

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 05, 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:	September 29, 2017 by telephone conference call

APPEARANCES:

Parties

Union Gas Limited

Coca-Cola Refreshments Canada Company

Rosart Properties Inc.

Counsel

Sarah Gilbert

Patrick Corney

Peter Pickfield

Director, Ministry of the Environment and Justin Jacob
Climate Change

ORDER DELIVERED BY JERRY V. DEMARCO AND MARCIA VALIANTE

REASONS

Background

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

[2] On April 19, 2016, the Director, Ministry of the Environment and Climate Change, 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 status update TCC was scheduled and took place on February 9, 2017, at which time the parties requested a further adjournment, as well as continuation of the stay until the next TCC. The Director consented to these requests. Subject to the same conditions as set out in its June 17, 2016 Order, the Tribunal issued an order on February 27, 2017 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, [2017] O.E.R.T.D. No. 9) granting the requested continuation of the stay until the next TCC, scheduled for May 9, 2017.

[6] A further status update took place during the TCC on May 9, 2017. Rosart Properties Inc., explained to the Tribunal that work was progressing on the conceptual site model, that a revised report had been circulated, and that meetings were being held to discuss the report and work plan with the goal of finalizing the conceptual site model in the near future. The Appellants requested a further adjournment to another TCC and a further continuation of the stay. The Director consented. Union Gas Limited also requested that the stay be continued to a date four weeks following the date of the next TCC, to allow time for the parties to prepare for carrying out the Director's Order in the event the Tribunal does not grant a continuation of the stay at that TCC. The other Appellants agreed to that request. Subsequent to the TCC, the Director informed the Tribunal by email that he also consented to that request. Subject to the same conditions as set out in its June 17, 2016 Order, the Tribunal issued an order on May 30, 2017 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, [2017] O.E.R.T.D. No. 31) granting the requested continuation of the stay until September 28, 2017 and scheduling the next TCC for August 31, 2017.

[7] On August 31, 2017, a TCC was held. The parties informed the Tribunal that the conceptual site model had been prepared and reviewed and will be discussed at a meeting on September 13, 2017, with the goal of finalizing the model at that time. The Appellants requested a further adjournment to another TCC and a further continuation of the stay, on similar terms to those in the May 30, 2017 Order. The Director agreed. Subject to the same conditions as set out in its June 17, 2016 Order, the Tribunal issued an order on September 8, 2017 (see: *Union Gas Limited v. Ontario (Environment*

and Climate Change), [2017] O.E.R.T.D. No. 43) granting the requested continuation of the stay until October 27, 2017 and scheduling the next TCC for September 29, 2017.

[8] A TCC was held on September 29, 2017. The parties informed the Tribunal that progress has been made toward finalizing the conceptual site model and the work plan, with additional adjustments to be made at the request of the Director by October 6, 2017, which will necessitate an additional meeting of technical staff and consultants. The Appellants requested a further adjournment to another TCC and a further continuation of the stay, on similar terms to those in the previous orders. The Director agreed.

Analysis and Findings

[9] In its previous orders, 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. Based on these findings and the parties' submissions on the September 29, 2017 TCC that there has been no change in circumstances, the Tribunal finds that it is not precluded under s. 143(2) or 143(3) of the *EPA* from granting a continuation of the stay of these items in the Director's Order.

[10] As was the case in the earlier orders, the requested continuation 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 that there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice* ("Rules").

[11] Subject to the same conditions set out in its earlier orders, the Tribunal grants the requested continuation of the stay, until four weeks following the next TCC.

ORDER

[12] 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 28, 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 November 30, 2017, at 9:30 a.m., 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

"Marcia Valiante"

MARCIA VALIANTE
VICE-CHAIR

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Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
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