

Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant Shield Source Inc.

Subject Application to Extend the Deadline for Providing
a Decommissioning Financial Guarantee for
Shield Source Inc.'s Tritium Light Source Facility
in Peterborough, Ontario

Date March 31, 2006

RECORD OF PROCEEDINGS

Applicant: Shield Source Inc.

Address/Location: R.R. #5, Municipal Airport, Peterborough, ON, K9J 6X6

Purpose: Application to extend the deadline for providing a decommissioning financial guarantee for Shield Source Inc.'s tritium light source facility in Peterborough, Ontario

Application received: February 3, 2006

Date(s) of hearing: February 15, 2006

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

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

Secretary: M.A. Leblanc
Recording Secretary: P.D. Bourgeau
General Counsel: J. Lavoie

Applicant Represented By	Document Number
• B. Lynch, President	CMD 06-H101.1
CNSC staff	Document Number
• K. Pereira • H. Rabski	CMD 06-H101

Licence: Amended
Date of Decision: February 15, 2006

Table of Contents

1. Introduction	- 1 -
2. Decision	- 2 -
3. Issues and Commission Findings	- 2 -
3.1 Provision of a Financial Guarantee	- 2 -
3.2 Operating Performance	- 4 -
3.3 Canadian Environmental Assessment Act	- 4 -
4. Conclusion	- 4 -

1. Introduction

Shield Source Incorporated (SSI) has applied to the Canadian Nuclear Safety Commission (CNSC¹) for an amendment of its licence that would extend the deadline for the provision of a financial guarantee for the decommissioning of the facility. The existing licence condition 10.1 requires that a financial guarantee, acceptable to the Commission, or person authorized by the Commission be in place prior to December 31, 2005. SSI has requested that the deadline be changed to December 31, 2006.

Under Nuclear Substance Processing Facility Operating Licence NSPFOL-12.02/2009, SSI operates a facility for the manufacturing of self-luminescent gaseous tritium light sources in Peterborough, Ontario.

Issues

In considering the application, the Commission was required to decide, pursuant to subsection 24(4) of the *Nuclear Safety and Control Act*² (NSCA),

- a) if SSI is qualified to carry on the activity that the amended licence would authorize; and
- b) if, in carrying on that activity, SSI would make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.

Hearing

Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to hear the application.

The Panel of the Commission (hereafter referred to as the Commission), in making its decision, considered information presented for a hearing held on February 15, 2006 in Ottawa, Ontario. The hearing was conducted in accordance with Rule 3 of the *Canadian Nuclear Safety Commission Rules of Procedure*³. In establishing the process, the Commission determined that it was not necessary to hold a public hearing on the matter. During the hearing, the Commission received written submissions and heard oral presentations from SSI (CMD 06-H101.1) and CNSC staff (CMD 06-H101).

¹ 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.

² S.C. 1997, c. 9

³ SOR/2000-211

2. Decision

Based on its consideration of the matter, as described in more detail in this *Record of Proceedings*, the Commission concludes that Shield Source Inc. is qualified to carry on the activity that the amended licence will authorize. The Commission is also satisfied that Shield Source Inc., in carrying on that activity, will make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed. Therefore,

the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, amends Nuclear Substance Processing Facility Operating Licence NSPFOL-12.02/2009 to extend the time limit for producing an acceptable decommissioning financial guarantee to December 31, 2006.

The Commission includes in the licence the conditions recommended by CNSC staff, as set out in the draft licence attached to CMD 06-H101.

3. Issues and Commission Findings

In making its licensing decision under section 24 of the NSCA, the Commission considered SSI's qualifications to carry out the proposed activities, and the adequacy of the measures for protecting the environment, the health and safety of persons, national security and international obligations to which Canada has agreed. In particular, the Commission considered the adequacy of SSI's provisions for complying with the CNSC's requirements for a financial guarantee for future decommissioning of the facility. The Commission's findings on these issues are summarized below.

3.1 Provision of a Financial Guarantee

On March 24, 2004 and July 8, 2004, the Commission held a public hearing on the matter of the renewal of the operating licence for SSI's facility. During that hearing, the Commission considered, among other things, the matter of a financial guarantee to cover the costs of the future decommissioning of the facility. The Commission required, by condition of the renewed licence, that SSI provide such a guarantee, acceptable to the Commission or a person authorized by the Commission, by June 30, 2005.

CNSC staff reported that SSI, in an effort to comply with the above-noted licence condition, explored different types of financial instruments recommended in CNSC Regulatory Guide G-206⁴, "*Financial Guarantees for the Decommissioning of Licensed Activities*" and as used by other licensees. In particular, SSI examined the possibility of Surety Bonds. SSI declared,

⁴ Regulatory Guide G-206 "*Financial Guarantees for the Decommissioning of Licensed Activities*", CNSC June 2000.

however, that neither Surety Bonds, nor any of the other examples of acceptable financial instruments described in section 5.2 of Regulatory Guide G-206 were available to SSI due to the nature of its business and how it is capitalized. In a letter to CNSC staff dated January 7, 2005, SSI proposed to meet the CNSC's requirement by establishing a defined contribution trust fund which would accumulate the necessary funds over time⁵.

CNSC staff reported that it rejected SSI's January 7, 2005 proposal and requested SSI to consider how the rate at which the trust fund would be built up could be enhanced and to provide further justification on SSI's inability to provide an acceptable form of financial guarantee.

CNSC staff further reported that SSI responded to the above request on May 25, 2005. In that response, SSI proposed a faster accumulation rate for the trust fund and projected that its decommissioning costs for its current facility would be lower, if and when SSI's planned relocation to future new premises nearby receives CNSC approval. SSI also reiterated why the other financial instruments are neither practical nor available to it in the circumstances. CNSC staff stated that it rejected this revised proposal on the basis that it did not conform to the criteria defined in subsection 5.1 of the Regulatory Guide G-206. To allow additional time to resolve the matter, SSI's licence was amended in June 2005⁶ to extend the deadline for providing an acceptable decommissioning financial guarantee until December 31, 2005.

On February 3, 2006, SSI subsequently applied for the deadline to put in place an acceptable financial guarantee to be further extended until December 31, 2006. That application is the subject of the current hearing.

In response to the Commission's questions on the contribution trust fund proposed by SSI, SSI reported that, while the matter is being reviewed by the CNSC staff, it proactively created a decommissioning fund to which it has been making regular contributions. SSI noted that, while the fund is not currently in a form that is secured from creditors, SSI is prepared to take such steps if the Commission so directs it.

The Commission notes SSI's efforts to cooperate with CNSC staff in an attempt to provide an acceptable financial guarantee, including SSI's initiative to begin to accumulate funds in the interim.

In examining the issues in this case, the Commission notes that, while licensees are expected to make all reasonable efforts to conform to Regulatory Guide G-206, the document is a guide and not mandatory in nature. Hence the Commission is prepared to consider, on a risk-informed basis, other achievable and practical arrangements that would fulfil the requirements under subsection 24(5) of the NSCA.

CNSC staff stated that it is currently examining the applicability of the CNSC's current guidance on decommissioning financial guarantees in all circumstances and whether alternative

⁵ SSI based its approach on the provision set out in section 3 of the Regulatory Guide G-206 "*Financial Guarantees for the Decommissioning of Licensed Activities*", CNSC June 2000.

⁶ Amended licence NSPFOL-12.01/2009.

approaches may be needed. Staff noted that some time is needed to examine and confirm the related policy issues.

Based on the information received, the Commission is satisfied that the proposed extension of the deadline for SSI to submit an acceptable decommissioning financial guarantee (i.e., until December 31, 2006) is justified and acceptable. The Commission appreciates the cooperation of, and initiative shown by, SSI in raising the issues and in working constructively with CNSC staff to arrive at an acceptable solution.

3.2 Operating Performance

The Commission sought further information on SSI's operations to confirm other aspects of SSI's qualifications to carry on the activity that the amended licence would authorize and, in doing so, make adequate provisions to protect the environment, persons, national security and Canada's international obligations. In response, CNSC staff stated that there are no other compliance or performance issues that would change the original assessment of qualifications and adequacy of provisions that the amended licence would authorize.

3.3 Canadian Environmental Assessment Act

While the amendment of a licence is a trigger under the *Canadian Environmental Assessment Act*⁷ (CEAA), the amendment is not of a type that would allow a project, as defined in the CEAA, to proceed. Therefore, the Commission is satisfied that an environmental assessment pursuant to the CEAA is not required before the Commission may consider and make a decision on the current licence application.

4. Conclusion

The Commission has considered the information and submissions of Shield Source Inc. and Canadian Nuclear Safety Commission staff as presented in the material available for reference on the record.

The Commission is satisfied that Shield Source Inc. is qualified to carry on the activity that the proposed amended licence will authorize. The Commission is also satisfied that Shield Source Inc. will make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and the measures required to implement international obligations agreed to by Canada.

The Commission therefore amends, pursuant to section 24 of the *Nuclear Safety and Control Act*, the Nuclear Substance Processing Facility Operating Licence (NSPFOL-12.02/2009) held by Shield Source Inc., Peterborough, Ontario, to extend the time limit for provision of an acceptable

⁷ S.C. 1992, c. 37

financial guarantee for the decommissioning of the facility. The amended deadline is December 31, 2006.

The Commission includes in the licence the conditions recommended by CNSC staff, as set out in the draft licence attached to CMD 06-H101.

Marc A. Leblanc
Secretary,
Canadian Nuclear Safety Commission

Date of decision: February 15, 2006
Date of release of Reasons for Decision: March 31, 2006