

# Director's Order

**DRAFT**

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**  
7227-BA6K4C

**Incident Report No.**  
2643-BA6JMF

**To:** 531322 Ontario Limited o/a Nickel Lake Lumber  
913 Crowe Ave  
Fort Frances, Ontario, P9A 2M1  
Canada

**Site:** Lot: 6, Concession: 3  
Unsurveyed Territory (Kenora Area Office), District of Kenora

## Part 1: Legal Authority and Reasons

This Order is being issued pursuant to Sections 27(1), 40, 44, 132(1), 136(1), 186(3), 196(1), 196(2) and 197(1) of the *Environmental Protection Act*, R.S.O. 1990, c.E.19 as amended, (“EPA”), for the reasons set out in Part 1 of this Order.

The following outlines the key background facts, issues and concerns regarding this matter which are the reasons for this Order:

### 1.0 Interpretations

The definitions for the purposes of this Order are set out in Part 3 - Definitions.

1.1 Where an item in the Order requires documents or information to be submitted to the Director, it shall be submitted to the attention of Director, Part V, Environmental Protection Act, Client Services and Permissions Branch, Ministry of the Environment, Conservation and Parks at 135 St. Clair Avenue West, 1st Floor, Toronto, Ontario, M4V 1P5.

1.2 Where an item in the Order requires documents or information to be submitted to the District Manager, it shall be submitted to the attention of District Manager, Ministry of the Environment, Conservation and Parks, at 808 Robertson Street, 2nd Floor, Kenora, Ontario, P9N 1X9.

1.3 Where an item in the Order requires documents or information to be submitted to the Financial Assurance Program Support Coordinator, it shall be submitted to the Financial Assurance Program Support Coordinator, Client Services and Permissions Branch, Ministry of the Environment, Conservation and Parks, at 135 St. Clair Avenue West, 1st Floor, Toronto, Ontario, M4V 1P5.

#### **1.4 Authorities**

1.4.1 Subsection 27(1) of the EPA provides that no person shall use, operate, establish, alter, enlarge or extend a waste management system or a waste disposal site except under and in accordance with an Environmental Compliance Approval.

1.4.2 Section 40 of the EPA provides that no person shall deposit, or cause, permit or arrange for the deposit of, waste upon, in, into or through any land or land covered by water, or in any building that is not a waste disposal site for which an Environmental Compliance Approval or Renewable Energy Approval has been issued, or a registration under Part II is in effect, and except in accordance with the terms and conditions of the approval or the regulations made for the purposes of Part II.

1.4.3 Section 44 of the EPA provides that where a waste management system or a waste disposal site is not in conformity with Part V of the EPA 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 Part V or the regulation within the time specified in the order.

1.4.4 Subsection 132(1) of the EPA provides that 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. R.S.O. 1990, c. E.19, s. 132(1); 2005, c. 12, s.1 (22).

1.4.5 Subsection 136(1) of the EPA provides that the Director may by order require the performance of environmental measures for which the Crown holds Financial Assurance and may require the use of the Financial Assurance for the performance of the environmental measures.

1.4.6 Subsection 186(3) of the EPA states that every person who fails to comply with the terms and conditions of an Environmental Compliance Approval, certificate of property use or Renewable Energy Approval, or of a licence or permit under this Act, or who fails to comply with the terms of a report under section 29 is guilty of an offence.

1.4.7 Subsection 196(1) of the EPA specifies that the authority to make an order under the EPA

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.

1.4.8 Subsection 196(2) of the EPA provides that 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, occupied or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

1.4.9 Subsection 197(1) of the EPA provides that 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.

## **1.5 Details of the Orderees**

1.5.1 531322 Ontario Limited was issued the Approval for the Site and as such is the corporation responsible for the establishment and operation of the Site.

1.5.2 Kendall Bruce Lundy is the sole director of 531322 Ontario Limited. As such, he exercises control over the activities of 531322 Ontario Limited and is a person responsible for the establishment, management and control of the Site. This was confirmed by a search of the Ministry of Consumer and Commercial Relations' Ontario Business Information System (ONBIS) on March 13, 2019.

## **1.6 Site Description**

1.6.1 The Site, locally known as the Nickel Lake Lumber Sawmill wood waste disposal site, is located on private land located 20km east of Fort Frances on Highway 11.

1.6.2 531322 Ontario Limited owns and operates the Site. On March 03, 2000 the Ministry issued Provisional Certificate of Approval A770166 for the use and operation of a 4.0 hectare wood waste disposal site within a total Site area of 17.5 hectares. The Site was approved to accept 100% solid non-hazardous waste limited to wood wastes with a total volume of 40,000 cubic meters.

1.6.3 On June 24, 2005, the Ministry amended the Approval to allow for Financial Assurance installment payments to be made by the Owner towards the total amount of Financial Assurance required for the Site.

## **1.7 Events Leading up to the Order**

1.7.1 On March 03, 2000 the Ministry issued Provisional Certificate of Approval A770166 for the use and operation of a 4.0 hectare wood waste disposal site within a total Site area of 17.5 hectares.

1.7.2 Condition 14(a) of the Approval states that, *"the Company shall submit to the Director,*

*Financial Assurance as defined in Section 131 of the Act, in the amount of \$50,000.00. This Financial Assurance shall be in a form and amount acceptable to the Director and shall provide sufficient funds for the analysis, transportation, Site clean-up, monitoring and disposal of all quantities of waste on the Site at any one time;*

1.7.3 Condition 14(b) of the Approval states that, *"no processing operations shall be carried out, or any waste accepted at the Site, unless the Ministry has received the appropriate amount of Financial Assurance as outlined in Condition 14(a);*

1.7.4 Condition 14(c) of the Approval states that, *"commencing on March 31, 2000 and on an annual basis thereafter, the Company shall provide to the Director a re-evaluation of the amount of Financial Assurance to facilitate the actions required under Condition 14(a). The Financial Assurance must be submitted to the Director within (10) days of written acceptance of the re-evaluation by the Regional Director*

1.7.5 On June 25, 2005, the Ministry amended the Approval for the Site requiring the Owner to submit Financial Assurance in the amount of fifty thousand dollars and zero cents. In accordance with the Approval the amount of Financial Assurance was to be provided in installment payments starting on March 31, 2006 and ending on March 31, 2009. A copy of the Financial Assurance Payment Schedule can be found in Appendix 1.

1.7.6 On July 05, 2018 Ministry staff conducted an inspection of the Site and a review of records pertaining to the operation of the Site. It was determined that the Owner had not submitted the proper amount of Financial Assurance as required by Condition 14(a) of the Approval. During the inspection it was also determined that the Owner had been failing to submit Financial Assurance Re-evaluations as required by Condition 14(c) of the Approval.

1.7.7 On August 03, 2018 a copy of the finalized inspection report was mailed, faxed and emailed to the Company. On the same day, a telephone call was made to Jube Martinuk who is the Office Manager for the Site and she confirmed receipt of the inspection report. The inspection report identified the following action items:

1. By September 30, 2018 the Owner shall, provide documentation to the undersigned officer that the total required Financial Assurance in the amount of fifty thousand dollars (CAD\$50,000.00) as stated in Environmental Compliance Approval No. A770166, has been submitted to the ministry.
2. By December 31, 2018 the Owner shall, submit to the undersigned officer a Financial Assurance Re-evaluation developed in accordance with the ministry's F-15 Financial Assurance Guideline.
3. By March 31, 2019 the Owner shall, submit to the undersigned officer an annual report in accordance with Environmental Compliance Approval No. A770166.
4. Effective immediately the Owner shall, maintain written records of Site inspections in accordance with Environmental Compliance Approval No. A770166.

5. Effective immediately the Owner shall, conduct monitoring at the Site in accordance with Environmental Compliance Approval No. A770166.
6. Effective immediately the Owner shall, provide to the undersigned officer copies of the written records pertaining to the weekly inspections in accordance with Environmental Compliance Approval No. A770166.

1.7.8 On January 09, 2019 the Ministry issued a Notice of Violation to the Owner for failure to address the inspection action items within the time frames listed in the inspection report.

1.7.9 The Ministry has not received a Financial Assurance Re-evaluation for the Site.

1.7.10 The Owner has failed to comply with condition 14(c) of the Environment Compliance Approval for the Site.

1.7.11 The Ministry currently holds \$20,000.00 in Financial Assurance for this Site. As of March 31, 2009 the Owner was required to have submitted to the Ministry, Financial Assurance with the total sum totalling \$50,000.00. As of April 08, 2018 the Owner has a current outstanding balance of \$30,000.00.

1.7.12 The Owner has failed to comply with condition 14(a) of the Environment Compliance Approval for the Site.

1.7.13 The Owner has not provided the Ministry with the amount of Financial Assurance required for the Site.

## **1.8 Opinion of Director**

I am of the opinion, that based on the information provided to me by the Provincial Officer, that:

- a. It is in the public interest to require the Orderees to take the measures specified to bring the Site into conformity with the Financial Assurance obligations described in Environmental Compliance Approval A770166.
- b. The Orderees have contravened sections 44 and 186(3) of the EPA by failing to comply with the requirements of the Approval.

Pursuant to the authority vested in me by sections 27(1), 40, 44, 132(1), 136(1), 186(3), 196(1), 196(2) and 197(1) of the EPA, I hereby order the Orderees, both jointly and severally, to take all steps necessary to do or cause to be done the following work required in Part 2: Work Ordered of this Order, at and with respect to the Site:

## **Part 2: Work Ordered**

**Item No. 1**

**Compliance Date**

2019/08/31  
(YYYY/MM/DD)

Within 28 days of the service date of this Order, the Orderees shall deliver to the Financial Assurance Program Support Coordinator, the amount of \$30,000.00 as specified by condition 14(a) and Schedule "B" of the Approval, which amount is in partial payment of the total amount of Financial Assurance required to be paid.

**Item No. 2** **Compliance Date** 2019/08/31  
(YYYY/MM/DD)

Within 28 days of the service date of this Order, the Orderees shall deliver to the Financial Assurance Program Support Coordinator, a Financial Assurance Re-evaluation in accordance with condition 14(c) of the Approval and in accordance with the Ministry's Financial Assurance Guideline F-15.

**Item No. 3** **Compliance Date** 2019/08/31  
(YYYY/MM/DD)

Effective immediately, the Orderees 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.

- 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.
- C. Unless otherwise specified, all requirements of this Order are effective upon service of this Order.

### **Part 3: Definitions**

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

"Approval" means Provisional Certificate of Approval A770166 and Environmental Compliance Approval A770166 and associated Notices.

"Director" means the undersigned Director or, in the event the undersigned is unable to act, any other Director authorized to act pursuant to sections 17, 27(1), 40, 44, 132(1), 133(1), 136(1) 186(3), 196(1), 196(2) and 197(1) of the Environmental Protection Act. R.S.O. 1990, c E.19.

"District Manager" means the District Manager of the Kenora Area/Thunder Bay District of the Ministry of the Environment, Conservation and Parks.

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

"Financial Assurance" or "FA" means Financial Assurance as required by Certificate of Approval A770166.

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

"Operator" means the person in occupation or having the charge, management or control of a waste management system or a waste disposal site as defined by Section 25, Part V of the EPA.

"Order" means this Director's Order No. 7227-BA6K4C, as may be amended.

"Owner" means 531322 Ontario Limited.

"Provincial Officer" means the undersigned Provincial Officer, or in the event that the Provincial Officer is unable to act any other Provincial Officer authorized to act pursuant to the Environmental Protection Act.

#### **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 [13.1 of the OWRA; 31. (1) of the Pesticides Act] 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 [107(2) of the OWRA; 42(2) of the Pesticides Act] 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. In particular, 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 persons 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 company; or
- iv. 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 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 the Company from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

4.10 This order has no expiry date .

4.11 The work requirements of any federal Statute or any Order, Approval, Rule or Regulation hereunder shall prevail to the extent of any conflict with the requirements of this Order.

The obligations hereof, as they are affected by 4.8.i, 4.8.ii, 4.8.iii or 4.8.iv above shall be



adjusted in a manner defined by the Director. To obtain such an adjustment, the Orderes 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.

**Part 5: Request for Hearing**

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.

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.

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
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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 TTY: 1-800-855-1155 via Bell Relay	Fax: (416) 326-5370 or 1(844) 213-3474 Web: www.ert.gov.on.ca
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**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](http://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.

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 are not affected.

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.