

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: March 29, 2021

CASE NO.:

15-086

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

Appellants:	See Appendix 1 – Appellant List
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to develop and implement measures that prevent, decrease or eliminate any adverse effects from the discharge of contaminants related to the Belleville Gas Plant
Reference No.:	6480-9RTQVJ
Property Address/Description:	100 South Church Street
Municipality:	City of Belleville
Upper Tier:	County of Hastings
ERT Case No.:	15-086
ERT Case Name:	The Corporation of the City of Belleville v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Counsel

Corporation of the City of Belleville	Harry Dahme and Natalie Mullins
835267 Ontario Inc., Sidney Spiegel and Naomi Spiegel	Tom Friedland and Brad Halfin
105 Pinnacle Limited, Kent D. Hawkins, Darlene Hawkins and Anthony J. McGarvey	Andrew Biggart
Director, Ministry of the Environment, Conservation and Parks	Paul McCulloch

HEARD: March 22, 2021 by video conference
ADJUDICATOR: Helen Jackson, Member

DECISION

BACKGROUND

[1] The Appellants listed in the Appellant List attached as Appendix 1 to this order appealed the Director of the Ministry of the Environment, Conservation and Parks' ("MECP") Order No. 6480-9RTQVJ ("Director's Order"). The Director's Order was issued on August 31, 2015 and amended upon consent on September 12, 2018 to extend deadlines. The Director's Order required the Appellants to develop and implement measures that prevent, decrease or eliminate any adverse effects from the discharge of contaminants related to the Former Manufactured Gas Plant in the City of Belleville ("City") at the location noted above. The Former Manufactured Gas Plant operated between the period 1854 to about 1947. The City owned and operated the plant during a large portion of this period.

[2] In 1965, the site on which the Former Manufactured Gas Plant was split in two parcels and sold. The Eastern Parcel of lands are known as the Spiegel lands. The Eastern Parcel of lands are owned by 835267 Ontario Inc. ("835267"), and the officers and directors of the numbered company are Sidney Spiegel and Naomi Spiegel. The Western Parcel of lands are known as the Hawkins lands, owned by W.T. Hawkins Ltd., now known as 105 Pinnacle Limited ("105 Pinnacle"). The officers and directors of 105 Pinnacle are Kent D. Hawkins, Darlene Hawkins, and Anthony J. McGarvey. The City, the companies, and the officers and directors were all named as Orderees in the Director's Order.

[3] Since the appeals were filed in 2015, the Environmental Review Tribunal ("Tribunal") has held numerous status telephone conference calls ("TCCs") and granted the parties several adjournment requests on the basis that they were working diligently

towards settlement. As was described to the Tribunal during the numerous status TCCs, the settlement of the appeals is quite complex as it involves the concurrent settlement of civil action and also involves the simultaneous purchase and sale of two separate properties, amongst other issues. The Tribunal was kept apprised that the environmental work required by the Director's Order continued throughout the settlement process, which was confirmed by the Director.

Settlement Hearing

[4] On March 22, 2021, the Tribunal held a settlement hearing by video conference. Counsel for the City, Harry Dahme, described the history of this matter, and provided a summary of the settlement that was reached. He noted that the Minutes of Settlement address the appeals that are before the Tribunal and also resolve civil litigation in the Superior Court. As some of the matters in the settlement are confidential, a summary of the Minutes of Settlement was filed with the Tribunal.

[5] In advance of the settlement hearing, the parties provided documents in support of the settlement reached, which were entered into evidence at the settlement hearing, as follows:

- Exhibit 1 – Summary of Minutes of Settlement dated February 2021.
- Exhibit 2 – Director's Order dated August 31, 2015, amended in 2018.
- Exhibit 3 – 2017 Golder Report: Environmental Investigations in Response to Director's Order: Former Manufactured Gas Plant Site, Belleville, Ontario.
- Exhibit 4 – Letter dated April 18, 2019 from counsel for the City to the Director with draft Risk Management Plan, draft Risk Management Measures, and draft Health, Safety and Environment Plan: Sample Template and Guidance, Area AC-01.
- Exhibit 5 – Risk Management Plan (April 18, 2019).
- Exhibit 6 – Risk Management Measures (April 18, 2019).

- Exhibit 7 – Figure 1 depiction of Area AC-01.
- Exhibit 8 – Letter dated June 14, 2019 from MECP District Engineer to MECP Director concluding that the Risk Management Plan was in compliance with the Director’s Order and presented measures that are appropriate for ensuring the protection of human health and the environment in the area of the Former Manufactured Gas Plant.
- Exhibit 9 – Letter dated June 20, 2019 from MECP Director to counsel for the City stating the recommended measures would effectively address any potential impacts.
- Exhibit 10 – Letter dated March 5, 2021 from MECP Director to counsel for the City confirming that the parties complied with the Director’s Order.
- Exhibit 11 – Belleville Former Gas Plant Director’s Order – 2021 Draft.

[6] A comprehensive environmental investigation was undertaken by Golder Associates that delineated the extent of the contamination arising from the Former Manufactured Gas Plant and assessed any risk posed by it. The 2017 Golder Report (Exhibit 3) provides the findings of this work. Contaminants were identified on the Eastern Parcel, Western Parcel, Immediate Area and Greater Area. Figures identifying these areas are provided in the reporting. The Greater Area is identified as AC-01 shown in Exhibit 7. Golder Associates subsequently developed Risk Management Measures for each of the areas. These measures are described in a Risk Management Plan dated April 18, 2019 (Exhibit 5).

[7] The MECP reviewed both the environmental investigation and risk management reports, accepted both reports and then approved the Risk Management Measures on June 20, 2019. The Ministry’s technical staff concurred that the recommended measures would effectively address any potential impacts.

[8] The Tribunal was advised of a number of risk management measures that have already been implemented, including:

i) Notice to affected residents

The City delivered a notice in December 2018 to all residents living within the impacted area described as Area AC-01 (Exhibit 7). The notice advises residents that low levels of chemical compounds related to various historical industrial and commercial activities may be present on their property and provides guidance as to actions and precautions that should be taken to ensure that the substances do not pose a health risk.

ii) City Health and Safety By-law

The City passed a Health and Safety By-law on January 27, 2020 that sets out controls on construction and demolition activities within the impacted area described as Area AC-01 (Exhibit 7), including requirements to develop a health and safety plan, properly dispose of excess soils and groundwater disturbed during construction or demolition activities, import clean fill or install an asphalt or concrete cap over disturbed soils, and add a vapour control system to the building if required.

iii) City administrative procedures

The City has implemented administrative procedures to provide notification and/or advisement attachments to applicants for building permits or municipal consents and cut permits, and/or attached to these permits when the permits are issued, so that those applying for and obtaining a permit are provided notice of the requirements of the by-law.

iv) Groundwater monitoring

A groundwater monitoring program has been and will continue to be implemented over at least the next several years. The City has retained an engineering firm to conduct the groundwater monitoring program. 105 Pinnacle and the City have reached an arrangement whereby the engineering firm will also conduct groundwater monitoring on the Western Parcel on behalf of 105 Pinnacle.

[9] As part of the settlement, the City is purchasing the Eastern Parcel and taking on full responsibility for implementing, maintaining and paying for all Risk Management Measures required on the Eastern Parcel. The City will also become solely responsible for implementing the Risk Management Measures (Exhibit 6) relating to the Immediate Area and the Greater Area. 105 Pinnacle is maintaining sole responsibility for implementing the Risk Management Measures (Exhibit 6) relating to the Western Parcel until the Risk Management Measures are no longer required. Certain restrictions on any transfers of interest in the Western Parcel are in place.

[10] The Director is satisfied that as long as the Risk Management Measures (Exhibit 6) continue to be implemented or maintained in the future, there is no reason to believe that the contamination that originated from the Former Manufactured Gas Plant Site, and is still present in, on or under the property, or the migration or continued migration of contaminants off of the property, is causing or is likely to cause any adverse effects or potential adverse effects, such as environmental impacts and/or human health impacts.

[11] The settlement requires that the Director revoke the 2015 Director's Order, as amended in 2018, and issue a new Order ("2021 Order") that will require the City to implement and maintain all risk management measures on the Eastern Parcel, the Immediate Area and the Greater Area. Similarly, 105 Pinnacle will be required to implement the risk management measures on the Western Parcel. While the 2015 Director's Order, amended in 2018, already required the parties to implement measures to address any adverse effects related to the contamination that originated from the site, it did not enumerate the specific measures to be carried out. It also included many requirements that have already been complied with. For clarity moving forward, the 2021 Order will specify the specific measures that have to be implemented and by whom. The 2021 Order will also be registered on the title of the two parcels so that any future purchasers will be made aware of any environmental concerns associated with

each parcel. As part of the settlement, the parties agree with the Appellants' intended withdrawal of their appeals of the 2015 Director's Order.

ISSUE

[12] The issue is whether the revocation of the Director's Order and the withdrawal of the appeals by the Appellants; and the issuance of a new Director's Order, as described above, is consistent with the purpose and provisions of the *Environmental Protection Act* ("EPA") and is in the public interest.

Relevant Legislation and Rule

[13] The purpose of the *EPA* is set out in s. 3 of the *EPA* and provides:

3 (1) The purpose of this Act is to provide for the protection and conservation of the natural environment.

[14] The Director submits that the settlement of this matter falls under Rule 201 of the Tribunal's *Rules of Practice* (the "Rules"). Rule 201 deals with proposed withdrawal of an appeal on consent that alters the decision under appeal. Rule 202 is applicable where a Director proposes to revoke a decision that is the subject of an appeal. It provides that:

202. Where a Director, Risk Management Inspector or Official, Authority or municipality proposes to revoke a decision that is the subject of an appeal, the Tribunal shall consider whether the proposed revocation is consistent with the purpose and provisions of the relevant legislation and whether the proposed revocation is in the public interest. The Tribunal shall also consider the interests of Parties, Participants and Presenters. After the consideration of the above factors, the Tribunal may decide to continue with the Hearing or issue a decision dismissing the proceeding.

[15] As required by the settlement in this matter, the 2015 Director's Order is being revoked entirely and a new Director's Order is to be issued. This situation falls within the parameters of Rule 202 of the Tribunal's Rules. The test for the Tribunal to

consider under Rule 202 is whether the proposed revocation is consistent with the purpose and provisions of the relevant legislation and whether the proposed revocation is in the public interest. The Tribunal shall also consider the interests of parties, participants and presenters; however, there are no participants or presenters in these appeals.

Discussion, Analysis and Findings

[16] The Director submits that this resolution is consistent with the purposes and provisions of the *EPA* and is in the public interest for the following reasons:

- i. All potential adverse effects to the environment and human health posed by the contamination that originated from the Former Manufactured Gas Plant have been thoroughly assessed by a qualified engineering firm after conducting extensive environmental investigations over the course of more than two years;
- ii. Based on the environmental investigations that were conducted, the engineering firm determined that the contamination does not pose a risk to human health or the natural environment as long as specified measures are implemented and maintained in place;
- iii. MECP technical staff reviewed and accepted the recommendations of the engineering firm;
- iv. A new Director's Order will require the City and 105 Pinnacle to implement and maintain the risk management measures to prevent any potential adverse effects stemming from the contamination from occurring. The City will be required to implement and maintain all risk management measures required at the Eastern Parcel and the surrounding area. 105 Pinnacle will be required to implement and maintain all risk

management measures at the Western Parcel. There is no longer any reason to issue an order to 835267;

- v. The bulk of the risk management measures will be carried out by the City, a municipal government. There is no reason to believe the City will not comply with the requirements, given its public mandate to act in the best interest of its own citizens. 105 Pinnacle is responsible for implementing certain measures on its property. The company has operated a family business with close ties to the community at the site for many years. It is a solvent and successful ongoing business. Further, the cost of implementing the measures is less than the value of the property. Therefore, there is no reason to believe that 105 Pinnacle will not comply with the proposed new order. Under the terms of the settlement, should the City or 105 Pinnacle fail to comply with the 2021 Director's Order, the Ministry may exercise its powers accordingly, including issuing any further Orders to the City in respect of the Eastern Parcel or surrounding area and/or to 105 Pinnacle in respect of the Western Parcel;
- vi. The resolution avoids any further litigation between MECP and the Appellants and also amongst the Appellants who were involved in a lawsuit against one another. The costs and resources saved by ceasing any further litigation can be put towards implementing the risk management measures; and
- vii. All the parties consent to the proposed resolution and there are no known objections.

[17] The Director submits that the settlement is consistent with the purposes of the *EPA* to protect and conserve the natural environment, and s. 18 of the *EPA*, as all adverse affects associated with the contamination have been addressed. Further, it is in the public interest as the 2021 Director's Order will ensure that the City and

105 Pinnacle are legally obligated to implement and maintain the necessary risk management measures going forward.

[18] The Appellants concur with the submissions of the Director, particularly that the settlement fulfills the purpose of the *EPA* and is in the public interest. The terms of settlement specify that the Appellants will withdraw their appeals and the Director will issue a new Director's Order which will have more specificity with regard to the work required. The Appellants jointly request that the Tribunal accept the withdrawal of their appeals and that the Tribunal direct the Director to issue a new Director's Order substantially in the form provided in Exhibit 11, and that the Tribunal dismiss the proceeding in accordance with the Tribunal's Rules.

[19] The Tribunal has considered the settlement agreement reached by the parties and considered the evidence and submissions of the parties presented at this settlement hearing. In accordance with Rule 202, the Tribunal finds that the settlement agreement described herein is consistent with the purpose and provisions of the *EPA* and is in the public interest. On that basis, the Tribunal directs the Director to revoke the 2015 Director's Order, as amended, and to issue the 2021 Director's Order in substantially the form provided in Exhibit 11 to this settlement hearing. The Tribunal accepts the withdrawal of the Appellants' appeals of the 2015 Director's Order and dismisses this proceeding pursuant to Rule 202 of the Tribunal's Rules.

ORDER

[20] The Tribunal directs the Director to revoke the 2015 Director's Order, as amended in 2018, and to issue the 2021 Director's Order in substantially the form provided in Exhibit 11 to this settlement hearing.

[21] The Tribunal accepts the withdrawal of the appeals by the Appellants and orders that the proceeding is dismissed pursuant to Rule 202 of the Tribunal's Rules.

*Director Directed to Revoke Director's Order
Director Directed to Issue New Order
Appeals Withdrawn
Proceeding Dismissed*

"Helen Jackson"

HELEN JACKSON
MEMBER

Appendix 1 – Appellant List

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

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Appendix 1**Appellant List**

Appellant Name	File No.
The Corporation of the City of Belleville	15-086
105 Pinnacle Limited	15-087
Kent D. Hawkins	15-088
Darlene Hawkins	15-089
Anthony J. McGarvey	15-090
835267 Ontario Inc.	15-091
Sidney Spiegel	15-092
Naomi Spiegel	15-093