

No Take-Backs: Waste Ownership and Liability Transfer Under the *EPA*

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Overview

- **Environmental Review Tribunal (Tribunal) decided a motion brought by Peel (Region)**
- **The Tribunal revoked the MOECC Director's Order issued against the Region**
- **Why important:**
 - important procedural rights for Orderees
 - clarified generator liability under the EPA, Part V, ss. 42 and 43
 - motions for review

Take-Home

1. This is NOT the *R. v Sault Ste. Marie* case
2. EPA, Part V – ‘Waste Management’ creates waste “generator liability”, but clarifies when it ends
3. The MOECC may not delegate its oversight of ECA sites to waste industry participants

Not Sault Ste. Marie

- **Municipality outsources waste collection and disposal to private company**
 - waste migrates to nearby creek
 - municipality charged for “permitting” the unlawful discharge
- **Sounds Familiar!!! Director alleged:**
 - the Region ‘permitted’ the deposit
 - Region had responsibility for waste even after it was deposited at ECA site

Not Sault Ste. Marie

2 Deposits of Waste

1. Region's lawful deposit of incinerator ash at ECA site

1. delivered by Region
2. accepted by ECA site owner

2. ECA site owner's unlawful deposit as fill beneath church property parking lot

Generator Liability

- **EPA, s. 42**

- 42. (1) The ownership of waste that is accepted at a waste disposal site by the operator of the site is transferred to the operator upon acceptance

- **EPA, s. 43**

- 43. Where waste has been deposited ... the Director may issue an order to remove the waste to ... (a) an owner, previous owner, a person who otherwise has or had charge and control of the waste”

Generator Liability

- **Tribunal held that s. 42 restricts the order-making power of the Director under s. 43**
- **Section 42 provides an incentive for ‘good behaviour’ – industry participants who lawfully deposit waste at MOECC approved waste sites gain the benefit of protection from future liability**
- **Section 43 (and other Order making provisions) provides the MOECC with a ‘stick’ to use against ‘bad actors’ who unlawfully dump waste at unapproved sites**

No Delegation

- **The Director: not reasonable for the Region to send many tonnes of waste to the ECA site and fail to track subsequent use**
 - read-in a due diligence provision into s. 42
- **Rejected by Tribunal**
 - “The Tribunal agrees with Peel that the MOECC is the regulator, not Peel... it was the MOECC’s responsibility to enforce the ECA, not Peel’s. Peel was a responsible actor ...”

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