

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 08, 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)

APPEARANCE:

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

Director, Ministry of the
Environment, Conservation and
Parks

Justin Jacob and Nadine Harris

HEARD:
ADJUDICATOR(S):

October 6, 2020 by teleconference call
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 October 6, 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 parties advise that they have been working constructively throughout the summer and early fall to narrow the key issues integral to the technical aspects and the legal framework. The parties indicated that this iterative process is advancing towards a future agreement in principle.

[6] The parties requested the Tribunal adjourn the matter to a further teleconference in about 60 days for a clearer picture as to the status of the ongoing settlement discussions. The parties are continuing to work through this matter with the aim of avoiding a contested hearing.

[7] The Tribunal acknowledges the effort that has been expended by the parties in order to reach resolution of this matter. On the basis of the parties' intention to work over the next two months to attempt to resolve the intertwined issues of the scope of the technical work and the legal apportionment of costs, the Tribunal finds that it is appropriate 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 integrity of the Tribunal's process and the public interest given that these appeals have been before the Tribunal for a number of years.

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

ORDER

[9] The Tribunal orders that:

1. A teleconference is scheduled for **December 18, 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. A path forward to address resolution of these appeals, giving consideration to either scheduling a pre-hearing conference or a settlement hearing.

*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