
Director's Order

Section 157.3 Environmental Protection Act, R.S.O. 1990
Section 16.4 Ontario Water Resources Act, R.S.O. 1990
Section 26.3 Pesticides Act, R.S.O. 1990
Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)
Section 32 Nutrient Management Act, 2002, S.O. 2002

Order Number
7671-8AGPMT-1

Incident Report No.
0072-86ARQN

To: 2241960 Ontario Inc.
13471 Lakeridge Rd
Scugog, Ontario, L0B 1B0
Canada

Site: 13471 Lakeridge Rd
Scugog, Regional Municipality of Durham

Pursuant to my authority under EPA Section 157.3(5), I order you to do the following:

Response to Request

I have reviewed the requests for review and stay by the Director dated March 8, 2011 and March 9, 2011 from Mr. John Tidball of Miller Thomson LLP (collectively, the Review Requests). The Review Requests related to the attached Provincial Officer's Order No. 7671-8AGPMT (Amendment No. 3) (Order) issued by Provincial Officer David Fisher on March 7, 2011 to 2241960 Ontario Inc. carrying on business as Earthworx Industries (Earthworx). The Order is a preventative measures order issued pursuant to subsection 157.1 (1) of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 (EPA). The Review Requests ask that I, as the Director, review the following items of the Order:

March 8, 2011

1. the requirement that all soils be deposited in an area to which no previous soil deposit has been made.

March 9, 2011

1. the requirement to provide weekly audit samples.
 2. the requirement that soil sampling occur at a minimum of 25 metre intervals.
 3. the requirement that additional soil sampling be completed by March 31, 2011, and
 4. the requirement that groundwater monitoring be carried out on a quarterly basis.
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I shall respond to each of those points below in the "Reasons for Response" portion of this Director's Order.

In addition to reviewing the Review Requests, I have reviewed the Order including the reasons for the Order. I have also discussed the Order with the issuing officer.

As I indicated to Mr. Tidball in a telephone voice message on March 16, 2011, I have decided that the Order should not be revoked or amended but that it should be confirmed.

Clause (b) of subsection 157.3(5) of the EPA provides that the Director may, by order, confirm or alter an order of a provincial officer. Subsection 157.3(6) provides that for the purposes of subsection 157.3(5) the Director may substitute his or her own opinion for that of the provincial officer.

Work Ordered

Pursuant to clause (b) of subsection 157.3 (5) of the EPA, I hereby, by order, confirm the Order (attached) in its entirety.

REQUEST FOR HEARING

You may require a hearing before the Environmental Review Tribunal if, within 15 days of service of this order, you serve written notice of your appeal on the Environmental Review Tribunal and the Director. Your notice must state the portions of the order for which a hearing is required and the grounds on which you intend to rely at the hearing. Except by leave of the Environmental Review Tribunal, you are not entitled to appeal a portion of the order or to rely on grounds of appeal that are not stated in the notice requiring the hearing. Unless stayed by the Environmental Review Tribunal, the order is effective from the date of service.

Written notice requiring a hearing must be served personally or by mail upon

The Secretary
Environmental Review Tribunal
655 Bay Street, 15th Floor
Toronto ON
M5G 1E5

and

Director
Ministry of the Environment
5th Floor
230 Westney Rd S
Ajax ON L1S 7J5
Fax (905)427-5602

Where service is made by mail, the service shall be deemed to be made on the fifth day after the date of mailing and the time for requiring a hearing is not extended by choosing service by mail.

FOR YOUR INFORMATION

The procedures to request a hearing and other information provided above are intended as a guide. The legislation should be consulted for additional details and accurate reference.

Reasons for Response

Since receipt of the Review Requests, the following key events have taken place:

a) On March 9, 2011, pursuant to subsection 157.3 (4) of the EPA, I ordered in writing a stay of part of the Order Item No. 13 requirement.

b) On March 11, 2011 and effective March 14, 2011 the Superior Court of Justice - Ontario granted the Township of Scugog's Motion for an interlocutory injunction.

c) Since March 14, 2011 Earthworx has not been accepting soil at the site.

d) On March 15, 2011, Earthworx submitted to the Provincial Officer the Phase II Environmental Site Assessment Report prepared by its Qualified Person, D.L. Services Inc. (Phase II Report), as required by Item No. 15 of the Order, but did not deliver the separate plan for additional environmental site assessment, which was also required by Item No. 15 of the Order.

I have considered your request regarding the requirement in Item No. 13 of the Order that all soils be deposited in an area to which no previous soil deposit has been made, be deferred until such time as the additional soil sampling and groundwater monitoring required in Item No. 15 is completed. I have also reconsidered my previous stay regarding this matter. I require sufficient time to have staff review the Phase II Report and the required environmental site assessment plan and determine an appropriate monitoring and sampling program as discussed further below. I believe that this requirement should no longer be stayed but should be confirmed and be in effect so as to ensure that site activities do not result in situations where soil above the Table 2 criteria is covered with additional soil. It appears from the Phase II Report that additional site assessment work is required on Pad 2 and on Pad 3 of the site.

I believe that it is reasonable to increase audit soil samples to weekly until such time that I have confidence that the source site management program is properly implemented. This equally applies to soils originating at any soil treatment facility.

Noted below is my decision to issue an amendment to this Director's Order which will address a mechanism for Earthworx to request a reduction in audit sampling frequency and obtain a right of appeal if any such request is refused.

With respect to the remaining items in the March 9, 2011 request for review and stay, I provide the following comments relating to Item No. 15 of the Order:

The Phase II Report included in its Conclusions and Recommendations Section 7.0 the following:

(a) additional borehole drilling and soil sampling in the vicinity of BH 7, BH 8 (Pad 3) and the remedial excavation at BH 14 (west half of Pad 2);

(b) further subsurface investigation to characterize the quality of fill in the east side of Pad 2;

(c) re-sampling of the groundwater monitoring wells;

(d) "A groundwater monitoring program should be developed and implemented for the facility."

including additional monitoring wells along the south (down-gradient) end of the property;

(e) "A contingency plan should be prepared and implemented in conjunction with the recommended monitoring program."

I agree with all of these broad recommendations. The plan for additional environmental site assessment required under Item No. 15 of the Order was intended to be a document which would detail a specific scope of work including scheduling. This was not provided but I am willing to meet with Earthworx and its Qualified Person to have this plan submitted and finalized. Once this plan is submitted, or in any event by April 15, 2011, I will issue an amendment to this Director's Order regarding implementation of additional environmental site assessment work and timelines. I believe that groundwater monitoring should be carried out on a quarterly basis (four times a year) commencing in May, 2011. With respect to the 25 metre interval requirement, this can also be considered and be the subject matter of my amending order.

I understand the concern about a desire to vary the groundwater monitoring frequency upon receipt of sufficient results that demonstrate that less frequent monitoring is justified. In my amendment to this Director's Order, I plan to provide that Earthworx may at any time request a further review of the groundwater sampling and monitoring requirements and the soil audit sampling, and that if I do not make a decision that is agreed to by Earthworx and amend my Director's Order, Earthworx would have a right of appeal as provided by the EPA.

Attachments



Issued at Toronto this 18th day of March, 2011.

Dave Fumerton
York Durham District Office