



Record of Decision

DEC 21-H106

In the Matter of

Applicant Mississauga Metals and Alloys Inc.

Subject Exemption under Section 7 of the NSCA from
Paragraph 24(2)(c) of the NSCA

Date of
Decision April 26, 2021

Date of
Reasons for
Decision May 13, 2021

RECORD OF DECISION

Licensee: Mississauga Metals and Alloys Inc.

Address/Location: 71 Middleton Street, Brantford, Ontario, N3S 7X1

Purpose: Exemption under Section 7 of the NSCA from paragraph 24(2)(c) of the NSCA

Date of decision: April 26, 2021

Date of reasons for decision: May 13, 2021

Panel of Commission: Dr. S. Demeter, Commission Member

Exemption from “prescribed fee” requirement in paragraph 24(2)(c) of NSCA : Granted

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1.0 INTRODUCTION

1. The Canadian Nuclear Safety Commission¹ (CNSC) considered, under section 7 of the *Nuclear Safety and Control Act*² (NSCA), whether to exempt Mississauga Metals and Alloys Inc. (MM&A) from the requirement of paragraph 24(2)(c) of the NSCA. Pursuant to paragraph 24(2)(c) of the NSCA, the Commission is authorized to license an activity where the licence application is “*accompanied by the prescribed fee.*” In respect of the renewal of a licence whose fees are prescribed by Part 2 of the *Cost Recovery Fees Regulations* (CRFR), there is no prescribed renewal application fee. Rather, the CNSC considers in such a case that paragraph 24(2)(c) requires an applicant for renewal to be in good standing, vis-à-vis its fees under the CRFR.
2. MM&A is a metal recycling facility located in Brantford, Ontario. Prior to 2007, MM&A imported a variety of metals and alloys that were contaminated with natural or slightly enriched (<5%) uranium. The decontamination process resulted in the accumulation of uranium-contaminated metals and acids at the facility. MM&A currently has 18 intermodal containers that store its contaminated waste inventory on its site. In 2007, MM&A ceased decontaminating metal and focused on storing the accumulated waste, processing the contaminated acids, and gradually disposing of radioactive waste. MM&A has significantly reduced its commercial activities and suffered a loss in its core revenue stream since a fire destroyed a major part of the facility in 2017.
3. MM&A holds a Waste Nuclear Substance Licence (WNSL), WNSL-W2-3750.0/2021, for the management and storage of nuclear substance waste at its site. This licence is in a class respecting which the Commission has authorized Designated Officers to conduct licensing. The licence was most recently renewed on May 1, 2019 and was set to expire on April 30, 2021.³ MM&A was not in compliance with the CRFR at the time of its WNSL renewal in 2019. This non-compliance was a statutory impediment to licensing under subsection 24(2) of the NSCA. To avoid the lapse of the licence, and to enable the renewal of the WNSL, the Commission exercised its authority under section 7 of the Act to exempt MM&A from having to be in good standing respecting fees at the time of licensing.⁴ The Commission’s decision did not exempt MM&A from payment of any fees; it simply enabled a licensing decision to be made by a CNSC Designated Officer (DO).⁵

¹ 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 [Statutes of Canada \(S.C.\) 1997, chapter \(c.\) 9](#)

³ The Commission authorized the Director General of the Directorate of Nuclear Fuel Cycle and Facilities Regulation, a CNSC Designated Officer (DO), to exercise licensing authority for this kind of licence, and MM&A’s current licence was issued by a DO.

⁴ Record of Decision in the Matter of Mississauga Metals and Alloys Inc., CNSC, April 30, 2019.

⁵ It is of note that while Designated Officers may be authorized to conduct licensing, and have been so authorized in respect of this kind of licence, only the Commission has the authority over exemption granted in section 7 of the Act.

4. On January 29, 2021, MM&A applied for the renewal of its WNSL. MM&A was in arrears in its fees. As was the case in 2019, there is no authority to license MM&A in these circumstances, by reason of paragraph 24(2)(c) of the Act. In its application, MM&A requested an exemption from the requirement to be in good standing respecting its payment of fees at the time of licensing, and proposed to enter into a payment arrangement to address the outstanding amounts of fees it owed under Part 2 of the CRFR. The Commission thus considered whether to exercise its authority under section 7 of the NSCA to exempt MM&A from the requirement to be in good standing vis-à-vis the CRFR, so that the Designated Officer could further consider MM&A's application.

Issue

5. In considering whether to grant an exemption under section 7 of the NSCA, the Commission was required to decide, pursuant to section 11 of the *General Nuclear Safety and Control Regulations*⁶ (GNSCR), whether the exemption would not:
 - a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Panel

6. Pursuant to section 22 of the NSCA, the President of the Commission established Dr. Sandor Demeter as a Panel of the Commission to decide, under section 7 of the NSCA, whether to exempt MM&A from the applicability of paragraph 24(2)(c) of the NSCA, as it pertains to timing of the payment of its fees. The Commission, in conducting a public hearing based on written materials, considered MM&A's application and a written submission from CNSC staff (CMD 21-H106).

2.0 DECISION

7. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission concludes that, in exempting MM&A from paragraph 24(2)(c) of the NSCA for the purpose of enabling a licensing decision to be made, the conditions of section 11 of the GNSCR are satisfied. Therefore,

the Commission, pursuant to section 7 of the *Nuclear Safety and Control Act*, exempts Mississauga Metal and Alloys Ltd. from the application of paragraph 24(2)(c) of the *Nuclear Safety and Control Act* in respect of the requirement to be in good standing on fees at the time of licensing.

⁶ [SOR/2000-202](#)

8. This decision *does not* exempt MM&A from payment of *any* fees. The Commission's decision merely enables a licensing decision to be made.

3.0 ISSUES AND COMMISSION FINDINGS

9. The Commission notes that, due to the need for the DO to consider the licence application before the licence expiry on April 30, 2021, the Secretary of the Commission conveyed the Commission's decision to CNSC staff by way of email on April 26, 2021, prior to the issuance of this Record of Decision. These reasons follow the conveyance of that decision. In making its decision, the Commission considered a number of issues relating to exempting MM&A from the applicability of paragraph 24(2)(c).
10. The Commission recognizes that, if MM&A did not pay its fees arrears by April 30, 2021 and the Commission does not grant the exemption under section 7 of the NSCA, the DO would not have statutory authority to renew MM&A's WNSL. As such, the WNSL would lapse and the nuclear substances in MM&A's possession would be unlicensed. If MM&A's WNSL lapses, MM&A would have to apply for a new licence, after its payment, with the CNSC having to consider other regulatory action.

Contextual information on fee arrears

11. CNSC staff reported that MM&A submitted a *Licence Activity Plan* for May to October 2021 with a financial plan that includes a liquidation of its outstanding balance for the period 2018-2019, and a proposed payment plan for overdue 2019–2021 licence fees, of \$7,965.62 per month, starting May 31, 2021 and continuing until April 30, 2023.
12. On April 9, 2021, MM&A informed the CNSC that the company had paid its outstanding balance for 2018-2019 licence fees, and that this payment had completed Phase 1 of MM&A's *Plan for Return to Full Regulatory Compliance*. The remaining, overdue licence fees amount to \$191,174.78.
13. CNSC staff submitted that, with the above considerations, the DO was prepared to consider granting a short-term licence to MM&A, with stringent licence conditions and enhanced compliance oversight. The DO recommended that the Commission exempt MM&A from the application of paragraph 24(2)(c) of the NSCA, the requirement to be in good financial standing at the time of licensing, in order to enable the DO to proceed.

Exemption

14. In accordance with section 7 of the NSCA, Commission may exempt any activity, person, class of person or quantity of a nuclear substance, temporarily or permanently, from the application of the NSCA, its regulations, or any provision thereof. Section 11 of the GNSCR sets out the conditions under which the Commission may grant such an exemption, namely, if doing so will not pose an unreasonable risk to the environment or the health and safety of persons; pose an unreasonable risk to national security; or result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed. Having reviewed the information related to this matter, the Commission is of the view that granting the exemption sought would not pose an unreasonable risk to the environment, the health and safety of persons, or to national security; nor would it result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed. The proposed exemption does not absolve MM&A of its obligations under the NSCA with respect to the maintenance of the above.
15. In the circumstances, the Commission is of the view that it best serves the purposes of the NSCA to grant MM&A an exemption with the sole and limited purpose of enabling the DO to render a decision on the licence application. If the licence is granted, MM&A will have the opportunity to pay its arrears in fees pursuant to Part 2 of the CRFR as a licensee. The Commission expects that, if the licence is granted, CNSC staff will actively monitor MM&A's compliance with respect to the payment of its fees, as well as with overall compliance with the NSCA, the regulations and its licence conditions, throughout the licence period.
16. To be clear, this decision does not exempt fees or make a licensing decision. It is rather enabling a DO to make a licensing decision. The Commission emphasizes that paying fees is not optional for licensees and expects that, in the DO's exercise of authority, a rigorous plan for MM&A's payment of fees will be put into place. The Commission directs the DO to report to the Commission in regard to the decision taken on MM&A's licence application and the associated fee payment plan in the context of the relevant Regulatory Oversight Report.

4.0 CONCLUSIONS

17. Based on its consideration of the information available in this matter, the Commission is of the following opinion:
 - the proposed exemption would not pose an unreasonable risk to the environment or the health and safety of persons;
 - the exemption would not pose an unreasonable risk to national security; and
 - the exemption would not result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

18. Therefore, pursuant to section 7 of the NSCA, the Commission exempts MM&A from the application of paragraph 24(2)(c) of the NSCA respecting its Waste Nuclear Substance Licence renewal application. This exemption applies only in relation to the timing of a licensing decision and does not exempt MM&A from the payment of any fees.
19. This is the second instance of this licensee being before the Commission for an exemption from paragraph 24(2)(c) of the NSCA. The Commission again wishes to note its displeasure at this situation. Fees under the CRFR are a licensing requirement, not an option, and licensees are required to meet licensing and regulatory requirements at all times.

**Dr. Sandor
Demeter** Digitally signed by Dr.
Sandor Demeter
Date: 2021.05.13
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May 13, 2021

Dr. Sandor Demeter
Member,
Canadian Nuclear Safety Commission

Date