that if terrorists perform reconnaissance missions at a nuclear power plant, the first thing they would see is that the OCA entrance is open and unguarded. The petitioner believes that the deterrent value of armed guards at the OCA entrances must not be downplayed.

The petitioner is concerned by how the NRC has determined what is ''adequate'' security and how the points of the ''Design Basis Threat'' are specified. The petitioner believes the NRC is reluctant to admit that terrorists might consider nuclear power plants as attractive targets. The petitioner states that nearly half of U.S. nuclear power plants have failed to demonstrate that they can defend against a terrorist attack during force-on-force security tests. The petitioner states that terrorists now take actions that are designed to kill large numbers of people instead of attempting to only instill fear or gain attention as in the past. According to the petitioner, revenge for the destruction of nuclear facilities in terrorists' home countries (e.g. Iraq) may be a motive for an attack in the U.S. The petitioner also states that a terrorist attack could destroy land and property that would be useless for many years and become a monument to terrorist activities. For these reasons, the petitioner has concluded that nuclear power plants are attractive targets to terrorists, that requiring guards at OCA entrances will create a visual deterrent against attacks, and that unguarded OCA entrances encourage attackers.

The petitioner believes that the NRC is not protecting against a large ''Design Basis Bomb.'' That is, the petitioner is concerned that a large enough vehicle bomb driven to the PA boundary and detonated might be able to damage vital equipment. The petitioner states that the FBI has determined that a large conventional bomb is still the weapon of choice for terrorists.

The petitioner believes that the ideal solution is for armed guards to control vehicle access at the OCA entrances and not allow access to the Protected Area without proper security checks. The petitioner contends that the presence of armed guards at the OCA entrance would have prevented the 1993 intrusion at Three Mile Island (TMI). The petitioner also contends that the NRC cannot state it has kept current with terrorist activities and capabilities and that unguarded OCA entrances create the impression that these facilities are soft targets. The petitioner cites a 2000 report by the U.S. Commission on National Security that has recommended an immediate reexamination of security practices because America is less secure than perceived.

The petitioner believes there are lessons to be learned from the 1996 Kobar Towers bombings after the U.S. Air Force was repeatedly assured by Saudi security officers that an expansion of the security perimeter was not necessary and determined that the jersey barrier placement provided reasonable protection proportional to any received threat. The petitioner recommends that the NRC read the report on this bombing to avoid security pitfalls and delays the U.S. Air Force experienced.

The petitioner is troubled by threats associated with the 1993 World Trade Center terrorists, citing articles from the New York Times, Universal Press International, and the Harrisburg, Pennsylvania, Patriot News. The petitioner states that many licensees have reduced the size of their guard force during the past few years, reducing the level of protection provided.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements in 10 CFR part 73 should be amended to require an armed guard to be posted at all entrances to the OCAs surrounding all U.S. nuclear power plants. The petitioner requests that the regulations at 10 CFR part 73 be amended as detailed in its petition for rulemaking.

Dated at Rockville, Maryland, this 29th day of October, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–27576 Filed 11–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR 170

[Docket No. PRM–170–5]

National Mining Association; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission has received and requests public comment on a petition for rulemaking filed by the National Mining Association (NMA). The petition, docketed on September 11, 2001, has been assigned Docket No. PRM–170–5. The petition requests that the NRC conduct a rulemaking that would enable the NRC to waive the assessment of all annual and periodic inspection and licensing fees imposed on NRC uranium recovery licensees or, as an alternative, establish the basis for waiving fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NMA believes that relieving the fee pressure on the licensees would be in the public interest and serve to maintain a viable domestic uranium recovery industry, including its substantial waste disposal capacity.

DATES: Submit comments by January 16, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comment to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov.* This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (*e-mail:cag@nrc.gov*).

Documents related to this petition, including comments received, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site (the Electronic Reading Room), *www.nrc.gov.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T, Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 1–800–368–5642 or e-mail: *MTL@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner, NMA, is an organization composed of companies engaged in mining and mineral processing. The companies include producers of most of the U.S. metals, uranium, coal, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment, and supplies; engineering and consulting firms and financial institutions that serve the mining industry. NMA submits this petition on behalf of its member companies who are NRC uranium recovery licensees, owners and operators of uranium mill and mill tailings sites and in situ leach (ISL) facilities.

The petitioner notes that since 1990, the NRC has been required to recover 100 percent of its budget authority through the imposition of fees on its licensees; however, the FY 2001 Energy and Water Development Appropriations Act (EWDAA) requires the percentage to decrease by two percent per year until 2005. Therefore, for FY 2001, NRC is only required to recover 98 percent of its budget. The petitioner acknowledges the two percent decrease and subsequent annual decreases up to ten percent in recovery requirements; however, the petitioner states that these decreases may be an example of ''too little, too late.'' The petitioner further recognizes that the Commission has the authority to waive fees if it can be established that to do so would be ''in the public interest'' (e.g., non-profit licensees). The petitioner also recognizes that any waiver of fees for Uranium Recovery (UR) licensees means that the burden of those fees would have to be shifted to other categories of licensees. NMA believes that it can establish that such a burden shift is not only, '' in the public interest,'' but also, in the interest of other NRC licensees, particularly nuclear fuel cycle licensees, including commercial nuclear reactors.

I. Background

A. NRC Fees

The petitioner states that the Omnibus Budget Reconciliation Act of 1990 (OBRA) which authorizes NRC to impose annual and periodic inspection and licensing fees on its licensees requires NRC to recover 100 percent of its budget with specified exceptions. The petitioner notes that inspection and licensing fees which reimburse NRC for activities such as review of license applications are administered under 10 CFR part 170 pursuant to the Independent Offices Appropriations Act of 1952, and that annual fees established under 10 CFR part 171 cover reimbursement for all other costs not covered under 10 CFR Part 170. The petitioner notes that OBRA, section 6101(c)(3) states that fees ''shall have a reasonable relationship to the cost of providing regulatory services.'' The petitioner states that the required two percent reduction each year until FY 2005 will result in a 90 percent recovery requirement. The petitioner states that the eventual ten percent reduction, along with a $3.2 million appropriations from the General Fund was implemented to cover certain agency expenses (e.g., regulatory reviews provided to other Federal agencies and States) because no direct benefit from these activities were realized by NRC licensees.

The petitioner cites that on June 14, 2001 (66 FR 32452), NRC issued a final rule on fee recovery FY 2001 based on the mandatory budget recovery figure of 98 percent. The petitioner states the Commission noted that it must recover approximately $453.3 million for FY 2001. The petitioner has included the Commission imposed FY 2001 fee scheme for UR licensees.

ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

Class I Facilities (uranium mill licensees)	$94,300
Class II Facilities (ISL licensees	79,000
11e. (2) Disposal	58,200
11e. (2) Disposal Incident to Existing Tailing Sites	9,200

Class I and II sites will be billed on a quarterly basis.

In addition, the petitioner notes that NRC levies inspection fees on an increased hourly basis of $144 per hour for UR facilities, an increase from FY 2000's rate of $143 per hour. The petitioner recognizes that NRC fees are not levied universally for all types of licensees and notes that NRC waives the annual fee requirements for those licensees who have relinquished their authority to operate and have permanently ceased operations, that small business entities benefit from their status through lower fee rates, and that non-profit educational institutions are fully exempt from fees.

B. Uranium Recovery Industry

The petitioner asserts that in the past several years, the domestic UR industry has suffered the ramifications of a severely depressed uranium market. The petitioner sets out the following reasons in support of its assertion.

1. Low spot-market prices for uranium coupled with the lack of long-term contracts for domestic UR operations have caused the entire industry to experience significant economic downturns.

2. Employment in the uranium recovery sector has decreased by almost 50 percent since 1996.

3. Poor demand for, and an oversupply of, uranium has caused spot-market prices of uranium to dip below eight dollars per pound.

The petitioner states that, as a result of the depressed market, most all domestic UR companies have seen the value of their stock plummet and their financial stability undermined to the point that they feel their existence is threatened. The petitioner is concerned that current uranium spot-market prices cannot sustain domestic UR conventional or non-conventional (*i.e.*, ISL) capacity and, because of the rapid decline in uranium price production levels, some companies have had to lay off one-third of its workforce. The petitioner cites other companies that have experienced similar economic problems and have had difficulty maintaining consistent operating levels. According to the petitioner, because of the market conditions and the few active UR licensees, all active UR licensees have experienced significant NRC fees. The decline in the number of licensees and the resulting increase in fees for those that remain has created a vicious cycle that the petitioner believes threatens to destroy domestic UR capacity, including conventional mill tailing.

In addition, the petitioner asserts that regulatory inefficiencies also have contributed to the domestic UR problems. NMA references its White Paper which listed several events that caused UR licensees to suffer even more adverse cost impacts, e.g., the NRC closing of the Denver Uranium Recovery Field Office (URFO) which was to allegedly achieve cost-cutting benefits. NMA believes the closure benefits were not recognized and UR licensees paid significantly higher fees because of the loss of virtually all institutional knowledge of UR licensed operations and the subsequent need to re-educate new NRC personnel. According to the petitioner, the most dramatic example of increased costs to UR licensees as a

result of loss of experienced personnel is manifested in the Hydro Resources Inc. (HRI) licensing proceeding. The petitioner offers that post-URFO, NRC inexperience with licensing ISL operations led to a long and drawn out licensing process that culminated in a so-called ''informal'' hearing that began several years ago and continues with interveners filing in excess of 15,000 pages.

II. By Restoring the Domestic UR Industry to Viability, NRC Serves the Public Interest

A. NRC Fee Policies Currently Provide for Fee Reductions and Waivers That Are ''in the Public Interest'

According to the petitioner, the current NRC fee scheme allows certain waivers or reductions in fee payment for certain types of licensee, i.e., licensees recognized as small entities under the Regulatory Flexibility Act; licensees that have relinquished their authority to operate and ceased operations permanently, provided proper notifications comply with fee regulations; and non-profit educational institutions because these institutions provide the potential for creating important scientific information and the formulation of new innovative techniques. The petitioner recognizes that every NRC action to benefit certain licensees with reductions or waivers of fee requirements creates burdens on other licensees because the NRC must recover those lost funds from other licensees; therefore NRC has not relied on economic hardship to justify fee waivers because this would shift the burden of increased fees on other licensees. The petitioner states imposing additional fees on other licensees can only be justified if it can be shown to benefit the ''public interest.'' The petitioner asserts that reducing the impact on an economically challenged segment of NRC's licensees is merely collateral benefit to such burden shifting.

B. Altering Fee Requirements for Domestic UR Licensees To Preserve the Benefits

The petitioner asserts that NRC has demonstrated that acting ''in the public interest'' is a valid justification for reducing and/or waiving fee obligations. The petitioner believes that shifting reasonable economic burdens from UR licensees to other licensees can be justified based on several significant public interest factors and that the issue to be explored is whether the burden to be shifted is reasonable in light of the public interest benefit. The petitioner believes it is reasonable.

The petitioner offers a scenario where NRC would have to shift approximately $4 to 5 million in fees from exempt UR licensees. Spread over 100 fuel cycle licensees, each licensee would pay approximately $40,000 in fees per year. The petitioner states that a shift of $40,000 per year, when weighed against the actual and potential benefits that domestic UR licensees can and will provide, is a modest amount. The petitioner notes the fee shifting may only be necessary for a very short time depending on projected increases in the demand for and price of uranium in the near term. The petitioner asserts that fuel cycle licensees would bear a reasonable burden both in terms of the amount and the duration of the increased fees in order that UR licensees may retain their licenses and protect valuable fuel cycle resources.

According to the petitioner, the public's interest in UR begins with the benefit NRC confers with the issuance of a license. The petitioner asserts that by providing a licensee with a license to utilize certain materials, NRC confers a presumptive benefit which is the authority for the licensee to decide when and how best to use the material authorized by the license. Further, the petitioner states that implicit in this benefit is the assumption that the licensee will be able to use the licensed materials in a useful and cost-effective manner. The petitioner states that NRC's current focus on risk-informed, performance-based regulatory oversight is designed to enhance cost-effective regulation by focusing licensee and NRC resources on more serious potential hazards. The petitioner believes that imposing unreasonable regulatory burdens on such licensees runs counter to prevailing Commission policy and threatens the short-term economic viability at a time of national energy crisis which suggests the potential for significantly increasing demand for a variety of UR services in the finite future. The petitioner asserts that dual regulation and unresolved inefficiencies in the NRC's UR regulatory program are providing a significant ''drag'' on UR licensees'' economic well-being; thereby resulting in increased internal operating costs as well as increased fees. The petitioner notes that NMA requested that the NRC forego a potentially more efficient regulatory program through the development of a new Part 41 because the cost of developing such a program would be prohibitive at present in part because of the increased fee impact on already economically burdened UR licensees.

The petitioner emphasizes the impact of increased costs on present and possibly future loss of human resources which could adversely impact the UR sector's ability to rebound economically as the price of uranium rises to levels that can support profitable domestic production.

The petitioner believes the ISL production can become profitable with relatively limited increases in the price of yellowcake (*i.e.*, $13–16/lb range). The petitioner discusses the increased cost in operating conventional mills and charges that the modest price increases will not be sufficient to support the continued production of yellowcake by conventional milling. However, the petitioner asserts that conventional mills hold the promise of providing significant new benefits to the ISL licensees, other fuel cycle licensees, including reactors and other NRC licensees through the processing of the alternate feed. The petitioner believes that alternate feed processing provides a valuable resource to other parties, including NRC licensees, DOE, and others that can divest themselves of materials that are wastes to them. The petitioner states that conventional mills can recycle the wastes and recover valuable energy resources that would be lost by direct disposal, yet ensure that the post-UR wastes will be contained and controlled in accordance with the Environmental Protection Agency/ Nuclear Regulatory Commission Uranium Mill Tailings Radiation Control Act (EPA/NRC UMTRCA) regulations in perpetuity.

The petitioner believes that only by processing alternate feeds and receiving recycling fees can conventional mills produce yellowcake profitably without a huge increase in the price of yellowcake. The petitioner claims that more efficient regulatory oversight through performance based license conditions authorized under the contemplated part 41 rule could support the viability of such operations and the benefits provided to waste generators and national energy interest.

Also, the petitioner offers that conventional mill tailings impoundments with approximately 20 million tons of disposal capacity offer the potential to assist in solving major radioactive waste disposal problems for ''similar'' high volume, low activity wastes. The petitioner states that stringent regulatory controls for both radiological and non-radiological wastes including a long-term governmental custodian with long-term stewardship costs funded by the licensee make such sites extremely valuable potential resources to address waste disposal

options of NRC licensees including fuel cycle licensees. The petitioner indicates the full scope of these facilities' value to the ''general public interest,'' in permanent disposal as opposed to temporary storage, has only just begun to be examined in detail, and that the loss of the significant low-level radioactive waste disposal options that such facilities may offer before those options have been fully explored by NRC, licensees, States, and the general public would be a blow to the national public interest.

The petitioner believes the UMTRCA UR regulatory program has provided, and will continue to provide, an invaluable ''living laboratory'' that addressed both operating and decommissioning impacts of nuclear fuel cycle facilities. The petitioner claims the information and experience gained through constructing and maintaining engineered barriers; groundwater corrective action, including ISL aquifer restoration; and site cleanup verification will help reduce the impact of future operations and future site closures. This, the petitioner asserts, is ''in the public interest.''

The petitioner states that to allow the domestic UR industry to wither to the point of virtual extinction or to disappear completely cannot be in the ''national public interest'' because of its current and potential benefits. The petitioner states that domestic UR operations provide value to the U.S. by producing energy-generating yellowcake and provide additional waste disposal options to radioactive waste generators.

The petitioner references several bills pending before Congress that acknowledge the importance of UR as a part of the domestic energy market. The petitioner believes consideration of these legislative initiatives demonstrates Congressional interest in maintaining a viable domestic UR industry as an important national resource that should be preserved.

Further, the petitioner states that NRC has recently explicitly noted ongoing Congressional concerns about a viable domestic UR industry. The petitioner cites a Federal concern for the impact on the domestic uranium mining industry as one of several factors regarding timeliness in the defueling and decommissioning (D&D) Standard Review Plan (SRP). The petitioner provided other examples of how the public will be served by an extension and included the following excerpt from the SRP:

The standby period will allow economic conditions in the uranium market to improve. Existing statutes oblige the Secretary of Energy to gather information on the uranium mining industry and to have a continuing responsibility for the domestic industry, to encourage the use of domestic uranium. See 42 U.S.C. 2201(b) & 2296(b)(3). Although this responsibility is not NRC's, we recognize that the viability of the industry is a Federal concern, or an alternate schedule involving some of the Federal licensee's other facilities would better take into account the Federal licensee's overall decommissioning needs, thereby reducing public funds needed for the ultimate decommissioning of the facility, etc.

The petitioner cites a July 17, 2001, NRC staff letter to Kennecott Uranium Company regarding the postponement of the Timeliness in D&D requirements' implementation at its Sweetwater Uranium Facility that stated, ''the continued existence of the mill is in the public interest...'' and ''maintaining the domestic capacity to provide the raw material for nuclear power is in the public interest.'' The petitioner concludes that it can be fairly said that NRC staff recognizes that maintaining a viable domestic UR industry is ''in the public interest'' of the United States. NMA emphasizes that it is also specifically in the interest of the NRC licensees, potentially including reactor licensees, within and without the nuclear fuel cycle.

NMA states that shifting reasonable economic burdens to other licensees can serve the public interest'' if the alternative is to lose all or even some of UR's valuable resources including ISL and conventional uranium mill facilities. The petitioner states that D&D activities have become increasingly important at fuel cycle facilities in part because of NRC's timeliness in D&D and final site D&D standards set forth in 10 CFR 20.1401 *et seq.* As a result, many sites, or portions thereof, are addressing reclamations activities to meet regulatory standards. The petitioner states that NRC has estimated that site D&D activities will generate large volumes of new low-level radioactive waste (LLRW) that will need a home for disposal. Also, licensed sites and government facilities will require the disposal of large volumes of LLRW in the form of soils, sludge, and debris. According to the petitioner, economically viable disposal options will be vital to final site closure and license termination at many complex sites. NMA believes conventional UR facilities can provide new alternatives to current disposal options for fuel cycle facilities with large volumes of LLRW. NMA continues that waste disposal for non-fuel cycle facilities generating technologically enhanced naturally occurring radioactive materials (''TENORM'') may also benefit from more numerous and competing options for disposal. The petitioner asserts that it would be ''in the public interest'' to help to ensure that the resources will not be lost while these important waste disposal opportunities are being debated, perhaps in a (contemplated Part 41) rulemaking process.

The petitioner suggests that UR industry licensees can continue to develop information, techniques, and systems that will add to ongoing protection of workers and the environment at ''active'' sites and ensure long-term post-closure protection at UR mill tailing impoundments, particularly if additional alternate feeds are processed and ''other than 11e.(2) materials'' are disposed there. Research in groundwater restorations at ISL sites, which is explicitly recognized in H.R.4, Section 309, could lead to new or refined methods for efficient, low-impact UR. Therefore, the petitioner believes that shifting a reasonable burden of fees to other licensees will allow UR licensees to continue developing such information in anticipation of a better uranium market and the reinstatement of production activities, is in the public interest.

Conclusion

In conclusion, the petitioner states that for several years, the UR industry has suffered through the effects of a severely depressed uranium market. Despite the fact that prices have remained low enough to threaten the loss of domestic UR capability, it is likely that the market for uranium will recover somewhat in the near term. However, until that happens, according to the petitioner, UR licensees must survive without adequate revenues. If, even without such revenues, UR licensees must still find a way to pay NRC fees imposed, or face loss of their licenses, this would truly put the nail in the coffin. The petitioner states that, as NMA has demonstrated and NRC recognizes, it would be ''in the public interest'' to relieve the fee pressure on UR licensees, at least in the near term, by exempting these licensees from all fees until the price of uranium reaches $13–16/lb. In the alternative, NRC could exempt UR licensees from some fees, including fees for development of the (contemplated Part 41) rule which ultimately would lead to more cost-effective regulatory oversight. The petitioner believes that the fee burden to be shifted (i.e. $40,000 per fuel cycle licensee) and the likely time frame (for at least one year) during which burden shifting would be necessary, are not excessive and that the ''public interest'' benefits, existing and potential, are significant. The petitioner, therefore, believes the burden shift is reasonable and prudent.

Commission Vote to Discontinue Part 41

On May 29, 2001, the Commission issued a staff requirements memoranda (SRM) that approved the discontinuance of the current 10 CFR part 41 rulemaking efforts. The SRM recommended that staff focus its resources on updating guidance documents to implement Commission direction set forth in SRM's for SECY's 99–012, 99–013, and 99–277.

Dated at Rockville, Maryland, this 25th date of October, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–27536 Filed 11–1–01; 8:45 am]

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