

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 02, 2020

CASE NO.:

16-058

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

Appellant:	Union Gas Limited (File No. 16-058)
Appellant:	Coca-Cola Refreshments Canada Company (File No. 16-059)
Appellant:	Rosart Properties Inc. (File No. 16-060)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to undertake work with respect to contaminants
Reference No.:	4280-A8JQEX
Property Address/Description:	Site 1) 1565 Barton Street East Site 2) 1575 Barton Street East Site 3) 360 Strathearne Avenue North
Municipality:	City of Hamilton
ERT Case No.:	16-058
ERT Case Name:	Union Gas Limited v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Union Gas Limited

Coca-Cola Refreshments Canada Company

Rosart Properties Inc.

Director, Ministry of the Environment, Conservation and Parks

Counsel

Leonard Griffiths

Patrick G. Duffy

Peter Pickfield

Isabelle O'Connor and Justin Jacob

HEARD: September 22, 2020 by telephone conference call
ADJUDICATOR(S): Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On April 19, 2016, the Director, Ministry of the Environment, Conservation and Parks issued Order No. 4280-A8JQEX (“Director’s Order”) against AVX Corporation, Union Gas Limited (“Union Gas”), Coca-Cola Refreshments Canada Company (“Coca-Cola”) and Rosart Properties Inc. (“Rosart”) pursuant to s. 17, 18, and 196 of the *Environmental Protection Act* (“EPA”). The Director’s Order relates to the presence and migration of contaminants on three properties located in Hamilton, Ontario: (1) 1565 Barton Street East, (2) 1575 Barton Street East, and (3) 360 Strathearne Avenue North.

[2] Pursuant to s. 140(1) of the *EPA*, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart (together the “Appellants”) filed Notices of Appeal with the Environmental Review Tribunal (“Tribunal”). AVX Corporation did not appeal the Director’s Order.

[3] On June 17, 2016, the Tribunal issued an Order staying portions of the Director’s Order, as against the Appellants, until December 31, 2016 (see: *Union Gas Limited v. Ontario (Environment and Climate Change)*, 2016 CanLII 37491 (ON ERT)). Since that time, the Tribunal has held numerous status update teleconference calls for the parties to provide an update of the work being undertaken to resolve the appeals without the need for a contested hearing and has continued the stay.

Teleconference call of September 22, 2020

[4] The Tribunal requested the parties submit an agreed upon schedule of milestone events to be undertaken prior to the teleconference call of September 22, 2020. The following schedule was provided as a guide to bringing this matter to closure.

- June 19: Rosart circulates draft Response Documentation and updated Conceptual Site Model to Union Gas and Coca-Cola for comment
- July 3: Union Gas and Coca-Cola provide comments to Rosart
- July 3 - 10: Discussion, if necessary, between experts (Rosart/Coca-Cola /Union Gas) and revisions to Response Documentation
- July 13: Rosart circulates final Response Documentation to Director
- July - August: Discussion amongst parties on next steps/resolution of appeals
- September 2020: Status update to the Tribunal.

[5] At the teleconference call, Mr. Pickfield advised that field work and analyses were undertaken as required to input to the Conceptual Site Model, and a matrix of comments and responses was prepared and submitted to the Director. The Director is in the process of completing a response, likely to be issued this week. The discussion amongst the parties on the next steps for the resolution of the appeals has not yet occurred. The Director and Rosart jointly indicated that a meeting of the technical experts is required for this and indicated that it would take on the order of eight weeks for this to occur. They jointly requested that a further status update teleconference call be held in about eight weeks hence in order to update the Tribunal on the resolution of the appeals.

[6] The Tribunal is satisfied that it is appropriate to adjourn the matter as requested to a further teleconference call on the basis of the continued work being undertaken to bring this matter to a resolution without the need for a contested hearing.

[7] Rule 110 of the Tribunal's *Rules of Practice* ("Rules") apply to the continuation of a stay. In determining whether the stay should be continued, the Tribunal has considered the factors as provided in Rule 110:

- a) How the relevant statutory tests that are applicable to the granting or removal of a stay are met;
- b) Whether there is a serious issue to be decided by the Tribunal;
- c) Whether irreparable harm will ensue if the relief is not granted; and
- d) Whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

[8] In earlier orders the Tribunal found that it was not precluded under s. 143(2) or 143(3) of the *EPA* from granting a continuation of the stay of s. 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order as against the Appellants. The continuation has the effect of extending some of the deadlines in the Director's Order.

[9] In its previous orders the Tribunal has continued the stay of portions of the Director's Order to 30 days following the next teleconference call. The Tribunal notes that there is no change in the circumstances of the properties or the parties that would affect the granting of a continuation of the stay. No party objects to the stay being continued. The Tribunal finds that it is appropriate and in the public interest to grant a continuation of the stay to 30 days following the next teleconference call, as has been provided for by the Tribunal in previous orders.

[10] Subject to the same conditions set out in its earlier orders, the Tribunal grants the continuation of the stay, until 30 days following the next teleconference call.

ORDER

[11] The Tribunal orders that:

1. Sections 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order are stayed as against the Appellants until January 15, 2021;
2. The Director or the Appellants may seek a removal or modification of this Order on 15 days' notice to the other parties and in accordance of Rule 108 of the Tribunal's *Rules of Practice and Practice Directions*; and
3. A status update teleconference call will be held on **December 15, 2020** at **10 a.m.** The Tribunal Case Coordinator will provide the parties with call-in details closer to that date.

*Continuation of Stay Granted
Procedural Directions Ordered*

"Helen Jackson"

HELEN JACKSON
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

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