

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: July 10, 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 and Rick Coburn

Director, Ministry of the
Environment, Conservation and
Parks

Justin Jacob and Hayley Valleau

HEARD:
ADJUDICATOR:

July 7, 2020 by teleconference
Helen Jackson, Member

PROCEDURAL ORDER

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).

Case Management

[4] The Tribunal held a teleconference on July 7, 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 waste disposal site; the legal issue with respect to the apportionment of responsibility amongst the Appellants; and mutually agreeable dates for scheduling a pre-hearing conference.

[5] The parties advised the Tribunal that the issues of the technical work and the legal apportionment of responsibility are intertwined. The technical work has advanced in accordance with the plan provided to the Tribunal at the last teleconference on April 14, 2020; however, the parties are now assessing an alternative legal framework that MECP proposed on June 18, 2020. The parties advise that this revised legal framework has implications on the proposed scope of technical work, and therefore the parties request additional time to assess the proposed revised legal framework and how it impacts the scope of the technical work.

[6] The Appellants request the Tribunal adjourn the matter to a further teleconference to allow the parties to continue to work through this matter with the aim of avoiding a contested hearing. The Director agreed to this approach.

[7] The Tribunal acknowledges the effort that has been expended by the parties in order to reach resolution of this matter, and on the basis of the stated intention to work over the next two months to resolve the intertwined issues of the scope of the technical work and the legal appropriation of costs, the Tribunal finds that it is appropriate 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.

[8] The Tribunal scheduled a further teleconference as described below.

ORDER

[9] The Tribunal orders that:

1. A teleconference is scheduled for **October 6, 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.

*Adjournment Granted
Procedural Directions Ordered*

"Helen Jackson"

HELEN JACKSON
MEMBER

Appendix 1 – Appellant List (11-155)

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 (11-155)

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