

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 21, 2019

CASE NO.:

18-049

PROCEEDING COMMENCED UNDER section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant:	Pamela Poulin (File No. 18-049)
Appellant:	Harold Westendorp (File No. 18-050)
Appellant:	1248833 Ontario Inc. (File No. 18-051)
Appellant:	1085488 Ontario Ltd. (File No. 18-052)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order requiring a Phase One Site Assessment and an assessment of all boilers, fuel storage tank(s), fuel supply lines, associated equipment and structures, the boiler room(s) and the fuel storage room(s), to be undertaken by a Certified Professional
Reference No.:	0868-B2EMYT-1
Property Address/Description:	36 Georgina Street
Municipality:	City of Brockville
Upper Tier:	United Counties of Leeds and Grenville
ERT Case No.:	18-049
ERT Case Name:	Poulin v. Ontario (Environment, Conservation and Parks)

Heard: February 11, 2019 in Brockville, Ontario

APPEARANCES:

Parties

Director, Ministry of the
Environment, Conservation and
Parks

Counsel

Jon Bradbury and Alicia Gordon-Fagan

Pamela Poulin, Harold Westendorp, J. Douglas Grenkie
1248833 Ontario Inc. and
1085488 Ontario Ltd.

ORDER DELIVERED BY JERRY V. DEMARCO

REASONS

Background

[1] This Order relates to a Pre-hearing Conference (“PHC”) regarding appeals brought to the Environmental Review Tribunal (“Tribunal”) by Pamela Poulin, Harold Westendorp, 1248833 Ontario Inc. and 1085488 Ontario Ltd. (“Appellants”) from Director’s Order No. 0868-B2EMYT-1 (“Director’s Order”). The Director’s Order was issued by Trevor Dagilis, Director, Ministry of the Environment, Conservation and Parks on September 25, 2018, pursuant to s. 157.3(5) of the *Environmental Protection Act* (“EPA”), in regard to a site located at 36 Georgina Street, in the City of Brockville (“Site”).

[2] The focus of the Director’s Order is on requiring the Appellants to have a Phase One Environmental Site Assessment carried out at the Site. There are also requirements related to dealing with waste at the Site. All of those requirements are set out in Items 1 to 15 of the Director’s Order. Item 16 requires the Appellants to give a copy of the Director’s Order to every person acquiring an interest in the Site.

[3] The PHC was held on February 11, 2019 in Brockville. No persons requested status in the proceeding. The issues addressed at the PHC were a request for a stay of the Director’s Order and the scheduling of the next steps in the proceedings.

Issues

[4] The issues are:

1. Whether to issue a stay of Items 1 to 15 of the Director's Order; and
2. Scheduling of next steps.

Discussion, Analysis and Findings

Issue No. 1: Whether to issue a stay of Items 1 to 15 of the Director's Order

[5] At the outset of the PHC, counsel for the parties indicated that they had agreed on a stay of Items 1 to 15 of the Director's Order. Jon Bradbury, counsel for the Director, and J. Douglas Grenkie, counsel for the Appellants, submitted that the Tribunal is not precluded under s. 143(2) of the *EPA* from issuing a stay as the items in question are not requirements to "monitor, record and report". They added that appropriate interim measures have been and are being put in place at the Site such that there is no bar to a stay under s. 143(3) of the *EPA*, which deals with risks to the environment or property and dangers to health or safety arising from a stay.

[6] Based on the parties' submissions and a review of the items in the Director's Order that are the subject of the stay request, the Tribunal finds that it is not precluded under s. 143(2) or s. 143(3) of the *EPA* from issuing a stay. Given that the requested stay is on consent of all parties and that any immediate concerns regarding the Site are being addressed, there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice*. The Tribunal grants the requested stay.

Issue No. 2: Scheduling of next steps

[7] The parties reached agreement on the next steps in this proceeding, as set out in the Order below.

ORDER

[8] The Tribunal orders:

1. Items 1 to 15 of the Director's Order are stayed pending the disposition of the appeals.
2. The issues for the hearing are: 1) whether Mr. Westendorp is properly named as an orderee, 2) whether a Phase One Environmental Site Assessment should be ordered, and 3) whether the Site is in compliance with the *EPA*.
3. The following deadlines apply:
 - a) April 4, 2019: parties to jointly notify the Tribunal whether they wish to engage in Tribunal-assisted mediation.
 - b) April 18, 2019: tentative date for Tribunal-assisted mediation.
 - c) May 17, 2019: Director to disclose all relevant documents and witness statements to the Appellants.
 - d) May 31, 2019: Appellants to disclose all relevant documents and witness statements to the Director.
 - e) June 10, 2019: parties to serve all documents to be relied upon at the Hearing on other parties and file with the Tribunal those documents (including witness statements) and any joint book of documents and/or agreed statement of facts.
 - f) **June 17, 2019**: Hearing commences at **9:30 a.m.** at:

**City of Brockville
1 King Street West
Brockville, Ontario**

*Request for Stay Granted
Hearing Scheduled*

“Jerry V. DeMarco”

JERRY V. DEMARCO
ASSOCIATE CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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