

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 15, 2020

CASE NO(S):

20-029

PROCEEDING COMMENCED UNDER section 139(1)(b) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19

Appellant:	Moose Creek Cement Products (2006) Limited
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Conditions imposed on the use and operation of a Hauled Sewage Disposal Site to reduce the allowable spreading rate to 2.8L/m ² /7days
Reference No.:	19-COR-55131
Property Address/Description:	16525 Sixth Road, RR #2
Municipality:	Moose Creek
Upper Tier:	North Stormont
ERT Case No.:	20-029
ERT Case Name:	Moose Creek Cement Products (2006) Limited v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Counsel

Moose Creek Cement Products (2006) Limited

Michael Hebert, Cheryl Gerhardt McLuckie

Director, Ministry of the Environment, Conservation and Parks

Sylvia Davis and articling students: Courtney Wilson, Leslie Anne St. Amour, Elizabeth Chan

HEARD:

ADJUDICATOR(S):

November 19, 2020 by telephone conference call
Helen Jackson, Member

DECISION

Background

[1] Moose Creek Cement Products (2006) Ltd. (“MCC” or “Appellant”) was issued Environmental Compliance Approval (“ECA”) No. 19-COR-55131, dated June 1, 2020, by Tracy Hart, Director, Ministry of the Environment, Conservation and Parks (“Ministry”). MCC operates a septic tank manufacturing and pumping facility at 16525 Sixth Road (“Site”), approximately four kilometres southwest of the Village of Moose Creek, Ontario. MCC has owned the business since 2006; however, the Site has been used for septage disposal for at least 25 years. The Site contains a sewage lagoon and three (3) spreading fields. Septage is stored in the lagoon during winter months and spread on the fields between May and mid-December.

[2] MCC filed an appeal of Condition 15 of the ECA to the Environmental Review Tribunal (“Tribunal”) pursuant to s. 139(1)(b) of the *Environmental Protection Act* (“EPA”) on July 7, 2020. Condition 15 reduced the previous allowable spreading rate of septage to 2.8 L/m²/7days.

[3] On October 13, 2020, counsel for the Appellant advised the Tribunal by email that as a result of discussions between the parties, the Ministry has provided proposed amended wording of Condition 15, which is satisfactory to the Appellant, and that the Appellant accordingly seeks to withdraw its appeal. The Appellant, in consultation with the Ministry, requested a teleconference with the Tribunal for settlement purposes.

[4] On November 17, 2020, the Ministry provided written submissions to the Tribunal in support of the settlement agreement reached by the Director and MCC in this matter.

[5] The Tribunal held a Pre-hearing Conference (“PHC”) by teleconference on November 19, 2020 to hear the settlement. No other persons attended the PHC to request status in this matter.

Issue

[6] The issue is whether the settlement agreement is consistent with the purpose and provisions of the *EPA* and whether it is in the public interest.

Discussion, Analysis and Findings

[7] Counsel for the Director explained the proposed amendment to Condition 15. Condition 15 currently reads as follows:

The maximum application rate of Hauled Sewage shall not exceed 2.8 litres per square metre for a 7-day period for Fields 1, 2 and 3 or such other lower rate which ensures that ponding at, puddling on or runoff from the Site does not occur.

[8] The amended version of Condition 15 will read:

The maximum application rate of Hauled Sewage shall not exceed 15 L/m²/7-day period (which equates to 150 m³/ha) for Fields 1, 2 and 3 or such other lower rate which will ensure that ponding at, puddling on or runoff from the Site does not occur. Despite the maximum application rate of 15 L/m²/ 7-day period, the maximum quantity of Hauled Sewage that can be land applied in any given calendar month in which you are permitted to apply Hauled Sewage is 28 L/m² (which equates to 280 m³/ha).

[9] In Condition 15 of the ECA, the Director had imposed a low weekly rate of spreading per seven days in order to reduce seasonal impacts related to nitrate loading in the groundwater that had been observed in the monitoring program. The intention of the Director was to reduce the monthly nutrient loading by approximately 50% in order to reduce groundwater impacts.

[10] The parties explained during the settlement hearing that there had been misunderstandings regarding the actual rate of spreading versus the rate that was provided in the 2018 and 2019 Annual Monitoring Reports. As was explained to the Tribunal, once the actual rates of spreading were clarified during the discussions between the parties, they were able to agree upon a rate of spreading that would be protective of

the reasonable use of the groundwater, and still be appropriate for the spreading needs of the facility. The new rate, provided for in the amended Condition 15, will provide approximately 50% reduction in the monthly nutrient loading, which was the original intent of the Ministry behind the spreading rate provided in Condition 15.

[11] The Director submits that the approach in the amended Condition 15 maintains operational flexibility by allowing higher rate spreading during some weeks. However, a prolonged high rate spreading is limited by the reduced monthly maximum rate. This approach is expected to significantly reduce potential groundwater impact and should address potential adverse effects associated with this activity.

[12] The settlement falls under Rule 201 of the Tribunal's *Rules of Practice and Practice Directions* ("Rules"), given that the proposed withdrawal of the appeal as part of the settlement is agreed to by all the parties and alters the decision under appeal.

[13] Rule 201 requires the Tribunal to review the settlement agreement and consider whether it is consistent with the purpose and provisions of the relevant legislation; and whether it is in the public interest. The Tribunal is also to consider the interests of participants and presenters, however, there were no participants or presenters in this matter.

[14] The purpose of the *EPA*, as set out in s. 3, is "to provide for the protection and conservation of the natural environment." Section 27(1) of the *EPA* states that "[n]o 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."

[15] In accordance with Rule 201 of the Tribunal's Rules, the parties submitted that the settlement fulfills the purpose and provisions of the *EPA* and is in the public interest. They requested that the Tribunal accept the withdrawal of the appeal by the Appellant and dismiss the proceeding under Rule 201.

[16] After hearing submissions from the parties, the Tribunal finds that the settlement agreement, which consists of an amended Condition 15 and an agreement by the Appellant to withdraw its appeal, is consistent with the purpose and provisions of the *EPA* and is in the public interest, given that the amended Condition 15 will result in a reduction in the monthly nutrient loading, which is expected to significantly reduce impacts to the groundwater and therefore, address potential adverse effects associated with the spreading activity. Accordingly, the Tribunal directs the Director to amend Condition 15 of the ECA in accordance with paragraph [8] above. In accordance with Rule 201, the Tribunal accepts the withdrawal of the appeal and dismisses the proceeding.

DECISION

[17] The Tribunal directs the Director to amend Condition 15 of the ECA as provided below:

Amended Condition 15:

The maximum application rate of Hauled Sewage shall not exceed 15 L/m²/7-day period (which equates to 150 m³/ha) for Fields 1, 2 and 3 or such other lower rate which will ensure that ponding at, puddling on or runoff from the Site does not occur. Despite the maximum application rate of 15 L/m²/ 7-day period, the maximum quantity of Hauled Sewage that can be land applied in any given calendar month in which you are permitted to apply Hauled Sewage is 28 L/m² (which equates to 280 m³/ha).

[18] The Tribunal accepts the withdrawal of the appeal and orders that the appeal is dismissed.

*Director Directed to Amend ECA
Appeal Withdrawn
Appeal Dismissed*

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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