

Attachment B



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 16, 1996

Anthony J. Thompson, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037-1128

SUBJECT: TIMELINESS IN DECOMMISSIONING RULE

Dear Mr. Thompson:

This letter is in response to your letter of August 25, 1995, to Steven F. Crockett of the Nuclear Regulatory Commission's Office of the General Counsel. Your letter, written in behalf of the National Mining Association (NMA), set forth the NMA members' understanding of how NRC will apply the Timeliness in Decommissioning rule (59 FR 36026, July 15, 1994) to uranium mills. Based on your letter, we believe there needs to be additional clarification of the NRC staff's positions. Therefore, I have attempted to address the conclusions highlighted in your letter by clearly restating the NRC's positions. The enclosure contains the clarifying information.

I hope you find that the information provided clarifies our position. Because the 24 month time period for submitting notification to NRC as required by the rule, expires next August, it is important that licensees begin preparing their requests if they wish to remain in standby status and not begin decommissioning activities.

If you have any questions on the enclosure, please feel free to contact either me or Mike Fliegel of my staff. I can be reached at (301) 415-7238 and Dr. Fliegel can be reached at (301) 415-6629.

Sincerely,

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

U.S. Nuclear Regulatory Commission Staff Response
to National Mining Association Comments on Decommissioning Timeliness Rule

Comment 1

National Mining Association (NMA) Comment

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.

Staff Response

The staff agrees with this conclusion.

Comment 2

NMA Comment

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 the U.S. Nuclear Regulatory Commission 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.

Staff Response

The staff believes there are a number of clarifications that need to be made in response to this comment.

1. The standard requires a determination that continued standby status "...is not detrimental to the public health and safety [emphasis added]," not "the environment" as stated in the NMA conclusion.
2. The determination is not a *pro forma* exercise. The licensee must show that continued standby status will not be detrimental to public health and safety. In a meeting held on January 10, 1995, and documented in the NRC letter to James E. Gilchrist of the American Mining Congress dated February 2, 1995, NRC stated that addressing this issue should be relatively simple and straightforward. The licensee can reference the safety requirements already contained in its license and NRC inspections of its facility as the demonstration that it is maintaining an adequate level of protection of public health and safety. We stated that NRC envisions a relatively short statement from the licensee addressing this

aspect of § 40.42(e). However, as was stated by the staff during the January 10, 1995 meeting, the review would involve at a minimum an evaluation of the license to ensure that all necessary conditions were included and correct. The staff review was not characterized as a *pro forma* exercise.

3. The determination that continued standby status "...is otherwise in the public interest" is separate from the public health and safety determination. NRC stated at the January 10, 1995, meeting that the licensee will have to discuss why its proposal to delay decommissioning is in the public interest. NMA's conclusion that unless a licensee is not fulfilling its license requirements, the fact that it was originally granted a license resolves this issue, is clearly incorrect for the following reasons:
 - a. Properly fulfilling its license requirements is a necessary condition for being in the public interest but not necessarily a sufficient condition. It is not clear how the fact that a facility is complying with its license leads one to conclude that continual standby is in the public interest.
 - b. [NRC originally granted licenses, in most cases many years ago, to these facilities to produce uranium. The public interest now, or in the future, for uranium production may be different than when the original license was granted. Furthermore, the standby request is not to produce uranium but to await changes to market conditions that might (or might not) eventually lead to uranium production. Therefore, a request for an exemption would have to show why continuation in a standby status is in the public interest.] For more on the public interest showing, see the Staff Response to Comment 3.

Comment 3

NMA Comment

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.

Staff Response

As stated by NRC at the January 10, 1995, meeting, the surety issue is tied to the determination of whether continued standby status is in the public interest. All licensees are required by regulation to have in place, financial assurance based on an NRC-approved reclamation plan. In many cases, the surety based on the approved plan will be the surety that satisfies the public interest. However, there have been situations in which it was

recognized that the approved reclamation plan needed upgrading. In some of those situations it was also recognized that the cost to implement the revised reclamation plan, and thus the amount of surety needed, would be substantially greater than for the existing, approved plan. However, until the revised reclamation was formally approved by NRC and incorporated in the license, the surety was based on the old reclamation plan.

It can sometimes take several years of review, discussion, and revision to achieve a reclamation plan that is approved by NRC. Although the licensee would have a surety based on an NRC accepted value, the public interest may not be protected because the NRC accepted value may not result in an adequate surety. Therefore, if a mill operator requests a delay in decommissioning, under § 40.42(e), and there is a revision to the mill's reclamation plan under review, NRC will not consider it to be in the public interest to grant the delay unless the licensee's surety accounts for the reclamation plan under review.

Comment 4

NMA Comment

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 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.

Staff Response

Several aspects of this conclusion repeat the misunderstandings of previous conclusions (i.e., the test is related to public health and safety, and the adequacy of surety is a component of the test of being in the public interest) and it again assumes a *pro forma* processing of request. Please see the clarification provided for those comments. The conclusion that there is no limit to the number of extensions that a licensee can receive, is correct.

Comment 5

NMA Comment

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.

Staff Response

The staff does not view a license condition as an alternative approach. We expect that in any instance in which we grant an extension of the time a licensee can remain on standby, the extended time period would be established in the license. Since that extension would have been granted in conformance with § 40.42(e), we do not see a conflict between the rule and the license condition.