

COURT FILE NUMBER 1701 - 00469

COURT COURT OF QUEEN'S BENCH OF ALBERTA

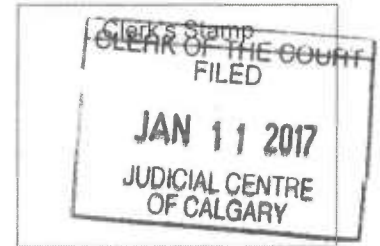
JUDICIAL CENTRE CALGARY

APPLICANT(S) NORMTEK RADIATION SERVICES LTD.

RESPONDENT(S) ALBERTA ENVIRONMENTAL APPEALS BOARD and SECURE ENERGY SERVICES INC. and DIRECTOR OF ALBERTA ENVIRONMENT AND PARKS

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT SHAUN FLUKER, Barrister & Solicitor
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NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Date: Monday March 6, 2017

Time: 10:00 am

Where: Calgary Court Centre, 601 – 5th Street SW, Calgary, AB T2P 5P7

Before: Justice in Motions Court

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicant is a corporation whose business is specialized in the management of radioactive waste with operations predominately in Western Canada.
2. On August 24, 2014 the Applicant filed a statement of concern under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 concerning an application by Secure Energy Services for approval to accept radioactive materials for landfill disposal.
3. On November 25, 2014 the Director of Alberta Environment and Parks dismissed the Applicant's statement of concern on the ground that the Applicant is not directly affected by the proposed project. The Director stated the Applicant is not directly affected because its place of residence is outside the area of environmental impact associated with the proposed project.
4. The Director of Alberta Environment and Parks issued Amending Approval No 48516-01-04 to Secure Energy Services on July 14, 2016 (the "Approval") under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 (EPEA).
5. On July 28, 2016 the Applicant filed a notice of appeal with the Alberta Environmental Appeals Board (the "Board") concerning the Approval under section 91(1)(a) of EPEA.
6. On October 13, 2016 the Board dismissed the Applicant's appeal because the Applicant is not directly affected by the Approval (the "Standing Decision").
7. This is an application brought for judicial review of the Standing Decision under the *Alberta Rules of Court*, Alta Reg 124/2010.
8. The Applicant seeks an Order finding the Board erred in law and the Standing Decision is either incorrect or unreasonable.
9. The Board erred in law and the Standing Decision is either incorrect or unreasonable on the following substantive grounds:
 - a. the Board denied the Applicant's right to natural justice and procedural fairness by failing to take into account relevant considerations and disregarding or failing to give appropriate weight to relevant evidence before it concerning how the Applicant is or may be directly affected by the Approval;
 - b. the Board denied the Applicant's right to natural justice and procedural fairness by failing to provide reasons in the Standing Decision to explain its finding that the Applicant is not directly affected by the Approval;

- c. the Board erred in law by requiring the Applicant to demonstrate it is directly affected the Approval, thereby by assigning a higher burden of proof on the Applicant than is required in the jurisprudence under EPEA;
- d. the Board has erred in law by giving an unduly restrictive interpretation of the phrase 'directly affected' in section 91(1)(a) of EPEA in the Standing Decision contrary to the purpose of EPEA which is to provide opportunities for interested and knowledgeable members of the public to give input and advice on the potential environmental and health impacts associated with the Approval.

Remedy sought:

1. An Order adjourning this Application to a Special Justice Chambers application.
2. An Order in the nature of *certiorari* quashing the Standing Decision and remitting the matter back to the Board for a determination in accordance with the directions of this Honourable Court.
3. A Stay of the Approval pending the outcome of the Applicant's appeal on the merits of the Approval before the Board under *EPEA*.
4. An Order that each party shall bear its own costs in this Application.
5. Such further or other Orders and Directions as this Honourable Court deems appropriate.

Affidavit or other evidence to be used in support of this application:

1. The Affidavit of Cody Cuthill, to be filed.
2. The Record of Proceedings at the Board, to be filed.
3. Such further and other Affidavits and evidence as the Applicant may advise and this Court may accept.

Applicable Acts and regulations:

1. *Environmental Protection and Enhancement Act*, RSA 2000 c E-12.

2. *Alberta Rules of Court, Alta Reg 124/2010 .*
3. Such further and other Acts and regulations as the Applicant may advise and this Court may accept.

WARNING

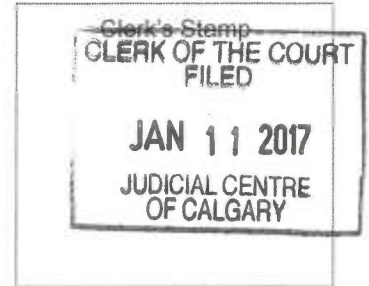
You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

NOTICE TO THE MINISTER OF JUSTICE AND SOLICITOR GENERAL FOR ALBERTA

TO: THE MINISTER OF JUSTICE AND SOLICITOR GENERAL FOR ALBERTA

Pursuant to Rule 3.15(3) of the Alberta Rules of Court, notice of the within Originating Application is hereby given.

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DOCUMENT **NOTICE TO OBTAIN RECORD OF PROCEEDINGS**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SHAUN FLUKER, Barrister & Solicitor
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Calgary, AB T2N 1N4
Phone: (403) 220-4939
Email: sfluker@ucalgary.ca

NOTICE TO THE ALBERTA ENVIRONMENTAL APPEALS BOARD

Requirement

You are required to provide the following or an explanation as to why they, or any of them, cannot be provided:

- (a) the decision or written record of the act that is the subject of the originating application for judicial Review (decision letter October 13, 2016 re Secure Energy Services Inc./EPEA Amending Approval No. 48516-01-04/ EAB File No16-024)
- (b) the reasons given for the decision or act, if any,
- (c) the documents starting the proceeding,
- (d) the evidence and exhibits filed with you, if any, and
- (e) anything else in your possession relevant to decision letter October 13, 2016 re Secure Energy Services Inc./EPEA Amending Approval No. 48516-01-04/ EAB File No16-024.