



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Proceedings, Including Reasons for Decision

In the Matter of

Order
issued to

Viterra Inc., formerly Western Cooperative
Fertilizers Limited (WESTCO)

Subject

Opportunity to be Heard on the Redetermination
of the Order Issued on April 21, 2008

Hearing
Date

November 6, 2009

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Introduction

1. Viterra Inc. (Viterra), formerly Western Cooperative Fertilizers Limited (WESTCO), has applied to the Canadian Nuclear Safety Commission¹ (CNSC) for a redetermination of the Order issued to WESTCO on April 21, 2008, and has requested that the Commission extend the date by which the clean-up of the site located at 3077 Shepard Place S.E., Calgary, Alberta, must be completed. Viterra requested a two-year extension, from December 1, 2009 to December 1, 2011.
2. On September 9, 2007, WESTCO took possession of the site on which was located the former ESI Resources Limited (ESIRL), a lessee of the property. ESIRL held a licence issued by CNSC for the part of the facility dedicated to the recovery of uranium from phosphoric acid. This part of the facility, consisting of a contaminated dryer room and evaporation ponds, was shut down in 2001 and remained in a safe shutdown state, as confirmed by CNSC staff during an inspection in October 2005. In November 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. After this date, the facility became unlicensed since ESIRL failed to apply for a licence renewal. A Designated Officer Order was issued to ESIRL on August 30, 2006. The order was reviewed and amended² by the Commission on May 16, 2007.
3. On October 29, 2007 since, ESIRL was no longer operating at the site, CNSC staff notified WESTCO that, since it 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.
4. On November 19, 2007, a Designated Officer, pursuant to paragraph 37(2) (f) of the NSCA³, issued an order requiring that WESTCO take specific actions and measures to protect the environment and the health and safety of persons (the Order). Pursuant to subsection 37(6) of the NSCA, the Designated Officer referred the order to the Commission for review and to confirm, amend, replace or revoke the order.
5. On January 15, 2008, WESTCO submitted a written submission to take advantage of its opportunity to be heard before the Commission, pursuant to paragraph 40(1)(d) of the NSCA. The submission included several requests to amend the Order.

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 *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 Statutes of Canada, S.C. 1997, c. 9.

6. The Commission considered the request during a closed session held on March 14, 2008 in Ottawa, Ontario and a public session held on April 3, 2008, also in Ottawa, Ontario⁴. The Commission, pursuant to subsection 37(6) of the NSCA, decided to amend the Order issued to WESTCO on November 19, 2007, as recommended by CNSC staff in CMD 08-H103.A. The amended order was issued on April 21, 2008, and included the requirement that WESTCO complete the clean-up of the site by December 1, 2009.
7. In a letter dated November 13, 2008, WESTCO notified the CNSC that on November 3, 2008, Viterra Inc. amalgamated its wholly-owned subsidiary WESTCO into Viterra's Agri-products segment. The Certificate of Amalgamation related to this change was submitted and Viterra indicated that decommissioning, remediation, and reclamation operations related to the ESIRL site would continue as per the Order. CNSC staff examined whether the Order should be amended. CNSC staff determined that all legal responsibilities were borne by Viterra Inc. by virtue of the amalgamation, and that the Order did not have to be changed.

Issue

8. In considering the application, pursuant to section 43 of the NSCA, the Commission was required to evaluate the request for the extension of the date by which the clean-up of the ESIRL site must be completed, and to decide on the redetermination of the Order issued to WESTCO on November 19, 2007 and amended on April 21, 2008.

Public Hearing

9. The Commission, in making its decision, considered information presented for a public hearing held on November 6, 2009 in Saskatoon, Saskatchewan. The public hearing was conducted in accordance with the *Canadian Nuclear Safety Commission Rules of Procedure*⁵. During the public hearing, the Commission received written submissions and heard oral presentations from CNSC staff (CMD 09-H13) and Viterra (CMD 09-H13.1 and CMD 09-H13.1A).

Decision

10. 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 section 43 of the NSCA, issues an order to Viterra Inc. for its site located at 3077 Shepard Place S.E., Calgary, Alberta, as presented in CNSC staff's CMD 09-H13.

⁴ *Record of Proceedings, including Reasons for Decision* issued by the Canadian Nuclear Safety Commission on June 9, 2008.

⁵ Statutory Orders and Regulations, S.O.R./2000-211.

11. With this decision, the Commission agrees that the date by which the clean-up of the site located at 3077 Shepard Place S.E., Calgary, Alberta, must be completed be extended from December 1, 2009 to December 1, 2011, and replaces the Order issued to WESTCO by a CNSC Designated Officer on November 19, 2007, as amended by the Commission on April 21, 2008.

Issues and Commission Findings

12. In making its decision, the Commission considered a number of issues related to Viterra's response to the previous order and the adequacy of the proposed clean-up measures for protecting the environment, and the health and safety of persons.
13. Viterra informed the Commission that, following WESTCO being amalgamated in Viterra's Agri-products segment on November 3, 2008, the name of the company has been changed to Viterra Inc., as of September 1, 2009.
14. Viterra summarized the history of the site, emphasizing the amount of the inherited waste, and informed the Commission on the progress made since the issuance of the Commission Order.. Viterra pointed out that, in addition to the general clean-up of the site, it had conducted a number of studies and activities in order to better understand the issues and develop efficient remedial plans.
15. Viterra stated that it expects to complete the decontamination of the calciner (dryer room) this fall and then submit a detailed soil and groundwater management plan. Demolition of the entire building is expected for the summer and fall of 2010. Commenting on the Order timeline, Viterra mentioned prolonged legal issues, weather restrictions, site debris and waste volume which were more significant than previously estimated, and its lack of experience in CNSC procedures as main reasons for the requested extension for the completion date.
16. Viterra confirmed its commitment to developing a remedial action plan for the evaporation ponds, which would include identification of a waste management facility capable to accept the waste. Viterra said that the ponds contain uranium contaminated sediments, but noted that the ponds are lined and that studies found no evidence of any leakage. Describing the site security, Viterra stated that there is no public access to the site.
17. CNSC staff informed the Commission that Viterra had submitted their plan to clean-up the site on June 27, 2008, within the time limit required by the Order, as well as an amended plan to clean-up the uranium concentrate dryer room dated April 13, 2009. CNSC staff said that it had reviewed the amended plan, found it acceptable and approved it in August 2009.

18. CNSC staff also informed the Commission that it was inspecting the clean-up in process and confirmed the progress made in 2009. CNSC staff finds that Viterra Inc. continues to meet the requirements outlined in the Order with respect to security and monthly reporting. CNSC staff stated that it had reviewed the application and recommended that the Commission accept its opinion that a two-year extension to the clean-up completion date is reasonable and revise the final clean-up date to December 1, 2011.
19. CNSC staff recommended that the Commission issue an Order to Viterra Inc., as proposed in Attachment 2 of the CMD CMD 09-H13, and replace the Order issued to WESTCO on November 19, 2007, as amended by the Commission on April 21, 2008.
20. The Commission inquired about the cost of works and the budget Viterra had committed for this project. Viterra responded that the most recent estimate for the complete clean-up (extends beyond the boundaries of the ESIRL site) was in the range of \$10 million, and the total amount on the end of this year would be around three million dollars.
21. The Commission sought more information on the reasons for the seriously deteriorated condition of the site prior to clean-up, and expressed its concerns about potential fire hazard at this and other similar sites. CNSC staff responded that the condition of this site was an exception and that the information on CNSC-led inspections and general conditions of similar sites is available.
22. The Commission inquired about Viterra's priorities related to this project, the team involved in its realisation, available resources, and assurances that the extension of two years would be sufficient for completion of all tasks. Viterra presented the team working on this project and underlined the experience that Viterra has as a company dealing with remediation of two large former fertilizer facilities. Viterra re-confirmed its commitment to complete clean-up of the site by the proposed date. CNSC staff stated that the dynamics of activities conducted so far, the two-year plan and proposed schedules indicate that a two-year period seems a reasonable period for completion of the clean-up project.

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 concludes that an environmental assessment under the CEAA is not required before the Commission may make its decision with respect to the application for redetermination of the order issued to WESTCO on November 19, 2007.
25. The Commission agrees with CNSC staff's conclusions that the date by which the clean-up of the site located at 3077 Shepard Place S.E., Calgary, Alberta, must be completed be extended from December 1, 2009 to December 1, 2011

26. The Commission, pursuant to section 43 of the *NSCA*, issues an Order to Viterra Inc., as proposed in Attachment 2 of the CMD CMD 09-H13, and replaces the Order issued to WESTCO on November 19, 2007, as amended by the Commission on April 21, 2008.



NOV 27 2009

Michael Binder
President,
Canadian Nuclear Safety Commission

Date