

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: May 14, 2021

CASE NO.:

11-144

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

Appellant:	See Appendix 1 - Appellant List (11-144)
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 Margach Waste Disposal Site
Reference No.:	8301-8HFPUQ
Property Address/Description:	Margach Waste Disposal Site
Municipality:	City of Kenora
Upper Tier:	Kenora District
ERT Case No.:	11-144
ERT Case Name:	OfficeMax Incorporated 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 Jacob, and Catalina Karam
(summer student)

HEARD:
ADJUDICATOR(S):

May 7, 2021 by video hearing
Hugh S. Wilkins, Member

PROCEDURAL ORDER

[1] On August 16, 2011, the Director issued Director's Order No. 8301-8HFPUQ regarding the Margach 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 2011, the Tribunal stayed specific items in the Director's Order on an interim basis and approved interim amendments to the Order. Since then, there has been ongoing work done at the site and settlement discussions have been undertaken between the Parties.

[3] On May 7, 2021, the Tribunal held a Pre-Hearing Conference ("PHC") in this proceeding. At the PHC, the Parties informed the Tribunal that they have reached a settlement in principle. The Tribunal heard a request for Participant status from the City and then scheduled a settlement hearing.

Request for Status

[4] At the PHC, the City requested Participant status. It submitted that the waste disposal site is within the geographic area of the City, it has a priority lien on the property, it owns lands nearby, and it has environmental concerns regarding 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. The Parties did not oppose 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.

[5] The *Ontario Land Tribunal Act, 2021* (Bill 245) received Royal Assent on April 19, 2021. It includes provisions limiting non-parties to written submissions only, which could impact the City's participation at the settlement hearing. Although Bill 245 is not yet in force, it will likely be by the time of the settlement hearing. As noted above, the Parties consent to the City being provided an opportunity to make oral submissions at the settlement hearing and for it to have the ability to request Party status at that time. The Tribunal notes the position of the Parties in this regard.

[6] 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 City is to serve and file its written submissions; and
- by **Tuesday, June 29, 2021**, the Parties are to serve and file any reply evidence, submissions and supporting documents, and the City is to serve and file reply written submissions, if any.

[7] The Tribunal notes that the Parties have agreed to hold meetings with the City to discuss the waste disposal site and the proposed settlement, and have agreed to promptly provide the City with relevant materials regarding the site and the proposed settlement.

ORDER

[8] The Tribunal orders that the City of Kenora is granted Participant status in these proceedings.

[9] The Tribunal orders that the settlement hearing in these proceedings will be held on **Tuesday, July 6, 2021 at 2 p.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.

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

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

[12] This Member is not seized.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

Appendix 1 – Appellant List (11-144)

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 (11-144)

Appellant Name	File No.
OfficeMax Incorporated	11-144
AbitibiBowater Inc.	11-146
AbiBow Canada Inc.	11-147
Abitibi-Consolidated Company of Canada	11-148
Pierre Rougeau	11-149
David J. Paterson	11-150
Allen Dea	11-151
Jacques P. Vachon	11-152
William G. Harvey	11-153
Alain Grandmont	11-154