

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 08, 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****Counsel**

AbiBow Canada Inc.
 AbitibiBowater Inc.
 Abitibi-Consolidated Company of
 Canada

Tyson Dyck

Alain Grandmont
 David J. Paterson
 Jacques P. Vachon
 Pierre Rougeau
 William G. Harvey
 Allen Dea

Zachary Silver and Alexandria Pike

OfficeMax Incorporated

Jennifer Fairfax and Patrick Welsh

Director, Ministry of the
 Environment, Conservation and
 Parks

Justin Jacob, Nadine Harris and Hayley Valteau

HEARD:
ADJUDICATOR(S):

October 1, 2020 by teleconference call
 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 October 1, 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 since the last status update on July 9, 2020, the parties have engaged in further technical and legal discussions. Significantly, on September 29, 2020, the MECP provided a revised proposal to the parties for review. This revised proposal addresses each of the two landfill sites separately, which has implications on the legal framework for the apportionment of liability for each of the two landfills. Counsel for the Appellants expressed the need for time to review the revised approach and the alternative legal framework and to obtain instructions from their respective clients. Jointly, the parties requested that the Tribunal adjourn for a further status update in about 60 days with the objective of resolving the matter and avoiding a contested hearing. Counsel for the Director confirmed that both landfill sites are being maintained as required by the interim orders that have been issued throughout this process. He stated that the MECP has no concerns regarding compliance with the interim orders for either site.

[5] Alexandria Pike, on behalf her clients, the former company Directors and officers, indicated that should the settlement discussions fail, it would be a significant effort for

her clients to prepare for a hearing, given the passage of time and the need to review records that are now decades old. She expressed concern regarding the timing of any potential future contested hearing given her clients' situation.

[6] The Tribunal heard submissions from the parties on the request to adjourn for further settlement discussions. The Tribunal acknowledges the complex nature of the matter and commends the parties for their efforts to resolve the appeals.

[7] When determining whether to grant the requested adjournment, the Tribunal considers the integrity of its process and the public interest in the delivery of its services. When considering these aspects, the Tribunal notes that these appeals have been before the Tribunal for a number of years, and that the integrity of the Tribunal's process and the public interest may be hindered should these appeals continue to remain before the Tribunal without a legitimate prospect of resolution.

[8] Given the balance between the parties' sincere efforts to resolve this complex matter, and the need to reach a resolution that can be agreed to by the parties, the Tribunal finds that it is appropriate under the circumstances to grant the requested adjournment. However, the Tribunal directs the parties to be prepared to discuss a path forward at the next teleconference call, on the basis that continued adjournment will have impacts to the items noted above.

[9] The Tribunal scheduled a further teleconference, as described below. Call in details will be provided by the Case Coordinator.

ORDER

[10] The Tribunal orders that:

1. A teleconference is scheduled for **December 16, 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. A path forward to address resolution of these appeals, giving consideration to either scheduling a pre-hearing conference or settlement hearing.

*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