

THE YEAR OF NEW RESPECT
FOR WASTE MANAGEMENT

PRESENTED AT THE 25TH ONTARIO INDUSTRIAL
WASTE CONFERENCE - JUNE 21ST, 1978

BY - THOMAS W. DREW,
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SINCE LIFE BEGAN WE RESIDENTS HAVE NOT BEEN TOO SELECTIVE IN PROTECTING THE GIFTS THAT WERE PUT ON THIS EARTH FOR OUR USE. WE HAVE CUT DOWN FORESTS, MOVED MOUNTAINS AND WATERCOURSES, GENERALLY DISRUPTING OUR WILDLIFE AND THE TRANQUILITY WE NOW SO EAGERLY SEARCH FOR. WERE WE TENANTS ON THIS EARTH, WE WOULD HAVE BEEN EVICTED AFTER THE FIRST MONTH.

NORTH AMERICANS GENERATE MORE WASTE PER CAPITA THAN ANY OTHER PART OF THE WORLD. WE WERE RECENTLY IN A MIDDLE EAST COUNTRY ASSESSING THEIR WASTE PROBLEMS. FRANKLY, THEIR CAPITAL CITY WITH ITS REFUGEE CAMPS AND THE COUNTRY SIDE IN GENERAL IS FAR CLEANER THAN OURS. THEIR ATTITUDE ALSO IS BROADER THAN OURS AS THEY ARE NOT RELUCTANT TO CROSS THE POLITICAL BOUNDARIES WITHIN THEIR COUNTRY IF IT IS BENEFICIAL. HERE WE FIND NOTHING BUT CONFUSION, RED TAPE AND RELUCTANCE TO MAKE FIRM DECISIONS. IF A SUBJECT IS ONE THAT IS CONTRAVERSIAL, THEN THERE IS A TENDENCY TO IGNORE IT.

CONSPICUOUS BY ITS ABSENCE AT MOST INDUSTRIAL CONFERENCES THROUGHOUT CANADA IN THE PAST, HAS BEEN THE SUBJECT OF INDUSTRIAL WASTE DISPOSAL. AS RECENTLY AS APRIL OF THIS YEAR A CONFERENCE WAS CONVENED BY ENVIRONMENT CANADA RE THE RETROFILLING OF TRANSFORMERS. IN THE AGENDA SENT TO DELEGATES IT WAS STATED THAT PCB DISPOSAL WAS NOT TO BE A SUBJECT FOR DISCUSSION. HOWEVER, THE MATTER DID ARISE ON MORE THAN ONE OCCASION, NOT ONLY FROM THE SPEAKERS BUT FROM OTHER CONCERNED DELEGATES FROM THE INDUSTRY.

WASTE MANAGEMENT CANNOT BE SWEEPED UNDER THE CARPET ANY LONGER! THE MANUFACTURING INDUSTRY HAS RELIED UPON DISPOSAL COMPANIES TO DISPOSE OF THEIR WASTES. THESE GENERATORS ARE QUICKLY BECOMING AWARE OF THIS COUNTRY'S DECREASING FACILITIES. OUR GOVERNMENTS ARE SWIFTLY CLOSING LANDFILLS, INCINERATORS AND OTHER PREVIOUSLY ACCEPTABLE DISPOSAL SYSTEMS WITHOUT APPARENT CONCERN AS TO WHETHER OR NOT NEW, APPROVED FACILITIES ARE AVAILABLE, OR EVEN BEING CONSIDERED.

THE MATTER OF HAZARDOUS WASTE DISPOSAL SHOULD BE OF EXTREME CONCERN TO OUR GOVERNMENTS. THERE HAVE BEEN PICKET LINES AT SOME U.S. SITES WHERE CANADIAN WASTES ARE GOING AND THIS SHOULD BE A STRONG SIGNAL FOR WHAT IS YET TO COME. THE E.P.A. HAS STATED THAT NO PCB MATERIAL CAN ENTER THE U.S. AFTER JANUARY 1ST, 1979. WE CAN ONLY ASSUME THAT OTHER HAZARDOUS WASTES WILL SHORTLY BE ADDED TO THE LIST.

OUR ENVIRONMENTAL AUTHORITIES SEEM TO PREFER TO IGNORE THE CLEAR FACT THAT INTERNATIONAL DOORS ARE CLOSING. ONTARIO'S INDUSTRY GENERATES A SUBSTANTIAL VOLUME OF WASTE AND THE GOVERNMENT MUST ACCEPT THE FACT THAT INDUSTRY REQUIRES APPROPRIATE DISPOSAL SITES IN THIS PROVINCE. THE ONTARIO ENVIRONMENTAL ASSESSMENT BOARD, BASED UPON RECENT DECISIONS, APPEARS TO BE LOOKING FOR UTOPIA AND IS NOT PREPARED TO ACCEPT PROVEN DISPOSAL SYSTEMS.

WE READ THAT THE MINISTRY OF ENVIRONMENT ADVOCATES THAT INDUSTRY SHOULD LOOK AFTER ITS OWN WASTES. HOW ASSININE TO THINK THAT EACH INDUSTRY CAN ACCOMPLISH SUCH A FEAT! CAN YOU VISUALIZE THE CHAOS THAT WOULD INVOLVE? THINK OF THE NUMBER OF ENVIRONMENTAL HEARINGS THAT WOULD BE REQUIRED! EQUALLY IMPORTANT IS THE NUMBER OF GOVERNMENT INSPECTORS NECESSARY TO ENFORCE THEIR REGULATIONS.

IF THE GOVERNMENT HOWEVER, IS REFERRING TO THE DISPOSAL INDUSTRY, THEN WE ASK, "WHAT MORE CAN WE DO?" BOTH RECENT ATTEMPTS TO ALLEVIATE THE CRISIS IN LIQUID AND SOLID WASTES WERE REJECTED BY ONTARIO AUTHORITIES. IT IS INTERESTING TO NOTE THAT THE REASONS FOR REFUSAL IN BOTH INSTANCES WERE VERY SIMILAR. WE CANNOT SPEAK WITH AUTHORITY CONCERNING THE HEARINGS AND THE DECISION FOR THE MAPLE MUNICIPAL WASTE APPLICATION BUT WE CAN WITH RESPECT TO THE NANTICOKE WASTE MANAGEMENT PROPOSAL.

IN EXAMINING THE ENVIRONMENTAL ASSESSMENT BOARD'S DECISION ONE MUST CONCLUDE THAT THEY MADE THEIR DECISION BASED UPON THE ENVIRONMENTAL ASSESSMENT ACT, AN ACT UNDER WHICH OUR APPLICATION WAS NOT MADE. WE ANTICIPATED APPROVAL SUBJECT TO CERTAIN CONDITIONS BEING MET. WE REALIZED FOR INSTANCE, THAT ADDITIONAL HYDROLOGY WOULD BE REQUIRED. HAD WE BEEN REQUIRED BY THE APPROVALS BRANCH TO SUPPLY FURTHER INFORMATION ON THIS MATTER FOR THE HEARING, IT WOULD HAVE BEEN FORTHCOMING. EACH OF OUR WITNESSES AT THE HEARING WAS SPECIFICALLY ASKED IF ANY FINANCIAL RESTRAINTS HAD BEEN PLACED UPON THEM. THE ANSWER WAS AN EMPHATIC NO!

WE INITIALLY SET OUT TO PROVIDE A FACILITY THAT WAS SECOND TO NONE IN NORTH AMERICA. THE GUIDANCE AND CO-OPERATION OF MEMBERS OF THE VARIOUS DEPARTMENTS OF THE MINISTRY OF THE ENVIRONMENT, WHO DILIGENTLY WORKED ON OUR PROJECT IN CONJUNCTION WITH OUR EXPERTS, IS NOT IN QUESTION. IT IS UNFORTUNATE THEY WERE OBVIOUSLY NOT AWARE OF WHAT IS REQUIRED FOR A HEARING OF THIS NATURE. WE QUESTION WHETHER ANYONE KNOWS. THEIR ENTHUSIASM, AS WELL AS THE ENCOURAGEMENT FROM MINISTRY OFFICIALS THROUGHOUT THE PROVINCE, WAS MOST ENCOURAGING AND STIMULATING TO US. ALSO, THE MINISTRY'S FIELD STAFF COULD SEE A RAY OF HOPE ON THE HORIZON, THAT AT LAST THERE WOULD BE A HOME FOR A BROAD RANGE OF INDUSTRY'S WASTES. TODAY THEY FEEL AS WE DO - KICKED IN THE STOMACH.

WE FAIL TO UNDERSTAND HOW THE APPROVALS BRANCH COULD FIRST OF ALL AGREE THAT THERE WAS SUFFICIENT INFORMATION TO RECOMMEND THAT A HEARING BE CALLED, KNOWING THERE WAS FULL SUPPORT FOR THE PROPOSAL BY THEIR ENGINEERING DEPARTMENT, AS WELL AS THE OTHER MINISTRY WITNESSES AND THEN TAKE A 180 DEGREE TURN, COMPLETELY AGREEING WITH THE ASSESSMENT BOARD'S DECISION. ONE CAN ONLY DRAW THE CONCLUSION THAT SWORN EVIDENCE WAS NOT REVIEWED, NOR WERE MINISTRY OFFICIALS WHO EITHER GAVE EVIDENCE, OR WERE PRESENT, CONSULTED PRIOR TO THE APPROVAL BRANCH'S NEGATIVE DECISION BEING FINALIZED. WE BELIEVE WE WERE LED DOWN THE GARDEN PATH BY WELL-INTENTIONED BUT ILL-INFORMED MINISTRY STAFF.

EVERY ONE OF THE REASONS LISTED FOR REFUSING OUR APPROVAL WAS ADEQUATELY EXPLORED EITHER IN DIRECT EXAMINATION OR RE-EXAMINATION BY OUR SOLICITOR. WE EARLIER MENTIONED THAT ADDITIONAL HYDROLOGY WAS A NECESSITY. SHOULD WE HAVE RECEIVED APPROVAL, WE HAD VOLUNTEERED IN DIRECT TESTIMONY TO SET UP A CONTINGENCY FUND TO BE ADMINISTERED BY THE MINISTRY. WE PRODUCED EXHIBITS INDICATING THAT A FIVE MILLION DOLLAR LIABILITY POLICY WAS AVAILABLE. LINERS HAVE PROVEN SATISFACTORY AND ARE COMPULSORY IN U.S. LANDFILLS BUT IN ONTARIO IT APPEARS THEY MUST HAVE A TRIED AND TRUE HISTORY OF LONGEVITY BEFORE BEING GIVEN A CHANCE TO PROVE THEIR WORTH. HOWEVER, THESE ITEMS ALONG WITH OTHER UNREFUTED EVIDENCE WERE TOTALLY IGNORED. YET THESE VERY ITEMS WERE SOME OF THE REASONS FOR REFUSING APPROVAL. EVEN THE FACT THAT WE PRODUCED A LETTER DIRECTED TO THE LOCAL MUNICIPALITY OFFERING A LEVY, IN ADDITION TO NORMAL TAXATION, WAS TOTALLY IGNORED.

THE ONE SATISFACTION THAT HAS EVOLVED FROM OUR EXPERIENCE OF PREPARING EVIDENCE IN GOOD FAITH AND GOING THROUGH A TRAUMATIC ENVIRONMENTAL HEARING, IS THAT WASTE GENERATORS ARE AROUSED, EXPRESSING THEIR FEELINGS AND CONCERNS TO APPROPRIATE ELECTED OFFICIALS. IT IS DEFINITELY A YEAR OF RESPECT FOR WASTE MANAGEMENT! THE SUPPORT WHICH MEMBERS OF THE CANADIAN MANUFACTURER'S ASSOCIATION GAVE US WAS OVERWHELMING AND SHOULD BE A WARNING SIGNAL TO CONCERNED GOVERNMENTS OF THE CRITICAL SITUATION CANADIAN AND, MORE PARTICULARLY, ONTARIO INDUSTRY NOW FACES. FRANKLY, WE MAY NOT SUCCEED IN OUR APPEAL WITHOUT VIGOROUS SUPPORT AND INDEED, PRESSURE FROM THE WASTE GENERATORS LOCATED IN ONTARIO. WE ARE APPEALING THE DECISION ON THE GROUNDS IT IS CONTRARY TO THE EVIDENCE AND TOO, WE FEEL A STRONG OBLIGATION NOT ONLY TO INDUSTRY, BUT ALSO TO THOSE WHO ARE CONCERNED WITH OUR ENVIRONMENT AND WANT TO SEE THE END OF IN-DISCRIMINATE DISPOSAL IN ONTARIO.

AND NOW TO DROP THE OTHER SHOE! THERE IS NO WAY THAT DISPOSAL INDUSTRIES WILL VENTURE FORTH IN THE FUTURE INTO THE UNKNOWN FIELD OF ENVIRONMENTAL HEARINGS UNLESS THERE ARE SPECIFIC GUIDELINES. THEY SHOULD ASSURE:

- 1) THAT THE TECHNICAL INFORMATION REQUIRED FOR A HEARING IS CLEARLY ARTICULATED,
- 2) THAT ALL THOSE WHO WISH TO SPEAK EITHER FOR OR AGAINST THE APPLICATION BE SWORN AND SUBJECTED TO CROSS-EXAMINATION AS TO THE VALIDITY OF THEIR OBJECTIONS,

- 3) THAT THE PROPONENT BE PRIVY TO OPPONENTS' TESTIMONY PRIOR TO THE HEARING, AS IS PRACTISED IN COMMON LAW,
- 4) THAT FRIVOLOUS COMMENTS BE STRICKEN FROM THE TRANSCRIPTS, AND,
- 5) THAT ENVIRONMENTAL HEARING BOARDS CLEARLY SPELL OUT THE RULES UNDER WHICH THEY PROPOSE TO OPERATE PRIOR TO THE COMMENCEMENT OF SUCH HEARINGS IN ORDER THAT PARTICIPANTS ARE FULLY AWARE OF THE ROLE THEY MUST TAKE.

WE CONCUR WITH THE MEMBER OF THE I.J.C., WATER QUALITY BOARD, WHOSE RECENT COMMENT ESSENTIALLY WAS, "A FEW YEARS AGO WE ENCOURAGED PUBLIC INPUT BUT NOW, HOW DO WE GET RID OF IT?" WE WELCOME THE PUBLIC'S CONSTRUCTIVE CRITICISM BUT TO LISTEN TO THE UNSUPPORTED OPINION AND HEARSAY "GARBAGE" WE WERE CONFRONTED WITH IS BEYOND ALL REASON. IT IS BOTH WASTEFUL AND DISCOURAGING. LET THE PUBLIC PARTICIPATE BUT LET THEM BE READY TO BE SUBJECTED TO QUESTIONING AND PREPARED TO SUPPORT THEIR COMMENTS WITH HARD EVIDENCE. IN OUR OWN CASE, WE OFFERED TO MEET WITH REPRESENTATIVES OF OPPOSING GROUPS BUT NO ONE ACCEPTED THE INVITATION.

INDUSTRY AND OURSELVES ARE NOT THE ONLY LOSERS IN THIS MATTER. THE MINISTRY HAS LEFT A NEGATIVE LEGACY TO FUTURE ONTARIO GENERATIONS TO CLEAN UP THE MESS THAT OUR GOVERNMENT LACKS THE FORTITUDE TO DO. THE "ENVIRONMENTALISTS" OF TODAY WILL BE PAYING THESE BILLS IN THE FUTURE.

TO THOSE OF YOU IN INDUSTRY, BE PATIENT AND DO NOT CRITICIZE YOUR LOCAL ENVIRONMENT INSPECTOR. HE TOO IS LACKING THE GUIDANCE THAT SHOULD BE AVAILABLE. THE ACTS IN CANADA ARE EXCELLENT BUT SOMEWHERE ALONG THE LINE THE WHEELS FELL OFF WITH RESPECT TO THEIR INTERPRETATIONS AND ENFORCEMENT. HARDLY A DAY PASSES THAT AN INDUSTRY, SOMEWHERE IN CANADA, DOES NOT CALL US CONCERNING A VITAL PROBLEM. INVARIABLY THEY HAVE BEEN REFERRED TO OUR COMPANY BY A LOCAL ENVIRONMENT OFFICIAL. TO ILLUSTRATE FURTHER, ONE GOVERNMENT INFORMATION MINISTRY TELEPHONED TO REQUEST OUR PACKAGING AND HANDLING GUIDE FOR PCB'S. THEIR ENVIRONMENT MINISTRY HAD REFERRED THEM TO US. THIS SHOULD NOT BE! OUR PEOPLE ARE FREQUENTLY INVITED TO ADDRESS GROUPS FROM PUBLIC UTILITIES, UNIVERSITIES, INDUSTRY AND SO FORTH, ON THE HANDLING OF HAZARDOUS WASTES BECAUSE THESE INSTITUTIONS CANNOT OBTAIN THE FACTS FROM GOVERNMENT ON WHAT SHOULD BE DONE, BUT ONLY WHAT CANNOT BE DONE.

THIS IS THE YEAR OF NEW RESEPECT FOR WASTE MANAGEMENT. WE SAY TO PROVINCIAL AND FEDERAL GOVERNMENTS, "IF UTOPIA IS NOT AVAILABLE, THEN GOVERNMENTS SHOULD PROCEED WITH THE BEST TECHNICAL KNOWLEDGE THAT IS AVAILABLE". TO INDUSTRY WE SAY, "EXPRESS YOUR CONCERNS TO YOUR PROVINCIAL MINISTER AND FEDERAL MEMBER OF PARLIAMENT. TELL THEM THE PROBLEMS YOU FACE AND ASK WHAT THEIR RESPECTIVE GOVERNMENTS PROPOSE TO DO IN SOLVING THE MATTER."

IN CONCLUSION, WE WOULD ADVISE THAT IT IS OUR INTENTION TO ESTABLISH VIABLE DISPOSAL FACILITIES TO SERVE THE MARITIMES, QUEBEC, ONTARIO AND THE WESTERN PROVINCES. WE ARE NOT PREPARED TO ACCEPT ONTARIO'S NEGATIVE ATTITUDE, BUT WILL PROCEED IN OTHER AREAS WHICH ARE PREPARED TO PROGRESS. IT IS A YEAR OF NEW RESPECT FOR WASTE MANAGEMENT. PERHAPS IT IS NOT RECOGNIZABLE AT THIS TIME BUT THE EVENTS THUS FAR IN 1978 MAY WELL ECHO THROUGH THE YEARS TO COME.

PREPARATION AND CONDUCT OF ENVIRONMENTAL
HEARINGS BEFORE THE ENVIRONMENTAL ASSESS-
MENT BOARD OF ONTARIO

ADDRESS OF M.P. FORESTELL, ESQ., Q.C.

PRESENTED AT THE 25TH ONTARIO INDUSTRIAL
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It is my intention in the course of this paper to deal in a very summary way with the essential aspects of preparing for an Environmental Assessment Board hearing for a waste disposal site and for presenting the applicant's position to the Environmental Assessment Board during the course of the hearing. It is hoped that these remarks will assist applicants in being successful before the Board. It is, however, with some humility that I make these remarks bearing in mind the Decision of the Environmental Assessment Board in the Nanticoke hearings upon which a great deal of my experience is based. I am sure that you are all aware that the Nanticoke application was unsuccessful, and though unsuccessful, a great deal was learned by myself, by the applicant, and I believe by the Ministry of the Environment.

At the very outset, it is in my opinion essential for a successful application that there be complete trust and faith displayed between the counsel handling the application and his client.

It is essential also that the counsel that is to handle the application be involved from the very beginning of the proposal and that his advice be sought as to the experts who are to be retained and who ultimately will be the witnesses at any Environmental Assessment Board hearing. In this regard, I might mention that in the Nanticoke hearing, I could not ask for a better client than Nanticoke Waste Management Limited and in particular, their President Mr. Drew.

At a very early stage in the proposal, the applicant and his counsel should make careful decisions as to the type of expert that will be required and this will vary depending upon whether it is a secured landfill site or a waste water treatment system. At this stage, the experts such as the hydrologists, the chemists, or the consulting engineers should be carefully screened to ascertain their competence in the particular field and their ability to give evidence in a clear and concise and definite manner. The ability to give their evidence orally as well as in writing is equally important in any Environmental Assessment Board hearing as their technical competence.

Once a proposed site has been selected, bearing in mind the physical requirements of the site, a thorough check of the zoning of the site should be made at the Municipal Offices. If re-zoning is necessary, this should be thoroughly discussed either by the applicant or his counsel, with the Municipal Officials entrusted with the zoning responsibility.

It is at this point that the first tactical decision should be made by the applicant and his counsel, namely, whether to bring an application before the Municipality and ultimately to the Ontario Municipal Board for re-zoning prior to making application for an Environmental Assessment Board hearing. In this regard, hindsight is a wonderful thing for in the Nanticoke application, upon reading the report of the Environmental Assessment Board, it is apparent that it might well have been a better procedure to have proceeded with a re-zoning application through the Municipal Offices and ultimately to the Ontario Municipal Board, prior to going before the Environmental Assessment Board. I must say that this procedure was considered by the applicant in the Nanticoke hearings and the decision made to go to the Environmental Assessment Board because of the time constraints on getting Nanticoke into operation.

It was felt clearly that if the Environmental Assessment Board made a favourable ruling, that the re-zoning would follow much more easily than if there had not been an Environmental Assessment Board hearing. In each individual instance, a decision must be made as to which route will be taken if rezoning is required.

It is essential, in my opinion, that the proposal be well thought out in the conceptual stages prior to any approach to the Municipal councils or the Environmental Ministry Officials. I would further submit

to you that the minute the applicant is ready to present his conceptual proposals to the Ministry of the Environment for their consideration pursuant to The Environmental Protection Act, or for that matter The Environmental Assessment Act, that they at this stage commence their public relations program with the residents of the area in which the liquid or solid waste disposal plant is to be established. In many instances, it would be advisable in my opinion to retain a public relations expert from the area in which you wish to locate.

At this stage, I would recommend that copies of the conceptual plans for the disposal site be presented to the Municipal bodies in the area at a meeting called specifically for this purpose and open to the public. Further, that all news media in the area be given the proposals for dissemination to the general public. Further, the applicant, either on its own or through a public relations expert hired for that purpose, should contact all organizations in the general area such as ratepayers, agricultural groups, fishing groups, and even Church groups and present them with the conceptual proposals, and further should undertake to keep these various groups informed of all developments in furthering the proposed waste disposal site.

As this procedure is being followed, the applicant will, of course, be preparing its final presentation for either the Environmental Assessment Board or the Ontario Municipal Board, and as this final preparation takes place, I would respectfully submit that the final

presentation should be completed well in advance and the information and briefs of the expert witnesses should be typed and distributed to all Municipal bodies in the area, to all organizations that have been previously contacted and expressed an interest in receiving the material.

Negotiations with the various groups should also take place at this time in an attempt to organize a complete exchange of technical information between the applicant's experts and the experts retained by any of the groups that might wish to oppose the location of the site and I think we can assume that there will be groups opposing the location of any waste disposal site.

I should pause at this point in this paper to deal with what is required perhaps for the final presentation before the Environmental Assessment Board. Up until the recent Nanticoke hearing, and the Maple hearing, it was, I think, everyone's opinion including the Ministry of the Environment and the former Minister of the Environment, The Honourable George Kerr, that where the application was under the Environmental Protection Act, 1971, more particularly under Sections 33 and following, that all that was required to be submitted was that degree of engineering completeness as might be required by the Ministry Officials and the Approvals Branch, and that when that had been completed, the Director would request that a hearing be held and that this degree of completeness

would be sufficient for the Environmental Assessment Board. Certainly under the provisions of the Environmental Protection Act 1971, it would clearly appear that only the conceptual approach at this stage would be required, and that the technology would not be required in the final design stage for the purpose of the hearing under the Environmental Protection Act. I think that it is clear from the results of both the Nanticoke hearings and the Maple solid waste hearings that the Environmental Assessment Board is totally and completely ignoring the requirements under the Environmental Protection Act, 1971, and are applying to all hearings the standards required by the Environmental Assessment Act, 1975, even though they do not technically apply, and accordingly, in preparing for any Environmental Assessment Board hearing reference should be made by the applicant to the standard of preparation required by the Environmental Assessment Act and particular reference should be made to Section 5, part 2, of the Environmental Assessment Act which clearly sets forth the very detailed requirements for approval.

In summary, it is my opinion that any applicant should not enter a hearing until his final engineering has been completed almost to the last nut and bolt, if he has any hope of being successful before the present Environmental Assessment Board.

I must state emphatically, however, that such a position

by the Environmental Assessment Board is, in my opinion, an exercise of excessive jurisdiction, and a jurisdiction that the present Board under the Environmental Protection Act does not possess and that the Board has in fact been influenced by the public outcry rather than the Statutes of the Province of Ontario and the policy of the Ministry of the Environment and the Government of Ontario.

With the present attitude of the Environmental Assessment Board towards waste disposal sites, I would venture to suggest to you that they have now, with the recent Maple and Nanticoke decisions, made it virtually impossible for any private applicant or for any segment of the private sector, to afford the type of research and design that will be required to bring any waste disposal site on stream. This attitude by the Environmental Assessment Board will, in my opinion, create a crisis situation for the disposal of hazardous waste in the Province of Ontario and will seriously affect the industrial strength and employment market of this Province.

If, however, an applicant has the courage to do all of the preparatory steps that I have outlined in a summary fashion in this paper, he will then be met with an Environmental Assessment Board hearing and I will now deal with the conduct of that hearing.

Once the hearing date has been set, again I would strongly suggest that the applicant attempt to arrange a meeting between the applicant's experts and the applicant's counsel with the experts that will be called by those parties objecting to the location and establishment of the site, with a hope that by such a meeting the areas that are in dispute between the experts will be narrowed down to such a point that written presentations by the experts may be accepted by the Board as the evidence subject to cross-examination and examination in chief only on those areas that are in dispute. If this procedure is not followed, applicants will, I submit, be faced with hearings that extend for months on end at considerable cost, a cost which is in our opinion not required and is needless.

If the application is strenuously opposed, the first tactic that will be adopted by the opposition is one of delay and for this reason it is absolutely necessary that the successful applicant has distributed all of his material, not only to all bodies that he is required to by law, but to everyone who might be in opposition. The applicant must deprive the opposition of any reason for seeking an adjournment at the opening of the hearing, and any attempt to obtain an adjournment must be vigorously opposed before the Board as it is in my opinion a tactic of opposition to wear down the applicant by delay. During the hearing itself, which will usually be before a three man panel of the Environmental Assessment Board, the applicant should present his case

fully and take absolutely nothing for granted. This may be done either through the filing of written submissions and presenting witnesses for the purpose of cross-examination, or through a combination of written submissions to the Board that are filed and the calling of viva voce evidence to support these submissions.

Counsel for the applicant must assure that prior to entering any hearing, he has not only read all of the submissions and prepared his witnesses carefully, but he must assure himself that he understands at least in a general way what each of his expert witnesses will say in the witness box.

The conduct of the hearing will be vastly similar to any other court proceeding or administrative tribunal proceeding and the hearing itself will be governed by the provisions of the Statutory Procedures Act and the Judicial Review Procedures Act and I do not intend to deal in detail with these aspects.

I would point out, however, that during the course of the Nanticoke hearing, the Environmental Assessment Board adopted a procedure whereby individual members of the public and in fact some groups of the public, by groups I mean organized groups, where permitted to submit oral representations and written briefs but the applicant's counsel was

prohibited from cross-examining any of these witnesses on either their oral or written presentations. It was our experience in the Nanticoke hearings that many false statements were made in these presentations and that the applicant had no opportunity to counter-act these statements. An example of such a statement was when one member of the public gave evidence before the Board of a dangerous situation existing if there were to be a blizzard in the area and the snowflakes were to touch the top of the waste water treatment lagoon, they would then carry pollution to the surrounding area when the snowflakes were carried by the wind. Certainly, this type of wild statement could, under cross-examination, have been destroyed. The inference given by the Board's attitude in prohibiting cross-examination of these types of witnesses was, during the course of the hearing, as though this evidence was not as important as the evidence given in the witness box under oath and subject to cross-examination, yet on page 12 of the report of the Board in the Nanticoke hearings, in item 11 of the reasons for the recommendations, the Board stated: "The Board weighed the concerns of adjacent residents and landowners and is of the opinion that such concerns are valid, although the technical and engineering concepts of the proposal appear, for the most part, to be satisfactory." Also, commencing at page 108 and through to page 119, the Board deals in detail with that evidence given by the public, where no cross-examination was permitted. This, in my opinion, constitutes a denial of natural justice to the applicant. Finally, in conclusion, I should like to strongly suggest to this group that a very

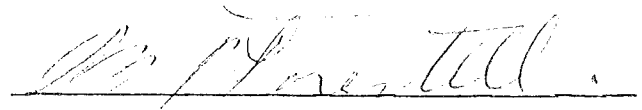
strong lobby for changes by way of legislation to the hearing process of disposal sites be undertaken. Among the things that this group, in my opinion, should press the Government strongly for is:

1. the elimination of the necessity of both an Ontario Municipal Board hearing and an Environmental Assessment Board hearing;
2. legislating the requirement that expert evidence of both the applicant and opposing experts be exchanged well before the hearing, much in the way of the examination for discovery procedures adopted by the Courts of this land.

I should also say in conclusion that throughout the early stages of the Nanticoke application, the Ministry of the Environment under its former Minister, The Honourable George Kerr, expressed concern for the necessity of disposal sites for hazardous waste to be located in the Province of Ontario and without in any way destroying their role in protecting the environment of Ontario, encouraged the applicant, Nanticoke Waste Management Limited, to proceed with a proposal for providing those facilities in a manner which was found by the Environmental Assessment Board to be technically sound, and even with this encouragement the Environmental Assessment Board who found that the proposal was technically sound, decided to reject the proposal. This decision was followed almost verbatim by the Director of Approvals, Mr. Caplice, when in fact a complete reading of the transcript would have revealed to the Director that the Nanticoke proposal was in fact a sound proposal that would have provided the Province with an environmentally safe disposal

site for industrial wastes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by M. P. FORESTELL,
ESQ., Q.C.


M. P. FORESTELL, ESQ., Q.C.