

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 03, 2020

CASE NO.:

11-155

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

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|-------------------------------|--|
| Appellant: | See Appendix 1 - Appellant List (11-155) |
| Respondent: | Director, Ministry of the Environment, Conservation and Parks |
| Subject of appeal: | Order issued to carry out work and provide financial assurance with respect to the Bowater Mercury Waste Disposal Site |
| Reference No.: | 4345-8HFPHW |
| Property Address/Description: | Bowater Mercury Waste Disposal Site |
| Municipality: | City of Dryden |
| Upper Tier: | Kenora District |
| ERT Case No.: | 11-155 |
| ERT Case Name: | Grandmont v. Ontario (Environment, Conservation and Parks) |

APPEARANCES:

Parties

AbiBow Canada Inc.
AbitibiBowater Inc.
Abitibi-Consolidated Inc.
Bowater Canadian Forest Products Inc.

Alain Grandmont
David J. Paterson
Jacques P. Vachon
Pierre Rougeau
William G. Harvey
Weyerhaeuser Company Limited

Counsel

Tyson Dyck

Zackery Silver and Alexandria Pike

Gabrielle K. Kramer

Director, Ministry of the
Environment, Conservation and
Parks

Justin Jacob

HEARD:
ADJUDICATORS:

January 21, 2020 by Teleconference
Maureen Helt, Acting Associate Chair
Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On August 25, 2011, Trina Rawn, Director, Ministry of the Environment, now Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 4345-8HFPHW (also referred to as “DO-3”) in relation to the Bowater Mercury Waste Disposal Site in Dryden. The Director also issued two other Director’s Orders (“DO-1” and “DO-2”) with similar parties and issues around the same time, though DO-1 and DO-2 deal with waste disposal sites in Kenora. All three of the Director’s Orders were appealed to the Environmental Review Tribunal (“Tribunal”) pursuant to s. 140(1) of the *Environmental Protection Act* (“EPA”). The parties listed in Appendix 1 appealed DO-3.

[2] In November 2011, at the joint request of the parties, the Tribunal stayed DO-3’s financial assurance items and approved interim amendments pending the outcome or final resolution of the appeals.

[3] The Tribunal has granted a series of adjournments to permit ongoing settlement discussions between the parties. Some adjournments were also granted on the basis of related ongoing litigation (see *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67; and *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60 (“*Resolute*”).

Case Management

[4] A teleconference was held on January 21, 2020 for the parties to provide the Tribunal with a status update on the appeals following release of the *Resolute* decision.

[5] The Tribunal advised the parties that it is necessary and appropriate to schedule a Pre-hearing Conference (“PHC”) in this matter to meet the Tribunal’s public interest mandate.

[6] The parties stated they were in the process of discussing and understanding the implications of the *Resolute* decision as it applies to this matter. Counsel for the Director submitted that there are two major issues that face the parties: the scope of technical work that needs to be completed to ensure a final resolution in regards to the waste disposal site; and, the apportionment of legal responsibility amongst the appellants.

[7] The Tribunal confirmed with the parties that monitoring and reporting work required by the Interim DO-3 continues to be carried out by a consultant under the direction of the Appellants represented by Mr. Dyck, at their cost. The Director confirmed that the work requirements of the Interim DO-3 are being met and that the waste disposal site is in a stable condition.

[8] The parties requested that, rather than set a PHC they be provided an opportunity to further discuss the implications of the *Resolute* decision and engage in settlement discussions for a period of time and return for a further teleconference at which time they will provide the Tribunal with an update on the settlement discussions.

[9] The Tribunal agreed to set a further teleconference. However, the Tribunal also informed the parties that it is necessary to set a PHC date to ensure this matter moves forward without undue delay. The parties were further advised that the date set for the PHC could be converted into a settlement hearing should the parties reach resolution.

ORDER

[10] The Tribunal orders that:

1. This matter is adjourned to a teleconference scheduled to proceed on **April 14, 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 the waste disposal site; 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 the waste disposal site and a list of any other interested persons to the Tribunal by April 21, 2020.
3. A pre-hearing conference is scheduled for July 7 and 8, 2020. The parties are to inform the Tribunal by June 23, 2020 if they would like the PHC to be converted to a settlement hearing.

*Adjournment Granted
Procedural Directions Ordered*

“Maureen Helt”

MAUREEN HELT
ACTING ASSOCIATE CHAIR

“Helen Jackson”

HELEN JACKSON
MEMBER

Appendix 1 – Appellant List (11-155)

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 (11-155)

| Appellant Name | File No. |
|---------------------------------------|-----------------|
| Alain Grandmont | 11-155 |
| Abitibibowater Inc. | 11-156 |
| AbiBow Canada Inc. | 11-157 |
| Abitibi-Consolidated Inc. | 11-158 |
| Bowater Canadian Forest Products Inc. | 11-159 |
| Pierre Rougeau | 11-160 |
| David J. Paterson | 11-161 |
| Jacques P. Vachon | 11-162 |
| William G. Harvey | 11-163 |
| Weyerhaeuser Company Limited | 11-175 |