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: 26

HELD AT: Oakville, Ontario.

DATE: Monday, July 13, 1987.

OFFICIAL REPORTERS
NETHERCUT & COMPANY LTD.
185 RICHMOND ST. W.,
TORONTO, ONT. M5V 1V3
TEL: 593-4802

THE CONSOLIDATED HEARINGS BOARD

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Nethercut & Co. Ltd.
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BEFORE:

H. H. Lancaster, Q.C.	-	Chairman
Dr. D.J. Kingham	-	Member
S. Tanner	-	Member

Netherclift & Co. Ltd.
Toronto, Ontario

Hearing conducted at The Oakville Granary Commercial Centre, 105 Robinson Street, Oakville, Ontario, on Monday, July 13, 1987

VOLUME 26

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

APPEARANCES (Cont'd):

C. Stevenson P. Hancock	for Framgard Holdings, Fosseri Investments Limited, Seriphos Investments Limited and Topic Investments
J.H. Olah	for the Halton Region Conservation Authority

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Per: C.F. Nethercut, CVR

--- Upon Commencing at 10.00 a.m.

DR. KINGHAM: Thank you, please be seated.

Well, we have given some careful thought over the last several weeks to our discussion earlier on, and we have summarized our collective views on it and we thought we would take this opportunity to make sure that everybody got the information at the same time and in the same fashion. Susan will start now and I will finish up.

MS. TANNER: I welcome you back on such a hot day. At least there is air conditioning in here. When we first learned of Chairman Lancaster's illness, we asked you for your preliminary observations on the options which we could follow and we would like to thank you for your observations and let you know that we have considered the options very seriously and discussed them with the two chairmen of the two boards. You will remember that the first option we discussed was just continuing, without any specific order to redefine the quorum. This is clearly a legally-defensible option in keeping with section 4 of the Consolidated Hearings Act and it appears quite attractive because it would not result in any time lost

and would be one of the least costly options, and we have noted that you have all recognized that the Act specifically does make provisions for such a situation.

A variation of this option is having two of us continue with the vacancy confirmed and the quorum re-defined by order according to section 4(9) of the Consolidated Hearings Act, which would have all the advantages of less delay and less cost, as well as, you know, making a statement by the establishing authority that they had confidence in the two members to continue with the hearing.

We had considered also the option of separating the planning issues from the environmental assessment issues, but I think we have all agreed, both counsel here present and confirmed by the chairmen of the OMB and the EAB, that such a separation would be difficult in fact and would not be in the interest of the hearings process. The option which stimulated the most discussion on June 25 was an option which would have a new OMB member join the panel and deem the evidence already in the record to have been heard by the new member. As many of you pointed out, this would help to preserve the balanced composition that we all seek for this board and it would have a time and dollar economy for us, and there would not be a need to re-

hear evidence. We are aware from the statements made on the 25th of June, that there is some legal precedent for such action, but, at the same time, there are legal precedents which suggest that such an action would not be appropriate.

In light of these apparent contradictions, some of you encouraged us to state the case to Divisional Court on an urgent basis in order that we might have some backing for proceeding in this direction if we chose to do so. In the light of section 12, subsection (3) which says:

> "No member of a joint board shall participate in a decision of the joint board following upon a joint board hearing unless he was present throughout the joint board hearing and heard the evidence and argument of the parties."

proceeding in this manner without Court approval would, in our view, be risky and at the same time there is no assurance that the Divisional Court would render an early decision on the issue or that an appeal might not be to a further Court.

DR. KINGHAM: One of the options we had to consider internally was the option of establishing a new panel, but using the existing two members of the

Environmental Assessment Board on that panel whilst bringing on a new OMB member. This would, of course, retain the Environmental Assessment Board assignments and the best use of available expertise which, while it would be desireable internally, could run into a future challenge because some members of the newly-created board might have heard different evidence than others. Of course, the negative side of this option would be that the evidence would have to be re-heard with the concomitant costs in terms of time and real expenditures. Because of both the delays and potential for subsequent challenge, the board has ruled out this option as well.

Aside from the options of continuing as two members, or some related compromise, the other fundamental option is to start all over with a new panel. It was not entirely clear how we could follow this option. There is some question as to whether we could defer the entire hearing to another board. It could be argued under section 5 subsection (3) of the Consolidated Hearings Act that "any matter" in that section could be interpreted as the undertaking. Section 5, subsection (3) says that"

> "A joint board may defer any matter or part of a matter to be heard and decided

under this Act by another joint board at another date."

However, there could be challenges if we were to dissolve a panel in the middle of a hearing when the Act in section 4 subsection (4) makes it quite clear that any member or members from either or both boards are considered adequate to constitute a joint board. There could be some concomitant damage to the credibility of the establishing authority if, in the final analysis, the authority concluded partway though a hearing that its members were not competent to continue with the task to which they were assigned.

Aside from the jurisdictional issues, there are real practical considerations. Obviously, this would create the greatest delay and there would be difficulty in finding new board members which would retain the balance which all of you stated so desireable to retain if at all possible. It would be necessary to re-hear all the evidence by recalling all of the witnesses with the attendant costs.

Because of these many serious negative aspects, this is an option which the joint board does not want to pursue.

Our preferred option all along has been to have Mr. Lancaster return in good health so that we

could continue with the balanced panel we all desire without any need to re-hear the evidence and with the loss of a minimum amount of time.

Therefore, the board has decided, with the complete concurrence of the establishing authority, that we will adjourn this hearing until September 14th, at which time we will hopefully continue with the hearing with the original three members or, if necessary, continue it with the two of us. In the latter case, the establishing authority would, by order, confirm the existence of the vacancy and establish the number of members that would then constitute a quorum of the joint board. If Mr. Lancaster can resume his work earlier, and there is enough lead time to do so, we would contact all parties to see if they might be prepared to resume earlier. Similarly, if it becomes obvious in the near future that Mr. Lancaster will not be ready to join us by mid-September, we would again contact all parties with a view to reconvening at the earliest possible date with Ms. Tanner and I constituting the joint board.

That concludes our decision on how we shall proceed and if as I described in the last sentence we have the opportunity of starting earlier, say on the first of September, we would contact all of

you and see if it is possible for that to be arranged. Our target is clearly to start on the 14th of September with Mr. Lancaster here, and resume hearing evidence at that time.

We stand adjourned until the 14th.

--- Adjournment until September 14, 1987 at 10:00 a.m.

--- CERTIFIED CORRECT:

C.F. Nethercut, CVR