

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 13, 2016

CASE NO.: 16-109

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

Appellant: Corporation of the City of Mississauga
Respondent: Director, Ministry of the Environment and Climate Change
Subject of appeal: Order to perform various work with respect to waste street sweepings
Reference No.: 3506-A8QGC3
Property Address/Description: Cayuga Site, Selkirk Site, and Other Sites
Municipality: Various municipalities
ERT Case No.: 16-109
ERT Case Name: Mississauga (City) v. Ontario (Environment and Climate Change)

Heard: December 9, 2016 by telephone conference call

APPEARANCES:

Parties

Corporation of the City of Mississauga

Director, Ministry of the Environment and Climate Change

Counsel

Harry Dahme, Natalie Mullins, and Annie My-Linh Thuan

Sylvia Davis

ORDER DELIVERED BY LAURIE BRUCE, MAUREEN CARTER-WHITNEY AND KAREN KRAFT SLOAN

REASONS

Background

[1] On November 30, 2016, Tim Webb, Director, Ministry of the Environment and Climate Change (“Director”) issued Director’s Order No. 3506-A8QGC3 (“Director’s Order”) to the Corporation of the City of Mississauga (“City”). The Director’s Order relates to street sweepings from the City that were delivered to various properties between 2004 and 2011.

[2] The City has appealed the Director’s Order in its entirety, including the work ordered pursuant to each item set out in Part 3, to the Environmental Review Tribunal (“Tribunal”).

[3] The City is seeking a stay of the Director’s Order pending the disposition of this appeal and an interim stay pending the disposition of the stay motion. A telephone conference call (“TCC”) was scheduled for December 9, 2016 in this regard.

[4] During the TCC, the parties requested, on consent, that the Tribunal grant an interim stay pending the disposition of the stay motion, which they requested to be heard in late January 2017. The Director requested that the Tribunal issue its disposition of the stay motion by the end of February 2017.

[5] During the TCC, the Director consented to the interim stay but without prejudice to any position he may take in arguing the stay motion. Counsel for the Director later emailed the Tribunal and the City to confirm that “the Director will not be arguing that either section 143(2) or 143(3) of the [*Environmental Protection Act*] apply to this particular appeal.”

[6] The parties have agreed to dates for the exchange of materials, including disclosure, evidence, submissions and authorities, in advance of the stay motion, as reflected in the Order below.

Issue

[7] The issue is whether the Tribunal should grant an interim stay of the Director's Order pending the disposition of the stay motion. The specific issues are whether s. 143(2) or 143(3) of the *Environmental Protection Act* ("EPA") prevent the Tribunal from issuing an interim stay in this case.

Relevant Legislation

[8] *Environmental Protection Act*

Tribunal may grant stay

143(2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a decision or order, other than,

- (a) an order to monitor, record and report; or
- (b) an order issued under section 168.8, 168.14 or 168.20.

When stay may not be granted

143(3) The Tribunal shall not stay the operation of a decision or order if doing so would result in,

- (a) danger to the health or safety of any person;
- (b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or
- (c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

Discussion, Analysis and Findings

[9] The Director and the City now agree that there is no statutory bar to the Tribunal granting an interim stay, including under s. 143(2) or 143(3) of the *EPA*.

[10] The Tribunal has reviewed the Director's Order and is satisfied there is no statutory bar to granting an interim stay. Therefore, the Tribunal finds that it is not prevented from ordering an interim stay as requested.

[11] Given that the interim stay is on consent of the parties, it is not necessary to analyze the elements listed in Rule 110 of the Tribunal's *Rules of Practice* relating to evidence and submissions in support of a motion for an interim stay.

[12] The Tribunal approves the schedule for the exchange of materials agreed to by the parties and has scheduled the hearing of the stay motion, as set out below.

ORDER

[13] The Tribunal orders that:

1. The request for an interim stay of Director's Order until the disposition of the stay motion is granted.
2. The dates for the exchange of materials, including disclosure, evidence, submissions and authorities, to be served and filed with the Tribunal are as follows: by the City by December 16, 2016; by the Director by January 13, 2017; and reply by the City by January 20, 2017.
3. The hearing of the stay motion is scheduled to take place on **January 23, 2017** at **10 a.m.** at:

**Environment and Land Tribunals Ontario
655 Bay Street, Hearing Room 12-4
Toronto, ON M5G 1E5**

*Request for Interim Stay Granted
Stay Motion Scheduled
Procedural Directions Ordered*

“Laurie Bruce”

LAURIE BRUCE
MEMBER

“Maureen Carter-Whitney”

MAUREEN CARTER-WHITNEY
VICE-CHAIR

“Karen Kraft Sloan”

KAREN KRAFT SLOAN
MEMBER

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

A constituent tribunal of Environment and Land Tribunals Ontario
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