

Federal Court



Cour fédérale

Date: 20200129

Docket: T-1363-19

Citation: 2020 FC 166

Ottawa, Ontario, January 29, 2020

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CANADIAN NUCLEAR SAFETY COMMISSION

Applicant

and

NEUCEL SPECIALTY CELLULOSE LTD.

Respondent

JUDGMENT

UPON APPLICATION UNDER paragraph 34(b) of the *Nuclear Safety and Control Act*, SC 1997, c 9 [Act] allowing for the disposal of radiation devices containing nuclear substances seized under the *Criminal Code*, RSC 1985, c C-46, in the manner and upon timing which the Canadian Nuclear Safety Commission deems appropriate;

AND UPON reading the Affidavit of Peter Larkin, sworn September 17, 2019;

AND UPON reading the written submissions of counsel for the Applicant, dated November 20, 2019;

AND UPON hearing the oral submissions of counsel for the Applicant on January 29, 2020;

AND UPON considering that the Respondent Neucel Specialty Cellulose Ltd. [Neucel], as owner and or operator of a pulp mill in Port Alice, British Columbia, was formerly in possession of certain radiation devices, namely gauges, containing nuclear substances [Devices] regulated under the *Act*;

AND UPON considering that Neucel was duly served with the Notice of Application, Application Record and the Notice of Hearing in this matter, yet failed to appear at the hearing and failed to make any written submissions;

AND UPON being satisfied that Neucel's Radiation Safety Officer informed the Applicant in February, 2019 that Neucel ceased operations and had informed its employees, including its Radiation Safety Officer, to go home because the company had no more money;

AND UPON being satisfied that Neucel thereby breached the terms of its licence issued by the Applicant, and thereby contravened section 26 of the *Act*;

AND UPON being satisfied that Neucel breached an Order dated March 22, 2019 issued by the Applicant, which was confirmed by the Applicant on May 6, 2019 pursuant to subsection 37(6) of the *Act*;

AND UPON being satisfied that Neucel's noncompliance with the *Act* posed risks to the health and safety of persons and to the environment, as contemplated by section 3 of the *Act*;

AND UPON being satisfied that the Devices were seized on May 30, 2019 pursuant to a warrant issued to a peace officer of the Port Hardy Royal Canadian Mounted Police, pursuant to section 487 of the *Criminal Code* and that said Devices are now in the possession and control of the Applicant;

AND UPON considering that the Applicant by decision dated June 25, 2019 revoked Neucel's licence pursuant to section 25 of the *Act*, because Neucel (i) is not qualified to carry out the licensed activity, (ii) failed to comply with the *Act*, the regulations made under the *Act* and its licence conditions, and (iii) is no longer carrying on the licensed activity;

AND UPON considering the jurisdiction conferred upon this Court pursuant to section 34 of the *Act*, to order the disposal of the Devices;

AND UPON considering that the Applicant has determined that the Devices cannot be returned to Neucel, which is no longer a licensee under the *Act*;

AND UPON the Court being informed that the Applicant has a plan to dispose of the Devices in accordance with applicable law and regulations by removing nuclear substances from the Devices, transporting the nuclear substances removed to Chalk River, Ontario to be stored, and recycling the Devices.

THE JUDGMENT OF THIS COURT is that:

1. The Application by the Applicant Canadian Nuclear Safety Commission for an Order pursuant to subsection 34(b) of the *Nuclear Safety and Control Act* in respect of the disposal of the Devices containing nuclear substances is granted;
2. The Applicant is to proceed with the disposal of the Devices in the manner and upon such timing as the Canadian Nuclear Safety Commission deems appropriate subject to applicable law and regulations.

"Henry S. Brown"

Judge