

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: July 15, 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, Nadine Harris and Hayley Valteau

HEARD:

July 9, 2020 by teleconference

ADJUDICATOR:

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] The Tribunal held a teleconference on July 9, 2020 for the parties to provide an update on three items: the scope of the technical work that needs to be completed to ensure a final resolution in regards to the two waste disposal sites; the legal issue with respect to the apportionment of responsibility amongst the Appellants; and mutually agreeable dates for scheduling a pre-hearing conference.

[4] The Director advised that the MECP has completed its review of the technical work proposed by the Appellants and has provided comments on the work proposed for both waste disposal sites as of June 2, 2020. The parties have engaged in discussions regarding the MECP's technical review, and are in the process of attempting to narrow down the technical issues. In a parallel manner, the parties are continuing discussions regarding the legal framework for the apportionment of costs.

[5] The parties jointly requested a further adjournment to continue the discussions to avoid a contested hearing. Alexandria Pike, on behalf her clients, indicated that should the settlement discussions fail, it would be a significant effort for her clients to prepare for a hearing, and expressed concern regarding the timing of any potential future contested hearing.

[6] The Tribunal agrees that it is appropriate under the circumstances to grant the requested adjournment. However, the Tribunal notes the importance of reaching resolution as otherwise it will be necessary to prepare for a hearing. The Tribunal advised that, should the parties wish to pursue Tribunal-assisted mediation, they are to contact the case coordinator.

[7] The Tribunal scheduled a further teleconference, as described below. Call in numbers will be provided by the case coordinator.

ORDER

[8] The Tribunal orders that:

1. A teleconference is scheduled for **October 1, 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.

*Adjournments Granted
Procedural Directions Ordered*

"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.olt.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.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