

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: May 14, 2021

CASE NO.: 11-061

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

Appellant:	See Appendix 1 - Appellant List (11-061)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to carry out work and provide financial assurance with respect to the Mud Lake Waste Disposal Site
Reference No.:	6248-8GRHU2
Property Address/Description:	Mud Lake Waste Disposal Site
Municipality:	City of Kenora
Upper Tier:	Kenora District
ERT Case No.:	11-061
ERT Case Name:	Dea v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

AbiBow Canada Inc.
AbitibiBowater Inc.
Abitibi-Consolidated Company of Canada

Allen Dea
Alain Grandmont
William G. Harvey
David J. Paterson
Pierre Rougeau
Jacques P. Vachon

OfficeMax Incorporated

Counsel

Tyson Dyck

Zachary Silver and Alexandria Pike

Jennifer Fairfax

Director, Ministry of the
Environment, Conservation and
Parks

Nadine Harris, Justin Jacobs, and Verity Thomson
(summer student)

HEARD: May 6, 2021 by video hearing
ADJUDICATOR(S): Hugh S. Wilkins, Member

PROCEDURAL ORDER

Background

[1] On May 13, 2011, the Director, Ministry of the Environment, Conservation and Parks (“MECP”) issued Director’s Order No. 6248-8GRHU2 (“Director’s Order”) regarding the Mud Lake Waste Disposal Site (“waste disposal site”) in the City of Kenora (“City”). The Director’s Order was appealed to the Environmental Review Tribunal (“Tribunal”) under s. 140(1) of the *Environmental Protection Act*. The Parties listed in Appendix 1 to this Decision are the appellants (“Appellants”).

[2] In late 2011, the Tribunal stayed certain items and approved interim amendments to the Director’s Order pending the outcome or final resolution of the appeals. Since that time, the Tribunal has granted a series of adjournments to permit ongoing work at the site and to allow for settlement discussions between the Parties.

[3] On May 6, 2021, the Tribunal held a Pre-Hearing Conference (“PHC”) at which it was informed by the Parties that they have reached a settlement in principle. At the PHC, the Tribunal addressed requests for status and it scheduled a settlement hearing.

Requests for Status

[4] The City requested Participant status. It stated that the waste disposal site lies within the geographic area of the City, it has a priority lien on the waste disposal site

property under the *Municipal Act 2001*, it owns lands in the vicinity of the waste disposal site, it has a role under the Director's Order, and it has environmental concerns regarding the possible migration of contaminants from the waste disposal site. The City requested that it be provided the opportunity to make oral submissions at the settlement hearing and that it be permitted to request Party status at the settlement hearing, if necessary. None of the Parties opposed the City's request. The Tribunal found that the City's interests will be directly and substantially affected by the hearing or its result, it has a genuine interest in the subject matter of the proceedings, and it is likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceedings. The Tribunal granted Participant status to the City, as requested.

[5] Wanda Marshall and Joyce McLeod also each requested Participant status. They each live in the vicinity of the waste disposal site and have health and safety concerns regarding it. None of the Parties opposed their requests. The Tribunal found that their interests will be directly and substantially affected by the hearing or its result, they each have a genuine interest in the subject matter of the proceedings, and they are each likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceedings. The Tribunal granted Participant status to Ms. Marshall and Ms. McLeod, as requested.

[6] The Parties consent to the Participants being provided an opportunity to make oral submissions at the settlement hearing and for them to have the ability to request Party status at the settlement hearing. The *Ontario Land Tribunal Act, 2021* (Bill 245) received Royal Assent on April 19, 2021. It includes provisions that non-parties may only make written submissions in proceedings. The proclamation date for Bill 245 has not yet been announced; however, it will likely be in effect by the time that the settlement hearing is held. The Tribunal notes the position of the Parties in regard to the Participants' engagement.

[7] The Parties agreed to the following dates for the exchange and filing of materials in preparation for the settlement hearing:

- by **Tuesday, June 22, 2021**, the Parties are to serve and file evidence, submissions and supporting documents and the Participants are to serve and file their written submissions; and
- by **Tuesday, June 29, 2021**, the Parties are to serve and file any reply evidence, submissions and supporting documents, and the Participants are to serve and file reply written submissions, if any.

[8] The Tribunal notes that the Parties have agreed to hold meetings with the Participants by telephone conference call to provide information regarding the waste disposal site and the proposed settlement and have agreed to provide the Participants with relevant materials.

ORDER

[9] The Tribunal orders that the City of Kenora, Wanda Marshall, and Joyce McLeod are granted Participant status in these proceedings.

[10] The Tribunal orders that the settlement hearing in these proceedings will be held on **Tuesday, July 6, 2021** at **10 a.m.** by video hearing. The Tribunal's Case Coordinator, Tracee Wessam, will provide the settlement hearing call-in details. Ms. Wessam may be reached at Tracee.Wessam@ontario.ca if there are questions regarding the call-in details for the settlement hearing.

[11] The Tribunal directs the Parties to serve and file evidence, submissions and supporting documents, and directs the Participants to serve and file their written submissions by **Tuesday, June 22, 2021**.

[12] The Tribunal directs the Parties to serve and file any reply evidence, submissions and supporting documents, and directs the Participants to serve and file any reply written submissions by **Tuesday, June 29, 2021**.

[13] This Member is not seized.

*Participant Status Granted
Settlement Hearing Scheduled*

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Appendix 1 – Appellant List (11-061)

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

Appellant List (11-061)

Appellant Name	File No.
AbiBow Canada Inc.	11-058
AbitibiBowater Inc.	11-059
Abitibi-Consolidated Company of Canada	11-060
Allen Dea	11-061
Alain Grandmont	11-062
William G. Harvey	11-063
David J. Paterson	11-064
Pierre Rougeau	11-065
Jacques P. Vachon	11-066
OfficeMax Incorporated	11-074