

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – August 23, 2022

IN THE MATTER OF sections 91, 92, 94, 95 and 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Normtek Radiation Services Ltd. with respect to the decision of the Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue EPEA Approval No. 48516-02-00 to Secure Energy Services Inc.

Cite as: *Normtek Radiation Services Ltd. v. Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks, re: Secure Energy Services Inc.* (23 August 2022), Appeal Nos. 16-024, 19-111 and 21-018-R (A.E.A.B.), 2022 ABEAB 35.

BEFORE:

Ms. Anjum Mullick, Acting Chair.

PARTIES:

Appellant: Mr. Cody Cuthill, Normtek Radiation Services Ltd., represented by Mr. Shaun Fluker and Mr. Drew Yewchuk, Public Interest Law Clinic, University of Calgary.

Approval Holder: Mr. Ian Radzichowsky, Secure Energy Services Inc., represented by Ms. Allison Sears, Fasken Martineau DuMoulin LLP.

Director: Mr. Mike Aiton, Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks, represented by Ms. Meagan Bryson and Mr. Paul Maas, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Secure Energy Services Inc. (the Approval Holder) applied for a renewal of an approval to operate its Pembina Hazardous Waste Landfill issued by Alberta Environment and Parks (AEP) under the *Environmental Protection and Enhancement Act* (EPEA). AEP issued the renewed approval. Normtek Radiation Services Ltd. (the Appellant) filed a Notice of Appeal with the Environmental Appeals Board (the Board), appealing the renewal of the approval and several of the approval's conditions.

The Board held a mediation meeting with the Approval Holder, the Appellant, and AEP (the Parties). At the mediation meeting, the Parties were able to reach an agreement on the issues in the appeal whereby the Parties requested the Board issue a Report and Recommendations to the Minister, recommending that the approval be varied to implement the Parties' agreement.

The Board agreed and requested the Minister vary the approval in accordance with the mediated agreement.

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I. BACKGROUND

[1] On July 14, 2016, the Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”), issued Approval No. 486516-01-04 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), to Secure Energy Services Inc. (the “Approval Holder”). The Approval authorized the Approval Holder, who operates the Pembina Area Landfill, a Class I Hazardous Waste Landfill near Drayton Valley, Alberta (the “Landfill”), to begin accepting naturally occurring radioactive material (“NORM”) below specified activity levels (levels of radiation) for disposal in the Landfill.¹

[2] Normtek Radiation Services Ltd. (“Appellant”) filed a Notice of Appeal on July 28, 2016 in relation to Approval No. 486516-01-04 with the Environmental Appeals Board (the “Board”).² The Approval Holder filed a preliminary motion to have the Appellant’s appeal dismissed on the basis of the Appellant was not directly affected by the Director’s decision to issue the Approval. The Board dismissed Normtek’s appeal after concluding that neither Normtek nor Mr. Cuthill were directly affected by the decision to issue the Approval.³

¹ According to Alberta Labour:

“Although the concentration of NORM in most natural substances is so low that this risk is generally regarded as negligible, higher concentrations may arise as the result of industrial operations such as:

- *mineral extraction and processing* - NORM may be released or concentrated in a process stream during the processing of ore...;
- *oil and gas production* - NORM may be found in the fluids and gases from hydrocarbon-bearing geological formations;
- *metal recycling* - NORM-contaminated materials are redistributed to other industries...;
- *forest products and thermal-electric production* - mineral ashes left from combustion may concentrate small amounts of NORM naturally present in plant material and coal;
- *water treatment facilities* - fresh or wastewater is treated ... to remove minerals and other impurities from the water being treated and may release radon...;
- *tunneling and underground working* - in areas where small amounts of indigenous radioactive minerals or gases may be present....”

See: OHS Code Explanation Guide 2018, Part 20 Radiation Exposure (Alberta Labour: 2020) at <https://www.qp.alberta.ca/documents/OHS/OHSCodeExplanationGuide.pdf>.

² This appeal was filed with the Board and numbered as EAB Appeal No. 16-024.

³ *Normtek Radiation Services Ltd. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Secure Energy Services Inc.* (2 March 2018), Appeal No. 16-024-D (A.E.A.B.) (“*Normtek Radiation Services Ltd.*”).

[3] On January 3, 2019, the Director extended the expiry date of the Approval for one year under section 69(1) of EPEA.⁴

[4] On March 4, 2020, the Director extended the expiry date of the Approval for a further year. On March 20, 2020, the Appellant filed a notice of appeal with the Board,⁵ appealing the Director's March 4, 2020 decision to extend the Approval (see: Approval No. 48516-01-07).

[5] On December 11, 2020, in *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, the Alberta Court of Appeal overturned the Board's standing decision in *Normtek Radiation Services Ltd.* and remitted the matter of the Appellant's standing in the appeal of the Approval back to the Board.

[6] On March 26, 2021, the Director extended the expiry date of the Approval for a further four months, and later extended the expiry date of the Approval by an additional two months on July 28, 2021.

[7] Between March 5 and April 16, 2021, the Board received submissions from the Appellant, the Approval Holder and the Director (the "Parties"), regarding the Appellant's standing to appeal the Approval.

[8] On September 30, 2021, the Director issued Approval No. 48516-02-00 to the Approval Holder authorizing the continued construction, operation, and maintenance of the Pembina Area Landfill, consisting of a Class I and Class II Landfill, where more than 10,000 tonnes per year of hazardous and non-hazardous waste may be disposed. Approval No. 48516-02-00 continues to permit the disposal of NORM waste below specified activities at the Landfill.

[9] On November 22, 2021, the Board advised the Parties it had reviewed their submissions and determined the Appellant was directly affected by the Director's decision to issue Amending Approval No. 48516-01-04, Amending Approval No. 48516-01-07, and Approval No. 48516-02-00, and reasons for the Board's decision would follow.

⁴ Section 69(1) of EPEA provides: "The Director may extend the expiry date, if any, of an approval or registration for one or more periods of not more than one year each."

⁵ This notice of appeal was filed with the Board and numbered as EAB Appeal No. 19-111.

[10] On December 6, 2021, the Board requested the Parties provide submissions on the potential issue of the mootness of EAB Appeal Nos. 16-024 and 19-111, as the Approval expired on March 31, 2021.

[11] On December 17, 2021, the Parties provided submissions to the Board on the issue of the mootness of EAB Appeal Nos. 16-024 and 19-111. On January 13, 2022, the Board advised the Parties that the Board had determined that EAB Appeal 16-024 was moot. The Board further advised the Parties that it would hear arguments with respect to EAB Appeal No. 19-111. The Board stated it would provide reasons for the decisions.

[12] On March 11, 2022, the Director provided a copy of the documents upon which the Director relied upon when making his decision to issue Approval No. 48516-02-00 to the Board (the “Director’s Record”). The Director’s Record was subsequently provided to the Parties.

[13] On March 31 and April 1, 2022, the Parties exchanged correspondence with the Board indicating their mutual interest in mediating the issues in the appeal.

[14] The Board held mediation meetings between the Parties on May 31, June 9, June 24, and July 15, 2022, via video conference, with a Board member appointed as the mediator.

[15] The mediation meeting resulted in an agreement between the Parties and a request to the Board to recommend the Minister of Environment and Parks (the “Minister”) vary the Approval No. 48516-02-00 according to the agreement.

II. DISCUSSION

[16] The Board reviewed the agreement reached by the Parties and agreed it was reasonable to recommend that Approval No. 48516-02-00 be varied.

III. RECOMMENDATIONS

[13] As requested by the Appellant and the Approval Holder, the Board generally recommends to the Minister that there should be a review of the regulation of radioactive wastes, including NORMs, in Alberta. The review should include Alberta Environment and Parks, the Alberta Energy Regulator, waste generators, waste receivers, and also include consideration of how best to address potential impacts of NORM waste on future generations.

[14] Further, in accordance with section 99 of EPEA⁶ and in accordance with the agreement reached by the Parties, the Board specifically recommends the Minister order Approval No. 48516-02-00 be varied as follows:

1. Condition 1.1.2 is amended by:
 - (a) deleting subclause (tt3) and replacing it as follows:

“(tt3) “bulk form” means NORM waste that is not packaged in a type IP-1 container; with respect to the acceptance of NORM waste means: without limitation, uniformly dispersed naturally occurring radioactive material in waste such as tank bottoms, pad waste, natural source materials, and filters. NORM scaling on surface contaminated objects shall also be treated as bulk form, for the purposes of waste acceptance under this approval, by representative sampling of the scale or other forms of NORM contamination and by excluding the weight of the equipment.”

- (b) by adding the following after subclause (tt3):

“(tt4) “surface contaminated objects” with respect to acceptance of NORM waste and disposal under the approval means: a solid object such as plastic or metal which is not itself radioactive but which has radioactive material distributed on its surface.”

⁶ Section 99 of EPEA provides:

“In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it.”

2. Condition 4.4.26(b) is amended by deleting “reinforced”.
3. The following is added after Condition 4.4.26:
“4.4.26.1 The approval holder shall only accept surface contaminated objects that have either undergone attempted decontamination or are not suitable for decontamination as outlined in the decontamination of surface contaminated objects declaration that must be submitted with all surface contaminated objects.”
4. Condition 4.4.3 is deleted and replaced as follows:
“4.4.3 The approval holder shall not dispose of the following at the landfill:
 - (a) explosives (Class 1 *Transportation of Dangerous Goods Regulation* (TDGR) wastes);
 - (b) radioactive material falling within the meaning of Class 7 radioactive material under the TDGR and regulated under the *Nuclear Safety and Control Act* (Canada) and the PTNSR;
 - (c) biological, biomedical and/or pathological waste (as defined in the *Waste Control Regulation*, AR 192/96, as amended);
 - (d) waste containing free liquids (as determined by the US EPA Method 9095 Paint Filter Liquids Test, specified in Test Methods for Evaluating Solid Wastes Physical/Chemical Methods, US EPA Publication No. SW-846, as amended);
 - (e) material containing ozone depleting substances; and
 - (f) domestic wastewater.Source material containing NORM that has not been identified in the application, unless acceptance is authorized in writing by the Director.”

[15] Under section 100(2) of EPEA,⁷ copies of this report and recommendations and any decision by the Minister are to be provided to:

1. Mr. Shaun Fluker and Mr. Drew Yewchuk, Public Interest Law Clinic, University of Calgary, on behalf of Mr. Cody Cuthill, Normtek Radiation Services Ltd;

⁷ Section 100(2) of EPEA states:

“The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.”

2. Ms. Allison Sears, Fasken Martineau DuMoulin LLP, on behalf of Mr. Ian Radzichowsky, Secure Energy Services Inc.; and
3. Ms. Meagan Bryson and Mr. Paul Maas, Alberta Justice and Solicitor General, on behalf of the Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks.

Dated on August 23, 2022 at Edmonton, Alberta.

-original signed-

Anjum Mullick
Acting Board Chair



ALBERTA

ENVIRONMENT AND PARKS

*Office of the Minister
MLA, Calgary-Glenmore Constituency Office*

**Ministerial Order
57 /2022**

*Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12*

Order Respecting Environmental Appeals Board Appeal Nos. 16-024, 19-111, and 21-018

I, Whitney Issik, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 16-024, 19-011, and 21-018.

Dated at the City of Edmonton, in the Province of Alberta, this 15 day of September, 2022.


Whitney Issik
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 16-024, 19-011, and 21-018

With respect to the decision of the Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks (the "Director"), to issue Approval No. 48516-02-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Secure Energy Services Inc., I, Whitney Issik, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Approval is varied as follows.

2. Condition 1.1.2 is amended by:

(a) deleting subclause (tt3) and replacing it as follows:

"(tt3) "bulk form" means NORM waste that is not packaged in a type IP-1 container; with respect to the acceptance of NORM waste means: without limitation, uniformly dispersed naturally occurring radioactive material in waste such as tank bottoms, pad waste, natural source materials, and filters. NORM scaling on surface contaminated objects shall also be treated as bulk form, for the purposes of waste acceptance under this approval, by representative sampling of the scale or other forms of NORM contamination and by excluding the weight of the equipment."

(b) by adding the following after subclause (tt3):

"(tt4) "surface contaminated objects" with respect to acceptance of NORM waste and disposal under the approval means: a solid object such as plastic or metal which is not itself radioactive but which has radioactive material distributed on its surface."

3. Condition 4.4.26(b) is amended by deleting "reinforced".

4. The following is added after condition 4.4.26:

"4.4.26.1 The approval holder shall only accept surface contaminated objects that have either undergone attempted decontamination or are not suitable for decontamination as outlined in the decontamination of surface contaminated objects declaration that must be submitted with all surface contaminated objects."

5. Condition 4.4.3 is deleted and replaced as follows:

"The approval holder shall not dispose of the following at the landfill:

- (a) explosives (Class 1 *Transportation of Dangerous Goods Regulation* (TDGR) wastes);
- (b) radioactive material falling within the meaning of Class 7 radioactive material under the TDGR and regulated under the *Nuclear Safety and Control Act* (Canada) and the PTNSR;

- (c) biological, biomedical and/or pathological waste (as defined in the *Waste Control Regulation*, AR 192/96, as amended);
- (d) waste containing free liquids (as determined by the US EPA Method 9095 Paint Filter Liquids Test, specified in Test Methods for Evaluating Solid Wastes Physical/Chemical Methods, US EPA Publication No. SW-846, as amended);
- (e) material containing ozone depleting substances; and
- (f) domestic wastewater.

Source material containing NORM that has not been identified in the application, unless acceptance is authorized in writing by the Director.”