

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: April 14, 2016

CASE NO.:

15-019

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

Appellants:	See Appendix 1 – Appellant list
Respondent:	Director, Ministry of the Environment and Climate Change
Subject of appeal:	Order issued to perform work to prevent the discharge of contaminants from the site
Reference No.:	7344-9UKF6C
Property Address/Description:	833 Helena Street
Municipality:	Fort Erie
Upper Tier:	Regional Municipality of Niagara
ERT Case No.:	15-019
ERT Case Name:	McQuiston v. Ontario (Environment and Climate Change)

Heard:	February 19 and March 9 and 11, 2016 by telephone conference call and in writing
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APPEARANCES:

Parties

Counsel/Representative⁺

Director, Ministry of the Environment and Climate Change

Andrea Huckins and Justin Jacobs

Ian McQuiston

Self-represented

Edwin M. Robertson and 1350095 Ontario Ltd.

Marc McAree and Matthew Gardner

Sanjay Nirula	Bruce McMeekin
Gerald Douglas Warne	Stewart McLellan ⁺ (in writing only)
DTZ Barnicke Niagara Limited, Taylor Wilson and Todd Howard Crawford	John Tidball
Corporation of the Town of Fort Erie	Christine Carter

Participant

Regional Municipality of Niagara	Leonard Griffiths and Jessica Mathewson
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DECISION DELIVERED BY HUGH S. WILKINS

REASONS

Background

[1] On March 19, 2015, the Director, Ministry of the Environment and Climate Change issued Order No. 7344-9UKF6C (the “Director’s Order”) to a number of individuals and entities regarding a spill of environmental contaminants including toluene and acetone at 833 Helena Street, Fort Erie, Regional Municipality of Niagara, Ontario (the “Site”). Several persons named on the Director’s Order appealed to the Tribunal under s. 140 of the *Environmental Protection Act* (“EPA”). A full list of the Appellants is included in Appendix 1.

[2] Notices of motion requesting stays of the Director’s Order were filed by Sanjay Nirula on April 24, 2015, and by 1350095 Ontario Limited and Edwin Robertson on April 27, 2015. These parties and the Director agreed, on consent, to terms and conditions regarding the requested relief and, on May 13, 2015, the Tribunal orally granted a partial stay and ordered interim amendments to the Director’s Order. The oral Order was confirmed in writing by the Tribunal on May 20 and with reasons on June 12, 2015.

[3] A preliminary hearing was held in Fort Erie, Ontario, on June 15, 2015. At the preliminary hearing, the Tribunal orally granted party status to Taylor Wilson, Todd Howard Crawford, Carvern Petrochemical Co. Ltd., Carvern International Industries Ltd., the Corporation of the Town of Fort Erie, PPG Industries Ohio, Inc., PPG Industries, Inc., Serious Business Inc., and Allcolour Paint Ltd., and granted participant status to the Regional Municipality of Niagara (the "Region"). The Tribunal confirmed this Order in writing on July 16, 2015.

[4] At the preliminary hearing, 1350095 Ontario Limited and Mr. Robertson stated that they were taking steps to have the work completed as required under the Director's Order.

[5] A status update telephone conference call ("TCC") was held on August 19, 2015 at which time the Tribunal granted party status to Amercoat Canada, Rubyco Inc., and Danroh Inc.

[6] On December 9, 2015, 1350095 Ontario Limited and Mr. Robertson sent correspondence to the Tribunal indicating that they were withdrawing their Notices of Allegation against PPG Industries Ohio, Inc., PPG Industries, Inc., Serious Business Inc., Allcolour Paint Ltd., Amercoat Canada, Rubyco Inc., and Danroh Inc. On December 14 and 15, 2015, these companies informed the Tribunal by email that, given the withdrawal of the Notices, they were withdrawing from the proceeding.

[7] During a status update TCC on February 19, 2016, the Director stated to the Tribunal that 1350095 Ontario Limited and Mr. Robertson had now completed all of the work required under the Director's Order and that the Director intended to revoke the Order provided that the Appellants withdrew their appeals.

[8] During a further status update TCC on March 9, 2016, the parties gave their consent to the revocation of the Order. The Tribunal requested written submissions on how the proposed revocation was consistent with the purpose and provisions of the *EPA* and in the public interest in accordance with Rule 202 of the Tribunal's *Rules of*

Practice (the “Tribunal’s Rules”). On March 9, 10, and 11, 2016 the Tribunal received written submissions in this regard.

[9] On March 11, 2009, the Tribunal held a further TCC and received oral submissions on the proposed revocation. The Tribunal accepted the revocation of the Order and dismissed the proceedings. With the revocation of the Director’s Order, 1350095 Ontario Limited, Mr. Robertson, Mr. Nirula, Mr. McQuiston, and DTZ Barnicke Niagara Limited, withdrew their appeals.

[10] On April 12, 2016, the Tribunal received email correspondence from Mr. Stewart McLellan, on behalf of Mr. Warne, withdrawing Mr. Warne’s appeal.

Relevant Legislation and Rules

[11] The following are the relevant provisions of the *EPA* and the Tribunal’s Rules):

EPA

Purpose of the Act

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

Rules of the Tribunal

Termination of Proceedings

202. Where a Director, a Risk Management Inspector or Official or a municipality proposes to revoke the 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.

Issue

[12] The issue is whether the Director's Order should be revoked and the proceedings dismissed, or whether the hearing should continue.

Discussion, Analysis and Findings

[13] Tribunal Rule 202 requires that the Tribunal consider whether the proposed revocation of an order is consistent with the purpose and provisions of the *EPA* and whether it is in the public interest. The Tribunal must also consider the interests of parties, participants and presenters. The Tribunal has the discretion either to continue with a proceeding or to dismiss it.

[14] On March 9, 2016, the Director sent correspondence to the Tribunal, and, on March 11, 2016, she made oral submissions that the proposed revocation is consistent with the purpose of the *EPA* and is in the public interest for the following reasons:

- the Director's Order has been fully complied with by 1350095 Ontario Limited and Mr. Robertson;
- 1350095 Ontario Limited has completed additional work, beyond the requirements of the Director's Order, at the Site and in a swale located south of the Site, including test pit investigation, demolition of a building, soil excavation, debris removal, confirmatory sampling and testing, and installation of a clay cap on a portion of the Site and the swale; and
- the settlement avoids the cost, time and resources of a hearing and will allow resources to be directed to the protection of the environment and the public.

[15] On March 10 and 11, 2016, the Tribunal received written and oral submissions from the parties and the Region supporting the Director's submissions. The parties and participant all agree to the proposed revocation.

[16] The Tribunal has considered the above information, the parties' submissions, and the interests of the participant, and finds that the proposed revocation is consistent with the purpose and provisions of the *EPA* and in the public interest. The Tribunal revokes the Order and dismisses the appeals pursuant to Tribunal Rule 202.

[17] The Tribunal notes that on June 12, 2015, it stayed portions of the Director's Order and amended the Order pending the final resolution of the appeal. The Tribunal notes that with the dismissal of the proceedings the requirements set out in the Tribunal's Order, dated June 12, 2015, are satisfied.

DECISION

[18] The Director's Order is revoked against the Appellants and the proceeding is dismissed.

*Director's Order Revoked
Proceeding Dismissed*

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

Appendix 1 – List of Appellants

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Environmental Review Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix 1**List of Appellants**

Appellant Name	File No.
Iain McQuiston	15-019
Sanjay Nirula	15-020
DTZ Barnicke Niagara Limited	15-021
Gerald Douglas Warne	15-022
1350095 Ontario Limited	15-023
Edwin Robertson	15-024