

**DIRECTOR'S ORDER  
ENVIRONMENTAL PROTECTION ACT  
R.S.O. 1990, c. E.19, as amended (EPA)  
Sections 17, 18 and 196**

**ONTARIO WATER RESOURCES ACT  
R.S.O. 1990, c. O.40, as amended (OWRA)  
Sections 32 and 104**

*Order Number 5581-BHHKSK*

**TO:** Havana Group Supplies Inc.  
Suite 102 - 3310 South Service Rd  
Burlington, Ontario, L7N 3M6, Canada

Zachary Philip Cyril Everett  
385 Carlisle Rd  
Hamilton, Ontario, L0R 1H1, Canada

Linda Everett  
385 Carlisle Rd  
Hamilton, Ontario, L0R 1H1, Canada

Waterdown Garden Supplies Ltd.  
1771 Highway 5 W  
Hamilton, Ontario, L0R 2B0, Canada

Wim Van Ravenswaay  
9121 Twenty Rd Smithville  
West Lincoln, Ontario, L0R 2A0, Canada

Gary William McHale  
106 Donald Bell Dr Binbrook  
Hamilton, Ontario, L0R 1C0, Canada

**SITE:** 1771 Highway 5 W Hamilton

## **PART 1 DEFINITIONS**

For the purposes of this order, the interpretation of all terms shall be the same as those contained in the legislation and the regulations made thereupon, unless defined below:

- 1.1. "Director" means a director authorized to act pursuant to the EPA and the OWRA.
- 1.2. "ECA" means an Environmental Compliance Approval.
- 1.3. "EPA" means the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended.
- 1.4. "HGS" means Havana Group Supplies Inc.
- 1.5. "Licensed Well Contractor" means an individual who possesses a valid well contractor license as required by R.R.O. 1990, Reg. 903: WELLS, as amended.
- 1.6. "Material" means soil and soil-like material, including, but not limited to, fill, soil, sediment, rocks and hydro-excavation material.
- 1.7. "Ministry" means the Ontario Ministry of the Environment, Conservation and Parks.
- 1.8. "Order" means this Director's Order Number 5581-BHHKSK, as it may be amended.
- 1.9. "OWRA" means the Ontario Water Resources Act, R.S.O. 1990, c. O.40, as amended.
- 1.10. "Parties" means the individuals and corporations named in this Director's Order.
- 1.11. "Provincial Officer" means a provincial officer authorized to act pursuant to the EPA and the OWRA.
- 1.12. "QP" or "Qualified Person" means a person who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas relating to the work required to be carried out in this Order and is a Professional Engineer or Professional Geoscientist licensed in the Province of Ontario.
- 1.13. "Reg. 153" means Ontario Regulation 153/04: RECORDS OF SITE CONDITION - PART XV.1 OF THE ACT, as amended, under the Environmental Protection Act.
- 1.14. "Reg. 347" means R.R.O. 1990, Regulation 347: GENERAL - WASTE MANAGEMENT, as amended, under the Environmental Protection Act.
- 1.15. "Reg. 903" means R.R.O. 1990, Regulation 903: WELLS, as amended, under the Ontario Water Resources Act.
- 1.16. "Schedule 4" means Schedule 4 – Leachate Quality Criteria, under R.R.O. 1990, Reg. 347: GENERAL - WASTE MANAGEMENT, as amended.
- 1.17. "Site" means the property municipally known as 1771 Highway 5 West, Hamilton, Ontario.
- 1.18. "Table 2" means Table 2 under the "Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act" published by the Ministry and dated April 15, 2011;
- 1.19. "Table 3" means Table 3 under the "Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act" published by the Ministry and dated April 15, 2011;
- 1.20. "WGS" means Waterdown Garden Supplies Ltd.

## **PART 2 LEGAL AUTHORITY AND REASONS**

- 2.1. Pursuant to subsection 1(1) of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended (EPA), "contaminant" means any solid, liquid, gas, odour, heat, sound, vibration,

radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.

Further, pursuant to subsection 1(1) of the EPA, “adverse effect” means one or more of the following:

- a) impairment of the quality of the natural environment for any use that can be made of it,
  - b) injury or damage to property or to plant or animal life,
  - c) harm or material discomfort to any person,
  - d) an adverse effect on the health of any person
  - e) impairment of the safety of any person,
  - f) rendering any property or plant or animal life unfit for human use,
  - g) loss of enjoyment or normal use of property, and
  - h) interference with the normal conduct of business.
- 2.2. Subsection 17 of the EPA provides that 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
- 2.3. Subsection 18(1) of the EPA provides that the Director may, by written order, 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:
- a) 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;
  - b) 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;
  - c) To implement procedures specified in the order;
  - d) To take all steps necessary so the 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;
  - e) To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director;
  - f) 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 order,

- iv. the natural environment into which a contaminant specified in the order may be discharged.
- g) 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.
- h) To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order.

2.4. Subsection 18(2) of the EPA states that 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.

2.5. Subsection 196(1) of the EPA states that 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.

2.6. Subsection 32 of the OWRA states where, in the opinion of a Director, it is in the public interest to do so, the Director, by order, may require a person who owns, manages or has control of a sewage works, water works or other facility which may discharge material into a water or watercourse that may impair the quality of the water, to do any one or more of the following:

1. To have available at all times, or during the periods specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order to prevent, reduce or alleviate any impairment of the quality of the water or the effects of any impairment of the quality of the water.
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 the procedures specified in the order.
4. To take all steps necessary to ensure that the procedures specified in the order will be implemented in the event that a water or watercourse becomes impaired or may become impaired.

5. To monitor and record the quality and quantity of any water specified in the order and to report thereon to the Director.
  6. To study and to report to the Director upon,
    - i. measures to control the discharge into a water or watercourse of a material specified in the order,
    - ii. the effects of the discharge into a water or watercourse of a material specified in the order,
    - iii. the water or watercourse into which a material specified in the order may be discharged.
- 2.7. Subsection 104(2) of the OWRA states that 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.
- 2.8. HGS began importing soil to the Site in April 2018. A lease was later signed between HGS and WGS allowing HGS to lease portions of the Site for soil storage. The portions of the Site leased are described in the Commercial Lease Agreement, dated September 20, 2018, as: “Mid-EAST lot area”, known as the “Finished Product Storage Area”; and the “Stormwater Filter Bed”, comprising approximately 14 acres of land. Havana Group Supplies Inc. operated a temporary soil storage site in these areas until approximately April 2019. Zachary Philip Cyril Everett is a director and officer of the corporation, Havana Group Supplies Inc. and as such, is a directing mind of the corporation and has management and control of the corporation and the Site. Linda Everett was an officer of Havana Group Supplies Inc., and as such, was a directing mind of the corporation and had management and control of the corporation and the Site
- 2.9. Waterdown Garden Supplies Ltd. is the corporation that owns the Site. Wim Van Ravenswaay is an officer of Waterdown Garden Supplies Ltd. and as such, is a directing mind of the corporation and has management and control of the Site. Gary William McHale is an officer of Waterdown Garden Supplies Ltd. and was an officer of Havana Group Supplies Inc. and, as such, is/was a directing mind of the corporation(s) and has/had management and control of the Site.
- 2.10. The random sampling of six trucks carrying soil to the Site on October 23, 2018 by Hamilton District Office Provincial Officers, revealed sample results with slight exceedances of Table 2 standards for benzo(a)pyrene in trucks that came from a common source. A Provincial Officer requested HGS to have their QP (Soil-Mat Engineers & Consultants Ltd.) further investigate this material to determine its quality and determine appropriate risk management measures, if any. HGS did not provide confirmation to the Provincial Officer that this work was completed.
- 2.11. The QP for the Site, at the request of a Provincial Officer, provided copies of four notification emails that had been sent to HGS informing that confirmatory samples revealed exceedances of Table 3 Standards for material imported to the Site. The QP advised HGS to segregate this material from other stockpiles on Site. This directive was not followed by HGS. The material

was mixed with other piles resulting in the QP deeming the resulting stockpile to be contaminated above Table 3 standards.

- 2.12. At the request of a Provincial Officer, the QP provided sample results from confirmatory samples and retroactive sampling of material on Site. Upon review of this data, the Provincial Officer found exceedances of Table 2 and Table 3 standards in both confirmatory and retroactive samples. The retroactive samples refer to Material that was imported to the Site prior to the QP being hired to complete confirmatory sampling (Material received prior to November 30, 2018).
- 2.13. Concerns were raised by the public to the Ministry regarding monitoring wells on Site. WGS representatives have stated that the wells were decommissioned in 2013, however the Ministry has no records on file to support this assertion. Additional requests made to WGS by a Provincial Officer for this information in February 2019 have not been fulfilled. Upon questioning by a Provincial Officer, HGS employees and their QP have no knowledge of the location or status of the monitoring wells. It is reasonable to conclude that the wells have been covered by imported soil or otherwise damaged by activities on surface.
- 2.14. Given the risk for contaminants to enter the ground water due to improperly maintained and/or improperly abandoned wells on the Site, I am of the opinion that the requirements of this Order are necessary and advisable so as,
  1. to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property, or
  2. 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.

I am also of the opinion that it is in the public interest to issue this order given the risk for contaminants to enter the ground water due to improperly maintained and/or improperly abandoned wells on the Site.

- 2.15. Notice of my intention to issue this order and written reasons therefor were served on the Parties and written submissions were invited within a five day period from service of the Notice and draft order.

### **PART 3 WORK ORDERED**

Pursuant to Sections 17, 18 and 196 of the EPA, and Section 32 and 104 of the OWRA, I hereby order the Parties, jointly and severally, to do the following:

- 3.1. By November 7, 2019 the Parties shall, at all times, cease receiving Material at the Site until the date that the Director confirms in writing to all Parties that compliance with all aspects of this Order and any subsequent orders has been achieved.
- 3.2. By November 29, 2019, the Parties shall:

- a) Hire a QP, satisfactory to the Director, to:
    - i. assess all Material that has been received at the Site since April 1, 2018, including, but not limited to, fill, soil, sediment, rock, hydro-excavation material and any similar material on Site. Appendix A identifies the approximate locations of such Material but may not include all areas where the Material is located; AND
    - ii. Carry out the work specified in Items 3.3 to 3.7 below; AND
  - b) Provide written confirmation to the Director that the QP has been retained, including name, contact information, qualifications and expertise and that the QP has been given a copy of this Order.
- 3.3. By December 13, 2019, the Parties shall ensure that the QP takes all steps necessary to implement risk management measures designed to:
- a) contain run-off from Material noted in Item No. 3.2;
  - b) prevent off-site adverse effects as a result of that Material currently being stored at the Site; AND
  - c) Provide a written report to the Director, setting out a list of risk management measures undertaken.
- 3.4. By March 2, 2020, the Parties shall ensure that the assessment described in Item 3.2 above is undertaken by the QP and that the assessment includes, as a minimum, the following components:
- a) a map or diagram illustrating the spatial distribution, elevation and volume of the Material;
  - b) a written report indicating the location, volume and environmental quality of any Material which, after appropriate environmental analysis and a comparison of the analytical results to Reg. 347 and Reg. 153, is determined to contain contaminants in concentrations exceeding those listed in Schedule 4 or Table 2 as the case may be;
  - c) a written plan including a timetable of actions designed to remove from the Site, any Material which contains contaminants in concentrations which exceed Schedule 4; AND
  - d) a written plan including a timetable of actions designed to remove from the Site, Material which contains contaminants in concentrations which exceed Table 2 only if the QP forms an opinion that removal of such Material is necessary to prevent an adverse effect and/or impairment of ground water.
- 3.5. By March 2, 2020, the Parties shall have the QP submit all documents required by Item No. 3.4 to the Director.
- 3.6. In the event that a written plan required by Item 3.4(c) or (d) identifies Material which must be removed from the Site, the Parties shall ensure that the work required by the written plan is completed under the direct supervision of the QP in accordance with the timelines specified therein.
- 3.7. In the event that Material is removed from the Site in accordance with Item No. 3.6, the Parties shall have the QP submit to the Director, copies of all manifests, waybills or other similar

documents which set out the details of the transportation and off-site receipt of the Material. Such copies shall be submitted to the Director within 30 days of completion of the plan under Item No. 3.6.

- 3.8. By November 29, 2019, the Parties shall hire a Licensed Well Contractor that is satisfactory to the Director, to carry out the work required by Item Nos. 3.9 & 3.10 and provide written confirmation to the Director that the Licensed Well Contractor has been retained.
- 3.9. By March 2, 2020, the Parties shall ensure that the Licensed Well Contractor,
  - a) assesses the ground water monitoring wells located at the Site to determine whether they have been abandoned in accordance with Reg. 903;
  - b) in the event that the monitoring wells have not been so abandoned, samples the wells to determine if there have been any ground water impacts; AND
  - c) submits a report in writing to the Director which confirms the status of the wells in respect to the requirements of Reg. 903, which report shall include any ground water sample results obtained from the Site and a written interpretation of those results.
- 3.10. In the event that the report noted in Item No. 3.9 identifies ground water monitoring wells that have not been abandoned in accordance with Reg. 903, the Parties shall ensure that the Licensed Well Contractor so abandons the monitoring wells no later than March 2, 2020.
- 3.11. The Parties shall ensure that the QP and Licensed Well Contractor, as applicable, provide a copy of any document or report submitted under this Order to each party named in this order.

#### **PART 4 GENERAL**

- 4.1. The requirements of this order are minimum requirements only and do not relieve the Parties from:
  - a) complying with any other applicable order, statute or regulation, or
  - b) obtaining any approvals or consents not specified in this order. Unless otherwise specified herein, nothing in this order should be construed as altering or revoking any instrument, including an Environmental Compliance Approval, or relieving the Parties of the obligation to obtain any applicable approval or authorization.
- 4.2. Failure to comply with a term of this order by the date specified does not absolve the Parties from compliance with that requirement. The obligation to complete the requirement shall continue each day thereafter.
- 4.3. 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.



- 4.4 The requirements of this order are severable. If any requirement of this order or the application of any requirement to any circumstances is held invalid, the application of such requirement to other circumstances and the remainder of the order shall not be affected thereby.
- 4.5 Any request to change a requirement in this order shall be made in writing to the Director with reasons for the request, at least thirty (30) business days prior to any compliance date for that requirement or, in the case of unanticipated, unexpected or emergency situations or events, as soon as possible prior to any compliance date for that requirement.
- 4.6 Notwithstanding the issuance of this order, further or other orders may be issued in accordance with the legislation as circumstances require.
- 4.7 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.
- 4.8 Subsection 186(2) of the EPA provides that non-compliance with the requirements of this order constitutes an offence.
- 4.9 In the event the Parties are, in the opinion of the Director, rendered unable to perform or comply with any obligations herein because of:
- a) natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections, or
  - b) strikes, lockouts, or other industrial disturbances, or
  - c) inability to obtain materials or equipment for reasons beyond the control of the Parties, or
  - d) any other cause whether similar to or different from the foregoing beyond the reasonable control of the Parties,
- the obligations hereof, as they are affected by (a), (b), (c), or (d) above shall be adjusted in a manner defined by the Director in consultation with the Parties. To obtain such an adjustment, the Parties must notify the Director immediately of any of the above circumstances, providing details that demonstrate that no practical alternatives are feasible in order to meet the compliance dates in question.

## **PART 5 HEARING BEFORE THE ENVIRONMENTAL REVIEW TRIBUNAL**

- 5.1. You may require a hearing before the Environmental Review 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 Environmental Review Tribunal and the Director. Your notice must: 1) specify the portion(s) of the order for which a hearing is being required or for which you require a hearing; and 2) the ground(s) on which you intend to rely on at the hearing. Except with the leave of the Environmental Review Tribunal, you are not entitled to appeal portion(s) of the order or to rely on ground(s) of the appeal that were not stated in the notice requiring the hearing. Unless stayed by the Environmental Review Tribunal, the order remains in effect from the date of service.
- 5.2. Written notice requiring a hearing can be served personally, by mail, by courier, by fax or by email upon:

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

And Director  
Ministry of the Environment Conservation  
and Parks  
9th Floor  
119 King St W  
Hamilton ON L8P 4Y7  
Fax: (905) 521-7806

Where service has been made by mail, the service shall be deemed to be made on the fifth (5) day after the date of mailing and the time for requiring a hearing is not extended by choosing service by mail. To see how service is to be effected and deemed date of service (if any), for service via courier, fax and email, please consult with the appropriate Service Regulations.

Further information on service of the Notice of Appeal on the Environmental Review Tribunal and requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 212-6349 or 1(866) 448-2248  
TTY 1-800-855-1155 via Bell Relay  
Fax: (416) 326-5370 or 1(844) 213-3474  
Web: [www.ert.gov.on.ca](http://www.ert.gov.on.ca)

5.3. 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:

5.3.1 two (2) days after the day on which the appeal before the Tribunal was commenced;

5.3.2 fifteen (15) days after service on you of a copy of this order.

5.4 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.

5.5 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:

5.5.1 fifteen (15) days after the day on which notice of the issuance of this order is given in the EBR registry; and

5.5.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

ISSUED at Hamilton, Ontario this 1<sup>st</sup> day of November, 2019.

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Paul Widmeyer, Director  
*Environmental Protection Act*, s. 17, 18 & 196  
*Ontario Water Resources Act*, s. 32 & 104

