

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 03, 2020

CASE NO.: 11-061
11-144

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

Appellant: See Appendix 1 - Appellant List (11-061)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to carry out work and provide financial assurance with respect to the Mud Lake Waste Disposal Site
Reference No.: 6248-8GRHU2
Property Address/Description: Mud Lake Waste Disposal Site
Municipality: City of Kenora
Upper Tier: Kenora District
ERT Case No.: 11-061
ERT Case Name: Dea v. Ontario (Environment, Conservation and Parks)

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

Appellant: See Appendix 2 - Appellant List (11-144)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to carry out work and provide financial assurance with respect to the Margach Waste Disposal Site
Reference No.: 8301-8HFPUQ
Property Address/Description: Margach Waste Disposal Site
Municipality: City of Kenora
Upper Tier: Kenora District
ERT Case No.: 11-144
ERT Case Name: OfficeMax Incorporated v. Ontario (Environment,

Conservation and Parks)

APPEARANCES:

Parties

AbiBow Canada Inc.
AbitibiBowater Inc.
Abitibi-Consolidated Inc.

Alain Grandmont
David J. Paterson
Jacques P. Vachon
Pierre Rougeau
William G. Harvey
Allen Dea

OfficeMax Incorporated

Director, Ministry of the
Environment, Conservation
and Parks

Counsel

Tyson Dyck

Zackery Silver and Alexandria Pike

Jennifer Fairfax and Patrick Welsh

Justin Jacob and Hailey Valteau

HEARD:

ADJUDICATORS:

January 27, 2020 by Teleconference
Maureen Helt, Acting Associate Chair
Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On May 13, 2011, Trina Rawn, Director, Ministry of the Environment, now Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 6248-8GRHU2 (also referred to as “DO-1”) in relation to the Mud Lake Waste Disposal Site in Kenora. On August 16, 2011, the Director issued Director’s Order No. 8301-8HFPUQ (also referred to as “DO-2”) in relation to the Margach Waste Disposal Site, also in Kenora. These two Director’s Orders have similar parties and issues. The parties listed in Appendix 1 appealed DO-1, and the parties listed in Appendix 2

appealed DO-2 to the Environmental Review Tribunal (“Tribunal”) pursuant to s. 140(1) of the *Environmental Protection Act* (“EPA”).

[2] In late 2011, at the joint request of the parties, the Tribunal stayed the financial assurance items and approved interim amendments to the Director’s Orders pending the outcome or final resolution of the appeals. The Tribunal also granted a series of adjournments to permit ongoing settlement discussions between the parties.

Case Management

[3] A teleconference was held on January 27, 2020 for the parties to provide the Tribunal with a status update on the settlement discussions and to determine next step in these appeals.

[4] At the teleconference, the parties advised that they have continued settlement discussions and that the outstanding issues to be resolved relate to the technical scope of work necessary to achieve a final resolution in the two matters, and the legal apportionment of responsibility amongst the appellants.

[5] The appellants advised that the monitoring and reporting work required by the Interim Orders is being undertaken and that the waste disposal sites are both in stable condition. This was confirmed by the Director. The Director further confirmed there was no risk of environmental harm.

[6] The Tribunal advised the parties that given the length of time that has elapsed since the appeals were launched, it is necessary and appropriate to schedule a Pre-hearing Conference (“PHC”) in these matters. The parties confirmed their availability for a two-day PHC on June 24 and 25, 2020 to address both waste disposal sites. The Tribunal indicated that these dates may be converted to a settlement hearing if a settlement is reached. The parties agreed to a teleconference on April 16, 2020 for the

parties to advise the Tribunal on the status of any settlement. These two matters will continue to be heard together.

[7] The Tribunal advised the parties that they are welcome to contact the case coordinator if they wished to pursue Tribunal-assisted mediation.

ORDER

[8] The Tribunal orders that:

1. This matter is adjourned to a teleconference scheduled to proceed on **April 16, 2020 at 10 a.m.** for the parties to advise the Tribunal of any agreement on:
 - i. The scope of the technical work that needs to be completed to ensure a final resolution in regards to both waste disposal sites; and,
 - ii. The legal issue with respect to apportionment of responsibility amongst the appellants.
2. The parties will provide a certified list of property owners within 120 metres of each waste disposal site and a list of any other interested persons to the Tribunal by April 23, 2020.
3. A pre-hearing conference is scheduled for June 24 and 25, 2020. The parties are to inform the Tribunal by June 10, 2020 if they would like the PHC to be converted to a settlement hearing.

*Adjournments Granted
Procedural Directions Ordered*

“Maureen Helt”

MAUREEN HELT
ACTING ASSOCIATE CHAIR

"Helen Jackson"

HELEN JACKSON
MEMBER

Appendix 1 – Appellant List (11-061)
Appendix 2 – Appellant List (11-144)

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 Environment and Land Tribunals Ontario

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

Appendix 1**Appellant List (11-061)**

Appellant Name	File No.
AbiBow Canada Inc.	11-058
AbitibiBowater Inc.	11-059
Abitibi-Consolidated Company of Canada	11-060
Allen Dea	11-061
Alain Grandmont	11-062
William G. Harvey	11-063
David J. Paterson	11-064
Pierre Rougeau	11-065
Jacques P. Vachon	11-066
OfficeMax Incorporated	11-074

Appendix 2**Appellant List (11-144)**

Appellant Name	File No.
OfficeMax Incorporated	11-144
AbitibiBowater Inc.	11-146
AbiBow Canada Inc.	11-147
Abitibi-Consolidated Company of Canada	11-148
Pierre Rougeau	11-149
David J. Paterson	11-150
Allen Dea	11-151
Jacques P. Vachon	11-152
William G. Harvey	11-153
Alain Grandmont	11-154