

NOTES FOR ADDRESS TO THE  
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INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL  
IN CANADA

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I. INTRODUCTION: A WORD ABOUT CELA

CELA is a non-profit, non-governmental organization, established in 1970 to use existing laws to protect the environment and, where necessary, to advocate environmental law reforms. It runs a law advisory clinic in Toronto, has published several books on environmental law and also has a bi-monthly newsletter on environmental/legal topics.

II. THE NATURE OF THE ENVIRONMENTAL AND HEALTH PROBLEMS ASSOCIATED WITH INDUSTRIAL AND HAZARDOUS WASTES

If I had to summarize in one sentence the problem of toxic and hazardous wastes in Canada, the sentence, with apologies to Joe Clark quite simply would be: "Real trouble deserves a fair chance."

The federal government estimates that at least 32,000,000 metric tonnes of industrial wastes are generated annually in Canada (excluding agricultural, mining and pulp and paper wastes). Of this quantity 3% or approximately 1 million metric tonnes are regarded as toxic or hazardous.

So that you're clear about the kind of wastes meant when the terms "toxic" or "hazardous" are used I should note that the federal government and a recent federal Task Force define hazardous wastes as those discarded materials or substances in solid, semi-solid, liquid or gaseous forms which due to their nature and quantity require specialized waste management techniques respecting handling, transport, storage, treatment and disposal

because they may cause or contribute to adverse, acute or chronic effects on human health or the environment when not properly controlled. Such wastes may contain toxic chemicals; pesticides; acids; caustics; solvents; infectious, radioactive, ignitable or explosive substances or other materials in sufficient amount to cause death, cancer, birth defects, mutations, disease, or infertility upon exposure.

What's even worse news, however, is that the federal government reports that:

"At present, the management of hazardous or toxic wastes on a national basis throughout Canada is not acceptable. In all geographic regions hazardous wastes are being handled and disposed of in a manner that endangers public health and/or the environment."

Some examples:

- In British Columbia it has recently been reported that toxic wastes are being illegally dumped in major urban storm sewer systems because quite simply, it's cheaper than proper disposal.
- In Alberta, in the wake of its energy and industrial boom, province-wide hearings on what to do about the growing problem of hazardous wastes are about to commence. The province has already admitted that its existing laws are antiquated and that comprehensive new legislation is needed.
- In Saskatchewan, PCB contaminated soil, arising from a four-year old industrial spill, now threatens the city of Regina's water supply. The National Research Council has recommended that up to 20,000 cubic metres of the soil be immediately excavated. The problem, however, is that there's no place to put the soil once excavated. \$1 million clean-up expected.
- In Ontario, arsenic contamination of the Moira River system near the city of Belleville is feared, arising from an

abandoned industrial site. The province is making noises that it will sue the company for clean-up costs. But after the province's performance in the seven-year Dow Chemical suit for mercury pollution of Lake St. Clair, skepticism abounds.

-Also in Ontario, the community of Niagara-on-the-Lake is concerned about possible contamination of its water wells from an old cyanide dump, as well as from a New York State approved proposal to dump up to 100,000,000 gallons per year of treated industrial wastes into the Niagara River, 3 kilometres from the town's water intake pipes.

-In Quebec, provincial environment officials this month warned residents of 3 eastern township villages - St. Hyacinthe, Mansonville and Farnham - not to drink or cook with their water because of high concentrations of unidentified and possibly dangerous chemicals from industries along the Yamaska River. Farnham residents were said to be shipping bottled water in by truck.

### III. THE NATURE OF EXISTING LAW AND ITS ADEQUACY

Notwithstanding the federal government's admission that toxic and hazardous wastes now rank as one of the highest priority environmental concerns in all regions of Canada, there is no federal hazardous waste management law. I would suggest that for the federal government to on the one hand argue that we've got a serious problem but on the other hand not act on this serious problem is to sow the seeds of confusion in the public, the provinces and industry. We most certainly need comprehensive federal law in this area, particularly with respect to interprovincial and international shipments of such wastes but also so as to avoid hazardous waste havens as well.

But if you've ever tried to get a federal official to answer you as to what the government is planning to do, the usual response is "its primarily a provincial matter." I would suggest that the feds are using that argument much the way a drunk uses a lamp post: more for support than

illumination. I think it is in the public interest to know what the federal government is doing on this national issue, and journalistic investigation and reportage can play an important role in this regard.

We also need strong provincial law in this area. A reasonable direction for the evolution of government policy and law would be the establishment of mandatory provisions for the reclamation, re-use and recovery of hazardous wastes to the maximum extent feasible in conjunction with controls directed to better waste identification, tracking, reduction and abandoned site control. Currently, with the single exception of Ontario's waybill regulations for tagging wastes from

generation to disposal, one cannot find any of the above matters in law. And, indeed, even industry spokesmen have questioned the effectiveness of Ontario's waybill system, suggesting "there are many loopholes in it and it doesn't mean very much unless it is policed."

Now I would expect that many journalists' first exposure, as it were, to the industrial and hazardous wastes issue, is on the question of illegal or clandestine dumping, a practice that the waybill tracking system is meant to stop. Yet there are some serious problems with that system which I suggest will make not only your job but the agency's job much tougher as well.

First, the problems start with the very forms the province uses to track the wastes themselves. If you take a look at one of the waybill forms you will see that it is called "Transfer of Liquid Industrial Wastes." It does not track hazardous wastes that are in solid forms.

If you look at that part of the waybill form that must be filled out by the generator of the wastes you will see that the generator does not have to designate the ultimate disposal site for his waste. In fact the generator frequently has no knowledge whatsoever of the place the transporter will be taking his wastes. Yet the generator is normally regarded by the industry itself as the best person to determine which site is capable of handling the particular types of chemical wastes which he generates. So under the present system the weakest link in the chain, the transporter, makes the key determination of where the wastes will go. Is it any mystery then that the Ontario Tourism Department's call to discover the surprises of rural Ontario has taken on a new meaning?

If you look at the waybill regulation under the EPA itself you will see that the system does not record liquid industrial wastes that are either meant to be stored or disposed of on the generator's premises. This has been regarded as a gap by the industry itself. Some industry spokesmen have said that if generators are not required, by the use of the waybill system, to account for all wastes which emanate from their facility, the possibility of clandestine dumping of these wastes may be an alternative disposal strategy open to irresponsible generators.

The waybill regulation also exempts from control "waste that is wholly used or recycled."

In practice this means that the 6 or 7 million gallons of waste oils that

are annually spread on about 2000 miles of unpaved roads in Ontario for dust control purposes are essentially uncontrolled. Frequently, these waste oils can be contaminated with PCBs, lead or other substances. When the MOE first began its sampling program of waste oils around the province they discovered to their chagrin that these oils could be contaminated with PCBs at levels up to 1,100 parts per million. MOE has since issued a "non-enforceable" guideline which states that where waste oils are found to have PCB levels above 25 ppm they will not be permitted for use in road dust control. What's so safe about below 25 ppm?

#### IV. WASTE FACILITY SITING

Now I could probably go on about this for some time but before I go I'd like to instead burst a few myths and leave a few morals with you on another aspect of the hazardous waste problem: the siting of new facilities. I think this issue can be an especially difficult one for journalists to cover in part because of the Cassandra chorus currently being sung by both government and industry about how they've solved the technological problems; now if only the social problem i.e. the public would see the light.

##### A. NANTICOKE: INDUSTRY ROLE

The industry says that its proposals should be reviewed on their technical merits. However, the recent experience suggests that industry hazardous waste proposals have in fact been rejected on technical - not emotional - grounds though both the industry and government claim that 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, the 1977-1978 Nanticoke hazardous waste site-treatment proposal south of Hamilton, was rejected by both the Environmental Assessment Board and the approvals director, on the following grounds:

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

Not one of them could be characterized as emotional. And please note these findings were based largely on public intervenor evidence. This example clearly demonstrates the need for government to seriously consider public funding of intervenors, not public castigation of them. (As some of you may know, last June, Dr. H. Parrott, currently Ontario's Environment Minister, told an audience in Toronto that the public was reacting to such proposals out of fear, mistrust and self-interest.) To the contrary I would submit 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 the provincial government may be moving in the opposite direction, i.e. toward funding or compensating companies who are unsuccessful at such hearings in the future. (MOE in late '79 advised



Browning-Ferris Industries, an industrial waste disposal firm involved in an application for a dump site and solidification plant in Harwich Township, Ontario that it would pay up to \$100,000,00 of the company's costs if its proposal is rejected by the EAB). This is apparently Dr. Parrot's way of getting the public to trust the government. You can draw your own conclusions.

B. NANTICOKE: GOVERNMENT ROLE

Now I'd also like to briefly dwell on the role of government agencies at waste facility site hearings, because frequently the performance of the agency is itself at issue though it may be an industry proposal. There's also an important moral here. For example, at the Nanticoke hearings citizen intervenors demonstrated:

- (1)- that the MOE often accepted data and figures from the applicant without inquiring into their validity;
- (2)- that despite its support for the use of plastic liners, MOE in fact had neither the experience nor the expertise with them; and
- (3)- that although normal MOE responsibilities include thorough investigation of proposals before recommending them for hearing, it was only during the hearings themselves that MOE admitted that if it had known about a local community water intake pipe it would not have recommended Nanticoke creek as a discharge point.

The simple moral here: don't leave it all to the government experts.

C. MAPLE: MORE ON GOVERNMENT ROLE

There's a corollary to this 1st moral: when you need a government expert,

you can't find one. CELA recently completed an appeal hearing on a proposal to establish what would be the biggest garbage dump in the free world, or certainly Canada. This dump also happens to be on a major source of groundwater beneath a worked out gravel pit. ( Groundwater is a prime source for rural drinking water supplies).

The first hearing went 80 days over 18 months (14,000 pages of transcripts, 250 exhibits, much aspirin) and cost the companies an estimated \$1 million. On the other side of the room was a local ratepayers group Maple Against Dumping (MAD). They did not spend \$1 million, I can assure you. The hearing could well have been a modern version of Lions vs. Christians. But, in fact, because of a variety of factors, the companies' proposals were rejected. The companies appealed (a right by the way that citizens do not have under Ontario law if they lose) and the appeal hearings went approximately 27 more days over 10 months (another 5000 pages of transcripts, another 100 exhibits, more aspirin).

Our clients (MAD) went to further considerable expense on appeal to call witnesses on such technical matters as:

- hydrogeology;
- landfill design and engineering; and
- environmental impairment insurance

By contrast the Ontario government (MOE) refused to call any witnesses on appeal even though their own director's decision was being appealed. Indeed, the perversity of this government stance was magnified by two factors:

- (1) our hydrogeologist (an expert from Illinois) said many of the same things about groundwater contamination from dumps that MOE reports state yet we had to go to the expense of bringing our expert from Illinois while the MOE had experts of their own sitting on their hands in Toronto who could have said the same thing at the hearing at less cost.
- (2) government lawyers went so far as to attack the credibility of our witness even though the evidence he presented was so obviously consistent with government documents; reports that the government refused, for whatever reasons, to introduce itself.

I think there's another moral there something about knowing how your tax dollars are being spent, but you can draw your own conclusions.

One final ironic note: re corporate responsibility. While these companies were before the Appeal Board seeking an approval to operate this plain old garden variety waste disposal site which they said many times during the hearing would never be used by them for the reception of industrial wastes because of the sensitive environmental setting; guess what: One of them was being convicted in provincial court on charges of illegally operating that very gravel pit for the reception of: you guessed it: liquid industrial wastes.

#### V. CONCLUSIONS: WHERE TO GO FOR INFORMATION

Now although Canada still has freedom from information as opposed to freedom of information I'd like to conclude by simply listing a few sources that a reporter should be familiar with in attempting to piece together a story on the industrial wastes issue:

- (1)- Parliamentary, royal commission and congressional transcripts and submissions.
- (2)- administrative tribunal and judicial transcripts, exhibits and decisions; (where available);
- (3)- environmental and citizen groups in both Canada and the U.S. (can be facilitated by conservation directories);
- (4)- business corporation information required to be filed respecting officers, objectives, share capital and related matters (good for establishing interlocking directors and other connections); land titles as well.
- (5)- environmental agency and attorney general's departments in foreign countries where a multi-national company has operated (seeking previous convictions, administrative agency orders etc.)
- (6)- key law professors or practitioners who are known to have special knowledge in such areas as:
  - constitutional law;
  - administrative law;
  - criminal law;
  - civil law;
  - environmental and planning law; (re summary advice)
- (7)- scientific reports respecting the state of the art in hazardous waste management from Key agencies and non-government institutions such as:
  - Environment Canada;
  - provincial environmental agencies;
  - U.S. EPA and state governments;
  - NATO (Brussels);
  - OECD (Paris);
  - IJC (Windsor, Ontario)
  - EEC
  - Science Council of Canada
  - Universities; key env. groups.
- (8)- Information on file with U.S. EPA or other U.S. agencies and obtainable through the U.S. FOIA process.
- (9)- In Ontario, copies of completed waybill forms from MOE for particular companies, time periods, geographic areas or wastes. MOE has no statutory duty to release such information but there's no harm in asking.