



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

In the Matter of

Licensee
Subject to
Order

Newfoundland Recycling Limited

Subject

Review by the Commission of the Designated
Officer Order Issued on February 16, 2017 in
Regard to the Improper Transfer of a Radiation
Device

Date of
Commission's
Review

February 26, 2018

RECORD OF DECISION

Licensee
subject to order: Newfoundland Recycling Limited

Address/Location: 46 Hickory Place
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Purpose: Review by the Commission of the Designated Officer Order Issued
on February 16, 2017 in Regard to the Improper Transfer of a
Radiation Device

Order Issued: February 16, 2017

Date of Commission's
Review: February 20, 2018

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

Panel of Commission: M. Binder, Chair

Table of Contents

1.0 INTRODUCTION.....	1
2.0 DECISION.....	2
3.0 ISSUES AND COMMISSION FINDINGS	2
4.0 CONCLUSIONS	3

1.0 INTRODUCTION

1. On February 16, 2017, a Canadian Nuclear Safety Commission¹ (CNSC) Designated Officer issued an Order to Newfoundland Recycling Limited (Newfoundland Recycling), a metal recycling company based in Conception Bay South, NL.² Newfoundland Recycling holds CNSC licence number 14484-1-21.0 and is authorized to possess, use, store and transfer prescribed equipment. The Order was issued after CNSC staff discovered that Newfoundland Recycling had transferred prescribed equipment, a Niton XL americium-241 series analyzer radiation device, to another person who was not authorized by the CNSC to possess the device. Pursuant to subsection 35(1) of the *Nuclear Safety and Control Act* (NSCA),³ the Order required Newfoundland Recycling to recover the Niton XL series analyzer radiation device and to properly transfer it to a person authorized by the CNSC to possess it.
2. Pursuant to subsection 37(6) of the NSCA, the Designated Officer referred the Order to the Commission for review.
3. Pursuant to paragraph 40(1)(d) of the NSCA, the Commission provided an opportunity to be heard to Newfoundland Recycling, as the licensee subject to and named in the Order. On March 9, 2017, a Newfoundland Recycling representative informed the Commission Secretary verbally that Newfoundland Recycling would not be seeking an opportunity to be heard in respect of the Order. The Designated Officer confirmed that the licensee had complied with the terms of the Order.
4. This *Record of Decision* describes the Commission's consideration of the Order and the reasons for its decision in this matter.

Issue

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

Order Review

6. Pursuant to section 22 of the NSCA, I established myself to preside a Panel of one Commission Member to review the Order. The Commission, in making its decision, considered the Designated Officer Order, and the information referred to in the February 16, 2017 Order.

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 <http://www.nuclearsafety.gc.ca/eng/acts-and-regulations/regulatory-action/newfoundland-recycling-limited.cfm>

³ Statutes of Canada (S.C.) 1997, chapter (c.) 9.

2.0 DECISION

7. 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 Newfoundland Recycling Limited on February 16, 2017.

3.0 ISSUES AND COMMISSION FINDINGS

8. In reviewing the February 16, 2017 Order issued to Newfoundland Recycling under subsection 37(6) of the NSCA, the Commission considered the reasonableness of the Order. 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 health and safety of persons and maintain the security of nuclear substances.

Background

9. The Order states that CNSC staff was notified on or about January 27, 2017 that prescribed equipment, a Niton XL series analyzer radiation device, possessed by Newfoundland Recycling had been transferred to another person who was not authorized to possess it. This was determined to demonstrate the serious failure of the licensee to meet its obligation to take all reasonable precautions to protect the health and safety of persons and to maintain the security of nuclear substances, pursuant to paragraph 12(1)(c) of the *General Nuclear Safety and Control Regulations*⁴ (GNSCR).
10. Further, Newfoundland Recycling was found to have contravened section 13 of the GNSCR, which prohibits the transfer of nuclear substances and prescribed equipment to any person not authorized by the CNSC to possess the nuclear substance or the prescribed equipment.
11. Pursuant to subsection 35(1) and paragraph 37(2)(f) of the NSCA, the Designated Officer issued the Order to Newfoundland Recycling on February 16, 2017.

⁴ SOR/2000-202

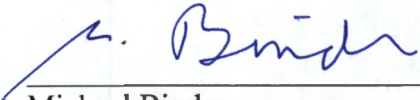
Actions and Measures of the Order

12. The Order listed the following actions and measures that Newfoundland Recycling was required to perform:
 1. By March 17, 2017:
 - a. Recover possession of the Niton XL series analyzer containing up to 1,110 megabecquerels (MBq) of Americium-241 from the person to whom it had been transferred.
 - b. Report to the CNSC Designated Officer that the radiation device had been recovered.
 2. By April 7, 2017:
 - a. Transfer the Niton XL series analyzer to another person who was authorized by the CNSC to possess the radiation device.
 - b. Provide documentation to the CNSC Designated Officer to demonstrate that the radiation device had been transferred to a person authorized by the CNSC to possess the radiation device.
13. The Designated Officer informed the Commission Secretary via email correspondence dated March 9, 2017 that Newfoundland Recycling has complied with all of the required actions specified in the Order and did not intend to seek a review of the Order.

4.0 CONCLUSIONS

14. The Commission has considered the information in the Order to Newfoundland Recycling, as well as information from the Designated Officer submitted to the Commission Secretary in regard to this matter.
15. Based on the above information, the Commission is of the view that the Order was warranted.
16. Therefore, pursuant to subsection 37(6) of the NSCA, the Commission confirms the Designated Officer Order issued to Newfoundland Recycling on February 16, 2017 in the manner described in this *Record of Decision*.

17. The Commission also notes that is satisfied that Newfoundland Recycling has complied with the conditions of the Designated Officer Order and that this matter is now closed.



Michael Binder
President
Canadian Nuclear Safety Commission

FEB 26 2018

Date