

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** June 17, 2016

**CASE NO.:** 16-058

**PROCEEDING COMMENCED UNDER** section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Union Gas Limited (File No. 16-058)  
Appellant: Coca-Cola Refreshments Canada Company  
(File No. 16-059)  
Appellant: Rosart Properties Inc. (File No. 16-060)  
Respondent: Director, Ministry of the Environment and Climate  
Change  
Subject of appeal: Order to undertake work with respect to  
contaminants  
Reference No.: 4280-A8JQEX  
Property Address/Description: Site 1) 1565 Barton Street East  
Site 2) 1575 Barton Street East  
Site 3) 360 Strathearne Avenue North  
Municipality: City of Hamilton  
ERT Case No.: 16-058  
ERT Case Name: Union Gas Limited v. Ontario (Environment and  
Climate Change)

Heard: In writing

**APPEARANCES:**

**Parties**

**Counsel**

Union Gas Limited

Leonard Griffiths and Sarah Gilbert

Coca-Cola Refreshments Canada  
Company

Patrick G. Duffy and Patrick J. Corney

Rosart Properties Inc.

Peter Pickfield

Director, Ministry of the  
Environment and Climate Change

Isabelle O'Connor and Justin Jacob

**ORDER DELIVERED BY JERRY V. DEMARCO**

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**REASONS****Background**

[1] On April 19, 2016, the Director, Ministry of the Environment and Climate Change ("MOECC"), issued Order No. 4280-A8JQEX (the "Director's Order") against AVX Corporation, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart Properties Inc. pursuant to s. 17, 18, and 196 of the *Environmental Protection Act* ("EPA"). The Director's Order relates to the presence and migration of contaminants on three properties located in Hamilton, Ontario: (1) 1565 Barton Street East, (2) 1575 Barton Street East, and (3) 360 Strathearne Avenue North.

[2] Pursuant to s. 140 of the *EPA*, Union Gas Limited filed a notice of appeal with the Environmental Review Tribunal (the "Tribunal") on May 3, 2016, and Coca-Cola Refreshments Canada and Rosart Properties Inc. filed notices of appeal on May 4, 2016 (the "Appellants"). AVX Corporation did not appeal the Director's Order.

[3] On June 3, 2016, the parties jointly requested, in writing, a stay of portions of the Director's Order as against the Appellants. The parties further requested that a telephone conference call ("TCC") be set for on or about September 30, 2016.

**Analysis and Findings**

[4] The parties indicated to the Tribunal in their June 3, 2016 request that, if the stay is granted, they will convene meetings of the relevant experts followed by meetings of the parties to attempt to resolve the issues related to the Director's Order.

[5] On June 10, 2016, the parties further advised the Tribunal that:

With respect to Rule 110 (a), the parties jointly submit that they have satisfied themselves in the circumstances of this case that all statutory tests for granting of the specific stay requested are met, including the test under section 143 of the *Environmental Protection Act*. In addition, the parties have satisfied themselves that there are no statutory bars to approval of the stay for the specific conditions for which the stay is requested.

[6] On June 15, 2016, the parties jointly submitted proposed draft wording for the requested stay of s. 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order as against the Appellants until December 31, 2016. Those sections address a number of steps to be undertaken over the coming months, including: the retention of a qualified professional (QP), the provision of available data on contaminants of concern to the QP, the development of a conceptual site model for the properties, and the submission of the model to the MOECC District Manager.

[7] The parties' agreement regarding the request for a stay is subject to the following conditions:

The Director and the Appellants consent to the terms of this Order, and compliance with the terms of this Order shall be without prejudice to any position the parties may take with respect to all or any part of the Director's Order.

Nothing in this Order shall fetter the discretion of the Director to take any regulatory action as may be necessary in the circumstances.

[8] Based on the parties' written submissions and a review of the portions of the Director's Order that are the subject of the stay request, the Tribunal finds that it is not precluded under s. 143(2) or s. 143(3) of the *EPA* from issuing a stay of s. 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order. Given that the requested stay is on consent of all parties and has the effect of extending some of the deadlines in the Director's Order while the parties attempt to resolve matters, there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice* (the "Rules"). Subject to the conditions of the parties' agreement set out above, the Tribunal grants the requested stay based on terms that largely follow the proposed draft wording provided by the parties, as set out below.

**ORDER**

[9] The Tribunal orders that:

1. Sections 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order are stayed as against the Appellants until December 31, 2016.
2. The report required by s. 3.3.1.4 of the Director's Order, to be submitted pursuant to s. 3.5.1, shall be submitted to the MOECC District Manager by December 31, 2016.
3. The Director or the Appellants may seek a removal or modification of this Order on 15 days' notice to the other parties and in accordance with Rule 108 of the Tribunal's Rules.
4. A status update TCC will be held on or about September 30, 2016, at which time the parties will update the Tribunal on this matter and address procedural matters such as scheduling a date for a preliminary hearing.

*Request for Stay Granted  
Telephone Conference Call Scheduled*

*"Jerry V. DeMarco"*

JERRY V. DEMARCO  
ASSOCIATE CHAIR

If there is an attachment referred to in this document,  
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**Environmental Review Tribunal**

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