



Environmental Appeal Board

Citation: *Envirogreen Technologies Ltd. v. Director, Environmental Management Act*, 2026 BCEAB 35

Decision No.: EAB-EMA-26-A005

Decision Date: 2026-08-21

Method of Hearing: Conducted by way of written submissions concluding on May 14, 2026

Decision Type: Preliminary Decision on a Stay Application

Panel: Darrell Le Houillier, Panel Chair

Appealed Under: *Environmental Management Act*, S.B.C. 2003, c. 53

Between:

Envirogreen Technologies Ltd.

Appellant

And:

Director, *Environmental Management Act*

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Chris Elrick

For the Respondent: Philip McLaughlin and Christina Clemente

PRELIMINARY DECISION ON A STAY APPLICATION

[1] This appeal relates to a hazardous waste facility operating at Registered Site RS-108253 in Princeton, British Columbia (the “Facility”). The Facility has been operating since 1998. It is operated by Envirogreen Technologies Ltd. (the “Appellant”), under Permit 13075 (the “Permit”). The Permit was originally issued under the *Waste Management Act*, R.S.B.C. 1996, c. 482, which preceded the currently applicable legislation, the *Environmental Management Act*, S.B.C. 2003, c. 53 (the “Act”). The Facility is currently governed by the Act and the *Hazardous Waste Regulation*, B.C. Reg. 63/88 (the “Regulation”) and must conform to the requirements of the Permit, which is now administered under the Act.

[2] For some period of time leading up to 2019, the Facility operated under a reclamation bond provided by a mine (named, at various points, the Similco Mine and the Copper Mountain Mine). In 2019, however, the Facility was removed from the bond and so ceased to have associated financial security for its operation.

[3] On December 18, 2025, Andrea Doll, a delegate for the Director, *Environmental Management Act* (the “Respondent”), issued a decision (the “Decision”) pursuant to section 17(2) of the *Regulation*. The Decision requires the Appellant to post and maintain \$8,637,000 in security for the Facility.

[4] The Appellant appealed the Decision, as well as three other decisions not at issue in this preliminary decision. The Respondent is the only other party to the appeal. The Appellant raises four arguments in the appeal:

- financial security is not necessary as the Appellant says there will be no hazardous waste remaining on-site upon closure;
- the Respondent failed to exercise independent judgment in this case, instead relying on policy and “standard practice” as either determinative or as creating a rebuttable presumption inconsistent with the analysis required to mandate a party to post security under the Act;
- the Respondent contravened the rules of procedural fairness by relying on information not available to the Appellant in making the Decision; and
- the Respondent made errors in calculating the security amount.

[5] The Appellant applied for a stay of the Decision, referring to the three-part test from *RJR-Macdonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) (“*RJR*”). In this application, the Appellant has also argued that a stay would preserve the status quo and, in any event, the security payment is premature as the responsible ministry, the Ministry of the Environment and Parks, is still finalizing its review of the Appellant’s application for the Facility, while still awaiting confirmation of land tenure from a different ministry (either the Ministry of Mining and Critical Minerals or the Ministry of Water, Land and Resource Stewardship).

[6] The Respondent opposes the stay application and based her arguments on the test found in *RJR*.

[7] *RJR* sets out three requirements for a stay to be granted, all of which must be established by the applicant for a stay:

- there must be a serious issue to be tried;
- the applicant will suffer irreparable harm if the stay is denied; and
- the balance of convenience must favour granting the stay.

PROCEDURAL RULING

[8] The Board set page limits for the submissions of each party in this case and for the Appellant's reply. Initial submissions conformed to these limits.

[9] The Appellant exceeded the page limit for the reply but submitted, after that reply, a request that the Board allow it to exceed the page limit. The Appellant argued that exceedance of the page limit should be allowed in this case because two of the relevant facts changed after it filed its original submissions: it obtained land tenure from the Ministry of Water, Land and Resource Stewardship (a fact referenced in the Respondent's submissions) and subsequently contracted with another company, Copper Mountain Mine (BC) Ltd., which the Appellant stated was relevant to the land tenure issue. The Appellant also argued that the Respondent made speculative assertions that required substantial rebuttal, including the provision of new evidence, for which the Appellant also sought leave to submit along with its reply.

[10] The Respondent objected to both the reply in excess of the page limit set by the Board and to the submission of new evidence along with the Appellant's reply. The Respondent sought the opportunity to make additional submissions if needed.

[11] The reply addresses some matters within the proper scope of reply, including the change in circumstances after it provided its submissions, as described by the Appellant. I have considered those matters in my reasons, below.

[12] There are also matters that are beyond the appropriate scope of reply, based on the law as set out in *R. v. Krause*, 1986 CanLII 39 (SCC), which states, at paragraph 16:

The plaintiff or the Crown may be allowed to call evidence in rebuttal after completion of the defence case, where the defence has raised some new matter or defence which the Crown has had no opportunity to deal with and which the Crown or the plaintiff could not reasonably have anticipated. But rebuttal will not be permitted regarding matters which merely confirm or reinforce earlier evidence adduced in the Crown's case which could have been brought before the defence was made. It will be permitted only when it is necessary to insure [*sic*] that at the end of the

day each party will have had an equal opportunity to hear and respond to the full submissions of the other.

[13] Consistent with this statement of the law on scope of reply, I have not considered matters first raised in reply that should have reasonably been anticipated when the Appellant filed its initial submissions. There are three such issues. First is the quality of evidence the Appellant relied upon in support of the application. The Appellant should have expected that the Respondent would challenge that evidence. Second are the impacts of the unresolved land tenure issue, which the Appellant raised in initial submissions and should have known to discuss thoroughly in submissions. The third is evidence providing financial details pertaining to its held cash, assets, existing debt, and operating cash flows, as well as submissions as to the impacts a denial of the stay application would have, given that information. The initial submissions described financial impacts to the Appellant, so the Appellant should have anticipated the need to provide and discuss such evidence.

[14] Given the constrained manner in which I have considered the Appellant's reply, I do not consider it necessary to invite further submissions from the Respondent.

ISSUE

[15] The issue to be address in this preliminary decision is whether the Decision should be stayed pending the outcome of this appeal.

EVIDENCE

[16] The Appellant provided a letter from Terry Michalakos, the Executive Vice President, Surety for North America with Trisura, an underwriting company. This letter indicates that "no underwriting company," through industry standard practice, could underwrite the amount of the security in this case for as long as its operating permit and land tenure remain uncertain. Furthermore, according to the letter, even if underwriting were possible, the Appellant would need to allocate or raise collateral for "up to the full security amount" of the security, which would remain encumbered for as long as the security were in place. There would be additional, annual, non-refundable premiums and charges on a percentage basis. The Appellant says that this would increase its operational expenses by 100 to 500% and render the Facility economically unviable.

[17] The Respondent provided an affidavit in support of her position. In her affidavit, the Respondent described the requirement for financial security is a "fundamental pillar" of environmental management and public policy and a tool of risk management, ensuring that the costs of managing hazardous waste remain with operators and not the public.

SUBMISSIONS

Serious Issue to be Tried

[18] With respect to the first branch of the test, the Appellant says there is a serious issue to be tried: whether the Respondent properly exercised their discretion to require the Appellant to post security in the circumstances of this case. The Respondent agrees the appeal raises a serious issue to be tried.

Irreparable Harm

[19] With respect to the second branch of the test, the Appellant argues that incurring compliance costs that cannot be recovered as damages from the Crown satisfy the requirement for irreparable harm (*Amazon.com.ca ULC v. Canada (Attorney General)*, 2024 FCA 217 (CanLII) ("*Amazon*"). The Appellant argues such circumstances exist here, as providing the required security would result in substantial financial costs which cannot be reversed should the Appellant succeed in its appeal.

[20] The Respondent notes that *RJR* describes "irreparable harm" accordingly:

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 1988 CanLII 5042 (SK QB), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, *supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, 1985 CanLII 154 (BC CA), [1985] 3 W.W.R. 557 (B.C.C.A.)).

[21] The Respondent says the Appellant did not provide any financial evidence to support its position. There is likewise no evidence to support that the Appellant cannot post security "... through existing cash, financing, asset liquidation, corporate restructuring, or alternative permissible forms of security." The Respondent points out that the Appellant has been aware for years that financial security may be required, during which time the Appellant had the opportunity to secure financing or alternative security arrangements.

[22] In reply, the Appellant argues that any means of paying the security has an associated, irreparable cost, whether that represents an opportunity cost, operational disruption, or interest. Furthermore, the Appellant says that it is immaterial that it was

aware a decision requiring financial security to be posted may be forthcoming, as there was no enforceable decision on that point.

Balance of Convenience

[23] With respect to the third branch of the test, the Appellant argues, if the stay is denied and it succeeds on appeal, it will have incurred substantial costs associated with posting the required security. On the other hand, if the stay is granted and the Appellant's appeal is unsuccessful, the status quo will continue: the Facility has been operating since 1998 without any security. The Appellant further argues there is no evidence of urgency or environmental risk that requires the immediate posting of security, and the Appellant has no plans to close the Facility. The Appellant says, should its appeal be unsuccessful, it can always post security at that point. The Appellant argues that, in *Amazon*, similar facts militated in favour of a stay (para. 27).

[24] Furthermore, the Appellant argues that the public interest favours a stay as the Facility remains regulated by the Permit, the *Act*, and the *Regulation*. The Appellant argues there is no evidence that a stay would create environmental risk or harm to the public. The Appellant says the public interest is in ensuring that regulatory decisions are lawfully made and that appellants do not incur irreversible costs before their appeals can be adjudicated.

[25] The Respondent argues there is a public interest favouring against the stay. The Respondent relies on *RJR*, where it says that when an authority is charged with promoting or protecting the public interest and there is some indication that the impugned decision was undertaken pursuant to that responsibility, an assumption should be made in most cases that irreparable harm would arise to the public interest should the decision be stayed. The Respondent says, in this case, the security requirement advances the core objectives of the *Act* and *Regulation*: it ensures the safe management of hazardous waste and the availability of funds to remediate potential environmental harm when the Facility closes.

[26] The Respondent also argues that the fact the Appellant does not have a land tenure likewise weighs against the granting of a stay, as the lack of tenure increases the risk that the Appellant would be unable to continue its business and would walk away from the enterprise. This means financial security is even more important in the circumstances of this case.

[27] In reply, the Appellant says that the portion of *RJR* quoted by the Respondent applies to *Charter* cases, not ones like this, which is purely pecuniary and does not immediately affect anyone outside of the parties. Broader impacts depend on a hypothetical future event, the likelihood of which is not supported by the evidence.

ANALYSIS AND DECISION

[28] The parties both relied on the test from *RJR* to determine if a stay should be granted, which is comprised of the three requirements set out above.

Serious Issue to be Tried

[29] The parties agree there is a serious issue to be tried. I agree. The first requirement of the *RJR* test is satisfied.

Irreparable Harm

[30] As noted above, the Appellant bears the burden of establishing irreparable harm is likely to result if the stay is denied. It has not provided sufficient evidence to do so. I understand that payment of the security before the appeal is decided will result in some associated cost, whether it comes in the form of interest and/or fees, opportunity cost, disruption, or some other non-recoverable cost. This does not establish irreparable harm, however.

[31] Stay decisions have shown varied approaches to the assessment of irreparable harm. At paragraph 15 of *Amazon*, for example, the court was satisfied that an irrecoverable payment of \$1.25 million per year would amount to irreparable harm, even without any evidence on the impact such a payment would have on the companies required to pay that sum.

[32] There is insufficient information before me as to what the payments or costs associated with providing the security would be, and so I cannot make a similar inference as in *Amazon*. The Appellant argues the payments would be “significant,” but there is insufficient detail before me to allow me to assess the significance or irreparable quality of such possible costs.

[33] As stated above, I have not considered the financial information the Appellant provided with its reply, as well as the associated arguments relying upon it. This information should have been provided along with the Appellant’s initial submissions to establish the facts foreseeably required for a stay to be granted. Allowing the Appellant to provide that information in reply would amount to the Appellant splitting their case on this application. This would result in unfairness to the Respondent, which could only be cured by spending considerably more time for additional iterations of submissions that the Board cannot feasibly allow while providing a reply with sufficient time for any stay to be an effective remedy.

[34] In reaching my conclusion that there is insufficient evidence to establish irreparable harm, I have not relied on the arguments pertaining to whether the Appellant had advance notice of the possibility of financial security being required and the time to

prepare for its payment. I do not consider it necessary to address these arguments in the circumstances as the Appellant provided insufficient evidence to satisfy the second branch of the test from *RJR*, even without considering this question.

Balance of Convenience

[35] While it is not strictly necessary for me to address this requirement because the Appellant has failed to satisfy the second branch of the *RJR* test, I note that there is a similar insufficiency of evidence before me with respect to the third branch. The Appellant has established the requirement to pay some cost (financial, opportunity, operational, etc.) but has not established how that will impact its business or operations, nor has it quantified what these financial costs might be.

[36] I also acknowledge that, if the stay were granted, the present status quo would continue. However, the evidence supports that security was in place for the Facility up to 2019 and, after that security became inapplicable to the Facility, the government sought to impose a requirement for financial security once more. I am not satisfied that the current circumstances represent the overall regulatory requirements to which the Appellant has been subject dating back to the opening of the Facility.

[37] I am satisfied, however, there is a presumption of public interest that militates against a stay as set out in *RJR* and referenced by the Respondent. The Respondent is charged with promoting or protecting the public interest, including human health and the environment, and the impugned decision was made for reasons in support of that responsibility, as established in the Respondent's affidavit. While the Respondent has not provided evidence to support that financial security will need to be used, that is not the relevant decision here: the requirement of the Appellant to post financial security. This is a tool of risk management, as described in the Respondent's affidavit, ensuring that some level of liquid resources is available to deal with unexpected or unplanned circumstances such as unforeseen environmental impacts or incomplete or inadequate closure of the Facility. The posting of security is not supported only when there is evidence of that the funds in question will likely be needed.

[38] While the Appellant argued this presumption applies only to *Charter* cases, I disagree. Paragraph 71 of *RJR* begins with stating that the public interest will be widely construed in *Charter* cases before explaining that, "In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant." The test to establish a presumption of public interest militating against a stay, as described above, is then set out. This test is not limited to *Charter* cases, but is more widely construed in such cases, compared to non-*Charter* cases where a public authority has acted in furtherance of a duty to protect the public interest.

CONCLUSION

[39] For the reasons provided above, I deny the Appellant's application for a stay. In reaching this decision, I have reviewed all evidence and submissions, except where otherwise stated in this preliminary decision.

"Darrell Le Houillier"

Darrell Le Houillier, Panel Chair
Environmental Appeal Board