

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: November 07, 2016

CASE NO.:

15-086

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

Appellant: See Appendix 1 - Appellant list
Respondent: Director, Ministry of the Environment and Climate Change
Subject of appeal: Order to develop and implement measures that prevent, decrease or eliminate any adverse effects from the discharge of contaminants related to the Belleville Gas Plant
Reference No.: 6480-9RTQVJ
Property Address/Description: 100 South Church Street
Municipality: City of Belleville
Upper Tier: County of Hastings
ERT Case No.: 15-086
ERT Case Name: Belleville (City) v. Ontario (Environment and Climate Change)
Heard: January 11, 2016 at Belleville, Ontario and May 9, October 6 and 13, 2016 by telephone conference call

APPEARANCES:

Parties

Counsel

Corporation of the City of Belleville

Harry J. Dahme and Natalie K. Mullins

835267 Ontario Inc., Sidney Spiegel and Naomi Spiegel

Tom Friedland and Brad Halfin

105 Pinnacle Limited, Kent D. Hawkins, Darlene Hawkins and Anthony J. McGarvey

R. Andrew Biggart and John R. Hart

Director, Ministry of the
Environment and Climate
Change

Paul McCulloch and Sarah Kromkamp

ORDER DELIVERED BY ROBERT V. WRIGHT

REASONS

Background

[1] On August 31, 2015, Brian Kaye, Director, Ministry of the Environment and Climate Change (“MOECC”), issued Director’s Order No. 6480-9RTQVJ (the “Director’s Order”) to the Corporation of the City of Belleville, 835267 Ontario Inc., Sidney Spiegel, Naomi Spiegel, 105 Pinnacle Limited, Kent D. Hawkins, Darlene Hawkins, and Anthony J. McGarvey regarding the former manufactured gas plant site in the City of Belleville, County of Hastings, Ontario (the “Site”). The location of the Site is more fully described in Appendix 2.

[2] By a notice of appeal filed with the Environmental Review Tribunal (the “Tribunal”) on September 15, 2015, the Corporation of the City of Belleville appealed the Director’s Order, requiring a hearing pursuant to s. 140 of the *Environmental Protection Act* (the “EPA”).

[3] By a notice of appeal filed with the Tribunal on September 16, 2015, 835267 Ontario Inc., Sidney Spiegel, and Naomi Spiegel also required a hearing pursuant to s. 140 of the *EPA*.

[4] By a notice of appeal filed with the Tribunal on September 16, 2015, 105 Pinnacle Limited, Kent D. Hawkins, Darlene Hawkins, and Anthony J. McGarvey also required a hearing pursuant to s. 140 of the *EPA*.

[5] The above appellants will be collectively referred to as the “Appellants”.

[6] The pre-hearing conference commenced on January 11, 2016, in person, in the City of Belleville, Ontario, and was continued by telephone conference call (“TCC”) as noted above.

[7] The parties seek to adjourn the hearing in furtherance of agreed upon changes to compliance dates in the Director’s Order.

Relevant Rules

[8] The following are the relevant Rules of Practice of the Tribunal (the “Rules”):

Motions for Adjournment

105. In deciding whether or not to grant a request for an adjournment, the Tribunal may consider:
- (a) the interests of the Parties in a full and fair Hearing;
 - (b) the interests of others potentially affected by the matters before the Tribunal who, after notification of the Hearing, may have arranged their affairs in the expectation of observing or participating in the Hearing;
 - (c) the integrity of the Tribunal’s process;
 - (d) the circumstances giving rise to the need for an adjournment;
 - (e) the timeliness of the request for the adjournment;
 - (f) the position of the other Parties on the adjournment request;
 - (g) whether an adjournment will cause or contribute to any existing or potential risk of environmental harm;
 - (h) the consequences of an adjournment, including expenses to other Parties;
 - (i) the effect of an adjournment on Participants and Presenters;
 - (j) the public interest in the delivery of the Tribunal’s services in a just, timely and cost effective manner; and
 - (k) whether the proceeding before the Tribunal is an appeal of a renewable energy approval under section 142.1 of the *Environmental Protection Act*.
106. If the request for an adjournment is based upon the need for environmental testing or other similar events, the adjournment order, if it is granted, shall be to a set date and may include a requirement for periodic progress reports to the Tribunal.
107. In granting an adjournment, the Tribunal may impose such conditions as it considers appropriate.

Discussion, Analysis and Findings

[9] The parties consent to adjourning the hearing to a date in June 2017, pursuant to Rule 106, for a status update TCC.

[10] In email correspondence from counsel for the Director, and confirmed in the TCCs by all of the parties, the Tribunal was advised that the parties have agreed to two work plans (the “Work Plans”): one for the east and west portions of the Site, and the other for the immediate and greater areas. The Work Plans include additional vapour monitoring, groundwater monitoring, and surface water and sediment monitoring. It is expected that this will inform what further work and/or risk management measures should be implemented to comply with the Director’s Order or narrow the scope of the issues in this hearing.

[11] The parties agree that it will take a longer period of time to develop and implement a remedial action plan for the Site than the completion date of September 2017 set out in the Director’s Order. The other parties consent to the Director’s intended amendments to Item Nos. 2, 17, 32 and 40 of the Director’s Order by deleting the wording: “... work completion date within two (2) years of the date of the issuance of this Order” and replacing it with “... work completion date within two (2) years of the date of acceptance by the Director of this Work Plan”, with the amended dates applying to all orderdees.

[12] The other parties also concur with the Director’s submissions that the hearing should be adjourned to facilitate the proposed amendments to the Director’s Order, and that it is fair and reasonable to amend the compliance deadline in the Director’s Order, because:

- although the appeal and the mediation process have resulted in an unanticipated delay, this allowed the parties to have input into and agree to the contents of the Work Plans;
- the Director’s Order is currently being complied with and there is no stay in effect;

- there is no evidence of any danger to the health or safety of any person, additional impairment of the quality of the natural environment, or any additional serious risk of damage to any property or plant or animal life; and
- the delay in implementing the Director's Order will not significantly alter the final timeline. The contamination caused by, and that emanated from, the former gas manufacturing plant has been in the natural environment for many years and the remediation and/or management of the contamination will likely continue for many years .

[13] The Tribunal has considered the matters in Tribunal Rule 105 in deciding whether to grant the request for an adjournment, sub-paragraphs (a), (d), (e), (f) and (g) in particular. On the basis of the Director's submissions, and the consent of all of the parties, it appears fair and reasonable for the Director to amend the compliance dates in the Director's Order and the Tribunal finds that the adjournment request meets the requirements of Rule 105.

ORDER

[14] The hearing is adjourned to June 15, 2017 at 9:30 a.m. for a status update TCC, with further particulars of the call-in information to be provided to the parties by the Case Coordinator.

Adjournment Granted

"Robert V. Wright"
ROBERT V. WRIGHT
VICE-CHAIR

Appendix 1 - Appellant List

Appendix 2 - Site Location

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix 1**Appellant List**

Appellant Name	File No.
Corporation of the City of Belleville	15-086
105 Pinnacle Limited	15-087
Kent D. Hawkins	15-088
Darlene Hawkins	15-089
Anthony J. McGarvey	15-090
835267 Ontario Inc.	15-091
Sidney Spiegel	15-092
Naomi Spiegel	15-093

Appendix 2**Site Location**

Belleville's former manufactured gas plant site ("site") consists of:

Lots 9, 10 and Part Lot 11 (the most southerly twenty-five feet) on the west side of South Church Street, and Part Lot 11 (the most southerly twenty-five feet) on the east side of Pinnacle Street, City of Belleville, County of Hastings, Ontario.

These lots and part lots are located within the land parcel having Ontario Land Registry System property identification number 40482-0037 with municipal address 100 South Church Street, City of Belleville, County of Hastings, Ontario.

and

Lot 9 and Part Lot 11 (the most southerly twenty-five feet) on the east side of Pinnacle Street, City of Belleville, County of Hastings, Ontario.

This Lot and part lots are located within the parcel having Ontario Land Registry System property identification number 40482-0027 with municipal address 105 Pinnacle Street, of Belleville, County of Hastings, Ontario.

and

The parcel of land lying and being part of South Church Street, and being east of Part Lots 10 and 11 on the west side of South Church Street, City of Belleville, County of Hastings, Ontario.

This Land is located within the parcel having Ontario Land Registry System property identification number 40482-0038 and is part of South Church Street, City of Belleville, County of Hastings, Ontario.