



POLICY ISSUE **(Notation Vote)**

December 20, 2019

SECY-19-0126

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: CLOSURE OF PETITION FOR RULEMAKING ON CATEGORIZATION OF
THE LICENSEE FEE CATEGORY FOR FULL-COST RECOVERY
(PRM-170-7; NRC-2018-0172)

PURPOSE:

To obtain Commission approval in closing a petition for rulemaking (PRM) associated with revisions to the fee category for uranium water treatment licensees (PRM-170-7) and publish a notice of closure in the *Federal Register* (FR). The petition was granted in part and corresponding changes were made in the fiscal year (FY) 2019 fee rule. For the one remaining issue from PRM-170-7, the staff is recommending that it be denied.

BACKGROUND:

On July 2, 2018, Christopher S. Pugsley, Esq., on behalf of Water Remediation Technology, LLC (WRT or the petitioner), filed a petition with the U.S. Nuclear Regulatory Commission (NRC) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18214A757). The petitioner requested revisions to Parts 170 and 171 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended," and "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals

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and Government Agencies Licensed by the NRC," respectively. The requested revisions are related to fee category 2.A.(5), "Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water," of 10 CFR 170.31 and 171.16 for uranium water treatment licensees. Prior to being filed as a petition, the petitioner's requests were provided as public comments (ADAMS Accession No. ML18057B073) to the FY 2018 proposed fee rule (83 FR 3407; January 25, 2018). The NRC responded to the petitioner's comments in the FY 2018 final fee rule (83 FR 29622; June 25, 2018). In dispositioning the fee rule public comments submitted by the petitioner, the NRC did not make any changes to the FY 2018 final rule as a result of the comments; however, regarding the petitioner's public comment that the fee category for uranium drinking water treatment licensees should be changed from fee category 2.A.(5) to fee category 2.F., the NRC stated that this change was outside the scope of the fee rule because members of the public would not have sufficient notice of the change requested by the commenter, and the staff would take this comment into consideration for the FY 2019 proposed fee rule. Subsequently, the petitioner filed its petition.

The NRC assigned docket number PRM-170-7 to this petition and published a notice of docketing in the FR (83 FR 55113; November 2, 2018). The NRC included a specific request for public comments on PRM-170-7 in the FY 2019 proposed fee rule (84 FR 578; January 31, 2019). The public comment period closed on March 4, 2019, and the NRC received one comment submission related to PRM-170-7 (ADAMS Accession No. ML19064B347), which was submitted by the petitioner expressing support for the proposed changes.

In accordance with Management Directive 6.3, "The Rulemaking Process," the staff seeks the Commission's approval to close the petition, which will acknowledge the granting of two petition requests and the denial of the third request.

DISCUSSION:

The petitioner assists small community water systems with compliance associated with the uranium drinking water standards. Although the petitioner recovers sufficient quantities of uranium to require an NRC license, 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 are, therefore, distinguishable from those licensees that profit from concentrating uranium as source material. 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 category 2.A.(5) under 10 CFR 170.31 and 171.16 to a fixed annual fee category and proposes that uranium water treatment licensees, such as Water Remediation Technology (WRT), should be placed under the annual fee category 2.F., "All other source material licenses."

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. Further, the petitioner concludes that, because of its small entity designation for 10 CFR Part 171 annual

fees and the nature of its licensed operations, it should be designated in the 10 CFR Part 170 fee category and charged a fixed-fee amount.

Lastly, the petitioner states that it disagrees with the timeframe to appeal the assessment of fees under 10 CFR 170.11(c) that was added to 10 CFR Part 170 during the FY 2018 fee rule. The petitioner asserts that 10 CFR 170.11(c) does not allow an applicant or licensee enough time to assess NRC's billings, its progress on an application or other work, and grounds for an exemption request. The petitioner also states that an applicant or licensee should not be restricted on when it can request an exemption.

Requested Change(s)

Based on these assertions, the petitioner requested that the NRC amend its requirements in 10 CFR Parts 170 and 171, with respect to the fee category 2.A.(5) for uranium water treatment licensees. Specifically, the petitioner requested that the NRC:

- “[A]mend its 10 CFR Part 171 regulations to re-categorize licensees performing water treatment services [e.g., WRT] from a full cost recovery category to a category with a fixed annual fee.”
- “[C]onsider addressing consistency issues between [10 CFR] Parts 170 and 171 fees by enacting a process that addresses whether the NRC has recognized a uranium water treatment licensee as a small entity for [10 CFR] Part 171 fees and, if so, these licensees should be billed for the [10 CFR] Part 170 annual fees in an amount commensurate with its small entity designation.”
- Consider amending language under 10 CFR 170.11, “Exemptions,” to extend the timeframe within which a licensee may appeal the assessment of fees and to apply for a fee exemption from 90 days to 180 days.

Technical Evaluation

The staff reviewed PRM-170-7 and WRT's public comment on the FY 2018 proposed fee rule 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 10 CFR 170.31 and 171.16. Additionally, 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 entity recovers sufficient quantities of uranium to require an NRC license, 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 are, therefore, distinguishable from those licensees that profit from concentrating uranium as source material. 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 the FY 2019 fee rule, the NRC eliminated fee category 2.A.(5) from 10 CFR 170.31 and 171.16. Existing licensees under fee category 2.A.(5) were re-categorized to fee category 2.F., and this category would also apply to future licensees. 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 full-cost fee category to a flat fee category. This change grants the first request in the petition.

In addition, the elimination of fee category 2.A.(5) and respective re-categorization to fee category 2.F. in the FY 2019 fee rule also addressed the second petition request concerning qualification for a small entity reduced fee. As briefly described in the FY 2019 fee rule and further detailed in the corresponding work papers, the staff calculated the 10 CFR Part 170 flat fees for materials licensees based on staff hours for licensing actions. These fees, or shared costs, are subsequently included as part of the calculation of the 10 CFR Part 171 annual fee category 2.F. The 10 CFR Part 171 annual fee category 2.F. includes a shared cost of materials 10 CFR Part 170 fees for service, which is included in the annual fee. Since the small entity regulations only pertain to 10 CFR Part 171 annual fees and part of the calculation of the annual fee for uranium water treatment includes the 10 CFR Part 170 shared costs for material licensees, licensees in the 2.F. fee category may now qualify for a small entity reduced fee upon submitting NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171."

Finally, the petitioner's third request in the petition was related to the timeframe to appeal the assessment of fees under 10 CFR 170.11(c). The petitioner specifically requested that the NRC extend the timeframe to apply for a fee exemption from 90 to 180 days. In the FY 2018 final fee rule, the NRC added a timing requirement under 10 CFR 170.11(c). The 90-day timing requirement only applies to those exemption requests for special projects submitted under 10 CFR 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 only to those who are seeking fee exemptions after submitting a request or report to the NRC. Notably, 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 10 CFR 15.31, "Disputed debts," the NRC provides the regulatory framework, including the timing requirement, by which a debtor may dispute a debt. Under 10 CFR 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. Therefore, the staff recommends denying this request.

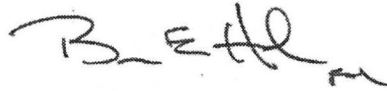
RECOMMENDATION:

The staff recommends that the Commission close PRM-170-7 for the reasons discussed above and approve publication of the enclosed FR notice. The first two petition requests were addressed in the FY 2019 fee rule. The third request is being recommended for denial because the 90-day 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. If approved, staff would:

- Publish the enclosed notice (Enclosure 1);
- Inform the petitioner of the Commission's decision (Enclosure 2); and
- Inform the appropriate congressional committees of the Commission's decision.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection to the denial of the petition.

A handwritten signature in black ink, appearing to read "M. Doane", with a stylized flourish at the end.

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letter to the petitioner

CLOSURE OF PETITION FOR RULEMAKING ON CATEGORIZATION OF THE LICENSEE FEE CATEGORY FOR FULL-COST RECOVERY (PRM-170-7; NRC-2018-0172) DATED DECEMBER 20, 2019

ADAMS Accession Nos: Package – ML19225D259; SECY – ML19225D297; FRN – ML19225D296; Letter to Petitioner – ML19225D298

* concurrence via email

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