

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: August 25, 2020

CASE NO.:

19-035

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

Appellant:	Pamela Poulin (File No. 19-035)
Appellant:	Harold Westendorp (File No. 19-036)
Appellant:	2057183 Ontario Limited (File No. 19-037)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to provide written confirmation that all liquid industrial and hazardous wastes have been removed from the Site by an Approved Waste Hauler, and to prepare and implement a Phase Two Environmental Site Assessment Action Plan and to submit a Final Report
Reference No.:	5200-BB2KYP-1
Property Address/Description:	7811 County Road 6
Municipality:	Elizabethtown-Kitley
Upper Tier:	United Counties of Leeds and Grenville
ERT Case No.:	19-035
ERT Case Name:	Poulin v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Pamela Poulin, Harold Westendorp
and 2057183 Ontario Limited

Director, Ministry of the
Environment, Conservation and
Parks

Counsel

J. Douglas Grenkie

Jon Bradbury

HEARD: August 19, 2020 by teleconference
ADJUDICATOR: Helen Jackson

PROCEDURAL ORDER

[1] Pamela Poulin, Harold Westendorp and 2057183 Ontario Limited (“Appellants”) filed appeals of Director’s Order No. 5200-BB2KYP-1 (“Director’s Order”) with the Environmental Review Tribunal (“Tribunal”). The Director’s Order was issued on May 9, 2019 under s. 157.3(5) of the *Environmental Protection Act* (“EPA”) for a site located at 7811 County Road 6 in Elizabethtown-Kitley (“Site”).

[2] The appeals have been the subject of various teleconferences held by the Tribunal in an attempt to narrow the issues in dispute and deal with pre-hearing procedural matters. A hearing was previously scheduled to start on March 25, 2020 for three consecutive days. Those dates were abandoned as a result of a number of factors, most notably the cancellation of all in-person hearings due to Covid-19 concerns. A teleconference was held May 6, 2020 to address issues of disclosure, and Tribunal assisted mediation was held June 15, 2020.

[3] The Tribunal was advised that the mediation was not successful. The Tribunal held a teleconference on August 19, 2020 to address the format and scheduling of the hearing. Counsel for the Appellants expressed concern that a video hearing would not be suitable, given that he anticipates the hearing to be lengthy and cross-examination may be difficult in a video hearing format. He was of the view that the City Council chambers in Brockville may be suitable to hold a safe in-person hearing, as Council chambers are large and likely amenable to the appropriate social distancing measures.

[4] Counsel for the Director expressed concern of further delay of the hearing in this matter and noted that the Tribunal has the authority to determine the format for the hearing.

[5] Mr. Grenkie is of the view that a hearing in this matter would require five days; whereas, Mr. Bradbury disagreed and thought it would be less time.

Next Steps

[6] The Tribunal considered the submissions of the parties with respect to the format and scheduling of the hearing. The Tribunal would like further elaboration of the issues and witnesses that would be before the Tribunal in this hearing in order to appropriately determine the format and length of the hearing. With that in mind, the Tribunal directed the parties to prepare a joint work plan for the hearing that would provide a list of the issues, the witnesses for each party, a short description of the evidence of each witness, and an estimate of time required for each witness for examination in-chief and cross-examination. The Tribunal also directed the parties to consider whether any issues or portions of the hearing may be dealt with in writing.

[7] The Tribunal scheduled a further teleconference where the hearing plan can be discussed and at which time further direction will be provided in regard to procedural matters and scheduling for the hearing. The parties are to provide the hearing plan to the case coordinator one week prior to the next teleconference.

[8] Mr. Grenkie has indicated a willingness to enquire whether it is possible to hold an in-person hearing at the City of Brockville Council Chambers. The Tribunal indicated that he should liaise with the Tribunal's case coordinator with respect to logistics in relation to any health and safety requirements the Tribunal or the City may have in regards to holding an in-person hearing.

ORDER

[9] The Tribunal orders that:

- i. The parties are to provide a joint work plan as described above to the Case Coordinator by October 9, 2020.
- ii. A further teleconference is scheduled for **Friday, October 16, 2020** at **10 a.m.** The Case Coordinator will provide further details regarding the call-in numbers.

Procedural Directions Ordered

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248