

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 15, 2020

CASE NO.:

16-109

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

Appellant: Corporation of the City of Mississauga
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to perform various work with respect to waste street sweepings
Reference No.: 3506-A8QGC3
Property Address/Description: Cayuga Site, Selkirk Site, and Other Sites
Municipality: Various municipalities
ERT Case No.: 16-109
ERT Case Name: Mississauga (City) v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Counsel

Corporation of the City of Mississauga

Harry Dahme, Liane Langstaff

Director, Ministry of the Environment, Conservation and Parks

Isabelle O'Connor

HEARD:
ADJUDICATOR(S):

November 25, 2020 by teleconference call
Helen Jackson, Member

PROCEDURAL ORDER

Background

[1] On November 30, 2016, Tim Webb, Director, Ministry of the Environment and Climate Change, now the Ministry of the Environment, Conservation and Parks (“MECP”), issued Director’s Order No. 3506-A8QGC3 (“Director’s Order”) to the Corporation of the City of Mississauga (“City”). The Director’s Order relates to street sweepings from the City that were delivered to various properties between 2004 and 2011.

[2] The City appealed the Director’s Order in its entirety to the Environmental Review Tribunal (“Tribunal”). The City sought and was granted a partial stay of the Director’s Order pending the disposition of the appeal.

[3] The Tribunal convened numerous telephone conference calls (“TCC”) to address procedural issues in advance of scheduling the Pre-hearing Conference (“PHC”). At the PHC, held in Mississauga on March 28, 2018, there were no requests for status in the matter.

[4] On August 8, 2019, a TCC was held for the purpose of hearing submissions on a proposed settlement reached by the Parties. The Proposed Minutes of Settlement included a Terms of Reference that established a process for assessing and addressing contaminants that may be contained in street sweepings at various properties.

[5] As part of the settlement, the Parties agreed that the City will not withdraw its appeal while the measures outlined in the Terms of Reference are being undertaken. Further, they agreed that should a dispute with respect to any aspect of the Terms of Reference arise, either Party may request the assistance of the Tribunal in resolving the dispute. Finally, upon completion of the measures outlined in the Terms of Reference, the Parties agreed that the City will request a withdrawal of its appeal, the Director shall consent to the request, and the Parties will request that the Tribunal direct the Director to issue an order amending or revoking the Director’s Order as agreed to by the Parties.

[6] In an Order issued on August 30, 2019, the Tribunal determined that the process contemplated by the Proposed Minutes of Settlement, including the Terms of Reference, was acceptable and adjourned the appeal to allow the Parties time to carry out the work contained in the Terms of Reference. The Tribunal directed the Parties to provide regular updates on the status of the appeal. The Tribunal directed that the updates may be made in writing, or a request for a TCC may be made through the Tribunal's Case Coordinator.

[7] Since that time, the parties have worked diligently towards resolution of the matter by working through the Terms of Reference, and the parties have provided regular updates to the Tribunal by letter advising of the progress reached in relation to the items of work described by the Terms of Reference.

[8] By email to the Tribunal dated November 23, 2020, the parties reported that the City has shared with the MECP the analytical results from the sampling that was conducted this past summer. Only three sites remain under investigation as per the Terms of Reference. The parties reported that no further work is required with respect to one site, and the City will prepare risk evaluation reports with respect to two remaining sites in accordance with Part V of the Terms of Reference. The City will then submit the reports to the MECP for review prior to their finalization and distribution to the property owner and health unit. On the basis of this update, the parties suggested that the next written update be provided by January 25, 2021, to allow sufficient time to prepare and review the reports. The parties jointly requested that in the interim the proceeding be adjourned *sine die*.

[9] Rather than adjourn the matter *sine die*, on its own initiative, the Tribunal directed the parties to attend a status update by TCC on November 25, 2020, to advise on the progress of the work and the anticipated time frame for the full settlement of this matter.

The November 25, 2020 Teleconference Call

[10] At the TCC of November 25, 2020, the parties advised that there remain only two sites where work is required. For each of these two sites, draft risk evaluation reports are being prepared that will be provided to the MECP for comment. These reports are ultimately to be provided to the owners of these two properties and the health unit, whereupon further discussions may be required to determine next steps.

[11] The Tribunal directed the parties to attend a further TCC on **February 17, 2021**. The purpose of the next TCC is for the parties to report upon the progress of the remaining work for the two outstanding sites, and to report upon the anticipated time frame for the full settlement of this matter.

ORDER

[12] The Tribunal directs the parties to attend a status update TCC scheduled for **February 17, 2021 at 10 a.m.** The call-in details will be provided by the Tribunal's Case Coordinator.

Procedural Directions Ordered

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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