

# **Environmental Review Tribunal**

## Tribunal de l'environnement



**ISSUE DATE:** May 17, 2021

**CASE NOS.:** 19-076

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

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)

### **APPEARANCES:**

#### **Parties**

NexCycle Industries Ltd. and  
NexCycle Properties Ltd.

Director, Ministry of the  
Environment, Conservation and  
Parks

#### **Counsel**

Bryan Buttigieg

Nadine Harris

**HEARD:**  
**ADJUDICATOR(S):**

In writing  
Helen Jackson, Member

## DECISION

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### Background

[1] On October 7, 2019, Amy Shaw, Director, Ministry of the Environment, Conservation and Parks (“MECP”), issued Director’s Order No. 3858-BCFPDZ (“Director’s Order”), amended on October 11, 2019, 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”). NexCycle operate a glass recycling facility at the Site.

[2] Items 1 to 4 of the Director’s Order require the Appellants 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) as required by Part V of the *Environmental Protection Act* ("EPA"). Items 5 and 6 require an estimate of financial assurance for the potential clean-up of the Site. Items 7 to 15 relate to other reporting and maintenance requirements.

[3] On October 18, 2019, the Appellants filed a Notice of Appeal of the Director’s Order with the Environmental Review Tribunal (the “Tribunal”). The Appellants appealed the Director’s Order in its entirety, including all the work ordered.

[4] By letter of October 30, 2019, the Appellants sought 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. On January 27, 2020, the Tribunal granted a stay of items 1 to 6 of the Director’s Order pending the disposition of the appeal.

[5] A pre-hearing conference was held on January 29, 2020 at which time the parties indicated that the core issue in the appeal is the legal requirement for an ECA. The

Tribunal directed that the appeal be undertaken in two phases, with the first phase being a hearing to determine whether an ECA for a waste disposal site is legally required. The second phase hearing on the remainder of the issues in dispute would proceed following the decision on the first phase.

[6] The parties provided an Agreed Statement of Facts on February 24, 2020, and written submissions were served upon the parties and Tribunal on March 13, 2020 for the first phase of the hearing. The Tribunal heard oral argument by telephone conference call (“TCC”) on March 23, 2020.

[7] By Order issued January 22, 2021, the Tribunal dismissed the appeal as it relates to items 1 to 4 of the Director’s Order. The Tribunal ordered the Appellants to undertake items 1 to 4 of the Director’s Order, and directed the parties to provide brief written submissions on proposed compliance dates for these items and for a procedure to address the remainder of the appeal. The stay of items 5 and 6 of the Director’s Order remained in place.

### **Remainder of the Appeal of the Director’s Order**

[8] In email correspondence to the Tribunal dated February 5, 2021, the parties agreed to compliance dates for items 1 to 4. The agreed-upon compliance date for items 1 to 3 was March 5, 2021 and the agreed-upon compliance date for item 4 was June 30, 2021. Subsequently, the Appellants indicated to the Tribunal by email dated March 15, 2021 that they wish to withdraw the remainder of their appeal – specifically, regarding items 5 and 6 and the remaining items (items 7 to 15) in the Director’s Order.

[9] By email to the Tribunal dated March 25, 2021, the Director agreed to the withdrawal of the remainder of the appeal by NexCycle. The Director submits that the withdrawal of the Appellants’ appeal of items 5 and 6 and the remaining items in the Director’s Order, falls under Rule 199 of the Tribunal’s *Rules of Practice* (“Rules”), since the decision under appeal is not altered by a settlement agreement. The Director

submits that the alteration of the compliance dates for items 1 to 6 is a consequence of the Tribunal's January 27, 2020 Order staying these six items. As well, the Director submits that the Tribunal lifted the stay of items 1 to 4 as part of its decision to confirm these items on January 22, 2021, but did not set revised compliance dates in that Order. The Director submits that the Tribunal must lift the stay on items 5 and 6 of the Director's Order.

[10] Rule 199 of the Rules sets out that if there is a withdrawal of an appeal agreed to by all parties and the instrument under appeal is not altered by a settlement agreement, then the Tribunal must dismiss the proceeding.

[11] Rule 199 states:

Where there has been a proposed withdrawal of an appeal agreed to by all Parties and the decision under appeal is not altered by a settlement agreement, a proposed withdrawal of an application, or a proposed revocation of an order made under section 74 of the Ontario Water Resources Act, the Tribunal shall issue a decision dismissing the proceeding

[12] The parties agree that the remainder of the Appellants' appeal in the matter is being withdrawn, and the decision under appeal is not altered by way of settlement. On that basis, the parties agree that the Tribunal should issue a decision dismissing the proceedings for this matter pursuant to Rule 199.

[13] The Tribunal agrees with the submissions of the parties that the Appellants' withdrawal of the appeal of items 5 and 6, and items 7 to 15, falls under Rule 199. The instrument (decision) under appeal is not being altered by a settlement agreement. The compliance dates for items 1 to 6 of the Director's Order are altered as a consequence of the Tribunal's direction, not through a settlement agreement. The previously ordered stay on items 5 and 6 of the Director's Order is hereby lifted given the disposition of the appeal. The remainder of the items in the Director's Order (items 7 to 15) were not stayed. The compliance dates for items 7 to 15 were not altered and remain in effect.

[14] The Tribunal orders the compliance dates for items 1 to 4 of the Director's Order are as follows:

- Items 1 to 3: March 5, 2021
- Item 4: June 30, 2021

[15] The Tribunal orders that the stay is lifted for items 5 and 6 of the Director's Order. The Tribunal further orders that the compliance date for items 5 and 6 of the Director's Order is June 30, 2021.

[16] In accordance with Rule 199 of the Tribunal's Rules, since the withdrawal of the appeal was agreed to by all parties and the decision under appeal is not altered by way of a settlement agreement, the matter is dismissed.

## **DECISION**

[17] The Tribunal orders that the stay of items 5 and 6 of the Director' Order is lifted.

[18] The Tribunal orders the following compliance dates:

- Items 1 to 3: March 5, 2021
- Items 4 to 6: June 30, 2021

[19] The Tribunal accepts the withdrawal of the remainder of the appeal by the Appellants and dismisses the proceeding. The compliance dates for items 7 to 15 were not altered and remain in effect.

*Remaining Appeal Withdrawn  
Remaining Appeal Dismissed  
Partial Stay Lifted*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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