



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

In the Matter of

Applicant Best Theratronics Limited

Subject *Amendment under Section 25 of the Nuclear Safety and Control Act and Request for Acceptance of the Financial Guarantee*

Decision Date July 14, 2017

RECORD OF DECISION

Purpose: Amendment under Section 25 of the *Nuclear Safety and Control Act* and Request for Acceptance of the Financial Guarantee

Date of decision: July 14, 2017

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

Member present: M. Binder, Chair

Licence: Amended

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1.0 INTRODUCTION

1. The Canadian Nuclear Safety Commission¹ (CNSC), under section 25 of the *Nuclear Safety and Control Act*² (NSCA), is considering amending, on its own motion, the licence for Best Theratronics Limited (BTL) to modify the licence condition related to BTL's financial guarantee. The financial guarantee was submitted pursuant to licence condition 1.3 of BTL's Nuclear Substance Processing Facility Operating Licence NSPFOL-14.01/2019. The current licence condition 1.3 states that "the licensee shall maintain a financial guarantee for decommissioning acceptable to the Commission by April 30, 2015".
2. The Commission may require, under subsection 24(5) of the NSCA, that the operators of nuclear facilities establish and maintain acceptable financial guarantees for the ultimate decommissioning of their facilities.
3. BTL is a medical device manufacturing company that was initially a part of Atomic Energy of Canada Ltd. It then became a separate Crown corporation under the name "Theratronics". In the 1990s, the company was purchased by MDS Nordion Inc. In 2008, the company was sold by MDS Nordion Inc. to a private investor and became BTL. BTL manufactures medical equipment including cobalt-60 (Co60) radiation cancer treatment units, as well as caesium-137 (Cs137) and x-ray-based blood irradiators. The licensed activities include the operation of a cyclotron/accelerator, the operation of a nuclear substance processing facility, and the operation of a radioactive source teletherapy machine.
4. The BTL current five-year licence was issued after the Commission hearing held on May 8, 2014. At the time of the hearing, a financial guarantee was not established. Consequently, the Commission required BTL to have a financial guarantee for the future decommissioning of the facility in place by January 31, 2015. After a hearing held on January 30, 2015³, the Commission amended the BTL licence to provide that an acceptable financial guarantee for the future decommissioning of the BTL Class 1B Nuclear Processing Facility in Ottawa in the amount of \$4.01M be in place by April 30, 2015. After another hearing held on March 25⁴, 2015, BTL obtained the authorization to change the financial guarantee so that the entire amount of the financial guarantee would be implemented through a letter of credit, and that the financial guarantee would be implemented gradually, through a phased approach.
5. On August 24, 2015, a CNSC Designated Officer issued an Order (the Order) to address BTL's failure to comply with licence condition 1.3 of NSPFOL-14.01/2019. BTL had failed to provide the first of four scheduled installments to implement the financial

¹ 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 Statutes of Canada (S.C.) 1997, chapter (c.) 9.

³ *Record of Proceedings, Including Reasons for Decision*, in the Matter of Best Theratronics Ltd., *Application to amend the Class 1B Nuclear processing Facility Operating Licence*, CNSC, 2015.

⁴ *Record of Proceedings, Including Reasons for Decision*, in the Matter of Best Theratronics Ltd., *Application for the Acceptance of the Financial Guarantee*, CNSC, March 25, 2015.

guarantee by the predetermined deadline of July 31, 2015. The Commission subsequently amended the Order twice, on September 28, 2015⁵ and on February 29, 2016⁶. The result of this enforcement action was that, effective October 1, 2016, BTL was not authorized to possess sealed sources, prescribed equipment containing radioactive sources or depleted uranium at the BTL facility in a quantity that would have disposal costs in excess of the established value of the financial guarantee.

6. To meet the conditions of the Order and reduce the amount of the financial guarantee, BTL has been progressively reducing its inventory of nuclear substances and increasing the financial guarantee amount. Up to March 28, 2017, the total value of the Letters of Credit (LoCs) provided by BTL was \$936,000.00. This amount was sufficient to cover the costs of safely disposing of the sealed sources, prescribed equipment and depleted uranium currently at the BTL site, and place the facility in a safe state, but not for the complete decommissioning of the site.
7. BTL proposes to fund the proposed financial guarantee by increasing the quantum of the existing LoCs for a total amount of \$1,800,000.00, which ensures that the licensee will have sufficient funds for decommissioning to unrestricted general industrial use of the facility.

Issue

8. Pursuant to section 25 of the NSCA and paragraph 8(2)(c) of the GNSCR, the Commission may amend a licence on its own motion if the licensee has failed to comply with the Act, the regulations made under the Act or the licence. Pursuant to subsection 24(5) of the NSCA, a licence may contain any term and condition that the Commission considers necessary for the purposes of the Act, including a condition that the applicant provide a financial guarantee in a form that is acceptable to the Commission. In considering this matter, the Commission had therefore to determine whether:
 - a) subsection 8(2)(c) of the GNSCR was applicable for the licence amendment considered
 - b) the amount and form of the financial guarantee proposed by BTL would satisfy condition 1.3 of licence NSPFOL-14.01/2019

Panel

9. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to review this matter. Pursuant to paragraph 40(1)(b) of the NSCA, BTL was provided with an opportunity to be heard, in writing, on this proposed licence

⁵ Record of Proceedings, Including Reasons for Decision, In the Matter of Best Theratronics Ltd., *Review by the Commission of the Designated Officer Order Issued on August 24, 2015*, September 10, 2015

⁶ Record of Proceedings, Including Reasons for Decision, In the Matter of Best Theratronics Ltd., *Redetermination, under subsection 43(3) of the Nuclear Safety and Control Act, of the Order issued by the Commission on September 28, 2015*, February 29, 2016,

amendment. BTL has determined that it did not wish to take advantage of the opportunity to be heard on this matter. The Commission considered written submissions from CNSC staff (CMD 17-H103 and CMD 17-H103.A).

2.0 DECISION

10. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission concludes that, pursuant to paragraph 8(2)(c) of the GNSCR, BTL has failed to comply with licence condition 1.3 as currently written. Therefore, the Commission:

pursuant to section 25 of the *Nuclear Safety and Control Act*, amends the Nuclear Substance Processing Facility Licence NSPFOL-14.01/2019 issued to BTL. The amended licence, NSPFOL-14.02/2019, is valid until June 30, 2019.

11. The Commission amends licence condition 1.3 to the following:

“The licensee shall maintain a financial guarantee for decommissioning acceptable to the Commission.”

12. The Commission accepts the proposed financial guarantee.

3.0 ISSUES AND COMMISSION FINDINGS

3.1 Review of the Preliminary Decommissioning Plan

13. The Commission notes that BTL’s Preliminary Decommissioning Plan (PDP) includes the removal of all radioactive substances and decommissioning of all non-radioactive hazardous materials used during its operations, and that the end point for the decommissioning is the unrestricted general industrial use of the facility.
14. The Commission recognizes that BTL has revised its PDP due to the significant decrease in the number of sealed sources, prescribed equipment, and depleted uranium due to the Order, and that this revised PDP includes a cost estimate of \$1.8 million. CNSC staff has reviewed the PDP and considers it acceptable.

3.2 Financial Guarantee

15. The Commission notes that BTL has proposed to fund its financial guarantee obligation in the form of Letters of Credit (LoCs). CNSC staff reviewed that financial instrument and confirmed that it meets the criterion for liquidity, certainty of value, adequacy of

value, and continuity as set out in Regulatory Guide G-206, *Financial Guarantees for the Decommissioning of Licensed Activities*⁷.

16. BTL proposes to fund the proposed financial guarantee by increasing the quantum of the existing LoCs. The Commission recognizes that the CNSC has received LoCs from Bank of Montreal (BMO) (\$236,000.00) and from ICICI (\$1,564,000.00), for a total amount of \$1,800,000.00, which ensures that the licensee will have sufficient funds for decommissioning to unrestricted general industrial use of the facility.
17. The Commission notes that BTL stores a number of sealed sources at Nordion Canada Inc. (Nordion), and that the estimated cost for the disposal of all of BTL's sources is \$433,300.00. The Commission recognizes that the disposal cost of the BTL sources stored at the Nordion facility is covered by Nordion's financial guarantee, and that those sources would only be returned to the BTL site once BTL has fully implemented its financial guarantee.
18. The Commission notes that CNSC staff reviewed BTL's financial instruments in the form of the increased values for the existing LOCs, and CNSC staff is of the view that the cost estimate of \$1.8 million is sufficient to cover all of the decommissioning activities for this facility, including the BTL sources stored at the Nordion facility. The Commission concurs with CNSC staff and accepts the financial guarantee in the amount of \$1.8 million.
19. The Commission also notes that BTL's proposed financial guarantee will be reviewed and revised by BTL every five years or when the Commission so requires, or following a revision of the PDP. BTL will be required to annually report that the financial guarantee remains valid, in effect, and adequate to fund the decommissioning of the facility.

3.3 Licence Amendment

20. The Commission notes that licence condition 1.3 required the acceptance of the financial guarantee by April 30, 2015.
21. The Commission may, pursuant to section 25 of the NSCA and paragraph 8(2)(c) of the GNSCR, amend, on its own motion, licence condition 1.3 of NSPFOL-14.01/2019, as BTL has failed to comply with that condition of its licence.
22. CNSC staff noted that, if the Commission accepts BTL's proposed financial guarantee, then BTL will be in compliance with the regulatory requirement to maintain a financial guarantee acceptable to the Commission, and the current wording of licence condition 1.3 would no longer be appropriate.

⁷ CNSC Regulatory Guide G-206, *Financial Guarantees for the Decommissioning of Licensed Activities*, June 2000.

23. The Commission notes that CNSC staff has recommended that licence condition 1.3 of NSPFOL-14.01/2019 be amended as follows to better reflect the current condition of the facility:

“The licensee shall maintain a financial guarantee for decommissioning acceptable to the Commission.”

This proposed licence condition is the standard one for financial guarantees used in all Class I licences issued by the Commission.

24. The Commission accepts CNSC staff’s recommendation to amend licence condition 1.3. The Commission notes that this licence amendment would not authorize new activities at the BTL facility and therefore, there would be no changes that would impact the environment, the health and safety of persons or the maintenance of national security.

3.4 Order

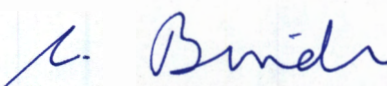
25. With this financial guarantee in place, the Commission notes that the amount of the financial guarantee is sufficient to cover the costs of safely disposing of the sealed sources, prescribed equipment and depleted uranium currently at the BTL site and at Nordion, and for the complete decommissioning of the site. The Commission therefore considers that all of the conditions of the Order have been met and closes this Order.

4.0 CONCLUSION

26. The Commission has considered the information and submissions from CNSC staff. Therefore, the Commission amends licence condition 1.3 of NSPFOL-14.01/2019 to:

“The licensee shall maintain a financial guarantee for decommissioning acceptable to the Commission.”

27. The Commission accepts the amount of \$1.8 million for the financial guarantee for the decommissioning of the BTL facility, and also accepts the amended LoCs as the instrument of the financial guarantee.
28. The Commission directs CNSC staff to inform the Commission of any non-conformity with the financial guarantee instrument.
29. The Commission considers the Order to be closed.



Michael Binder
President,
Canadian Nuclear Safety Commission

JUL 14 2017

Date