

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** April 22, 2020

**CASE NO.:**

11-155

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

Appellant:	See Appendix 1 - Appellant List (11-155)
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

Zachary Silver and Alexandria Pike

Gabrielle K. Kramer

Director, Ministry of the  
Environment, Conservation and  
Parks

Justin Jacob and Hayley Valleau

**HEARD:**  
**ADJUDICATORS:**

April 14, 2020 by teleconference  
Maureen Helt, Acting Associate Chair  
Helen Jackson, Member

## **PROCEDURAL ORDER**

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### **Background**

[1] On August 25, 2011, the 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 (“Appellants”).

[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] The Tribunal held a teleconference on April 14, 2020 for the parties to provide an update on two things: 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. The Appellants advised that since the last teleconference they have engaged a consultant and have been working together to prepare a joint proposal for the technical work which was then delivered to the MECP on March 16, 2020 for its review. The Appellants have also been working to resolve the question of the apportionment of legal responsibility amongst the parties. MECP advised that staff have not yet been able to provide the technical review as previously anticipated due to the ongoing Covid-19 situation. MECP staff now expect to provide comments to the Appellants 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 7-8, 2020, be converted to a status update teleconference to provide further updates and set new dates. The Tribunal agrees that it is appropriate under the circumstances to vacate the dates set out in the Procedural Order issued February 3, 2020 and makes the following order.

## ORDER

[6] The Tribunal orders that:

1. A teleconference is scheduled for **July 7, 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 the waste disposal site;
  - 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.

2. The July 7-8, 2020 pre-hearing dates set out in the Procedural Order dated February 3, 2020 and the date for filing the 120 m landowner list are hereby vacated.

*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](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Environmental Review Tribunal**

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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**Appendix 1**

## Appellant List (11-155)

<b>Appellant Name</b>	<b>File No.</b>
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