

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: April 23, 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 Company
 of Canada

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

Zachary Silver and Alexandria Pike

Jennifer Fairfax and Patrick Welsh

Justin Jacob and Hayley Valteau

HEARD:**ADJUDICATORS:**

April 16, 2020 by teleconference
 Maureen Helt, Acting Associate Chair
 Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On May 13, 2011, the 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] At the last status update teleconference on January 27, 2020, 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. The Tribunal scheduled a two-day pre-hearing conference on June 24 and 25, 2020 to address both waste disposal sites.

[4] On April 16, 2020, the parties attended for a further status update teleconference. The parties advised that as a result of the ongoing COVID-19 situation, while the appellants have completed their review and developed a proposal, which was submitted to the MECP on March 24, 2020, the MECP has not yet had sufficient time to review and provide feedback to the appellants. The MECP explained the delay is a result of the current pandemic and the issuance of the Declaration of Emergency by the government on March 17, 2020. The MECP anticipates it will be in a position to provide the appellants with their review of the proposal by June 1, 2020.

[5] The parties jointly requested that the dates established for the pre-hearing conference in the previous Procedural Order, namely June 24-25, 2020, be vacated and a date be set in early July, 2020 for a further status update teleconference.

[6] The Tribunal agrees that it is appropriate under the circumstances to vacate the dates set out in any previous Procedural Order and makes the following Order.

ORDER

[7] The Tribunal orders that:

1. A teleconference is scheduled for **July 9, 2020 at 10 a.m.** The parties are to provide an update 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;
 - ii. The legal issue with respect to the apportionment of responsibility amongst the appellants; and
 - iii. Mutually agreeable dates for scheduling a pre-hearing conference for both matters.

2. The pre-hearing dates of June 24-25, 2020 set out in the Procedural Order dated February 3, 2020, and the deadline for providing the 120 m landowner list by April 23, 2020 are hereby vacated.

*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