

RECORD OF PROCEEDINGS

Applicant: 588972 Alberta Limited, operated as Enviropac

Address/Location: 2236 - 80 Ave NW, Edmonton, Alberta, T6P 1N2

Purpose: Review by the Commission of the Designated Officer Order issued to 588972 Alberta Limited on September 15, 2006

Order issued: September 15, 2005

Date of proceeding: December 14, 2006

Location: Canadian Nuclear Safety Commission (CNSC) Public Hearing Room, 280 Slater St., 14th. Floor, Ottawa, Ontario

Members present: L. J. Keen, Chair
J. A. Dosman
M. J. McDill

Secretary: M.A. Leblanc
Recording Secretary: M. Young
General Counsel: J. Lavoie

Applicant Represented By	Document Number
<ul style="list-style-type: none">• Robert Masnyck, CEO• John P. Poirier, Counsel	CMD 06-H159.1
CNSC staff	Document Number
<ul style="list-style-type: none">• R. Jammal• P. Fundarek	CMD 06-H159

Order: Confirmed
Date of Decision: December 14, 2006

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Introduction

1. 588972 Alberta Limited, operated as Enviropac and located in Alberta, Edmonton currently holds three licences issued by the Canadian Nuclear Safety Commission (CNSC¹):
 - a calibration licence 12127-4-09.0, issued October 1, 2004;
 - a storage licence 12127-2-09.1, issued January 1, 2006; and
 - a licence to process unsealed nuclear substances 12127-3-09.0, issued October 1, 2004
2. On September 15, 2006, a CNSC Designated Officer, pursuant to his authority under paragraph 37(2)(f) and sub-section 35(1) of the *Nuclear Safety and Control Act*² (NSCA), issued an Order to Enviropac. The Order required Enviropac to immediately comply with specific actions and measures identified in the Order. Pursuant to the Order, Enviropac is prohibited from carrying out any licensed activities under any of its CNSC licences.
3. On September 20, 2006, pursuant to subsection 37(6) of the NSCA, the Designated Officer referred the Order to the Commission for review to confirm, amend, revoke or replace the Order. The purpose of the review is to provide the person named in or subject to the Order with an opportunity to be heard and to allow the Commission to take into consideration all information and evidence that will result in a fully informed decision.
4. CNSC staff also recommended that the Commission, in its review, consider including additional conditions in the Order. CNSC staff also recommended that the Commission amend, on its own motion, the storage licence and revoke the calibration licence and the licence to process unsealed nuclear substances.
5. Pursuant to paragraph 40(1)(d) of the NSCA, the Commission provided an opportunity to be heard to Enviropac, as the person subject to and named in the Order.
6. This *Record of Proceedings* describes the Commission's consideration of Enviropac's submission on the Order, the review of the Order and the reasons for the decision.

Issues

7. In its review of the Order, the Commission was required to decide to confirm, amend, revoke or replace the Order issued on September 15, 2006, pursuant to subsection 37(6) of the NSCA.
8. In addition, amendments to the Order were also requested by CNCS staff and the licensees.

¹ In this *Record of Proceedings*, the *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² S.C. 1997, c. 9.

9. The Commission was also asked to determine whether it would, on its own motion, amend the storage licence 12127-2-09.1, revoke the calibration licence 12127-4-09.0, and revoke the licence to process unsealed nuclear substances 12127-3-09.0.

Proceeding

10. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to review the Order.
11. The Panel of the Commission (hereafter referred to as the Commission), in making its decision, considered information presented for a proceeding held by teleconference on December 14, 2006 in Ottawa, Ontario. During the proceeding, the Commission considered written submissions from CNSC staff (CMD 06-H159), including the Designated Officer Order, and Enviropac (CMD 06-H159.1). The Commission also heard an oral presentation from CNSC staff.
12. The proceeding was conducted in accordance with Part 6 of the *Canadian Nuclear Safety Commission Rules of Procedure*³. The President of the Commission decided that it would not be prejudicial to Enviropac and would be in the public interest to carry out the proceeding in a public forum and thus the public was invited to observe the proceeding.
13. At the commencement of the proceeding, the Commission reviewed Enviropac's request for an adjournment. The Commission decided to proceed with the review of the Designated Officer Order issued on September 15th, 2006. However, the Commission ruled that it would adjourn part of the proceeding to a later date to consider the amendments to the Order as requested by Enviropac and recommended by CNSC staff, as well as the amendment to licence 12127-2-09.1 and the revocation of licences 12127-3-09.0 and 12127-4-09.0, as recommended CNSC staff.

Decision

14. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*,

the Commission, pursuant to subsection 37(6) of the NSCA, confirms the Designated Officer Order issued to 588972 Alberta Limited on September 15, 2006.

15. Further to its decision, the Commission decides to adjourn the proceedings until January 26, 2007 for the matters of:
 - amending the Order as recommended by CNSC staff in CMD 06-H159;
 - amending the Order as recommended by Enviropac in CMD 06-H159.1;
 - amending the storage licence 12127-2-09.1;

³ SOR/2000-211.

- revoking the calibration licence 12127-4-09.0; and
- revoking the licence to process unsealed nuclear substances 12127-3-09.0.

Issues and Commission Findings

16. In reviewing the Order under subsection 37(6) of the NSCA, the Commission considered the reasonableness of the Order. In this regard, the Commission considered the actions and measures identified in Part 2 of the Order and the information on which the Order was based, as identified in Part 3 of the Order. In this regard, and as elaborated further below, the Commission is satisfied that the Designated Officer, based on the information available, had sufficient evidence and a reasonable basis for issuing an Order to protect the health and safety of the public and the environment.

Actions and Measures of the Order

17. The Commission considered the four actions and measures identified in Part 2 of the Order. During the hearing, Enviropac stated that it did not take issue with the four terms of the Order.
18. The Commission is of the opinion that the actions and measures identified in Part 2 of the Order are adequate to protect the health and safety of the public and the environment.

Basis of the Order

19. The Commission considered the information on which the Order was based, as identified in Part 3 of the Order.
20. CNSC staff stated that an inspection of the Enviropac premises on March 1, 2005 had identified many health, safety and security issues of non-compliance. As a result of this non-compliance, CNSC Inspector Order 195 was issued on March 2, 2005. CNSC staff explained that one of the conditions of Order 195 prohibited the acquisition and transfer of nuclear substances and radiation devices.
21. CNSC staff stated that it had focused its efforts in trying to obtain regulatory compliance with the licensee through a number of measures, mainly through the use of increased regulatory oversight. CNSC staff reported that in September 2006, it was decided by the CNSC Directorate of Nuclear Substance Regulation management that an inspection should be carried out to verify the operations at the premises of the licensee. CNSC staff explained that it had been unable to obtain a proper inventory from the licensee, and that it had information that the licensee had received, and continued to receive, radiation devices and nuclear substances, contrary to written commitments to Commission staff that it would cease doing so.

22. In the Order issued on September 15, 2006, CNSC staff explained that it had attempted to inspect the premises on September 14, 2006, but was refused entry by an employee onsite and by the director of Enviropac by telephone. CNSC staff stated that the City of Edmonton Police was contacted and a Warrant to Search was issued in order to gain entry to the premises for the purpose of verifying compliance with the NSCA.
23. In its submission, Enviropac explained that it had denied CNSC inspectors access to the premises because it did not understand the gravity of the situation and in consideration of the director's absence. Furthermore, Enviropac noted that it had expected the inspection to be carried out the following week.
24. CNSC staff stated that during its inspection on September 14, 2006, it identified with certainty that the licensee had carried out, and continued to carry out, unlicensed activities, including the servicing of radiation devices, manufacturing of sealed sources, manufacturing of radiation devices and the transfer of licensable material to unlicensed users.
25. CNSC staff noted that, during this inspection and as noted in previous inspections, radiation dose rates measured around the facility were found to be elevated. CNSC staff explained that it had concerns that the elevated dose rates posed a risk to the public, in addition to all of the other unlicensed activities identified. CNSC staff stated that the Order was issued based on those concerns.
26. In response to the Commission's concerns regarding the dose rates, CNSC staff responded that the high dose rates were a risk for people both inside and outside of the facility. CNSC staff stated that it had identified a number of nuclear substances and radiation devices that were not properly labelled, were improperly stored and that were releasing dose rates significantly in excess of regulatory limits. CNSC staff also explained that outside the facility, inspectors found and identified dose rates that were in excess of the licence conditions.
27. The Commission enquired whether employees at Enviropac wore dosimeters. CNSC staff responded that it did not know whether the one employee it had encountered was wearing one, but noted that the employee would not have been required to wear one at that time as the employee was working outside of the licensed area of the facility. Based on this information, the Commission expressed its concern that the licensee may not have taken all reasonable measures to ensure the safety of its employees.
28. The Commission inquired about the protection of the safety of the public. The Commission was informed that, at this time and in light of measures taken since the issuance of the Order, there is no safety risk to the public. This was confirmed by Enviropac and CNSC staff.
29. In regards to the water drums being used to shield neutron radiation, the Commission was concerned that the water might freeze over the winter and rupture the drums. Enviropac stated that many of the drums had calcium chloride added to the water, which would prevent the water from freezing.

30. Based on the above information, the Commission agrees with CNSC staff's conclusions that Enviropac has failed to comply with the terms and conditions of its licence.
31. The Commission is satisfied that the Order reflects the urgent need for Enviropac to address the issues related to the non-compliance of licence conditions, including the servicing of radiation devices, manufacturing of sealed sources, manufacturing of radiation devices and the transfer of licensable material to unlicensed users. On this basis, the Commission confirms the Designated Officer Order issued on September 15, 2006.

Conclusion

32. The Commission has considered the information and submissions from Enviropac and CNSC staff as presented in the material available for reference on the record for the proceeding.
33. The Commission, pursuant to subsection 37(6) of the NSCA, confirms the Designated Officer Order issued to Enviropac on September 15, 2006 in the manner described in this *Record of Proceedings*.
34. Furthermore, in order to provide Enviropac with additional time to review CNSC staff's recommendations as submitted in CMD 06-H159, the Commission adjourns the proceedings until January 26, 2007 for the matters of:
 - amending the Order as recommended by CNSC staff in CMD 06-H159;
 - amending the Order as recommended by Enviropac in CMD 06-H159.1;
 - amending the storage licence 12127-2-09.1;
 - revoking the calibration licence 12127-4-09.0; and
 - revoking the licence to process unsealed nuclear substances 12127-3-09.0.

Linda J. Keen
President,
Canadian Nuclear Safety Commission

Date of decision: December 14, 2006

Date of release of Reasons for Decision: December 15, 2006