

July 25, 2003

MEMORANDUM TO: Susan Frant, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

FROM: Dan Gillen, Chief **/RA/**
Decommissioning Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: TECHNICAL ASSISTANCE REQUEST - REVIEW OF WESTERN
NUCLEAR INC. FINANCIAL ASSURANCE DOCUMENTS

As requested in your June 9, 2003 memorandum, we have reviewed the decommissioning financial assurance documents submitted by Anthony J. Thompson, Counsel, on behalf of licensee Western Nuclear Inc. (WNI) for the Split Rock Site in Jeffrey City, Wyoming. The documents are to provide funds for decommissioning and decontamination activities through a parent company guarantee by Phelps Dodge Corporation as a replacement for a surety bond issued by AIG.

Our review found that Phelps Dodge Corporation does not qualify as a Parent Company Guarantor under Financial Test II of 10 CFR Part 30, Appendix A because of an insufficient bond rating (NUREG-1727, Appendix F, Section 13.1). Therefore, the licensee should resubmit the documents demonstrating that Phelps Dodge qualifies as a Parent Company Guarantor under Financial Test I of 10 CFR Part 30, Appendix A, or the licensee should obtain financial assurance for D&D activities through another mechanism.

In the submission, Mr. Thompson requests that NRC accept the parent company guarantee of Phelps Dodge Corporation despite the fact that WNI does not have a positive, tangible net worth, as requested in NRC guidance. Provided that Phelps Dodge qualifies as a Parent Company Guarantor under Financial Test I and the requests for additional information are satisfactorily addressed, a parent company guarantee by the Phelps Dodge Corporation on behalf of the licensee WNI would be acceptable.

Also, in the submission, Mr. Thompson notes that the cost estimates of the approved decommissioning plan for the Split Rock Site have been the subject of lengthy discussions between WNI and NRC Staff and therefore, this request only addresses the nature of the financial assurance mechanism and not the amount of the financial assurance. Since the amount of the financial assurance is required in the executed financial assurance documents, if the amount of the decommissioning cost estimate should change as a result of the discussions, a revised set of financial assurance documents may need to be submitted by WNI reflecting the new amount.

Detailed comments are attached in the form of a Request for Additional Information that the licensee should address if they submit a parent company guarantee demonstrating that Financial Test I of 10 CFR Part 30, Appendix A, is met.

Docket: 40-1162
License: SUA-56

Attachment: Request for Additional Information

CONTACT: Derek Widmayer, NMSS/DWM/DCB
(301)415-6677

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CONTACT: Derek Widmayer, NMSS/DWM/DCB
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REQUEST FOR ADDITIONAL INFORMATION

WESTERN NUCLEAR INCORPORATED (WNI) SPLIT ROCK FACILITY, WYOMING

INTRODUCTION

Western Nuclear Inc. (WNI), licensee for the Split Rock Site in Jeffrey City, Wyoming, submitted a parent company guarantee by Phelps Dodge Corporation to provide funds for decommissioning and decontamination (D&D) activities at Split Rock. The parent company guarantee is submitted as a replacement for a surety bond issued by AIG, which has informed Phelps Dodge that they are exiting the reclamation surety bond business.

The staff reviewed the licensee's submission with the applicable regulations at 10 CFR 40, Appendix A, and the regulatory guidance of NUREG-1727, *NMSS Decommissioning Standard Review Plan*, September 2000 (NUREG-1727) and the *Technical Position on Financial Assurances for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities*, October 1988 (Technical Position).

The staff's review found that Phelps Dodge Corporation does not qualify as a Parent Company Guarantor under Financial Test II of 10 CFR Part 30, Appendix A because of an insufficient bond rating. Therefore, the licensee should resubmit the documents demonstrating that Phelps Dodge qualifies as a Parent Company Guarantor under Financial Test I of 10 CFR Part 30, Appendix A, or the licensee should obtain financial assurance for D&D activities through another mechanism.

If the licensee decides to resubmit the parent company guarantee documents, the staff's review found that the licensee should revise the financial assurance documents in the following ways:

- (1) Demonstrate that Phelps Dodge Corporation qualifies as a Parent Company Guarantor under Financial Test I of 10 CFR Part 30, Appendix A;
- (2) Include the value of \$20 Million as the minimum tangible net worth in the financial test results included with the Chief Financial Officer's (CFO) letter and the Recitals section of the Parent Company Guarantee;
- (3) Include an auditor's special report confirming the CFO letter and reconciling the amounts in the CFO letter with the parent company's financial statements;
- (4) Include list of activities to be funded consistent with recommended language in the Parent Company Guarantee for a uranium recovery facility, or refer to the approved reclamation and decommissioning plan for the facility;
- (5) Include a provision for a Standby Trust in the Parent Company Guarantee;

and

(6) Revise the language in the recitals of the Parent Company Guarantee to recommended NRC language.

These revisions are discussed in detail below.

SPECIFIC COMMENTS

(1) Demonstrate that Parent Company Meets Financial Test I ***(10 CFR 40.36; NUREG-1727, Appendix F, Sections 13.1 and 13.6; Technical Position, Section 3.3)***

10 CFR 40.36, *Financial Assurance and Recordkeeping for Decommissioning* requires and Section 13.1 of NUREG-1727 says that the parent company guarantor must pass one of the two financial tests specified in Appendix A to 10 CFR Part 30. The two financial tests differ in that Financial Test I does not include a bond rating criterion while Financial Test II does. The bond rating criterion states that the parent company must have a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.

Phelps Dodge has submitted information demonstrating that they meet Financial Test II. The minimum acceptable Moody's Rating for Financial Test II is Baa2. However, line 2 of the Parent Company Guarantee Financial Test II results submitted with the CFO's letter shows that the current bond rating of the most recent issuance of this firm rated Baa3. This rating is insufficient to qualify Phelps Dodge as a parent company guarantor under Financial Test II.

The parent company guarantee financial test results should be revised to demonstrate that Phelps Dodge meets Financial Test I that includes the information recommended in Section 13.6 of NUREG-1727, "Model Parent Company Guarantee Financial Test I."

(2) Include \$20 Million as the Value of the Minimum Tangible Net Worth in the Financial Test Results ***(Technical Position, Section 3.3)***

Section 3.3 of the Technical Position discusses parent company guarantees and provides guidance that address the special circumstances that surround the uranium recovery industry. Because the domestic uranium industry continues to be economically unstable and therefore, the risk of default is higher, and because of the added requirements for ground-water remediation, the Technical Position recommends that the parent company guarantee should show a tangible net worth of at least \$20 Million rather than \$10 Million.

Line 7 of the Phelps Dodge Corporation Parent Company Guarantee shows that the tangible net worth of Phelps Dodge is at least \$10 Million. Both Financial Test I and II should show that the tangible net worth of Phelps Dodge is at least \$20 Million to qualify Phelps Dodge Corporation as a parent company guarantor for a uranium recovery facility.

The set of financial assurance documents submitted demonstrating that Phelps Dodge meets Financial Test I should show that the tangible net worth of Phelps Dodge is at least \$20 Million in: (1) the demonstration included with the CFOs letter and (2) Recital #4 of the Parent Company Guarantee.

(3) Include Auditor's Special Report and Attachment

(NUREG-1727, Appendix F, Sections 13.3, 13.8, and 13.9; Technical Position, Section 3.3(c))

Section 13.3 of NUREG-1727 and Section 3.3 of the Technical Position discuss the recommended documentation that should be submitted to the NRC to constitute the financial assurance documents for a parent company guarantee. Included in these recommended documents is an auditor's special report from the parent company's independent certified public accountant that compares the data used by the parent company in the financial test demonstration with the amounts in its annual financial statements. Section 13.3 also recommends that the report include a schedule attachment that reconciles the financial test numbers with amounts in the parent company's financial statements. The guidance includes a model auditor's special report as Section 13.8, *Model Auditor's Special Report*, and a model schedule attachment as Section 13.9, *Model Schedule Reconciling Amounts Contained in Chief Financial Officer's Letter with Amounts in Financial Statements*.

The parent company guarantee financial assurance documents submitted by the licensee WNI on Phelps Dodge Corporation do not include the auditor's special report or the attachment.

The parent company guarantee documents submitted that demonstrate that Phelps Dodge meets Financial Test I should include an auditor's special report that is modeled after Section 13.8 and an attached schedule, if needed, modeled after Section 13.9.

(4) Include Complete List of Activities in the Parent Company Guarantee for a Uranium Recovery Facility (Technical Position, Appendix C)

Appendix C of the Technical Position includes the Recommended Wording for a Parent Company Guarantee. In this recommended wording, several of the recitals include language that specifies the activities of decommissioning, reclamation, and long-term surveillance and control required in 10 CFR Part 40, Appendix A. This ensures clarity in terms of what the "required activities," are that the guarantor is agreeing to fund; decommissioning activities, remediation of the groundwater; and, long-term surveillance and control of the site required by the license after closure. Alternatively, the recommended wording in some of the recitals refers to the "Approved Reclamation and Decommissioning Plan" for the uranium recovery facility.

The recitals in the parent company guarantee submitted on Phelps Dodge Corporation only refer to "decommissioning activities" and do not refer to an approved plan.

Therefore, the recitals in the parent company guarantee submitted that demonstrate that Phelps Dodge meets Financial Test I should include the following words in the appropriate recitals:

“ . . . for decommissioning, reclamation, and long-term surveillance and control of the facility . . . ”

Or, alternatively, the appropriate recitals should include the following reference to the approved plan for the facility:

“ . . . in accordance with the approved Reclamation and Decommissioning Plan and also for any long-term surveillance and control of the uranium recovery facility. . . ”

In the Recommended Wording for a Parent Company Guarantee in Appendix C of the Technical Position, example recitals containing appropriate language are numbered 2, 3, 5, and 12.

(5) Include Provision for a Standby Trust in the Parent Company Guarantee
(NUREG-1727, Appendix F, Section 13.3 and 13.10; Technical Position, Appendix C)

NUREG-1727, Section 13.3, discusses the recommended documentation that should be submitted to the NRC to constitute the financial assurance documents for a parent company guarantee. Included in these recommended documents is a standby trust fund that can receive the funds from the guarantee, although this is not required.

Since WNI already has a Standby Trust with First Union National Bank, this could be used to receive the funds from the guarantee.

The parent company guarantee documents submitted that demonstrate that Phelps Dodge meets Financial Test I should include a recital that is modeled after Recital 6 of the Recommended Wording for a Parent Company Guarantee in Appendix C of the Technical Position that includes the following provisions after item (a):

OR:

- (b) Set up a trust fund in favor of the above identified beneficiary in the amount of these current NRC-approved cost estimates for these activities, and
- (c) In addition, the guarantor shall cover the eventual payment of the amount for long-term surveillance and control, if any, as required by 10 CFR Part 40, Appendix A.

(6) Include Revised Language in Recitals of Parent Company Guarantee
(NUREG-1727, Appendix F, Section 13.10; Technical Position, Appendix C)

The model wording guidance for parent company guarantees in NUREG-1727 and in Appendix C of the Technical Position contains certain language that NRC finds acceptable for this financial assurance mechanism for uranium recovery facilities.

The information submitted on Phelps Dodge Corporation contains four recitals that should be revised and one typographical error that should be corrected in information submitted to demonstrate that Phelps Dodge meets Financial Test I. These are discussed below:

Recital #2 - Recital #2 refers to the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. Reference to the Uranium Mill Tailings Radiation Control Act of 1978 should also be included for financial assurance documents for uranium recovery facilities. Recommended language for this recital of a Parent Company Guarantee for a uranium recovery facility can be found as Recital 2 of the Recommended Wording for a Parent Company Guarantee in Appendix C of the Technical Position.

Recital #4 - Recital #4 includes “boilerplate” language in the demonstration that Phelps Dodge Corporation meets Financial Test II that discusses power reactor licensees and numbers and values of power reactor units. References to power reactor licensees and power reactor units is not applicable to the Phelps Dodge Corporation and these references should not be included in a demonstration that Phelps Dodge meets Financial Test I. References to “certifications” are also unnecessary in any information concerning Financial Test I since this methodology is not being used. Recommended language for this recital of a Parent Company Guarantee for a uranium recovery facility can be found as Recital 3 of the Recommended Wording for a Parent Company Guarantee in Appendix C of the Technical Position.

Recital #5 - Recital #5 includes the name of the licensee, WNI. This recital in information submitted to demonstrate that Phelps Dodge meets Financial Test I should be revised to include the address of WNI; the uranium recovery facility operated by the licensee; and the license number for the facility.

Recital #9 - The last sentence in Recital #9 of the current recitals begins with the word, “With.” The recital submitted to demonstrate that Phelps Dodge meets Financial Test I that contains the information of the current Recital #9 should begin with the word, “Within.” Recommended language for this recital of a Parent Company Guarantee for a uranium recovery facility can be found as Recital 8 of the Recommended Wording for a Parent Company Guarantee in Appendix C of the Technical Position.

Recital #11 - Recital #11 includes “boilerplate” language that references 10 CFR Part 30, 40, 70, or 72, as applicable. This recital in information submitted to demonstrate that Phelps Dodge meets Financial Test I should be revised to refer only to 10 CFR Part 40 since that is the only applicable regulation.