



Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant COGEMA Resources Inc.

Subject Application for revocation of Mining Facility
Removal Licence for the Kiggavik-Sissons
Project

Date May 16, 2002

RECORD OF PROCEEDINGS

Applicant: COGEMA Resources Inc.

Address/Location: P.O. Box 9204, 817-825, 45th Street West, Saskatoon,
Saskatchewan (S7K 3X5)

Purpose: Revocation of Mining Facility Removal Licence for the
Kiggavik-Sissons Project

Application received: November 7, 2001

One-Day Hearing: April 18, 2002

Location: Canadian Nuclear Safety Commission (CNSC) Public Hearing
Room, 280 Slater St., 14th. Floor, Ottawa, Ontario

Members present: L.J. Keen, Chair
C.R. Barnes
A.R. Graham
Y.M. Giroux

Counsel: B. Shaffer
Secretary: M.A. Leblanc
Recording Secretary: C.N. Taylor

Applicant Represented By	Document Number
X R. Pollock	CMD 02-H4.1
X B. Reilly	CMD 02-H4.1A
CNSC Staff	Document Number
X C. Maloney	CMD 02-H4
X R. McCabe	CMD 02-H4.A
X P. Thompson	
Intervenors	Document Number
See Appendix A	

Decision and Reasons:

Revocation of licence: Approved: X
Date of Decision: April 18, 2002

1. Introduction

COGEMA Resources Inc. (CRI) has applied to the Canadian Nuclear Safety Commission for the revocation of its licence at its Kiggavik-Sissons uranium exploration project. The Kiggavik-Sissons Project is currently subject to a Mine Facility Removal Licence (AECB-MFRL-157-03.6 – no expiry) that was issued by the former Atomic Energy Control Board (AECB).

The Kiggavik-Sissons Project is a uranium surface exploration project located approximately 80 kilometers west of Baker Lake in the Kivalliq Region of Nunavut. The project includes the camp for office work and lodging at the Kiggavik site; and core shack facilities for core storage, logging and sampling at the Kiggavik site and the Andrew Lake (Sissons Project) site about 17 kilometers to the southwest. A storage area is also maintained by the drilling contractor. There is also one small core storage area at the former camp on Pointer Lake. The project has been inactive since the 1997 field program.

2. Decision

The Canadian Nuclear Safety Commission, in making its decision, considered information presented for a one-day public hearing held on April 18, 2002 in Ottawa, Ontario.

Based on its consideration of the matter, as described in more detail in the following sections,

the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, revokes COGEMA Resources Inc.'s Mining Facility Removal Licence AECB-MFRL-157-3.6 for the Kiggavik-Sissons Project, effective September 20, 2002.

With this decision, the Commission requests that CNSC staff undertake specific actions before the date of the licence revocation. The Commission also has specific expectations as to what other parties will undertake in that same period. These requests and expectations are listed in subsection 4.2.3 of this *Record of Proceedings*.

3. The Public Hearing Process

The public hearing, conducted under the *Nuclear Safety and Control Act* and the *Canadian Nuclear Safety Commission Rules of Procedure*, was held in Ottawa, Ontario on April 18, 2002. The Commission received written submissions and heard oral presentations from CNSC staff (CMD 02-H4 and CMD 02-H4.A) and COGEMA Resources Inc. (CMD 02-H4.1 and CMD 02-H4.1A). The Commission also considered written submissions from intervenors, as listed in Appendix A.

The Commission heard concerns about the hearing process from three intervenors (P. Williamson, H. Tickie and D. Bean). Those intervenors requested that the public hearing be held in Baker Lake so that the people most potentially affected by any decision could have an

opportunity to participate. The Commission considered this request and decided not to hold the hearing in Baker Lake. In deciding on whether to move the hearing to Baker Lake, the Commission noted that any decision it makes on the current application would not authorize any work to proceed at the Kiggavik-Sissons sites. Should CRI wish to expand its activities to the evaluation of an ore body or test mining, CRI would require a licence from the CNSC and a public hearing would be held by the Commission to consider the application. The Commission further notes that written submissions are an effective means of participating in hearings of the Commission and that these submissions are given full and equal consideration by the Commission in making its decisions. Although the Commission did not hold the hearing in the local area of the project, the Commission moved the hearing date from February 28, 2002 to April 18, 2002 to allow additional time for the community to participate either orally or in writing in the hearing.

The Commission appreciated the efforts made by some representatives of the community to travel to Ottawa to appear in person before the Commission. To accommodate those intervenors during the hearing, and later the residents in the Baker Lake area, an oral translation of the proceedings to Inuktitut and an audio recording of that translation were arranged. Unfortunately technical difficulties during the hearing prevented simultaneous translation during the complete proceeding. However, the full transcript of the proceedings was later translated to Inuktitut on audio tape.

An intervenor (P. Williamson) expressed the view that the terms of reference for the hearing should be set with the input of the local community. The Commission notes that its hearings are carried out on matters within its jurisdiction and in accordance with the *Canadian Nuclear Safety Commission Rules of Procedure*. The rules provide ample opportunity for interested persons to become informed about the specifics of an application and to express their views to the Commission. As noted above, the Commission took additional measures during and following the proceedings to accommodate the particular needs of the community.

4. Issues and Commission Findings

4.1 Requirement for a CNSC Licence

CRI, in its application, submits that the activities currently being carried out on the project, and for the foreseeable future, are strictly surface mineral exploration activities which are exempt from licensing under the new *Nuclear Safety and Control Act*. (NSCA).¹

Referring to Section 2(2) of the *Uranium Mines and Mills Regulations*, CRI expressed the view that the current and proposed activities at the Kiggavik-Sissons Project are in respect of uranium prospecting and surface exploration and are not associated with the development, production or use of nuclear energy.

CRI also referred to Section 10 of the *General Nuclear Safety and Control Regulations* which exempts from the NSCA and its regulations (except for the provisions related to transport, and to

¹ The *Nuclear Safety and Control Act* replaced the Atomic Energy Control Act in May 2000.

import or export of nuclear substances) naturally occurring nuclear substances other than those associated with the development, production or use of nuclear energy.

CNSC staff, in its submissions, concurred with CRI's interpretation of how the NSCA and its regulations apply to the Kiggavik-Sissons project. CNSC staff noted that, pursuant to subsection 2(2) of the *Uranium Mines and Mills Regulations*, a licence is not required for surface "exploration" activities. A licence, however, would be required if the activities changed from "exploration" to the "evaluation of an ore body". CNSC staff is of the opinion that the activities at the Kiggavik-Sissons Project consist only of exploration activities and, therefore, a licence is not required.

To clarify at what point a CNSC licence will be required at the Kiggavik-Sissons Project, or other potential uranium mine development site, CNSC staff reported that it is presently consulting with stakeholders to better define what constitutes the "evaluation of an ore body", an activity that is subject to CNSC licensing. CNSC staff committed to having this guidance in place by the fall of 2002.

With respect to this proposed guidance on the licensing trigger, CRI suggested that the CNSC consider the terms "indicated resource" and "measured resource" as defined by the Ontario Securities Commission (OSC). CRI suggested that a CNSC licence could be required when a decision is made by a proponent to spend large amounts of money on delineation drilling to bring the knowledge of the deposit from an "indicated resource" to a "measured resource" in accordance with the OSC definitions. Further in accordance with the OSC definitions, CRI noted that the requirement for a CNSC Removal Licence to evaluate an ore body is normally characterized by a proponent's decision to do delineation drilling at a much tighter grid spacing and significantly increase in expenditures.

The Commission appreciates CRI's suggestion for a clear definition of the trigger for CNSC licensing and notes that CNSC staff will take CRI's suggestion into consideration. The Commission observed, however, that the OSC definitions are based on financial and economic criteria as opposed to explicit health, safety and environmental criteria and that this will need to be considered by CNSC staff in proposing criteria.

The Kivalliq Inuit Association (KIA), in its intervention, expressed a desire to also be consulted by CNSC staff on the criteria for triggering CNSC licensing.

In response to follow-up questions from the Commission on CRI's future plans at the Kiggavik-Sissons Project, CRI confirmed that the development of the sites remains a long way from being economical under current uranium market prices. CRI explained that, as a result, it has no plans to do further exploration drilling in the foreseeable future.

On the basis of the above information presented for the hearing, the Commission is satisfied that, for the purpose of the current application, the activities at the Kiggavik-Sissons Project are "exploration" activities which do not require a licence by the CNSC. The Commission encourages CNSC staff give a high priority to establishing the guidance necessary to define precisely when licensing would be required under the NSCA. The Commission also requests

that CNSC staff include the KIA and the other relevant authorities in Nunavut in the consultations for developing that guidance.

4.2 Other Regulation of Mineral Exploration in Nunavut

4.2.1 Regulatory Regimes for Mineral Exploration in Nunavut

The Commission considered whether the exploration activities at the Kiggavik-Sissons Project, following a revocation of the existing AECB licence, would continue to fall under another regulatory regime that would provide adequate protection of people and the environment.

The KIA, in its intervention, sought assurance that the other responsible government departments had acknowledged and are willing to carry out their responsibilities for the future regulation of the sites. The KIA felt that this should be confirmed before the “safety net” of CNSC licensing is removed. Mr. D. Bean, another intervenor, expressed the view that there would no longer be effective regulation of uranium exploration in Nunavut if the CNSC does not continue to licence that activity. Similarly, Mr. P. Williamson expressed the opinion that the KIA and Government of Nunavut lacks the infrastructure and capacity to deal with the demands of uranium exploration and requested the Commission to delay the licence revocation until they do, likely in a few years. Furthermore, Ms. H. Tickie expressed concerns about the lack of clarity on regulatory direction and is not satisfied that the relatively new Nunavut government, or Indian and Northern Affairs Canada (INAC), has the necessary capabilities to assess uranium exploration projects.

In response to the Commission’s request for information on the other regulatory regimes, and the related concerns expressed by the intervenors, CNSC staff explained that the activities carried out at mine exploration projects in Nunavut are regulated by INAC, the Government of Nunavut, and for Inuit Owned Lands, the KIA. Together these organizations regulate land use through instruments which may contain conditions for exploration activities, site access, work camps, land clearing, drilling, and reclamation of disturbed sites. CNSC staff explained that the KIA regulates surface activities on all Inuit Owned Lands in the Kivalliq Region on which five of the subject mine leases are located. The KIA issues land use permits and conducts periodic inspections. CRI noted that the current policy of the KIA is that there will be no uranium production on Inuit Owned Land and that CRI therefore may not proceed on those leases without the prior approval of the KIA.

CNSC staff further explained that INAC -- through its Land Administration Department and under the *Territorial Lands Act*, *Canada Mining Regulations* and *Territorial Land Use Regulations* -- controls the subsurface mineral rights. INAC also issues permits and conducts periodic inspections. Furthermore, the Workers Compensation Board of the Northwest Territories is responsible for regulating occupational health and safety. The Mines Inspectorate, including the Chief Mines Inspector, has knowledge of, and carries out radiation monitoring where appropriate. The Government of Nunavut will soon have its own mines inspectorate.

The KIA also noted in its intervention that the Government of Nunavut exercises other controls through the Nunavut Planning Commission, the Nunavut Water Board, and the Nunavut Impact Review Board.

CNSC staff explained that the *Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials* were prepared to assist these various agencies on radiological matters. Those guidelines recommend control measures equivalent to those required by the CNSC in licensing.

In summary, CNSC staff expressed the opinion that, for uranium exploration in Nunavut, the public's welfare (including liability for site clean-up and restoration) and worker health and safety are well protected by the INAC and territorial regulatory regimes.

Despite the above-described regulatory structure and CNSC staff conclusion, CNSC staff reported that the KIA and INAC have both expressed an interest in obtaining further technical assistance from CNSC staff in radiation monitoring and protection. In response to that interest, CNSC staff has agreed to accompany the KIA and other agencies on an inspection of the Kiggavik-Sissons sites this summer (2002), discuss the results of the inspection in the community as a demonstration of how to manage radiological risks, invite KIA representatives to a CNSC *Radiation Instrumentation Course* scheduled for September 2002, and consult with the KIA and Nunavut Impact Review Board on the licensing trigger guidance document discussed above in section 4.1 of this *Record of Proceeding*.

4.2.2 Current Regulatory Burden

To provide the Commission with a sense of the risks associated with the proposed exploration activities, and hence the regulatory burden that the various other regulatory authorities in Nunavut would carry upon revocation of the licence for the Kiggavik-Sissons Project, the Commission received information from various parties on past operational issues relating to radiation protection, occupational health and safety, environmental protection, materials safeguard controls, and decommissioning liabilities.

Radiation Protection:

With respect to radiation protection, CRI reported that there is no indication that any of the workers have received doses exceeding 1 mSv/year (incremental over background) and thus the workers do not need to be designated as Nuclear Energy Workers. CRI noted that it would employ at the Kiggavik-Sissons sites the same radiation protection procedures that it uses at other exploration projects in Canada. In response to a follow-up question from the Commission, CRI confirmed that the consistently very low concentrations of nuclear substances in the core samples in storage are such that they would not pose a significant radiological risk to a person who might pick them up or remove them from the site.

Conventional Health and Safety:

With respect to conventional health and safety, CRI reported that the past exploration activities were carried out with only infrequent minor injuries.

Environmental Protection:

On the matter of environmental protection, CNSC staff reported that from its last inspection of the sites (1995), CRI was found to be in compliance with the licence and that all drill cuttings had been placed back in the holes as required. CRI added that the routine inspections of the physical conditions of the remaining structures have not indicated any problems.

In response to a question from the Commission on the potential radiological effects on wildlife and traditional food supplies, CNSC staff reported that, to its knowledge, no specific dietary studies on wild food supplies have been done; however, studies on caribou in the vicinity of other uranium mines have not shown any significant variation in radionuclide concentrations from those received from naturally occurring sources.

An intervenor, Ms. H. Tickie, expressed the view that CRI does not have a good environmental performance record in other areas in the world and, in her written submission, provided the Commission with excerpts from various media sources in support of this view.

Nuclear Material Safeguards:

Concerning the matter of material safeguards regulation in the absence of a CNSC licence, CNSC staff expressed the opinion that, based on recent experience and good cooperation with the owners/operators of unlicensed locations, the revocation of the licence would not result in a failure to achieve conformity with international obligations to which Canada has agreed respecting International Atomic Energy Agency (IAEA) safeguards. An intervenor (Mr. Philip Penna) disagreed with this view of CNSC staff and suggested that, in light of international terrorism, it would not be prudent to remove licences from exploration sites where strategic materials are involved.

Current and Future Decommissioning Liabilities:

On the matter of regulating the liabilities for site restoration in the absence of a CNSC licence, CNSC staff reported that the current \$155,000 letter of credit required by the CNSC would no longer be required if the licence was revoked. However, the letter of credit could be transferred to INAC, KIA or the Government of Nunavut if they required such a guarantee. CRI confirmed its willingness to transfer the guarantee if desired. KIA, in its intervention, expressed the opinion that the financial guarantee could be transferred to INAC and KIA in proportion to their relative responsibilities for land use control.

The Commission expressed concern that the matter of who would become the new recipient of the financial guarantee had not been resolved prior to or during the course of the hearing. The Commission noted that, until that guarantee is transferred, the revocation of the licence could be

viewed as the removal of an obligation on the licensee to properly remediate the sites. In response to this concern, CRI noted that the letter of credit would remain in the name of the CNSC even upon revocation of the licence. CRI further noted that it does not intend to initiate cancellation of the letter of credit until the discussions with the other authorities on the matter are complete. Furthermore, CRI expressed the view that it, as a good corporate citizen with many mining interests in Canada, has an obligation to ensure all of its sites are properly remediated.

Further on the question of existing environmental liabilities, the KIA requested that, before the CNSC revokes the licence, the CNSC undertake a thorough inspection of the sites to: ensure all of the former AECB's requirements have been met; determine and inform the community about what environmental liabilities presently exist; introduce the other regulatory authorities to the project; develop a plan for any immediate remediation needed; establish a baseline condition for future inspections by other authorities; and provide a good training opportunity for people in the community to do future inspections. KIA stressed its view that this work should be done while the CNSC licence is in effect, with CNSC as the lead, rather than only as a provider of technical assistance. Other intervenors to the hearing (H. Tickie, D. Bean, and P. Penna) also supported the need for a thorough site assessment before removing the licence.

4.2.3 Commission Views and Expectations Regarding the Other Regulatory Regimes

Based on the above information and concerns expressed by the various participants, the Commission is satisfied that the protection of health, safety and environment at the Kiggavik-Sissons project will be adequately regulated under the other applicable regulatory regimes. However, based on that same information, the Commission was not fully convinced that the other authorities have yet completed the necessary steps to become familiar with this project and fully mobilize and coordinate their resources to effectively exercise their authorities on this project. The Commission does not question the capabilities or commitment of those authorities, rather the Commission is sensitive to the time they may need to familiarize, organize and make appropriate administrative arrangements. The Commission is also concerned that the information on the actual condition of the sites has not been fully verified for approximately seven years (since the inspections completed in 1995).

The Commission therefore carefully considered the requests of several intervenors for a delay or deferral in the revocation decision so that the final arrangements and inspections could be made. However, the Commission is also cognizant of the fact that the proposed activities are no longer subject to the CNSC's licensing authority under the current regime. Therefore, the Commission decided to revoke the licence for the Kiggavik-Sissons Project, effective on a future date (September 20, 2002). It is the Commission's expectation that the various responsible parties will make the final arrangements in the intervening time to ensure a smooth transition of regulatory operations to the other legitimate regulatory authorities. By delaying the effective date of the licence revocation, the Commission expects that the various parties, including CRI and CNSC staff will take the necessary positive initiatives to see that no gap in regulatory coverage occurs. In that regard the Commission much appreciated, and wishes to formally acknowledge, the considerable goodwill and commitment exhibited by the proponent, the KIA and CNSC staff to ensure that objective is realized in a timely manner.

The Commission shares many of the specific expectations articulated by the participants and parties to this hearing for what should occur prior to the revocation of the licence. In this regard, the Commission expects that CRI and the other relevant parties will undertake the following activities prior to the revocation of the CNSC licence on September 20, 2002 (providing that safe weather conditions in the summer of 2002 permit):

- CRI inspection of the Kiggavik-Sissons Project sites;
- participation by the KIA (or its designate), INAC, and Government of Nunavut, as applicable, in the above noted inspection of the Kiggavik-Sissons Project sites; and
- CRI logistical assistance to the CNSC staff and other parties to enable their participation in the above inspection (assistance from Baker Lake only).

The Commission also expects CRI to formally offer to transfer the financial guarantee (\$155,000 letter of credit) for site remediation from the CNSC to the appropriate authorities.

Furthermore, the Commission requests CNSC staff to undertake the following activities prior to the revocation of the licence on September 20, 2002:

- participation in the above-noted CRI inspection of the Kiggavik-Sissons Project sites;
- demonstration to the others present during the CRI site inspections on the function and use of appropriate radiation monitoring instruments;
- presentation of the inspection results to the public in the Baker Lake area;
- invitation to the KIA to attend the CNSC's Radiation Instrumentation Course scheduled for September 2002; and
- provision of an opportunity for the KIA, INAC, Government of Nunavut and CRI to provide input to the development of CNSC guidelines on the point at which CNSC licensing will be required in the evaluation of an uranium ore body.

The Commission acknowledges that many of the above activities have already been initiated by the various parties on their own initiatives, and they have done so in a spirit of cooperation and desire for the sharing of knowledge.

4.3 Canadian Environmental Assessment Act

CNSC staff expressed the view that an environmental assessment under the *Canadian Environmental Assessment Act* (CEAA) is not required before a decision on the proposed licence revocation can be made. This is because the proposed activities do not constitute a "project" as defined under the CEAA. Furthermore, the revocation of a licence is not a trigger for the application of the CEAA as set out in the *CEAA Law List Regulations*.

The Commission concurs with the CNSC staff's interpretation of the application of the CEAA to the licensing action and concludes that an environmental assessment under the CEAA is not required.

4.4 Public Information Programs

Although the CNSC's requirements for a licensee public information program relate to proposed licensed activities (i.e., as opposed to applications for licence revocation), the Commission did consider the adequacy of the efforts to inform the public about the consequences of the current application.

In this regard, an intervenor (Mr. P. Penna) expressed the view that the local people had not been adequately consulted on the proposed licence revocation and what it could mean in terms of future uranium project development in the area.

CNSC staff explained that, in addition to the public notices for the hearing issued by the CNSC Secretariat, a letter was sent by CNSC staff to the Mayor of Baker Lake explaining the licensing requirements for uranium exploration, evaluation and development in Canada under the NSCA. CNSC staff also recounted its involvement at a public meeting in Baker Lake on March 4, 2002 where the CNSC licensing regime was explained. CNSC staff also mentioned a radio phone-in show in the Baker Lake area that was hosted by the KIA. That show was partially successful in correcting some important misunderstandings of the public as related to the current application. CRI also recounted its participation in the public meeting in Baker Lake on March 4, 2002 where CRI outlined its plans for the summer-2002 site inspections. CRI reported that many of the comments and concerns of the public at that meeting related to possible future uranium mine development and operation in the area, rather than the current exploration activities that are the subject of the current licence. CRI indicated that it learned much about the community's philosophy towards, and concern for, the care of the land, animals, soil and water. In response, CRI indicated that it plans to involve local residents in the planned site inspections so that they may observe and form their own opinions about the effects of the project. The KIA, in its intervention, thanked the CNSC and CRI for their efforts to communicate with the people and indicated that it was looking forward to future discussions.

Based on this information, the Commission is satisfied that appropriate efforts were made to inform the public about the application to revoke the licence and the possible effects that the decision could have.

5. Conclusion

The Commission has considered the information and submissions of the applicant, CNSC staff and all other participants as set out in the material available for reference on the record, as well as the oral and written submissions provided or made by the participants at the hearing.

The Commission therefore revokes, pursuant to section 24 of the *Nuclear Safety and Control Act*, COGEMA Resources Inc.'s licence, AECB-MFRL-157-3.6, for the Kiggavik-Sissons Project, effective September 20, 2002. Other than the effective date, the Commission places no conditions on the revocation.

As expressed in section 4.2.3 of this *Record of Proceedings*, the Commission has specific expectations of the other parties, and is making specific requests of its staff, concerning what actions should occur prior to the termination of the licence on September 20, 2002. The Commission acknowledges that many of those activities have already been initiated by the applicant, various other parties and CNSC staff on their own initiatives, and that they have done so in a spirit of good cooperation and desire for the sharing of knowledge. The Commission is of the view that those actions, together with the deferred revocation date, will allow for a smooth transition of regulatory activity to the other responsible authorities.

Marc A. Leblanc
Secretary,
Canadian Nuclear Safety Commission

Date of decision: April 18, 2002

Date of release of Reasons for Decision: May 16, 2002

Appendix A

Intervenors	Document Number
Peter Williamson	CMD 02-H4.2
Heather R. Tickie	CMD 02-H4.3 CMD 02-H4.3A CMD 02-H4.3B
Kivalliq Inuit Association, represented by K. Gilson, Legal Counsel and L. Manzo, Chief Land Administrator	CMD 02-H4.4
Darcy Bean	CMD 02-H4.5
Phillip Penna	CMD 02-H4.6