

Record of Proceedings, Including Reasons for Decision

In the Matter of

Order
issued to Western Cooperative Fertilizers Limited
(WESTCO)

Subject Opportunity to be heard on the Designated
Officer Order Issued to WESTCO

Hearing
Date April 3, 2008

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Introduction

1. On September 9, 2007, Western Cooperative Fertilizers Limited (WESTCO) took possession of the site on which was located the former ESI Resources Limited (ESIRL). The site includes contamination inside the dryer room and evaporation ponds.
2. ESIRL previously held a licence issued by the Canadian Nuclear Safety Commission¹ (CNSC) for the recovery of uranium from phosphoric acid. The phosphoric acid purification operation was shut down in 2001. The uranium recovery part of the facility remained in a safe shutdown state, as confirmed by CNSC staff during an inspection in October 2005.
3. Following a hearing held on November 30, 2005, the Commission issued a Fuel Facility Operating, Licence FFOL-3663.0/2006, to ESIRL for the purpose of maintaining its uranium recovery facility in a secure shutdown state. The licence was valid until July 31, 2006.
4. ESIRL failed to file a licence renewal application to the Commission and the facility became unlicensed following the expiry of ESIRL's licence on July 31, 2006. A Designated Officer Order was issued to ESIRL on August 30, 2006, reviewed and amended² by the Commission on May 16, 2007.
5. On October 29, 2007, CNSC staff notified WESTCO that since the company was currently in possession of nuclear substances (in the form of uranium contaminated waste) it had to comply with the CNSC regulatory requirements applicable to the owner of the site.
6. On November 19, 2007, a Designated Officer, pursuant to paragraph 37(2) (f) of the NSCA³, issued an order to WESTCO. The order required WESTCO to take specific actions and measures to protect the environment and the health and safety of persons. Pursuant to subsection 37(6) of the NSCA, the Designated officer referred the order to the Commission for review to confirm, amend, replace or revoke the order.
7. On January 15, 2008, WESTCO submitted a written submission to take advantage of its opportunity to be heard before the Commission pursuant to section 40(1)(d) of the NSCA. The submission included several requests to amend the order.
8. This *Record of Proceedings* describes the Commission's consideration of WESTCO's request to amend the order, further submissions from CNSC staff to further amend the order, the review of the order and the reasons for the decision.

¹ The Canadian Nuclear Safety Commission is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² Refer to the Record of Proceedings on *Review by the Commission of the Designated Officer Order Issued to ESI Resources Limited on August 30, 2006*, hearing date: February 7, 2007.

³ S.C. 1997, c. 9.

Issue

9. In its review of the order, the Commission was required to confirm, amend, replace or revoke the order, pursuant to subsection 37(6) of the NSCA.

Proceeding

10. Pursuant to section 22 of the NSCA, the President of the Commission established a panel of the Commission to review the order.
11. The Commission, in making its decision, considered information presented at a closed session held on March 14, 2008 in Ottawa, Ontario by teleconference and in a public session held on April 3, 2008, also in Ottawa, Ontario. During these sessions, the Commission considered the November 19, 2007 Designated Officer order, including information referred to in the order and oral and written submissions from CNSC staff (CMD 08-H103) and WESTCO (CMD 08-H103.1), as well as additional written submissions submitted by CNSC staff (CMD 08-H103.A) and WESTCO (CMD 08-H103.1A) following the April 3 session.
12. The proceeding was conducted in accordance with Part 6 of the *Canadian Nuclear Safety Commission Rules of Procedure*⁴.

Decision

13. Based on its consideration of the matter, as described in more details in the following sections of this *Record of Proceedings*,

the Commission, pursuant to subsection 37(6) of the NSCA, amends the Designated Officer order issued to WESTCO on November 19, 2007, as presented in CNSC staff CMD 08-H103.A.

14. With this decision, the Commission notes that WESTCO remains responsible to submit to CNSC staff a monthly report on the compliance activities it has taken under the order. In addition to this requirement, in the event of WESTCO becoming aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*⁵, WESTCO shall submit a written report to the Commission of the location and circumstances of the situation and of any action that WESTCO has taken or proposes to take with respect to it.

⁴ S.O.R./2000-211.

⁵ S.O.R./2000-202.

Issues and Commission Findings

15. In reviewing the order under subsection 37(6) of the NSCA, the Commission considered the reasonableness of the order. In this regard, the Commission considered the actions and measures identified in the order and the information on which the order was based, as identified in the order. As elaborated further below, the Commission is satisfied that the Designated Officer, based on the information available, had sufficient evidence and a reasonable basis for issuing an order to protect the environment until the matter could come before the Commission.

Preambles of the Order

16. WESTCO requested on January 15, 2008 in a written submission to the CNSC that the order's preliminary statements (preambles) be changed. The order contained seven preambles that were laid out to form the basis for issuing the order. WESTCO outlined the requested changes in CMD 08-H103.1. On April 3, 2008, WESTCO requested changes to the preambles that were different from those submitted in January. The new changes submitted to the Commission in CMD 08-H103.A are outlined as follows:
 - Preamble 1: WHEREAS WESTCO is the owner of lands previously leased to ESIRL (the "ESI Site"), upon which a uranium contaminated dryer room and evaporation ponds are located.
 - Preamble 2: WHEREAS on September 7, 2007 WESTCO took possession of the ESI Site pursuant to a Court Order obtained by WESTCO and has voluntarily implemented improved security measures to ensure the health and safety of persons and the environment.
 - Preamble 3: no changes.
 - Preamble 4: WHEREAS WESTCO has indicated that it does not wish to become a licensee under section 24 of the Nuclear Safety and Control Act (NSCA) and ESIRL's licence expired on July 31, 2006.
 - Preamble 5: no changes.
 - Preamble 6 and 7 combined: WHEREAS the uranium contaminated waste and equipment stored in the dryer room and the contents of the two evaporation ponds, in regards to nuclear substances, associated with past operations of ESIRL may cause unreasonable risk to the environment and health and safety of persons and must be under regulatory control (NSCA section 26).
17. CNSC staff reviewed the proposed preambles and recommended that the Commission accept them.

Timelines in the Order

18. WESTCO requested that the two dates specified in the November order for completing key milestones in the decontamination and the clean-up process be modified as follows:
- the date of March, 31, 2008 for the submission of a remediation and clean-up plan including a schedule to perform the work specified in sections 1 and 2 of the order and provisions for workers' protection, environment and radiation protection be changed to June 30, 2008;
 - the date of December 1, 2008 specified for the completion of the clean-up items noted in section 2 of the order and submission of a report be changed to December 1, 2009.
19. CNSC staff reviewed WESTCO's reasons for the new proposed dates. Although CNSC staff was seeking a shorter clean-up time, the staff expressed the view that WESTCO's request was a reasonable.

Solid and Liquid Disposal Criteria and Volumetric Criteria for Solid Materials

20. WESTCO found that the disposal criteria for solid materials stated in the November 19 order were too stringent and therefore requested that these criteria be changed. CNSC staff reviewed WESTCO's request and recommended that the Commission amend the order according to the four following conditions:
1. Westco shall maintain the required physical security arrangements as described in WESTCO's letter dated October 5, 2007 for its standby uranium recovery part of the plant, namely: the former evaporation ponds and the uranium concentrate dryer room located at the facility at 3077 Shepard Place S.E., Calgary, Alberta and in accordance with the NSCA and its associated Regulations until all requirements of this order are completed and accepted by the Commission or a person authorized by the Commission;
 2. WESTCO shall submit to the Director General, Directorate of Nuclear Cycle and Facilities Regulation of the CNSC, by June 30, 2008, a proposed plan of work including a schedule to perform all work required in order to ensure that all unreasonable risk to the health and safety of persons and the environment is prevented;
 3. The proposed plan shall include the proposed clean up criteria, based on the end use of the land, and a rationale for such criteria; and

4. Prior to implementing the plan referred to in item 2 above, WESTCO must receive written acceptance of its plan by the Director General, Directorate of Nuclear Cycle and Facilities Regulation of the CNSC.

21. The Commission notes that the above recommended changes to the order set out a different approach regarding the identification of various criteria originally set out in Appendix C of the Designated Officer order. While the Designated Officer order provides specifics on the criteria that WESTCO should use to clean up the site as well as disposal criteria for the uranium (surface contamination criteria, volumetric criteria for solid materials, criteria for solid materials to be disposed of, disposal criteria for liquids), the proposed amendments to the order would not set out specific clean-up criteria (Appendix C would be deleted). However, the Commission is satisfied that the proposed amendments would require WESTCO to submit a proposed plan of work to ensure that all unreasonable risk to the health and safety of persons and the environment is prevented. The amendments would ensure that the plan include a schedule to do the clean-up work (as in the original order), and also include the clean-up criteria and the rationale for such criteria based on the "land use" proposed by the owner (e.g., residential, commercial, industrial).

Clean-up Completion

22. CNSC staff reviewed WESTCO's request to amend the order in regards of the clean-up completion work. CNSC staff recommended to the Commission that WESTCO submit a clean-up work plan to the CNSC that shall be approved by the CNSC Director General, Directorate of Nuclear Cycle and Facilities Regulation before the following clean-up work shall be completed, as follows:
1. Decontaminate the uranium concentrate dryer room and equipment inside the dryer room at the facility located at 3077 Shepard Place S.E., Calgary, Alberta, in accordance with the accepted plan;
 2. Remove the contents, in regards to nuclear substances, of the two evaporation ponds at the facility located at 3077 Shepard Place S.E., Calgary, Alberta in accordance with the accepted plan;
 3. After completing the work stipulated in 1 and 2 above, perform a final radiological survey verifying that the dryer room and the two evaporation ponds meet the requirements as stipulated in the accepted plan; and
 4. Submit a report to the Director General, Directorate of Nuclear Cycle and Facilities Regulation of the CNSC, providing the results of the final radiological survey conducted. This shall include, at a minimum, all measurement results used to demonstrate compliance with the requirements set out in accepted plan; associated computed values for direct comparison to these requirements; the areas, volumes or masses of material associated with these measurements or computed values; and all instrumentation calibration and quality control measurements taken during the course of the work.

Conclusion

23. The Commission has considered the information and submissions as presented in the material available for reference on the record for this proceeding.
24. The Commission agrees with CNSC staff's conclusions that the continued presence of uranium contaminated material at the WESTCO's unlicensed site may cause unreasonable risk to the workers, the public and the environment.
25. The Commission, pursuant to subsection 37(6) of the NSCA, amends the Designated Officer order issued to WESTCO on November 19, 2007, as proposed in CNSC staff CMD 08-H103.A and agreed upon by WESTCO.
26. The Commission is of the opinion that the amended order reflects the need for WESTCO to address the issues related to the decontamination of the dryer room and two evaporation ponds, as well as the disposal of all uranium contaminated waste materials to a CNSC approved site to prevent any potential safety, health, security and environmental concerns in the future.
27. The Commission notes that WESTCO remains responsible for the decommissioning of the facility under the NSCA and the order. The Commission notes that, as the person named in the order, WESTCO must comply with the order, pursuant to section 41 of the NSCA.
28. The Commission further notes that WESTCO shall submit to CNSC staff a monthly report on the compliance activities it has taken under the order. In the event of WESTCO becoming aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*, WESTCO shall submit a written report to the Commission of the location and circumstances of the situation and of any action that WESTCO has taken or proposes to take with respect to it.



Michael Binder,
President
Canadian Nuclear Safety Commission

Date of decision: April 21, 2008

Date of release of Decision: June 9, 2008