

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: February 05, 2021

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.

Peter Pickfield

Director, Ministry of the Environment, Conservation and Parks

Isabelle O'Connor

HEARD: February 4, 2021 by telephone conference call
ADJUDICATOR(S): Helen Jackson, Member

DECISION

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 Limited, Coca-Cola Refreshments Canada Company 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 on the work being undertaken to resolve the appeals without the need for a contested hearing and has continued the stay.

[4] At the TCC of December 15, 2020, Isabelle O’Connor, counsel for the Director, indicated that the Director was satisfied that there was the basis for resolution of this matter as a result of the most recent reporting provided by Rosart. The parties

requested a settlement hearing be scheduled in a few weeks to allow sufficient time to fully resolve the matter. On that basis, the Tribunal scheduled a settlement hearing for February 4, 2021.

Settlement Hearing of February 4, 2021

[5] In advance of the settlement hearing, Coca Cola, Rosart, and Union Gas (now known as Enbridge Gas Inc.) each advised the Tribunal that the Director has confirmed that the work required under the Director's Order has been completed and that each of these Appellants have no further obligations with respect to the Director's Order. Each of these three Appellants indicated their intention to withdraw their appeals of the Director's Order.

[6] Ms. O'Connor also confirmed by email to the Tribunal that the Director was satisfied that the work required by the Director's Order was complete. She noted that the Order under appeal has not been altered, and all parties have indicated their intention to withdraw their appeals. She stated that it is the Director's position that Rule 199 of the *Tribunal's Rules of Practice and Practice Directions* ("Rules") applies in this situation.

[7] At the settlement hearing, Ms. O'Connor confirmed that the Director is satisfied that the work required by the Director's Order has been met and there is no further work required by this Order. Given that the Director is satisfied that the work required under the Director's Order is now complete, each of the three Appellants indicated at the settlement hearing that they wish to withdraw their appeals.

[8] Rule 199 sets out that if a settlement results in a proposed withdrawal of an appeal agreed to by all parties without any changes to the instrument under appeal, then the Tribunal must dismiss the proceeding.

[9] Rule 199 states:

Where there has been a proposed withdrawal of an appeal agreed to by all Parties and the decision under appeal is not altered by a settlement agreement, a proposed withdrawal of an application, or a proposed revocation of an order made under section 74 of the *Ontario Water Resources Act*, the Tribunal shall issue a decision dismissing the proceeding

[10] The parties all agree that the Appellants intend to withdraw each of their appeals, and the instrument under appeal has not been altered. The Tribunal is satisfied that Rule 199 applies in this circumstance. The Tribunal accepts the withdrawal of the three appeals.

[11] In accordance with Rule 199 of the Tribunal's Rules, since the withdrawal of the appeal was agreed to by all parties and the decision under appeal is not altered, the Tribunal dismisses the proceeding.

DECISION

[12] The Tribunal orders that the proceeding is dismissed.

*Appeals Withdrawn
Appeals Dismissed*

"Helen Jackson"

HELEN JACKSON
MEMBER

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