

Director's Order No. 6528-BP4PYS

ENVIRONMENTAL PROTECTION ACT

ORDER

PURSANT TO SECTION 136, 196

TO: Ontario Graphite, Ltd. ("OGL")
2142 Forestry Tower Road, Post Office Box No. 138
Kearney, ON, P0A 1M0

SITE: Kearney Graphite Mine ("Site")
2142 Forestry Tower Road, Kearney, Ontario, Canada
PIN 52152-0004 (LT), PIN 52152-0008 (LT) and PIN 52152-0009 (LT)

PART 1 – LEGAL AUTHORITY AND REASONS

- 1.1 Pursuant to subsections 136(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (EPA), the Director by order may 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.
- 1.2 Subsection 136 (2) of the EPA provides that the Director may make an order mentioned in subsection (1) if the Director has reasonable and probable grounds to believe that any environmental measure required by the approval, order, certificate of property use or a regulation made under clause 176 (1.3) (i) in respect of which the financial assurance was given has not been or will not be carried out in accordance with the requirement.
- 1.3 Subsection 136 (3) provides that an order under this section shall be directed to,
 - (a) the person,
 - (i) to whom the approval, order or certificate of property use was issued or any other person who is bound by the approval, order or certificate of property use, or
 - (ii) who registered the activity prescribed by the regulations for the purposes of subsection 20.21 (1), if the financial assurance has been provided pursuant to a regulation made under clause 176 (1.3) (i); and

- (b) any person that to the knowledge of the Director has provided the financial assurance for or on behalf of a person referred to in clause (a), or any successor or assignee of a person that to the knowledge of the Director has provided the financial assurance for or on behalf of a person referred to in clause (a).

Description of the Orderee

- 1.4 OGL is the current owner of the Site and the person to whom Environmental Compliance Approval No. 2876-B3AQTS (ECA) was issued on October 26, 2018. Condition 16 of the ECA requires the provision of the financial assurance to pay for the compliance with and performance of any action specified in the ECA including the clean-up, monitoring and post closure care of the Works as defined in the ECA.
- 1.5 To the knowledge of the Director, Cal Graphite Corporation provided the financial assurance on or about December 24, 1992 pursuant to a condition in their Certificate of Approval No. 4-0043-88-006 in relation to operations at the Site. The successor to Cal Graphite Corporation has since been dissolved. The Certificate of Approval was revoked and replaced by the ECA. The financial assurance provided by Cal Graphite Corporation was transferred to OGL for the purpose of Condition 16 of the ECA.
- 1.6 This order is being directed to OGL further to clause 136(3)(a) of the EPA, which requires the order to be directed to the persons to whom the approval, order or certificate of property use was issued or any other person who is bound by the approval, order, or certificate of property use.

Background

- 1.7 The Kearney Graphite Mine originally operated from 1990 to 1994 as an open pit graphite mine and mill facility.
- 1.8 In 2011, OGL announced plans to resume operations at the Site. On June 26, 2018, OGL applied to amend the sewage works approval for the Site. As a result, the ECA was issued by the Ministry on October 26, 2018.
- 1.9 On February 12, 2020, a secured creditor of OGL made an application to the Ontario Superior Court of Justice for protection under the *Companies' Creditors Arrangement Act* (CCAA). The Court issued an initial order which stayed all proceedings against OGL until the return date of February 20, 2020. On February 20, 2020, the Court extended the stay of proceedings to April 29, 2020, and approved a court-supervised sales process of OGL's assets. There was no successful bidder. There was no application to extend the stay of proceedings beyond April 29, 2020.
- 1.10 On April 29, 2020, the CCAA proceedings were terminated. The subsequent endorsement states that the remaining \$45,000 in OGL's bank account is to be used for the payment of OGL employee salaries and wages, materials and supplies used in connection with the ongoing remedial work at the mine site, or in the alternative for the

payment of contractors hired by OGL who may also be performing ongoing remedial work at the mine site. OGL's remaining assets are not sufficient for the compliance with and performance of action specified in the ECA including the clean-up, monitoring and post closure care of the Works.

- 1.11 Based on the foregoing, I have reasonable and probable grounds to believe that the environmental measures required by the ECA for which the financial assurance was given will not be carried out by OGL. I also believe that it is necessary for the Crown to use the financial assurance for the performance of the environmental measures specified in the ECA including the clean-up, monitoring and post closure care of the Works as defined in the ECA.

PART 2 – WORK ORDERED

- 2.1 Pursuant to subsection 136(1) of the EPA, I hereby require the performance of the environmental measures for which Ontario currently holds financial assurance in the amount of \$139,215.31 CDN (\$100,000 original value plus \$39,215.31 interest) and require the use of that financial assurance to perform those environmental measures.

PART 3 – GENERAL

- 3.1 The requirements of this order are severable. If any requirement of this order or the application of any requirement to any circumstance or person is held invalid, the application of such requirement to other circumstances or persons and the remainder of the order shall not be affected thereby.
- 3.2 Any request to change a requirement in this order shall be made in writing to the Director with reasons for this request, at least fourteen (14) days prior to any compliance date for that requirement.
- 3.3 The requirements of this order are minimum requirements only and do not relieve you from:
 - (a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; and
 - (b) obtaining any approvals or consents not specified in this order.
- 3.4 Notwithstanding the issuance of this order, further or other orders may be issued in accordance with the legislation as circumstances require.
- 3.5 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.
- 3.6 Subsection 186(2) of the EPA provides that non-compliance with the requirements of this order constitutes an offence.

PART 4 - HEARING BEFORE THE ENVIRONMENTAL REVIEW TRIBUNAL

- 4.1 Pursuant to section 140 of the EPA, you may require a hearing before the Environmental Review Tribunal (the "Tribunal"), if within fifteen (15) days after service on you of a copy of this Order, you serve written notice on the Director and the Tribunal as set out in paragraph 4.3.
- 4.2 Pursuant to section 142 of the EPA, the Notice requiring the hearing must include a statement of the portions of the Order for which the hearing is required and the grounds on which you intend to rely at the hearing. Except by leave of the 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.
- 4.3 Written Notice requiring a hearing should be served personally or by mail on the following:
- The Secretary
Environmental Review Tribunal
655 Bay Street – 15th Floor
Toronto, ON M5G 1E5
Fax: 416-314-4506
- and
- Michael Gluck, Acting Director
Northern Region
Ministry of the Environment, Conservation and Parks
435 James Street South, Suite 331
Thunder Bay, ON P7E 6S7
Fax: 807-475-1754
- 4.4 Where service is made by mail, the service shall be deemed to be made on the fifth (5) day after the day of mailing and the time for requiring a hearing is not extended by choosing service by mail.
- 4.5 Unless stayed by application to the Environmental Review Tribunal under Section 143 of the EPA, this order is effective from the date of issue.
- 4.6 If you commence an appeal before the Environmental Review Tribunal, under section 47 of the Environmental Bill of Rights (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 Environmental Commissioner who will place it on the EBR registry. The notice must be delivered to the Environmental Commissioner at 605-1075 Bay Street, Toronto, Ontario M5S 2B1 by the earlier of:

- 4.6.1 two (2) days of commencing the appeal before the Tribunal; and
 - 4.6.2 fifteen (15) days after this Order.
- 4.7 Pursuant to subsection 47(7) of the EBR, the Environmental Review 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.
- 4.8 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 Environmental Review Tribunal by the earlier of:
- 4.8.1 fifteen (15) days after notice of this Order is given in the EBR registry; and
 - 4.8.2 if you appeal, fifteen (15) days after your notice of appeal is placed in the EBR registry by the Environmental Commissioner.

ISSUED at Thunder Bay, Ontario this 5th day of August, 2020.



Michael Gluck
Director, Section 136, Environmental Protection Act
Acting Director, Northern Region
435 South James Street, Suite 331
Thunder Bay, Ontario P7E 6S7