

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** June 06, 2018

**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:** June 15 and November 1, 2017 and February 27 and May 22, 2018 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

Corporation of the City of Belleville

Harry Dahme and Natalie Mullins

835267 Ontario Inc., Sidney Spiegel and Naomi Spiegel

Brad Halfin and Tom Friedland

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

Andrew Biggart and John Hart

Director, Ministry of the  
Environment and Climate Change

Paul McCulloch

## **ORDER DELIVERED BY JUSTIN DUNCAN**

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### **REASONS**

#### **Background**

[1] On August 31, 2015, Brian Kaye, Director, Ministry of the Environment and Climate Change, issued Director's Order No. 6480-9RTQVJ ("Director's Order") to the Corporation of the City of Belleville ("City"), 835267 Ontario Inc., Sidney Spiegel, Naomi Spiegel, 105 Pinnacle Limited, Kent D. Hawkins, Darlene Hawkins, and Anthony J. McGarvey regarding contamination associated with a former manufactured gas plant site in the City of Belleville.

[2] The City, 835267 Ontario Inc., Mr. Spiegel, Ms. Spiegel, 105 Pinnacle Limited, Mr. Hawkins, Ms. Hawkins, and Mr. McGarvey (collectively "Appellants") variously appealed the Director's Order to the Environmental Review Tribunal ("Tribunal") pursuant to s. 140 of the *Environmental Protection Act*.

[3] A pre-hearing conference was held on January 11, 2016 in Belleville and was continued by telephone conference call ("TCC") on May 9, and October 6 and 13, 2016.

[4] During the October 13, 2016 TCC, the parties requested and were granted an adjournment of the appeals to June 15, 2017 to allow for the development of work plans pursuant to the requirements of the Director's Order. During that TCC, the parties also requested and were granted changes to the compliance dates contained in the Director's Order. The Tribunal's Order following the October 13, 2016 TCC was issued on November 7, 2016.

[5] Additional TCCs took place on June 15, 2017, November 1, 2017, February 27, 2018 and May 22, 2018. During each of these TCCs, the parties provided collective updates on the progress of work being completed in accordance with the requirements of the Director's Order, including the completion of the work plans and the implementation of the work plans. The parties provided various updates on sampling and investigation activities conducted as part of work plan implementation during the TCCs. The parties also provided updates on their discussions, facilitated in part by Tribunal-assisted mediation, aimed at achieving a settlement of the appeals.

[6] During the May 22, 2018 TCC, the parties advised that the Director had a number of comments relating to sampling conducted to date and the Appellants had provided responses. The Appellants advised that they were awaiting any additional comments the Director may have and anticipated that risk management measures and follow-up monitoring may be required on an ongoing basis in fulfilment of the requirements of the Director's Order and as part of a settlement of the appeals.

[7] On behalf of the Director, Paul McCulloch advised that the Director's response to the latest details provided by the Appellants would take up to two months and he requested that a further adjournment be granted to a TCC in September 2018 in order to allow the parties time to have further discussions. The Appellants were in agreement with this approach and the parties requested that the Tribunal grant an adjournment on the same basis as that set out in the November 7, 2016 Order of the Tribunal.

[8] Further, the parties advised that it may become necessary to either stay or amend the compliance dates currently contained in the Director's Order.

### **Issue**

[9] The issue is whether to grant a further adjournment of the appeals.

## Relevant Rules

[10] The following are the relevant *Rules of Practice* of the Tribunal:

### 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

[11] The parties consent to adjourning the appeal to a TCC in September 2018.

[12] The parties agreed that the appeals should be adjourned based on the same factors as the November 7, 2016 Order of the Tribunal which were summarized by the Tribunal as follows at para. 12:

[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] On the basis of the submissions of the parties and their consent to the adjournment, it appears fair and reasonable to adjourn the appeals to a TCC in September 2018 pursuant to Rule 105. Most importantly, progress is being made in implementing work plans in accordance with the Director's Order and there is no disagreement that investigations conducted to date indicate that there is no immediate threat to human health or the environment arising from the contamination.

[14] Finally, the parties may make a request in writing to stay or amend the compliance dates currently contained in the Director's Order. If agreement cannot be reached on this matter, a further TCC can be arranged through the Tribunal's Case Coordinator to allow the parties to make submissions.

**ORDER**

[15] The appeals are adjourned to a TCC on September 12, 2018 at 9 a.m. The call-in information for the TCC will be provided to the parties by the Tribunal's Case Coordinator.

*Adjournment Granted*

*"Justin Duncan"*

JUSTIN DUNCAN  
VICE-CHAIR

Appendix 1 – Appellant List

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Environmental Review Tribunal**

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**Appendix 1****Appellant List**

<b>Appellant Name</b>	<b>File No.</b>
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