

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 28, 2017

CASE NO.:

16-109

PROCEEDING COMMENCED UNDER section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Corporation of the City of Mississauga
Respondent: Director, Ministry of the Environment and
Climate Change
Subject of appeal: Order to perform various work with respect to
waste street sweepings
Reference No.: 3506-A8QGC3
Property Address/Description: Cayuga Site, Selkirk Site, and Other Sites
Municipality: Various municipalities
ERT Case No.: 16-109
ERT Case Name: Mississauga (City) v. Ontario (Environment and
Climate Change)

Heard: January 23, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Corporation of the City of
Mississauga

Harry Dahme and Julia Vizzaccaro

Director, Ministry of the Environment
and Climate Change

Sylvia Davis

**ORDER DELIVERED BY LAURIE BRUCE, MAUREEN CARTER-WHITNEY AND
KAREN KRAFT SLOAN**

REASONS

Background

[1] On November 30, 2016, Tim Webb, Director, Ministry of the Environment and Climate Change (“MOECC”) issued Director’s Order No. 3506-A8QGC3 (“Director’s Order”) to the Corporation of the City of Mississauga (“City”). The Director’s Order relates to street sweepings from the City that were delivered to various properties between 2004 and 2011, defined in the Director’s Order as the “Cayuga Site”, “Selkirk Site”, “Other Sites” and “Additional Sites”.

[2] The work ordered, and the associated completion dates are set out in Part 3 of the Director’s Order, which is included as Attachment 1 to this decision. In summary, the Director’s Order requires the City, by specified dates, to take all necessary steps to: share information in the City’s possession relating to the street sweepings (Part 3a, Items No. 1 to 5); retain one or more Qualified Persons to complete work with respect to street sweepings at the Cayuga Site (Part 3b, Items No. 6 to 9); retain one or more Qualified Persons to complete work with respect to street sweepings at the Selkirk Site (Part 3c, Items No. 10 to 12); retain one or more Qualified Consultants to conduct a forensic audit regarding the Other Sites and Additional Sites, prepare a report and submit it to the Director and Public Health Officials (Part 3d, Items No. 13 to 16); and retain one or more Qualified Persons to complete work with respect to street sweepings at the Other Sites, and the Additional Sites where a specific property address is known (Part 3d, Items No. 17 to 20).

[3] On December 6, 2016, the City filed a Notice of Appeal of the Director’s Order with the Environmental Review Tribunal (“Tribunal”). The City appealed the Director’s Order in its entirety, including the work ordered pursuant to each Work Item set out in Part 3. The grounds of the City’s appeal are that: the street sweepings are not “waste” within the meaning of the *Environmental Protection Act* (“EPA”) and applicable regulations, and the Director has no jurisdiction to issue the Director’s Order; the Director has not established that there are potential adverse effects associated with the

street sweepings or, in the alternative, that there are not sufficient potential adverse effects associated with the street sweepings to justify the work ordered; and, in the event that the Tribunal finds that the street sweepings are a “waste” or that there are sufficient potential adverse effects associated with the street sweepings to justify the Director’s Order, the work ordered is excessive, unnecessary, unreasonable and not advisable having regard to all of the circumstances relating to the delivery of street sweepings to the properties referred to in the Director’s Order.

[4] The City seeks a stay of all the Work Items in the Director’s Order pending the disposition of this appeal. In an Order issued December 13, 2016, the Tribunal granted the City’s request for an interim stay, and scheduled the stay motion that is the subject of this Order for January 23, 2017. The Director requested that the Tribunal issue its disposition of the stay motion by the end of February 2017.

[5] The Director now agrees to a stay of Parts 3b and 3c of the Director’s Order, and to a stay of Items No. 17 to 20 of Part 3d. Regarding these Work Items, which relate to the investigations into street sweepings at various sites, it is the Director’s position that the MOECC has taken appropriate mitigation measures to protect the health of property owners while investigations are being carried out. He states that these measures include sending letters to property owners including the information described above, as well as fact sheets from the local public health units serving the respective jurisdictions in which the properties are located. The Director notes that further orders may be issued as necessary, as further information is received from the investigations and through the hearing process. On this basis, the Director is satisfied that it is acceptable to stay these Work Items.

[6] The Director does not consent to a stay of the remaining Work Items in the Director’s Order, specifically: Part 3a and Items No. 13 to 16 of Part 3d. The City continues to seek a stay of these Work Items.

[7] As set out in the City’s reply submissions, dated January 20, 2017, it is now the City’s position that, should the Tribunal grant a stay of Part 3a and Items No. 13 to 16 of

Part 3d, it is prepared to take certain steps so that owners of properties that received street sweepings are given notice of this appeal and an opportunity to participate. The City proposes to hire an independent Qualified Consultant to review the City's records and interview City staff and external companies or contractors to identify the addresses and owners of those properties without municipal addresses listed in the Site Summary Table appended to the Director's Order, and identify any other properties and owners of those properties that may have received street sweepings but were not identified in the Site Summary Table appended to the Director's Order. The City states that this work would be conducted so that, to the extent reasonably possible, owners of those properties that received street sweepings from the City are given notice of the appeal and the opportunity to participate. The City is prepared to have a Qualified Consultant do the work necessary to identify the property owners, but objects to producing all the information required in Part 3a of the Director's Order.

Issue

[8] The issue is whether the Tribunal should grant a stay of the Work Items in the Director's Order until the disposition of the City's appeal of the Director's Order. The specific sub-issues are whether s. 143(2) or 143(3) of the *EPA* prevent the Tribunal from issuing a stay and whether a stay should be granted under the three-fold test for granting a stay found in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 ("*RJR-MacDonald*"), and incorporated in Rule 110 of the Tribunal's *Rules of Practice* ("Tribunal Rules").

Relevant Legislation and Rule

[9] The relevant provisions of the *EPA* and Tribunal Rules are as follows:

Environmental Protection Act

143(2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a decision or order, other than,
(a) an order to monitor, record and report; or

- (b) an order issued under section 168.8, 168.14 or 168.20.

143(3) The Tribunal shall not stay the operation of a decision or order if doing so would result in,

- (a) danger to the health or safety of any person;
- (b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or
- (c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

Tribunal Rule

110. The Party shall provide evidence and submissions in support of its motion respecting:

- (a) how the relevant statutory tests that are applicable to the granting or removal of a stay are met;
- (b) whether there is a serious issue to be decided by the Tribunal;
- (c) whether irreparable harm will ensue if the relief is not granted; and
- (d) whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

Discussion

Evidence on the Motion

[11] The evidence on the motion consisted of affidavits from three witnesses on behalf of the City and five witnesses on behalf of the Director. There were no cross-examinations on the affidavits. However, the parties are not in agreement on all of the background facts presented in their respective motion materials. The background information set out in these reasons is subject to findings of fact that will be made on the evidence at the main hearing on the merits of the appeal.

[12] The City's motion materials state that the City conducts street cleaning each year to collect materials that have accumulated on streets over the winter due to routine winter road maintenance practices. The City's motion materials maintain that, between 2004 and 2011, the street sweepings were: accumulated at the City's Mavis Road Works Yard ("Mavis Yard"); screened to remove debris such as litter; sampled by an external consultant who provided the results of the chemical testing to the City; and

delivered to the owners of various properties, who were informed of the origin of the street sweepings and provided with the chemical testing results.

[13] The Director agrees with the fact that the City provided street sweepings to property owners from 2004 through 2011, but his motion materials state that there is insufficient evidence to conclude with certainty that the street sweepings were properly screened to remove debris, that the sweepings were properly screened or sampled to ensure they did not contain contaminants in unsafe amounts, or that the property owners were properly notified of the origin and contents of the materials provided. His motion materials further state that the Director has evidence of at least one complaint by a property owner regarding the contents of the street sweepings. The Director takes the position that street sweepings are waste, subject to the requirements of the *EPA* and Regulation 347, as they commonly include litter, glass, metal, plastic and grass, and may also contain a range of pollutants.

[14] The Director's motion materials state that the City initially told the MOECC that 10 properties had received street sweepings but this number has risen to approximately 46 locations, of which a specific address is known for only 28 of these properties. His motion materials further state that the City has been unable to provide complete records about the amount of street sweepings sent to each property and the information provided to the property owners who received them. The Tribunal notes that there are 47 locations listed in the Site Summary Table appended to the Director's Order.

[15] The City's motion materials state that the City discontinued delivery of street sweepings to private properties in 2012, following discussions with the MOECC. The City's materials describe its efforts since 2012 to assess whether there was an unacceptable risk to human health or the environment due to the potential presence of street sweepings on the affected properties. Specifically, the City's materials state that it: retained Terrapex Environmental Ltd. ("Terrapex") in 2013 to carry out a site sensitivity analysis of the properties identified at that time as having received street sweepings; and authorized Terrapex, in 2014, to conduct intrusive site investigations on the Cayuga Site and the Selkirk Site. The City's materials further state that, in 2015, it

retained Thomas Franz, who is designated as a “Qualified Person for Risk Assessment” under O. Reg. 153/04, to: review available information and provide opinions regarding potential human health and environmental impacts at the Cayuga Site and the Selkirk Site; evaluate potential risks associated with street sweepings at the Other Sites; and analyze available chemical data on the street sweepings that were at the Mavis Yard between 2004 and 2011.

[16] The City’s motion materials provide a summary of Mr. Franz’s conclusions, which include the following: the material at the Cayuga Site may not be street sweepings; if, however, street sweepings were delivered to the Cayuga Site, there are no human health or ecological risks related to street sweepings at the Cayuga Site; there are no human health or ecological risks related to street sweepings at the Selkirk Site; and the risk to human health and environment at the Other Sites is unlikely.

[17] The Director’s motion materials dispute the conclusions reached by Mr. Franz. The Director provides the affidavit evidence of Tim Edwards, a District Engineer with the MOECC, setting out his opinions that: there is not enough information available to conclude that the material at the Cayuga Site is not street sweepings; Mr. Franz’s conclusion that there are no human health and ecological risks related to street sweepings at the Cayuga Site is based on an unsupported conclusion that street sweepings were not deposited there; there is not enough information to support the conclusion that there are no human health or ecological risks related to street sweepings at the Selkirk Site, and further investigation of unaccounted for street sweepings at the Selkirk Site is required; and there is not sufficient information available to make the conclusion that the risk to human health and environment at the Other Sites is unlikely.

[18] The Director’s motion materials further state that the MOECC sent letters to the property owners for whom it has contact information alerting them that: the street sweepings provided to them may contain debris and contaminants; the MOECC would test private well water for contaminants if the property owners wish; and the MOECC was proposing to issue an order to require the City to provide information to the property

owners regarding the street sweepings placed on their properties. According to the Director's motion materials, these letters included a fact sheet from the local public health units that outlined cautions regarding adverse health effects and methods for minimizing exposure to the street sweepings.

Analysis and Findings

[19] Rule 110 refers to the relevant statutory tests in 110(a), which in this case are set out in s. 143(2) and 143(3) of the *EPA*, and incorporates, in 110(b) to (d), the three-pronged common law test for a stay set out in *RJR-MacDonald*. This three-pronged test considers: whether there is a serious issue to be decided; whether irreparable harm will ensue if the relief is not granted; and whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

[20] As noted above, the Director consents to a stay of Part 3b, Part 3c and Items 17 to 20 of Part 3d of the Director's Order. While the conclusions of the Tribunal below address all the Work Items in the Director's Order, the focus of the analysis is on the requested stay of the Work Items that remain in dispute, and which the parties addressed in their arguments: Part 3a and Items No. 13 to 16 of Part 3d.

Sections 143(2) and 143(3) of the EPA

[21] The Director and the City agree that there is no statutory bar to the Tribunal granting a stay, as neither s. 143(2) nor 143(3) of the *EPA* applies in this instance. Having reviewed all the Work Items in the Director's Order and having heard submissions from both parties, the Tribunal is satisfied that it is not an order to monitor, record and report under s. 143(2)(a) and it was not issued under any of the sections listed in s. 143(2)(b). Likewise, the Tribunal is satisfied that staying the operation of the Director's Order would not result in: danger to the health or safety of any person; impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or injury or damage or serious risk of injury or damage to any property or to any plant or animal life. Therefore, the Tribunal finds that there is no

statutory bar to granting a stay under s. 143(2) or 143(3) of the *EPA*. The Tribunal now turns to its consideration of the submissions and evidence from each party with respect to the test for a stay in *RJR-MacDonald*.

Serious Issue

[22] As stated in *Limoges v. Ontario (Ministry of the Environment)*, [2007] O.E.R.T.D. No. 14 (“*Limoges*”), at para. 56, the question of whether there is a serious issue to be decided by the Tribunal “has a very low threshold, intended only to rule out frivolous or vexatious claims.” The City submits that there are serious issues to be tried with respect to: whether the street sweepings are “waste” under the *EPA*; whether there are potential adverse effects associated with the street sweepings; and whether the work ordered is excessive and unnecessary. The Director concedes for the purpose of this motion that this appeal raises a serious issue to be decided by the Tribunal. The Director states, for the record, his position that the street sweepings fall under the definition of “waste” under the *EPA* and that the opinion of Mr. Franz is fatally flawed.

Findings on Serious Issue

[23] Based on these submissions by the parties, the Tribunal is satisfied that there is a serious issue to be decided by the Tribunal and so this prong of the test is met.

Irreparable Harm

[24] It is the City’s position that it will suffer irreparable harm if it is required to carry out the work associated with Part 3a, Items No. 1 to 5, and Part 3d, Items No. 13 to 16, and then the Director’s Order is not ultimately upheld.

[25] The City states that it will suffer irreparable harm if it incurs costs to undertake these Work Items, and the Tribunal later concludes that the street sweepings do not constitute “waste” under the *EPA* and that the MOECC had no jurisdiction to issue the Director’s Order, or concludes that the materials at issue are indistinguishable from

other fill materials or street sweepings deposited by other municipalities. The City submits that, in such a scenario, it will not be able to sue the provincial government to recover its costs. Given that the Director consents to a stay of Part 3b, 3c and Items 17 and 20 of Part 3d, the City acknowledges that the costs of complying with the remaining Work Items in Part 3a and Part 3d, Items No. 13 to 16 would not constitute a material harm to the City on its face. The City submits, however, that the irreparable harm it would suffer arises from the inability to recover the costs of the litigation that may be threatened or commenced against the City by others as a result of providing the information specified in Part 3a, as further discussed below.

[26] The Director notes that the costs estimate provided in the affidavit of Mr. Franz pertains to Item No. 19 of the Director's Order and does not address the costs of providing documents to the Director and various property owners under Part 3a, or of the forensic audit under Part 3d, Items No. 13 to 16. The Director submits that the City has not provided any evidence as to whether the expenditure of such money in the interim would constitute material harm and further submits that, without such evidence, it is impossible for the Tribunal to conclude that harm in the form of economic hardship would occur.

[27] The City further submits that, if a stay is not granted, it will suffer irreparable harm to the reputation it has earned for environmental excellence through a number of environmental initiatives, noting that it has been recognized with awards for its leadership in environmental excellence. The City asserts that the Supreme Court of Canada in *RJR-MacDonald*, at para. 64, recognized irrevocable damage to a party's reputation as an example of irreparable harm. The City also provides prior decisions in which the Tribunal considered whether a party will suffer irreparable harm to its reputation if it complies with an order under appeal.

[28] The City goes on to cite the propositions in *Canpages Inc. v. Quebecor Media Inc.*, [2008] O.J. No. 2169 (Ont. Sup. Ct.), at para. 14, that the loss of goodwill is something that damages cannot reverse and that it is difficult if not impossible to establish the impact of a loss of reputation. Citing *Matrix Photocatalytic Inc. v. Purifics*

Environmental Technologies Inc., [1994] O.J. No. 2253 (Ont. Ct. J. (Gen. Div.)) (“*Matrix*”), at para. 77, the City states that a party does not have to demonstrate irreparable loss beyond doubt or on a balance of probabilities, but need only show a real risk of disastrous consequences for which damages will be of little or no comfort. The City submits that it is not required to prove actual loss of reputation, and that there is plausible evidence that there is a real risk that the City would suffer irreparable harm to its reputation for environmental excellence if the Work Items in dispute are not stayed. The City asserts that the loss of reputation by a municipality will affect public trust in the municipality and it is difficult, if not impossible, to provide evidence establishing the extent of the harm that will be suffered.

[29] The Director submits that in prior decisions, such as *Tembec Industries Inc. v. Ontario (Ministry of the Environment)*, [2009] O.E.R.T.D. No. 33 (“*Tembec*”), at para. 57, the Tribunal has found that complying with an order while denying responsibility does not constitute irreparable harm. The Director further submits that the one instance in which the Tribunal found that there could be a loss of reputation if an order was not stayed was in *Braun v. Ontario (Ministry of the Environment)*, [2008] O.E.R.T.D. No. 47 (“*Braun*”), at para. 31, where the order would have been required to hire a competitor to comply with an order. The Director notes that these were different circumstances than the case in this matter.

[30] Finally, with respect to irreparable harm, the City submits that it is reasonable to anticipate that litigation will be threatened or commenced by the owners of the Other Sites against the City in connection with the delivery of the street sweepings. It is the City’s position that this could result in the costs of defending such litigation, as well as a further loss of reputation for the City. The City states that the Director’s evidence supports this, noting the Witness Statement of Larry Skorupski, which states that he would like to have his property brought back to its pre-existing condition before street sweepings were deposited. The City says it is reasonable to infer that the City will be exposed to litigation if Mr. Skorupski’s property is not restored.

[31] The City asserts that the Work Items in Part 3a of the Director's Order require the City to provide to the persons listed all information generated under the requirements of the Director's Order, even before those persons have sought and obtained Party status for the hearing, contrary to Rule 166 of the Tribunal Rules. The City further asserts that the requirement to provide "all information" is extremely broad and does not require that the information is relevant to the issues to be decided in the appeal, which would normally be determined following the identification of a preliminary list of issues. The City submits that the production of information beyond what is relevant to the issues on appeal may be prejudicial in any civil proceeding commenced by those persons named in Part 3a, Item No. 5.

[32] In the Director's view, it is not clear why the City believes a stay will prevent litigation, noting that individual property owners and the general public have been notified of the street sweepings issue, the investigation by the MOECC, the issuance of the Director's Order and the City's appeal. The Director states that this notification has occurred through: visits to identified properties by MOECC officials; letters provided to property owners regarding the investigation and potential health hazards of the street sweepings; the provision of a copy of the Director's Order to all property owners when it was issued; and an article in a local newspaper reporting on the MOECC findings leading to the Director's Order and the City's appeal of the Director's Order. The Director asserts that the existence of the Director's Order is already sufficient to potentially prompt someone to sue the City, and that this will be the case whether or not the Director's Order is stayed. The Director further states that, regardless of whether a stay is ordered, the owners of all sites that might be affected by the Director's Order are entitled to notice of the appeal and pre-hearing conference, and of their right to participate.

[33] It is the Director's submission that the City has not put forward evidence, but has merely speculated, that litigation might occur, which does not meet the test set out in *Hart v. Ontario (Ministry of the Environment)*, [2013] O.E.R.T.D. No. 48 ("*Hart*"), at para. 22, that speculation about the harm that might be suffered is not sufficient to prove irreparable harm. Citing *Mad Term II Inc. v. Ontario (Ministry of the Environment)*,

[2011] O.E.R.T.D. No. 52 (“*Mad Term*”), at para. 28, the Director asserts that, even in a situation where parties are actively threatening civil litigation, the Tribunal found that the appellant had not demonstrated that it would suffer irreparable harm if a stay was not granted, because there was no evidence to suggest that complying with the order in that matter while continuing to deny legal responsibility for the contamination would affect the appellant’s legal position in any such litigation or subject the appellant to greater exposure for damages.

Findings on Irreparable Harm

[34] The Tribunal held in *Rocha v. Ontario (Ministry of the Environment)*, [2014] O.E.R.T.D. No. 51, at para. 73, that the issue at this prong of the test is whether harm to the appellant’s interests, through refusing the stay, could not be remedied if there is a different result on the merits at the conclusion of the main hearing.

[35] In *RJR-MacDonald*, at para. 59, the Supreme Court of Canada held that “irreparable” refers to the nature of the harm suffered rather than its magnitude, stating that it is harm, which either cannot be quantified in monetary terms or cannot be cured, usually because one party cannot collect damages from the other. In *Limoges*, at para. 60, the Tribunal reviewed case law analyzing irreparable harm, including this statement in *RJR-MacDonald*, and concluded that the case law “makes it clear that the litigant arguing irreparable harm must demonstrate that such harm would occur” (emphasis in the original). The Tribunal, in *Limoges*, went on to find that it would need some specific evidence to assess that there is irreparable harm in order for it to grant a stay and, in that case, determined that it had not been provided with a basis to assess whether there would be irreparable harm.

[36] The City states that the *Matrix* decision addressed the standard of proof that must be met to demonstrate irreparable harm. The *Matrix* decision dealt with a motion for an interlocutory injunction against the defendants in that matter to restrain them from conducting a purifying business in competition with the plaintiff. Noting that the test for the granting of an interlocutory judgment is the same as the three-pronged test for a

stay in *RJR-MacDonald*, the City referred the Tribunal to para. 77, where the Court states as follows:

A party in the position of Matrix does not have to demonstrate irreparable loss beyond doubt or even, at this stage, on a balance of probabilities. All that must be done, as it seems to me, is to show a real risk of disastrous consequences for which damages will be of little or no comfort.

[37] In oral submissions, the Director agreed that the standard of proof of a real risk of disastrous consequences applies here instead of the higher standard of proof, on a balance of probabilities. Therefore, both parties accepted that the standard of proof that the City must meet is whether there is a real risk of disastrous consequences for which damages will be of little or no comfort. The Tribunal utilizes that standard here but notes that the same result would have been reached under a balance of probabilities standard in the circumstances of this case.

[38] With respect to the claim that it will suffer irreparable harm due to financial costs, the City has not provided any evidence concerning the estimated financial costs of providing data and reports regarding the street sweepings, or of conducting a forensic audit. Rather, the City acknowledges that it will not cost a great deal of money to fulfill the requirements of these Work Items. The Tribunal finds that the City has not demonstrated that there is a real risk of disastrous consequences for which damages will be of little or no comfort due to the cost of performing the Work Items in Part 3a and Items No. 13 to 16 of Part 3d of the Director's Order.

[39] A greater concern for the City appears to be the potential for a loss of reputation and the threat of litigation with respect to the street sweepings. The Tribunal accepts that irrevocable damage to a party's reputation may constitute irreparable harm. The City has certainly demonstrated that it has earned a reputation for environmental excellence that has been widely recognized and has indicated that it has concerns about the potential impact of the Director's Order on this reputation. However, for the reasons that follow, the Tribunal finds that the City has not shown that the actions required to fulfil the Work Item requirements in Part 3a and Items No. 13 to 16 of Part

3d of the Director's Order will result in a loss of the City's reputation, and therefore has not demonstrated that there is a real risk of disastrous consequences for which damages will be of little or no comfort in respect of its reputation.

[40] The Tribunal, in the *Tembec* case at para. 57, did "not agree that complying with an order while denying responsibility constitutes irreparable harm." The Tribunal in *Tembec* went on in para. 57 to refer to a discussion, at para. 42 of the *Braun* decision, that a stay decision does not speak to the issue of whether a party should ultimately be considered responsible. The Tribunal adopts the reasoning in *Tembec*, and observes that it is open to the City to comply with the Work Items in Part 3a and Items No. 13 to 16 of Part 3d of the Director's Order while, at the same time, publicly putting forth its position that it is not responsible.

[41] Regardless of whether all the requirements of the Director's Order are stayed, the existence of this order is already publicly known, as the Director notes. A risk of harm to the City's reputation for environmental excellence may already exist by virtue of the fact that the Director's Order has already been issued and made public. Performance of the disputed Work Items is intended to result in additional property owners being identified and advised of the Director's Order, therefore publicizing the Order more broadly, in order to ensure that all those affected are made aware of the potential contamination (as is further discussed in below in the analysis of the "balance of convenience" prong of the test). However, this is not a case, as in *Braun*, where the real risk of a loss of reputation arose because the appellant would have been forced to hire a competing business in order to comply with the requirements of an order. The situation in the case before the Tribunal is different from *Braun* in that the City has not suggested that it is in a competitive relationship with other municipalities or that it would have to retain such a competitor to comply with the Director's Order.

[42] The Tribunal also finds that the City has not demonstrated that there is a real risk of disastrous consequences for which damages will be of little or no comfort insofar as it has not shown a real risk of a threat of litigation arising from a decision not to stay the Work Item requirements in Part 3a and Items No. 13 to 16 of Part 3d of the Director's

Order. The City has not provided evidence of any intent on the part of any property owners to pursue litigation. The Tribunal views Mr. Skorupski's witness statement as an indication that he seeks to have his property returned to its pre-existing condition, but sees no implicit or explicit threat of litigation. As the Director noted, the Tribunal in *Mad Term* did not find that there was irreparable harm from a threat of litigation where a neighbour had written to the appellants to say that it "may" seek to recover costs by way of a civil action for damages. As in the *Mad Term* case, the City has not provided evidence to suggest that complying with the Director's Order, while continuing to deny legal responsibility for the alleged contamination would affect the City's legal position in any potential litigation or subject it to greater exposure for damages. Furthermore, as with the City's concern about loss of reputation, the potential for litigation already exists because it is publicly known that the Director's Order has been issued.

[43] The Tribunal finds that the City has not demonstrated a real risk that irreparable harm would ensue if the stay is not granted and, therefore, the City has not met the irreparable harm prong of the test for a stay. However, the Tribunal will go on to consider the final prong of the test for a stay, the balance of convenience, as well.

Balance of Convenience and Public Interest Considerations

[44] The Tribunal's decision in *Pitt v. Ontario (Ministry of the Environment)*, [2014] O.E.R.T.D. No. 21, at para. 54, states that this prong of the stay test has been described as a determination of which of the two parties will suffer the greater harm from the granting or refusal of a stay pending a decision on the merits. As set out in *Limoges*, at para. 65, regardless of whether the public interest is a dominant or overriding consideration in assessing the balance of convenience, it is a significant and imperative factor that must be taken into consideration.

[45] The City submits that the balance of convenience favours the granting of a stay of Part 3a and Part 3d, Items No. 13 to 16 of the Director's Order. The City asserts that there is no evidence at this time to suggest any human health or ecological risks relating to the street sweepings, pending the hearing of the appeal. The City notes Mr. Franz's

conclusions that there is no risk to human health and the environment from street sweepings, or that such risk is unlikely. Further, the City submits that the lack of immediate action by the MOECC in 2012, when they first became aware of the street sweepings, suggests that there is not a strong public interest in requiring the work under the Order to be completed prior to the Tribunal's decision in the appeal.

[46] The City submits that, in agreeing to stay those parts of the Director's Order that relate to the performance of investigations and remedial work by the City pending the disposition of this appeal, the Director has agreed that the public interest does not require that remedial work take place prior to the completion of the hearing. The City submits, therefore, that the question of whether the public interest requires remedial action to be taken prior the hearing is irrelevant in this motion, and should not tip the balance of convenience in favour of denying the stay of Part 3a and Part 3d, Items 13 to 16.

[47] The City notes that there is currently no remedial work required under the Director's Order because the Director is consenting to a stay of Part 3b, Part 3c and Items 17 to 20 of Part 3d, and submits that the Director has not provided any evidence of human or ecological risks in the event that a stay is granted of Part 3a and Part 3d, Items 13 to 16. The City cites the Tribunal's decision in *Keswick Presbyterian Church v. Ontario (Ministry of the Environment and Climate Change)*, [2016] O.E.R.T.D. No. 41 ("*Keswick*") to grant a stay of an order where there is no evidence of the potential for adverse impacts from the material at issue remaining in place, and submits that a similar approach should be adopted here.

[48] The City asserts that the Director has not alleged or provided evidence of the persistent lack of timely compliance by the City with MOECC requirements. The City states that it has provided information about the street sweepings to the MOECC upon request, notwithstanding that the parties may have a dispute regarding the completeness of that information. The City further asserts that, if there has been a delay, it has been on the part of the MOECC and not the City, and it should not tilt the balance of convenience in favour of denying the stay.

[49] It is the City's position that its proposal to hire a Qualified Consultant to undertake the work required to identify property owners and the addresses of those who may have received street sweepings will ensure that the public interest is satisfied, by ensuring that all those who may have an interest in the hearing are provided with notice. The City submits that, in the absence of a stay, the Director's Order would compel it to produce documentation that may be prejudicial to the City in advance of any obligation to do so in the hearing process. The City states that, given this concession, the balance of convenience is in favour of granting the stay of the remaining items in the Director's Order.

[50] The Director submits that the balance of convenience favours not granting a stay because the strong public interest in the completion of the Work Items in Part 3a and Part 3d, Items 13 to 16 of the Director's Order outweighs the City's interest in a stay. It is the Director's submission that it is in the public interest to ensure that all those who may have an interest in the hearing are provided with proper notice and that there is full disclosure by the City to the Director of all relevant documents.

[51] The Director asserts that the essence of procedural fairness is the ability to participate in a hearing and that proper notice is the essential first step in that process. The Director notes that the Tribunal Rules will require the City to provide the Tribunal with a certified list of names and addresses of all owners of property within 120 metres of the boundary of the properties that are the subject of the Director's Order, as well as the names and addresses of any other persons who should be notified of the proceeding due to an interest in the outcome. Noting that the properties that are the subject of the Director's Order include the Additional Sites for which the City has not provided addresses or owner contact information, the Director submits that the owners of these sites have an interest in the outcome of the hearing and should be provided with personal notice in accordance with Rule 126. The Director further submits that the forensic audit of the City's records, required in Part 3d, Items 13 to 16 of the Director's Order, would address the problem of the missing addresses and contact information.

[52] With respect to disclosure, it is the Director's submission that full disclosure of all relevant documents is an essential aspect of the adjudicative process, and all the documents that Part 3a, Item 1 of the Director's Order requires the City to provide are relevant to the hearing and must be disclosed. The Director states that, if any of the owners or public health officials listed in Part 3a, Items 2 to 5 of the Director's Order obtain party or participant status, they would be entitled, as part of legitimate disclosure, to all documents listed in Part 3a, Item 1. The Director asserts that the forensic audit required under Part 3d, Items 13 to 16 of the Director's Order may also disclose records that should be disclosed to the Director, local public health officials and property owners as part of the hearing process.

[53] Although the Director is satisfied that appropriate mitigation measures have been taken to protect the health of property owners while investigations are being conducted, he remains concerned that there is potential contamination from the street sweepings. Regarding the Tribunal's granting of a stay in *Keswick*, cited by the City on the basis that there was no evidence of potential adverse impacts from material remaining in place, the Director notes that because both parties consented to a stay of the order in that matter, the Tribunal did not hear argument from the parties on the balance of convenience and the public interest.

Findings on Balance of Convenience and Public Interest Considerations

[54] Based on the evidence and submissions provided by the parties, the Tribunal finds that the balance of convenience and public interest considerations favour denying a stay of Part 3a and Part 3d, Items No. 13 to 16 of the Director's Order.

[55] While it is the City's position that there is no evidence to suggest any human health or ecological risks relating to the street sweepings, the Director presented detailed evidence in support of his ongoing concerns about the street sweepings, including the affidavit evidence of Mr. Edwards. Mr. Edwards addressed each of Mr. Franz's conclusions and provided his opinion that those conclusions are based on inadequate information, as set out above in paragraph 17. Mr. Edwards stated that his

opinion of the City's position is supported by correspondence from Terrapex, which provided the opinion of its Qualified Person that the information provided by the City was not adequate.

[56] Mr. Edwards further stated that: the City had not provided the types of records required to confirm that an appropriate sampling and testing program had been carried out at the Mavis Yard and he was therefore unable to determine whether the results of sampling can be considered representative of the street sweepings deposited at each of the sites; MOECC Provincial Officers had observed street sweepings at some of the locations where they were deposited and had identified significant amounts of debris indicating that the street sweepings may not have been appropriately screened prior to leaving the Mavis Yard; he is of the opinion that, if the street sweepings were not adequately processed to remove debris prior to being disposed of, the material is classified as waste regardless of the presence or absence of any chemical contamination; and the presence of debris within the street sweepings observed at some of the Other Sites presents a potential for adverse effects. The Tribunal finds that the evidence of Mr. Edwards supports the Director's position that additional investigations are required, notwithstanding the evidence of Mr. Franz.

[57] While the MOECC's investigations prior to issuing the Director's Order took place over a number of years, the Director has now made a determination that the order is necessary in order to address the potential for contamination. As noted above, the Director is satisfied that appropriate mitigation measures have been taken to protect the health of property owners while investigations are being carried out and therefore has consented to staying Part 3b, Part 3c and Items No. 17 to 20 of Part 3d of the Director's Order. However, the Director requires additional information in order to determine whether the potential for and extent of human health or ecological risks arising from the street sweepings.

[58] The Work Items for which the Director does not consent to a stay are intended to ensure: that property owners receive important information pertaining to their sites that may assist them in deciding whether to participate in this hearing; that local public

health officials are aware of what is present on those sites and can make informed decisions about potential risks to health; and that a consultant who, in the Director's opinion, has the experience and qualifications to carry out the forensic audit work to address the lack of property owner addresses and contact information for certain sites and determine the complete list of properties that may have received the street sweepings. The Tribunal finds that the public interest in identifying and directly notifying, to the extent possible, persons directly affected by this appeal outweighs the City's concerns about those Work Items in Part 3a and Part 3d, Items No. 13 to 16, of the Director's Order. The owners of all sites that might be affected by the Director's Order are entitled to notice of the appeal and preliminary hearing, and notice of their right to participate in the hearing process.

[59] While proposing to take alternative steps in order to provide notice to property owners, the City maintains that the Director's Order would require it to produce potentially prejudicial documentation in advance of any obligation to do so in the hearing process. The Tribunal finds, however, completion of the Work Items in Part 3a and Part 3d, Items No. 13 to 16 is required to provide property owners of Other Sites and Additional Sites with enough information to ensure procedural fairness to the owners of all sites by providing proper notice and the ability to participate in the proceeding. The Tribunal sees no prejudice to the City in providing to the owners the information pertinent to their properties, under the Work Items in Part 3a of the Director's Order, prior to the commencement of the Pre-hearing process in this appeal. The Tribunal notes that the information in the forensic audit report ordered under Part 3d, Items No. 13 to 16, is to be submitted only to the Director and the relevant local public health officials, and not to all property owners of sites that received street sweepings, prior to the Pre-hearing process.

Conclusions

[60] In conclusion, the Tribunal is satisfied that there is no statutory bar to granting a stay of Part 3b, Part 3c and Items No. 17 to 20 of Part 3d of the Director's Order under s. 143(2) or s. 143(3) of the *EPA*. The Tribunal finds it appropriate to grant a stay of these Work Items on consent, based on the submissions and evidence of the parties.

[61] Regarding Part 3a and Items No. 13 to 16 of Part 3d of the Director's Order, the Tribunal finds that the City has not provided adequate evidence and submissions to demonstrate that irreparable harm will ensue if the stay is not granted or that the balance of convenience, including effects on the public interest, favours granting the stay.

ORDER

[62] The Tribunal orders that:

1. Part 3b, Part 3c and Items No. 17 to 20 of Part 3d of Director's Order No. 3506-A8QGC3 are stayed until the final resolution of the appeal. The Tribunal dismisses the request for a stay of Part 3a and Items No. 13 to 16 of Part 3d of that order.
2. The Case Coordinator will contact the parties to schedule a date for a status update telephone conference call with the Tribunal to determine the appropriate dates for completion of the Work Items in Part 3a and Items No. 13 to 16 of Part 3d of Director's Order No. 3506-A8QGC3.

*Stay Granted in Part
Procedural Directions Ordered*

“Laurie Bruce”

LAURIE BRUCE
MEMBER

“Maureen Carter-Whitney”

MAUREEN CARTER-WHITNEY
VICE-CHAIR

“Karen Kraft Sloan”

KAREN KRAFT SLOAN
MEMBER

Attachment 1 – Director’s Order No. 3506-A8QGC3

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248



Ministry of the Environment and Climate Change
 Ministère de l'Environnement et de l'Action en
 matière de changement climatique

Director's Order

Environmental Protection Act, R.S.O. 1990, c. E 19 (EPA)
 Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)
 Pesticides Act, R.S.O. 1990, c. P11 (PA)
 Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)
 Nutrient Management Act, 2002, S.O. 2002, c.4 (NMA)

Order Number
 3506-A8QGC3

Incident Report No.
 5663-A8PQA9

To: THE CORPORATION OF THE CITY OF MISSISSAUGA
 300 City Centre Drive
 Mississauga, Ontario
 L5B 3C1

Site: Cayuga Site, Selkirk Site and Other Sites as defined below

Part 1: Definitions

For the purposes of this Order, the following terms shall have the meanings described below:

"Additional Sites" means the properties identified by the Forensic Audit as being the properties at which Waste Street Sweepings were deposited, but does not include the Cayuga Site, Selkirk Site, Other Sites, or properties at which the Waste Street Sweepings were deposited under and in accordance with an environmental compliance approval for the processing or disposal of waste.

"Cayuga Site" means the property located at 3085 River Road, Cayuga, Regional Municipality of Haldimand-Norfolk, identified by Mississauga as being a site at which Waste Street Sweepings were deposited as described in more detail in the Provincial Officer's Report.

"EPA" means the *Environmental Protection Act, R.S.O. 1990, c. E.19*, as amended.

"Forensic Audit" means the forensic audit to be carried out by Qualified Consultant(s) in accordance with Items No. 13 and 15 of this Order and described in more detail in Section 2.7.4 of this Order.

"Ministry" means the Ontario Ministry of the Environment and Climate Change.

"Mississauga" means The Corporation of the City of Mississauga.

"Order" means this Director's Order Number 3506-A8QGC3, as it may be amended.

"Other Sites" means the properties identified by Mississauga in its "Site Summary Table", dated April 11, 2016, given to the Ministry on April 12, 2016, providing updated information regarding identification of properties where Waste Street Sweepings from the City of Mississauga had been deposited between the years 2004 and 2011, a copy of the Table being attached to the Provincial Officer's Report.

"Provincial Officer's Report" means the Provincial Officer's Report prepared by Denise Plourde dated November 28, 2016, a copy of which is annexed hereto.

"Public Health Officials" means representatives from the boards of health established under the Health Protection and Promotion Act that cover the geographical areas of the Cayuga Site, the Selkirk Site, the Other Sites and the Additional Sites that received Waste Street Sweepings.

"Qualified Consultant" means a consultant who has experience, expertise and qualifications in respect to forensic investigations and who is acceptable to the undersigned Director.

"Qualified Person" means a person who has experience carrying out the work required by this Order and either a) holds a licence, limited licence or temporary licence under the Professional Engineers Act of Ontario or b) a certificate of registration under the Professional Geoscientists Act and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario.

"Selkirk Site" means the property located at 813 Lakeshore Road, Selkirk, Regional Municipality of Haldimand-Norfolk, identified by Mississauga as being a site at which Waste Street Sweepings were deposited as described in more detail in the Provincial Officer's Report.

"Waste Street Sweepings" means the material swept from streets by or on behalf of Mississauga during the period 2004 to 2011 including in particular, street sweeping material located at the sites addressed by this Order.

Part 2: Legal Authority and Reasons

The following are the relevant provisions of the EPA regarding this Order:

2.1 Definitions under Part V, Waste Management

Section 25 of the EPA states:

25. In this Part,

"operator" means the person in occupation or having the charge, management or control of a waste management system or a waste disposal site;

"waste" includes ashes, garbage, refuse, domestic waste, industrial waste, or municipal refuse and such other materials as are designated in the regulations;

"waste disposal site" means,

(a) any land upon, into, in or through which, or building or structure in which, waste is deposited, disposed of, handled, stored, transferred, treated or processed, and

(b) any operation carried out on machinery or equipment used in connection with the depositing, disposal, handling, storage, transfer, treatment or processing referred to in clause (a);

"waste management system" means any facilities or equipment used in, and any operations carried out for, the management of waste including the collection, handling, transportation, storage, processing or disposal of waste, and may include one or more waste disposal sites.

2.2 Approval, Waste Management System or Waste Disposal Site

Subsection 27(1) of the EPA, states: "No person shall use, operate, establish, alter, enlarge or extend a waste management system or a waste disposal site except under and in accordance with an environmental compliance approval."

2.3 Prohibitions Regarding Waste

Section 40 of the EPA states: "No person shall deposit, or cause, permit or arrange for the deposit of, waste upon, in, into or through any land or land covered by water or in any building that is not a waste disposal site for which an environmental compliance approval ... has been issued ... and except in accordance with the terms and conditions of the approval ...".

Section 41 of the EPA states: "No person shall use, or cause, permit or arrange for the use of, any facilities or equipment for the storage, handling, treatment, collection, transportation, processing or disposal of waste that is not part of a waste management system for which an environmental compliance approval ... has been issued and except in accordance with the terms and conditions of the approval ...".

2.4 Order for Removal of Waste

Section 43 of the EPA states:

Where waste has been deposited upon, in, into or through any land or land covered by water or in any building that has not been approved as a waste disposal site ..., the Director may issue an order to remove the waste and to restore the site to a condition satisfactory to the Director to,

(a) an owner or previous owner or a person who otherwise has or had charge and control of the land or building or waste;

- (b) an occupant or previous occupant of the land or building; or
- (c) a person that the Director reasonably believes engaged in an activity prohibited by section 40 or 41 that resulted in the deposit of the waste.

2.5 Preventive Measures Order

Section 18 of the EPA states:

18. (1) The Director, in the circumstances mentioned in subsection (2), by a written order may require a person who owns or owned or who has or had management or control of an undertaking or property to do any one or more of the following:
1. To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order.
 2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
 3. To implement procedures specified in the order.
 4. To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.
 5. To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director.
 6. To study and to report to the Director on,
 - i. the presence or discharge of a contaminant specified in the order,
 - ii. the effects of the presence or discharge of a contaminant specified in the order,
 - iii. measures to control the presence or discharge of a contaminant specified in the order,
 - iv. the natural environment into which a contaminant specified in the order may be discharged.
 7. To develop and implement plans to,
 - i. reduce the amount of a contaminant that is discharged into the natural environment,
 - ii. prevent or reduce the risk of a spill of a pollutant within the meaning of Part X, or
 - iii. prevent, decrease or eliminate any adverse effects that result or may result from a spill of a pollutant within the meaning of Part X or from any other discharge of a contaminant into the natural environment, including,
 - A. plans to notify the Ministry, other public authorities and members of the public who may be affected by a discharge, and
 - B. plans to ensure that appropriate equipment, material and personnel are available to respond to a discharge.
 8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order.

18. (2) The Director may make an order under this section if the Director is of the opinion, on reasonable and probable grounds, that the requirements specified in the order are necessary or advisable so as,

(a) to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property; or

(b) to prevent, decrease or eliminate an adverse effect that may result from,

(i) the discharge of a contaminant from the undertaking, or

(ii) the presence or discharge of a contaminant in, on or under the property.

2.6 Orders, Consequential Authority

Subsection 196(1) of the EPA provides that the authority to make an order under this Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.

2.7 Background and Key Events Leading up to the Order

The following outlines the key background facts, issues and concerns regarding this matter which provided me with the reasons for this Order.

2.7.1 Provincial Officer's Report

I have annexed the Provincial Officer's Report and hereby incorporate by reference all the information described therein. As the supervisor working with the Provincial Officer and as the current District Manager, I have personal knowledge regarding this matter.

I am of the opinion that the efforts taken to date and information provided to the Ministry by Mississauga are not sufficient to result in an appropriate understanding of the quantity, quality and ultimate fate of Waste Street Sweepings collected, processed and disposed and/or deposited by Mississauga.

I am of the opinion, based on the information provided to me and set out in the Provincial Officer's Report, and my involvement in the file, that the requirements of this Order are necessary or advisable so as to achieve compliance with Part V of the EPA, Waste Management; to prevent, decrease or eliminate an adverse effect that may result from the presence or discharge of a contaminant in, on or under any properties where Waste Street Sweepings have been deposited; and to ensure that appropriate information is shared with the property owners and Public Health Officials.

2.7.2 Description of the Orderee and the Sites Involved

The Corporation of the City of Mississauga had ownership and/or charge and control of the Waste Street Sweepings that it provided to various sites and engaged in an activity prohibited by Sections 40 and/or 41 of the EPA that resulted in the deposit of the Waste Street Sweepings at the sites set out in this Order.

Mississauga permitted the deposit of the Waste Street Sweepings at the sites addressed by this Order by not conducting appropriate sampling of the Waste Street Sweepings and not taking adequate steps to prevent any improper deposit of the Waste Street Sweepings at unapproved sites.

The sites at which the Waste Street Sweepings have been deposited are described in more detail in the Provincial Officer's Report and are also referred to in this Order as the Cayuga Site, Selkirk Site, Other Sites and Additional Sites.

2.7.3 Waste Street Sweepings Concerns

The Waste Street Sweepings are a waste under the EPA and, having been deposited at unapproved sites, may need to be removed. The concerns of the Ministry are described in more detail in the Provincial Officer's Report.

2.7.4 Further Information – Forensic Audit

Mississauga has provided varied information to the Ministry as a result of its review of its records. The Ministry does not consider the information to be sufficient and believes that a further independent review and report is required of the actions taken by Mississauga in dealing with the Waste Street Sweepings and the location of the properties where Waste Street Sweepings may have been deposited between 2004 and 2011. This requirement is set out in the Work Ordered Items 13 through 16 relating to the Forensic Audit.

2.7.5 Plan for Intrusive Investigation at Other Sites

Work Ordered Items 17 through 19 set out the requirement for a plan for intrusive investigations at the Other Sites and at the Additional Sites, where a specific property address is known.

2.7.6 Access

Work Ordered Item 20 requires the provision of information to the Director if any access needed for doing the things required by this Order is prevented or otherwise unobtainable.

2.7.7 Next Steps

Upon completion of the work required by this Order, a Director will determine what further steps will be necessary to address the Waste Street Sweepings matter, including in particular, any access matters and the implementation of the intrusive investigations plans and the removal of Waste Street Sweepings.

Part 3: Work Ordered

Pursuant to the authority under Subsection 196(1), and Sections 18 and 43 of the EPA, I hereby order Mississauga to take all necessary steps to do, or cause to have done, the following:

Part 3a: Work Ordered Regarding Information Sharing

Item No. 1

By January 10, 2017, submit to the undersigned Director all sample results, data, reports and other information in Mississauga's possession relating to the Waste Street Sweepings deposited at the Cayuga Site, Selkirk Site and Other Sites, including correspondence provided by Mississauga to the property owners of the Cayuga Site, Selkirk Site and Other Sites.

Item No. 2

By January 10, 2017 provide the owner(s) of the Cayuga Site a copy of all information referred to in Item No. 1, above, that pertains to the Cayuga Site; and thereafter, as available, provide all information generated pursuant to the requirements of this Order to the owner(s) of the Cayuga site that pertains to the Cayuga Site.

Item No. 3

By January 10, 2017 provide the owner(s) of the Selkirk Site a copy of all information referred to in Item No. 1, above, that pertains to the Selkirk Site; and thereafter, as available, provide all information generated pursuant to the requirements of this Order to the owners of the Selkirk Site that pertains to the Selkirk Site.

Item No. 4

By January 10, 2017, provide the Public Health Officials with a copy of all information referred to in Item No. 1; and thereafter, as available, provide to the Public Health Officials all information generated pursuant to all of the requirements of this Order.

Item No. 5

By January 10, 2017, provide the owner(s) of the Other Sites, for which specific site addresses are known, a copy of all information referred to in Item No. 1, above, that pertains to their property; and thereafter, as available, provide all information generated pursuant to the requirements of this Order to the owners of the Other Sites, for which specific site addresses are known, that pertains to their property.

Part 3b: Work Ordered Regarding the Cayuga Site

Item No. 6

By December 20, 2016, retain the services of one or more Qualified Person(s) to prepare and complete all work specified in Item No. 8 of this Order.

Item No. 7

By December 20, 2016, submit to the undersigned Director written confirmation from the Qualified Person(s) that the Qualified Person has, (1) received a copy of this Order; (2) been retained to carry out the work specified in Item No. 8; and (3) the experience and qualifications to carry out the work.

Item No. 8

By May 2, 2017, remove the Waste Street Sweepings from the Cayuga Site according to the following procedures:

- (a) A detailed site plan outlining the location and volumes of Waste Street Sweepings must be prepared together with an assessment as to the impact, if any, of the presence of the Waste Street Sweepings on the quality of the drinking water and surface water at the site;
- (b) A Ministry approved waste hauler(s) must be retained to remove the Waste Street Sweepings from the site;
- (c) The Waste Street Sweepings must be taken to a Ministry approved waste disposal site(s);
- (d) A logbook must be maintained indicating the exact date and time when each truck removed Waste Street Sweepings from the site and must include all receipts and weigh bills associated with the removal of Waste Street Sweepings;
- (e) After the Waste Street Sweepings have been removed, the site must be restored to its original state; and
- (f) The Qualified Person must prepare a final report and include a statement that all Waste Street Sweepings were removed from the site and the site was restored to its original state. This statement must be supported with photographs and/or confirmatory sampling.

Item No. 9

By June 6, 2017, submit to the undersigned Director the report prepared by the Qualified Person(s) summarizing the removal of the Waste Street Sweepings from the Cayuga Site as required by Item No. 8 of this Order.

Part 3c: Work Ordered Regarding the Selkirk Site

Item No. 10

By December 20, 2016, retain the services of one or more Qualified Person(s) to prepare and complete all work specified in Item No. 12 of this Order.

Item No. 11

By December 20, 2016, submit to the undersigned Director written confirmation from the Qualified Person(s) that the Qualified Person has, (1) received a copy of this Order; (2) been retained to carry out the work specified in Item No. 12; and (3) the experience and qualifications to carry out the work.

Item No. 12

By January 31, 2017, submit to the undersigned Director a plan prepared by the Qualified Person(s) for further intrusive investigations at the Selkirk Property. The plan must include the installation of boreholes, test pits, monitoring wells and sampling of street sweepings, soil and groundwater at the Selkirk Site to further assess the property and identify any Waste Street Sweepings present.

Part 3d: Work Ordered Regarding the Other Sites and Additional Sites

Item No. 13

By December 20, 2016, retain the services of one or more Qualified Consultant(s) to conduct the Forensic Audit.

Item No. 14

By December 20, 2016, submit to the undersigned Director written confirmation from the Qualified Consultant(s) that the Qualified Consultant has, (1) received a copy of this Order; (2) been retained to carry out the work specified in Items No. 15 and 16; and (3) the experience and qualifications to carry out the work.

Item No. 15

By February 21, 2017, conduct the Forensic Audit and prepare a report thereon detailing the actions taken during, and the findings of, the Forensic Audit.

The report shall include, but not be limited to, details on the following:

- Description (e.g., electronic, hard copy, financials, time sheets, log books, petty cash, etc.) and date ranges of records from Mississauga that were reviewed.

- A description of records that were not reviewed but, if reviewed, could help identify all sites where Mississauga Waste Street Sweepings were deposited, along with an explanation as to why they were not reviewed.
- A description (e.g., electronic, hard copy, financial records, etc.) and date ranges of records from other individuals/companies that were reviewed.
- Name and position of all Mississauga staff interviewed and a description of the involvement they had in the management of Waste Street Sweepings.
- Name and position of former Mississauga staff contacted and interviewed regarding their involvement and a description of their involvement in the management of Mississauga Waste Street Sweepings.
- Identification of all external companies, contractors or individuals involved in the handling and delivery of Mississauga Waste Street Sweepings to sites not subject to an environmental compliance approval for the disposal or processing of waste, including a description of their involvement.
- Identification of individuals who were not interviewed but, if interviewed, could help identify sites where Mississauga Waste Street Sweepings were deposited, along with an explanation as to why they were not interviewed.
- Locations and descriptions of all Additional Sites that received Waste Street Sweepings from Mississauga, from 2004 to 2011, along with information on the quantity of Waste Street Sweepings deposited on each site.

Item No. 16

By February 21, 2017, submit to the undersigned Director and Public Health Officials the report required by Item No. 15 of this Order, prepared by the Qualified Consultant(s).

Item No. 17

By December 20, 2016, retain the services of one or more Qualified Person(s) to prepare and complete all work specified in Item No. 19 of this Order.

Item No. 18

By December 20, 2016, submit to the undersigned Director written confirmation from the Qualified Person(s) that the Qualified Person has, (1) received a copy of this Order; (2) been retained to carry out the work specified in Item No. 19; and has (3) the experience and qualifications to carry out the work.

Item No. 19

By March 21, 2017, submit to the undersigned Director a plan prepared by the Qualified Person(s) for intrusive investigations at the Other Sites and at the Additional Sites, where a specific property address is known. The plan must include the installation of boreholes, test pits,

monitoring wells and sampling of street sweepings, soil and groundwater at the Other Sites and at the Additional Sites, where a specific property address is known to assess the properties and identify any Waste Street Sweepings present.

Item No. 20

By no later than 3 days from being advised that any access needed for doing the things required by this Order, is prevented or otherwise unobtainable, submit to the undersigned Director, a notice stating why the access is required, the details and reasons why access has been prevented or is otherwise unobtainable, and details on the efforts made to obtain access.

Part 4: General

- 4.1 All orders are issued in the English language and may be translated into the French language. In the event that there should be a conflict between the English original and the French translation, the English original shall prevail.
- 4.2 The requirements of this Order are severable. If any requirement of this Order or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the Order shall not be affected thereby.
- 4.3 Subsection 19(1) of the EPA provides that an order of the Director is binding upon the successor or assignee of the person to whom it is directed.
- 4.4 Subsection 186(2) of the EPA provides that non-compliance with the requirements of this order constitutes an offence.
- 4.5 Any request to change a requirement in this Order shall be made in writing to the Director, with reason for the request, at least 14 days prior to any compliance date for that requirement.
- 4.6 The requirements of this Order are minimum requirements only and do not relieve you from:
 - i. complying with any other applicable order, statute, regulation, municipal, provincial or federal law, or
 - ii. obtaining any approvals or consents not specified in this Order
- 4.7 Notwithstanding the issuance of this Order, further or other orders may be issued in accordance with legislation as circumstances require. In particular, the Director shall issue an order where the approval or acceptance of the Director is required in respect of a matter under this Order and,
 - i. the Director does not grant approval or acceptance; or
 - ii. the Director does not grant approval or acceptance because the changes which the Director considers necessary for granting approval or acceptance have not been agreed to by the persons to whom this Order is issued.

4.8 In the event that any party to this Order is, in the opinion of the Director, rendered unable to perform or comply with any obligations herein because of:

- i. natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections; or
- ii. strikes, lockouts or other labour disturbances; or
- iii. inability to obtain materials or equipment for reasons beyond the control of the company; or
- iv. any other cause whether similar to or different from the foregoing beyond the reasonable control of the parties,

the obligations hereof, as they are affected by the above shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the party must notify the Director immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the compliance dates in question.

4.9 Failure to comply with a requirement of this Order by the date specified does not absolve the parties from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

4.10 This Order has no expiry date.

Part 5: Request for Hearing

You may require a hearing before the Environmental Review Tribunal (Tribunal), if, within fifteen (15) calendar days from the date of service of the Order, you serve written notice of your appeal on the Tribunal and the Director. Your notice must state:

- (a) the portion(s) of the Order in respect of which a hearing is required; and
- (b) the grounds on which you intend to rely at the hearing.

Except with leave of the Tribunal, you are not entitled to appeal a portion of the Order or to rely on a ground that is not stated in the notice requiring the hearing. Unless stayed by the Tribunal, the Order remains in effect from the date of service.

Written notice requiring a hearing can be served upon:

The Secretary
Environmental Review Tribunal
655 Bay Street, Suite 1500
Toronto ON
M5G 1E5
Fax: (416) 326-5370
Email: ERTTribunalSecretary@ontario.ca

and

Tim Webb, Director
Ministry of the Environment and Climate
Change
4145 North Service Road, Suite 300
Burlington, ON
L7L 6A3
Fax: (905) 319-9902
Email: Tim.Webb@ontario.ca

Further information on the Tribunal and requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 212-6349 or 1-866-448-2248
TTY 1-800-855-1155 via Bell Relay

Fax: (416) 326-5370 or 1-877-849-2066
Web: <http://elto.gov.on.ca/ert/>

If you commence an appeal before the Tribunal, under Section 47 of the Environmental Bill of Rights, 1993 (EBR), you must give notice to the public in the environmental registry established under the EBR (EBR registry). The notice must include a brief description of this Order (sufficient to identify it) and a brief description of the grounds of appeal. The notice must be delivered to the Environmental Commissioner who will place it on the EBR registry. The notice must be delivered to the Environmental Commissioner at 605-1075 Bay Street, Toronto, Ontario M5S 2B1 by the earlier of:

- (a) 2 days of commencing the appeal before the Tribunal; and
- (b) 15 days after the service of this Order.

Pursuant to Subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.

For your information, under Section 38 of the EBR, any person resident in Ontario with an interest in this Order may seek leave to appeal the Order. Under Section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:

- (a) 15 days after notice of this Order is given in the EBR registry; and
- (b) if you appeal, 15 days after your notice of appeal is placed in the EBR registry by the Environmental Commissioner.

To find out if any person has made application for leave to appeal this Order, you may wish to check the EBR registry a few days after the period mentioned above. The EBR registry is available at www.ebr.gov.on.ca.

FOR YOUR INFORMATION

The following is for your information:

Service of the documentation referred to above can be made personally, by mail, by fax, by commercial courier or by email in accordance with the legislation under which the Order is made and any corresponding Service Regulation. Further information can be obtained from e-Laws at www.e-laws.gov.on.ca. Please note that choosing service by mail does not extend any of the above mentioned timelines.

Unless stayed, this Order is effective from the date of service. Non-compliance with the requirements of this Order constitutes an offence.

The requirements of this Order are minimum requirements only and do not relieve you from complying with the following:

- (a) any applicable federal legislation,
- (b) any applicable provincial legislation or requirements that are not addressed in this Order, and
- (c) any applicable municipal law.

The requirements of this Order are severable. If any requirement of this Order or the application of any requirement to any circumstances is held invalid, the application of such requirement to other circumstances and the remainder of the Order are not affected.

Further orders may be issued in accordance with the legislation as circumstances require.

The procedures and other information provided above are intended as a guide. The legislation and/or regulations should be consulted for additional details and accurate reference.

Part 6: Attachment

The following attachment also forms part of this Order:

1. Provincial Officer's Report (13 pages) dated November 28, 2016.

ISSUED in Burlington this 30th day of November, 2016,



Tim Webb
Director
Ministry of the Environment and Climate Change

Provincial Officer's Report

Order Number
3506-A8QGC3

THE CORPORATION OF THE CITY OF MISSISSAUGA
300 City Centre Drive
Mississauga, Ontario
L5B 3C1

Site

Cayuga Site, Selkirk Site and Other Sites as defined below

Observations

1. Observations

Set out below is a description of the reasons for the proposed Order and the circumstances on which the reasons are based.

2. Definitions

For the purposes of this Provincial Officer's Report, the following terms shall have the meanings described below:

"Cayuga Site" means the property located at 3085 River Road, Cayuga, Regional Municipality of Haldimand-Norfolk, identified by Mississauga as being a site at which Waste Street Sweepings were deposited as described in more detail in this Provincial Officer's Report.

"ECA" means an environmental compliance approval (formerly known as a certificate of approval) issued under Part II.1 of the EPA.

"EPA" means the Environmental Protection Act, R.S.O. 1990, c. E.19, as amended.

"Forensic Audit" means the forensic audit to be carried out by Qualified Consultant(s) in accordance with the Order and described in more detail in Section 2.7.4 of the Order.

"Ministry" means the Ontario Ministry of the Environment and Climate Change.

"Mississauga" means The Corporation of the City of Mississauga.

"Order" means the proposed Director's Order Number 3506-A8QGC3.

"Other Sites" means the properties identified by Mississauga in its "Site Summary Table", dated April 11, 2016, given to the Ministry on April 12, 2016, providing updated information regarding identification of properties where Waste Street Sweepings from the City of Mississauga had been deposited between the years 2004 and 2011, but does not include the Cayuga Site or the Selkirk Site. A copy of the table is attached to this Provincial Officer's Report.

"Provincial Officer's Report" means this Provincial Officer's Report.

"Public Health Officials" means representatives from the boards of health established under the Health Protection and Promotion Act that cover the geographical areas of the Cayuga Site, the Selkirk Site and the Other Sites that received Waste Street Sweepings.

"Qualified Consultant" means a consultant who has expertise and qualifications in respect to forensic investigations and who is acceptable to the undersigned Director.

"Qualified Person" means a person who has experience carrying out the work required by the Order and holds either a) a licence, limited licence or temporary licence under the Professional Engineers Act of Ontario or b) a certificate of registration under the Professional Geoscientists Act, and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario.

"Selkirk Site" means the property located at 813 Lakeshore Road, Selkirk, Regional Municipality of Haldimand-Norfolk, identified by Mississauga as being a site at which Waste Street Sweepings were deposited as described in more detail in this Provincial Officer's Report.

"Waste Street Sweepings" means the material swept from streets by or on behalf of Mississauga during the period 2004 to 2011 including in particular, street sweeping material located at the sites addressed by the Order.

3. Description of the Sites

The following describes the sites which received Waste Street Sweepings:

3.1 Cayuga Site

The Cayuga Site is approximately 625 square meters in size with a residential dwelling and three

barns. The property is located within a rural area, zoned for agricultural use.

3.2 Selkirk Site

The Selkirk Site is approximately 6000 square meters in size with a residential dwelling, an in-ground pool, greenhouse and a barn. The site is located within a rural/residential area, zoned for residential use.

3.3 Other Sites

Other Sites are the properties identified by Mississauga in its "Site Summary Table", dated April 11, 2016, given to the Ministry on April 12, 2016, providing updated information regarding identification of properties where Waste Street Sweepings from the City of Mississauga had been deposited between the years 2004 and 2011. As indicated in the attached copy of the table, not all of the properties are identified by a specific street address.

4. Waste Street Sweepings

Waste is broadly defined in the EPA as including "ashes, garbage, refuse, domestic waste, industrial waste, or municipal refuse and such other materials as are designated in the regulations".

It is the Ministry's position that the Waste Street Sweepings are waste, as defined in the EPA and described in the Ministry's General Waste Regulation, O. Reg. 347, typically as municipal waste. The regulation provides various exemptions that allow wastes to be reused, recycled, etc. under specific circumstances without the need for an ECA. There is no specific exemption regarding street sweepings.

The Ministry protocol titled "Management of Excess Materials in Road Construction and Maintenance", dated July 22, 1994, allows for the management of street sweepings (called roadsweeping material and defined as "sand/gravel/vehicle grit mixture resulting from winter maintenance operations, but does not include litter and abandoned material components") in three ways:

- (1) within road and highway rights-of-way for engineered applications,
 - (a) by sweeping directly onto the shoulder,
 - (b) by blending with virgin sand and reusing for winter sanding operations, or
 - (c) by stockpiling on municipally or provincially owned land for future use as described above;
- (2) reuse "in a construction material or any other reuse or recycling option, as endorsed by the MOEE" [Ministry of the Environment and Energy, now known as the Ministry]; and
- (3) disposal in an approved landfill as "solid non-hazardous industrial or commercial waste".

It is the Ministry's position that any use of street sweepings that requires processing for any use other than as described in the protocol requires a waste management ECA. Such an ECA would

include specific processing operations, sampling and testing protocols, and conditions to ensure deposits at appropriate locations.

Waste Street Sweepings are not excess soil. Excess soil is defined in the Ministry guidance document “Management of Excess Soil – A Guide for Best Management Practices” developed to outline the Ministry’s expectations for the beneficial management of excess soil in a manner that promotes sustainability and protects the natural environment.

In dealing with excess soil, a generally accepted practice is for a Qualified Person, knowledgeable about the assumptions used to develop the standards, to compare contaminant concentrations in the material to the most appropriate land use standards found in the “Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act”. If Waste Street Sweepings can be characterized as soil-like material or earth or rock fill, or material of a similar nature and can be shown to meet these standards soil standards, the Waste Street Sweepings may accordingly be seen as being endorsed by the Ministry for reuse as described in the 1994 protocol. The information provided by Mississauga and its consultants to date is not sufficient to provide for such an endorsement.

5. Background and Summary of Events Leading Up to Order

5.1 Mississauga’s Historical Management of Street Sweepings

In 2012, staff at the Ministry learned that Mississauga had deposited Waste Street Sweepings as fill material on various properties located in southern Ontario.

Mississauga conducts street cleaning each spring, with road sweeper trucks, to collect materials that may have accumulated over the winter. Mississauga indicated that between 2004 and 2011, Waste Street Sweepings were eventually brought back to the Mississauga works yard on Mavis Road in Mississauga where they were deposited and accumulated.

Until 2004, Mississauga sent street sweepings to an approved landfill site. Mississauga has informed the Ministry that between 2004 and 2011, it processed Waste Street Sweepings by screening out debris, such as litter, and then deposited the material on properties including residential, commercial and agricultural properties upon the request of the owners of such properties.

In February 2012, Mississauga provided to the Ministry a report dated June 20, 2011, prepared by a consultant to assist Mississauga “in determining disposal options for the material collected as street sweepings”. The report, based on the chemical testing of two samples collected on June 6, 2011 of Waste Street Sweepings from Mississauga Mavis Work Yard, concluded that “Based on the chemical test results, in our opinion the subject material may be shipped to any registered landfill site licensed to receive this category of waste”. The report did not recommend sending the street sweepings to any other location or that the sampled street sweepings could be reused for any other purposes.

In April 2012, during a meeting between staff from the Ministry and Mississauga, Mississauga indicated it would dispose of its current street sweepings at an approved waste disposal site and investigate long-term options for the management of street sweepings.

Mississauga initially disclosed to the Ministry that fifteen properties had received Waste Street Sweepings between 2004 and 2011. As indicated in Section 5.2 below, in November 2015 Mississauga provided the Ministry with additional disclosure.

In a letter dated October 22, 2012, Ministry counsel restated the Ministry's position that Waste Street Sweepings are waste and should have been managed and disposed of accordingly. The letter also explained that Waste Street Sweepings may also be managed as set out in the 1994 protocol "Management of Excess Materials in Road Construction and Maintenance".

5.2 Testing at the Cayuga and Selkirk Sites

In October 2012, after discussions with the Ministry, Mississauga retained a consultant, Terrapex Environmental Ltd. (Terrapex) to carry out a site sensitivity analysis of the 15 properties that had been identified at that time to have received Waste Street Sweepings.

Based on the findings, in November 2012, Mississauga provided a letter to the Ministry proposing to assess the three most sensitive receiving sites out of the 15 properties: (1) the Cayuga Site, (2) the Selkirk Site, and (3) a site located in Acton. Details of the proposed intrusive site investigations were provided by Terrapex in a letter to Mississauga dated December 2012.

Between December 2012 and May 2015, the Ministry and Mississauga had numerous discussions regarding carrying out of the sensitivity analysis.

In April and May 2015, reports on the testing completed by Terrapex for the Cayuga Site and the Selkirk Site were submitted to the Ministry. Mississauga staff told the Ministry that it was unable to obtain permission from the owner of the Acton property to conduct the necessary environmental investigations.

In the report regarding the Cayuga Site, Terrapex indicated that based on site observations it was estimated that 937.5 tonnes of Waste Street Sweepings had been deposited. The amount is generally consistent with the information presented by Mississauga that approximately 1056 tonnes of Waste Street Sweepings had been deposited. Testing of the nine samples collected showed that there were contaminants of concern present on the property. Three samples contained arsenic, five samples contained lead and one sample contained antimony, all of which were at levels which could present an unacceptable risk to human health due to direct contact exposures. In addition, electrical conductivity was measured in three of the nine samples at levels that could present an unacceptable risk to plants and soil organisms. Ministry staff were advised about the Terrapex testing and attended the Cayuga Site during part of the Terrapex site work.

In the report regarding the Selkirk Site, there is a large discrepancy about the amount of Waste

Street Sweepings that were deposited at the Selkirk Site. It was estimated that approximately 67 tonnes of Waste Street Sweepings had been deposited. This is not consistent with the information initially presented by Mississauga that approximately 1600 tonnes of Waste Street Sweepings had been deposited. No explanation was provided for the discrepancy. Testing showed that in all four of the samples collected, electrical conductivity was measured at levels that could present an unacceptable risk to plants and soil organisms. One of the four samples collected contained lead at a concentration that could present an unacceptable risk to birds and mammals. The Ministry was not notified in advance of the sampling and was not present at the time of the sampling at this site.

In September 2015 the Ministry informed Mississauga that the Terrapex reports do not include what the Ministry considers an adequate assessment of the potential risk to human health and ecological receptors from the deposited Waste Street Sweepings.

At a meeting in November 2015, Mississauga informed the Ministry that it had retained a new consultant, Arcadis Canada Inc. (Arcadis) and that it had discovered that at least 40 sites had received the Waste Street Sweepings. Specific details and addresses were not available for approximately one-third of the sites. In December 2015, Mississauga provided the Ministry with two Arcadis reports regarding the Cayuga Site and Selkirk Site.

In February and March 2016, the Ministry advised Mississauga that the information presented in the two Arcadis reports did not address the Ministry's concerns.

In April 2016, Mississauga provided the Ministry with a further Arcadis report in response. This response did not change the Ministry's position which is described in more detail in Section 5.4 below and also in the May 16, 2016 Ministry memorandum. Mississauga also provided the attached site summary table in April 2016.

5.3 Mississauga's Record Keeping

The Ministry has requested information and records describing what Mississauga actually did at its Mavis Yard site, as well as all the analytical results showing the chemical quality of the Waste Street Sweepings that had been deposited. Mississauga has not provided information that the Ministry can rely upon to determine that the material is suitable for reuse as fill.

The information provided by Mississauga's consultants does not include information regarding:

- (1) whether a Qualified Person was involved in the process and/or supervised any of the activities;
- (2) any details about the sampling plan and sampling methodologies that were followed in the testing of the Waste Street Sweepings;
- (3) the quantities (tonnage) of street sweepings that had been collected for each of the years in question;
- (4) the reason for the variation in the testing frequency; and
- (5) any documentation from a Qualified Person and/or from Mississauga attesting to the suitability of the street sweepings for use as fill at any specific property.

5.4 Testing at the Mississauga Mavis Yard

In November 2015, Mississauga provided the Ministry with a binder containing the laboratory analytical results for bulk analyses associated with 28 individual samples that were claimed to be representative of street sweepings that were tested at the Mavis Road yard for the years 2004 through 2011. The number of street sweeping samples collected by Mississauga was not consistent year to year and equates to less than four samples analysed per year. This is considered very limited sampling of material that is heterogeneous by nature (e.g., sweepings from roads in industrial areas are likely to have different contaminant concentrations than sweepings from roads in a residential area). It is unlikely that the extent of sampling reported would properly characterize the piles of street sweepings in the Mavis Yard.

Of the 28 samples only eight samples were identified within the laboratory certificates of analyses specifically as being street sweepings. Five of the sample identifications describe the material tested as either soil, sand or sand mixed with gravel. The remaining samples were given a generic sample ID such as "Sample #1" or "Sample #2". No other information was provided in relation to the sample results. Based on the limited information provided, the Ministry is not able to confirm that all the material tested was street sweepings.

The Arcadis reports mentions conversations with Mississauga staff where it was indicated that the street sweepings were all screened of debris, using a trommel, at the Mavis Road works yard and mixed into a homogeneous pile prior to sampling and testing. It is assumed that the trommel refers to a trommel screen or rotary screen where material from street sweepers is dumped, presumably by a loader, into a hopper and material moved through the rotating screen. Material that is small enough to pass through the screen will presumably be what is referred to as street sweepings, while debris that is too big to fit through the screen is disposed of elsewhere. It is true that the material dumped into the hopper will be mixed to some extent as it moves through the trommel, but this does not mean that the resulting pile of screened sweepings will be homogeneous. If the street sweepings are primarily a mixture of coarser material, such as sand and gravel material, with some silt and clay material, the finer textured material will tend to move down through the coarser textured material toward the bottom of the pile. Typically, finer textured materials contain higher contaminant concentrations.

No documents or records have been provided to confirm the statements or to explain how Mississauga managed the Waste Street Sweepings at its Mavis Road works yard. For example, it is not known whether all the material for a given year was collected and stored in a stockpile at the yard prior to screening, sampling and disposal or whether the street sweepings were continually transferred in and out of the yard.

It is not clear how samples for analysis were collected from the Mavis Yard street sweeping piles, but often "grab" samples are taken from the surface of piles, since this is the easiest way to collect a sample. If this were the case, the samples would tend to contain more of the coarser textured/less contaminated material and not the finer/more contaminated material. This would mean the samples may underestimate the extent of contamination in the pile. The material trucked to the Cayuga Site, Selkirk Site and the Other Sites as fill material may have come from anywhere in the pile and if the material was toward the bottom of the pile it is likely to contain

more finer textured material and tend to have higher contaminant concentrations.

In April 2016, Mississauga provided the Ministry with statistical analyses of the “available Mavis Yard street sweepings chemical concentrations for all years available (2004 to 2012)” prepared by Arcadis. According to Arcadis, the statistical analyses show that overall the material has relatively consistent chemical concentrations for the chemicals that show exceedances of Table 2 (coarse) standards of O. Reg. 153/04 (as amended) and that the data is useful for purposes of risk evaluation.

For the reasons outlined above the Ministry is not able to verify that all of the chemical analytical data that was used in the statistical analyses performed by Arcadis was in fact representative of the Waste Street Sweepings and may be used in any risk evaluation.

6. Further Waste Street Sweepings Assessment Work

Based on the forgoing, I reasonably believe that there are grounds to issue the proposed Order (a copy of which I have reviewed) and it is necessary and advisable to confirm the Ministry’s expectations and requirements concerning the need to:

- a) obtain and share information regarding the Cayuga Site, the Selkirk Site and the Other Sites;
- b) remove the Waste Street Sweepings from the Cayuga Site;
- c) conduct further intrusive investigations at the Selkirk Site;
- d) obtain further information about the location of all properties where Waste Street Sweepings may have been deposited; and
- e) submit a plan to assess such properties and ensure that any Waste Street Sweepings present are identified .

I am of the opinion that the requirements of the proposed Order are necessary or advisable to better understand the Waste Street Sweepings matter including compliance with the EPA Part V Waste Management and to prevent, decrease or eliminate an adverse effect that may result from the presence or discharge of a contaminant in, on or under the properties where the Waste Street Sweepings have been delivered.

The following describes the procedures that should be followed where is necessary to remove Waste Street Sweepings from any site pursuant to the Order:

- 1) A Qualified Person needs to be retained to plan and supervise the removal of the Waste Street Sweepings;
- 2) A detailed site plan outlining the location and volumes of Waste Street Sweepings must be prepared together with an assessment as to the impact, if any, of the presence of the Waste Street Sweepings on the quality of the drinking water and surface water at the site;
- 3) A Ministry approved waste hauler(s) must be retained to remove the Waste Street Sweepings from the site;
- 4) The Waste Street Sweepings must be taken to a Ministry approved waste disposal site(s);
- 5) A logbook must be maintained indicating the exact date and time when each truck

- removed;
- 6) Waste Street Sweepings from the site and must include all receipts and weigh bills associated with the removal of Waste Street Sweepings;
 - 7) After the Waste Street Sweepings have been removed, the site must be restored to its original state; and
 - 8) The Qualified Person must prepare a final report and include a statement that all Waste Street Sweepings were removed from the site and the site was restored to its original state. This statement must be supported with photographs and/or confirmatory sampling.

7. Public Health Matters

Since December 2015, the Ministry has discussed the Waste Street Sweeping issues with Public Health Officials regarding their mandate under the Health Protection and Promotion Act, regarding any health related concerns.

All the information received under the Order is required to be shared with the Public Health Officials in order for them to assess any public health matters that may be involved.

In February, 2016 a report was prepared by the Public Health Ontario toxicologists that confirmed that there is currently inadequate information to characterize the potential exposures to residents; however, the report does provide general guidelines that may be followed by residents to limit their potential exposure to contaminants in the Waste Street Sweepings or soil.

8. Site Visits

I and/or other Ministry staff conducted site visits to the Cayuga Site, the Selkirk Site and the Other Sites with the assistance of the Public Health Officials. The following is a list of work I completed regarding the site visits:

- a) I personally visited the Cayuga Site and the Selkirk Site with a Public Health Official;
- b) With respect to the Cayuga Site, I have reviewed the Terrapex report and the information provided by the resident and have noted the following:
 - (i) There is a discrepancy of the reportable amounts of Waste Street Sweepings received;
 - (ii) The location of where the Waste Street Sweepings were deposited was known. The resident indicated that the Waste Street Sweepings appeared to be approximately 60 percent sand and were deposited in an area of the driveway, measuring approximately 50 x 30 feet. The area is covered with gravel and vehicles are parked within the area. The Terrapex report indicated that the Waste Street Sweepings are located approximately 155 m west of the driveway entrance from the road;
 - (iii) Other fill or excess soil was also received from Mississauga, but the location of

that material is separate from the location of the street sweepings.

- c) With respect to the Selkirk Site, I have reviewed the Terrapex report and the information provided by the property owner and have noted the following:
 - (i) The current owner purchased the property in 2015 without knowledge of the placement of the Waste Street Sweepings but indicated that he would request the previous owner to contact me which has not occurred yet;
 - (ii) The Terrapex report indicated that the Waste Street Sweepings are located approximately 690 m north of the driveway entrance from the road.
- d) I reviewed information provided by Ministry staff and the respective Public Health Officials regarding visits of 19 of the Other Sites;
- e) The 19 Other Sites were chosen because they are residential or agricultural use, and their locations are known. The following summarizes the information received from these visits:
 - (i) Three of the Other Sites property owners purchased their properties within the last six years and were unaware that Waste Street Sweepings were deposited on their respective properties;
 - (ii) Six of the Other Sites property owners were aware that the material received was Waste Street Sweepings and were able to identify the locations where the Waste Street Sweepings were deposited;
 - (iii) Seven of the Other Sites property owners acknowledge receiving material from Mississauga but didn't understand that the material was Waste Street Sweepings;
 - (iv) Three of the Other Sites property owners reported that the Waste Street Sweepings looked similar to sand;
 - (v) Two of the Other Sites property owners reported that debris was found in the Waste Street Sweepings;
 - (vi) One of the property owners provided a copy of a July 11, 2008 cover letter from the City addressed 'To Whom It May Concern' with an attached July 9, 2008 letter from Trow Associates Inc. addressed to the City, along with a certificate of analysis. The cover letter stated "that the screened sweepings originate from municipal street sweeping operations undertaken by the City of Mississauga". The letter also stated that "With the exception of a slight exceedance of the Table 2 criteria for electrical conductivity in Samples #1 and #2 and a slight exceedance of the F3 fraction of Petroleum Hydrocarbon in Sample #2, the analysis did not indicate any other exceedances for the parameters tested. From an environmental perspective, the screened sweepings are considered suitable for non-engineering fill placements at residential/parkland/institutional property uses, subject to your review and acceptance."

9. Documents

The key documents that I have reviewed regarding the Waste Street Sweepings matter are:

1. *Report titled "City of Mississauga, Street Sweepings Receiving Site, Intrusive Investigations, 3085 River Road, Cayuga, Ontario, Final Report", dated May 14, 2015, prepared by Terrapex Environmental Ltd. (Terrapex) and signed by Sara Legros and Jeff Stevenson.*
2. *Report titled "City of Mississauga, Street Sweepings Receiving Site, Intrusive Investigations, 813 Lakeshore Road, Selkirk, Ontario, Final Report", dated April 10, 2015, prepared by Terrapex Environmental Ltd. (Terrapex) and signed by Siratha Chhan and Jeff Stevenson.*
3. *"Site Summary Table", dated April 11, 2016, given to the Ministry on April 12, 2016, providing updated information regarding identification of properties where City of Mississauga's street sweepings had been deposited between the years 2004 and 2011.*
4. *"Updated City Information on Street Sweepings Loads 2004-2011", dated November 16, 2015, given to the Ministry on November 16, 2015, providing supplemental information about the number of loads of street sweepings that were deposited including a comparison to the information previously provided to the Ministry in 2012.*
5. *"Street Sweeping Sampling Results, The Corporation of the City of Mississauga 2004-2012", dated November 16, 2015, compiled by Gowlings LLP, given to the Ministry on November 16, 2015.*
6. *"Opinion regarding potential environmental impact at 3085 River Road, Cayuga due to alleged use of City of Mississauga street sweepings as fill", dated December 4, 2015, prepared by Arcadis.*
7. *"Opinion regarding potential environmental impact at 813 Lakeshore Road, Selkirk due to alleged use of City of Mississauga street sweepings as fill", dated December 4, 2015, prepared by Arcadis.*
8. *Ministry Memo "City of Mississauga Street Sweepings", dated September 4, 2015, prepared by Tim Edwards.*
9. *Ministry Memo "City of Mississauga Street Sweepings", dated March 8, 2016, prepared by Tim Edwards.*
10. *"Street Sweepings Used as Fill at Residential Properties", dated February 16, 2016,*

prepared by Public Health Ontario.

11. *"Responses to MOECC Comments (MOECC review dated March 8, 2016 in a memo from Tim Edwards to Tina Dufresne)", dated April 21, 2016, prepared by Arcadis.*
12. *Ministry Memo "Mississauga Street Sweepings Arcadis Reports", dated May 16, 2016, prepared by Chris Charron.*
13. *Information provided and collected by Ministry staff and the respective Public Health Officials during site visits carried out in May and June 2016.*

10. Attachment

The following is the attachment referred to in this Provincial Officer's Report, which forms part of this Order:

Site Summary Table dated April 11, 2016, given to the Ministry by Mississauga on April 12, 2016.



Summary Table_Site Information_CLEAN_11April2016.pdf

Offence(s)

Suspected Violation(s)/Offence(s):

**Act - Regulation - Section,
Description
{General Offence}**

"Originally signed by"

Denise Plourde
Provincial Officer
Badge Number: 1290
Date: 2016/11/28
District Office: Halton-Peel District Office

No.	Municipality	Address	Year(s) Street Sweepings were Delivered	Loads of Street Sweepings Delivered	Notes
1	Mount Healy	3004 River Road	2008	See Footnote 1	
2	Mount Healy	3083 River Road	2008	See Footnote 2	
			2010	13	
			2011	27	
3	Selkirk	813 Lakeshore Road	2009	See Footnote 3	
			2010	21	
			2011	10	
4	Selkirk	1021 Lakeshore Road	2008	See Footnote 4	
5	Milton	7155 6th Line	2007	See Footnote 5	
6	Acton	13005 Townline Road	2007	See Footnote 6	
			2009	10	
7	Acton	11175 Highway 7	2004 ¹	146	
			2005	58	
			2006 ⁷	2	
			2007	See Footnote 8	
			2009	28	
8	Cambridge	4659 Elbs Road	2010	9	
9	Guelph	6759 Sideroad 10	2010	10	
10	Alton	431129 19th Line	2010	2	
11	Caledon	18794 Horseshoe Hill Road	2010	See Footnote 9	
12	Halton Region	Regional Road 53	2009	See Footnote 10	
			2010	8	
13	Campbellville	3475 Campbellville Sideroad	2004 ⁷	380	Campbellville Sand and Gravel Supply
14	Caledon	1795 Quarry Drive	2004 ⁷	327	Caledon Landfill
			2005	32	
15	Arthur	7240 1th Line West Garstrass	2007	109	
			2008	21	
16	Mississauga	3539 Maple Road	2005	9	
17	Empire Corners	900 Concession #2	2008	29	
18	Mississauga	2800 Royal Windsor Drive	2008	45	
19	Acton	Corner of Hwy 25 and 25 Sideroad	2008	16	
20	Acton	12525 Mossagawa-Exquising Townline	2009	72	
21	Mississauga	"Winston Churchill Capital Project"	2008	139	Capital project work in road allowance between Dundas and Burnhamthorpe
22	Erin	3434 4th Line	2010	23	
23	Guelph	Hwy 34 and 10 Sideroad	2010	16	
24	Rockwood	12584 4th Line	2010	4	
25	Waterdown	1141 Concession 4W	2010	15	
			2011	50	
26	Carleton Place	291 Carleton Road	2010	4	
27	Milton	1182 8th Line	2010	41	
			2011	50	
28	Mount Healy	609 Link Road	2010	15	
29	Milton	211 5th Line	2011	2	
30	Acton	9163 Wellington County Road	2011	22	
31	Milton	5647 14th Sideroad	2011	(41) ¹¹	
32	Palgrave	9043 County Road	2011	38	
33	Whitby		2006 ⁷	48	No address identified in available records.
34	Cambridge		2007	53	No address identified in available records.
35	Acton		2007	126	No address identified in available records. The number of loads may include Site 6 and 7.
36	Mount Healy		2008	103	No address identified in available records. The number of loads may include Site 1 and 2.
37	Acton	"Farm Site"	2008	8	No address identified in available records.
38	Brampton		2010	1	No address identified in available records.
39	Halton Region		2010	12	No address identified in available records.
40	Selkirk		2010	4	No address identified in available records.
			2004 ⁷	42	
			2005	272	
			2006 ⁷	194	
41	"Private Landowner"		2007	1	No addresses identified in available records.
			2011	12	
42	"City Projects"		2004 ⁷	23	No address identified in available records.
43	"Warden PA"		2006 ⁷	32	No address identified in available records.
44	"Newfie"		2010	2	No address identified in available records.
45	"Aquarium Farms"		2010	1	No address identified in available records.
46	"Ben"		2010	2	No address identified in available records.
47	"Pet's Farm"		2011	12	No address identified in available records.

Footnotes:

- 48 loads previously reported. A current review of available records did not identify this address as a receiver in 2008. The available records list only "Mount Healy" (#16), which may include this property.
- 42 loads previously reported. A current review of available records did not identify this address as a receiver in 2008. The available records list only "Mount Healy" (#16), which may include this property.
- 33 loads previously reported. A current review of available records did not identify this address as a receiver in 2008.
- 7 loads previously reported. A current review of available records did not identify this address as a receiver in 2008.
- 40 loads previously reported. A current review of available records did not identify this address as a receiver in 2008.
- 47 loads previously reported. A current review of available records did not identify this address as a receiver in 2007. The available records list only "Acton" (#35), which may include this property.
- The available records do not distinguish between the types of materials shipped in each load (i.e. asphalt, concrete, fill, street sweepings, etc.)
- 42 loads previously reported. A current review of available records did not identify this address as a receiver in 2007. The available records list only "Acton" (#35), which may include this property.
- 13 loads previously reported. A current review of available records did not identify this address as a receiver in 2010.
- 16 loads previously reported. A current review of available records did not identify this address as a receiver in 2009.
- This material was removed by the City's contractor at the owner's request.