

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 27, 2017

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: February 9, 2017 by telephone conference call

APPEARANCES:

Parties

Counsel

Union Gas Limited

Leonard Griffiths

Coca-Cola Refreshments Canada Company

Patrick G. Duffy

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 AND HEATHER I. GIBBS

REASONS**Background**

[1] This Order relates to the continuation of a stay.

[2] On April 19, 2016, the Director, Ministry of the Environment and Climate Change (“MOECC”), issued Order No. 4280-A8JQEX (“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.

[3] Pursuant to s. 140 of the *EPA*, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart Properties Inc. (“Appellants”) filed notices of appeal with the Environmental Review Tribunal (“Tribunal”). AVX Corporation did not appeal the Director’s Order.

[4] On June 17, 2016, the Tribunal issued an Order staying portions of the Director’s Order as against the Appellants, until December 31, 2016 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, 2016 CanLII 37491). In addition, the proceeding was adjourned on request of the parties until September 30, 2016.

[5] A status update telephone conference call (“TCC”) took place on September 30, 2016, at which time the parties requested that the proceeding continue to be adjourned because action was being taken on a without-prejudice basis in response to the Director’s Order. A further TCC was scheduled for February 9, 2017.

[6] During the TCC on February 9, 2017, the parties requested a further adjournment, as well as a continuation of the stay.

[7] The parties explained that a proposal had been submitted to the Director for a work program leading to finalization of a conceptual site model for the properties. They said that the Director provided comments on the proposal very recently, and the additional adjournment would permit the experts to consider the Director's comments and respond to them. The Appellants also requested that the stay of portions of the Director's Order, granted by the Tribunal on June 17, 2016, be continued until the next TCC. The Director consented to both requests.

Analysis and Findings

[8] In its Order of June 17, 2016, the Tribunal found that it was not precluded under s. 143(2) or 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 as against the Appellants.

[9] During the TCC on February 9, 2017, the parties confirmed that there are no statutory bars to the requested continuance of the stay.

[10] Based on the Tribunal's stay Order of June 17, 2016, and the parties' submissions on the February 9, 2017 TCC, the Tribunal finds that it is not precluded under s. 143(2) or 143(3) of the *EPA* from continuing a stay of the portions of the Director's Order that are the subject of the stay request.

[11] As was the case in the June 17, 2016 Order, the requested continuance of the 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. The Tribunal finds there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice* ("Rules").

[12] Subject to the same conditions set out in its June 17, 2016 Order, the Tribunal grants the requested continuation of the stay until the next TCC in this proceeding.

ORDER

[13] 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 May 9, 2017.
2. 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.
3. A status update TCC will be held on May 9, 2017, at which time the parties will update the Tribunal on this matter.

*Request for Continuation of Stay Granted
Telephone Conference Call Scheduled*

"Jerry V. DeMarco"

JERRY V. DEMARCO
ASSOCIATE CHAIR

"Heather I. Gibbs"

HEATHER I. GIBBS
VICE-CHAIR

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Environmental Review Tribunal

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