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CORPORATE CONCENTRATION AND THE ENVIRONMENT

by J. F. Castrilli

Experience has shown that thorough documentation of the impact of corporate concentration on the environment would probably require at least the annual budget for several years of the anti-combines division of the Department of Consumer and Corporate Affairs -- and that sum for investigation of only one oligopolized segment of the economy. The high cost of such documentation -- which makes it frequently beyond the resources of most individuals and public interest groups -- is itself an indication of the impact of corporate power.

We offer two examples of such impact or potential impact on the environment - (1) the Syncrude project, and (2) the U.S. anti-trust action against the Big Four auto manufacturers and the industry's trade association for suppression of air pollution technology.

We offer two further, though more modest, examples of corporate impact on the legislative and regulation setting process- (3) the pulp and paper effluent regulations made pursuant to the federal Fisheries Act, and (4) the Environmental Contaminants Act. These latter examples, while not immediately linkable to corporate concentration per se, nevertheless illustrate the power of the corporate sector generally vis-a-vis the interface between its interests and environmental protection measures proposed by government.

1. The Syncrude Project

It is no secret that the oil companies with substantial control in the Syncrude Tar Sands project in Alberta, include many of the most powerful international petroleum companies [Imperial, Shell, Cities Services, Gulf, etc.]. Moreover, as has been documented elsewhere [see U.S. Federal Trade Commission Reports (1952) and (1973) on The International Petroleum Cartel] the behaviour of these companies "should properly be regarded as co-operative, rather than competitive, with respect to: influencing legislation; bidding for crude leases; establishing the purchase price of crude oil; transporting crude oil; refining crude oil; marketing gasoline." The 1973 FTC report continues "the majors demonstrate a clear preference for avoiding competition through mutual co-

operation and the use of exclusionary practices. Together they dictate a common price for raw material and seek to stabilize a price for refined product". It is no surprise then, that with regard to the Alberta tar sands, the oil industry's planning solidarity has replaced the market and the purposes of the public's interest in environmental protection as well.

Political scientist Larry Pratt, of the University of Alberta, has documented that negotiations in the summer of 1973 between Syncrude and Premier Peter Lougheed's cabinet resulted in important commitments being made to the oil companies regarding future government regulation of the environment affected by the project.

> "In mid July... The minister of environment, Bill Yurko, spelled out the Department of Environment's requirements, enclosed permits required under the Clean Air Act and Clean Water Act for Syncrude to commence construction, and then gave the consortium two additional assurances. First, should the government anticipate any changes in standards of corporate performance expected under the Clean Air and Clean Water acts during the construction phase of Syncrude's project, it would promise to discuss such changes in detail with Syncrude before enacting any new rules. Second, when Syncrude applied for licenses to operate its plant under the same acts, the licenses would be issued for a full five-year period; that is, the licenses would establish the conditions under which the plant would be allowed to operate for five years. These two assurances appear to reduce Syncrude's uncertainties regarding expensive changes in environmental regulation, and they obviously also limit the authority of the Department of Environment to enforce tighter standards, particularly in the crucial first five years of the project's life." [The Tar Sands: Syncrude and the Politics of Oil, Hurtig, 1976]

There was no acknowledgment that the invisible third party -- the public -- would be involved in, or informed about the substance of such discussions and conditions before decisions affecting the public interest would be made. We simply note in passing that this insulated procedure is generally used in the administration of practically all environment legislation in Canada.

Indeed, the Syncrude oil consortium's regard for questions of environmental protection is amply documented by the federal Department of Environment's critique of Syncrude's "Environmental Impact Assessment" [prepared Summer 1974]. The report concluded that the companies had failed to address the serious ecological impacts of large-scale development. The report found according to the then federal environment minister, Jeanne Sauve, that from an examination of the available information [and her staff encountered "great difficulty" in obtaining certain information from Syncrude] the company "has failed to appreciate the real scope of environmental concerns and has also failed to address the question of environmental protection in either a realistic or an adequate manner". Syncrude's documentation is deficient in detailed information in many areas of environmental concern and we believe that there is a likelihood for major environmental damage". The report continued:

> "The Syncrude Environmental Impact Assessment was found wanting in quantitative data relevant to the existing ecosystem components [biological and physical] on Lease 17 and the Athabasca tar sands in general. The functional relationships of ecosystem components lacked quantification and specific aspects of the Syncrude development proposal lacked adequate clarification to effectively predict the ecological consequences of the project. In view of these voids in information, statements presented by the proponent relating to the environmental effects forecast from the development must be considered as conjectural..."

The report added that "the documents present a concept of pollution management with very little evidence or documentation of reliability". This applied to problems of handling huge quantities of waste water, atmospheric emissions, including sulphur, hydrocarbons, nitrogen oxides and hydrogen sulphide. "With the release of large volumes of water, we are concerned with the potential for formation and persistence of widespread fog in the area. This fog, along with sulphur dioxide, could produce a serious human health hazard." The report strongly implied that Syncrude was not employing the best available technolo-

gies for reducing atmospheric emissions because these would increase its costs. Also, the report noted that Syncrude was making only a token effort at land reclamation. "At no point in the assessment is there any...evidence to support the feasibility of reclamation following such a massive physical and chemical alteration to the environment as that proposed by Syncrude."

Now that both levels of government are financially involved in the Syncrude project, there is an obvious risk that commercial considerations will be given even greater precedence over the ecology. An example of this is reflected in a recent exchange in the House of Commons between NDP Leader Edward Broadbent and Environment Minister Jean Marchand [January 29, 1976 proceedings] reproduced below.

NDP LEADER EDWARD BROADBENT:
Mr. Speaker, I received a letter yesterday in reply to questions I put to the Minister of the Environment concerning environmental controls in respect of the Syncrude project, in which the minister stated at one point that his department intends to use the "best practicable technology." Since the minister's own departmental study in 1974 on the Syncrude project indicated that it was possible to reduce the level of emission of sulphur dioxide to 40 long tons per day, why has this department permitted the project to proceed with levels of emission which will reach up to 287 long tons a day?

ENVIRONMENT MINISTER JEAN MARCHAND:
Mr. Speaker, the first responsibility in that field lies, of course, with the Government of Alberta. We have made some studies and my department believes it is possible to reduce the amount of sulphur dioxide emission from 287 long tons a day to 40 long tons a day. That being possible, the Government is pressing the companies to use this new technology in order to obtain this reduction.

MR. BROADBENT:
In the minister's letter to me he has indicated that the Government has entered into an agreement with the Government of Alberta that will permit "levels of emission up to the level of 287 long tons." What the minister is now saying, if I understand him well, is that this might not be the case, and that it is possible to get a level of control which is more vigorous than this, a level this Government wants. What I want to do is get this minister who is responsible for the environment in Canada to make a commitment that it is the objective of this Government, which holds an equity in the Syncrude project and is on the management committee, to insist on this standard as a condition to further federal participation.

MR. MARCHAND:
Mr. Speaker, I can assure the hon. gentleman that I will insist on having this present emission reduced. While it is true that we hold equity in the Syncrude project, it is a small percentage, I think about 15 per cent, but even without a majority of the shares we intend to exercise pressure on those companies to do this.

Neither Mr. Broadbent nor Mr. Marchand note the existence of the 1970 Federal Clean Air Act which provides that violation of national emission standards [where there is a significant danger to health] carries with it upon summary conviction a $200,000 maximum fine, with each day's violation constituting a separate offence. Perhaps Mr. Marchand did not mention the government's

powers under this Act because six years after its passage no emission standards with respect to sulphur dioxide have been promulgated thereby making the government's powers under the Act academic. In this light, it is understandable that Mr. Marchand should wish to overlook this Act, and rely instead on undefined "pressure" with the government's corporate partners as the country's first line of defence from environmental abuse.

2. U.S. Anti-Trust Action Against Big Four Auto Manufacturers for Suppression of Air Pollution Technology

In the early 1950's the automobile industry's "Big Four" [General Motors, Chrysler, American Motors and Ford] and the industry trade association [Automobile Manufacturer's Association) participated in a joint research and development effort aimed at solving the problem of automobile-caused air pollution. In 1953 the industry set up the Vehicle Combustion Products Committee to facilitate joint research, and two years later a cross-licensing agreement was added under which any discoveries would be equally available to all participants. In 1965, after industry critics charged that the joint effect was retarding, not speeding, the anti-pollution effort, a federal grand jury was convened and the anti-trust division of the U.S. Department of Justice began an investigation of the automobile industry's co-operative research programme and cross-licensing agreement. Specifically, the division wanted to determine whether there had been concerted action by the automobile companies, in violation of the anti-trust laws, to restrain competition in the development and marketing of automobile exhaust control systems and devices. The Justice Department subsequently filed a civil anti-trust suit aganist the "Big Four" and the industry trade association in 1969, charging them with a violation of section 1 of the U.S. Sherman Act [15 U.S.C. s.1, 1970]. The section reads, in pertinent part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal..." The complaint alleged that the defendants had conspired to eliminate competition among themselves in the research, development, manufacture, installation and publicity of air pollution control devices and in the purchase of patents

and patent rights covering such equipment. The suit was settled by a "consent decree" under which the defendants, without admitting any illegal practices, agreed to cease any anticompetitive activity. [United States v. Automobile Manufacturers Association, 307 F. Supp. 617 (C.D. Cal. 1969)], aff'd. mem. sub nom. New York v. United States, 397 U.S. 248 (1970). The decree, in substance, prohibited the defendants from conspiring to restrain the development of pollution control devices, from restraining the individual decisions of companies as to when pollution control devices would be installed; from refusing to file individual statements with government agencies concerned with pollution and from filing joint statements unless specifically requested to do so; from continuing the cross-licensing agreement; from exchanging secret information on pollution control or patent rights on devices; and from dealing jointly with independent developers of pollution control devices. [The text of the decree is reported in 1969 Trade Cases, paragraph 72, 907 at 87,456.]

One can only speculate on the magnitude of the costs in health, environment and property damage between the early 1950's and the late 1960's, in both the U.S. and Canada, as a result of the auto industry's efforts to suppress pollution control technology.

3. Federal Fisheries Act, Pulp and Paper Effluent Regulations

The "capture" of regulatory agencies by those being regulated has often been discussed. Economist J. K. Galbraith has written:

> "In the past, when the divergence of some private or planning purpose from the public interest [with environmental or other effect] became intolerable, it was the practice to specify the broad legislative purpose and to pass enabling legislation. Then a regulatory agency, new or old, was given the task of framing the specific regulations that reflected legislative intent, including specification of the time period within which conforming behaviour would be required. And the regulatory body had considerable discretion in enforcement. This greatly simplified the legislative task and allowed what is called flexibility in enforcement. It has also been a generally admirable arrangement for those who do not wish to conform. It has allowed the corporate planning system to bring its

> natural power in relation to the public bureaucracy to bear in order to minimize, postpone or negate action. Where this power is great -- as in the case of automobile, oil, chemical or like industries -- the resulting regulatory effect has been extensively neutralized". [Economics and the Public Purpose, Houghton Mifflin, Boston, 1973]

A rather blatant example of Mr. Galbraith's scenario occurred regarding the pulp and paper industry in Canada.

Several years ago, the federal government proclaimed regulations which were intended to apply to pulp and paper mills, the major industrial contributor to water pollution in Canada [Pulp and Paper Effluent Regulations, Canada Gazette, Part II, Vol. 105 pursuant to Federal Fisheries Act, R.S.C. 1970 F-14) the Fisheries Act was and is silent, however, on the process to be followed in determining the standards. In the case of the Pulp and Paper Effluent Regulations, the responsible administrative agency sought out the intended subjects of the regulations and negotiated with them. Economic viability of the industry dictated the standards. At no time in the course of determining the standards was the public at large or anyone identifiably representing them involved in negotiating those standards which subsequently became law. It is therefore not surprising that when these regulations were made they did not apply to any pulp and paper mills operating in Canada. [Although they apply to new, expanded or altered mills.] One would almost think that Mr. Galbraith had this precise example in mind when he wrote the above.

4. The Federal Environmental Contaminants Act

The Federal Environmental Contaminants Act (Bill C-25) which recently received Royal Assent is described in its preamble as "An Act to protect human health and the environment from substances that contaminate the environment". As such, the Act is directed primarily at industrially or commercially generated substances, including polyvinyl chlorides, aerosol sprays, asbestos, lead, arsenic, and mercury. Because a sound preventive statute would require that industry substantially change its ways of handling and generating such materials, it is understandable that industry would be concerned about what such a statutory proposal might

have in store for it. It is equally true that the public (the presumed beneficiaries of the Act's measures) have an interest in whether such a statutory scheme will in fact "protect human health and the environment". Both interests are valid. Yet the federal government consulted only industry, on early drafts of the Bill; and that was done approximately a year in advance of the Bill's introduction in the House of Commons for first reading. As Wilburt Canniff, technical director for the Canadian Chemical Producers Association stated before the Standing Committeee on Fisheries and Forestry, "there was an earlier edition of Bill C-25 and prior even to that we received a copy of a draft prepared by the Department of Environment. We provided extensive comments to the Hon. Jack Davis [then Minister of Environment] with respect to the first draft. When we saw the new bill, most of the corrections, changes or criticisms we had found with the first draft had been corrected, modified or vastly improved. So the bill presented to us as C-25 was vastly improved over that which we saw as an earlier draft and this is why our comments are not too voluminous." No such similar offer was made to any environmental, consumer or other public group. And while it is not necessarily an article of faith that any bill the Chemical Producers Association can be happy with is one that no one else will be able to live with, why the difference in treatment between public environmental or consumer groups and industry and chemical associations? Surely members of the public for which the Act is to provide protection should have been granted the same opportunities for "extensive comment" on draft versions of the bill as those whose activities the Act was meant to control?

While the Act's deficiencies cannot all be catalogued here, the shortcomings included; (1) No public participation in the Act's processes including notice, access to information; (2) no requirement for certification and registration of substances before commercial production and mass distribution, including no requirement for reporting to the Minister of test results, testing methods and standards used, toxicity levels, alternatives to the substance and adverse health and environmental effects discovered.

Recommendations

For some time the Canadian Environmental Law Association has advocated the passage of an Environmental Bill of Rights by the Federal government and each of the provincial governments. Such legislation would reduce the disparity in power and resources between the corporate sector and individuals between the corporate sector and public interest groups, and, indeed, between the corporate sector and government.

An environmental Bill of Rights would include the following provisions:

1. A substantive right to a healthy and attractive environment. The law should state unequivocally that citizens have a right to a healthy and attractive environment.

2. The law should give any citizen the right to defend any part of the environment in the courts.

3. The law should require social and environmental impact statements and cost benefit analysis prior to development decisions. At present, there is no federal environmental impact assessment statute and only one province, Ontario, has an impact assessment law.

4. The law should give citizens the right of access to all information pertaining to environmental issues and decisions.

5. The law should give citizens the right to participate in the setting of standards of environmental quality (for example acceptable levels of pollution) which are now frequently drafted in secret by civil servants in close co-operation with industry and business.

6. The law should require that recreational areas, parks and other public land be held in public trust and citizens should be able to prevent violations of that trust in the courts.

7. Some method must be found to narrow the difference in resources including

money, access to expertise and access to the legal profession between the public and corporations, so that members of the public may present their views and enforce their rights on a more equal basis before courts, administrative and quasi-judicial boards and tribunals, government bodies and fact-finding commissions.

The above paper was prepared for the Task Force on the Churches and Corporate Responsibility, which represents a coalition of Canadian churches which have come together to address themselves to questions of corporate social responsibility.

The paper is Appendix C of the submission of the Task Force to the Royal Commission on Corporate Responsibility, Mr. Robert Bryce, Chairman, presented in Toronto, February 16, 1976.