMA's Conclusion: It is NMA's understanding that where specific license provisions regarding the completion of decommissioning activities exist, or are required in the future, these specific license timetables will be controlling rather than the general requirements of the timeliness rule.

(2) Second, with respect to the 24-month inactivity period for facilities on "standby," NMA understands that NRC believes "flexibility has been built into the final rule so that a licensee can file for an exemption from having to commence decommissioning following 24 months of inactivity." 59 Fed. Reg. at 36,032. The rule provides that extensions of the 24-month period of inactivity can be granted if NRC determines that "this relief is not detrimental to the public health and safety and is otherwise in the public interest." Id. The criteria by which this broad standard may be satisfied are not explained. At our meetings, NRC has indicated that an exemption from the 24 month inactivity trigger would be granted if the criteria noted above are satisfied (which NRC assumes will not be a major undertaking) and the licensee has posted adequate surety.

Presumably, these criteria are essentially satisfied by the existence of a valid license. Uranium recovery facility licenses contain multiple requirements, including financial surety, protection of on-site workers, and other elements that protect the environment and the public interest whether the site is actively in production or not. Indeed, NRC asserts that it exercises full and complete oversight over standby sites and, therefore, charges them the same annual fee as that for an actively operating facility. See 59 Fed Reg. 36895 (July 20, 1994). Recently NRC noted that "[t]he choice of whether or not to exercise that authority is a business decision of the licensee." 60 Fed. Reg. 20918 (April 28, 1995). Also, NRC not only has a "history" of site compliance

but a history of licensee submittals both to prepare a facility for standby and to prepare it for resumption of operations. Thus, almost by definition, unless NRC is not fulfilling its responsibilities, the licensee must be satisfying the "not to the detriment of the environment," and "otherwise in the public interest" requirements.

NMA's Conclusions:

a. With respect to showing that continued standby status is "not detrimental to the environment" and is "otherwise in the public interest", NMA assumes that, unless a licensee plainly has failed to fulfill its license requirements or has done so haphazardly (which would presumably result in a pending or contemplated enforcement action), this determination would be a *pro forma* exercise since NRC must regulate and oversee licensees whether they are on standby or not, particularly if licensees are being charged for it. And, presumably, NRC would not have granted a license in the first place unless these requirements were going to be met. To the extent there are concerns raised by an extension, additional license conditions could address any such concerns and provide NRC with the necessary comfort level.

b. With respect to the surety requirement, it is NMA's understanding that the amount of the surety would be based on the amount approved by NRC or, if there is no approved amount, on the licensee's estimate of costs for final site reclamation. If there is no approved amount or no estimate, then the amount of the surety required would be subject to discussions between NRC and the licensee.

(3) Finally, it is NMA's view that the provisions of the timeliness rule do not limit the amount of time for the extension or waiver of the 24 month period merely to another 24 month period. Moreover, given the nature of the uranium recovery market, NMA anticipates that licensees may need to make multiple requests for extensions of the inactivity

period.[2] However, NMA notes that this seems both cumbersome and unnecessary when the Commission could simply put a specific condition in the license allowing a longer standby term since the licensee must satisfy the "not to the detriment" and "in the public interest" criteria notwithstanding the requirements of the general timeliness in decommissioning standard. This would be a sensible approach since, as noted above, the general provisions of the rule will not control the time of mill reclamation or for that matter any other reclamation activities controlled by specific license conditions.

In the alternative, if the licensee proposes a longer timeframe than 24 months (up to 5 years) and provides a basis for needing a longer timeframe, this should be satisfactory to NRC. As noted above, most licenses will contain sufficient requirements to address any concerns NRC may have in terms of protecting the public health and safety and the environment during a standby period.

NMA's Conclusions: NMA assumes that there is no limit on the number of extensions that a licensee can receive. If the requisite conditions have been met (adequate surety and not detrimental to the environment and otherwise in the public interest), a facility will, if necessary, be granted continued extensions. Indeed, given the unique nature of the uranium industry's stand-by situation, licensees could request an exemption from the 24 month period for a period of time ranging from 24 months to 5 years. At the end of the agreed upon time, the licensee would have the option of requesting another exemption/extension. NRC's processing of these requests would be *pro forma*, unless specific concerns are identified by the licensee or raised by NRC.

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[2] It is worth noting that virtually any site requiring a site specific advisory board, (SSAB) as proposed in NRC's decommissioning and decontamination rulemaking proceeding (59 Fed. Reg. 43,200, August 22, 1994), will likely require multiple extensions as well.

In the alternative, the appropriate timeframe could be established as a license condition which would be controlling over the general requirements of the timeliness rule.

NMA and its licensee members look forward to your response. If you have any questions about the substance or intent of this letter, please do not hesitate to call me at 202/663-9198.

Sincerely,

Anthony J. Thompson

AJT/clc
cc: Mr. Joseph Holonich

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