

# Record of Proceedings, Including Reasons for Decision

In the Matter of

Order  
issued to

Mr. E. Kolewaski

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Subject

Opportunity to be heard on the Designated  
Officer Order Issued to Mr. E. Kolewaski with  
respect to the premises located at 2236, 80<sup>th</sup>  
Avenue, Edmonton, Alberta, previously leased  
to Enviropac Inc.

Proceeding  
Date

May 15, 2008



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## **Introduction**

1. On April 3, 2008, a Canadian Nuclear Safety Commission<sup>1</sup> (CNSC) Designated Officer issued an order to Mr. E. Kolewaski with respect to the premises located at 2236, 80<sup>th</sup> Avenue, Edmonton, Alberta. Mr. E. Kolewaski is the landlord of these premises which were previously leased to 588972 Alberta Ltd., operated as Enviropac Inc. The order was issued to Mr. E. Kolewaski to ensure that the access to the site be controlled and that any work inside the building be prohibited due to contamination from Americium-241.
2. Pursuant to subsection 37(6) of the *Nuclear Safety and Control Act*<sup>2</sup> (NSCA), the Designated Officer referred the order to the Commission for review.
3. Pursuant to paragraph 40(1)(d) of the NSCA, the Commission was required to provide an opportunity to be heard to any person named in or subject to the order. On April 25, 2008, Mr. Kolewaski notified the Commission that he would take advantage of this opportunity to be heard on the order in the form of a written submission.
4. This Record of Proceedings describes the Commission's consideration of Mr. Kolewaski and CNSC staff submissions, its review of the order and the reasons for the decision.

## Issue

5. In its review of the order, the Commission was required to confirm, amend, replace or revoke the order, pursuant to subsection 37(6) of the NSCA.

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6. Pursuant to section 22 of the NSCA, the President of the Commission established a panel of the Commission to review the order.
7. The Commission in making its decision, considered the April 3, 2008 Designated Officer order and written submissions from CNSC staff and Mr. Kolewaski, as presented in CMD 08-H109.1.
8. The proceeding was conducted in accordance with Part 6 of the *Canadian Nuclear Safety Commission Rules of Procedure*<sup>3</sup>.

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<sup>1</sup> 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.

<sup>2</sup> S.C., 1997, c.9

<sup>3</sup> S.O.R./2000-211.

## Decision

9. Based on its consideration of the matter, as described in more details 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 Mr. E. Kolewaski on April 3, 2008, as presented in CMD 08-H109.1.

10. With this decision, the Commission expects CNSC staff to exercise due diligence to complete the remaining remediation work at the premises located at 2236, 80<sup>th</sup> Avenue, Edmonton, Alberta, so that the property can be returned to the control of the landlord with unrestricted use as early as possible, taking into account any obstacles that could be encountered during the completion of the work.
11. In addition, the Commission requests CNSC staff to report any deviation from the confirmed order that may occur before the completion of the remediation work. The Commission notes that Mr. Kolewaski is also responsible, in the event he becomes aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*<sup>4</sup>, to submit a written report to the CNSC of the location and circumstances of the situation and of any action that he has taken or proposes to take with respect to it.

## Issues and Commission Findings

12. 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 the order and the information on which the order was based, as identified in 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 environment until the matter could come before the Commission.

### *Background*

13. A Designated Officer order in respect to the premises located at 2236, 80<sup>th</sup> Avenue, Edmonton, Alberta was issued to Mr. R. Masnyk and Enviropac Inc. This order was

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<sup>4</sup> S.O.R./2000-202.

replaced with the Commission order 07-01 following an opportunity to be heard<sup>5</sup> provided to Mr. Masnyk on December 14, 2006 and on February 7, 2007.

14. In February 2008, CNSC staff completed Phase II of the three-phased remediation plan included in the Commission order 07-01. This involved the removal of approximately 900 sealed sources of radioactive material from the property. To date, CNSC staff has expended significant resources to remediate the site through the use of specialized contractors and CNSC staff expertise. At all times since then, CNSC staff stated that it has sought to ensure the protection of the health and safety of persons and of the environment through the application of safety and security measures sufficient for the risk posed by the nuclear substances and prescribed equipment at the site in Alberta. As a result of the planning and the knowledge and experience of the CNSC staff involved, all radiation exposures to date have been minimized.
15. As reported to the Commission during the opportunity to be heard on the Designated Officer order issued on September 15, 2006, CNSC staff was not expecting any surface contamination to be identified on the premises. Therefore, CNSC staff had not expected that the final set of surface contamination measurements, which were taken in non-routine work areas, would demonstrate evidence of surface contamination.
16. CNSC staff stated that the contamination was determined to have resulted from Americium-241, a radionuclide commonly mixed with beryllium in well-logging sources to produce neutron radiation. CNSC staff submitted that it acted quickly and justifiably to control the issue and ensure that the risk to any person was controlled and minimized by issuing an order to the landlord of the premises, Mr. Kolewaski. CNSC staff expended additional resources to carry out a more complete characterization of the site to determine the scope of the remediation required. The evidence of contamination throughout the interior of the building, reported above, was found during the more detailed characterization.

*Timelines in the order*

17. At the time that the Designated Officer order was issued to Mr. Kolewaski, on April 3, 2008, the extent of the contamination and the amount of work that would be required to carry out final remediation was unknown. Therefore, the order issued did not include timelines. After obtaining a more complete understanding of the nature of the work to be done to remediate the site, CNSC staff proposed timelines to return the site to unrestricted use, following the successful selection of a qualified contractor under the Government of Canada's contracting requirements. As such, CNSC staff submitted that by July 31, 2008, the contractor would complete the remediation work on the premises in Edmonton. By August 22, 2008, a report would be available to CNSC staff on the

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<sup>5</sup> Refer to the Record of Proceedings on "Review by the Commission of the Designated Officer order issued to 588972 Alberta Ltd on September 15, 2006 and licensing actions", hearing dates: December, 14, 2006 and February 7, 2007.

final monitoring results to demonstrate that the site no longer requires access controls.

18. In its submission Mr. Kolewaski asked that the order be amended to include the potential timelines suggested by CNSC staff for the completion of the remediation work. In considering this request, the Commission noted that the order was issued to Mr. Kolewaski to provide him with specific directives and that it was not appropriate to include the timelines in the order due to the fact that the remediation work specified in it was not under the responsibility of Mr. Kolewaski. However, the Commission agrees that the remediation work should be carried out as expeditiously as possible and directs CNSC staff to ensure that it proceeds with celerity. In this regard, the Commission is of the view that proposed timelines that indicate the site remediation work could be completed by July 31, 2008 and final monitoring results be reported by August 22, 2008 appear to be reasonable.

#### *Clean-up Completion*

19. The Commission is of the opinion that the order reflects the amount of work that would be required from the CNSC to carry out final remediation of the contamination throughout the interior of the building.
20. The Commission is of the opinion that, at this time, remediation work should be started as soon as it is diligently possible for CNSC to finalize arrangements with a responsible contractor and to proceed with the clean-up activities.

#### **Conclusion**

21. The Commission has considered the information and submissions as presented in the material available for reference on the record for the proceeding.
22. Based on the above information, the Commission agrees with CNSC staff's conclusions that the continued presence of contamination at the premises located at 2236, 80<sup>th</sup> Avenue, Edmonton, Alberta, may cause unreasonable risk to the workers, the public and the environment.
23. Thus, the Commission, pursuant to subsection 37(6) of the NSCA, confirms the Designated Officer order issued to Mr. E. Kolewaski on April 3, 2008.
24. The Commission notes that CNSC staff shall report to the Commission any deviation from the confirmed order or from the projected timelines. The Commission also requests that Mr. Kolewaski, in the event he becomes aware of any of the situations listed in section 29 of the *General Nuclear Safety and Control Regulations*<sup>6</sup>, submit a written report to the CNSC of the location and circumstances of the situation and of any action that he has taken or proposes to take with respect to it.

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<sup>6</sup> S.O.R./2000-202.

25. In making its decision the Commission stresses the need that the remaining remediation work on the premises be completed diligently, so that the property can be returned to the control of the landlord as early as possible, taking into account any obstacles that could be encountered during the completion of the remediation work.

A handwritten signature in black ink, appearing to read "M. Binder". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Michael Binder,  
President  
Canadian Nuclear Safety Commission

Date of decision: May 15, 2008