

November 25, 2003

Mr. Lawrence J. Corte, Manager
Western Nuclear, Inc.
Union Plaza, Suite 300
200 Union Boulevard
Lakewood, Colorado 80228

SUBJECT: SOURCE MATERIAL LICENSE SUA-56, REQUEST TO CHANGE FINANCIAL
SURETY INSTRUMENT FOR SPLIT ROCK SITE, JEFFREY CITY, WYOMING
REVISED REQUEST FOR ADDITIONAL INFORMATION (TAC L52525)

Dear Mr. Corte:

The U S. Nuclear Regulatory Commission (NRC) reviewed the decommissioning financial assurance documents submitted by Anthony J. Thompson, Counsel, on behalf of 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. A letter was sent to you on August 8, 2003, outlining a request for additional information (RAI). After discussions with Anthony A. Thompson on September 24, 2003, and further staff review, we have revised our RAI which is enclosed. 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. We request that WNI submit a revised financial assurance document within 30 days from the receipt of this letter to address the other concerns.

If you have any questions in regard to this letter, please contact the Project Manager, William von Till at (301) 415-6251 or by email at rwv@nrc.gov.

L. Corte

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Robert A. Nelson, Chief
Uranium Processing Section
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-1162

License No.: SUA-56

Enclosure: Revised Request for Additional Information

cc: R. Chancellor, WDEQ
Donna Bergman-Tabbert, DOE

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DATE	11/24/03		11/25/03		11/ /03		11/25/03	

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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 Nuclear Regulatory Commission (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 the 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 are 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 the current NRC-approved cost estimates for these activities, and
- (3) 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.