

Record of Proceedings, Including Reasons for Decision and Order

In the Matter of

Party
Subject to
Order

PricewaterhouseCoopers Inc.

Subject

Opportunity to be Heard on the
Designated Officer Order Issued to
PricewaterhouseCoopers Inc. on
February 3, 2009

Hearing
Date

February 19, 2009

RECORD OF PROCEEDINGS

Party Subject to Order: PricewaterhouseCoopers Inc.

Address/Location: 250 Howe Street, Suite 700, Vancouver,
British Columbia, V6C 3S7

Purpose: Opportunity to be heard on the Designated Officer Order issued to
PricewaterhouseCoopers Inc. on February 3, 2009

Order Issued: February 3, 2009

Date of hearing: February 19, 2009

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

Members present: M. Binder, Chair
R. J. Barriault
C.R. Barnes

Secretary: M.A. Leblanc
Recording Secretary: M. Young
General Counsel: L. Thiele

| Applicant Represented By | Document Number |
|---|------------------------|
| <ul style="list-style-type: none">• R. Miller, Counsel for PricewaterhouseCoopers Inc.• C. Stocco, Vice-President of PricewaterhouseCoopers Inc. | CMD 09-H105.2 |
| CNSC staff | Document Number |
| <ul style="list-style-type: none">• P. Fundarek• A. Régimbald | |
| Intervenors | Document Number |
| <ul style="list-style-type: none">• Province of British Columbia, represented by P. Landry and E. Gouge | CMD 09-H105.1 |

Designated Officer Order: Replaced by Commission Order

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Introduction

1. On February 3, 2009, a Canadian Nuclear Safety Commission¹ (CNSC) Designated Officer issued an Order to PricewaterhouseCoopers Inc. (PWC). The Order required PWC to immediately comply with specific actions and measures identified in the Order. Among other actions and measures, PWC was ordered to make arrangements to complete the transfer of nuclear substances and prescribed equipment in its possession under CNSC licence 12853-4-09.0 to another person licensed by the CNSC by no later than February 13, 2009.
2. Pursuant to subsection 37(6) of the *Nuclear Safety and Control Act*² (NSCA), the Designated Officer referred the Order to the Commission for review.
3. Pursuant to paragraph 40(1)(d) of the NSCA, the Commission provided an opportunity to be heard to PWC, as the person subject to and named in the Order.
4. This *Record of Proceedings* describes the Commission's consideration of PWC's submission on the Order, the Province of British Columbia's (the Province) submission on the Order, the review of the Order and the reasons for the decision.

Issue

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

Proceeding

6. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to review the Order. The Commission, in making its decision, considered information presented for a proceeding held on February 19, 2009 in Ottawa, Ontario. The proceeding was conducted in accordance with the *Canadian Nuclear Safety Commission Rules of Procedure*³. The Commission considered the Designated Officer Order, including information referred to in the Order, and received written submissions and heard oral presentations from PWC (CMD 09-H105.2) and the Province (CMD 09-H105.1).

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 S.C. 1997, c. 9.

³ S.O.R./2000-211.

Decision

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

the Commission, pursuant to subsection 37(6) of the NSCA, replaces the Designated Officer Order issued to PricewaterhouseCoopers Inc. on February 3, 2009 with the Commission Order attached to this *Record of Proceedings*.

Issues and Commission Findings

8. 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.

Background

9. Pope & Talbot Mackenzie Pulp Operations Ltd. (Pope & Talbot) formerly held CNSC licence 13340-1-11.0 for the nuclear substances and prescribed equipment for the Mackenzie pulp mill located near Mackenzie, British Columbia. Pope & Talbot sought and obtained creditor protection under the *Companies Creditors Arrangements Act*⁴ in October 2007. PWC, the receiver of Pope & Talbot, sold the mill to its present owner, Worthington Mackenzie Inc. (Worthington) in September, 2008. The mill has not produced pulp since May 2008.
10. In July 2008, PWC submitted an application to assume control over the nuclear substances and prescribed equipment located at the mill. PWC was issued CNSC licence 12853-4-09.0 on October 7, 2008 for the temporary possession of the nuclear substances and prescribed equipment. The licence, which is valid until September 30, 2009, does not authorize the use of the nuclear substances and prescribed equipment. PWC's licence application identified a mill employee as the Radiation Safety Officer (RSO) for the site.
11. Worthington, which does not hold a licence for the nuclear substances and prescribed equipment at the mill, failed to meet its payroll on January 8 and January 22, 2009. On January 22, 2009, the employees of the mill advised the Province that they would withdraw their services unless their wages were paid.

⁴ R.S., c. C-25, s. 1.

12. The mill contains large quantities of toxic chemicals, including chlorine dioxide. The mill, including the heating system, and pumping and effluent treatment systems, must be maintained in order to prevent the release of these toxic chemicals.
13. In response to the situation, the British Columbia Minister of Environment (MOE) issued a Declaration under section 87 of the *Environment Management Act*⁵. The Declaration empowered the MOE to conscript essential supplies for as long as needed and essential labour for a period of 15 days. The employees provided conscripted labour from January 25 to February 9, 2009 and continued to work while contracts of employment were being negotiated between the employees and the Province.
14. The nuclear substances and prescribed equipment are not necessary to prevent the release of the toxic chemicals, but they are necessary to resume production at the mill.
15. CNSC staff received a letter from the RSO, dated January 22, 2009, informing CNSC staff that the RSO was resigning from the RSO position. CNSC staff did not receive information from PWC notifying CNSC staff of this change, as required under paragraph 15(c) of the *General Nuclear Safety and Control Regulations*⁶.
16. CNSC staff further stated that it has not received any further application for a licence regarding the nuclear substances and prescribed equipment located at the mill.
17. A Designated Officer issued the Order on February 3, 2009 due to the potential for unreasonable risk to the health and safety of persons, the protection of the environment, and the security of the nuclear substances and prescribed equipment.

Actions and Measures of the Order

18. PWC was ordered to undertake several actions and measures. PWC was required to:
 - immediately provide CNSC staff with an inventory of the nuclear substances and prescribed equipment in its possession under licence 12853-4-09.0;
 - conduct a radiation survey and provide the results to CNSC staff;
 - review the security arrangements to ensure that they meet requirements;
 - ensure that any servicing of the radiation devices is carried out by persons who are licensed by the CNSC to do so; and
 - make arrangements to complete the transfer of the nuclear substances and prescribed equipment to another qualified CNSC licensee, by no later than 11:59 PM PST on February 13, 2009.

⁵ S.B.C 2003, c 53.

⁶ S.O.R./2000-211.

19. PWC stated that it had commenced the work required to complete items one through three of the actions and measures identified in the Order. At the proceeding, PWC requested an extension for the deadline for the fifth action and measure to March 6, 2009. PWC stated that it had reached an agreement with a qualified licensee, Stuart Hunt & Associates, to complete the transfer of the nuclear substances and prescribed equipment. PWC stated that the extended deadline would allow sufficient time to complete the safe removal of the radioactive material from the mill, which would then be placed in secure storage.
20. The Province requested an extension to the deadline for the fifth action and measure to allow sufficient time for a replacement RSO at the mill to be trained and for the Province to file an application for a licence to possess the nuclear substances and prescribed equipment located at the mill. The Province explained that it had reached an agreement to pay the mill employees, including the manager, to maintain the mill. The Province explained that this would prevent an environmental emergency that could result from the release of the toxic chemicals at the mill.
21. The Commission asked whether it is necessary to remove the nuclear substances and prescribed equipment from the site. CNSC staff responded that it is necessary under the current conditions at the mill, because, without the oversight of a qualified licensee, there is a risk to the health and safety of persons and the protection of the environment. CNSC staff further noted that at the time of the issuance of the Order, it was understood that the conscripted labour could not be renewed.
22. The Commission inquired about the level of security at the mill. The Province responded that there are workers on site 24 hours a day to provide security, as well as maintain the machinery and equipment. PWC noted that no mill worker is qualified to service the prescribed equipment, which is currently being stored with the power disconnected. PWC further noted that it would explore the possibility that the person formerly acting as the RSO may be available to resume that position.
23. The Commission inquired about the timeline to train a new RSO. The Province stated that it expects that the training will take eight days.
24. The Commission asked whether the proposed date of March 6, 2009 would be sufficient for the Province to complete its licence application. CNSC staff responded that an extension to March 30, 2009 would allow sufficient time for the Province to have a RSO trained and apply for a licence. CNSC staff further stated that, provided that the information is correct and satisfies CNSC requirements, a licence could be issued within that timeframe.
25. The Commission asked whether the Province would be able to commit to this timeframe. The Province stated that it would file a licence application and identify a RSO by no later than March 5, 2009.

26. The Commission, noting the urgency of the situation, expects CNSC staff to provide as much assistance as possible in order to expedite the licence application process.

Conclusion

27. The Commission has considered the information and submission of PWC, the Province and CNSC staff as presented in the material available for reference on the record for the proceeding.
28. Based on the above information, the Commission, pursuant to subsection 37(6) of the NSCA, replaces the Designated Officer Order issued to PricewaterhouseCoopers Inc. on February 3, 2009 with the Commission Order attached to this *Record of Proceedings*.
29. The Commission, noting the urgency of the situation, expects CNSC staff to provide as much assistance as possible in order to expedite the licence application process. The Commission also expects CNSC staff to rigorously monitor this situation.
30. The Commission notes that PWC shall comply with the actions and measures identified in the Order in order to ensure that the site is secured and does not pose a risk to the health and safety of persons and the protection of the environment. The Commission further expects CNSC staff to report to the Commission in the event that PWC does not meet the conditions of the Order or if the Province does not proceed with the licence application.



Michael Binder
President,
Canadian Nuclear Safety Commission

28/2/09

Date

**IN THE MATTER OF AN ORDER ISSUED BY A DESIGNATED OFFICER
PURSUANT TO THE *NUCLEAR SAFETY AND CONTROL ACT* ON
FEBRUARY 3, 2009 REGARDING NUCLEAR SUBSTANCES AT A PULP MILL
IN MACKENZIE, B.C.**

**ORDER BY CANADIAN NUCLEAR SAFETY COMMISSION REPLACING
DESIGNATED OFFICER ORDER PURSUANT TO SUBSECTION 37(6) OF THE
*NUCLEAR SAFETY AND CONTROL ACT***

ORDER NO. 09-1

Date of Commission Order: February 19, 2009

TO: Mr. Shawn Ellsworth
Manager,
PricewaterhouseCoopers Inc.
250 Howe Street, Suite 700
Vancouver, B.C. V6C 3S7
Canada
(604) 806-7219

PURSUANT to an opportunity to be heard conducted in Ottawa on February 19, 2009, and following representations made by PricewaterhouseCoopers Inc., the Province of British Columbia and staff of the Canadian Nuclear Safety Commission, the Canadian Nuclear Safety Commission has replaced, pursuant to subsection 37(6) of the *Nuclear Safety and Control Act* (NSCA), the Order issued on February 3, 2009 by the Designated Officer under paragraph 37(2)(f) and subsection 35(3) of the NSCA.

THE ORDER of the Commission orders the following actions and measures:

1. If not already conducted, PricewaterhouseCoopers Inc. shall immediately conduct an inventory of the nuclear substances and prescribed equipment in possession under CNSC licence 12853-4-09.0, record the results of that inventory and provide a copy of that record to the Designated Officer, Mr. Peter Fundarek, or a person acting on his behalf.
2. If not already conducted, PricewaterhouseCoopers Inc. shall immediately conduct a radiation survey, record the existing gamma radiation levels at 1 meter around each radiation device, take action necessary to ensure compliance, as necessary, and confirm that each radiation device remains in a safe configuration and provide a copy of that record to the Designated Officer, Mr. Peter Fundarek, or a person acting on his behalf.

3. If not already done, PricewaterhouseCoopers Inc. shall immediately review the security arrangements of the nuclear substances and prescribed equipment in possession under CNSC licence 12853-4-09.0, take action necessary to ensure compliance, as necessary, and confirm, in writing to the Designated Officer, Mr. Peter Fundarek, or a person acting on his behalf, that the security arrangements are sufficient to meet the requirements of paragraph 12(1)(g) of the *General Nuclear Safety and Control Regulations*.
4. PricewaterhouseCoopers Inc. shall ensure that any servicing of the radiation devices, including mounting or dismounting, are carried out by persons who are licensed by the CNSC to service radiation devices, pursuant to section 24 of the *Nuclear Safety and Control Act*.
5. PricewaterhouseCoopers Inc. shall make arrangements and complete the transfer of the nuclear substances and prescribed equipment in possession under CNSC licence 12853-4-09.0 to another person licensed by the CNSC to possess these nuclear substances and prescribed equipment by no later than 11:59 PM PST, March 30, 2009.



Michael Binder
President,
Canadian Nuclear Safety Commission

28 / 2 / 09

Date