

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 17, 2019

CASE NO:

19-042

PROCEEDING COMMENCED UNDER section 100.1(7) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant:	Dori Wiens (File No. 19-042)
Appellant:	Ernst Wiens (File No. 19-043)
Respondent:	Town of Niagara-on-the-Lake
Subject of appeal:	Order to pay issued in relation to the prevention, elimination or amelioration of a spilled pollutant
Reference No.:	2019-05-22
Property Address/Description:	1055 Line 2, RR 2
Municipality:	Town of Niagara-on-the-Lake
Upper Tier:	Regional Municipality of Niagara
ERT Case No.:	19-042
ERT Case Name:	Wiens v. Niagara-on-the-Lake (Town)

Heard: September 4, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel

Dori Wiens and Ernst Wiens

Matthew Gardner and Julie Paille

Town of Niagara-on-the-Lake

Brent Harasym

ORDER DELIVERED BY MARLENE CASHIN

REASONS

Background

[1] On May 22, 2019, Brett Ruck, Supervisor of Environmental Services for the Town of Niagara-on-the-Lake (“Town”), issued an Order under s.100.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 (“Town Order”) to Dori Wiens and Ernst Wiens (“Appellants”).

[2] The Town Order required the Appellants to “pay the total costs and expenses incurred by the Town of Niagara-on-the-Lake, plus interest to the end of April 2019 in the amount of \$207,477.88”, in relation to remedial work undertaken as a result of a spill that the Town Order alleged was caused by an incident at the Appellants’ property.

[3] The Order reads in part:

Statement Identifying Spill

On or about October 19, 2016, an incident at your property caused surface water in and around the Harrison Drain #1 at Line 2 and Concession 3 Road in the Town of Niagara-on-the-Lake to turn cloudy and grey. The incident was inspected and rotting grapes were observed in the drain. The cleaning of grape harvesting equipment caused grapes to flow into and subsequently begin to rot causing adverse effects in the drain.

On October 19, 2016, the grapes in the drain caused a fish kill and an unpleasant odour. Surface water and sediment was removed from the affected area and tested. The testing concluded that the surface water exceeded the PWQO for total phosphorous and as a result the material was considered a pollutant.

The Town of Niagara-on-the-Lake was forced to perform immediate remedial work as a result of the spill. This included the installation of sediment booms and rock dams along the drain in order to contain the spill, the removal of surface water and transportation of the surface water to a wastewater treatment facility and the removal of solid soil from the spill area. In total, 635,949 litres of surface water were removed and disposed of and 14 loads of solid material were removed and transferred to landfill for disposal.

[4] On June 6, 2019 the Appellants appealed the Town Order to the Environmental Review Tribunal (“Tribunal”).

[5] A Pre-hearing Conference (“PHC”) was held by the Tribunal on September 4, 2019 by telephone conference call. There were no requests for Party, Participant or Presenter status in the proceeding.

Scheduling of Next Steps

[6] The Parties informed the Tribunal that mediation, which had been discussed briefly between the Parties, would possibly be of assistance in this case. However, they agreed that they would confirm whether or not they would request Tribunal-assisted mediation once the exchange of relevant documents has taken place. Brent Harasym, counsel for the Town, was unsure when his client would be able to complete the disclosure of documents, but provided an undertaking to update the Tribunal and the Appellants regarding a disclosure date, in writing, on or before September 13, 2019.

[7] Mr. Harasym subsequently provided the date of October 18, 2019 for the Town’s disclosure of documents. Mr. Gardner, counsel for the Appellants, suggested November 15, 2019 for the disclosure of the Appellants’ relevant documents. The Tribunal accepts the respective dates proposed by the Parties for disclosure of documents.

ORDER

[8] The Tribunal orders that the exchange of documents between the Parties shall take place on or before October 18, 2019 for the Town, and on or before November 15, 2019 for the Appellants. The Parties are directed to contact the Tribunal’s Case-Coordinator should they agree to request Tribunal-assisted mediation. In the event that mediation does not take place, or does not settle all the issues in the appeals, the Tribunal, in consultation with the Parties, will schedule dates for a hearing of the appeals and for further procedural steps leading up to the hearing.

Procedural Directions Ordered

"Marlene Cashin"

MARLENE CASHIN
MEMBER

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Environmental Review Tribunal

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