

Environmental Protection Act, R.S.O. 1990, c. E.19 (EPA)

Order Number
3858-BCFPDZ

Incident Report No.
8437-BALQS9

Director's Order

To: NexCycle Properties Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

NexCycle Industries Ltd.
235 Wilkinson Road,
Brampton, ON
L6T 4M2

Site: PT Lot 4, Plan 677; PT Lot 26, Concession 7
Township of Puslinch, Ontario
Property Identifier Number: 71196-0013

Part 1: Legal Authority

This Order is made under the authority of Sections 7, 17, 18, 44, 132, 196 and 197 of the Environmental Protection Act (EPA) which provide as follows:

7 (1): When the report of a provincial officer contains a finding that a contaminant discharged into the natural environment is a contaminant the use of which is prohibited by the regulations or is being discharged in contravention of section 14 or the regulations, the Director may issue a control order directed to,

- (a) an owner or previous owner of the source of contaminant;
- (b) a person who is or was in occupation of the source of contaminant; or
- (c) a person who has or had the charge, management or control of the source of contaminant.

17 Where any person causes or permits the discharge of a contaminant into the natural environment, so that land, water, property, animal life, plant life, or human health or safety is injured, damaged or endangered, or is likely to be injured, damaged or endangered, the Director may order the person to,

- (a) repair the injury or damage;
- (b) prevent the injury or damage; or
- (c) where the discharge has damaged or endangered or is likely to damage or endanger existing water supplies, provide temporary or permanent alternate water supplies.

18 (1) The Director, in the circumstances mentioned in subsection (2), by a written order may require a person who owns or owned or who has or had management or control of an undertaking or property to do any one or more of the following:

1. To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order.
2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
3. To implement procedures specified in the order.
4. To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.
5. To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director.
6. To study and to report to the Director on,
 - i. the presence or discharge of a contaminant specified in the order,
 - ii. the effects of the presence or discharge of a contaminant specified in the order,
 - iii. measures to control the presence or discharge of a contaminant specified in the or
 - iv. the natural environment into which a contaminant specified in the order may be discharged.
7. To develop and implement plans to,
 - i. reduce the amount of a contaminant that is discharged into the natural environment,
 - ii. prevent or reduce the risk of a spill of a pollutant within the meaning of Part X, or
 - iii. prevent, decrease or eliminate any adverse effects that result or may result from a spill of a pollutant within the meaning of Part X or from any other discharge of a contaminant into the natural environment, including,

A. plans to notify the Ministry, other public authorities and members of the public who may be affected by a discharge, and

B. plans to ensure that appropriate equipment, material and personnel are available to respond to a discharge.

8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order.

(2) The Director may make an order under this section if the Director is of the opinion, on reasonable and probable grounds, that the requirements specified in the order are necessary or advisable so as,

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

44 Where a waste management system or a waste disposal site is not in conformity with this Part or the regulations, the Director may order an owner or previous owner to take such action as is required to bring the system or the site into conformity with this Part or the regulations within the time specified in the order.

132 (1) The Director may include in an approval or order in respect of a works a requirement that the person to whom the approval is issued or the order is directed provide financial assurance to the Crown in right of Ontario for any one or more of,

(a) the performance of any action specified in the approval or order;

(b) the provision of temporary or permanent alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the approval or order is related; and

(c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.

196 (1) The authority to make an order under this Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.

(2) A person who has authority under this Act to order that a thing be done on or in any place also has authority to order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

197 (1) A person who has authority under this Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.

Background and Reasons

NexCycle Properties Ltd. is the legal property owner of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON. NexCycle Industries Ltd. ("NexCycle") leases the property and operates a large glass waste processing facility at the Site. NexCycle receives glass waste from industry, municipal recycling programs, and the Ontario Deposit Return Program. NexCycle has management or control of the undertakings at the Site.

Section 25 of the EPA defines "owner" as a person that is responsible for the establishment or operation of a waste management system or waste disposal site.

Section 27 of the EPA requires NexCycle to hold an Environmental Compliance Approval ("ECA") for waste processing.

An ECA ensures that site activities are carried out in accordance with ministry requirements and sets conditions that are protective of human health and the environment.

This Director's Order is being issued based on operations observed at the Site and information provided to me by Provincial Officers Lynnette Armour and Clarissa Whitelaw, which are summarized as follows:

In 1995, Rosen Continental Inc. (now known as NexCycle Industries Ltd.) contacted the Ministry regarding its proposed facility for the processing of glass materials. The incoming correspondence sought confirmation that an Approval was not required for the processing of glass material "from the single waste category noted as item 1, glass, in Schedule 2, of O. Reg. 101/94". On July 28, 1995 the Ministry indicated that no Approval was required - quoting an exemption found in s.3(2)2 of O. Reg. 347 with respect to "Municipal waste, consisting solely of waste from a single category of waste set out in Schedule 1, 2 or 3 of O. Reg. 101/94, transferred by a generator and destined for,

- i. a waste disposal site that, but for the exemption in section 5 of O. Reg. 101/94, would be a municipal waste recycling site to which Part IV of that regulation applies and that is located at a manufacturing establishment that uses all the output, other than residues, of the site, or
- ii. a site for use at the site in an ongoing agricultural, commercial, manufacturing or industrial process or operation used principally for functions other than waste management if the process or operation does not involve combustion or land application of the waste."

A review of current site operations and information provided by NexCycle, revealed that NexCycle receives the following types of glass waste:

1. Bottle glass for the Ontario Deposit Return Program,
2. Post-industrial window plate glass from manufacturers,
3. Blue Box glass collected in the municipal recovery facilities, and
4. Automotive windshield glass from replacement programs.

As such, the glass received is not solely from a single category of waste set out in Schedule 1, 2 or 3 of O. Reg. 101/94. NexCycle is receiving glass waste listed in both Schedule 1 and Schedule 2 of O. Reg. 101/94. As the Ministry's correspondence of July 28, 1995 refers to only receiving waste from a single category of Schedule 2 of O. Reg. 101/94, this correspondence no longer reflects current operations at the Site.

In addition, under section 27 of O. Reg. 101/94 a municipal waste recycling site is exempt from sections 27, 40, and 41 of the EPA provided that all buildings and processing or storage areas that are part of the site are at least fifty metres from the boundaries of the parcel of land. Due to current operations and layout, the Site cannot meet this requirement, therefore there is no exemption to obtain an Approval provided in O. Reg. 101/94.

Based on existing site operations, neither O. Reg. 347 section 3(2)2 nor O. Reg 101/94 section 27 provide an exemption from the requirement to obtain an Approval with respect to NexCycle's operations at PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch.

The Ministry has received and continues to receive numerous concerns from a local business regarding odours impacting its operations, safety issues pertaining to fine glass blowing onto its property and an increased number of vermin affecting its products. On June 19, 2019, the Ministry received an email with photographs showing large amounts of plastic and glass that had blown off the Site and onto their property. Damage to private property (employee vehicles) in the parking lot is alleged.

As such, NexCycle has discharged, caused or permitted the discharge of a contaminant into the natural environment in a manner that property, human health or safety has been injured, damaged or endangered. Further, NexCycle continues to discharge, cause or permit the discharge of a contaminant into the natural environment that causes or may cause the following adverse effects:

- impairment of the quality of the natural environment for any use that can be made of it;
- harm or material discomfort to any person;
- an adverse effect on the health of any person;
- impairment of the safety of any person;
- loss of enjoyment of normal use of property, and;
- interference with the normal conduct of business.

I am of the opinion, on reasonable and probable grounds, that it is in the public interest to require waste sites to comply with the Environmental Protection Act and that the requirements of this 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 the undertaking or property, and/or (b) prevent, decrease or eliminate and adverse effect that may result from the discharge of a contaminant from the undertaking, or the presence or discharge of a contaminant in, on or under the property.

As per NexCycle's own calculations, the total amount of glass stored outdoors at the Site on March 31, 2019 was 50,128 tonnes. This included 32,374 tonnes of processed glass and 17,754 tonnes of unprocessed glass.

In a letter to the Ministry, dated May 21, 2019, NexCycle's President wrote; "Glass generation is seasonal and at various times of the year the incoming supply will be lower than demand and at other times the inverse occurs. Accordingly, there will always be some level of processed inventory on site. Unlike other businesses, NexCycle cannot predict with 100% accuracy its supply by ordering requirements. Glass

generation is variable and often dependent on glass production. There is sometimes a lag between what is generated and what is sold".

A site visit by Ministry staff on July 29, 2019 identified that the amount of glass inventory outside was relatively unchanged since March of 2019 (~51,000 tonnes). During the site visit, two Provincial Officers made observations of residual glass, litter and plastic on the neighbouring industrial property, the presence of garbage like odours, seagulls, shredded/ripped dust socks on the Site's outdoor hoppers and ripped and ineffective mesh barrier fencing between the two properties.

The parties are being ordered to provide an estimate of Financial Assurance to the Crown in right of Ontario with respect to the Site. Financial Assurance is required to ensure that appropriate measures are taken to prevent adverse effects should the facility close or otherwise cease operations as per section 132(1) of the EPA. These measures include the transfer of the stockpiled glass waste to a Ministry approved waste disposal site if so needed.

Part 2: Work Ordered

NexCycle Properties Ltd. is the legal property owner of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, Ontario. NexCycle Industries Ltd. leases the property from NexCycle Properties Ltd. and is the current operator at the Site. For the reasons set out in this Order and pursuant to my authority under sections 7, 17, 18, 44, 132, 196 and 197 of the Environmental Protection Act, I order the parties to do, or cause to have done, the following:

Item No. 1

By October 14, 2019, the parties shall retain a consultant(s) satisfactory to the Director ("Consultant") and having appropriate expertise in waste management for the purposes of completing an application for an Environmental Compliance Approval for a Waste Disposal Site (Transfer and Processing), including all relevant supporting documentation, for submission to the Client Services and Permissions Branch at 135 St. Clair Avenue West, 1st Floor, Toronto ON M4V 1P5.

Item No. 2

By October 14, 2019, the parties shall notify the Director of the name of the Consultant retained pursuant to Item No. 1 along with the credentials of the Consultant.

Item No. 3

By October 14, 2019, the parties shall provide a copy of this order to the Consultant and confirm to the Director that the Consultant has been retained to carry out the work specified in Items 1, 4, 5 and 6.

Item No. 4

By December 31, 2019, the parties shall cause the Consultant to carry out the work required by Item No. 1 and submit an application for an ECA as specified in Item No. 1 with a copy to the Director.

Item No. 5

By October 31, 2019, the parties shall cause the Consultant to estimate the funds necessary for the analysis, transportation, site clean-up, monitoring and disposal of all glass waste and non-glass waste on the Site at any one time (Financial Assurance), in accordance with the Financial Assurance Guideline.

Item No. 6

By October 31, 2019, the parties shall cause the Consultant to submit to the Director a report with supporting documentation and detailed rationale with respect to the estimated Financial Assurance in relation to the Site, in accordance with the Financial Assurance Guideline.

Item No. 7

Commencing on November 1, 2019, and monthly thereafter, the parties shall provide, or cause to be provided, an inventory report to the Director on the volume of incoming and outgoing material at the Site for the preceding month. The inventory report shall be categorized in terms of the volume of inventory (in metric tonnes) for processed, unprocessed, and non-glass waste.

Item No. 8

By October 14, 2019, the parties shall provide training to all staff with respect to its Dust Control Management Plan (revised July 15, 2019) and its Odour Control Prevention and Response Plan (revised July 16, 2019) for the Site and submit to the Director confirmation of the training including the name of the person(s) trained and position.

Item No. 9

Immediately upon issuance of this Order and every day thereafter, the parties shall ensure that, at all times, vermin control measures are in place at the Site. The vermin control measures shall at a minimum include the following:

- i. having an adequate number of rodent stations located and maintained as recommended by a licensed exterminator; and,
- ii. having sufficient hawk kites, or other effective deterrent measures, to minimize the number of seagulls.

The vermin control measures shall be inspected on a weekly basis and maintained in such a manner as to maximize efficacy. A record of the completion of each weekly vermin control measures inspection shall be maintained and made available, upon request, for inspection by the Ministry.

Item No. 10

By October 14, 2019, the parties shall submit to the Director confirmation that the vermin control measures referred to in Item No. 9 have been implemented.

Item No. 11

By October 14, 2019, the parties shall repair or replace the mesh netting/screens along the eastern boundary of the Site.

Item No. 12

By October 14, 2019, the parties shall submit to the Director confirmation that the mesh netting/screens along the eastern boundary of the Site have been repaired or replaced.

Item No. 13

Immediately upon issuance of this Order, the parties shall conduct weekly inspections along the entire Site boundary for any offsite litter connected with its operations at the Site. Any offsite litter linked to operations at the Site shall be cleaned up the same day. A record of the completion of each weekly litter inspection shall be maintained and made available, upon request, for inspection by the Ministry.

Item No. 14

By October 7, 2019, the parties shall submit to the Director confirmation that the weekly litter inspection program referred to in Item No. 13 has been implemented.

Item No. 15

By October 14, 2019, the parties shall take all steps necessary to install replacement socks on all outdoor hoppers located on the east side of the building at the Site.

Item No. 16

By October 14, 2019, the parties shall submit to the Director confirmation that replacement socks have been installed on all outdoor hoppers located on the east side of building at the Site.

Item No. 17

Immediately upon issuance of this Order, and every day thereafter, the parties and any other person with an interest in the Site shall, before dealing with the Site in any way, give a copy of this Order, including any amendments thereto, to every person who will acquire an interest in the Site, as a result of the dealing.

Part 3: Definitions

"**Approval**" means a Certificate of Approval("CofA") (prior to 31-October-2011) and/or an Environmental Compliance Approval("ECA") (after 31-October-2011).

"**Director**" means Amy Shaw, District Manager of the Guelph District Office of the Ministry of the Environment, Conservation and Parks. Where items are required to be submitted to the Director, they shall be delivered either by mail at: 1 Stone Road West, Floor 4SW, Guelph, ON N1G 4Y2 or via email at Amy.Shaw@Ontario.ca

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

"**Financial Assurance Guideline**" means Guideline F-15, MECP publication PIBS 0226e04, last revision date June 2011.

"**Ministry**" means the Ontario Ministry of the Environment, Conservation and Parks.

"**NexCycle**" means NexCycle Industries Ltd., operator of the Site, registered as PIN 71196-0013(R) with the legal property description of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON.

"**O. Reg.**" is a reference to an Ontario Regulation as either an enacted Regulation of Ontario or enacted as a Revised Regulation of Ontario.

“Parties” means NexCycle Properties Ltd. and NexCycle Industries Ltd.

"Site" means the property registered as PIN 71196-0013(R) with the legal property description of PT Lot 4, Plan 677; PT Lot 26, Concession 7, Township of Puslinch, ON.

Part 4: General

- 4.1 All orders are issued in the English language and may be translated into the French language. In the event that there should be a conflict between the English original and the French translation, the English original shall prevail.
- 4.2 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 shall not be affected thereby.
- 4.3 Subsection 19(1) of the EPA provides that an order of the Director is binding upon the successor or assignee of the person to whom it is directed.
- 4.4 Subsection 186(2) of the EPA provides that non-compliance with the requirements of this order constitutes an offence.
- 4.5 Any request to change a requirement in this order shall be made in writing to the Director, with reason for the request, at least 14 days prior to any compliance date for that requirement.
- 4.6 The requirements of this order are minimum requirements only and do not relieve you from:
- i. complying with any other applicable order, statute, regulation, municipal, provincial or federal law, or
 - ii. obtaining any approvals or consents not specified in this order
- 4.7 Notwithstanding the issuance of this order, further or other orders may be issued in accordance with legislation as circumstances require. The Director shall issue an order where the approval of the Director is required in respect of a matter under this order and,
- i. the Director does not grant approval; or
 - ii. the Director does not grant approval because the changes which the Director considers necessary for granting approval have not been agreed to by the person(s) to whom this order is issued.
- 4.8 In the event that any party to this order is, in the opinion of the Director, rendered unable to perform or comply with any obligations herein because of:
- i. natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections; or
 - ii. strikes, lockouts or other labour disturbances; or
 - iii. inability to obtain materials or equipment for reasons beyond the control of the party; or
 - iv. any other cause whether similar to or different from the foregoing beyond the reasonable control of the party, the obligations hereof, as they are affected by the above shall be adjusted in

a manner defined by the Director. To obtain such an adjustment, the party must notify the Director immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the compliance dates in question.

- 4.9 Failure to comply with a requirement of this order by the date specified does not absolve you from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 4.10 This order has no expiry date.

Part 5: Request for Hearing

- 5.1 You may require a hearing before the Environmental Review Tribunal (Tribunal), if, within fifteen (15) calendar days from the date of service of the Director's order, you serve written notice of your appeal on the Tribunal and the Director.

Your notice must state:

- (a) the portion(s) of the order in respect of which a hearing is required; and
- (b) the grounds on which you intend to rely at the hearing.

- 5.2 Except with leave of the Tribunal, you are not entitled to appeal a portion of the order or to rely on a ground that is not stated in the notice requiring the hearing. Unless stayed by the Tribunal, the order remains in effect from the date of service.
- 5.3 Written notice requiring a hearing can be served upon:

The Secretary
Environmental Review Tribunal 655
Bay Street, 15th Floor Toronto ON
M5G 1E5
Fax: (416) 326-5370
Email: ERTTribunalsecretary@ontario.ca

and

Director
Ministry of the Environment
Conservation and Parks
1 Stone Road West, 4th Fl
Guelph, Ontario
N1G 4Y2
Fax: (519) 826-4286
email: amy.shaw@ontario.ca

Further information on the Tribunal and requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 212-6349 or 1(866) 448-2248
3474

Fax: (416) 326-5370 or 1(844) 213-

TTY: 1-800-855-1155 via Bell Relay

Web: www.ert.gov.on.ca

- 5.4 If you commence an appeal before the Tribunal, under section 47 of the Environmental Bill of Rights, 1993 (EBR), you must give notice to the public in the EBR registry. The notice must include a brief description of this order (sufficient to identify it) and a brief description of the grounds of appeal. The notice must be delivered to the Minister of the Environment, Conservation and Parks who will place it on the EBR registry. The notice must be delivered to the Minister of the Environment, Conservation and Parks at 777 Bay St., 5th Floor, Toronto, Ontario M7A 2J3 by the earlier of:
- 5.4.1 two (2) days after the day on which the appeal before the Tribunal was commenced;
 - 5.4.2 fifteen (15) days after service on you of a copy of this order.
- 5.5 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 5.6 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in this order may seek leave to appeal the order. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:
- 5.6.1 fifteen (15) days after the day on which notice of the issuance of this order is given in the EBR registry; and
 - 5.6.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

FOR YOUR INFORMATION

The following is for your information:

Service of the documentation referred to above can be made personally, by mail, by fax by commercial courier or by email in accordance with the legislation under which the order is made and any corresponding Service Regulation. Further information can be obtained from e- Laws at www.e-laws.gov.on.ca. Please note that choosing service by mail does not extend any of the above mentioned timelines.

Unless stayed, 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:

- a) any applicable federal legislation,
- b) any applicable provincial legislation or requirements that are not addressed in this order, and
- c) any applicable municipal law.

Further orders may be issued in accordance with the legislation as circumstances require.

The procedures and other information provided above are intended as a guide. The legislation and/or regulations should be consulted for additional details and accurate reference.

ISSUED at Guelph this xx day of xxxx, xxxx

Amy Shaw

Director
Ministry of the Environment, Conservation and Parks

DRAFT