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SUBMISSIONS  
of the  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
to the  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
on the  
SOUTH CAYUGA LIQUID INDUSTRIAL WASTE  
FACILITY:  
POLICY CONSIDERATIONS

by

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AND LAW REFORM

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## I. INTRODUCTION

The Canadian Environmental Law Association (CELA) is a non-profit organization established in 1970 to use existing laws to protect the environment and to advocate appropriate environmental law reforms.

Since 1970 CELA has run a law advisory clinic for people with environmental problems and has from time to time been involved in matters respecting both solid and liquid wastes before the Supreme Court of Ontario, (Div. Ct. and Court of Appeal), the Environmental Assessment Board, the Environmental Appeal Board and the Provincial Court (Criminal Division). Both in 1974 and 1978 CELA published a citizen's law advisory handbook which included a chapter on waste management. A sister organization, the Canadian Environmental Law Research Foundation (CELRF), has undertaken studies in the last ten years for the federal government and the International Joint Commission dealing with hazardous waste law and policy. Both CELA and CELRF also publish the Canadian Environmental Law Reports (CELR), the only law reporting service in Canada exclusively reporting environmental cases before courts and tribunals as well as providing case and legislative comments. Reported cases and commentary articles in the CELRs have frequently dealt with the problem of liquid industrial and hazardous wastes.

These submissions will briefly review: the nature and magnitude of the environmental and human health problems associated with such wastes; applicable environmental legislation; potential deficiencies in our laws; the special problem of waste facility siting and the role of the public;

examine past hearing experiences and the prospective situation at South Cayuga; and provide concluding recommendations.

Because of time constraints and the standing committee terms of reference, these submissions will not generally review the role of the federal government or of provincial planning law and related areas though these also have application to the industrial waste problem.

## II. THE NATURE AND MAGNITUDE OF THE ENVIRONMENTAL AND HUMAN HEALTH PROBLEM ASSOCIATED WITH LIQUID INDUSTRIAL OR HAZARDOUS WASTES.

### A. Waste Definition

A Federal Task Force on Hazardous Waste Definition (hereinafter the Task Force)<sup>1</sup> and the federal government generally,<sup>2</sup> define hazardous wastes as those discarded materials or substances in solid, semi-solid, liquid or gaseous form which, due to their nature and quantity, require specialized waste management techniques for 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.<sup>3</sup> The Maclaren's Report Annex 1<sup>4</sup> indicates that Ministry of Environment officials regard 10% - 20% of Ontario's industrial wastes as "hazardous".

Other definitions for "hazardous" and/or "industrial" wastes have been discussed in the Maclaren's Report<sup>5</sup> and Annex 1 respecting Ontario and United States statutory definitions and will not be duplicated here.

Suffice it to say, however, that an identification process is a key com-

ponent of any hazardous or industrial waste management program, since how a waste is defined or identified will determine whether a particular jurisdiction's full regulatory apparatus should be brought to bear.

#### B. Pathways of Contamination

Environmental and health damage from such wastes may occur through:

- contamination of domestic groundwater supplies;<sup>6</sup>
- surface water contamination through direct dumping<sup>7</sup> and runoff;<sup>8</sup>
- direct physical contact with, or accumulation in, the body or the food chain;<sup>9</sup>
- air and odour pollution;<sup>10,11</sup>
- fire and explosions<sup>12</sup>.

#### C. Waste Quantities

In 1977, the federal government estimated that at least 32,000,000 tonnes (metric) of industrial wastes were generated in Canada (excluding agricultural, mining and pulp and paper wastes). Of this quantity, 3% or approximately 1 million tonnes (metric) were regarded as toxic or hazardous.<sup>13</sup> Environment Canada estimates that about 85% of the one million tonnes that we produce nationally in a year is improperly dealt with, in the sense that such wastes are being handled and disposed of in a manner that endangers public health and/or the environment.<sup>14</sup>

The Table on page 5 of our brief cites past, present and projected quantities of liquid industrial or hazardous wastes in Ontario using the Ministry of the Environment and Maclarens as information sources. From a review of the Table it is apparent that between just 1977 and 1985, there will be a projected 100% increase in such waste quantities in this province. It should also be noted that these figures may be low because the waybill regu-

lation from which much of this information is derived does not, for example, record wastes that are stored or disposed of on the generator's property; that are solids; or that are recycled, such as waste oils used for rural road dust control.

### III. EXISTING ENVIRONMENTAL LEGISLATION

Generally, provincial environmental control strategies may be grouped into two categories; preventative and reactive. Preventative strategies include hearings, approvals, licenses, permits and the like, employed before particular activities, such as a waste facility are established. Some preventative strategies may be of no legal effect, such as guidelines, though they may point to future governmental policy or regulation options. Reactive strategies include prosecutions, administrative orders, injunctions, compensation schemes for pollution victims or other remedial measures employed with respect to an existing or closed facility that is or may be contributing to environmental or health damage. Some reactive strategies may also be of no legal effect, such as voluntary negotiations respecting compliance though they may lead to other enforcement options.

Both the province's preventative and reactive instruments contain gaps as to what they apply to and how they are applied. These will be discussed in more detail below.

Because I'm sure both committee counsel and MOE counsel have already described the basic elements of The Environmental Assessment Act<sup>15</sup>, The Environmental Protection Act<sup>16</sup> and The Ontario Water Resources Act<sup>17</sup> these will not be repeated here. There are, however, a few issues which deserve mention at this point.



TABLE 1

LIQUID INDUSTRIAL OR HAZARDOUS WASTE QUANTITIES IN ONTARIO 1977-1985*			
YEAR	QUANTITY (in millions of gallons)	SOURCE	% INCREASE FROM 1977
1977	40	Min. of Environment testimony at EAB Nanticoke hearing	_____
1980	60-70	Maclaren's Report-November 1980, Annex 1	50% - 75%
1985	80	Maclaren's Report-November 1980 (projections)	100% (14%-33% projected increase from 1980)

\* These estimates do not necessarily include liquid industrial or hazardous wastes that are (1) stored or (2) disposed of on the generator's premises, (3) are solids, or (4) are recycled (e.g. waste oils used for rural road dust control.)

A. Preventative Strategies

1. The Environmental Assessment Act

When the Act was tabled in the legislature in 1975, then Environment Minister, William Newman called it "preventative medicine". He argued that: "It will allow us to anticipate potential environmental damage before it occurs. It will ensure environmental protection at the critical part of a proposed project -- at the drawing board."<sup>18</sup>

In virtually every Ministry of Environment speech or publication on the Act going back to at least 1973, the two objectives hammered home by Ministers and senior Environment Ministry officials alike as the reasons for environmental assessment were:<sup>19</sup>

- to identify and evaluate all potentially significant environmental effects of proposed undertakings at a stage when alternative solutions are available to decision-makers; and
- to ensure that the proponent of an undertaking and approval agencies give due consideration to the means of avoiding or mitigating adverse environmental effects prior to granting any approval to proceed.

These are important objectives which make it clear why simple pollution abatement statutes such as the EPA and the OWRA had to be supplemented by the environmental management and planning mechanisms available under the EAA. Those have been the arguments and the sentiments expressed by the MOE itself. However, nice sentiments are not enough.

Virtually every project, public or private, with any significant environmental impact that has been controversial, has escaped hearings under the Act through either section 30 exemption orders, section 41(f) exemption regulations, or the failure to apply the Act to the municipal or private sector.

These projects have included the Elora Gorge Bridge; the Darlington Nuclear Generating Station; the Elliot Lake mining expansion; the Maple Theme Park; the Atikokan Generating Station; the burning of PCB's at St. Lawrence Cement, Mississauga; the Maple Landfill; and now South Cayuga.<sup>20</sup>

We would submit that if this Act is "preventative medicine", then it surely ought to apply to the problem of industrial waste management in this province; and to a major project such as South Cayuga.

2. The Environmental Protection Act and The Ontario Water Resources Act

As the committee is undoubtedly aware, both the EPA and the OWRA also contain hearing provisions prior to the establishment of waste disposal sites or sewage works respectively. The environmental information required under both Acts is substantially narrower than under the EAA and, as a result, has caused problems in the past for both hearing participants and decision-makers under those two Acts. As you are aware, exemption regulations have also been issued with respect to South Cayuga under both these Acts.<sup>21</sup> In the case of the EPA, an approval but no hearing will be allowed with respect to South Cayuga. In the case of the OWRA, the South Cayuga project will be subject to neither hearings nor approvals.

Under the EPA there are also liquid industrial waste tracking regulations.<sup>22</sup> In addition under Part VIII-A of the Act there are requirements for the establishment of a corporation to compensate victims of pollution as well as provisions intended to make the owners and handlers of toxic substances and wastes responsible for cleaning up spills and restoring the environment to the previous condition.<sup>23</sup> As will be discussed below both these programs need to be improved or better implemented by the province.

B. Reactive Strategies

Prosecution for violations of the above Acts and applicable regulations can stimulate a higher public profile for those prosecuted. Fines levied, however, may frequently be an insufficient economic deterrent to the convicted. Moreover, one may only obtain a fine with a prosecution, not an injunction to stop unlawful activity. Frequently, unlawful activity continues while charges are being processed through the courts.

While prosecutions are limited in their effect, injunctions or restraining orders may provide a valuable supplement in halting potential or actual harmful activity. All three statutes (EAA s.29; EPA s.100; OWRA s.74) authorize the Minister to seek injunctions where appropriate, but do not allow any other member of the public to do so when, for whatever reasons, the Minister refuses or simply does not act. In CELA's experience, the injunction is a rarely, if ever, used instrument in the MOE arsenal.

IV. WHAT OUR LAWS ARE LACKING WITH RESPECT TO LIQUID INDUSTRIAL OR HAZARDOUS WASTE CONTROL

It would be impossible to understand the full implications of the South Cayuga decision and the public's reaction to it without also understanding some of the current inadequacies in related areas of the law that have application to industrial waste management.

A. Better Waste Tracking Requirements

The purpose of the waybill regulation is to require the generators and haulers of liquid industrial wastes, as well as the operators of disposal facilities, to provide information to the MOE respecting the nature and quantity of wastes they have from the point of generation to that of ultimate disposal. The November 1980 Maclaren's report indicates that while the program has been of benefit there are many deficiencies in the system. Yet the information

in the Maclaren's report on the waybill's inadequacies is substantially the same as the October 1978 testimony of industry and environmental groups before this Standing Committee.<sup>24</sup> Why has the MOE not acted to modify the waybill regulation in the interim twenty-seven months ?

As noted earlier, the waybill would appear not to apply to industrial or hazardous wastes that are (1) stored or (2) disposed of on the generator's premises (3) are solids or (4) are recycled (e.g. waste oils used for rural road dust control). Indeed, the Maclaren's report tells us that even the waste hauling industry itself:<sup>25</sup>

- felt certain that substantial quantities of liquid industrial wastes were not being reported;
- that certain types of waste exemptions would encourage unscrupulous operators to mix some industrial wastes with sewage and disguise the entire mixture as sewage; and
- that there was a general lack of enforcement of the regulations.

It is time, in CELA's opinion, that the waybill regulation was substantially amended to meet these concerns and minimize the problem of illegal dumping.

#### B. Waste Classification and Identification Requirements

As noted earlier, unless we know which wastes are of special concern our control efforts to deal with such wastes will be inadequate. The MOE has been promising waste classification and related regulations since June 1979.<sup>26</sup> We have yet to see such regulations.

#### C. Provisions for Recovery, Re-use and Reclamation

The Maclaren's report<sup>27</sup> indicates that recovery and re-use of hazardous and

industrial wastes "is an excellent method of reducing the volume of waste requiring treatment and/or disposal while simultaneously conserving feed-stocks." Yet the Maclaren's report indicates that the industry views the economics as continuing to favour disposal. This has also been the testimony of MOE officials in past administrative hearings.<sup>28</sup> As a result, our waste quantities will likely double in just 8 years (See Table 1. 1977-40 million gallons -- 1985-80 million gallons). At the same time, for example, the Maclaren's report notes that in 1979-80 only .2% of such wastes were handled by the Canadian Waste Materials Exchange.<sup>29</sup>

It is clear, therefore, that the industry's commitment to waste reduction and related techniques is marginal at best and that a substantial part of the problem the industry faces is of the industry's own creation. Since it is not at all clear who will pay for the construction of a Crown disposal facility - at South Cayuga or anywhere else - we doubt that industry will be more inclined in future than it has been in the past to reduce industrial and hazardous waste quantities.

We would submit that it is time Ontario law required industry to reduce, reclaim, re-use and recover such wastes to the maximum extent feasible through taxes, fees or related fiscal or economic incentives or disincentives. We would further submit that recovery techniques would become more competitive with disposal if more stringent controls resulted as might arise out of an EAA hearing.

#### D. Compensation of Pollution Victims

As noted earlier, a series of amendments to the EPA passed in December 1979, and intended to assist in the compensation of victims from environmental damage, have yet to be proclaimed in force. The amendments were intended to make the owners and handlers of toxic substances and wastes responsible

for cleaning up spills, restoring the environment to its previous condition and reimbursing victims of spills. Moreover, regulations setting up a corporation to assist in the compensation of victims, and which were authorized under these amendments, have yet to be introduced in draft form for public comment. Such introduction was promised by Dr. Parrott before this Standing Committee in December 1979.<sup>30</sup> The Maclaren's report notes the importance of such legislation to industrial waste management.<sup>31</sup>

We find it hard to understand why the Ontario Government is having such difficulty in proclaiming this law, one which Dr. Parrott described before the Legislature on November 27, 1980 as "the most progressive legislation one could imagine".<sup>32</sup> The Government of Saskatchewan passed and proclaimed legislation similar to Ontario's in July 1980. Indeed, the Saskatchewan legislation was substantially based on Ontario's bill.

CELA submits that these amendments should be proclaimed at once. CELA further submits that the regulations establishing the compensation corporation should now be introduced in draft form for public comment as promised by Dr. Parrott 13 months ago.

#### E. Abandoned Site Controls

In October 1978,<sup>33</sup> and again in June 1979,<sup>34</sup> as part of the province's seven-point waste disposal program, Dr. Parrott announced that he was considering establishment by regulation of a perpetual care fund for clean-up of existing and inactive or abandoned sites. According to a 1979 MOE report on the subject, such a fund could be financed through an industry surcharge, based on type, toxicity or weight/volume of waste disposed.<sup>35</sup>

There is already precedent for such an approach in a proposed 1979 Ontario mining bill under which the gravel industry would be required to contribute to a rehabilitation fund for abandoned pits and quarries.<sup>36</sup>

A perpetual care fund for abandoned or inactive waste disposal sites is an especially important program in light of a recent County Court decision which held that despite the existence of high levels of methane gas escaping from a closed waste disposal site, the Ontario Ministry of the Environment cannot issue control orders under the EPA imposing new obligations on either current or former owners of the site, once the use of the site has ceased.<sup>37</sup>

Despite the province's earlier pronouncements on perpetual care, no such bill or regulation has been proposed to date.

#### F. The Need for a Decision-Making Tribunal

As the committee is undoubtedly aware, under the EAA, the Environmental Assessment Board makes a decision where it is directed to hold a hearing.<sup>38</sup> Under both the EPA<sup>39</sup> and the OWRA<sup>40</sup> the EAB only makes recommendations to the Director of Approvals. Similarly under the recent Order-in-Council filed by the Minister of Environment before the Standing Committee on January 20, 1981, the Ontario Waste Corporation's hearing panel will only make recommendations.<sup>41</sup>

We submit that there are important issues of individual rights and related matters that turn on whether a tribunal makes a decision or only makes a recommendation. Where boards are vested with a statutory power of decision, Ontario law (The Statutory Powers Procedure Act) requires that certain basic procedures be provided to protect the rights of individuals. These protec-



tions include a right:<sup>42</sup>

- to be present;
- to be heard;
- to have counsel at the hearing;
- to have cross-examination;
- to have a decision with reasons, made by the persons hearing the evidence.

Where boards only make recommendations, these basic procedural protections may not apply. This could-and as will be described below- has led to board practices being adopted in this province that have resulted in the public losing confidence in environmental tribunals and their processes. For these and related reasons of public policy the EAA is the preferable instrument under which matters such as South Cayuga ought to be decided.

#### G. Funding of Citizens Before Environmental Tribunals

Dr. Parrott has also advised this committee that the public will be provided an opportunity to examine the details of the South Cayuga proposal and to participate in determining the safety of the site.<sup>43</sup> Yet a frequent complaint of citizens is the glaring disparity between their resources and those of proponents as there has not been any financial assistance provided to intervenors at hearings under Ontario environmental legislation. An April 17, 1980 statement in the Legislature by Dr. Parrott outlining a plan to make funding available for the Environmental Assessment Board to call expert witnesses, apart from being unclear, has also never been implemented. Without adequate funding of intervenors who might otherwise not be able to afford to participate, such hearings, whether under statute or under ad hoc procedures, run the risk of being ignored or simply resembling a modern version of Christians vs. Lions, as one commentator has put it.

Since the province would appear to have an active policy of funding pro-

ponents of projects - proponents who can of course write-off as business expenses all or most of their hearing related expenses - it would appear past due for the province to start funding the taxpayer for proper preparation of waste management hearings.

#### H. Public Participation into Regulation Making

There is no requirement under any piece of Ontario environmental legislation, for the public to have an opportunity to review drafts of proposed regulations before they become law. Yet regulations are frequently the teeth of such laws - determining whether or not they will be effective or not. This is no less true in the area of waste management regulations. As mentioned above the provisions establishing a compensation corporation are to be under regulation and the province's waybill is implemented by regulation.

Increasingly, at the federal level (such as the Clean Air Act) statutes are at least requiring "notice and comment" procedures for draft regulations so that the public may review such rules before they become law.

We would submit that this committee ought to support such public input as well with respect to industrial waste management regulations or exemptive regulations.

#### I. Restraining Orders

As noted above, only the Minister under the EAA, EPA and OWRA has the authority to seek injunctions on any person not complying with those Acts. Like the Minister, citizens need both prosecutions and injunctive remedies. A prosecution may stimulate a higher public profile for those prosecuted, as well as for the relevant administrative agency. However, fines levied may frequently be an insufficient economic deterrent to the convicted. Moreover, one may only obtain a fine with a prosecution, not an injunction to stop unlawful activity. Frequently, under a prosecution unlawful activity continues while charges are being processed through the courts.

V. WASTE FACILITY SITING: THE ROLE OF THE PUBLIC

A. Overview

In attempting to justify the need for the extraordinary actions the Ontario government has taken with respect to the suspension of statutory hearings on the South Cayuga proposal, Dr. Parrott, in his January 20th testimony before this committee and elsewhere in the last two years, has sought to leave the impression that the public - and not industry or government - are acting out of "fear", "mistrust" and "self-interest" when questions are raised about the adequacy of industrial waste proposals.

B. Industrial Waste Proposals Have Been Failing on Technical Not Emotional Grounds

In fact, while both industry and government claim that their proposals should be judged on their technical merits - we would submit that recent industrial and hazardous waste proposals have been found wanting on technical not emotional grounds. In these hearings - usually held under the EPA or OWRA, or both - the tribunal was only looking at one site as will be the case under the South Cayuga Order-in-Council. As a result, the effect of a rejection tends to be much more unsettling to government plans and timetables. Whereas, if the exercise had been carried out under the EAA, where many sites and technologies could be reviewed at once, we might well have the appropriate facilities in place today. Moreover, it has frequently been members of the public, despite the lack of sufficient funding, who played an important role in revealing the technical inadequacy of proposals which if permitted to proceed might later result in environmental health damage or require costly remedial work at public expense. There are at least two proposals which demonstrate these propositions - Nanticoke and Ajax.

1. Nanticoke

In 1978, both the Environmental Assessment Board and the Director of Environmental Approvals for the Ministry of Environment rejected, primarily on technical grounds, an industry proposal to establish a liquid industrial waste treatment and landfill site complex at Nanticoke. Both the Board and the Director rejected the industry proposal on grounds which included:<sup>44</sup>

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

2. Ajax

In October 1980, a panel of the EAB recommended rejection of a regional government proposal to convert a conventional treatment plant to one for the treatment of liquid industrial wastes in Ajax. The technical grounds for the recommended rejection included:<sup>45</sup>

- unsatisfactory planning, site selection and design;
- vulnerability of the site to flooding;
- unsatisfactory provision for inorganic sludge disposal;
- possible elimination of future waste reclamation opportunities due to the treatment process proposed; and
- the absence of on-site soil and groundwater studies.

C. Government Performance

The public has other concerns about industrial waste proposals in addition to technical considerations. These concerns include hearing fairness and

credibility and the record of government enforcement. These are especially of concern because of the nature of these wastes and the threats they could pose to environmental health if not properly controlled. In the long-term, erosion of public confidence in these two areas can, in our experience, undermine any positive measures the government may later initiate.

1. Ajax and Niagara

In both the 1980 Ajax hearing<sup>46</sup> and a 1976 Niagara region sludge transfer station hearing<sup>47</sup> members of the EAB who did not hear the evidence were permitted to change the recommendation of those board members who did hear the evidence. In both cases a recommended rejection became a recommended approval.

Dr. Parrott, himself acknowledged in the Legislature on December 1, 1980 with respect to the Ajax matter that: "I accept that in this instance these procedures did not encourage public confidence".<sup>48</sup>

We would submit that scrapping the EAA hearing process for the ad hoc hearings proposed for South Cayuga is not the way to regain public confidence.

2. Harwich

Another way not to gain public confidence is to blame the public for delaying hearings when the fault lies with the MOE itself. When appearing before this committee on January 20, 1981 Dr. Parrott had some very harsh things to say about the citizens of Harwich and the prospective EAA hearings on the MOE-BFI solidification proposal. He used Harwich as an

example of why he says the government needed to exempt South Cayuga from the EAA process. But the facts are otherwise. If the residents of Harwich did not want a full and fair EAA hearing on that proposal, we're sure Dr. Parrott will be able to explain why a letter was sent to the EAB and to Dr. Parrott in early October 1980 by CELA on behalf of those residents in which financial assistance to pay for experts was asked for in preparation for those hearings pursuant to Dr. Parrott's April 1980 funding policy<sup>49</sup>. If Dr. Parrott did want a full and fair EAA hearing on that proposal, we're sure he'll be able to explain why neither the Board nor Dr. Parrott ever answered that correspondence. In addition, CELA and Harwich Township were first advised by the MOE that the BFI environmental assessment was due in February 1980. Yet it was not submitted to MOE until May 1980. Both CELA and Harwich were then advised by MOE that its notice and review would be out and available by July/August 1980. We have yet to see MOE's review of the BFI environmental assessment. Thus we would submit that the MOE and not the residents were responsible for delay at Harwich.

MOE's record at the existing Harwich Landfill is also not cause for public confidence.

1. For 10 years MOE did not advise either the Township or the residents of the fact that cyanides, PCBs, formaldehyde and other liquid industrial wastes were being dumped<sup>50</sup>;
2. MOE is now allowing the company to continue operating under an expired certificate of approval after the Divisional Court quashed the current certificate.

E. The Prospective Situation at South Cayuga

In light of the above concerns, the government should not be surprised if the proposed ad hoc hearings into the establishment of a major liquid industrial waste facility at South Cayuga engender little public confidence that the government is looking before it leaps or that its ad hoc hearing process will be equitable.

While we don't propose to discuss the merits or demerits of this particular site before this forum, we do understand that Dr. Parrott has advised the committee that the South Cayuga site could be rejected by the technical hearings he has proposed. While this seems unlikely, we do wonder what Dr. Parrott has gained - environmentally speaking - should the Corporation actually reject the South Cayuga site. By placing all his eggs in the South Cayuga basket and by burying what remains of the EAA process, what is Dr. Parrott going to do next year if South Cayuga is rejected and if no other sites have been specifically investigated in detail in the interim? We would submit that if that occurred we may well be back at step one.

We would further submit that rather than expedite the search for an acceptable site and technology the government's actions may well result in greater delays down the line. Such delays could occur from within the corporation and/or the panel itself as a result of its experimentation and confusion with its still emerging hearing and program procedures; delays could occur if we must eventually reject this site and don't have anything else immediately around to even look at; or delays could occur if, as might be possible, any one or more of the three exemption regulations were challenged in Divisional Court.



We would submit that the Committee has an obligation to consider these and related possibilities very carefully and determine whether in fact the public's interest wouldn't be better served by the timely application of the EAA to the problem of industrial wastes. For the information of the committee we are attaching in Appendix I the supporting views of three additional groups with respect to environmental assessmental act hearings.

VI. RECOMMENDATIONS

CELA would recommend to the Standing Committee that it urge the government to:

- rescind or withdraw the 3 exemption regulations issued December 29, 1980 under the EAA, EPA and OWRA pertaining to South Cayuga;
- withdraw the Order-in-Council dated January 14, 1981 respecting the Waste Corporation's ad hoc hearings;
- proceed with the use of the EAA and its hearing process with respect to industrial and hazardous waste management siting in this province;
- provide funding for citizens for such hearings;
- publish in draft form for public comment amended waybill regulations;
- introduce draft legislation with respect to mandatory provisions for waste recovery, reduction, re-use and reclamation of industrial and hazardous wastes;
- proclaim in force Part VIII-A of the EPA and publish in draft form for public comment regulations establishing the compensation corporation;
- introduce draft legislation with respect to establishment of a perpetual care fund for existing, inactive or abandoned waste disposal sites or publish in draft form for public comment regulations on same.

VII. NOTES

1. Federal Task Force on Hazardous Waste Definition. Minutes of the Second Meeting, October 18-19, 1979. Environment Canada, Ottawa.
2. Statement of E. Carey, Chief, Hazardous Waste Management Division, Environment Canada to the Second Meeting of public interest groups and the Canadian Environmental Advisory Council, November 21-22, 1977, Ottawa. See Canadian Environmental Advisory Council. Reports of the First and Second Meetings of Public Interest Groups with the Canadian Environmental Advisory Council. Report No. 7, May 1978. p. 71.
3. Federal Task Force on Hazardous Waste Definition. Report of the Sub-Group on Criteria. Draft Working Paper as adopted by the Task Force. January 15, 1980. Environment Canada. Ottawa.
4. Maclaren. Engineers, Planners & Scientists Inc. Need For Waste Management Facilities And Available Technologies. Annex One. Technical Report to the Ministry of the Environment on the Siting of Facilities and the Management of Liquid Industrial and Hazardous Wastes in Ontario. November 1980.
5. Maclaren. Engineers, Planners & Scientists Inc. The Siting of Facilities and the Management of Liquid Industrial and Hazardous Wastes in Ontario. Report to the Ministry of the Environment, November, 1980.
6. "Old cyanide dump called threat to Niagara-on-the-Lake's wells", The Globe and Mail, March 22, 1979.
7. R. Hanley, "Dumping of Acid Into Arthur Kill Alleged in New Jersey", The New York Times, February 20, 1980.
8. Stan Oziewicz, "Fencing Arsenic-Laden Site Useless, MOH Says", The Globe and Mail. November 14, 1979. (Contamination of Moira River system near Belleville, Ontario feared.)
9. U.S. Environmental Protection Agency. Office of Solid Waste Management Programs. Report to Congress: Disposal of Hazardous Wastes (SW-115, 1974). See also Michael H. Brown. "Love Canal and the Poisoning of America". The Atlantic Monthly. December, 1979.
10. U.S. Environmental Protection Agency. Office of Solid Waste Management Programs. Hazardous Waste Disposal Damage Reports. Washington, D.C., June, 1976. (Poison fumes reported to have overcome workers in a Maryland landfill).
11. F.F. Marcus, "Cleaning Up Toxic Waste: A Long and Dirty Road; Rural Abuse". The New York Times. April 22, 1979. P. E5. (A 19-year-old Louisiana truck driver died from hydrogen sulfide gas formed by the reaction of the alkaline-spent caustic he was dumping into a waste pond with the acid waste already there.)

12. Ben A. Franklin, "Cleaning Up Toxic Waste: A Long and Dirty Road; Urban Neglect". The New York Times, April 22, 1979. P. E5. (10,000 drums of reactive chemical waste burst into explosive flame forcing the closing of a bridge and the sending of 43 firemen to hospitals for treatment near Philadelphia, PA.).
13. Supra note 2.
14. Raymond M. Robinson. Assistant Deputy Minister, Environmental Protection Service, Environment Canada. Text of an address given at the Canadian Environmental Law Research Foundation Regulation Conference. January 22, 1980. Toronto, Ontario.
15. S.O. 1975, c.69.
16. S.O. 1971, c.86 as amended.
17. R.S.O. 1970, c.332 as amended.
18. Hon. William G. Newman, Ontario Minister of the Environment. "Remarks on Ontario's Environmental Action Plan". See Proceedings of the Annual Conference of the Pollution Control Association et al. April 20-23, 1975. Toronto, Ontario.
19. See, for example, Ontario Ministry of the Environment. Green Paper on Environmental Assessment. September, 1973; and David R. Young, Senior Environmental Planner, Environmental Approvals Branch, MOE. "Environmental Assessment - Better Decisions Through Better Planning". Background Notes for Remarks to "Environmental Law: A One Day Workshop on The Environmental Assessment Act". Sponsored by the Canadian Bar Association (Ontario). November 5, 1976. Toronto, Ontario.
20. O.Reg. 1122/80. South Cayuga Sewage Works and Waste Disposal Sites. Regulation made under The Environmental Assessment Act, 1975. Dated December 29, 1980.
21. O.Reg. 1120/80. South Cayuga Sewage Works. Regulation made under The Ontario Water Resources Act. Dated December 29, 1980; and O.Reg. 1121/80. Crown Waste Disposal Sites. Regulation made under The Environmental Protection Act, 1971. Dated December 29, 1980.
22. O. Reg. 926/76. Transfers of Liquid Industrial Waste.
23. The Environmental Protection Amendment Act. S.O. 1979, c.91.
24. See generally Standing Committee on Resources Development. Legislative Assembly of Ontario. Hearings on Liquid Industrial Wastes. October 1978.

25. Supra note 4.
26. See, for example, Leonard F. Pitura, Waste Management Branch, Ontario Ministry of the Environment. "Ontario Industrial Waste Disposal - Guidelines, Regulations and Related Activities", a speech delivered at the Proceedings of the 26th Ontario Industrial Waste Conference. June 17-20, 1979. Toronto, Ontario.
27. Supra note 4.
28. See, for example, Ontario Environmental Assessment Board. Report on the Public Hearings on the Nanticoke Waste Management Limited Waste Disposal Site for Liquid Industrial Waste Treatment and Landfill Facilities. Summary of the testimony of E.W. Turner, Ontario Ministry of the Environment. April 20, 1978.
29. Supra note 4.
30. Testimony of the Hon. Harry Parrott, Minister of the Environment, before the Standing Committee on Resources Development. Legislative Assembly of Ontario on Bill 24 (EPA Spills Bill amendments). pp. R-1000-2, R-1005-1, 2, 3 and R-1010-1. December 5, 1979. Toronto, Ontario.
31. Supra note 4.
32. Hansard. Legislature of Ontario Debates. Fourth Session, 31st. Parliament. November 27, 1980. Comments of Dr. Parrott at page 4694.
33. Hon. Harry Parrott, Minister of the Environment. Statement to the Standing Committee on Resources Development on "A Seven-Point Program for the Disposal of Liquid Industrial Waste". Legislative Assembly of Ontario. October 17, 1978. Toronto, Ontario.
34. Hon. Harry Parrott, Minister of the Environment. "Liquid Industrial Wastes - Beyond the Seven-Point Program". A speech reported at the Proceedings of the 26th Ontario Industrial Waste Conference. June 17-20, 1979. Toronto, Ontario.
35. Ontario Ministry of the Environment. Perpetual Care for Waste Management Facilities. Interim Report. August 1979.
36. Bill 127. The Aggregates Act, 1979 (Ontario). Part IV. Abandoned Pits and Quarries. First Reading, June 14, 1979.
37. The Director, Ministry of the Environment v. Mississauga (1979) 9 CELR 24 (Ontario County Court).
38. See, for examples, ss. 12, 20 and 24.
39. See, s.33d(3b).

40. See, s.9a(12b).
41. See Order in Council 87/81 ss. 3,4. Dated January 14, 1981.
42. For a general description of these principles see D.W. Mundell, Q.C., Manual of Practice on Administrative Law and Procedure in Ontario under The Statutory Powers Procedure Act, 1971 and Related Statutes, February 1972.
43. Testimony of the Hon. Harry Parrott, Minister of the Environment, before the Standing Committee on Resources Development. Legislative Assembly of Ontario on the Annual Report, 1978-79 Ministry of the Environment. January 20, 1981. pp. 38 and 39.
44. Supra note 28. Findings of the Board. See also Decision of the Director of Environmental Approvals, Ontario Ministry of the Environment. Re Nanticoke Waste Management Limited.(1978) 7 CELR 129. Toronto, Ontario.
45. Ontario Environmental Assessment Board. Report on the Public Hearing Concerning an Application By the Regional Municipality of Durham for Approval of a Proposed Liquid Industrial Waste Treatment Facility - Town of Ajax. October 1980.
46. Ontario Environmental Assessment Board. Certification that portions of the draft report were varied by the full EAB by resolution. Signed by T.M. Murphy, Board Secretary. November 20, 1980. Toronto, Ontario.
47. See Ontario Environmental Assessment Board. Report on the Public Hearing on the Application by the Regional Municipality of Niagara for a waste disposal site (Sludge Transfer Lagoons) in the City of Niagara Falls. May 27, 1976. As revised by the full EAB.
48. Hansard. Legislature of Ontario Debates. Fourth Session, 31st Parliament. December 1, 1980. Comments of Dr. Parrott at page 4770.
49. Correspondence from Toby Vigod, CELA to T.M. Murphy, Secretary, Environmental Assessment Board. October 3, 1980. Toronto, Ontario.
50. See, for example, Rudy Platiel, "In Harwich, ministry's name is pure poison", The Globe and Mail, May 23, 1980.
51. Rudy Platiel, "Court quashed permit, so province lets dump operate with its old one," The Globe and Mail, December 6, 1980.

APPENDIX I



CONSUMERS' ASSOCIATION OF CANADA (ONTARIO)

R. R. 2  
Ancaster, Ontario  
L9G 3L1

December 1, 1980

The Honourable William G. Davis, QC  
Premier of Ontario  
Legislative Buildings  
Queen's Park  
Toronto, Ontario  
M7A 1A2

Dear Mr. Davis:

On behalf of the Board of Directors of the Consumers' Association of Canada (Ontario), I wish to express our unanimous opposition to the decision by the Government of Ontario to proceed with the establishment of a liquid waste disposal complex in South Cayuga Township without the benefit of public hearings concerning the suitability of the site, in accordance with the Environmental Assessment Act.

We feel that the Government of Ontario has a moral responsibility to uphold the laws of the Province. We cannot accept the explanation that pressures of time make it essential to bypass the hearings. In the first place, the need for a disposal site did not arise overnight; the Government should have made a site selection earlier, so as to allow time for the public hearings provided for in the legislation. Secondly, if the Government is to be able to plead pressures of time as justification for not adhering to regular procedures, then we must wonder what is the use of having such safeguard legislation as the Environmental Assessment Act.

Public hearings would enable the citizens of Ontario to learn the facts concerning potential adverse impact of the waste dump facility on the surrounding lands and waters. If the South Cayuga site is indeed the most suitable location, the hearing process should bring this out, and increase public confidence in the Government's site selection procedures.

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As representatives of Ontario consumers, we lack the expertise to decide the merits of the South Cayuga site. We hope it is a safe area for disposal of toxic wastes; without public hearings we do not have ready access to facts on which to base a judgement. We do, however, feel strongly that it is not in the consumers' interest to have the Government of Ontario set itself above legislation designed to protect citizens of Ontario.

Sincerely yours,

*Miriam P. Kramer*

Miriam P. Kramer  
President

cc: The Hon. H. C. Parrott,  
Minister of the Environment

Resolution Re: SOUTH CAYUGA INDUSTRIAL WASTE DISPOSAL  
SITE

Adopted December 4, 1980  
By the Annual Convention  
Christian Farmers Federation of Ontario

WHEREAS the Province of Ontario has moved to build an industrial waste disposal facility in the South Cayuga area.

THEREFORE BE IT RESOLVED

THAT we object to the intention to take land from local property owners without a hearing under the Expropriations Act;

THAT we object to the approval of the site without a hearing under the Environmental Assessment Act;

THAT we object to the use of agricultural land for the disposal of industrial waste;

THAT we endorse the use of a crown corporation for the management and development of a waste management site;

THAT we urge our government to support the recycling of wastes; and

THAT we evaluate whether it is really necessary to create all these wastes in order to have a stewardly life-style in Ontario.

Federation of Ontario Naturalists Position.

Motion B-80-153.

December 13, 1980.

"That the F.O.N. support the government's intent to build an adequate facility for the treatment and disposal of toxic liquid waste materials.

We urge the government to apply the Environmental Assessment Act to this project as expeditiously as possible."

Carried.

by F.O.N. Board and Executive.