

Court file no. 12875/86

SUPREME COURT OF ONTARIO

BETWEEN:

NATIONAL SEWER PIPE LIMITED



and

PLAINTIFF(S)

THE CORPORATION OF THE CITY
OF BURLINGTON

DEFENDANT(S)

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 17, 1986

Issued by

W.J. Dewlap & M. Taylor
Local registrar

(Name & address of
each defendant.)

TO:

The Corporation of
The City of Burlington
City Hall
426 Brant St.
Burlington, Ontario
L5R 3Z6

Address of court office:

145 Queen St. West
Toronto, Ontario
M5H 2N9

CLAIM

1. THE PLAINTIFF(S) CLAIM(S): against the defendant for:

(State here the precise relief claimed.)

(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)

(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)

- (a) damages for trespass upon the plaintiff's lands hereinafter described in the amount of \$4,000,000.00;
- (b) damages for nuisance to the plaintiff's lands by the defendant in the amount of \$4,000,000.00;
- (c) damages for negligence and breach of statutory duty by the defendant in the amount of \$4,000,000.00;
- (d) punitive damages in the amount of \$2,000,000.00;
- (e) a permanent injunction prohibiting and restraining the defendant from continuing to trespass upon the plaintiff's lands by the deposit of the defendant's garbage, refuse, landfill and/or pollutants and from creating a nuisance upon the plaintiff's lands by deposit of pollutants upon the plaintiff's lands which emanate from the defendant's lands;
- (f) a mandatory Order requiring the defendant to abate the nuisance and trespass caused by the defendant to the plaintiff's lands by the escape of pollutants from the defendant's lands to the plaintiff's adjoining lands and the deposit of the defendant's garbage, refuse and landfill on the Plaintiff's lands;
- (g) pre-judgment interest pursuant to the provisions of the Courts of Justice Act;

(h) costs of this action on a solicitor and client basis;

(i) such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff is an incorporated company owning in fee simple certain parcels or tracts of land situate in the City of Burlington, in the Regional Municipality of Halton, generally described as follows:

"ALL AND SINGULAR those certain parcels or tracts of land and premises, situate, lying and being in the City of Burlington, in the Regional Municipality of Halton, formerly in the Township of East Flamborough, County of Halton, and the Province of Ontario, being composed of part of Lots 2 and 3; Concession 1; part of Lot 3 in Concession 2; and part of the Road Allowance between Concessions 1 and 2, closed by By-Law No. 228, East Flamborough, in the said City of Burlington."

3. The Defendant is a municipal corporation and is the owner and occupier of certain lands referred to as Bayview Park, more particularly shown on Expropriation Plan dated the 16th day of May, 1986, prepared by Allan G. Hall, Ontario Land Surveyor, for the Defendant, which said lands consist of Part of Lot 2, Concession 2, in the City of Burlington and on their westerly and southerly boundaries abut the Plaintiff's lands hereinbefore referred to.

4. The defendant during the period 1957 to 1972 operated on its lands described aforesaid, a landfill operation known as the Bayview Park Landfill. The Bayview Landfill was closed in 1972. The said landfill site, approximately 40 acres in size, was closed from active dumping for a period of time and then the Defendant attempted to rehabilitate the lands for park and recreational purposes.

5. During the operation of the defendant's aforesaid landfill, the defendant intentionally negligently or otherwise did cause or permit garbage, refuse, and landfill brought to the defendant's lands to escape to or be deposited upon the plaintiff's lands abutting on the westerly and southerly boundary of the defendant's aforesaid lands. The garbage, refuse and landfill deposited on the plaintiff's lands by the defendant remain upon and continue to contaminate the Plaintiff's lands and constitute a nuisance and a trespass.

6. In or about the years 1980 to 1982, the Ministry of the Environment upon investigations made of the defendant's aforesaid landfill site noted surface water contamination upon the plaintiff's lands. Further investigations revealed that the defendant, through its negligent use, operation and closure of the Bayview Park landfill site, created or permitted the creation of toxic leachate which has and continues to percolate,

escape and migrate from the Defendant's lands to the adjoining lands of the Plaintiff as aforesaid, which constitutes a trespass and nuisance to the Plaintiff's lands.

7. The Plaintiff says that the Defendant's use of its own lands as aforesaid was and continues to be a non-natural use of its lands and as such the Defendant is strictly liable to the Plaintiff for any damage caused to the Plaintiff's lands from the escape from the Defendant's lands of the dangerous substance known as toxic leachate which has polluted and contaminated the ground and surface waters upon the Plaintiff's lands.

8. The Plaintiff says that the Defendant owed to the Plaintiff a duty of care to ensure that the use of its lands as a landfill would not interfere with the use and enjoyment by the Plaintiff of its lands and that the Defendant breached that duty and was negligent in the performance of said duty. The particulars of the Defendant's negligence and breach of duty are as follows:

- (a) it dumped garbage and other waste material on the lands, when it knew or ought to have known that the decomposition of the materials deposited within the landfill would result in the production of toxic leachate which would seep into and constitute a hazard and danger to the adjoining property of the Plaintiff;
- (b) by depositing the garbage and other waste material as aforesaid, the Defendant permitted the toxic leachate therefrom to escape into the adjoining property owned by the Plaintiff;

- (c) it failed to take, adopt or construct the necessary physical precautions, structures or means to prevent the escape of the dangerous, toxic leachate pollutants onto the Plaintiff's lands;
- (d) it failed to adopt or consider or provide proper means of dispersing the toxic leachate or other pollutants safely without causing damage to the adjoining lands owned by the Plaintiff;
- (e) it failed to inspect from time to time, the purported remedial methods adopted in closing its landfill to determine whether said methods were working or accomplishing the results intended to remove the dangers of pollution or escape of dangerous substances onto adjoining landowners' properties; and
- (f) it failed to warn the Plaintiff as an adjoining property owner of the possibility of pollutants such as toxic leachate and other dangerous substances escaping from its lands to the plaintiff's lands.

9. The Plaintiff says that the ongoing escape of toxic leachate onto its lands and the presence of garbage, refuse and landfill render its lands unsuitable for commercial/industrial development or other development and has destroyed the value of the lands for that use. The Plaintiff has suffered substantial damages as a result of the acts or omissions of the Defendant as pleaded aforesaid.

10. The Defendant since the closure of its Bayview landfill site in 1982 has known about its trespass upon the Plaintiff's lands but has refused to take any steps whatsoever to

abate the said trespass by the removal of the garbage, refuse and landfill from the Plaintiff's lands. In May of 1982, the Defendant received from M.M. Dillon Limited, Consulting Engineers and Planners, a report within which it was indicated that it would cost approximately \$500,000.00 to remove the garbage, refuse and landfill deposited on the Plaintiff's lands, as aforesaid, from the Plaintiff's lands to another landfill site which abuts on the westerly extremities of the Plaintiff's property. Despite this information, the Defendant has taken no steps to correct the trespass.

11. In addition, the Defendant was at all relevant times aware of the contamination by leachate of the Plaintiff's lands but took no steps to alleviate or mitigate the matter until threatened by the Ministry of the Environment with a Control Order obliging it to clean up the mess. The Plaintiff, at the request of the said Ministry, cooperated with the Defendant by entering into an Access Agreement dated June 9, 1986, enabling the Defendant to enter upon a portion of the Plaintiff's lands for the purposes of putting into use a leachate control system.

12. The Plaintiff says that the Defendant refused to take any steps to clean up the said mess at an earlier time, but now acting in purported compliance with the demand of the Ministry of the Environment is attempting

to restrict the Plaintiff in the proper and lawful enjoyment of its lands, and to avoid its legal obligation to abate the trespass and nuisance to the Plaintiff's lands. This is being done by designing a leachate monitoring and control system which utilizes much more of the Plaintiff's valuable land than necessary to the south of Bayview Park for the real purpose of depriving the Plaintiff of the lawful use of its lands and thus avoiding its legal obligation to abate the nuisance and trespass.

13. The Plaintiff says that the Defendant by its actions as pleaded in paragraphs 10, 11 and 12 acted in bad faith and has shown wanton, reckless, callous and contemptuous disregard of the Plaintiff's property rights and enjoyment of its said lands. As a result of the Defendant's conduct as pleaded, the Defendant should be ordered to pay punitive damages to the Plaintiff.

The Plaintiff proposes that this action be tried at Toronto, Ontario.

Date of Issue: July 17, 1986.

FASKEN & CALVIN
Barristers & Solicitors
Box 30
Toronto-Dominion Centre
Toronto, Ontario
M5K 1C1

Robert B. Tuer
Peter R. Greene
(416) 366-8381

Solicitors for the Plaintiff.

NATIONAL SEWER PIPE LIMITED

and

THE CORPORATION OF THE CITY OF BURLINGTON

PLAINTIFF(S)

DEFENDANT(S)

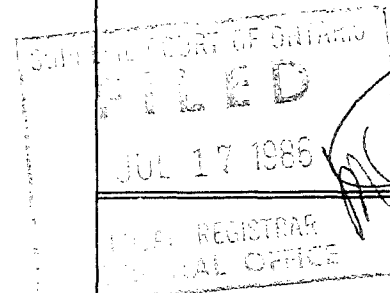
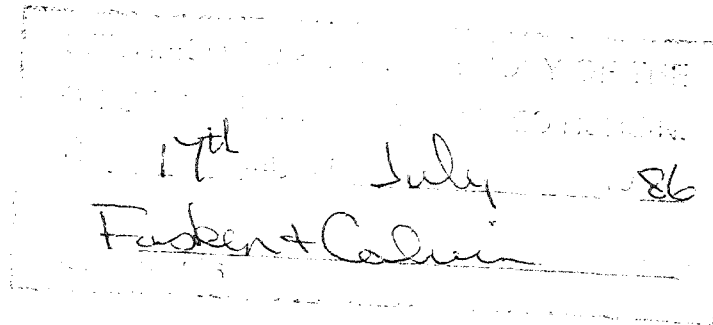
(Short title of proceeding)

Court file no.

12875/86

SUPREME COURT OF ONTARIO

Proceeding commenced at Toronto,
Ontario.



CLERK, REGISTRAR
JUDICIAL OFFICE

STATEMENT OF CLAIM

(Form 14A under the Rules)

DYE & DURHAM CO. LIMITED—Form No. 900 or 920

(68161/903 RBT/PRG)

Name, address and telephone number of solicitor or plaintiff:

Fasken & Calvin,
Barristers and Solicitors,
Box 30,
Toronto-Dominion Centre,
Toronto, Ontario.
M5K 1C1
366-8381

Robert B. Tuer
Peter R. Greene
Solicitors for the Plaintiff
National Sewer Pipe Limited

Court file no. *RE 1630/86*

SUPREME COURT OF ONTARIO

BETWEEN:

NATIONAL SEWER PIPE LIMITED

APPLICANT(S)

(Court seal.)

and

THE CORPORATION OF THE CITY OF BURLINGTON

RESPONDENT(S)

(Insert statutory provision or rule under which the application is made.)

APPLICATION UNDER The Municipal Act Sections 138, 139, 140(6) and 193; The Courts of Justice Act, Sections 110 & 114; and The Rules of Civil Procedure
NOTICE OF APPLICATION of Civil Procedure
Section 14.05(1) (2) (3)

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant(s). The claim made by the applicant(s) appears on the following page.

(Insert a High Court judge, a local judge of the High Court or as may be.)

THIS APPLICATION will come on for a hearing before a Justice of the Supreme Court of Ontario

on Tuesday, July 29th, 1986, at 10:00 a.m.
(day) (date) (time)

(Address of court house.)

at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N9

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 17, 1986

Issued by

Local registrar

Warren J. Dunlop per E. S. S.

(Name and address of each respondent.)

TO: THE CORPORATION OF THE CITY OF BURLINGTON
City Hall
426 Brant Street
Burlington, Ontario
L7R 3Z6

Address of court office:

145 Queen Street West
Toronto, Ontario
M5H 2N9

APPLICATION

1. The Applicant makes application for:

- (a) an Order pursuant to Section 139 of The Municipal Act, R.S.O., 1980, c. 302, as amended, quashing the resolution identified as SWM-69-85-1 by motion 271 passed at the Regular Meeting of the Council of the Respondent held on July 22nd, 1985, purportedly passed by the Respondent pursuant to Section 139 of The Municipal Act and relating to the commencement of expropriation proceedings of the Applicant's lands;
- (b) an Order pursuant to Section 139 of The Municipal Act R.S.O., 1980, c. 302, as amended, quashing the resolution identified as EM-63-86, dated June 9, 1986 and the resolution identified as EM-35-86, dated April 7, 1986, relating to the Notice of Application for approval to expropriate the Applicant's lands which was served upon the Applicant pursuant to the provisions of The Expropriations Act R.S.O., 1980, c. 148, and in particular Section 6 thereof;
- (c) an Order pursuant to Section 110 of the Courts of Justice Act or alternatively pursuant to Rule 14.05(3)(d),(g) of the Rules of Civil Procedure declaring that the resolutions passed by the Respondent and identified under paragraphs (a) and (b) aforesaid, are invalid and unenforceable as against the Applicant with respect to any steps taken by the Respondent or its council pursuant to the provisions of The Expropriations Act with regard to the Applicant's lands which are the subject matter of the aforesaid resolutions;
- (d) an Order declaring that the Respondent exceeded its statutory authority purportedly exercised pursuant to Section 193 of The Municipal Act in commencing expropriation proceedings of the Applicant's lands which exceed in acreage the requirements of the Respondent for its legitimate use;
- (e) an Order declaring that the aforesaid resolutions were enacted in bad faith and with the sole intent and purpose of preventing the Applicant from using its lands for legitimate purposes;
- (f) a mandatory and permanent Order pursuant to Section 114 of the Courts of Justice Act or pursuant to Rule 14.05(3)(g) of the Rules of Civil Procedure prohibiting, restraining and enjoining the Respondent its servants, agents or

representatives from enforcing or taking any steps or acts pursuant to the aforesaid resolutions and in particular from proceeding under those resolutions with the expropriation of the Applicant's lands or the expropriation proceedings commenced by the Respondent pursuant to the provisions of The Expropriations Act;

- (g) an interim Order pursuant to Section 140 (6) of The Municipal Act or alternatively pursuant to Section 114 of the Courts of Justice Act restraining and enjoining by way of an interim injunction, pending the disposition of this application, the Respondent its servants, agents or representatives from enforcing or taking any steps or acts pursuant to the aforesaid resolutions and in particular from proceeding under those resolutions with the expropriation of the Applicant's lands or the expropriation proceedings commenced by the Respondent pursuant to the provisions of The Expropriations Act and from referring its application for approval to expropriate the Applicant's lands to the Chief Inquiry Officer pursuant to Section 7 of The Expropriations Act;
- (h) an Order pursuant to Section 140 (6) of The Municipal Act directing that the Respondent do nothing under the aforesaid resolutions until this application is disposed of;
- (i) an Order that the Respondent pay the Applicant's costs of these proceedings; and
- (j) such further and other Order or relief including interim relief as to this Honourable Court may seem just.

2. The grounds for the Application are:

- (a) the resolutions which are treated as by-laws under Section 138 of The Municipal Act are void at law, illegal and unenforceable in that they were enacted in bad faith by the Respondent's council in that they were enacted not for the purported purpose but to prevent the Applicant from using its lands as a landfill site and to circumvent the legal obligation of the Respondent to alleviate its trespass on the Applicant's lands and the nuisance caused upon the Applicant's lands by the Respondent and in particular to circumvent the Respondent's legal obligation to remove from the Applicant's lands garbage, refuse and landfill owned

by the Respondent which was deposited upon the Applicant's lands by the Respondent and to abate the contaminate and pollution of the Applicant's lands by the Respondent; and

- (b) the resolutions are ultra vires the Respondent corporation in that the Respondent exceeded its statutory authority under Section 139 of The Municipal Act as the said resolutions concern land which is not required for legitimate purposes by the Respondent or its use.

3. The Applicant intends to rely upon the following statutory provisions:

- (a) The Municipal Act, R.S.O. 1980, c. 302, as amended; and in particular Sections 138, 139, 140(6) and 193;
- (b) The Expropriations Act, R.S.O. 1980, c. 148, as amended Sections 4, 5, 6 and 7.
- (c) the Courts of Justice Act, S.O. 1984, c. 11, Sections 110, 114; and
- (d) the Rules of Civil Procedure, Rule 14.

4. The following documentary evidence will be used at the hearing of the Application:

- (1) the Affidavit of Roger S. Christensen;
- (2) the Affidavit of Robert Tait;
- (3) Such further and other material as counsel may advise and this Honourable Court permit.

DATE OF ISSUE July 17, 1986

FASKEN & CALVIN
Box 30, Toronto-Dominion Cen
Toronto, Ontario
M5K 1C1, (416) 366-8381
(R.B. Tuer, Q.C. and
Peter R. Greene)
Solicitors for the Applicant

NATIONAL SEWER PIPE LIMITED

and

THE CORPORATION OF THE CITY OF BURLINGTON

APPLICANT(S)

RESPONDENT(S)

(short title of proceeding)

Court file no.

SUPREME COURT OF ONTARIO

Proceeding commenced at the City of
Toronto, in the Judicial District

FILED
TO THE
of York
JUL 17 1986

TREASURER OF ONTARIO

NOTICE OF APPLICATION

THE SUPREME COURT OF ONTARIO (Form 74E Under the Rules)

FILED

JUL 21 1986

DYE & DURHAM CO. LIMITED—Form No. 932

(68161/903 RBY PRG)
Name, address and telephone number of solicitor or applicant:
WEEKLY COURT OFFICE

FASKEN & CALVIN
Box 30
Toronto-Dominion Centre
Toronto, Ontario
M5K 1C1

R.B. Tuer and Peter R. Greene
(416) 366-8381

Solicitors for the Applicant

Court file no.

2E 1659/86

SUPREME COURT OF ONTARIO

BETWEEN:

CORPORATION OF THE TOWN OF MILTON

APPLICANT(S)

(Court seal.)

and

CORPORATION OF THE CITY OF BURLINGTON
and NATIONAL SEWER PIPE LIMITED

RESPONDENT(S)

(Insert statutory
provision or rule
under which the
application
is made.)APPLICATION UNDER The Municipal Act, sections 138, 139 & 140;
The Courts of Justice Act, sections 110 & 114
and The Rules of Civil Procedure, s. 14.05(1)(2) & (3)
NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant(s). The claim made by the applicant(s) appears on the following page.

(Insert a High Court
judge, a local judge
of the High Court
or as may be.)THIS APPLICATION will come on for a hearing before a Justice of the Supreme
Court of Ontarioon Tuesday, July 29th, 1986, at 10:00 a.m.
(day) (date) (time)(Address of court
house.)

at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N9

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 22, 1986

Issued by ^{PR} WARREN E. J. DUNLOP ^{PER} E. SUGAR
Local registrar(Name and address
of each respondent.)TO: Corporation of the City of Burlington, City Hall, 426 Brant Street, Burlington, Ontario, L7R 3Z6
Address of court office: 145 Queen Street West, Toronto, Ontario, M5H 2N9AND TO: National Sewer Pipe Limited,
1650 Lakeshore Road West,
Mississauga, Ont. L5J 1J3

APPLICATION

1.

The applicant makes application for:

- (a) an Order pursuant to section 140 of the Municipal Act, R.S.O. 1980, c.302, as amended, quashing the Respondent Corporation of the City of Burlington (the Respondent Burlington) Resolution EM-63-86 dated June 9, 1986, and Resolution EM-35-86 dated April 7, 1986, relating to an application of the Corporation of the City of Burlington to the Council of the said City for approval to expropriate lands owned by the Respondent National Sewer Pipe Limited, as identified in a Notice of Application for Approval to Expropriate Lands published June 25, 1986;
- (b) in the alternative, an Order pursuant to section 110 of The Courts of Justice Act, or alternatively pursuant to Rule 14.05(3)(d),(g) of the Rules of Civil Procedure declaring that the Resolutions referred to in para. (a) above passed by the Respondent Burlington are invalid and unenforceable;
- (c) an Order declaring that the Respondent Burlington, in purporting to authorize the expropriation of the lands referred to on a preliminary, proposed plan of expropriation prepared by the City of Burlington Department of Public Works - Survey Section, dated May 16, 1986, acted in an ultra vires manner, acted in bad faith as regards the Corporation of the Town of Milton, and violated the provisions of the Environmental Assessment Act and Regional Municipality of Halton Act, or any of these;
- (d) an Order pursuant to s. 140(6) of The Municipal Act directing that the Respondent Burlington do nothing under the aforesaid Resolutions until this Application is disposed of;
- (e) a permanent injunction pursuant to s.114 of The Courts of Justice Act, or pursuant to Rule 14.05(3)(g) of the Rules of Civil Procedure, prohibiting, restraining and enjoining the Respondent Burlington, its servants, agents, or

representatives from enforcing or taking any steps or acts pursuant to the Resolutions referred to in para. (a) above, or alternatively, from enforcing or taking any steps or acts pursuant to the aforesaid Resolutions to proceed with the expropriation of those lands shown on the said expropriation plan dated May 16, 1986; and

- (f) an Order granting leave to the Applicant to bring this Application on short notice.

2. The grounds for the application are:

- (a) The Resolutions which are treated as by-laws under s.138 of The Municipal Act are void at law, illegal and unenforceable in that they were enacted in bad faith by the Respondent Burlington Council not for the purported purposes but to prevent the utilization of the Respondent National Sewer Pipe's lands as a landfill site either as a privately operated landfill site or as a site to be operated by the Regional Municipality of Halton. The purported expropriation is an attempt to illegitimately frustrate the statutory duties of the Regional Municipality of Halton to obtain approvals for a new regional landfill facility where the Region of Halton's consultants have identified the Respondent National Sewer Pipe's lands as part of the preferred site for a regional landfill. Expropriation of Part 1 in particular, as well as Part 3 of the said Plan of Expropriation, will interfere with both the Region's pending environmental assessment process and with National Sewer Pipe's pending application filed with the Ministry of the Environment for a Certificate of Approval for a privately operated landfill site on the said lands. The Respondent Burlington's actions integrally affect the interests of the Corporation of the Town of Milton insofar as the alternative but secondary site identified by the Region of Halton's consultants for

the next Regional landfill facility is in the Town of Milton. The Town of Milton has, consistently since at least 1976, taken the position that the preferred location for a Regional landfill facility is in the City of Burlington at or about the lands sought to be expropriated by the Respondent Burlington and the Region's studies made pursuant to the Environmental Assessment Act have confirmed this. However the Respondent Burlington's purported expropriation would eliminate or at least greatly prejudice the approval of a Regional landfill in Burlington and concurrently render the Town of Milton the de facto preferred site;

- (b) the Resolutions are ultra vires the Respondent Burlington in that the Respondent Burlington exceeded its statutory authority under s. 139 of The Municipal Act as the said Resolutions concern land which is not required for legitimate purposes by the said Respondent;
- (c) the Resolutions are ultra vires the Respondent Burlington in that the purpose of the expropriation of the majority of the lands to be taken as shown on the preliminary, proposed plan of expropriation prepared by the City of Burlington dated May 16, 1986, is for an undertaking which is subject to the Environmental Assessment Act and no environmental assessment of the undertaking has been submitted to or approved by the Minister of the Environment pursuant to the requirements of sections 5 and 6 of the Environmental Assessment Act; and
- (d) the Resolutions are ultra vires the Respondent Burlington in that the purpose of the expropriation is to allow for the collection and disposal of sewage within the meaning of Section 86 of the Regional Municipality of Halton Act and pursuant to the said Act the sole statutory responsibility for the collection of such

sewage lies with the Regional Municipality of Halton.

3. The applicant intends to rely upon the following statutory provisions:

- (a) The Municipal Act, R.S.O. c. 302, as amended; and in particular sections 138, 139, 140(6) and 193;
- (b) The Environmental Assessment Act, R.S.O. 1980, c. 140, as amended; and in particular sections 5 and 6;
- (c) R.R.O. 1980 Reg. 293, as amended; and in particular s. 5:
- (d) Regional Municipality of Halton Act, R.S.O. 1980 c. 436, s. 86.
- (e) The Expropriations Act, R.S.O. 1980, c. 148, as amended, sections 4, 5, 6 and 7;
- (f) The Courts of Justice Act, R.S.O. 1984, c. 11, section 110, 114; and
- (g) The Rules of Civil Procedure, Rule 14.

4. The following documentary evidence will be used at the hearing of the application:

- (1) The Affidavit of Roy Main;
- (2) The Application made by the National Sewer Pipe Limited (applicant) and the Corporation of the City of Burlington (respondent) Court File No. RE 1630/86 dated July 17, 1986 filed in the Supreme Court of Ontario, including the Notice of Application, Affidavit and Exhibits filed in support thereof by the Applicant National Sewer Pipe Limited;
- (3) Such further and other materials as counsel may advise and this Honourable Court permit.

DATE OF ISSUE: July 22, 1986.

DAVID ESTRIN,
Barristers & Solicitors
22 Scollard Street
Toronto, Ontario
M5R 1E9 Tel: (416) 927-82
Solicitors for the Applicant

JULY 29 TH 1986

TOWN OF MILTON

and

CITY OF BURLINGTON ET AL

APPLICANT(S)

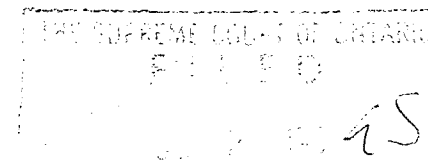
RESPONDENT(S)

(Short title of proceeding)

Court file no. RE 1659/86

SUPREME COURT OF ONTARIO

Proceeding commenced at Toronto



NOTICE OF APPLICATION

(Form 14E under the Rules)

DYE & DURHAM CO. LIMITED—Form No. 932

Name, address and telephone number of solicitor or applicant:

DAVID ESTRIN,
Barristers & Solicitors
22 Scollard Street
Toronto, Ontario,
M5R 1E9 Tel: (416) 927-
Solicitors for the Appl