

Environmental Review Tribunal

Tribunal de l'environnement



ISSUE DATE: June 23, 2020

CASE NO.: 16-058

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

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| Appellant: | Union Gas Limited (File No. 16-058) |
| Appellant: | Coca-Cola Refreshments Canada Company (File No. 16-059) |
| Appellant: | Rosart Properties Inc. (File No. 16-060) |
| Respondent: | Director, Ministry of the Environment, Conservation and Parks |
| Subject of appeal: | Order to undertake work with respect to contaminants |
| Reference No.: | 4280-A8JQEX |
| Property Address/Description: | Site 1) 1565 Barton Street East Site 2) 1575 Barton Street East Site 3) 360 Strathearne Avenue North |
| Municipality: | City of Hamilton |
| ERT Case No.: | 16-058 |
| ERT Case Name: | Union Gas Limited v. Ontario (Environment, Conservation and Parks) |

APPEARANCES:

Parties

Union Gas Limited

Coca-Cola Refreshments Canada
Company

Rosart Properties Inc.

Director, Ministry of the
Environment, Conservation and
Parks

Counsel

Leonard Griffiths

Patrick G. Duffy

Peter Pickfield

Isabelle O'Connor and Justin Jacob

HEARD: June 16, 2020 by teleconference call
ADJUDICATOR: Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On April 19, 2016, the Director, Ministry of the Environment, Conservation and Parks issued Order No. 4280-A8JQEX (“Director’s Order”) against AVX Corporation, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart Properties Inc. (“Rosart”) pursuant to ss. 17, 18, and 196 of the *Environmental Protection Act* (“EPA”). The Director’s Order relates to the presence and migration of contaminants on three properties located in Hamilton, Ontario: (1) 1565 Barton Street East, (2) 1575 Barton Street East, and (3) 360 Strathearne Avenue North.

[2] Pursuant to s. 140(1) of the *EPA*, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart (“Appellants”) filed Notices of Appeal with the Environmental Review Tribunal (“Tribunal”). AVX Corporation did not appeal the Director’s Order.

[3] On June 17, 2016, the Tribunal issued an Order staying portions of the Director’s Order, as against the Appellants, until December 31, 2016 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, 2016 CanLII 37491 (ON ERT)). In addition, the proceeding was adjourned on request of the parties until September 30, 2016.

[4] Since that time, the Tribunal has held numerous status update teleconference calls and continued the stay.

[5] The Tribunal held a teleconference call on June 16, 2020 for the parties to provide an update of the work being undertaken to resolve the appeals without the need for a contested hearing.

[6] As in the case for the status updates prior to this call, the Appellants have been working together to finalize the conceptual site model in relation to site conditions to respond to comments by the Director. Peter Pickfield spoke on behalf of the Appellants and indicated that the work was delayed due to the consultants' not being able to undertake field and office work as a result of the restriction placed on work conditions due to COVID-19. These restrictions have eased, and the consultants will be returning to undertake field work shortly. Mr. Pickfield indicated that the parties have all agreed upon a schedule of activities to occur over the next couple of months to bring this matter to resolution and settlement. At the request of the Tribunal, Mr. Pickfield agreed to provide this schedule to the Tribunal Case-Coordinator as background to this matter.

[7] Upon consent of the parties, Mr. Pickfield requested the Tribunal schedule a further teleconference call in late September for the parties to provide the Tribunal with an update on the work conducted and a process to resolve the dispute.

[8] The Tribunal is satisfied that it is appropriate to adjourn the matter as requested to a further teleconference call and to continue the stay of portions of the Director's Order to 30 days following the next teleconference call. In its previous orders, the Tribunal found that it was not precluded under s. 143(2) or 143(3) of the *EPA* from issuing a stay of s. 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order as against the Appellants. Based on these findings, the Tribunal finds that it is not precluded under s. 143(2) or 143(3) of the *EPA* from granting a continuation of the stay of these items in the Director's Order. The Tribunal finds that there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice*, as there is no objection to the continuation of the stay.

[9] Subject to the same conditions set out in its earlier orders, the Tribunal grants the continuation of the stay, until 30 days following the next teleconference call.

ORDER

[10] The Tribunal orders that:

1. Sections 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order are stayed as against the Appellants until October 23, 2020;
2. The Director or the Appellants may seek a removal or modification of this Order on 15 days' notice to the other parties and in accordance of Rule 108 of the Tribunal's *Rules of Practice and Practice Directions*; and
3. A status update teleconference call will be held on **September 22, 2020** at **10:00 a.m.** The Tribunal Case Coordinator will provide the parties with call-in details closer to that date.

*Continuation of Stay Granted
Procedural Directions Ordered*

"Helen Jackson"

HELEN JACKSON
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
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