

COURT FILE NUMBER 1701 - *00470*

COURT COURT OF QUEEN'S BENCH OF ALBERTA

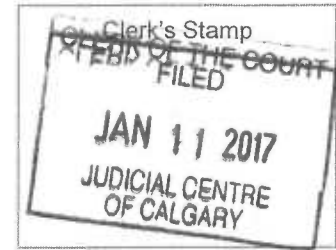
JUDICIAL CENTRE CALGARY

APPLICANT(S) NORMTEK RADIATION SERVICES LTD.
and CODY CUTHILL

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

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SHAUN FLUKER, Barrister & Solicitor
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Calgary, AB T2N 1N4
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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 Normtek Radiation Services is a corporation whose business is specialized in the management of radioactive waste with operations predominately in Western Canada.
2. The Applicant Cody Cuthill is the Chief Executive Officer for Normtek Radiation Services. Mr. Cuthill is a recognized expert in management and disposal of Naturally Occurring Radioactive Material (NORMs) and has advised federal and provincial government officials on the proper disposal of NORMs.
3. On August 24, 2014 the Applicant Normtek 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.
4. On November 25, 2014 the Director of Alberta Environment and Parks dismissed the Applicant Normtek's statement of concern on the ground that the Applicant Normtek is not directly affected by the proposed project. The Director stated the Applicant Normtek is not directly affected because its place of residence is outside the area of environmental impact associated with the proposed project.
5. The Director of Alberta Environment and Parks (the "Director") 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).
6. On July 28, 2016 the Applicant Normtek filed a notice of appeal with the Alberta Environmental Appeals Board (the "Board") concerning the Approval under section 91(1)(a) of EPEA.
7. On October 13, 2016 the Board dismissed the Applicant Normtek's appeal because the Applicant Normtek is not directly affected by the Approval (the "Standing Decision").
8. In a related application, the Applicant Normtek has applied for judicial review of the Standing Decision on the ground that the Board erred in law by finding the Applicant Normtek is not directly affected by the Approval.
9. This is an application for judicial review of the Approval under the *Alberta Rules of Court*, Alta Reg 124/2010. This application is brought by the Applicants as a public interest litigant under the public interest standing doctrine as set out by the Supreme Court of Canada in *Canada (Attorney General) v Downtown*

Eastside Sex Workers United Against Violence Society, [2012] 2 SCR 524, 2012 SCC 45.

10. The Applicants seek an Order finding the Director erred in law and the Approval is either incorrect or unreasonable.
11. The Director erred in law and the Approval is either incorrect or unreasonable on the following substantive grounds:
 - a. The Director classified NORMs as non-hazardous waste at limits up to 70 KBq/Kg contrary to the classification of such waste as hazardous by
 - i. other provincial and federal regulators in Canada including Health Canada which classifies NORMs as the second leading cause of lung cancer,
 - ii. the guidelines of the International Commission on Radiological Protection, and
 - iii. the guidelines of the International Atomic Energy Agency with whom Canada has signed international agreements with and form the basis of federal radiation protection regulations;
 - b. The Director exceeded his jurisdiction by approving the disposal of oilfield waste on terms which are not consistent with Alberta Energy Regulator Directive 058 *Oilfield Waste Management Requirements for the Upstream Petroleum Industry* or the Memorandum of Understanding Between the Alberta Energy Regulator and Alberta Environment on Harmonization of Waste Management;
 - c. The Director issued the Approval without giving due and proper consideration to provincial and federal law and policy guidelines on the disposal of NORMs including
 - i. the Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials, and
 - ii. the Technical Report on the Management of Naturally Occurring Radioactive Material (NORM) Waste prepared by the NORM Waste Management Technical Committee;
 - d. The Director issued the Approval contrary to the stated purposes of the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 by

- i. failing to ensure the terms of the Approval are sufficient and adequate to protect the environment and human health,
 - ii. failing 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,
 - iii. failing to work co-operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts associated with the Approval, and
 - iv. failing to adhere to the polluter pays principle;
- e. The Director erred in law by issuing the Approval with insufficient and inadequate controls and terms to ensure compliance with generally accepted radioactive waste management practices including monitoring and record keeping requirements for the disposal of NORMs waste.

Remedy sought:

1. An Order adjourning this Application to a Special Justice Chambers application.
2. An Order in the nature of *certiorari* quashing the Approval and remitting the matter back to the Director for a determination in accordance with the directions of this Honourable Court.
3. An Order that each party shall bear its own costs in this Application.
4. 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 of the Director, to be filed.
3. Such further and other Affidavits and evidence as the Applicants 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, regulations, policies and guidelines as the Applicants may advise and this Court may accept.

WARNING

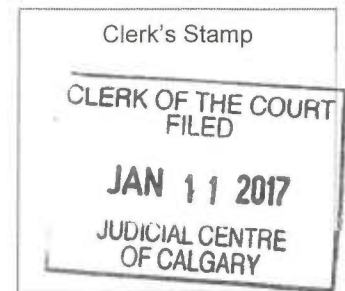
You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking 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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JUDICIAL CENTRE CALGARY
APPLICANT(S) NORMTEK RADIATION SERVICES LTD. and
CODY CUTHILL
RESPONDENT(S) DIRECTOR OF ALBERTA ENVIRONMENT
AND PARKS and SECURE ENERGY
SERVICES INC. and the ALBERTA
ENVIRONMENTAL APPEALS BOARD
DOCUMENT **NOTICE TO OBTAIN RECORD OF
PROCEEDINGS**



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4340, Murray Fraser Hall, University of Calgary
2500 University Drive NW
Calgary, AB T2N 1N4
Phone: (403) 220-4939
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NOTICE TO DIRECTOR OF ALBERTA ENVIRONMENT AND PARKS

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 (Approval No 48516-01-04 dated July 14, 2016)
- (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 Approval No 48516-01-04 dated July 14, 2016.