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# Genesis and Garbage

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In preparing for this presentation today, I had some doubt as to the role that I was assuming as part of this panel on the subject of waste management. I finally concluded that Ted Hunt asked me to participate since it is a recognized fact in some circles in this County that the County Department of Planning and Development is one of the major generators of paper that eventually finds its way to the Oxford County Landfill Site. Recognizing that I am the representative of the waste generators, it was easier for me to focus my comments today.

I also had to wrestle with the fact, when considering the knowledge of the other panelists on this subject, that I am essentially what is called in the entertainment circles, the "warm-up act". Since the warm-up act is supposed to set the tone for the acts to follow, I thought that it would be appropriate to share with you a little commentary on the whole subject of the environment and what is being done to ensure that it is not degraded. The title of these comments is "GENESIS".

*"In the beginning, God created heaven and earth".* He was then faced with a class action law suit by the Canadian Environmental Law Association for failing to file an Environmental Impact Statement with H.M.O.E. (Heavenly Ministry of the Environment), an angelically staffed agency in Ontario dedicated to keeping the universe pollution-free.

God was granted approval for the heavenly portion of the project, but was issued a "stop work order" on the earthly portion pending further investigation by H.M.O.E.

When asked why He began these projects in the first place, He simply replied that He liked to be "creative". This was not considered adequate reasoning and He would be required to substantiate this further.

H.M.O.E. was unable to see any practical use for earth since, "the earth was void and empty" and "darkness was upon the face of the deep" and God said "let light be made".

He should never have brought up this point, since one of the newly appointed members of the Environmental Assessment Board was most active in the Sierrangel Club and immediately protested by saying, "How is the light to be made? Would it be a coal fired or nuclear fired generating plant built by Ontario Hydro?" God explained that the light would come from a huge ball of fire.

Nobody on the Environmental Assessment Board really understood, but it was provisionally accepted assuming:

- (1) there would be no smog or smoke resulting from the ball of fire,
- (2) a separate burning application would be required, and
- (3) since continuous light would be a waste of energy, it should be dark at least one half of the time.

And so God agreed to divide light from darkness and He would call the light "day" and call the

darkness "night" (the Board expressed no interest with in-house semantics).

When asked how the earth would be covered, God said, "let there be firmament made amidst the waters, and let it divide the waters from the waters." One ecologically concerned Board member accused Him of double talk, but the Board tabled action since God would be required first to file for a "firmament permit" from the A.B.L.M. (Angelic Bureau of Land Management) and further would be required to obtain water taking permits from the appropriate branch of H.M.O.E.

The Board asked if there would be only water and firmament, and God said, "let the earth bring forth a green herb, and such as may seed, and the fruit tree yielding fruit after its kind, which may have seed itself upon the earth." The Board agreed to this as long as native seed would be used.

About future development, God also said "let the waters bring forth a creeping creature having life and the fowl that may fly over the earth under the firmament of heaven." Here again, the Board took no formal action, since this would require approval of the Game and Fish Branch of the Ministry of Natural Resources, co-ordinated with the Heavenly Wildlife and Audobongelic Society.

It appeared that everything was in order until God stated that He wanted to complete the project within six days. At this time He was advised by the Board that His timing was completely out of the question. H.M.O.E. would require a minimum of 180 days to review the application and the Environmental Impact Statement, then there would be the public hearings. It could feasibly take ten or twelve months before his application could be reviewed and a decision arrived at.

### **And God said, "TO HELL WITH IT".**

Fortunately, for all of us here today, God was able to eventually get permission for a Class Environmental Assessment, and on this basis He proceeded with creation.

Considering the state of waste management and the planning for waste management in this Province, as well as other parts of North America, I think that we can all appreciate the fact that this commentary has a somewhat serious side to it. However, I am not here to discuss the broad picture of waste management in Ontario, but instead to focus on the subject of waste management from the perspective of the Municipal Official Plan.

As you are all well aware, the Municipal Official Plan is a land use planning document. For those of you

who may not be familiar with planning, "planning" is defined as the best method of achieving accidental results. For many years now, it has been the practice in the Province of Ontario to document how a municipality should achieve its accidental results, and those documents are referred to as Official Plans.

The Government of the Province of Ontario has also chosen to define an Official Plan. In the 1983 Planning Act of Ontario, an Official Plan means:

"A document approved by the Minister of Municipal Affairs, containing objectives and policies established primarily to provide guidance for the physical development of a municipality . . . while having regard to relevant social, economic and environmental matters."

The last clause, "while having regard to relevant social, economic and environmental matters" is critical to any discussion of how an Official Plan addresses the subject of waste management. It is my contention that since the 1983 Act was proclaimed, the Municipal Official Plan has really taken a much lower profile in the whole realm of the planning for and approach to waste management. There has been a continuing debate over the whole issue of what the words "while having regard to" really mean. Since the authors of Official Plans are to have regard to environmental matters, there is a wide diversity of approach to that task. The bigger question is whether it's all even worth it when we consider the approach of the real bully on the block "The Environmental Assessment Act".

This Act has become the paramount legislation affecting the planning for waste management facilities in the Province of Ontario. It is still true that the proponent of a waste management facility must still abide by the policies of a Municipal Official Plan and, more likely than not, seek an amendment to that Plan. The legislation also provides that the land use planning process can dovetail with the Environmental Assessment process through the auspices of the Consolidated Hearings Act and the Consolidated Hearings Board.

Although one can argue that there are two concurrent processes, it is difficult to review the Environmental Assessment Act and the Planning Act without coming away with the impression that the Environmental Assessment Act really has the big clout when dealing with site selection, design, operations, and after-use of waste disposal facilities.

My observations on this subject are well supported by the facts as they pertain to the siting and operations of the County of Oxford Landfill Site. More will be said later, by at least one other panelist, about the long and convoluted process that the County of Oxford went through to achieve an operating site. Suffice it to say, from my perspective, that the County

Official Plan (and I might add the only Official Plan in the County of Oxford due to Oxford's one tier Official Plan structure) did not fare particularly well in the overall process. To support this contention, a short bit of history is appropriate.

When the County of Oxford developed its Official Plan in the late 1970's, the County Council decided to take a rather novel approach to the locating of waste disposal sites. Essentially, in its initial form, the County Official Plan simply stated that waste disposal sites could be located anywhere. As you might appreciate, this particular policy approach did not go over well with Provincial authorities, and since the County was already into the site selection process with one local municipality feeling the pressure, it was not long before the County's policy on waste disposal sites was referred to the Ontario Municipal Board, under the provisions of the Planning Act. During the course of a 55 day hearing before the Environmental Assessment Board, it was clear from a review of the Board decision that matters pertaining to the Official Plan were essentially glossed over.

I might add that as of August, 1983, the County of Oxford does have an Official Plan policy on waste disposal sites. Essentially, a proponent is required to obtain a site specific amendment to the Official Plan prior to establishing any kind of waste disposal facility. There are a number of policies set forth in the Official Plan that must be considered when examining alternate sites, site selection and operations. The least amount of prime agricultural land is to be used, attempts are to be made to minimize the adverse effects of waste disposal sites on agriculture and other natural resources, and efforts are to be made to minimize potential for the production of off-site ground and surface water pollution. Furthermore, the Plan sets an objective of trying to minimize the adverse individual and community effects of waste disposal sites.

It is also interesting to note that the County Official Plan established the policy that the County shall continue to investigate and report on the most appropriate ways of dealing with the management of waste in the County. The investigations are to address the reduction of the waste generated, the separation of waste at the source of generation, the recycling of waste, the use of waste for the production of energy, the use of landfilling as a component of the waste management strategy, and other methods of waste disposal.

In order not to leave you with the impression that the balance between the Environmental Assessment Act and the Planning Act is entirely weighted in favour of the former, the County Official Plan does specifically state that the County shall undertake public information programs on waste disposal and ensure that the constituent area

municipalities in the County and the public are invited to participate in the examination of alternative sites, site selection, design and operations. The Planning Act and municipal Official Plan do have a role to play when it comes to the subject of public participation, even in the process of waste management. I don't think there is any question that the public input process through the Planning Act is much better equipped in dealing with controversial undertakings such as waste disposal facilities than the Environmental Assessment Act. Part of this advantage with the Planning Act is simply that the public is more familiar with its public participation process, whereas the same process under the Environmental Assessment Act tends to be cumbersome and not well understood.

In summary, the following conclusions can be drawn when assessing the role of Municipal Official Plans in the process of the planning for waste management facilities:

- (1) the Planning Act and its offspring, the Municipal Official Plan, have not been able to stand toe to toe with the Environmental Assessment Act;
- (2) the Planning Act does set forth a better process for public participation as it pertains to any land use, including waste disposal facilities, than that set forth in the Environmental Assessment Act;
- (3) the erosion of the role of the Municipal Official Plan is likely to continue, since the Environmental Assessment Act and its various regulations are now under review by the Ministry of the Environment, and the trend seems to be towards tightening as opposed to loosening the requirements of the Environmental Assessment Act;

I think that we can all be thankful that God decided to reconsider His efforts at creation when one considers the obstacles that Man has put in His way. God, unfortunately, didn't recognize that even going to Hell is defined as an "undertaking" in the Environmental Assessment Act. As the proponent, He must, therefore, ensure that He submits the required Environmental Assessment to the Minister.