

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 31, 2020

CASE NO(S):

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
Pierre Rougeau
David J. Paterson
Jacques P. Vachon
William G. Harvey

Counsel

Tyson Dyck

Zachary Silver and Alexandria Pike

Weyerhaeuser Company Limited Gabrielle K. Kramer

Director, Ministry of the
Environment, Conservation and
Parks Nadine Harris

HEARD: December 18, 2020 by teleconference call
ADJUDICATOR(S): 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 call on December 18, 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 sites, 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 Tribunal was advised that since the last status update on October 6, 2020, the parties have engaged in further technical and legal discussions. In response to the Tribunal's direction from the previous teleconference call, where the Tribunal directed the parties to be prepared to discuss a path forward for resolution of these appeals, Mr. Dyck provided a description of the work activities being undertaken to reach settlement in relation to the work required for the landfill site. He reported that the technical work has been undertaken iteratively in response to comments from the MECP, and that this iterative approach has resulted in a framework for settlement of the appeals. With the consent of all the Appellants and the Director, Mr. Dyck requested a short adjournment for the parties to have sufficient time to confirm the details of the proposed approach to settlement. At the next teleconference call, the parties anticipate they would be in a position to either set a settlement hearing date or to set a date for a pre-hearing conference in preparation for a contested hearing.

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

[7] Based upon the submissions of the parties in the teleconference call of December 18, 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 the parties to be prepared to discuss a path forward at the next teleconference call.

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

ORDER

[9] The Tribunal orders that:

1. A teleconference call is scheduled for **Wednesday, February 3, 2021 at 10 a.m.** The parties are to provide an update on:
 - i. 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