

November 14, 2003

MEMORANDUM TO: Gary Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards, NMSS

FROM: Dan Gillen, Chief
Decommissioning Branch
Division of Waste Management, NMSS

SUBJECT: ADDITIONAL REVIEW OF WESTERN NUCLEAR INC. FINANCIAL
ASSURANCE DOCUMENTS

We completed a review of 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 and transmitted the results of the review, including a Request for Additional Information (RAI) on July 25, 2003. 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 staffs met on September 24, and October 30, 2003, concerning the RAI and the proposed responses of WNI. The September 24th meeting included discussions with Mr. Thompson. As a result of these two meetings, my staff agreed that NUREG-1727 should not have been referred to in the RAIs and agreed to revise the RAI to reflect this change. Our revised RAI is attached. Of particular note is that Item #1 in the July RAI is no longer applicable and has been deleted.

As a result of the revisions to the RAI, the conclusions of our review have also changed. Phelps Dodge qualifies as a Parent Company Guarantor under Financial Test II and the parent company guarantee by the Phelps Dodge Corporation on behalf of the licensee, WNI, is acceptable. The revised RAI should be addressed to make the financial assurance documents consistent with acceptable language found in NRC guidance and to correct errors.

As discussed in our July 25th memorandum, if the amount of the decommissioning cost estimate should change as a result of discussions between WNI and NRC staff, a revised set of financial assurance documents may need to be submitted by WNI reflecting the new amount.

If you have any questions about our revised RAI or this memorandum, please contact Derek Widmayer at the number specified below.

Docket: 40-1162
License: SUA-56

Attachment: Revised Request for Additional Information

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

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NAME	DWidmayer*	TFredrichs	CCraig	DGillen	
DATE	11/10/2003	11/12/2003	11/14/2003	11/14/2003	

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- REVISED -
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 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 qualifies as a Parent Company Guarantor under Alternative II of the Financial Tests in Appendix C of the Technical Position. However, the review also found that the documents should be revised to be consistent with recommendations in the Technical Position.

The review found that the licensee should revise the financial assurance documents in the following ways:

- (1) 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;
- (2) 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;
- (3) Include the 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;

and

- (4) 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) 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 addresses 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. Financial Test 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 II 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.

(2) Include Auditor's Special Report *(Technical Position, Section 3.3(c))*

Section 3.3 of the Technical Position 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 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.

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

The parent company guarantee documents submitted should include an auditor's special report that is modeled after the sample provided in Appendix C of the Technical Position.

(3) 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 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.

(4) Include Revised Language in Recitals of Parent Company Guarantee
(Technical Position, Appendix C)

The model wording guidance for parent company guarantees 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 five recitals that should be revised and one typographical error that should be corrected . 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. References to “certifications” are also unnecessary 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 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 #6 - Recital #6 includes “boilerplate” language that includes paragraph (a) “Carry out the required activities.” The parent company guarantee documents 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.

Recital #9 - The last sentence in Recital #9 of the current recitals begins with the word, "With." The recital 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 should be revised to refer only to 10 CFR Part 40, Appendix A, since that is the only applicable regulation.