

(b) the borrowing of money therefor and the issuance of debentures in the sum of \$3,700,000.00 for a term of five years

A F F I D A V I T

I, ROY MAIN, Acting Clerk Co-ordinator of The Corporation of The Town of Milton, the Applicant herein, MAKE OATH AND SAY AS FOLLOWS:

1. At the time of the hearing of this matter, I was the Deputy Clerk of the Town of Milton and I attended at the hearing on a daily basis and I am quite familiar with the evidence which was given. I am also familiar with the Board's decision in the matter, having read and reviewed it on a number of occasions.
2. Evidence was lead on behalf of the Regional Municipality of Halton with respect to lands owned by National Sewer Pipe Limited, at Burlington, within the area described by all parties to the hearing as Site "A". The consultants for the Regional Municipality of Halton, M. M. & Dillon & Co., Consulting Engineers, has identified the National Sewer Pipe Limited lands early in the selection process. The said consultants had rejected the National Sewer Pipe Limited lands on the basis that they were too expensive (\$20,000.00 per acre) and that they were otherwise unavailable because of their intended use for shale extraction by National Sewer Pipe Limited.
3. The engineering consultants for The Corporation of the Town of Milton identified a sixty acre parcel of land as being suitable for the regional landfill use desired at Site "A".

These lands adjoined the National Sewer Pipe Limited lands at their northerly boundary and adjoined a proposed extension of the existing Burlington landfill at Site "A". These lands were the basis of the case put forward by The Corporation of the Town of Milton and were presented on the thesis inter alia that at some unspecified future date a further natural extension could be made southward into the National Sewer Pipe Limited property which would presumably then be quarried and required to be filled under the Pits and Quarries Act.

4. The stated capacity for the lands identified by the Corporation of the Town of Milton at Site "A" (60 acres) was approximately two million tons and therefore equivalent to the capacity projected for Site "F" within the Town of Milton. Evidence was lead that there was a possible total future capacity at the Burlington location in the approximate amount of ten million tons.

5. Following the decision of the Board herein, the Corporation of the Town of Milton appealed to the Divisional Court on various grounds and leave to proceed with that appeal was denied on the basis that the questions raised were neither questions of law nor jurisdiction. The Corporation of the Town of Milton also petitioned the decision of the Board to the Ontario Cabinet which has not, as of the date of this Affidavit, decided the petition. In addition to the petition of the Corporation of the Town of Milton, petitions were brought by Victor Kovachik (airport owner), H. Craig Reid and others (dairy farmers) and Tremaine-Britannia Citizens Group

(ratepayers). None of the other petitions have been decided or ruled on by the Ontario Cabinet.

6. Attached hereto as Exhibit "A" to this my Affidavit is a copy of a letter directed to the Provincial Cabinet and signed by Ryland J. New, the President of National Sewer Pipe Limited. Following the decision of the Board in this matter, National Sewer Pipe Limited retained Proctor and Redfern, Consulting Engineers, and Morris and Beatty Limited, Hydrogeologists, to make investigations of the feasibility of using one hundred and eighty-five acres adjoining the existing Burlington landfill for landfill purposes. Drilling programs have commenced and results are available. Feasibility studies are in progress and opinions with respect to engineering feasibility are available.

7. It is my information that National Sewer Pipe Limited is desirous of negotiating a contract for the disposal of waste produced in the Region of Halton at prices to be negotiated with National Sewer Pipe Limited providing the landfilling service adjacent to the existing Burlington landfill site. It is my further information, and is the thrust of the Exhibit attached hereto, that National Sewer Pipe Limited anticipates the co-operation of the Regional Municipality of Halton in obtaining environmental approval for the project.

8. It is my understanding and belief that the Regional Municipality of Halton is encouraging National Sewer Pipe Limited in its efforts and has retained Dr. John Cherry, a noted hydrogeologist, to review the Morris and Beatty results.

9. The evidence at the hearing of this matter was to the effect that the National Sewer Pipe Limited lands were Class 7, or poorer agricultural soils. It was my understanding of those designations that the National Sewer Pipe Limited lands would therefore be practically useless for agricultural purposes. All parties conceded that the lands identified at Site "F" were Class 1 agricultural soil which were presently in production and had been in production for many years.

10. It is my recollection of the evidence at the hearing that all parties proceeded on the assumption that the National Sewer Pipe Limited lands were not available for landfill. I believe that the evidence lead at the hearing came to the attention of National Sewer Pipe Limited and that its interest in a landfill project stems from the attention focused on the Site "A" lands. It is my belief that evidence such as is now available, and becoming available, in relation to the National Sewer Pipe Limited lands would have been relevant, persuasive and central to the issues determined by the Board. It now appears that efforts are being made toward opening two major landfill sites in the Region of Halton and it is my information and belief that the Ministry of the Environment as a matter of Government policy does not approve of more than one major landfill in an area like Halton. I therefore believe that as a matter of agricultural and environmental planning policy, the decision of the Board should be reviewed at this time and prior to the Corporation of the Town of Milton being required to amend its zoning by-law and official plan. The Corporation

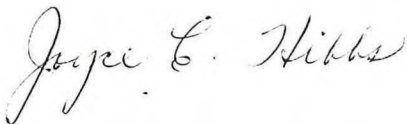
of the Town of Milton has petitioned the Ontario Cabinet to direct a re-hearing of this case by the Board on the grounds aforesaid, among others.

11. I make this Affidavit in support of an Application by The Corporation of the Town of Milton that the Ontario Municipal Board re-hear, review, rescind, change, alter or vary its decision herein, made on the 15th day of June, 1979.

SWORN before me at the)
Town of Oakville, in the)
Regional Municipality of)
Halton, this 21st day)
of January, 1980.)



ROY MAIN



JOYCE CATHERINE HIBBS, a Commissioner
for taking Affidavits, Province of Ontario, for
Saul, O'Connor, MacLeod, Leitch & Hays,
Barristers & Solicitors.
Expires February 20th, 1982.
Commission No. 79344.

A Commissioner, etc.



NATIONAL SEWER PIPE LIMITED

MANUFACTURERS OF VITRIFIED CLAY PRODUCTS

RECEIVED

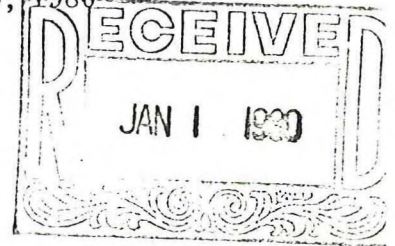
This is Exhibit....."A".....referred to in the
affidavit of.....ROY MAIR.....
made before me, this.....21st.....
day of.....JANUARY.....1980

P.O. BOX 1800
OAKVILLE, ONTARIO
CANADA L6J 5C7
JANUARY 10, 1980

.....Joyce E. Hibbs.....
A COMMISSIONER, ETC.

Dr. E. Stewart,
Secretary of the Cabinet,
Room 284 - Legislative Building,
Queen's Park,
TORONTO, Ontario. M7A 1A1

JOYCE CATHERINE HIBBS, a Commissioner
for taking Affidavits, Province of Ontario, for
Saul, O'Connor, MacLeod, Leitch & Hays,
Barristers & Solicitors.
Expires February 20th, 1982.
Commission No. 79344.



Dear Sir:

Re Petition of the Town of Milton from an Order
of the Ontario Municipal Board dated the 15th
day of June, 1979, permitting an Official Plan
and Zoning By-Law amendment to enable the
establishment of a sanitary landfill site by the
Regional Municipality of Halton

We have been provided with a copy of the Petition of the Town of Milton, the Response of the Regional Municipality of Halton, and the Town's Reply respecting a decision of the Ontario Municipal Board ordering the amendment of the Official Plan of the former Burlington Planning Area and the Milton Zoning By-law to permit a sanitary landfill site at the northwest corner of Britannia Road and Tremaine Road within the Town of Milton, the site being commonly referred to in the proceedings as "Site F".

This company for many years has owned approximately 185 acres of land located west of King Road on the north side of Highway 403, on which we operate a shale quarry in conjunction with our manufacturing business. The property lies between the old Burlington landfill site and the present Halton Region landfill site and is immediately south of the lands referred to in the proceedings as "Site A" which apparently was proposed as an alternative site in the proceedings.

This company did not in any way participate in the Ontario Municipal Board hearing in question and we have no desire to enter into the controversy between the Region and the Town of Milton as to the suitability of "Site F" as a landfill site for the Region. We do, however, wish to clarify for the benefit of the Cabinet any confusion or uncertainty which might arise from certain statements contained in the Petition and Response concerning this company's proposed use of its lands.

Dr. E. Stewart,
Secretary of the Cabinet,
Queen's Park

January 10, 1980

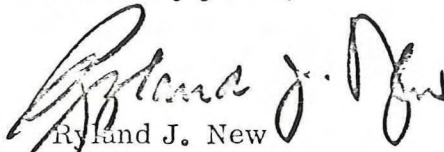
It is this company's intention to proceed as expeditiously as possible to make application for approval of its lands as a sanitary landfill site in conjunction with and contemporaneously with the continued use of the lands as a shale quarry. Considerable scientific investigation has already been undertaken and is continuing in co-operation with the Ministry of the Environment and a consultant retained to advise the Region respecting the site. We are greatly encouraged by the results to date which so far indicate that the site is ideally and perhaps uniquely suited for utilization as a landfill site by reason of its location adjacent to an existing landfill site with no neighbours to disturb, excellent haulage routes presently used for landfill haulage, soil of low agricultural value, and indications that leachate control will not be a problem. The site will have a capacity in excess of three million tons of solid waste.

While the Region of Halton clearly has not committed itself with respect to this site, by our letter of August 30, 1979, we clearly have committed ourselves, if enabled, to establish and operate the site as a landfill site in conjunction with our ongoing shale quarry. (A copy of our letter of August 30, 1979 and the resolution adopted by the Regional Council are attached).

We expect the hydrogeological testing necessary to confirm the viability of the site to be completed by the end of April. Barring any unforeseen difficulties arising from the test results, we will then be proceeding with the anticipated co-operation of the Region and the Ministry of the Environment with all other necessary steps to obtain final site approval. We foresee no public objection to the establishment of this landfill site.

We trust the foregoing will be of some assistance in clarifying this company's intentions respecting the use of its lands as a sanitary landfill site.

Sincerely yours,


Ryland J. New
President

RJN:B
Encl.

Copies to: Mr. Frederick E. Leitch ✓
Counsel to the Corporation
of The Town of Milton

Mr. Dennis Y. Perlin
Regional Solicitor - The Regional
Municipality of Halton

August 30, 1979

The Chairman and Members of Council,
Regional Municipality of Halton,
P. O. Box 1700,
OAKVILLE, Ontario.
L6J 6E1

Ladies and Gentlemen:

The property between the old Burlington landfill site and the present Halton Region landfill site is owned by National Sewer Pipe Limited. It is the intention of this Company to make application to allow this property of approximately 185 acres to be used as a landfill site.

We would like to meet with you and your Staff to discuss this item and to determine what interest the Region may have.

Sincerely yours,

NATIONAL SEWER PIPE LIMITED

RJN:B

Ryland J. New
President

The Council Regional Municipality of Halton



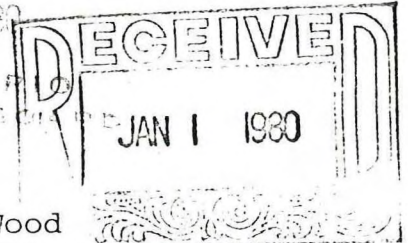
Date: October 3rd, 1979

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Number: _____

JAN 23 1980

Resolution



Moved by: W. Johnson

Seconded by: E. Wood

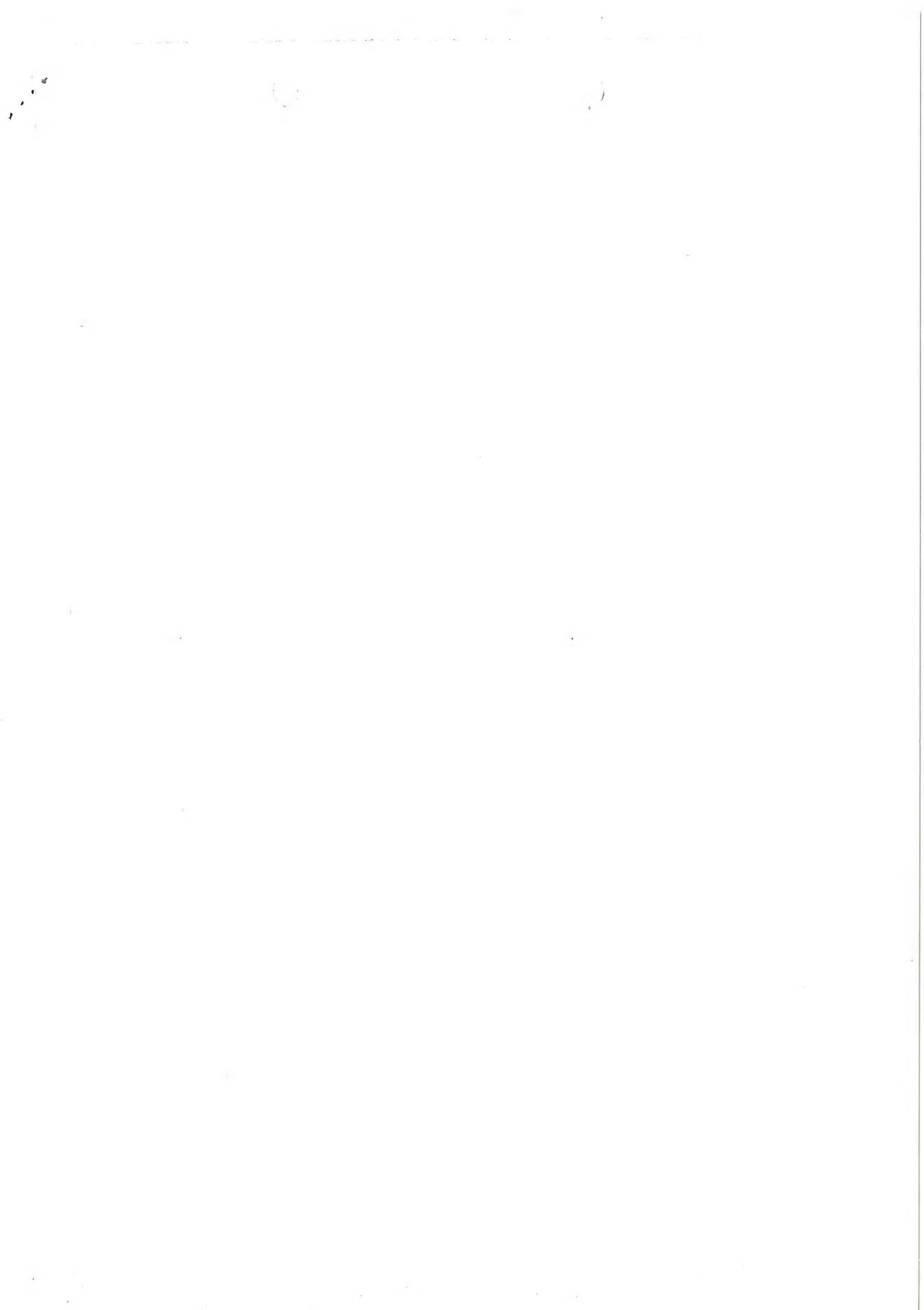
1. THAT National Sewer Pipe Limited be informed that the Region is prepared to investigate and explore the National Sewer Pipe proposal for a possible sanitary landfill site on the National Sewer Pipe lands in Burlington on the understanding that such proposal is only being investigated and explored in the context of the total study now being done by Regional Council for an updated comprehensive solid waste management system for Halton.
2. THAT Regional staff are hereby instructed to co-operate in the investigation and exploration authorized above.
3. THAT National Sewer Pipe Limited are hereby requested to engage in discussions with Kilborn Limited and with the Solid Waste Management Committee as required with respect to the possibility of a landfill site on the National Sewer Pipe lands fitting into the comprehensive solid waste management system for Halton.
4. THAT Professor John Cherry be retained by the Region as an independent hydrogeologist to review the hydrogeological investigation done by the hydrogeological firm, Morrison Beatty, on behalf of National Sewer Pipe Limited and to advise the Region whether the site proposed by National Sewer Pipe Limited is presently or can be made hydrogeologically safe and sound for sanitary landfilling. Costs for retaining Professor Cherry to be charged to the Landfill Reserve Fund.

CERTIFIED A TRUE COPY
REGIONAL MUNICIPALITY OF HALTON

.....*W. Johnson*.....
Deputy Regional Clerk

"J.N. Raftis"

Chairman



Re National
Sewer
Pipe Application

From R78 1380 Part 2 of 3

P.O. BOX 7000
1151 BRONTE ROAD
OAKVILLE, ONTARIO L6J 6E1
TELEPHONE: AREA CODE 416

BURLINGTON)
OAKVILLE) 827-2151
MILTON)
TORONTO)

THE
REGIONAL MUNICIPALITY
OF
HALTON



OFFICE OF THE
REGIONAL CHAIRMAN

1980 01 18

18/1/80

Dr. E. Stewart
Secretary of the Cabinet
Room 284 - Legislative Building
Queen's Park
Toronto, Ontario M7A 1A1

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JAN 25 1980

Dear Sir:

Re: Petition of the Town of Milton from an Order of the Ontario Municipal Board dated the 15th day of June, 1979, permitting an Official Plan and Zoning By-law amendment to enable the establishment of a sanitary landfill site by the Regional Municipality of Halton

GENERAL COMMENTS

The Region has been provided with a copy of the letter dated January 10, 1980, from National Sewer Pipe Limited sent to the Cabinet in your care with respect to the above captioned matter.

With great respect, the Region would caution the Cabinet about placing any reliance on such a self-serving letter in attempting to determine whether or not the Ontario Municipal Board decision respecting the proposed Regional landfill site at Site F in Milton should be confirmed.

National Sewer Pipe Limited indicates that its reason for writing the letter is "to clarify for the benefit of the Cabinet any confusion or uncertainty which might arise from certain statements contained in the Petition and Response concerning this company's proposed use of its lands". The Region's Response indicated clearly, and was neither confusing nor uncertain as to the existence of the National Sewer Pipe proposal for a possible landfill site on its lands in Burlington. It was also clear as to the infancy of that proposal vis-a-vis the studies that have to be completed, the agreements that have to be reached, and the approvals that have to be sought.

While National Sewer Pipe Limited states "we have no desire to enter into the controversy between the Region and the Town of Milton as to the suitability of "Site F" as a landfill site for the Region", it then clearly goes on to do so in the letter by expounding on a site as yet unproven and as yet unapprovable by the Region, let alone the Province through its Parkway Belt

Regulations, the Ministry of the Environment and perhaps even the Ministry of Natural Resources.

Clearly such "blowing of one's own horn" in the Site F matter when one has neither been a party to nor a participant in the dispute can only be interpreted to be a try to knock the proposed Site F "out of the box" in the hope that one's own lands will then be the "only game in Town". Such an approach can only be interpreted as an attempt by National Sewer Pipe Limited to put the Region in a position where it would have to negotiate a deal much more favourable than might otherwise have to be the case with National Sewer Pipe in the event that the National Sewer Pipe lands ever prove out as a landfill site. That type of pressure approach might be thought plausible by National Sewer Pipe Limited since it fully knows and understands that the Region has a statutory obligation to provide waste disposal availability in the Region but it truly is regrettable if not deplorable.

Despite the positive desire of National Sewer Pipe Limited as expressed in its letter of January 10th, 1980, it must be noted that one of the major reasons why the National Sewer Pipe lands were not more closely explored in the year 1976 when the Region began its site selection process for a new Regional landfill site was because of the then clearly expressed negative attitude of National Sewer Pipe Limited toward a new landfill site on or near its lands and that attitude was firm even until the Ontario Municipal Board hearings were practically completed with respect to the Region's Site F proposal for Milton. By the time the Ontario Municipal Board hearing had commenced, detailed studies of the suitability of Site F as a landfill site (which to this day remain unchallenged in any serious way), had been completed and a hearing carried out all at great cost to the taxpayers of this Region and to a certain extent with Provincial subsidy. Close to a half million dollars of Regional and Provincial money has already been expended on the Site F proposal.

During 1976 when National Sewer Pipe was first consulted and again as late as January of 1979 when the Ontario Municipal Board hearing had already commenced, National Sewer Pipe indicated that it wanted nothing to do with a landfill site on its lands and that if the Region did wish to take the National Sewer Pipe lands for a landfill site then there would be a cost for the shale of approximately one dollar a ton for six million tons or six million dollars plus the value of the land making the initial "up-front" land costs an exorbitant six million dollars plus. While there were other serious reasons, there is no question that two of the major reasons why the Region ended-up excluding the National Sewer Pipe lands from the site selection process and got into the great costs for a site such as Site F were the strongly negative attitude of National Sewer Pipe to a landfill project and the enormous expenditure that would be required to purchase the lands let alone prepare them for acceptance of waste.

While the change in desire of National Sewer Pipe to now proceed with a landfill proposal is not questioned by the Region, it must be remembered that the National Sewer Pipe proposal at the present time is simply a possibility. National Sewer Pipe Limited in its letter of January 10th has belittled the approval process and made assumptions that simply cannot be made in an area as sensitive and at times as emotional as waste disposal. This the Region is sure that the Cabinet is aware of in light of its own difficulties with respect to certain Provincial projects dealing with waste disposal. One simply cannot "in this business" assume that one will not have unforeseen difficulties nor can one simply assume Regional approval nor can one simply assume Ministry of the Environment approval nor should one ever foresee no public objection to the establishment of a landfill site.

The National Sewer Pipe lands to become available as a landfill site must go through a great number of hoops and the Region cannot simply assume, and we respectfully request that the Cabinet not simply assume either, that all the hoops will be easily and "expeditiously" cleared as National Sewer Pipe seems to consider possible. The Provincial approval process, let alone the steps to Regional approval, could even with the greatest of intentions take years to complete and not until completion will one know whether the answer is "yes" or "no".

If Site F is any example, the National Sewer Pipe proposal could take 3 or 4 years from commencement of the approval process to get a final answer. IF Site F is now shelved without all the approvals obtained and the answer is "no" to the National Sewer Pipe proposal, what would the Region do then?

With the various approvals in place for Site F, should a decision be made to pursue the National Sewer Pipe site as an alternative to Site F, then if the National Sewer Pipe alternative fails the Region would be in a position to immediately return to the Site F proposal and get on with it. Further, even if the National Sewer Pipe site is successful, with an approved site available for establishment at Site F, then Site F could immediately proceed should National Sewer Pipe Limited decide at any time to terminate any agreement with the Region to take waste at its site or should operational or leachate pollution problems arise with the National Sewer Pipe site or should capacity be exhausted at the National Sewer Pipe site.

SPECIFIC COMMENTS

1. National Sewer Pipe Limited suggests that a landfill on its lands would be a "landfill site with no neighbours to disturb". How about the existing recreational facility adjacent to the National Sewer Pipe site called "Bayview Park"?

2. National Sewer Pipe suggests that there are "excellent haulage routes presently used for landfill haulage". At present the haulage routes to the existing landfill site in Burlington are used simply for the use of hauling of Burlington waste. As a Regional landfill site garbage will come from all over the Region of Halton. While the Region's interim waste program would see garbage coming from all over the Region for a very short interim period to the small expansion of the existing Burlington site what National Sewer Pipe proposes is a very long term approach to the haulage routes. In order to have the use of such haulage routes on a long term basis there may be a need for certain upgrading and improvements to the haulage routes which may be costly.

3. "Leachate control will not be a problem." It was pointed out at the Site F Ontario Municipal Board hearing by a qualified hydrogeological firm, Gartner Lee and Associates, that based on the very testimony of the Town of Milton's own hydrogeological firm, i.e. Morrison Beatty (now retained by National Sewer Pipe) that there could be pollution of streams in Aldershot and of Burlington Bay from a landfill site on lands in the area of the National Sewer Pipe lands. Since that hearing the Region has hired an independent hydrogeologist, a Dr. Cherry of the University of Waterloo to give the Region advice on hydrogeological suitability unbiased by any previous involvement in any previous hearing. The Region's independent hydrogeologist commenting on the proposed study program (which has just gotten underway on the National Sewer Pipe lands) has clearly indicated that no judgement whatsoever should be ventured on the hydrogeological suitability of the National Sewer Pipe lands until the testing program is completed. Even National Sewer Pipe Limited admits that such completion will not be until the end of April, so no judgement on whether leachate control will or will not be a problem should be made until the hydrogeological program is completed.

4. "The site will have a capacity in excess of three million tons". That is the initial proposal of National Sewer Pipe. The initial proposal of the Region with respect to Site F was substantially larger than the existing proposal which has been cut back to 246 acres and two million tons. This has occurred as a result of the objections to the project by the Town and the concerned ratepayer group. Who knows what capacity cutback there may be for the National Sewer Pipe proposal once the approval process commences.

5. "We foresee no public objection to the establishment of this landfill site". It should be noted that when the Region carried out its public information program in its site selection process for Site F, it was thought that there would be little, if any, public objection to the establishment of a landfill site there. Obviously that has not been the case. Should the Region give its approval to the establishment of a landfill site on the National Sewer Pipe lands then one will see what public objection there will be, whether from the City or ratepayers groups, or what have you. One would be very "presumptuous" to not foresee any public objection once the proposal is in a position to proceed to approval.
6. On page 2 of the January 10, 1980 letter National Sewer Pipe Limited indicates that by their letter of August 30, 1979, they had clearly committed themselves, "if enabled, to establish and operate the site as a landfill site in conjunction with their ongoing shale quarry". However, at a meeting of the Solid Waste Management Committee on September 27th, 1979, when National Sewer Pipe made a formal presentation of its proposal, it clearly indicated to the Solid Waste Management Committee that it did not wish to proceed unless there was Regional support and approval. Further, what if it is determined that in order to provide the utmost in leachate controls a liner or some other safety feature must be put in place so that there can not be "an ongoing shale quarry" in conjunction with the landfill. Is that the end of the commitment? Then what is the Region to do without any alternative like Site F to go to.

SUMMARY

1. Reliance should not be placed on the January 10, 1980, self-serving letter from National Sewer Pipe Limited as a basis for not confirming the Ontario Municipal Board decision with respect to Site F and/or for not continuing with the approval process for Site F.
2. The Region has not yet approved the National Sewer Pipe proposal and indeed will not be in a position to even consider doing so until:
 - (i) the site has been proven hydrogeologically suitable;
 - (ii) the role for such a site in the long term waste management program of the Region is finalized; and
 - (iii) a satisfactory agreement regarding the establishment, operation, perpetual care

and afteruse of such a site can be reached with National Sewer Pipe Limited.

3. Even after such Regional approval, the Provincial approval process (Parkway Belt, Ministry of the Environment and Ministry of Natural Resources) still has to be carried through and that will involve:

- (i) consultation and hopefully approval from the City of Burlington;
- (ii) Amendment to the Parkway Belt Regulation;
- (iii) Application for environmental approval from the Ministry of the Environment.
- (iv) Approval from the Ministry of Natural Resources to the combined operation of landfilling and shale mining vis-a-vis the rehabilitation plan filed under the existing shale license.

4. Even if the National Sewer Pipe site is approved by the Regional Council as an alternative to Site F:

- (i) Site F should be kept as an available site, i.e. approved and ready to go if necessary:
 - (a) In case, National Sewer Pipe does not get the various Parkway Belt, the Environmental and/or the Ministry of Natural Resources approvals required;
 - (b) If National Sewer Pipe at some point terminates its agreement with the Region for whatever reason and decides to no longer landfill waste at the site;
 - (c) The National Sewer Pipe site at some point starts to create leachate pollution or other environmental problems requiring unexpected early closure;
 - (d) To be used for the landfilling of waste once the National Sewer Pipe site has reached capacity.
- (ii) Site F must be kept available as an effective bargaining tool to ensure that National Sewer Pipe lands are "not the only game in Town" should the Region decide to try and negotiate an agreement with National Sewer Pipe re the establishment, operation, perpetual care and afteruse of the proposed site. Without Site F

National Sewer Pipe would have a monopoly unnecessarily before entering negotiations. That would not be prudent.

5. No persuasive evidence has been presented to the Ontario Municipal Board or to the Cabinet that Site F is not a suitable site other than evidence of some possible irritants. It is hoped that with proper engineering and proper operation of the site that any irritants will be kept to a minimum. Further a landfill at Site F would be an interim use limited to 2,000,000 tons which is approximately 8 years of disposal capability without source separation and/or resource recovery. Agricultural rehabilitation is the goal and hydrogeological suitability to prevent surface and groundwater pollution is of prime concern. A rejection of Site F by the Cabinet in favour of the National Sewer Pipe lands will be considered by many, if not most, a "rejection" and the fact that the merits of Site F may not have been the reason, this will be lost in the "rejection" and make difficult the resurrection of Site F again, if ever that should be necessary for the reasons previously raised herein.

CONCLUSION

The writer would be quite prepared to meet with the Cabinet or any Committee of Cabinet, or any representative of Cabinet, to discuss this very important matter in the Region of Halton at any time.

Yours very truly,



J. N. Raftis, P. Eng.
Regional Chairman

DYP:hp
encl.

c.c. Premier William Davis
Honourable J. Snow, Minister of Transportation
and Communications
Honourable C. Bennett, Minister of Housing
Honourable H. Parrot, Minister of the Environment
George Kerr, Q.C.