

Court file no. 12875/86

SUPREME
(Supreme or District)

COURT OF ONTARIO

BETWEEN:

NATIONAL SEWER PIPE LIMITED

PLAINTIFF(S)

and

THE CORPORATION OF THE CITY OF BURLINGTON

DEFENDANT(S)

NOTICE OF INTENT TO DEFEND

(Or defendant added
by counterclaim or
third party.)

THE DEFENDANT(S)

intends to defend this action.

Name, address and telephone number of solicitor or party serving notice.

Date: July 22, 1986

WEIR & FOULDS
Barristers and Solicitors
Box 480
Exchange Tower
2 First Canadian Place
Toronto, Ontario
M5X 1J5(Name and address
of solicitor or party
on whom notice is
served.)

TO:

FASKEN & CALVIN
Barristers and Solicitors
Toronto-Dominion Centre
Toronto, Ontario
M5K 1C1Lynda C. E. Tanaka
365-1110Solicitors for the
Plaintiff

Solicitors for the Defendant

NATIONAL SEWER PIPE LIMITED

and

THE CORPORATION OF THE CITY OF BURLINGTON

PLAINTIFF(S)

DEFENDANT(S)

Short title of proceeding)

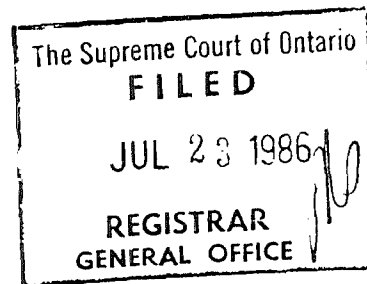
Court file no. 12875/86

SUPREME COURT OF ONTARIO
(Supreme or District)

Proceeding commenced at
Toronto

Service of a true copy hereof admitted
the 23rd day of July 1986

Solicitors for Plaintiff
Parker & Calver



**NOTICE OF
INTENT TO DEFEND**

(Form 18B under the Rules)

DYE & DURHAM CO. LIMITED - Form No. 928

Name, address and telephone number of solicitor or party serving notice:

WEIR & FOULDS
Barristers and Solicitors
Box 480
Exchange Tower
2 First Canadian Place
Toronto, Ontario
M5X 1J5

Lynda C. E. Tanaka
365-1110

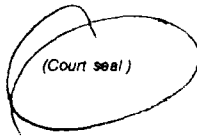
Solicitors for the Defendant

Court file no. 12875/86

SUPREME COURT OF ONTARIO

BETWEEN:

NATIONAL SEWER PIPE LIMITED



(Court seal)

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 p. H. 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)

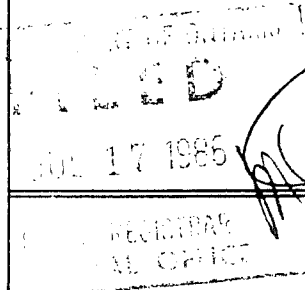
Court file no.

12875/86

SUPREME COURT OF ONTARIO

Proceeding commenced at Toronto,
Ontario.

17th July 1986
Fasken & Calvin



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