

# Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant ESI Resources Limited

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Subject Review by the Commission of the Designated  
Officer Order Issued to ESI Resources Limited  
on August 30, 2006

Hearing  
Date February 7, 2007

## RECORD OF PROCEEDINGS

Applicant: ESI Resources Limited

Address/Location: 3077 Shepard Place S.E., P.O. Box 997,  
Postal Station T, Calgary, Alberta, T2H 2H4

Purpose: Review by the Commission of the Designated Officer Order issued  
to ESI Resources Limited on August 30, 2006

Order Issued: August 30, 2006

Date of hearing: February 7, 2007

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

Members present: L.J. Keen, Chair  
J.A. Dosman  
M. J. McDill

Secretary: M.A. Leblanc  
Recording Secretary: M. Young  
General Counsel: J. Lavoie/S. Maislin Dickson

<b>Applicant Represented By</b>	<b>Document Number</b>
<ul style="list-style-type: none"><li>• None</li></ul>	CMD 07-H109.1 CMD 07-H109.1A
<b>CNSC staff</b>	<b>Document Number</b>
<ul style="list-style-type: none"><li>• B. Howden</li><li>• H. Rabski</li><li>• J. Jaferi</li></ul>	CMD 07-H109
<b>Others</b>	<b>Document Number</b>
<ul style="list-style-type: none"><li>• Western Co-operative Fertilizers Limited, represented by P. May and J. Virtue</li></ul>	CMD 07-H109.2 CMD 07-H109.2A CMD 07-H109.2B
<ul style="list-style-type: none"><li>• Alberta Environment</li></ul>	CMD 07-H109.3

**Order:** Amended  
**Date of Decision:** May 16, 2007

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## Introduction

1. ESI Resources Ltd. (ESIRL) maintains a facility in Calgary, Alberta. Earth Sciences Extraction Company (ESEC) operates this facility under a limited partnership controlled by ESIRL. The facility was operated to recover uranium contained in phosphoric acid feedstock supplied by Western Co-operative Fertilizers Limited's (Westco) plant located adjacent to the facility. The facility is currently unlicensed. Westco owns the land on which ESIRL's facility is located, and ESIRL has a perpetual lease agreement with Westco.
2. The Westco fertilizer plant was shut down in 1987, at which time ESIRL terminated its operations at the facility. The facility was decontaminated except for the dryer room and the evaporation ponds, in accordance with the requirements of ESIRL's licence. The facility remained shut down until 1996, when it was modified and received an approval from Alberta Environment to purify imported phosphoric acid only. The uranium recovery part of the facility, the dryer room and the evaporation ponds, remained isolated from the rest of the phosphoric acid processing plant. Since that time, the ESIRL facility has been jointly regulated by the Canadian Nuclear Safety Commission<sup>1</sup> (CNSC) and Alberta Environment.
3. In 2001, the phosphoric acid purification operation was shut down. The uranium recovery part of the facility remained in a safe shutdown state, as confirmed by CNSC staff in an October 2005 inspection.
4. Following a hearing on November 30, 2005, the Commission issued 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.
5. ESIRL failed to file an adequate licence renewal application and the facility became unlicensed following the expiry of ESIRL's licence on July 31, 2006.
6. On August 30, 2006, the Designated Officer, pursuant to her authority under paragraph 37(2)(f) of the *Nuclear Safety and Control Act*<sup>2</sup> (NSCA), issued an Order to ESIRL. The Order required ESIRL to immediately comply with specific actions and measures identified in the Order, pursuant to section 41 of the NSCA. Among other actions and measures, ESIRL was ordered to complete the clean-up of the facility and submit a report to the Director General, Directorate of Nuclear Cycle and Facilities Regulation of the CNSC and provide the results of the final radiological survey conducted.

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<sup>1</sup> In this *Record of Proceedings*, 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.

<sup>2</sup> S.C. 1997, c. 9.

7. On September 5, 2006 pursuant to subsection 37(6) of the NSCA, the Designated Officer referred the Order to the Commission for review to confirm, amend, revoke or replace the Order. The purpose of the review is to provide the person named in or subject to the Order with an opportunity to be heard and to allow the Commission to take into consideration all information and evidence that will result in a fully informed decision.
8. Pursuant to paragraph 40(1)(d) of the NSCA, the Commission provided an opportunity to be heard to ESIRL, as the person named in and subject to the Order. The opportunity to be heard was originally scheduled for October 26, 2006 and was rescheduled until February 7, 2007, as ESIRL complied with the condition of the Order regarding the security of the site, and the facility did not pose a risk to the health and safety of the public or the environment.
9. In addition, due to their involvement with ESIRL, Westco and Alberta Environment expressed an interest in the matter and provided information for the Commission's consideration.
10. This *Record of Proceedings* describes the Commission's consideration of the participants' submissions on the Order, the review of the Order and the reasons for the decision.

#### Issue

11. 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

12. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to hear this matter.
13. The Panel of the Commission (hereafter referred to as the Commission), in making its decision, considered information presented for a proceeding held on February 7, 2007 in Ottawa, Ontario. During the proceeding, the Commission considered the Designated Officer Order, including information referred to in the Order, and received written submissions from CNSC staff (CMD 07-H109), ESIRL (CMD 07-H109.1) and Westco (CMD 07-H109.2). The Commission also considered oral presentations from CNSC staff and Westco.

14. The proceeding was conducted in accordance with Part 6 of the *Canadian Nuclear Safety Commission Rules of Procedure*<sup>3</sup>. The President of the Commission decided that it would not be prejudicial to ESIRL and would be in the public interest to carry out the proceeding in a public forum and thus the public was invited to observe the proceeding.
15. ESIRL was unable to participate in the hearing held on February 7, 2007. As such, the Commission needed more information before making a decision and decided to provide ESIRL with an opportunity to comment on the matters discussed during the proceeding. Further written submissions were received from ESIRL (CMD 07-H109.1A), Westco (CMD 07-H109.2A and CMD 07-H109.2B) and Alberta Environment (CMD 07-H109.3).

### **Decision**

16. 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, amends the Designated Officer Order issued to ESI Resources Limited on August 30, 2006.

17. The Commission amends the Order as recommended by CNSC staff in CMD 07-H109, with the exception that the date by which ESIRL must submit its plan as explained in the Actions and Measures of the Order, October 16, 2006, be changed to August 31, 2007.
18. In addition, ESIRL shall submit to CNSC staff a monthly report on the compliance activities it has taken under the Order. In the event of ESIRL becoming aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*<sup>4</sup>, ESIRL shall submit a written report to the Commission of the location and circumstances of the situation and of any action that ESIRL has taken or proposes to take with respect to it.

### **Issues and Commission Findings**

19. 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. In this regard, and as elaborated further below, the Commission is satisfied that the Designated Officer, based on the

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<sup>3</sup> S.O.R./2000-211.

<sup>4</sup> S.O.R./2000-202.

information available, had sufficient evidence and a reasonable basis for issuing an Order to protect the environment until the matter could come before the Commission.

*Actions and Measures of the Order*

20. The Commission considered the four actions and measures identified in the Order. These actions include the following:
  - the maintenance of required physical security arrangements;
  - the completion of clean-up by November 30, 2007, as outlined in the Order;
  - the submission of a plan by August 31, 2007, which includes a schedule to perform all work identified in the previous two actions; and
  - receiving a written acceptance of this plan from CNSC staff.
21. The Commission is of the opinion that the actions and measures identified in the Order are adequate to protect the health and safety of the public and the environment.

*Basis of the Order*

22. The Commission considered the information on which the Order was based, as identified in the Order, as well as the submissions from CNSC staff, ESIRL, Westco and Alberta Environment.
23. CNSC staff stated that in February 2006, ESIRL submitted an application for a licence renewal. CNSC stated that it had notified ESIRL of deficiencies in ESIRL's application and requested that a revised application be submitted before March 15, 2006. CNSC staff stated that ESIRL did not submit any additional information, and on July 31, 2006, ESIRL's licence expired. CNSC staff noted that the facility is not currently licensed to possess and store uranium contaminated material, pursuant to section 24 of the NSCA.
24. In its submission, Alberta Environment stated that it had repeatedly informed ESIRL that an approval under the *Environmental Protection and Enhancement Act*<sup>5</sup> is required for the facility and ESIRL needs to apply for a renewal of the approval. Alberta Environment stated that ESIRL's approval expired on September 30, 2006 and it has not received any application for renewal. Alberta Environment stated that ESIRL is in non-compliance with provincial legislation.
25. CNSC staff stated that it conducted an inspection of the facility in June 2006. CNSC staff reported that the samples that were taken and analyzed revealed uranium contamination inside the dryer room and evaporation ponds, but the site did not pose an unreasonable risk to the health and safety of persons or the environment at that time.

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<sup>5</sup> R.S.A. 2000, c. E-12.

26. CNSC staff stated that once the site became unlicensed, the requirement to take necessary measures under the NSCA was not enforceable. As the unlicensed site may cause an unreasonable risk to the health and safety of persons and the environment, CNSC staff issued the Order to ESIRL to take the specified actions and measures to protect workers, the public and the environment. In the Order, CNSC staff required that ESIRL decontaminate the dryer room and two evaporation ponds and dispose of all uranium-contaminated waste materials to a CNSC-approved site to prevent any potential safety, health, security and environmental concerns in the future.
27. In its October 2006 submission, ESIRL stated that the facility is being maintained in minimum operation mode, with full security and maintenance, as required by the Order.
28. During the proceeding, the Commission asked CNSC staff if the site was safe and the security of the site was being maintained. CNSC staff responded that it had conducted inspections of the facility and determined that is the case.
29. In its April 2007 submission, Westco stated that it had been informed by the electricity provider (ENMAX) that ESIRL was in arrears of payment of its electricity account and ENMAX intended to take steps to cut off electricity to the ESIRL facility. Westco stated that the electricity to the site was cut off on April 17, 2007. Westco expressed concern that the lack of electricity may negatively impact ESIRL's ability to maintain security of the facility.
30. Based on the above information, the Commission agrees with CNSC staff's conclusions that the continued presence of uranium contaminated material at the ESIRL unlicensed site may cause unreasonable risk to the workers, the public and the environment.
31. The Commission is of the opinion that the Order, as amended, reflects the need for ESIRL to address the issues related to the decontamination of the dryer room and two evaporation ponds, as well as the disposal of all uranium contaminated waste materials to a CNSC approved site to prevent any potential safety, health, security and environmental concerns in the future.

*Ownership and Responsibility for the Disposal of Materials*

32. In its submission, ESIRL stated that, in respect to the ownership of the materials it is maintaining at the ESIRL facility, it does not own the lands upon which the materials are placed and secured, and that the substances, both licensed and unlicensed, are owned by Westco. ESIRL stated that it is of the opinion that it does not have the final responsibility for the materials addressed in the Order, and that those materials remain the property of Westco.



33. Westco stated that the relationship between ESIRL and Westco is governed by a Uranium Extraction Agreement (UEA). Westco stated that, pursuant to the UEA, Westco owned the phosphoric acid and ESIRL owned any uranium and other compounds extracted from the phosphoric acid. Westco was of the opinion that the materials extracted from phosphoric acid are the responsibility of ESIRL. Westco stated that it believes that ESIRL has responsibility for all materials and contaminants on the lease, and is responsible for the decontamination and decommissioning of the entire facility.
34. Westco also stated that it is in litigation with ESIRL over the termination of the perpetual lease. Westco explained that the term of the lease and the use of the leased lands were linked directly with the operation of the facility. Westco stated that in the event of the termination of the lease, ESIRL has the obligation to remove all equipment and structures from the site. Westco stated that it is of the opinion that the termination of the lease does not relieve ESIRL from its obligations to comply with the Order.
35. In a letter attached to the Order, Westco raised concerns related to ESIRL's financial capability to fulfill decommissioning requirements. The Commission inquired about the extent of costs for decommissioning. CNSC staff responded that ESIRL's most recent assessment of decommissioning and associated decommissioning costs, conducted in 2006, was \$1.7 million. Westco stated that the Preliminary Decommissioning Plan and Reclamation Cost Estimate, prepared by Golder Associates on Westco's behalf, placed the cost at \$2.86 million.
36. The Commission is of the opinion that, at this time, ESIRL is responsible for the decommissioning of the facility under the NSCA and the Order. The Commission notes that, as the person named in the Order, ESIRL must comply with the Order, pursuant to section 41 of the NSCA.
37. The Commission further notes that ESIRL shall submit to CNSC staff a monthly report on the compliance activities it has taken under the Order. In the event of ESIRL becoming aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*, ESIRL shall submit a written report to the Commission of the location and circumstances of the situation and of any action that ESIRL has taken or proposes to take with respect to it.

### **Conclusion**

38. The Commission has considered the information and submissions as presented in the material available for reference on the record for the proceeding.
39. The Commission, pursuant to subsection 37(6) of the NSCA, amends the Designated Officer Order issued to ESIRL on August 30, 2006.

40. The Commission amends the Order as recommended by CNSC staff in CMD 07-H109, with the exception that the date by which ESIRL must submit its plan as explained in the Actions and Measures of the Order, October 16, 2006, be changed to August 31, 2007.
41. In addition, ESIRL shall submit to CNSC staff a monthly report on the compliance activities it has taken under the Order. In the event of ESIRL becoming aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*, ESIRL shall submit a written report to the Commission of the location and circumstances of the situation and of any action that ESIRL has taken or proposes to take with respect to it.

Linda J. Keen,  
President  
Canadian Nuclear Safety Commission

Date of decision: May 16, 2007

Date of release of Reasons for Decision: June 20, 2007