

Provincial Officer's Order

Environmental Protection Act, R.S.O. 1990, c.E 19 (EPA)
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)
Pesticides Act, R.S.O. 1990, c. P11 (PA)
Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)
Nutrient Management Act, 2002, S.O. 2002, c.4 (NMA)

Order Number
7671-8AGPMT

Incident Report No.
0072-86ARQN

To: 2241960 Ontario Inc.
carrying on business as Earthworx Industries
13471 Lakeridge Rd
Scugog, Ontario, L9L 1W3
Canada

Site: 13471 Lakeridge Rd
Scugog, Regional Municipality of Durham

Pursuant to my authority under EPA Section 157.1, I order you to do the following:

Work Ordered

Item No. 1	Compliance Date	2010/10/26 (YYYY/MM/DD)
By 01:00 hours on October 26, 2010, cease accepting any material at the Site, until there is put in place a procedure whereby a Qualified Person retained by Earthworx has reviewed written documentation from the source site, and has confirmed in writing that the material being received is acceptable for use at the Site. The written documentation and written confirmation shall be available at the Site, for review by a Provincial Officer.		

Item No. 2	Compliance Date	2010/10/26 (YYYY/MM/DD)
By 15:00 hours on October 26, 2010 provide to the undersigned Provincial Officer, a copy of all procedures established by or on behalf of Earthworx, relating to the acceptance of material, including fill, at the Site.		

Item No. 3	Compliance Date	2010/10/29 (YYYY/MM/DD)
By 15:00 hours on October 29, 2010, retain one or more Qualified Person to carry out the work described in section 5 of the attached Provincial Officer's Report and provide to the undersigned Provincial Officer written documentation confirming the name, contact information and qualifications of the retained Qualified Persons.		

Item No. 4**Compliance Date**2010/11/09
(YYYY/MM/DD)

By November 9, 2010, submit to the undersigned Provincial Officer, a copy of the report from the Qualified Person regarding the nature and sources of the material that has been accepted at the Site by Earthworx as described in section 5 of the attached Provincial Officer's Report.

Item No. 5**Compliance Date**2010/11/30
(YYYY/MM/DD)

By November 30, 2010, submit to the undersigned Provincial Officer, a copy of the report from the Qualified Person regarding a proposed plan for an environmental site assessment of the Site as described in section 5 of the attached Provincial Officer's Report.

- A. While this Order is in effect, a copy or copies of this order shall be posted in a conspicuous place.
- B. While this Order is in effect, report in writing, to the District or Area office, any significant changes of operation, emission, ownership, tenancy or other legal status of the facility or operation.

This Order is being issued for the reasons set out in the annexed Provincial Officers Report which forms part of this Order.

Issued at Ajax this 25th day of October, 2010.



David Fisher

Badge No: 1215

York Durham District Office

Tel: (905) 427-5600

APPEAL/REVIEW INFORMATION

REQUEST FOR REVIEW

You may request that this order be reviewed by the Director. Your request must be made in writing (or orally with written confirmation) within seven days of service of this order and sent by mail or fax to the Director at the address below. In the written request or written confirmation you must,

- specify the portions of this order that you wish to be reviewed;
- include any submissions to be considered by the Director with respect to issuance of the order to you or any other person and with respect to the contents of the order;
- apply for a stay of this order, if necessary; and provide an address for service by one of the following means:
 1. mail
 2. fax

The Director may confirm, alter or revoke this order. If this order is revoked by the Director, you will be notified in writing. If this order is confirmed or amended by order of the Director, the Director's order will be served upon you. The Director's order will include instructions for requiring a hearing before the Environmental Review Tribunal.

DEEMED CONFIRMATION OF THIS ORDER

If you do not receive oral or written notice of the Director's decision within seven days of receipt of your request, this order is deemed to be confirmed by order of the Director and deemed to be served upon you.

You may require a hearing before the Environmental Review Tribunal if, within 15 days of service of the confirming order deemed to have been made by the Director, 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	and	Director (Provincial Officer Orders)
Environmental Review Tribunal		Ministry of the Environment
655 Bay Street, 15th Floor		York Durham District Office
Toronto ON		5th Floor
M5G 1E5		230 Westney Rd S
		Ajax ON L1S 7J5
		Fax: (905)427-5602
		Tel: (905)427-5600

Where service is made by mail, it is 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.

Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 314-4600

Fax: (416) 314-4506

www.ert.gov.on.ca

FOR YOUR INFORMATION

- Unless stayed by the Director or the Environmental Review Tribunal, 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:
 - any applicable federal legislation;
 - any applicable provincial requirements that are not addressed in the order; and
 - any applicable municipal law.
- 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 are not affected.
- Further orders may be issued in accordance with the legislation as circumstances require.
- The procedures to request a review by the Director and other information provided above are intended as a guide. The legislation should be consulted for additional details and accurate reference.

Provincial Officer's Report

Order Number
7671-8AGPMT

2241960 Ontario Inc.
carrying on business as Earthworx Industries
13471 Lakeridge Rd
Scugog, Ontario, L9L 1W3
Canada

Site
13471 Lakeridge Rd
Scugog, Regional Municipality of Durham

Observations

On 2010/10/19, I visited the above site(s) and made the following observations:

1. Authority to Issue Order

I have authority as a Provincial Officer to issue orders under the Environmental Protection Act (R.S.O. 1990, c. E. 19) as amended (EPA) to further the purpose of the EPA, namely "to provide for the protection and conservation of the natural environment".

This Order is issued to 2241960 Ontario Inc. operating as Earthworx Industries, (Earthworx) pursuant to subsection 157.1 (1) of the EPA. Under this provision, an order may be issued to any person who owns or has management or control of an undertaking or property if a Provincial Officer reasonably believes that the requirements specified in the 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 an undertaking or a property or (b) to prevent, decrease or eliminate an adverse effect that may result from the presence or discharge of a contaminant in, on or under the property.

Set out below is a brief description of the reasons for the Order and the circumstances on which the reasons are based.

2. Definitions

For the purposes of this Order, the following terms shall have the meanings described below:

"Earthworx" means the corporation 2241960 Ontario Inc. carrying on business as Earthworx Industries.

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

"Ministry" means the Ontario Ministry of the Environment.

"Order" means this Provincial Officer Order No. 7671-8AGPMT, as it may be amended.

"Provincial Officer" means the undersigned provincial officer or any other provincial officer designated under the EPA to act.

"Qualified Person" means a person who has obtained the appropriate education and training and demonstrated the experience and expertise in the areas relating to the work required to be carried out by this Order.

"Scugog" means the Corporation of the Township of Scugog.

"Site" the property municipally known as 13471 Lakeridge Road, Scugog, Ontario and the owned by Earthworx.

3. Site Description

The Site, municipally known as 13471 Lakeridge Road, is approximately 62 acres in size, and is located in a rural setting, on the east side of Lakeridge Road in the Corporation of the Township of Scugog (Scugog), approximately 300 metres south of Regional Road 21 and the Lakeridge Road intersection. A Region of Durham works depot is located at the southeast corner of Regional Road 21 and Lakeridge Road which is immediately north of the Site. The area west of Earthworx is in the Township of Uxbridge and is a gravel pit. A horse farm is located north-east of the Site. To the south of the site is a forest. Generally speaking, the area in the vicinity of the Site is agriculture and gravel pits with sparse residential.

The Site is located in a high aquifer vulnerability area of the Oak Ridges Moraine Conservation Act, 2001 S.O. 2001, Chapter 31. The Oak Ridges Moraine Conservation Act, 2001 S.O. 2001, Chapter 31 was established to protect the ecological and hydrological features and functions that support the health and well-being of the region's residents and ecosystems. The property is zoned Oak Ridges Moraine Rural (ORM-RU) Zone.

The Site formerly operated as a gravel pit under a Ministry of Natural Resources License and was rehabilitated a number of years ago. On May 21, 2010, Earthworx, which was incorporated on

April 28, 2010, purchased the Site with the intent of filling the Site and developing it for some other purpose. In May 2010, the Site began receiving "clean fill" and continues to do so. The Site has a number of signs located at the only entrance off Lakeridge Road. The original sign stated Earthworx Industries – Clean Fill Dump Site. In June 2010, an addition to the sign was added to include "Heliport". In October 2010, Scugog erected a sign on municipal property, at the entrance to the Site stating, "Notice - No Dumping Allowed - Effective October 8 - 2010..."

The Ministry has not issued any control document concerning the Site prior to the issuance of this Order.

4. Summary of Events Leading Up to the Order

The following outlines my involvement at the Site and the key events that have occurred.

On May 6, 2010 Scugog issued, under its By-Law 125-04, a Site Alteration Permit # 17809-17811 based on an application dated April 26, 2010, signed by Mr. Gordon Churchill, who later became a Director and Vice-President of Earthworx, to begin filling the Site.

On Friday, June 11, 2010, I inspected the Site following receipt of an anonymous complaint regarding illegal waste disposal activities. Mr. Churchill advised me that the site was operating under a municipal permit and he would provide me with documentation including soil analysis. I did not observe any staining or smell any odourous soils which could be indicators of illegal waste disposal activities.

On Monday, June 14, I spoke with the person at Scugog who issued the Site Alteration Permit who indicated that the Site Alteration Permit was being reviewed by Scugog because of recent public concerns.

Scugog, under the authority of the Municipal Act, 2001 on June 14, 2010 passed By-law Number 52-10, being a bylaw to prohibit or regulate the removal of topsoil, the placing or dumping of fill and the alteration of the grade of land in areas of Scugog.

On Wednesday, June 16, 2010 I arrived at the Site where I met Mr. Churchill, his two sons, Mr. Claudio Villa, Mr. Mike Donnelly of Scugog, Mr. Mac Phelan of Scugog and Mr. Ram Jagdat P.Eng. of Canada Engineering Services Inc. a consultant for Earthworx. Mr. Villa is a director and vice-president of Earthworx and indicated that he was intending to build his house on the Site. We discussed the need to ensure that the source of material was appropriate for the Site and that proper records are available. I advised all that the Ministry does not regulate clean fill sites but in this case the potential for groundwater impairment and adverse effect to the natural environment is the Ministry's concern. I advised that the Site should not be accepting fill which exceeds Table 2 of the Ministry's Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the EPA due to the potable water situation in the area. Mr. Jagdat provided a copy of 4 reports concerning the quality of fill being received at the Site to myself and the Scugog officials. I later reviewed these reports and on June 21, 2010, I advised Earthworx that the reports were incomplete, inadequate and inaccurate

On June 29, 2010, provincial officers Phil Dunn and myself met with Scugog officials and also advised them that the reports were incomplete, inadequate and inaccurate. Scugog officials indicated that they had retained Golder Associates Ltd., an environmental consultant, to sample the fill and provide Scugog with advice on how best to proceed. Golder Associates Ltd. Collected 6 samples from the Site on June 30, 2010 and reported on July 9, 2010 to Scugog that the analysis indicated the soils met Table 2 standards.

On July 13, 2010, Scugog apparently revoked the Site Alteration Permit. I understand that Earthworx and Scugog were negotiating conditions concerning operating the Site under the new, Township of Scugog By-Law 52-10. Apparently, no fill was received at the Site until August 30, 2010 when Earthworx began operating again.

On Saturday September 25, 2010 a voice mail was left for me from an anonymous complainant regarding trucking activities at the Site.

On Monday September 27, 2010, I spoke with Mr. Donnelly of Scugog who advised that Scugog council was discussing the Site status at a council meeting that night and that he would keep me updated.

On Thursday, October 7, 2010 the Ministry was forwarded by Scugog, an October 6, 2010 email from Golder Associates Ltd. who collected 2 soil samples at the Site on September 29, 2010. The soils analysis were attached to the email. Mike Cleverdon of Golder Associates concluded "So far, three of the four samples we have collected and have had tested from the site have failed the 2004 MOE Table 2 Residential Standards for one or more parameters.". I reviewed the analytical analysis and also concluded that one of the soil samples exceeded Table 3 standards for lead and benzo (a) pyrene.

I began to request information from the 4 companies who I had been told by Earthworx had been bringing soils to the Site. This request was for information as to where the source sites were located and any documentation regarding the nature of the fill quality. This information has not been provided to date.

On Friday, October 15, 2010 the Ministry was advised by Scugog that it issued on October 8, 2010, to Earthworx regarding its site alteration permit, a "Notice of Revocation", and an "Order to Discontinue Activity and Notice of Contravention".

On Tuesday, October 19, 2010 I attended the Site. Earthworx advised me that the soil which Golder Associates Ltd. had sampled originated at a site in Toronto identified as "Pier 27" and was hauled by "GFL Excavation". I was provided a copy of soil analysis done by Maxxam Analytics for Stantec Consulting Ltd. dated October 12, 2010 regarding 8 samples taken on October 1, 2010 at 25 Queens Quay in Toronto which is also known as Pier 27. There is no documentation correlating this analysis to activities at the Site. Earthworx staff stated that they do not carry out any independent verification of the nature and quality of the material being accepted at the Site, nor do they record the location of where the loads are deposited on the Site.

On Friday, October 22, 2010, I met with Scugog officials to understand the recent history surrounding the Site. In summary, it was confirmed that there are ongoing differences between Scugog and Earthworxs and the environmental conditions at the Site is still not properly known.

5. Order Requirements

As indicated above, there is insufficient information available for me to determine whether or not the operations at the Site by Earthworx may be causing an adverse effect that may result from the presence or discharge of a contaminant in, on or under the Site.

The requirements of this Order are in addition to and do not relieve Earthworx from complying with any other applicable order, notice, statute, regulation, municipal, provincial or federal law, including any requirements imposed by Scugog on Earthworx.

Work Ordered Item No. 1 is necessary as a preventative measure. I am not confident that the current documentation is satisfactory to confirm that acceptable material is being received at the Site. The involvement of a Qualified Person and further procedures at the Site are required to ensure that Earthworx is not causing an adverse effect that may result from the presence or discharge of a contaminant in, on or under the Site. In addition to reviewing the information from the source sites, the new procedure must include some quality control representative sampling at the Site.

Work Ordered Item No. 2 is necessary to obtain information regarding what controls Earthworx have in place since they acquired the Site and commenced fill operations. I will review the procedures and discuss them with Earthworx. I reasonably believe that material should only be accepted at the Site if proper procedures are in place and implemented appropriately.

If changes are required as a result of the information received in Work Ordered Item No. 1 and Work Ordered Item No 2., they will be documented by an amended to the Order or otherwise.

Work Ordered Item No. 3 is necessary to ensure that a Qualified Person is involved to provide assurance that the environmental condition of the Site is understood and is being managed properly.

Work Ordered Item No. 4 is necessary to obtain from the Qualified Person, a report concerning all available information related to activities at the Site and to ensure that the material accepted at the Site was suitable for the Site. This will involve reviewing the records of Earthworx as well as the records from all of the sources of the material deposited at the Site. The records should include analytical data regarding the nature and quality of the material.

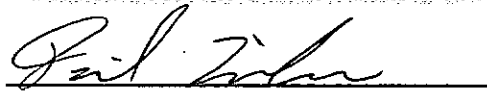
Work Ordered Item No. 5 is necessary to obtain from a Qualified Person a report regarding the quality of material already deposited at the Site and its potential effect on any drinking water usage of the local aquifer. As a minimum the plan must include:

(a) a summary of sources of materials at the Site and what documentation has been received regarding the same, and

(b) a comprehensive recommended soil and ground water monitoring program of the Site to determine any potential effects on the drinking water usage of the local aquifer.

Offence(s)

Suspected Violation(s)/Offence(s):
Act - Regulation - Section, Description (General Offence)



David Fisher
Provincial Officer
Badge Number: 1215
Date: 2010/10/25
District Office: York Durham District Office