

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 28 (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.

VOLUME: 179 (Pages 44350-44533)

HELD AT: Oakville, Ontario

DATE: October 17, 1988

OFFICIAL REPORTERS

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Toronto, Ontario

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BEFORE: H. H. Lancaster, Q.C. - Chairman

Dr. D.J. Kingham - Member



Nethercut & Co. Ltd.

Toronto, Ontario

Hearing conducted at The Oakville
Granary Commercial Centre, 105 Robinson
Street, Oakville, Ontario, on Monday,
October 17, 1988

VOLUME 179

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 Limited



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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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Per: C. F. Nethercut, C.V.R.



1 --- Upon commencing at 9:30 a.m.

2 MR. LANCASTER: Good morning. Thank
3 you. Please be seated.

4 DR. KINGHAM: Just before we get
5 underway, do we know if Ms Vigod is here? Has anyone
6 seen her this morning?

7 MR. TIDBALL: She takes the GO train and
8 it is supposed to get in about 8:20 and I assume she
9 would have grabbed a taxi.

10 DR. KINGHAM: While we are waiting,
11 there is something that was raised actually in response
12 to a question of mine last week, Mr. Lederer, and I
13 just want to make sure I have understood what you were
14 trying to tell us. This has to do with a combination
15 of Section 2 of the Environmental Assessment Act and
16 Section 5(3)(d) of the Environmental Assessment Act.
17 Section 2 says:

18 "The purpose of this act is the
19 betterment of the people of the whole...
20 of Ontario with respect to the wise
21 management in Ontario of the
22 environment."

23 And leaving out a few sections there. Section 5(3)(d)
24 calls for in an environmental assessment:

25 "... an evaluation of the advantages and



1 disadvantages to the environment of the
2 alternatives to the undertaking."

3 That is the last line of that section, 5(3)(d). What
4 we touched on briefly last week was the extent to which
5 the Environmental Assessment documents and the
6 witnesses which you had brought forward had given us a
7 clear understanding of the advantages and disadvantages
8 of alternatives to the undertaking, advantages and
9 disadvantages, for example, of composting waste or
10 advantages and disadvantages of source separation in
11 apartment buildings or commercial installations, an
12 understanding of the proportion of waste streams that
13 are household or domestic versus commercial and
14 business. We touched on these things through the
15 course of the hearing and I'm wondering if you will be
16 offering before you complete argument this morning some
17 direction as to where in the evidentiary record we
18 should find a description of the Region's work on the
19 advantages and disadvantages of the alternatives to the
20 undertaking.

21 MR. LEDERER: If you could give me a
22 moment, Dr. Kingham, my notes are full.

23 DR. KINGHAM: Serious technical
24 problems.

25 MR. LEDERER: Yes. I talk for a living,



1 I don't work binders, sir. I don't propose to offer
2 you any more evidence with respect to that question.
3 With respect, the answer to the proposition you put to
4 me it seems to me develops in two ways. First of all,
5 I think it is important to consider what this
6 Environmental Assessment deals with, and for that you
7 need to go to the Environmental Protection Act and not
8 to the Environmental Assessment Act. There you will
9 see a distinction within the definitions between
10 something called a waste management system and
11 something called a waste management site or waste
12 disposal site which I think is the actual terminology.
13 What we are applying for here is a waste disposal site.
14 We are not applying for any other part of a waste
15 management system. In my respectful submission the
16 first thing I have to do is show you therefore that a
17 site of this type is needed. If it is needed, in the
18 absence of there being any realistic alternative, then,
19 in my respectful submission, I have done what I have to
20 do.

21 What the Board has said in its past
22 rulings in this area is that it is necessary to look at
23 what is reasonable, and for one example I would point
24 to the first of the two Hydro, Hydro Southwestern
25 cases, and in my respectful submission to compel me now



1 to examine every possible alternative in the sense you
2 now put it to me, other recipients of the waste stream,
3 is to require me not to do an environmental assessment
4 with respect to a waste disposal site but rather with
5 respect to a waste disposal system and I must then do
6 everything. It is not enough to come here just with a
7 site because I would have to show you composting and
8 every other aspect I have looked at. In my respectful
9 submission, sir, that is not reasonable. So, it is my
10 respectful submission that what I need to do is
11 demonstrate within the bounds of reasonableness,
12 whatever they may be, that what I am proposing here is
13 necessary and that the other examples of it have been
14 looked at.

15 If you are looking for the balancing of
16 the different alternatives, then, in my respectful
17 submission, it may be necessary to look at the other
18 sites that have been examined here. Somebody will
19 stand up and say those aren't alternatives but
20 alternative methods with respect -- within the terms of
21 the Environmental Assessment Act, and I suppose that
22 one would have to argue that that term is a broader
23 term and means something wider than the limits of
24 alternatives and alternative methods as you find that
25 earlier in the section. However, in my respectful



1 submission you are simply asking for too much and we
2 won't be here as I said when you posed this to me last
3 week for a year and a half but much longer.

4 DR. KINGHAM: Doesn't that depend upon
5 the level of detail to which you pursue alternatives to
6 the undertaking? As we understand it, and indeed the
7 second statement in the Notice of Motion says that this
8 deals with Section 12, sub (2) of the Environmental
9 Assessment Act which deals with this very hearing in
10 fact and deals with the acceptance or amendment and
11 acceptance of the Environmental Assessment. As I read
12 it, that acceptance of the Environmental Assessment
13 throws itself back to the assessment which is to
14 contain an evaluation of the advantages and
15 disadvantages of the alternatives to the undertaking.
16 That presumably should have come out in the evidence of
17 the Phase 2, Stage 1 Waste Needs & Systems Analysis
18 which I see you have put up. We recall having heard
19 some evidence, in particular from Miss Henderson and
20 Mr. Rinaldo on that subject, and we asked them
21 questions at the time and have asked a number of
22 witnesses since then about the extent to which
23 recycling and other means of waste reduction, that is
24 in the sense of the waste stream that would finally go
25 to the landfill, have been dealt with in the



1 Environmental Assessment and we have only that
2 evidentiary record up until now.

3 MR. LEDERER: That and the evidence of
4 Mr. Watson and all the written material you have with
5 respect to Stage 1. The Stage 1 Waste Needs & Systems
6 Analysis is the substance of that evidence and I don't
7 think there is more there.

8 DR. KINGHAM: That is your answer,
9 Mr. Watson to the extent he dealt with the waste needs
10 question in terms of quality, that was his approach and
11 Miss Henderson to the extent that she dealt with the
12 fact there had been something additional.

13 MR. LEDERER: I could say the biggest
14 disadvantage to all of these alternatives systems is
15 that they can't take very much of the waste and perhaps
16 I could put it in those terms, and at that point the
17 need for a landfill becomes self-evident.

18 DR. KINGHAM: You may recall through the
19 evidence as well we have asked questions of various
20 witnesses as to whether or not they understand what the
21 proportions of waste in the waste stream is, and for
22 you to make the statement you just made, which I think
23 is based on what Mr. Watson said as well as what
24 Miss Henderson said, implies an understanding as to
25 how much waste for example comes from households and



1 what percentage of that waste from households in Halton
2 is compostable and how much is garden clippings and so
3 on.

4 MR. LEDERER: With respect, it doesn't
5 necessarily say that. First of all you have the
6 evidence of everybody here and happily to this point
7 that kind of record doesn't exist, and it's not that it
8 doesn't exist in Halton but it does not exist virtually
9 anywhere, and that was Mr. Stamm's position. Beyond
10 that, regardless of how much waste there is to put into
11 those facilities, if the capacity is not available and
12 cannot be reasonably made available, then it doesn't
13 matter how much is there and for example with respect
14 to recycling and presumably one of the things we don't
15 know is how much is out there which is available to be
16 recycled, but you have before you evidence as to what
17 has been planned for in this area in a variety of
18 communities.

19 Mr. Watson suggested, and if you will
20 forgive me I am going from memory, but something like
21 five per cent and going to 6.9 per cent and increasing
22 at 0.3 per cent per year to 15.9 per cent of the last
23 full year of the projection. You have evidence from
24 Peel that they are planning for 22 per cent and from
25 one other community I believe and I have forgotten has



1 23 per cent and Mr. Mereu telling you that 12 per cent
2 is what is realistic, so the planning in this area
3 isn't for the moment being done with respect to how
4 much is out there that can be recycled, the planning is
5 being done for what capacity can we realistically
6 handle and can we anticipate that our communities will
7 respond to given there is no long history of this kind
8 of activity in this community. With the greatest of
9 respect that is just as valid an approach in the
10 present -- if you will forgive me -- the present waste
11 disposal environment than suggesting if we knew we had
12 how much then we could take care of it in this way. In
13 my respectful submission that would move me back into
14 having to deal with this on the basis of a waste
15 disposal system. The simplest proposition I can put to
16 you, and there is more evidence and I don't want to in
17 any sense belittle its value, but the simplest piece of
18 evidence you have in this area is Mr. Sobanski telling
19 you that 95 per cent of all waste in this province goes
20 to landfill and all the other evidence which
21 demonstrates the technologies available simply aren't
22 on stream and in many respects aren't acceptable and
23 that's what causes the problem.

24 Our biggest problem or one of the
25 biggest problems in this hearing is not that we are



1 sending too much to landfill, it's the proposition of
2 the City of Burlington that we aren't sending enough
3 because, after all, why should we plan for an EFW with
4 all the difficulties of having that kind of system
5 approved? With the greatest of respect, you have asked
6 us to do more in the context of this hearing which is
7 the implication of your question with respect, but to
8 ask us to have done more, in my respectful submission,
9 is to ask us to do a complete waste management plan and
10 begin to broaden out the sides of the triangle, and you
11 will recall that discussion, and we are no longer
12 dealing on the horizontal plane with only geographic
13 alternatives but we would be at Phase 2, Stage 1 with a
14 broader triangle encompassing all alternatives and
15 investigating how much waste there is and their
16 capacity to accept it all the way to the end so we
17 would be looking at everything.

18 Again at the risk of repeating myself,
19 if this process of study is going to be realistic and
20 reasonable, if it will have some reasonable, and
21 frankly, sir, some reasonable economic limitation to
22 the studies that have to be ongoing, then at some point
23 at the high end and with relatively little detail we
24 have to be prepared to accept that choices are made.
25 If we can't make choices on reasonably small amounts of



1 detail, and gross macro style choices at the upper end
2 of the process, then this process doesn't have much
3 meaning and we will be here forever. I suppose that
4 that is the most important part of your question. We
5 have to be able to make gross decisions at the top end
6 with relatively little detail.

7 DR. KINGHAM: And we have to be able to
8 understand how and why you have made those gross,
9 decisions and I think what you have been telling us is
10 a repeat of what you told us before.

11 MR. LEDERER: I don't know if I have
12 ever said the last part before.

13 DR. KINGHAM: Essentially once we have
14 decided we needed some landfill then it devolved to an
15 issue of acceptability of landfill and how much. I
16 guess it remains for us to consider the evidence as to
17 whether the vigour with which you pursued at the first
18 stages alternatives to the undertaking before arriving
19 at the conclusion that none of them were acceptable,
20 because the evidence suggests to us that it was a
21 serious and deliberate consideration of alternatives or
22 did the conclusion arrive fairly quickly that we need a
23 landfill so let's just get on with the landfill review.

24 MR. LEDERER: With respect, that
25 belittles the efforts of the consultants and the Region



1 of Halton itself. First of all no one has rejected the
2 other alternatives. They are all part of the process.
3 Again the toughest thing we have had to meet here is
4 the City of Burlington's proposition that we are being
5 too easy in bringing Energy from Waste into our system
6 and the criticism of the City of Burlington is that we
7 have too much recycling and we should be at 12 per cent
8 and not 15.9 per cent. No one has said anything with
9 respect to composting, and my understanding is that
10 there isn't the capacity to take a lot with respect to
11 composting. You know, however, there is a sludge
12 system already at work in Milton and with the greatest
13 of respect to say it was all done so easily and say
14 these things were rejected, with great respect is not
15 responsive to what was done here and again with respect
16 it doesn't demonstrate, and I'm a bit nervous now but
17 doesn't show a complete misunderstanding of what has
18 happened. There has been a very careful analysis and a
19 breakdown into a variety of systems and all of those
20 systems have landfill, and the first proposition is
21 that we have 75 per cent going to Energy from Waste
22 which means obviously a much smaller landfill than the
23 one that is now proposed and it was only later in the
24 study that it became evident we had to go to the
25 landfill size now proposed. The effort was to move



1 away from landfill and not an easy task of let's get a
2 landfill. You must be aware that everybody in this
3 province is now under pressure with respect to waste
4 disposal and Halton is no different than anyone else
5 and has been at this since the mid-1970's. I'm not
6 sure if it's in evidence but it is a matter of public
7 record, but when the Environmental Assessment Act was
8 made to apply to municipalities, the Region already had
9 an approval from the Ontario Municipal Board and it has
10 been referred to and other municipalities were
11 grandfathered out but this one wasn't. When you are
12 put in that position you are way behind in your
13 planning.

14 With respect, from the implication of
15 your question I understand it to be that we didn't look
16 at this carefully enough or maybe we didn't and we had
17 better think of it, but with the greatest of respect in
18 my view that doesn't show an understanding of what has
19 happened here. There has been a very comprehensive
20 effort to look at all the options and to put together
21 the reasonable percentages and nothing has been
22 rejected, none of the components of the system have
23 been rejected to the best of my recollection, if you
24 look at the Stage 1 process.

25 To repeat myself, if we can't make these



1 kind of macro or gross decisions at the top end, if
2 everything must be studied in detail down here, then
3 this is a conceptualization of the process and it
4 doesn't work at all because the process becomes closer
5 and closer to a rectangle and that may be where you end
6 up, but that means we have to study everything to the
7 end before we make a decision and that in my respectful
8 submission isn't the planning process any longer, but a
9 full-blown technical examination of everything at the
10 Environmental Protection Act phase and then the
11 distinction as Mr. Clarke depicts it between the
12 Environmental Protection Act and the Environmental
13 Assessment Act which says planning legislation on top
14 of a piece of technical legislation doesn't work.

15 DR. KINGHAM: Does Halton have a waste
16 management systems environmental assessment underway?

17 MR. LEDERER: No, because Mr. Clarke
18 told you, at the time this was done there was no such
19 concept around and Mr. Clarke has told you that the
20 work done here by the Region has now become the model
21 for that kind of study and so you have it in effect but
22 not by that name because it didn't exist at the time
23 this was undertaken. In effect you have a waste
24 management master plan of a type and on top of this
25 landfill Environmental Assessment which depicts the



1 full system of landfill, Energy from Waste, recycling
2 and I believe four per cent composting, and that is a
3 system which would now be recognized as a system, but
4 six years ago, that was when we began to understand the
5 terminology. We would be better off if we could start
6 off today and do a systems assessment and get that
7 approved and then go through the longer detailed study
8 because then the top end gross decisions, and you might
9 be able to make them, and I haven't thought about this,
10 but you could make them subject to a decision of the
11 Board but that didn't exist at the time.

12 DR. KINGHAM: I appreciate what you are
13 saying but you must appreciate there are other
14 communities that are starting today and they might
15 appreciate what you are saying.

16 MR. LEDERER: Absolutely. I have a very
17 narrow interest. I want to have a landfill approved
18 and as a subsidiary point I would like to have the
19 system evolve in an appropriate fashion, but here I
20 represent the Region of Halton.

21 DR. KINGHAM: I understand.

22 MR. LANCASTER: We have the two
23 interests in mind.

24 MR. LEDERER: I understand.

25 ARGUMENT BY MR. LEDERER, (continued):



1 Mr. Chairman, as I indicated at the end
2 of the day last week, what I would propose to do this
3 morning, and I hope not to be too long, and I hope I'm
4 not asked what that means, but I would like to say only
5 a very few words with respect to land use planning
6 impacts, some discussion of the process essentially
7 centred around the evidence of Mr. MacNaughton and then
8 to review with you the hearings that are before you and
9 the approvals which we seek.

10 Land use planning or the impact depicted
11 by that field of study was an integral part of the site
12 selection process from the beginning. In Phase 2A
13 impacts were assigned to areas in and near to urban
14 areas and areas with high impacts were rejected from
15 further consideration. In Phase 2, Stage 2B a land use
16 survey was conducted in and within a half a mile of the
17 candidate areas and impacts for each area were
18 determined based on the numbers, types and distribution
19 of land and land uses within those candidate areas and
20 study areas.

21 In Phase 2, Stage 2C land use
22 information formed part of the input in reducing
23 candidate sites to site plan areas and was then applied
24 and conducted in detailed site comparisons. An update
25 of land use information with respect to sites D and F



1 was conducted in 1986 to evaluate the need for any
2 changes to the impacts that had been identified in
3 Stage 2C and to provide input to the comparative
4 analysis document which is now Exhibit H-14.

5 Potential land use impacts from landfill
6 were found by Mr. Walker to be greater at Site D than
7 at Site F. Site D was found to have four residential
8 uses. Could I have a moment?

9 MR. LANCASTER: Yes.

10 MR. LEDERER: Site D was found to have
11 four residential uses and three businesses that would
12 be displaced as well as a number of nearby residential
13 and other uses that would potentially be affected by
14 landfill. On the other hand Site F has no on-site
15 residences or businesses and off-site uses that would
16 be potentially affected tend to be fewer in number and
17 further away than at D. On this basis it was
18 determined that Site F was preferable to Site D as a
19 sanitary landfill site and this finding was utilized as
20 part of the comparative study within the social impact
21 category of factors.

22 Now, you have the views of I think it's
23 fair to say a large number of land use planners with
24 respect to these issues. I don't propose to review
25 them with you. I anticipate that my friends will each



1 wish to refer to the consultants or experts that they
2 have called to give evidence before you. With respect,
3 however, very little of this with perhaps the exception
4 of the view of Mr. Stagl or Mr. Kauffman differ from
5 that of Mr. Walker and from that point of view Site F
6 is the preferred site.

7 I do think there is one important factor
8 outside the parameters of the study that ought to be
9 raised and ought to be part of this Board's
10 consideration. Mr. Walker has suggested to you that
11 the role of a land use planner has been reduced in
12 scope at this hearing and that expert evidence has been
13 brought forward in many areas which a planner would
14 traditionally have given a judgment on based on his
15 experience. Mr. Walker has said that the use of the
16 land use planner is indeed proscribed by the nature of
17 this process but that this has to be seen as inevitable
18 when a higher order of planning process such as the one
19 put before you at this hearing is taking place.

20 Essentially it is Mr. Walker's view that
21 the Environmental Assessment Act brings into play a
22 more comprehensive planning process than that which we
23 have been used to in simple land use planning and where
24 the land use planner might have in other circumstances
25 offered his opinion with respect to such matters as



1 noise or traffic, that now within the context of this
2 study we look to individual experts in each of those
3 areas to give the Board their advice and consideration.
4 In my respectful submission that is a matter which
5 bears some consideration by this Board because, in the
6 overall context it tends, as Mr. Walker has suggested,
7 to lower the role of simple land use planning as we
8 have understood it.

9 In this process it is appropriate for
10 land use planning to have a relatively narrow context
11 and larger planning function and to proceed in a way
12 which reflects the level and variety of available
13 analysis and information. Now, if I could turn to the
14 process. I hope to be relatively brief. This is the
15 environmental assessment process as adopted by the
16 Region of Halton and commented on by Roger Clarke of
17 the Ministry of the Environment and Ian MacNaughton, a
18 land use planner, called on behalf of the City of
19 Burlington.

20 Generally the process adopted by the
21 Region through its consultants, Walker, Wright, Young,
22 consisted of a winnowing of the alternatives available
23 for landfill and at each stage of the study there was a
24 reduction in the lands then considered appropriate and
25 an increase in the detail of the studies undertaken.



1 Ultimately at the end of Stage 2, Phase 2B, six
2 candidate sites remained and with some refinements
3 these six locations were evaluated and ranked at the
4 Phase 2, Stage 2C level. The Phase 2, Stage 2C level
5 ranked Site F as the most preferred site and Site D as
6 the second preferred site. Counsel for the Region of
7 Halton determined to proceed to this Board with two
8 sites. Mr. Roger Clarke was called on behalf of the
9 Ministry of the Environment and he was involved in the
10 government review of this assessment. Mr. Clarke
11 observed that the process adopted by the Regional
12 Municipality of Halton had been instructive to many
13 people involved in this field. Some aspects of this
14 first effort, an environmental assessment for a
15 municipal landfill have become the model for waste
16 master management plans. I suppose that's the fifth
17 time I have said that since I began this.

18 At the time of the first government
19 review the Minister had some difficulty -- the
20 Ministry, excuse me -- had some difficulty in
21 understanding the logic and the decision process
22 employed by the Region. In particular, at the time of
23 the review the Ministry was concerned about the number
24 of comments and observations made by several of the
25 review agencies. As part of the landfill technical



1 phase of this study, the part normally reserved for the
2 Environmental Protection Act evaluation, further work
3 was incorporated into the Environmental Assessment.
4 With this work in place at the time of the
5 supplementary review, the Ministry endorsed the work of
6 the Region of Halton and Mr. Clarke has suggested it is
7 appropriate for this Board to accept the Environmental
8 Assessment as one that conforms to the requirements of
9 the Environmental Assessment Act.

10 The other expert testimony dealing with
11 this aspect of the proceedings before the Board is that
12 of Mr. MacNaughton. Mr. MacNaughton's observations do
13 not deal with the environmental assessment process
14 directly but refer only to the comparative analysis of
15 the two sites now before this Board. The substance of
16 his work is in B-901 which is his report and which has
17 the title "Comparative Analysis of Alternative Sites
18 for Sanitary Landfilling in the Regional Municipality
19 of Halton." Generally Mr. MacNaughton suggests that
20 his work does two things. It looks at the comparison
21 of the two sites from a different perspective and is a
22 wrestling with how to order the information, and that
23 is in the transcript at page 38412. There is in my
24 submission more than one way of undertaking this kind
25 of comparison or of making this sort of decision and



1 Mr. MacNaughton agrees with that at page 38413.

2 Mr. Clarke's evidence confirms this and
3 what the Ministry requires is a rational, logical
4 approach. This doesn't suggest there is but one
5 rational or logical approach. In this context
6 Mr. MacNaughton may have a different perspective, but
7 that does not invalidate the approach undertaken by the
8 study team brought up by Walker, Wright, Young.

9 Mr. MacNaughton notes:

10 "Overall the regional consultants have
11 set up a method whereby they would reach
12 a recommendation. I agree with much of
13 what has been done and have found myself
14 to be nodding in agreement as I listened
15 to Mr. Walker's evidence."

16 Mr. MacNaughton concedes that Mr. Walker's grasp of the
17 evidence may be better than his own as a result of
18 Mr. Walker's longer involvement in the project and that
19 is at page 38418.

20 It is my respectful submission, given
21 this view, that Mr. MacNaughton may bring to this
22 analysis a perspective which he prefers. The Region's
23 approach may be different, but it is still open and
24 appropriate for the Board to accept the Region's
25 approach as legitimate, even if it were to prefer that



1 of Mr. MacNaughton.

2 With respect to the ordering of the
3 criteria used to evaluate and undertake this
4 comparison, Mr. MacNaughton indicates he agrees with
5 the order or ranking and it is one which he would
6 independently adopt, and that is in the transcript at
7 pages 38064 and 38423. The Region's work with respect
8 to each of the five criteria reviewed by
9 Mr. MacNaughton -- were reviewed by Mr. MacNaughton in
10 five areas and you will recall that they are listed in
11 Exhibit B-901. The first one is public health and
12 safety.

13 This criterion is made of three factors;
14 hydrogeology, traffic safety and land use conflict:
15 vermin. The team of consultants retained by the City
16 of Burlington analyzed the Region's work and with
17 respect to traffic safety this work was undertaken by
18 Mr. Blay. On the basis of this work, that team
19 accepted that this factor does not indicate any
20 substantive preference between these two sites and that
21 is consistent with the Region's position as outlined in
22 the evidence of Mr. McLeod. You will see that referred
23 to in Mr. MacNaughton's cross-examination at pages
24 38519 to 38522.

25 Land use conflict: vermin concerns the



1 potential hazard of birds to aircraft. Again after a
2 review and additional work for the City of Burlington
3 through Mr. MacNaughton, there is a conclusion arrived
4 at which is consistent with the conclusion arrived at
5 by the Region. This is not a factor which is of
6 significance in conducting a comparative study and all
7 of that is in the transcript at 38526. It should not
8 be a deciding factor in site selection, and that is at
9 page 38061.

10 The third factor making up the public
11 health and safety criterion is hydrogeology. It is the
12 crucial consideration and the most important factor.
13 Mr. MacNaughton says that or agrees with it at pages
14 38031 and 38527. This is a principle which is also
15 recognized by the Region in its work and that is at
16 transcript page 38528. Within his report
17 Mr. MacNaughton refers only to the conclusions arrived
18 at by Conestoga-Rovers Associates and he has no
19 particular qualification to independently assess this
20 work and this is all at page 38536. He concedes that
21 it is a weakness in his report, that he considered only
22 Burlington's contribution without any effort to take
23 into account the hydrogeological evidence produced by
24 the Town of Milton. That's at page 38544. It is a
25 skewed analysis. In the end, Mr. MacNaughton makes no



1 determination as to which site is preferred on this
2 issue. He concedes that he does not have a sufficient
3 grasp of all the complexities given the evidence that
4 has gone in. That's at page 38033. He is leaving this
5 question to the Board. Accordingly, in my submission
6 with respect to this first criterion, Mr. MacNaughton
7 does not advance or amend the comparative analysis.
8 Either he agrees with the Region or he leaves the
9 matter to the Board.

10 The second of the five criteria is
11 natural environment and this is made up of three
12 factors; biophysical, agricultural and mineral
13 resources. Mr. MacNaughton indicates he respects the
14 work of Dr. Mackintosh, and that's at page 38742. As I
15 submitted to you last week, Mr. Hoffman's work does not
16 detract from but rather confirms the work of
17 Dr. Mackintosh. Mr. MacNaughton accepts and respects
18 the views of Mr. Kitchen with respect to the
19 biophysical resource and he has respect for Mr.
20 Kitchen's understanding of his area of expertise. As I
21 submitted last week, Mr. Kitchen does not differ from
22 and accepts the majority of the conclusions of Miss
23 Hellas. Accordingly, in terms of the substance of the
24 information brought before the Board with respect to
25 these two factors, Mr. MacNaughton accepts views which



1 are consistent with those of the Region.

2 Now, he differs from Mr. Walker's
3 approach by suggesting that the biophysical component
4 should be given precedence over the agricultural
5 component. Mr. Walker has suggested that a
6 consideration of one cancels out a consideration of the
7 other. It is my respectful submission that
8 Mr. Walker's approach is rational and logical and meets
9 the requirements of an Environmental Assessment and
10 should be accepted by the Board. The fact is that
11 there is another view that has value of its own simply
12 confirm there may be two approaches to the same
13 question. In any event, it is my submission to this
14 Board that Mr. Walker's view is the preferable view.
15 Both are valuable land uses reflective of the areas in
16 which these proposed sites are located and much like
17 Mr. Stevens' treatment of after-use they are unique to
18 their own location. Mr. Kitchen who you will recall I
19 said a few moments ago Mr. MacNaughton respects
20 confirms that approach.

21 "Q. In fact they should receive or
22 natural lands, I should say, should
23 receive the same protection as
24 agricultural lands?"

25 and he answered:



1 "A. I would think so, yes."

2 That's at page 36060 of the transcript.

3 The third factor within the natural
4 environment criterion are the mineral resources and
5 Mr. MacNaughton is of the view that the mineral
6 aggregate resource policy should receive the same
7 treatment as the Food Land Guidelines and the aggregate
8 resource should receive a consideration which was not
9 present in the Region's work. Like the Food Land
10 Guidelines the mineral aggregate resource policy does
11 not put a freeze on the development of lands in which
12 shale is present. In my submission the importance of
13 this resource is in its economic value. If it's not
14 economic to extract the material, then its value is
15 limited. The Region did consider this resource.
16 Miss Hellas considered it at the 2B level of study and
17 Mr. Watson undertook an economic analysis as part of
18 his landfill technical studies work. His finding is
19 that it would be uneconomic to extract the shale at
20 Site F. Accordingly in my submission this is reason
21 enough to permit the development of a landfill in the
22 location of this resource.

23 As with the agricultural resource, there
24 are competing demands for this land. The Ministry of
25 Natural Resources which has responsibility for



1 overseeing the protection of the aggregate resource has
2 agreed that Site F can be developed for landfill
3 subject to certain conditions, and these conditions
4 have been put before the Board and I'm sure
5 Ms Mansfield will review them with you and they are
6 agreeable to the Region and with great respect with
7 those conditions in place the concerns of
8 Mr. MacNaughton have been appropriately addressed.

9 Ultimately Mr. MacNaughton notes that
10 with respect to the factor as a whole that in the end
11 this particular factor was being pointed out -- I
12 apologize -- he was discussing only the mineral
13 aggregate resource:

14 "In the end this particular factor was
15 being pointed out, I think it was
16 missed. I believe it should be in the
17 natural environment category and I think
18 it changes the weighting or the
19 statement one gives in the natural
20 environment category. That change
21 could have relevance in the final
22 decision. I'm not saying absolutely it
23 does, it depends upon what happens in
24 some of the other categories,
25 particularly health and public safety.



1 I saw it as a case where the regional
2 consultants had done a comprehensive job
3 and reached a conclusion. They
4 recommended Site F by a nose. I looked
5 at what they had done, I had the benefit
6 of looking after. I, in my opinion,
7 would have added some different
8 considerations which I believe I can say
9 fairly should have been in the work
10 carried out by the Region. This is a
11 good example."

12 That is page 38083 and Mr. MacNaughton concedes the
13 Regional consultants have done a comprehensive job and,
14 most importantly, he has the benefit of hindsight.
15 Health and public safety remain the principal and
16 likely the determining feature.

17 With respect to the third category,
18 social environment, Mr. MacNaughton has suggested he
19 would prefer to see some amendment to the constituents
20 of the criterion. He suggests that land use
21 compatibility remains as a separate factor but the
22 factors of community facilities, visual impact and
23 nuisance factors which would include dust, odour,
24 litter and noise make up sub-factors within land use
25 compatibility. He adds to this a new sub-factor,



1 alternative land use. This appears to be a kind of
2 opportunity cost and that is the lost opportunity of
3 being able to develop Site F lands for industrial
4 purposes.

5 He also adds an additional factor,
6 landfill capacity. Despite these changes his ultimate
7 conclusion is consistent with that of the Region. The
8 spread between Site D and Site F in the social
9 environment category is major, and that's at page
10 38639.

11 With respect to the factors making up
12 the criteria the first is population impacts on site.
13 The population impact at Site D is a major
14 consideration. That's at transcript reference 38095
15 and 38106. This is not inconsistent with the
16 conclusion of the Region found in H-14, the comparative
17 study.

18 Under land use compatibility, the
19 landfill proposal is acceptable at either site based on
20 the proposed mitigative measures. That is consistent
21 with the Region's conclusion and Mr. MacNaughton
22 concedes that at transcript page 38645.

23 With respect to the sub-factor community
24 facilities, he accepts the conclusion of the Region's
25 consultants that there is a greater impact on community



1 facilities at Site F than at Site D. You can find that
2 at transcript page 38646 and Exhibit B-901, page 21.

3 With respect to the sub-factor nuisance
4 factors, he has concluded that the Region's studies are
5 sufficient and has come to the same conclusion as the
6 Region that the potential impacts of dust, odour,
7 litter and noise can be mitigated at both sites to fall
8 within the acceptable levels as defined by the Ministry
9 of the Environment. That's at page 38649 and also at
10 page 21 of B-901.

11 With respect to the sub-factor visual,
12 he says that:

13 "It is, therefore, difficult to compare
14 and rank the sites. Although the
15 precise effects will be different at
16 both sites, landfilling at either site
17 will result in a visual impact."

18 This too is not inconsistent with the
19 Region's finding and that is at transcript reference
20 38651 and at page 22 of Exhibit B-901.

21 With respect to his added sub-factor
22 alternative land use, this is a sub-factor which was
23 considered by the Region at the Phase 2, Stage 2B level
24 and was carried over as an objective for the Stage 2C
25 level of study and that's at page 22 of Exhibit B-901.



1 Of course over the course of any environmental
2 assessment the factors and criteria will evolve and in
3 this case this sub-factor was dropped by the Region.
4 While Mr. MacNaughton suggests that it should have been
5 carried on, the fact is that he suggests that not much
6 weight should be given to it. It wouldn't turn a major
7 difference into something substantially less, he says,
8 and that was at page 38659. In my respectful
9 submission if you take into account the fact that he
10 would not consider it in any great depth, doesn't
11 really change the assessment and it's not really
12 inconsistent with respect to what the Region has done.

13 Finally, with respect to his additional
14 factor, which is landfill capacity, he indicates he has
15 not put weight on this comparison on the basis of that
16 factor. It was not a constituent factor in the
17 conclusion which he arrived at. That's transcript page
18 38641 and 38642. Again in my submission, overall
19 Mr. MacNaughton's finding with respect to this
20 criterion, social environment, is consistent with the
21 Region's conclusion and in fact his analysis really
22 isn't that different when you take into account the
23 fact that landfill capacity is not used and alternative
24 land use is given not much weight.

25 The fourth of the five factors is



1 cultural environment. There are two factors which are
2 the component parts of this criteria, heritage features
3 and secondly archaeology. No one has added to the
4 evidence produced by the Region with respect to these
5 factors. Mr. MacNaughton's principal concern is that
6 he does not believe that in this case it is possible
7 for the cultural environment to be the deciding factor.
8 In Mr. Walker's analysis Site F is preferred under the
9 public health and safety criteria and that preference
10 is strengthened as a result of the preference for Site
11 F under the social category. The favourable ranking of
12 Site F under the cultural criteria simply adds further
13 weight, and that was reviewed with Mr. MacNaughton at
14 page 38551. This, Mr. MacNaughton agrees, does not
15 offend the principle that the cultural environment
16 should not be the deciding factor. That's at page
17 38559 and 38787. So, nothing Mr. Walker has done is
18 inconsistent or offends Mr. MacNaughton's primary
19 concern and accordingly yet again he is consistent with
20 the Region.

21 Finally, there is the matter of costs.
22 Mr. MacNaughton suggests, and this is a quote from page
23 38032:

24 "If there is a major spread in costs, if
25 there is no clear preference in the



1 public health and safety and based on my
2 evidence there is not a clear preference
3 in the natural and social, then I
4 believe the major spread in cost can
5 drive the decision."

6 The converse is that costs drive the issue and all
7 other criteria are equal or relatively equal. In this
8 case he suggests that the cost of operating at Site F
9 is considerably more expensive than operating at Site
10 D. In making this assumption he accepts the evidence
11 of, and this is a quotation:

12 "... the representatives of CRA with
13 respect to the need for the cost of a
14 liner at Site F."

15 And he also accepts the evidence of Mr. Kitchen with
16 respect to the cost of the after-use program at Site F
17 and the haul cost differences arrived at by Mr. Blay
18 and the appraisal costs outlined by Mr. O'Brien. If
19 any of these factors are rejected by the Board, I think
20 they will have an impact on his conclusion. In
21 particular, if no liner is found to be required at Site
22 F, then the cost differential as I reviewed with you on
23 Tuesday is significantly reduced. The issue becomes
24 whether or not the difference remains a major one as
25 suggested by Mr. MacNaughton.



1 Again as I have already submitted to
2 you, over the life of a 20-year site a difference of
3 for example \$7 million is not a significant difference.
4 In my submission, Mr. Chairman and Dr. Kingham, if all
5 else is truly equal, then perhaps costs do carry the
6 day and that may be a legitimate point in the abstract
7 but, in reality, it is very unlikely and in fact I
8 surmise that no two sites are likely to be equal, in
9 every other regard. There is in fact not a party
10 appearing before you who is going to submit that these
11 two sites are equal with respect to all other issues.

12 Finally, after he has completed his
13 review of these five criteria Mr. MacNaughton puts
14 forward a series of conclusions or what he calls cases
15 which he proposes are a kind of map outlining the route
16 to the Board's conclusion, depending primarily on
17 whether or not a liner is required at Site F. In my
18 submission the problem with this kind of approach is
19 that it tends to set up narrow parameters and drive the
20 decision in a particular direction.

21 In my respectful submission the Board
22 needs to assess each of these criteria on its own and
23 to determine the relative weight and then conduct its
24 own assessment and not structured artificially by this
25 kind of decision design. By way of example, Mr.



1 Hodgson has made it quite clear to the Board that it is
2 the Region's position that there is no liner required
3 at Site F. However, just as an example of the kind of
4 problem that is created by what Mr. MacNaughton
5 proposes, the fact is that it is open to the Board to
6 find that a liner is required -- may not be required to
7 make the site safe but a liner may enhance the safety
8 of the site and to a degree which makes the cost,
9 reasonable and worthwhile.

10 In my submission that is not an option
11 recognized in Mr. MacNaughton's analysis. His cases
12 only deal with the notion that if a liner is required
13 it can only be required to bring the site to some
14 minimum standard of safety. His analysis does not
15 foresee that some technology could move the site beyond
16 the minimum level to something which is economically
17 feasible and a standard which is higher but reasonably
18 achievable. These case studies are created around a
19 fixed balancing of the other features and in my
20 respectful submission the decision cannot be that
21 simple and cannot be reduced to such an easy solution
22 in the face of all of the evidence before this Board.

23 That concludes what I want to say with
24 respect to process.

25 DR. KINGHAM: Before you move on to



1 another subject, this question I don't think will
2 surprise you, but we recall from the comparative
3 analysis document that your consultant, your chief
4 consultant went back to each of the subcontractors and
5 said "Now, consider Sites D and F on the basis of an
6 extensively engineered system," but we discover in the
7 response to submissions, the compilation of submissions
8 and responses, that much earlier in the process the
9 consultant had said or whoever wrote the response had
10 said that in any event any site chosen will likely have
11 to be based on extensive engineering. The question is
12 where would we look in the evidentiary record to find a
13 clue about what happened to the site selection process
14 if that statement were applied to Sites A, B, C and E
15 before you got down to the comparative analysis. Do
16 you understand what I'm saying?

17 MR. LEDERER: No, sir.

18 DR. KINGHAM: At some stage your
19 consultants told us that they reasoned that extensive
20 engineering would be called into play at any landfill
21 site.

22 MR. LEDERER: Yes, sir.

23 DR. KINGHAM: The stage at which you
24 tell us the selection of the final two sites was done
25 was the stage at which you asked your consultants to



1 consider extensive engineering?

2 MR. LEDERER: Yes, sir.

3 DR. KINGHAM: Is there anything in the
4 record about the effect that kind of evaluation would
5 have had on the consideration of the four sites that
6 were rejected earlier in the process?

7 MR. LEDERER: I don't think there is and
8 in my respectful submission it wouldn't be appropriate
9 because yet again you get to the issue of how much
10 detail do you have to look at. If you want to start
11 considering -- if you say you have to consider what --
12 consider that engineering is a factor which could have
13 some impact on the sites, then clearly you must look at
14 the sites to see if there is engineering which is
15 realistic and economic. The moment you do that then
16 you have to go to a whole new level of study and have
17 to have the kind of study you had at the landfill
18 technical stage and drill the holes in a pattern and do
19 that kind of analysis and in effect take the study into
20 the phase -- into the landfill technical level of
21 study. In my respectful submission what you are doing
22 again is broadening out the level of detail and
23 broadening out the triangle.

24 DR. KINGHAM: Are you telling us then
25 that at that preliminary stage when your consultants



1 considered the selection criteria, they were not
2 relying on the extensive engineering that would be
3 required but rather the first line of defence being
4 natural attenuation, and is that what we should find in
5 the record?

6 MR. LEDERER: Yes, and at that stage a
7 second line of defence would be engineering. I don't
8 want to suggest engineering wasn't considered as a
9 factor, but I'm suggesting it wasn't considered in the
10 way it was considered in the comparative stage, nor
11 would it have been appropriate, and it was done at that
12 level at each succeeding stage and that was what was
13 done.

14 DR. KINGHAM: Okay.

15 MR. LEDERER: Mr. Chairman, I am going
16 to go through the hearings which are now before you
17 then I have a couple of other comments and then I will
18 ask for the break and Mr. Hodgson has suggested we
19 revisit that last question by Dr. Kingham and I would
20 like that opportunity.

21 MR. LANCASTER: All right.

22 MR. LEDERER: Now, as I review with you
23 the hearings before you, I will first refer to a
24 schedule which you have not seen since the first day of
25 the hearing and it never was nor is it appropriate that



1 it be exhibited, but it's a list of the different
2 approvals which we seek or which were taken before this
3 Board with one exception which has arisen as a result
4 of the evidence and cross-examination of Mr. Walker by
5 Mr. McQuaid. I will use it again as a guidepost.

6 Secondly, I want to say to the Board
7 that as I suppose I have just said to Dr. Kingham a few
8 moments ago, my primary concern here is that we have a
9 landfill which is approved and that we need not go back
10 for some further approval. It's clear that in certain
11 situations these pieces of legislation are open to some
12 form of interpretation as to whether these approvals
13 are needed or not needed, but, in my respectful
14 submission, I don't propose to deal with those
15 arguments so much as to say that this is the way which
16 will not leave us with any argument when the day is
17 over.

18 Secondly, before I get into the actual
19 approvals, it is important to remember that this is a
20 hearing under the Consolidated Hearings Act and that is
21 important for two reasons. First of all, Section 2 of
22 that Act makes it clear that you may have brought
23 before you any hearing that may be required and not
24 necessarily one that is required and, secondly, under
25 Section 15 of that Act where under the original



1 legislation the person or tribunal conducting the
2 hearing made a recommendation, in your hands that
3 recommendation becomes the decision. So in effect the
4 actual decision-making power is removed from the
5 authority which under the originating legislation had
6 that power and responsibility.

7 Sir, the first approval we seek here is
8 approval under the Environmental Assessment Act and
9 while the matter could be debated, this is not a
10 hearing under Section 13 of the Act but rather one
11 under Section 12, subsection (2) and there the Board is
12 required to hold that hearing with respect to:

13 "(c) The acceptance or amendment and
14 acceptance of the environmental
15 assessment."

16 And we seek an order that the Environmental Assessment
17 be accepted. I would remind the Board that the
18 Environmental Assessment at this stage is not limited
19 to the documents produced by the Region, but in fact
20 encompasses all the evidence which is now before the
21 Board:

22 "(d) Whether approval to proceed with
23 the undertaking in respect of which the
24 environmental assessment was submitted
25 should or should not be given."



1 We seek approval to proceed with one or the other of
2 these two sites and:

3 "(e) Whether the approval mentioned in
4 clause (d) should be given subject to
5 such terms and conditions and if so the
6 provisions of such terms and
7 conditions."

8 You have had a variety of conditions raised before you,
9 all of which I guess to this point have been accepted
10 by the Region and I can assure you you will have more
11 and I suspect we will have something to say about those
12 in reply and doubtlessly the Board will develop some of
13 its own and we anticipate an approval with conditions.

14 The second approval, and this applies to
15 both site and if I could say what I think is obvious,
16 Mr. Chairman, once the Board selects a site then
17 clearly what we are looking for is approval with
18 respect to that site and we don't require them with
19 respect to the other once a decision has been made as
20 to which one is the one to proceed. With respect to
21 the Environmental Protection Act, it will of course
22 apply to both sites and this is one of the Acts where
23 the originating legislation would call for a
24 recommendation, and in this case it would be a
25 recommendation by the Environmental Assessment Board to



1 the Director. The Board may recall that under that Act
2 it's actually the Director who has cast upon him the
3 responsibility to hold a hearing but he is, however,
4 able to delegate that responsibility and customarily
5 does delegate it to the Environmental Assessment Board
6 as I recall under Section 33 of that Act. Under
7 Section 33 ...

8 DR. KINGHAM: Excuse me, but we were
9 having a discussion about the most recent amendment to
10 the environmental legislation that may affect the
11 nature of the decision we can make. I don't know if
12 you have taken that into account.

13 MR. LEDERER: I'm not sure what you are
14 referring to so I don't know if I have taken it into
15 account.

16 DR. KINGHAM: The question is and it
17 took effect in June, and I know there is an answer
18 somewhere to it and I don't know if you are going to
19 address it, but it's whether it applies to this hearing
20 retroactively. I'm sure there is a nice legal answer
21 to that somewhere. Maybe there isn't a nice legal
22 answer.

23 MR. LEDERER: Mr. Tidball is going to
24 address that.

25 DR. KINGHAM: Okay. I'm sure we will



1 appreciate some submissions on that, Mr. Tidball.

2 MR. LEDERER: Section 38 of the Act
3 indicates that:

4 "The Director, after considering an
5 application for a certificate of
6 approval, may issue a certificate of
7 approval or provisional certificate of
8 approval."

9 Under subsection (2) where:

10 "The Director may,
11 (a) refuse to issue or renew;
12 (b) suspend or revoke; or
13 (c) impose, alter or revoke terms and
14 conditions in,
15 a certificate of approval or provisional
16 certificate of approval ..."

17 And then it goes on, but of course we are seeking
18 direction from this Board to the Director to issue a
19 certificate of approval.

20 The Board may recall that at the outset
21 of this hearing I submitted to you that there appeared
22 to be some redundancy between the Ontario Water
23 Resources Act and the Environmental Protection Act.

24 Before you can establish sewage works you have to
25 provide certain information to the Director and he



1 decides if the application should be approved. That is
2 under Section 24(1) of the Ontario Water Resources Act.
3 Section 1(r) defines "sewage" and, in my respectful
4 submission, it is clear that leachate generated by a
5 new landfill would be drainage as that term is used in
6 the Act or commercial waste and industrial waste both
7 within that definition. "Sewage works" is defined by
8 Section 1(s), engineering for a new landfill which:

9 "... means any works for the collection,
10 ... of sewage, ..."

11 And accordingly it appears that despite the fact these
12 same issues are canvassed on an application under Part
13 V of the Environmental Protection Act, none the less
14 approval under the Ontario Water Resources Act may be
15 required. This is one of those cases where you may
16 have an argument about whether this really makes any
17 sense, but certainly there is a legal principle which
18 you might attempt to apply and of course I'm not
19 convinced it works, but it is generale tantum valet in
20 generalibus quantum singulare in singulis or the
21 general shall not be taken from the specific, and in my
22 respectful submission, whether it applies or not, we
23 just want the approval. It's a simple answer for us.

24 MR. LEITCH: Ex abundanti cautela.

25 MR. LEDERER: Thank you, out of an



1 abundance of caution. In fact I can tell the Board
2 that Mr. Nethercut taught me what that last one meant.

3 DR. KINGHAM: I must warn you I've never
4 studied Latin. Translations are appreciated because I
5 don't know if they are accurate or not.

6 MR. LEDERER: Without appearing to be
7 obsequious, that perhaps may be the first thing that
8 counsel may be convinced you have not studied at some
9 time. You will find the submissions with respect to
10 those two applications at tabs 7 and 8 of Exhibit
11 H-5, the grouping of the various submissions and
12 applications. Both of the sites would require an
13 approval pursuant to the terms of the Conservation
14 Authorities Act and Section 28(1) is a regulation-
15 making power given to the Conservation Authority
16 dealing with -- excuse me -- dealing with these issues
17 and such a regulation has been passed, Regulation 164
18 of RRO, Revised Regulations of Ontario 1980, and
19 applications have been made with respect to both sites,
20 tabs 5 and 6 of Exhibit 5.

21 I should remind the Board that the
22 Conservation Authorities Act is not an Act which is
23 scheduled -- the Conservation Authorities Act is not an
24 Act which is scheduled to the Consolidated Hearings
25 Act, but the Board will recall there is a special



1 regulation or more specifically an amendment to a
2 regulation bringing that aspect of the matter before
3 this Board. It was done through Regulation 450 of 1986
4 which amends Regulation 194 of 1984. These
5 applications generally deal with diverting water and
6 that's all part of Mr. Crysler's evidence and there
7 were conditions discussed with the Halton Region
8 Conservation Authority and I am sure they will be
9 raised by Mr. Olah when he appears here and we are
10 asking for that approval.

11 At this point if you look at No. 5 we
12 are entering into the area of planning, and it may be
13 useful to inject the proposal not brought forward by
14 the Region. You will recall in cross-examining
15 Mr. Walker the issue arose as to whether there should
16 be an amendment to the regional Official Plan and
17 really identifying and locating Site D should it be
18 approved. Mr. Walker's view and the Region's position
19 has been that this is not necessary and this regional
20 plan is really a series of policy statements and it's
21 not a document which designates specific lands for
22 specific uses. None the less, Mr. McQuaid has put to
23 Mr. Walker a form of Official Plan Amendment being
24 essentially a map with Site D located on it and
25 Mr. Walker conceded it might be helpful although not



1 necessary. I don't and the Region does not object to
2 that amendment being ordered as part of these
3 proceedings so long as Site D is the selected site. It
4 wasn't clear to me from the exhibit list what exhibit
5 that amendment is, but I believe it is Exhibit B-356.
6 It is also I believe in the back of Exhibit B-901,
7 Mr. MacNaughton's report.

8 Now, hearing 5D deals with an amendment
9 to the Official Plan of the Town of Milton. The Board
10 will recall that because Site F is in the Parkway Belt
11 Planning Area there is no need for an amendment to
12 either the City of Burlington Official Plan or its
13 zoning by-law. Planning in that area is covered first
14 of all by the Parkway Belt Plan which takes up the
15 Official Plan level of policy and then the regulation
16 which takes up the zoning level. At tab 11 of H-5 you
17 will find the submission with respect to amending the
18 Official Plan of the Town of Milton. You may recall
19 that Mr. Walker in his evidence took the position that
20 this too was probably not necessary, having regard to
21 the fact that as he interprets that Official Plan,
22 within the agricultural zone you can have a landfill
23 and you have that precedent set by the manner in which
24 the old site was designated. Be that as it may, the
25 Official Plan Amendment is before you and again we



1 don't wish to have the matter raised as a matter which
2 needs to be determined after this hearing. We seek the
3 approval of that Official Plan Amendment.

4 You have before you as well the
5 amendments to the zoning by-law for the Town of Milton.
6 This is required to permit a sanitary landfill at Site
7 D and the submissions with respect to that are at tab
8 12 and the requirement for the hearing is at 34(11) and
9 we seek approval for that zoning amendment.

10 I should say to you that there is an
11 alternative available to the Board with respect to by-
12 laws of the municipality, and that arises from Section
13 35:

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



1 There is in a sense another option for giving the
2 Region what it seeks and that would be to simply say
3 that the zoning by-law does not apply to this site.
4 That will become more important in a few moments.

5 DR. KINGHAM: Are you advising us of
6 your preference on those options?

7 MR. LEDERER: No, not with respect to
8 the zoning by-law.

9 DR. KINGHAM: It has the same net effect
10 in the end.

11 MR. LEDERER: It has the same net
12 effect. Now, there is also the matter of site plan
13 control, and this becomes a somewhat complicated
14 matter. It might be helpful if I reviewed with the
15 Board Section 40, subsection (2) of the Planning Act:

16 "Where in an Official Plan an area is
17 shown or described as a proposed site
18 plan control area the council of the
19 local municipality in which the proposed
20 area is situate may by by-law designate
21 the whole or any part of such area as a
22 site plan control area."

23 Accordingly, if an area is shown as a site plan control
24 area within the Official Plan it becomes open to the
25 municipality to pass a by-law and specifically



1 designate it as such. In Burlington the whole
2 community has been proposed as a site plan area in the
3 Official Plan and there is a by-law designating it as
4 such. In Milton there is in -- there is a policy in
5 the Official Plan designating the area around Site D
6 but Site D as of yet is not one which is in an area
7 proposed for site plan control.

8 Within the Official Plan Amendment which
9 is before you and for which we seek approval, there is
10 the designation of that site as one for site plan
11 control, and you will find that referred to for example
12 as purpose 3 in the Official Plan Amendment at tab 11
13 and the statement is:

14 "... to designate the proposed sanitary
15 landfill as a site plan control area
16 under Section 40 of the Planning Act,
17 S.O. 1983."

18 So as of yet there is no reference in the Official Plan
19 which would permit the Town of Milton to pass a by-law
20 under Section 40.

21 Now, if this Board approves the Official
22 Plan Amendment, only then would it become possible for
23 such a by-law to be passed and then you do arrive at a
24 question dealing with retroactivity and whether or not
25 the approval of this Board would be sufficient to set



1 aside any requirement with respect to site plan
2 control. For us the issue is how do you deal with it
3 in order to avoid the necessity of coming back for
4 another hearing?

5 First of all, even now this is a hearing
6 which may fall under the general rubric of the word
7 "may" in Section 2 of the Consolidated Hearings Act.
8 In other words, you have the authority now. Secondly,
9 you may find that you can or should defer the matter
10 under Section 5(3) of the Consolidated Hearings Act
11 either to yourselves or to the Ontario Municipal Board
12 in expectation that the by-law will be passed. That is
13 obviously not something which is of much help to the
14 Region because that is precisely what we are trying to
15 avoid. It could simply be left for the normal route
16 for some other hearing, and again that doesn't assist
17 the Region. It's all pretty confusing and, as I have
18 said, we simply want a way out of this now. The
19 submissions are at tab 9 and tab 10.

20 What I would remind the Board of is
21 this; Mr. Walker has given you evidence with respect to
22 the requirements of site plan control in comparison to
23 the requirements of Regulation 309. He has told you
24 there is nothing in site plan control which would apply
25 to a landfill that is not covered in Regulation 309 and



1 therefore covered by the authority of this Board under
2 the Environmental Protection Act, except a particular
3 kind of signing. In my respectful submission therefore
4 it may well be that this is perfect for the application
5 of Section 35 of the Environmental Protection Act which
6 is to say that any site plan control by-law will not
7 affect this site. It may be said "How can you do that
8 prospectively?" but if you can't do it prospectively
9 then, in my submission, any municipality could affect
10 the decision of this Board by simply passing another
11 by-law immediately after its decision imposing an order
12 under Section 35 of the Environmental Protection Act.
13 In this case I'm asking the Board for an order which
14 will exempt any -- exempt this site from any site plan
15 control by-law.

16 DR. KINGHAM: It sounds like you are
17 saying that your preference actually in terms of the
18 alternatives available is the 35 sub (1) alternative
19 where we consider this to be such a hearing and the by-
20 law to not apply to the proposed site.

21 MR. LEDERER: Yes.

22 DR. KINGHAM: That is your real
23 preference?

24 MR. LEDERER: Exactly, sir. This is a
25 hearing brought before you and it's referred to in the



1 notice and I don't think there is any issue there.
2 Sir, you also have before you the hearings listed as 8D
3 and 6F, the financing requirements as financing is
4 necessary here. If Site F is the approved site,
5 Mr. Rinaldo has told you the debenturing he requires is
6 \$12,775,000 and if it's Site D he has told you he
7 requires \$9.5 million and we seek approval for
8 whichever is appropriate given the site the Board
9 ultimately selects.

10 Sir, at the end of the day it will be
11 necessary for Halton to purchase some land. Section
12 210, paragraph (84) indicates that by-laws may be
13 passed by councils of local municipalities for the
14 purchase of land for the purpose of waste disposal
15 within local municipalities. Halton of course is not a
16 local municipality. However, Section 137, subsection
17 (13) of the Region of Halton Act indicates that Section
18 210, paragraph (84) applies to Halton with necessary
19 modifications. Clearly if it is to have application
20 then the necessary modification has to be the removal
21 of the word "local" insofar as it applies to the Region
22 of Halton. On this interpretation we need the consent
23 of the local municipality before the Region can buy the
24 land and that is the substance of (84)(a) of Section
25 210.



1 In my respectful submission a better
2 view of all of this is not that we require this
3 approval but rather it's something that applies in
4 circumstances where a municipality wishes to buy land
5 outside its own boundaries in some other municipality.
6 I can tell the Board there is some case law supporting
7 that, but for us none of it matters because it is a
8 matter for argument and it's safer to have the approval
9 so no one will raise the question later, so accordingly
10 we seek that approval here.

11 Now, second-last is 8F. The Board will
12 recall that at the outset of the hearing there was
13 reference to the fact that the City of Burlington had
14 commenced expropriation proceedings with respect to
15 some land to the southern part of the old Bayview
16 Landfill Site for the purposes of putting in remedial
17 works and there was an issue raised as to whether or
18 not they had taken more land than they would actually
19 need and whether the Region of Halton would have to in
20 turn expropriate some of that land back as it were.
21 You have heard no evidence with respect to that and I
22 can't tell you what the status is of those
23 expropriation proceedings, but I can tell you that the
24 expropriation is being contested or was being contested
25 by Ms Cronk's clients. In these circumstances it may



1 therefore be necessary for there to be an expropriation
2 from the City of Burlington. We can't be certain at
3 the moment precisely what it is that we would be
4 expropriating. However, to carry out such an
5 expropriation, an approval under 193, subsection (5) of
6 the Municipal Act would be required. There is no
7 expropriation plan obviously and on the other hand
8 since this isn't being proceeded with under the
9 Expropriations Act, that may not be necessary. In any
10 event it can be dealt with I think over a proposition I
11 make to you with respect to the final hearing which are
12 the hearings of necessity with respect to the other
13 private owners and these are the last two hearings, 10D
14 and 9F on the schedule.

15 Under the Expropriations Act, section
16 7(5) you would make a finding or a hearing officer
17 would make a finding that the taking of the land was
18 fair, sound and reasonably necessary and make a
19 recommendation to the approving authority who under
20 Section 8 would make the decision as to whether or not
21 the expropriation should be proceeded with and
22 approved. In this case because of the impact of
23 Section 15 of the Consolidated Hearings Act, you act
24 not only as the hearing officer but also as the
25 approving authority and so we ask that this Board



1 approve these expropriations. I want to make it quite
2 clear that that won't end the responsibilities of the
3 Region. Under Section 9 we will then have to give
4 notice to those people who are being expropriated which
5 will kick in the time limits and the rights which they
6 have with respect to seeking appropriate and proper
7 compensation from the Region. So, we seek an order
8 approving the taking of the land and the issue arises
9 as to what precisely it is that we are taking and that
10 unhappily perhaps is an issue that still remains with
11 the Board.

12 The Board I trust will recall that the
13 Region has looked for what really is necessary for a
14 provision of a landfill at these two sites. At Site D
15 that would not include the lands in the northeast
16 quadrant. Having said that, the Board will recognize
17 that that is a matter which is up for some debate
18 before you and in fact in order to ensure that we have
19 covered off all the contingencies, Mr. Watson's
20 assessment as to the value of expropriating these lands
21 takes into account those takings as full takings so we
22 know we are at the conservative end of the scale. The
23 survey, however, is based on the notion of the Region's
24 view of what is fair, sound and reasonably necessary.
25 We fully expect that others will make submissions that



1 more should be taken and we can see that it may be
2 entirely appropriate for the Board to in fact approve
3 that larger taking. In those circumstances you don't
4 have a survey before you that will deal with the
5 problem.

6 You have a similar problem with respect
7 to Site F. There, while the entire site has been
8 valued for the purposes of expropriation, there are the
9 lands which fill out the bottom part of the L and take
10 you to King Road which were not part of the Region's
11 view of what was fair, sound and reasonably necessary
12 and the triangle below the Hydro easement at the bottom
13 and also some of the lands going to the Falcon Creek
14 Valley at the northern end and some of the Azova lands,
15 and all of those have been evaluated for expropriation
16 purposes but were not part of the survey. If the Board
17 finds those lands should be taken, you do not have a
18 complete survey in front of you.

19 Now, there is some precedent for this
20 kind of problem in the Ontario Hydro cases and in those
21 cases it was not entirely clear where the right-of-way
22 would go and the problem was caused not only by
23 individual farmers taking different positions, but it
24 was exacerbated by the problems of photomosaics in that
25 the lines didn't join at the beginning of each new



1 photograph. So it was understood that the Board would
2 make its decision, and with its decision known it would
3 hold back its stamp approving the expropriation until
4 the surveys could be done with its approval in place
5 and the stamp became in effect a true rubber stamp
6 thereafter. In these circumstances we are perfectly
7 happy to proceed on that basis. Should you decide that
8 some lands in excess of those which are clearly the
9 minimum requirement for the Region, or if anything more
10 than that is what the Board determines ought to be
11 approved ...

12 DR. KINGHAM: When you say we don't have
13 a complete survey, are you suggesting the survey you
14 offered us as H-888 is not a complete survey?

15 MR. LEDERER: It's a complete survey if
16 you accept the Region's view that it doesn't need to
17 for example at Site D take the lands in the northeast
18 quadrant, but because it doesn't take into account the
19 remainder of those parcels it would not be complete to
20 show those lands.

21 DR. KINGHAM: In what sense do you say
22 it doesn't include those lands because the lands in
23 fact are shown and notwithstanding without a bold line
24 around them, but they are shown?

25 MR. LEDERER: Indicating the surveyor



1 has not confirmed those dimensions. If the Board is
2 prepared to accept that as sufficient, it would be my
3 understanding that in the typical course it would be
4 considered to be such.

5 That really concludes my submissions
6 with respect to the merits of the case, but there is
7 however one matter I want to touch on and that is the
8 issue of the Region having proceeded with two sites
9 rather than one. I concede immediately that that is
10 not a matter which will reflect upon your decision.
11 However, the Board has indicated some interest in the
12 process and I can tell the Board that it is a decision
13 which appears to have excited others outside this
14 particular proceeding. I was surprised to attend at
15 the preliminary meeting at the Region of Peel
16 Environmental Assessment and to have some discussion as
17 to whether or not the Board should consider its
18 jurisdiction in the context of that case to consider
19 more than one site for approval and to have a lawyer
20 from the Ministry of the Environment suggest that we
21 would like to have that decision so we would all know
22 what bringing two sites to the Halton hearing has done
23 and which I must confess I considered it improper at
24 the time.

25 In my respectful submission it would be



1 extremely simplistic to analyze this case and say it
2 would be a lot shorter if we only had one site. First
3 of all, these sites, certainly as we entered this
4 hearing and in my submission even now are quite
5 different and yet based on any objective analysis they
6 are quite close. Therefore in my submission, had we
7 appeared here with one site we would still have the
8 same hearing. We would just have someone else
9 suggesting that the last decision, the decision to go
10 with that one site, was the wrong decision and all the
11 evidence you have heard with respect to the other site
12 would still have been here and we would have spent as
13 much time and, in my respectful submission, we might
14 have spent longer because the Region would not have
15 brought forward its evidence in direct examination and
16 that would have become the subject matter of cross-
17 examination, and it's always harder to bring out the
18 first concise story in that format.

19 Secondly, the Region would have taken a
20 considerable risk. The Environmental Assessment Board
21 or certainly the Chairman of the Board has written in
22 one place, and that is in his dissenting judgment on
23 the Redhill Creek case, that his view of the
24 Environmental Assessment Board's role is quite
25 different from what we have always understood the



1 Ontario Municipal Board's view of its role to be. I
2 have always understood the Ontario Municipal Board took
3 the position that as long as the position of the
4 municipality is reasonable and rational, and as long as
5 the proper process has been followed, it will approve
6 such undertakings, despite the fact it might not on its
7 own independent judgment have come to the same
8 decision.

9 The Environmental Assessment Board it
10 would appear from the Chairman's reference takes the
11 view that it has a larger responsibility, a
12 responsibility to look after the resource known as the
13 environment and to consider it on any application, not
14 only in its local aspect but in its provincial aspect.
15 In those circumstances, any municipality that makes a
16 recommendation to the Board does precisely that. It no
17 longer decides but recommends to the Board and for the
18 purposes of these submissions I don't in any way
19 criticize that view of the Board's role, it obviously
20 puts the municipality in very great difficulty because
21 it is no longer a question of whether it has been
22 reasonable but whether the Board members, none of whom
23 it knows, and many of whom will not be as familiar with
24 the community as are the elected representatives, but
25 they will override their decision and that takes us in



1 this case to the real risk of coming out of the hearing
2 with nothing approved if the wrong site had been the
3 selected site. In my respectful submission, that is
4 not an answer that would bring credit to this process.
5 It's too long and it's too expensive to force us to
6 take that risk. So, in my respectful submission and on
7 the basis of this case it was not only reasonable, it
8 was the only appropriate thing to do given that these
9 sites are as close and as different as they are and in
10 my respectful submission the courts have given us some
11 indication that this is in fact the right thing to do
12 and I'm thinking of the two Hydro cases.

13 First of all in the case involving the
14 southeastern transmission lines, the court has said
15 that it is not appropriate for a board to approve an
16 alternative to an undertaking, but it can approve an
17 alternative method. That is simply what a second site
18 is. The second site is the alternative method. If you
19 go to the southwestern case, that case makes clear the
20 decision of his Lordship Mr. Justice Reid, it's a clear
21 statement that you can't approve anything if the people
22 haven't been notified that they are at risk. In my
23 respectful submission all we have done is give notice
24 to a second alternative method. The Region has been
25 clear all along that Site F is its preferred site and



1 that the sites are close and to avoid the dangers
2 inherent in not giving notice and in coming away
3 without a decision, without an approval, all we have
4 done is serve notice with respect to a second site and
5 having done that to having led the evidence we have
6 with respect to it. In my respectful submission that
7 is consistent with what the cases provide.

8 In my submission the issue in a sense
9 goes further and this with respect has little to do
10 with this Board and in a very real sense is just the
11 Region and the area municipalities which are component
12 parts of the Region responding to their
13 responsibilities and the legislation as it exists.
14 Under the present legislation and under Section 137 of
15 the Region of Halton Act it is the Region of Halton
16 that has cast upon it the responsibility to supply its
17 residents with waste disposal facilities and area
18 municipalities, those municipalities represented by my
19 friends Mr. Leitch, Mr. Estrin, Mr. McQuaid and
20 Mr. Tzekas are without responsibility. What is equally
21 clear is that politicians must, it's their job to
22 respond to the desires of their constituents. Nobody
23 in our present form of regional government is elected
24 to the regional council and everybody sits because they
25 are elected to the area municipal council. In my



1 respectful submission what that arrangement calls for
2 is for people who sit on regional council to respond to
3 matters on the basis of the interests of their
4 constituents which are their area municipal
5 constituents and therefore the only regional
6 councillors to whom you have had reference in this
7 hearing are Mr. Mulkewich and Ms Little who represent
8 the area surrounding Site F and it's no big surprise
9 that they are opposed to it.

10 Regional government also calls for the
11 regional municipalities to get along and have a
12 continuing relationship. It's not just a matter of
13 dealing with this issue, and in my respectful
14 submission what all of that means is that these area
15 municipalities and the Region are in effect asked to
16 and therefore look for some other way to make these
17 important decisions because the area municipal
18 councillor has to make it on the basis of his locality
19 and he must get along with everybody else and so in
20 some respects the setup requires a difficult decision
21 to be made elsewhere.

22 Now, I want to take this a step further,
23 and I do this with some hesitation, but in the
24 Hamilton-Wentworth case the Chairman of the
25 Environmental Assessment Board I think made it fairly



1 clear that he was not very pleased with the way in
2 which the area municipal politicians made the decision
3 and he traced through in some detail the history of the
4 decision surrounding that proposal. That is really
5 hitting a politician where it hurts. In my respectful
6 submission if the Board is going to do that, and I'm
7 not suggesting it's inappropriate because it may be
8 entirely appropriate, but you have to expect people to
9 look for ways to confront that challenge and answer
10 that question. You have had it suggested here not by
11 the City of Burlington but certainly by some residents
12 that this was all pre-determined and it was all going
13 to Site F. What is the clearest answer that it wasn't?
14 The clearest answer is to propose another site. In my
15 respectful submission, and it may not be the happiest
16 situation, but this particular undertaking called for
17 this particular solution. First of all the sites are
18 different and they are close. The risk of coming here
19 after this long a hearing, and the hearing would have
20 been this long without an approval is simply too great.

21 Secondly, the political structure which
22 is in place calls for this kind of action in order for
23 politicians to properly do the job as they are asked to
24 do it and it may not be the best but it's what's there.
25 It may be easy to say you have two sites here and if



1 you subtract one from two then that is one and this
2 would be a whole lot shorter hearing; that's too simple
3 and if the Board deals with this issue it's my
4 respectful submission and it's my hope that it will not
5 be approached in that way.

6 Mr. Chairman, I expect there will be
7 fairly lengthy reply but hope springs eternal and in
8 the event there isn't may I take this opportunity on
9 behalf of Mr. Hodgson and myself and all of the people
10 who have presented evidence here on behalf of the
11 Region to thank you for your patience. This has been a
12 long and at times a fairly trying exercise and I do
13 appreciate your consideration. Thank you.

14 MR. LANCASTER: Thank you very much.
15 Did you wish to consult with Mr. Hodgson before you
16 conclude?

17 MR. LEDERER: I will and I hope I will
18 have nothing to say but possibly I might.

19 MR. LANCASTER: We will adjourn for 15
20 minutes.

21 --- Recess

22 MR. LANCASTER: Thank you. Please be
23 seated.

24 MR. LEDERER: We are missing a
25 significant part of the team, sir.



1 MR. HODGSON: Whose team?

2 MR. LEDERER: The team.

3 MR. LANCASTER: I think we are all
4 represented now.

5 MR. LEDERER: Sir, one thing that I
6 could add with respect to Dr. Kingham's question
7 concerning the examination of recycling and composting
8 and everything at the front end; there is a matter I
9 should remind the Board of which is that the Region
10 only has limited control with respect to a number of
11 those items, for example recycling. It is waste
12 disposal which is the Region's responsibility and the
13 waste collection is the area municipality's
14 responsibility, and while the Region enters into
15 agreements with the area municipalities to facilitate
16 those programs, in fact those are programs whose
17 original responsibility begin there and there is only a
18 limited amount we can do there, so all we can do is
19 plan our landfills to a reasonable size having regard
20 to what seems appropriate in the area for instance of
21 recycling.

22 Secondly, you asked me about the recent
23 amendment to the Environmental Protection Act and I
24 confess I had forgotten all about it because it has
25 very little bearing on this case, but as a result of



1 Section 15, the condition which is now placed as a
2 result of the amendment is a condition which has been
3 here since we started and it's your decision which
4 counts. The interesting words I suppose of the
5 amendment are the words "and the Director shall
6 implement the decision" so I suppose the question is
7 how far can your decision reasonably go? It has to be
8 understood and I'm sure it has been throughout that you
9 haven't had final designs presented to you and it's not
10 practical in the context of what happens at a hearing
11 where everything changes according to the evidence and
12 the different perceptions of others. When Mr. Tidball
13 gets up I know he will be providing a series of
14 conditions which we have seen and which we will
15 doubtlessly comment on in reply, but one will be that
16 final design be subject to the approval of the Director
17 and that, it seems, is entirely appropriate in the
18 circumstances. When the Director comes to implement
19 the decision he is implementing the decision if I can
20 put it this way as far as the Board can reasonably take
21 it and the remainder such as final design will have to
22 be left to him and, as I say, in our submission we
23 think that that is appropriate.

24 Finally, with respect to the question of
25 engineering, I confess that I may not have understood



1 the question properly and Mr. Hodgson understood it
2 differently than I did, but my understanding was that
3 we were being asked at what level engineering becomes a
4 part of the study and at what stage it becomes a real
5 consideration. Mr. Hodgson's understanding was that
6 given we have moved to this level of engineering do we
7 have to go back and reiterate through the other earlier
8 six sites? With respect to engineering at the Phase 2,
9 Stage 2C stage, if you go through that report, I'm sure
10 the Board will recall that engineering is referred to
11 at a less detailed although not really a generic level
12 with respect to each of those six sites, and I'm
13 referring to Site F and I do this only by way of
14 example because it's there for all of them. If you
15 look at Section 3.6.4, proposed landfill design ...

16 DR. KINGHAM: Can you give us the
17 section and document in which that kind of thing
18 occurs?

19 MR. LEDERER: H-38, page 55. You will
20 see for example reference at the bottom of page 56 to a
21 leachate underdrain system to be installed at any
22 landfill constructed at Site F.

23 DR. KINGHAM: Are you telling us we
24 would find a similar paragraph for each of the six
25 sites in the plan?



1 MR. LEDERER: Yes, sir. In fact I
2 believe, and I don't recall if there is an index to
3 this, but certainly there is a section entitled
4 "Landfill Design" with respect to each of the six
5 sites.

6 DR. KINGHAM: This was one of the more
7 difficult exhibits to get through because it is 80 per
8 cent maps which are unpaginated. We would find then --
9 let's take Site E as an illustration. I would have to
10 somehow find where that is. Forty-four to 49.

11 MR. LEDERER: Page 47, "Proposed
12 Landfill Design."

13 DR. KINGHAM: That is where I have
14 problems. I have page 43 with text and then a bunch of
15 maps. Is there a page 47?

16 MR. LANCASTER: Yes.

17 DR. KINGHAM: Oh, there it is.

18 MR. LEDERER: To the extent that my
19 understanding of the question is correct, or at least
20 assists you in any way, what you see is that at this
21 level of study there is consideration of engineering to
22 the appropriate level of detail and that level of
23 detail of course is increased when you proceed into the
24 landfill technical phase. It does that in this case
25 only because the Region of Halton determined to proceed



1 here or rather to have intensive studies conducted with
2 respect to two sites and, in my respectful submission,
3 it was entirely open to the Region at that stage to say
4 we choose Site F or any other site if council wishes
5 not to accept the view of the consultants and proceed
6 to study only that site in detail. In a sense the
7 assessment process as a winnowing overview planning
8 process is a bit lost here in the detail of the
9 landfill technical phase which really is an
10 Environmental Protection Act kind of technical detail.

11 DR. KINGHAM: So what I understand you
12 to be saying is with respect to each of these sites,
13 and I'm still looking at Site E for instance at the top
14 of page 49, that at this stage of selection your
15 consultant would have taken that engineering factor,
16 the sloping of the base of the pit and the leachate
17 collection tiles, the gradient and so on into account
18 in determining that that site was less acceptable than
19 A, B, C or D -- less acceptable than D in this case?

20 MR. LEDERER: That is certainly my
21 understanding, yes.

22 DR. KINGHAM: The other thing is that
23 you mentioned a moment ago there were limitation to the
24 extent to which the Region can require things other
25 than the particular waste handling proposal or waste



1 disposal proposal you have put before us, and yet in
2 the draft conditions Mr. Tidball gave us in items 1 and
3 2, and I'm looking particularly at item 1B, a direction
4 to continue programs with respect to recycling. Are
5 you submitting that that's outside your jurisdiction?

6 MR. LEDERER: Yes, and in fact that
7 point has been taken to Mr. Tidball and I believe the
8 next version will exclude that requirement.

9 DR. KINGHAM: You don't see this as a
10 dilemma for a region that has a responsibility for
11 waste management but which can do nothing about
12 controlling waste quantities?

13 MR. LEDERER: I certainly see it as a
14 dilemma but it's a dilemma forced on us by the
15 legislation and its area municipalities will have to
16 deal with this as best they can. The fact is the
17 legislation says it's the Region which is responsible
18 for waste disposal facilities and its the area
19 municipalities responsible for collection and we will
20 have to work this out. There are agreements in place
21 and in fact the Region is constructing a recycling
22 facility and we expect the area municipalities will
23 bring materials there, but I'm saying in dealing with
24 alternatives there is a level of control beyond which
25 we cannot go and if you were to make a decision



1 compelling us to go further we can't do it because we
2 could be told by the area municipalities it's too bad.
3 I don't expect that that will happen, but that's the
4 reality. I guess what I'm attempting to say and my
5 concluding submissions touched on this in a different
6 way, but we are caught with a legislative setup which
7 we have not fully understood because we have not been
8 through this process yet, and therefore it has not been
9 allowed to evolve and frankly the amendments which may
10 occur after the initial understanding of the process is
11 developed -- I have lost where I am. The amendments
12 which may arise once we arrive at our initial
13 understanding of the process have not taken place and
14 they may well take place, but for the moment we are
15 stuck with it and we must deal with the legislative
16 scheme as it is in place.

17 There is still the question of the
18 matter of reiteration as Mr. Hodgson understood your
19 question and I just want to talk to that for a moment.
20 If I understand that correctly it proposes this; when
21 you get to the comparative stage and find the detailed
22 engineering you need, must you go back and start
23 comparing that to the other four sites that were there
24 and in my respectful submission that would confuse yet
25 again the relationship between the Environmental



1 Assessment Act and the Environmental Protection Act
2 because in essence you have a development of detail and
3 a demonstration that we now know what engineering we
4 will need or have a much better idea short only of
5 final design, but a better idea of the engineering that
6 will be required at each of the sites and to go back
7 and compare that to the original four would be to say
8 you must take those four to that level of detail, as
9 well which means to say you don't have a winnowing
10 process and you have to examine them each at the same
11 level of detail.

12 Of course the major difference here may
13 be the presence of a liner at Site F and that
14 possibility is referred to in the 2C stage of study,
15 but the point is moot because in our submission as
16 Mr. Hodgson has said there is no liner required at Site
17 F. The expense of doing what is proposed or implied in
18 the notion of going back is extreme and, as I say, it
19 really renders the Environmental Assessment Act a much
20 longer and much more detailed and frankly not a
21 planning process because it then becomes a technical
22 process. What we need to do, as Mr. Clarke has told
23 you, is to demonstrate a reasonable, rational, logical
24 development through each stage of decision-making,
25 through the environmental assessment process and as the



1 Ministry found in the end and as nobody has really
2 disagreed with, at least with respect to the issue as
3 Dr. Kingham raises it, no one has suggested we should
4 go back and do that kind of detailed work and in my
5 respectful submission the assessment process is
6 acceptable and should be found to be such by this
7 Board.

8 DR. KINGHAM: I hope you are not
9 interpreting I suggested one should go back in this
10 case or you should have gone back in the course of the
11 assessment because that is not what I was asking, but
12 rather if the decision was made early in the process
13 that extensive engineering would be required at any
14 site, then as one moves through the site selection
15 process in the early stages one takes the approach we
16 are going to have to have extensive engineering at this
17 site, what do the constraints to site development tell
18 us about whether we consider this site any further? If
19 the constraint was something to do with drainage or
20 something to do with visual or whatever, then it's at
21 that point that you ask yourself the question "Does
22 engineering take care of this and is it still in the
23 running?"

24 MR. LEDERER: That confirms my
25 assessment of the question as it was asked. May I just



1 have a moment?

2 I would simply say to you that what
3 becomes required in those circumstances is a
4 consideration of engineering at the appropriate level
5 of detail for the level of study then being conducted.
6 Clearly before you can look at engineering at all you
7 have to look at some size relatively consistent with a
8 landfill and not the larger areas being dealt with at
9 the earlier phases and in my submission what was done
10 here was appropriate. I don't recall whether there was
11 any discussion of engineering at the 2B level, but
12 certainly 2C would be the appropriate level to begin
13 and that is what was done. It should be remembered as
14 well that of course all engineering will begin with an
15 understanding of the natural environment and more or
16 less would be required in a given circumstance so that
17 always of course would be the starting point.

18 DR. KINGHAM: Thank you.

19 MR. LEDERER: Thank you and thank you
20 again, sir, for your consideration.

21 MR. LANCASTER: Mr. Leitch. Mr. Estrin.

22 MR. LEITCH: I think Mr. Tidball is
23 expecting to proceed and I would have to go back to my
24 office and get my material out of the typewriter.

25 MR. TIDBALL: I think you should go now.



1 MR. LANCASTER: Shall we agree with
2 that?

3 MR. TIDBALL: According to the normal
4 order I am going next but I spoke to Mr. Olah and he
5 has brief submissions.

6 MR. LANCASTER: All right, thank you.
7 Mr. Olah.

8 MR. LEDERER: Before Mr. Olah begins we
9 will have a bit of a structural problem because we have
10 divided the case in discrete areas of responsibility,
11 and I don't want my friends to be accused and it would
12 be an appropriate accusation of us seeing that we both
13 have the right to object and we could have interesting
14 stereophonic sound if that happens, so we will be
15 dividing up that responsibility and in this case
16 Mr. Olah will be dealing with hydrology so that would
17 be Mr. Hodgson's area so you will see us shuffle a bit
18 while we try and figure out how to make this work.

19 ARGUMENT BY MR. OLAH:

20 I'm pleased to tell you that not only
21 will I be brief but I understand the position I will be
22 expressing will not be contested by anyone, or at least
23 that is my hope.

24 You will recall that it was almost one
25 year ago I appeared before you and at that time there



1 was an agreement as to certain conditions that were to
2 be included in any conditions eventually issued or
3 incorporated in any order this Board makes. You will
4 recall they were contained in H-238 and H-239 which
5 were filed jointly by the Region and myself. I have
6 extra copies if you feel you would like to have them
7 handy, but let me make a couple of brief points if I
8 may. Would it assist you to have copies?

9 MR. LANCASTER: It would if you wouldn't
10 mind.

11 MR. OLAH: I understand Mr. Hodgson in
12 his closing referred to Mr. Crysler's witness
13 statement, the second witness statement filed, and you
14 will recall Mr. Crysler's witness statement and his
15 testimony was that there was no adverse surface water
16 impact and we on behalf of the Conservation Authority,
17 the Halton Region Conservation Authority, agree with
18 that. Then when I cross-examined Mr. Crysler, you will
19 recall that it was at that time that H-238 and H-239
20 were introduced and Mr. Crysler agreed that the
21 criteria that are contained in those two exhibits would
22 be used by the Region for design purposes and if it
23 assists you, that is to be found in Volume 41 dated
24 October 13, 1987 and commencing at page 9098.

25 Now, as I understand it, the draft



1 conditions which Mr. Tidball has prepared are basically
2 a replication or contain a replication of Exhibits
3 H-238 and H-239. As I understand it the Region through
4 Mr. Hodgson has indicated that they agree with these
5 conditions.

6 DR. KINGHAM: Have you not seen the
7 draft conditions?

8 MR. OLAH: I have, sir, I have.

9 DR. KINGHAM: So in effect you are
10 satisfied?

11 MR. OLAH: I am satisfied as it relates
12 to the surface water conditions and as I understand it
13 the Region is satisfied so really what we are saying is
14 that it is not an issue and every one of the key
15 players has agreed to those conditions. The only
16 concern the Authority has and which I would express to
17 you this morning is this; the Authority wants to be
18 sure that the final engineering drawings, the working
19 drawings that relate to the drainage works and which
20 would normally be handled under Regulation 164 for the
21 year 1980 through which the Authority exercises its
22 power, that those engineering drawings would be
23 reviewed and the process by which the Authority would
24 do that would be to issue approval subject to the
25 engineering drawings being approved or complying so,



1 there would be some sort of opportunity to review the
2 engineering drawings or final drawings to ensure that
3 they comply with the conditions that are contained in
4 any permit that is issued. The question is how do we
5 do that in this case? How do we ensure that the final
6 drawings actually meet the conditions that are being
7 issued?

8 There are basically two options. One
9 would be to have the Authority have some sort of power
10 of review or leave that power with the Authority
11 pursuant to the regulations. As I understand it from
12 the Region's perspective that is unacceptable.

13 The other mode whereby this could be
14 achieved is to ensure that the engineering drawings are
15 circulated to the Authority and it can then comment to
16 the Director of the Ministry of the Environment if
17 there are any difficulties. As I understand it from
18 Mr. Lederer this morning, the Region is content to
19 proceed that way. The Authority is content to proceed
20 that way. The Ministry is content to proceed that way.

21 So, what I would ask is that as a
22 condition that the Region be directed to circulate the
23 final engineering drawings as it relates to surface
24 water to the Authority for its comment before
25 requesting a Certificate of Approval under the



1 Environmental Protection Act. Of course you have that
2 power under Section 5(2) of the Act, to incorporate any
3 terms or conditions that you see fit and appropriate.

4 DR. KINGHAM: Under Section ...

5 MR. OLAH: Under Section 5(2) of the
6 Consolidated Hearings Act. That would permit the
7 Authority to indirectly fulfill the obligation it is
8 charged with and ensure that the engineering drawings
9 live up to the conditions that have been recommended.

10 Those are the only submissions I have on
11 behalf of the Halton Region Conservation Authority
12 unless you have any questions for me, sir.

13 MR. LANCASTER: I don't believe so.

14 MR. OLAH: Thank you very much.

15 MR. LANCASTER: Thank you.

16 DR. KINGHAM: Just one moment. I'm
17 actually having a little difficulty, and this may be a
18 problem for Mr. Tidball or there is some geography I
19 don't understand, but the proposed conditions of
20 approval with respect to Site D as they address surface
21 water ...

22 MR. TIDBALL: There is an error there,
23 Dr. Kingham.

24 DR. KINGHAM: Thank you. Again Mr. Olah
25 has read both sets of conditions and when he says they



1 replicate he understands they replicate on both sites.

2 MR. OLAH: That is correct, they
3 replicate the exhibits, H-238 and H-239. Thank you.

4 MR. TIDBALL: I feel uncomfortable
5 working from the back of the room, but since I have a
6 ton of stuff back there, if you wouldn't mind.

7 ARGUMENT BY MR. TIDBALL:

8 Mr. Chairman, I have put the conditions
9 in a format that may make it easier to deal with.
10 Actually I like looking at everyone from behind. Also
11 I know there is no one behind me.

12 DR. KINGHAM: We won't call you Brutus
13 anyway.

14 MR. LEDERER: The question in that
15 analogy is who is playing Caesar.

16 DR. KINGHAM: You have the pole
17 position.

18 MR. TIDBALL: I'm trying to avoid having
19 Mr. Lederer accuse me of stabbing him in the back.
20 Mr. Chairman, what I have distributed, this is called
21 "Summary of Final Submissions ..." but you will notice
22 it contains four tabs and the four tabs correspond to
23 the four sets of conditions you have seen in draft
24 previously. Tabs 1 and 2 are the Environmental
25 Assessment Act conditions for Sites D and F



1 respectively and 3 and 4 are the EPA provisions for the
2 two sites. You will notice preceding those four tabs
3 are approximately 15 pages, I believe, that summarize
4 the submissions I am going to make to you today, and
5 I'm afraid probably into tomorrow. What I have put
6 there is in a very summary way setting out the position
7 of the Ministry of the Environment and the summary
8 submissions I will be making to you. I will follow it
9 fairly closely and, as I go along, I will be adding
10 argument where necessary and referring you to specific
11 parts of the evidence.

12 So, if we could start -- oh, a couple of
13 other introductory things. I'm going to propose to
14 deal with these conditions in two specific sections.
15 I'll deal with the Environmental Assessment Act
16 probably early this afternoon and when I am finished
17 dealing with that Act I want to do the conditions under
18 tabs 1 and 2 and then following a discussion of the
19 Environmental Protection Act and the approvability of
20 Sites D and F I want to do the conditions so that the
21 conditions at tabs 3 and 4 will be at the very end of
22 my submissions. I guess in some respects I am taking a
23 different tack from Mr. Lederer and Mr. Hodgson in that
24 my focus is going to be on your jurisdiction and, to a
25 great extent, trying to focus the debate here on what



1 we believe are objective criteria on which you can
2 evaluate the approvability of either Site D or Site F,
3 or in fact of both. I would ask that I be given the
4 right to reply on the issue of conditions. I am in the
5 position of putting these to you at the first instance
6 and Mr. Lederer has already indicated that he will
7 reply in his reply argument, and I think I asked for
8 this once before, but I would like the right to reply
9 to submissions anyone makes on any specific conditions
10 and in fact it's my feeling that this may turn out to
11 be beneficial because there may be other conditions
12 that other people suggest that the Ministry can
13 certainly support and it may be that people may suggest
14 variations we can agree with and I might be in a
15 position at the end of next week to give you some
16 further documents to suggest changes or to suggest
17 additional conditions.

18 DR. KINGHAM: We understand these
19 conditions have been in the hands of all parties for
20 some time.

21 MR. TIDBALL: The draft conditions we
22 circulated several weeks ago certainly have been.
23 There have been changes made since then and I think
24 it's fair to say that some parties here have not seen
25 this particular version. It is a further generation of



1 what everyone else has seen and I don't think anything
2 will be too surprising in it but perhaps we could pick
3 it up on the way through, but I don't think it is
4 prejudicial at all.

5 I want to start with the jurisdiction of
6 the Board and in some respects I am picking up at the
7 end of Mr. Lederer's argument and working backward.
8 That is found in paragraphs 1, 2 and 3 of my
9 submission. You obviously know you have been pursuant
10 to -- I come to the first error, and I don't know how
11 that happened, but obviously paragraph 1 should say the
12 Consolidated Hearings Act, I apologize.

13 DR. KINGHAM: Is Mr. Olah still here?

14 MR. LEDERER: I am quite sure he would
15 be happy to take on that authority.

16 MR. TIDBALL: I thought there was only
17 one error but this appears to be a second. Your
18 jurisdiction is set out in Section 5(2) of that act and
19 you are charged with making decisions on a variety of
20 statutes and the statutes are what Mr. Lederer went
21 through but they are set out in paragraph 3. If I
22 might deal with the question of your jurisdiction vis-
23 a-vis the Environmental Protection Act. Under the
24 Environmental Protection Act as it stood prior to June
25 29 of this year the procedure was that under Part V the



1 Environmental Assessment Board would hold a hearing at
2 the request of the Director of Approvals and would
3 recommend back to the Director of Approvals as to how
4 the Director should exercise his discretion. The
5 effect of the Consolidated Hearing Act, specifically
6 5(2) which is set out in paragraph 2, is that
7 notwithstanding the amendment made on June 29,
8 notwithstanding that, you are given the power to make
9 the decision and you are given the power of the
10 Director as opposed to the power of the Board and in
11 fact you are being given both powers, the power to hold
12 the hearing and to make the decision the Director
13 otherwise would have made. On June 29 the
14 Environmental Protection Act was amended and the
15 Legislature saw fit to give the power of approval or
16 the power of decision, I should say, to the
17 Environmental Assessment Board. I think as a matter of
18 law that that change would not apply to this decision
19 you have to make, but as a practical matter it doesn't
20 really matter because the effect would be exactly the
21 same. Rather than being given the power to stand in
22 the shoes of the Director, per se, you are being given
23 the power or you would then be given the power to stand
24 in the shoes of the Board and it makes no difference
25 because you have the power of decision and have the



1 power given to the Director under Section 38 of the Act
2 and I think that that is all that is critical.

3 The only interesting dilemma is the one
4 raised by Mr. Lederer. In 5(2) of the Consolidated
5 Hearings Act you will note that -- I'm sorry, it's not
6 in 5(2) but in -- I'm sorry, it is 5(2) and that
7 section always gives me concern, but the last three
8 lines where it says you can make the decision:

9 "... after the holding of the hearing
10 including but not limited to the
11 granting of any authority or directing
12 the granting or issuing of a permit or
13 licence in the imposition of terms and
14 conditions."

15 Now, I always thought the jurisdiction for this Board
16 to actually issue a Certificate of Approval was
17 questionable, and I guess you would do so under the
18 words "the granting of any authority". We have had
19 this debate on several occasions before a joint board,
20 in fact before several joint boards, and it has always
21 been resolved in favour of directing the Director and
22 at the end of the day I will be urging you to direct
23 the Director of Approval to issue a Certificate of
24 Approval in a certain format. I am not sure that
25 practically it makes much difference, although there is



1 one aspect I will deal with at the end of the day where
2 there might be a practical advantage to doing it that
3 way, but the only dilemma is is there any conflict
4 between being given the power under the Consolidated
5 Hearings Act to direct the granting of something versus
6 the new wording in Bill 148 which says that the
7 Director shall implement the decision of the Board? I
8 don't think practically speaking it really matters and,
9 as I say, it would be my legal submission that Bill 148
10 is irrelevant for your purposes anyway.

11 DR. KINGHAM: Accepting that position or
12 not, as we may, from a mechanical point of view the
13 matter raised by Mr. Olah is interesting to consider in
14 directing the granting of the issuing of a permit. It
15 now becomes a third order matter. Have you some ideas
16 on that?

17 MR. TIDBALL: I guess I had a small
18 problem with the submission Mr. Olah made, and I didn't
19 know he was going to make it in that form until he
20 actually made it. I will be having some submissions to
21 make with respect to what I am asking you to do with
22 respect to final design. Mr. Olah touches on the
23 Conservation Authorities Act permit and I was surprised
24 to hear, or not hear Mr. Olah make any submissions on
25 the Conservation Authorities Act permit itself because



1 I would have thought the Conservation Authority would
2 have some interest in the exact wording of that permit,
3 just as the Ministry of the Environment has an interest
4 in the wording of any Certificate of Approval or in
5 fact any conditions under the Environmental Assessment
6 Act. I think I have a slightly different submission to
7 make with respect to the Conservation Authorities Act
8 permit, although I am leery to do it, and it is
9 certainly not my legislation to worry about in the
10 narrow sense. I'm not sure, Dr. Kingham, what you are
11 concerned about.

12 DR. KINGHAM: It seems that Mr. Olah
13 made it clear that he would defer to the Director of
14 Approvals as long as the design met the conditions
15 spelled out both in the Conservation Authority's
16 submissions earlier, H-238 and H-239, and was thus
17 saying that if the Ministry is going to follow up on
18 that that in essence we are deferring our approval of
19 conditions which we don't have under a consolidated
20 hearing to the Ministry to do it all at once. As long
21 as we have an option, I think he said, of seeing it
22 before it goes to the Director of Approvals and by
23 implication of vetoing it if they don't like it and
24 that is the implication I want your view on.

25 MR. TIDBALL: The implication extends to



1 the Director of Approvals because at the end of the day
2 I will be asking you to defer a fair power to the
3 Director of Approvals on this matter. I see no way
4 around it. There is a logical dilemma here to try and
5 balance the interests of having the Board exercise as
6 much power as they can after having heard 176 days of
7 evidence at this hearing versus the practical necessity
8 for having somebody deal with the fact that there is
9 going to be a final design and it will contain a lot of
10 details. I suppose there is an option that the Board
11 could defer this matter back to itself, and that is
12 legally possible under the Consolidated Hearings Act
13 and we could all reconvene here in a year and a half or
14 whatever, but I'm not sure that's very attractive to me
15 and I'm sure it wouldn't be attractive to Mr. Lederer
16 or Mr. Hodgson. I think what I have tried to do is
17 strike the balance in the appropriate way and I will be
18 making that submission.

19 As to the Conservation Authority, I
20 would see no problem with also deferring the approval
21 of final design to them as well. Mr. Olah has said he
22 doesn't really want that and he is content simply
23 having the Authority make their submissions to the
24 Director of Approvals and I am content with that, with
25 or without a condition requiring Halton to circulate it



1 to the Authority, and I can undertake right now that
2 the Director of Approvals would do that and I don't see
3 that as a problem.

4 DR. KINGHAM: You can be assured we are
5 very sensitive to that conundrum and we will listen
6 attentively to your proposed fine balance.

7 MR. TIDBALL: If I could move on to the
8 position of the Ministry on this case, this is set out
9 in paragraphs 4 to 8 of my submissions. The position
10 of the Ministry has attracted some degree of interest
11 throughout this hearing and in fact I guess I can say
12 with all honesty I have even been amazed at the extent
13 to which all parties have attempted to extract some
14 sort of position out of the Ministry and have taken
15 issue, I guess, with the fact that the Ministry is not
16 taking a position throughout. I advised you at the
17 beginning of this hearing that we didn't see this
18 matter as a simple question of being yea or nea for
19 either of the sites. We saw it as a much more
20 complicated matter. We took specific positions on, for
21 example, the acceptability of the Environmental
22 Assessment, but we wanted to see how the evidence
23 unfolded and see how things developed before we would
24 take any position at all with respect to the
25 acceptability or approvability of either site. We are



1 in a position to do that now. I doubt very much we
2 would have been in a position to do it earlier, given
3 the unfolding of this hearing even in the later days,
4 and you have already heard some significant submissions
5 on what has happened in the last month or two of this
6 hearing and I will be making further submissions.

7 We have tried to maintain throughout
8 what we see as our role at this hearing which is, as
9 objective reviewers. We have attempted to test the
10 evidence in areas where we felt it needed testing and
11 we have called, albeit limited, but some evidence
12 before you on areas which we felt you had to have
13 evidence on.

14 At the end of the day what you have
15 before you is a whole series of decisions you have to
16 make under the Consolidated Hearings Act, and I have
17 hidden it behind some Acts up there but Mr. Lederer's
18 panel with all the decisions you have to make. At the
19 end of the day I only take a position with respect to
20 the Environmental Assessment Act and Environmental
21 Protection Act matters. I do have some comments on a
22 couple of the other approvals that are being sought by
23 the Region and the first one is the necessity for an
24 approval under Section 24 of the OWRA, the Ontario
25 Water Resources Act. Mr. Lederer puts before you the



1 fact that there is, I guess to be fair, some confusion
2 and to be safe, and they don't really care, but to be
3 safe they feel there may be a need for an Ontario Water
4 Resources Act approval. While we are on Section 24,
5 and I don't know if the Board has the Act before them,
6 but it might make some sense. Section 24, the main
7 approving authority which comes under the subheading of
8 "SEWAGE WORKS", but it has been extensively amended by
9 Bill 148. Having said that, I must reiterate my
10 earlier submission that Bill 148 doesn't really apply
11 and it doesn't really matter. Bill 148 does a
12 wonderful job of simplifying what Section 24(1) says
13 and it now says:

14 "... no person shall establish, alter,
15 extend or replace a new or existing
16 sewage works except under and in
17 accordance with an approval granted by
18 the Director."

19 And it's much easier to understand. My submission on
20 the OWR is that it doesn't matter and if you direct
21 your attention to subsection (6) of Section 24, it
22 says:

23 "This section does not apply,
24 (a) to a sewage works from which sewage
25 is not to drain or be discharged



1 directly or indirectly into a ditch,
2 drain or storm sewer or a well, lake,
3 river, pond, spring, ..."
4 et cetera, and in fact any watercourse. It's my
5 submission that it's that clause which applies in this
6 case, that there is no direct or indirect discharge
7 into a watercourse. It's not a situation of an
8 industry having a direct discharge to a river. It's a
9 case of a discharge to the sanitary sewer system,
10 either directly in the case of Site F or via truck in
11 the case of Site D. In that case it is my submission
12 that Section 24 doesn't apply and there is no need for
13 Ontario Water Resources Act approval and you need not
14 do anything with that. I don't know how you will deal
15 with it at the end of the day. I would suggest you
16 decline to deal with the application on the basis that
17 that section of the Act is not applicable.

18 With respect to the Conservation
19 Authorities Act, and following up on Mr. Olah's
20 submissions, the Ministry takes no position on the
21 issuance of the permit except it would like to note
22 that it makes sense that it should simply follow the
23 event. As Mr. Olah put before you, the Conservation
24 Authority in Halton reached agreement on the criteria
25 which would go to the final design and he referenced



1 the two exhibits, H-238 and H-239, and I will get to it
2 probably tomorrow now as to how they have been
3 incorporated into the Certificate of Approval
4 conditions. I don't think it's as simple as they have
5 been moved verbatim. I have moved some of the words
6 around, but it's all there and as I say Mr. Olah has
7 seen that.

8 There are a couple of submissions to
9 make with respect to the Planning Act approval and I
10 guess it follows up in some sense the submissions
11 Mr. Lederer made to you this morning. It would be my
12 submission that the Environmental Assessment Act and
13 the Planning Act are complementary to the extent there
14 is no conflict between their respective requirements,
15 and to some extent I am anticipating I guess an
16 argument that might be made by my friend Mr. Leitch.
17 There is in fact a conflict provision in the Planning
18 Act, Section 70, which is a standard type of conflict
19 provision which says:

20 "In the event of a conflict this Act
21 prevails."

22 In my submission to you in advance of any kind of that
23 submission I see no conflict and you have no need to
24 resort to Section 70.

25 Following up from Mr. Lederer, I guess



1 his submissions with respect to Mr. Walker and how the
2 traditional land use planning function has been sort of
3 enveloped by the environmental assessment procedure, it
4 would be my submission that the two statutes are
5 complementary, they sort of fit inside one another, and
6 the Environmental Assessment Act only has primacy in
7 the sense that Section 6 of the Act prevents the
8 granting of any other approvals unless the EA has been
9 accepted and approval to proceed has been given. So,
10 in a situation of staged hearings or in a situation
11 where you didn't have a consolidated hearing there is a
12 bar in the Environmental Assessment Act to issuing
13 Planning Act approvals prior to Environmental
14 Assessment Act approval. As a practical matter it
15 doesn't matter here because that is all before you.

16 I guess I would agree with the
17 submissions Mr. Lederer made that the Environmental
18 Assessment Act if anything casts a broader net and
19 brings more things into a planning analysis, but it is
20 my submission to you, and it will be throughout, that
21 the Environmental Assessment Act is also a planning
22 statute but it is just a broader-based planning
23 statute.

24 Finally, it is my submission that the
25 Planning Act approvals should flow as a matter of



1 course from a decision to approve one of the sites and
2 by that I mean the actual mechanics of the decisions
3 themselves, having to rezone Site D or having to change
4 Official Plans, and in that respect I would like to
5 touch briefly on the argument Mr. Stagl advanced to you
6 in his evidence. As I understood that argument he was
7 taking the position that if all other factors were
8 equal the Board should approve the site, of the two
9 they have before them, which least disturbs the
10 existing planning framework.

11 Now, I just have a couple of
12 observations to make I guess on that position and I
13 guess the bottom line for me is that I don't believe
14 the Board should be constrained in that sort of manner.
15 We are talking about planning throughout this hearing
16 and whether it's narrower Planning Act planning or the
17 broader Environmental Assessment Act planning. The
18 logical consequence I would submit of Mr. Stagl's
19 argument is that you ought to approve Site E because
20 that is the one in the Official Plan as the old Site F,
21 the one that is within the planning framework and
22 logically it doesn't make sense to me.

23 The other observation I would make is
24 that simply I have a problem I guess with his
25 submission with regard to Site F, that there wouldn't



1 be a disturbance of the existing planning framework
2 when in fact it seems apparent that that is only so
3 because the undertaking is municipal. If the
4 undertaking had been private, and if for example if the
5 application of National Sewer Pipe Limited were
6 proceeding, there would need to be changes in the
7 planning framework and the argument would not apply.

8 Finally, under the Planning Act the
9 Ministry has an interest in one specific area of
10 planning. You may recall I cross-examined Mr. Walker,
11 Mr. Stagl and Mr. Zsadanyi on this item, and that has
12 to do with the need for some kind of protection
13 surrounding the approved site, and we have limited the
14 discussion to Site D mainly because of the planning,
15 the sort of provincial planning framework which applies
16 around Site F and I will restrict the discussion to
17 Site D because there is nothing that could be done at
18 Site F. It is my submission that there is the need
19 beyond any of the other planning approvals you are
20 dealing with for the creation of what has been termed a
21 special policy area in the Official Plan, and that is
22 to reflect potential nuisance impacts around Site D.
23 For a reference I would refer to Mr. Hiraishi at Volume
24 48, pages 10951 and '55 and that is a reference simply
25 to the inevitability of certain off-site nuisance



1 effects. The Ministry has a policy on this type of
2 issue and it's Policy 07-07 and it has been filed
3 before you as part of Exhibit E-333. E-333 is a letter
4 to the Ministry of Municipal Affairs from a Mr. Beech,
5 the Planning Co-ordinator for this matter in the
6 Ministry's Central Region, and in that he suggests the
7 Official Plan Amendment I am talking about and he
8 includes a copy of Policy 07-07. I asked Mr. Walker
9 about this and you will find that at Volume 61, pages
10 14120 to 14223. It's fair to say I think that Mr.
11 Walker agreed with the concept in principle and had
12 some problems with whether it could be effectively
13 implemented in the field. I also asked Mr. Stagl, and
14 that is Volume 95, pages 22661 to '4 and I think most
15 importantly I asked Mr. Zsadanyi, and I hope I don't
16 mislabel him, but I believe he was the Planning
17 Director for the Town of Milton, and I would refer to
18 Volume 68, page 15887 to 15890. Mr. Zsadanyi, you may
19 recall, wholeheartedly supported the notion of
20 establishing some sort of special policy area around
21 Site D.

22 We are constrained in this proceeding I
23 guess in the following manner; you do not have before
24 you that kind of special policy area proposal. There
25 wasn't that proposal made in the initial application



1 and no notice has been given of it. We considered
2 fairly early on simply suggesting to you that you ought
3 to amend the regional Official Plan to make the
4 required change. It occurred to us that there may be a
5 notice problem in that there may in fact be people
6 around Site D, and I find it very unlikely but in
7 theory, but people around Site D who otherwise would
8 not have participated or otherwise chose not to
9 participate in this process but had they known there
10 would have been an Official Plan change made affecting
11 their property might have shown up, but there is a
12 notice problem and we tried to resolve this by
13 proposing a condition which, if I can take you to tab
14 1, it is condition 9 at page 2, condition 9 of the
15 Environmental Assessment Act conditions and the
16 condition would require:

17 "Within one year of this approval, ...
18 (Halton) shall submit an application to
19 the Town of Milton for an Official Plan
20 Amendment to provide for the creation of
21 a Special Policy Area ... The Special
22 Policy Area shall be created in
23 accordance with Ministry of the
24 Environment Policy #07-07."

25 There has been a fair amount of reference to that



1 policy about there being a 500-metre influence area. I
2 would refer to E-333 wherein Mr. Beech talks about that
3 because I guess the point is simply that we don't think
4 there is any magic to 500 metres and it's the kind of
5 thing that must be tailored to any individual site. We
6 didn't feel we could constrain Halton or the Town of
7 Milton as to how they did that, but the principle is
8 the most important thing to the Ministry of the
9 Environment and therefore we propose the condition as
10 it sits.

11 Finally, with respect to approvals under
12 the Ontario Municipal Board Act for financing of the
13 Municipal Act and the Expropriations Act, the Ministry
14 takes no position.

15 If I can then turn to the Environmental
16 Assessment Act, and that is set out in the next part of
17 my submissions at paragraphs 9 to 14. Your
18 jurisdiction under the Environmental Assessment Act is
19 set out in subsection (2) of Section 12, and I'm not
20 sure of the effect of Mr. Lederer's comment this
21 morning that arguably your power may be under Section
22 13. I don't think that's right, I think it's 12(2).
23 In that subsection it is set up so that the Minister
24 may require the Board, the Environmental Assessment
25 Board, to hold the hearing with respect to three



1 matters and Mr. Lederer has been through them, the
2 acceptance, approval and conditions and subsection (3)
3 says the Board shall hold the hearing and decide the
4 matters referred to in the notice of the Minister. In
5 this case there is obviously no notice from the
6 Minister because of the Consolidated Hearings Act.
7 This is an area which is not dealt with specifically in
8 the Consolidated Hearings Act and it's an area that I
9 guess in a former life when I used to take a lot of
10 calls from lawyers when I was employed by the Ministry
11 of the Environment, I used to take an awful lot of
12 calls on this because it is fairly unclear. We take
13 the position that logically there didn't need to be any
14 action by the Minister to get it to the Board because
15 it has been gotten before this Joint Board through the
16 provisions of the Consolidated Hearings Act and it's
17 completely logical and consistent I would submit. In
18 any event it doesn't matter because it is here before
19 you and you now have the power that would otherwise be
20 exercised by the Environmental Assessment Board and you
21 have three decisions to make.

22 I would simply note, and this applies to
23 the Environmental Protection Act, but subsection 5(7)
24 of the Consolidated Hearings Act states that:

25 "The standards and criteria ... (from



1 the statutes which are consolidated
2 before you) apply with necessary
3 modifications ..."

4 So you are directed by the Legislature to use the same
5 kind of judgment you would use under the Environmental
6 Assessment Act and it is simply transferred to the
7 Consolidated Hearings Act. The first decision you have
8 to make under the Environmental Assessment Act is
9 whether the Environmental Assessment document itself
10 should be accepted or amended and accepted. As you
11 have heard more than once in this hearing, that
12 acceptability is governed by the requirements of
13 subsection 5(3) of the Act and for the purposes of
14 convenience I have set that out for you in paragraph
15 10.

16 To briefly summarize what happened in
17 this case, the Environmental Assessment -- I guess to
18 put it in the context of where it fits within the
19 overall 900-and-some-odd documents you have before you
20 and 176 volumes of evidence, the Environmental
21 Assessment itself was submitted on October 28, 1985 and
22 the Environmental Assessment itself is actually this
23 document, H-75, but this document incorporates 47
24 schedules which you would find listed in there starting
25 at page S-15. So, the Environmental Assessment is, I



1 don't know, maybe a foot deep or something like that.
2 Having received that document the Ministry as required
3 by Section 7 of the Act caused a review to be prepared
4 and that review was completed in February of 1986 and
5 is before you as Exhibit E-109.

6 You have Mr. Clarke's evidence on this
7 point and you have before you in fact two pieces of
8 evidence, the review itself, E-109, and Mr. Clarke's
9 witness statement which is E-932 and, in fact,
10 Mr. Clarke's evidence at Volume 168 of the transcript.

11 DR. KINGHAM: Don't we have a
12 supplemental review?

13 MR. TIDBALL: I'll get to that in a
14 moment, but in the scheme of things the review itself
15 came first. The government review evaluated the
16 Environmental Assessment under two criteria and the
17 first is "Are all the components required by subsection
18 5(3) present?" and the answer in that case was "Yes"
19 and the second one was "Is the technical quality and
20 level of detail satisfactory?" and that question is
21 answered through the answers received from various
22 members of the government review team as
23 Mr. Clarke explained and the answer to that question
24 was "No", but based on the concerns of I think
25 primarily nine review agencies. You have heard



1 Mr. Clarke explain that normally the kinds of concerns
2 that were raised, especially when they concern lack of
3 detail which is what this was about, would have been
4 dealt with prior to the completion of the government
5 review and would have been worked out between Halton
6 and the government review agencies and in the areas
7 where there is information lacking or something.

8 However, Halton had been given a commitment to have a
9 review out in 90 days and the Ministry kept to that
10 commitment and the result was what has been termed a
11 negative review. For the discussion of that I would
12 refer to Mr. Clarke at Volume 168 at pages 41920 and
13 '21 and 41996 to 42001.

14 After that Halton felt the need to
15 respond to this negative review and they prepared a
16 response to the review that was submitted to the
17 Ministry and the various government agencies in
18 November of 1986, and that is in H-77 and H-77A, and
19 H-77A is simply a schedule appended to H-77, and
20 following that the supplementary review was prepared,
21 E-110, and I guess it was released in April of 1987.
22 Again on the two criteria the conclusion of the
23 reviewer was that all of the components of the EA were
24 present, and logically that could hardly not be so, and
25 on the second question on the technical quality and



1 level of detail, the vast majority of concerns raised
2 by the government reviewers had been addressed and Mr.
3 Clarke concluded that the answer to that question was
4 also yes, the requisite technical quality was there and
5 he therefore concluded that subsection 5(3) had been
6 met.

7 DR. KINGHAM: Can I be clear on what you
8 are telling us? It's that the negative response came
9 primarily because of a short turn-around time and the
10 substantive negativism was strictly related to level of
11 detail?

12 MR. TIDBALL: I think that's quite true
13 at the end of the day and in fact I had a reference
14 here and I didn't have time to look in the transcript,
15 but if you could refer to Mr. Walker's cross-
16 examination and in fact the questions from you, the
17 infamous questions at the end of the day, "What would
18 you have done differently?" and you must read it
19 carefully but what Mr. Walker says -- I think the first
20 thing he says is "We wouldn't have stuck with the 90-
21 day turn-around" and I think Mr. Walker himself saw
22 that as a major problem. It's unfortunate or an
23 unfortunate development, but as Mr. Lederer has chosen
24 to characterize it and I take no issue with his
25 characterization, but it simply externalized the



1 process that often takes place within the government
2 review process itself in that what happened is what
3 always happens except another two documents were
4 generated as a result and at the end of the day I think
5 you simply have to look at -- you finally have to look
6 at the final result. It is not my understanding that
7 any party before you is taking any position that the
8 Environmental Assessment is not acceptable under the
9 Act and I was going to simply stop there and the
10 submission would be that you should answer the first
11 question directed to you by 12(2) by saying that the EA
12 was acceptable.

13 However, I would like to comment briefly
14 on the question put to Mr. Lederer this morning with
15 respect to alternatives to, and I suppose this won't be
16 the first time or the last time, but I'm afraid I
17 disagree with Mr. Lederer in the way he gets to his
18 submission to you, although I think after the break and
19 adding the business about the problems of jurisdiction,
20 I think that that is a valid point. I think you have
21 to look at the review and Mr. Clarke considered this
22 and if I draw your attention, and if you could make a
23 note of it, but in E-109 there is a general discussion
24 of alternatives to found at pages 11 and 12 in a
25 generic sense and then at page 32 Mr. Clarke deals with



1 the alternatives to the undertaking that were
2 considered by Halton, and I think that the only logical
3 way to approach this is to approach it through the kind
4 of analysis that Mr. Clarke laid out for you in his
5 evidence, and that is you must look at the process as a
6 scoping exercise and you have to look at it, as you go
7 through the process, the level of detail increases and
8 it's entirely reasonable at earlier stages of the
9 process to deal with things at a fairly general level
10 of detail. I would refer you in particular to -- there
11 was an exhibit that Mr. Clarke put before you, and I
12 think it's around -- I think it's Exhibit E-934 and it
13 was I think a drawing that showed how you went from a
14 broad range of alternatives and scoped it down and I
15 think that is how you must analyze this. You must look
16 at it and say we start with alternatives to and there
17 are a fair number of alternatives, i.e., composting,
18 recycling, reduction at source and the various things
19 actually set out at page 32 of the review, and there
20 was some evaluation of that and I would only differ
21 from Mr. Lederer in saying that you have to look at the
22 waste -- H-9, I'm sorry -- the waste needs and systems
23 analysis and to be satisfied you have to look -- you
24 have to be satisfied that the Environmental Assessment
25 Act has been satisfied and you must look at it because



1 H-9 is the only real analysis of alternatives to the
2 undertaking. It is my submission that the analysis is
3 satisfactory and meets the requirements of the Act, but
4 you must approach it from the point of view of that far
5 less level of detail than is required as you get down
6 the road. I think as a practical matter Mr. Lederer's
7 submission is perfectly sensible and in fact Halton
8 required a landfill of some type and there seemed to be
9 no doubt as there seems to be no doubt now that a
10 landfill of some size was required, but I suppose the
11 issue simply goes to the size of the landfill.

12 On the acceptability of the
13 Environmental Assessment, I guess there is one further
14 submission I would like to make to you. There have
15 been submissions throughout the hearing that at the end
16 of the day what is commonly done, and in fact I think
17 it was characterized by Mr. Leitch as being the law in
18 this area, all of the documents filed before you and
19 all the transcripts would simply be deemed to be part
20 of the Environmental Assessment. In fact what has
21 happened is, generally speaking, the Board has as a
22 technical matter, or other boards or other joints
23 boards or mainly joint boards have simply at some point
24 in the decision said "We amend the EA by adding all of
25 this stuff." My submission to you is that that is



1 certainly not the law and it originated in several
2 earlier decisions, primarily on Hydro cases, where
3 there were questions raised about the ability of the
4 Environmental Assessment to meet 5(3) and there were no
5 other approvals required beyond the Environmental
6 Assessment, other than fairly narrow technical
7 approvals needed or Expropriations Act approvals
8 needed, and it was a problem that the Board had to get
9 around by deeming everything to be included. I'm not
10 sure that that's necessary and I don't think it causes
11 any harm if you do it but I don't see it as necessary.

12 I submit that the Environmental
13 Assessment as we find it with H-75 and with the 47
14 attachments, I think that that is acceptable as amended
15 by H-77, but I don't think it is necessary as a
16 technical matter for you to at some point in your
17 decision include 960-some-odd exhibits and 176 volumes
18 of transcript. I don't see that as necessary and I
19 question what practical effect it has anyway. If you
20 need to do it or if you feel there were areas in the
21 Environmental Assessment as submitted that require
22 something further that came out at the hearing, then by
23 all means do it but I just don't think that it is
24 necessary.

25 I guess what that touches on is the



1 difference between the Environmental Assessment Act and
2 what I will be submitting is the jurisdiction of the
3 Environmental Protection Act. It is a matter that
4 comes up time and time again in waste management
5 proceedings and it is fair to say that the legislative
6 direction is not clear. The Ministry takes a fairly
7 specific view of where the Environmental Assessment Act
8 ends and the Environmental Protection Act begins, but
9 that is by no means the only interpretation one can
10 gather from the evidence -- I'm sorry, from the
11 statute. I would simply submit that in this case it's
12 our view that the Environmental Assessment Act
13 submission was what is contained with E-75 and its
14 attachments and as amended by H-77 and everything that
15 came in after that goes to the Environmental Protection
16 Act and it's perfectly sensible if you look at it
17 because it's a much broader or greater level of detail,
18 the kind of detail that goes to the more technical
19 matters under the EPA.

20 Now, there is a problem in some areas
21 where a greater level of analysis or a more detailed
22 analysis was done on issues that don't really pertain
23 to the EPA and that aren't with respect to the natural
24 environment, the air, land and water of the Province of
25 Ontario. I'm not sure what we do with that, but it



1 causes a problem from the point of view of the Ministry
2 because it is our position that what was there was
3 acceptable under the EA and you didn't need it under
4 the EPA, but I don't see that as a critical problem and
5 only say it as a comment on the way through. That is
6 something that will take a few years to shake down or
7 perhaps there might be a legislative amendment to deal
8 with it, but it is not in a completely satisfactory
9 state at the moment.

10 MR. ESTRIN: I hate to interrupt but I
11 have been sitting here wondering if Mr. Tidball was
12 here at the point towards the end of the day most
13 recently when the Board in fact made an Order amending
14 the EA with all the evidence and documents and whether
15 Mr. Tidball was aware of that or is he asking the Board
16 to retract that Order?

17 MR. TIDBALL: I wasn't aware of that.

18 DR. KINGHAM: We did that on the last
19 day we heard evidence.

20 MR. TIDBALL: I recall now. I forgot
21 when I was drafting -- I'm sorry to have wasted your
22 time. I recall the Board having done that and I don't
23 think it hurts anything and I certainly don't think you
24 need to retract it.

25 DR. KINGHAM: It may prove to be a



1 matter of semantics or a matter of substance, but we
2 did make the Order and we intend to consider for our
3 assessment the environmental impacts whether they be
4 social or other ...

5 MR. TIDBALL: Thank you. I'm about to
6 move on to the question of the approval to proceed and
7 I think this would be a logical place to break.

8 MR. LANCASTER: I was just going to
9 suggest that. We will adjourn until 2:00 o'clock.

10 --- Luncheon recess 12:35 p.m.

11 --- Upon resuming at 2:00 p.m.

12 MR. LANCASTER: Please be seated.

13 DR. KINGHAM: We're ready for you,
14 Mr. Tidball.

15 MR. TIDBALL: Thank you. I want to go
16 back to one thing this morning. I'm afraid I left the
17 implication there may have been major conditions or
18 changes to the conditions that counsel hadn't seen. It
19 had been brought to my attention and it slipped my mind
20 that I sent the almost latest version out to everyone
21 on October 6th and they have changed in some minor way
22 since then but nothing substantial.

23 MR. LEITCH: We'll be the judge of that.

24 MR. LEDERER: How does "almost the
25 final" relate to "nearly the final"?



1 MR. TIDBALL: "Almost" is one order
2 removed. When we left off before lunch we were talking
3 about the Environmental Assessment Act and I would like
4 to move on to the second decision you have to make
5 under the Environmental Assessment Act and that is
6 whether approval to proceed with the undertaking should
7 be granted. In the Environmental Assessment Act there
8 are no criteria to assist you, no specific criteria to
9 assist you in coming to that decision. You are simply
10 required to decide by subsection (3) of Section 12 on
11 approval to proceed. It may well be, and if you have
12 the Environmental Assessment Act there I can refer you
13 to Section 14. It's difficult to say whether this is a
14 legislative oversight or not, and I have heard it
15 argued, in fact by members of the Board, that they
16 consider their jurisdiction to be the same as the
17 Minister. If you look at 14(2) the Minister is at
18 least given matters to consider and if you look at them
19 they are not particularly startling and the purpose of
20 the Act and the EA as accepted and submissions if any
21 made to the Minister with respect to the EA. There is
22 nothing too startling, but the Board is not
23 specifically given even that jurisdiction. It is my
24 submission that it is at least reasonable or it would
25 be reasonable for this Board to start there and whether



1 you are specifically given it or not I don't think
2 matters, but it makes sense to start there, to at least
3 consider the purpose of the Act and I think it's
4 meaningless to say that you should consider the EA as
5 accepted because that goes without saying.

6 The purpose of the Act is set out in
7 Section 2 and is stated to be:

8 "... the betterment of the people of the
9 whole or any part of Ontario by
10 providing for the protection,
11 conservation and wise management in
12 Ontario of the environment."

13 I am going to suggest that logically a decision on
14 approval to proceed with the undertaking flows from
15 subsection 5(3)(d), and 5(3) you will recall is the
16 subsection of the Act that sets out what an
17 environmental assessment has to consist of and 5(3)(d),
18 and Dr. Kingham touched on this this morning, states
19 there has to be an evaluation of the advantages and
20 disadvantages to the environment of:

21 "...the undertaking, the alternative
22 methods of carrying out the undertaking,
23 and the alternatives to the
24 undertaking."

25 If you read that as a continuum, it obviously ends up



1 in 5(3)(d) where all of the information that is
2 otherwise laid out is evaluated and for comparative
3 advantages and disadvantages and the undertaking
4 naturally flows as the most acceptable combination of
5 advantages and disadvantages of the alternatives looked
6 at.

7 In this case the comparative evaluation
8 of alternatives -- in every case the comparison of
9 alternatives is in many levels and starts on the
10 broadest level where you are talking about alternatives
11 to the undertaking and devising in this case that the
12 preferred option is landfill and then moving down into
13 the very, very much more detailed and having a close
14 look at specific alternative methods. In this case it
15 has been laid out very carefully and it doesn't matter
16 whether it is EA or EPA, you are given a clear choice
17 between Site D and Site F. Although it may seem almost
18 trite to say it, what you are really charged with doing
19 under the Act is doing a comparative evaluation of the
20 advantages and disadvantages in this case of Sites D
21 and F and that is where you will end up with your
22 decision.

23 Another factor going into this, although
24 it is not specific, there is an overlap between the
25 Environmental Assessment Act and the Environmental



1 Protection Act in that both statutes apply to an
2 undertaking of this type. This isn't an undertaking
3 like a major highway or a hydro line where there may be
4 other tangential approvals, but there is no real other
5 approval that goes to the merits of the proposal. In
6 the case of waste management you have the Environmental
7 Protection Act sitting there that otherwise would deal
8 with the approvability of the site from a more
9 technical point of view focused on the natural
10 environment as opposed to the environment as that term
11 is broadly defined in the Environmental Assessment Act.
12 It seems to me that it is at least a factor that you
13 have to consider, the approvability of either site
14 under the Environmental Protection Act. If one or the
15 other site is unacceptable under the Environmental
16 Protection Act, clearly it shouldn't be given approval
17 to proceed under the Environmental Assessment Act and
18 that just follows.

19 It is the submission of the Ministry,
20 Mr. Chairman, that you have sufficient information
21 before you to approve the undertaking or to give
22 approval to proceed with the undertaking under the
23 Environmental Assessment Act and we derive that
24 partially from a discussion that I am going to carry
25 through for the balance of today and perhaps into



1 tomorrow, and the bottom line of that discussion is
2 that both sites can be approved under the EPA. We
3 submit that you could give approval to proceed with
4 either site under the Environmental Assessment Act and
5 we are not going to take a position on one site over
6 the other. We don't -- let me back up.

7 Such an evaluation requires a balancing
8 of the advantages and disadvantages to the environment
9 as that term is broadly defined in the Environmental
10 Assessment Act. There are parts of that definition, if
11 you will, specifically if you look at the definition of
12 "environment" found on the first page of the
13 Environmental Assessment Act in Section 1, the third
14 item is:

15 "...the social, economic and cultural
16 conditions that influence the life of
17 man or a community."

18 It is my submission that the Ministry of the
19 Environment in its traditional role, and it has a role
20 with respect to the administration of the environmental
21 assessment process, but in its traditional role it has
22 nothing to say about that area and it really has no
23 jurisdiction over that particular area and we don't
24 think it is appropriate to stand before you and take an
25 overall position purporting to take into account



1 impacts on the social, economic and cultural
2 environment. That's really not our job. We are
3 prepared to make submissions to you with respect to
4 things that are within our jurisdiction and we are
5 satisfied that the factors that are within our
6 jurisdiction, specifically groundwater and surface
7 water impacts, have been adequately evaluated
8 throughout the process.

9 DR. KINGHAM: I take it you are saying
10 that "environment" as defined by you for the Ministry
11 of the Environment is different from "environment" as
12 defined by the legislation to this Board?

13 MR. TIDBALL: There is an interesting
14 dilemma with the Ministry of the Environment because we
15 administer more than one piece of legislation. We
16 administer the Environmental Assessment Act and the
17 "environment" is broadly defined, but the Ministry sees
18 its role as a sort of guardian of that process but
19 really -- I can't say that in an absolute sense, but in
20 general there really isn't the expertise within the
21 Ministry to evaluate things like Dr. Schiff's social
22 impact assessment or in fact Professor Lang's social
23 impact assessment and we don't have the horses to look
24 at that and we don't pretend to look at that and I
25 don't pretend to stand before you and say we have



1 looked at it and we think you should prefer one opinion
2 over the other. There are lots of factors that go into
3 your decision and there is a complete balancing you are
4 going to have to do. We are able to stand before you
5 and make submissions with respect to those things which
6 we feel strongly about and we feel that are in our
7 jurisdiction, but with respect to the others, we will
8 just not take an overall position and I think that's as
9 far as I can go on it. I'm not sure it would add
10 anything to your deliberations because there are
11 numerous parties here putting positions before you and
12 I'm not sure it adds anything that the Ministry throws
13 in its two cents worth and says we think overall one
14 site is better than the other.

15 In any event, it is my submission that
16 you can give approval to proceed with either site under
17 the Environmental Assessment Act and I suppose
18 parenthetically it is regrettable that the Board can't
19 approve both sites given that position, but the
20 jurisdiction of the Board has been constrained by the
21 definition of the undertaking and you really can only
22 approve one or the other, but logically it makes sense,
23 if both are acceptable it may well be that given the
24 concerns raised by the City of Burlington, especially
25 with respect to the size of site that may or may not be



1 required, it may in fact be regrettable that you can't
2 do that.

3 This I guess would be the logical point
4 to put in my two cents worth on Mr. Lederer's
5 submissions on Halton's two-site strategy. I wasn't
6 going to say anything, but having heard him start the
7 discussion with reference to Ministry counsel at the
8 Peel hearing I would only put in one point: I don't
9 pretend to have anything to say with the politics of
10 Halton Region and how these things are possible or not
11 possible, but I would disagree that this would have
12 been as long a hearing had there only been one site
13 before you. I fully believe this would have been a
14 much shorter hearing had there only been one site. I
15 think it's too narrowly -- the discussion is too narrow
16 to say if we had taken it through exactly as we did it
17 and named one site at the end it would have been as
18 long. That might be so, but in fact the strategy of
19 the Region goes well before the decision to go to the
20 hearing. The strategy started before the technical
21 studies were undertaken and in fact at the EA level I
22 believe it was Mr. Walker's recommendation that Site F
23 was the preferable site. At that point the Region
24 could have decided to take Site F through but they
25 chose not to, for all the reasons set out by Mr.



1 Lederer and I have no quarrel with them, and devoted
2 considerable resources to doing technical studies at
3 both sites. It is my view that had that not happened
4 and had Site F for example proceeded alone along that
5 track then we would have been done by now, but I don't
6 know that goes to anything and I assume Mr. Lederer
7 raises it because he anticipates the Board saying
8 something about it in its decision but for what it's
9 worth those are my views.

10 Having said that, that leaves the third
11 decision you have to make under the Environmental
12 Assessment Act, whether approval to proceed with the
13 undertaking should be given subject to terms and
14 conditions and, if so, what those terms and conditions
15 should be. Again the Board is not given any specific
16 jurisdiction on conditions. It is simply given the
17 power to decide on terms and conditions baldly and
18 nothing constrains that jurisdiction. Again the
19 Legislature has seen fit to give the Minister and
20 Cabinet direction on what conditions they may impose
21 and that is set out in 14(1)(b) and it names things
22 such as methods in phasing of the carrying out of the
23 undertaking, mitigation measures, further research
24 investigation, studies and monitoring programs, any
25 changes in the undertaking requiring the proponent to



1 enter into agreements, the requirement that the
2 proponent comply with any undertakings given throughout
3 this documentation and prescribing periods of time
4 during which the undertaking has to be commenced or
5 carried out.

6 Again I believe that other members of
7 the Environmental Assessment Board have taken that
8 jurisdiction, so to speak. I'm not sure that it,
9 matters that you say you have the specific jurisdiction
10 or not but it's a good starting point in terms of
11 condition you may want to impose. It's logical you
12 take some guidance from it.

13 The conditions we are proposing under
14 the Environmental Assessment Act are set out at tabs 1
15 and 2 in my submissions and let me try and explain how
16 they fit with what are at tabs 3 and 4 because
17 logically there is a continuum through them. We tried
18 to put the operational type of conditions, the things
19 that went very specifically to site design on-site, we
20 tried to put them into the Environmental Protection Act
21 conditions under the Certificate of Approval and there
22 are a couple of reasons for that. In terms of
23 administration it is simpler. If it turns out there is
24 some problem it is considerably easier to do something
25 with a condition under the EPA than to have to go back



1 and amend an Environmental Assessment Act approval, as
2 that can be problematic as you may have to get an
3 exemption or you end up triggering the hearing process
4 all over again.

5 Conditions that are broader, that are
6 unrelated to the Environmental Protection Act type of
7 matters or extend beyond the site boundaries to the
8 extent they require certain works off-site with one or
9 two exceptions have been put into the Environmental
10 Assessment Act conditions. I would first like to deal
11 with the common ones. Conditions 1 to 8 and the last
12 condition which for Site D I believe is 14 and for Site
13 F is 12 are common to both sites and there is no
14 difference in the wording. So, if we could deal with
15 them one at a time. For the purposes of convenience
16 starting with the Site D ones because I can move into
17 the Site D specific ones after this, condition 1
18 states:

19 "The Regional Corporation ..."

20 And throughout we have used that term to refer to the
21 Regional Municipality of Halton:

22 "... shall make all reasonable efforts
23 to institute programs and activities and
24 to encourage area municipalities to
25 institute programs and activities to



1 promote the re-use, reduction and
2 separation at source and recycling of
3 waste."

4 Dr. Kingham, this morning you pointed out the original
5 wording of much broader conditions. It has been
6 pointed out to us by the Region that the Region's
7 jurisdiction to do any of this is suspect. Apparently
8 the activities which are now being carried out are
9 perhaps being carried out at the limits or beyond the
10 limits of the Region's jurisdiction as it stands now
11 and I suppose the real problem is that the legislation
12 as drafted for Halton and in fact for every other
13 regional municipality doesn't really reflect the
14 realities of the eighties and nineties. It doesn't
15 reflect the fact there are two things you do with
16 waste, collect it and dispose of it. So collection was
17 given to the area municipalities and disposal was given
18 to the region. In fact you may or may not have heard
19 evidence about this, but there is a serious question
20 about transfer stations in this Region and where they
21 fit, are they collection or are they disposal? This is
22 another one of those areas and I guess all I can say is
23 that we would certainly encourage as much co-operation
24 as can be achieved, but the problem with the earlier
25 approach we proposed to take and which you will find in



1 the draft conditions is that it seems unreasonable to
2 impose specific recycling or reduction targets on
3 Halton when they in fact may have no jurisdiction to do
4 the kinds of things they would have to do to meet the
5 targets. I guess it is with some regret that I make
6 this submission. We very much would have liked to, and
7 in fact after the version of that condition you saw
8 there was another one that was in fact tighter in the
9 sense that it set out more clearly how to calculate the
10 various percentages, but, as I say, we were persuaded
11 by the Region that in fact there was a problem there
12 and we accept that and I would submit that you ought to
13 as well.

14 DR. KINGHAM: On that point we had
15 noticed the significant change from your earlier draft
16 to your final condition and wondered if you had
17 considered or if you would like to address the extent
18 to which subsection 14(1)(e)(v) might help you, if at
19 all, in that regard.

20 MR. TIDBALL: I have no problem with
21 that and in fact it might be logical -- the wording in
22 condition 1 as it stands with "encouraging area
23 municipalities" I think it would be within your
24 jurisdiction to require Halton to enter into agreements
25 with its area municipalities and I have no problem with



1 that at all. The problem is trying to make it an
2 enforceable condition in the sense that you sort of
3 approach it from the back end. If you say that in 1996
4 you have to show you have recycled 12 per cent, let us
5 say, what if you don't? The question then is of course
6 we could enforce the condition, but how would we
7 enforce it? I suppose we could prosecute. We could
8 seek injunctive relief for a breach of a condition
9 under the Environmental Assessment Act but in either
10 case you are in a situation where Halton will argue we
11 don't have the jurisdiction to do it and you can't make
12 us do it. Everybody agrees they should do it and Mr.
13 Watson's bases in part all his calculations on the
14 capacity of the site on the fact they can do it and I
15 guess on the Ministry's side we really want to be able
16 to say you should do it, go out and meet those targets.
17 But, we are constrained by the realities of the
18 legislation.

19 Having said that, I think that that is a
20 reasonable suggestion and the Board may want to -- I
21 may consider that over the course of the next two weeks
22 and perhaps we could make some amendment to condition 1
23 to reflect the need to enter into agreements. I'm sure
24 that happens anyway, but that may in fact be a good
25 addition to that condition.



1 DR. KINGHAM: In considering that, you
2 might consider the value, if any, of your last general
3 condition for both sites, condition 14.

4 MR. TIDBALL: With respect to reporting?

5 DR. KINGHAM: Exactly.

6 MR. TIDBALL: Thank you. I think it is
7 probably not necessary to point out the rationale for
8 condition 1, but I would simply refer you to
9 Mr. Watson's Waste Needs & Systems Analysis, H-15, and
10 for the specific recycling targets I think you will
11 find the important page is pages 10, 23 and 24. I also
12 have a reference to Mrs. Henderson with respect to the
13 lack of an education program and I would refer to
14 Volume 42, a question of yours, Volume 42, page 9352.

15 The next two conditions I think can be
16 considered together. Condition 2 would be to require
17 Halton to:

18 "... make all reasonable efforts to
19 comply with strategy and timetable for
20 the implementation of an Energy From
21 Waste facility ... with the objective of
22 starting up such a facility within 8
23 years of the ..."

24 ... startup of the site and condition 3 would go on to
25 say that:



1 "If 50 percent of the waste generated
2 within the (Region) ... is not diverted
3 from the landfill ..."

4 ... by the end of eight years, then the Region has to
5 immediately commence new studies, whatever studies are
6 necessary at that point for the approval of new waste
7 management facilities and we simply specify:

8 "... waste reduction, re-use, recycling,
9 recovery and disposal programs and
10 facilities."

11 You have heard a lot of evidence as to the importance
12 of the Energy from Waste facility with regard to the
13 sizing of the landfill. I would again refer you to
14 Mr. Watson in H-15 at page 12. The clear evidence of
15 Mr. Watson I think after being cross-examined on it and
16 after coming back to it at a later date was that
17 without an EFW or some other diversion of 50 per cent
18 of the waste stream after eight years, the landfill
19 life would be cut by in the order of 3.8 years. Again
20 I would refer you to Volume 3 of the transcript, pages
21 5560 to 62 -- I'm sorry, 560. We are all used to these
22 huge number but this is back at the beginning, 560 to
23 562.

24 MR. LEDERER: That's Mr. Watson?

25 MR. TIDBALL: Mr. Watson was cross-



1 examined on this extensively and the number we finally
2 ended up with in the reference I have given you is that
3 there would be a loss of 3.8 years capacity without an
4 EFW.

5 The Energy from Waste program and one of
6 the documents -- it isn't referred to there, but there
7 were a series of documents put into evidence by
8 Mrs. Henderson and Mr. Rinaldo and they are H-46,
9 through to H-50 and those two witnesses gave evidence
10 on that area, and there are references throughout their
11 evidence to specific commitments to carry forward the
12 planning and the ultimate is in Exhibit H-77, the
13 response to the government review. You will recall a
14 commitment to an EFW was something raised in the
15 government review by the Ministry of the Environment
16 technical reviewers and the response is in Part 3 of H-
17 77 which dealt with their commitment to carry forward
18 the planning of those facilities. The effect of the
19 combination of the two conditions is simply that Halton
20 has sized the landfill based on a diversion of 50 per
21 cent of the waste after eight years after startup, and
22 it's hard to say exactly what date that might be. If
23 they don't do that they end up with a site which is
24 considerably smaller and it's simply good planning to
25 require them to start planning for the next type of



1 facility because it is apparent, given the length of
2 time this proceeding has taken, that these things take
3 a fair degree of time and condition 3 would simply
4 require them to start that planning.

5 Condition 4 speaks to the need to
6 establish:

7 "... facilities for the collection and
8 transfer of household hazardous wastes."

9 And then goes on to say that the facilities have to be
10 convenient and available for use at least once in each
11 month. Mr. Chairman, this is a condition that goes to
12 the general concern about the reduction in inputs of
13 hazardous waste to a landfill. We have heard lots of
14 evidence about the output and lots of evidence about
15 what can end up in the leachate of a landfill and what
16 kind of impacts that may cause. We are very concerned
17 about turning some attention to the other end of that
18 and talking about putting controls on a landfill site
19 that would prevent or at least try to prevent the input
20 of contaminants into a landfill. This is the first
21 one. I think it may be the only one contained in the
22 EA conditions and there are a lot more in the EPA
23 conditions. There is evidence before you that the
24 Region already carries out a similar program. I am not
25 sure there is any evidence on timing before you as to



1 once a month or once every six months, but I would
2 refer you to Mrs. Henderson at Volume 42, pages 9325
3 and '6 and to Mr. Hiraishi at Volume 48, page 10894.
4 In my submission this is a common-sense condition and
5 I'm not sure you need to go -- that you need a lot of
6 evidence to support such a condition. I think it's
7 strictly common sense and it simply continues what the
8 Region of Halton does at present.

9 The fifth condition is that we would
10 require Halton to establish a review committee to
11 monitor waste haulage practices in the Region and the
12 purpose of the committee would be to review public
13 concerns, haulage routes and practices with the goal of
14 improving general traffic safety. You have heard quite
15 a bit of concern, I think, and I don't have specific
16 transcript references for you, but quite a bit of
17 concern mainly on the part of residents, especially
18 around Site D and also to some extent around Site F,
19 about traffic. You have heard some concerns early on
20 in the hearing through the cross-examination of Mr.
21 MacLeod with respect to the effect of trucks on Brant
22 Street in Burlington and this condition was
23 specifically recommended by Mr. MacLeod either in
24 Exhibit H-32 or H-33 and the page reference at H-33 is
25 page 67.



1 Condition 6 would require Halton to:
2 "... take all reasonable steps to form a
3 Citizen's Advisory Committee to make
4 recommendations for the avoidance or
5 minimization of off-site impacts from
6 the landfill. The Committee shall
7 consist primarily of local residents."

8 And Halton would be required to provide a reasonable
9 annual budget to operate the committee. This is
10 intended to be a continuation of the type of committee
11 that is now operating at the Burlington landfill. You
12 in fact have evidence from the chairman of that
13 committee, Mr. Aiken, who gave evidence through
14 Ms Vigod's clients, and his evidence is at Volume 161,
15 page 39328 and '9. In addition, such a committee was
16 recommended by Mr. Hiraishi at Exhibit H-42, pages 101
17 and '2 and by Dr. Schiff. You will find that in the
18 transcript at Volume 15, pages 3684 and '5.

19 Condition 7 ...

20 DR. KINGHAM: Before you move to No. 7,
21 we notice a difference between 5 and 6 in that 6
22 specifically refers to citizen participation and 5 does
23 not. Did you mean to exclude it in 5 or did you leave
24 it as an open issue?

25 MR. TIDBALL: I left it as an open



1 issue. There was no specific recommendation on it and
2 it would appear that it may or may not require citizen
3 input and it may be something that would be a matter
4 for haulers meeting with consultants or something like
5 that.

6 Condition 7 would require Halton to
7 undertake, and this is another condition with respect
8 to the input and the prevention of hazardous waste
9 input at the site:

10 "The Regional Corporation shall
11 undertake industrial and commercial
12 waste generator surveys to identify all
13 potential generators of commercial and
14 non-hazardous solid industrial waste and
15 the disposal method of each type ..."

16 And they are required to update the information at
17 least annually and the information is to be made
18 available to the site operators and to the Ministry
19 upon request. As I say, this again stems from the
20 general concern about keeping hazardous waste out of
21 the landfill. I think it's fair to say you don't have
22 any specific evidence to support this type of survey.
23 In my submission it flows logically and as a matter of
24 pure common sense out of the evidence you have before
25 you. It's linked, and we will be talking about this



1 later, but it's linked to several Environmental
2 Protection Act conditions respecting control on the
3 entry of the waste and we put it under the
4 Environmental Assessment Act because it seemed broader
5 than the operation of the site itself.

6 The problem of course is that waste
7 haulers show up at the site and tip at the working face
8 thinking they have on board a load of commercial or
9 non-hazardous waste. Haulers don't necessarily know
10 what they have picked up and I would refer you to a
11 discussion on that with Mr. Hiraishi at Volume 48, page
12 10891 and also I think to Mr. Watson at Volume 2, pages
13 383 to '7. The critical concern, and I think the
14 discussion with Mr. Watson -- the critical concern was
15 the industrial and commercial sector and that's really
16 where you could have a load of something that sort of
17 sneaks into the site and, as I say, all of this is
18 connected to the need for inspection at the face and
19 all of that, but the condition would require the
20 collection of some baseline information that could be
21 used to identify sources of unacceptable waste. For
22 example a hauler shows up at the landfill site and all
23 he knows is -- he turns out to have something
24 unacceptable on his truck and all he knows is that he
25 picked things up at two or maybe one particular



1 location and it would simply serve as some kind of
2 baseline data to enable the authorities to go back at a
3 particular generator of waste using the information
4 gathered in these surveys.

5 DR. KINGHAM: When you say we don't have
6 much evidence to support that condition, were you here
7 for the evidence on the analytical results of the
8 leachate from the existing landfill sites in Halton?

9 MR. TIDBALL: Dr. Willis and Mr. Norman?
10 I was here for part of it.

11 DR. KINGHAM: They spoke to the issue
12 early on and talked about the concentrations of various
13 chemicals in leachate.

14 MR. TIDBALL: I don't mean to suggest by
15 saying we don't have much evidence, I don't mean to
16 suggest there is not tons of evidence on which you
17 could base this kind of condition. I am just saying
18 nobody has stood before you and said there ought to be
19 waste surveys and that is what I meant to say.

20 Condition 8 refers to archaeological
21 surveys. This was a recommendation of Mr. Pearce in H-
22 27 and it has been agreed to by Halton Council
23 resolution and Mr. Lederer referred to it. It is found
24 in H-77A at page 29.

25 MR. LEDERER: Which number?



1 MR. TIDBALL: H-77A, the response to the
2 government review. The appendix document. By the way,
3 there is a minor difference in the wording and you may
4 pick it up between here on Sites D and F because under
5 Site D it says:

6 "Prior to site preparations, the
7 Regional Corporation shall complete the
8 archeological survey ..."

9 And on Site F it says:

10 "... shall carry out an archeological
11 survey ..."

12 And that reflects the difference in the level of survey
13 that has been undertaken at each site.

14 Finally, if you turn to the last
15 condition on either one, condition 14 on Site D, this
16 is simply a requirement for what might be called
17 compliance reporting and:

18 "On or before October 1st of each year,
19 the Regional Corporation shall submit a
20 report to the Director of the
21 Environmental Assessment Branch of the
22 Ministry ... for filing on the public
23 record which describes compliance with
24 these conditions ..."

25 And the major ones I presume would be the recycling



1 condition, and there are several others, and progress
2 on the EFW. This is straight common sense and there
3 have been numerous witnesses who have talked about
4 reporting mechanisms and I don't think it's important
5 to go into it specifically. Note in the second
6 sentence that the report is also to be provided to
7 specific government agencies and the agencies listed
8 are those who would have a specific interest. Under
9 Site D, the Director of the Heritage Branch of the
10 Ministry of Citizenship and Culture would be concerned
11 with the archaeological survey and the Manager of the
12 Electricity Section of the Ministry of Energy would be
13 concerned with EFW and the Director of the Foodland
14 Preservation Branch of the Ministry of Agriculture and
15 Food would be concerned with the agricultural after-
16 use, and that is a condition that I will be speaking to
17 in a minute and, finally, the Clerk of the Town of
18 Milton and similarly on the Site F conditions, the
19 Clerk of the City of Burlington and instead of the
20 Ministry of Agriculture and Food it would go to the
21 Ministry of Natural Resources with respect to the shale
22 resource.

23 If you could now turn to condition 9 of
24 the Site D conditions. Conditions 9 through to 13 are
25 specific to Site D and the first one, I have already



1 spoken to it but it has to do with the special policy
2 area and the amendment to the Official Plan. It was
3 brought to my attention that I may have left the
4 erroneous impression that because we were requesting
5 this condition with respect to Site D and not Site F it
6 somehow implied some feeling about greater impacts at
7 one site or the other and that wasn't the point at all.
8 The point was that at Site F the lands around there are
9 designated under the Parkway Belt West and there is an
10 entirely different framework in which this works and we
11 are relatively satisfied that the Parkway Belt can
12 impose a sufficient enough control, but Site D is a
13 different matter.

14 Next is condition 10. It simply states
15 that:

16 "The Regional Corporation shall design
17 and operate the site in a manner that
18 will allow for the implementation of an
19 agricultural after-use at the site."

20 It's obvious where this comes from. It is a
21 recommendation first from Dr. Mackintosh as a way to
22 mitigate the loss of agricultural lands. It is my
23 submission that the Region should be required to follow
24 this through at least to the extent of making
25 agricultural after-use a feasible possibility at the



1 end of the day. It may well be that in 20 years time
2 the wishes of the municipality or in fact the
3 provincial government may be such that the lands
4 shouldn't remain in agriculture and I don't think the
5 condition should necessarily be drafted so there has to
6 be an agricultural after-use. It seems to make sense
7 that the Region should be required to make that
8 possible and let the decision be made by others in 20
9 years time.

10 Condition 12 refers to the preservation
11 of the Ford farmhouse and associate landscape
12 plantings. That was a recommendation of Mr. Scott in
13 Exhibit H-26, and again Mr. Lederer dealt with that and
14 I think he has agreed to that condition. It has been
15 brought to my attention I may have said condition 12
16 but that was condition 11.

17 Condition 12 refers to the necessary
18 widenings of Highway 25. That was a recommendation of
19 Mr. MacLeod and in H-32 the condition would simply
20 require the Region to make the necessary arrangements
21 with the Ministry of Transportation to do that.

22 No. 13 states:

23 "On or before December 31, 1996, the
24 Regional Corporation shall make all
25 necessary applications for the



1 construction of a gravity sewer or
2 forcemain to connect the site to the
3 Mid-Halton Water Pollution Control Plant
4 or for the installation of leachate
5 treatment facilities at the site."

6 If I could deal with the last phrase first, that is
7 simply put there, although it seems unlikely that new
8 technology might come along in the next five years
9 wherein leachate could be treated on-site and perhaps
10 discharged to surface water because it has no effect,
11 it seems reasonable to leave the possibility there and
12 that is the reason why that last phrase is there.

13 Actually as a condition requiring Halton to install a
14 sewer or forcemain, that is something that was
15 recommended by Conestoga-Rovers in Exhibit B-860 and as
16 to the reasons for why they recommended it, and I think
17 they were primarily economic, I would refer you to
18 Volume 143, page 34594. It is my submission that the
19 evidence before you is that this is something that will
20 have to be done at some time or another. I refer you
21 specifically to Mr. Rinaldo's evidence and of course he
22 was dealing with economics and I believe it was
23 Mr. Rinaldo's evidence that given the assumptions he
24 was given to work with, he assumed it would be
25 economically feasible and I think necessary by 1999. I



1 would refer you specifically to his evidence at Volume
2 54, pages 12478 to 12479 and there is a specific
3 exhibit on this, H-303, the one that shows the graph of
4 costs of trucking versus construction of a sewer.

5 I would simply like to draw your
6 attention to the fact that it would appear reasonable,
7 a reasonable presumption to make after hearing all the
8 evidence, that the site as may be finally designed at
9 Site D will be considerably different from the site
10 proposed by Mr. Hiraishi and the assumptions that went
11 into Mr. Rinaldo's costing estimates and therefore his
12 opinion that the sewer would be required by 1999, were
13 based on Mr. Hiraishi's original assumptions which, if
14 you may recall, didn't involve any pumping of leachate
15 from that site for the first several years. I think it
16 is a reasonable assumption to make from the evidence
17 that in fact with that pumping there will be a
18 difference in leachate generated to be disposed of and
19 there is other evidence before you with respect to
20 other things that might be necessary, and referring
21 specifically to Mr. Feenstra, and I'll get to this
22 later on today, wherein there may be the possibility
23 that purge wells will have to be pumped and there may
24 be the possibility that leachate wells in the waste may
25 have to be pumped, and indeed there might even be some



1 need to pump stormwater, although that does not seem
2 likely. As a contingency that is there and there is a
3 condition that deals with that under the EPA
4 conditions.

5 In all the circumstances it seems
6 reasonable to require Halton to install such a sewer or
7 forcemain and December 31, 1996 -- I don't think the
8 date is critical. It seemed to be a reasonable date
9 but I don't think it is critical.

10 If we could turn then to the Site F
11 conditions, specifically conditions 9, 10 and 11 under
12 tab 2. Condition 9 states:

13 "Prior to any construction activities at
14 the site, the Regional Corporation
15 shall, in cooperation with the City of
16 Burlington, either design and implement
17 measures at Bayview Park to mitigate
18 noise, dust, odour and visual impacts of
19 the landfill site or make provision for
20 replacement facilities during the
21 operation of Cell 1."

22 Now, this condition really has to be considered in
23 relation to the other design conditions in the EPA
24 conditions set out at tab 4. We put this here
25 specifically because of the off-property aspect of it



1 in that it has to involve the City of Burlington
2 because it is their property. It seems apparent from
3 the evidence that there will be impacts on Bayview
4 Park. I can refer you first of all to Mr. Marinacci
5 who you will recall had to do with the White Oaks
6 Riding Club, and I hope I have the name close, but
7 that's at Volume 171, page 42632 and he simply was
8 talking about the potential loss of that facility for
9 horse shows. Obviously the impacts would be primarily
10 in the areas of noise, dust and to a certain extent
11 visual. I would refer you to Mr. Hiraishi at Volume
12 47, pages 10747 to '9 and I was cross-examining Mr.
13 Hiraishi and I think it is clear that no mitigation is
14 proposed at Bayview Park but there are things which
15 could be done, but it's simply that Mr. Hiraishi did
16 not turn his attention to it.

17 It is my submission, Mr. Chairman, that
18 it's apparent that all of the consultants involved
19 here, primarily Mr. Coulter, Dr. Kozckur, primarily
20 those two made certain assumptions about the limited
21 use of Bayview Park and that is how they came to the
22 conclusion that impacts would be minimal and therefore
23 they didn't need to recommend anything specific on
24 Bayview Park. For those assumptions I would refer to
25 Mr. Coulter at Volume 10 of the transcript, pages 2430



1 to '32 and Mr. Kozckur or Dr. Kozckur at Volume 15,
2 pages 3591 to '98.

3 MR. LEDERER: I'm sorry, did you say
4 3591 and is that 35000?

5 MR. TIDBALL: Three thousand, five
6 hundred and ninety-one to '98.

7 DR. KINGHAM: As it was 2430 to 2432.

8 MR. TIDBALL: In the one case where the
9 assumption wasn't made, i.e., no assumption made about
10 limited use, Mr. Coulter at the 2C level of study
11 didn't make that assumption, and I would refer you
12 specifically to Volume 10 of the transcript and
13 Mr. Coulter in chief I think at page 2394 and in that
14 case his recommendation was to relocate the facilities
15 at Bayview Park. It is my submission that to take the
16 position that you don't need to do anything special
17 with respect to Bayview Park simply because it's only
18 really used on weekends is an unreasonable position to
19 take and the operation of the landfill site should not
20 constrain the operation of the park in that manner, and
21 that is the reason we make the submission that there
22 ought to be some special measures taken at Bayview, and
23 it may be at the end of the day that the easiest thing
24 would be to relocate those facilities, especially the
25 horse ring, but it will have to be done in co-operation



1 and consultation with the City of Burlington.

2 DR. KINGHAM: In fact it's my
3 recollection that some counsel here present suggested
4 in the course of that evidence that the horse ring
5 might be relocated and we might be hearing about that
6 subsequently, but we never did.

7 MR. TIDBALL: That's right and I think
8 there was more than one reference to it throughout,
9 Dr. Kingham.

10 Condition 10 has to do with the holding
11 of the quarry licence now held by NSP under the Pits
12 and Quarries Control Act. That licence is filed before
13 you as H-306 and I also make reference to the mineral
14 aggregate resources policy and that is filed as H-305.
15 The wording of condition 10 is virtually the exact
16 wording of the agreement between MNR and Halton filed
17 before you as MNR-538 and I don't have much to say
18 about that but will defer that issue to Ms Mansfield.

19 Finally is condition 11 and in a similar
20 manner to the condition on Site D and it refers to the
21 after-use and would simply require the Region to:

22 "... design and operate the site in a
23 manner that will allow for the
24 implementation of a passive recreational
25 after-use ..."



1 That was recommended by Mr. Stevens at H-21 and I think
2 it is clear that the concept was agreed to by
3 Dr. Kitchen in Exhibit B-882.

4 Those are the comments I have with
5 respect to the Environmental Assessment Act conditions.

6 DR. KINGHAM: Before you leave them, on
7 the last one in each section, 14 for Site D and 12 for
8 Site F, the last half-dozen words of each of those last
9 conditions refer to the Clerk of the City of Burlington
10 or the Clerk of the Town of Milton. First of all, what
11 is the purpose in having them go to those individuals
12 and why stop there?

13 MR. TIDBALL: The purpose was simply to
14 make sure -- presumably the report will be tabled at
15 Halton Regional Council and would get to the City of
16 Burlington or Town of Milton in any event, but it
17 seemed reasonable to have it go formally to the
18 government agency directly affected, i.e., the agency
19 with jurisdiction over the area in which the site is
20 located and it was nothing more than that.

21 DR. KINGHAM: Do you see any value in
22 having notice of the availability of this document made
23 to the general populace?

24 MR. TIDBALL: There may be some value to
25 that and you will notice that the general public comes



1 in to peruse the public record as a regular occurrence
2 and that in fact is why that is there so that it's
3 clear it was going on the public record. It may very
4 well be an interesting addition to give notice about
5 the availability of the document.

6 DR. KINGHAM: And perhaps to have it
7 available in each municipality?

8 MR. TIDBALL: Certainly. So could I
9 take you back to paragraph 15 of my submissions, page 7
10 at the beginning of the blue book? Now I would like to
11 turn my attention to the Environmental Protection Act
12 and it's on this Act I will be spending the rest of my
13 time.

14 Paragraph 15 sets out the powers of the
15 Director under Section 38 of the Act. Now, if you
16 notice, the Director's power to issue a Certificate of
17 Approval, which is in fact his power to approve and
18 which is in fact your power, is unconstrained in
19 subsection (1). It simply says he must consider the
20 application and issue a certificate and that's your
21 job, your job is to consider the application and by
22 inference all the documents you have before you and
23 issue a Certificate of Approval. You are not given any
24 grounds and you are not given any direction as to what
25 you have to consider and you are not given any grounds



1 or tests or criteria for what makes a site approvable
2 or not under the Environmental Protection Act. I
3 suppose you could read the negative out of subsection
4 (2) which if you look at the bottom of the page sets
5 out the grounds for refusing, and I guess it's logical
6 to take the negative and say that if the Director
7 considers that a site won't create a nuisance or is in
8 the public interest and won't result in a hazard to the
9 health and safety of any person that that might be some
10 direction.

11 I am going to suggest that approval
12 ought to be considered in light of the purpose of the
13 Act and in light of the potential impacts on the
14 natural environment. Natural environment is a term
15 defined in the Act as the air, land and water of the
16 Province of Ontario, and actually it's a bit broader
17 than that, or any part of or any combination of those
18 three in the Province of Ontario. The purpose of the
19 Act is to provide for the protection and conservation
20 of the natural environment.

21 Now, if we are going to evaluate a site
22 vis-a-vis potential impacts you have to think about
23 what those potential impacts might be from a landfill
24 site with respect to the natural environment as
25 defined, and I have listed the ones I can think of



1 under paragraph 17. There is dust and odour, noise,
2 litter, visual effects, bird hazards, and that would be
3 a hazard to aircraft from birds, and impacts from the
4 generation of gas and impacts on groundwater and
5 surface water. It is my submission to you,
6 Mr. Chairman, that most of these impacts on either of
7 these sites are amenable to mitigation measures and
8 there is nothing about most of them which goes to
9 approvability one way or the other. The critical
10 impacts in my submission that really bear on your
11 decision under the Environmental Protection Act are
12 impacts on groundwater and impacts on surface water in
13 this case, in the case of D and F, and there may be
14 cases where another one of those impacts is
15 particularly crucial, but looking at D and F it is my
16 submission that the real impacts you have to look at
17 are impacts on groundwater and impacts on surface
18 water.

19 The only other one on that list which
20 may cause you some concern is the bird hazard issue.
21 It is my submission that that does not affect the
22 approvability of either site and, in fact, it really
23 hasn't been raised with Site F, it goes to Site D. In
24 my submission the issue on bird hazards is the extent
25 of the mitigation required, and I am sure you will hear



1 a lot on this from Mr. Estrin and I am sure you will
2 hear a lot of reply from Mr. Lederer as I think he has
3 already promised it. So I don't have a lot to add
4 except that I would note that it's a small airfield,
5 there are no jets in and out of the Burlington Air Park
6 and the eight-kilometre distance is only a guideline
7 and I think Mr. Lederer referred to that. It's not as
8 though there was a regulation concerning eight
9 kilometres from the site, it's a guideline and it is
10 amenable to mitigation. We will come to this at the
11 end of the day, but it is our position that overwiring
12 should be employed as a technique for bird control at
13 Site D and I will get to that later.

14 If I might then start with groundwater
15 impacts, and speaking specifically to paragraphs 19 to
16 21 in my submissions. It is my submission that we have
17 to look at these kind of impacts with some kind of
18 objective criteria. There has to be some kind of an
19 analysis and in my submission I'm not sure,
20 Mr. Chairman, whether you sat on another one of these
21 hearings and I'm sure Dr. Kingham hasn't since it is
22 his first hearing, but in my submission it is to my
23 mind one of the primary problems with these kind of
24 hearings in that there is usually very little analysis
25 which goes into exactly what makes a site acceptable.



1 The tendency is to put as much information as can be
2 humanly gathered before the Board and then say "See, it
3 is acceptable." We would like to suggest that there is
4 in fact an objective way of looking at this which
5 applies across the board and it applies beyond Sites D
6 and F and we would like to propose that in fact there
7 are three criteria against which you should evaluate
8 both Sites D and F. The three criteria are set out in
9 paragraph 19 and they are:

10 "(1) It should be demonstrated that any
11 predicted leachate migration from the
12 landfill will not impair the reasonable
13 use of ground water on adjacent
14 property.

15 (2) It should be demonstrated that a
16 monitoring program can be developed
17 which will be capable of identifying any
18 movement of landfill-derived
19 contaminants."

20 (3) It should be demonstrated that
21 feasible contingency measures will be
22 available to mitigate any impact on
23 adjacent property that is identified by
24 the monitoring program."

25 I put those three criteria or fairly close versions of



1 them as they have been cleaned up a little first to
2 Mr. Sobanski at Volume 22 of the transcript, pages 5006
3 to 5008. I think it's best to simply refer you to
4 those pages and ask you to read them. What I draw from
5 them is that Mr. Sobanski generally agreed with the
6 criteria and I gave him the opportunity to expand on
7 them which he did, but I'm not sure he did it in such a
8 way that you could add a criteria or anything like that
9 from what he said. That's Volume 22, pages 5006 to '8.
10 I also put the three criteria to Dr. Charlesworth at
11 Volume 84, starting at page 20040 and Dr. Charlesworth
12 also agreed with the criteria. He did, however, want
13 to add another criterion and I think I can quote, he
14 thinks the criterion should be that you understand the
15 flow system. I have some comments on that but I think
16 I can pick it up in what I want to say about what
17 Conestoga-Rovers had to say about criteria because I
18 think it's much the same point and I think the point is
19 that understanding the flow system is essential to
20 criterion (1), or some understanding and I think to say
21 there is some absolute level of understanding is
22 misleading.

23 MR. ESTRIN: What was the volume number?

24 MR. TIDBALL: Volume 84. When
25 Conestoga-Rovers came along later in the hearing,



1 Mr. Chairman, and I think I would like to give
2 Conestoga-Rovers credit for this, they took the
3 approach of setting out objective criteria. They also
4 postulated three criteria which I think they referred
5 to as the minimum you would have to meet. I think if
6 you could find B-617 at page 6 and also in 618. At
7 page 6 of Exhibit B-617 Conestoga-Rovers sets out what
8 they consider to be the minimum criteria. Now if I
9 could deal with the second and third ones first; in my
10 submission they are essentially the same as the
11 criteria I have already suggested and I don't think we
12 need to take it much further, but the problem I have
13 with their criteria is their criterion No. 1 which
14 states:

15 "Migration of contaminants from the
16 landfill must be predictable and the
17 impact from this migration must be
18 determined to be acceptable."

19 I guess I have problems with both halves of that
20 criterion, Mr. Chairman. I cross-examined Mr. Crutcher
21 on this fairly extensively and you can find that at
22 Volume 113 extending from page 27167 right through to
23 27212 and I would commend you to that section. It's
24 hard to pick out excerpts to read for you, but there is
25 a specific reference at pages 27185 and '6 wherein



1 Mr. Crutcher said he really thinks there are two
2 separate criteria but Conestoga-Rovers chose to link
3 them within this criterion.

4 DR. KINGHAM: Twenty-seven, one eight-
5 five and six?

6 MR. TIDBALL: Yes, within my cross-
7 examination, the second day I was cross-examining
8 Mr. Crutcher and I had left the whole notion of
9 objective criteria and evaluating each site against
10 that and that was in the morning I believe.

11 If I could start with the second half of
12 it first, that has to do with the impact from this
13 migration must be considered to be acceptable, and
14 again I would refer you to the reference I just gave
15 you on my cross-examination. I'm not sure it is very
16 helpful to make it a criterion that the migration must
17 be determined to be acceptable and I don't think that
18 in terms of a real criterion, it says almost nothing
19 and it would be my view that the criterion I have
20 suggested to you and as set out in paragraph 19 of my
21 submissions is far more appropriate as a concrete way
22 of dealing with what is acceptable and what isn't.

23 As to the first part of the criterion
24 suggested by Conestoga-Rovers, predictability, and if
25 you read Conestoga-Rovers' documents carefully you will



1 see that in fact they spend most of the time dealing
2 with predictability, but the first criterion almost
3 turns into a criterion of predictability and it is
4 through that measure they come to the conclusion that
5 Site F is unacceptable because it is unpredictable.
6 First of all it is my submission that predictability is
7 obviously a component of all three suggested criteria
8 that I have put before you. Obviously to be able to
9 talk about whether leachate migration impairs the
10 reasonable use of groundwater there is an element of
11 prediction and, similarly, to develop a monitoring
12 program and similarly to say there would be contingency
13 plans. I have some problems with the notion as to
14 whether there can ever be an absolute standard of
15 predictability. Predictability is something that
16 always has to be considered with respect to a level of
17 confidence and with respect to a scale. Are you
18 talking about predictability on a local scale versus a
19 regional scale? In my submission it is not something
20 that ought to be an independent and separate criterion.
21 Predictability as a criterion is dealt with adequately
22 within the criteria I have suggested to you.

23 If I could deal then with groundwater
24 impacts with respect to the first criterion, in my
25 submission there is a policy basis in the policies put



1 before you by the Ministry for the first criterion.
2 The first policy that is applicable is the Reasonable
3 Use Policy and that is filed before you as E-154, and I
4 would refer you specifically to the evidence of
5 Dr. Hughes and his witness statement is E-928 and his
6 evidence is found at Volumes 167 and 168 of the
7 transcript. The Reasonable Use Policy is what I might
8 call a two-step approach to evaluating impact and the
9 first step is to determine the reasonable use of
10 groundwater on adjacent property and the evidence of
11 Dr. Hughes is that in Ontario most of the time that is
12 drinking water but that is not always the case, and in
13 fact when I come to make my specific submissions on
14 Site F I will suggest to you that that is not the case
15 with respect to part of the groundwater.

16 The second step is to develop boundary
17 criteria based on applicable criteria that in most
18 cases would be the drinking water objectives, and there
19 is a formula set out in the policy you will recall
20 wherein one is essentially allowed to have an impact up
21 to a certain level based on a point somewhere between
22 background and the objective and if in fact background
23 is at the objective you are not allowed any exceedence
24 at all and that is the case at Site D.

25 The second policy that applies in this



1 case is the Engineered Facilities Policy and that is
2 contained in Dr. Hughes' witness statement, E-928, and
3 in my submission, Mr. Chairman, it is an eminently
4 sensible policy and it simply says that if engineered
5 facilities -- if a proponent comes along and suggests
6 that engineered facilities are necessary to prevent
7 impairment of groundwater as for example Halton has
8 done with respect to Site D, then the applicant should
9 be able to demonstrate that they can be operated as
10 long as they need to operate it and that is over the
11 contaminating lifespan of the site because if they are
12 not then at some point in the future there will be an
13 impact from the site and the facilities -- obviously
14 there needs to be something else done. It's another
15 area where there has been some lack of analysis over
16 the years on this item and in my submission consultants
17 tend to throw the engineering at a particular site and
18 say "There." I think if you look at the kinds of
19 responses I got from Mr. Hiraishi, and I'm sorry I
20 don't have a specific reference, but from Mr. Hiraishi
21 and Mr. Sobanski about the contaminating lifespan and
22 how long they think the facilities will last, it
23 reflects the fact that it's something that consultants
24 don't usually think about. I guess that's one of the
25 reasons why the Ministry promulgated this policy and



1 it's a relatively new policy and you got a version of
2 it before it was even made official as it turns out.

3 I just wanted to raise one matter with
4 the engineered facility policy and that is that I think
5 it is important you don't get hung up on terminology,
6 that somebody calls something an engineered facility as
7 opposed to a contingency or the other way round. I
8 would refer you to Dr. Hughes' evidence on that, that
9 it is simply a question of terminology. If something
10 is needed to prevent off-site impact over the life of
11 the site, then it is an engineered facility that needs
12 to be addressed and it may not be the first level of
13 engineering, it may be the second or third. I guess
14 having raised the Engineered Facilities Policy I
15 wouldn't like to suggest that the Regional Municipality
16 of Halton should be sort of stuck by the letter of it.
17 It is a new policy and something that came up in the
18 greater scheme of things closer to the end of this
19 hearing and my only submission is that it is a sound
20 principle and it ought to be used by the Board in
21 evaluating the acceptability of the sites.

22 Just before we break there is one other
23 area I wanted to touch on which is surface water
24 impacts. I have dealt with groundwater impacts and in
25 my submission how you ought to objectively look at and



1 evaluate groundwater impacts. Paragraph 22 is an
2 attempt to do the same thing for surface water.

3 Generally at landfill sites it has been
4 my experience that surface water is never much of an
5 issue. In the latter stages of this hearing it was
6 apparent that surface water is an issue with respect to
7 Site F and it forced us to turn our minds to the
8 question of whether one could derive an objective
9 criteria to deal with surface water. There is no real
10 policy direction on the specific point. There are lots
11 of Ministry surface water policies, but none of them
12 are directly applicable to an indirect discharge
13 through groundwater and out to surface water. None of
14 them really work. Ms Vigod has on several occasions as
15 has Mr. McQuaid attempted to put to you the Minister's
16 MISA policy, but the MISA White Paper is before you as
17 E-930 and it would be my submission on that simply that
18 the MISA approach, or MISA, per se, is not directly
19 applicable. If you look at the White Paper you will
20 see very clearly that it's directed, it is certainly
21 directed to industrial and municipal-type discharges,
22 direct discharges to surface water. However, it is my
23 submission that it would be appropriate in the
24 circumstance to devise some kind of an objective
25 criteria which is consistent with MISA, and I think



1 that is as follows. It is my submission that the
2 criteria should be that the proponent should
3 demonstrate that any predicted leachate migration from
4 the site will have no impact on surface water, and that
5 seems only prudent in the situation and given Site F
6 and the lack of any predictions with respect to the
7 impact at Site F, either with regard to timing or
8 quality, I think that that is the only prudent course
9 to take in this case, and as an approach also on top of
10 that or as a corollary to it, it is my submission that
11 an approach consistent with MISA would require the use
12 of best available technology to prevent discharges to
13 surface water. We are not talking about the best
14 available treatment technology, but simply the best
15 available technology to prevent the discharge and in
16 the case of Site F, and I'll be coming back to that
17 later, probably tomorrow morning as it stands now, that
18 is what is the best available technology to collect
19 leachate that would otherwise find its way into surface
20 water?

21 Having said that, I was going to now
22 turn specifically to Site D and this would be an
23 appropriate place for our afternoon break.

24 MR. LANCASTER: All right, thank you.
25 Ten minutes.



1 --- Recess

2 MR. TIDBALL: Mr. Chairman, I'm now
3 going to turn to Site D and I'm confident I can get
4 through this today and if I do I wouldn't mind stopping
5 at 4:30 because to start Site F would get us into an
6 area that would take considerably longer.

7 MR. LANCASTER: Under the circumstances
8 we wouldn't mind stopping.

9 MR. TIDBALL: Would you like to stop
10 now?

11 MR. LANCASTER: I wouldn't, no, if you
12 want an honest answer.

13 MR. TIDBALL: My other answer is I teach
14 a course at the University of Toronto starting at 5:00
15 o'clock, but I can be a bit later.

16 MR. LANCASTER: I think we are fully
17 represented.

18 MR. TIDBALL: Including trucks?
19 Mr. Chairman, I would like to turn to a consideration
20 of Site D, specifically with respect to impacts on
21 groundwater and surface water, although I can start by
22 saying I don't think surface water impacts are an issue
23 with respect to Site D and I will have nothing to say
24 with respect to that.

25 If we could turn to groundwater impacts



1 and in terms of my submissions I'm in paragraph 23 on
2 page 10. I start with the first criterion and I have
3 suggested to you that the first part we need to look at
4 is the reasonable use of groundwater. In my submission
5 there is an abundance of evidence before you to lead to
6 the conclusion that the reasonable use of groundwater
7 in the vicinity of Site D is domestic and agricultural
8 use. There is evidence before you that the existing
9 water quality is marginal, and I refer specifically to
10 Exhibit M-462 which sets out some analysis from the
11 wells in the area, and in fact the water quality is at
12 or near provincial water quality objectives for
13 drinking water found in this little green book, the
14 Ontario Drinking Water Objectives which is before you
15 as N-188. Given that, it seems clear that if you try
16 and apply the formula set out in the reasonable use
17 policy, in fact the answer to the question of what
18 additional degradation is allowable, the answer is
19 zero. No degradation at the boundary is acceptable
20 because the groundwater is currently at or exceeds
21 drinking water objectives and therefore what Site D has
22 to meet is a zero discharge standard.

23 Now, that brings us to the applicant's
24 design of the site which you have heard numerous times
25 has been termed a hydraulic trap, and it is apparently



1 common ground to most witnesses before you that if the
2 trap works and can be made to work throughout the
3 contaminating lifespan of the site, Site D can meet the
4 zero discharge standard and therefore can satisfy what
5 I have suggested to you as the first criteria.

6 However, serious concerns have been
7 raised through the hearing and I want to deal with two
8 specifically right now and the third will come up in a
9 minute, but the first one in my submission is that no
10 one has really done much in the way of attempting to
11 define the contaminating lifespan of Site D. It wasn't
12 defined by Trow. I attempted to pin Mr. Sobanski on
13 this matter in cross-examination and I would refer to
14 Volume 22 of the evidence, pages 5074 to 5076 and if
15 you read that, Mr. Chairman, Mr. Sobanski at the end of
16 that guesses that the contaminating lifespan of the
17 site is in the order of 20 to 30 years. Dr. Rowe in
18 his evidence specifically addressed the issue and that
19 is at Exhibit M-444, the joint witness statement of
20 Dr. Rowe and Dr. Charlesworth in paragraphs 33 to 35,
21 and he concluded the contaminating lifespan would be in
22 the order -- in excess of 80 years. Mr. Feenstra has
23 also taken a stab at estimating it and has suggested to
24 you in the later days of the hearing that the
25 contaminating lifespan may be in the order of 60 to 80



1 years and you can find that in H-936 at paragraph 40.

2 The second issue with that is the life
3 one might expect for the leachate collection system and
4 specifically with the leachate underdrain system.
5 Serious concerns have been expressed by Dr. Rowe, and
6 I'm not going to canvass those as I am sure Mr. Estrin
7 will spend some time on that matter, but I would simply
8 point out that no witnesses stood before you and
9 testified that the leachate collection system, i.e.,
10 the underdrains, would last 50 years or more. I think
11 or at least it is my submission that the only prudent
12 finding of fact you can make is that the leachate
13 underdrains will probably not last long enough to
14 prevent off-site impact, and that is the expected life
15 of the underdrains will not be or will be shorter than
16 the contaminating lifespan of the site. I think that
17 that point was agreed to by Mr. Hodgson in his
18 argument. It is therefore apparent, Mr. Chairman, that
19 additional engineering will have to be added to the
20 Site D design in order to make it meet the suggested
21 criterion I have put before you. I would like to speak
22 specifically to the engineering modifications that I
23 think are called for here and then come back to Mr.
24 Feenstra's hypothesis on fracturing because I think
25 that raises a whole other level.



1 The first thing, and I'm referring
2 specifically to paragraph 27 of my submissions, but I
3 would submit that the 0.4-metre margin of safety
4 proposed by Trow is insufficient in all the
5 circumstances. You will recall that Mr. Feenstra in
6 his reply evidence raised a concern with respect to
7 fluctuations in water levels and I would refer to H-936
8 at paragraph 12 and I cross-examined him on the issue
9 and asked him specifically whether a greater margin of
10 safety -- when we talk about margin of safety you will
11 recall we are talking about the difference between the
12 maximum permissible mound height and the lowest
13 hydraulic head in the underlying geologic units -- when
14 I cross-examined I asked whether one metre would be
15 better and his response was, yes, that that would give
16 him more comfort. You will find that in Volume 172,
17 pages 42771 to '4, and it's the same reference
18 Mr. Hodgson took you to, and I think he read that whole
19 section, those four pages.

20 It is my submission that the evidence
21 for or against any particular margin of safety isn't
22 strong. There is really nothing before you to suggest
23 that one is better than 0.8 or better than 1.3 or
24 anything else. Unfortunately in the circumstances it
25 is my submission that one metre is the best we can do



1 and I suppose in retrospect I could put a series of
2 numbers which I could have put to Mr. Feenstra and I
3 don't know what he would have said, and it's moot
4 anyway, but we just talked about one metre and that is
5 all you have before you. It is my position therefore
6 that there ought to be a design requirement for this
7 site that the margin of safety be one metre and you
8 will notice that I have specifically incorporated that
9 in condition 5.4.1 of the site EPA conditions at tab 3,
10 page 9. If you go to tab 3, page 9 you will see
11 condition 5.4 sets out design and operation parameters
12 for the leachate collection system and 5.4.1 says it
13 shall ensure that the maximum hydraulic head at the
14 base of the landfill is at least one metre lower than
15 the lowest measured hydraulic head in the underlying
16 geologic strata. I'm not sure, and I reviewed my notes
17 of Mr. Hodgson's argument and he may have conceded this
18 one as well, but I stand to be corrected on that.

19 The second item that in my submission
20 needs to be added to this design is the use of leachate
21 pumping wells. I put this to Mr. Feenstra in cross-
22 examination and the submission is simply this;
23 Mr. Feenstra devoted considerable time to talking about
24 how the upper granular unit could be purged through the
25 use of purge wells which would be sort of the next



1 level of engineering, and it struck us as logical that
2 if the trap failed because of clogging of the
3 underdrains, the logical first thing you would want to
4 do is try and restore the trap by lowering the mound
5 again. I put that to Mr. Feenstra at Volume 172, page
6 42798.

7 MR. ESTRIN: What page number?

8 MR. TIDBALL: Forty-two thousand, seven
9 ninety-eight and I simply put the proposition to him
10 that the logical first step would be to try and restore
11 the mound by pumping the leachate out of the site and
12 he agreed with that and agreed that that is one of the
13 first things that should be done. If you refer to the
14 evidence of Mr. Crutcher, first of all in Exhibit
15 B-618, his hydrogeological report at page 100, and then
16 there is an extensive cross-examination with Mr. Estrin
17 when he was back with Mr. Mereu in Volume 144, pages
18 34843 to 34860. You will recall Mr. Crutcher was
19 talking about the need to monitor the mound and I think
20 -- you will see the condition we have drafted sort of
21 speaks to both, to install wells through the waste that
22 would have the function of both monitoring, taking
23 samples, monitoring the head and pumping if necessary.
24 There was extensive cross-examination about that and
25 Mr. Crutcher in fact drew on I think it was Exhibit



1 B-860, Drawing 2R and actually marked locations on
2 where he would put such wells. In any event, I have
3 incorporated this or what we think is an essential
4 design amendment into condition 14.3 of the Site D
5 conditions and that is at page 18 under tab 3 and you
6 will see 14.3 reads:

7 "Following the completion of each
8 landfill cell, wells shall be completed
9 to the base of the waste. The
10 configuration and construction of these
11 wells shall allow monitoring of leachate
12 levels and the pumping of leachate if
13 required."

14 And then it goes on to talk about determining the
15 hydraulic conductivity of the waste.

16 I would raise a note of caution here
17 because I think it is arguable that this condition is
18 in conflict with the Environmental Assessment Act
19 conditions requiring the development of the site that
20 would allow for an agricultural after-use. I think
21 logically if you had potentially or there was some
22 potential if you have to put in a lot of leachate
23 pumping wells through the top of the waste, then you
24 are talking about a bunch of pipes sticking up all over
25 the landfill and I raise that because I don't know what



1 you would do with it or what I would do with it,
2 frankly, but it strikes me we don't have a lot of
3 evidence on it one way or the other. I don't think the
4 conditions are necessarily in conflict and the EA
5 condition simply requires Halton to operate it and do
6 the best they can to allow for an agricultural after-
7 use and if it's impossible because of the need to pump
8 leachate, then I think that that is a higher priority
9 item in any event and would take precedence.

10 I come now to Mr. Feenstra's hypothesis
11 on fracturing of the unweathered upper till. You will
12 recall Mr. Feenstra's position was that there was a
13 real possibility that fractures extend through the
14 unweathered upper till all the way to the lower till.
15 The issue that that raises you will recall is simply
16 that if the trap fails the result could be very rapid
17 movement of contaminants to the upper granular unit and
18 the critical item is that this is a zero discharge
19 site. We can't allow anything to get into the upper
20 granular unit and move off-site through that unit and I
21 put to Mr. Feenstra that issue at Volume 172, pages
22 42766 to '7 and Mr. Feenstra agreed that that was the
23 issue here, that this wasn't necessarily an issue for
24 every other site in the province, but simply because of
25 the nature of this site and because of the marginal, I



1 won't be conclusive at the end of the day and at some
2 point down the road someone will have to make the
3 decision about whether the testing program has or has
4 not been conclusive and in my submission the most
5 environmentally prudent course would be to simply
6 accept the hypothesis.

7 That leaves the question of what
8 additional design feature ought to be added to account
9 for that. Mr. Feenstra has put three possible
10 additional engineering features to you and it is my
11 submission that the preferable option is option 3, the
12 addition of a liner to the Site D design. I would
13 refer you to Ms Cronk's cross-examination of
14 Mr. Feenstra at Volume 172, pages 42872 to '6 and again
15 Mr. Hodgson read that entire reference I believe
16 wherein Mr. Feenstra commented that the liner was the
17 only preventive alternative or the only alternative
18 that prevents the effects that are of concern. In my
19 submission the addition of a liner effectively ensures
20 that one metre or more of the upper till has virtually
21 the same properties that have previously been ascribed
22 to the entire four metres, that is until Mr. Feenstra
23 came along with his hypothesis, it was assumed by Trow
24 and everyone else that the unweathered upper till was
25 essentially a tight, competent till and the only debate



1 has been about whether the permeability is higher or
2 lower and the effect of putting in a liner which in
3 this case would simply be an over-excavation and
4 recompaction of the base of the cell would be to ensure
5 that at least one metre has that characteristic of
6 being non-fractured.

7 I would refer once again to Mr. Feenstra
8 at Volume 172, my cross-examination, pages 42006 to 42007
9 that the effect of the liner would be to buy time to
10 allow for the restoration of the hydraulic trap and
11 that relates specifically to the prevention point and
12 the addition of a liner would allow you the luxury of
13 being able to watch the mounding within the site and to
14 take action before you had a problem as opposed to
15 reacting to finding contaminants in the upper granular
16 unit. I would also refer you to the same page, 42807,
17 where Mr. Feenstra commented that this option allowed
18 you a deeper excavation and I guess it goes hand in
19 hand with my previous submission that there ought to be
20 a one-metre margin of safety which implies going
21 deeper.

22 The option put to you with regard to
23 piped water is not preventative. In my submission, if
24 anything, it discourages protection of the resource and
25 it may even, and again I guess we are guessing at what



1 might be in people's minds years down the road, but it
2 may even amount to writing off the resource,
3 notwithstanding the tie in the option to the
4 implementation of the purge wells and there would be
5 less impetus to try and protect the resource if in fact
6 people are protected with drinking water.

7 The first option is the monitoring and
8 pre-installed purge wells. I would draw your attention
9 specifically to Mr. Feenstra's comments on that at
10 Volume 172, pages 42809 to '10. Mr. Feenstra commented
11 very specifically that the problem with this option was
12 that it needs to be done correctly. In my submission
13 there is a great potential for error and a great
14 potential for disagreement over the meaning of
15 monitoring results and I guess in a broader sense once
16 purge wells are turned on at Site D then the trap, the
17 hydraulic trap design effectively ceases to exist and
18 the effect of that is to simply write off the hydraulic
19 trap rather than trying to restore it and the point is
20 that I suppose, although we didn't go far with this
21 line of questioning, you would create some kind of new
22 trap in the upper granular unit, a unit which in some
23 respects we don't know an awful lot about.

24 Finally, I come to Mr. Hodgson's
25 proposal and I call that a modified No. 1. I would



1 have understood this proposal had it involved a liner
2 in cell 1 and in fact when I was writing it down I
3 actually wrote down a liner because I thought that that
4 was the logical inference of where Mr. Hodgson was
5 going and I stood to be corrected later on because in
6 fact that is not what was being proposed. I think that
7 in some ways the suggestion is at odds with Halton's
8 acceptance of the hypothesis. I think it amounts to a
9 tentative acceptance of the hypothesis for the purposes
10 of cell 1. I would raise the same concerns about that
11 option as I had with undertaking that option overall,
12 detailed monitoring and pre-installation of purge wells
13 and mainly who is it who decides down the road that the
14 testing that went on concurrent with the operations in
15 cell 1 was or was not conclusive? In my submission the
16 most appropriate course of action is the implementation
17 of a liner at Site D. There may be some logic to some
18 kind of a modified proposal whereby a liner is put in
19 in each cell as information becomes available, but we
20 have not really put our minds to that and I am not
21 putting that position before you but I am just simply
22 raising it as a point of interest.

23 In light of all of those, that entire
24 discussion, it is my submission to you that Site D can
25 be made through the addition of engineered facilities



1 some issue as to whether the upper granular unit is
2 continuous across First Line, and that is something
3 that would be developed during the development of the
4 monitoring program, but I don't think anyone has
5 seriously taken the position before you that you can't
6 monitor Site D so therefore it is my submission that
7 Site D meets suggested criterion No. 2.

8 Finally, that leaves the matter of
9 contingency plans. Again it's easy to get bogged down
10 in terminology as to what is a contingency and what is
11 a design measure, but I would refer you specifically to
12 Mr. Estrin's cross-examination of Dr. Hughes on this
13 matter, Volume 167, pages 41698 to 41703. In my
14 submission the labelling is not the crucial issue. At
15 Site D it is clear now that what had previously been
16 thought to be contingencies have probably moved up to
17 some level of design and whether that amounts to purge
18 wells in the upper granular unit and depending on what
19 your preference is with regard to extra design options
20 to allow for Mr. Feenstra's hypothesis, it is my
21 submission there are still further contingency measures
22 to mitigate unforeseen impacts and that is the key to
23 contingency measures. If we predict there will be an
24 impact somewhere, then suggesting some engineering for
25 that amounts to engineering for the site whether it's



1 on the second, third or fourth level. Contingency
2 plans are to plan for things that you are not
3 predicting will happen. For example, no one has been
4 talking about impacts on the lower granular unit and
5 what might happen there and where there might be
6 impacts on wells in the lower granular unit. I think
7 it's clear from the evidence before you that there are
8 contingency measures that can be employed and purge
9 wells can be used and other things can be used. It is
10 my submission that Site D can meet suggested criterion
11 No. 3.

12 Overall, it is my submission that Site D
13 can be designed in such a way as to be acceptable in
14 terms of groundwater impacts and can meet the three
15 criteria I have suggested to you and it is therefore my
16 submission that it is acceptable on that count. As I
17 said previously, there is no surface water issue at
18 Site D and it is therefore my submission that Site D is
19 acceptable under the Environmental Protection Act and a
20 C of A or a Certificate of Approval -- sorry about the
21 terminology -- can be issued. Now, there are a series
22 of conditions at Site D which are laid out at tab 3 and
23 there is a fairly significant overlap with the
24 conditions at tab 4, although you must be careful
25 because they look the same and there are small changes,



1 but with your permission I would like to deal with them
2 together at the end and so I would propose then to move
3 to Site F and deal with Site F first and then come back
4 to the conditions.

5 DR. KINGHAM: You mean in paragraph 35,
6 you mean to say "acceptable under the Environmental
7 Assessment Act"?

8 MR. TIDBALL: I'm sorry, that was the
9 one other change. That should be the Environmental
10 Protection Act.

11 DR. KINGHAM: I thought perhaps it was
12 the "h" from the previous paragraph and it is really
13 minor. I can't even find it now myself.

14 MR. TIDBALL: It's a bit early and it is
15 a bit warm in here, but this would be a very convenient
16 place to break. I can continue through Site F if you
17 like, I can leave the decision up to you, but I will be
18 longer than half an hour on Site F I'm sure.

19 MR. LANCASTER: You will be longer?

20 MR. TIDBALL: I will be longer than half
21 an hour to deal with Site F.

22 MR. LANCASTER: Then we will adjourn now
23 until 9:30 tomorrow morning.

24 --- Adjournment (3:58 p.m.)
25



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44533

Tidball, arg.

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CERTIFIED CORRECT:

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