

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: January 27, 2020

CASE NO.:

19-076

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

Appellant: NexCycle Industries Ltd. (File No. 19-076)
Appellant: NexCycle Properties Ltd. (File No. 19-077)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to conduct certain work including submitting a waste Environmental Compliance Approval and a financial assurance estimate to ensure that appropriate measures are taken to prevent adverse effects
Reference No.: 3858-BCFPDZ
Property Address/Description: PT Lot 4, Plan 677; PT Lot 26, Concession 7
Municipality: Township of Puslinch
Upper Tier: Wellington County
ERT Case No.: 19-076
ERT Case Name: NexCycle Industries Ltd. v. Ontario (Environment, Conservation and Parks)

Heard In writing

APPEARANCES:

Parties

Counsel

NexCycle Industries Ltd.

John Tidball

Director, Ministry of the Environment, Conservation and Parks

Nadine Harris, Mitchel Boughs

ORDER DELIVERED BY HELEN JACKSON

REASONS

Background

[1] On October 7, 2019, and amended October 11, 2019, Amy Shaw, Director, Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 3858-BCFPDZ (“Director’s Order”) to NexCycle Industries Ltd. and NexCycle Properties Ltd. (the “Appellants” or “NexCycle”). The Director’s Order relates to a property located at 50 McLean Road in the Township of Puslinch as described in the header above (the “Site”). The Site is approximately 89 m wide by 410 m long and is about 9.17 acres. The Site is owned by NexCycle Properties Ltd., who leases the Site to NexCycle Industries Ltd. who operate a glass recycling facility at the Site. Strategic Materials Inc. (“SMI”) wholly owns both Appellant companies through other holding companies. SMI is headquartered in Texas.

[2] The work ordered, and the associated completion dates, are set out in Part 2 of the Director’s Order.¹ The October 11, 2019 Amendment² modified the compliance dates for the work ordered. A further minor modification to the day for a monthly inventory report to be provided to the Director was identified by the Appellants and agreed to by the Director as noted in a letter to the Tribunal dated November 28, 2019.³

[3] In summary, the Director’s Order Items 1 to 4, require the Appellants, by specified dates, to take all necessary steps to: retain a qualified Consultant(s) satisfactory to the Director and have the consultant complete and submit an application for an Environmental Compliance Approval (“ECA”) for a Waste Disposal Site (Transfer and Processing). Items 5 and 6 require an estimate of financial assurance in relation to the potential clean-up of the Site. Item 7 requires that a monthly inventory report be

¹ Appendix 1 to this decision.

² Appendix 2 to this decision.

³ Appendix 3 to this decision.

provided to the Director. Item 8 requires the reporting on staff training about dust and odour control, prevention and response. Items 9 and 10 relate to vermin control. Items 11 and 12 relate to weekly inspections and reporting. Items 13 and 14 relate to the installation of replacement socks on outdoor hoppers. Item 15 requires that the Order be provided to any person with an interest in the Site.

[4] On November 8, 2019, the Appellants filed a Notice of Appeal of the Director's Order with the Environmental Review Tribunal ("Tribunal"). The Appellants appealed the Director's Order in its entirety, including all the work ordered. The Appellants dispute the need for an ECA for a waste disposal site and the need for work that is already being addressed.

[5] By letter of October 30, 2019, the Appellants seek a stay of Items 1 to 6 in the Director's Order that relate to the requirement for an ECA for a waste disposal site and a financial assurance estimate pending the disposition of this appeal.

[6] The Tribunal held an Interim Stay Motion Hearing by way of telephone conference call ("TCC") on November 1, 2019. On the TCC, the Appellants indicated that the Interim Stay request was on the consent of the Director, with the agreement that the Stay Motion would proceed in writing with a schedule of submission dates in short order. The parties submitted that there are no prohibitions under s. 143 of the *Environmental Protection Act* ("EPA") for granting the interim stay; and further, that the granting of an interim stay was the most practical and productive approach. Based on the information filed in the request for the interim stay and the submissions of the parties, particularly the submission of the parties that there are no prohibitions to the granting of an interim stay, the Tribunal provided an Oral Order granting the Interim Stay of Items 1 to 6 of the Director's Order pending the disposition of the Appellants' Stay Motion.

[7] The Tribunal directed that the Stay Motion be heard in writing, with the last of the submissions provided to the Tribunal by December 6, 2019. The Director contests the

requested stay of Items 1 to 6. This decision provides the Tribunal's Order with reasons on the Stay Motion.

Issue

[8] The issue is whether the Tribunal should grant a stay of Items 1 to 6 in the Director's Order until the disposition of the Appellants' appeal of the Director's Order.

[9] The outcome on the stay motion depends on the sub-issues of: (i) whether s. 143(2) or 143(3) of the *EPA* prevent the Tribunal from issuing a stay; and (ii) whether the test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 ("*RJR-MacDonald*") as incorporated in Rule 110 of the Tribunal's *Rules of Practice* ("Tribunal Rules") is met to warrant a stay.

Relevant Legislation and Rule

[10] 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

[11] The evidence on the motion consisted of affidavits from Laurence Borg, President of NexCycle Canada Inc., on behalf of the Appellants; and Amy Shaw, Director, and Robert Baranski, part owner of Barco Material Handling Ltd. (“Barco”) on behalf of the Director. Barco makes wooden pallets and is located immediately adjacent to the Site. There were no cross-examinations on the affidavits. The background information set out in these reasons is subject to findings of fact that will be made on the evidence at the hearing on the merits of the appeal.

NexCycle’s Position on the Stay Motion

[12] The motion materials describe NexCycle as the leading recycler of glass in Ontario. The facility receives glass collected from municipal recycling programs, the Ontario Deposit Return Program, post-industrial window plate glass, and automotive glass; which is processed to be re-used in the production of glass products like bottles, construction glass and aggregate.

[13] This facility is one of over 40 glass recycling facilities operated by SMI in Canada, the United States and Mexico. As stated in the motion material, only one facility is required to operate as a waste management facility or under the regulatory authority of waste management approvals, licences or permits, and none of these facilities is currently required to post financial assurance as a regulatory condition of operation.

[14] On July 28, 1995, Rosen Continental, NexCycle’s predecessor, received written confirmation from the Ministry that its operations did not require a waste management

approval under Part V of the *EPA* on the basis of a Regulation 347 exemption. Since that time, the facility has operated on the basis that it does not require an *EPA* Part V approval. However, NexCycle holds environmental compliance approvals under the *EPA* and the *Ontario Water Resources Act* (“OWRA”) for air emissions and stormwater management.

[15] The Ministry first suggested that NexCycle required an *EPA* Part V approval in 2012. The next instance was in March 2019, when an MECP environmental officer stated that NexCycle required an *EPA* Part V approval and requested a complete application by June 28, 2019. In response, NexCycle obtained a legal opinion that the Site does not require such approval, which it communicated to the MECP.

[16] NexCycle has obtained a cost estimate of \$38,400 from its environmental consultant to do the work required by Items 1 to 6 of the Director’s Order, not including additional work that will be required during the MECP review process, or the application fee charged by the MECP.

[17] NexCycle expects that the total cost will be in the range of \$50,000 to \$100,000, which does not include the time that NexCycle staff will be required to spend on the project, based on NexCycle’s recent experience with an amendment to an environmental compliance approval for air emissions.

[18] NexCycle notes that in the event that Items 1 to 6 of the Director’s Order are ultimately revoked by the Tribunal, NexCycle will have no legal ability to recover these costs from the MECP.

[19] NexCycle states that the Site is currently regulated by the MECP under the general requirements of the *EPA* and the OWRA. Like most other industrial and manufacturing facilities in Ontario, NexCycle is specifically regulated in accordance with the terms and conditions of two ECAs. As well, the facility is regularly inspected by MECP environmental officers, who possess considerable statutory authority to impose

issue-specific requirements on NexCycle as may be required to address environmental issues.

[20] NexCycle notes that the Director's Order requirement to obtain an *EPA Part V* approval seeks to address an interpreted regulatory requirement, not any environmental issue at the facility.

The Director's Position on the Stay Motion

[21] The Director indicated that despite significant abatement efforts by the MECP since 2011 to reduce the amount of stockpiled glass and address the off-site adverse effects, significant environmental issues with the Site have persisted. In September 2012, the MECP carried out two inspections at the Site (Air and Subject Waste), and both inspections noted failures. The main observations from the inspections were as follows:

- There was approximately 85,000 tonnes of commingled glass stockpiled on Site, all outside on the ground. Some of the commingled glass had been there for many years, some contained significant amounts of waste residues like plastic and organics, and some was falling onto adjacent property.
- The stockpiles emitted dust and odour.
- There was non-compliance with the Air ECA as new equipment had been installed without approval.
- New Emission Summary and Dispersion Modelling was required as the modelled fugitive emissions showed standards of Particulate Matter (PM10) and Total Suspended Solids were exceeded off-property.
- A stormwater collection system was needed as stormwater at the Site was not contained but rather was running off the stockpiled materials and offsite into a neighbouring ditch.

[22] The final inspection report commented that the 1995 letter from the Ministry exempting the Site from the requirement to obtain a waste ECA needed to be

reassessed in light of the nature and composition of the waste glass currently being received and stored at the Site.

[23] Between 2013 and 2014, the number of complaints the Ministry received about the Site escalated. In 2014 alone, there were 112 complaints. NexCycle achieved compliance with the Provincial Officer's Order by June 2016 and agreed to continue to report on the percentage of residuals semi-annually with a target of achieving ten percent residuals by December 31, 2018.

[24] The Director alleges that the site currently has over 50,000 tonnes of stockpiled glass comingled with organics, metals, plastics and paper stored in large piles outside along with piles of non-glass waste known as residuals, significantly more than was present at the Site in September 2015 (16,500 tonnes). The operations at the Site are resulting in adverse effects on the neighbouring property due to dust, fine glass particles, odour, seagulls/vermin and stormwater runoff. These adverse effects have been confirmed by the Ministry on several occasions. NexCycle has taken insufficient action to remedy them.

[25] The stormwater runoff from the Site exceeds the Provincial Water Quality Objectives for several metals and has elevated levels of Biochemical Oxygen Demand and Total Ammonia. Yet, the stormwater management facility approved through an ECA issued in March 2017 has not been constructed and no stormwater controls or contingency measures have been implemented to prevent runoff from the Site.

[26] In summary, despite the Ministry's persistent efforts over the past several years to bring the Site into compliance with environmental laws, NexCycle continues to discharge, cause or permit the discharge of a contaminant into the natural environment that causes or may cause adverse effects. This combined with NexCycle's refusal to apply for a waste ECA formed the background and reasons for the Director's Order issued on October 7, 2019 and amended on October 11, 2019.

[27] The MECP submits that a waste ECA would require NexCycle to operate their waste facility under strict conditions which would not otherwise be regulated or required through the issuance of an Air or Industrial Sewage ECA. Typical waste ECA conditions include: restrictions on hours of operation, a maximum amount of waste that can be stored, restrictions on the types of wastes that can be accepted, residual waste removal requirements, spill reporting procedures, complaint reporting procedures, waste handling staff training requirements, creation of an operations manual, incoming waste inspections and notification to the Ministry of owner changes. An important condition included in all waste ECA's is the requirement for the submission of financial assurance to the Ministry in the event that the facility closes or otherwise ceases operations at the Site and the stockpiled waste is not removed.

Analysis and Findings

[28] 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 test for a stay set out in *RJR-MacDonald*. This test considers: (i) whether there is a serious issue to be decided; (ii) whether irreparable harm will ensue if the relief is not granted; and (iii) whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

[29] The parties 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.

[30] The Tribunal is satisfied that the Director's Order is not an order to monitor, record and report under s. 143(2)(a) and that it was not issued under any of the sections listed in s. 143(2)(b).

[31] Likewise, under s. 143(3), 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. While the Director is concerned about a delay in the work necessary to address the adverse effects of the operations at the Site, the Director recognizes that there is insufficient evidence at this time to show that the threshold test in s. 143(3) would be met if the requested stay were granted.

[32] 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 the test for a stay in *RJR-MacDonald* and Rules 110(b) to (d).

Serious Issue

[33] 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 Director concedes for the purpose of this stay motion that the appeal raises a serious issue to be decided by the Tribunal.

Findings on Serious Issue

[34] The Tribunal is satisfied that there is a serious issue to be decided by the Tribunal. The issues raised by Items 1 to 6 of the Director’s Order are serious issues about the Director’s jurisdiction to require NexCycle to apply for an environmental compliance approval for a waste disposal site and to provide a financial assurance estimate.

Irreparable Harm

[35] In *RJR-MacDonald*, the Supreme Court of Canada described irreparable harm as follows:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[36] NexCycle submits that the harm they will suffer falls squarely into the second type defined by the Supreme Court of Canada, i.e. harm which cannot be cured because one party cannot collect damages from the other. If a stay is not granted, the Appellants will be required to spend a significant amount of money to retain an environmental consultant to prepare a Part V application and a financial assurance estimate.

[37] NexCycle will have no legal means of recovering those costs from the Director, by way of civil claim or otherwise, should their appeal of Items 1 to 6 ultimately be successful. There are no other parties named in the Director’s Order from whom NexCycle might claim reimbursement. NexCycle maintains that the lost costs constitute irreparable harm for the purpose of the test enunciated by the Supreme Court of Canada.

[38] Citing *Limoges* at para. 60 and *Baker v. Director, Ministry of the Environment*, [2013] O.E.R.T.D. No. 21 (“*Baker*”) at paras. 81-82, the Director submits that the party seeking the stay must demonstrate that irreparable harm would in fact occur if a stay is not granted. Unsubstantiated claims or proof of a risk of irreparable harm are not sufficient.

[39] The Director is of the view that the requirements of Items 1 to 6 are not onerous. Notably, complying with Items 1 to 3 should not involve any cost as this consists of selecting and retaining a consultant and providing confirmation to the Director. The consultant estimates that complying with Items 4 to 6 would be \$38,400, which the Appellant inflates up to \$100,000. The Director submits that this inflated amount should be rejected by the Tribunal, as it relates to costs after the submission of a waste ECA application and financial assurance estimate. The Director’s Order requires the preparation and submission of a waste ECA application and financial assurance

estimate. It does not cover the period after the application and estimate have been submitted.

[40] Further, the Director submits that NexCycle provides no evidence that \$38,400 will cause them irreparable harm. The Director states that this amount is an insignificant cost to NexCycle, given that the parent company has estimated annual revenues of US\$260 million and is the largest glass recycler in North America. The Director submits that the expenditure of this modest sum will have no meaningful impact on NexCycle nor will their business be irreparably damaged in any way.

[41] The Director rejects NexCycle's claim that because they have "no legal means of recovering those costs from the Director" and "[t]here are no other parties named in the Director's Order from whom the Appellants might claim reimbursement", they will suffer irreparable harm. The Director submits that this construes recoverability too narrowly, and that NexCycle have provided no evidence that recovery is not possible from other sources, including customers, suppliers who pay NexCycle to take the glass waste or NexCycle's parent company.

[42] NexCycle notes that the ERT stay decision that most closely resembles this case is *Posthumus v. Ontario (Environment and Climate Change)*, 2017 CanLII 3658 (ON ERT) ("*Posthumus*"). In that case, the Director ordered the appellants to apply for an environmental compliance approval for air discharges. The Director consented to a stay of the requirement pending disposition of the appeal, which the Associate Chair granted.

[43] The Director submits the *Posthumus* decision has no relevance to the Tribunal's decision in the present case since it was an order for a stay issued on consent with no analysis of the *RJR-MacDonald* test including the issue of irreparable harm.

[44] The Director submits that the Tribunal should deny the stay since NexCycle has failed to demonstrate that they will suffer irreparable harm if a stay is not granted.

Findings on Irreparable Harm

[45] The Tribunal agrees with NexCycle that the appropriate test is whether the costs are recoverable. The Tribunal is not persuaded by the Director's submissions that because NexCycle can 'afford' the costs of complying with the Director's Order, that it follows that this cannot be considered 'irreparable harm'. It is clear from the findings of the Supreme Court of Canada in *RJR-MacDonald* that "harm which cannot be cured, usually because one party cannot collect damages from the other" is irreparable harm.

[46] Further, as stated in *RJR-MacDonald*: "Irreparable refers to the nature of the harm suffered rather than its magnitude". As submitted by NexCycle, the magnitude of the harm, whether it be \$38,400, \$50,000, \$100,000 or more, is not relevant. The Tribunal is not persuaded by the Director's submission that this is a negligible cost for NexCycle. The test does not require an evaluation of how onerous the cost is for an appellant, but whether it is recoverable, which the Tribunal finds it is not in this case.

[47] There is no mechanism whereby NexCycle could recover its costs should it be determined on the merits of the case that the work ordered for a waste ECA and a financial assurance estimate are not legally required. The Director is the only other party involved at this point. There are no other parties named in the order so no other entities from which NexCycle could recover its costs. Passing the costs on, such as to customers or suppliers as suggested by the Director, is not what is intended by the recovery of costs.

[48] The Tribunal finds that NexCycle has established that irreparable harm would occur if the requested stay is not granted. Costs, in the magnitude of \$38,400 up to possibly \$100,000 would be expended by NexCycle that would not be recoverable if NexCycle is successful in their appeal before the Tribunal and found not to be legally required to undertake Items 1 to 6 of the Director's Order.

Balance of Convenience and Public Interest Considerations

[49] The third part of the *RJR-MacDonald* test is an analysis of whether the balance of convenience, including effects on the public interest, favours granting a stay, based on consideration and weighing of the respective harms that will be suffered by the parties.

[50] NexCycle submits that there is no urgency to submit an application for an *EPA* Part V approval given that the Site has operated without such an approval for 24 years. NexCycle notes that the matter should be resolved before the Tribunal in the next 6 months.

[51] Further, NexCycle contends that the Site is already regulated by the MECP under the *EPA* and the OWRA, and under the terms and conditions of two environmental compliance approvals. The facility is regularly inspected by MECP environmental officers who possess the authority to address any environmental issue that may arise. The Director's Order requirements to obtain an *EPA* Part V approval and to prepare a financial assurance estimate do not address any environmental protection issues at the facility.

[52] NexCycle submits that there will be no harm to the public interest if Items 1 to 6 of the Director's Order are stayed pending resolution of the appeal.

[53] The Appellant contends that it is not reasonable, logical or administratively efficient to require NexCycle to retain a consultant and bear the costs associated with preparing an application for an *EPA* Part V approval in advance of a determination of the legal issue by the Tribunal. They submit that the balance of convenience favours a stay of Items 1 to 6 of the Director's Order.

[54] The Director submits that a significant factor that the Tribunal must consider in weighing the balance of convenience is the harm to the public interest. Citing *Baker* at paras. 89-91 which refers to *RJR-Macdonald* and confirmed its applicability to a stay

motion of an order issued under the *EPA*, the Director argues that a public authority's onus in demonstrating irreparable harm to the public interest is less than that of a private applicant. Consequently, the Director submits that the Tribunal is to assume that irreparable harm to the public interest would result from any stay of the Director's Order which the Director issued in the exercise of the Ministry's role to promote the public interest and protect the natural environment.

[55] The Director submits that granting the stay would substantially harm the public interest given the significant ongoing environmental issues at the Site. These impacts include paper and plastic labels and rotting food debris being blown into the neighbouring yards and buildings; fine glass particles covering products, people and vehicles; a stench that permeates neighbouring property; and seagulls that number in the hundreds covering vehicles and product with excrement.

[56] A stay of the Director's Order would ignore the public interest of the neighbouring property owners and place the burden on them to continue to endure the adverse effects from NexCycle's operations. This far outweighs any potential harm to NexCycle. A waste ECA will ensure that NexCycle operates under strict conditions tailored to the waste processing operations occurring at the Site with the express purpose of limiting or eliminating the likelihood of adverse impacts as a result of these operations.

Findings on Balance of Convenience and Public Interest Considerations

[57] The Tribunal finds that the balance of convenience and public interest considerations favour granting a stay of Items 1 to 6 of the Director's Order.

[58] The fact that NexCycle has operated the facility for many years without the requirement for Part V ECA waste approval weighs heavily in the assessment of the balance of convenience. Issuance of a stay will have the effect of preserving the status quo until the Tribunal rules on the issue, which is to occur in relatively short order.

[59] The Director has provided evidence of ongoing environmental concerns at the Site, which the Appellant acknowledges. However, for the purposes of this stay motion, the Director has not articulated how the balance of convenience and the public interest favours requiring the Appellant to apply for a Part V ECA for a waste site prior to the determination of its legal requirement by the Tribunal.

[60] The Director retains other regulatory tools to ensure the protection of the environment in relation to the Site to protect the public interest. Items 7 to 15 of the Director's Order are not stayed, and are in the process of being addressed by NexCycle. These include measures regarding regular inspection, reporting, and dust, odour and vermin control. The staying of Items 1 to 6 until the disposition of the appeal does not preclude the Director from taking action it deems necessary in regard to the protection of the public interest.

[61] Items 5 and 6 require NexCycle to prepare and submit a financial assurance estimate, in relation to the potential clean-up of the Site should the Site close without the removal of stockpiled waste. The evidence provided in this motion is that the parent company has significant assets. There is no evidence of imminent risk of abandonment of the Site that would warrant the preparation of a financial assurance estimate prior to the determination of its legal requirement, which will be determined at the hearing of the merits.

[62] The Tribunal is not satisfied that the balance of convenience and protection of public interest requires the immediate implementation of Items 1 to 6 of the Director's Order.

Conclusion

[63] In conclusion, the Tribunal is satisfied that there is no statutory bar to granting a stay of Items 1 to 6 of the Director's Order under ss. 143(2) or 143(3) of the *EPA*. The Tribunal finds that there is a serious issue to be decided, and that irreparable harm will

ensue if the stay is not granted. Lastly, the Tribunal finds that the balance of convenience, including effects on the public interest, favours granting the stay.

ORDER

[64] The Tribunal orders that Items 1 to 6 of Director's Order No. 3858-BCFPDZ are stayed until the final disposition of the appeal.

Stay Granted

"Helen Jackson"

HELEN JACKSON
MEMBER

Appendix 1 – Director's Order No. 3858-BCFPDZ
Appendix 2 – Director's Order No. 3858-BCFPDZ, amended
Appendix 3 – Letter dated November 28, 2019

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



Environmental Protection Act, R.S.O. 1990, c. E.19 (EPA)

Order Number
3858-BCFPDZ

Incident Report No.
8437-BALQS9

Director's Order

To: NexCycle Properties Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

NexCycle Industries Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

Site: PT Lot 4, Plan 677; PT Lot 26, Concession 7
Township of Puslinch, Ontario
Property Identifier Number: 71196-0013

Part 1: Legal Authority

This Order is made under the authority of Sections 7, 17, 18, 44, 132, 196 and 197 of the Environmental Protection Act (EPA) which provide as follows:

7 (1): When the report of a provincial officer contains a finding that a contaminant discharged into the natural environment is a contaminant the use of which is prohibited by the regulations or is being discharged in contravention of section 14 or the regulations, the Director may issue a control order directed to,

- (a) an owner or previous owner of the source of contaminant;
- (b) a person who is or was in occupation of the source of contaminant; or
- (c) a person who has or had the charge, management or control of the source of contaminant.

17 Where any person causes or permits the discharge of a contaminant into the natural environment, so that land, water, property, animal life, plant life, or human health or safety is injured, damaged or endangered, or is likely to be injured, damaged or endangered, the Director may order the person to,

- (a) repair the injury or damage;
- (b) prevent the injury or damage; or
- (c) where the discharge has damaged or endangered or is likely to damage or endanger existing water supplies, provide temporary or permanent alternate water supplies.

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 or
 - 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.

(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.

44 Where a waste management system or a waste disposal site is not in conformity with this Part or the regulations, the Director may order an owner or previous owner to take such action as is required to bring the system or the site into conformity with this Part or the regulations within the time specified in the order.

132 (1) The Director may include in an approval or order in respect of a works a requirement that the person to whom the approval is issued or the order is directed provide financial assurance to the Crown in right of Ontario for any one or more of,

(a) the performance of any action specified in the approval or order;

(b) the provision of temporary or permanent alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the approval or order is related; and

(c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.

196 (1) 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) A person who has authority under this Act to order that a thing be done on or in any place also has authority to order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

197 (1) A person who has authority under this Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.

Background and Reasons

NexCycle Properties Ltd. is the legal property owner of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON. NexCycle Industries Ltd. ("NexCycle") leases the property and operates a large glass waste processing facility at the Site. NexCycle receives glass waste from industry, municipal recycling programs, and the Ontario Deposit Return Program. NexCycle has management or control of the undertakings at the Site.

Section 25 of the EPA defines "owner" as a person that is responsible for the establishment or operation of a waste management system or waste disposal site.

Section 27 of the EPA requires NexCycle to hold an Environmental Compliance Approval ("ECA") for waste processing.

An ECA ensures that site activities are carried out in accordance with ministry requirements and sets conditions that are protective of human health and the environment.

This Director's Order is being issued based on operations observed at the Site and information provided to me by Provincial Officers Lynnette Armour and Clarissa Whitelaw, which are summarized as follows:

In 1995, Rosen Continental Inc. (now known as NexCycle Industries Ltd.) contacted the Ministry regarding its proposed facility for the processing of glass materials. The incoming correspondence sought confirmation that an Approval was not required for the processing of glass material "from the single waste category noted as item 1, glass, in Schedule 2, of O. Reg. 101/94". On July 28, 1995 the Ministry indicated that no Approval was required - quoting an exemption found in s.3(2)2 of O. Reg. 347 with respect to "Municipal waste, consisting solely of waste from a single category of waste set out in Schedule 1, 2 or 3 of O. Reg. 101/94, transferred by a generator and destined for,

- i. a waste disposal site that, but for the exemption in section 5 of O. Reg. 101/94, would be a municipal waste recycling site to which Part IV of that regulation applies and that is located at a manufacturing establishment that uses all the output, other than residues, of the site, or
- ii. a site for use at the site in an ongoing agricultural, commercial, manufacturing or industrial process or operation used principally for functions other than waste management if the process or operation does not involve combustion or land application of the waste."

A review of current site operations and information provided by NexCycle, revealed that NexCycle receives the following types of glass waste:

1. Bottle glass for the Ontario Deposit Return Program,
2. Post-industrial window plate glass from manufacturers,
3. Blue Box glass collected in the municipal recovery facilities, and
4. Automotive windshield glass from replacement programs.

As such, the glass received is not solely from a single category of waste set out in Schedule 1, 2 or 3 of O. Reg. 101/94. NexCycle is receiving glass waste listed in both Schedule 1 and Schedule 2 of O. Reg. 101/94. As the Ministry's correspondence of July 28, 1995 refers to only receiving waste from a single category of Schedule 2 of O. Reg. 101/94, this correspondence no longer reflects current operations at the Site.

In addition, under section 27 of O. Reg. 101/94 a municipal waste recycling site is exempt from sections 27, 40, and 41 of the EPA provided that all buildings and processing or storage areas that are part of the site are at least fifty metres from the boundaries of the parcel of land. Due to current operations and layout, the Site cannot meet this requirement, therefore there is no exemption to obtain an Approval provided in O. Reg. 101/94.

Based on existing site operations, neither O. Reg. 347 section 3(2)2 nor O. Reg 101/94 section 27 provide an exemption from the requirement to obtain an Approval with respect to NexCycle's operations at PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch.

The Ministry has received and continues to receive concerns from a local business regarding odours impacting its operations, safety issues pertaining to fine glass blowing onto its property and an increased number of vermin/seagulls affecting its products. On June 19, 2019, the Ministry received an email with photographs showing large amounts of plastic and glass that had blown off the Site and onto their property. Damage to private property (employee vehicles) in the parking lot is alleged.

As such, NexCycle has discharged, caused or permitted the discharge of a contaminant into the natural environment in a manner that property, human health or safety has been injured, damaged or endangered. Further, NexCycle continues to discharge, cause or permit the discharge of a contaminant into the natural environment that causes or may cause the following adverse effects:

- impairment of the quality of the natural environment for any use that can be made of it;
- harm or material discomfort to any person;
- an adverse effect on the health of any person;
- impairment of the safety of any person;
- loss of enjoyment of normal use of property, and;
- interference with the normal conduct of business.

I am of the opinion, on reasonable and probable grounds, that it is in the public interest to require waste sites to comply with the Environmental Protection Act and that the requirements of this order are necessary or advisable so as to (a) prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property, and/or (b) prevent, decrease or eliminate and adverse effect that may result from the discharge of a contaminant from the undertaking, or the presence or discharge of a contaminant in, on or under the property.

As per NexCycle's own calculations, the total amount of glass stored outdoors at the Site on March 31, 2019 was 50,128 tonnes. This included 32,374 tonnes of processed glass and 17,754 tonnes of unprocessed glass.

In a letter to the Ministry, dated May 21, 2019, NexCycle's President wrote; "Glass generation is seasonal and at various times of the year the incoming supply will be lower than demand and at other times the inverse occurs. Accordingly, there will always be some level of processed inventory on site. Unlike other businesses, NexCycle cannot predict with 100% accuracy its supply by ordering requirements. Glass

generation is variable and often dependent on glass production. There is sometimes a lag between what is generated and what is sold".

A site visit by Ministry staff on July 29, 2019 identified that the amount of glass inventory outside was relatively unchanged since March of 2019 (~51,000 tonnes). During the site visit, two Provincial Officers made observations of residual glass, litter and plastic on the neighbouring industrial property, the presence of garbage like odours, seagulls, shredded/ripped dust socks on the Site's outdoor hoppers and ripped and ineffective mesh barrier fencing between the two properties.

The parties are being ordered to provide an estimate of Financial Assurance to the Crown in right of Ontario with respect to the Site. Financial Assurance is required to ensure that appropriate measures are taken to prevent adverse effects should the facility close or otherwise cease operations as per section 132(1) of the EPA. These measures include the transfer of the stockpiled glass waste to a Ministry approved waste disposal site if so needed.

Part 2: Work Ordered

NexCycle Properties Ltd. is the legal property owner of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, Ontario. NexCycle Industries Ltd. leases the property from NexCycle Properties Ltd. and is the current operator at the Site. For the reasons set out in this Order and pursuant to my authority under sections 7, 17, 18, 44, 132, 196 and 197 of the Environmental Protection Act, I order the parties to do, or cause to have done, the following:

Item No. 1

By October 21, 2019, the parties shall retain a consultant(s) satisfactory to the Director ("Consultant") and having appropriate expertise in waste management for the purposes of completing an application for an Environmental Compliance Approval for a Waste Disposal Site (Transfer and Processing), including all relevant supporting documentation, for submission to the Client Services and Permissions Branch at 135 St. Clair Avenue West, 1st Floor, Toronto ON M4V 1P5.

Item No. 2

By October 21, 2019, the parties shall notify the Director of the name of the Consultant retained pursuant to Item No. 1 along with the credentials of the Consultant.

Item No. 3

By October 21, 2019, the parties shall provide a copy of this order to the Consultant and confirm to the Director that the Consultant has been retained to carry out the work specified in Items 1, 4, 5 and 6.

Item No. 4

By December 31, 2019, the parties shall cause the Consultant to carry out the work required by Item No. 1 and submit an application for an ECA as specified in Item No. 1 with a copy to the Director.

Item No. 5

By October 31, 2019, the parties shall cause the Consultant to estimate the funds necessary for the analysis, transportation, site clean-up, monitoring and disposal of all glass waste and non-glass waste on the Site at any one time (Financial Assurance), in accordance with the Financial Assurance Guideline.

Item No. 6

By October 31, 2019, the parties shall cause the Consultant to submit to the Director a report with supporting documentation and detailed rationale with respect to the estimated Financial Assurance in relation to the Site, in accordance with the Financial Assurance Guideline.

Item No. 7

Commencing on November 1, 2019, and monthly thereafter, the parties shall provide, or cause to be provided, an inventory report to the Director on the volume of incoming and outgoing material at the Site for the preceding month. The inventory report shall be categorized in terms of the volume of inventory (in metric tonnes) for processed, unprocessed, and non-glass waste.

Item No. 8

By October 18, 2019, the parties shall provide training to all staff with respect to its Dust Control Management Plan (revised July 15, 2019) and its Odour Control Prevention and Response Plan (revised July 16, 2019) for the Site and submit to the Director confirmation of the training including the name of the person(s) trained and position.

Item No. 9

Immediately upon issuance of this Order and every day thereafter, the parties shall ensure that, at all times, vermin control measures are in place at the Site. The vermin control measures shall at a minimum include the following:

- i. having an adequate number of rodent stations located and maintained as recommended by a licensed exterminator; and,
- ii. having sufficient hawk kites, or other effective deterrent measures, to minimize the number of seagulls.

The vermin control measures shall be inspected on a weekly basis and maintained in such a manner as to maximize efficacy. A record of the completion of each weekly vermin control measures inspection shall be maintained and made available, upon request, for inspection by the Ministry.

Item No. 10

By October 21, 2019, the parties shall submit to the Director confirmation that the vermin control measures referred to in Item No. 9 have been implemented.

Item No. 11

Immediately upon issuance of this Order, the parties shall conduct weekly inspections along the entire Site boundary for any offsite litter connected with its operations at the Site. Any offsite litter linked to operations at the Site shall be cleaned up the same day. A record of the completion of each weekly litter inspection shall be maintained and made available, upon request, for inspection by the Ministry.

Item No. 12

By October 21, 2019, the parties shall submit to the Director confirmation that the weekly litter inspection program referred to in Item No. 11 has been implemented.

Item No. 13

By October 21, 2019, the parties shall take all steps necessary to install replacement socks on all outdoor hoppers located on the east side of the building at the Site.

Item No. 14

By October 21, 2019, the parties shall submit to the Director confirmation that replacement socks have been installed on all outdoor hoppers located on the east side of the building at the Site.

Item No. 15

Immediately upon issuance of this Order, and every day thereafter, the parties and any other person with an interest in the Site shall, before dealing with the Site in any way, give a copy of this Order, including any amendments thereto, to every person who will acquire an interest in the Site, as a result of the dealing.

Part 3: Definitions

"**Approval**" means a Certificate of Approval("CofA") (prior to 31-October-2011) and/or an Environmental Compliance Approval("ECA") (after 31-October-2011).

"**Director**" means Amy Shaw, District Manager of the Guelph District Office of the Ministry of the Environment, Conservation and Parks. Where items are required to be submitted to the Director, they shall be delivered either by mail at: 1 Stone Road West, Floor 4SW, Guelph, ON N1G 4Y2 or via email at Amy.Shaw@Ontario.ca

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

"**Financial Assurance Guideline**" means Guideline F-15, MECP publication PIBS 0226e04, last revision date June 2011.

"**Ministry**" means the Ontario Ministry of the Environment, Conservation and Parks.

"**NexCycle**" means NexCycle Industries Ltd., operator of the Site, registered as PIN 71196-0013(R) with the legal property description of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON.

"**O. Reg.**" is a reference to an Ontario Regulation as either an enacted Regulation of Ontario or enacted as a Revised Regulation of Ontario.

"**Parties**" means NexCycle Properties Ltd. and NexCycle Industries Ltd.

"**Site**" means the property registered as PIN 71196-0013(R) with the legal property description of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON.

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. The Director shall issue an order where the approval of the Director is required in respect of a matter under this order and,
- i. the Director does not grant approval; or
 - ii. the Director does not grant approval because the changes which the Director considers necessary for granting approval have not been agreed to by the person(s) 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 party; or
 - iv. any other cause whether similar to or different from the foregoing beyond the reasonable control of the party, 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 you 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

5.1 You may require a hearing before the Environmental Review Tribunal (Tribunal), if, within fifteen (15) calendar days from the date of service of the Director’s 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.

5.2 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.

5.3 Written notice requiring a hearing can be served upon:

The Secretary
Environmental Review Tribunal 655
Bay Street, 15th Floor Toronto ON
M5G 1E5
Fax: (416) 326-5370
Email: ERTTribunalsecretary@ontario.ca

and

Director
Ministry of the Environment
Conservation and Parks
1 Stone Road West, 4th Fl
Guelph, Ontario
N1G 4Y2
Fax: (519) 826-4286
email: amy.shaw@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
3474

Fax: (416) 326-5370 or 1(844) 213-

TTY: 1-800-855-1155 via Bell Relay

Web: www.ert.gov.on.ca

- 5.4 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 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 Minister of the Environment, Conservation and Parks who will place it on the EBR registry. The notice must be delivered to the Minister of the Environment, Conservation and Parks at 777 Bay St., 5th Floor, Toronto, Ontario M7A 2J3 by the earlier of:
- 5.4.1 two (2) days after the day on which the appeal before the Tribunal was commenced;
 - 5.4.2 fifteen (15) days after service on you of a copy of this order.
- 5.5 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.
- 5.6 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:
- 5.6.1 fifteen (15) days after the day on which notice of the issuance of this order is given in the EBR registry; and
 - 5.6.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

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.

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.

ISSUED at Guelph this 07 day of October, 2019.

A handwritten signature in black ink, appearing to read 'Amy Shaw', is written over a horizontal line.

Amy Shaw
Director
Ministry of the Environment, Conservation and Parks

Ministry of the Environment,
Conservation and Parks
Drinking Water and Environmental
Compliance Division
West Central Region
Guelph District Office

Ministère de l'Environnement de la
Protection de la nature et des Parcs
Division de la conformité en matière
d'eau potable et d'environnement
Direction régionale du Centre-Ouest
Bureau de district de Guelph



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Guelph (Ontario) N1G 4Y2
Tél.: 519 826-4255
Télééc: 519 826-4286

October 11, 2019

NexCycle Properties Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

NexCycle Industries Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

Site: PT Lot 4, Plan 677; PT Lot 26, Concession 7
Township of Puslinch, Ontario
PIN: 71196-0013 (R)

RE: Amendment to Director's Order 3858-BCFPDZ issued October 7, 2019

Mr. Borg,

I am in receipt of correspondence from your counsel, John Tidball of Miller Thomson LLP, dated October 8, 2019 regarding the compliance dates specified in Director's Order #3858-BCFPDZ issued to NexCycle Properties Ltd. and NexCycle Industries Ltd. on October 7, 2019. In particular, the request related to compliance dates for Items 1 to 8 of the order. I have considered the matter and pursuant to my authority under the Environmental Protection Act sections 7, 17, 18, 44, 126, 132 and 196, I hereby amend the compliance dates for Items 1 to 8 of Director's Order #3858-BCFPDZ as follows:

Item No. 1

The compliance date is changed to no later than **November 6, 2019**

Item No. 2

The compliance date is changed to no later than **November 6, 2019**

Item No. 3

The compliance date is changed to no later than **November 6, 2019**

Item No. 4

The compliance date is changed to no later than **January 14, 2020**

Item No. 5

The compliance date is changed to no later than **November 14, 2019**

Item No.6

The compliance date is changed to no later than **November 14, 2019**

Item No. 7

The compliance date is changed to commencing on **December 2, 2019**

Item No. 8

The compliance date is changed to no later than **November 1, 2019**

In accordance with Item No.15 of the order, please ensure that a copy of this amendment, along with a copy of the order, is provided to any person who may acquire an interest in the Site. All other aspects of Director's Order #3858-BCFPDZ remain in effect.

ISSUED at Guelph, Ontario this 11th day of October 2019.



Amy Shaw

Director

Ministry of the Environment, Conservation and Parks

cc. John Tidball, Miller Thomson LLP



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
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F 905.660.0139

MILLERTHOMSON.COM

November 28, 2019

DELIVERED VIA E-MAIL

Ms. Tracee Wessam
Case Coordinator
Environmental Review Tribunal
655 Bay Street, 15th Floor
Toronto, ON M5G 1E5

John R. Tidball
Direct Line: 905.532.6614
Direct Fax: 905.660.0139
jtiddball@millerthomson.com

File: 00138564.00011

Dear Ms. Wessam:

**Re: NexCycle Industries Ltd. v. Ontario (MECP)
ERT Case No. 19-076**

The Appellant has just identified a minor issue with one item of the Director's Order that is currently under appeal to the Tribunal. Item No. 7, for which a stay has not been sought, requires the submission to the Director of a monthly inventory report. Submission is to commence on December 2, 2019 and then occur "monthly thereafter". Pending resolution of its appeal, the Appellant is content to submit a monthly inventory report. However, it now appreciates that its month-end inventory numbers are not usually final on the first business day of the following month, as its accounting department needs to review them. The Director is not in a position to amend the Order, as it is under appeal to the Tribunal. As a result, we are requesting the Tribunal to make a minor amendment to Item No. 7 of the Director's Order, as follows:

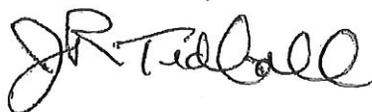
Commencing on December 2, 2019, and monthly thereafter on the second business day of every month thereafter, the parties shall provide, or cause to be provided, an inventory report to the Director on the volume of incoming and outgoing material at the Site for the preceding month. The inventory report shall be categorized in terms of the volume of inventory (in metric tonnes) for processed, unprocessed, and non-waste glass.

We have spoken with counsel for the Director, who has confirmed that the Director consents to this amendment.

Please advise if the tribunal requires any further information.

Yours truly,

MILLER THOMSON LLP



John R. Tidball

Certified Specialist (Environmental Law)
JRT/pgs

Enclosure

- c. Nadine Harris, Counsel, MECP, 135 St. Clair Ave. W., Toronto, ON M4V 1P5
Mitchel-Boughs, Counsel, MECP, 135 St. Clair Ave. W., Toronto, ON M4V 1P5

