

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 17, 2019 **CASE NO.:** 19-035
19-036
19-037

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. 19-035)
Appellant: Harold Westendorp (File No. 19-036)
Appellant: 2057183 Ontario Limited (File No. 19-037)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to provide written confirmation that all liquid industrial and hazardous wastes have been removed from the Site by an Approved Waste Hauler, and to prepare and implement a Phase Two Environmental Site Assessment Action Plan and to submit a Final Report
Reference No.: 5200-BB2KYP-1
Property Address/Description: 7811 County Road 6
Municipality: Elizabethtown-Kitley
Upper Tier: United Counties of Leeds and Grenville
ERT Case No.: 19-035
ERT Case Name: Poulin v. Ontario (Environment, Conservation and Parks)
Heard: September 27, 2019 in Brockville, Ontario and on November 6, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel

Pamela Poulin, Harold Westendorp,
and 2057183 Ontario Ltd.

D. Grenkie

Director, Ministry of the
Environment, Conservation and
Parks

J. Bradbury

Presenters

John and Dorothy Lapierre	Self-represented (on September 27, 2019 only)
Brenda Fisk	Self-represented

ORDER DELIVERED BY HUGH S. WILKINS

REASONS

[1] On May 24, 2019, Pamela Poulin, Harold Westendorp, and 2057183 Ontario Limited (“Appellants”) filed an appeal regarding Director’s Order No. 5200-BB2KYP-1 (“Director’s Order”) made on May 9, 2019 by Trevor Dagilis, Kingston District Office, Ministry of the Environment, Conservation and Parks (“MECP”) under s. 157.3 of the *Environmental Protection Act* (“EPA”). The Director’s Order requires the Appellants to do the following work at the subject property at 7811 County Road 6 in Elizabethtown-Kitley:

1. provide written confirmation to the Director that all liquid industrial and hazardous wastes have been removed from the subject property by a Ministry approved waste hauler;
2. retain the services of a qualified person to prepare and implement a Phase 2 Environmental Site Assessment Action Plan and prepare a Phase 2 Environmental Site Assessment Final Report;
3. provide written confirmation to the Director from the qualified person that he or she has received a copy of the Director’s Order, has been retained to carry out the specified work, and has the experience and qualifications to carry out the work;

4. submit the Phase 2 Environmental Site Assessment Action Plan to the Director; and,
5. complete all required work identified in the Phase 2 Environmental Site Assessment Action Plan and submit to the Director a copy of the Phase 2 Environmental Site Assessment Final Report.

[2] A pre-hearing conference (“PHC”) was held in Brockville on September 27, 2019. At the PHC, the Environmental Review Tribunal (“Tribunal”) granted Presenter status to John and Dorothy Lapierre and Brenda Fisk. Each lives in the vicinity of the subject property and expressed concerns about possible impacts caused by any contaminants on the subject property.

[3] At the PHC, the Parties discussed and suggested terms for a proposed stay of the Director’s Order for the period of September 27, 2019 to November 6, 2019. The proposed terms of the stay are:

- by October 11, 2019, the Appellants provide written confirmation with documents (if any) of steps taken to comply with item no. 1 in the Director’s Order; and,
- by November 5, 2019, a provincial officer is to inspect the subject property to confirm steps taken by the Appellants and identify any other immediate concerns that may impact whether the Director will consent to extend the stay beyond November 6, 2019.

[4] As requested on consent, the Tribunal granted the stay until November 6, 2019 and directed that a further PHC would be held by telephone conference call on that date to determine whether the stay should be extended.

[5] At the continuation of the PHC on November 6, 2019, the Director stated that a provincial officer from MECP had again visited the subject property and was satisfied that the requisite steps had been taken by the Appellants as required under the stay. The Director stated that he would agree to extend the stay pending the outcome of the hearing on the condition that the Appellants not bring any more hazardous wastes or liquid industrial wastes to the subject property from any other sites. The Appellants agreed to this condition and the Tribunal extended the stay on consent pending the outcome of the hearing.

[6] This Order provides the Tribunal's reasons for these dispositions.

Relevant Legislation and Rules

[7] The following are the relevant provisions of the *EPA* and the *Rules of Practice* ("Rules") of the Tribunal:

EPA

Tribunal may grant stay

143(2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a decision or order, other than,

- (a) an order to monitor, record and report; or
- (b) an order issued under section 168.8, 168.14 or 168.20.

When stay may not be granted

(3) The Tribunal shall not stay the operation of a decision or order if doing so would result in,

- (a) danger to the health or safety of any person;
- (b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or
- (c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

Rules of the Tribunal

Motion Seeking an Interim Stay/Stay or a Removal of a Stay

108. A Party seeking a stay or a removal of a stay until a specified date or until the disposition of the proceeding shall arrange through the assigned Case Coordinator a teleconference call with the Tribunal and all Parties to seek directions as to:

- (a) the form and content of the motion;
- (b) the necessary supporting materials, including affidavit materials;
- (c) the scheduling of dates for cross-examination of witnesses, if required; and
- (d) the scheduling of the Hearing of the motion.

110. The Party shall provide evidence and submissions in support of its motion respecting:

- (a) how the relevant statutory tests that are applicable to the granting or removal of a stay are met;
- (b) whether there is a serious issue to be decided by the Tribunal;
- (c) whether irreparable harm will ensue if the relief is not granted; and
- (d) whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

Issue

[8] The issue is whether there should be a stay of the Director's Order.

Discussion, Analysis and Findings

[9] The parties submit that the Director's Order is not an order to monitor, record or report and was not issued under ss. 168.8, 168.14 or 168.20, and the proposed stay therefore would comply with s. 143(2) of the *EPA*. They submit that the proposed stay would not result in danger to the health or safety of any person, impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it, or injury or damage or serious risk of injury or damage to any property or to any plant or animal life under s. 143(3) of the *EPA*. They also submit that the requirements of Rule 110 are met.

[10] Having considered the submissions of the parties, the proposed terms of the stay of the Director's Order, s. 143(2) and (3) of the *EPA*, and Rules 108 and 110, the Tribunal found that the requested stay meets the relevant statutory tests and the Rules. It found that the terms of the proposed stay will ensure that the Director's environmental concerns will be met on an interim basis. It found that the proposed terms are in the public interest in that they protect the environment and provide the opportunity for the efficient resolution of the appeal. Taking into account the submissions of the Parties and their consent to the proposed stay, the Tribunal found that there is a serious issue to be decided by the Tribunal in this proceeding and the balance of convenience favours granting the relief requested.

OTHER PROCEDURAL MATTERS

[11] At the PHC on September 27, 2019, the Tribunal also gave directions for the exchange of documents and scheduled the hearing of the appeal to commence on March 25, 2020 in Brockville.

ORDER

[12] The Tribunal orders that:

1. the Director's Order is stayed pending the outcome of the hearing on the condition that the Appellants not bring any more hazardous wastes or liquid industrial wastes to the subject property from any other sites.
2. the Director provide to the Appellants all documents relating to this proceeding in the Director's possession, control or power by October 31, 2019;

3. the Appellants provide to the Director all documents relating to this proceeding in the Appellants' possession, control or power by January 3, 2020;
4. John and Dorothy Lapierre and Brenda Fisk have presenter status in this proceeding; and
5. the hearing of the appeal will commence on **March 25, 2020 at 10 a.m.** Three consecutive days have been set aside for the hearing. The hearing will be held at:

**City Hall
1 King Street West
Brockville, On K6V 7A5**

*Procedural Directions Given
Stay of Order Granted*

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

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
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248