

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 21, 2020

CASE NOS.: 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**

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

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

OfficeMax Incorporated

Director, Ministry of the
 Environment, Conservation and
 Parks

Counsel

Tyson Dyck

Zachary Silver
 Alexandria Pike

Jennifer Fairfax

Nadine Harris
 Lauren Sasaki

HEARD:**ADJUDICATOR(S):**

December 16, 2020 by telephone conference 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 telephone conference call (“TCC”) on December 16, 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] On the previous TCC of October 1, 2020, the Tribunal directed the parties to be prepared to discuss a path forward for resolution of these appeals. In response to that direction, on behalf of the Appellants, Mr. Dyck described the work activities that have been undertaken at each of the two landfill sites, and the discussions amongst the parties, in order to reach settlement in this matter. Mr. Dyck reported that there are currently settlement proposals before the Director for each of the two landfill sites, and the Director will be providing comments to the Appellants on these in the next month.

[5] The parties jointly requested the Tribunal adjourn until late January, 2021, when the parties would be in a better position to report upon the next steps. The Tribunal was advised that the parties are hopeful that full settlement may be reached by the spring time.

[6] The Tribunal was advised that both landfill sites are being maintained as required by the interim orders that have been issued throughout this process.

[7] As acknowledged in previous Procedural Orders, the Tribunal notes the complex nature of the matter and commends the parties for their efforts to resolve the appeals and also notes the recent considerable effort to reach resolution. Nonetheless, 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] Based upon the submissions of the parties in the TCC of December 16, 2020, the Tribunal is satisfied that the parties are nearing settlement of these appeals, and finds that it is appropriate under the circumstances to grant the requested adjournment. The Tribunal anticipates that the parties will continue the considerable recent efforts to reach resolution, and directs that parties to be prepared to discuss a path forward at the next teleconference call.

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

ORDER

[10] The Tribunal orders that:

1. A telephone conference call is scheduled for **January 29, 2021** 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

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

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