

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: April 13, 2018

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: March 28, 2018 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Corporation of the City of Mississauga

Harry Dahme, Andra Maxwell and Patrick Murphy

Director, Ministry of the Environment and Climate Change

Isabelle O'Connor, Jessica Rosenberg and Hayley Valteau (Articling Student)

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 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, defined in the Director's Order as the "Cayuga Site", "Selkirk Site", "Other Sites" and "Additional Sites".

[2] The Director's Order requires the City, by specified dates, to take all necessary steps to: share information in the City's possession relating to the street sweepings (Part 3a, Items No. 1 to 5); retain one or more Qualified Persons to complete work with respect to street sweepings at the Cayuga Site (Part 3b, Items No. 6 to 9); retain one or more Qualified Persons to complete work with respect to street sweepings at the Selkirk Site (Part 3c, Items No. 10 to 12); retain one or more Qualified Consultants to conduct a forensic audit regarding the Other Sites and Additional Sites, prepare a report and submit it to the Director and Public Health Officials (Part 3d, Items No. 13 to 16); and retain one or more Qualified Persons to complete work with respect to street sweepings at the Other Sites, and the Additional Sites where a specific property address is known (Part 3d, Items No. 17 to 20).

[3] On December 6, 2016, the City filed a notice of appeal of the Director's Order with the Environmental Review Tribunal ("Tribunal"). The City appealed the Director's Order in its entirety, including the work ordered pursuant to each Work Item set out in Part 3. The grounds of the City's appeal are that:

- the street sweepings are not "waste" within the meaning of the *Environmental Protection Act* and applicable regulations, and the Director has no jurisdiction to issue the Director's Order;

- the Director has not established that there are potential adverse effects associated with the street sweepings or, in the alternative, that there are not sufficient potential adverse effects associated with the street sweepings to justify the work ordered; and
- in the event that the Tribunal finds that the street sweepings are a “waste” or that there are sufficient potential adverse effects associated with the street sweepings to justify the Director’s Order, the work ordered is excessive, unnecessary, unreasonable and not advisable having regard to all of the circumstances relating to the delivery of street sweepings to the properties referred to in the Director’s Order.

[4] The City sought a stay of all the Work Items in the Director’s Order pending the disposition of this appeal. In an order issued December 13, 2016, the Tribunal granted the City’s request for an interim stay. The Tribunal heard the stay motion on January 23, 2017 and, on February 28, 2017, issued an order: granting a stay of Part 3b, Part 3c and Items No. 17 to 20 of Part 3d of the Director’s Order until the final resolution of the appeal; and dismissing the City’s request for a stay of Part 3a and Items No. 13 to 16 of Part 3d of the Director’s Order. In a further order issued April 7, 2017, the Tribunal ordered revised dates for completion of the Work Items in Part 3a and Items No. 13 to 16 of Part 3d of the Director’s Order.

[5] Following the disposition of the stay motion, the Tribunal convened several status telephone conference calls on June 23, July 25, October 3, November 3 and December 5, 2017 and January 16, 2018, involving various counsel for the parties, to address procedural issues in advance of scheduling the Pre-hearing Conference (“PHC”).

[6] At the PHC on March 28, 2018, Harry Dahme, Andra Maxwell and Patrick Murphy appeared on behalf of the City, and Isabelle O’Connor, Jessica Rosenberg and Hayley Valleau appeared for the Director. Several individuals observed the proceedings but there were no requests for status in the matter.

[7] The parties proposed to the Tribunal mutually agreeable dates for the exchange and filing of materials, including a joint book of documents, and hearing dates were set. The Tribunal confirmed the dates as set out in the Order below.

[8] The issues for the hearing will be based on the City's grounds of appeal set out above.

ORDER

[9] Disclosure of relevant documents between the parties shall take place by May 30, 2018.

[10] A joint book of documents shall be prepared by the parties by July 31, 2018.

[11] Witness statements and documents to be relied on at the hearing shall be exchanged between the parties and filed with the Tribunal by September 28, 2018.

[12] Reply witness statements shall be exchanged between the parties and filed with the Tribunal by October 15, 2018.

[13] The hearing is scheduled for 10 days and shall commence on November 7, 2018 at 10 a.m. and continue on November 8 to 9 and 20 to 23, and December 3 to 5, 2018 at:

**Municipal Hearing Room
Mississauga Civic Centre
300 City Centre Drive
Mississauga, ON L5B 2G6**

*Procedural Directions Ordered
Hearing Scheduled*

“Laurie Bruce”

LAURIE BRUCE
MEMBER

“Maureen Carter-Whitney”

MAUREEN CARTER-WHITNEY
VICE-CHAIR

“Karen Kraft Sloan”

KAREN KRAFT SLOAN
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
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