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COMPENSATION OF POLLUTION VICTIMS

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## COMPENSATION OF POLLUTION VICTIMS

### I INTRODUCTION

The need for compensation for victims of pollution incidents is probably one of the most hotly-contested topics of debate between industry and environmentalists. The current common-law tort system, which I will discuss briefly later, is seen by environmentalists as too problem - ridden to provide fast, economical remedies to victims of pollution. Industry, on the other hand, argues that its rights are being abrogated by legislative attempts to provide for clean-up of spills and slowly emanating pollution, and to provide speedier, simpler methods of arriving at compensation determinations.

Submission to the Ontario Legislature of Part IX of the Environmental Protection Act ('EPA') brought into the public forum much of the debate in Ontario. Then Minister of the Environment Harry Parrott put forward his rationale for a compensation and clean-up scheme as:

....I believe that those who create the risk should pay for restoration as a reasonable condition of doing business. It is not up to an innocent party whose land or property has been damaged. At present persons manufacturing and handling contaminants are not legally responsible in the absence of fault or other legal ground of liability. Common law and the existing provisions of the Environmental Protection Act are inadequate in spelling out the necessary procedures to control and clean up spills and to restore the natural environment.

The principle that if a loss must fall somewhere it should be upon the person conducting an enterprise for the purpose of profit rather than upon its completely innocent neighbour is a major departure point for industry. The primary argument which I'm sure we'll hear from industry representatives today is that they should not be required to pay for clean-up and compensation where they have not been at fault. The logical conclusion to that argument is that the innocent victim and the environment pay or society as a whole pays. The real question is one of equity.

Since Part IX of the EPA was passed 4½ years ago, the industry lobby appears to have gained some momentum, evidenced by non-proclamation of Part IX. Hence Part IX is not in force, and the cost of the approximately 1000 spills per year<sup>2</sup> is still, to a great extent, borne by innocent members of the public and the environment, rather than by industry.

In 1981 the Economic Council of Canada published a study by John Swaigen on the topic of compensation of pollution victims.<sup>3</sup> Extensive discussion of compensation schemes in Canada, the United States, Sweden and Japan was provided. Many of those schemes were relatively new, with little experience to draw from. Three and one-half years later, the situation has remained relatively unchanged.

Centre, by Order in Council, by the previous government in Ottawa, should be made available for research and training at the Centre upon the condition that the building can be financed from other sources.

3. The availability of independent, unbiased recommendations pertaining to the development of criteria to be used in formulating environmental regulations. As Prime Minister, you are doubtless painfully aware of the problems any government has in maintaining credibility in the eyes of the body politic. This need for a "third voice" is particularly pertinent in the area of environmental information.

Thus it is with a clear sense of distrust that we view your government's decision to completely remove the staff support for the National Research Council's Associate Committee on Scientific Criteria for Environmental Quality. The committee, with a broadly-constituted membership, has always met without remuneration. We would not wish for a better indication of dedication to public service.

The sixty-plus reports it has issued since its founding in 1972 have led to some of the most important regulations in the environmental field. For example, the improvement in the quality of the water in the Great Lakes, with the reduction in phosphorous content, owes its origins to this committee's work. It has played a considerable role in the testing of new products - such as microwave ovens and word-processing terminals. The need for credibility is central to the acceptance of these products.

There is no way that the private sector would want to take on this work. More importantly, there is no way that the results of this work, if pursued by the private sector, could be made credible.

We request that the secretariat support to the committee be fully restored forthwith.



We would also like to emphasize that unbiased information is needed as much by governments as by others. For example, the recent uproar in the House of Commons over the PCB spill in Northern Ontario could have been a far more constructive debate if there had been a centre of toxicology to turn to.

With the above and other improvements to the processes by which we build up our understanding of the environment, we would trust that there will emerge a greater sense of our responsibility to act as good stewards of the environment. In the broadest sense, what this means is that we should be ensuring:

2. Part IX of the Environmental Protection Act

The Part IX, or Spills Bill, provisions of the EPA, which deal with spills of pollutants rather than slow or regular contamination, were passed in December of 1979, but have not as yet been proclaimed. The objectives of these provisions are:

- to provide a mechanism for instant action when a spill occurs
- to provide a specific authority so that a spill can be dealt with quickly
- to provide an incentive for better handling in order to prevent spills
- to provide a simple mechanism to compensate victims of spills.<sup>18</sup>

Although the duty of an owner or person having control of a spilled pollutant to do everything practicable to prevent, eliminate and ameliorate adverse effects and to restore the natural environment<sup>19</sup> is fairly clear, the nature and extent of compensation liability is less clear. John Swaigen, who participated in lobbying efforts by the Canadian Environmental Law Association, describes the process and its results with respect to the Part IX provisions as follows:

The original version... said only that the compensation liability did not depend upon proof of fault or negligence. In response to requests to clarify the nature of the compensation liability, the Minister amended the Bill to provide that it was absolute.

Industry representatives reacted strongly against the concept of unlimited absolute liability. As a result, the Ministry introduced into the Bill a compensation fund to alleviate any hardship to industry that might result. After further lobbying by industry, absolute liability for compensation was replaced by liability with exceptions similar to those in the Fisheries Act and the Arctic Waters Pollution Prevention Act. Ultimately, industry representatives were successful in having the Bill further amended to provide that if an owner or a person in control of a pollutant establishes that he took all reasonable steps to prevent the spill he is not liable for compensation.<sup>20</sup>

Since that time, the Canadian Manufacturers' Association ('CMA') has maintained that Part IX provides an unacceptably narrow definition of the circumstances under which owners and persons in control of a spilled pollutant will not be considered to be responsible under Part IX. Although, to my knowledge, the CMA still argues that fault should exist before liability can be found,<sup>21</sup> the only action at common law which requires fault is the negligence action. Also, although Dr. Parrott originally intended that liability should result even when damage was caused by an Act of God and other uncontrollable events, the legislation now provides many of the normal defences.<sup>21a</sup>

The Part IX definition of "loss or damages" includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income. The inclusion of ~~loss of income would appear to address problems which manifested~~ themselves after the Mississauga derailment, where many people's

only loss was pecuniary,<sup>22</sup> however, the requirement that damages be direct will undoubtedly limit the scope of recovery.<sup>23</sup>

One of the major new provisions in Part IX is the establishment of an Environmental Compensation Corporation.<sup>24</sup> Its purposes include the provision of financial assistance to those suffering loss or damage as a direct result of a spill, or of clean-up duties ordered by the Minister, and the owner or person having control of a pollutant who must pay compensation may also apply for assistance. No experiences of this Corporation's operation has been gained since it has not yet been established. Also, regulations defining classes of persons entitled to payment, conditions to and limits of payment, claims procedures, and exemptions have not been promulgated.

Briefly, although Part IX would be an improvement to victim compensation law if the government acts on its promises, problem areas still exist. For example:

- victims must still initiate court action against a polluter unless he cannot be found or the pollution source cannot be established
- amendments to the original bill have created uncertainty with respect to what type of liability has been created
- the limitation period is only two years (as opposed to the 6 year tort limitation period) from when the person knew or ought to have known of his loss or damage
- routine discharges and gradual emissions are not covered.

### 3. Other Ontario Mechanisms

Board of Negotiation proceedings have been established under section 134, Part XIV of the EPA to deal with cases where a contaminant causes damage to livestock or crops. For the process to commence, a request to investigate the matter must be made to the Minister within 14 days after the injury or damage becomes apparent. Very little is known about the effectiveness of this mechanism despite its 14 years of existence because hearings are held in camera and names of parties are not released.<sup>25</sup>

The EPA also provides a Waste Well Disposal Security Fund<sup>26</sup> which is to be provided by operators of deep well disposal facilities for compensation of damage to water sources used for ordinary household purposes or for watering livestock, poultry, home gardens, lawns, or irrigation, or for crops rendered unfit for use. Recovery is possible only on the basis of availability of funds.

The Pesticides Act<sup>26a</sup> provides compensation provisions for cases involving damages caused by only professional exterminators. These are largely in the form of third party liability insurance requirements.



memo

To: Frank  
From: Bonnie  
Date: May 10, 1985

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Other points when talking to NDP and Liberal representatives:

1. reaffirmation of the provincial commitment to the Canadian Centre for Toxicology. (See attached)
2. Improved access to Ontario government reports, briefs, studies, etc. which have recently been completely inaccessible due to the Ministry's (Deputy Minister's?) policy of not releasing any such documents on the environment. Example: Jock's article a month or so ago about unreleased documents being held by the Ontario Government.

↳ continue notes going to Hunt & Stokes

We heard at the meeting of work that has been carried out at Statistics Canada on the development of environmental statistics and their integration with social and economic statistics. What we were not pleased to learn, on checking, is that the Office of the Senior Advisor on Integration, in which this work was being done, has been wound up in recent months and with it most of the work it was conducting. For a country which is so dependent on the sustainable development of its natural resources, we believe that Canada has never devoted sufficient funds to the development of computer useable data for resource accounting. To have cut these limited funds, we see to be the height of folly. We request that the work being done on the Environmental Statistics Program and related programs in what was the Office of the Senior Advisor on Integration be reinstated in full forthwith.

Toxicology  
Centre

- > 2. The development of world-class centres of excellence that will bring together the necessary minimum critical mass of intellectual, scientific and technological resources required to tackle world-class environmental problems in an atmosphere of collaboration between the research, business and governmental communities. This requirement is patently obvious in the field of toxicology, all the more so following the federal cut in support for, and withdrawal of participation in, The Canadian Centre for Toxicology sponsored jointly by the University of Guelph and the University of Toronto.

We discussed this cut at length with your colleague, Mme. Blais-Grenier. While she said she recognized that the presence of toxins in our environment is a world-class problem and that toxicological research should be a priority for the federal government, she seemingly has no appreciation of the need to build up a centre of excellence and the fact that this calls for such a basic facility as a building. We do not believe that the new frontiers that have to be pushed back in this field - which require the close collaboration of many different scientists - will yield to the old approach of diffuse funding or research in a multitude of small laboratories. Similarly, the training of our next generation of scientists, to continue work in this field, demands the creation of a world-class centre of excellence.

The benefits of the world-class centre will accrue to all of Canada, not just Ontario. There is no reason why the Government of Ontario should be the sole supporter from the public sector.

We request that the federal support for the Canadian Centre for Toxicology be reinstated in full forthwith.

If your government has a stated policy of not funding buildings, we request that all of the federal funds previously set aside for this

## SAFE DRINKING WATER

The quality of our drinking water is deteriorating. Ontario's lakes and rivers are being polluted by industrial and sewage discharges, agricultural runoff and airborne fallout. Groundwater supplies, once considered pure water, are being contaminated by chemical spills, leaky underground storage tanks, garbage dumps and agricultural fertilizers and pesticides.

The International Joint Commission has found over 800 chemical contaminants in the Great Lakes, the source of drinking water for over four million Ontarians. Many of these - like mirex, mercury, lead benzenes and phenols - are known to be hazardous to humans.

Present water treatment methods were designed about 1900 to disinfect water from disease carrying microorganisms and filter out solids. They were not designed to filter out industrial chemicals. Chlorine, when added to water supplies as a disinfectant combines with substances already in the water to produce a new class of hazardous compounds known as trihalomethanes (THMs).

Laboratory tests indicate that many of the toxic chemicals found in Ontario water are hazardous to humans at high levels. We know much less about long-term exposure to the low levels found in drinking water. Government officials often dismiss worries about toxic chemicals in drinking water because the level of contamination is so low, but there is no scientific proof that chemicals are not hazardous at these levels. It is known that some chemicals - such as vitamin B-12 - are biologically significant at levels as low as one part per billion.

Growing public concern about drinking water is reflected by the rapid growth in the use of bottled water and home water filtration systems. However, these are luxuries few can afford.

Government officials have tried to assure us that drinking water "meets the guidelines". At present, Ontario guidelines for drinking water quality regulate 44 substances, including 12 pesticides. But these levels are not enforceable by law, and there is no legal recourse if levels are exceeded. Moreover the list is lamentably short: of the 80 contaminants found in Toronto drinking water, only 28 are on the list.

Future drinking water quality cannot be assured unless we clean up existing pollution sources. However, some persistent chemicals - like PCBs - continue to be found though they are no longer manufactured. The disposal of toxics in landfill sites pollutes groundwater years after dumping has ceased. Though the Whitchurch-Stouffville site was closed to liquid wastes in 1969, contaminants were not detected in local wells until a dozen years later. Only a Safe Drinking Water Act will guarantee Ontarians protection from past and present contamination of our water.

The absence of federal leadership on this issue led Quebec to pass the country's first Safe Drinking Water Act in 1984. Ontario should follow suit with an act including the following provisions:

- legally enforceable standards for pollutants in all water supplies;
- the determination of these standards must allow for public participation;
- a monitoring programme for drinking water contaminants;
- a procedure to notify the public when a standard is violated;
- the right of the citizen to sue the water supplier (or polluter);
- fines for water suppliers who fail to meet the standards;
- and
- the right to seek judicial review of the Minister of the Environment for failure to perform his/her duties.

## ACID RAIN

Two common by-products of industrial society - sulphur and nitrogen oxides - cause acid rain. When these pollutants are emitted into the atmosphere from tall smokestacks, they can be transformed into sulphuric and nitric acids. Prevailing winds then carry them many kilometers from the original source of pollution where they fall to earth as acid rain or snow.

If the acids fall on land or water which is low in natural alkalinity, or buffering capacity, lake and stream waters can acidify, buildings and property can deteriorate, the healthy growth of forests can be affected, and people with respiratory problems may suffer through inhalation of acid air pollution.

Acid rain threatens Ontario's economic and recreational health. Of the 16,000 fishing lodges and camps in Ontario, 600 may be closed because of acid rain by the year 2000 if emissions are not reduced, resulting in losses of \$28 million and 600 jobs. Half of Ontario soils are very sensitive to acid rain. Much of Ontario's population lives in areas of high acid fallout. Of over 4000 lakes surveyed by the Ontario Ministry of the Environment, 4 percent are acidified and 54 percent are either extremely or moderately sensitive to acidification. 1200 to 1400 lakes and ponds in the Sudbury region alone have been destroyed by acid emissions from Inco's non-ferrous metal smelter.

The Ontario government's record on acid rain has been mixed at best. Ontario Hydro is required by law to reduce its 1980 emissions by 43 percent by 1990, but the utility's

plan to do this is based on replacing coal-fired capacity with increased nuclear power. This plan was called "imprecise and undependable" by the federal Sub-committee on Acid Rain in a 1984 report which recommended the use of scrubbers on Hydro's coal plants in order to meet their target.

The province attempted in 1970 to cut sulphur dioxide emissions at Inco's Sudbury plant by ordering reductions to 680 tonnes per day by 1978. But that was successfully resisted by the company, and today a government order limits emissions to 1770 tonnes per day.

In 1982, a federal/Ontario task force proposed an 86 percent reduction of emissions through the use of "roast reduction smelting" for nickel and "flue hoods" for copper. Initial cost estimated for the programme were \$430 million. Inco's estimates were somewhat higher. But earlier this year, the federal government offered \$150 million for acid rain clean-up at the five largest non-ferrous smelters in Canada, provided that the companies involved could demonstrate financial need and that provincial funds would be added to this fund. The Ontario government should respond promptly to this offer so that plans can be made.

An 86 percent reduction would decrease Inco's allowable emissions to below 275 tonnes per day. This would result in a direct reduction in the amount of Canadian produced acid rain and would also have enormous political importance for Canadian efforts to negotiate a reduction in U.S. emissions.

## NIAGARA ESCARPMENT PLAN

The Niagara Escarpment is 550 kilometres long. It runs across the heart of south-western Ontario from the Bruce Peninsula to Niagara Falls. It is made up of ancient rock formations, jagged cliffs, forests and rolling farmland. It is a naturalist's paradise and a hiker's joy. As a natural resource and recreational area, it is unsurpassed. The famous Bruce Trail runs its full length. Rare orchids, ferns, animals and birds make it a living museum.

In the early 1960s, it became apparent that the natural environment of the Escarpment was being threatened by hodgepodge development controlled by the numerous municipalities through which it runs. In 1964, then Premier John Robarts made a commitment to preserve the Escarpment, but it wasn't until Bill Davis took over that the Niagara Escarpment Planning and Development Act was passed in 1973. Its purpose was "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such development occurs as is compatible with the natural environment."

The Act established the Niagara Escarpment Commission, which has been responsible for controlling development along the Escarpment's length. The Commission was also told to develop an Official Plan for the Escarpment; each municipality would then have to ensure that its own Official Plan conformed to the overall plan.

It took eight years to produce a plan, which then went to public hearings. Last year, then Minister for Resources

Development, Norman Sterling, presented a final Niagara Escarpment Plan to the Cabinet for approval.

The final Plan meets most of the environmental criteria laid out in the 1973 Act. Sensitive areas are given special protection, and for the most part the Commission will have responsibility for monitoring developments taking place within the planning area, ensuring that municipalities do not violate its provisions.

However, the Plan has one obvious flaw. It reserves 24,000 hectares of land within the sensitive Escarpment corridor for the removal of unlimited amounts of sand, gravel and stone. Extensive damage has already been done to the Escarpment by aggregate mining in the past, and former pits are very difficult to rehabilitate. There is not a shortage of sand, gravel and stone in Ontario, and aggregate production need not take place within the Escarpment corridor.

Moreover, if the Niagara Escarpment Plan is adopted in its current form, the Commission will not even be given the responsibility to monitor aggregate developments to ensure that the Plan is complied with. Development of other land uses, such as recreation facilities and residential projects, will be subject to close scrutiny by the Commission, as regional municipalities and counties take over detailed administration of the Plan. The significant environmental impacts of aggregate production makes this unacceptable to all those who agree that the Escarpment is one of Ontario's most valuable natural heritages.

**PROVINCIAL PARKS POLICY**

In June, 1983, then Natural Resources Minister Alan Pope announced that the government would be creating 155 new provincial parks - somewhat less than the originally proposed 245 parks evaluated publicly under the Strategic Land Use Planning programme. Six are wilderness parks, and these were immediately put into regulation - that is, they exist "on paper". The rest are badly needed, natural environment and recreation parks, and it was promised that these would all be in regulation by June 1985.

To date, the Cabinet has acted on only 55 of the other parks, including most of those proposed for the Niagara Escarpment. Putting the rest into regulation would not require the development of detailed plans, but would ensure that the land involved is protected for park use.

The announcement of the new wilderness parks included a surprise twist. Unlike current wilderness parks, these new ones will allow mineral exploration and extraction, hunting, and tourism development to continue or begin within their boundaries. This allowance for non-conforming uses in wilderness parks is a serious departure from accepted park standards.

Management planning for the new wilderness parks has commenced only on the Woodland Caribou Park in northwestern Ontario. Planning for the park on the Madawaska River has been undermined by opponents who have succeeded in getting the proposed park area reduced by half. The rest of the proposed parks aren't even in the planning stage. They are only promises. No gates have been opened yet on any of the new parks.

Park supporters want reliable assurances that all the proposed parks are placed into regulation without reduction in size, and that the new wilderness parks will conform to accepted park standards.

## FOREST PESTICIDES

Ontario's forests either directly or indirectly employ 160,000 people. In northern Ontario more than 40 communities depend almost entirely on the forest industry; about 3/4 of the jobs in northern Ontario are forestry-dependant. In 1983 the forest industry provided for \$2.6 billion in external revenues from exported forest products. Jobs in the tourism, hunting, fishing and trapping sectors also require a healthy forest, as does environmental protection.

A sustainable economy in Ontario requires good forest management.

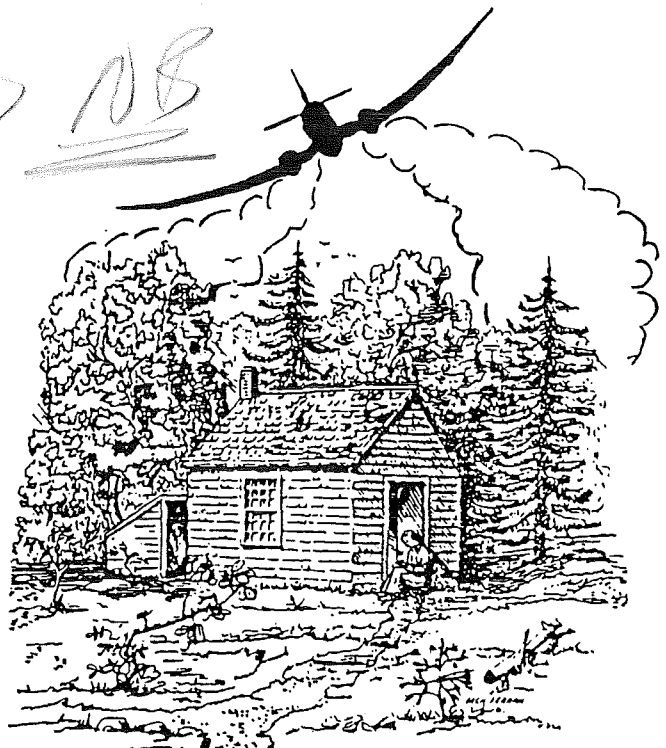
Spruce and Jack pine budworm are insects that compete with us for trees. Spruce budworm outbreaks are most serious in balsam fir stands. The growth of balsam fir in cut-over areas has helped produce a budworm outbreak of epidemic proportions. This year, for the first time, the Ontario Ministry of Natural Resources is considering large-scale use of the chemical pesticides Fenitrothion and Matacil to combat the pests. The aerial spraying is to be paid for with public funds, and has been exempted from the Environmental Assessment Act. Both these chemicals are known to have harmful effects on the natural predators of the budworm, and on humans.

Lengthy experience with chemical sprays in New Brunswick has shown them unable to cope with insect pests in the long term, and that they may actually worsen the problem.

If spraying is unavoidable, biological agents are preferable to toxic chemicals and one - *Bacillus Thuringiensis* (BT) - has been proven effective at killing only caterpillars. Quebec, with similar forests, is phasing out chemical use in favour of BT.

Budworm outbreaks are a symptom of bad forest management. The population of balsam fir has greatly increased because of the "highgrading" of spruce and pine by forestry companies. The only cure for budworm problems is to reduce balsam stands, either by logging or by controlled burning under the supervision of competent foresters. The forest industry has created or worsened much of the budworm problem by creating or bypassing large stands of balsam fir.

The extensive aerial spray program planned for northern Ontario should be cancelled. Many local residents oppose the plan, and are asking for all other alternatives to be considered, for their health and that of the environment.



## SPILLS BILL

In the wake of the accident in Bhopal, India, there exists a complex web of legal claims and counter claims. Who will compensate the victims? Who pays for the clean-up? How can future accidents of spills be prevented?

In 1979, shortly after the Mississauga train derailment, the Ontario legislature passed Part IX of the Environmental Protection Act, also known as the Spills Bill. The legislation was an attempt to answer the questions raised above by providing:

- . a mechanism for immediate response when a spill occurs;
- . authority to order quick clean-up without having to first sort out liability;
- . incentive for better handling in order to prevent spills; and,
- . a simple mechanism to compensate victims of spills.

But to date, the Spills Bill has never been proclaimed. In the event of an environmental emergency on the scale of Bhopal, the Ministry of the Environment will likely not be able to adequately handle the complex issues that will arise.

Spills and accidents happen all the time in Ontario; about 1,000 per year are of sufficient hazard that they must be reported to the Ministry of the Environment. Some are very dangerous: last November an accidental release of deadly chlorine gas in Fort Frances caused evacuation of the Town's 9,000 residents. Wind conditions prevented a cloud of the gas from enveloping a hospital near the Boise Cascade plant where the accident occurred. A highway spill of dangerous methyl methacrylate near Niagara Falls earlier this winter

could have been much worse: the chemical is very explosive and could have ignited easily had the accident occurred on a hot summer day.

The Spills Bill was designed on the principle that persons manufacturing or handling contaminants create the extra risks and must therefore be liable to pay for restoration as a reasonable condition of doing business. This would open up the market for environmental liability insurance, and companies would improve their practices as a way of keeping insurance premiums low.

To carry out clean-up, the Ministry of the Environment currently may order a person who discharges contaminants into the natural environment to take all steps necessary to repair any damage or injury. But clean-up can be delayed if that order is appealed to the Environmental Appeal Board, leaving local residents and the environment in danger. The Spills Bill, when proclaimed, will give the Ministry of the Environment the authority to order an immediate clean-up by the parties most capable of taking action.

In 1980, the federal government passed the Transportation of Dangerous Goods Act, which has a similar purpose to that of the Spills Bill. But the federal law only covers railroad, airport, and navigable water accidents, and substances under federal jurisdiction (radioactive). Those on provincial highways or roads or involving process or storage are still provincial responsibility.



## FARMLAND

There are three requirements for productive agriculture: good land, a favourable climate, and hard-working farmers. Ontario has all three. Consequently, the province is a major supplier of key agricultural products, and contributes 25 percent to the total national income generated by farming.

But this status is threatened. According to the Canada Land Inventory, only 0.5 percent of Canada's total land base is Class I (the best out of seven classes) and 25 percent of it is found within 80 kilometers of large urban centres in Ontario. This land is in danger. During the last 25 years, almost 80 percent of Ontario urban development has occurred on good farmland (Classes I, II and III).

Presently, 4.4 million hectares are being farmed in Ontario and the province is 75 percent self-sufficient in food. But by the year 2000, if the population of Ontario increases as predicted 8.3 million to 10.3 million, an additional 1 million hectares will be needed to maintain that level of self-sufficiency.

However, in the past 30 years 1 million hectares of good farmland have been taken out of production by conversion to urban use.

Hectare by hectare, our good farmland is being buried under the concrete of industrial, commercial and residential developments. Fields are paved over for highways, roads and airports. Once taken over for urban use, farmland is extremely difficult to rehabilitate.

There are other problems. Deterioration in the quality of the crowded urban environment makes rural living seem very attractive. The influx of urban people into the rural community creates low-density, non-farm housing, cutting

up road frontages, splitting land ownership, and forcing farmers to pay higher costs for labour, land and facilities. Gravel pits take over large tracts of land and result in increased traffic in farm areas. Construction of airports attracts even more commercial and industrial activity. Demand for increased productivity of land has resulted in dramatic increases in the use of chemical fertilizers and pesticides, resulting in severe degradation of soil quality.

Farming has become less attractive as a way of life because of uncertainties caused by the effects of urbanization and high interest rates. It is difficult for new farmers to begin farming or expand existing farms, and easier to sell out as the price of land increases.

In 1977, the Association of Rural Municipalities recommended that Class I-III lands be designated for agricultural uses only. Later that year, the Ontario Ministry of Agriculture and Food released a draft of the Foodland Guidelines, adopted in 1978 as official provincial policy on appropriate land uses to be incorporated into Official Plans. However, as guidelines only, these have not significantly reduced the rate of rural to urban land conversions.

A much tougher provincial wide policy is needed if we are to preserve one of our most valuable renewable resources - our land - from those more interested in short-term gain than long-term sustainability.

**ENERGY**

Environmental and economic concerns about Ontario Hydro's activities and attitudes include:

- expansion of nuclear capacity despite numerous questions about need and safety;
- failure to reduce acid gas emissions in the past five years;
- a foreign debt almost twice the size of the federal government's; electricity rates increasing much faster than the inflation rate, and now higher than the Canadian average;
- aggressive promotion of increased electrical consumption using advertising and grant programmes; and
- discouragement of alternative sources of electricity through unfair buy-back rates.

Past attempts to examine these concerns - the Porter Commission on Electric Power Planning (completed 1980) and the Legislature's Select Committee on Hydro Affairs (cancelled 1981) - have not succeeded in influencing policy making at Hydro. The problem with Hydro, its critics have concluded, is that the utility is fundamentally unaccountable, and in need of reform. A Task Force examining Hydro's policies, structures and accountability would allow all interested sectors of Ontario society to compare the many reforms of electric utility companies in place elsewhere and examine the many suggestions made about how Hydro should be reformed.

The Darlington Nuclear Generating Station under construction near Bowmanville exemplifies for many people what is wrong with Hydro. Darlington will be one of the world's largest nuclear plants but it was exempted from public scrutiny under the Environmental Assessment Act in 1977, primarily on

the grounds of urgency. Hydro said the station was needed by 1984. Since then, Hydro has made numerous delays in the construction schedule, and they admit now that Darlington will be surplus to our needs by the time it is completed in 1992. Darlington will generate, directly and indirectly, an enormous quantity of waste, much of it extremely toxic. And because the provincial government guarantees Hydro's loans, the addition of Darlington's \$11 billion construction costs to Hydro's total debt puts pressure on the government to cut spending in other areas like health, education and environmental protection.

Ontario Hydro often claims its nuclear expansion programme - including Darlington - helps fight acid rain. But the federal Sub-Committee on Acid Rain reported recently that it "has very little confidence" in this strategy, which it says "could actually result in more sulphur emissions than the cheaper option of foregoing more nuclear capacity and installing scrubbers instead."

The real alternative to Darlington isn't coal, it's conservation and renewable energy. Ontario Hydro's own studies show that electricity conservation alone could completely eliminate the need for Darlington's output, and that cancelling the station could bring Hydro's rates down. These same studies show that if Ontario Hydro stopped discriminating against alternative technologies like micro-hydro and co-generation, these could produce over 1000 megawatts of power by the year 2000, just in case we do need more power than the rest of Hydro's system can produce.

## MUNICIPAL WASTE MANAGEMENT

Wasteful use of resources in Ontario contributes to a volume of refuse which totals over 6 million tonnes annually - about 2 kg. per person per day. The problems of managing this huge amount of waste - in particular, the difficulty of finding appropriate landfill sites - have frequently led governments to ignore the long-term but even more serious matter of possible resource depletion.

In an attempt to address both of these problems, environmentalists have developed a set of principles for resource conservation known as "The Three Rs". The first of these in order of priority is to reduce the amounts of primary materials used and waste produced. This can be done primarily by developing more durable or repairable products, and by rejecting unnecessary consumption and excess packaging.

The second principle - reuse - is probably most commonly exemplified by the refillable beverage container. The standard beer bottle, for example, is used an average of 20 times, after which the glass may be recycled into another container. Reuseable containers are feasible, however, for a variety of products in addition to beverages. A study by Middleton Associates in 1978 showed that the range of commodities amenable to reusable standardized containers includes detergents, sauces, relishes, salad dressings, yogurt and cottage cheese, jams, jellies and marmalades, and others. These containers could be collected at the curbside and delivered to clearing houses for cleaning.

Paper products can also, in many cases, be reused. Over 75 percent of retail waste is in the form of cardboard containers - many of which are now used only once. This squandering

of paper products could be curtailed using a standardized packaging system in a variety of sizes, accompanied by arrangements for the transfer of containers back to manufacturers.

After the portion of waste reusable in its present form is separated out, much of the remainder could be recycled. Food and yard wastes represent a major portion of the refuse in large cities, where composting of such material by individuals is often not feasible. In Toronto, food and yard wastes make up about 38 percent of the city's total waste stream. These organic materials could be the most easily recycled portion of municipal refuse if they were included in a source separation program: they could be shipped to central composting facilities for the production of soil fertilizer and conditioner.

Many municipalities have recycling programmes for tin, glass, newsprint and fine paper. Some of these, particularly glass, could be tied to the schemes for reuse described above. But such small scale programmes are only moderately useful if they are not integrated into a province-wide system. The provincial government, however, has not shown much interest in implementing such a system; it has more enthusiasm for the burning of garbage for energy, which has been promoted as a fourth "R" - recovery. The Ministry of Energy hopes that 6.8 million barrels of crude oil equivalent will be provided by energy-from-waste plants by 1995.

But is energy-from-waste (EFW) an environmentally acceptable solution? There is concern that EFW plants will emit toxics into the air. One

## INTERVENOR FUNDING

Environmental groups have fought hard to achieve opportunities to appear at hearings on environmental matters. But participating in these hearings is expensive. While fighting a landfill proposal in Hamilton-Wentworth, the Binbrook Anti-Dump Committee spent over \$25,000 appearing before hearing boards. The Concerned Citizens to Maintain the Environment, a London group concerned about a proposed energy-from-waste facility, spent almost \$75,000 in legal and expert fees to participate in a hearing under the Consolidated Hearings Act. These amounts are tiny in comparison to the amounts spent by project proponents.

Private and public sector proponents usually have large secure sources of funding to prepare their cases and appear at hearings. A study for the Economic Council of Canada entitled "Public Participation in the Regulatory Process: The Issue of Funding" concluded that taxpayers subsidize approximately 50% of private companies' hearing costs through government grants and tax breaks. Users of the services provided by the private proponents' undertakings absorb the remainder of the costs through price increases.

By contrast, citizens' groups must use their precious time to put on bake sales, dances and membership drives.

The information and perspective that citizens' groups can bring to public hearings helps ensure that the best possible decisions are made. It is unrealistic to assume that private or government proponents will present evidence highlighting the negative aspects of their plans. For this kind of information, hearing boards must rely on the evidence of intervening groups of individuals. The

strength of a citizens' group's case is often dependent on the experts it can enlist. Qualified experts cost money.

Sometimes hearing boards give cost awards to citizens' groups that appear before them. These awards help, but usually a citizens' group does not know until after the hearing is completed whether they will be awarded costs. This uncertainty means that a group may be unable to present all the evidence it could.

In July 1984, a coalition of 26 environmental and citizens' groups met with then Minister of the Environment Andrew Brandt to present the case for an intervenor funding programme. Brandt agreed in principle with the proposal and promised to work out a detailed policy in consultation with environmental groups. Since then, some ad hoc funding has been provided, but a draft permanent policy has not been announced.

A provincial intervenor funding programme is urgently needed and should include the following provisions:

- funding for intervenors should be provided by both project proponents (whether private or government) and the Ministry of the Environment;
- citizens' groups must raise some funds themselves, within a flexible formula that allows for special circumstances;
- funds should be administered by members of a panel who do not also sit on the actual project hearing panel;
- funds must be made available before a hearing begins so that groups can effectively prepare their participation;
- these provisions must be given statutory backing through amendments to the relevant legislation.

## RIGHT TO KNOW LEGISLATION

If people are to act responsibly in a democratic society, they must have both knowledge of the issues and power to influence their own lives and the environment. This fact is clearly recognized in the Occupational Health & Safety Act, which within limits gives some workers the "right to know" about certain classes of chemicals used in the work place. It also gives them the right to be involved in decision making and the right to refuse unsafe work. However, the information provided is frequently inadequate or delayed, and enforcement of the Act is lax.

There is no comparable act to provide community residents with the right to know about chemicals manufactured, used or stored in, or transported through their neighbourhoods. Nor is there legislation extending the "right to know" provisions of the Occupational Health and Safety Act to workers where no joint health and safety committees exist. Such is the case for farm workers, teachers, hospital and office workers or those in places with fewer than 20 employees.

The need for residents to know about toxic substances in their communities becomes more evident daily. Residents and public health officials find themselves faced with pollution problems where the identities of the chemicals (and thus their potential health effects) are unknown. In the wake of Bhopal, communities everywhere are asking whether it can happen here, and discovering that they don't know.

Industry, of course, has suggested that it needs to protect "trade secrets" and that it has a right to own and protect its "intellectual property". But studies in the U.S. have shown that seldom if ever is there a real need to keep information from competitors. Instead, the argument is used to keep

workers and communities in ignorance of the hazards they face daily, making them unable to insist that toxic substances be properly controlled, monitored or even removed from the workplace and the community.

Recently, a number of municipalities and states in the U.S. have passed "right to know" legislation. These give residents access to information about which toxics on a designated list are present in their community, and what the suspected health and environmental effects of these are.

There is no such provision here in Ontario, although the City of Toronto and the City of Windsor are currently exploring the possibility of passing municipal "right to know" by-laws. It is uncertain whether the province would grant them the authority thought necessary for municipal action. In any event, provincial legislation would be preferable.

If community residents and workers are to act responsibly to protect their own health and that of their families and neighbours, they must be given the right to know about the hazards to which they are exposed. The right to know should be fundamental in any free and democratic society.



**ENVIRONMENTAL ASSESSMENT ACT**

Ontario's Environmental Assessment Act passed in 1975, has been described as the most important piece of environmental legislation ever enacted in Canada. The basic principle of the Act is common to such legislation found elsewhere: that the potential environmental impacts of new projects or activities need to be evaluated publicly if good decisions are to be made about how, or even whether, they should proceed. But Ontario's Act is superior for a number of reasons:

- The environmental impact statement produced by the proponent, and the review of that statement by the Ministry of the Environment and the Environmental Assessment Board, must examine the project's effects on not only the natural, physical environment, but also the "social, economic and cultural conditions that influence the life of ... a community."
- The review must assess the need for, and the alternatives to a given undertaking.
- The Act requires extensive opportunities for public review and comment upon development plans.
- Initially, only provincial government projects were to be subject to the Act. But the government promised this would be followed by municipal government projects (carried out in 1980) and private sector projects (still not subject).
- Finally, supporters of the Act won a provision stating that all projects in categories subject to the Act would be reviewed unless specifically exempted. Others had advocated that only those projects specifically designated by the government be reviewed. (Under the Act the government can designate a private sector project, but this has only been done four times.)

However, since the Act was proclaimed in 1976 it has fallen far short of expectations. Over 300 government projects have been exempted by various Ministers of the Environment. These include a number of large-scale, controversial projects like the Darlington Nuclear Generating Station and the toxic waste management facility once proposed for South Cayuga. Though an Environmental Assessment Advisory Committee was set up in July 1983 because of criticisms about the number of exemptions, its mandate does not provide for the open, public appeal process necessary to prevent arbitrary exemptions. On several occasions the Committee has recommended to the Minister of the Environment that he not grant an exemption, but he has never refused a proponent's request for an exemption.

Erosion of the Act's application has disillusioned those who initially hailed it as important in the fight for environmental protection. The Ministry has become less thorough over the years in their review of projects and many proposals are being evaluated in a "concept" stage, before all the details are known.

There has also been an increase in the use of "class" environmental assessments for large projects. Class EAs were originally designed to deal with large numbers of small, similar projects such as municipal roads. But undertakings as large as the Forest Management Agreements signed between the Ministry of Natural Resources and forestry companies are being assessed in a class. These are of enormous environmental significance and should be assessed on a case-by-case basis.

The Ontario government is currently reviewing the Environmental Assessment Act as part of an overall review of environmental legislation. Studies

especially dangerous chemical, dioxin, is thought to be produced by the burning of plastic. A recent report by Pollution Probe of Toronto states that data on emissions are insufficient, and recommends a long-range testing program covering all pollutants of interest, including sulphur dioxide, hydrogen chloride, dioxins, PCBs and others.

A second reason for questioning the advisability of energy-from-waste projects is that they have the potential to compete with reuse and recycling for both funds and waste materials. If a community spends millions on an EFW plant, it will not likely support reuse and recycling schemes - especially if these reduce the amount of combustible items like paper. Moreover, EFW is in conflict with the fundamental principle of resource conservation: it encourages wasteful use of primary materials by giving society a vested interest in producing garbage.

Current priorities of the Ontario government can be clearly seen by comparing the levels of support for energy-from-waste plants and recycling projects. The provincial contribution to just one EFW facility - at Victoria Hospital in London - is \$6.96 million. Yet ten recycling operations in fifteen Ontario municipalities, involving 1 million people, last year received grants from the Ministry of the Environment totalling only \$890,000.

