

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: July 13, 2018

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, Conservation and Parks
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, Conservation and Parks)

Heard: In writing

APPEARANCES:

Parties

Counsel

Union Gas Limited

Leonard Griffiths

Coca-Cola Refreshments
Canada Company

Patrick Duffy

Rosart Properties Inc.

Peter Pickfield

Director, Ministry of the
Environment, Conservation and
Parks

Isabelle O'Connor

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 (now the Ministry of the Environment, Conservation and Parks), 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 did 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] Subsequently, the Tribunal held several TCCs where it was informed of the progress being made toward finalizing the conceptual site model and the work plan, and at each TCC ordered a continuation of the stay, each time subject to the same conditions as set out in its June 17, 2016 Order. The following Orders were issued:

- a. an order dated September 8, 2017 granting the requested continuation of the stay until October 27, 2017 and scheduling the next TCC for September 29, 2017 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, [2017] O.E.R.T.D. No. 43);
- b. an order dated October 5, 2017 granting the requested continuation of the stay until December 28, 2017 and scheduling the next TCC for November 30, 2017 (see: *Union Gas Limited v Ontario (Environment and Climate Change)*, 2017 CanLII 65450); and
- c. an order dated December 7, 2017 granting the requested continuation of the stay until March 28, 2018 and scheduling the next TCC for February 28, 2018 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, [2017] O.E.R.T.D. No. 59).

[8] On February 28, 2018, the Tribunal held another TCC. Given the progress made, the parties requested, and the Tribunal granted, a two-week adjournment for some of them to obtain instructions with respect to finalizing the conceptual site model and work plan.

[9] On March 14, 2018, the Tribunal held another TCC. The Director informed the Tribunal that there was now agreement that the work plan would be jointly submitted by the Appellants and would be implemented over the course of the next year. The Director requested that the proceeding be adjourned to a TCC to be held at the end of July 2018, so that the Tribunal could be informed of the progress of implementation, and consented to the extension of the stay to four weeks after that date. The Appellants expressed their preference for an adjournment to the end of the one-year implementation period, and an extension of the stay; however, the Director did not consent to this timing.

[10] The Tribunal issued an Order on March 23, 2018 granting the requested continuation of the stay until July 31, 2018, unless the Director advised the Tribunal by July 3, 2018 that a status update was not necessary at that time, in which case the next TCC would be held on February 14, 2019 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, [2018] O.E.R.T.D. No. 15).

[11] On July 3, 2018, Isabelle O'Connor, counsel for the Director, wrote to the Tribunal stating that the Director was of the view that a status update was not required until February 14, 2019 and that the Director consented to the continuation of the stay until March 14, 2019 subject to the usual conditions. The other parties subsequently confirmed their agreement with this approach.

Analysis and Findings

[12] 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. Given that the parties have not brought to the Tribunal's attention any 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.

[13] 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. 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").

[14] 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

[15] The Tribunal orders that:

- a. 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 March 14, 2019.
- b. 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.
- c. A status update TCC will be held on **February 14, 2019 at 10 a.m.**

*Request for Continuation of Stay Granted
Procedural Directions Ordered*

"Jerry V. DeMarco"

JERRY V. DEMARCO
EXECUTIVE 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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