

## 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**  
3333-8FN29D-1

**Incident Report No.**  
5573-8FMH37

**To:** 1744856 Ontario Inc.  
96 Cawker's Cove Rd Port Perry  
Scugog, Ontario, L9L 1R6  
Canada

Richard Rondeau  
96 Cawker's Cove Rd Port Perry  
Scugog, Ontario, L9L 1R6  
Canada

**Site:** 4148 Regional Highway #2 RR #8, Newcastle  
Clarington, 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 request for review and stay dated April 13, 2011 and clarified on April 14, 2011 from legal counsel for the parties ordered, namely 1744856 Ontario Inc. and to Richard Rondeau (the "Review Request"). The Review Request related to the Provincial Officer's Order Number 3333-8FN29D ("Order") issued by Provincial Officer Steve Elford on April 6, 2011. 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 Request asks that the Director, review all of the Items of the Order, and revoke the Order, or alternatively amend it in accordance with some proposed modifications. I am issuing this Director's order as the acting District Manager in the absence of Dave Fumerton, to whom the Review Request was originally addressed. In addition to reviewing the Review Request, I have reviewed the Order including the reasons for the Order. I have also discussed the Order with the issuing officer, Dave Fumerton and legal counsel for the Ministry.

I shall respond to each of the key points raised in the Review Request below in the "Reasons for Response" portion of this Director's Order.

Clause (b) of subsection 157.3(5) of the EPA provides that the Director may, by order, revoke, 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.

I have decided that the Order should not be revoked. I have agreed with a number of the wording amendments and a date change suggested in the Review Request. Because this Director's order is being issued today, there is no need for me to consider a stay. I am also of the opinion that a communication plan would be a beneficial addition to the Order.

For convenience and ease of reference, I hereby set out my Director's Order, in its entirety, and use, by means of capitalization, the defined terms set out in the Provincial Officer's Report or in this order

**Work Ordered**

**Item No. 1**

**Compliance Date**

2011/04/15

(YYYY/MM/DD)

After April 15, 2011 **at 07:00 hours**, cease accepting any material at the Site that originates from any source, other than Pier 27 or the soil reconditioning facility located at Toy Avenue, Pickering, until:

a) One or more Qualified Person(s) has/have been retained to carry out the work described in conditions 1, 5 and 6 of the GRCA Permit No. 1089 and this Director's order and there has been submitted to the undersigned Director written documentation confirming the name, contact information and qualifications of the retained Qualified Person(s).

b) There is put in place a procedure whereby the Qualified Person(s) has / have reviewed available written documentation for each source site and confirmed in writing that the material being received is acceptable for use at the Site and that there is documentation supporting that there are appropriate soil management activities at each source site prior to delivery of material to the Site to ensure the material being delivered to the Site meets Table 2 criteria. The written documentation and written confirmation shall be available at the Site, for review by a Provincial Officer.

c) There is an on-site, independent Qualified Person(s), or an independent inspector instructed by the Qualified Person(s) and reporting thereto, to confirm 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. The Qualified Person(s) or the independent inspector shall be responsible for monitoring all vehicle activities at the Site, including documenting the vehicle identity for all vehicles depositing material at the Site, details of the approved source of the material, and the date, time and location where, material was deposited and / or managed.

d) There is put in place, a procedure that is acceptable to the undersigned Director whereby each source site material can be segregated and deposited into separate areas and managed at the Site

in conjunction with the confirmatory audit sampling procedures set out below.

e) There is put in place, a procedure whereby the Qualified Person(s), or an independent inspector reporting thereto, shall collect weekly audit soil samples from trucks that represent each source site that has been accepted to ship soil to the Site. These soil samples shall be analysed for metals, soluble chlorides, volatile organic compounds, petroleum hydrocarbons, and benzene, toluene, ethylbenzene, xylenes and semi-volatile organic compounds. Copies of these analysis results shall be maintained on the Site and be made available to Ministry staff upon request. If any audit sample results indicate levels above Table 2 criteria, the undersigned Director shall be notified within 24 hours and advised of the action(s) being taken and by when the soils above Table 2 will be removed from the Site.

The provisions of subparagraphs (d) and (e) shall apply, after April 15, 2011, to all materials received at the Site including the Pier 27 and Toy Avenue materials.

The foregoing provisions have no expiration time periods indicated, and shall continue in full force and effect, until such time as a Director revokes or alters the requirements. The Site owner and the Permit holder may, at any time, submit to the Director, an application, based on a recommendation from the Qualified Person, for a revocation or alteration of the provisions. The Director shall alter this order following receipt of such an application, even where the Director may not approve or accept the submission made in order to provide for a right of appeal of such a decision.

<b>Item No. 2</b>	<b>Compliance Date</b>	2011/05/09 (YYYY/MM/DD)
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By 16:00 hours on May 9, 2011, submit to the undersigned Director, a copy of a report from the Qualified Person(s) regarding the nature and sources of the material that has already been deposited at the Site prior to the date of the report. This report shall also include a description of any business relationships between the parties involved at the source sites, the excavation and trucking activities, and all the parties involved at the Site including, where corporations are involved, any business relationships with their officers, directors, and shareholders.

<b>Item No. 3</b>	<b>Compliance Date</b>	2011/05/09 (YYYY/MM/DD)
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By 16:00 hours on May 9, 2011, submit to the undersigned Director one or more reports on any environmental site assessment and soil work done at the Site, and, a plan prepared by the Qualified Person(s), for additional environmental site assessment(s) and the date for completion of those assessment(s). The additional environmental site assessment(s) will include, at a minimum:

(a) a site soil and fill characterization program including test pitting and boreholes as appropriate to determine the concentration and vertical and horizontal extent of any contaminant in the fill received at the Site and, if determined by the Qualified Person to be necessary, a program to assess underlying native soils, and

(b) a groundwater monitoring program including intrusive investigations to characterize the depth to groundwater, groundwater flow direction, a groundwater sampling program and a survey of on-Site and off-Site groundwater uses and/or the relation to surface water features for all groundwater aquifers at the Site that may be impacted by activities at the Site.

**Item No. 4** **Compliance Date** 2011/04/15  
(YYYY/MM/DD)

By 16:00 hours on April 15, 2011, submit to the undersigned Director, the following:

(a) a report confirming appropriate security measures at the Site and ensure the measures continue to be implemented, and

(b) written confirmation of procedures and legal requirements in place relating to managing any noise and dust from activities at the Site and truck traffic to and from the Site and ensure these procedures continue to be implemented and legal requirements followed.

**Item No. 5** **Compliance Date** 2011/04/29  
(YYYY/MM/DD)

By 16:00 hours on April 29, 2011, submit to the undersigned Director a communications plan with timelines for implementation, in order to advise all interested parties, concerning the activities being undertaken at the Site in relation to this order.

#### **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	and	Director
Environmental Review Tribunal		Ministry of the Environment
655 Bay Street, 15th Floor		5th Floor
Toronto ON		230 Westney Rd S
M5G 1E5		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**

Richard Rondeau:

I disagree that there is "no basis for inclusion of Richard Rondeau in the Order". As indicated in the Provincial Officer's Report, Mr. Rondeau personally applied for, and was issued, the GRCA permit No. 1089. Consequently, I am of the opinion that Mr. Rondeau is a person responsible for managing or controlling the Site, and is therefore an appropriate person against whom a preventative measures order should be issued.

#### Site Ownership and Description:

As noted in the April 14, 2011 clarification letter, 1744856 Ontario Inc. is the owner of the Site. It should be noted that the municipal address for the Site was incorrectly stated in the Order as "2513 Morgans Road, Newcastle, Clarington, Regional Municipality of Durham". Clarington has advised that there is no Morgans Road address for the Site, but that the municipal assessment records describe the Site's address as 4148 Regional Highway 2, R.R. #8, Newcastle. The legal description of the Site is "PT LT 16 CON 2 CLARKE AS IN D463967 EXCEPT PT 1 10R2193; S/T N9921; CLARINGTON (PIN 26668-0065 (LT))". I have amended the Site address above accordingly.

I have also noted that the "property plan" and the "final grading plan" that were attached to the Order as part of the GRCA permit material indicate that the Site is generally in the shape of a rectangle. The land registry office records indicate that, in fact, a portion of the rectangle adjacent to Morgans Road, beginning just to the north of the vehicle roadway onto Morgans Road, to just below the "proposed fill area", is owned by the Crown (Ontario Ministry of Transportation). The owner of the Site is claiming rights over this property (including, in particular, the right to access and use the roadway) and has been in discussion with Crown legal counsel concerning this property. I understand that there has been, and will be, no deposit or stockpiling of fill on this parcel of land.

#### Basis for the Order:

I am of the opinion that the Order and this Director's order are necessary and appropriate in these circumstances. I agree that 1744856 Ontario Inc. has indicated a level of cooperation in dealing with this matter. However, given the broad public interest in this Site and in filling operations, generally, I believe it is important to have the Ministry issue a control document which outlines, formally, its expectations and requirements. The Order is the appropriate document to do so and also provides appeal procedures, if necessary. It is important to recognize that the Order is not a contravention order; but rather a preventative measures order. The Ministry has not been provided with sufficient information required at this time to properly assess the environmental status of the Site. Furthermore, although GRCA and Clarington are involved, as indicated in the Order, there are jurisdictional limitations. The involvement of the Ministry and the issuance of the Order and this Director's order supplement their requirements and provide for an improvement in the understanding of the Site and its operations.

I do not agree with all of the Review Request background and factual information.

Although the meeting on Monday, April 11, 2011 was the first opportunity for Mr. Shawn

Rondeau, the son of Richard Rondeau, to discuss the matter with Ministry staff, Provincial Officer Steve Elford did attend at the Site on Monday, March 2, 2011 and spoke with Mr. Jody Churchill who was managing the Site operations and was well aware of the Ministry's concerns. Previous to that, the Ministry's concerns are reflected, in a general way, in the GRCA Permit No. 1089.

Clarington counsel has advised me that the statement made on Page 3 of the Review Request, "Prior to accepting any fill at the site, our client was advised by Clarington that a permit was not required to accept fill." is not completely correct. The advice provided by the Clarington official was that no permit was required from Clarington because the Site was being regulated by the GRCA and a permit would be required from them.

I do not agree "there is no evidence of an adverse effect or the potential for an adverse effect from fill deposited on-site under the terms of the Permit...there is no basis for an Order".

The sample taken by the Ministry in April 2010, which showed a minor exceedance of Table 2, was taken to assist the GRCA. GRCA did issue their control document, Permit No. 1089, which did deal specifically with requirements regarding the area of the Site which was sampled (see Condition 5 on the Permit). No further sampling, however, was conducted by either the Permit holder or the Site owner, to confirm that the balance of the material, which had been deposited at the Site, and has since been relocated, did, in fact, meet the requirements of Permit Condition 5.

Although the Site owner did receive some sample results from its engineering consultant, who in turn was relying on information received from the Pier 27 consultant, I have concerns regarding this information. The amount of the sampling was not sufficient and how the sample information relates to the material that was, in fact, deposited at the Site is not clear. As indicated in the Review Request, the report being submitted to satisfy Work Ordered Item No. 2 regarding the nature and sources of the material deposited at the Site will provide further information in this regard. It is important to note that I now understand filling occurred at the Site in March 2010 (from Toy Avenue, before the Permit), in September 2010 (from Bowmanville) and then in March 2011 (from Pier 27 and Toy Avenue), and that, in all cases, the GRCA was not provided with the sample results from these source sites prior to the filling activities taking place. If the new soil analysis reports being submitted by the Qualified Person indicate specific exceedances of Table 2 criteria, appropriate actions will be required to be taken. In summary, a basis for the Ministry's concern is a lack of appropriate information regarding the source sites' material and the public concern regarding potential impact to private drinking water wells.

I believe the requirements of this Director's order are necessary or advisable so as, as stated in Section 157.1 of the EPA:

" (a) to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or project; or

(b) to prevent, decrease or eliminate an adverse effect that may result from

- (i) the discharge of a contaminant from the undertaking, or
- (ii) the presence or discharge of a contaminant in, on or under the property."

Work Ordered Items:

The following specifically comments on the Work Ordered Items:

I have required the submission of materials to myself, instead of "the undersigned Provincial Officer" in the various sections where this was noted in the Order and the Review Request proposed amendments. Since I am issuing this Director's Order, it is appropriate to have the submissions sent directly to me.

Item No. 1:

I have agreed with a number of the proposed amendments in Item No. 1. The following sets out the reasons for the key areas involved:

I have received on April 14, 2011, information required by Item No. 1 (a) of the Order, confirming that Decommissioning Consulting Services Limited has been retained as the Qualified Person for the purposes of the Order.

The Ministry does not require the Site to cease accepting material from Pier 27 and / or the soil reconditioning facility at Toy Avenue, Pickering, as the Qualified Person will be, as of April 15, 2011, supervising the on-site soil management activities and providing a report by May 9, 2011 to me regarding these source sites.

Although I have agreed to the wording changes in sub-paragraphs (a) and (b) of Item No. 1, I see the role of the Qualified Person as being critical "to ensure the material being delivered to the Site meets Table 2 criteria."

I have agreed in sub-paragraph (c) of Item No. 1 to add "an independent inspector instructed by the Qualified Person and reporting thereto". I have not, however, agreed to any two-week time period limitation for this requirement, as requested. Until the May 9, 2011 report is submitted by the Qualified Person, such a decision cannot be made. This independent audit requirement is a requirement at other fill site operations where the Ministry is involved in York Durham District.

I have, however, provided provisions that address a possible revocation or alteration of the Item No. 1 requirements. This addition will also provide appeal rights if the Site owner and / or Permit holder and the Qualified Person do not agree with a decision by the Director made in the future. This provision is often inserted in orders or certificates of property use to address these time limitation concerns.

Item No. 2:

I have agreed to change the compliance date for the submission of the nature and sources of fill report from April 29, 2011 to May 9, 2011 to allow the Qualified Person time to complete an appropriate detailed report for our review.

Item No. 3:

I have also agreed to change the compliance date for the submission of any environmental site assessment reviews. It is my view that a groundwater monitoring program is particularly important at this Site to understand the groundwater flow regime in the area wherein the community relies on groundwater as the source of drinking water, and any possible adverse impacts, either off-site or moving within the Site, or as has been suggested, possibly moving onto the Site from a nearby former landfilling operation.

Items No. 4 and No. 5:

Items No. 4 and No. 5 of the Order have been merged into my Director's Order Item No. 4, as they both have the same compliance date.

I understand that there are security measures currently in place for the Site, and therefore have amended the requirement to submit a report, rather than a plan.

I have added "legal requirements" to the procedures in place with respect to the report on the management of noise and dust from activities at the Site and truck traffic to and from the Site. I understand that Clarington will be dealing with these matters in further detail at a later date.

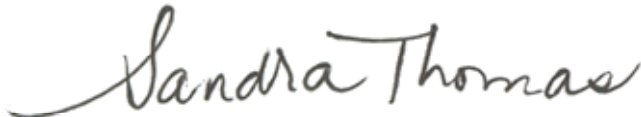
New Item No. 5:

I have added a new provision requiring a the submission of a proposed communication plan in order that the activities being undertaken at the Site can be properly conveyed by the Site owner and Permit holder to all interested parties. Measures that I have seen being used effectively elsewhere to provide proactive and open information include newsletters, websites, open houses and meetings and presentations. I will review the submitted plan and provide comments thereon and the next steps.

### **Attachments**

This Notice constitutes part of Order Number 3333-8FN29D, issued on 06/04/2011.

Issued at Ajax this 15th day of April, 2011.

A handwritten signature in cursive script that reads "Sandra Thomas".



Sandra Thomas  
York Durham District Office