

By e-mail only

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November 19, 2024

www.aer.ca

Normtek Radiation Services Ltd.

Fasken Martineau DuMoulin LLP

Attention: Cody Cuthill

Attention: Allison Sears

Dear Parties:

**RE: Request for Regulatory Appeal filed by Normtek Radiation Services Ltd. (Normtek)
SECURE Energy Services Inc. (SECURE)
Application No.: 1943077 (Application)
Approval No.: Amendment L to Approval WM 122 (Approval)
Locations: 06-36-068-06-W6M
Request for Regulatory Appeal No.: 1949706**

We, the Alberta Energy Regulator (AER) delegated decision makers for this matter, have considered the request of Normtek Radiation Services Ltd. (Normtek), under section 38 of the *Responsible Energy Development Act* (REDA), for a regulatory appeal of the AER's decision to approve the Application and issue the Approval to SECURE (Request). We have carefully reviewed the entirety of the submissions made by both Normtek and SECURE in this matter. This review included not only the new materials filed in relation to the Request, but also materials filed prior to submission of the Request and adopted by the parties in relation to the Request.

We have decided to grant the Request in part.

Test for Regulatory Appeal

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [underlining added]

In order to be granted a regulatory appeal, all these conditions must be met.

Appealable decision

The decision to amend the approval and issue the Approval, which is an amendment to an existing approval, is a decision made by the Regulator under an energy resource enactment, the *Oil and Gas Conservation Act*, and therefore is an appealable decision as set out in REDA section 37(a)(iv).

In accordance with the Rules

The Request was made within the time limits and guidelines set out in the *Alberta Energy Regulator, Rules of Practice*, section 30 and is thus in accordance with those rules.

Eligible person

The term “eligible person” is defined in section 36(b)(ii) of REDA to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment]...

Dismissal of a request for regulatory appeal

Section 39(4) of REDA sets out circumstances where the AER may dismiss a request for regulatory appeal.

That section states:

- 4) The Regulator may dismiss all or part of a request for regulatory appeal
 - (a) if the Regulator consider the request to be frivolous, vexatious or without merit
 - (b) if the request is in respect of a decision on an application and the eligible person did not file a statement of concern in respect of the application in accordance with the rules, or
 - (c) if for any other reason the Regulator considers that the request for regulatory appeal is not properly before it.

For the reasons set out below, we are satisfied that Normtek is directly and adversely affected by the AER’s decision to approve the Application and issue the Approval. However, we have concluded that certain grounds of appeal should be dismissed as being without merit.

Background

SECURE submitted Application 1943077 under *Directive 058: Oilfield Waste Management Requirements for the Upstream Petroleum Industry* and *Directive 058 Addendum Oilfield Waste Management Facility Approvals—Notification and Amendment Procedures (Directive 058)* to amend Approval WM 122 for its South Grande Prairie Oilfield Waste Management Facility to accept naturally occurring radioactive material (NORM) laden waste at the facility.

Normtek filed a statement of concern in relation to the Application. After considering Normtek’s concerns and SECURE’s responses to those concerns and reviewing the Application, the AER issued Amendment L to Approval WM 122 on December 14, 2023, pursuant to the *Oil and Gas Conservation Act* section 39(1)(g); *Oil and Gas Conservation Rules* (OGCR) sections 8.150(2) and 15.212; and *Directive 058*.

Normtek then submitted the Request.

The first question for us is whether Normtek has demonstrated that it is an “eligible person” because it is a person who is directly and adversely affected by the decision to issue the Approval to SECURE.

Normtek’s submissions

Normtek says it is directly and adversely affected, “financially, socially and environmentally”.

Normtek says it provides industries with experience and assistance in all aspects of radiation protection and NORM management from initial detection through worker training, consolidation and packaging, decontamination, laboratory analysis and transport to final disposal.

According to Normtek, the Approval allows the improper handling of radioactive materials from the point of generation to final disposal. Normtek alleges that SECURE’s practices do not meet radiation best practices, which, in turn, may harm Normtek’s employees. Normtek raises specific concerns over safety of transport and acceptance requirements.

Normtek’s position appears to be twofold:

- a) its employees could be harmed by the alleged improper handling of NORM and
- b) Normtek suffers harm because SECURE can operate without complying with best practices.

Improper Handling

- no transport documents that fall under the Packaging and Transport of Nuclear Substances Regulations, 2015 (PTNSR) are being properly completed.

- the approval does not comply with the receiver responsibilities of the OGCR and that of the PTNSR regarding classification.

Normtek claims that the AER:

- a) failed to ensure operating plans addressed the information needed to be put on transport documents; and
- b) did not require procedures to ensure that the solid phase of waste governed under the PTNSR was properly characterized upon receipt for non-oilfield waste and out of province waste as the approved plans only addressed the liquid phase (improper characterization).

Thus, Normtek asserts, the approved plans allow SECURE to disregard any segregation of NORM activities by placing all solids on a drying pad to be mixed then an analysis obtained prior to disposal. Normtek alleges that it cannot follow this method if it follows recommended practices of radioactive waste management.

Best Practices

According to Normtek, SECURE's method does not meet radiation best practices, as it allows activities that would be considered unsafe for most disposal options.

Normtek submits that the Approval is for handling NORM for the purpose of disposal and that Normtek is directly affected economically. Normtek states that while its primary concern is that of ensuring safety, it is financially affected.

SECURE's submissions

In its original response to Normtek's concerns about the Approval, SECURE submitted the following:

SECURE's decision to use a dose rate of 150 nSv/hr to determine the potential presence of NORM, is not arbitrary. It is based on the Canadian NORM Guidelines. In particular, Table 5.1 of the Canadian NORM Guidelines lists concentrations that give a maximum effective dose of 0.3 mSv/a. Section 3.2 of the CNG states that activities are unrestricted at an annual dose of 0.3 mSv/a. Section 4.1.1 equates 0.3 mSv/a to an incremental dose rate of 0.15 uSv/hr (i.e., 150 nSv/hr) above background. SECURE, in fact, uses a conservative value of 150 nSv/hr including background. Normtek's assertion that industry uses any dose above background, is incorrect. For example, ALARA Consultants, a radiation safety service provider advises clients that NORM-laden material should be characterized as NORM if the dose reading is 30 nSv/hr above background when subject to a gamma dose rate survey. SECURE does not use this approach as natural background radiation levels vary, which causes confusion between generating and receiving location. SECURE submits

that its approach is more robust, but the point is that it is entirely consistent with the requirements set out in the Canadian NORM Guidelines¹

In further response to Normtek's concerns, and in direct response to the Request, SECURE stated in its May 31, 2024 letter that the Request should be dismissed for lack of merit. It stated in part:

...while Normtek may disagree with how the Regulator addressed the issue of characterization and classification of waste, it did address these issues and it did so with the benefit of Normtek's submissions. Moreover, SECURE submits that the conditions the AER has imposed under the Approval are in no way contradictory and are entirely consistent with the requirements under the Packaging and Transport of Nuclear Substances Regulations, 2015 ("PTNSR"), the Transportation of Dangerous Goods Regulations ("TDGR") and the Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials" ("Canadian NORM Guidelines"). Normtek's unsupported assertions to the contrary should be rejected.

SECURE further submitted that Normtek is not directly and adversely affected because its employees are safer and NORMs in the environment are better handled with the Approval and its conditions in place. SECURE responded to the submission that it is not complying with Canadian NORM Guidelines and argued that the Request should be dismissed because the AER has issued an amended approval, the Approval, regulating NORMs within its jurisdiction. SECURE also argued that Normtek's claims that the regulatory regime is improper or unfair are not valid because:

...there is no factual support for Normtek's claim that NORMs are not regulated in Alberta. Rather, Normtek does not consider the existing regulatory framework in Alberta to be adequate. This is a concern with government policy.

In short, SECURE submits that Normtek is not directly and adversely affected by the Approval and that the AER should use its discretion found in REDA section 39(4) to dismiss this Request.

Analysis

Before we consider applying section 39(4) of REDA, we must first determine whether Normtek has met the test for eligibility for a regulatory appeal set out in REDA section 38(1).

In the particular circumstances of this very complex matter, we must consider the submissions made by Normtek and SECURE regarding the merits of the Approval and a potential appeal as they pertain to the issue of Normtek's status as an eligible person. Having reviewed the submissions, we find that Normtek is directly and adversely affected by the Approval. Normtek asserts that it is in the business of managing radioactive material in an environmentally responsible manner, consistent with applicable laws and in

¹ SECURE letter to the AER, 30 June 2023.

accordance with internationally accepted best practices in radioactive waste management. The Approval, Normtek argues, is in conflict with this.

The potential effects of the Approval, specifically the mishandling of radioactive materials, as alleged by Normtek, could have real world direct consequences for this operator. Normtek's submissions persuade us that the potential economic impacts on Normtek and potential physical impacts, including to Normtek's employees, could arise from the Approval. While we are not persuaded the Dangerous Occurrence report demonstrates that impact, the issues raised by Normtek regarding the potential problems with the Approval and the nature of NORMS are such that direct impact is possible.

Normtek also raises an issue that the Approval may inadvertently change the regulatory regime for NORMS, in an area of law that both parties recognize is new. In the unique circumstances of this matter having regard for the submissions, Normtek has demonstrated that it is an "eligible person" for the purposes of s. 36 of the REDA.

Section 39(4) of REDA

SECURE stated in its May 31, 2024 submission that the grounds upon which it seeks to have the Request dismissed are that the Request is without merit or not properly before the AER. Secure asks the AER to dismiss the request for a regulatory appeal on this basis through section 39(4) of REDA.

Section 39(4) of REDA allows us to dismiss a request for regulatory appeal if we are satisfied the request is "without merit" or not properly before the AER. To find Normtek's request to be without merit, we must answer the question whether there is a reasonable basis, as disclosed in the submissions, for proceeding to the next stage.

We are satisfied that matters raised by Normtek that are outside the jurisdiction of the AER are without merit, should not be before the AER and cannot be the basis for a regulatory appeal. We also agree with SECURE that a regulatory appeal hearing is an inappropriate forum to review policy set by the Government of Alberta. The AER has no ability to issue decisions directly altering government policies. Therefore, matters in relation to which Normtek seeks Government of Alberta policy changes are not within the scope of the hearing. Nor are matters related to the enforcement of regulations outside the AER's jurisdiction. SECURE is correct that matters that do not arise from the Approval, cannot fall within the scope of an appeal of the Approval.

However, we are not satisfied that there is no reasonable legal or factual basis for the whole of the Request. Issues related to content of the Approval, including characterization and classification of waste, which fall within the AER's jurisdiction, cannot be said to have no factual or legal basis.

For example, we note that the Approval (in part) states at clause 1:

NORM Waste are any waste material with concentrations of NORM above the limits specified in Tables 5.1, 5.2, and 5.3 of the Canadian Guidelines for Naturally Occurring Radioactive Material (NORM; Canadian NORM Guidelines), Health Canada (April 2014), as amended.

However, Normtek's submission suggests that clauses 20-24 contradict clause 1.

SECURE has suggested that the rigour of the AER's consideration of the Application should persuade us that Normtek's challenge to the Approval is meritless. With respect, the fact the AER had a robust process in deciding the Application does not dictate that any requested appeal is without merit. Further, the fact issuance of the Approval was within the AER's jurisdiction does not by itself demonstrate the Request is meritless.

Apart from the exceptions noted above, the Request raises issues that are not on the face of the submissions without merit and thus in the circumstances should be the subject of an appeal hearing.

Conclusion

For the reasons set out above, the AER has determined that Normtek is entitled to a regulatory appeal of the decision to issue the Approval. This grant excludes the matters listed above, which are dismissed from the appeal.

Sincerely,

<Original signed by>

Jeffrey Moore
Senior Advisor, Legal/Regulatory

<Original signed by>

Dustin Shauer
Senior Advisor, Closure Policy

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Todd Shipman
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