



Order Number: 8555-A6ESGE

**Director's Order Amendment No. 3**

**Environmental Protection Act, R.S.O. 1990, c. E 19 (EPA)**

**Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)**

- TO:** Ontario Graphite, Ltd.  
2142 Forestry Tower Road, Post Office Box, No. 138  
Kearney, Ontario, P0A 1M0
- And to:** Derek Hirsch, Director  
2142 Forestry Tower Road, Post Office Box, No. 138  
Kearney, Ontario, P0A 1M0 and/or  
1619 Selkirk Avenue,  
Montreal, Quebec, H3H 1C7
- And to:** Ellerton Castor, Director, and Authorized Signing Officer, Chief Financial  
Officer and Chief Administrative Officer  
2142 Forestry Tower Road, Post Office Box, No. 138  
Kearney, Ontario, P0A 1M0
- And to:** Tom Burkett, CEO  
2142 Forestry Tower Road, Post Office Box, No. 138  
Kearney, Ontario, P0A 1M0
- Site:** 2142 Forestry Tower Road, Kearney, Ontario, Canada  
PIN 52152-0004 (LT), PIN 52152-0008 (LT) & PIN 52152-0009 (LT)

**The Work Ordered Item 2.1 below hereby amends the 2016 *Director's Order* as previously amended by *Director's Order Amendment No. 1* issued January 31, 2018 and No. 2 issued on May 4, 2018 by revoking Items No. 1.3 and No. 11 and adding new Work Ordered Items No. 17, 18, 19, 20, 21, 22, 23, 24 and 25:**

**Reason for issuing amendment No. 3 to *Directors Order*:**

1. On October 26, 2018 the *Company* obtained an amended Environmental Compliance Approval for the Industrial *Sewage Works* on *Site* (*ECA*). The purpose of this amendment was to extend the expiry date of the proposed works in the *ECA* and to provide some clarity regarding the sampling requirements.

2. Work Ordered Items No. 1.3 and No. 11 of the *Director's Order* are hereby revoked. These Work Ordered Items are now regulated under Conditions within the recently amended *ECA*.

3. On June 1, 2018 the *ministry* issued a letter to the *Company* requesting a water balance to be developed for the *Site* because of concerns that effluent might overflow from the polishing pond into the natural environment. Similar concerns were reiterated within the Dam Safety Review (DSR) dated March 21, 2019 prepared by Tulloch Engineering Inc (Tulloch). The *Company* had provided a copy of the Tulloch report to the Ministry of the Environment, Conservation and Parks on April 3, 2019. The DSR stated that the *Site* has no long-term water level monitoring program and recommended monitoring and recording of water levels and significant storm events to help understand seepage rates through the dams. Tulloch noted that the *Company* had installed staff gauges within the Tailings Management Area (TMA); however, they were being moved regularly by the *Company's* staff as the water levels fluctuated and such movement of the staff gauges rendered them unable to provide a long-term record of consistent water levels.

4. The *Company* is required to implement an action plan that will enhance treatment on *Site* through *Director's Order Amendment No 1*. Currently the *Company* has not complied with Work Order Item No. 7 that requires taking all necessary steps to complete the action plan.

The current industrial *sewage works* on *Site* is considerably undersized compared to its approved design under the *ECA*. The newly amended *ECA* provides an extension to December 31, 2020 to construct the modifications to the existing industrial *sewage works* to the approved design. The undersigned *Director* is concerned that continued delays in construction will occur and that this, in combination with the *Company* not yet having implemented all of the items in their work plan as required in Work Order Item No 7., will lead to further effluent discharge limit exceedances and potential impact on the receiving waters.

The *ECA* application that the *Company* submitted to the *ministry* in 2013 which forms the basis of the 2018 *ECA* description of proposed works indicated that the length of the Stormwater Trench & Groundwater Collection System is insufficient to contain stormwater runoff and groundwater interception of the water flow from the 9.0 hectare (ha) Mill Yard area. The proposed Stormwater Trench & Groundwater Collection System is intended to collect stormwater and groundwater with low pH and high metal concentrations from the Mill Yard that will otherwise enter Graphite Lake.

In addition, Tulloch's DSR states that the current Polishing Pond Dam does not have adequate spillway capacity or freeboard to pass the IDF (Inflow Design Flood), and that the current Polishing Pond Dam would be overtopped during an IDF event. Further Tulloch's recommendation is to raise the Polishing Pond Dam.

Work Ordered Items No. 18, 19, 20, 21, 22, 23, 24 and 25 is added to the *Director's Order* through this amendment to require the construction of the Polishing Pond System and Stormwater Trench & Groundwater Collection Systems as approved by the amended *ECA* by December 31, 2019.

## **PART 2: WORK ORDERED**

2.1 For the reasons set out previously and pursuant to the authority vested in me under sections 17, 18(1), 18(2) and 196(1) of the *EPA*, and sections 31, 32, 60, 61, 91, 92 and 104 (2) of the *OWRA*, I hereby order the parties named in this Order, jointly and severally, to take all steps necessary to cause to be done the following:

### **Item No. 17**

Work Ordered Items No. 1.3 and No. 11 of the *Director's Order* are hereby revoked.

### **Item No. 18**

By 12 days after the Order is served the *Orderees* shall retain a *Qualified Person* to complete the planning, designing, composing, evaluating, advising, reporting, directing and supervising of engineering work related to Work Items 19, 20, 21, 22, 23, 24 and 25. The *Orderees* shall provide a copy of this *Director's Order* including all amendments to the *Qualified Person*.

### **Item No. 19**

By 40 days after the Order is served, the *Orderees* shall have the *Qualified Person* design and submit to the *Director* a long term water level monitoring program to address the concerns raised in the Tulloch's DSR and to support future operation of the *Sewage Works* for the purpose of safeguarding the environment that includes but is not limited to the following:

- Installation of permanent water level staff gauges that function for all water level scenarios.
- Measurements tied to the Canadian Geodetic Datum (or to a common datum used throughout the mine *site*) and verified by an Ontario Licensed Surveyor.
- Monitoring frequency that includes weekly measurement records with an increase to daily measurement records following significant storm events.
- Records to be kept on *site* and made available upon request by the *Ministry*.

### **Item No. 20**

By 80 days after the Order is served, the *Orderees* shall implement the long term water level monitoring program and have the *Qualified Person* submit written

confirmation to the *Director* that the long term water level monitoring program has been implemented as per their design.

**Item No. 21**

By October 31, 2019, the *Orderees* shall complete the Polishing Pond dam raise that is described in Stantec Consulting Ltd.'s Geotechnical Design Report dated March 9, 2012 forming Schedule A of the *ECA*.

**Item No. 22**

By November 30, 2019, the *Orderees* shall have the *Qualified Person* submit to the *Director* a prepared statement, certified by the *Qualified Person*, that the Polishing Pond Dam raise has been constructed in accordance with Stantec Consulting Ltd.'s Geotechnical Design Report dated March 9, 2012 forming Schedule A of the *ECA*.

**Item No. 23**

By December 31, 2019, the *Orderees* shall construct works entitled "Polishing Pond System" (with the exception of the Polishing Pond dam raise which is required in Work Order Item No. 21) and the "Stormwater Trench & Groundwater Collection Systems" that are described under the heading Proposed Works in the *ECA*.

**Item No. 24**

By January 31, 2019, the *Orderees* shall have the *Qualified Person* submit to the *Director* a prepared statement, certified by the *Qualified Person*, that the works entitled "Polishing Pond System" (with the exception of the Polishing Pond Dam raise which is required in Work Order Item No. 22) and the "Stormwater Trench & Groundwater Collection Systems" is constructed in accordance with the *ECA*.

**Item No. 25**

By December 31, 2020, the *Orderees* shall have the *Qualified Person* submit to the *Director* a set of the as-built construction drawings of the works entitled "Polishing Pond System" and the "Stormwater Trench & Groundwater Collection Systems".

**PART 3: DEFINITIONS**

"*Company*" means Ontario Graphite, Ltd. (OGL)

"*Director*" means the undersigned Director or any other person as may be designated as a Director for the purposes of this Order.

"*EAPD*" means the *Ministry's* Environmental Assessment and Permissions Division

previously known as the Environmental Approvals Branch “*EAB*”.

“*ECA*” means Environmental Compliance Approval No. 2876-B3AQTS.

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

“*Ministry*” means the Ontario Ministry of the Environment, Conservation and Parks previously known as Ontario Ministry of the Environment and Climate Change “*MOECC*”.

“*Orderees*” means collectively, the *Company* – Ontario Graphite, Ltd., Ellerton Castor, Tom Burkett and Derek Hirsch.

“*OWRA*” means the Ontario Water Resources Act, R.S.O. 1990, c. O.40, as amended.

“*Qualified Person*” means a person who (a) holds a license, limited license or temporary license under the Professional Engineers Act, R.S.O. 1990, c. P. 28.

“*Sewage*” has the same meaning as provided in the *OWRA*.

“*Sewage Works*” has the same meaning as provided in the *OWRA*.

“*Site*” means the property known as Kearney Graphite Mine *Site* located at 2142 Forestry Tower Road, Lot 7 & 8, Concession 10, Former Township of Butt, Town of Kearney, District of Parry Sound, Ontario, Canada.

#### **PART 4: GENERAL**

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.

Nothing in this Order should be construed as prejudging any decision that the *EAB* Director may make in respect of an application for approval of a *sewage works* and is in no way binding on the *EAPD* Director in relation to the granting of approval or any terms and conditions specified therein.

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.

Non-compliance with the requirements of this Order constitutes an offence.

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.

In the event any party to this Order is, 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 party, or
- (d) any other cause whether similar to or different from the foregoing beyond the reasonable control of the party,

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.

All documentation submitted to the *Director* pursuant to the requirements of this Order shall be submitted to:

*Director*  
Carroll Leith, District Manager  
Timmins District Office  
Ministry of the Environment and Climate Change  
Ontario Govt. Complex  
5520 - Hwy 101 E  
PO Bag 3080  
South Porcupine ON,  
P0N 1H0  
Email: [Carroll.leith@ontario.ca](mailto:Carroll.leith@ontario.ca)

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

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, Ontario  
Tel: (416) 212-6349  
Toll free: 1-866-448-2248  
Email: ERTTribunalsecretary@ontario.ca

and

Director  
Carroll Leith, District Manager  
Timmins District Office  
5520 – Hwy 101 E, PO Bag 3080  
South Porcupine, ON  
P0N 1H0  
Tel: (705) 235-1500  
Fax: (705) 235-1520  
Email: Carroll.leith@ontario.ca

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 Fax: (416) 326-5370 or 1-844-213-3470 TTY

1-800-855-1155 via Bell Relay

Web: [www.ert.gov.on.ca](http://www.ert.gov.on.ca)

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.

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.

Original signed by Carroll Leith

Director

Signed at the City of Timmins, Ontario on the 12<sup>th</sup> day of, April, 2019.