

Order Number: 001

Environmental Penalty Order

Environmental Protection Act, R.S.O. 1990, c. E 19 (EPA)
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)

To: CGC Inc.

Site: Hagersville Plant
55 Third Line Rd.
Haldimand County
Ontario, Canada
N0A 1H0

1 Definitions

1.1 For the purposes of this Environmental Penalty Order ("EP Order"), the following terms shall have the meanings described below:

"CGC" means CGC Inc.

"Director" means the undersigned Director or, in the event that the undersigned is unable to act, any other director authorized to act pursuant to the EPA;

"EP" means environmental penalty;

"EP Order" means this Environmental Penalty Order number 001;

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

"ERT" means the Environmental Review Tribunal;

"Guideline" means "Guideline for Implementing Environmental Penalties (Ontario Regulations 222/07 and 223/07), May 2007";

"Ministry" means the Ontario Ministry of the Environment;

"O. Reg. 222/07" means Environmental Penalties – Ontario Regulation 222/07, made under the EPA;

“O. Reg. 561/94” means Effluent Monitoring and Effluent Limits – Industrial Minerals Sector – Ontario Regulation 561/94, made under the EPA, as amended.

“Regulated Person” means a person who owns or operates a plant that falls under section 3 of O. Reg. 222/07;

“Site” means the property municipally known as 55 Third Line Road, Haldimand County.

2 Legal Authority and Reasons

Legal Authority

Authority to Issue EP Order

Subsection 182.1(1) of the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended (“EPA”) authorizes the Director to issue an environmental penalty (“EP”) to a regulated person (“Regulated Person”) that:

- A. Contravenes or has contravened:
 - i. Section 14 of the EPA,
 - ii. Section 93 of the EPA,
 - iii. A provision of a regulation that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment,
 - iv. A provision of an order under the EPA that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment, or
 - v. A provision of a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under the EPA that establishes or has the effect of establishing a numerical limit, including the limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment; or
- B. The Regulated Person contravenes a provision of,
 - i. The EPA or the regulations,

- ii. An order under the EPA, other than an order under sections 99.1, 100.1 or 150 of the EPA or an order of a court,
- iii. A certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under the EPA,
- iv. A report under section 29 of the EPA, or
- v. An agreement under subsection 182.1(9) of the EPA.

Agreements

- 2.1 Subsection 182.1(9) of the EPA allows the Director and the Regulated Person against whom a Notice of Intention or an EP Order has been issued to enter into an agreement that:
- A. Identifies the contravention in respect of which the Notice of Intention or an EP Order has been issued;
 - B. Requires the Regulated Person against whom the Notice of Intention or an EP Order has been issued to take steps specified in the agreement within the time specified in the agreement, and
 - C. Provides that the obligation to pay the penalty may be cancelled in accordance with O. Reg. 222/07 or the amount of the penalty may be reduced in accordance with O. Reg. 222/07.

Publication of Agreements

- 2.2 Subsection 182.1(10) of the EPA requires the Ministry of the Environment ("Ministry") to publish every agreement entered into under subsection 182.1(9) of the EPA in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993.

Penalty Does Not Prevent Prosecution

- 2.3 Subsection 182.1(11) of the EPA allows a Regulated Person to be charged, prosecuted and convicted of an offence under the EPA in respect of a contravention referred to in subsection 182.1(1) of the EPA even if an EP has been imposed or paid by the Regulated Person in respect of the contravention.

No Admission of Liability

- 2.4 Under subsection 182.1(12) of the EPA, a Regulated Person that pays the EP imposed under subsection 182.1(1) of the EPA in respect of a contravention or enters into an agreement under subsection 182.1(9) of the EPA in respect of a

contravention does not represent an admission that the Regulated Person committed the contravention for the purposes of any prosecution for the contravention.

Failure to Pay When Required

- 2.5 Subsection 182.1(13) of the EPA allows the Ministry to enforce an EP Order where a Regulated Person who is required to pay an EP fails to comply with the requirement by,
- A. Filing the EP Order or decision with the local registrar of the Superior Court of Justice and enforcing the EP Order or decision as if it were an order of the Superior Court of Justice,
 - B. The Director may by order suspend any certificate of approval, provisional certificate of approval, licence or permit that has been issued to the Regulated Person under the EPA until the EP is paid, and
 - C. The Director may refuse to issue any certificate of approval, provisional certificate of approval, licence or permit to the Regulated Person under the EPA until the EP is paid.

Key Background Facts Regarding the Issuance of This Environmental Penalty Order

- 2.6 The following outlines the key background facts, issues and concerns regarding this matter which provide me with the reasons for issuing this EP Order:

Details of the Orderee

- 2.6.1 CGC Inc. ("CGC") is a company incorporated under the laws of Ontario (Corporation Number: 001558078). CGC amalgamated with Donn Canada Limited on January 1, 2003.
- 2.6.2 CGC is the owner and operator of a plant in Hagersville. This plant is listed in Table 1 under subsection 3(1)(a) of O. Reg. 222/07. CGC is, therefore, considered a Regulated Person to whom the Director is authorized to issue an EP.

The Site

- 2.6.3 CGC operates a wallboard manufacturing plant and mine at the Hagersville Plant. The property comprises part of Lots 14 and 15 in the Township of Haldimand County and is municipally known as 55 Third Line Road ("Site"). CGC has a sampling point 0200 that discharges to Boston Creek. The sampling point is regulated under the Effluent Monitoring and Effluent Limit – Industrial Minerals sector Regulation 561/94 ("O. Reg. 561/94").

Events Leading Up To Issuing Environmental Penalty Order

- 2.7 On October 4, 2007, CGC advised the Ministry that a limit exceedance occurred on September 26, 2007 at sampling point 0200. The analytical result for total suspended solids was reported to the Ministry at 358 mg/L, which is above the limit of 50 mg/L as identified in subsection 18(1) of O. Reg. 561/94.
- 2.8 In addition, on October 4, 2007, CGC notified the Ministry that the monthly average concentration calculated for total suspended solids in September, 2007 at sampling point 0200 had been exceeded. On November 14, 2007, CGC advised that the monthly average calculated for total suspended solids for September 2007 was 92 mg/L, which is above the limit of 25 mg/L as identified in subsection 18(2) of O. Reg. 561/94.
- 2.9 On November 8, 2007, an environmental officer in the Ministry's Hamilton District Office attended the Site and discussed the reported exceedances at sampling point 0200 with a representative from CGC. The officer was advised that the reported source of the September 26, 2007 limit exceedance was storm water runoff from a synthetic gypsum storage pile that entered a nearby catch basin and discharged through the sampling point 0200. The officer was also advised that during the week of October 22, 2007, corrective action was taken to address this source of suspended solids, including the installation of a French drain and re-establishment of silt fencing. CGC was advised by the officer of the potential for an EP Order being issued because CGC had contravened a provision of a regulation that established a numerical limit (i.e. the discharge exceeded the established limit).
- 2.10 CGC had submitted to the Hamilton District a Suspended Solids Study and Management Plan on September 15, 2006. Item 3 of this plan identified the synthetic gypsum pile and the adjacent catch basin as a source of total suspended solids. The plan identified that CGC would "re-establish a rock check dam consisting of rock cribs and filter cloth. Keep material pulled back sufficiently to prevent overflow of material into the catch basin."
- 2.11 On November 14, 2007, CGC submitted to the Hamilton District Office a response to the Ministry's inspection of the Site on November 8, 2007. This response included an account of what has been done in the past, what has been done recently and their continuous efforts to improve the plant's MISA record as it pertains to total suspended solids. One aspect of the actions identified in the submission was that:

"recent inspections of plant effluent ways discovered a breach in the rock check dam and filter cloth installed around a critical catch basin adjacent to a synthetic gypsum jockey pile. This was repaired along with installation of a series of filter cloth silt fences in and around another upstream catch basin. This is a new installation intended to moderate flow during major storm events through this area. The intent

is that suspended solid bearing effluent will be reduced in flow speed to limit erosion of ditch ways and allow a certain amount of decant time prior to effluent in this area entering downstream plant sewer systems.”

These actions identified in CGC's November, 2007 response to address the September 26, 2007 total suspended solids exceedance are the same actions proposed in CGC's September, 2006 plan that were not implemented until October, 2007.

- 2.12 On November 14, 2007, the Hamilton District notified CGC via e-mail and advised that the September 2007 total suspended solids exceedances are offences that could be subject to an EP and that a Notice of Intention to issue an EP may be forthcoming. The Ministry's internet link to information on EP's was also included in the e-mail. The e-mail also requested information on other violations under O. Reg. 561/94. First CGC submitted the 2006 4th quarter analytical data to the Ministry on April 2, 2007 which is later than the required submission date of February 15, 2007. Subsection 37(1) of O. Reg. 561/94 requires that the quarterly reports be submitted to the Director no later than 45 days after the end of each quarter. Second, CGC did not report to the Ministry as required by O. Reg. 561/94 three total suspended solids limit exceedances from October, 2006 orally and in writing as soon as reasonably possible. Subsection 36 (3) of O. Reg. 561/94 requires that a report required under subsection 36(2), where any concentration or other result that exceeds a limit prescribed by sections 18 or 19, be given orally, as soon as possible, and in writing, as soon as reasonably possible.
- 2.13 EP Notice of Intention NOI-001 related to two (2) contraventions:
- Contravention #1: The analytical results for a sample collected under section 22 of O. Reg. 561/94 for total suspended solids was 358 mg/L on September 26, 2007 and that exceeds the limit of 50 mg/L which is established in subsection 18(1) of O. Reg. 561/94; and
- Contravention #2: The monthly average concentration calculated for total suspended solids for September, 2007 under section 15 was 92 mg/L and that exceeds the limit of 25 mg/L which is established in subsection 18(2) of O. Reg. 561/94.
- 2.14 CGC provided a written response to the issuance of NOI-001 in a letter dated January 29, 2008. The response was general in nature and did not specifically request any reductions to the penalty.

- 2.15 The Hamilton District office contacted CGC via telephone on January 30, 2007 to seek clarification on the letter. CGC identified that they would like the Director to consider not issuing the Environmental Penalty order for the two violations or at least reduce them for the following reasons:
- 2.15.1 One violation caused the other (single daily concentration exceedance was so large that it caused the monthly average to be exceeded).
 - 2.15.2 The company has implemented successful remedial measures to address the cause of the effluent limit exceedance and has not had a subsequent exceedance for suspended solids.
 - 2.15.3 The company is committed to identifying additional measures that can be proactively taken by the company to ensure compliance and improve environmental management systems within the plant.
- 2.16 A review of the 2 contraventions identified that a factual nexus existed between Contravention #1 and Contravention #2 in that Contravention 2 was a direct result of the exceedance identified in Contravention 1. As such, I have decided that an EP Order should not be issued for Contravention #2.
- 2.17 This EP Order is being issued for contravention #1 that occurred on September 26, 2007 when the analytical results for a sample collected under section 22 of O. Reg. 561/94 for total suspended solids was 358 mg/L and that exceeds the limit of 50 mg/L which is established in subsection 18(1) of O. Reg. 561/94.
- 2.18 Contravention #1, an exceedance of a discharge standard in Reg. 561/94 that occurred on September 26, 2007, is covered by item number 3 of Table 2 of O. Reg. 222/07
- 2.19 Contravention #1 is classified as a Type 1 contravention in accordance with item number 3 in Table 2 of O. Reg. 222/07. The seriousness of contravention #1 was classified in accordance with subsection 12(3) of O. Reg. 222/07, which specifies that where the limit does not relate to pH, the contravention is classified as very serious if the limit is exceeded by 100 percent or more. In regard to Contravention #1, the limit was exceeded by 616% and is therefore considered to be very serious in nature. The Cell in Table 4 that corresponds to the classification of Type 1 and very serious is \$5,000 - \$10,000.

Application of Case-Specific Factors Listed in Paragraph 3 of s. 9(1) of O. Reg. 222/07

- 2.20 To determine the amount of the gravity component of an EP, the Director must look to section 9 of O. Reg. 222/07. More specifically, the Director will consider the factors identified in paragraph 3 of subsection 9(1) of O. Reg. 222/07. These factors will then be assigned points and the total number of points will be used to determine the final gravity component of the EP.

- 2.21 Under paragraph 3(i) of subsection 9(1) of O. Reg. 222/07, the Director can consider a Regulated Person's contravention history under the EPA and/or the Ontario Water Resources Act ("OWRA") when determining the gravity component of the EP. On November 4, 2005, CGC was convicted on two counts for failing to comply with a Permit to Take Water, contrary to clause 34(8)(c) of the OWRA. Under Appendix 3 of the "Guideline for Implementing Environmental Penalties (Ontario Regulations 222/07 and 223/07), May 2007" ("Guideline"), two (2) or more convictions in the previous five (5) years results in two (2) points.
- 2.22 Under paragraph 3(iv) of subsection 9(1) of O. Reg. 222/07, the Director can consider the seriousness of the contravention when determining the gravity component of the EP. In this case, the limit was exceeded by 616%. Under Appendix 3 of the Guideline, limit exceedances of 150% or more results in six (6) points.
- 2.23 Adding the factors outlined in paragraphs 2.21 and 2.22 together results in eight (8) points. Under Appendix 3 of the Guideline, a total of seven (7) points or more for a non-toxic limit exceedance results in a ten thousand dollar (\$10,000) gravity component.
- 2.24 The contravention occurred for one day on September 26, 2007
- 2.25 The unmodified single-day gravity component ("gravity component") for the contravention is ten thousand dollars (\$10,000).

Director's Response to Regulated Person's Request for Review of Notice of Intention

- 2.26 On January 15, 2008, a Notice of Intention to issue an EP Order NOI-001 was issued to CGC. CGC provided a written response to the issuance of NOI-001 in a letter dated January 29, 2008.

A copy of the Notice of Intention issued on January 15, 2008 is attached to and forms part of this EP Order.

A copy of CGC's written request dated January 29, 2008 acknowledging receipt of the Notice of Intention that I issued on January 15, 2008 is attached to this EP Order.

- 2.27 I have reviewed your written response provided. My responses to your request(s) are as follows:

A. Violations

- 2.27.1 CGC identified to the Ministry on January 20, 2008 that they did not want the EP ordered issued for the two violations because one violation caused the

other (single daily concentration exceedance was so large that it caused the monthly average to be exceeded) as noted in paragraph 2.15.1.

2.27.2 I have reviewed this information and accept that a factual nexus exists between the two violations as I have noted in paragraph 2.16. This EP Order is only being issued for Contravention #1 that occurred on September 26, 2007.

B. Reductions for Prevention

2.27.3 Reductions to the gravity component are determined in accordance with section 16 of O. Reg. 222/07 on the grounds that the Regulated Person took steps to prevent the contravention or mitigate its effects. Section 4.1 in Appendix 4 of the Guideline specifically lists the preventive measure modifiers considered for discharge violations. A Regulated Person is eligible for up to a 20% reduction to the gravity component of a penalty for the steps the person took to prevent the discharge violations. For each consideration that has a "yes" answer in Table A1, the appropriate point value from the last 3 columns is assigned. The points are totalled and Table A2 is used, based on the violation type to determine the percentage reduction for the preventive measures taken by the regulated person.

2.27.4 Risk Analysis

CGC's letter dated January 29, 2008 identified that CGC had commissioned the environmental consulting firm of Golder and Associates Ltd. to perform an in-depth study of the Hagersville facility to provide recommendations to prevent exceedances of total suspended solids under the MISA program. It was identified that Golder made a number of recommendations which were responded to and implemented in a timely fashion.

I have reviewed this information and accept that CGC has conducted a documented risk assessment of the process/area where the incident occurred, where the risks were prioritized for future action to be taken

In chapter 4.1 Appendix 4 in the Guideline, a yes for 1a - Risk Analysis results in 1 point.

2.27.5 Preventive Measures

CGC Suspended Solids Study and Management Plan dated November 14, 2007 identified that CGC staff conduct periodic inspections of ditch ways by plant personnel.

I have reviewed this information and accept that CGC has a preventive maintenance program specific to the process/areas where the incident occurred.

In chapter 4.1 Appendix 4 of the Guideline, a yes for 2a - Preventive Measures results in 1 point.

2.27.6 Adding the factors for prevention outlined in paragraphs 2.27.4 and 2.27.5 results in 2 points. Using Table A2, 1 -3 points for an unlawful discharge from an approved discharge point results in a four percent (4%) reduction to the gravity component. This is a four hundred dollar (\$400.00) reduction to the gravity component for prevention measures.

C Reductions for Mitigation

2.27.7 Reductions to the gravity component are determined in accordance with section 16 of O. Reg. 222/07 on the grounds that the Regulated Person took steps to prevent the contravention or mitigate its effects. Section 4.2 in Appendix 4 of the Guideline lists all the mitigative measures that may be considered. A Regulated Person is eligible for up to a 10% reduction to the gravity component of a penalty for the steps the person took to mitigate the effects of the discharge violation. For each consideration in Table B1, the appropriate point value from the last 3 columns is assigned. Points are totalled and Table B2 is used to determine the percentage reduction for the mitigative measures taken by the Regulated Person.

2.27.8 Implementation of a Spill Response Plan

CGC Suspended Solids Study and Management Plan dated November 14, 2007 identified that CGC staff are trained in written spill response procedures, that CGC is modifying their quarterly reported procedures to use the MEWS system and that monitoring will be continued by plant personnel. In addition, CGC's response letter dated January 29, 2008 identified that CGC will retain the services of an independent environmental engineering firm to identify preventative measures to ensure compliance and improve environmental management systems within the plant.

I have reviewed this information and will allow that the plant has developed and implemented a set of written procedures related to the identification and appropriate response to limit exceedances and acute lethality failures.

In chapter 4.2 Appendix 4 of the Guideline, a yes for 1b - Implementation of a Spill Response Plan results in 1 point.

2.27.9 Response

CGC's letter dated January 29, 2008 referenced CGC's Suspended Solids Study and Management Plan dated November 14, 2007. The plan identified that "recent inspections of plant effluent ways discovered a breach in the rock check dam and filter cloth installed around a crucial catch basin adjacent to a synthetic gypsum jockey pile" (source of the September 26, 2007 exceedance). "This was repaired along with installation of a series of filter cloth silt fences in and around another upstream catch basin." This is a new installation intended to moderate flow during major storm events through this

area. The intent is that suspended solid bearing effluent will be reduced in flow speed to limit erosion of ditch ways and allow a certain amount of decant time prior to effluent in this area entering downstream plant sewer systems.

I have reviewed this information and will allow that once the incident was identified, a detailed cause analysis was conducted to determine the source of the violation.

In chapter 4.2 Appendix 4 of the Guideline, a yes for 2c - Response results in 1 point.

2.27.10 **Response**

CGC's November 14, 2007 plan identified the installation of a series of filter cloth silt fences in and around another upstream catch basin. In addition, CGC identified that monitoring of plant personnel will be continued and awareness training will be implemented to bring a heightened awareness of CGC's processes and how CGC's actions affect the environment. This awareness and monitoring around storm events will allow CGC to formulate a plan to reduce the incidences of MISA exceedances. In addition, CGC's January 29, 2008 response identifies that they will be retaining an independent environmental engineering firm to identify preventative measures to ensure compliance and improve environmental management systems within the plant.

I have reviewed this information and will allow that once the incident was resolved, a process was implemented to incorporate the lessons learned into future preventive actions.

In chapter 4.2 Appendix 4 of the Guideline, a yes for 2f - Response results in 2 points.

2.27.11 **Other Mitigative Actions**

CGC's letter dated January 29, 2008 referenced CGC's Suspended Solids Study and Management Plan dated November 14, 2007. The plan identified the installation of a series of filter cloth silt fences in and around another upstream catch basin of the synthetic gypsum pile. CGC has also committed to retaining the services of an independent environmental engineering firm to identify preventative measures to ensure compliance and improve environmental management systems within the plant.

I have reviewed this information and allow that the plant has performed other actions, beyond those required by legislation that served to mitigate the unlawful discharge.

In chapter 4.2 Appendix 4 of the Guideline, a yes for 5a - Other Mitigative Actions for these actions results, in this case, in 1 point.

2.27.12 Adding the factors for reduction outlined in paragraphs 2.27.8, 2.27.9, 2.27.10 and 2.27.11 results in 5 points. Using Table B2, 5- 6 points for an unlawful discharge from an approved discharge point results in a six percent (6%) reduction to the gravity component. This is a six hundred dollars (\$600.00) reduction to the gravity component for mitigative measures.

Amount of Environmental Penalty

- 2.28 Under section 7 of the Regulation 222/07, the amount of the environmental penalty for a contravention is calculated by adding the monetary benefit (section 8 of Reg. 222/07 to the gravity component (section 9 of Reg. 222/07) which includes subtracting the reduction for prevention or mitigation measures (section 16 of Reg. 222/07, the reduction for an environmental management system (section 17 of Reg. 222/07 and the reduction for an agreement (section 18 of Reg. 2227/07), as applicable.
- 2.29 For contravention #1, no monetary benefit component is being determined for this environmental penalty. The gravity component as identified in paragraph 2.25 is ten thousand dollars (\$10,000). The reduction for prevention measures as identified in paragraph 2.27.6 is four hundred dollars (\$400.00) and the reduction for mitigative measures as identified in paragraph 2.27.12 is six hundred dollars (\$600.00). This results in an environmental penalty of nine thousand dollars (\$9,000.00).

3 Order to Pay Environmental Penalty

- 3.1 For the reasons stated above and pursuant to my authority under subsection 182.1(1) of the EPA, I order you to pay an environmental penalty in the amount of nine thousand dollars (\$9,000.00) by April 30, 2008. This payment shall be made by certified cheque payable to the Minister of Finance and sent to the following address District Manager, Hamilton District Office, 119 King St. W., 9th Floor, Hamilton, Ontario.

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 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.
- 4.3 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;
 - obtaining any approvals or consents not specified in this order.
- 4.4 Notwithstanding the issuance of this order, further or other orders may be issued in accordance with legislation as circumstances require.
- 4.5 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
- natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections, or
 - strikes, lockouts or other labour disturbances;
 - inability to obtain materials or equipment for reasons beyond the control of the company, or
 - 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 date in question.
- 4.6 Failure to comply with a requirement of this order by the date specified does not absolve the parties from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 4.7 This order has no expiry date.

5 Appeal Rights

- 5.1 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 Review Tribunal and the Director.
- 5.2 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.
- 5.3 Written notice requiring a hearing shall be served personally, by fax or by mail on the following:

The Secretary
Environmental Review Tribunal
655 Bay Street, 15th Floor
Toronto ON M5G 1E5
(416) 314-4506 (fax)

and

Director
Ministry of the Environment
West Central Region
12th Floor, 119 King Street West
Hamilton, ON L8P 4Y7
(905) 521-7820 (fax)

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.

Refer to Service of Documents Regulation 227/07 for further rules regarding service by fax.

6 Process of Appeal Before the Environmental Review Tribunal

- 6.1 Subsection 143 (1) of the EPA provides that an order to pay an environmental penalty is automatically stayed on appeal.
- 6.2 Subsection 145.4(1) of the EPA provides that the regulations made under clause 182.1(15)(d) governing the determination of the amount of an EP apply to the Environmental Review Tribunal ("ERT").
- 6.3 Subsection 145.4(2) of the EPA provides that the ERT shall not substitute its opinion for that of the Director with respect to the amount of the EP unless the ERT considers the amount to be unreasonable.
- 6.4 Subsection 145.5(2) of the EPA places the onus on the Regulated Person requesting the hearing before the ERT to prove that the contravention of section 14 of the EPA did not cause or could not have caused an adverse effect.
- 6.5 Subsection 145.5(3) of the EPA places the onus on the Regulated Person requesting the hearing before the ERT to prove that a contravention of section 93 of the EPA that:
- i. The discharge of the pollutant was not abnormal in quality or quantity in light of all the circumstances of the discharge;
 - ii. The pollutant that was spilled did not cause and was not likely to cause an adverse effect; or
 - iii. Forthwith after the pollutant was spilled, the person did everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.
- 6.6 Subsection 145.5(4) of the EPA places the onus on the Regulated Person requesting the hearing before the ERT to prove that a contravention of a provision referred to in subclause 182.1(a)(iii), (iv) or (v) that the Regulated Person did not contravene the provision.



Bill Bardswick
Director appointed under subsection 182.1 (1) of the EPA
West Central Region
12th Floor, 119 King Street West
Hamilton, ON L8P 4Y7
(905) 521-7820 (fax)

Date:  29/08