Court of Queen's Bench of Alberta

Citation: Normtek Radiation Services Ltd v Alberta (Environmental Appeal Board), 2018 ABQB 911

Date: 20181121
Docket: 1701 00469
Registry: Calgary

Between:

Normtek Radiation Services Ltd.

Applicant

- and -

Alberta Environmental Appeals Board, Secure Energy Services Inc., Director of Alberta Environment and Parks

Respondents

Reasons for Decision of the Honourable Madam Justice Janice R. Ashcroft

---

I. Introduction

[1] Normtek Radiation Services Ltd. ("Normtek") applies for judicial review of a decision of the Alberta Environmental Appeals Board ("the Board"). The Board refused Normtek standing, holding that it was not "directly affected" as required by the ***Environmental Protection and Enhancement Act***, RSA 2000, c E-12 ["***EPE Act***"].

[2] Normtek specializes in decontamination and waste management services for naturally occurring radioactive material ("NORM") which is produced in resource development.

[3] Secure Energy Services Inc. ("Secure Energy") provides services which include the disposal of oilfield by-products. Secure Energy applied to the Director of Alberta Environment

and Parks ("the Director") to allow its Pembina landfill ("the Landfill") to receive and dispose of oil field equipment which contains NORM, without decontamination.

[4] Normtek applied to make submissions to the Director on Secure Energy's application; however, the Director rejected the statement of concern submitted by Normtek on the basis that Normtek was not "directly affected", as set out under the ***EPE Act***. The Director eventually approved the amending application and Normtek attempted to appeal the Director's approval to the Board.

[5] The Board held that Normtek was not "directly affected" by the approval and therefore had no standing to appeal the Director's decision.

II. Issues

[6] This judicial review raises several issues:

- Whether the Board's *interpretation* of "directly affected", pursuant to section 91(1)(a)(i) of the ***EPE Act***, was reasonable;
- Whether the Board's *application* of its interpretation of section 91(1)(a)(i), was reasonable. In other words, if this Court finds the Board's interpretation of "directly affected" reasonable, were the Board's findings and conclusions that Normtek was not "directly affected", reasonable;
- Whether the Board "fettered its discretion" when it dismissed Normtek's appeal because Normtek lacked standing. Normtek argues that the discretionary wording in section 95 (5)(a) and (b) of the ***EPE Act*** ("may dismiss" an appeal as opposed to "shall dismiss") supports that an appeal can be allowed even when an applicant is found not to be "directly affected"; and
- Whether the Board brought the legal system into disrepute by failing to provide reasons for their decision in a timely manner. At the hearing counsel clarified that Normtek was not seeking a remedy on this issue; rather, it wanted the Court to make a declaration that the 16-month delay in issuing reasons is not acceptable.

III. Legislation, the Approval Process and the Decision of the Board

[7] As set out in section 2:

> The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:
>
> (a) the protection of the environment is essential to the integrity of ecosystems and human health and the well-being of society;
> (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
> (c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;
(e) the need for Government leadership in areas of environmental research, technology and protection standards;
(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;
(h) the responsibility to work cooperatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;
(i) the responsibility of polluters to pay for the costs of their actions;
(j) the important role of comprehensive and responsible action in administering this Act.

[8] Where a project, or an amendment to the project, requires an approval by the Director, public notice of the application is required pursuant to section 72 of the ***EPE Act***. On July 29, 2014, the Director issued public notice of the application by Secure Energy for an amending approval.

[9] Section 73 of the ***EPE Act*** then allows for persons "directly affected" to submit a statement of concern:

> 73(1) Where notice is provided under section 72(1) or (2), any person who is directly affected by the application or the proposed amendment, addition, deletion or change, including the approval holder in a case referred to in section 72(2), may submit to the Director a written statement of concern setting out that person's concerns with respect to the application or the proposed amendment, addition, deletion or change.

[10] Normtek filed submissions with the Director outlining its concerns with the application. The Director advised Normtek that its submission would not be considered a statement of concern because Normtek was not geographically located in close proximity to the Landfill. The Director did indicate, however, that the issues raised by Normtek would be considered in the Director's review of Secure Energy's application.[1]

[11] The Director approved Secure Energy's amending application for the project ("the Amending Approval") and Normtek filed an appeal of this decision with the Board. Section 91 of the ***EPE Act*** states:

> 91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:
>
> (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70 (1)(a) or makes an

[1] The Director's decision in refusing to accept the statement of concern is the subject of a second separate judicial review and is not before the Court in this judicial review.

> amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted
>
> (i) by the approval holder or by an person who previously submitted a statement of concern in accordance with section 73 and is *directly affected* by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or... [emphasis added]

[12] Normtek also applied to the Board for a stay of the Director's decision. Secure Energy cross applied to dismiss both Normtek's appeal and stay application, on the basis that Normtek was not "directly affected" and had no standing. Written submissions were received by the Board from both parties, including a rebuttal submission from Normtek.

[13] On October 13, 2016, the Board dismissed Normtek's Notice of Appeal. The Board held that Normtek was not "directly affected" by the Amending Approval. The Board indicated that its reasons would follow in due course. Its reasons were provided over 16 months later, on March 5, 2018 ("Reasons for Decision").

[14] In its Reasons for Decision, the Board referenced the jurisprudence including cases which supported that a party must demonstrate that the "approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource," before an applicant will be considered "directly affected".

[15] The Board rejected Normtek's arguments that Cody Cuthill (a Normtek executive), Normtek's employees, and Normtek's shareholders were directly affected by the Amending Approval. The Board stated that Normtek had not identified the specific natural resource Mr. Cuthill uses or any link back to the Amending Approval. The Board also held that Normtek had not shown that its employees would be using the Landfill as Normtek was not a current client, and any alleged recreational use of land by its employees near the Landfill was not supported with any specificity.

[16] The Board also rejected Normtek's argument that the test for "directly affected" should be relaxed because the Landfill is surrounded by public lands. The Board held that having a right to access land does not demonstrate a direct effect sufficient to ground a directly affected interest.

[17] Most significantly, the Board also dismissed Normtek's argument that it was directly affected economically by the Amending Approval. The Board stated that any direct economic impact was speculative and that even if economic impact existed, no causal connection had been demonstrated between any economic impact on Normtek, which would lead to an effect on the environment. The Board emphasized that a generalized interest is not enough to be "directly affected" under the ***EPE Act***.

[18] Section 95(5) of the ***EPE Act*** states:

> The Board
>
> (a) *may* dismiss a notice of appeal if
>
> [...]

(ii) In the case of a notice of appeal submitted under section 91(1)(a)(i) or (ii), g(ii) or (m) of this Act or section 115(a)(a)(i) or (ii), b(i) or (ii), (c)(i) or (ii), (e) or (r) of the ***Water Act,*** the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,

[...]

and

(b) *shall* dismiss a notice of appeal if in the Board's opinion

(i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one of more hearings or reviews under Part 2 of the Agricultural Operation Practices Act, under the Natural Resources Conservation Board Act or any Act administered by the Alberta Energy Regulator or the Alberta Utilities Commission at which all of the matters included in the notice of appeal were adequately dealt with, or

the Government has participated in a public review under the Canadian Environmental Assessment Act (Canada) in respect of all of the matters included in the notice of appeal.
[emphasis added]

IV. Role of the Board and the Director on Judicial Review

[19] It is within the Court's discretion to determine, balancing a number of factors, the degree to which a tribunal may participate in a judicial review of its own decision: ***Ontario Energy (Board) v Ontario Power Generation Inc,*** 2015 SCC 44 at paras 41-62 [***Ontario Energy***]. Counsel for the Board appropriately provided submissions only as to the legislative structure of the ***EPE Act***, and the standard of review.

[20] After the hearing, I requested follow-up submissions from the named parties to the judicial review about the Director's role both before the Board and in the judicial review. Secure Energy, the Director, and the Board submitted that:

- under the ***Environmental Appeals Board Regulation***, Alta Reg 114/1993 "the person whose decision is the subject of the notice of appeal" is defined as a party to an appeal before the Board: s 1(f)(ii)[2]; and
- receiving submissions from the Director allows the Board to provide the best advice to the Minister[3] especially when the appeal before the Board is ultimately a "de novo hearing" and new evidence is accepted.

---

[2] See also section 95(6) of the ***EPE Act*** which allows the Board, in the context of natural justice, to hear from persons "who the Board considers should be allowed to make representations."

[3] Pursuant to section 99 (1) of the ***EPE Act*** the Board provides a report and recommendations to the Minister regarding an appeal under sections 91(1)(a) through (m).

[21] The respondents also directed me to ***Imperial Oil Ltd v Alberta (Minister of Environment)***, 2003 ABQB 388, where this Court examined the role of the Director on a judicial review of its own decision. Nation J concluded at paragraphs 16 and 17:

> ...As a result, the Director does have standing and the ability to speak to the statutory regime, jurisdictional issues in relation to it and factors that may apply in terms of the standard of review.
>
> [ ]
>
> All levels are restricted from making comments about their respective decisions, in terms of justifying them or entering the 'fray' with Imperial...

[22] The Director and Secure Energy further argue that the Director's role on judicial review should be broader than that as set out by Nation J given that it is not the Director's decision on standing (as opposed to the Director's decision on the Amending Approval), that is under review before this Court. Thus, there is little risk of the Director seeming to defend his own decision.

[23] Normtek also did not take issue with the Director's role in this judicial review. Normtek advised that there appears to be an established practice of the Board accepting submissions from the Director on the preliminary issue of whether an applicant is "directly affected". Further, Normtek, relying on ***Ontario Energy***, characterizes the Director's function as more administrative than adjudicative, thereby reducing the risk of any perception of impartiality.

[24] The ***EPE Act*** gives the Director status, at the Board level, as a party because the Director rendered the decision on the Amending Approval, which is the subject of the appeal. Party status allows the Director to provide submissions on the merits of its decision to grant the Amending Approval. This status also likely extends to a determination regarding preliminary issues on the appeal such as standing.

[25] However, the Director has already decided in a previous proceeding that Normtek was not "directly affected" by the proposed amendment. There may be a perception of unfairness that the Director is now allowed to try and further convince this Court of the reasonableness of the Board's decision that Normtek is not "directly affected". This perception may exist even though counsel for the Director assumed an appropriate tone in both written and oral argument. Given this perception, and as Secure Energy is a sophisticated party capable of providing the Court with full submissions it is appropriate to limit the Director to arguments on the standard of review, the statutory regime and any arguments framed as jurisdictional.

V. Analysis

A. Certified Record

[26] Normtek's materials have referred to information that is not contained in the Certified Record. No argument was put forward on whether the Certified Record should be expanded. Accordingly, my review of the Board's decision is confined to the Certified Record: ***IMS Health Canada, Limited v Information and Privacy Commissioner***, 2005 ABCA 325 at para 34.

B. Whether the Board's interpretation of "directly affected", pursuant to section 91(1)(a)(i) of the *EPE Act*, was reasonable

1. Positions of the Parties

[27] Normtek argues that an interpretation of "directly affected" as set out in sections 91 and 95 of the ***EPE Act***, does not require causal connection back to the environment, in particular that the Board must find that a natural resource be affected or that the applicant's use of the natural resource is affected. Rather, the specific legislative wording requires only that the applicant be "...directly affected by the Director's decision": ***EPE Act***, s 91(1)(a)(i).

[28] Normtek emphasizes that a restricted approach to "directly affected" is not consistent with an important goal of the legislation, that of public participation and investment in environmental protection. Normtek states that a review of comments of the Minister of Environment in the Hansard, when the legislation was introduced, shows that there was a strong commitment to engage and broaden public participation in all aspects of environmental decision-making: Alberta, Legislative Assembly, *Hansard*, 22nd Leg, 4th Sess, (11 May 1992 and 4 June 1992) at 805 and 1184 (Ralph Klein).

[29] Normtek notes that this particular purpose of the legislation was confirmed in ***Pembina Institute v Alberta (Environment and Sustainable Resources Development)***, 2013 ABQB 567 at paragraph 28 and especially 29 [***Pembina Institute***]:

> The emphasis is on public consultation, setting up administrative procedures to promote "access to information" and increase public consultation and participation in all aspects of environmental reporting and enhancement activities.

[30] Counsel for Normtek points out that the legislation makes reference to human health, ecosystem integrity, technology, economics, and protection standards (see also ***Gadd v Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.***, (8 October 2004), 03-150, 03-151 and 03-152-IDI, AEAB at para 69 [***Gadd***]). Accordingly, Normtek argues that a narrow definition which requires the appellant's use of a natural resource be harmed, in order to ground standing, is incongruent with the broader purposes enunciated in the statute.

[31] Normtek argues that the Board's interpretation of "directly affected" remains largely unchanged over the years and the Board approaches the interpretation and application of this term, almost word for word in almost all of its decisions. This argument implies that the Board is not properly considering any changing norms of environmental protection and individual circumstances of applicants but rather the Board is approaching "directly affected" in a formulaic manner.

[32] Normtek argues that while the test is potential for harm, the Board seemed to require actual proof of economic loss. Normtek states that the purposes of the ***EPE Act*** as set out in section 2 specifically links economic interests and environmental concerns, and Normtek has, at the very least, the potential to be economically affected.

[33] Normtek points out that the Courts, have interpreted the phrase "directly affected" under section 18.1 of the ***Federal Courts Act***, RSC 1985, c F-7, [***Federal Courts Act***] for the purposes of determining who has standing to file judicial review, quite broadly. "Directly affected" in this context has been held to include an effect on legal rights, or legal obligations, or that a person's

rights or interests have been prejudicially affected: ***Cowessess First Nation No 73 v Pelletier et al***, 2017 FC 692 at para 21.

[34] Normtek also argues that the test for who is "directly affected" should be applied broadly because the material being disposed of is radioactive and the harm may not be occurring now but will be in the future. Normtek also points out that there is limited expertise on NORM and restricting standing may result in the Board making decisions without full information.

[35] Secure Energy responds that a narrow approach to the term "directly affected" appropriately links standing back to the person and the environment, and prevents the Board's process being used for improper purposes. Secure Energy submits that improper purposes include parties who seek standing simply to discourage business competition and protect their own economic interests. Secure Energy believes that Normtek is bringing forward a commercial interest under the guise of an environmental interest.

[36] Secure Energy also argues that the Board has set out a principled framework grounded in its past decisions and the jurisprudence of this Court, for deciding who is "directly affected":

- The applicant needs to establish a direct personal or private interest; it must be more than just an effect on the general public or interest in the environment: ***Kostuch Alberta (Director, Air and Water Approvals Division, Environmental Protection)***, 35 Admin Crown (2d) 160, 1996 CanLii 10565 (Alta QB) [(***Kostuch (QB)***)].
- An economic interest can be sufficient to show that a person is directly affected but the economic interest must be a direct result of reasonable harm to the use of the natural resource that the person uses or relies upon: ***Kostuch Alberta (Director Air & Water Approvals Division, Environmental Protection)***, [1995] AEABD No 9, 1995 CarswellAlta 735 (WLCan) at para 28, [***Kostuch (Board Decision)***]; ***Court Alberta (Director, Bow Region, Regional Services, Alberta Environment)***, 2003 ABQB 456 at paras 67-75 [***Court***].
- Other factors to be considered include how the approved project will affect the environment and how the effect on the environment will affect a person's use of the area; the closer the connection, the more likely the person is directly affected: ***Gadd*** at para 66; ***Byram Industrial Services Ltd v Director, Central Region, Regional Services, Alberta Environment re: Wasteworks Inc*** (28 April 2005), 04-057-D, AEAB [***Byram Industrial Services***].

[37] Secure Energy also replies that while the Court in ***Pembina Institute*** commented that there was room for how "directly affected" was interpreted, this applied only to how the Director interpreted that term, not the Board. Secure Energy, citing ***Kostuch (QB)*** at paragraph 23, argues that this Court has confirmed that how the Board interprets the words "directly affected" for the purposes of standing on appeal is narrower as the Board engages an adversarial process in contrast to the Director's information-gathering role.

2. Standard of Review

[38] The Board's approach to "directly affected" under the ***EPE Act*** involves the interpretation of a home statute by a tribunal with presumed expertise. Accordingly, the standard of review as to its interpretation of "directly affected" is presumed to be reasonableness: ***Dunsmuir v New Brunswick***, 2008 SCC 9 at paras 53-54 & 58-61, [2008] 1 SCR 190

[Dunsmuir]; ***Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd***, 2016 SCC 47 at para 22, [2016] 2 SCR 293.

[39] This Court has also held that issues of standing are to be reviewed on the reasonableness standard: ***Westridge Utilities Inc v Alberta (Director, Southern Region, Environmental Management)***, 2012 ABQB 681 at para 54, 84 Alta LR (5th) 147. It is also worth noting that there is a strong privative clause contained in section 102 of the ***EPE Act***:

> Where this part empowers or compels the Minister or the Board to do anything, the Minister or the Board has exclusive and final jurisdiction to do that thing and no decision, order, direction, ruling, proceeding, report or recommendation of the Minister or the Board shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court to question, review, prohibit or restrain the Minister or the Board of any of its proceedings.

[40] The applicant cites ***Québec (Procureure générale) v Guérin***, 2017 SCC 42, [2017] 2 SCR 3 [***Guérin***], for authority that questions on standing may be assessed as true jurisdictional issues thus falling into a category enunciated by the Supreme Court which attracts correctness review. However, it is clear that ***Guérin*** did not change the law on standard of review as set out by the Supreme Court to date. Any possible expansion or further direction as to what constitutes true jurisdictional questions was only referenced by a minority of the Court.

[41] The presumption of reasonableness has not been rebutted. If the Court finds that the Board's approach to "directly affected" was justified, transparent and intelligible, and falls within "the range of acceptable and rational solutions", this Court must show appropriate deference: ***Dunsmuir*** at para 47. The range may be narrow or wide "depending upon the nature of the question and the circumstances": ***Paradis Honey Ltd v Canada (Minister of Agriculture and Agri-Food)***, 2015 FCA 89 at paras 135-136, 382 DLR (4th) 720.

3. The Board's interpretation of "directly affected", pursuant to section 91(1)(a)(i) of the *EPE Act*, was reasonable

[42] The Board rejected submissions that Normtek's employees and shareholders are "directly affected" by the Amending Approval stating that:

- "...for the Appellant to be directly affected, specific evidence needs to be provided that the Appellant, its employees, or its shareholder will actually use these resources to be found to be directly affected". [para 155 Reasons for Decision]
- "Merely having a right to access land is not sufficient to demonstrate the holder of that right is directly affected for the purposes of an appeal to the Board. If the Appellant's reasoning is correct, every Albertan who has the right to access public lands would have to be granted standing whether they use the lands or not. This is clearly not what the Legislature intended." [para 160 Reasons for Decision]

[43] As it relates to economic harm, the Board, at paragraph 148 in its Reasons for Decision, dismissed Normtek's claim that it was "directly affected":

> In the Board's view, the Appellant's argument that it is directly affected because of an economic impact fails on two grounds. First the argument is speculative; the Appellant has not provided sufficient evidence on a prima facie basis to demonstrate it is directly affected. Second, the Appellant's argument does not

> demonstrate an adequate causal connection between the economic impact it is alleging and the Amending Approval being appealed. The Appellant's argument is that the Amending Approval will cause an economic effect, which in turn will cause an environmental effect. This is too remote a connection to establish that the Appellant is directly affected.

[44] The Board's interpretation of "directly affected" appears to require that Normtek establish:

- Evidence of direct effect or harm. The Board's reference to insufficient "speculative" evidence appears to relate both to the nature of the harm and whether the effect is direct; and
- Causal connection between the alleged impact and the Amending Approval. Under this prong of the test the Board also appears to require, not just that Normtek establish direct effect between the Amending Approval and economic harm but also some sort of connection between the economic harm and the environment. This connection is enunciated various ways in the Reasons for Decision.

[45] First, the jurisprudence is clear that potential harm to an applicant, and not just current harm, can be considered in the "directly affected" test: ***Court*** at paras 67-71:

> To achieve standing under the Act, an appellant is required to demonstrate, on a *prima facie* basis, that he or she is "directly affected" by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed by the approved project.

[46] Further, economic impact can be considered harm. In ***Kostuch (Board Decision)*** the Board stated at paragraph 28:

> ...the word 'directly' requires the Appellant to establish, where possible to do so, a direct personal or private interest (economic, environmental, or otherwise) that will be impacted or proximately caused by the Amending Approval in question.

Links between economic interests and the environment are also specifically noted in section 2 of the ***EPE Act.***

[47] The wording used by the Board in paragraph 148 in its Reasons for Decision may leave the impression that the Board is requiring proof of current harm rather than potential for harm. However, earlier in its Reasons for Decision the Board at paragraph 34 actually appears to broaden the test by seeming to state the test as a "probability of a possibility":

> ...What the Appellant needs to show is that there is a reasonable possibility, based on the balance of probabilities, of a direct effect on the Appellant and that the direct effect relates to an environmental impact.

[48] See also other jurisprudence of the Board including ***Re Mizera*** [1998] AEABD No 43 at paragraph 26 where the Board stated its task is "to determine at this preliminary stage of the proceedings whether on a balance of probabilities there is a potential, that is, a reasonable possibility, that any of the parties will be directly affected by the application": as cited in ***Court*** at para 67.

[49] In any event, reviewing the entirety of the Board's decision including its references to general case law and its more specific reasons, I am satisfied that the Board recognized that potential for harm, rather than current, actual harm could be considered as part of the "directly affected" test:

> The Court of Queen's Bench in ***Court*** stated an appellant only needs to show that there is a potential for an effect on its interests....
>
> [Reasons for Decision at para 126].
>
> ...
>
> ...At this stage in the appeal process, the Board does not require the Appellant to provide conclusive proof that it is directly affected.
>
> [Reasons for Decision at para 134]

[50] This approach is consistent with the jurisprudence and reasonable in the environmental context where a project may not yet be up and running and actual current harm may be difficult to establish.

[51] The Board's interpretation of "directly affected" also requires that any evidence of alleged harm and the "directness" of the potential effect not be speculative. This requirement also finds support in its jurisprudence:

> As stated, the effect must be reasonable and plausible. It is not sufficient for an appellant to show it is possibly affected, it must also show the probable effect is reasonable. An effect that is too remote, speculative, or is not likely to impact the appellant's interests will not form the basis to find an appellant directly affected. Both the reasonableness and the probability of the effect must be shown…
>
> ***Tomlinson and Jackson v Director, Red Deer-North Saskatchewan Region, Alberta environment and Sustainable Resource Development, re: County of St. Paul*** (14 September 2015), 14-021-022 and 15-011-012-ID2 AEAB:
>
> See also ***Gadd*** at para 67.

[52] The Board also requires as part of its interpretation of "directly affected" that Normtek establish more than just a general interest or effect caused by the Amending Approval. Again, this approach finds solid support in the jurisprudence.

[53] In ***Kostuch (QB)***, Marceau J specifically considered the public participation goals of the ***EPE Act***, and circumstances where, similar to the case at hand, there was no prospective applicant residing close by the project who could constitute a clearly "directly affected" party.

[54] In dismissing an application for standing from an applicant who could only show a more general effect, Marceau J emphasized that the modifier of "directly" points to a narrower interpretation of "directly affected". Marceau J relied upon, at that time, two recently released decisions where the Alberta Court of Appeal had provided direction as to the meaning of "directly affected":

[17] At p. 8 of the ***W.M.I. Waste Management***[4] decision the Court said:

> In our view, the inclusion of the word "directly" signals a legislative intent to further circumscribe a right of appeal. When considered in the context of the regulatory scheme, it is apparent that the right of appeal is confined to persons having a personal rather than a community interest in the matter.

[18] At p. 4 of the ***F.O.T.A.***[5] decision the Court said:

> The appellants urge the application of the principle in ***Friends of the Island***, which held that courts have a broad discretion to grant standing to apply for judicial review. We specifically rejected that proposition in ***WMI Waste Management***. The mandate of an administrative tribunal and its legal process must be construed in accordance with the legislative intent. In our view, the intent is clear. The use of the modifier 'directly' with the word 'affected' indicates an intent on the part of the Legislature to distinguish between persons directly affected and indirectly affected. An interpretation that would include any person who has a genuine interest would render the word 'directly' meaningless, thus violating fundamental principles of statutory interpretation: ***Subliomar Properties (Dundas) Ltd., v. Cloverdale Shopping Centre Ltd.,*** (1973) 1962 CanLII 76 (SCC) 35 D.L.R. (2d) 1 (SCC) at 5. An interpretation that would import expanding concepts of judicial discretion, contrary to the intention of the Legislature, would engage the sort of interpretive exercise expressly rejected by the ***Supreme Court in Canada (Attorney General) v. Mossop*** (1993) 100 D.L.R. (4th) 658 at 673.

[55] And in ***Kostuch (QB)*** at paragraph 24 citing with approval ***Kostuch (Board Decision)*** at paragraph 34:

> ...The first issue is a question of fact, i.e. the extent of the causal connection between the Amending Approval and how much it affects a person's interests.... 'Directly' means the person claiming to be 'affected' must show causation of the harm to her particular interest by the Amending Approval challenged on appeal. As a general rule, there must be an *unbroken connection between one and the other*." [emphasis added]

[56] In addition to requiring a fairly direct causal connection between any potential economic effect and the Amending Approval, the Board also appears to require that any potential economic effect caused by the Amending Approval be linked back to the environment:

---

[4] ***CUPE Local 30 v WMI Waste Management of Canada Inc***, 1996 ABCA 6 [***WMI Waste Management***].

[5] ***Friends of the Athabasca Environment Assn v Alberta (Public Health Advisory & Appeal Board***, 1996 ABCA 11 (CanLII)

> ...What the Appellant needs to show is that there is a reasonable possibility, based on the balance of probabilities, of a direct effect on the Appellant and that the direct effect relates to an environmental impact. [Reasons for Decision para 134]

[57] In other words direct potential economic effect arising from the Amending Approval is not enough to ground standing. The Board requires that direct potential economic effect must also be linked back to the environment. For example, the Board has indicated that Normtek can be:

> ...directly affected if, as part of its business, it physically uses natural resources in the area of the project and those natural resources are impacted by the projects. An example of this would be if Normtek had a well drilled into a geological formation it was using for disposal, and the proposed project was to build a landfill on top of the well (with the well being properly abandoned), such that Normtek was deprived of the use of the well. Normtek has not advanced such an argument, and therefore the appellant has not demonstrated it is directly affected. [Reasons for Decision paragraph 151]

[58] It is this aspect of the approach to "directly affected" applied by the Board with which Normtek takes the most issue. Normtek states the above example underlines how difficult it is for an applicant to obtain standing.

[59] As pointed out by Normtek, the Board's interpretation of "directly affected" is not required or set out in the legislation. The ***EPE Act*** only says that the applicant be "...directly affected by the Director's decision". The legislation does not say that in order to be directly affected, a natural resource must be directly affected or that an applicant's use of natural resources must be directly affected.

[60] The jurisprudence also does not require the Board to apply an approach which assesses whether the impact is to a natural resource that the applicant uses, or harms the applicant's use of that natural resource. In ***Kostuch (Board Decision)*** at paragraph 26, the Board recognizes there is no rigid test that should be applied in all cases:

> ...We have not found a universal, simple and easy test to determine when a person is "directly affected" which can be applied automatically in all cases. We believe that this determination should be made on a case-by case basis, taking into account the varying circumstances and facts of each appeal.

[61] In ***Gadd***, the Board noted at paragraph 57 that,

> ...Although this framework is in place, the Board recognizes there must be some flexibility in determining who is directly affected, and it will be governed by the particular circumstances of each case: citing ***Wessley v Director, Alberta Environmental Protection*** (2 February 1994), 94-001, AEAB

[62] In ***Byram Industrial Services*** at para 53 the Board acknowledges that a direct economic effect argument indirectly linked back to the environment could ground standing:

> The Board has in its previous decisions determined a person is directly affected based on direct environmental impacts and direct economic impacts as a result of environmental impacts, but the Board also sees there is a possibility of a direct economic impact with an indirect environmental impact being the basis of

> standing. Indirect environmental effects can be just as significant as direct environmental impacts.

[63] However, the Board's approach in Normtek's case which requires the applicant to demonstrate not only a potential direct economic effect causally connected to the Amending Approval but also that the economic effect be linked back to environmental effect, also finds support in the jurisprudence.

[64] McIntyre J in ***Court*** at paragraph 70 adopted the approach which requires a link between the applicant's alleged harm and the use of a resource in order to show that the applicant was "directly affected":

> Third, in proving, on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See ***Bildson*** at para. 33...

[65] The Board's interpretation of "directly affected" which requires a fairly strict link back to the environment is supported in the jurisprudence and especially, on the facts of this case, where clear economic interests are at play. As argued by Secure Energy it is not the role of the Board to become an economic regulator. The requirement of the Board that the potential for economic harm be connected back to the environment is reasonable.

[66] In sum, the Board's interpretation of "directly affected" requires Normtek to establish:

- The potential for harm caused by the Amending Approval;[6] however, evidence as to the nature of the harm cannot be speculative;
- A fairly direct causal connection between the potential harm and the Amending Approval. Again, evidence supporting a causal connection between the alleged impact and the Amending Approval cannot be speculative; and
- Assuming that Normtek has established that the potential effect of the Amending Approval is both direct and non-speculative, Normtek must also demonstrate a connection between the alleged potential harm and an effect on the environment. This connection may be established in a number of different ways including that the "approved project may harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource" but the connection back to the environment cannot be too remote.

[67] This approach taken by the Board has support both in the legislative language and the jurisprudence. Accordingly, I find the Board's interpretation of "directly affected" under section 91 (1)(a)(i) was reasonable.

[68] Normtek takes issue with the Board's use of similar, if not identical, wording in prior decisions which address the term "directly affected". The section "Legislation and Previous

---

[6] The actual wording in the ***EPE Act*** is that the person must be directly affected by the "Director's decision". However, this difference in terminology is not significant.

Cases" included by the Board in its Reasons for Decision is a common feature in most of its decisions related to the topic of "directly affected". While the consistent inclusion of this section may not be particularly helpful in ascertaining what test the Board is actually applying in each case, I agree with the Respondents. It is reasonable for the Board to flag to the reader that the Board is aware of past jurisprudence, and to develop and apply a similar framework for determining who is "directly affected". I am also satisfied that the Board has attempted to address the particular facts in Normtek's case and has not simply applied a cursory formula.

C. Whether the application of the Board's interpretation of section 91(1)(a)(i), was reasonable

1. Positions of the Parties

[69] Normtek emphasizes that the industry addressing the disposal of NORM is very small and the approval of the Landfill essentially offers companies an inexpensive option for disposing of equipment containing NORM. Normtek argues that most companies will choose to dispose of equipment rather than decontaminate, and this will have a dramatic economic effect on Normtek. This economic impact will in turn, says Normtek, affect its ability to undertake the proper disposal of NORM which will then result in adverse effects to human health and the environment.

[70] Normtek further states that it is very difficult for it to provide evidence of direct effect within the time limits set out by the legislation. There is a 30-day period in which to file an appeal and a 60-day time limit to file submissions.

[71] Negative impact, especially with respect to economic harm, is also difficult to prove, says Normtek, given that the economic harm has not yet occurred as the project is not underway.

[72] Secure Energy argues that the Board properly considered potential harm but found the potential for harm to be speculative, not actual or imminent.

[73] Secure Energy further states that it is not impossible, as argued by Normtek, for applicants to show direct effect through economic impact citing both ***Bildson v Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Limited*** (October 19, 1998), 98-230-D, AEAB [***Bildson***] and ***Gadd.*** In these cases the Board decided that there was *prima facie* evidence that the applicants' use of a natural resource would be harmed and accordingly found the applicants to be "directly affected".

[74] Further, Secure Energy argues that given how events unfolded, and given that Normtek always intended to appeal the Director's decision, Normtek had a much longer notice period than 60 days to prepare and submit evidence of economic impact.

[75] Normtek also argues that the Board failed to consider other evidence put forward by Normtek including:

- that the Amending Approval was not compliant with Canadian or international NORM guidelines on best practices;
- "the longevity of the radioactive material being approved for landfill disposal"; and
- "the potential for significant adverse impacts on the environment and human health from the surface disposal of NORM waste in a landfill at levels of radioactivity

> which exceed thresholds of any other jurisdiction in the world for a facility that is not regulated by a nuclear safety regulatory agency."

[76] These factors, says Normtek, support a reasonable probability of potential harm linked back to the environment and the Board was unreasonable or incorrect in failing to address these submissions or issues.

[77] Secure Energy disputes the accuracy of these claims and in any event categorizes the above issues as related to the merits of the case and not standing. Secure Energy argues that standing is a preliminary matter and the merits of the appeal were properly not considered by the Board.

2. Standard of Review

[78] The standard of review as to what evidence is accepted by the Board, how the Board weighed that evidence, and its conclusion as to the impact of that evidence, is reasonableness: ***Dunsmuir***.

3. The Board's application of its interpretation of section 91(1)(a)(i), was reasonable

[79] The onus to prove that the applicant is directly affected, or has the potential to be directly affected, is on the applicant, on a standard of balance of probabilities: ***Board's Rules of Practice***, s 29.

[80] Normtek argues that the Board's application of its approach to "directly affected", in particular its characterization of the evidence and submissions provided by Normtek as "speculative", was unreasonable.

[81] The Board, in rejecting Normtek's submissions that it had the potential to be economically directly affected, stated in its Reasons for Decision at paragraph 148:

> ...First the argument is speculative; the Appellant has not provided sufficient evidence on a prima facie basis to demonstrate that it is directly affected...

[82] The Board indicated that it would need more information on the factors that companies take into account when deciding on how to dispose of radioactive waste before concluding that Normtek would be economically harmed. For example, the Board indicated that it would need more information on the costs of decontamination versus continually replacing equipment that has been disposed of in the Landfill.

[83] McIntyre J in ***Court*** at paragraphs 67-71 citing ***Re Vetsch***, [1996] AEAB No 10 at para 20 citing, emphasized that proof of harm may be difficult to demonstrate in environmental situations because the project or plant in question may not be yet in operation and there may be a lack of evidence, scientific or otherwise, available at the time as the loss may occur in the future.

[84] That is indeed the situation here: the Landfill's operations in accepting this type of waste without decontamination would be the first of its kind in Alberta. Further, the Board stated in its Reasons for Decision at para 132 that prior to the Amending Approval, Normtek was the only business in Alberta and British Columbia involved in the disposal of NORM waste. Normtek has also provided uncontroverted submissions that it currently decontaminates over 50 % of the equipment in the industry.

[85] Given this information and the caution expressed by McIntyre J about applying too high a threshold for assessing potential harm, it may be that Normtek's evidence of potential harm was not properly characterized as "speculative".

[86] However, of larger importance is the Board's determination that Normtek had not provided sufficient evidence that it had the potential, now or in the future, to be "directly" economically affected, as opposed to simply "affected" by the Amending Approval. Clearly, even if Normtek was affected economically in the future by the Amending Approval, the effect is not "direct". Several factors would still have to be presumed to intervene prior to Normtek experiencing potential economic harm.

[87] The Board continues its analysis to hold that Normtek has also not established a direct connection between the potential economic harm and harm to the environment. Normtek states that companies will choose the cheaper option of disposing of equipment into the Landfill rather than decontaminating. This choice will interfere with Normtek's financial ability to continue to decontaminate equipment and properly dispose of NORM. Normtek states that the increase in the amount of equipment in the Landfill will, in turn, negatively impact the environment. Again, as found by the Board, any connection between harm to Normtek and environmental impact is fairly remote.

[88] The Board in ***Byram Industrial Services*** did acknowledge that direct economic impact combined with an indirect environmental impact may ground standing. However, in Normtek's situation, neither the potential economic impact or the alleged environmental impact can be classified as direct. There is only an indirect chain of causation between either the potential economic harm to Normtek and the Director's decision, or the potential economic harm and any impact on the environment.

[89] The Board applied its interpretation of "directly affected" to the submissions and evidence of the parties. The Board's finding that Normtek had not provided sufficient evidence of any "direct" effect between any potential economic impact and the Amending Approval was reasonable. Further, Normtek's conclusion that any connection between the potential economic impact on Normtek and harm to the environment through the Amending Approval was too remote, is also reasonable.

[90] Normtek has also argued that the Board has failed to consider or give weight to certain submissions. These relate particularly to the merits of the appeal. The Board in its Reasons for Decision at paragraph 165 stated that it was not considering:

- Whether there was any contravention of the ***EPE Act*** by the Minister or the Director through their failure to develop policies, procedures, regulations, and best practices surrounding the handling of NORM;
- The proper categorization of the waste that was allowed to be admitted to the Landfill, and its assessment as "low level waste";
- Whether Secure Energy misled the Board about the long-term risks of high activity radioactive waste; and
- The appropriate persons to be consulted by the Director when making his decision regarding the Amending Approval.

[91] In ***Court***, McIntyre J, at paragraph 4 citing ***Bildson***, emphasized that standing should be decided as a preliminary issue prior to the merits of the appeal being decided. McIntyre J acknowledged that in most cases the standing of the applicants is linked to the substantive merits of the appeal but it is still appropriate to determine standing prior to hearing the merits.

[92] McIntyre J, at paragraph 67, further cited ***Zajes v Leduc (County)***, 1987 ABCA 172 [***Zajes***]. In ***Zajes***, Laycraft CJA, at paragraphs 11 and 12, recognized that while a finding as to standing must be made early in the proceedings this finding is necessarily influenced by an assessment as to the various conclusions that the Board may ultimately come to:

> If the section [of the *Administrative Procedures Act*] is to be construed as requiring the person proposing to intervene to show with certain that his rights will be affected, how is he to do it? A tribunal cannot know with any certainty at the start of the hearing what the proceeding will involve... [Emphasis in the original by Laycraft CJA]
>
> The Board, by the nature of its task, is bound to make its ruling at an early stage of the proceeding. It is bound to rule fairly on the balance of probabilities whether the hearing has the potential to affect or vary a person's rights given the variations in result possible at the conclusion of the hearing. [Emphasis added by McIntyre J.]

[93] I agree with McIntyre J's assessment and the comments made in ***Zajes***.[7] For reasons of efficiency and fairness the Board should generally determine standing as a preliminary issue. However, I also agree that the Board must be alive to the possibility, when determining standing that an assessment of the merits of the appeal may be required in order to reasonably assess whether there is the potential for harm to the applicant.

[94] Normtek has made forceful submissions on the merits of the appeal including that the Amending Approval allows for the disposal of "high activity long lived radioactive waste" into a landfill which does not have the institutional controls or expertise for managing this waste. Secure Energy disputes this characterization stating that the Amending Approval only allows for disposal of a low level of NORM waste category, and the Amending Approval itself mandated specific safeguards. Normtek is concerned that its arguments may never be heard and weighed by the Board if the Board denies standing.

[95] An exploration of the merits of the appeal may or may not support a stronger case for potential harm to the environment or human health and safety. However, an assessment of the merits of the appeal in this case does not assist Normtek in demonstrating that it is "directly affected" by the Amending Approval. Again, the legislature has seen fit to limit arguments made at the Board level to those who are "directly" affected. Given the fulsome submissions provided to the Board from Normtek on how it was "directly affected", I find that the Board reasonably exercised its discretionary authority in deciding that it had sufficient information to decide that Normtek was not "directly" affected, without considering the merits of the appeal.

[96] The Board's decision, that the information and submissions put forward by Normtek which are directed at the merits of the appeal are not relevant to standing, is reasonable.

---

[7] I recognize in ***Zajes*** the statutory test was whether "rights will be varied or affected" as opposed to "directly affected".

D. Whether it was reasonable for the Board to refuse to hear Normtek's appeal given the wording in section 95(1)(a)(i) and (ii) of the *EPE Act*

[97] Normtek argues that section 95(5)(a), which states that the Board "may dismiss" an appeal where the person is not "directly affected", as juxtaposed immediately with section 95(5)(b) which states that Board "shall dismiss" an appeal in other circumstances, indicates a legislative intention that the Board has discretionary authority to hear from individuals who are not directly affected. In other words, the Board can exercise a discretion to hear public interest complaints.

[98] Secure Energy responds that while 95(5)(a)(ii) provides some discretion to the Board to dismiss a notice of appeal under subsections (i), (iii), (iv), and (v), a notice of appeal is not valid unless the person submitting it is found to be "directly affected". As Normtek was not found to be "directly affected" the Board had no discretion to refuse to dismiss its appeal. Further, Secure Energy states that even accepting that the statutory language may be unclear, any ambiguity in its interpretation should be resolved by the Board, an expert body interpreting its home statute.

[99] The Director emphasizes that the word "may" does not serve to increase the jurisdiction of the Board and points to the recent decision in ***Alberta Wilderness Association v Alberta (Environmental Appeal Board)***, 2013 ABQB 44. In that case, Hall J assessed very similar wording under the ***Water Act***, RSA 2000, W-3 [***Water Act***] and held that the Board only had jurisdiction which was granted to it by the provisions of the statute. Section 115(1)(c)(i) of the ***Water Act*** stated that a person who has standing to file an appeal must have submitted a statement of a concern and be directly affected by the Director's decision. The Court held that:

> [...] The *Water Act* did not grant the Board authority to hear public interest appeals. It can only hear appeals from parties directly affected by the decisions of the Director. The Board receives its jurisdiction from the provisions of the *Water Act*. It is a legislated jurisdiction. The Board cannot exceed that jurisdiction. The Board has no inherent jurisdiction.

[100] First, even though this issue has been characterized by Normtek as one of "fettering discretion", I find that the issue is a question of law involving the interpretation of a home statute. This question is presumed to attract a standard of review of reasonableness: ***McLean v British Columbia (Securities Commission)***, 2013 SCC 67.

[101] It is curious that the legislators would use the word "may" when the more specific provision clearly indicates that to file a notice of appeal the applicant must be "directly affected". However, even accepting some ambiguity in the legislation, it was open to the Board to prioritize the specific requirement of having to be "directly affected", over the more general wording set out in section 95(5).

[102] Further, as pointed out by Hall J, to allow public interests complaints through the exercise of discretion afforded under section 95(5)(a)(ii), is contrary to clear legislative intent. The inclusion of the word "directly", demonstrates a strong legislative intent that a general or public interest is not enough to ground standing: ***WMI Waste Management*** at 8.

[103] The Board's dismissal of the appeal under section 95 on the basis that Normtek was not "directly affected" is reasonable.

[104] Related, Normtek argues, that if the Board's interpretation of "directly affected" under section 91 is accepted and the Board refuses to exercise discretion under section 95(5), any

appeal on the merits of the Amending Approval will be dismissed. Normtek emphasizes that this series of decisions precludes the possibility of applying legal accountability mechanisms to ensure the Director is making decisions in accordance with the ***EPE Act*** and the public interest.

[105] Normtek points again to the Minister's comments in *Hansard*, which described the Board as an entity that would provide independent review of the decisions made by the Director:

> ...This board will provide an independent review of the decisions made by directors and other people within the department to provide a system of checks and balances on those decisions.... Alberta, Legislative Assembly, *Hansard*, 22nd Leg, 4th Sess, (11 May 1992 and 4 June 1992) at 1184 (Ralph Klein)

[106] Normtek further argues, relying on ***Canada (AG) v Downtown Eastside Sex Workers***, 2012 SCC 45 [***Downtown Eastside Sex Workers***] and ***Delta Air Lines Inc v Lukács***, 2018 SCC 2 [***Delta Air Lines***] that the Board cannot interpret its statute in a manner such that the purposes of the legislation are undermined or defeated.

[107] I acknowledge that the Director's decision on "directly affected" is somewhat shielded in the administrative regime in that it cannot be appealed to the Board. Further, if the Board does not allow an applicant standing then the Director's decision as to the merits of the Amending Approval may go unchallenged.

[108] However, the ***EPE Act***, while not providing for an appeal of the Director's decision on standing to the Board, does allow some decisions of the Director to be appealed.[8] It must be assumed then for reasons of efficiency or otherwise, that the legislature has turned its mind to the appellate function of the Board and decided to allow appeals on certain issues but not others.

[109] Further, even though the decision of the Director on standing cannot be appealed to the Board, the applicant can, as Normtek did in this case, apply to the Board for a separate ruling on standing. In other words, there is another process whereby an applicant may apply to the Board for a ruling on whether it is directly affected even in the face of the Director's refusal to accept the applicant's a statement of concern.[9] In this way, there is an element of review built into the statutory regime.

[110] The Supreme Court, in ***Downtown Eastside Sex Workers***, endorsed a flexible approach to the concept of 'public interest standing' so as to allow citizens to challenge unconstitutional laws. This is a very different context than decisions made within a statutory regime, which decisions are subject to judicial review, albeit mainly on a reasonableness standard. On this point, see also ***Dunsmuir*** at paragraph 30 which emphasizes the "role of judicial review in upholding the rule of law."

---

[8] See for example numerous other provisions under section 91 of the ***EPE Act***.

[9] I do not read the conjunctive test as set out in section 91(1) (a) (the person must have submitted a statement of concern to the Director and be directly affected by the Director's decision) as allowing the Board to make a decision on assessing "direct affect" only if the Director has accepted a statement of concern. Rather, the reference to the submission of a statement of concern appears to be a procedural requirement so that applicants are prevented from jumping into Board proceedings at first instance. See also ***Byram Industrial Services*** at para 69 citing ***Ouimet et Director, Regional Support, Northeast Boreal Region, Regional Services, Alberta Environment re: Ouellette Packers*** (2000) Ltd. (28 January 2002), Appeal No. 01-076-D AEAB.

[111] With respect to ***Delta Air Lines***, the tribunal had applied a very narrow test for public interest standing in the face of very broad discretionary language.[10] The Supreme Court stated further that the test as enunciated by the tribunal could never be met. This is very different than the case at hand wherein the Board is charged with interpreting statutory wording which specifically states that only those found to be "directly affected" may appeal the Director's decision.

[112] I cannot accept that the Board's interpretation of "directly affected" or its refusal to read section 95(5)(a)(ii) as creating a discretionary authority to allow public interest complaints, subverts the intention of the legislature, the purposes of the ***EPE Act***, or the principles of administrative law.

E. Did the Board bring the legal system into disrepute through undue delay?

[113] Normtek argues that the delay occasioned by the Board with no written reasons delivered until 16 months after its decision to dismiss Normtek's appeal, brings the legal system into disrepute.

[114] Normtek emphasizes that this issue touches on procedural fairness, or in the alternative that it is a question of general importance to the legal system as a whole and, as such, attracts the correctness standard of review. At the hearing, Normtek indicated that it was no longer pursuing a remedy on this issue but requested a declaration from this Court that 16 months is far too long for a decision maker to explain its decision.

[115] Secure Energy argues that in order for delay to constitute a breach of procedural fairness, the delay must have caused prejudice to the applicant: ***Tora Regina (Tower) Ltd, (cob Giant Tiger, Regina) v Saskatchewan (Labour Relations Board)***, 2008 SKCA 38 at para 17. Further, Secure Energy emphasizes that Normtek was fully involved in proceedings for the over two-year period it took for the Director to issue the Amending Approval. The Board dismissed Normtek's appeal within approximately one month of the parties providing submissions. Lastly, Secure Energy points out that there is no time frame set out in the ***EPE Act*** in which reasons must be issued, and the delay was not prejudicial.

[116] Whether or not a process was procedurally unfair must be assessed in accordance with the factors set out in ***Baker v Canada (Minister of Citizenship and Immigration),*** [2999] 2 SCR 817, 1999 CanLII 699 (SCC) [***Baker***]. The Court in ***Baker*** emphasized at paragraph 28:

> ...The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decision.

[117] Any prejudice suffered by Normtek due to the delay in issuing reasons is also relevant.

---

[10] Section 37 of the ***Canada Transportation Act,*** SC 1996, c10:

> The Agency may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under any *Act* of Parliament that is administered in whole or in part by the Agency.

[118] The Board provided numerous opportunities for Normtek to present their case. The process was defined and clear to the parties. A decision was made by the Board that Normtek did not have standing within a fairly short period of time. I am not minimizing the expense and effort of having to file a possibly unnecessary judicial review to meet time limits under the ***Alberta Rules of Court***, without having the opportunity to review the Board's reasons. However, no prejudice on this basis was argued. The process, including the issuance of late reasons, did not breach procedural fairness.

[119] Normtek has asked for a declaration that this delay in issuing reasons is not acceptable, and brings the administration of justice into disrepute. A delay of 16 months for the parties to receive reasons is undesirable but in the circumstances I do not consider it necessary to issue a declaration and I decline to do so.

VI. Conclusion

[120] The application for judicial review is dismissed.

[121] Submissions on costs were made at the hearing. While I appreciate the public aspect to Normtek's submissions, Normtek has a clear economic interest in the outcome of this judicial review. There is no reason to depart from the normal rule. Secure Energy shall have its costs at Column 2 of Schedule C of the ***Alberta Rules of Court***.

Heard on the 1st day of May, 2018.
Written submissions received on November 9, 2018.
Dated at the City of Calgary, Alberta this 21st day of November, 2018

Janice R. Ashcroft
J.C.Q.B.A.

Appearances:

Shaun Fluker
Drew Yewchuk – Student at Law
for the Applicant, Normtek Radiation Services Ltd.

Keith F. Miller
Sarah M. Graham
for the Respondent, Secure Energy Services Inc.

Christopher Ghesquiere
for the Respondent, Director of Alberta Environment and Parks

Grant D. Sprague, Q.C.
for the Alberta Environmental Appeals Board