

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: July 15, 2020

CASE NO.:

18-049

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

Appellant:	Pamela Poulin (File No. 18-049)
Appellant:	Harold Westendorp (File No. 18-050)
Appellant:	1248833 Ontario Inc. (File No. 18-051)
Appellant:	1085488 Ontario Ltd. (File No. 18-052)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order requiring a Phase One Site Assessment and an assessment of all boilers, fuel storage tank(s), fuel supply lines, associated equipment and structures, the boiler room(s) and the fuel storage room(s), to be undertaken by a Certified Professional
Reference No.:	0868-B2EMYT-1
Property Address/Description:	36 Georgina Street
Municipality:	City of Brockville
Upper Tier:	United Counties of Leeds and Grenville
ERT Case No.:	18-049
ERT Case Name:	Poulin v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Pamela Poulin, Harold Westendorp,
1248833 Ontario Inc. and 1085488
Ontario Ltd.

Director, Ministry of the
Environment,
Conservation and Parks

Counsel

J. Douglas Grenkie

Jon Bradbury

HEARD: June 26, 2020 by teleconference
ADJUDICATOR: Laurie Bruce, Member

PROCEDURAL ORDER

BACKGROUND

[1] On September 25, 2018, the Director, Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 0868-B2EMYT-1 (“Director’s Order”) pursuant to s. 157.3(5) of the *Environmental Protection Act* (“EPA”) in regard to a property located at 36 Georgina Street, in the City of Brockville (“Site”).

[2] Pamela Poulin, Harold Westendorp, 1248833 Ontario Inc. and 1085488 Ontario Ltd. (“Appellants”) appealed the Director’s Order to the Environmental Review Tribunal (“Tribunal”) pursuant to s. 140(1) of the *EPA*.

[3] The Director’s Order requires the Appellants to have a Phase One Environmental Site Assessment (“Phase One”) at the Site. There are also requirements dealing with waste at the Site, as set out in the Director’s Order.

[4] In an order issued February 21, 2019, former Associate Chair Jerry V. DeMarco granted a stay of the Director’s Order pending the disposition of the appeals. At that time, the parties had reached an agreement on the next steps and a June 17, 2019 hearing date was set out in former Associate Chair DeMarco’s order.

[5] The June 17, 2019 hearing date was adjourned to allow the parties to continue to hold discussions in an attempt to reach a settlement. During the discussion period, a new issue arose when it was discovered by the MECP that there may have been oil leaking from an oil tank on the Site. The parties worked together to identify a sampling plan that would be a hybrid of a Phase 1 and 2 site assessment. The parties were unable to reach a settlement. The Tribunal scheduled a three-day hearing starting on October 6, 2020.

[6] During a teleconference held on June 26, 2020, the Tribunal heard submissions on the format of the hearing. Counsel for the Appellants explained that they wished to have the hearing in-person in the Brockville Council Chambers, which he indicated was a large room thereby addressing, in his opinion, any concerns about COVID-19 and any necessary physical distancing. He submitted that the Tribunal will need to establish the credibility of witnesses and that this is better done in-person. Counsel for the Director submitted, and the Tribunal agrees, that the witnesses will be technical experts who will still testify via video and that seeing the experts in-person will not be an important consideration. Further, this appeal is almost two years old and it is important that the matter proceed to a hearing. There is no certainty as to when the Tribunal will be able to hold in-person hearings, therefore the matter will proceed as an electronic hearing.

[7] The Tribunal acknowledges that, in preparation for the original June 17, 2019 hearing dates, documentary disclosure has already taken place and that reference to disclosure in this order is for additional documents not previously provided.

ORDER

- [8] The Tribunal orders that the following schedule shall govern the hearing:
- a. **Parties** will disclose relevant documents by **July 17, 2020**;
 - b. The **Appellants** are to serve and file witness statements and documents to be relied upon to the Ministry and the Tribunal by **August 14, 2020**;
 - c. The **Ministry** is to provide the Tribunal and the Appellants with its witness statements and documents to be relied upon by **August 28, 2020**;
 - d. The **Appellants** are to serve and file any reply witness statements and documents to the Ministry and the Tribunal by **September 11, 2020**;
 - e. A hearing is scheduled for three consecutive days starting at **10 a.m.** on **Tuesday, October 6, 2020** by videoconference; details will be provided by the Case Co-ordinator in advance;

- f. No further notice of the hearing will be given.

*Procedural Directions Ordered
Hearing Scheduled*

“Laurie Bruce”

LAURIE BRUCE
MEMBER

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

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