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UNDER THE UNCITRAL ARBITRATION RULES AND
SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT

BETWEEN:

VITO G. GALLO

Investor

v.

GOVERNMENT OF CANADA ("Canada")

Party

STATEMENT OF CLAIM

A. NAMES AND ADDRESSES OF THE PARTIES

CLAIMANT/
INVESTOR:

Vito G. Gallo

REDACTED

ENTERPRISE:

1532382 Ontario Inc.
225 Duncan Mill Road
Suite 101
Don Mills, Ontario
M3B 3K9
Canada

PARTY:

GOVERNMENT OF CANADA
Office of the
Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

1. The Investor alleges that the Government of Canada has breached, and continues to breach, its obligations under Chapter 11 of the NAFTA, including, but not limited to:

- (i) Article 1105, The Minimum Standard of Treatment
- (ii) Article 1110, Expropriation and Compensation

2. The relevant portions of the NAFTA are attached as “Appendix ‘A’” hereto.

B. FACTS SUPPORTING THE CLAIM

B.1 IDENTITY OF THE CLAIMANT, THE INVESTMENT, AND THE ENTERPRISE

3. This claim is brought on behalf of 1532382 Ontario Inc. (“the Enterprise”). The Enterprise was incorporated under the laws of Ontario on June 26, 2002.¹

4. The Enterprise owns and controls what had been a licensed waste site whose lands included a former iron ore mine located in Northern Ontario, known as the Adams Mine Site (“the Investment”)². The Adams Mine Site is approximately 10 kilometres south-east of the town of Kirkland Lake.³

5. The Investor, Mr. Vito Gallo, is a national of the United States, resident in Pennsylvania.⁴

6. Mr. Brent Swanick is the President and sole director of the Enterprise. Mr. Swanick is also a barrister and solicitor, licensed to practice law in the Province of Ontario.

7. On or about June 26, 2002, Mr. Swanick signed a declaration of trust that he held one common share in the capital of the Enterprise in Trust for Mr. Gallo.⁵ On or about September 9, 2002, Mr. Swanick transferred the share to Mr. Gallo.⁶

8. Mr. Gallo is both the legal and beneficial owner of the Enterprise. He holds title to 100% of the issued common shares in the Enterprise. There are no other class of shares (either common

¹ Corporation Profile Report, incorporation date June 26, 2002

² To be clear, the character of the Investment is composed not only of its real property, but also of its intangibility properties represented in its permits and any cause of action arising from their unjust revocation.

³ Land Registry Property Identification for Adams Mine Site

⁴ Passport of Mr. Vito Gallo

⁵ Declaration of Trust signed by Mr. Brent Swanick, June 26, 2002

⁶ Certificate for Shares in 1532382 Ontario Inc, June 26, 2002. Transfer of Shares, September 9, 2002

or preferred) issued by the Enterprise. Mr. Gallo does not hold these shares in trust for any other person or company.

9. Mr. Gallo possesses legal control of the Enterprise pursuant to the provisions of the *Ontario Business Corporations Act*.⁷ He exercises control on the basis of his right to elect and control the Board of Directors. Brent Swanick became sole Director, as well as President, of the Enterprise on June 26, 2002 and continues to hold those positions.⁸

10. On September 10, 2002, Enterprise entered into a limited partnership known as the 1532382 Limited Partnership ("Limited Partnership").⁹ The Enterprise is the General Partner of the Limited Partnership. The Limited Partnership does not hold any ownership interest in the Enterprise or in the Investment.

REDACTED

12. Under separate agreement, the Enterprise also retained the Limited Partnership to manage the Investment.¹¹

*B.2 OVERVIEW AND HISTORY OF THE ONTARIO GOVERNMENT
ENVIRONMENTAL APPROVALS ISSUED TO OPERATE THE ADAMS MINE
WASTE DISPOSAL SITE*

13. The Adams Mine Site was an ideal location for waste disposal. It is a decommissioned, open-pit iron ore mine, occupying four thousand acres, with superb rail and road access and high

⁷ Sections 115, 119 and 133 of the *Ontario Business Corporations Act*

⁸ Corporation Profile Report, incorporation date June 26, 2002

⁹ 1532382 Limited Partnership Agreement, September 10, 2002

¹⁰ 1532382 Limited Partnership Loan Agreement, September 9, 2002

¹¹ 1532382 Limited Management Agreement, September 9, 2002. For a specified period of time, the Limited Partnership retained Christopher Gordon Associates to perform consulting services in order to discharge its obligations to the Enterprise under the 1532382 Limited Management Agreement.

capacity electrical and natural gas services. From 1965 to 1989, two mining companies extracted iron ore from the Adams Mine Site's three, deep open-pits ("South Pit, Central Pit, and Peria Pit") and shipped the crushed ore on daily operated trains to Hamilton, Ontario, where the iron ore was processed into steel.¹²

14. The Adams Mine Site had considerable on site improvements that are required for a large volume rail-haul landfill that would otherwise cost tens of millions of dollars to develop. These improvements consisted, *inter alia*, of:

- a. a two line rail spur;
- b. paved roadway site access;
- c. paved on-site road system;
- d. paved road access to the South Pit;
- e. on-site paved and gravel parking areas;
- f. a gatchouse with weigh-scale infrastructure;
- g. administrative offices;
- h. vehicle and storage and maintenance buildings with high ceilings, high bay doors, reinforced concrete flooring capable of servicing heavy vehicles, complete with vehicle/crane capabilities;
- i. on-site fuel storage tanks;
- j. considerable access to grid power (electricity and natural gas)
- k. water run-off detention areas and catch basins;
- l. perimeter fencing;

¹² Diagrams and photographs of the Adams Mine Site

- m. readily available gravel/aggregate stockpiles for road cover and leachate infrastructure

15. The South Pit of the Adams Mine Site is approximately 200 metres deep and is capable of receiving at least 1,341,600 tonnes of non-hazardous municipal, industrial and commercial waste each year. The South Pit alone had a total Government of Ontario licensed waste disposal capacity of at least 21.9 million cubic meters, including waste and daily intermediate cover material but excluding final cover material.

16. In 1986, the Municipality of Metropolitan Toronto (“Toronto”) determined that its Keele Valley waste site, located just north of the city, was approaching full capacity and it began searching for a ‘next generation’ landfill with other municipalities near Toronto (the Regions of York, Durham and Peel, collectively: the “GTA municipalities”) and the Province of Ontario. Together, the GTA municipalities launched a North America-wide Request for Proposal for this next generation waste disposal site.

17. The Enterprise’s predecessor in title, Notre Development Corp. (“Notre”), identified the Adams Mine as an ideal candidate to satisfy Toronto’s Request for Proposal. Notre purchased the four thousand acre Adams Mine Site from Chevron and Dofasco in 1990, with the intention of developing the Adams Mine Site as the ‘next generation’ landfill site for the GTA, once the Keele Valley Site reached its maximum capacity in the late 1990s.

18. Notre began working with Toronto to develop the Adams Mine Site as the future disposal site for the GTA. The City of Toronto financed several of the engineering and feasibility studies for the Adams Mine and also obtained a time limited right of first refusal to the City of Toronto for purchase of the Adams Mine Site from Notre for \$35 million in 1996. Notre and Toronto considered that each of the three major open pits ultimately would serve as waste disposal sites for Toronto and the GTA Regions.

19. In order for the Adams Mine Site to serve as a waste disposal site, Notre was required to obtain several environmental approvals, which had been obtained by the end of 2001:

- a. Approval of its project under the EAA, dated August 13, 1998;¹³
- b. Certificate of Approval to operate a landfill site under the EPA, on the condition that Notre acquired the Borderlands from the Crown, Certificate of Approval No. A612007, dated April 23, 1999;¹⁴
- c. Permit to Take Water from the South Pit, PTTW No. 00-P-6040, dated October 18, 2000;¹⁵
- d. Certificate of Approval to operate a leachate treatment facility and storm water facility under the OWRA, Approval No. 3250-4NMPDN, dated July 9, 2001.¹⁶

20. Notre submitted an initial environmental assessment approval application to the Ontario Minister of the Environment in early December 1996. Rather than seek approval for each of the three deep open pits of the Adams Mine, Notre sought approvals only with respect to the South Pit.

21. The South Pit is designed to operate as a landfill using the hydraulic containment method. Under this method any leachate generated from the deposited waste is drained to a containment basin and then pumped to a leachate treatment plant. Unlike the mature landfills located in soil and clay conditions in Southern Ontario, the rock walls of the South Pit and the leachate treatment plant prevent leachate from seeping into adjacent lands.

22. The hydraulic containment method for the Adams Mine Site was analyzed and reviewed by Golder Associates Ltd., an internationally recognized consulting engineering firm expert in the design of waste management systems. Golder Associates Ltd. designed the systems to be installed at the Adams Mine Site.

23. On December 17, 1997, the then Ontario Minister of the Environment, Norm Sterling, referred Notre's application to the Ontario Environmental Assessment Board (the "EAB"),¹⁷ asking the EAB to consider the following four questions:

1. Is the proposed "hydraulic containment" design an effective solution for the containment and collection of leachate that will be generated at the proposed site?

¹³ Order in Council Approval, August 13, 1998

¹⁴ Ministry of Environment Provisional Certificate of Approval No. A612007, April 23, 1999

¹⁵ Permit to Take Water for the south pit, Adams Mine, PTTW No. 00-P-6040, October 18, 2000

¹⁶ Approval to operate a leachate treatment facility and storm water facility, Approval No. 3250-4NMPDN, July 9, 2001

¹⁷ Notice Requiring the Board to hold a hearing under s.9.2 of the EAA, December 16, 1997

2. If the answer to Question 1 is “No”, is there an alternative method that would be an effective solution for the containment and collection of leachate that will be generated at the proposed site?
 3. If the answer to Question 1 or 2 is “Yes”, are the attached draft Conditions of Approval set out in Schedule A-1 appropriate?
 4. If the answer to Question 3 is “No”, in whole or in part, what changes to the draft Conditions in Schedule A-1, or additional Conditions, would you impose?
24. The EAB is an independent adjudicative tribunal that operates autonomously from the Government of Ontario. The EAB approved Notre’s application by decision EA-97-01 in 1998,¹⁸ following a full hearing at Kirkland Lake which lasted 17 days, involved 40 witnesses, of which 20 were experts in engineering and waste treatment and an in person visit to the Adams Mine Site.
25. Ontario’s Ministry of the Environment supported Notre’s application and assisted Notre in countering opposition to the granting of a waste disposal license. The Ministry of the Environment was represented by two expert environmental lawyers. during the course of the EAB application.
26. The Ministry of the Environment also called three expert technical witnesses to support Notre’s application and the set of jointly agreed upon recommended conditions (agreed between Notre and the Ministry of the Environment) to attach to any Certificate of Approval. These conditions included a requirement that Notre purchase surrounding Government of Ontario lands to the Adams Mine Site.
27. The Ministry of the Environment submitted to the EAB that “the proposed hydraulic containment design is an effective solution for containment and collection of leachate.”
28. The EAB accepted the Ministry of the Environment’s submissions, holding in part that “on most of the issues raised, the MOE [Ministry of the Environment] provided often

¹⁸ EAB Decision: Notre Development Corporation EA-97-01, June 19, 1998

illuminating confirmation of the viability of the proponent's design".¹⁹ Notre submitted the following technical documents²⁰ *inter alia*:

- (a) Technical Appendix A – AMSAP Public and Agency Consultation (1995)
- (b) Technical Appendix B – Design and Operations (1995)
- (c) Technical Appendix C – Bird Hazard and Health (1995)
- (d) Technical Appendix D – Air Quality (1995)
- (e) Technical Appendix E – Noise (1995)
- (f) Technical Appendix F – Geology/Hydrogeology (1995) Attachments
- (g) Technical Appendix G – Surface Water (1995)
- (h) Technical Appendix G – Surface Water (1995) Attachments
- (i) Technical Appendix H – Biology (1995)
- (j) Technical Appendix I – Agriculture (1995)
- (k) Technical Appendix J -Archaeology (1995)
- (l) Technical Appendix K – Economics (1996)
- (m) Technical Appendix L – Heritage (1995)
- (n) Technical Appendix M – Planned Land Use (1995)
- (o) Technical Appendix N – Social (1995)
- (p) Technical Appendix O – Local Transportation
- (q) Technical Appendix P – Transportation Route Study (1995)
- (r) Addendum A1 – Public and Agency consultation (1996)
- (s) Addendum C1 – Bird Hazard and Health (1996)
- (t) Addenda F5-7
- (u) Addendum G1 – Surface Water Hydrology (1996)
- (v) Addendum G2 – Surface Water Quality (1996)

¹⁹ Ibid., at, 26

²⁰ Technical Appendices, Addendums and Response to Ministry of Environment

- (w) Addendum H1 – Aquatic Biology (1996)
- (x) Attachment H1E to Addendum H1 – Aquatic biology (1996)
- (y) Addendum H2 – Terrestrial Biology (1996)
- (z) Response to Ministry of Environment and Energy letter/Sensitivity Analyses – Early Closure and Low Filing Rate Scenarios

29. The Environmental Assessment Board's decision²¹ provided, inter alia:

As no evidence was provided substantiating an alternative method for the containment and collection of leachate, this decision focused on Question 1, and related conditions. The Board's response to Question 1, is a conditional "Yes".

The Board found that, on balance, the evidence indicated that the proposed hydraulic containment design would be effective. A question arises however, concerning the long term maintenance of hydraulic containment (that is, in the gravity drainage phase after the 100-year pumping phase), from the results of tests of groundwater levels in at the single deep angled borehole drilled under the South Pit. Accordingly, Condition of Approval number 10, requests as a condition of proceeding with the proponent's application for a Certificate of Approval, that two additional deep angled boreholes be drilled under the South Pit, and that "no waste shall be placed in the South Pit until the Director evaluates the results of the tests and determines, without reservation, that the recorded groundwater levels will sustain hydraulic containment in the South Pit such that the environment will be protected, during both pumping and gravity drainage phases."

The Board's decision is subject to the Notre Development Corporation meeting, in all, twenty-six conditions, under the following themes:

Monitoring/Operating and Remedial Action and Contingency Plans

Contaminating Lifespan

Financial Assurance

Community Consultation and Participation

Conditions 22 to 26 set out the requirements of a self-managing Community Liaison Committee providing 'a credible and meaningful opportunity for the people and communities who would be affected by any failure of hydraulic containment to participate in the decision-making process of the landfill project.'

²¹ EAB Decision: Notre Development Corporation EA-97-01, June 19, 1998, Executive Summary, pp. 1-2.

30. On July 8th, 1998, a group of opponents appealed the EAB decision to the Minister of the Environment (Minister Sterling) under s. 11(2) of the Ontario *Environmental Assessment Act*. The Minister denied their request that the Certificate of Approval to be quashed on August 18, 1998. The group attempted to have the Certificate of Approval cancelled by the Ontario Divisional Court immediately thereafter. Its application for an interim injunction was dismissed on April 22, 1999²² and the application for judicial review was dismissed in its entirety on July 13, 1999.²³ The Ministry of the Environment continued to support Notre throughout the appeal and judicial review process.

31. On April 23rd, 1999, Notre received the required Certificate of Approval from the Ontario Ministry of the Environment to operate a landfill.²⁴ In Ontario, Certificates of Approval to operate a waste site have conditions which regulate how much waste and what kinds of waste can be disposed both annually and in total over the lifetime of the waste site, as well as the local area which can be serviced by the waste facility. The Certificate of Approval granted to Notre following its environmental hearings, provided, *inter alia*:

Service Area

12. Wastes may be received at this Site only from within the Province of Ontario.

Maximum Fill Rate

15. The maximum rate at which the Site can receive waste is 1,341,600 tonnes per year ...

Waste Placement in the South Pit

34. The total waste disposal volume is 21.9 million cubic metres. This volume includes waste and daily/intermediate cover material and excludes final cover.

32. Certificates of Approval also regulate the geographic boundaries from where the waste site may accept waste, usually from municipalities close to the waste site. Rare among Certificates of Approval, the Adams Mine Site, served by rail-line, was licensed to accept waste

²² *Adams Mine Intervention Coalition v. Ontario (Environment Assessment Board)* [1999] O.J. No. 2886 Div. Ct.

²³ *Adams Mine Intervention Coalition v. Ontario (Environment Assessment Board)* [1999] O.J. No. 2701 Div. Ct.

²⁴ Ministry of Environment Provisional Certificate of Approval No. A612007, April 23, 1999

from any location in the Province of Ontario. Any non-hazardous public and/or private waste, from anywhere in Ontario, could be sent to the Adams Mine Site.

33. In April, 1999, Toronto issued a Request for Expressions of Interest in respect of its increasingly urgent need for a replacement facility for the Keele Valley Site. A Request for Proposals for Disposal followed in October, 1999 and by February, 2000, six qualified proposals for long term disposal capacity for Toronto had been received.

34. In 2000, the Ontario Northland Transportation Commission (owned by the Province of Ontario), the Canadian National Railway and the Enterprise's predecessor in title, Notre, joined together to offer to the City of Toronto and the waste from neighbouring municipalities, a complete rail-haul waste solution.

35. Under this solution, waste would be compacted and transferred to a railway site north of Toronto. The compacted waste would then be loaded onto specially designed railcars; sent to the Adams Mine Site; and then unloaded, sorted and separated, with waste materials either being sent for recycling or being deposited into the South Pit.

36. The option included added capacity, in the expectation that other GTA municipalities would also adopt the rail option. This joint venture involving Notre, Canadian Waste, Miller Waste Management, Canadian National Railways, and Ontario Northland Railways was known as RailCycleNorth.

37. Following the submission of the RailCycleNorth proposal, opponents began organizing public protests against waste being shipped to the Adams Mine Site. David Ramsay, who was an opposition Member of Provincial Parliament, was actively involved in organising these protests. His opposition to making use of the Adams Mine Site as a waste treatment facility had begun in the early 1990s.

38. As described in more detail below, once he became Ontario's Minister of Natural Resources in October 2003, David Ramsay was placed in a position to act on his longstanding opposition to the Adams Mine Site, and would become the key political actor in the expropriation of the Investment that would soon follow.

39. In response to the opposition to the project, Golder Associates Ltd. sent the following letter dated September 15, 2000, to the then Mayor of Toronto, Mel Lastman, rebutting the activists' claims. The letter stated in part:²⁵

Golder Associates Ltd. is providing this letter is in response to statements being reported in the media regarding the environmental acceptability of the Adams Mine Landfill site.

Golder Associates is an international consulting engineering firm founded in Toronto in 1960 with extensive expertise in hydrogeological assessment, engineering design and environmental monitoring. We have conducted detailed technical studies and analyses over a 10 year period on the Adams Mine Site and completed the landfill design. We want to assure you, and your council, that we stand solidly behind our technical design.

The Adams Mine Landfill incorporates a proven method of hydraulic containment design. We are confident that our landfill design will protect the groundwater resources in the surrounding area. Our professional opinion is based 'on proven' engineering and scientific principles. All technical studies have conclusively demonstrated that inward groundwater flow to the landfill will be maintained, thereby preventing any groundwater impacts in the surrounding area. As a result, the Adams Mine Landfill received approval under the *Environmental Assessment Act* following a public hearing in Kirkland Lake. The landfill has subsequently received the necessary Certificate of Approval for operation from the Ontario Ministry of the Environment.

The Adams Mine landfill is a proper design that provides an environmentally sound solution to solid waste disposal. Our confidence is shared by the technical specialists and peer reviewers who were chosen, by others, to evaluate our work.

40. The design by Golder Associates Limited of the hydraulic containment method had been reviewed by another environmental engineering firm, Gartner Lee Limited. It wrote a letter to Mayor Lastman on September 14, 2000 stating in part:²⁶

Gartner Lee Limited was involved as the independent peer reviewer of the Adams Mine Landfill from 1995 to 1999. Over that period our experts examined technical studies prepared by professional engineers and geoscientists that detailed the landfill design and operations.

²⁵ Letter from Golder Associates to Mayor Mel Lastman, City of Toronto, September 15, 2000

²⁶ Letter from Garner Lee Limited to Mayor Mel Lastman, City of Toronto, September 14, 2000

Recently, we have become concerned at the amount of incorrect and misleading information being reported by the media. Under the perceived endorsement of public reporting, many false statements have been given credence. The purpose of this letter is to set the record straight.

On behalf of two public liaison committees which included representation from the communities of Kirkland Lake, Larder Lake and Engelhart, Gartner Lee Limited and independently evaluated the environmental integrity of the Adams Mine Landfill. Any assertion that the undertaking will cause environmental harm, is untrue and has no basis in fact.

The Adams Mine Landfill has been publicly scrutinized and the thoroughness and depth of investigation of the detailed studies has been accepted by the specific professional engineers and geoscientists who were involved in the extensive due diligence and approval of the undertaking.

It is our professional opinion, based on much first hand study and extensive review, that the design of the Adams Mine Landfill ensures environmental security for the residents of the three surrounding communities and beyond. Furthermore, based on our experience, the scope of the approved monitoring programs exceed those which are in place at other landfills. For these reasons Gartner Lee Limited looks forward to continued involvement in the development and operation of the landfill. We trust that this sets the record straight.

41. At this point in time the Ministry of the Environment, through Director David Hollinger, issued the Permit to Take Water. Director Hollinger's accompanying letter dated October 18th, 2000 stated in part:

Please be advised that many comments (99 letters) were received; 98 were opposed to the proposal and one letter was in support of the proposal. The comments received can generally be summarized into five areas of concern: ...

3. With regarding to the potential adverse impact to local wells, the supporting technical documents indicate that the pit dewatering will not have an adverse impact on ground water quantity and quality beyond the property boundaries of the Adams Mine site. The nearest private well, which is located 5 km west of the site, is separated by a ground water divide and therefore is hydraulically isolated from the influence of the pit dewatering. In addition, special conditions 2, 3, and 4 require the proponent to conduct a comprehensive ground water monitoring program during the dewatering and to contact the Ministry immediately if the measure water level of any monitoring well deviates below the levels referred to in Special Conditions 3 and 4.

4. With respect to the concern for the lack of public consultation related to the PTTW proposal, I am satisfied that both the Environmental Assessment process and the additional public consultation which was conducted through the Adams Mine Public Liaison Committee, provided ample opportunity for the public to make submissions to the Ministry concerning this proposal.
5. The issue concerning the general opposition to the Adams Mine Landfill Project as a whole, and the issues the Director is required to consider under the provisions of Ontario Regulation 285/99, were considered under the Environmental Assessment Act, and the director adopts the conclusions reached in that process.

42. In a letter to the Grand Chief of the Algonquin Nation Secretariat dated July 17, 2001, the Ministry of the Environment also stated:²⁷

From a technical perspective, the proposal has been thoroughly examined. During the Environmental Assessment (EA) process, peer reviews of the studies done by the Proponent, Notre Development Corporation, were completed for geology, hydrogeology, and hydrology – this included examining the potential for groundwater and surface water contamination for landfilling activities, and predicting leachate movement and design and operation of the landfill. These reviews were in addition to the work of the Proponent's engineers and scientists, and technical review by the ministry's experts.

As part of this Ministry's *Environmental Assessment Act* review process, a team of government ministries and agencies, including the Ministry of the Environment, the Ministry of Natural Resources, Environment Canada, and the federal Department of Fisheries, analyzed the Adams Mine landfill proposal.

A public hearing before the EA Board was held in Kirkland Lake in 1998. The Board was asked to look specifically at the hydraulic containment design of the landfill site, given the presence of the fractured rock. After hearing from technical experts, as well as this Ministry, the Proponent, members of the public, and local environmental groups, Board concluded in its decision dated June 1998 that the landfill could be approved, subject to specific conditions. The Minister, with Cabinet's approval, issued Environmental Assessment Act approval for the Adams Mine Landfill in August of 1998.

²⁷ Letter from Ministry of Environment to Algonquin Nation Secretariat, July 17, 2001

43. Early in October 2000, the City of Toronto Council voted to approve the proposal for its waste to be sent the Adams Mine Site. The Region of York, as well as Durham and Peel Regions also selected the Adams Mine Site for their waste. However, on October 11, 2000, political interference intervened to prevent the Toronto contract from going forward. Instead, on October 27, 2000 Republic Services was contracted to transport Toronto's residential and industrial, commercial and institutional waste to the Carleton Farms Landfill in Michigan. The contract with Republic Services, however, would end in 2005.

B.3 ONTARIO SOON REALIZES ITS NEED FOR AN ONTARIO SOLUTION FOR PUBLIC AND PRIVATE WASTE NEEDS

44. In 2003-2004, Ontario had an immediate and material shortage of available airspace for the placement of municipal solid consumer waste ("MSW waste") and industrial, commercial and institutional ("ICP") waste, with demand exceeding daily intake capacity as well as short- and long-term capacity. The issues relating to this shortage of available airspace in the densely populated areas of Ontario were magnified because of the high barriers to entry for landfills, which is the primary method of disposal in Ontario.

45. This shortage was also magnified by the political pressures that began to grow in Michigan to close the border to Ontario waste soon after the commencement of the export of Ontario waste to the State of Michigan under the new contract. Legislation was introduced in the Michigan legislature to close the border.²⁸ Ontario (through the Ministry of the Environment) and the GTA municipalities began to consider the closure of the border as a threat to exports of waste to Michigan.

46. The fear of border closure increased on May 20 and 21, 2003, when the United States barred Ontario waste imports as part of its general over-reaction to one case of mad-cow disease in the Province of Alberta. The closure of the border caused an immediate back-up within the GTA waste management system.²⁹

47. Minister of the Environment Chris Stockwell reacted to this emergency by ordering on May 26, 2003 that the Ministry of the Environment work with Toronto and the Regions of York,

²⁸ Earth Tech Canada Inc. Summary Report: Availability of Landfill space in Ontario, January 2004, pp. 9-10

²⁹ Report to Works Committee, City of Toronto, June 20, 2003

Durham and Peel to have contingency plans in the event that the American border was closed again, either temporarily or permanently.³⁰

48. Following Minister Chris Stockwell's May 26, 2003 order, senior government officials from the provincial and municipal governments began meeting regularly to evaluate what options were available in the event of immediate border closure or the export contracts to Michigan were scheduled for renewal.³¹

49. The joint provincial-municipal group retained consultants to identify waste disposal capacity in the Province of Ontario and to determine options and to develop contingency plans.³² Senior Ministry of the Environment officials warned that there was a substantial landfill capacity gap in Ontario, particularly as environmental assessments for new capacity were not being approved.³³

50. As of 2003-2004, Ontario produced approximately 13.8 millions tonnes of municipal solid consumer waste and institutional, commercial and industrial waste annually, of which the majority was generated in the Southern Ontario Region, the Region that had the greatest shortfall of landfill airspace in Ontario.

51. Ontario's annual permitted disposal capacity totalled approximately 6.4 million tonnes, compared to an annual disposal demand (after diversion and recycling) that was between nine and ten million tonnes. After diversion, recycling and land filling in Ontario, the balance of the 3.0 million to 3.4 million tonnes of waste was shipped by truck to Michigan annually. The Greater Toronto Area municipalities (Toronto, and its neighbouring Regions of Durham, Peel, and York) alone exported approximately 1.3 million tonnes of waste to Michigan at this time.

52. During 2003-2004, Ontario had an overall diversion rate³⁴ of about 30% and required landfill disposal of about 9.7 million tonnes. In the previous fifteen years, the number of landfills

³⁰ City of Toronto Commissioner of Works to Works Committee, City of Toronto, August 20, 2003, pp. 2-3

³¹ Minutes of Meeting of GTA Waste Coordination Meeting, July 3, 2003

³² Memorandum of Understanding regarding a cooperative Effort to Develop Contingency Waste Planning, August 23, 2003

³³ *ibid*

³⁴ Diversion rate is the amount of waste that does not go to landfill as a result of programs such as recycling, reusing, and composting of the waste.

in Ontario had fallen significantly, with the majority of the waste disposal shortfall affecting the Southern Ontario Region market.

53. Those landfills still operating in Ontario had insufficient volume capabilities (ie. daily intake capacity and permitted capacity) to handle the Southern Ontario Region's disposal needs. None of the Ontario operating landfills had annual intakes of more than 700,000 tonnes, and the vast majority of landfills accepted only 100,000 tonnes or less.

54. This was in contrast to the Adams Mine landfill, which was permitted to accept over 1.3 million rail-hauled tonnes per year. The Ontario government projected in 2003-2004 that Ontario's long term disposal demand would be fairly consistent at 8.6 million tonnes per year for the next 25 years, even allowing for aggressive diversion and assuming average population and employment growth for Ontario.

55. By 2003 the private consultants retained by the Ministry of the Environment and the GTA Regions confirmed that there was a desperate shortage of available airspace in the Southern Ontario Region (SOR), an area that includes the Greater Windsor Area (GWA), Greater Toronto Area (GTA) and the Greater Ottawa Region (GOR). The consultants reported that Ontario had no more than 36 weeks of contingency disposal capacity at operating landfills in the Province at which time, there would be no more licensed capacity to take waste.³⁵ Ontario would have to develop an emergency plan that might result in the opening of the Keele Valley landfill and other sites that had been closed, as well as government imposed price controls to prevent tippage fees from increasing dramatically.

56. The consultants also warned that the shortfall in waste disposal capacity would continue to widen as waste generation continued to rise and the relevant supply of capacity declined daily. The conclusion was that Ontario was severely under served from a waste disposal perspective (waste disposal demand far exceeds existing supply both in terms of daily intake and permitted capacity).

³⁵ Gartner Lee Report – GTA Municipalities Solid Waste Disposal Contingency Plan, January 2005

57. One such study was prepared by Earth Tech Canada Inc., a private waste consulting expert group retained by the Province and the GTA municipalities. The report dated January 2004, stated that the most significant waste management option was the Adams Mine Site:

A significant volume of approved disposal capacity at facilities that are not currently receiving waste was identified in the course of the study. The most significant by far, and known to the Region, is the Adam's Mine site. This site has received a certificate of approval and represents a disposal capacity of approximately 20 million tones with an annual tonnage rate limit of 1 million tones and no waste type restrictions other than solid non-hazardous waste. This facility does not represent a short term contingency option due to the time required to: prepare the site (dewatering and pit wall scaling, etc.); construct the engineered facilities required for the landfill (e.g., groundwater interceptor system, and leachate collection system; and construct the associated transportation infrastructure associated with the rail haul required for this facility (i.e., rail car systems, and waste transfer facilities for hauling by train,). It is estimated that at least 18 to 24 months would be required before the site could receive waste.³⁶

58. The conclusions of the internal and external reports and information available to the Ministry of the Environment and the GTA municipalities in 2003 and 2004 were uniform: options for Ontario waste disposal were few in number. Essentially, Ontario was experiencing an acute shortage of waste disposal capacity that would cause an immediate crisis if the border was closed to Ontario waste.

59. Amidst the growing Ontario waste disposal crisis and the growing demand for licensed waste disposal in Ontario, the Enterprise moved forward to ready Adams Mine Site to take waste.

B.4 PURCHASE OF THE ADAMS MINE SITE BY 1532382 ONTARIO INC.

60. In 2002, Notre did not possess the necessary financial resources to develop the Adams Mine Site into a fully functioning waste disposal facility and therefore could not continue with the project. The RailCycleNorth consortium broke apart after the termination of negotiations with the City of Toronto. Notre required financing capable of seeing the project through to the development of the Adams Mine Site as a fully functioning waste disposal facility.

³⁶ Earth Tech Canada January 2004.

61. 1532382 Ontario Inc. purchased the Adams Mine Site on September 9, 2002. Upon assuming ownership and control, the Enterprise began taking the remaining steps required to complete the site preparations and turn the Adams Mine Site into a functioning waste disposal facility by April, 2004.

Renew Permit to Take Water Mandated by EAB Approval of Adams Mine Site

62. Permits to Take Water (“PTTW”) are time limited in the Province of Ontario. To prepare the Adams Mine Site as a waste disposal facility required a renewal of the PTTW (PTTW NO. 00-PP-6040) that had originally been issued to Notre on November 1, 2000 and expired on October 30, 2001.

63. Notre had applied for a new PTTW by letter dated January 4, 2002. The Ministry of the Environment responded, again by Director David Hollinger, by letter dated January 15, 2002³⁷ stating in part:

The PTTW application requests a Permit to cover 12 months of water taking over a five year period and indicates that no date has yet been set for the commencement of dewatering activities. Further, we understand that no water was taken under PTTW 00-P-6040, which expired on October 30, 2001. Permits to Take Water are not issued to reserve water taking, regardless of the use, and cannot be maintained in the absence of a definite need for the taking.

As you appear not to have an immediate or definite need for this Permit, I suggest that we retain your application on file and ask that you notify us within six months of the anticipated commencement of water taking. Providing that the details of this taking and the uses being made of the local environment remained unchanged from your original submission, which PTTW 00-P-6040 was based on, this new PTTW application will be able to be reviewed and the approval issued promptly.

64. By its letter of January 15, 2002, the Ministry of the Environment had promised to Notre that its PTTW would be reviewed, with prompt approval, so long as the details of the taking and the uses made of the local environment remained unchanged from the original submission made by Notre.

³⁷ Letter from Ministry of Environment to Notre, January 15, 2002

65. On July 7, 2003³⁸, the Enterprise submitted an Application for a PTTW from October 30, 2003 to October 30, 2004, again to Director Hollinger. The Enterprise identified a definite need for the taking, as it intended to commence operation as a waste disposal site as soon as the preparatory work could be completed, anticipating that dewatering could begin in October 2003.³⁹ The accompanying expert environmental report⁴⁰ confirmed that the application for a PTTW remained unchanged from that originally approved by the Ministry of the Environment in 2000, stating in part:

Dewatering of the South Pit was previously approved under PTTW 00-P-6040, but did not proceed at that time. This reapplication demonstrates that the details of this taking, and the uses being made of the local environment, remain unchanged from the original submission. Specifically, dewatering will be accomplished within the 12 month period, at the same rate (0.3 m³/sec) as previously approved. The discharge point will be the same (at the head of the tailings area), and the previous intensive monitoring program remains appropriate. The contingency plan, which entailed temporary pumping to the Central Pit remains viable. Certificate of Approval no 3250-4NMPDN for the discharge of water is still in force, and its corresponding monitoring plan will be followed as previously planned. There is time to install the necessary instrumentation prior to commencement of dewatering at the end of October.

Please accept this letter in support of the application. It is our understanding that all the original supporting documentation is presently on file with the MOE....

66. On November 14, 2003, in the course of an ordinary review of an Application for a PTTW, the Ministry of the Environment issued a Permit to Take Water, Permit number 4121-5SCN9N.⁴¹

Purchase of the Borderlands as mandated by EAB approval of Adams Mine Site

67. In 1996, Notre had discovered that the Government of Ontario leases for the lands surrounding the Adams Mine Site property granted to various mining companies (“the

³⁸ Letter from Gordon McGuinty to Ministry of Environment enclosing Gartner Lee Report dated July 4, 2003 and application, July 7, 2003

³⁹ *Ibid* p. 3

⁴⁰ Letter from Gordon McGuinty to Ministry of Environment enclosing application and fee, July 7, 2003 with enclosed Gartner Lee Report, July 4, 2003, p. 4

⁴¹ Permit to Take Water, Permit Number 4121-5SCN9N

Borderlands”), were about to expire and began exploring the possibility of purchasing or leasing the Borderlands from the Government of Ontario in order to support the Adams Mine Site.⁴²

68. Notre’s Certificate of Approval to operate the Adams Mine Site as a waste facility provided, as one of the conditions, that Notre purchase the Borderlands. The purchase condition in the Certificate of Approval read, in part:

Tailings Area

Prior to the receipt of waste for disposal at this Site, the Owner shall acquire legal access to the portions of the existing tailings area not currently controlled by the Owner (described in Schedule “A”, Item 16, Tab 1) and required for the management and discharge of surface water and the treatment and discharge of drainage layer effluent, including constructed wetlands and a constructed channel to direct treated leachate to the tailings pond upgradient of Dam #6 and subsequently into the Miserna River via Moosehead Creek.

69. On February 17, 2003,⁴³ the Ontario Ministry of Natural Resources offered to sell the Borderlands to the Enterprise. Ontario had already completed a supplementary environmental review and obtained an independent property appraisal. The Enterprise accepted the offer, which stated, in part:

As outlined to you, our original offer to you for the lands was \$96,000 plus GST and this offer included the trees situated on the lands. As discussed yesterday, due to concerns recently raised as a result of our supplemental environmental review we are prepared to (and you stated your agreement to) finalize the sale to you at this time for the appraised market value of the land only (\$48,000.00) plus GST for a total price of \$51,360.00. **Please note that this offer will be valid for a period of three months from the date of this letter. [Emphasis in the original]**

70. On April 10, 2003, the Enterprise delivered a certified cheque to the Ministry of Natural Resources, along with a covering letter stating:⁴⁴

Referring to your letter dated February 17, 2003, we enclose herewith the following:

- 1) Application for Crown Land executed in triplicate

⁴² Letter from Notre to Ministry of Natural Resources, October 1, 1996

⁴³ Letter from Ministry of Natural Resources to Gordon McGuinty, February 17, 2003

⁴⁴ Letter from Gordon McGuinty to Ministry of Natural Resources, April 10, 2003

- 2) The Agreement executed in Triplicate
- 3) Our certified cheque for \$51,360.00 (includes \$3,360 GST)
- 4) A copy of the Company's Corporate Profile.

Trusting the above is sufficient to complete the transaction if otherwise, please advise. Please return a copy of the finalized documentation for our files, when executed and registered.

71. By tendering full payment on the Ministry of Natural Resources (Crown in Right of Ontario) acceptance of all conditions by the Province of Ontario, at law and/or in equity, the Enterprise was the owner in title of the Borderlands and had met the purchase of the Borderlands condition set out in the Certificate of Approval.

72. Contrary to its obligations under the agreement, the Ministry of Natural Resources failed to transfer title to the Borderlands. As a result, the Enterprise commenced action against the Province of Ontario in the Superior Court of Justice of Ontario of the District of Algoma on October 9, 2003 (Court File Number 22368/A3).⁴⁵ It did so only after having provided the Province of Ontario with the legally required 60 days notice before issuing its statement of claim, as required by the *Proceedings Against the Crown Act*.

73. In its lawsuit against the Province of Ontario, the Enterprise sought the following relief, *inter alia*:

The [Enterprise] makes the following claims and requests the following orders as against the Defendant:

- a. An Interim Declaratory Order that the [Enterprise] is entitled to receive immediate transfer from the [Province of Ontario] of the ownership in fee simple of all the lands set out in Schedule "A", (the "Lands"), attached hereto;
- b. A permanent Declaration that that the [Enterprise] is entitled to receive from the [Province of Ontario] an immediate transfer of the ownership in fee simple of all of the lands;
- c. Damages for breach of an Agreement of Purchase and Sale entered into between the [Enterprise] and the [Province of Ontario] wherein the

⁴⁵ Notice of Claim, by 1532382 Ontario Inc., July 28, 2003 and Statement of Claim, Court File No. 22368/A3, October 9, 2003

[Province] was to transfer the lands to the [Enterprise], damages being in the amount of \$301,000,000.00;

- d. Punitive and exemplary damages in the amount of \$1,000,000.00;
- e. Pre-judgment and post-judgment interest pursuant to the Courts of Justice Act and Rules of Practice in effect in Ontario
- f. Such further and other relief as this Honourable Court deems appropriate in the circumstances.

74. The Attorney General for Ontario filed a Statement of Defence on November 18, 2003,⁴⁶ stating baldly that there was no agreement between the Enterprise and Ontario and that the Enterprise did not suffer any damages.

75. On March 3, 2004, the Enterprise served a motion for Summary Judgment⁴⁷ before the Ontario Superior Court of Justice, seeking, *inter alia*:

Partial summary judgment in the form of a Declaratory Order that the [Enterprise] is entitled to receive immediate transfer from the [Province of Ontario] of the ownership in fee simple of all of the [Borderlands].

76. The motion was scheduled to be heard on March 11, 2004 but was adjourned at the request of the Province of Ontario.

77. The Liberal Party of Ontario was elected as a new provincial government in October 2003. During the election, David Ramsay, the incumbent Liberal candidate for the area where the Adams Mine Site is located, pledged to put the project “to bed once and for all” and stated that “we’ve got to kill that project.”⁴⁸

78. After Mr. Ramsay was appointed Minister of Natural Resources, on October 23, 2003, he fomented a political crisis and threatened to resign from Cabinet unless the Province of Ontario terminated the Adams Mine project.⁴⁹ This manufactured crisis reached its climax after the Enterprise’s Permit to Take Water was issued by the Ministry of Environment on November 14, 2003.

⁴⁶ Statement of Defence, Court File No. 22368/A3, November 18, 2003

⁴⁷ Motion Record of 1532382 Ontario Inc. re: Summary Judgment, returnable March 11, 2004

⁴⁸ Northwatch News, “Northeast Goes Tory-Free in Liberal Election Sweep”, URL: http://www.web.ca/~nwatch/nwatchnews/NN_Fall_2003.PDF, accessed June 23, 2008

⁴⁹ Benzie, Robert (Nov. 19/03) “Ramsay vows to quit if mine plan proceed”. Toronto Star.

79. The exact nature of the process undertaken by the new government in Ontario is unknown to the Investor and Enterprise who will seek full production and discovery during the course of the arbitration.

B. 6 THE ENACTMENT OF THE ADAMS MINE LAKE ACT

80. Unexpectedly and without warning the new government introduced and gave First Reading to Bill 49 on April 5, 2004, "An Act to Prevent the Disposal of Waste at the Adams Mine Site" ("Bill 49"), which is a modern day bill of attainder.

81. The Bill was introduced less than six months after the new government was elected. The bill was introduced without any notice or consultation, even without the required notification required pursuant to the *Ontario Environmental Bill of Rights* which provides:

Proposals for policies and Acts

15. (1) If a minister considers that a proposal under consideration in his or her ministry for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented. 1993, c. 28, s. 15 (1).

Exception

(2) Subsection (1) does not apply to a policy or Act that is predominantly financial or administrative in nature. 1993, c. 28, s. 15 (2).

82. No studies were published and no internal analyses were released regarding Bill 49.

83. In the provincial debates that followed, Jim Flaherty, who is currently the Minister of Finance of the Government of Canada but was then an opposition member of the Ontario Legislature, commented on Bill 49 on May 3, 2004:

I'm pleased to have an opportunity to speak to [Bill 49] today. It's an important bill, not particularly because it deals with the Adams mine, but because of the principles that are being violated by this bill relating to the property rights of individuals and corporations in the province of Ontario ... A huge process was followed: experts on all sides all kinds of evidence, the whole thing according to the rule of law, according to the rules in the

province of Ontario. A conclusion was reached. Today, the Liberal government comes before the Legislature and says we should throw all that out the window. ... Then they say, “Oh, OK, compensation. You might want some compensation because we’re changing the rules retroactively, which has substantial financial consequence. You were successful in your application when you followed all the rules back in 1998, six years ago. Now we’re changing the rules. We’re going to limit what you can do. We’re going to say that you lose the fundamental right, which people have in the province of Ontario, to go to court” – Magna Carta, redress, the opportunity, the fundamental principle of the rule of law, that people who have suffered harm at the hands of others may go to court and seek redress. But the Liberals won’t even give them that. They retroactively changed the law vis-à-vis the environment and then they said:” “We won’t let you go to court. We’re going to tell you the kind of compensation you’re entitled to. You’re not going to be allowed to take legal proceedings,” and so on.⁵⁰

84. John Baird, the current Minister of the Environment of the Government of Canada and then a member of the Ontario Legislature, stated on May 5, 2004, the following in opposition to Bill 49:

... I have some very serious concerns with respect to Bill 49 and they’re twofold. The first concern is with respect to property rights and the second concern is with respect to the political nature of the approval of garbage disposal that this government is engaging in. I’d like to talk first, if I could, about property rights. Section 5 of this bill is outrageous. It says that individuals involved in this dispute can’t even seek the remedy of the courts, that they can’t even seek legal recourse for any dispute. I think property rights are incredibly important. They’re every bit as important as the other rights enumerated in our Charter of Rights and Freedoms. I’m disturbed by this government’s attempt to use legislation to curtail law-abiding citizens’ views and their intervention into the legal process.

...

Norm Sterling, ...[is] not just a lawyer, he’s not just an engineer, a former Attorney General and a former Minister of the Environment, but someone who I think most members on all sides of the House would acknowledge has certainly followed environmental issues for many years. ... He spoke of the political meddling involved in this bill. I’m glad to see the member for Timiskaming here. This bill, among some, has been called the “David Ramsay Career Protection Act,” because David Ramsay made commitments and the government is bailing him out from certain electoral defeat on this issue. As Mr. Sterling said, the government wants to throw

⁵⁰ Hansard Excerpt, May 3, 2004

aside proper and due process and inject its political will on the people of Ontario. Section 5 of the bill extinguishes the right of the proponent to legal recourse with regard to what the government has done for this very political process, and that does cause those of us on this side of the House substantial concern.⁵¹

85. Bill 49 was enacted on June 17, 2004. It received Royal Assent on the very same day and was immediately proclaimed in force. The effect of Bill 49 was far reaching, cancelling all of the environmental approvals that had been obtained or were pending, Section 3(1) thereof stating:

The following are revoked:

1. The approval dated August 13, 1998 that was issued to Notre Development Corporation under the Environmental Assessment Act, including any amendments made after that date.
2. Certificate of Approval No. A 612007, dated April 23, 1999, issued to Notre Development Corporation under Part V of the Environmental Protection Act, including any amendments made after that date.
3. Approval No. 3250-4NMPDN, dated July 9, 2001, issued to Notre Development Corporation under section 53 of the Ontario Water Resources Act, including any amendments made after that date.
4. Any permit that was issued under section 34 of the Ontario Water Resources Act before this Act comes into force in response to the application submitted by 1532382 Ontario Inc. for New Permit #4121-5SCN9N (00-P-6040) and described on the environmental registry established under the Environmental Bill of Rights, 1993 as EBR Registry Number XA03E0019. 2004,

No permit for specified application

(2) No permit shall be issued under section 34 of the Ontario Water Resources Act after this Act comes into force in response to the application referred to in paragraph 4 of subsection (1).

86. Bill 49 went on also to extinguish the agreement of purchase and sale to purchase the Borderlands in Article 4 thereof:

4. (1) An agreement entered into by Notre Development Corporation or 1532382 Ontario Inc. after December 31, 1988 and before this Act comes

⁵¹ Hansard Excerpt, May 5, 2004

into force is of no force or effect if the agreement is with the Crown in right of Ontario and is in respect of,

- (a) the purchase or sale of the lands described in Schedule 1 or any part of those lands;
- (b) the granting of letters patent for the lands described in Schedule 1 or any part of those lands; or
- (c) any interest in, or any occupation or use of, the lands described in Schedule 1 or any part of those lands.

SCHEDULE 1

The lands described as:

Location CL 411-A, Boston Township, District of Timiskaming, containing 387.48 hectares;

Location CLM 104, McElroy Township, District of Timiskaming, containing 238.72 hectares;

Parts 1, 2, 3, 4, 5, 6, Plan 54R-2947, Boston Township, District of Timiskaming, containing 14.58 hectares;

Parts 1, 2, 3, Plan 54R-1694, Boston Township, District of Timiskaming, containing 18.76 hectares;

Location CL 936, Plan TER-670, Boston Township, District of Timiskaming, containing 33.46 hectares;

Parts 1, 2, Plan 54R-1807, Boston Township, District of Timiskaming, containing 37.10 hectares;

Parts 1, 2, 3, Plan 54R-1693, Boston Township, District of Timiskaming, containing 12.12 hectares;

Parts 1, 2, Plan 54R-2322, Boston Township, District of Timiskaming, containing 18.69 hectares;

Part 1, Plan 54R-1540, Boston Township, District of Timiskaming, containing 14.48 hectares;

Location CL 1584, Part 1, Plan 54R-1511, Boston Township, District of Timiskaming, containing 16.06 hectares;

Location CL 1221, CL 1222, Parts 1, 2, Plan 54R-1291, McElroy Township, District of Timiskaming, containing 34.02 hectares;

Location CL 1220, Parts 1, 2, 3, 4, 5, 6, 7, Plan 54R-1292, McElroy Township, District of Timiskaming, containing 102.62 hectares;

Parts 1, 2, 3, Plan 54R-1619, McElroy Township, District of Timiskaming, containing 43.28 hectares.

87. Bill 49 also terminated the cause of action including, without limitation, the relief sought in the Statement of Claim that was issued on October 9, 2003 in the circumstances described above:

Extinguishment of causes of action

5. (1) Any cause of action that exists on the day this Act comes into force against the Crown in right of Ontario, a member or former member of the Executive Council, or an employee or agent or former employee or agent of the Crown in right of Ontario in respect of the Adams Mine site or the lands described in Schedule 1 is hereby extinguished.

Same

(2) No cause of action arises after this Act comes into force against a person referred to in subsection (1) in respect of the Adams Mine site or the lands described in Schedule 1 if the cause of action would arise, in whole or in part, from anything that occurred after December 31, 1988 and before this Act comes into force.

(3) Subsections (1) and (2) do not apply to a cause of action that arises from any aboriginal or treaty right that is recognized and affirmed by section 35 of the Constitution Act, 1982.

Enactment of this Act

(4) Subject to section 6, no cause of action arises against a person referred to in subsection (1), and no compensation is payable by a person referred to in subsection (1), as a direct or indirect result of the enactment of any provision of this Act.

Application

(5) Without limiting the generality of subsections (1), (2) and (4), those subsections apply to a cause of action in respect of any agreement, or in respect of any representation or other conduct, that is related to the Adams Mine site or the lands described in Schedule 1.

Same

(6) Without limiting the generality of subsections (1), (2) and (4), those subsections apply to a cause of action arising in contract, tort, restitution, trust, fiduciary obligations or otherwise.

Legal proceedings

(7) No action or other proceeding shall be commenced or continued by any person against a person referred to in subsection (1) in respect of a cause of action that is extinguished by subsection (1) or a cause of action that, pursuant to subsection (2) or (4), does not arise.

Same

(8) Without limiting the generality of subsection (7), that subsection applies to an action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief.

Same

(9) Subsection (7) applies to actions and other proceedings commenced before or after this Act comes into force.

88. Bill 49 also included a provision declaring that the statute itself does not constitute an expropriation, even though it constitutes an expropriation or conduct tantamount to expropriation at international law:

5(10) Nothing in this Act and nothing done or not done in accordance with this Act constitutes an expropriation or injurious affection for the purposes of the Expropriations Act or otherwise at law.

89. The amount of compensation under the Statute was unduly limited and in no manner compensated the Enterprise, stating, inter alia:

Compensation

6. (1) The Crown in right of Ontario shall pay compensation to 1532382 Ontario Inc. and Notre Development Corporation in accordance with this section.

Amount

(2) Subject to subsection (3), the amount of the compensation payable to a corporation under subsection (1) shall be determined in accordance with the following formula:

A + B + C

where,

A = the reasonable expenses incurred and paid by the corporation after December 31, 1988 and before April 5, 2004 for the purpose of using the Adams Mine site to dispose of waste,

B = the lesser of,

i. the reasonable expenses incurred by the corporation after December 31, 1988 and before April 5, 2004, but not paid before April 5, 2004, for the purpose of using the Adams Mine site to dispose of waste, and

ii. \$1,500,000, in the case of Notre Development Corporation, or \$500,000, in the case of 1532382 Ontario Inc.,

C = the reasonable expenses incurred by the corporation on or after April 5, 2004 for the purpose of using the Adams Mine site to dispose of waste, if the expenses are for legal fees and disbursements in respect of legal services provided on or after April 5, 2004 and before this Act comes into force.

Same

(3) The amount of the compensation payable to 1532382 Ontario Inc. under subsection (1) shall be the amount determined for that corporation under subsection (2), less the fair market value, on the day this Act comes into force, of the Adams Mine site.

90. Bill 49 also specifically states that no payment will be made for any loss of goodwill or possible loss of profits:

Loss of goodwill or possible profits

(8) For greater certainty, no compensation is payable under subsection (1) for any loss of goodwill or possible profits.

91. The intent of Bill 49 was clear and beyond dispute: to eliminate the Investment as a solid waste landfill site and to destroy its value for the Enterprise, while preserving its title in order to ensure that any ongoing liabilities in respect of the land would be borne by the Enterprise rather than the Province of Ontario. The statute specifically:

- a. Revoked each of the certificates of approval and licenses that the Enterprise held to operate the Adams Mine Site as a waste disposal site;

- b. Terminated the application process for the issuance of the Permit To Take Water and cancelled the Permit to Take Water that had been issued in November 2003;
 - c. Cancelled the binding agreement to sell the Borderlands to the Enterprise;
 - d. Extinguished the Enterprise's causes of action that had been made in its Superior Court of Justice proceeding that had been commenced on October 9, 2003 and which was before the Court on a Motion For Summary Judgement;
 - e. Extinguished all other causes of action that the Enterprise either had or would have in the future, including recourse under the Province's Expropriation Act; and
 - f. Restricted damages and/or compensation, limiting the costs that could be recovered and specifically limited recovery for future expenses and liabilities on the site and for any recovery on the basis of goodwill or loss of profits.
92. The Government of Ontario has failed to pay any compensation to 1532382 Ontario Inc. since passage of Bill 49.

C. THE NAFTA AND APPLICABLE INTERNATIONAL LAW

Interpretation of the NAFTA

93. NAFTA Article 1131(1) provides that a tribunal shall decide issues in dispute accordance with the NAFTA and the applicable rules of international law. NAFTA Article 102(2) further provides that NAFTA provisions shall be interpreted and applied in accordance with the applicable rules of international law and in light of the objectives of the NAFTA set out in Article 102(1).

94. Construed within the context of Articles 102(2) and 1131(1), the term 'applicable rules of international law' includes the customary international law rules of treaty interpretation, as restated in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*.

95. The applicable rules of treaty interpretation require that the NAFTA shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its stated object and purpose. The text of the treaty is presumed to be the authentic expression of the parties' intentions. The ordinary meaning of the text is normally conclusive of the obligations owed by a party to a treaty. Such meaning is also informed by the context in which the subject text appears and the object and purpose of the treaty in question.

96. NAFTA Article 102 explicitly delineates its object and purpose. It provides:

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured-nation treatment and transparency, are to:

(a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in the territories of the Parties;

(d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

(f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

97. Because the NAFTA contains explicit objectives, such as promoting conditions of fair competition in the free trade area and substantially increasing investment opportunities in the territories of the Parties, the 'object and purpose' of the treaty is clear. The NAFTA preamble also provides the context within which its provisions are to be interpreted, including ensuring "a predictable commercial framework for business planning and investment... in a manner consistent with environmental protection and conservation."

98. As such, the terms of NAFTA Chapter 11 are to be construed in a broad and remedial manner consistent with the NAFTA's object and purpose, or promoting and protecting fair trade and investment in the territories of the Parties.

Jurisdiction over Claims under Chapter 11

99. The Tribunal's jurisdiction to hear a claim under NAFTA Chapter 11 is established under Articles 1101, 1116 and/or 1117 and 1122. Article 1116 permits an investor of another Party to bring a claim to arbitration for loss or damage it has suffered arising out of a breach of Section A of NAFTA Chapter 11 by a Party. Article 1117 permits an investor of another Party to bring a claim to arbitration on behalf of an enterprise of another Party for loss or damages that the enterprise has suffered arising out of a breach of Section A of NAFTA Chapter 11 by a Party. NAFTA. Article 1122 provides that the NAFTA Parties proactively consent to arbitration of claims brought by investors of another Party under Article 1116 and/or Article 1117.

100. NAFTA Article 1101 establishes the scope of application for NAFTA Chapter 11. As indicated above, like all NAFTA provisions its terms must be construed in light of the object and purpose of the NAFTA, which is intended to promote opportunities for investment and ensure fair competition in the territories of the NAFTA Parties. Article 1101 provides, in relevant part:

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of another Party;
 - (b) investments of investors of another Party in the territory of the Party;
- and
- (c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

101. NAFTA Article 1101 provides that the Chapter broadly applies to measures ‘relating to’ investors and to their investments in the territory of another NAFTA Party. Accordingly, whenever a measure directly affects an investor of another Party, or an investment that an investor of another Party owns or controls in the territory of another NAFTA Party, it falls within the scope of the Chapter 11

102. NAFTA Article 1139 provides that an investor of another Party includes a national of another NAFTA Party who has made, is making or seeks to make an investment. Under the same provision, ‘investment’ is defined as including both real property and an ‘enterprise.’ Article 201 provides that ‘enterprise’ includes a corporation or partnership, joint venture or other association constituted or organized under the laws of a Party.

103. NAFTA Article 1117 provides that an investor of a Party may bring a claim on behalf of an enterprise of another Party that the investor either owns or controls. Ownership and control are issues of fact to be determined based upon the evidence on the record. Ownership of a corporation is demonstrated by possession of a majority of the issued shares of a corporation, which constitutes an enterprise as defined above.

Article 1105: Treatment in Accordance with International Law

104. NAFTA Article 1105 reaffirms Canada’s obligation to provide fair and equitable treatment and full protection and security to American and Mexican nationals and to their investments in its territory. Whether enforced by way of treaty or through customary

international law, the fair and equitable treatment standard establishes a floor below which no State conduct shall fall. Application of the standard is normally dependent upon a detailed appraisal of the factual context, but in no case can a State satisfy its obligation to accord fair and equitable treatment by providing only a ‘minimal’ level of treatment, rather than the ‘minimum’ that is required under customary international law and NAFTA Article 1105.

105. The State’s obligation to accord fair and equitable treatment is not fixed in time. The content of the standard continues to evolve, as expectations reasonably held by the international investment community increase over time. Under Article 1105, Canada is required to act in accordance with the customary international law principle of good faith; to provide a stable, transparent and predictable regulatory and business environment for foreign investment; and to accord both substantive and procedural due process in exercising its legislative, judicial and administrative functions.

Article 1110: Expropriation

106. As Article 1110 of the NAFTA explicitly provides, “no Party may directly or indirectly expropriate an investment of an investor of another Party in its territory or take a measure tantamount to the expropriation of such investment except for: a public purpose; on a non-discriminatory basis; in accordance with due process of law; and on payment of compensation.” A measure constitutes an indirect taking or act tantamount to expropriation when it substantially interferes with the investor’s ability to derive the full economic benefit of its investment in the host State.

107. Canada breaches its obligation under Article 1110 when it enacts a measure that constitutes an indirect expropriation or an act tantamount to expropriation but for which it has either failed to pay compensation to the investor or has failed to pay compensation that is “equivalent to the fair market value of the expropriated investment immediately before the expropriation took place” or where has failed to pay compensation that does not “reflect any change in value occurring because of the intended expropriation and valuation criteria must include going concern value, asset value and such other criteria as appropriate to determine fair market value.” Canada must also ensure that expropriatory measures are executed in accordance with due process of law; are not otherwise discriminatory or not for a public purpose.

108. A measure constitutes an indirect taking or act tantamount to expropriation when it substantially interferes with the investor's ability to derive the full economic benefit of its investment in the host State.

Damages

109. Under customary international law, which constitutes applicable international law under Article 1131(1), Canada is required to make full reparation for the harm caused to the Enterprise, placing it in the position it would have been in but for Canada's breach of NAFTA Article 1105 and/or Article 1110. Under customary international law, the standard of compensation for a breach of Article 1105 may be the same as the compensation stipulated under Article 1110(2). In circumstances such as the instant case, the only appropriate compensation for total deprivation of one's enjoyment of the intended use of an investment is payment of fair market value of that investment as of the date immediately before the measure was enacted and harm caused thereby.

D. APPLICATION OF THE NAFTA AND INTERNATIONAL LAW TO THE FACTS OF THIS CASE

Jurisdiction

110. Mr. Vito Gallo is a national of the United States of America. He therefore qualifies as an investor of another Party with respect to Canada. Mr. Gallo owns 100% of the issued common shares of the Enterprise, 1532382 Ontario Limited. The Enterprise was constituted and is organized under the laws of Ontario. The Enterprise therefore qualifies as an investment in the territory of Canada. At all relevant times, the Enterprise has owned and controlled the lands that form the subject of this claim, i.e. the Adams Mine Site, as well as all of the Certificates necessary to permit the establishment and operation of the Landfill Site.

111. This claim has been brought by Mr. Gallo on behalf of the Enterprise, under NAFTA Article 1117, for loss and damage suffered by the Enterprise arising from imposition of Bill 49, and the steps taken by the Government of Ontario to frustrate and delay the Enterprise's ability to operate or obtain returns from its investment, including the Government's failure to honour its good faith obligation to transfer the Borderlands to the Enterprise pursuant to the contract between them. Accordingly, the Tribunal has jurisdiction to hear the claim.

Article 1105

112. The measure purports to deny all access to the Courts of Ontario for vindication of a claim for damages concerning the Adams Mine Site. The measure thus constitutes a *prima facie* denial of justice, contrary to customary international law generally and the standard of fair and equitable treatment in particular, contrary to NAFTA Article 1105. In no uncertain terms, Bill 49 was contrived to deny the Enterprise from having ‘its day in court’ in respect of the destruction of the investment.

113. At the time the investment was acquired, there was no reason to expect that the Government of Ontario would not abide by the terms of the Certificates its own officials had lawfully and properly issued for its operation as a waste landfill, or to perform the undertakings provided under contract to the Enterprise for transfer of the Borderlands. No foreign investor could have reasonably anticipated that the Government of Ontario would abrogate each of those Certificates by legislative fiat, well aware that investments had been made in reliance upon the existence of those Certificates and undertakings.

114. Such conduct constitutes an obvious failure by Canada to accord fair and equitable treatment to the Enterprise, because the Enterprise was entitled to reasonably expect that it could rely upon the good faith of the Government of Ontario in respect of the permits that had been issued for operation of the investment.

115. Moreover, no foreign investor should have expected that the Government of Ontario would engage in tactics of obfuscation and delay, impairing the Enterprise’s ability to obtain redress before its courts, while drafting legislation that would purport to annul any right to redress in its entirety. Such conduct constitutes a breach of the customary international law standard of fair and equitable treatment because it demonstrates a lack of good faith.

116. It was also not unreasonable to expect that the Government of Ontario would negotiate and honour its obligations, in good faith, transferring the Borderlands it had promised in sale to the Enterprise, for expansion of the Adams Mine Site. The Government’s conduct in this regard further demonstrates a lack of good faith contrary to the general international law principle of good faith and the principle of transparency referenced in NAFTA Article 102(1), both of which inform the standard of fair and equitable treatment set out in Article 1105. Such conduct

accordingly further breached Canada's obligation to accord fair and equitable treatment under Article 1105 and under customary international law.

117. It is not necessary to establish that substantial interference or total deprivation has occurred to establish liability under Article 1105. Any level of unlawful interference is prohibited under international law. Nonetheless, in this case the measure does totally deprive the Enterprise of the highest and best use of the Adams Mine Site, which was also the basis upon which the investment was established: as a fully-permitted mega landfill waste treatment site.

Article 1110

118. The purpose and effect of the measure was to totally deprive any owner of the Adams Mine Site of the right to operate it as a waste landfill facility. Bill 49 also reduced the asset value of the investment to a negative amount, and in no case more than nil, because of taxes and the ongoing costs associated with maintaining the site.

119. While the Government of Ontario could have directly expropriated the investment with its measure, it did so indirectly for one simple reason. By leaving title to the Adams Mine Site with the Enterprise, the Government was able to encumber the Enterprise with the on-going costs of maintaining the site. The intent behind the measure was to definitively limit any compensation payable under domestic law, while nonetheless 'killing the project.' The measure is accordingly an indirect expropriation and a measure tantamount to expropriation under NAFTA Article 1110 and customary international law.

120. Article 1110(1)(a) provides that a measure must be imposed for a public purpose. Bill 49 was not implemented for a public purpose because it was not a measure of general application and was issued contrary to the principles of economic efficiency and sustainable development. Article 1110(1)(a) provides that a measure must not be discriminatory. Bill 49 is discriminatory because it was targeted specifically at the Enterprise and the investment, rather than at the industry generally.

121. NAFTA Article 1110(1)(c) provides that a measure must be imposed in accordance with due process of law. Bill 49 purports to eliminate all claims for damages that might lie for the Enterprise under domestic law and purports to relieve the Government of Ontario from its

obligations to produce witnesses in any domestic legal proceeding arising in respect of imposition of the measure or its application to the Adams Mine Site. As such, the measure is designed to completely deprive the Enterprise of any kind of due process rights under domestic law.

122. Finally, NAFTA Article 1110(1)(d) provides that an expropriatory measure must not be imposed without payment of compensation in accordance with Article 1110(2). To be clear, Article 1110 provides that compensation must be paid regardless of whether the measure was for a public purpose, was not discriminatory and was in accordance with due process of law. The provision clearly states that compensation must be paid in the event of a finding of expropriation, whether direct or indirect. Article 1110(2) also establishes that valuation criteria shall include “fair market value,” which obviously contemplates recognition of lost future cash flows as part of the valuation analysis. Bill 49 directly contradicts Article 1110(2) by specifically provides that “no compensation is payable ... for any loss of goodwill or possible profits.”

123. That the measure constitutes an illegal expropriation, contrary to Article 1110 and customary international law, is not seriously in question. The Government of Ontario’s has admitted as much by publicly proclaiming, with imposition of the measure, that it the measure could not be considered an expropriation under its own law.

Damages

124. The fair market value of the Investment, as it existed on June 3, 2004, must be determined on the basis of the Investment’s highest and best use. Its best use was as a high volume, waste-by-rail, landfill disposal facility. The value of the site resided in its right to accept waste and the extent and density of its “air space” as defined by its certificate of approval. The volume established by the Adams Mine Site certificate of approval was 1,341,600 tonnes per year. This amount constituted a “mega landfill” disposal facility, as understood in the waste management industry.

125. In Ontario, both today and at all relevant times, demand for waste disposal has far exceeded the supply. Permitted mega landfill disposal facilities are readily saleable and a market exists for them both within the vicinity of Toronto and throughout North America. Because high

barriers to entry characterize the market for waste landfill facilities in North America, permitted air space is considered within the industry to be a scarce commodity with very high demand.

126. The introduction and subsequent passage of the Adams Mine Lake Act destroyed the fair market value of the permitted air space for the Adams Mine Site by canceling the Certificates of Approval and all other permits that had been granted for its operation as a waste landfill facility. The measure did not provide for compensation to the Enterprise or the Investor. Instead, it statutorily barred the payment of just compensation on a timely basis and purported to remove all causes of action for such compensation under applicable domestic law.

127. The estimated fair market value of the investment, as of the moment immediately before the measure was announced, is US\$355,100,000.00.

E. THE ISSUES

128. There are three issues in this claim:

- (i) Does the measure breach Article 1105 by arbitrarily depriving the Enterprise from recourse to a civil court for the loss and damage it causes?
- (ii) Does the measure breach Article 1105 because Canada failed to provide the Investor and Enterprise with a transparent and predictable regulatory environment upon which to establish and maintain the investment?
- (iii) Does the measure indirectly expropriate the investment by depriving the Enterprise of its use without payment of prompt, adequate and effective compensation contrary to Article 1110(2)?

F. RELIEF SOUGHT AND DAMAGES CLAIMED

129. The Investor claims damages on behalf of the Enterprise for the following:

- a. Payment of not less than US\$355,100,000.00 as compensation for the damages caused by, or arising out of, Canada's measures that are inconsistent with its obligations contained in Part A of Chapter 11 of the North American Free Trade Agreement;
- b. Out-of-pocket costs incurred by the Enterprise in opposing imposition of the measure;
- c. Compensation for any on-going or future liabilities arising from the Adams Mine site including, without limitation, for its environmental remediation;

- d. Costs associated with the expropriation, these proceedings, including all professional fees and disbursements.
- e. Pre-award and post-award compound interest at a rate to be fixed by the Tribunal.
- f. Tax consequences to maintain the integrity of the award.
- g. Such further relief as counsel may advise and that the Tribunal may deem appropriate.

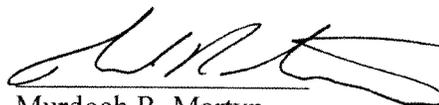
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APPENDIX "A"

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, nondiscriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
 - (a) for a public purpose;
 - (b) on a nondiscriminatory basis;
 - (c) in accordance with due process of law and Article 1105(1); and
 - (d) on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.
4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.
5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest ad

accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminator measure of general application shall not be considered a measure tantamount to an expropriation of debt security or loan covered by this Chapter solely on the grounds that the measure imposes costs on the debtor that cause it to default on the debt.

SCHEDULE "1"

1. Corporation Profile Report, incorporation date June 26, 2002
2. Land Registry Property Identification for Adams Mine Site
3. Passport of Mr. Vito Gallo
4. Declaration of Trust signed by Mr. Brent Swanick, June 26, 2002
5. Certificate for Shares in 1532382 Ontario Inc, June 26, 2002
6. Sections 115, 119 and 133 of the *Ontario Business Corporations Act*
7. 1532382 Limited Partnership Agreement, September 10, 2002
8. 1532382 Limited Partnership Loan Agreement, September 9, 2002
9. 1532382 Limited Management Agreement, September 9, 2002
10. Diagrams and photographs of the Adams Mine Site
11. Order in Council Approval, August 13, 1998
12. Ministry of Environment Provisional Certificate of Approval No. A612007, April 23, 1999
13. Permit to Take Water for the south pit, Adams Mine, PTTW No. 00-P-6040, October 18, 2000
14. Approval to operate a leachate treatment facility and storm water facility, Approval No. 3250-4NMPDN, July 9, 2001
15. Notice Requiring the Board to hold a hearing under s.9.2 of the EAA, December 16, 1997
16. EAB Decision: Notre Development Corporation EA-97-01, June 19, 1998
17. Technical Appendices, Addendums and Response to Ministry of Environment
18. *Adams Mine Intervention Coalition v. Ontario (Environment Assessment Board)* [1999] O.J. No. 2886 Div. Ct.
19. *Adams Mine Intervention Coalition v. Ontario (Environment Assessment Board)* [1999] O.J. No. 2701 Div. Ct.
20. Letter from Golder Associates to Mayor Mel Lastman, City of Toronto, September 15, 2000

21. Letter from Garner Lee Limited to Mayor Mel Lastman, City of Toronto, September 14, 2000
22. Letter from Ministry of Environment to Algonquin Nation Secretariat, July 17, 2001
23. Earth Tech Canada Inc. Summary Report: Availability of Landfill space in Ontario, January 2004
24. Report to Works Committee, City of Toronto, June 20, 2003
25. City of Toronto Commissioner of Works to Works Committee, City of Toronto, August 20, 2003
26. Minutes of Meeting of GTA Waste Coordination Meeting, July 3, 2003
27. Memorandum of Understanding regarding a cooperative Effort to Develop Contingency Waste Planning, August 23, 2003
28. Gartner Lee Report – GTA Municipalities Solid Waste Disposal Contingency Plan, January 2005
29. Letter from Ministry of Environment to Notre, January 15, 2002
30. Letter from Gordon McGuinty to Ministry of Environment enclosing Gartner Lee Report dated July 4, 2003 and application, July 7, 2003
31. Permit to Take Water, Permit Number 4121-5SCN9N
32. Letter from Notre to Ministry of Natural Resources, October 1, 1996
33. Letter from Ministry of Natural Resources to Gordon McGuinty, February 17, 2003
34. Letter from Gordon McGuinty to Ministry of Natural Resources, April 10, 2003
35. Notice of Claim, by 1532382 Ontario Inc., July 28, 2003
36. Statement of Claim, Court File No. 22368/A3, October 9, 2003
37. Statement of Defence, Court File No. 22368/A3, November 18, 2003
38. Motion Record of 1532382 Ontario Inc. re: Summary Judgment, returnable March 11, 2004
39. Northwatch News, “Northeast Goes Tory-Free in Liberal Election Sweep”, URL: http://www.web.ca/~nwatch/nwatchnews/NN_Fall_2003.PDF, accessed June 23, 2008

40. Benzie, Robert (Nov. 19/03) "Ramsay vows to quit if mine plan proceed".
Toronto Star.
41. Hansard Excerpt, May 3, 2004
42. Hansard Excerpt, May 5, 2004

