

TAB 3



The Six-Minute Environmental Lawyer 2014

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Precedent Order – 6020747 Canada Inc.

Rosalind Cooper, C.S., *Fasken Martineau DuMoulin LLP*

October 22, 2014

ORDER
Environmental Protection Act
Section 18

TO: *6020747 Canada Inc.*

AND TO: *Kevan Martin Green*
676 Gardenwood Drive
Lockport, New York
United States of America
14094-6377

AND TO: *Larry Wayne Green*
Lot 39, Concession 4
R2
Ohswegen, Ontario
N0A 1M0

AND TO: *815244 Ontario Inc.*

AND TO: *Donald Rickerd*
1 Dunbar Road
Toronto, Ontario
M4W 2X5

AND TO: *Robert Labatt*
115 Howden Road
Scarborough, Ontario
M1R 3C7

AND TO: *John McGill Currie*
3294 Lakeland Crescent
Burlington, Ontario
L7N1B8

PART 1 LEGAL AUTHORITY AND REASONS

- 1.1 Pursuant to subsection 1(1) of the *Environmental Protection Act*, R.S.O. 1990, c.E. 19, as amended ("the 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:

- (i) impairment of the quality of the natural environment for any use that can be made of it,
- (ii) injury or damage to property or to plant or animal life,
- (iii) harm or material discomfort to any person,
- (iv) an adverse effect on the health of any person
- (v) impairment of the safety of any person,
- (vi) rendering any property or plant or animal life unfit for human use,
- (vii) loss of enjoyment or normal use of property, and
- (viii) interference with the normal conduct of business.

- 1.2 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:

- 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 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;
- 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 order, and,
 - 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.
- 1.3 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,
- i to prevent or reduce the risk of a discharge of a contaminant into the natural environment
 - ii from the undertaking or property; or
 - iii to prevent, decrease or eliminate an adverse effect that may result from,
 - a. the discharge of a contaminant from the undertaking, or
 - b. the presence or discharge of a contaminant in, on or under the property.
- 1.4 6020747 Canada Inc. was incorporated under the laws of Canada (Canada Business Corporations Act) on September 19, 2002.

- 1.5 The Federal Corporations Report lists Kevan Martin Green and Larry Wayne Green as the only directors.
- 1.6 815244 Ontario Inc. was incorporated under the laws of Ontario on January 1, 1989.
- 1.7 The Ministry of Consumer and Business Services Corporation Profile Report for the Corporation prior to the sale of the property to 6020747 Canada Inc., lists John McGill Currie, Donald Rickerd, Robert Labatt and Donald Early (now deceased) as directors.
- 1.8 This order is issued to the parties named for the reasons set out in the attached Provincial Officer's Report dated May 19, 2010.
- 1.9 The following are observations found in the report of Provincial Officer Brad Farnand dated May 19, 2010 (a copy of which is attached) with respect to the property located at 82 Fishcarrier Street, Cayuga, in the County of Haldimand (hereinafter "property"):
 - The site is not secure, the front door was unlocked, a section of fence fronting the street was pushed down and the gate at the rear of the property by the former rail line was open.
 - There are numerous unknown lab chemicals stored unsecurely in the former laboratory.
 - There are pallets of resins chips some of which have broken open.
 - There are numerous drums, pails and various and assorted containers of unknown chemicals (containers unlabelled).
 - There are drums, partial drums, and pails of lubricating oil, mineral spirits, propane containers, paint, surfactant, etc stored at the site.
 - There are approximately 80 bags of suspected asbestos waste stored on the floor of a building.
 - There is a storm water pond located on the site. There is no indication of where the discharge point is located.
 - There are numerous large outdoor chemical storage tanks with unknown contents located on the site.
 - There is an intermittent resin odour located on the property.
 - The liquid industrial and solid waste has remained on the property since 2004.
 - The property is subject to ongoing entry by unauthorized personnel and appears to be vandalized regularly.
 - The company has failed to comply with various items in Provincial Officer Order 0474-6GFMXG issued September 21, 2005.
 - All the liquid and solid material stored on the site is waste, and the site is not approved to store waste.
 - Ground water and surface water investigations by the Ministry have revealed that there is a strong potential for contaminants from this site to be migrating off-site and may be impacting a nearby stream (Pike Creek)

PART 2 WORK ORDERED

For the reasons set out in the report of Provincial Officer Brad Farnand and pursuant to the authority vested in me under section 18 of the EPA, I hereby order all parties, both jointly and severally, to do the following and to take all steps necessary in order to do the following:

- 2.1 By **August 6, 2010**, secure the entire property to prevent any unauthorized access, including but not limited to repairing the perimeter fence, closing and locking gates, and installing locks, doors, windows, on the buildings.
- 2.2 By **August 6, 2010**, retain the services of a qualified waste management professional to assess and classify all wastes currently located on the site, including but not limited to all storage tanks, drums, lab chemicals, pails, containers, solid waste, sumps, drains, underground storage, tanks, pond/lagoon located on the property.
- 2.3 By **August 6, 2010**, provide in writing to the Director the name and qualifications of the qualified waste management professional required by Item 2.2 above.
- 2.4 By **August 20, 2010**, have the waste management professional assess/sample and properly classify all wastes stored on the property in accordance with Regulation 347.
- 2.5 By **August 27, 2010**, have the waste management professional dispose of all waste located on the property.
- 2.6 All waste removed from the property shall be transported by an approved waste hauler to a site approved to receive the waste.
- 2.7 By **September 3, 2010**, provide a written report to the Director at the address below confirming the removal of the waste/material which shall include the following:
 - 2.7.1 details of the amount of material/waste removed from the property;
 - 2.7.2 the name of the hauler used to transport the material/waste;
 - 2.7.3 the waste disposal site or other location where the material/waste was lawfully disposed, recycled or otherwise processed; and
 - 2.7.4 copies of all supporting documentation (receipts, waybills, bills of lading and other such confirmation of completed transactions) relevant to the removal of the waste/material.
- 2.8 By **August 6, 2010**, retain the service of a qualified professional to assess all sources of contamination on the property which may be migrating off-site.

- 2.9 By **August 6, 2010**, provide in writing to the Director the name and qualifications of the qualified professional required by Item 2.8 above.
- 2.9 **August 27, 2010**, have the qualified professional referred to in Item 2.8 undertake all necessary investigations of the property to assess and delineate all sources of contamination on the property.
- 2.11 By **September 24, 2010**, have the qualified professional referred to in Item 2.8 submit a report to the director that outlines as a minimum, all areas of the site that were assessed, details on the extent of on and off-site contamination, proposed remediation measure for all off-site contamination identified, and a proposed plan to mitigate any future migration of contaminants off-site. The report shall include a timeline for remediation and mitigation measures not to exceed ninety (90) days.

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 circumstances is held invalid, the application of such requirement to other circumstances 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 the request, at least 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:
- complying with any other applicable order, statute, regulation, municipal, provincial or federal law; and
 - obtaining any approvals or consents not specified in this order.
- 3.4 Failure to comply with a term of this order by the date specified does not absolve you from compliance with that requirement. The obligation to complete the requirement shall continue each day thereafter.
- 3.5 Notwithstanding the issuance of this order, further orders may be issued in accordance with the legislation as circumstances require.
- 3.6 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.

- 3.7 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 Under section 140 of the EPA, you may require a hearing before the Environmental Review Tribunal, if, within fifteen days after service upon you of this order, you serve written notice upon the Environmental Review Tribunal and the Director.
- 4.2 Section 142 of the EPA provides that 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 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.
- 4.3 Written notice requiring a hearing shall be served personally or by mail on the following:

The Secretary
Environmental Review Tribunal
655 Bay Street
15th Floor
TORONTO, Ontario
M5G 1E5

and

Director
Ministry of Environment
119 King Street West
9th Floor
Hamilton, Ontario
L8P 4Y7

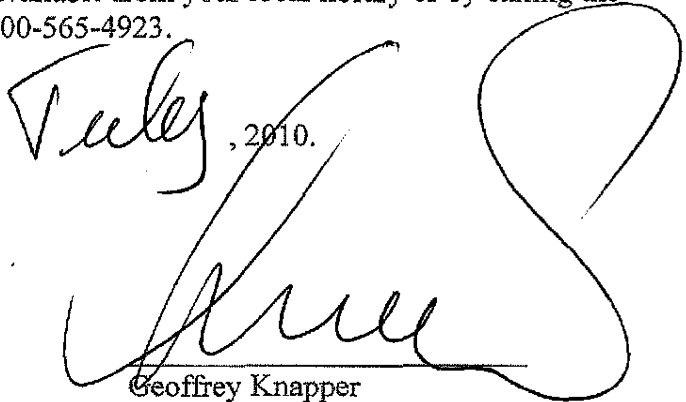
Where service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing and the time for requiring a hearing is not extended by choosing service by mail.

Unless stayed by application to the Environmental Review Tribunal under Section 143 of the EPA, this order is effective from the date of issue.

- 4.4 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:
- 4.4.1 2 days of commencing the appeal before the Tribunal; and
 - 4.4.2 15 days after service of this order.
- 4.5 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.
- 4.6 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 Environmental Review Tribunal by the earlier of:
- 4.6.1 15 days after notice of this order is given in the EBR registry; and
 - 4.6.2 if you appeal, 15 days after your notice of appeal is placed in the EBR registry by the Environmental Commissioner.

To ascertain whether or not an application for leave to appeal this order has been made by any person, you may wish to periodically check the EBR registry up to a few business days after the period mentioned in paragraphs 4.6.1 and 4.6.2 above. Information about how to access the EBR registry is available from your local library or by calling the Ministry of the Environment at 1-800-565-4923.

ISSUED at Hamilton, this 6th day of July, 2010.



Geoffrey Knapper
Director,
Environmental Protection Act

Provincial Officer Report

Issue: Lengthy storage of large amounts of unknown waste, and potential off-site contamination from the operation of a former resin manufacturing facility which may impair water quality.

History

St. Lawrence Resins (815244 Ontario Inc.) is located at 82 Fishcarrier Street in the Town of Cayuga. The site was involved in the production of resins from approximately 1967 to 1997. In 1997 upon closure of the facility much of the waste associated with the operation of this site was removed, however, a significant amount of material was left at the site.

In 2004 Provincial Officer Jason Ryan inspected the site and found numerous drums of resin, cylinders of boron trifluoride, bags of asbestos, signs of spills and solvent odours coming from the tanks located on-site. Officer Ryan wrote to St. Lawrence Resins regarding the issues he identified and requested they submit a plan. In early 2005 the company responded to Officer Ryan and indicated that all his concerns would be addressed within 30 days by their tenant Kevan Green who had a lease purchase agreement with St. Lawrence Resins.

In 2005 Provincial Officer Joseph Lesko inspected the site in August and found that none of the work to be carried out by Mr. Green to address Officer's Ryan's concerns had been completed. Officer Lesko issued a Provincial Officer Order to St. Lawrence Resins to secure the site, identify the waste located on-site, and remove all waste from the site. St. Lawrence Resins appealed the order based on the fact that Kevan Green had care and control of the property. The order was revoked and re-issued to 1198906 Ontario Limited, the tenant. Mr. Green only complied with the removal of the cylinders of boron trifluoride.

St. Lawrence Resins, 82 Fishcarrier Street, Cayuga, Ontario

On October 1, 2008 I inspected the site and made the following observations:

- The site is not secure, the front door was unlocked, a section of fence fronting the street was pushed down and the gate at the rear of the property by the former rail line was open.
- There are numerous unknown lab chemicals stored unsecurely in the former laboratory.
- There are pallets of resins chips some of which have broken open.
- There are numerous drums, pails and various and assorted containers of unknown chemicals (containers unlabelled).

- There are drums, partial drums, and pails of lubricating oil, mineral spirits, propane containers, paint, surfactant, etc stored at the site.
- There are approximately 80 bags of suspected asbestos waste stored on the floor of a building.
- There is a storm water pond located on the site. There is no indication of where the discharge point is located.
- There are numerous large outdoor chemical storage tanks with unknown contents located on the site.
- There is an intermittent resin odour located on the property.
- The liquid industrial and solid waste has remained on the property since 2004.
- The property is subject to ongoing entry by unauthorized personnel and appears to be vandalized regularly.
- The company has failed to comply with various items in Provincial Officer Order 0474-6GFMXG issued September 21, 2005.
- All the liquid and solid material stored on the site is waste, and the site is not approved to store waste.

Based on a property search and corporate search, I issued a Provincial Officer Order to 815244 Ontario Inc. to secure the site, identify the waste and remove the waste from the site. The directors of 815244 Ontario Inc. were Donald Rickard and Donald Early (now deceased). Robert Labatt and John McGill Currie had been removed as directors after the issuance of the Lesko Order. The order was not complied with and the corporation was charged for order non-compliance. During court proceedings it was revealed that the site had been sold to 6020747 Canada Inc. for the sum of \$10.00 but not registered on titled by the purchaser's solicitor. The directors of 6020747 Canada Inc. are Kevan and Larry Green.

In 2009 and 2010 the Ministry's Technical Support staff have conducted ground and surface water sampling at the site. Based upon those results, the Ministry believes that contamination from this site has migrated off-site and may be impacting nearby surface water (Pike Creek).

Findings

- The site has not been properly secured (buildings/fencing).
- There is a significant amount of drummed and bagged waste that is on the site that has not been properly characterized or removed.
- Due to suspected vandalism, there are wastes that have been spilled in the warehouse section of the former plant.
- The content of the tanks located on-site is unknown, and the condition of the tanks is deteriorating.
- There are 93 bags of suspected asbestos waste located on the site.
- Ground water and surface water investigations by the Ministry indicate a potential off-site impact to surface water from previous operations at this site.


Document Source: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA5OTlw&statusId=MTcwMjMx>

Recommendation:

Issue a Director's Order under Section 18 of the Environmental Protection Act to the current owner of the site, and the previous owner/operators of the site, including directors, to secure the site, classify all waste located on the site, remove all waste from the site, investigate the potential for off-site contamination, remediate all off-site impacted areas, and ensure that any potential off-site contamination is mitigated.



Brad Farnand
Provincial Officer #273
Ministry of the Environment
Hamilton District Office


Date