



January 14, 1980

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Waste Management Branch  
Environment Canada - Environmental  
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Dear Dr. Rodgers:

Re: Hazardous Wastes Policy and Law - Canada/Ontario

As part of my involvement on the Federal Task Force on Hazardous Wastes, I believe it might be helpful to you if I transmitted some preliminary thoughts on my overall perceptions of evolving laws, policies and procedures at key levels of government in this area. My concerns include:

- problems of coordination between levels of government;
- legislative/regulatory control gaps within each level of government; and
- problems in the flow of scientific/technical information to those expected to develop regulatory programs.

Assuming this covers areas that may be of concern to you as well, I would advise as follows:

First, in my opinion, a reasonable overall direction for the evolution of government policy and law - and for the moment I do not distinguish as to federal or provincial - would be the establishment of mandatory provisions for reclamation, re-use and recovery of hazardous materials to the maximum extent feasible in conjunction with controls directed to better waste tracking and reduction. Currently, with the single exception of Ontario's waybill regulations, one cannot find any of the above matters in our law. And, indeed, even industry spokesmen have questioned the efficacy of Ontario's waybill system, suggesting "there are many loopholes in it and it doesn't mean very much unless it is policed."

Certainly, the Ontario government has been prepared to at least take a stab at control of the movement of hazardous wastes, yet it is also clear that the province is now looking to the federal government for direction and guidance on the question of what in fact should be defined as a hazardous waste - years after the promulgation of the regulation itself. Indeed, generally the federal role is perceived - rightly or wrongly - as one that is, in the main, limited to technology development, demonstration and information transfer. Of course, this federal role all

takes place outside of a statutory framework and thus is especially subject to political vagaries and perceived changes in overall government priorities and funding availability. Indeed, at times, one would question the federal commitment to a role in this area at all.

The federal Environmental Contaminants Act, while a welcome addition, is not a hazardous waste management law. It is a statute directed to the control of the manufacture of new substances and the addressing of problems from existing designated substances. Its reactive statutory processes of dealing with problems from substances one at a time, while arguably appropriate in relation to toxic substances control, is unfortunately a procrastinator's dream come true when it comes to timely and comprehensive hazardous waste management and control. Similarly, the twice thwarted Transport of Dangerous Goods Bill is not likely to be a reasonable substitute for a Canadian hazardous wastes law either. From comments I have heard from Transport Canada officials, dangerous goods are likely to be a very small circle in what is the much wider field of hazardous wastes. Moreover, the apparent processes for expanding a dangerous goods definition or classification to include a wider variety of problem wastes will be in the hands of a non-environmental agency (i.e. Transport) an agency not traditionally noted for its environmental sensitivity.

#### Waste Facility Siting

Notwithstanding the views expressed in a number of government documents, including at least one IJC publication, industrial hazardous waste siting proposals have frequently been rejected on technical - not emotional - grounds though both industry and government claim the public is largely responsible for blocking sites. Public intervenors, despite the lack of adequate funding, have frequently shown that the industry has simply not done its technical homework by the time of provincially required public hearings. For example, in the 1977-1978 Nanticoke hazardous waste site and treatment complex proposal, the findings of both the Environmental Assessment Board and the Director of Environmental Approvals for the Ontario Ministry of the Environment, based largely on public intervenor evidence included:

- a finding of inadequate hydrogeological investigation by the company;
- a finding of unsatisfactory provision of leachate handling;
- a finding of unsatisfactory provision for monitoring and site management;
- a finding that the wrong discharge point was chosen;
- a finding of unsatisfactory provision for contingencies;
- a finding of unacceptable further deterioration of groundwater quality; and
- a finding that there was a lack of demonstration that effluent quality would be acceptable.

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The example demonstrates the need for government to seriously consider public funding of intervenors, not public castigation of them. It has been said that sophisticated public interventions can result in sounder environmental siting decisions, with an additional benefit being that resource recovery and waste reduction opportunities will be enhanced because cheap, inadequate disposal will no longer be acceptable. If anything, there has been some suggestion in the Ontario Legislature that the provincial government may be moving in the opposite direction, i.e. toward funding or compensating companies who are unsuccessful at such hearings in future.

If the provision of siting facilities should instead be a provincial responsibility, then it is respectfully submitted that the program would have to be carried out in recognition of the "polluter pays" principle i.e. there would have to be a substantial and continuing financial contribution to the success of the provincial program by the waste and substance generators themselves.

I trust these comments may be of some assistance to you in your deliberations.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION



Joe F. Castrilli  
Research Director

JFC/fc