

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 11, 2020

CASE NO.:

19-035

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

Appellant:	Pamela Poulin (File No. 19-035)
Appellant:	Harold Westendorp (File No. 19-036)
Appellant:	2057183 Ontario Limited (File No. 19-037)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to provide written confirmation that all liquid industrial and hazardous wastes have been removed from the Site by an Approved Waste Hauler, to prepare and implement a Phase Two Environmental Site Assessment Action Plan, and to submit a Final Report
Reference No.:	5200-BB2KYP-1
Property Address/Description:	7811 County Road 6
Municipality:	Elizabethtown-Kitley
Upper Tier:	United Counties of Leeds and Grenville
ERT Case No.:	19-035
ERT Case Name:	Poulin v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Pamela Poulin, Harold Westendorp
and 2057183 Ontario Limited

Director, Ministry of the
Environment, Conservation and
Parks

Counsel

J. Douglas Grenkie

Jon Bradbury, Elizabeth Chan (articling student)

HEARD:
ADJUDICATOR(S):

November 27, 2020 by teleconference call
Helen Jackson, Member

PROCEDURAL ORDER

[1] Pamela Poulin, Harold Westendorp and 2057183 Ontario Limited (“Appellants”) filed appeals of Director’s Order No. 5200-BB2KYP-1 (“Director’s Order”) with the Environmental Review Tribunal (“Tribunal”). The Director’s Order was issued on May 9, 2019 under s. 157.3(5) of the *Environmental Protection Act* (“EPA”) for a site located at 7811 County Road 6, in Elizabethtown-Kitley (“Site”).

[2] The appeals have been the subject of various teleconferences held by the Tribunal in an attempt to narrow the issues in dispute and deal with pre-hearing procedural matters. A hearing was previously scheduled to start on March 25, 2020 for three consecutive days. Those dates were abandoned as a result of a number of factors, most notably the cancellation of all in person hearings due to COVID-19 concerns. A teleconference was held May 6, 2020 to address issues of disclosure. Separately, Tribunal-assisted mediation was held on June 15, 2020; however, the parties were unable to reach a resolution.

[3] The Tribunal held a teleconference on August 19, 2020 to re-schedule the hearing and address the format of the hearing. Counsel for the Appellants preferred an in person hearing; whereas counsel for the Director was of the view that the hearing could proceed by way of video. A further teleconference was held October 26, 2020 to hear submissions on the schedule and format of the hearing. The Tribunal determined that a video hearing was appropriate and directed that the hearing commence on December 7, 2020, to continue daily through to December 11, 2020. The final argument was scheduled for December 16, 2020. These dates were agreeable to the parties.

Teleconference of November 27, 2020

[4] By email to the Tribunal dated November 16, 2020, Mr. Grenkie requested an adjournment of the scheduled hearing dates because Mr. Grenkie had subsequently

been scheduled for trial in the Superior Court of Justice, Family Court, on the same dates scheduled by the Tribunal in the current matter.

[5] The Tribunal scheduled a teleconference call for November 27, 2020 to hear submissions on this request. On the teleconference call, Mr. Grenkie clarified that the court had again rescheduled his matters, and that he had a criminal matter in court from November 30 to December 4; and, the family court matter was being rescheduled for December 14 to 18, leaving open the dates of December 7 to 11, 2020. Nevertheless, he requested that the matter before the Tribunal be adjourned on the basis that Mr. Grenkie, as a sole practitioner, was not able to do justice to all three matters under such a tight schedule.

[6] Mr. Bradbury expressed the Director's concern that the matter before the Tribunal had been delayed previously as described in the paragraphs above and voiced concern about any further delay. However, Mr. Bradbury noted that the Order under appeal is related to the requirement to undertake a Phase II investigation, which would not likely proceed in the winter season in any event. He also noted that even if Mr. Grenkie were compelled to attend to the Tribunal matter between December 7 to 11, according to the court schedule, Mr. Grenkie would not be available on December 16, the sixth day scheduled for the Tribunal matter.

[7] Given the situation that Mr. Grenkie has described regarding his tight schedule, Mr. Bradbury stated that the Director was willing to give his consent to the requested adjournment, provided that the rescheduled dates occur prior to the end of March 2021.

[8] The parties and the Tribunal consulted their respective calendars and agreed that, should the Tribunal grant the requested adjournment, the matter could be rescheduled from February 8 to 16, 2021, inclusive.

Analysis and Findings

[9] In considering whether to grant the requested adjournment, the Tribunal looks to its *Rules of Practice and Practice Directions* 104 to 107, which provide direction to the party seeking the adjournment and set out what the Tribunal may consider in deciding whether or not to grant the request for the adjournment. Mr. Grenkie explained to the Tribunal that he has been overscheduled due to the Superior Court's resumption of activities following the slowdown due to the COVID-19 pandemic. He noted that when he brought to the court's attention this Tribunal matter that had already been scheduled, the court responded that its timetable takes precedence over Tribunal matters.

[10] The Tribunal finds that in order for the parties to have a full and fair hearing, it is necessary to adjourn this matter to a time period when Mr. Grenkie has sufficient capacity in his calendar to ensure that he has the ability to properly represent the Appellants.

[11] As noted by Mr. Bradbury, the subject of the Order, being a Phase II investigation, would not proceed in the winter in any event, therefore an adjournment will not cause any further environmental harm than would have occurred without the adjournment. The adjournment will not overly prejudice either party.

[12] The rescheduled hearing can occur prior to the end of March, as requested by the Director.

[13] The Tribunal finds that under the circumstances it is appropriate to adjourn as requested but advised the parties that no further adjournment would be contemplated by the Tribunal.

ORDER

[14] The Tribunal orders that:

- i. The hearing in this matter will be held by video format. The Tribunal's Case Coordinator will provide login details separately by email.
- ii. The hearing is scheduled to commence on **Monday, February 8, 2021** at **10 a.m.** and continue through to **Tuesday, February 16, 2021**. There will be no sitting on February 15, 2021, as it is Family Day. These hearing dates are peremptory.

*Adjournment Granted
Hearing Dates Rescheduled*

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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