

CONSOLIDATED HEARINGS BOARD

IN THE MATTER OF Sections 2 and 3 and 6 (3) of the Consolidated Hearings Act, 1981, S.O. 1981, c.20;

— and —

IN THE MATTER OF Section 12(2) of the Environmental Assessment Act, R.S.O. 1980, c.140;

— and —

IN THE MATTER OF Sections 30, 35 and 38 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

— and —

IN THE MATTER OF Sections 24 and 61 (2) of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended;

— and —

IN THE MATTER OF Section 26 (3) of, and Regulation 164 under, the Conservation Authorities Act, R.S.O. 1980, c.85, as amended;

— and —

IN THE MATTER OF Section 40(12) of the Planning Act, S.O. 1983, c.1, as amended; in connection with site plan control of the sanitary landfill site;

— and —

IN THE MATTER OF Section 22(1) of the Planning Act, 1983 in connection with a referral to this Board by the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on a request by the Regional Municipality of Halton to amend the Official Plan for the Town of Milton to redesignate a parcel of land comprising Part Lots 3 and 4, Concession 2 N.S. in the Town of Milton from "Agriculture" and "Conservation and Hazard Lands" to permit the construction, operation and maintenance of a landfill site, Minister's File No. 24-OP-0208-A01;

— and —

IN THE MATTER OF Section 34(11) of the Planning Act, 1983 in connection with an appeal to this Board by the Regional Municipality of Halton for an order directing an amendment to By-law 61-85 of the Town of Milton to rezone the lands situated at Lot 3 and part of Lot 4, Concession 2 N.S., in the Town of Milton from "Agriculture" to permit a regional sanitary landfill site and ancillary uses;

— and —

IN THE MATTER OF Section 15(1) of the Planning Act, R.S.O. 1980 ch.379 in connection with a referral by the Honourable Claude F. Bennett, Minister of Housing on a request by Tremaine Britannia Citizen's Group for consideration of part of the Official Plan for the Halton Planning Area with respect to Sections 1 to 5 inclusive, 7, 9 and 10 of Part III D3 Solid Waste Management, Minister's File No. OPC-0026;

— and —

IN THE MATTER OF Section 64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347 as amended in connection with an application by the Regional Municipality of Halton for an order approving:

a) the acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

- (i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;
- (ii) landfilling at the site commonly referred to in Halton's Environmental Assessment as Site D in the Town of Milton

at an estimated cost of \$12,775,000.00, and the borrowing of money by way of temporary advances not exceeding in the aggregate such estimated cost pending the sale of debentures, and

(b) the issuance of necessary debentures to a maximum of \$12,775,000.00 for a term not to exceed fifteen years;

— and —

IN THE MATTER OF Section 193(5) and Paragraph 84 of Section 210 of the Municipal Act, R.S.O. 1980, c.302, as amended;

— and —

IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

— and —

IN THE MATTER OF an undertaking of the Regional Municipality of Halton to provide facilities for the purpose of receiving, dumping and disposing of waste as required by section 137 of the REGIONAL MUNICIPALITY OF HALTON ACT, R.S.O. 1980, c.436, as amended, by acquiring the land for, constructing, operating and maintaining a landfill to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton.

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I N D E X

Opening statement by Mr. Lederer	90
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page</u>
1	Affidavit of David Grant Smith dated 27 April, 1987.	15
2	Affidavit of David Varley dated May 4, 1987.	15
3	Letter from Dr. Boldrini dated March 4, 1987.	90
4	Letter from Dr. Boldrini dated March 11, 1987.	90
5	Book entitled Region of Halton's Compilation of Applications and Submissions for Approval - Landfill Component of Solid Waste Management System.	105
6	Letter dated June 24, 1986 from the Hon. Bernard Grandmaitre, Minister of Municipal Affairs to Mr. Pomeroy of the Regional Municipality of Halton.	136



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5 IN THE MATTER OF Sections 30, 35 and 38 of the
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7 amended;

- and -

8 IN THE MATTER OF Sections 24 and 61(2) of the Ontario
9 Water Resources Act, R.S.O. 1980, c.361, as amended;

- and -

10 IN THE MATTER OF Section 28(3) of, and Regulation 164
11 under, the Conservation Authorities Act, R.S.O. 1980,
12 c.85, as amended;

- and -

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14 S.O. 1983, c.1, as amended; in connection with site
15 plan control of the sanitary landfill site;

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19 Affairs, on a request by the Regional Municipality of
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22 Lots 3 and 4, Concession 2 N.S. in the Town of Milton
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BEFORE:	H. H. Lancaster, Q.C.	-	Chairman
	Dr. D.J. Kingham	-	Member
	S. Tanner	-	Member



Nethercut & Co. Ltd.

Toronto, Ontario

Hearing conducted at The Oakville
Granary Commercial Centre, 105 Robinson
Street, Oakville, Ontario, on
Tuesday, May 5, 1987

VOLUME 1

APPEARANCES:

T.R. Lederer and H.D. Hodgson	for the Regional Municipality of Halton (Proponent)
J.R. Tidball	for the Ministry of the Environment
T. Vigod J.F. Castrilli	for the West Burlington Citizens Group
D. Estrin, F.E. Leitch and H. Dahme	for the Corporation of the Town of Milton
S.R. Garrod and A. Nurvo	for the Milton Area Citizens Coalition and several affected Milton area landowners
R.B. Tuer, Q.C. E.A. Cronk and F. Perrier	for National Sewer Pipe Limited
L.F. Longo	for Azova Investments Limited
M.J. McQuaid, Q.C. and C.J. Tzekas	for the City of Burlington
C. Mansfield	for the Ministry of Natural Resources
P. Renaud	for Cumis



Nethercut & Co. Ltd.

Toronto, Ontario

APPEARANCES (Cont'd):

1	C. Stevenson	for Framgard Holdings,
2	P. Hancock	Fosseri Investments
3		Limited, Seriphos
4		Investments Limited and
5		Topic Investments
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J.H. Olah

for the Halton Region
Conservation Authority

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185 Richmond St. W.
Toronto, Ontario
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Per: C.F. Nethercut, C.V.R.



Oakville, Ontario.

May 5, 1987.

--- Upon commencing at 10:00 a.m.

THE CHAIRMAN: Thank you. Please
be seated. Can we come to order please?

This is a hearing before the
Consolidated Hearings Board to consider two
sanitary landfill sites within the Regional
Municipality of Halton and, if found appropriate, to
select and approve one such site.

The hearing is concerned with
several other matters related thereto, and I will go
over those quickly as they are all set out in the
Notice.

We are considering Sections 2, 3
and 6 of the Consolidated Hearings Act; Section 12
of the Environmental Assessment Act; Sections 30,
35 and 38 of the Environmental Protection Act;
Sections 24 and 61 of the Ontario Water Resources
Act; Section 28 of Regulation 164 under the
Conservation Authorities Act; Section 40 of the
Planning Act; Sections 21(1) and 34(11) and 15(1)
of the Planning Act; 64 of the Ontario Municipal
Board Act, and also in the matter of Section 193
of the Municipal Act and possibly Sections 6, 7 and 8



1 of the Expropriations Act, as well as the Regional
2 Municipality of Halton Act.

3 The Consolidated Board is made up of
4 Mrs. Susan Tanner, a lawyer and member of the
5 Environmental Assessment Board, Dr. D.J. Kingham,
6 a scientist and vice-chairman of the Environmental
7 Assessment Board, and myself, and my name is Lancaster,
8 H.H. I am as well a lawyer and vice-chairman of
9 the Ontario Municipal Board and chairman of this
10 hearing.

11 Now, might we have the names of
12 legal counsel appearing, please?

13 MR. LEDERER: Please, Mr. Chairman,
14 my name is Lederer, L-e-d-e-r-e-r. My initials
15 are T.R. and I appear here with my colleague,
16 Mr. Hodgson, H-o-d-g-s-o-n, Mr. H.D. Hodgson.
17 We appear together on behalf of the Regional
18 Municipality of Halton and will jointly be presenting
19 their evidence before you.

20 MR. LEITCH: Mr. Chairman, my name
21 is Leitch, L-e-i-t-c-h, initials F.E. and I am
22 appearing with Mr. David Estrin, E-s-t-r-i-n, and
23 we both represent the Corporation of the Town of
24 Milton.

25 In addition there is Mr. Dahme,



1 D-a-h-m-e, who will be before you from time to time.

2 THE CHAIRMAN: What is Mr. Dahme's
3 initial?

4 MR. LEITCH: H. We are representing
5 the Town of Milton.

6 THE CHAIRMAN: Thank you.
7 Mr. McQuaid.

8 MR. McQUAID: Thank you. My name
9 is McQuaid, M-c-Q-u-a-i-d, initials M.J., and with
10 me on my right is Mr. C.J. Tzekas, and we will be
11 appearing on behalf of the City of Burlington.

12 MR. GARROD: Mr. Chairman, my name
13 is Garrod, G-a-r-r-o-d, initials S.R., and with
14 me is my associate, Anja Nurvo, N-u-r-v-o, and
15 we are together representing a number of clients
16 in the vicinity of Site D. I have a list I am
17 prepared to file with you, but for present
18 purposes it is essentially a coalition of ratepayers
19 and some individual property owners.

20 THE CHAIRMAN: Do you have that list
21 available now, Mr. Garrod?

22 MR. GARROD: Yes, Mr. Chairman.
23 I have copies for other parties if people wish them.

24 THE CHAIRMAN: If you would, please.

25 MS. MANSFIELD: Good morning,



1 Mr. Chairman and members of the Board. My name
2 is Mansfield, initial C., and I will be appearing
3 on behalf of the Ministry of Natural Resources.

4 THE CHAIRMAN: Thank you, Ms.
5 Mansfield.

6 MR. TIDBALL. Good morning, Mr.
7 Chairman. My name is Tidball, T-i-d-b-a-l-l,
8 initials J.R. and I am appearing for the Ministry
9 of the Environment.

10 MS. VIGOD: Good morning. My name
11 is Toby Vigod, V-i-g-o-d.

12 THE CHAIRMAN: I can't hear you.

13 MS. VIGOD: V-i-g-o-d, and I am
14 here with Mr. J. Castrilli, C-a-s-t-r-i-l-l-i,
15 and we are appearing here on behalf of the West
16 Burlington Citizens Group, a ratepayers group
17 located in West Burlington.

18 DR. BOLDRINI: My name is Boldrini,
19 B-o-l-d-r-i-n-i, initial P. and I am a non-lawyer
20 and I appear on behalf of the Advocacy Group for
21 the Environmentally Sensitive.

22 MR. LEDERER: Mr. Chairman...

23 THE CHAIRMAN: Just one moment.

24 MR. LEDERER: I obviously have
25 no objection to your noting this last gentleman's



1 name, but I have indicated to Mr. Boldrini and I
2 will indicate to the Board that I propose, at the
3 appropriate time, to oppose his being granted party
4 status in this matter and would like the Board to
5 hear my submissions at the appropriate time.

6 THE CHAIRMAN: Very well.

7 Mr. Boldrini, at this moment we are
8 asking for legal counsel and we will get to you.

9 MR. BOLDRINI: I didn't get that.

10 THE CHAIRMAN: We are enquiring about
11 legal counsel at this moment and you are not legal
12 counsel.

13 MR. BOLDRINI: I am not, but am
14 representing a group and on the motion to be
15 discussed, I intend to be recognised by you.

16 THE CHAIRMAN: You will be recognised
17 and given proper status, yes.

18 MS. CRONK: My name is Eleanor
19 Cronk, C-r-o-n-k, and I appear together with Mr.
20 Tuer, initial R., T-u-e-r, on behalf of National
21 Sewer Pipe Limited and from time to time my colleague,
22 Mr. Neil Perrier will also be in attendance on behalf
23 of our client. Thank you.

24 MR. HANCOCK: Mr. Chairman, my name
25 is Hancock, H-a-n-c-o-c-k, initial P. and I am here



1 today for my colleague, Mr. Stevenson, S-t-e-v-e-n-s-o-n,
2 initial C., and we represent a group or four landowners
3 in the vicinity of Site D and the names of those owners
4 are Topic, T-o-p-i-c, Investments Limited, Seriphos,
5 S-e-r-i-p-h-o-s, Investments Limited, Fosseri,
6 F-o-s-s-e-r-i, Investments Limited and Framgard,
7 F-r-a-m-g-a-r-d, Holdings Limited.

8 THE CHAIRMAN: Thank you.

9 MR. LONGO: Mr. Chairman, my name
10 is Longo, L-o-n-g-o, initials L.F., and I represent
11 Azova Investments Limited, one of the landowners
12 directly involved with respect to Site F along with
13 NSP. Mr. Chairman, I should advise that we will not
14 be attending every day, but we will be attending
15 the hearing at appropriate times and I thought the
16 Board should just note that I will be absent for a
17 portion of the hearing. The Board should also know
18 our position, that we support the selection of
19 Site F.

20 THE CHAIRMAN: Thank you, Mr. Longo.

21 Are there any other legal counsel?

22 MR. RENAUD: My name is Renaud,
23 R-e-n-a-u-d, initial P. and I am appearing for Cumis Group
24 Limited, C-u-m-i-s, adjacent property owners to
25 Site F.



1 THE CHAIRMAN: Thank you.

2 Is there anyone else? No further
3 legal counsel?

4 The Board will advise you at this
5 time that Mr. Thomas Marshall has been appointed
6 counsel for the Board and Mr. Marshall is sitting
7 over here and he will not be in attendance at all
8 times, but he will be here to assist the Board when
9 necessary and the hearing.

10 Now, there are a few matters we should
11 touch on before we commence. Of course, there
12 will be no smoking during the hearing, no smoking
13 or eating of lunches or drinking or anything of that
14 nature. I think it has been agreed and determined
15 by the Board that the Board will sit four days a
16 week, that is Monday to Thursday inclusive. The
17 times will generally be -- Monday, I guess is 10:00
18 until 5:00 or thereabouts, and the other three days
19 will be 9:30 to 4:30. That will be the general rule.
20 There may be some discussion regarding vacation
21 time. The Board has determined, to this extent at
22 any rate, that a vacation period of five weeks
23 comprising generally the first two weeks in July
24 and the first three weeks in August. That will mean
25 that the last hearing date prior to the first



1 vacation period would be June 25 and reconvening
2 on July 13. The next period would be from July
3 30 to August 24. It is always difficult in a
4 hearing such as this, a long one, as far as the
5 Board is concerned, there are certain commitments
6 the Board has and one of those is next week, May
7 14. I personally will be unable to attend
8 Thursday of next week. As well, my colleagues will
9 not be able to attend on June 16 and 17. That's
10 a Tuesday and Wednesday of that week.

11 Does anyone have any comments
12 regarding the vacation period and those dates?

13 I also understand that a preliminary
14 meeting was held on February 11 and it was agreed
15 all technical reports would be distributed thirty
16 days in advance. Is that understood and agreed to?

17 MR. LEDERER: I think the arrangement
18 was it was a general rule we would try and follow,
19 but there was an understanding among all parties
20 that there would be a need for some flexibility.

21 THE CHAIRMAN: Of course, because
22 many times a report is simply not available.

23 The question of transcripts has
24 come up and the Board has determined or considered
25 that a two-week turnover period would in most cases



1 be sufficient. Are there any comments on that? It
2 is obviously a question of cost, and if anyone
3 requires a quicker turn-around period, I imagine
4 the Board would expect that those people would look
5 after their own requirements in that regard.

6 A SPEAKER: Could you turn the mikes
7 up because it is hard to hear you.

8 THE CHAIRMAN: Is it difficult?

9 I might add that the Board has
10 determined or agreed that insofar as transcripts
11 go and other documentation, not the exhibits, but
12 other possible documentation, that there would be
13 three places in which, for instance, copies of the
14 transcript would be available and that is Milton,
15 Burlington and at this location.

16 Are there any other preliminary
17 matters to be discussed?

18 Specifically those locations are
19 the Clerk of the Regional Municipality of Halton
20 at 1151 Bronte Road; the Clerk of the City of
21 Burlington at 426 Brant Street and with the Clerk
22 of the Town of Milton in Victoria Park Square in
23 Milton, Ontario and of course they will be
24 available at the offices of the Consolidated Hearings
25 at 1 St. Clair Avenue West in the City of Toronto.



1 Are there any other matters that
2 could be discussed at this time?

3 Mr. Lederer, have you the filings
4 that are required?

5 MR. LEDERER: I have the affidavits
6 of service and in fact there are two of them.
7 You will observe from reviewing them that the distinction
8 is that one group of people had notice of this
9 hearing delivered to them and others had them mailed.
10 The distinction is the ones which were delivered are
11 the ones whose land may be expropriated as a result
12 of this and it was felt wise that they should obtain
13 that kind of more direct notice.

14 You will also note that within the
15 notice of the Board itself, there is specific
16 reference to the fact that lands may be expropriated
17 as a result of this hearing and that is an
18 additional precaution, so that people are aware that
19 that is among the issues being raised before this
20 Board. I believe it is the second one, the thicker
21 one which has reference to the newspaper
22 advertisements which are required by direction of
23 the Board.

24 THE CHAIRMAN: I don't see the
25 affidavit.



1 MR. LEDERER: It's right at the front.
2 It doesn't look like an affidavit because of the
3 listing.

4 THE CHAIRMAN: The affidavit of
5 David Grant Smith, sworn on the 27th day of April,
6 1987, will be marked as Exhibit No. 1.

7 --- EXHIBIT No. 1: Affidavit of David Grant
8 Smith dated 27 April, 1987.

9 THE CHAIRMAN: The affidavit of
10 David Varley of May 4, 1987, will be marked as
11 Exhibit No. 2.

12 --- EXHIBIT No. 2: Affidavit of David Varley
13 dated May 4, 1987.

14 THE CHAIRMAN: Now we will get into
15 the question of the order of presentation and the
16 question of parties and participants. Mr.Lederer,
17 you of course as the proponent will have the leading
18 position.

19 MR. LEDERER: Yes, sir, it seems
20 difficult for me to avoid that.

21 THE CHAIRMAN: Has there been any
22 agreement between counsel as to the order of
23 presentation?

24 MR. LEDERER: Sir, that was discussed
25



1 at the preliminary meeting and subject to one comment
2 which Mr. Tidball has to make before you, I think
3 it was agreed that first there would have to be some
4 flexibility as the responsibility for presenting
5 evidence shifts from one party to the other.

6 Generally, I believe the agreement
7 was, and something like this, obviously the Region
8 would go first and at that time it was decided
9 that the Ministry of the Environment would go second,
10 the Town of Milton would go third, Mr. Garrod's
11 clients would go fourth, Mr. McQuaid would go fifth
12 and Ms. Vigod would have the honour of cleaning up.

13 I believe that Mr. Tidball has some
14 concerns with that and he may wish to make
15 submissions to you, and of course there is the whole
16 question of other parties not identified within that
17 and I forgot Ms. Cronk, and I apologise, but if I
18 remember correctly, Ms. Cronk was to follow Mr.
19 Garrod.

20 It would appear then logical from
21 that, to the extent that Mr. Longo is here, he
22 should follow directly after Ms. Cronk.

23 MS. MANSFIELD: Excuse me, but perhaps,
24 Mr. Chairman, I could mention that MNR is not
25 mentioned in that order of presentation as it was



1 discussed in February. At that point it was uncertain
2 whether Halton and the Ministry would be able to
3 reach an agreement on the matter of dispute between
4 them, the utilization of shale at Site F, and it
5 appears that we will be unable to reach an agreement.

6 I would think in the order of
7 presentation, since our focus is quite a narrow one,
8 that it may be appropriate for us to go after the
9 municipalities have presented their comprehensive
10 evidence. I am not sure if there are any
11 objections to that.

12 There is a possibility, possibly
13 quite remote at this point, that Halton and the
14 Ministry of Natural Resources would be able to agree
15 on an approach to the utilization of shale, but
16 certainly by having us present our evidence after
17 Milton and Burlington have presented theirs, it
18 would give us maximum time for reaching any
19 agreement, if that is at all possible.

20 THE CHAIRMAN: Well, we can only
21 try.

22 MS. MANSFIELD: Thank you.

23 THE CHAIRMAN: I'll just get that
24 order again.

25 MR. LEDERER: Shall I go through it



1 a bit more slowly?

2 THE CHAIRMAN: You mentioned Ms. Cronk
3 and Mr. Garrod and without going back through my
4 initial pages, to whom they represent, what I
5 have here is the Region, the Ministry of the Environ-
6 ment, then the Town of Milton, the Milton ratepayers,
7 National Sewer Pipe, the City of Burlington,
8 Burlington ratepayers and we have added the
9 Ministry of National Revenue....

10 MR. LEDERER: I don't know what they
11 are doing here, but everyone else is here!

12 THE CHAIRMAN: By the time we are
13 finished, we may need them.

14 MR. LEDERER: No doubt.

15 THE CHAIRMAN: Then the reply evidence.
16 So would you like to go through that again from
17 the Ministry of Natural Resources.

18 MR. LEDERER: First of all it is
19 obviously the Region, represented by myself and
20 Mr. Hodgson. You haven't heard yet from Mr. Tidball,
21 and perhaps I can put him in the position I know
22 he wants to be in. Given the position I know he
23 will take before you, second would be the Town of
24 Milton, represented by Mr. Estrin and Mr. Leitch
25 and, as I understand it, occasionally Mr. Dahme.



1 Third would be the Milton ratepayers
2 groups represented by Mr. Garrod and Ms.... I am
3 sorry.

4 MR. GARROD: Nurvo.

5 MR. LEDERER: Followed by National
6 Sewer Pipe, represented by Ms. Cronk, Mr. Tuer and
7 I have forgotten the third name.

8 MS. CRONK: Mr. Perrier.

9 MR. LEDERER: Followed by Azova,
10 represented by Mr. Longo, followed by the City of
11 Burlington represented by Mr. McQuaid and Mr. Tzekas
12 and followed by the Burlington ratepayers group,
13 represented by Ms. Vigod and Mr. Castrilli and
14 followed by Mr. Tidball -- followed by the
15 Ministry of the Environment represented by Mr.
16 Tidball and followed then by the Ministry of Natural
17 Resources, represented by Ms. Mansfield.

18 THE CHAIRMAN: Thank you, Mr. Lederer.

19 MR. LEDERER: As I said, and perhaps
20 I should say as a caution, obviously there will
21 be times when that changes, and particularly when
22 other parties begin to call their case. It seems
23 to me that the Region's position will vary, depending
24 upon the position of the party calling the evidence.

25 THE CHAIRMAN: Is that acceptable to



1 all of the those persons and groups?

2 MR. McQUAID: I would just like to
3 clarify the position. I think in the letter I
4 received from Mr. Tidball with respect to this order,
5 he made it clear that that was his wish with respect
6 to the order of presentation of his witnesses and
7 not necessarily the order with respect to cross-
8 examination. I think he is agreeing, but I would
9 like to hear him and ask him if he would confirm it,
10 that on the aspect of cross-examining witnesses,
11 that he is prepared to go after the Region of Halton,
12 or earlier in the proceedings. So, on that aspect,
13 I would like clarification and that would be my
14 submission, he ought not to go at the very end,
15 and I would also ask the Board, and I would ask
16 Mr. Tidball, I suppose through you, Mr. Chairman
17 and members of the Board, but it seems to me that
18 at as early a point in the proceedings as possible
19 we should have the preliminary views of the
20 Ministry as to what their submissions are, whether
21 they are submitting -- accepting the regional
22 material as it is submitted, or whether they have
23 certain issues which they wish to address. I
24 gather that is the purpose in fact that Mr. Tidball
25 has now asked, he sort of now wants to go from the



1 early position of No. 2 at the starting post to going
2 at the very end. He wants to hear the evidence and
3 I suppose have additional facts brought to the
4 Ministry's attention.

5 However, there is a tremendous
6 amount of material, and the Ministry has been circulating
7 it and already I would assume has some preliminary
8 position as to what the main issues, whether it
9 is Site D or F or both sites or whatever it be.
10 I would think it would be in everyone's interests
11 that we get that position on the table as early as
12 possible in the presentation of evidence also.

13 So, on the two grounds, one on cross-
14 examination, I do not agree Mr. Tidball should go
15 last, he should go early in the proceedings in terms
16 of cross-examination. And, second, on the issue
17 of the presentation of witnesses, I would submit
18 that the Ministry should present a position to the Board
19 early on and if there is later evidence that comes
20 forward which would cause them to adjust their views,
21 then I think Mr. Tidball could ask to go at the end,
22 which seems to be the order of presentation of
23 witnesses now being suggested to you.

24 THE CHAIRMAN: Thank you.

25 MR. LEITCH: Mr. Chairman, arising



1 from Mr. McQuaid's submissions, by inference I take
2 from his submission that he would ask that the order
3 of cross-examination be in the order the parties
4 present their cases. This is a unique kind of
5 application where you almost have to deal with it
6 on a subject matter by subject matter basis to have
7 fairness in the procedure of cross-examination and,
8 speaking for the Town of Milton, we do not concede
9 that the correct order of cross-examination is
10 necessarily in the order in which the parties are
11 calling their cases.

12 I think as my friend, Mr. Lederer,
13 gets into his opening statement, you will begin to
14 understand my concern, but I want to raise it now
15 so that when the question of the order of cross-
16 examination arises, we could have the Board's
17 ruling on how that should work.

18 THE CHAIRMAN: I agree it will vary
19 from time to time, depending upon the subject
20 matter, but I am concerned at the moment with the
21 presentation of the cases and in which order they
22 should proceed.

23 With cross-examination, we will determine
24 that as we go. All may not be interested in
25 a particular field.



1 MR. GARROD: Having regard to your
2 comments, I wanted to support Mr. Leitch's remarks
3 in respect of the order of cross-examination and I
4 will go no further.

5 THE CHAIRMAN: Could I have your
6 name again?

7 MR. GARROD: Stephen Garrod,
8 G-a-r-r-o-d. Certainly it is my client's position
9 we should be able to cross-examine witnesses in
10 different order, depending upon whether the region's witness
11 is favourable to our case or against our case as
12 the case may be.

13 MR. TIDBALL: Mr. Chairman, my name
14 is Tidball with the Ministry of the Environment.
15 Mr. McQuaid has asked that we put some kind of
16 position on the record and I will do my best to
17 answer that, if I can.

18 The Ministry of the Environment
19 intends to be a full-time participant at this hearing
20 and will be here at all times. The Ministry has
21 several roles in this entire process, as you may
22 appreciate, and in part the Ministry is charged
23 with administering the environmental assessment
24 process and, in that regard, the Ministry coordinates
25 the preparation of a government review. In that



1 respect, it is an overall EA review function and I
2 will certainly be calling the review coordinator to
3 tell you about that government review.

4 The Ministry is also the ultimate
5 regulator in the field, and we are the ones who will
6 have to administer any Certificate of Approval which
7 this Board may choose or direct be issued. In that
8 respect we will certainly, at the end of this whole
9 process, be suggesting to you conditions of approval
10 which would be appropriate and necessary for
11 inclusion in any Certificates of Approval.

12 We are also a review agency for all
13 the technical documents that have been submitted, and
14 I can draw the distinction right now between documents
15 submitted as part of the Environmental Assessment Act
16 undertaking and documents submitted as supporting
17 documents to the application under the Environmental
18 Protection Act, and we will be making submissions
19 to you later on our view of how those two
20 applications differ and what level of detail is
21 appropriate to either, and I need not go into that
22 right now.

23 As it stands now on the overall
24 undertaking, which as I understand it incorporates
25 Planning Act matters and Expropriations Act matters,



1 et cetera, we take no position one way or the other
2 on the overall. However, we will be taking positions
3 on various issues as they arise. I can advise you
4 now, for example, that we will take the position
5 that the environmental assessment document is
6 acceptable and ought to be accepted by this Board as
7 the basis for making a decision and that is the
8 first of the three decisions you must make under
9 the Environmental Assessment Act.

10 We will certainly be taking the
11 position there is a need for a landfill in the
12 Region of Halton. We may or may not, at the end
13 of this whole thing, favour one of the sites over
14 the other on the basis of areas that are of concern
15 to us and that is that fall within the Ministry's
16 mandate, and I am not talking about the environmental
17 assessment mandate here which is something quite different,
18 but the Ministry's traditional mandate of protecting
19 the air, land and water of the province of Ontario.
20 In this case, the primary protection issue is
21 the protection of the groundwater resource and that
22 gets into the whole area of hydrogeology.

23 With respect to where the Ministry's
24 evidence is called in this whole process, it
25 appeared to us very early on, and in fact with



1 discussion with counsel, it was obvious there were
2 only two places to go, we could go directly after
3 Halton's case or we could go after the cases of --
4 I can call it the Milton and Burlington sides, if
5 you will, the other two main sides, and we couldn't
6 go between the Milton people and the Burlington
7 people. At the time I didn't take any objection to us
8 going right after Halton, but there was some
9 discussion on this matter at the preliminary hearing
10 and we have been thinking about it a lot and I have
11 been talking to some counsel and last week I sent
12 them a letter advising them that I would be asking
13 this morning to slot us last in the order.

14 Now, there are several reasons for
15 that. The primary area that most people are interested
16 in is the whole area of hydrogeology and the design
17 and operation of the landfill site, and that is an
18 area where you will hear a fantastic volume of
19 evidence. We have a lot of it before us and we have
20 been reviewing a lot of it and we hoped long before
21 this and we certainly hoped by this morning to have
22 something we could give to all parties in terms of
23 at least a synopsis of our review comments and we
24 hope to have that by the end of the week, but in
25 any event I don't think it matters if it's this week



1 or next week.

2 We have some comments, and there
3 are some outstanding matters that we will want to
4 cross-examine on and there are matters that we
5 are going to want to hear, as everyone is, the
6 positions of experts called by the various parties.
7 We have in the past been put in the position by
8 the Board of being asked to sort of give them a
9 third opinion, and there are several landfill hearings
10 I can give examples of where the Board has actually
11 requested the Ministry to come in when they have not
12 even been a party and the Board knowing that the
13 Ministry has reviewed the evidence and has or does
14 have an extra hydrogeologist available. We think
15 it is only reasonable if we are in that position,
16 and I think ultimately we are truly neutral on the
17 question and we don't have -- prime facie we don't
18 prefer one site over the other, I think we are
19 natural to go last and give the Board the benefit
20 of our expert evidence, having heard all the rest
21 of the evidence.

22 So, Mr. Lederer has nicely put me
23 at the end and I would like to stay there.

24 On the question of cross-examination,
25 as I said in the letter and repeat, I don't really



1 care where we go in the order of cross-examination and
2 any argument I made only pertains to the order of
3 evidence. Thank you.

4 THE CHAIRMAN: Thank you.

5 Are there any other comments?

6 Well, Mr. McQuaid, we have agreed we will accept
7 Mr. Lederer's positioning and have the Ministry go
8 later on on that basis, rather than after the
9 Region in the matter of the presentation of evidence.

10 MR. McQUAID: I suppose my concern
11 is that Mr. Tidball has indicated he is neutral,
12 but then on the other hand he said at the very end
13 that presumably after hearing the evidence, they
14 may decide one site or the other.

15 My concern, quite frankly, has been
16 that if they know already that they will be
17 preferring one site or the other, they should go
18 forward and if his position is in his synopsis that
19 they still have not tilted or made a decision and
20 can't get out of neutral, so be it. But, if they
21 were out of neutral, they should go in support or
22 in the time in the proceeding when that particular
23 site is being put forward.

24 Now, if at the end they decide they
25 are going to prefer one site or the other, the only



1 thing I ask is that they reserve the right, whether
2 it be Site D, Mr. Estrin and Mr. Leitch's client,
3 or my client, we want the right to reply to that,
4 if they have brought up something new that we
5 haven't heard.

6 THE CHAIRMAN: There is no doubt about
7 that, Mr. McQuaid, and that right will be afforded
8 to both of you.

9 MR. McQUAID: Thank you.

10 THE CHAIRMAN: I understood that the
11 Ministry is in a neutral position at the moment.

12 MR. TIDBALL: Just on that matter,
13 I didn't say -- it might well be at the end the
14 Ministry will take the position that either site is
15 acceptable and you could approve either one for
16 whatever reasons because they are equal in terms of
17 protecting the environment.

18 MR. LEDERER: A happy result from
19 the Region's point of view, sir.

20 THE CHAIRMAN: I am sure we will hear
21 more about that later.

22 MR. LEDERER: You will, sir.

23 THE CHAIRMAN: Yes, Mr. Garrod. I
24 am sorry, but it will take a while, but I find it
25 difficult to see with the sun behind you.



1 MR. GARROD: As the hearing drags on,
2 you will have the advantage of being able to daydream
3 out the window, while the rest of us have to look at
4 the wall. I just wanted to add, Mr. Chairman, with
5 respect to reply evidence, that my clients, although
6 I have not yet had an opportunity to make an opening
7 presentation to you, I suspect you can predict that
8 they are opposed to Site D in the Town of Milton,
9 and because we are cast in a position of going
10 relatively early in the proceedings, we may well be
11 seeking from you leave to reply to certain aspects
12 presented by either the City of Burlington or the
13 Burlington ratepayers that may be the proper subject
14 of reply by me on behalf of my clients.

15 THE CHAIRMAN: Yes. You all must
16 understand that this will be a very complex hearing
17 in a number of matters and the number of times with
18 things coming up and we will have to deal with those,
19 each in its own order. I am sure that that will
20 arise many times, and it's impossible to determine
21 it now, all these points.

22 Are there any other concerns in that
23 regard? I suppose now we should consider who will
24 be parties to this hearing and who we would more
25 properly term as participants. Obviously all those



1 listed so far will be listed as parties.

2 MR. LEDERER: That is subject to
3 my application with respect to Mr. Boldrini.

4 THE CHAIRMAN: Yes, and we can deal
5 with any other person.

6 Now, is it Dr. Boldrini or Mr?

7 DR. BOLDRINI: I ask to be called
8 the same way, Doctor or Mister.

9 THE CHAIRMAN: What is your
10 doctorate in?

11 DR. BOLDRINI: Chemistry.

12 THE CHAIRMAN: I think you did
13 mention you were representing what was termed the
14 Advocacy Group for the Environmentally Sensitive.
15 What is that?

16 DR. BOLDRINI: It is a national
17 group which speaks in three locations, Burlington-- in
18 fact the first line of the volume of the transcript
19 says its Hamilton, but it is Burlington, and Ottawa
20 and Montreal are the other locations.

21 These are people who react to
22 chemical contamination.

23 THE CHAIRMAN: I am sorry?

24 DR. BOLDRINI: They react to chemical
25 contamination and they feel it in their bodies, they



1 react, and they are so-called hyper-sensitive and in
2 that respect I notice that this is something new
3 and even the question or the evidence will not
4 quarrel with this view. Some of them live in
5 Burlington and some live in Hamilton and I live in
6 Hamilton, but I am not in their group any more.
7 I was challenged at another hearing on funding
8 because I was on their membership list and I acted
9 on their Board of Directors. I was told I wasn't
10 allowed to have funding for the group, so I resigned.
11 Well, I didn't register for 1987, so I didn't need
12 to resign. I didn't renew my membership so I am
13 only representing them as a scientific counsel and
14 my purpose for being at the hearing is to question
15 the evidence and from the activity of some of my
16 letters I have sent to the Board, you might realize
17 that I have read the reports and I have a few
18 questions and maintain that our position is something
19 new.

20 Now, we are perhaps more than the
21 other two citizens groups, we live around the landfill
22 as well as far away from the landfill, but we have
23 a lot of experience. We have contributed to the
24 Halton Region discussion and myself, I was present
25 at the first discussion and I myself read the



1 draft environmental assessment some time ago, and I
2 have a package of correspondence in that respect
3 with the Region, but my group as well participated
4 at the public meeting with two persons at least,
5 one Marie Lorraine was present and the second is
6 Mr. Holme, who I don't know, but you will find
7 both names on the list of the public meetings.
8 In fact, the Halton Region was planning the landfill
9 and that was the stimulus for the group to be formed
10 and the group is incorporated now, so the group
11 became a formal group and, among other things, because
12 of the landfill and my part in it in the past has
13 always been what is in the air or where does the air
14 go and what kind of contaminants, et cetera, et
15 cetera, water, food, soil, leachate.

16 We submitted at the funding hearing
17 our newsletter and that was the only copy I had
18 and I would be willing to submit other copies for
19 you to have an idea of what the group is and what
20 it does.

21 THE CHAIRMAN: Thank you.

22 Mr. Lederer.

23 DR. BOLDRINI: Now, I have a question.
24 I said I wanted to be recognised before the motion
25 as to status for my group, my reason being that I



1 was handed this morning a set of legal documents and
2 I am not willing to go through it, but have taken
3 the precaution and I knew by letter of the proponent,
4 by letter after Friday that they were challenging
5 me and the first notice I got was a frivolous one
6 over the phone. They challenged me for not living
7 in Halton and I considered that frivolous, but when
8 I received that letter Friday after supper, and I
9 saw the reason for challenging my group was different
10 than the one I had before, and the one which I have
11 here is that my group is very well represented by
12 the other groups. This is not as frivolous as the
13 previous one, but is certainly not true and I took
14 the precaution of contacting a lawyer and my motion
15 is to you that you postpone the presentation of this
16 motion because I will ask, and we will ask for
17 legal counsel and we will ask for a legal certificate
18 and we didn't have the time to do it yesterday and
19 we were told, and if you want to know more about
20 that, Mrs. Lorraine can answer you. We were told
21 that you need....

22 THE CHAIRMAN: Dr. Boldrini, you can
23 respond after we hear the concerns and whatever tack
24 you wish to take after that, you may do so.

25 DR. BOLDRINI: My motion is that I



1 cannot and will not discuss legal matters. We are
2 having a lawyer for that.

3 THE CHAIRMAN: That lawyer may come
4 forward at a later time and present your case, if
5 you wish.

6 DR. BOLDRINI: In other words, I
7 can't talk from my own point of view, or my point
8 of view will not answer the concern of the proponent
9 because I don't want to tackle.... my concerns are
10 different.

11 THE CHAIRMAN: The Board is not aware
12 of your concern at the moment, and I am sure we will
13 be in time, but we aren't at the moment, and we
14 can proceed in that manner at a given time at your
15 convenience.

16 DR. BOLDRINI: Can we answer in two
17 weeks time, because that is what I am asking? I
18 am asking you to answer to the motion in two weeks
19 time because I am not able.

20 THE CHAIRMAN: What motion are you
21 speaking of?

22 DR. BOLDRINI: The request of the
23 proponent. I am not able, nor am I willing, to
24 present my rebuttals to what is going on because I
25 was told about it five minutes to ten and I am not



1 willing to take this as the basis of my discussion.

2 THE CHAIRMAN: At the moment the Board
3 is entirely in the dark on that, so let us proceed
4 and we can determine later.

5 DR. BOLDRINI: Okay.

6 MR. LEDERER: Mr. Chairman, perhaps
7 in view of Mr. Boldrini's comments I should make
8 some brief statement with respect to the manner in
9 which this matter comes before you this morning.

10 When we appeared on February 11,
11 the Chairman on that day made it clear, as I think
12 all parties agreed was appropriate, that no formal
13 orders would be made and that that was a preliminary
14 meeting as the regulation attached to the
15 Consolidated Hearings Act states and, accordingly,
16 the Board was not sitting in its official capacity,
17 if I can use that word, and as has transpired, the
18 membership of the Board might well change.

19 Accordingly, no one has status and
20 no one has standing until this Board on this day
21 makes such an order.

22 It was therefore my view that there
23 was no basis upon which to file a formal notice of
24 motion or to serve Mr. Boldrini. However, I did
25 take the precaution of informing him about this a



1 week ago Friday -- I am sorry -- he called my office
2 on Friday and left a message that I should phone him
3 on Monday and I phoned him on Tuesday of last week
4 and informed him at that time that this application
5 would be brought. He attended at my office and met
6 with me and my colleagues for about an hour and a
7 half on Wednesday of last week and the fact that
8 this application would be brought was repeated at
9 that time. I have this morning given him the three
10 cases I will refer to and because he is not a lawyer,
11 I referred him to the specific sections I will be
12 discussing with the Board in order that he will be
13 fully advised of what it is I am arguing and what it
14 is I propose to submit to you this morning.

15 I make this application with some
16 trepidation. I am sensitive to the fact and the
17 Region of Halton is sensitive to the fact that this
18 is at its root a public hearing and that members
19 of the public are to be given an opportunity to
20 address their concerns and to hear the evidence and
21 for the Board to be able to take advantage of whatever
22 submissions they may make in coming to its decision
23 as to whether or not an approval should be granted.

1B

24 I suppose we are particularly
25 sensitive to that because we act for a public agency.



1 However, in my submission, the process must still be
2 reasonable and it will be my submission to you that
3 in these circumstances, the granting of party status
4 to Mr. Boldrini and whoever he may represent, and
5 that in my submission is not entirely clear, status.

6 I suppose the fundamental issue I
7 have raised is what really is reasonable in these
8 circumstances, and I start with this proposition. You
9 don't become a party merely by appearing here and
10 asking for status. There has to be something which
11 connects you to the application as the legal
12 concept of interest, you must have some interest
13 and not academic interest, not a general interest in
14 being informed, but some relationship to the project
15 or proposal which is being brought forward.

16 Now, the cases support that
17 proposition and within the folders I have given you
18 there are three cases to which I which to refer.
19 The first is the case of Victoria Wood Development
20 Corporation Inc. and Jan Davies Ltd., 1979, 10 Ontario
21 Municipal Board Reports at page 47, a decision of
22 the Court of Appeal.

23 THE CHAIRMAN: I am sorry?

24 MR. LEDERER: There should be a copy.

25 THE CHAIRMAN: I am sorry, I started



1 at the wrong end.

2 MR. LEDERER: In this decision, the
3 facts upon which the decision is based are that the
4 Committee of Adjustment had granted certain minor
5 variances to a landowner, but the decision was
6 appealed to the Ontario Municipal Board by a rate-
7 payer who owned property some eight miles away. The
8 case was stated to the Divisional Court to decide
9 whether the objector was a person with sufficient
10 interest in the matter to maintain the appeal. On
11 appeal, the Court of Appeal held that the party
12 lacked sufficient interest and I would like to refer
13 you, Mr. Chairman, to page 50 of the decision and
14 to a brief comment by Mr. Justice Morden, reading
15 from the middle of the one paragraph which appears
16 on that page and which is the substance of the
17 decision:

18 "I am of the view that for the
19 respondent in this case to claim to
20 be a 'person having an interest in
21 the matter' it would be necessary
22 for it to establish some geographic
23 proximity to the subject lands."

24 In this case, eight miles was not
25 enough, but it establishes the notion of interest



1 and, in that particular case, an interest based on
2 geographic proximity.

3 Now, it is difficult to know what
4 the geographic proximity is of this group, as we
5 don't know very much about them. The only reference
6 which was made to them by Dr. Boldrini or Mr. Boldrini
7 when he appeared on February 11, is found at pages
8 7 and 8 of the transcript of that day. He says:

9 "The Advocacy Group for the
10 Environmentally Sensitive, I am their
11 scientific adviser and that group was
12 started in Burlington a few years
13 ago and is in fact an international
14 group. It has an address in
15 Hamilton for the past president
16 and secretary and if you want --
17 shall I give you the address or
18 do you want my address or my phone
19 number, which one?"

20 Today he has informed the Board that
21 in fact this is a national group centred in
22 Burlington, Montreal and Ottawa.

23 Now, in my submission, if a group
24 whose interest is international or national can
25 on that basis obtain interest for a landfill in some



1 region in southwestern Ontario, there is, in effect,
2 no landfill, no proposal anywhere in this country
3 or, if you wish to take the word "international"
4 as the operative word, nowhere in the world where
5 they don't have an interest and can't have status.
6 In my respectful submission, that kind of group in
7 these circumstances cannot be said to have the kind
8 of direct interest envisaged by the notion of
9 geographic proximity.

10 Now, somebody may say what about the
11 statement of these people who live in Burlington?
12 They haven't been identified, but before I get to
13 that matter, I would refer to the second case, the
14 case of re. Village Bay Preservation Society and
15 Mayne Airfield Inc. This case appears at 1982,
16 136 Dominion Law Reports, 3rd edition at page 729
17 and is a decision of the British Columbia Supreme
18 Court. In this case the local Agricultural Land
19 Commission had approved the development of an air
20 strip in the area. The petitioner was an unincorporated
21 society, having as its object the preservation and
22 protection of the national environment of the area
23 and its members being landowners in the area.

24 Now, if I could refer you to the
25 decision of Mr. Justice McKay at page 733, reading



1 from the last paragraph of the case:

2 "In order to have the necessary
3 standing to challenge the resolution
4 in question, without the intervention
5 of the Attorney-General, the petitioner
6 must show that it has a particular
7 interest or that it has suffered or
8 will suffer injury or damage peculiar
9 to itself....".

10 That promotes the notion of interest
11 through direct damage or impact:

12 ".... see Re. Island Protection
13 Society et al v. The Queen, supra.
14 The petitioner is an inanimate
15 incorporates society with a legal
16 status separate and distinct from that
17 of its members."

18 That appears to be the case here

19 now:

20 "There is no evidence that it owns
21 property in the area. It has no
22 senses to be adversely affected by
23 the operation of the airfield. How
24 can it be said that it, as a legal
25 entity, has a particular interest



1 distinct from that of other concerned
2 citizens of the area? How can it be
3 said that it, as a legal entity,
4 has suffered, or will suffer, injury
5 or damage peculiar to itself? Put
6 at its highest, the society is in the
7 position of a concerned corporate
8 citizen - that is not sufficient to
9 grant standing."

10 In my submission, we are not very far
11 removed from this case. In this case we apparently
12 have an incorporated group but there is no personal
13 assertion as to who the members are and it is said
14 that some of them live here, as they did in this case, but
15 as a group, they don't have the kind of direct interest
16 which permits them to be granted status.

17 Now, may I digress to say that it is
18 true that there are cases within the province of
19 Ontario before tribunals such as this where general
20 interest groups have been granted status, but that
21 applies in circumstances where the interest they
22 represent will not be fully canvassed without their
23 participation. The most recent one I am aware of is
24 Energy Probe and the Ontario Hydro southwestern
25 transmission hearings. It is my submission that in



1 they are personally affected by
2 its determination. The decision
3 whether they have a right to sue
4 involves in part a process of
5 elimination."

6 Then, if you turn over the page to
7 the first paragraph at the top of page 300 -- 390,
8 pardon me:

9 "As to the plaintiffs, they sue as
10 'members' of the Authority, and
11 purport to do so on behalf of all
12 its members. They have no pecuniary
13 or propriety interest in the assets
14 of the Authority. They do not bring
15 the action as a derivative one,
16 in the technical sense of an action
17 that the Authority itself could bring
18 but has refused to bring. They have
19 not asked the Attorney-General of
20 Ontario to bring the action or to
21 intervene in any way.

22 They are neither ratepayers nor
23 inhabitants. (Neither plaintiff
24 resides in the County, if that is
25 material, which I doubt.) They will



1 not benefit personally in a pecuniary
2 way, if Resolution No. 17-74 is
3 declared ultra vires."

4 Then if you refer to page 393 in
5 the middle of that page:

6 "It would be tempting to say that a
7 member of a conservation authority
8 has a 'special interest...or
9 sufficient interest' to give him the
10 necessary status, but a very long
11 line of cases, binding on this Court,
12 have held that the 'interest'
13 referred to must be pecuniary or
14 propriety in nature (including, of
15 course, actual physical injury or the
16 risk thereof.)

17 Thus Duff, J., in Smith v. A-G, Ont.

18 said:

19 'An individual, for example, has no
20 status to maintain an action
21 restraining a wrongful violation
22 of a public right unless he is
23 exceptionally prejudiced by the
24 wrongful act.'....."

25 And then the last paragraph beginning



1 | this case, it cannot be said that there is any
2 | citizen in proximity to any of these sites or
3 | either of these sites who is not represented fully
4 | by some other party here. First of all, the two
5 | municipalities in which these two prospective sites
6 | are located are here with counsel. If there is
7 | any distinction between the position of the
8 | institutional municipality, the incorporated
9 | municipality and a citizens group, there is a
10 | citizens group from Burlington represented by Ms.
11 | Vigod and from Milton represented by Mr. Garrod.

12 | Now, what does this add? Does it
13 | add the interest of the property owners? We have
14 | Mr. Longo here and Ms. Cronk who are here. Does
15 | it add the interest of the regulatory agency?
16 | The Ministry of the Environment is here and the
17 | Ministry of Natural Resources is here. There is
18 | no shortage of expertise being brought to bear in
19 | this case and there is no deficiency in the panorama
20 | of interest that might come and appear before a
21 | Board of this type.

22 | In my submission, there is no reason,
23 | nothing will be added by granting status to Mr.
24 | Boldrini or his group.

25 | Finally, may I refer you to the case



1 of Rosenberg and the Grand River Conservation
2 Authority and this is found at 1976 69 D.L.R. (3rd)
3 at page 384 and also a decision of the Ontario
4 Court of Appeal. This is a reasonably well known
5 situation in which the County of Wellington wanted
6 to build a bridge across the Elora Gorge. To do
7 that it required the consent of the Grand River
8 Conservation Authority to transfer land. The
9 plaintiff was a member of the Conservation Authority
10 but did not reside in the affected area and did not
11 have any other pecuniary interest in the matter and
12 appeared in his own right. He didn't appear as a
13 member but simply appeared as an individual. He
14 sought an injunction to restrain the action on a
15 resolution authorizing the conveyance of the land
16 and was refused status by the Court of Appeal.

17 If I could refer you, sir to page
18 389 of the decision under the heading, towards the
19 bottom of the page:

20 "In considering the right of the
21 plaintiffs to bring this action, it
22 is necessary to categorize the legal
23 issue involved, and then to examine
24 the relationship of the two
25 plaintiffs to that issue, and how



1 on that page:

2 "While this action purports to be
3 brought on behalf of all members of
4 the Authority, it is really brought
5 on behalf of the public generally.
6 There is no special benefit to be
7 gained by the plaintiffs, beyond
8 that which may be gained for the
9 public generally."

10 It is my respectful submission that
11 careful examination of these words indicates the
12 requirement for a direct interest, for the requirement
13 for some special addition to the hearing from
14 the participation involved and none, in my submission,
15 of which exists here.

16 When Mr. Boldrini appeared in my
17 office, we discussed this matter and I asked him
18 what position he was going to take and his answer
19 was, and the Board may wish to canvass this with him,
20 but "I can't tell you whether I favour Site D or F,
21 I want to ask questions." This is not a process of
22 discovery and we are not here to educate Mr. Boldrini.
23 We are here to deal with the regulatory process to
24 determine whether or not a regional municipality
25 should be granted the approvals necessary to provide



1 a necessary municipality facility, which it is
2 compelled to provide by legislation.

3 While all the requirements of a
4 public hearing should be followed scrupulously, we
5 should not forget, in my respectful submission,
6 that the process must be reasonable.

7 Now, I began the submissions by
8 referring to this question of reasonableness and
9 even if I am wrong in what I have said to this point,
10 it is my submission to you that that concept raises
11 another fundamental question. Being a party to
12 a proceeding such as this grants one certain
13 privileges but, in my respectful submission, it also
14 brings with it responsibility. This is a long,
15 complicated and expensive process. You have already
16 in the first ten minutes of this proceeding had
17 two or three people allude to how complex it is,
18 how long it is going to take, the vast amount of
19 evidence that you are going to hear. I can tell you
20 there are some 130 basic reports which are the
21 foundation of the studies which have been conducted
22 in this matter.

23 I can also tell you, and I don't
24 believe it is a secret, that several millions of
25 dollars have already been spent and every party who



1 comes here bears some responsibility to see that
2 the matter moves forward at a reasonable pace and
3 deals with the issues in a responsible manner.

4 In line with that, the parties who
5 appeared at the preliminary meeting made some
6 arrangements with respect to the question of
7 interrogatories and the essential arrangement was
8 that generally by a specific date, I would receive
9 questions and generally by a specific date I would
10 respond to them.

11 In the case of the Burlington
12 ratepayers group and the City of Burlington, the
13 Ministry of Natural Resources, I have received
14 those interrogatories and we have been able to
15 answer them and have provided them in this kind of
16 format.

17 I have also received requests
18 from Dr. Boldrini, and I should say to you that
19 Milton -- sorry, I left out Mr. Leitch's client,
20 but I have received requests for interrogatories
21 from Milton and I have some concerns about them
22 and have been told and requested, and I think
23 responsibly, that the town will consider them
24 more carefully and be sure that they really need
25 them, a responsible thing to do, to be sure that we



1| aren't spending unnecessary time and money.

2 Now I would like to review what I
3 have received with you from Dr. Boldrini and these
4 letters are also in the material, in the file
5 folder. I understand you may have received copies,
6 he may have delivered copies to the Board and I am
7 not going to take your time by going through all
8 of these, but I want to give you some examples of
9 what we have been confronted with.

10 There are essentially four letters
11 I have received in total and three are matters of
12 substance and two are directly relevant to these
13 submissions and they are, first of all, a letter
14 of March 4, 1987 and, secondly, a letter of March 11,
15 1987. Now, as I give you these examples of what
16 he has asked for, and I want to stress that this
17 is virtually an arbitrary selection by me of what
18 to refer you to and I encourage you to read it all,
19 but I ask you to consider the amount of work involved
20 and whether there is any demonstration of relevance
21 or what interest they support.

22 I can start with No. 1:

23 "The degree of preference between the
24 two sites is somewhat smaller than
25 the number and priority of categories



1 in which each site is preferred would
2 suggest. Put 'the degree of
3 preference between the two sites'
4 into a figure. Is that figure
5 50.1% (49.9%) et cetera, et cetera
6 or any other figure included among
7 the previous limits?"

8 There is always an issue in these
9 matters as to whether the judgments are subjective
10 or objective. Are the numbers objective; but in
11 my submission, nothing is gained by this kind of
12 request and this is not the way we chose to do it.
13 If Dr. Boldrini wants to bring evidence to show that
14 this is a better way of doing it, that is fine, but,
15 in my submission, it is not appropriate to ask us
16 to re-do it in some method which he finds more
17 appropriate and a tremendous amount of materials
18 in these letters would require new work.

19 May I also refer you to question 1.3:
20 "The notice of the preliminary hearing
21 stated that Halton is going to
22 landfill: 'Ashes, garbage, refuse,
23 domestic waste, industrial solid
24 waste and municipal waste.' What
25 are the total quantities for each



1 of the six subcategories of waste
2 to be landfilled?"

3 Now let's just think about what
4 that means. We are projecting the requirements of
5 landfill into the future and now we will have to
6 try and somehow establish how much will be ashes,
7 how much will be garbage and how much will be refuse.
8 Let me tell you where those words come from. Those
9 are the words of Section 137 of the Region of Halton
10 Act and that is the section which compells the
11 Region to supply this facility and this is not
12 reasonable. What would it mean and how much time
13 would it take and how much money would it cost?

14 THE CHAIRMAN: Is it possible at all?

15 MR. LEDERER: In my submission it
16 is not possible. When I get to the end of this, I
17 am going to suggest there is no rationale behind any
18 of this and this is somebody who has read the reports
19 and has asked every question which has come into
20 his mind and now he wants taxpayers' dollars
21 spent in answering them.

22 It will be my submission to you,
23 going back to where we started, that this is just
24 not reasonable. It is not what responsible parties
25 do and it does not demonstrate the responsibility



1 that should be the foundation of the granting of
2 party status.

3 May I take you, please to 1.4:

4 "Provide complete quantitative
5 chemical analyses of the regional
6 waste landfilled. Using any of the
7 three methods available...."

8 and it is not clear what the methods are:

9 "... estimate the future composition
10 putting the relative values in a
11 9 x 17 data grid made up of each
12 item in a) by b):"

13 And you have the a) and b), what I
14 presume are two axes. It would be some kind of
15 demonstration like the one, chart 1, which I will
16 refer to later. This type of material sorted out on
17 it, but for what purposes?

18 May I take you to 1.7 and 1.8:

19 "Provide the 1986 amounts for the 57+
20 materials listed in Table 1...."

21 and if you turn over the page you will see Table 1,

22 "as analyzed in the leachate of
23 the regional Burlington landfill.

24 1.8 Provide the 1986 amounts for
25 the 57+ materials listed in Table 1,



1 as analyzed in the surface-, shallow-,
2 deepoverburden-, and bedrock-water
3 of site 'D' in Milton."

4 I haven't had a chance to update and
5 review the point I am trying to make with you, and
6 I may be wrong, but I understand that typically
7 one substance, a conservative substance is taken to
8 map what will happen with water because it is
9 simply too difficult to map 57 and chlorides are the
10 ones usually selected, so why do we have to do this?

11 May I take you to 1.9:

12 "For each of the six subcategories
13 of waste:"

14 and these are the six referred to in Section 137 of
15 the Region of Halton Act,

16 c) ashes, garbage, refuse, domestic
17 waste, industrial solid waste,
18 municipal waste, fill out a separate
19 6 x 4 data grid including for each
20 item in c) the items in 1.9.x in
21 answer to the (blank) questions."

22 And what follows is a series of
23 things and in my submission they are all matters of
24 educating someone and that is not what we are here
25 for, with respect.



1 There are a number of areas in which
2 we are told that Dr. Boldrini will challenge
3 statements and you will see one of those at point
4 1.13. May I take you to 1.14:

5 "In view of what is stated in
6 Appendix D of ref. 1, provide:
7 1.14.1 list of successes and
8 failures of grass and crop growing
9 at closed landfill sites:
10 1.14.2 list of successes and failures
11 of tree growing at closed landfill
12 sites;
13 1.14.3 evidence of anaerobic soil, with
14 foul odour and dark appearance,
15 support crop-grass-plant growth;
16 1.14.4 evidence of what delineates
17 the aerobic from the anaerobic soil
18 below closed landfill sites."

19 May I take you to 1.20:

20 "A detailed printout from the computer
21 literature search and a summary
22 listing of references for all of
23 those articles attained and reviewed
24 is on file at Pollutech,"

25 one of the consultants the Region has retained with



1 respect to leachate quality and treatability.

2 I am not quite clear what that's about, but if it's
3 a complete listing of everything in their library,
4 that is none of Dr. Boldrini's business, to put it
5 as harshly as I can, and, to put it more softly, I
6 cannot see how it adds to this process.

7 I should tell you, sir, that in
8 order to demonstrate some level of good faith, we
9 have attempted to respond to some of these questions
10 and my recollection is that we got down to about
11 1.20 of this letter, the one I have just read you.
12 I don't want to say there are answers provided, but
13 we tried to deal with them and that was delivered
14 to Mr. Boldrini last Friday.

15 If I can take you over, and again
16 these are only examples, but to 1.31 on page 6.

17 "The major tasks undertaken by
18 Pollutech during the study as part
19 of this submission was as follows: -
20 A detailed literature review....
21 -Detailed characterization of
22 landfill leachate produced in the
23 regional municipality of Halton....
24 On page 31 of the same ref. something
25 else is reported, not what is



1 promised in the table of content."

2 That is his point of view, I suppose
3 but what are we supposed to do with it?

4 Paragraph No. 1.31.3 and on are
5 a series of opinions and he can prove them if he
6 wants, I suppose, but No. 1.31.8 is:

7 "Provide the missing inorganic data
8 of Table 8."

9 What's missing? He may feel there
10 is something missing and perhaps we will agree, but
11 I don't know what that means.

12 If I may now take you to the letter
13 of March 11, and I don't propose to take you through
14 this letter in the same way. It's the same kind
15 of material, but I will tell you this, that we have
16 made certain enquiries of one of our consultants
17 and we sent them this letter and said what is
18 involved in responding to all of this. First of
19 all, there were some questions which weren't under-
20 stood. There were about 80 per cent which could
21 be answered, but the answers would take fourteen
22 man days of work. There were several more which
23 would require new work, and to do that would take
24 more than fourteen days of man work. To respond to
25 this letter, the Region will have to hire somebody



1 or get one of its consultants to work for, it
2 appears, at least a month of full time work. That's
3 not reasonable.

4 The hearing process is here to bring
5 out information and the interrogatory process is
6 to facilitate it and make it simpler, but it is not
7 here to wantonly spend money, private money or,
8 in this case, in my submission, taxpayers' money.

9 There are, as I said some time ago,
10 the questions of someone who has read the reports
11 and simply asked everything that came to mind and
12 without order. The idea of a public hearing cannot,
13 in my submission, envisage that anyone, especially
14 one without a direct interest, can show up and ask
15 whatever he likes; that is not responsible and it
16 is not reasonable and, in my submission, this
17 gentleman, based upon the evidence that we have as
18 to who he represents, should not be granted party
19 status.

20 Now, if I may I would like to read
21 from one other decision and I don't have a copy of
22 it for you because it only occurred to me last
23 night that it might have some value here, but I
24 will read you these words of Mr. Justice Cory.

25 This is a case from re. Holmes and the Regional



1 Municipality of Halton, and you will observe this
2 is a case involving the Regional Municipality of
3 Halton and as you listen to these words, I would
4 like to tell you that this case was heard in 1977
5 and when his lordship was talking, he was talking
6 about the Region's efforts to site a landfill which
7 has still not been realized. We are still, in
8 effect, continuing down that same road we were on
9 in 1977:

10 "This application arises out of a
11 very fundamental problem that no
12 doubt will repeat itself frequently
13 in the future. The respondent
14 regional municipality is under a
15 statutory duty to provide the
16 facilities for the disposal of waste
17 and to acquire land to carry out
18 that statutory duty. A more
19 difficult duty facing elected
20 representatives of the people would
21 be hard to imagine. To fulfil
22 the duty is not only onerous but
23 bound to be unpopular with some
24 residents. The provision of this
25 essential service can only be



1 loathed and detested by those who
2 are in close proximity to the chosen
3 site. The service must be provided
4 and the decision with regard to it
5 will have to be made by elected
6 representatives with considerable
7 courage and fortitude. No unnecessary
8 obstacles should be placed in the
9 way of those conscientiously and
10 courageously attempting to carry out
11 their difficult tasks.
12 In situations such as this, it is
13 no longer appropriate to say you
14 can't fight city hall. Rather, the
15 question is whether city hall can
16 find its way through the convoluted
17 procedural labyrinth imposed upon it."
18 You have already heard about how long
19 this is going to take and in my opening I am going
20 to take you through the nineteen theoretical
21 applications that are before you. The granting of
22 this gentleman's party status to respond to these
23 kind of inquiries is an unnecessary obstacle which
24 convolutes the labyrinth his lordship is talking
25 about. In fairness, I should read the following



1 sentence:

2 "On the other hand, owners adjacent
3 to the proposed site with a natural
4 love of their land may quite
5 properly take all steps to ensure
6 that their rights are recognised."

7 There is no assertion of land owner-
8 ship and all these interests are presented and this
9 corporation does not own any land.

10 Now, I want to be quite clear, sir,
11 and say that in making these submissions, I do not
12 not, nor would it be appropriate for me to say or
13 attempt to restrict the ability of Dr. Boldrini to
14 appear here, prove himself as an expert and give
15 you the advice which he thinks is relevant, based
16 on his expertise. If he chooses to do that and can
17 prove his expertise, I cannot object. I am not
18 attempting to restrict him in that way, but it is
19 this notion of party status with its particular
20 privileges and responsibilities which concerns me
21 and what the granting of status will contribute to
22 this hearing, both in terms of cost, delay and lack,
23 in my submission, of any additional substance to
24 the many submissions you are already going to hear.

25 Thank you, sir.



1 THE CHAIRMAN: Thank you, Mr. Lederer.
2 Dr. Boldrini, do you wish to respond?

3 MR. GARROD: Mr. Chairman, before
4 Dr. Boldrini does, I have some remarks in support
5 of that application which you might want to hear.

6 Mr. Chairman, I will be quite
7 brief. I support Mr. Lederer's application that
8 Dr. Boldrini be denied party status in this hearing.
9 In my submission he is here on behalf of a national
10 group which has no more interest in this particular
11 application, I submit, than it would have in any
12 other application of a similar sort anywhere in the
13 country and that would go for any landfill application
14 as well as any other application of any sort that
15 might add contamination into the environment.

16 As I understand the objects of his
17 organization, it is to protect the environmentally
18 sensitive, those people who are hypersensitive to
19 chemical contamination in the environment, and that
20 can occur in any number of ways, not only by landfill
21 and, in that situation, I submit this group has no
22 status here.

23 If you do not accept that entirely,
24 my other position is that given that the group has
25 a Burlington office and it seems evident that the



1 motivation for their formation in this part of the
2 country and their interest in this application is
3 their proximity to the existing Burlington landfill
4 site, which you will hear is immediately adjacent
5 to the proposed Burlington Site F, it is my submission
6 that their interest, if it exists in this
7 application, is with the possible implications of a
8 new site adjacent to the existing site in Burlington.

9 Having said that, it is my position
10 that, if that is the case, they should be required
11 in a responsible fashion to coalesce and consolidate
12 their interests with the other interests here before
13 you with respect to that particular aspect of this
14 matter.

15 I filed with you at the beginning
16 of today a list of the clients that I and my
17 associate represent here, and if you could refer
18 to it briefly you will note that there are three
19 main groups of clients, if you like, I have put on
20 this list and there is no great magic to those
21 numbers, but if you look at it closely you will see
22 that in fact the No. 1 group is a coalition of
23 citizens groups, three groups forming that coalition
24 and each one of which, I submit to you, would in
25 other circumstances be completely entitled to be



1 separately represented here.

2 Secondly is the Halton Federation
3 of Agriculture, which has a broader interest on
4 agricultural issues in the region and thirdly is
5 nine property owners who would lose their homes
6 and their property if the Board seeks to approve
7 Site D. They have a direct interest of potentially
8 being expropriated, and I submit to you that any of
9 these individual clients would be perfectly entitled
10 to come here at this hearing and be separately
11 represented, either by counsel or on their own behalf,
12 and you would have before you ten people standing
13 where I stand if we had not expended considerable
14 effort to coalesce and be represented here and
15 all of similar interests that were able to be
16 coalesced.

17 Now, it is my submission to you that
18 if Dr. Boldrini and his organization have some kind
19 of direct legitimate interest, which I do not
20 agree with, they should be in a responsible fashion
21 required to coalesce in some fashion with the
22 West Burlington Citizens Group and with any other
23 interested property owners in the vicinity of
24 Site F. You have not heard from other people other
25 than Dr. Boldrini, Mr. Chairman, and I understand



1 | there will be other individuals here who will be
2 | seeking separate party status before you and my
3 | position with respect to them is the same. If my
4 | clients can all coalesce and present their interests
5 | to you in a responsible coordinated fashion, there
6 | is no reason why other groups should not be
7 | required to do the same.

8 | Mr. Chairman, I say that because if
9 | you do not require that, there is no incentive for
10 | groups such as my clients to take the considerable
11 | efforts that I can tell you have been taken to
12 | coordinate their efforts and present their positions
13 | here. If there is no incentive for groups to do
14 | that, then these hearings could last years instead
15 | of one year, which I predict to you will be the
16 | length of time that we are involved in this
17 | application.

18 | In my submission, I agree with
19 | Mr. Lederer that there is no only privileges but
20 | responsibilities that reside with party status, and
21 | part of those responsibilities are the
22 | responsibility to coalesce your interest to the
23 | extent possible with other like interests. We
24 | have attempted to do that to the maximum extent we
25 | have been able to, and we will continue to as this



1 hearing progresses to you. I hope I have the
2 opportunity of adding to my client list, rather
3 than have other people bring in separate
4 representations to you.

5 The bottom line concern, Mr. Chairman,
6 is time and money because, in the absence of that
7 kind of effort, there is considerable time and
8 considerable money expended, and I can tell you,
9 and I would like to put everyone on notice now, that
10 my clients intend to make a substantial contribution
11 to this process and intend to seek substantial
12 costs at the end of the process. Part of the reasons
13 or one of the criteria for evaluating groups will be,
14 if the Board follows previous cases, the extent to
15 which groups have coalesced into groups such as
16 my clients have to present like interests and I
17 ask you, if you decide to not grant Mr. Lederer's
18 application, and if you decide to allow all of the
19 various groups opposed to Site F to present their in-
20 terests to you separately, to keep that factor in
21 the forefront of your minds when you are addressing
22 the cost applications at the end of this hearing.

23 Like Mr. Lederer, I agree fully
24 that Dr. Boldrini would be entitled to present
25 himself as an expert witness, and any of the groups



1 who may wish to call him as a witness may do so or
2 he may present himself on his own behalf at the
3 appropriate time, but that does extend to allow him
4 the right to cross-examine witnesses as a separate
5 party.

6 THE CHAIRMAN: Thank you.

7 Mr. Leitch.

8 MR. LEITCH: The Town of Milton
9 endorses the submissions put forward by my friend,
10 Mr. Lederer and my friend, Mr. Garrod.

11 In addition, in respect of Mr. Garrod's
12 suggestion that consolidation may be a partial answer
13 to the issue, you might look at Section 8 of the
14 Consolidated Hearings Act, in particular 8(3),
15 which says:

16 "Upon application by a party other
17 than the proponent, a joint board
18 may, from among a class of parties
19 having a common interest, recognize
20 a person as representing the class..."

21 It seems to me that if you can
22 identify a general interest that Mr. Boldrini
23 represents in connection with the Burlington site,
24 then there are other parties here represented by
25 counsel who could carry that brief.



1 Mr. McQUAID: Mr. Chairman and
2 members of the Board, I do not believe that at this
3 time the group represented by Dr. Boldrini has been
4 able to establish that party status should be granted
5 to it. I have heard Dr. Boldrini on three occasions
6 at the preliminary meeting and at a regional
7 council meeting, and I suppose this is the third time,
8 but one two occasions specifically, when he has been
9 asked what his interest is with respect to Sites D
10 and F and I have never yet been able to understand
11 or appreciate what his connection is to either of
12 the sites put forward by the Region.

13 Now, Mr. Lederer has made the point
14 that the interests seem to be represented, whether you
15 go down the municipal side of the table or whether
16 you go down the community group side of the table or
17 you go to the Ministry of the Environment and we
18 even have Mr. Marshall representing the Board in a
19 sense and he is very neutral in the sense that he
20 could take ideas from Dr. Boldrini, if they weren't
21 ideas that any of us on this side of the table wanted
22 to take and put before the Board as being of some
23 probative value to assist our relative clients.

24 However, when I received a copy of the questions that
25 had been put to the Region, I reviewed them with the



1 City of Burlington advisers and the information I
2 received was that they were of no probative value
3 to this Board in terms of helping with the issues
4 at all. I recognise that perhaps the Town of
5 Milton is next on the list to have similar questions
6 put to it and the City of Burlington is third or
7 second on the list, and we will have a series of
8 other questions, all of them which seem to be not
9 helpful and not relevant to the matters which we
10 are going to have to deliberate and argue about
11 over the next months and so on.

12 So, for the interests that have been
13 expressed by Mr. Lederer and the earlier speakers
14 and for the interests indeed of the Board's own
15 process and the control that you as members of the
16 Board must have over the administration of the
17 process, I am supporting Mr. Lederer's submission at
18 this point and the motion at this time that this
19 group not be granted party status.

20 THE CHAIRMAN: Thank you, Mr. McQuaid.
21 Are there any other comments?

22 MS. VIGOD: First of all on, Mr.
23 Lederer's motion itself, my clients take no position.
24 However, we do want to make some comments with
25 regard to Mr. Garrod's attempt to link Mr. Boldrini's



1 client's to the West Burlington Citizens Group.

2 Our particular group of ratepayers
3 includes a group of six hundred members living in
4 the Aldershot and West Burlington area and
5 certainly in that respect the group has tried to
6 coalesce various residents in that area and as well
7 the West Burlington Citizens Group has a long record
8 of involvement in waste management issues in the
9 region and appeared as a party in the 1984 expansion
10 of the existing landfill and has a well documented
11 and clear, ascertainable interest and record in these
12 proceedings.

2A

13 All the citizens are residents in
14 the West Burlington-Aldershot area. As Mr. McQuaid
15 has said, we do not know what Dr. Boldrini's
16 position is at this hearing and, in fact, the members
17 of his groups we have heard in Hamilton, and perhaps
18 Milton, and at this point we don't know their position
19 and they may have an equal link to the Milton group,
20 and certainly at both the funding hearing and before
21 this Board they have taken no position with regard
22 to either Site F or D and, therefore, any attempt to
23 link this group in a coalition with our group we
24 feel would be most inappropriate and certainly,
25 given the facts as we have heard them so far, it



1 would be -- there is no common interest in the
2 position and, in fact, we don't know their position
3 so at least in that respect we would oppose any
4 attempt to link the groups together.

5 THE CHAIRMAN: Thank you, Ms. Vigod.

6 Are there any other comments?

7 MS. CRONK: I don't think I can
8 add much to the submissions you have already received
9 from Mr. McQuaid, Mr. Garrod and Mr. Lederer, but
10 National Sewer Pipe wholly endorses them.

11 THE CHAIRMAN: Thank you.

12 Dr. Boldrini, can you advise the
13 Board specifically of your interest in this
14 particular matter, in the matter before this Board?

15 DR. BOLDRINI: I have some
16 difficulty....

17 THE CHAIRMAN: We understand that,
18 and that is why I am asking.

19 DR. BOLDRINI: I also have some
20 difficulty understanding what you are asking because
21 there are some things there which are not yet quite
22 clear to me, but what I am asking is yes, repeating
23 what I was trying to ask before when it was raised,
24 and that is, we tried to contact Legal Aid yesterday
25 and in order to have an answer -- you will have an



1 answer in two weeks, but I am not making a fool of
2 myself as a chemist going into some of the matters
3 which were handed me. I guess even a lawyer wouldn't
4 be able to answer, and I am not trying, and I will
5 not try and give you even a partial answer this
6 morning because I don't want the partial answer
7 taken as the full answer, but I am quite willing to
8 give you a full answer, and indeed an appropriate
9 one, and I could answer very easily to someone if
10 you asked me a specific question, and I will
11 certainly try to do it, but I don't want that to be
12 taken for my answer.

13 For my answer I need to have legal
14 aid and I thought Mr. Lederer, as he suggested to
15 me last week was a frivolous one because he said on
16 the phone he would try to exclude us because we
17 don't live in Burlington, and that was rather
18 frivolous and I could have answered that, but I
19 can't answer it in legal terms. So, I hope you
20 will understand my embarrassment and I don't
21 know what to do except ask you to allow me, as we
22 have already done and discussed with the group,
23 to ask for legal counsel and also myself, because
24 there are many things I can answer myself, but I
25 don't want you to take that as the full answer.



1 I don't know, it depends on whether you have anything
2 to ask.

3 THE CHAIRMAN: Excuse us one moment.

4 Mr. Lederer, you did mention there
5 were other people who were seeking status or there
6 would be others? Was it you who mentioned that?

7 MR. LEDERER: I said that interests
8 were fully canvassed through the presence here of
9 Mr. Garrod, Ms. Vigod and the two gentlemen
10 representing the municipalities, and I am saying that
11 all conceivable interests are represented without
12 the granting of party status to Dr. Boldrini.

13 MR. GARROD: Mr. Chairman, it was
14 I who made reference to the fact that I understood
15 there were other individuals who may want to seek
16 some kind of status.

17 THE CHAIRMAN: Are there other
18 such individuals present who wish party status at
19 this matter?

20 MR. ELSTONE: Mr. Chairman, my name
21 is Robert Elstone and my property is to the west
22 about a mile along the immediate border of the
23 Burlington-Aldershot Site F landfill. I do not
24 want to be a participant in the sense I have to
25 listen to all the garbage I have heard here this



1 morning. I resent what has been said. It seems
2 as though we have lawyers ganging up against an
3 ordinary person who wants to make a presentation.

4 I also see they get the high price
5 seats, while we have to sit back here.

6 THE CHAIRMAN: What is your interest?

7 MR. ELSTONE: My interest is that
8 my property is in an area that could be expropriated
9 and my property, my home is probably the closest
10 home to the present landfill site and probably the
11 closest to one of them that is suggested here.

12 THE CHAIRMAN: What site is that?

13 MR. ELSTONE: Site F, as they call
14 it now, the Burlington-Aldershot landfill site.

15 MR. LEDERER: This is Site F here and
16 you can see the general location in terms of streets.

17 MR. ELSTONE: There is a better map
18 than that.

19 Now if Mr. Lederer could just stand
20 there and point to the present landfill site in
21 the northwest corner, my property is approximately a
22 mile along the border of that and starting at the
23 bottom and curving around to the northeast. You
24 are too far over. Move your hand to your right.

25 MR. MCQUAID: Why not go over and



1 point it out?

2 MR. HODGSON: I think this is the
3 property here.

4 MR. ELSTONE: That is correct,
5 and not only do I own the lands there, but I work
6 about 450 acres of adjoining farmland. I cannot
7 understand, Mr. Chairman, and I find it hypocritical
8 that people are speaking here about cutting down
9 costs when this project is costing the municipality,
10 the taxpayers, thousands and thousands of dollars.
11 It has been gone over on many occasions and in the
12 last four hearings we have had, extensions have been
13 granted to the landfill site there and in the last
14 licence it distinctly said there would be no
15 further extensions. Site F is nothing other than
16 an extension of the present landfill, and yet that is
17 the licence with which the last extension was
18 granted and why we are here, I cannot understand.
19 We are wasting taxpayers' money and it's as simple
20 as that.

21 THE CHAIRMAN: Are you intending to
22 seek status of some type at this hearing and will
23 you participate?

24 MR. ELSTONE: I will, but I haven't
25 got the time, I haven't the money and it's not



1 profitable for me on being here.

2 THE CHAIRMAN: The Board is only
3 interested in determining the status of the various
4 people who wish to appear.

5 MR. ELSTONE: I don't understand the
6 legal terms; I'm not a lawyer but a farmer.

7 THE CHAIRMAN: You will be allowed to
8 participate if you wish to and give evidence at a
9 later time.

10 MR. ELSTONE: Yes, and can I ask
11 questions where I feel it is necessary and I assure
12 you that I won't take any more time than absolutely
13 necessary.

14 THE CHAIRMAN: Whether or not you can
15 ask questions will be determined at that time, but
16 as long as it is germane and pertinent to the
17 matters before us at that particular time, you may
18 do so.

19 MR. ELSTONE: I beg your pardon?

20 THE CHAIRMAN: You may ask questions
21 if it is pertinent and germane.

22 MR. ELSTONE: Thank you.

23 MR. McQUAID: I wonder if as a matter
24 of general procedure I could make a comment, and
25 not really in answer to Mr. Elstone's specific



1 request for asking questions on his own behalf or
2 whatever, but this is certainly not -- the motion
3 that is before you is a specific one with respect
4 to Dr. Boldrini and our comments should not be
5 taken as reflective of whether Mr. Elstone wants
6 to become involved as a party or anyone else. We
7 are dealing at this point only with Dr. Boldrini.

8 I might also indicate that it has
9 also been my experience, and I say this to everyone
10 here, that of anyone who is interested in the
11 interest I represent, the City of Burlington, which
12 is that Site F not be selected, but if they have
13 any good ideas and any good positions, I welcome
14 them coming to me at breaks or lunches and so on
15 and giving me their ideas, and those particular
16 positions will then, if it is something new we
17 have not thought of, we will decide whether we will
18 ask questions or lead evidence on those particular
19 areas. I daresay that if Mr. Estrin and Mr.
20 Leitch would do the same with respect to the
21 positions of those who are trying to keep the site
22 out of the Town of Milton, and similarly if I could
23 speak for Mr. Garrod and Ms. Vigod and others, if
24 we are aligned in interest, we are ready to receive
25 suggestions as to how the case might best be put



1 forward.

2 The problem we really have in a sense
3 is that we want to do it in that way and we want to
4 do it most efficiently. I am conscious, as I think
5 all of us who represent municipal councils here,
6 is that it is unusual that we have three
7 municipalities and three sets of taxpayer funds
8 involved, and what we are trying to do is say as
9 counsel and as people who have been trained and
10 who have experience in these areas, we want to see
11 the case go in as efficiently as possible. It will
12 be complex and it probably will be long, but we
13 would like to shorten that time and I say even to
14 Dr. Boldrini, and I have already been through the
15 list of items he has and there are one or two items
16 that might be gleaned from it, but we will ask
17 questions in those areas and the remainder of it
18 was so diffused as to be unhelpful and that is why --
19 I don't usually oppose a citizen directly coming
20 into the proceeding, but the questions were so
21 diffused as to be unhelpful and I have estimated in
22 my own mind, if Dr. Boldrini is involved, that 20
23 per cent of the time of the hearing or he may add
24 as much as 20 per cent to the time of the hearing,
25 10 to 20 per cent, without adding any new issues,



1 and I feel it is only responsible on behalf of my
2 municipality to say that that is not the most
3 efficient way to do it. If Dr. Boldrini or anyone
4 else has any good ideas, he should come to the
5 interests at the table with whom they are most
6 aligned, make the suggestions to them and we might
7 use that evidence. Then, if they are not happy with
8 whether we used them or not, then at the appropriate
9 time the Board can allow the public to go into
10 the witness box and make submissions and give
11 evidence and they can still make their positions
12 to the Board at that time, as indeed Dr. Boldrini
13 or representatives of his group can do. They will
14 have their chance, and I am not stopping them and
15 not suggesting they be cut off or anything of that
16 nature, but when the public are heard from, they will
17 be able to come forward and will be able to go on
18 for whatever length or period of time the Board
19 wants to hear from them, as long as the evidence
20 is helpful and useful to the Board.

21 THE CHAIRMAN: Thank you, Mr.
22 McQuaid.

23 MR. LEDERER: I would like to
24 second something Mr. McQuaid said, as it is very
25 important to me.



1 When I started, I said I was making
2 submissions with trepidation and this is a very
3 difficult thing for any municipality to do and I
4 don't want any submissions I made on Dr. Boldrini
5 to be translated to Mr. Elstone, because Mr. Elstone's
6 interest is quite clear and you just have to look
7 at where he lives and you don't have that problem here,
8 but you have the added complication of seeing what
9 the inclusion of what this particular party may bring to
10 bear on this hearing.

11 THE CHAIRMAN: The Board fully
12 realizes that and we realize your comments were made
13 with regard to a motion brought and the Board would
14 like to know if there is anyone else in that position
15 and that is why we are asking.

16 MR. ROBERTSON: I'm a landowner
17 in the same area and I would like to voice my opinion.

18 THE CHAIRMAN: I might say now that
19 anyone and everyone who wishes to speak will be
20 heard eventually.

21 MR. ROBERTSON: But you are asking
22 if there are others.

23 THE CHAIRMAN: I was asking if there
24 are others who wish to seek party status and all
25 that entails.



1 MR. ROBERTSON: I would like to
2 speak as an individual.

3 THE CHAIRMAN: You may do so at
4 the appropriate time.

5 MR. MARSHALL: Mr. Robertson is a
6 landowner and perhaps if you could note his name
7 and address as a participant who owns land, I take it,
8 adjacent to one of the sites.

9 MR. ROBERTSON: My land is directly
10 over where the new site is proposed.

11 MR. MARSHALL: You are in the same
12 position as Mr. Elstone?

13 MR. ROBERTSON: To the east of
14 where Mr. Elstone is, except closer to the new
15 site and we are already bothered by the old site.
16 So I would like that noted.

17 MR. MARSHALL: Have you an address
18 and a telephone number?

19 MR. ROBERTSON: 1870 King Road,
20 R.R.2, Burlington. 689-4413.

21 MR. McQUAID: There may be some
22 confusion as to what party status means and of
23 course to the lawyers and the Board we recognise that
24 that means you will be recognised as a party and
25 be given copies of documents and be allowed to cross-



1 examine through all the proceedings and take part
2 in each day, not that the public won't be allowed
3 to be here, but a party status is different than
4 just taking part during the proceedings when the
5 public is called upon. Everyone can do that and
6 that is not what is being discussed, but whether you
7 are entered as a specific party having a specific
8 interest and given the role of cross-examining each
9 witness as the proceedings go through. I am not
10 sure whether that was understood by certainly the
11 more recent people.

12 THE CHAIRMAN: Is that understood
13 by everyone? You may certainly participate in the
14 hearing at the appropriate time and express your
15 views, but you will not be here day by day or do not
16 have to be here if you do not wish to participate
17 at every day of the hearing.

18 Well, the Board has decided it
19 will adjourn for lunch at this time and we will give
20 you our decision regarding Dr. Boldrini when we
21 return.

22 MR. LEDERER: When are we returning,
23 sir?

24 THE CHAIRMAN: We will adjourn until
25 1:30.

--- Luncheon Adjournment (12:00 p.m.)



1 --- Upon resuming at 1:30 p.m.

2 THE CHAIRMAN: Thank you. Please
3 be seated.

4 Dr. Boldrini, you have not
5 established to the Board's satisfaction your direct
6 interest in this matter and you have no direct
7 legal interest, nor do you have a substantial
8 interest otherwise in this matter. The Board will
9 accord you participant status in this hearing and
10 you may, if you wish, at a later date, if you can
11 establish the fact, you can appear as an expert
12 witness and give your testimony in this matter, but
13 we will not make you a party to the hearing.

14 DR. BOLDRINI: Can I speak?

15 THE CHAIRMAN: The decision is made,
16 but if you wish to say something, yes.

17 DR. BOLDRINI: I will appeal your
18 decision in order to proceed.

19 THE CHAIRMAN: You are free to do so.

20 DR. BOLDRINI: Thank you.

21 THE CHAIRMAN: I might point out to
22 the public that what we are going through today and
23 hopefully what we will complete today is the legal
24 or procedures of the hearing and we haven't got into
25 the hearing proper as yet.



1 There will be occasion, we hope, and
2 we don't know when yet, when we can set aside time
3 to hear from members of the public who wish to be
4 heard and we will determine that at a later time.

5 Perhaps if anyone here wishes to
6 speak in the future, they might leave their name
7 and address with the Board to be contacted as to
8 an appropriate time.

9 We have the Board's secretary present
10 here today if you wish to leave a name and address,
11 Ms. Yvonne Lane, seated at the table here and if you
12 could leave a name, an address and a phone number
13 with her.

14 MR. Lederer, was there a question
15 of grouping or scoping of the issues together?

16 MR. LEDERER: Well, the short answer
17 is no. I have not received as yet a single report
18 or a single witness statement from any other party
19 and we have had to prepare without any indication
20 from anybody as to what in particular is of concern
21 to them. Obviously we know the basic positions and
22 we know that Mr. McQuaid has a special preference
23 for Site D, whereas Mr. Leitch has a special
24 preference for Site F, but beyond that, we really
25 don't know anything about what position the other



1 parties are taking and, in the absence of that, it is
2 simply not possible for us to do that.

3 I am going to address this issue
4 in my opening and I can say quite shortly it will
5 become evident to the Board from the number of
6 reports, that if we led evidence with respect to
7 every report and every page we would be here for
8 three years and we have had to make some judgments
9 and I will refer to that in the course of making
10 my opening statement.

11 THE CHAIRMAN: Thank you.

12 Has anyone else any further comment
13 before we proceed?

14 MS. MANSFIELD: Mr. Chairman,
15 perhaps I should just clarify that the Ministry
16 will not be in attendance every day. We will only
17 be in attendance when it appears that the evidence
18 will be relating to the shale resource at Site F.

19 Thank you.

20 THE CHAIRMAN: Thank you. I am not
21 sure I realize what a shale resource is yet, but
22 I am sure we will find out.

23 MR. OLAH: My name is John Olah
24 and I am here on behalf of the Halton Region
25 Conservation Authority.



1 THE CHAIRMAN: : What was your name?

2 MR. OLAH: Olah, it's O-l-a-h,

3 and we were granted status of participation on

4 February 11 at a pre-hearing stage and I rise for

5 the same reason my friend previously rose. The

6 Authority will be here only from time to time and

7 we should advise you that we have received an

8 application pursuant to our regulations from the

9 Region and we are reviewing that and we are hopeful

10 that once that review is complete, that we will be

11 in a position, jointly with the Region, to file

12 certainly some witness statements or conditions

13 that we would like to see attached if this project

14 is approved.

15 However, there will be one phase

16 that we probably would like to address and have the

17 opportunity to cross-examine on and that will be

18 the issue of surface drainage.

19 THE CHAIRMAN: Surface drainage?

20 MR.OLAH: That is correct, sir.

21 So, hopefully once we can work out

22 the issues between the Region and the Authority,

23 there may be some narrow areas where I will be

24 seeking the right to cross-examine from you.

25 Thank you very much.



1 THE CHAIRMAN: Thank you, Mr. Olah.

2 MR. HANCOCK: Yes, Mr. Chairman,

3 my name is Perry Hancock and I am here on behalf

4 of the four landowners around Site D in Milton.

5 I should clarify that while the landowners are

6 in the position I presume as parties to this hearing,

7 we will not be in attendance throughout the entire

8 hearing and, in particular, given the limited

9 resources of our clients, we anticipate at this time

10 that we will not

11 THE CHAIRMAN: Excuse me, but could

12 we possibly close that door. It is becoming impossible

13 to hear. I am sorry, Mr. Hancock.

14 MR. HANCOCK: It is our anticipation

15 at this time that we will not be leading direct

16 evidence on matters relating to Site D, but we

17 propose to cross-examine the experts who prepared

18 the social impact assessment and the economic

19 assessment and so when these experts will be

20 presented by the Region, we would be interested at

21 that time in conducting cross-examination of them.

22 I mention this as well because Mr. Lederer mentioned

23 that not every report would be led or not every matter

24 would be dealt with and I wanted to give notice that

25 we would be interested in hearing the evidence of



1 those particular experts.

2 THE CHAIRMAN: Fine. Thank you.

3 MS. CRONK: Ms. Cronk on behalf of
4 National Sewer Pipe and a minor procedural matter.
5 Mr. Garrod and Ms. Nurvo earlier provided you in
6 written form a break-out of the categories of
7 persons who constituted the Milton ratepayers group
8 they represent and I wonder if the same is to be
9 expected from or required from the West Burlington
10 Ratepayers Association for the benefit of other
11 counsel and, indeed, I would expect for the Board as
12 well, to have some idea as to what groups are
13 represented under that coalition.

14 MS. VIGOD: Mr. Chairman, the
15 ratepayers group is not a coalition but a ratepayers
16 group of approximately six hundred members and in
17 that respect it would probably be difficult to put
18 together that list, but there certainly is the
19 executive which can be provided and it is one group,
20 a large ratepayers group.

21 THE CHAIRMAN: Perhaps you could
22 provide the executive of the group anyway?

23 MS. VIGOD: Fine.

24 MS. CRONK: That would be of
25 assistance, Mr. Chairman, thank you.



1 THE CHAIRMAN: Are there any other
2 matters?

3 Mr. Lederer, are you prepared to
4 present your case?

5 MR. LEDERER: On a case of this
6 magnitude, sir, I am not sure what "prepared" means.

7 THE CHAIRMAN: Are you prepared to
8 commence? Incidentally, because I think we did
9 refer to some letters with your first filing, I
10 will mark those two letters, March 11th and March
11 4th from Dr. Boldrini; the letter of March 4 will
12 be Exhibit 3 and Exhibit No. 4 is the letter of
13 March 11 and the other documentation of course is
14 the cases, which we needn't mark.

15 --- EXHIBIT No. 3: Letter from Dr. Boldrini
16 dated March 4, 1987.

17 --- EXHIBIT No. 4: Letter from Dr. Boldrini
18 dated March 11, 1987.

19 OPENING STATEMENT BY MR. LEDERER:

20 THE CHAIRMAN: Mr. Lederer, you have
21 presented us with some documentation and do you
22 wish it marked?

23 MR. LEDERER: I think, sir, it should
24 be marked, but I think it probably would be better
25 if you mark it when I come to refer to these



1 documents as this presentation will take a little
2 while and I think it would have more meaning if
3 I could refer to it as each of them come into play.

4 I may say the first pile of material I have
5 given you are all, or I hope they are all the Acts
6 and Regulations which form the foundation for the
7 various hearings before you and, in part, I propose
8 to take you through those Acts to show you how these
9 matters either typically, or in this case have come
10 before this Board, because while it is going to be a
11 fairly laborious process and while it will bore a
12 number of people, it seems to me that when we deal
13 with a matter this detailed and which has this much
14 behind it, you might as well start with a reasonably
15 clear understanding, or I hope what will be a
16 reasonable understanding of where in fact it all
17 begins.

18 Before I begin, there is one thing
19 I should have said and I apologise. Mr. Gehrity is
20 here from the Real Estate Department of the Region
21 of Halton and, among other things, it is his
22 responsibility to lease this room and he is concerned
23 about whether or not we have enough mikes and if we
24 are generally happy, and he asked me if the Board
25 feels there is a need for additional microphones,



1 but I gather from discussions I had over the lunch
2 break that the acoustics in here are not the best
3 and we could, if the other parties thought it was
4 advisable and if you thought it would assist, we
5 could provide mikes on each of these tables. Now,
6 there is one other matter which I had forgotten.
7 I also understand that one of the Board members
8 may have expressed a concern about light from the
9 window and we could look at the possibility of
10 getting drapes.

11 THE CHAIRMAN: It is rather hard
12 on the eyes looking up all the time and it makes
13 it hard to see.

14 MR. LEDERER: We will see if we can
15 get some drapes up. How about the microphone question?
16 There is an expense associated with it and I would
17 rather not do it if it is not necessary, but if it
18 will assist, we can get on it right away.

19 THE CHAIRMAN: I think the one from
20 there is sufficient if everyone who wishes to speak
21 comes up to the microphone.

22 MR. ESTRIN: Have we a microphone
23 for the witness, as he may want to travel around? How
24 about a neck microphone, because inevitably, I am
25 sure, he will be asked to come up and move around.



1 THE CHAIRMAN: That might be a good
2 idea.

3 MR. LEDERER: We will look after
4 drapes and a microphone that can be pinned on.

5 THE CHAIRMAN: We may find it
6 necessary to readjust the room slightly, I don't
7 know, as we go on.

8 It has occurred to us that it is a
9 bit complicated where the witness should sit and
10 we will try and work something out with respect to
11 that.

12 Mr. Chairman, when I originally
13 began to prepare for this opening statement, I had
14 the intention of making it quite brief. However,
15 as I said, on reflection I have come to realize that
16 there is a lot of material that will be placed before
17 you and to the extent I can assist the Board, by first
18 of all providing a foundation on which to base an
19 understanding of how these various matters come here
20 and, secondly, to the extent I can provide some
21 understanding as to the organization of the studies
22 which were undertaken and which we will rely on to
23 support this process and, thirdly, to the extent I
24 can provide some small amount of information with
25 respect to the organization of evidence, that is



1 all to the good, so I do anticipate that these
2 submissions will be reasonably lengthy, but I do
3 hope that they will assist the Board.

4 The Regional Municipality of Halton
5 appears here to seek approval to construct and
6 maintain a new landfill at one of two alternate
7 locations, and if there is any language you will be
8 required to understand before the end of this hearing,
9 it will be the appellations Site D, which is the
10 proposal for Milton, and Site F, which is the proposal
11 for Burlington.

12 In seeking these approvals, or this
13 approval, the Region is attempting to provide for
14 an essential municipal service, the disposal of
15 waste. In this case, it is not a question of
16 hazardous waste, it is not a question of toxic
17 waste, but essentially the waste produced by any
18 municipality in our modern society.

19 The Region of Halton is the level of
20 government which is compelled by its founding
21 legislation to provide this facility, and that takes
22 me to the first statute to which I wish to refer you
23 and this the Regional Municipality of Halton Act
24 which you will find somewhere in that material which
25 I have given to you. I would like to refer you,



1 members of the Board, to Section 137 and, most
2 particularly, to Section 137 subsection (2):

3 "The Regional Corporation shall
4 continue to provide facilities for
5 the purpose of receiving, dumping and
6 disposing of waste and no area municipi-
7 pality shall provide such facilities."

8 The Region is specifically given the
9 powers it requires to operate such a facility by
10 Section 137, subsection (5):

11 "For the purposes of subsection (2),
12 the Regional Corporation may,

13 (a) acquire and use land;

14 (b) erect, maintain and operate
15 facilities for the purpose of
16 receiving, dumping, treating and
17 disposing of waste;

18 (c) contract with Her Majesty in
19 right of Canada, Her Majesty in
20 right of any province, and agency of
21 either of them, a regional or
22 metropolitan municipality, or local
23 board thereof, or any person for such
24 purposes;

25 (d) prohibit or regulate the dumping,



1 treating and disposing of waste, or
2 any class or classes thereof, upon
3 such land;

4 (e) prescribe rates or charges for
5 the use of such property, which rates
6 or charges may relate to the volume,
7 weight, or class of waste, or otherwise,
8 as the Regional Council considers
9 appropriate in the circumstances;
10 and

11 (f) provide standards and regulations
12 for vehicles or any class or classes
13 thereof, used for the haulage of
14 waste to any waste facility located
15 in the Regional Area."

16 With respect to regional roads, you
17 will see that the Regional Council is given specific
18 powers to prescribe one or more routes upon which
19 these vehicles can travel under Section 137 subsection
20 (8).

21 It is my submission to you that the
22 obligation to provide this service is confirmed, not
23 only by the use of the imperative "shall" in the
24 empowering provision, which is directed to the
25 Region in Section 137(2), but also by the specific



1 exclusion from this responsibility of each of the
2 area municipalities which make up the Region of
3 Halton, being the City of Burlington, which is
4 represented here, the Town of Milton, which is
5 represented here, the Town of Oakville and the
6 Town of Halton Hills.

7 The fact is that this legislation
8 makes the Region primarily responsible for the
9 disposal -- sorry, for all waste disposal activities
10 within its boundaries and that is, of course,
11 subject, in certain circumstances, to confirmation
12 of its actions and proposals by either the Ontario
13 Municipal Board or the Environmental Assessment
14 Board, or, in those cases where it applies, a joint
15 board such as this one, promulgated pursuant to the
16 terms of the Consolidated Hearings Act.

17 All of that can be found by a review
18 of Section 137(7), (8), (10), (11) and (12) and
19 137(3) and (4), and I don't propose to review those
20 with you now.

21 Finally, it is the Region which is
22 empowered to look into and directly involve itself
23 in the developing technologies relating to using
24 waste to produce other commodities, most particularly
25 energy, and you will find that specific reference



1 at Section 137 subsection (14).

2 "The Regional Corporation may erect,
3 maintain and operate buildings,
4 structures, machinery or equipment
5 for the purposes of recovering,
6 manufacturing, producing, supplying,
7 selling or distributing from domestic
8 or industrial sewage or waste any
9 product, resource, commodity,
10 electrical power or energy, hot water
11 or steam, and for such purposes may,

12 (a) enter into agreements with any
13 person;

14 (b) carry on investigations,
15 experiments, research or
16 development;

17 (c) construct and maintain pipes,
18 apparatus, and equipment on, over,
19 under or across any highway or
20 private property with the consent of
21 the owner of such private property;
22 and

23 (d) acquire any patent or licence or
24 any interest in any patent or licence,
25 or dispose of any patent or licence
by sale or otherwise."



1 This is of significance in this case
2 because ultimately you will come to see that what
3 is being proposed here is only part of how the
4 Region proposes to deal with its responsibilities.
5 Energy from waste has long been part of the Region
6 of Halton's investigations and is a substantial part
7 of how it hopes to meet its obligations.

8 My first submission to you then is
9 that it is the Regional government that bears this
10 responsibility and it is obliged to be here and to
11 seek these approvals for what is an absolutely
12 necessary municipal facility. There is no element
13 of choice about the requirement that we find some
14 way to dispose of waste. The range of approvals
15 that are required to make -- excuse me, make this
16 process anything but straightforward. The
17 legislation, or the range of legislation that comes
18 into play here compels a proponent to consider
19 such a proposal with great care and with concern.
20 It is my intention to review with you all of the
21 various hearings or the legislative base for all
22 of the various hearings before you in order that
23 you can come to some understanding of where this
24 process begins.

25 Now, in order to do that, we have



1 prepared a chart which references these hearings
2 and I will go through each of them, but you will
3 see the foundation hearing is the environmental
4 assessment and that is where it starts, and it's that
5 hearing which really considers both sites and then
6 if you come to consider Site D, then ultimately all
7 these applications will apply or the ones on the
8 left as you look at the chart, or if you come to
9 deal with Site F, it will be all of those on the
10 righthand side.

11 Even before reviewing with you the
12 specific substantive hearings, it is important to
13 come to some understanding of the application of the
14 Consolidated Hearings Act, and that is another one
15 of the statutes that I have placed before you.
16 It is my submission to you that this legislation
17 really deals with procedure rather than substance.
18 It is the legislation which gives to this joint board
19 jurisdiction to deal with all of the matters brought
20 here, regardless of who may have had the original
21 jurisdiction to deal with the matter.

22 The intention behind this Act is to
23 bring all approvals necessary for a single under-
24 taking before one board and the intention is
25 expedition, accompanied by a full consideration of



1 all the issues.

2 Section 2 of the Act is really where
3 a consideration of this statute must begin:

4 "This Act applies in respect of an
5 undertaking in relation to which
6 more than one hearing is required
7 or may be required...."

8 So, the possibility of a hearing is enough to bring
9 it under the umbrella of this legislation.

10 ".... may be required or held by
11 more than one tribunal under one
12 or more of the Acts set out in the
13 Schedule or prescribed by the
14 regulations."

15 The Act which serves to bring this
16 legislation into play is discussed in Section 3
17 under 3(1):

18 "The proponent of an undertaking to
19 which this Act applies shall give
20 written notice to the Hearings
21 Registrar.

22 (2) A notice under subsection (1)
23 must specify the general nature of
24 the undertaking, the hearings that
25 are required or that may be required



1 or held, and the Acts under which
2 the hearings are required or may be
3 required or held.

4 (3) Upon application by originating
5 notice by any person who is or may
6 be affected by an undertaking
7 mentioned in subsection (1), the
8 Divisional Court may order the
9 proponent of the undertaking to
10 give to the Hearings Registrar the
11 written notice required by subsection(1)."

12 The originating process, if that is
13 an appropriate term, is a notice to the Hearings
14 Registrar which originates always with the proponent,
15 either on its own motion or under an order of the
16 Divisional Court, and in this case such notice has
17 in fact been delivered by the Regional Municipality
18 of Halton.

19 Now, by that notice and by the
20 formulation of this Board, everything that could have
21 been before or might have been before another
22 tribunal or other decision-making body is removed
23 to this Board and that becomes clear by reference
24 to Section 15 of the Act, and I am most concerned
25 here with Section 15(1)(b). However, I will read



1 the full section:

2 "(1) Where a hearing is required or
3 may be required or held under any Act
4 set out in the Schedule or prescribed
5 by the regulations and a joint board
6 makes a decision in respect of the
7 hearing, subject to section 13,"

8 and that deals with petitions to Cabinet following
9 the Board's decision:

10 "(a) the joint board decision stands
11 for all purposes in place of the
12 hearing;

13 (b) the decision of the joint board
14 stands for all purposes in place of
15 any decision, order or action that is
16 required or may be made or taken by
17 the tribunal that has a power, right
18 or duty to hold the hearing or by any
19 other body or person after the
20 holding of the hearing; and

21 (c) no proceedings shall be taken by
22 way of appeal in respect of the
23 hearing or the decision except in
24 accordance with this Act."

25 The reason I referred you specifically



1 to subsection 15(1) (b) is if the hearing was
2 originally to be conducted by a Board which only
3 made a recommendation; in this case, for example,
4 the Environmental Protection Act, that decision is
5 no longer merely a recommendation, but in the hands
6 of this Board becomes a decision and the Director
7 of Approvals who would normally have made the
8 decision has that power in effect removed from him.
9 You decide, in effect, everything.

10 Now, in reviewing the specific
11 applications with you, I want to rely on the chart
12 and also on one of the books which I have placed
13 before you, and this has a blue cover on it and
14 is entitled Region of Halton's Compilation of
15 Applications and Submissions for Approval - Landfill
16 Component of Solid Waste Management System, and from
17 time to time I will refer to that because it has
18 within it some of the material which relates to
19 the efforts which have been made to originate some
20 of these applications.

Ex. No. 5

21 THE CHAIRMAN: You just filed the one?

22 MR. LEDERER: I gave three, I hope.

23 There is one under the Bible.

24 THE CHAIRMAN: Yes, we have them.

25 We will make this one an exhibit. That will be



1 Exhibit 5.

2 --- EXHIBIT No. 5: Book entitled Region of
3 Halton's Compilation of
4 Applications and
5 Submissions for Approval
6 -Landfill Component of
7 Solid Waste Management
8 System.

9 MR. LEDERER: Thank you, sir.

10 I want to start with the Environmental
11 Assessment Act. It is, in my submission, important
12 to remember that at its foundation this is an
13 environmental assessment. It is necessary for the
14 Regional Municipality of Halton to follow the require-
15 ments of that Act and I would refer the Board to
16 Section 3, subsection (a):

17 "This Act applies to,
18 (a) enterprises or activities or
19 proposals, plans or programs in respect
20 of enterprises or activities by or
21 on behalf of Her Majesty in right of
22 Ontario or by a public body or
23 public bodies or by a municipality or
24 municipalities on and after the
25 day this Act comes into force."

26 This Act applies to this proposal
27 because it is an undertaking as that term is defined



1 by this Act and, Mr. Chairman, you will find that
2 in subsection (1) of Section (o):

3 "(o) 'undertaking' means,

4 (i) an enterprise or activity or
5 a proposal, plan or program in
6 respect of an enterprise or
7 activity by or on behalf of
8 Her Majesty in right of Ontario,
9 by a public body or public bodies
10 or by a municipality or
11 municipalities, or...."

12 and then it goes on to discuss major commercial
13 or business enterprises or activities.

14 Halton is therefore required to
15 submit an environmental assessment document and the
16 Board will find reference to that in Section 5(1):

17 "The proponent of an undertaking to
18 which this Act applies shall submit
19 to the Minister an environmental
20 assessment of the undertaking and
21 shall not proceed with the undertaking
22 until,

23 (a) the environmental assessment has
24 been accepted by the Minister; and

25 (b) the Minister has given his



1 approval to proceed with the undertak-
2 ing."

3 Section 5, subsection (3) gives you
4 an indication as to what it is an environmental
5 assessment document should contain.

6 Now, I am going to digress a little
7 bit here and, in my submission, it is important to
8 understand some history and therefore to come to an
9 understanding of how this environmental assessment
10 has come to be developed.

11 In the mid-1970s, beginning as early
12 as 1974 but before the Environmental Assessment Act
13 was applicable to municipalities as opposed to
14 simply provincial undertakings, the Region went
15 through an investigation process and identified a
16 location for its new landfill.

17 On March 2nd, 1977, the Regional
18 Council passed a resolution instructing those
19 responsible to acquire land, complete studies and
20 to get approval of what was then the Environmental
21 Review Board. You can see that resolution quoted
22 in the Holmes and Halton case to which I referred
23 you earlier in the day.

24 In January and March of 1979, the
25 Ontario Municipal Board conducted a hearing in



1 relation to that site, which, unhappily for us today,
2 was then known as Site F. Let me be quite clear, it
3 is not the Site F that will be discussed before this
4 Board and if you wish to make the comparison, it is
5 known here as Site E, but for the purposes of this
6 submission I will refer to it simply as old Site F.

7 There was in fact a hearing before
8 the Ontario Municipal Board with respect to these
9 matters, seeking first of all to amend the Official
10 Plan for what had been the Burlington planning area,
11 but which by then was the Town of Milton and to
12 permit landfill at the selected site, to amend the
13 applicable zoning by-law to permit landfill and to
14 approve the acquisition of land and the borrowing
15 that was necessary for that purpose.

16 The decision in that case was forth-
17 coming on June 15, 1979, and it granted the approvals
18 that were sought. The matter proceeded and
19 investigations were carried out and it was moving
20 towards the remaining environmental appeal hearing,
21 and as I must say as I think is self-evident,
22 this was before the days of the Consolidated Hearings
23 Act and what remained was in effect a kind of
24 technical approval required by the Environmental
25 Protection Act.



1 Then, at some point in the late 70s
2 or early 80s, and I don't remember precisely when,
3 but the Environmental Assessment Act was made to
4 apply to municipalities. Many municipalities that
5 had already begun work looking for a new waste
6 disposal facilities were grandfathered out of the
7 application of the Act. However, for reasons which
8 I suspect are known only to the government of the
9 day, on February 9, 1981, the then Minister of the
10 Environment issued a decision that the proposed
11 undertaking to landfill at the old Site F in
12 Milton should proceed under the Environmental
13 Assessment Act.

14 Now, it has always been Halton's
15 view that by that decision the Minister really
16 required the Region to go back and start all over
17 again because, by its terms, the Environmental
18 Assessment Act requires an investigation into alternatives
19 to and alternate methods of carrying out the undertaking,
20 which requires a look at alternate sites, which
21 requires a look back before a decision as to what
22 site to go to and, accordingly this reference to an
23 environmental assessment of old Site F was of
24 little meaning and the process had to begin again.

 It is the results of this subsequent



1 process which are now brought before you and upon
2 which the Region relies in seeking the approval
3 to landfill at one of these two alternate sites.
4 Following the Minister's decision, the Region went
5 through a proposal call for the necessary
6 consultants and studies were conducted and approved
7 by Council and by resolution passed by the Regional
8 Council on October 23rd, 1985, the Regional Clerk
9 was instructed to submit an environmental assessment.

10 If you now go to the blue book,
11 Exhibit 5, and turn to tab 1, you will see there
12 the letter written to the Honourable James Bradley,
13 the Minister of the Environment, which enclosed that
14 original environmental assessment and it quotes the
15 resolution of October 23rd, 1985, and you will
16 see that the letter is dated November 28 of that year.

17 Under the Environmental Assessment Act,
18 if I could now take you to Section 7, subsection (1),
19 the Minister is obliged to cause a review of an
20 assessment document and then to provide opportunity
21 for interested parties to comment on both the
22 assessment and on that review document. In this
23 case the review was completed on February 28, 1986
24 and it asked for some clarification and some further
25 information and suggested that the requirements of



1 Section 5, subsection (3) had at that point not been
2 met.

3 Now, following the release of that
4 review, the Region, in 1985 and 1986, undertook the
5 studies, and this is another bit of language that
6 I hope you will grab onto, but for what I hope will
7 become known here as the technical studies phase
8 of its investigation. These are the more detailed
9 investigations required by Part V of the Environmental
10 Protection Act.

11 Now, Mr. Tidball made reference this
12 morning to his view of the distinction between what
13 is required for the Environmental Assessment Act
14 and what is required for the Environmental Protection
15 Act, and let me make it clear now that when these
16 studies were undertaken, among the things that were
17 attempted was an effort to resolve the questions
18 and concerns raised by the government review and,
19 to that extent, those studies also form part of the
20 environmental assessment. In fact, that work updated
21 the assessment of the projected waste quantities
22 to be landfilled, and one might expect that over
23 time, and secondly, it resulted in a small
24 modification to the site plan boundaries of the two
25 proposed sites and thereby caused a redefinition of



1 the undertaking as required by Section 5, subsection
2 (3). If you now turn to tab 2 of the blue book, you
3 will see, after you turn over the front page, that
4 this is the material that was delivered to the
5 Ministry, or at least part of it, and indicates
6 that change in the specific definition of the under-
7 taking. You will see the letter to the Honourable
8 Minister of the Environment is dated November 25
9 of last year and you will see there is a discussion
10 of waste quantities projection and site capacity and
11 site plan areas and then over the page there is an
12 amendment to the definition of the undertaking and
13 then if you turn over the page to Schedule A, you
14 will see a statement of the original undertaking
15 as it had previously been prepared and then the
16 re-definition and I would like to read that to you.
17 That is the description of the undertaking which is
18 brought before the Board:

19 "The undertaking is to acquire land
20 for, construct, operate and maintain
21 a landfill to contain 7.96 million
22 cubic metres of waste in the
23 Regional Municipality of Halton and
24 to do so by one of two alternative
25 methods as follows:



1 (i) landfilling at the site referred
2 to in Halton's Environmental
3 Assessment as Site F, in the City of
4 Burlington, as shown in maps A and
5 B hereto or,
6 (ii) landfilling at the site referred
7 to in Halton's Environmental
8 Assessment as Site D in the Town of
9 Milton, shown in maps A and C hereto."
10 And you will see those maps attached
11 as well.

12 Having received this additional
13 information and still dealing with the environmental
14 assessment from the proponent of this process, the
15 Ministry of the Environment released on April 24,
16 1987 what I gather is called the supplementary
17 review and I must confess that I haven't yet seen
18 a copy of it, but I am told that it now indicates
19 compliance with the requirements of Section 5(3) of
20 the Environmental Assessment Act.

21 Again I want to digress and observe
22 that this kind of evolutionary process as the
23 founding mechanism for the environmental assessment
24 is absolutely typical. There are examples of it
25 in other Boards and it is consistent with the findings



1 of other tribunals. I can give you three examples
2 I am aware of, and I don't have the citations, but
3 these are all, I believe, quite well known cases,
4 and I think there are in fact people here who were
5 involved in each and every one of them.

6 First of all is the Victoria
7 Hospital case; secondly, Ontario Hydro's application
8 for new transmission facilities into southwestern
9 Ontario and, finally, the Redhill Creek expressway
10 case in Hamilton and in each of these cases, when
11 the Board came to make its decision, it relied upon
12 Section 12(2) ^(c) ~~(b)~~ of the Environmental Assessment Act
13 which gives it the power to amend the assessment and
14 amended the environmental assessment to include all
15 of the evidence and all of the reports presented
16 before that joint board. I know that within the
17 Region of Hamilton case there is specific reference
18 made by the Chairman of the Environmental Assessment
19 Board to this notion of an evolutionary process.

20 DR. KINGHAM: Could you repeat the
21 reference?

22 MR. LEDERER: Section 12(2), subsection
23 (b). I am sorry, I have given you the wrong letter.
24 It should be (c), 12(2) (c):

25 "Require the Board to hold a hearing



1 with respect to,

2 (c) the acceptance or amendment and
3 acceptance of the environmental
4 assessment."

5 I should say to you that it is
6 entirely possible that what happened in those cases
7 will happen here as well. We have, as I have already
8 said, not yet received any reports or any witness
9 statements from any other party and we have no idea
10 what they will contribute, and perhaps some or all
11 of that evidence should and will ultimately come to
12 form part of this environmental assessment.
13 Candidly this might be the kind of thing which finds
14 its way into all environmental assessments. This
15 is not a process which works in stages, it is a
16 continuum which has a beginning and end and the end
17 is with the approval and not at any other time
18 over the course of the process.

19 Now, that leaves me one other matter
20 to deal with with respect to the Environmental
21 Assessment Act, and that is which of the two sections
22 which empower originally the Environmental Assessment
23 Board to deal with this matter, are we dealing with
24 here. You will see the distinction between them
25 if you look at Section 12(2)(c), (d) and (e)



1 and 13(a) and (b). If you read those sections you
2 will see that the distinction is that under 12(2)(c)
3 the Board is instructed to make a finding with
4 respect to the acceptance or amendment and acceptance
5 of the environmental assessment, whereas that part
6 of the jurisdiction of the Board is in effect removed
7 if the hearing is conducted under Section 13, in
8 which case only the two remaining elements would be
9 subject to the Board's findings, and that is whether
10 approval to proceed with the undertaking in respect
11 of which the environmental assessment was submitted
12 should or should not be given, and whether approval
13 as is mentioned in clause (d) or in (a) under 13
14 should be given subject to terms and conditions and,
15 if so, the provisions of such terms and conditions.

16 Now, the distinction typically with
17 respect to these two provisions or how they come
18 into play relates to the way in which and the time
19 at which the requirement for hearing is originated,
20 and I won't take you through all the various processes
21 and whether the Minister can amend the process before
22 or not, but suffice it to say that you can have the
23 Minister under 12(1) indicate that there should be
24 a hearing or some other party under Section 7(2)
25 indicating there would be a hearing, and it much



1 depends upon, as I say, where in the process this
2 takes place.

3 In this case there -- as far as I
4 am aware, there has been no such notice but, even
5 if there has, there has been no direction from
6 the Minister to the Environmental Assessment Board.
7 In my submission it is not necessary and this takes
8 you back to the Consolidated Hearings Act. Remember
9 that the originating process for this hearing is
10 the notice to the Hearings Registrar. With that
11 referral, the joint board in effect takes over and
12 that is all that is required for the Board to be
13 formed and it's with that notice in hand that the
14 Chairmen of the Ontario Municipal Board and the
15 Environmental Assessment Board are instructed to
16 promulgate Boards of this type so that, in my
17 submission, again there is no requirement for the
18 Minister's direction and in fact it has been
19 displaced in effect by the notice to the Hearings
20 Registrar.

21 So, in my submission, you have
22 before you in essence the three decisions found in
23 Section 12 because in displacing the Minister's
24 direction, there has yet been no decision made with
25 respect to the acceptance and amendment of the



1 environmental assessment.

2 Now, that takes me from the
3 Environmental Assessment Act to these other groups
4 of hearings. Theoretically, the matter could stop
5 with your determination of the Environmental Assess-
6 ment Act, but it is possible that you could find
7 the environmental assessment unacceptable. Our
8 expectation of course is that that will not happen
9 and our hope is that given the comprehensive
10 study program that has been undertaken, that in fact
11 no one here or no party here would suggest it even
12 should happen. That being the case, it will be
13 left to you to consider these remaining applications.

14 Now, I want to be very careful when
15 I deal with this schedule, because it is very much
16 a conceptual depiction of the hearings and it's in
17 no way meant to be some kind of decision tree where
18 you move from one to the next. To the contrary,
19 this is a comprehensive process and the evidence
20 with respect to each of these applications is
21 not mutually exclusive; to the contrary, it is all inte
22 independent, so that at the end of the day, rather
23 than considering nine or ten separate hearings
24 encased in one process, in my submission you will
25 be considering a package of applications with respect



1 to either Site D or Site F.

2 Now, the second hearing with respect
3 to both sites, hearing 2D or 2F, is the application
4 made pursuant to the terms of the Environmental
5 Protection Act. Even before you actually get to
6 that legislation, there is yet again an issue raised
7 as to what might be said to be the expected
8 procedure, and to see that it is necessary to return
9 to Section 34 of the Environmental Assessment Act:

10 "Where a proponent is required under
11 this Act not to proceed with an
12 undertaking until an environmental
13 assessment of the undertaking has
14 been accepted by the Minister and a
15 public hearing is required or permitted
16 under the Environmental Protection
17 Act or the Ontario Water Resources Act
18 other than by the Environmental
19 Appeal Board or the Ontario Municipal
20 Board with respect to the undertaking,
21 the Minister shall order,
22 (a) that the public hearing under
23 such other Act may be proceeded with
24 and that this Act or the regulations
25 or any matter or matters provided for



1 in this Act or the regulations that
2 is specified in the order does not
3 apply to the undertaking or
4 proponent; or

5 (b) that this Act applies to the
6 undertaking and proponent and the public
7 hearing under such other Act shall be
8 deemed not to be required or permitted."

9 Now here the hearing required under
10 the Environmental Protection Act is not by the
11 Environmental Appeal Board, but rather by the Director
12 of Approvals or under his direction, the Environmental
13 Assessment Board, and so it could be argued,
14 particularly looking again at the use of the
15 imperative "shall" saying "the Minister shall order",
16 that where the Environmental Assessment Board is
17 to hold a hearing under both the Environmental
18 Assessment Act and the Environmental Protection
19 Act, the Minister is obliged to make an order under
20 Section 34 indicating which Act is the major
21 thrust of the process. In effect, that section
22 created a consolidation of two hearings, two
23 hearings before the same tribunal.

24 The Consolidated Hearings Act
25 applies only where the hearing being consolidated



1 is before different tribunals. So, where you had an
2 Environmental Protection Act hearing and an
3 Environmental Assessment Act hearing before the
4 Environmental Assessment Board, the Consolidated
5 Hearings Act would have no part to play. Reading
6 again Section 2:

7 "This Act applies in respect of an
8 undertaking in relation to which more
9 than one hearing is required or may
10 be required or held by more than one
11 tribunal under one or more of the
12 Acts set out in the Schedule or
13 prescribed by the regulations."

14 Now, in this case again, there is
15 no order of the Minister. Again, in my submission, it
16 is supplanted by the notice under Section 3 of
17 the Consolidated Hearings Act. Nothing is lost,
18 of course, because if I am right and the legislative
19 intention behind Section 34 is consolidation, then
20 we have that anyway, we have that by the provisions
21 of the Consolidated Hearings Act in a far more
22 comprehensive manner, including all of the relevant
23 applications.

24 Now, under the Environmental Protection
25 Act, looking at the substance of the matters which are



1 raised by hearings 2E and 2F, Part V of that Act
2 deals with waste management. In my submission, to
3 understand what is being proposed here, it is
4 important to remember the distinction between a
5 waste disposal site as defined by Section 24(e) and
6 a waste management system as that is defined by
7 Section 24(f). A waste disposal site means:

8 "Any land or land covered by water
9 upon, into, in or through which
10 or building or structure in which
11 waste is deposited, processed and
12 any machinery, equipment or
13 operation required for the treatment
14 or disposal of waste."

15 Now, a waste management system means:
16 "All facilities, equipment and
17 operations for the complete management
18 of waste, including collection,
19 handling, transportation, storage
20 processing and disposal thereof and
21 may include one or more waste
22 disposal sites."

23 The application before you is for
24 a waste disposal site. It is not for an entire
25 system.



NB

1 Now, in the context of this case,
2 that shows most importantly with respect to the
3 treatment of energy from waste. We are not applying
4 for the approval of an energy from waste facility
5 and despite the Region's efforts, and you will hear
6 this in the evidence, there is no customer for
7 the steam and no specific proposal. Nonetheless,
8 following on this alternative to the undertaking,
9 as that word is understood in the Environmental
10 Assessment Act, it is the Region's intention to have
11 such a facility play a part in its waste management
12 system within this planning cycle.

13 So, in considering the size of
14 the landfill, in projecting waste quantities to be
15 directed to landfill, assumptions have to be made
16 as to what contribution energy from waste can be
17 expected to make. These assumptions are made for the
18 purposes of planning for landfills part of the
19 program and we will lead some evidence to show the
20 basis for that assumption, but the technical
21 requirements or the efficacy of energy from
22 waste is not what is at issue here and, in my
23 respectful submission, that would take us beyond
24 the notion of a waste disposal site into the area
25 of a waste management system.



1 Under the Environmental Protection Act,
2 you cannot establish or operate a waste disposal
3 site without a certificate of approval. You will
4 find that by reviewing Section 27 of that Act:

5 "No person shall use, operate,
6 establish, alter, enlarge or extend
7 a waste management system or a waste
8 disposal site unless a certificate of
9 approval or provisional certificate
10 of approval therefor has been
11 issued by the Director and except
12 in accordance with any conditions
13 set out in such certificate."

14 The Director cannot issue a certificate
15 of approval for a site that is to receive waste
16 equal to the domestic waste of 1500 people without
17 first having a hearing, and you will find reference
18 to that in Section 30, subsection (1). Typically,
19 the Director will require the Environmental Assess-
20 ment Board to hold a hearing and you will find
21 reference to that in Section 33, subsection (1)
22 where the Director is required or permitted to hold
23 a hearing under this Act, he may by a notice in
24 writing and on such terms and conditions as he may
25 direct, require the Environmental Assessment Board



1 to hold a hearing.

2 The Environmental Assessment Board
3 then prepares a report which contains its
4 recommendations with respect to the application,
5 and you will find that in Section 33, subsection (5),
6 (c) and (e). The Director then considers the
7 report in Section 33, subsection (6), and decides
8 whether or not to issue a certificate of approval
9 under Section 38.

10 Again, all of this is supplanted
11 by a notice to the Hearings Registrar. However,
12 applications for approval have been made and, with
13 respect to Site D in Milton, you will see that
14 information at tab 3 and, with respect to Site F
15 in Burlington, under tab 4. If you go to tab 3,
16 you will see an accompanying letter to the Director,
17 Mr. William Balfour, and you will see it notes
18 the intention to have this matter proceed under
19 the Consolidated Hearings Act and you will see the
20 application and when you first look at it it looks
21 blank, but if you turn over a couple of pages, you
22 will see the actual typewritten information on a
23 separate form and you will see under paragraph (e)
24 it deals with the waste to be received per day and
25 paragraph 9 lists the supporting documents which are



1 the documents of some of the technical studies
2 phase of the Region's analysis.

3 Now, this was presented to Council
4 on October 3rd, 1986 and was sent to the Ministry
5 of the Environment as the covering letter shows on
6 October 22nd, 1986 and it contains the basic
7 information with respect to the need for landfill,
8 and you can see that if you go to the page that has the
9 number 10 at the bottom, but pursuant to Section
10 137 of the Regional Municipality of Halton Act,
11 the Regional Municipality of Halton is responsible
12 for providing waste facilities for the purpose of receiving,
13 dumping and disposing of waste. At present the
14 Region is providing for its solid waste disposal
15 needs by a number of means, one of which is the
16 process of landfilling Halton Region's solid waste
17 at the regional landfill site located on part of
18 Lots 3 and 4, Concessions I and II, the City of
19 Burlington, formerly in the Township of East
20 Flamborough in the Region of Halton.

21 The useful life of that landfill
22 site is rapidly approaching an end. At present there
23 exists no other site available in Halton that is
24 approved for the purposes of landfilling, either
25 private or public, to satisfy the solid waste



1 disposal needs of Halton. Halton's most recent
2 assessment of the time during which Halton will be
3 in a position to satisfy its solid waste disposal
4 needs through landfilling at the existing landfilling
5 site in Burlington is set out in report PW292/86
6 dated August 8, 1986, and received by Halton
7 Regional Council. This report is included in
8 Schedule N, submitted with this application. The
9 report indicates that the existing landfill site
10 will have reached its capacity to satisfy the
11 Region of Halton's solid waste disposal needs in
12 the late fall of 1987, unless other interim
13 emergency disposal measures are implemented.

14 It also contains a statement of the
15 basic history of the Environmental Assessment process
16 on pages 11 and 12, and I am going to review that
17 history with you later in the submissions.

18 However, this is the manner in which
19 these hearings come before you. It is under the
20 auspices of the Consolidated Hearings Act, but
21 applications have been made under the Environmental
22 Protection Act and that now takes me to hearings
23 3D and 3F under the Ontario Water Resources Act.

24 Now, it is my submission to you that
25 there is an unfortunate redundancy as between the



1 Environmental Protection Act and the Ontario Water
2 Resources Act. Before you can establish a sewage
3 works, you must provide information to the Director
4 and he decides if those works should be approved, and
5 you can see that by reference to Section 24(1):

6 "When any municipality or any person
7 contemplates the establishment of any
8 sewage works, or the extension of or
9 any change in the existing sewage
10 works, the plan specifications and an
11 engineer's report of the works to be
12 undertaken, and the location of the
13 discharge of effluent, together with
14 such information as the Director may
15 require, shall be submitted to the
16 Director and no such works shall be
17 undertaken or proceeded with and no
18 by-law for raising money to finance
19 such works shall be passed until
20 the proposed works have been approved
21 by the Director."

22 Section 1, subsection (r) defines
23 sewage, which includes:

24 "drainage, storm water, commercial
25 wastes and industrial wastes and such



1 other matter or substance as is
2 specified by regulations made
3 under clause 44(1)(i)."

4 It is my respectful submission that
5 leachate, which is generated by a new landfill is
6 drainage or commercial waste and industrial waste
7 and is therefore within that definition.

8 Sewage work is defined under Section 1
9 (s) and it means:

10 "Any works for the collection,
11 transmission, treatment and disposal
12 of sewage, or any part of any such
13 works, but does not include plumbing
14 or other works to which regulations
15 made under clause 44(2)(a) apply."

16 It is my submission then that
17 engineering for a new landfill appears to be a
18 work for the collection, in this case, of sewage and,
19 accordingly, it appears that despite the fact that
20 the same issues are canvassed on an application
21 under Part V of the Environmental Protection Act,
22 nonetheless, approval under the Ontario Water
23 Resources Act may be required. It is a hearing that
24 may be required and you will recall the use of that
25 word in the Consolidated Hearings Act.



1 I should say that Section 24 subsection
2 (6) of the Ontario Water Resources Act does contain
3 certain exemptions from applications of this section,
4 but landfill is not one of them and, for what it's
5 worth, and I suspect it's not much, it is that
6 failure to exclude landfill which causes what, I submit,
7 is a redundancy.

8 I should indicate to you that the
9 hearing under Section 24(1) is not required where
10 an approval is to be granted. It is only where
11 approval is to be refused or that the approval
12 granted is awarded subject to certain conditions
13 which the applicant finds is too stringent that
14 there may be a request for a hearing and it is
15 in fact that hearing based on a refusal or too
16 stringent conditions which is, in effect, the
17 hearing consolidated here.

18 Again, despite the supplanting of
19 all of this by the notice to the Hearings Registrar,
20 applications have in fact been made to the Ministry
21 of the Environment and you will find them in
22 Exhibit 5 at tab 7 with respect to Site D and at
23 tab 8 with respect to Site F. Before I leave this
24 matter of the overlap between these two Acts, I
25 should refer you to Section 25 of the Environmental



1 Protection Act. It states in part that this part,
2 that would be Part V, does not apply to any sewage
3 or other works to which the Ontario Water Resources
4 Act or the regulations thereunder apply.

5 Now, on its face, it appears that
6 if the Region is required to obtain Ontario Water
7 Resources Act approval, then it doesn't require
8 the approval under Part V of the Environmental
9 Protection Act, and that is an effective avoidance
10 of the redundancy. It seems clear to me and it is
11 my submission that that was not the intention.
12 If that is wrong, then Part V is of really little
13 application with respect to landfill because there
14 simply isn't a landfill constructed any longer that
15 doesn't have some form of leachate control and all
16 of the aspects of definition I have reviewed with
17 you with respect to sewage and sewage works would
18 come into play. So, it is my respectful submission
19 that the applications overlap, but they are there
20 and probably require, most importantly, the Region
21 cannot afford the delay which undoubtedly would be
22 caused if it attempted to push this through without
23 an Environmental Protection Act hearing, because I
24 have no doubt Mr. Tidball would seek to take the
25 matter to Divisional Court to review, and we would



1 rather go ahead with it and have the matter dealt
2 with in this way. Ultimately there will be a question
3 of argument as to how this should be dealt with.

4 Now, that takes me to 4D and 4F, which
5 is the matter of the Conservation Authorities Act.

6 DR. KINGHAM: Can you tell us, you
7 have given a definition of drainage in fact here,
8 which places that definition then under sewage and
9 that places it under the Ontario Water Resources Act.
10 Has that happened before or is it your submission
11 to us that it should be captured under that definition?

12 MR. LEDERER: I have not gone to
13 look -- I am not sure if I understand the question
14 and I may not therefore respond to it, but let me try.
15 Under the Ontario Water Resources Act, drainage is
16 not defined, and what it is, however, is contained
17 within the definition of sewage and sewage includes
18 drainage. If you are asking me whether or not
19 drainage has ever been defined so as to apply to a
20 landfill before, I cannot answer that question. I
21 don't know. One of the problems I might say we are
22 confronted here generally is that although the
23 Environmental Assessment Act has been with us for
24 some time, this is, I think, the first, certainly
25 the first major environmental assessment that has



1 dealt with landfill, and that has been a problem
2 throughout because there have been a whole series
3 of judgments to be made about what the requirements
4 are and all of these kinds of interpretations and
5 sorting out of regulatory processes has not yet
6 really taken place. Unhappily for the Region of
7 Halton, because it does add to the expense, but we
8 are on the cutting edge here.

9 DR. KINGHAM: I just wanted to be
10 sure what you were getting at here and it sounded
11 to me, and perhaps you can confirm, like leachate
12 would be drainage and drainage would be sewage
13 and therefore it is covered both under this and
14 the Assessment Act. OWRA

15 MR. LEDERER: I think that
16 possibility is there and could be argued and
17 therefore we have brought that approval within this
18 Act and ultimately these things will be a matter for
19 decision by the Board based on final argument, but
20 that certainly is the rationale which brings it here.

21 Now, under Section 28, subsection (1)
22 of the Conservation Authorities Act, the
23 Conservation Authorities are given the power to make
24 regulations and most particularly in this case
25 regulations prohibiting or regulating or requiring



1 the permission of the Authority for the straightening,
2 changing, diverting or interfering in any way with
3 the existing channel of a river, creek, stream or
4 watercourse.

5 In this case, such a regulation has
6 been passed and it is Regulation 164 of the Revised
7 Regulations of Ontario for 1980 and I have included
8 a copy on letter-sized paper just inside the copy
9 of the Act I have given you.

10 Applications have been made with
11 respect to that regulation in relation to both sites,
12 and again if you will turn to Exhibit 5 you will
13 find them at tab 5 for Site D in Milton and tab 6
14 for Site F in Burlington.

15 Each of these describes the proposed
16 work and lists the supporting information at page 6.

17 Under the Conservation Authorities
18 Act and under Section 28(3), before refusing such
19 an application, or again where the application is
20 granted subject to a stringent set of conditions,
21 the Authority, or where it has so delegated, its
22 executive committee is required or can be requested
23 to hold a hearing and that is the hearing that may
24 be required in this case and which brings the matter
25 before this Board.



1 Now, the careful reader of the
2 Consolidated Hearings Act will realize that the
3 Conservation Authorities Act is not in fact a piece
4 of legislation which is scheduled to the Consolidated
5 Hearings Act. You will recall that Section 2
6 refers to the -- the Consolidated Hearings Act
7 applying to the Act set out in the schedule or
8 prescribed by the regulations. As I said, the
9 Conservation Authorities Act is not so scheduled.

10 However, I have also put inside the copy of the Act
11 I have given you, a copy of Regulation 450 for 1986
12 which has the effect of amending Regulation 194 of
13 1984. That regulation was originally passed
14 with respect to the application made to a joint
15 board regarding the approval of what has become known
16 as the Redhill Creek Expressway in Hamilton-
17 Wentworth, and Section 1 of the regulation schedules
18 the Conservation Authorities Act to the Consolidated
19 Hearings Act and then Section 2 says all
20 applications are exempted from Section 1, except,
21 and then originally the list contained one matter,
22 and that was the Redhill Creek Expressway, but by
23 this amendment, Regulation 450 to 1986, the list
24 is extended to two to include this proposal, so
25 that by that regulation this hearing now becomes



1 properly scheduled into this process and is properly
2 before you.

3 Now, that takes me to Approval 5D,
4 which is an Official Plan Amendment. This, as you
5 will see, relates only to Site D in Milton, the
6 reason for that being that Site F in Burlington is
7 in the area of the Parkway Belt West plan of 1978
8 and that plan as a matter of law supercedes all
9 municipal official plans and in fact local zoning.
10 The proposed amendment -- I am sorry, the proposed
11 undertaking is in fact in conformity with the Parkway
12 Belt Plan and that in fact has been confirmed
13 by letter which we have obtained from the Minister
14 of Municipal Affairs on June 24th of last year.
15 Do you wish to exhibit that, sir?

16 THE CHAIRMAN: Exhibit No. 6.

17 --- EXHIBIT No. 6: Letter dated June 24, 1986
18 to Mr. Pomeroy of the
19 Regional Municipality of
20 Halton from the Hon.
Bernard Grandmaitre,
Minister of Municipal
Affairs.

21 MR. LEDERER: That means the matter
22 of an Official Plan Amendment or the matter of
23 zoning in Burlington is not an issue brought before
24 this Board, but it does, however, have to be dealt
25 with with respect to the Town of Milton. It will



1 | be necessary to amend the Official Plan to designate
2 | Site D to permit landfill. It is presently designated
3 | as Agricultural and in this community, landfilling is
4 | not a permitted use in the agricultural designation
5 | although it is in many and is partly in conservation and
6 | hazard lands where landfill is also not a permitted use. The
7 | amendment has in fact been proposed by the Region
8 | and you will see that material at tab 11 and the
9 | application was made on December 17, 1985.

10 | On July 21, 1986 by resolution, which
11 | is also included. I believe towards the back of the
12 | material, behind tab 11, yes, the last document -- the
13 | second last document, there is a resolution of the
14 | Town of Milton Council indicating that in their view
15 | this application is premature and deferring the
16 | application. I am not sure what is meant by premature,
17 | but it does refer to the Environmental Assessment Act
18 | and I expect that reliance is being placed on
19 | Section 6 of that Act:

20 | "Where a proponent is required under
21 | this Act to submit to the Minister an
22 | environmental assessment of an
23 | undertaking,
24 | (a) a licence, permit, approval,
25 | permission or consent that is required



1 under any statute, regulation, by-law
2 or other requirement of the Province
3 of Ontario, an agency thereof, a
4 municipality or a regulatory authority,
5 in order to proceed with the under-
6 taking shall not be issued or
7 granted; and
8 (b) if it is intended that the
9 Province of Ontario or any agency
10 thereof will provide a loan, a
11 guarantee of repayment of a loan, a
12 grant or a subsidy with respect to
13 the undertaking, the loan, guarantee,
14 grant or subsidy shall not be
15 approved, made or given, unless...."
16 in effect until in fact the site is approved. It
17 has not been dealt with, but on November 23rd, 1986,
18 a request was made by the Region to the Minister
19 of Municipal Affairs seeking referral of that
20 application to the Ontario Municipal Board under
21 Section 22, subsection (1) of the Planning Act,
22 which is also before you, and the substance of that
23 section is that if you make an application and
24 Council does not deal with the matter, then there is
25 thirty days and then you have the right to refer the



1 matter to the Ontario Municipal Board, and that in
2 effect is what has happened here.

3 I can't tell you whether the
4 Minister has in fact referred that application to the
5 Ontario Municipal Board. He could theoretically
6 refuse to do so under Section 22, subsection (3).
7 However, it is all supplanted by the Consolidated
8 Hearings Act and the notice to the Hearings
9 Registrar.

10 That now takes me to Section 6D,
11 and this is the matter ancillary to the Official Plan
12 Amendment, the amendment to the Milton zoning by-law.

13 THE CHAIRMAN: Mr. Lederer, I wonder
14 if we might take about ten minutes.

15 MR. LEDERER: I would appreciate it,
16 sir. Thank you.

17
18 --- Recess
19

20 THE CHAIRMAN: Mr. Lederer, I believe
21 you were about to start 6D.

22 MR. LEDERER: I just realized, for
23 reasons I can't explain, I brought a copy of the
24 Coroner's Act and I wondered exactly what it meant.
25 Obviously I should not have said that because I am



1 getting all kinds of wisecracks from the peanut
2 gallery.

3 I was about to deal with hearing 6D,
4 which is the matter of the zoning by-law of the
5 Town of Milton. Again, as with the Official Plan,
6 this is required to permit a sanitary landfill at
7 Site D in the Town of Milton and the appropriate
8 amendment was submitted to Milton Council along with
9 the Official Plan Amendment to which I have already
10 referred. You will find that matter at tab 12
11 of Exhibit 5 and in the same resolution, which I
12 referred you to with respect to the Official Plan,
13 Mr Chairman, the Town of Milton dealt with the
14 matter as being premature and it is therefore
15 in its view, not considered the matter and that
16 brings into play Section 34(11) of the Planning Act:

17 "Where an application to Council
18 for an amendment to a by-law passed
19 under this section or a predecessor
20 of this section is refused or the
21 Council refuses or neglects to make
22 a decision thereon within thirty
23 days thereon after the receipt of
24 the application, the applicant may
25 appeal to the Municipal Board and



1 the Board shall hear the appeal
2 and dismiss the same or amend the
3 by-law in such manner as the Board
4 may determine or direct that the
5 by-law be amended in accordance
6 with its order."

7 So, that kind of referral has been
8 made, and if you refer to tab 12 in Exhibit 5, you
9 will see there is a letter in fact addressed in this
10 case to the secretary of the Ontario Municipal Board in
11 effect requesting a hearing under that section
12 be conducted. Again I am not sure if this material
13 has been delivered to the Ontario Municipal Board
14 or what the Board has done to it -- if it was
15 delivered to you by the Ontario Municipal Board,
16 but, in any event, it is all again supplanted by
17 the Consolidated Hearings Act.

3A 18 That takes me to 7D or 5F and this
19 is the matter of site plan control. I must confess
20 to you that I have found this fairly confusing and
21 for reasons which I think will become apparent.
22 You have to start with Section 40, subsection (2):

23 "Where in an Official Plan an area
24 is shown or described as a proposed site
25 plan control area, Council of the



1 local municipality in which the
2 proposed are is situate may by by-law
3 designate the whole or any part of
4 such area as a site plan control
5 area."

6 So for an area to be an area of
7 site plan control, there is a two-stage process
8 and it must be first designated in an Official Plan and
9 then there has to be an appropriate by-law passed by
10 the municipal council.

11 In this case, in Burlington, the
12 whole city is proposed as a site plan area in the
13 Official Plan and the requisite by-law has in fact
14 been passed. In Milton, the Region's Official Plan
15 Amendment to which I have already referred as being
16 dealt with in 5D, contains as one of its terms
17 that Site D become designated as an area which may
18 be in turn designated by by-law as an area for
19 site plan control. Of course, it isn't an area
20 of site plan control now, nor can Milton pass the
21 by-law, because in fact it will require the approval
22 of the Official Plan Amendment by this Board before
23 that can in fact take place.

24 Now, where an area is designated
25 as an area for site plan control, then Section 40(4)



1 and (7) come into play. Section 40(4) indicates
2 you can't undertake any development in an area
3 designated as an area for site plan control without
4 the approval of Council and it indicates what
5 Council may determine.

6 Section 40(7) indicates what a
7 municipality can require before granting approval
8 and it talks about things such as off-street
9 vehicular loading, walkways, facilities for lighting,
10 those kinds of requirements. Now, where the
11 person wishing to undertake development is unable
12 to obtain the approval of the council of the
13 municipality under Section 40(4), or again where the
14 conditions are too stringent, then Section 40(12)
15 comes into play, and I won't read it as it is quite
16 long, but the bottom line is that in those
17 circumstances there can be a referral to the
18 Ontario Municipal Board for a hearing and in this
19 case that is the hearing that may be required.

20 Now, I think it is worthwhile to
21 pay some attention to the terms of Section 40(7)
22 because, in my submission, they cover on a straight
23 reading things which don't really apply to the
24 development of a landfill and, to the extent that
25 they do, they really consider matters of design



1 and operation which are really dealt with by the
2 application under the Enviromental Protection Act
3 and, again, there does seem to be some kind of overlap
4 which exists. However, they are both there and
5 perhaps out of an abundance of caution, the Region
6 has chosen to apply under both and of course
7 argument as to what should be dealt with can be
8 made in final argument.

9 Now, there are problems in a sense
10 associated with both of these sites and with
11 respect to the application of site plan control in
12 any event. First of all, it is true, as I have said,
13 that Burlington has designated this area for site
14 plan control and it is also true there is a by-law.
15 However, as Mr. Leitch raised at the preliminary
16 hearing on February the 11th, there is the whole question
17 of the impact of the Parkway Belt West plan on that, and I am not
18 clear on that myself at the moment and it is something
19 that will have to be dealt with ultimately in
20 argument, I think.

21 With respect to Site D, there is
22 this whole issue of timing. As I have said, it is
23 only really with the Board's approval of the
24 proposed Official Plan -- of the Milton Plan, the
25 Official Plan Amendment of the Milton Plan, that it will



1 be open to Milton Council to pass the Section 40(2)
2 by-law designating the area as one for site plan
3 control. Without that, it is not subject to site
4 plan control.

5 Now, even if you approve the Official
6 Plan Amendment, it is theoretically possible that
7 the municipality will never pass the by-law, in which
8 case Section 40(4) does not come into play and that
9 approval is not required. If a by-law is passed
10 subsequent to this hearing, then there are a number
11 of things that may happen and I just put these to
12 you as options and again it really is a matter for
13 final argument, but there is the question of whether
14 it is too late. As I have said, matters are
15 supplanted by the Consolidated Hearings Act and the
16 issue of what will happen here may in a sense be
17 res judicata, and that is not a principle that typically
18 applies to administrative tribunals, but the notion of
19 already having been decided and a finding been de-
20 termined may apply.

21 There is a question of whether the
22 Board may choose and believe it has the jurisdiction
23 to act under Section 5(3) of the Consolidated
24 Hearings Act and under that section you have the
25 power to defer the matter to yourselves, and you would
become re-constituted at the appropriate moment, or to



1 refer it back to the Board having the original
2 jurisdiction, and that would be the Ontario Municipal
3 Board, or, in fact, to another joint board which
4 again could be constituted if the by-law were
5 passed. All of this would of course be done by this
6 Board in the expectation of the by-law being
7 passed.

8 Thirdly, it presumably would be
9 open to you to simply leave the matter and see if
10 it gets dealt with under a referral to the OMB.
11 That, of course, would breach the intention of the
12 Consolidated Hearings Act and my hope is, frankly,
13 this is something we will be able to agree to with
14 the Town of Milton, how this is to be dealt with
15 before the end of the hearing, but, if not, then
16 presumably submissions will be made to you at that
17 time.

18 Applications under Section 40 have
19 been made, and again there is the issue as to whether
20 or not in both cases they may apply. In Burlington
21 they may not apply because of the Parkway Belt Plan
22 and in Milton they may not apply because the area
23 was not, in fact, an area for site plan control.
24 I want to be clear that I want to reserve for the
25 Region to make that submission at the end of the day



1 but I just want to indicate where we are and how
2 we have gotten here.

3 You will find the applications as
4 they presently exist under tab 9 for Site D and
5 under tab 10 for Site F and, of course, those tabs
6 are part of Exhibit No. 5.

7 There may in fact be an alternate way
8 around these difficulties, and that is found in the
9 hearing which you have shown as the second 7D or
10 the second 5F, and this arises as a result of
11 Section 35(1) of the Environmental Protection Act:

12 "Where a by-law of a municipality
13 affects the location or operation
14 of a proposed waste disposal site,
15 the Minister upon the application
16 of the person applying for a
17 certificate of approval for the waste
18 disposal site may, by a notice in
19 writing and on such terms and
20 conditions as he may direct, require
21 the Environmental Assessment Board
22 to hold a public hearing to consider
23 whether or not the by-law should
24 apply to the proposed waste disposal
25 site."



1 Now, it may be appropriate to deal
2 with site plan control or, for that matter, with
3 the Milton zoning by-law by seeking an order under
4 this section that those by-laws simply not apply
5 to this site, or to these sites. Now, this section
6 requires an order of the Minister and in fact I had
7 a brief discussion with Mr. Tidball about that and
8 we have agreed, as with all these hearings, that
9 when you kick in the notice to the Hearings
10 Registrar. you supplant all the other requirements
11 and that, in effect, is a decision of the Minister
12 which is brought to this hearing and, accordingly, it is
13 all before you and it is subject ultimately to
14 your decision.

15 Now, that takes me hearings 8D
16 and 6F. This arises out of the requirements of
17 Section 64, subsection (1) of the Ontario Municipal
18 Board Act. Section 64(1) of the Ontario Municipal
19 Board Act indicates:

20 "Notwithstanding the provisions
21 of any general or special Act, a
22 municipality shall not,
23 (a) authorize; or
24 (b) exercise any of its powers to
25 proceed with; or



1 (c) provide any moneys for,
2 any undertaking, work, project, scheme,
3 act, matter or thing, the cost or
4 any portion of the cost of which is
5 to be,

6 (d) raised in a subsequent year or
7 years; or

8 (e) provided by the issue of
9 debentures,
10 until the approval of the Board has
11 first been obtained."

12 "The Board" in this case, of course,
13 is the Ontario Municipal Board. Here this kind of
14 financing is necessary and therefore reference
15 should be had also to Section 66:

16 "Upon an application being made to
17 the Board for the approval required
18 by section 64, the Board shall
19 proceed to deal with the application
20 in the manner provided by and shall
21 have regard to the matters mentioned
22 in section 62, and may hold such
23 public hearings as to the Board may
24 appear necessary."

25 Here we have another hearing that may



1 be required. In this case an application has in
2 fact been made and you will find it at tab 14,
3 and what it indicates is that the Region of Halton
4 seeks to secure authority to issue debentures in
5 an amount not exceeding \$12,775,000 for a term
6 not exceeding fifteen years to deal with land
7 acquisition, design, construction and all other
8 associated capital costs relating to a new regional
9 landfill, and that takes me then to hearing or
10 approval 9D and 7F and this relates to the Municipal
11 Act. Once the joint board, assuming it does
12 decide that Halton is going to have all of the
13 approvals needed to construct the landfill, it
14 will be necessary to purchase the land. There is
15 a suggestion, or there is an issue that could be
16 raised and would suggest that the Region needs
17 approval of the area municipality to purchase any
18 lands within the area municipality's boundaries
19 and to see how this works you have to go to Section
20 210 and to paragraph 84 of the Act. Paragraph 84
21 is on page 172 and the opening words of Section 210
22 are simply:

23 "By-laws may be passed by councils
24 of local municipalities...."

25 and then 84(a):



1 "For acquiring land in any local
2 municipality or territory without
3 municipal organization for any of
4 the purposes of paragraph 83.

5 (a) no land shall be acquired in a
6 local municipality under this
7 paragraph without the approval of
8 the local municipality, which
9 approval may be granted upon such
10 terms and conditions as may be
11 agreed upon or, failing such
12 approval or agreement, the approval
13 of the Municipal Board and no land
14 shall be acquired in territory
15 without municipal organization
16 under this paragraph without the
17 approval of the Municipal Board,"

18 and you will see that relates to the collection,
19 removal and disposal of garbage. Again the person
20 who looks at this with a bit of care will realize,
21 I suspect immediately, that Halton is not a local
22 municipality and therefore at first blush this
23 section would not apply to it. However, if you return
24 to the Regional Municipality of Halton Act, and again
25 to Section 137, you will recall that this is the



1 section that generally deals with the Region's
2 responsibilities in the area of waste disposal and
3 you will see at subsection (13):

4 "For the purposes of subsection (5),
5 paragraph 84 of section 210 of the
6 Municipal Act applies with necessary
7 modifications."

8 Now, in my submission, to make
9 paragraph 84 of Section 210 apply, the necessary
10 modifications are obvious, remove the word "local"
11 or at least that would be the argument, and then you
12 would have that paragraph of that section applying
13 to the Region. So, arguably we would need the
14 consent of the local municipality before we can buy
15 land within its boundaries and, in that situation, a
16 hearing may be required because, as Paragraph 84(a)
17 suggests, that application may find its way to the
18 Ontario Municipal Board.

19 Again, all of this is a matter of
20 argument at the end of the day, but I do want to
21 indicate to you now that this is all included here
22 as a precaution. It is my submission and my
23 belief that the better view of this paragraph is
24 that it only applies to a municipality which is
25 purchasing property in another municipality outside



1 its boundaries, and there is some case law to
2 support that proposition. However, again it is a
3 matter for final argument.

4 Now, that takes me to the next
5 approval, 8F, and this deals only with Site F in
6 Burlington, and in order to explain to you how this
7 works I am going to have to subject you to my
8 not terribly competent artwork. If you can just
9 give me half a moment.

10 Now, this is an abstractual
11 conception of Site F. Just to put it in a little
12 better context, you can see on this map which was
13 provided by the Town of Milton, its general L-shape
14 with the red outline. These marks which I have
15 added to it indicate the lands generally covered
16 by a notice of expropriation which has gone out from
17 the City of Burlington, and these are lands which
18 the City proposes to expropriate and the stated
19 reason for doing so is that there is in fact another
20 landfill which has been closed since 1972 in this
21 general area, which is known as Bayview Park and
22 that is another name you will hear a lot of, I
23 suspect, before this proposal is over.

24 There have been some surface leaks
25 or seepage of leachate from this, and, as a result,



1 this land is being expropriated and there will be
2 some kind of a drainage ditch here and leachate
3 collection system here (indicating). These lands
4 further to the south are also being expropriated
5 although, as we understand it, no works are to be
6 placed upon them, and to be entirely candid, it is
7 not clear why it is at the moment being expropriated.
8 So far as I am aware, and Ms. Cronk knows more about
9 this than I do, but this expropriation is being
10 contested and, as far as I am aware, it has not
11 proceeded or at least not terribly far.

12 The Region in designing its landfill
13 has attempted to respect that expropriation. It
14 will acquire this drain in the sense that it would
15 be a shared facility under the proposal and it will
16 require this land down here, which I am just hatching,
17 but that land, as you can see, and as I understand it,
18 is not really subject to the construction of any
19 works.

20 Now, if that expropriation goes on,
21 we will be in the position of having to expropriate
22 land from another municipality, from the City of
23 Burlington. If that happens, we will potentially
24 kick in Section 195 of the Municipal Act. I am
25 sorry, 193(5) of the Municipal Act:



1 "A municipality as defined in the
2 Municipal Affairs Act , including
3 Metropolitan Toronto, that has the
4 authority to expropriate land
5 may, with the approval of the Ontario
6 Municipal Board, exercise this
7 authority in respect of the land of
8 another such municipality."

9 So, if that were the case, we would
10 have to have the approval of the Ontario Municipal
11 Board and have another hearing that may be required.

12 I suspect that the reason this exists is that if you
13 didn't have something like this, you would simply
14 have a municipality expropriating land and then the
15 coincident municipality expropriating it back and
16 they would expropriate it back and forth into an
17 infinity and obviously this is an effort to stop
18 that and have a final determination.

19 Finally, that takes me to hearings
20 10D and 9F. If either site is approved, land will
21 have to be expropriated. As I indicated at the
22 outset of today, special reference is made to that
23 with respect to the notice of the Board and the
24 assessment rolls have been checked and sub-searches
25 have been made to identify the owners and notification



1 delivered to them. Under the Expropriations Act,
2 Section 6(2), an owner or registered owner, as those
3 terms are defined in that Act, can require a hearing
4 by an inquiry officer who determines if that hearing
5 or if that taking rather is fair, sound and
6 reasonably necessary and then a recommendation is
7 made under the Act by the inquiry officer to the
8 expropriating -- to the approving authority. I hope
9 I have the terminology right. The key is this is
10 another hearing where there is a recommendation and
11 it's all displaced and it's your decision as to
12 whether or not the expropriation goes ahead.

13 Now, those are the hearings which
14 were referred to in the notice to the Hearings
15 Registrar. There is, however, one further
16 application to which I wish to refer. If you review
17 the notice which has been delivered on instructions
18 and direction from the Board, you will see on page
19 2, just above the reference to -- just above the
20 last reference, which is Section 64 of the Ontario
21 Municipal Board Act to which I referred, but
22 reference to Section 15(1) of the Planning Act.
23 The Region of Halton, when regional government was
24 formed, was instructed or compelled by legislation, as
25 I think were all regions, to come up with an Official



1 Plan and I believe the operative date or the date
2 by which they were obliged to submit to the Minister,
3 was -- I have forgotten, but I think it was in early
4 1980 or late 1979. That Official Plan was forthcoming.
5 However, it contained certain policies that dealt
6 with waste disposal and a referral or a request for
7 a referral of that portion of the Official Plan
8 was made to the Minister of Municipal Affairs, and
9 this material is found at tab 13, and you will see
10 in fact the matter was referred to the Ontario
11 Municipal Board on October 15, 1980.

12 Now, it is not included and was not
13 included in the notice to the Hearings Registrar
14 because it is my submission that it is not covered
15 by and is not relevant to an application under the
16 Consolidated Hearings Act. An application under that
17 Act is specific to "an" undertaking and Section 2
18 says:

19 "This Act applies in respect of an
20 undertaking in relation to which more
21 than one hearing is required...."

22 and this is not a hearing that deals with any
23 specific undertaking. An Official Plan is a matter
24 of general policy for the entire region and does
25 not deal with a single or in this case two potentially --



1 -- sorry, with two, ultimately a single isolated area.
2 It is a matter of general application which goes
3 through a separate public information process of
4 its own and a separate hearing process and it has
5 no application and landfilling -- in this Official
6 Plan, unlike others, there are no designations and
7 therefore you don't need it, a designation or
8 amendment with respect to landfilling in these areas,
9 we can do what we want and that matter has to be
10 dealt with separately and is not properly consolidated.

11 Now, having said all that, prior to
12 the preliminary meeting I received some inquiries
13 about this, one from Mr. Garrod, as I recall, and one
14 from Mr. McQuaid. It was discussed at the preliminary
15 meeting and I believe there is general agreement now
16 that it need not be included here. The position
17 of the Region is that while we believe it is not
18 appropriate for it to be here, we would not
19 judicially review a decision to keep it here,
20 we have to get a hearing, have a hearing and
21 we must get going, and as a matter of precaution, it
22 was included in the Board's notice. I believe
23 there is general agreement that it ought not to
24 be considered by this Board, but you will want to
25 hear from the other parties with respect to that.



1 Now, that really concludes the first
2 part only of the submissions I wish to make at the
3 outset of this hearing and I have done this first
4 of all to familiarize you with the various
5 applications before you and candidly to make clear
6 that this is a complicated matter. I am not talking
7 about the technical questions, but just the legal
8 niceties about how all of this gets here and the
9 kinds of tests and complications to which the Region
10 has been put and in my view and, in my submission,
11 extend beyond anything frankly that is reasonable,
12 but this clearly appears to be the intent of the
13 legislation, that this sort of thing be done and,
14 accordingly, we have undertaken it. The complexity
15 of all of this is underscored by the study process
16 that has been undertaken and I want to now take you
17 through that in chronological order.

18 Now, I want to do this now because
19 it is important, and for reasons which I hope will
20 ultimately become clear, it would be impractical
21 and really impossible for us to call the evidence
22 in a chronological order. I think you will see there
23 have been many study phases and the same consultants
24 dealt with different phases and we would have to
25 call people back three, four and five times if we



1 were going to do this that way. So, what I am going
2 to do now is take you through it in some form of
3 chronology so that you will understand how the
4 study developed and so that you will be able to
5 follow each of these witnesses and to have your
6 bearings as they describe their contribution to the
7 various phases in which this study was conducted.
8 It is important to remember, as I have said before,
9 that this is at its root an environmental assessment
10 and it is the environmental assessment of the landfill
11 component of the Region of Halton's solid waste
12 management system. It was initiated in 1982 and
13 the substantive work was grouped into phases. It
14 begins with Phase 2, Stage 1. There is a Phase 1
15 but I am not going to review it with you; in fact
16 we can deal with it in the evidence, but it just
17 relates to arrangements of work programs between
18 the consultants and the Region, but the substantive
19 hearing or the substantive study begin at Stage
20 2, Phase 1. This is the initial determination of
21 waste quantities projected to be produced in the
22 Region of Halton over a twenty-year planning period.
23 It also looked at the available technologies and
24 considered them at what I think can safely be called
25 a generic level. It looked at options for



1 diverting the waste stream from the landfill. It
2 developed four systems options and ultimately
3 determined from this work that a landfill would be
4 required in the Region of Halton.

5 Now, in going through this I am going
6 to in fact refer you to two charts; first of all
7 this large one which unfortunately will not fit
8 anywhere, and you will find a small copy of this in
9 the back of Volume II of our book of witness
10 statements. Those are the red books I have given you,
11 and if you look in the back of Volume II you will
12 see there is a small copy of this there and, as well,
13 there is a bar chart which will indicate to you
14 generally the timing of the various phases and you
15 will see the months at the bottom, every second
16 month, January, March, May and then through and the
17 years at the bottom and the various times represent
18 the various phases of study.

19 Now, the work for Phase 2, Stage 1
20 -- perhaps before I do that I should also review
21 for you this rather larger chart. If you look
22 across the top---

23 MR. HODGSON: Mr. Lederer has just
24 realized one of his ambitions.

25 MR. LEDERER: I have become a planner.



1 Now, across the top you will see
2 generally four of the phases of study and let me
3 warn you now that in fact there are two others out
4 here you don't see, something I have referred to,
5 the technical studies phase, and out here a
6 comparative phase.

7 Now, down the side you will see
8 categorized generally the progress of each phase,
9 the draft work programs, the public forums, the
10 submissions report, final draft report, public
11 forums, final reports and the consultants involved
12 and then you will see when each of those stages
13 was acted on with respect to each of the phases
14 down the five columns, and you can relate those
15 phases, of course to the bar chart. For example,
16 Phase 2, Stage 2B is right in here in generally
17 September of '83 through May of '84.

18 Now, the work starts with the
19 adoption of work programs by Regional Council on
20 December 9, 1982. The draft report for Phase 2,
21 Stage 1, was received by Council on April 20, 1983
22 and if you just follow down chart 1 and look at the
23 draft report, you will see Phase 2, Stage 1,
24 Waste Needs and System Analysis, draft, March, '83
25 and received April 20, 1983. The draft was



1 circulated for public comment and for the comments
2 of the appropriate government agencies. Public
3 comment was obtained through an information centre
4 on March 10, 1983 and I should say that, as I under-
5 stand it, at the information centres comments are
6 requested sometimes in writing on sheets which are
7 provided -- but public meetings with the appropriate
8 committee of Council, the Solid Waste Management
9 Committee on April 14, 1983. With those submissions,
10 the final report was prepared and received by
11 Council on June 22, 1983 and by that time it, of
12 course, had already been reviewed by the relevant
13 committees. So, at that point work has been done
14 with respect to the projection of waste quantities
15 to be directed to the landfill and, secondly, as
16 part of that study, a look at, or as part of that
17 work, a look at some generic options for waste
18 disposal.

19 Now, Phase 2 is the site selection
20 phase and it consists basically of three sub-stages,
21 Phase 2, Stage 2A, Phase 2, Stage 2B and Phase 2,
22 Stage 2C. Now, in my submission, before I begin
23 to take you through the process, it is important to
24 review and understand the nature of an environmental
25 assessment. This environmental assessment is, in



1 effect, a screening process. It examines the
2 available options in a progression of stages, sub-
3 stages 2A, 2B, 2C and so on. At each stage, options
4 are removed from further consideration and, at each
5 subsequent stage, the remaining options are
6 evaluated at an ever-increasing level of detail.

7 Yet again I am going to draw you to
8 my again not competent artwork. It is my submission
9 that this can most easily be conceptualized as an
10 inverted triangle, or, if you like to think in
11 three dimensions, a pyramid. The horizontal axis
12 represents the range of options and in the context
13 of landfill, when we get to that, it is really a
14 geographic option and when you start at the top
15 you are looking at the full range of options, which
16 is the entire Region of Halton.

17 The horizontal axis -- sorry, the
18 vertical axis represents the level of detail, the
19 depth of detail that you undertake as you proceed
20 through the study. Now, this is, in my submission,
21 extremely important to grasp because there is often,
22 in hearings like this, the assertion that more
23 work should have been done. Scientists and
24 technical experts adhere to the principle that
25 more information is better. Now, it is my submission



1 to you that that concept is really anathetical
2 to the environmental assessment process or to the
3 screening or winnowing that is an inherent part of
4 that process. If you say you should have more because
5 more is better, and if you extend that to its
6 logical conclusion, you don't have a triangle any
7 more, you have a square because you have to evaluate
8 all the options, the whole region, to a complete
9 level of detail.

10 Now, that is simply impractical in
11 the context of this kind of study.

12 With respect, for example, to the
13 question of hydrogeology, which is always important
14 in these kinds of proceedings, you would have to
15 drill holes throughout the entire region because
16 that is the only way that you would have that level
17 of detail and have all of the information with
18 respect to all of the options.

19 The relevant question, in my
20 submission, is whether you have sufficient detail
21 for the level of analysis which is then being under-
22 taken and when you deal with the full options at
23 level 2A, do you have enough detail to do that
24 initial screening and when you do the next step in
25 2B, do you have enough detail or the increased



1 information you require? It is also important, in
2 my submission, to understand that you have to have
3 the same level of detail, the appropriate level of
4 detail for each option because if you have more
5 with respect to one option or less, then, in effect,
6 you by definition excuse me.

7 MR.MARSHALL: Everyone is conspiring
8 to keep you going.

9 MR. LEDERER: I was going to say
10 something nice about you and now I won't.

11 If we had more or less, you bias
12 the decision, either in favour or against that
13 site, depending upon what the nature of that increased
14 detail is.

15 Now, the winnowing here, as I have
16 said, is based upon the three sub-stages essentially
17 of Stage 2A. At 2A, we begin with the whole region
18 and the horizontal axis shows the full range of
19 options. Now, if you want to extend the triangle
20 back a step to Phase 2, there is of course the
21 examination of options even beyond the geographic
22 options into the generic study of other
23 technologies. The vertical axis in this case, and
24 you will see that is the narrowest depth of detail,
25 relied almost entirely on existing data, a small



1 depth of detail. At this level of analysis, and
2 with this level of detail, constraints dealing with
3 the appropriateness of landfill were developed and
4 they were published in draft in June, 1983 and they
5 were then subjected to a public information centre
6 for public input on July 20, 1983. The draft was
7 also circulated and some written submissions were
8 received and then a final factors report was
9 published in August of 1983 and adopted on November
10 9, 1983.

11 You will understand here that there
12 are generally in these phases two stages of develop-
13 ment; ^① first of all there is the methodology, the
14 evaluation factors, and all of that is subjected to
15 public input and then ^② there is the actual study,
16 the application of the factors to the options which
17 then remain. Here at 2A the factors were applied
18 to determine which area of the region would be
19 excluded from further consideration and the results
20 were published in a draft report which was circulated
21 on September 20, 1983. There was an information
22 centre on that day and a submissions report was
23 prepared, the gathering of the submissions together
24 and responses drafted so that each of them is
25 considered, and then a final report taking into account



1 those submissions was published in October of 1983
2 and adopted by Council on November 9, 1983, and in
3 this case I should say a summary was then prepared
4 for public consumption.

5 Now, the final results of that work
6 are seen on this map, and these are a bit weathered
7 because they are in fact the maps that were used at
8 the time to demonstrate to people what the results
9 of the study were. You can see in purple generally
10 the areas that remained. There were seven districts
11 and district E is generally in here, district D is
12 in here, G down here, B and so on. You might observe
13 that it is interesting to note that there is a line
14 here and there is nothing in this northwestern
15 section, but the Niagara Escarpment generally runs
16 along here and the area on top of the escarpment is
17 generally just not suitable. Water tends to drain
18 out and into the lower areas.

19 There were also remaining seven sites
20 which will undoubtedly become known as pits and
21 quarry sites and those are the seven boxes that you
22 see.

23 Now, I should perhaps explain with
24 respect to those two types of sites that from the
25 outset there were two rather different types of



1 sites that were considered. The general constraint
2 analysis refers to till plain locations, and till
3 plains are those large flat areas which have been
4 left from the ice age and are generally bedrock
5 overladen with different types of and different
6 layers of glacial till. From the outset of this case
7 it was recognised that the Region of Halton contains
8 a reasonably large number of pits and quarries which
9 are generally associated with outcroppings around
10 the Niagara Escarpment. It was felt that these
11 might lead to an appropriate site, although obviously
12 for different reasons. This was underlined during
13 the 2A phase of study because, at that time, what
14 might be loosely called the agricultural community
15 expressed the concern that inevitably a till plain
16 site would wind up in an area that was rich in
17 agricultural productivity.

18 So, during the course of the 2A phase,
19 there was an assessment done at the appropriate level
20 of detail of fifty-five pits and quarries sites and
21 the result of that work is the seven sites which
22 you now see on this map, the general overview analysis
23 Phase 2, Stage 2A.

24 Now, that is the first level of
25 site selection. We then move to 2B, which looking



1 at chart 1 is the second -- the third column. Here
2 the draft evaluation factors were prepared and
3 published in November of 1983 and they were circulated
4 to agencies and the public, and this time there were
5 three public information centres; Burlington on
6 November 24, 1983, Milton November 23, 1983 and
7 Georgetown on November 29, 1983 and a submissions
8 report was prepared, and again you can follow down
9 the chart and see all this, and the final evaluation
10 factor report was dated January, 1984 and was made
11 public in February of that year.

12 Now, in this work the districts are
13 refined to fifty-five candidate sub-areas. Let me
14 warn you that there are candidate sub-areas,
15 candidate areas, candidate sites and it takes a while
16 to grasp it all, but that is an important part of
17 the terminology which I think we are all going to
18 be required to follow, to follow how this works.

19 Now, this map will show you the
20 result of the 2B level of study. The evaluation
21 factors were applied to -- sorry, I have jumped
22 ahead. Let me just leave that map. As I said, these
23 are the fifty-five candidate sub-areas which come at
24 the end of 2B and let me go a little further.
25 Evaluation factors were applied to the candidate sub-



1 areas and the draft 2B report was dated February,
2 1984 and was circulated on March 7, 1984. There
3 were public information centres, again following
4 down the chart, in Milton on March 20, in Burlington
5 on March 21 and in Georgetown on March 22nd. The
6 submissions report dated April, 1984 led to the
7 final 2B consolidation report which was released in
8 April '84 and adopted on May 9, 1984 and which resulted
9 in six candidate sites. So, these fifty-five
10 candidate areas, which are the result of a further
11 winnowing of the candidate areas from site 2A now
12 become six candidate sites, and those generally
13 can be seen on this map, and let me just warn you
14 that this looks a little out of scale because you
15 will see it doesn't contain the northern part of
16 the region. The cut-off point is Derry Road,
17 which I believe is here, and so it doesn't consist
18 of this northern part because none of the sites were
19 in that area. You can see sites A, B and C grouped
20 together and then D, E and F.

3B
21 Now, that takes you to stage 2C,
22 and this is a reasonably in-depth analysis, and
23 remember with increasing levels of detail, of the
24 six remaining sites and at this level, for example,
25 holes were drilled in each of the six sites and a



1 proposal is to use that in the new landfill should
2 this be approved. The area for landfilling you can
3 see is in the black line and it is generally this
4 area and the service area I believe will generally
5 be in here. I am sorry, the service area is down
6 here and there will be some works in this area, but
7 it's not to scale.

8 There is a Hydro right-of-way
9 which I should have referred to earlier. I should
10 have said that the nearest residences are about
11 300 metres to the north and the residences to the
12 south are about 600 metres away and 900 to the east
13 and 1300 to the west; in other words the gentleman
14 here this morning from Cumis, there is a Cumis and
15 Tridon, and both have industrial developments
16 on the other side of the present regional landfill
17 on the north service road.

18 I should also tell you that you have
19 here of course Highway 403, immediately south of
20 the North Service Road and just out of view here
21 you will get the development of Burlington and you
22 can see that better on the map provided by Milton
23 and this line, south of that, is the CNR tracks.

24 This site is 96 hectares in total
25 and the fill area is approximately 50 hectares.



1 There are buffers and again you will see that the
2 buffers are somewhat variable inasmuch as they are
3 contiguous to an existing or past landfill. They are
4 50 metres at the hydro corridor, which in a sense
5 provides an additional buffer itself, since hydro
6 doesn't require that kind of usage of the land
7 and 100 metres elsewhere.

8 Now, that takes me to the end of
9 the second part of this opening statement and leaves
10 me only to review with you very briefly the
11 organization of the evidence.

12 I gave you three books, two red ones
13 and one buff one, and at the time of the preliminary
14 meeting I indicated I would attempt to supply
15 people with witness statements for the witnesses
16 we intended to call, understanding, of course, that
17 all of these things are subject to change, and these
18 were delivered to all of the parties, I believe,
19 in the early part of the second week of March --
20 the first week of March. I indicated at the time
21 of the preliminary meeting that the order in which
22 these are presented would be our intended order
23 for calling evidence and I have confirmed that with
24 various parties since that time. You have already
25 heard, and I have already repeated that this is going



1 to be a long matter and it is going to be complex
2 and the matter of how to organize the evidence was
3 not a simple issue for us to deal with. We have
4 attempted to govern ourselves by some fairly basic
5 principles; first of all there are, as I said earlier,
6 approximately 130 fundamental reports which have
7 been developed over the course of the study and we
8 have four copies which we have here for you and
9 you will see there are twelve boxes and there is a
10 copy in each of three boxes coming from the wall,
11 so there is one copy for each of you, and an
12 additional copy to be exhibited or for the court
13 reporter.

14 Realizing there is an incredible
15 amount of paper, we have also supplied a body in
16 the person of Mr. Smith who is sitting there, and
17 Mr. Smith will be active through the course of
18 this hearing in attempting to keep the material
19 organized for you. I should say we had offered
20 the services of such a person at the preliminary
21 meeting, but unfortunately that person was so
22 daunted by the prospect that she quit and took
23 another job, so we had to isolate someone else,
24 and that, happily for us, is Mr. Smith.

25 I am going to submit these reports



1 to you in effect now, all of them. However, I want
2 to be clear, as I said earlier, for us to direct
3 evidence to each and every one of these reports or
4 at worst each and every page of each and every
5 report would take this hearing -- by that time
6 my daughter will have her driver's licence and she
7 is only three and a half. This will just extend this
8 out.

9 So, I guess our first operating
10 principle is that we just can't talk about all of it.
11 We are constrained in how to deal with it by the
12 fact that, as I said earlier, we don't have a single
13 report or a single witness statement from any other
14 party and we don't know what it is in particular
15 that interests them. Obviously we can make some
16 educated guesses and we have attempted to do that,
17 but to a large degree we have had to guess. It may
18 be that someone will require evidence that we have
19 not dealt with and I hope not, but, if so, we will
20 look to the Board for some understanding and the
21 cooperation of the parties to bring it forward if
22 the Board ultimately agrees it is necessary.

23 The second principle we have used
24 is, as I said earlier, we can't do it chronologically.
25 As you can see, and it is difficult to see now, but



1 detailed biophysical analysis was undertaken, social
2 surveys were done and conceptual designs were
3 prepared. The work to be undertaken was subjected
4 to public review at a series of eight public meetings
5 and in this case workshops, smaller groupings
6 of local people who were directly affected, on April
7 20 and May 2nd in Burlington -- in 1984-- in Milton
8 on May 7 and 8 of 1984 and in Oakville on May 9,
9 1984. There were also in Oakville site meetings
10 and people preferred to have meetings at the
11 prospective sites, but at each of the three sites
12 on May 14, 15 and 17 of 1984 and a submissions report
13 was then prepared. The work to be undertaken was
14 finalized on June 6, 1984.

15 Now, before I get to the application
16 of that work to those six sites, I need to take you
17 back a step. If you look at the bar chart you will
18 see Phase 2 and Stage 2C there is something called
19 Phase 2, Stage 2B review and supplement. Because
20 these studies take too long or take a long time and
21 there is a lot of qualitative judgment to slip
22 in there, things do change and, as I have indicated
23 to you earlier, the work was being done at the
24 same time with respect to another component of the
25 Region's waste disposal system, energy from waste.



1 Some time prior to August, 1984,
2 refinements in that work required and caused a
3 reconsideration of how much waste could reasonably be
4 projected as being directed to landfill. That
5 work was carried out as it has become known as
6 Phase 2, Stage 2B review and supplement and it
7 resulted in an increase in the quantity of waste
8 projected to be directed to landfill.

9 That caused a reconsideration of
10 the decisions made at the end of Stage 2B and
11 consultants were given an opportunity to indicate
12 if these changes affected their analysis and the
13 original decision as to the six sites was confirmed
14 so that the 2C study continued.

15 The 2B supplement stage, as you can
16 see by looking at chart 1, contains a process of its
17 own. There was a draft report circulated on October
18 18, 1984 and written submissions were requested
19 and a submissions report was prepared and then a
20 final report published in November of 1984 and
21 adopted by Council on December 5 of that year.

22 The Phase 2, Stage 2C continues and the
23 Stage 2C draft summary report, accompanied now by
24 twelve technical reports and, if I may just list
25 these for you; a transportation assessment, a bio-



1 physical assessment, an economic assessment, an agri-
2 cultural assessment, a social assessment, an air
3 quality assessment, hydrogeologic / hydrologic
4 assessment and conceptual design, archeological
5 assessment, noise assessment, visual assessment,
6 heritage feature assessment, land use assessment
7 were all circulated. The date of circulation was
8 February 6, 1985. These reports is a demonstration
9 of the increase in the vertical axis, the depth of
10 detail.

11 Workshops were conducted and held
12 during the preparation of these reports in Oakville
13 on October 15, 1984, in Milton on October 17, 1984
14 and in Burlington on October 18, 1984. Following
15 circulation of the Stage 2C draft reports, there
16 were then public meetings in Burlington on February
17 26, 1985, in Oakville on February 27, 1985 and in
18 Milton on February 28, 1985 and there were public
19 delegations to Council on May 8, 1985. The
20 submissions received were published in this case in
21 two volumes and two addenda-- the addenda contained
22 submissions filed after the time prescribed,-- and a
23 submission report with responses to those submissions
24 was published in June, 1985. The final reports
25 were prepared and then there were public meetings



1 in Oakville on July 9, Burlington on July 10 and
2 Milton on July 11 and then final reports, which
3 really is the evaluation and summary report and the
4 twelve technical reports went to Council on July
5 23rd, where delegations were again heard and
6 ultimately they were adopted. At that time the
7 decision was taken to proceed with two sites and
8 undertake the necessary level of analysis for an
9 Environmental Protection Act application. So you
10 see this winnowing from the Region to the districts
11 to the candidate areas, to the candidate sites,
12 to six to two.

13 Now, at that point, following that
14 level of study, the environmental assessment was
15 prepared and, as I already referred you to in Exhibit
16 5, an application was made and a review from the
17 government was subsequently received on February
18 28. Oh, I am sorry, it was 1986.

19 Now, to underscore the public nature
20 of all of this, I should also indicate to the Board
21 that a separate public meeting was held, as was
22 required by the Planning Act, on July 21st, 1986 to
23 deal with the Official Plan Amendment for the Town
24 of Milton. Now, that takes me off chart 1 to the
25 technical studies phase. This was, as I have said,



1 studied to the level of detail required for an
2 Environmental Protection Act approval and it includes
3 issues raised by the government review and the other
4 applications brought before you. It consists of
5 a design and operations report, a hydrological
6 report, a transportation analysis, a biophysical
7 analysis report, an after-use report, a heritage
8 features assessment, a visual analysis, wind analysis,
9 an air quality analysis, noise analysis, economic
10 impact and affordability analysis. It began with
11 the instructions of Council on July 23rd, 1985 and was
12 presented to a meeting of Council on October 3rd,
13 1986 and was adopted by Council on October 22nd,
14 1986. The results of that work were dated January
15 1987 and adopted by Council on March 4th of this
16 year.

17 I'm sorry, but my notes -- I'm sorry.
18 The technical studies phase was adopted by Council
19 on October 22nd, 1986 and you will see the
20 Environmental Protection Act application is made
21 shortly thereafter. The page I am missing here is
22 the page that would tell me that after the technical
23 studies phase there is then a sixth phase, if you
24 like or seventh, which is the comparative studies
25 phase and in that study each of the consultants was



1 required and asked to prepare a comparison of the
2 two sites, dependent upon their initial work, and
3 then a comparative analysis done in order that a
4 preference might be shown with respect to each of
5 the two sites.

6 Let me tell you that the environmental
7 assessment in a technical sense ends where the two
8 sites are selected because the undertaking is one
9 site or the other. In a very real sense it is
10 immaterial to the Region which it is, but we simply
11 need a landfill approved. However, in order to
12 properly fulfil our obligations, we believe it is
13 necessary to indicate to you ultimately what the
14 preferred site is and so this kind of comparative
15 analysis is undertaken and has been taken to Council
16 and, as you will ultimately hear, the analysis
17 demonstrates a preference, but not a wide preference,
18 for Site F over Site D, and that will be the nature
19 of the Region's evidence.

20 Now, I just want to spend a few
21 moments with you reviewing the two sites. These
22 are two aerial photographs of Site D, one which shows
23 simply the site and the other one gives the location in
24 a greater context and shows more of the surrounding
25 land. Site D is in Milton and is bounded by the



1 First Line here, by the Lower Baseline Road, which
2 is not directly contiguous to the property but
3 further down, and to Britannia Road, which again is
4 not contiguous to the north end of the site but it
5 is up here and then by Highway 25, right here.
6 It contains presently four homes, the Martin home
7 here, and this is an unlicensed airstrip where
8 repair work is done to aircraft; there is a property
9 here known as the Ford Farm, although I understand
10 it is owned by the Fords on which a dog-grooming
11 business is located, and the Newman property where
12 a garden centre is operated, and then there is what
13 appears to be an investment property here, and I
14 understand there have recently been cars on the
15 property and that's the first time they have been
16 seen there. There are five homes across the street
17 on First Line, here, here, here and the Dillon
18 property is not a home but a shed, and then down
19 here. The area for landfilling shown here with the
20 hatched line and the service area will be approximately
21 here, and we are looking at the short end of the L
22 and to the north just off to the side, but the
23 entrance will be from Highway 25. The site is
24 126 ^{hectares} acres in total, of which approximately 53 ^{hectares} will
25 be used for landfill. You can see as well that there



1 are buffers around, of course, each of the sides.

2 MR. McQUAID: You said acres, but
3 it's hectares.

4 MR. LEDERER: Hectares, I'm sorry,
5 thank you.

6 Now, Site F. Site F is in Burlington
7 and is bounded on the north by the foot of the
8 Niagara Escarpment, on the south by the North Service
9 Road, along this part of the east by King Road and
10 in this area is what I referred to earlier as the
11 old Bayview landfill site, which has, I believe
12 the Burlington Rod and Rifle Club here and
13 equestrian facilities -- although they seem to have
14 been taken down recently, but they were the people
15 at the site most recently and I believe there was
16 a model air club or something in here recently.

17 On the west side it is bounded by the
18 existing regional landfill site, and this is an
19 operating site which has a certificate of approval
20 which was extended in 1984 and which will end in
21 one of two ways, depending on its approval, and that
22 is either the reaching of the specified contours,
23 which is quite close, or when the new regional
24 landfill is approved, whichever comes first. The
25 service area for that landfill is here and the



1 if you look at the bottom of chart 1, you have
2 listings of the project consultants in each phase
3 and you will see first of all as we increase
4 detail, the list grows and, secondly, many times
5 the same consultants are involved and we would have
6 to call them separately for each phase and that is
7 unwieldy and unfair to them.

8 What we propose to do is to call
9 each witness and to have him or her review with you
10 their entire involvement in a chronological fashion.
11 So, as they do that you will hear, "Were you involved
12 in Stage 2A?", "Yes, I was," "And what did you do?"
13 And I hope that because of the chronology we have
14 now given you, with the assistance of these charts,
15 you will be able to understand and follow what
16 phase of the study is then being referred to.

17 By doing that, we have been able to
18 put ourselves in the position where only two witnesses
19 will be called twice. The first is Mr. C.N. Watson,
20 who will be called first to deal with waste
21 quantities and needs and later to deal with
22 economic analysis and my hope is that parties and
23 the Board will understand immediately that these
24 are discrete topics and will respect the division
25 of the evidence and insofar as economic matters are



1 concerned, leave questions they have until Mr.
2 Watson's second appearance.

3 Mr. Rinaldo is also being called
4 twice and Mr. Rinaldo is the financial commissioner
5 for the Region of Halton and obviously has some
6 contribution to make to the economic analysis which
7 Mr. Watson will be dealing with. Also he has been
8 involved and looked at the energy from waste and
9 therefore the basis of the assumptions made with
10 respect to that alternative part of the program.
11 Again, we presume, and this is not unusual in these
12 hearings, that the Board will find it permissible
13 for people to be called more than once and, secondly,
14 that the Board will instruct, if the parties will
15 themselves not undertake, to have cross-examination
16 deal with the issues then before the Board.
17 There is no effort to limit anything, as all
18 questions eventually get asked, but it is a matter
19 of categorizing it in an appropriate fashion.

20 The other issue we have tried to
21 deal with is the matter of process. In my submission,
22 process deals with two things, the path of the study
23 or the path the study travels down and it also deals
24 with the decisions made along the way. Our rule or
25 principle we adopted is that it's impossible to



1 understand the decision if you don't have the
2 substance of the information. So, what we propose
3 to do is to put the process at the end and you will
4 see Mr. Walker, who was the coordinator from Phase 1
5 through to the end of 2C and whose firm did the
6 comparative work, will give you that at the end when
7 you have all the information so that when he talks
8 about that information you will know what it is
9 he is talking about and, of course, that leaves the
10 problem of the path down which the study travelled,
11 but my hope is that you have that now from this kind
12 of opening submission and from the material which
13 I have put before you.

14 Just a few more items. First of
15 all, it is not unusual in the proceedings for
16 witnesses to be called in panels, and that is more
17 than one witness where they are dealing with the
18 same or related areas. In this case we have kept
19 that to a minimum and there is never a panel of
20 more than two and we believe there is good reason
21 for each of them and we expect you will permit us
22 to do that as well. There is only one change to
23 this point to the order of witnesses, and this will
24 in fact take out one of the panels. We propose
25 to take Mr. Dennis Stevens dealing with after-use



1 and move him down below what is now shown as panel 8
2 and make him in effect panel 9 because his evidence
3 to some degree draws on some of the work of the
4 people who precede him and it seems better to have
5 him in that place.

6 Finally we have -- there is some
7 method to the particular organization and if you
8 look at the first panel, that of course stands on
9 its own, the issue of how much waste, and panels 2,
10 3 and 4 deal with surface or visible environmental
11 factors and 5, 6 and 7 with operational type impacts
12 and 9, 10, 11 and 12 with design or operational issues
13 and 13 stands on its own, the matter of money, and
14 14 and 15 are essentially process issues. The only place
15 that that really falls out of whack is in putting
16 land use planning with process, but that's not
17 inadvisable, given that that's an overview study
18 and that Mr. Walker's firm also undertook that work.

19 Finally, I have some material I
20 will distribute to the parties and advise them that
21 it is here and some additional work has been done
22 with respect to traffic analysis and I have two items
23 I will be distributing and I am not sure it's necessary
24 I file them with the Board, as I am not sure it
25 is relevant.



1 Mr. Chairman, those are my opening
2 submissions, and I hope they will assist the Board
3 and we will all be engaged on a very long road
4 and I hope that we will be able to assist you and
5 that this will move forward in a reasonably efficient
6 fashion and certainly if there's anything we can do
7 to assist the Board through Mr. Smith's efforts or
8 otherwise, we will only be too happy to do what we
9 can.

10 THE CHAIRMAN: Thank you, Mr. Lederer.

11 I would like to ask if it is necessary
12 to carry this stuff upstairs or can it be left here, all
13 these documents overnight?

14 MR. LEDERER: It will be secure, sir,
15 but I think I can say that to the extent the material
16 needs to be moved, that is one of the things we told
17 Mr. Smith that he will have to do.

18 THE CHAIRMAN: Another request is
19 if we could get a long narrow table, two tiered,
20 behind us. I would like to eliminate all of this
21 in front of us, if possible, and perhaps there is
22 some place we could put exhibits from time to time.
23 Would it be possible?

24 MR. LEDERER: All the right people
25 are nodding yes, so I think it will be possible.



1 THE CHAIRMAN: If that's the case,
2 we will adjourn this hearing until 9:30 tomorrow
3 morning.

4 MR. ESTRIN: Excuse me, but are
5 we sitting Friday of this week?

6 THE CHAIRMAN: I believe not.
7 I guess we're not.

8 MR. ESTRIN: Thank you.

9
10 --- Adjournment (4:47 p.m.)

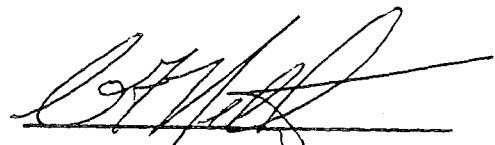
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15 --- CERTIFIED CORRECT:


C.F. Nethercut, CVR

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