

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** January 25, 2021

**CASE NOS.:** 20-068

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

|                               |   |
|-------------------------------|---|
| Appellant:                    | Jason Geil (File No. 20-068)  |
| Appellant:                    | Geil Style Enterprises Inc. (File No. 20-069)   |
| Respondent:                   | Director, Ministry of the Environment,<br>Conservation and Parks  |
| Subject of appeal:            | Order to implement a monthly inspection,<br>maintenance and reporting program to manage<br>potential for any off-site adverse effects from the<br>soils deposited on the site |
| Reference No.:                | 1222-BTNKFB-1   |
| Property Address/Description: | 1943 Roseville Road   |
| Municipality:                 | North Dumfries  |
| Upper Tier:                   | Regional Municipality of Waterloo   |
| ERT Case No.:                 | 20-068  |
| ERT Case Name:                | Geil v. Ontario (Environment, Conservation and<br>Parks)  |

**APPEARANCES:**

**Parties**

Jason Geil  
Geil Style Enterprises Inc.

Director, Ministry of the  
Environment, Conservation and  
Parks

**Counsel**

Sean Biesbroek

Amanda Landre

**HEARD:**

**ADJUDICATOR(S):**

January 13, 2021 by teleconference  
Helen Jackson, Member

## ORDER

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### REASONS

[1] On December 2, 2020, Amy Shaw, Director, Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 1222-BTNKFB-1 (“Director’s Order”) to Jason Geil and Geil Style Enterprises (“Appellants”).

[2] The Director’s Order requires the Appellants, by specified dates, to provide a monthly inspection and maintenance report of soil berms (item 1); to retain a Qualified Person acceptable to the MECP to prepare and complete work as required in the order, to provide the order to the Qualified Person, to confirm to the Provincial Officer/Director that a Qualified Person has been retained and provide their qualifications (items 2 to 4); and, to submit a Site Assessment and Evaluation Report prepared by the Qualified Person regarding the current soil and groundwater conditions and the potential for offsite impacts (item 5).

[3] On December 16, 2020, 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 the work ordered pursuant to each item, and set out the grounds of appeal. To summarize, the Appellants dispute that they are running a waste disposal site, dispute various contentions, and request disclosure of the information upon which allegations are made.

[4] The Appellants requested a stay of all the items in the Director’s Order. The Tribunal scheduled a telephone conference call (“TCC”) for January 13, 2020 to address this request.

**TCC of January 13, 2021**

[5] At the TCC of January 13, 2021, counsel for the Director, Amanda Landre, indicated that the Director and the Appellants had discussed the Appellants' stay request in advance of the TCC. Ms. Landre indicated that arising from that discussion, the Director agreed to a stay of items 2 to 5 pending the disposition of the appeals, and that item 1 would not be stayed.

[6] Ms. Landre submitted that items 2 to 5 require the Appellants to engage a Qualified Person and to undertake field work and prepare a report by May 31, 2021, which would be difficult to accomplish because it is now winter and the field work cannot be done during the winter. She also indicated that by avoiding the need to prepare for a stay hearing, the parties can instead be preparing for the merits hearing and thus reduce the amount of time before the merits hearing is scheduled. She indicated that by moving quickly to a hearing and the resolution of this matter, the potential for impact to the environment is lessened.

[7] Counsel for the Appellants, Sean Biesbroek, indicated that the Appellants agreed with the approach described by Ms. Landre. Mr. Biesbroek noted that if the Appellants were to undertake items 2 to 5 and ultimately were successful in the appeals, the money spent on this work would not be recoverable.

[8] The Tribunal heard the submissions of the parties and provided an Oral Order granting a stay of items 2 through to 5 of the Director's Order pending the disposition of the appeals. Item 1 is not stayed.

[9] The following provides the reasons for the Tribunal's order.

## Issue

[10] The issue is whether the Tribunal should grant a stay of item 2 to 5 of the Director's Order until the disposition of the Appellants' appeals of the Director's Order. The specific sub-issues are whether s. 143(2) or s. 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

[11] 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

- (d) granted; and whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

## Analysis and Findings

[12] Rule 110 refers to the relevant statutory tests in 110(a), which in this case are set out in s. 143(2) and s. 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.

[13] As noted above, the Director consents to a stay of items 2 to 5 of the Director's Order. The conclusions of the Tribunal below address and confirm that a stay of items 2 to 5 should be granted.

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

[14] The Director and the Appellants agree in their submissions that neither s. 143(2) nor s. 143(3) of the *EPA* applies in this instance. The Tribunal has reviewed all the items in the Director's Order, and considered the submissions of the parties. The Tribunal is satisfied that the Director's Order 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).

[15] 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 s. 143(3) of the *EPA*.

[16] The Tribunal now turns to its consideration of the submissions with respect to the test for a stay in *RJR-MacDonald* as captured in Rule 110.

*Serious Issue*

[17] 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.”

[18] In this matter, the Director’s Order requires the Appellants to undertake a Site Assessment and Evaluation Report prepared by a Qualified Person, the necessity of which is disputed by the Appellants. The Tribunal recognizes this undertaking to be a significant and costly undertaking, and is satisfied that whether this is required is a serious issue to be decided by the Tribunal. The Tribunal finds this prong of the test is met.

*Irreparable Harm*

[19] 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.

[20] The Appellants asserted that if they were to undertake work that is later determined not to be necessary, the Appellants would not be able to recover these costs, and this would be irreparable harm.

[21] The Director does not dispute this contention, and consents to the stay. The Tribunal agrees with the Appellants' submissions that if they are successful in the appeal and have already spent money to retain a Qualified Person to undertake the Site Assessment and Evaluation Report, this money would not be recoverable.

[22] The Tribunal finds that the Appellants have demonstrated that irreparable harm would ensue if the stay is not granted. The Tribunal finds that the irreparable harm prong of the test for a stay has been met.

#### *Balance of Convenience and Public Interest Considerations*

[23] As noted by the Director, because it is currently the winter season, undertaking the field work to prepare a Site Assessment and Evaluation Report cannot be done in any event until the spring. By granting the stay, the parties can apply their resources towards preparing for a merits hearing rather than preparing for a stay hearing. The Tribunal agrees this is a better use of the parties' and the Tribunal's resources. The Director agrees to the granting of a stay for items 2 to 5. The Tribunal is satisfied, based upon these submissions, that the balance of convenience and the public interest favours the granting of a stay.

#### *Conclusions*

[24] In conclusion, the Tribunal is satisfied that there is no statutory bar to granting a stay of items 2 to 5 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 items on consent, based on the submissions and evidence of the parties.

[25] The Tribunal finds that the submissions provided by the parties demonstrate that a serious issue is to be determined, irreparable harm will ensue if the stay is not granted, and that the balance of convenience, including effects on the public interest, favours granting the stay.

**ORDER**

[26] The Tribunal orders that:

1. Items 2 to 5 of Director's Order No. 1222-BTNKFB-1 are stayed until the final disposition of the proceeding.

*Stay Granted in Part*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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**Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-224