

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 16, 2020

CASE NOS.:

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

Counsel

Union Gas Limited

Leonard Griffiths

Coca-Cola Refreshments Canada Company

Patrick G. Duffy

Rosart Properties Inc.

Colin Leger for Peter Pickfield

Director, Ministry of the Environment, Conservation and Parks

Isabelle O'Connor

HEARD: December 15, 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 ss. 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, Coca-Cola 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 telephone conference calls (“TCC”) 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.

[4] The parties jointly provided to the Tribunal an agreed upon schedule of milestone events as a guide to bringing this matter to closure. At the status TCC of September 22, 2020, counsel for Rosart 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 and Rosart jointly requested that a further status update TCC be held where the parties could provide the Director's response, and to discuss the next steps for the resolution of the appeals. Union Gas and Coca Cola were in agreement with this approach.

Telephone Conference Call of December 15, 2020

[5] At the TCC of December 15, 2020, Isabelle O'Connor, counsel for the Director, provided an update. Ms. O'Connor indicated that Director had responded to the reporting provided by Rosart and had requested additional clarifications be provided. Rosart provided an updated report to the Director on December 8, 2020. Ms. O'Connor advised that, subject to minor issues, this updated report provides the basis for resolution of this matter.

[6] Upon consent of all the parties, Ms. O'Connor requested the matter be adjourned for a few weeks to allow the parties time to fully resolve the matter and requested that a settlement hearing be scheduled.

[7] The Tribunal is satisfied that it is appropriate to adjourn the matter as requested and to schedule a settlement hearing. The Tribunal directed the parties to provide settlement materials one week in advance of the settlement hearing date, and to consider the Tribunal's *Rules of Practice and Practice Directions* ("Rules") 198 to 206 that apply to the termination of proceedings when preparing the settlement materials.

[8] Rule 110 applies 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.

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

[10] In its previous orders, the Tribunal has continued the stay of portions of the Director's Order to 30 days following the next TCC. 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 TCC, as has been provided for by the Tribunal in previous orders. The continuation of the stay will allow the parties the requested time to work towards resolution of the appeals.

[11] 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 TCC.

ORDER

[12] 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 March 8, 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 settlement hearing by telephone conference call will be held on **February 4, 2021 at 10 a.m.** The Tribunal Case Coordinator will provide the parties with call-in details closer to that date.

*Continuation of Stay Granted
Settlement Hearing Scheduled*

"Helen Jackson"

HELEN JACKSON
MEMBER

If there is an attachment referred to in this document,
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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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