



THE GREAT LAKES UNITED

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an international coalition to conserve and protect the Great Lakes/St. Lawrence River ecosystem

winter 1994-95

Citizens force Ontario to scrap hazardous waste proposal

by John Jackson, Coordinator

Ontario Toxic Waste Research Coalition

The people of West Lincoln, Ontario, have been in a state of elation since November 23, 1994. On that day a provincial hearing board refused to approve the Ontario Waste Management Corporation's application to build a hazardous waste landfill and incinerator designed to handle 300,000 tonnes of waste a year.

For more than ten years the dark cloud of the OWMC proposal has been hanging over this rural community fifty-five kilometers south of Hamilton in the Niagara Peninsula.

The OWMC, a provincial government agency, appealed the board's decision to the provincial cabinet, but in February the cabinet rejected the appeal, finally killing all plans by the provincial



Ontario Hazardous Waste Coalition members celebrate. From left, Clifford Gracey, John Dykstra, Marilyn Gracey, Doug Hodgson, Edith Hallas, and GLU President John Jackson.

government to build a hazardous waste landfill or incinerator.

In February Ontario announced a new direction for management of the province's industrial hazardous wastes focusing on the 3 Rs—reduce, reuse, recycle—and on pollution prevention and private-sector innovations developed with provincial support. The strategy:

- 1) Development of product stewardship initiatives by industry,
- 2) Government expenditure of \$30 million over the next five years on hazardous waste reduction, with a particular emphasis on waste reduction at source,
- 3) Funding support for private sector development of new waste reduction and treatment technologies, and
- 4) Development of pollution prevention

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The Environment and the "Contract with America"

Unfunded mandates

by Reg Gilbert

Both houses of Congress overwhelmingly passed separate "unfunded mandates" legislation in late January and early February, in an attempt to force Congress to pay the costs of laws it imposes on state and local governments.

Environmentalists oppose the bills because they are likely to lead to a severely reduced federal role in setting environmental standards.

Among the laws affected will be most new environmental protection measures, which are often enforced by states, counties, and cities. Laws already passed will generally not be affected.

The bills will shortly go to a conference of the two houses to iron out minor differences between them. President Clinton has said he will sign the legisla-

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Takings

by David Mahony

Great Lakes United Field Coordinator

On vote of 277 to 148 the Republican-dominated U.S. House of Representatives in early March passed the Private Property Protection Act, which would require the government to pay for regulation-related losses of 20 percent or more in the value of a landowner's environmentally sensitive property.

The bill applies to losses caused by wetland, endangered species, and water use regulations. Government compensation payments are to be taken from the budgets of the agencies issuing the applicable regulations. Losses calculated to exceed 50 percent would require purchase of the entire property. Agencies will be required to bargain with any property owner who files a claim for

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Risk assessment and cost-benefit analysis

by David Mahony

If the House of Representatives has its way, all U.S. regulations will soon have to be justified in great scientific and financial detail.

On a vote of 286 to 141 the House passed the Risk Assessment and Communication Act in late February. The act would subject most new health, public safety, and environmental regulations to a 23-step analysis before they could be put into effect.

The vote in favor of the bill was just four short of the number needed to override a veto already hinted at by President Clinton. Senate prospects for the legislation are uncertain, with several versions now being considered in committee. Majority Leader Bob Dole (R-Kansas) has introduced regulatory reform legislation, S.343, very similar to that passed in the House.

The House bill would apply to all new regulations estimated to cost industry \$25 million or more. The bill would not mandate review of old regulations, but would apply to new regulations issued under the authority of old laws.

The bill vastly expands the role of judicial review in the regulatory process, extending it into the period before regulations are issued. Many of the steps in the analytic process could be challenged in court as they are completed, making it possible for affected companies to delay introduction of most regulations almost indefinitely.

The House rejected an amendment that would have sent existing regula-

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Environment Canada budget cuts devastating

by John Jackson

Canada's new federal budget, announced at the end of February, will result in dramatic reductions in the ability of Environment Canada to work to clean up and protect the Great Lakes.

Over the next three years, Environment Canada's budget will be reduced from its present \$737 million to \$503 million—a more than 30 percent reduction without counting inflation. Over the same period, staffing will be reduced from the current 5,700 people to 4,300—a 24 percent reduction.

The targets in the Canada-Ontario Agreement, which was signed with great fanfare last July, will be "reassessed." Significant changes this budget makes in COA include:

- Contaminated site cleanups will be "deferred"
- PCB destruction goals will be "deferred"
- Wetlands acquisition will be "deferred"
- Targets for reductions in levels of persistent toxic pollutants, development of ecosystem health indicators, conservation of wildlife species, and demonstration of new technologies to clean up municipal wastewater and contaminated sediments, will all be "stretched" one or two years.

The cuts to Canada's budget will result in a greater than 50 percent reduction of funding for the Hazardous Waste Management Branch. This will be achieved by dropping several programmes, including promotion of waste

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Join us in Sarnia, Ontario
for Great Lakes United's
13th Annual Meeting
"Transition to a Clean Economy"

June 2 to 4, 1995

See article on page 2 for details



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... Ontario hazardous waste facility killed

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tion legislation.

OWMC's flawed proposal

The OWMC's landfill was its downfall. Seven years ago the OWMC knew that its landfill would pollute the surrounding groundwater with chlorides. The agency's own evidence at the hearing showed that the landfill would eventually contaminate the groundwater under 1,200 hectares of farmland. The groundwater would remain unfit for human use for thousands of years. Without changing its proposal, the OWMC relentlessly went ahead to a hearing on the landfill that extended over four years. The OWMC was willing to knowingly become a major polluter and write off this groundwater.

After a major uproar and disbelief that a crown agency could act in such an environmentally irresponsible way, the OWMC tried to fix up its landfill plan. As the hearing was almost done in late 1992, the OWMC proposed to extract the chlorides from the landfill and find alternate uses for them or put them into a deep well. But the OWMC never

proved these options were workable.

In its November decision the hearing board first condemned the original proposal ("We would not have sanctioned a proposal that involved the contamination of groundwater for thousands of years"), then rejected the OWMC's 1992 alternative ("We cannot accept the conclusion... that the OWMC system is the preferred waste management system"). The hearing board was particularly interested in exploring salt mines as a disposal option.

People's victory

For the people of West Lincoln the hearing board's denial of the application was a great victory. Newspaper headlines such as "Victory for the little people: Blue collar crowd outbattles the suit set," and "Phenomenal win celebrated," greeted the decision. Many people's lives had been disrupted for years as they fought to stop this proposal.

Opposition to the proposal was led by the Ontario Toxic Waste Research Coalition, a coalition of agricultural, citizen, and environmental groups based in the Niagara Peninsula. The coalition

had long insisted that the OWMC proposal was simply "a process that collects contaminants and redistributes them."

The coalition persistently pushed for a modern waste management system that emphasizes the three Rs with a particular emphasis on reduction in the use of toxic chemicals. The coalition's major fear was that building the OWMC's hazardous waste disposal plant would send the message to industry that it is okay to create hazardous wastes. Indeed, they feared the province would even come to want the creation of hazardous waste in order to keep its half-billion-dollar plant from becoming a burden on Ontario taxpayers.

In return for their opposition to the OWMC proposal, the members of the coalition were repeatedly accused by OWMC President Donald Chant of selfishness and "perpetuating environmental harm." But the hearing board's decision shows that official stubbornness is very wasteful. After 1987 the OWMC spent seven years and approximately \$100 million of taxpayers' money—time and money that should have been spent on developing and implementing a more serious solution to Ontario's hazardous waste problem.

Come to GLU's 13th annual meeting in Sarnia, Ontario!

Great Lakes United will hold this year's annual meeting the weekend of June 2 to 4, in Sarnia, Ontario, one of Canada's great chemical manufacturing centers. This year's theme is "Transition to a Clean Economy."

The meeting will open Friday afternoon with a tour of Sarnia's Dow Chemical facility, hosted by the Communication, Energy, and Paperworkers' union.

Friday evening will feature a session we call "Hot Spots and Bright Lights," in which delegates and guests take a turn

at the microphone to describe their "hot" issue and point out its locale on a large map of the Basin. We hope guests will put up short descriptions of their issue on a "stick-it" note, with their name and group, on the wall surrounding the map so people can read them throughout the weekend and follow up with each other on particular areas of interest.

The Saturday morning session will open with a panel presentation and discussion of the Wise Use/Share and takings/compensation issues as they apply

to the Great Lakes.

Saturday afternoon will begin with strategy sessions for GLU's four task forces—Clean Production, Biodiversity and Habitat, Healthy Communities, and Water Resources. The idea is to put some grassroots muscle behind the various task force activities planned for the rest of the year.

Later Saturday afternoon we will hold a series of concurrent workshops on issues, such as Basin nuclear waste trafficking and Basin toxic chemical health effects, and on skills, such as media message delivery and electronic bulletin board and mail training.

Saturday night's banquet will feature a speaker on the transition to a clean economy, followed by a pulse-pounding dance into the wee hours.

Sunday morning and early afternoon, as usual, will be devoted to reports on the previous day's task force activity, reports by GLU officers, and elections.

We are hoping that this year's annual meeting will give a substantial boost to our organizing efforts for the next year and provide a networking forum for the Basin's many activists in this time of extraordinary threat to human, wildlife, and environmental health.

Please attend and invigorate the coalition effort that is Great Lakes United. With 1995 promising to be a watershed for environmental protection in both the United States and Canada, our work has never been more important.

Join Great Lakes United!

Unless someone like you, Cares a whole awful lot,
Nothing is going to get better, It's not! (The Lorax, by Dr. Seuss)

Sure! Somebody's got to care! Sign me up as an:

☐ Individual member (\$20) ☐ Family member (\$30) ☐ Sustaining member (\$50) ☐ Organizational member (\$100)
(All members get a year of the newsletter—four issues. Sustaining and organizational members also get big hugs!)

Name: _____

Affiliation: _____

Address: _____

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Send memberships to Great Lakes United at
Buffalo State College, Cassedy Hall, 1300 Elmwood Ave., Buffalo, New York, 14222

P R E S I D E N T ' S M E S S A G E

Karen Murphy has left Great Lakes United. She has moved with her husband, Charlie Tebbutt, to Eugene, Oregon. We miss her.

Karen made an incredible contribution to GLU during the five years she worked with us. As a field coordinator for her first four years with the organization, Karen was responsible for much of our work with Basin citizens' groups. She is first and foremost an activist who is convinced that grassroots action is the way to make fundamental change. Thus Karen's role as field coordinator was always dearest to her heart.

This year, when GLU needed someone to be acting executive director, Karen

generously shifted her talents to the strenuous, often mundane, yet anxiety-ridden work of keeping us going and preparing us for the coming year.

Karen was remarkably successful at achieving her goal of getting us onto a firm footing for 1995. Every grant application that she prepared and submitted was successful. She straightened out our financial procedures. She played a central role in moving us forward in our strategic plan for the coming years.

She did all this with unmatched generosity and dedication. She worked outrageously long hours as our acting executive director this year, but did all of this for a part-time field coordinator's

salary. Undoubtedly, our successes in the coming years will be a product of Karen's gift to us.

Karen infused GLU with her energy and outgoing spirit. We all are confident that that spirit will radiate all the way from the West Coast back to us. Karen, we wish you well.

As Karen leaves, we welcome Burkhard Mausberg as our new executive director. Details on his background can be found elsewhere in this issue. We are confident that Burkhard brings us the energy, the skills, and the knowledge of Great Lakes issues and organizations that are essential for GLU at this time.

—John Jackson

Great Lakes United

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An amendment limiting the bill's risk assessment requirements to regulations costing industry at least \$100 million was also defeated. According to *USA Today*, if the amendment had passed, the bill would have applied to just those 10 percent of regulations that account for 97 percent of industry's regulatory costs. The House's unwillingness to adopt the \$100 million threshold appears to support environmentalists' charges that the aim of the bill is not to reduce costs to industry but rather to use paperwork to make it almost impossible to issue any regulations at all.

Environmental Protection Agency Administrator Carol Browner said of the bill, "If we want to repeal the Clean Air or Clean Water acts, that should be debated openly in the light of day, not snuck past people using code words."

The new process for reviewing regulations would take three forms. *Risk assessment* is a process whereby a public

All three methods are currently used by federal agencies that issue protective regulations, but the agencies are not required to do so, nor are the results of such analyses binding.

The new risk assessment system would replace current health-based standards for regulations. Such standards set specific goals such as a safe level for a given contaminant that may be found in a region's environment. The change under the House bill would be dramatic. Air-quality regulations for lead, for example, are currently set by the determining how clean the air must be to protect people from lead poisoning. Current environmental regulations have removed 98 percent of lead pollution from the air at a cost of about 1 cent per gallon of gasoline. Lawyers for the Environmental Defense Fund estimate that under the House bill's risk assessment provisions, the lead regulations that brought about this achievement could not have been issued.

Cost-benefit analysis can also lead to serious problems. It can be very difficult

National cost cap

This bomb ticking in the heart of the bill may be the most revealing of its writers' intentions—it dispenses entirely with consideration of offsetting benefits. As the *New Yorker* summarized this approach to cost analysis:

Peer review

Peer review of proposed regulations can be useful to regulators, but it can also be unnecessary and easily abused. The

In general, the House risk assessment bill will cause bureaucratic and budgetary paralysis of the government regulatory system (see chart). Few regulations could ever be issued under the procedures in the House bill, and those few would be put on the books only after great cost and delay.

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The direct effect of the mandates bills is simply to put members of Congress on record specifically supporting the imposition of a bill's costs on state and local government. The indirect effect is to make them less willing to do so.

The law does not effect mandates imposed on private business.

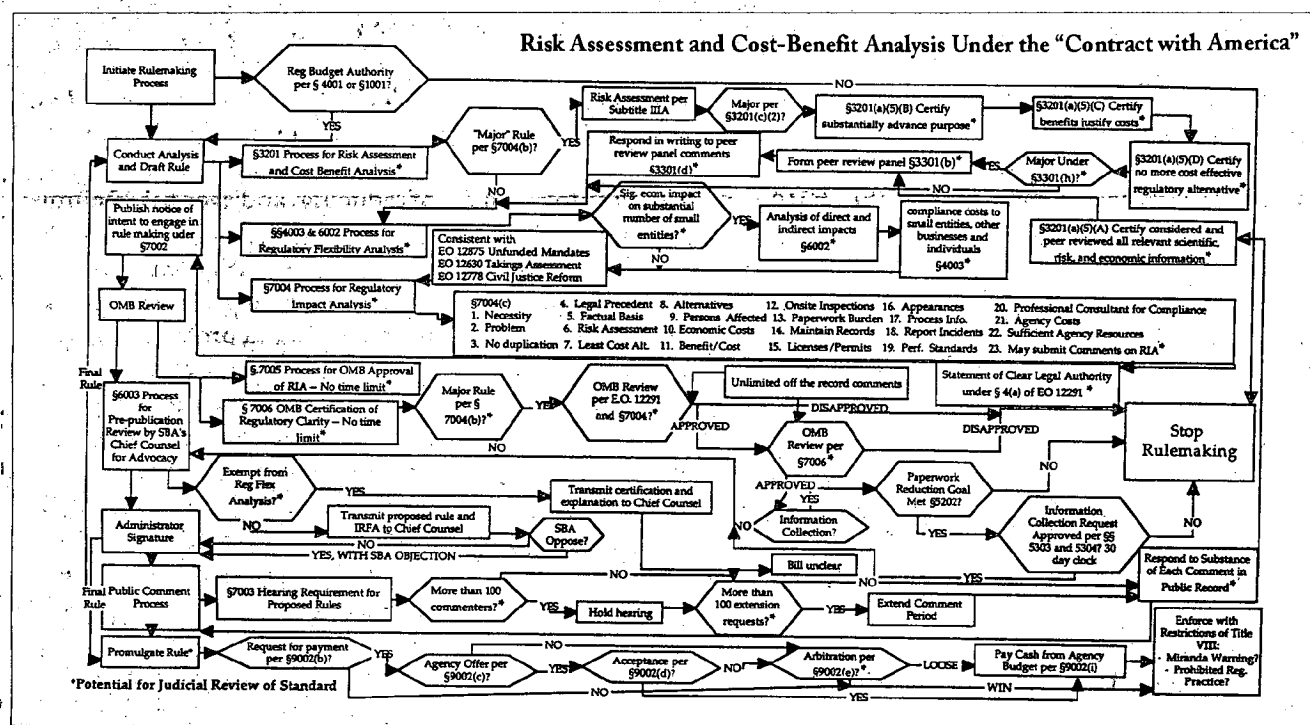
The unfunded mandates legislation is one of the few major elements of the Republican "Contract with America" to garner strong bipartisan support, passing 360-74 in the House, with 130 of that body's 196 Democrats in support, and 86-10 in the Senate, with 34 Democrats in support. Sen. John Glenn, D-Ohio, a sponsor of the 1990 legislation that led to the Great Lakes Initiative, sponsored the Senate version of the bill.

Environmentalists oppose the bill because it raises additional bureaucratic hurdles to passage of protective measures, which in any case has been increasingly difficult to pass in recent years.

First, the mandates legislation tends to elevate concern about cost over concern about detrimental health and environmental effects. Mandates provisions would be triggered when the five-year costs of proposed legislation go over \$50 million, but, perniciously, those estimated costs cannot be balanced against estimated economic or other benefits.

Second, cost estimates can often be difficult to assess, making them subjective and unreliable. The director of the nonpartisan Congressional Budget Office, which will be responsible for coming up with the estimates, declared in a letter to one senator that some mandated costs would be "very difficult if not impossible" to estimate because "legislation is often broad and lacks the specifics needed to project future impacts at the time the bill is being considered."

Finally, the mandates law could impede beneficial legislation by enabling such tactics as the introduction of costly, unrelated amendments intended mainly to gum up the legislative process. This consequence of the mandates legislation, which would be particularly effective in the Senate, was criticized by Sen. Glenn as having the potential for "setting up a whole new filibuster process."



Welcome to 1995! I started as GLU's executive director in December, taking over from Karen Murphy, who has moved to Oregon. In just eight short months as acting director, Karen achieved a long list of organizational goals. Karen's shoes will be difficult to fill, and she is already severely missed.

GLU's work has been reoriented around our four task forces, and they are developing a busy agenda.

Our Clean Production Task Force is already in high gear. We just have hired a field coordinator to organize a multi-organizational campaign to target elimi-

Our Healthy Communities Task Force is collecting and distributing examples of successful activities associated with the Basin's 43 Remedial Action Plans. In coordination with the Institute for Conservation Leadership, GLU will also be conducting training sessions for the RAP teams in several of the Areas of Concern. This task force is coordinated by our long-time Windsor director, Mary Ginnebaugh.

Our Biodiversity Task Force is starting to fight off the "wise use" movement, and is organizing a conference on Great Lakes fisheries for December of this year. We have hired David Mahony, an activist with a degree in law fresh from Vancouver as field coordinator to staff this task force.

Finally, our Sustainable Water Use Task Force is planning a background

In other news, Great Lakes United has hired a new office manager. Donna Neal is the person behind the friendly voice you hear when you call the Buffalo office. Donna has thirty years' experience managing office environments and she has had an interest in GLU's activities for some time. Donna has already proven herself invaluable and she is becoming a wonderful asset to GLU.

On a final note, this is probably the last time GLU's newsletter will look the way it has for the last years. We are planning some major changes to the newsletter and hope that you fill out the survey elsewhere in this issue so we can include your suggestions for a new GLU newsletter.

Hope to see you around the Lakes in the coming months.

—Burkhard Mausberg

GLU BIODIVERSITY & HABITAT TASK FORCE

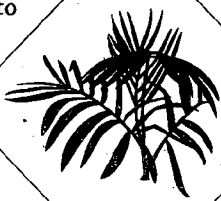
This year the Biodiversity and Habitat Task Force plans to focus on the "Wise Use" and "Share" movements, the broad terms for the American and Canadian groups working to eliminate laws that restrict private property owners from using their land in ways that damage or destroy wetlands and the habitat of threatened species.

We plan to identify the major Basin groups and activists pushing the Wise Use/Share agenda in Ontario, Québec, and the Great Lakes states, develop campaigns that counter their

efforts, and enlist interested Basin environmentalists, conservationists, hunter/anglers, and other concerned citizens in our various activities.

One way you can help is by contacting us if you have an interest in this effort.

We'd like to send you a survey and put you on our list to receive educational materials, message development information, and possibly even media strategy and training. Please contact us by faxing a message to (716) 886-0303, or calling David Mahony at (716) 886-0142.



...takings

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compensation. The process can begin without documenting the claimed loss.

Environmentalists object to the bill because the compensation payments and the legal costs of disputed estimates of decreased value may effectively end enforcement of the wetland and endangered species acts.

Environmentalists may not be alone in their opposition to the bill. Last year Rep. William Tauzin (D-Louisiana) and Sen. Richard Shelby (R-Alabama) sponsored a bill to compensate property owners for a 50 percent diminution in property value due to wetlands or endangered species protection. Thirty-three state attorneys general, including those of Minnesota, Wisconsin, Michigan, Indiana, Ohio, and New York, responded by sending a letter to Congress urging the proposal's rejection. The National

League of Cities echoed that opposition this December.

The bill's prospects in the Senate are clouded by its likely estimated costs (still to be calculated by the Congressional Budget Office), if those costs are calculated assuming that all the affected environmental and water use laws are fully enforced. Under the 1990 Budget Act, a bill's costs must be offset by accompanying tax increases or spending cuts. The requirement can be waived. The House has done so, but a budget waiver requires sixty votes in the Senate, and the Republicans hold only fifty-four of that body's one hundred seats.

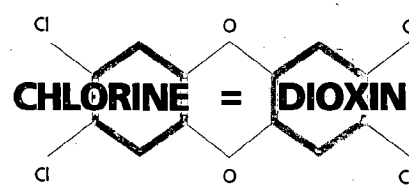
Some of the Senate "takings" proposals, as the compensation legislation is known, such as the bill proposed by Majority Leader Bob Dole (R-Kansas), go beyond the House legislation in requiring voluminous "property rights impact statements" every time an agency contemplates regulatory action.

GLU CLEAN PRODUCTION TASK FORCE

The first project of the Clean Production Task Force will be a "Little Zeros" campaign. We hope to move beyond the grand idea of Basinwide zero discharge of persistent toxic substances. It is time to work to eliminate specific persistent toxics from specific sources. Examples include ending a major source of airborne dioxin and heavy metals by stopping municipal waste incineration and phasing out the use of toxic perchloro-

ethylene in dry cleaning.

We will begin the campaign with a "Little Zeros Bus." May 6 we will hold a one-day workshop in Ann Arbor, Michigan, with Great Lakes activists strategizing on various "little zero" efforts. The next day we will pack the resource people into a bus and drive to



Hamilton, Ontario, to do the same thing.

The task force is also writing a report on transition planning for the International Joint Commission. The report, a case study in virtual elimination, will focus on ways to end Basin dioxin discharges. Part of the report will concentrate on the phaseout of the manufacture and use of polyvinyl chloride or PVC. Call the GLU office sometime in April for a copy of the report.

...Canada budget

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reduction practices, development and maintenance of waste inventories, siting of mobile PCB destruction facilities, and cleanup of high-risk orphan contaminated sites.

These cuts are devastating news for all those citizens devoting countless volunteer hours to developing and implementing those programmes. The well-being of the Great Lakes and all the inhabitants of the Great Lakes Basin cannot afford to have targets that were already too far into the future put off even longer or dropped entirely.

GLU Newsletter Survey

Dear Reader: We are planning changes in the newsletter and would very much like your input so that it can better meet your needs. Could you take a moment to answer a few questions about what changes you'd like to see?

Areas of newsletter interest (please check only 3):

- ☐ Biodiversity/habitat
- ☐ Cleanups
- ☐ Exotic species
- ☐ Biological health effects
- ☐ Government activities
- ☐ Grassroots activities
- ☐ Nuclear contamination
- ☐ Toxics/clean production
- ☐ Use/control of Basin water
- ☐ Winter navigation
- ☐ Other _____

Preferred newsletter content (check one in each group):

- ☐ Mostly news, some analysis
- ☐ Mostly analysis, some news
- ☐ More, shorter articles
- ☐ Fewer, longer articles
- ☐ Articles same length as now
- ☐ More graphics and photos
- ☐ Fewer graphics and photos
- ☐ Basic events calendar
- ☐ Extended events calendar
- ☐ Basic publications list
- ☐ Extended publications list

Preferred newsletter format:

- ☐ Current tabloid-type size
- ☐ 8"x11" stapled booklet-type
- ☐ Current paper
- ☐ Newsprint
- ☐ Current black print + blue on some pages
- ☐ All pages black + blue
- ☐ All pages black

Your background:

- ☐ Conservation employee
- ☐ Environmental activist (volunteer)
- ☐ Environmental activist (paid)
- ☐ Hunter/angler
- ☐ Interested citizen
- ☐ Local government employee
- ☐ Policymaker
- ☐ Regulatory employee
- ☐ Sewerage employee
- ☐ Other _____

What single aspect of the newsletter is most in need of change? _____

What single aspect of the newsletter is best left as it is? _____

How often should the newsletter be produced? _____

Please comment in general on how you think the newsletter could be improved: _____

Please fax your response to (716) 886-0303, or mail it to Great Lakes United, Buffalo State College, Cassety Hall, 1300 Elmwood Ave., Buffalo, New York, 14222. Look for the survey findings in the next issue.

CEPA: WHAT'S WRONG, HOW TO FIX IT

The Canadian Environmental Protection Act is the most important of Canada's federal environmental laws, but since its inception, environmentalists from across Canada have had major concerns about its scope and effectiveness.

CEPA is now being reviewed by Parliament's Standing Committee on Environment and Sustainable Development. This gives Canadians an opportunity to present their views on CEPA's problems and how it might be changed to improve Canada's environment and the health of its citizens.

To this end the members of the Toxics Caucus of the Canadian Environmental Network have studied CEPA closely and last year developed background papers on various parts of the law. These papers were collected in the 200-

page *Reforming the Canadian Environmental Protection Act*, which was condensed, with some emendations, in the 27-page *CEPA: An Agenda for Reform*, both released late last year and endorsed by over fifty nongovernmental groups, including Great Lakes United.

The following is an adaptation of the condensed report.

INTRODUCTION

Two fundamental themes pervade the issues presented here, and should provide the framework for Parliament's review:

1) The need for strong federal leadership. The CEPA review is of critical importance because it will provide an opportunity not only to evaluate CEPA, but also to assess the state of federal leadership

in the protection of the Canadian environment. It is incumbent on the standing committee to urge the federal government to affirm its interest in Canada's environment and ensure a minimum level of environmental quality for all Canadians; and

2) The precautionary principle. This concept is defined in the Rio Declaration, a statement of principles issued by the world's nations in an unprecedented 1992 summit: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

In order to implement the precautionary principle, two points should be considered during the CEPA review:

a) The burden of proof, more



FEDERAL ROLE IN ENVIRONMENTAL PROTECTION

What CEPA says. A number of mechanisms in CEPA are intended to further federal-provincial cooperation in environmental management. These mechanisms include equivalency agreements (where CEPA regulations would not apply if a province has already implemented "equivalent" provincial regulations), administrative agreements (where both the federal government and a province administer

CEPA provisions in partnership), and intergovernmental agreements (where administrative and enforcement duties are delegated to a province).

What's wrong with CEPA. The federal government has traditionally taken a narrow interpretation of its potential constitutional authority in the field of environmental management. The problems in this approach could be amplified in the "harmonization" initiative currently underway under the auspices of the Canadian Council of Ministers of the Environment.

In the absence of a strong federal role, the harmonization process among the provinces may lead to a "race for the bottom" and the adoption of "lowest common denominator" national standards. It is also possible that the process could result in constraints on the ability of provinces to raise standards independently, and to adopt innovative policy approaches.

Minimum standards of environmental quality must be achieved for all Canadians, while providing individual jurisdictions with the freedom to adopt more stringent standards if they wish to. This will require the federal government to

demonstrate leadership in the environmental field. The federal government must affirm its interest in protecting Canada's environment, and make it clear that it will intervene to the full extent of its jurisdictional capacity when it feels such actions are necessary.

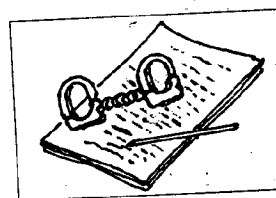
What needs to be changed. The federal government must:

1) Affirm its commitment to be a leader in shaping appropriate environmental law and policy in Canada. This leadership role should be included in the CEPA's preamble;

2) The process for developing and implementing intergovernmental agreements facilitating federal-provincial cooperation must be improved. The public should be allowed to review them;

3) All agreements, once concluded, should: a) be published in Part II of the *Canada Gazette*, b) require annual reporting to Parliament, c) have sunset clauses requiring periodic review, and d) permit the federal government to retain the right to prosecute under federal statutes if an agreement exists.

Source: "The Constitution, Federal-Provincial Relations, Harmonization and CEPA," prepared by the Canadian Institute for Environmental Law and Policy.



ENFORCEMENT AND ADMINISTRATION

What CEPA says. Environment Canada and the Department of Justice share authority for enforcing CEPA and its regulations. Eighty-six people carry out CEPA-related investigation and enforcement duties across Canada.

What's wrong with CEPA. On average, only ten prosecutions per year have been undertaken under CEPA, and 85 percent of these prosecutions are related to just three regulations. Among the reasons for this poor enforcement record include federal aversion to asserting its constitutional authority to protect the environment, reluctance by Environment Canada to "get

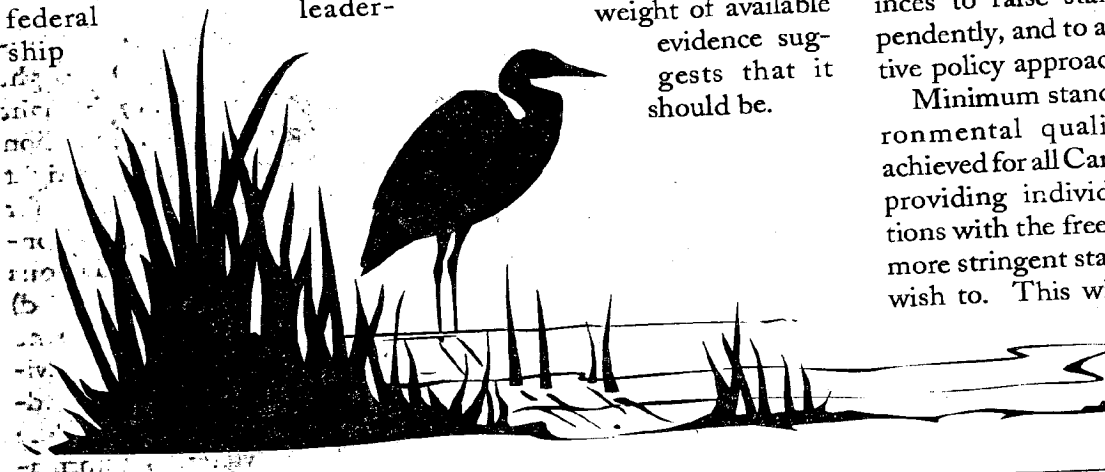
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CEPA contains no pollution prevention provisions. In fact, no Canadian federal law or policy adopts pollution prevention as a national approach. U.S. states pollution legislation 1991. The must consist philosophy of pollution prevention into the provisions of all its subject areas.

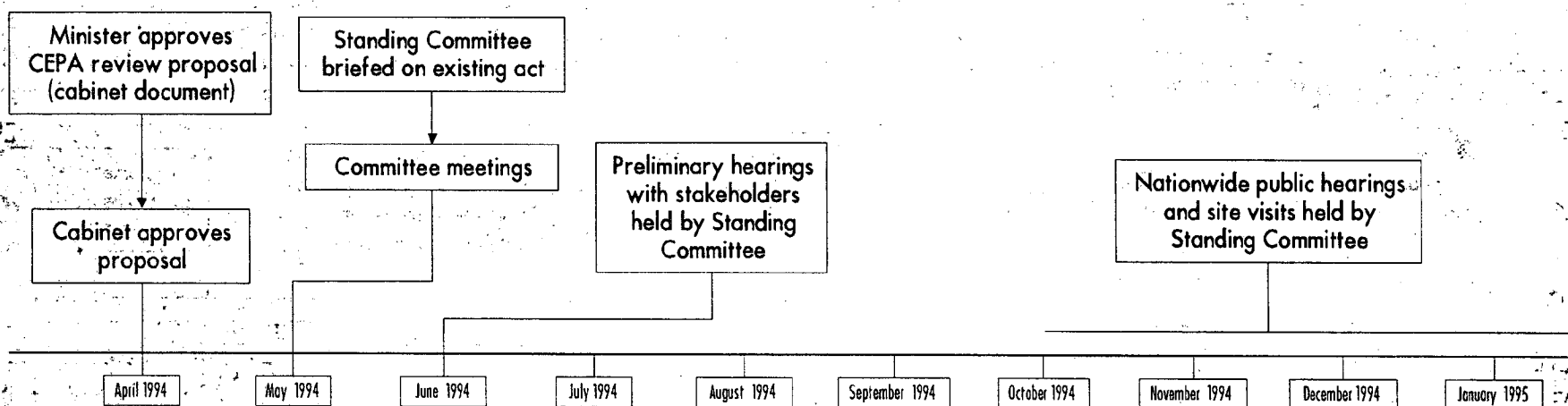
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legally known as the *onus of proof*, that an environmentally risky activity is safe should belong to the party proposing to carry it out; and

b) The standard of proof (that an activity is environmentally harmful) that must be met before the federal government can act should be the standard known as *weight of evidence*. Rather than acting only if there is absolute proof that something may harm the environment, regulatory action should be undertaken if the weight of available evidence suggests that it should be.



Timeline for Parliamentary Review of CEPA



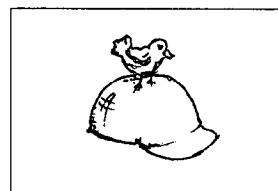
tough" with polluters and act as a regulatory and enforcement body, the lack of adequate resources to fully carry out federal enforcement duties, and the federal government's inadequate powers of inspection and enforcement officers.

What needs to be changed. There are four sets of recommendations necessary to improve enforcement and administration of CEPA.

and legal services staff to decide when to prosecute;

2) Inspectors' powers under CEPA should be expanded to include at least the authority to a) issue preventative orders and b) authority to gain entry where an owner refuses consent;

3) CEPA should be amended so that citizens have the right to sue to ensure that the requirements of the act and any regulations are met;



ENVIRONMENTAL AND WORKER RIGHTS

What CEPA says. The public's role in CEPA is carefully defined. There are a few rights to

information, including a program called the National Pollutant Release Inventory, which requires large facilities to report pollution emissions to the public.

CEPA also gives the public a right to review regulatory decisions, request investigations, and sue for damages caused by breaking the law. However, CEPA does not include specific worker rights, with the exception of a limited right in section 37 that offers certain protection to employees.

What's wrong with CEPA. Currently, all Canadians, including industry, regulators, labour groups, environmental groups, and the general public, have only the most limited access to both government and private sector information on pollutants being released into the environment.

There are also barriers to the civil actions and private prosecutions under CEPA, and, given the inadequacy of regulatory instruments, problems with the ability of the public to request reviews of regulatory decisions.

Finally, worker rights are almost nonexistent under CEPA. The act does not recognize the risk workers are exposed to, and the role they can play in improving envi-

ronmental conditions.

What needs to be changed. CEPA should improve public information rights and measures:

1) CEPA should create a public information registry accessible electronically on the Internet. The registry should contain a) information gathered under the National Pollutant Release Inventory, b) monitoring and inspection information, c) information on enforcement activities, d) information relevant to notification regulations, e) proposals for federal-provincial harmonization and equivalency agreements, f) proposals for new regulations, codes of practices, and guidelines; and g) pollution prevention plans;

2) Confidentiality provisions in CEPA should be reformed so they do not block meaningful public access to environmental information;

3) The National Pollutant Release Inventory should be improved to: a) provide the NPRI with a sound and broad legislative base within CEPA, b) include information relevant to emergency planning, c) collect information on chemical use and pollution prevention, and d) broaden the scope of the program by reducing the thresholds to include more facilities and adding more substances that must be reported on;

4) CEPA should be amended to include a comprehensive set of environmental and worker rights, which can evolve into a CEPA environmental bill of rights;

The environmental rights should include, among others, provisions allowing citizen suits under CEPA and reforming the law relating to private prosecutions.

The worker rights should include, among others: a) the right to refuse to pollute; b) the right to environmental information from the employer; c) the right to protection from retaliation for reporting violations of environmental laws or regulations ("whistle-blower" protection); d) compensation for workers who lose their jobs as a result of environmental issues; and e) amendment of the Federal Workplace Hazardous Materials Informa-

CEPA-related environmental crime is not a major federal concern in Ontario. According to Environment Canada there have been 2,831 federal inspections of facilities in the province since 1988, less than 500 a year. These resulted in a warning letters, and accumu-

There region's permission court be- M c A n - tober 19, enacted in thought would be act. It hasn't the country only have been collected

The standard fine for successfully prosecuted offences has been a paltry \$1,000, not much of a deterrent against environmental crime. The largest fine so far has been \$40,000, lowered on appeal from \$100,000, levied on the Rimouski, Québec, Department of Public Works, for ocean dumping (Office of Enforcement Legal Activities, Environment Canada and Health Canada, "Summary Report on CEPA and the Fisheries Act," 1994).

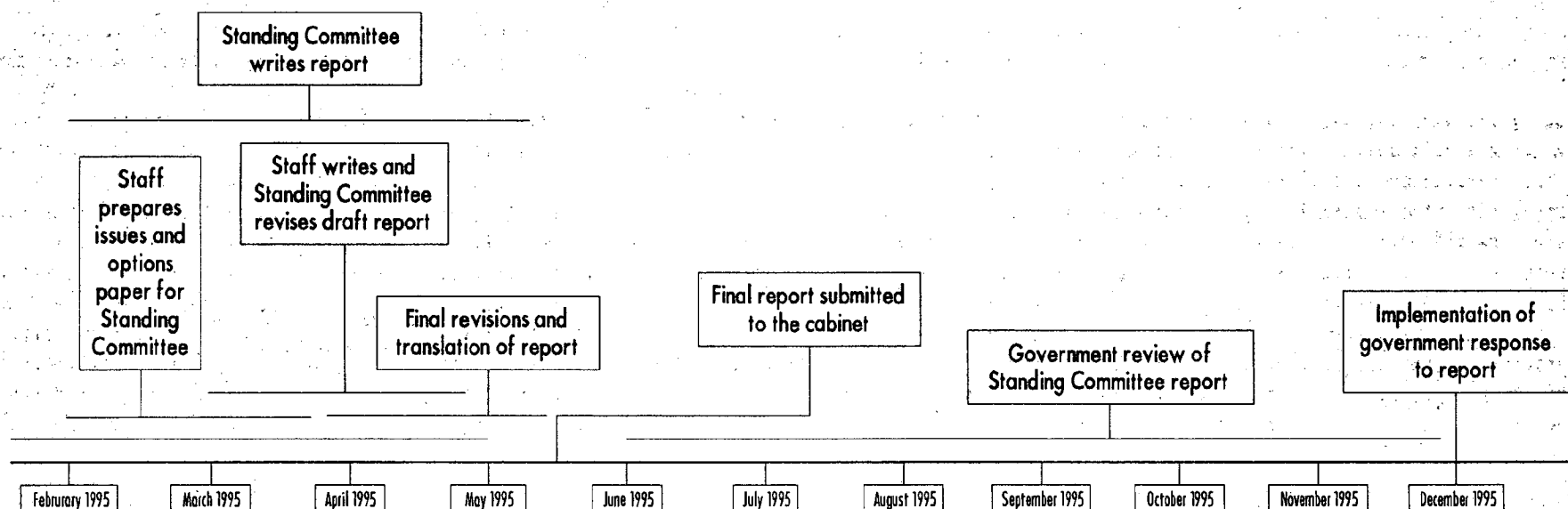
Getting away with it

1) Environment Canada's enforcement mandate must be clearly affirmed under CEPA. This requires: a) a clear separation between the agency's enforcement and "promotion and assistance" roles, b) the agency's ability to prosecute without the permission of the Department of Justice, and c) increasing the authority of the agency's investi-

4) CEPA should implement administrative penalties, as does the health and safety authority under the Worker's Compensation Board.

Source: "CEPA and Environmental Law Enforcement," prepared by the Canadian Institute for Environmental Law and Policy.





tion to require that Material Safety Data Sheets include information regarding environmental hazards and precautions for cleanup of spills and other environmental risks to which

mental taxes and tradeable pollution permits. CEPA has no specific provisions regarding economic instruments.

What's wrong with CEPA. Economic instruments can

stances. Therefore:

1) CEPA should not be amended to permit trading of ocean dumping permits or emissions involving substances considered "toxic" under CEPA;

2) CEPA should be amended to permit imposition of charges on use, processing, manufacturing, sale, import, or export of "toxic" substance or products containing a "toxic" substance;

3) Revenues raised from such charges should finance federal contributions to the National Contaminated Sites Rehabilitation Program. They might also support development and diffusion of pollution prevention skills and technologies.

Source "CEPA and Economic Instruments," prepared by the Canadian Institute for Environmental Law and Policy.

disposal, and pollutant discharge practices.

What's wrong with CEPA. The federal government has failed to adequately address the impact of its own operations on the environment. The emphasis in CEPA is on voluntary action; most of the guidelines issued by the minister of the environment to other federal departments are not enforceable. There is strong evidence that CEPA's voluntary measures have failed.

Equally important, to regulate an area of federal government activity, the cabinet must establish that there is no other authority to issue the regulations, and that the minister responsible for that area of activity concurs. Such concurrence is highly unlikely.

Only one regulation has been issued in those areas where CEPA gives express authority to regulate.

What needs to be changed. Federal agencies should undergo the same scrutiny as any other individuals or organizations that may cause harm to human health or the environment:

1) The government must affirm CEPA's role as Canada's paramount environmental law. The act should be amended to give the Minister of Environment the right to enact, with cabinet approval, regulations governing other departments, agencies, boards, and crown corporations and to enforce them adequately;

2) Under CEPA, the governor in council should be permitted to make regulations to protect the environment with respect to federal works, undertakings, or land, and with respect to the activities and operations of federal departments, boards, agencies, and crown corporations;

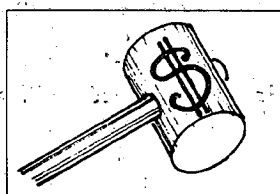
The federal government passed the Canadian Environmental Protection Act in June 1988. The idea behind CEPA was to create an overarching framework for federal protection of the Canadian environment, with a particular focus on address all as-lifespan. The at the time, CEPA the ronmen- Western C E P A billing, has effective- mental is- marine envi- products, en- prehensive environ- munities. But the act has also demonstrably failed in its centerpiece effort, the prevention of toxic pollution.

CEPA directed the ministers of environment and health to select from all the chemicals used commercially in Canada (about 21,000) a small list of chemicals for priority attention. These chemicals were to be assessed for toxicity and followup regulatory action. The result, reached through a multistakeholder advisory process, was a list of 44 chemicals known as the "Priority Substances List." Environment Canada and Health Canada have taken five years to assess the PSL's 44 chemicals, and of these 13 have not been determined either "toxic" or "nontoxic" due to insufficient data. Of the 27 chemicals found to be toxic, only a few have been regulated.

A history of CEPA

workers are exposed.

Source: "Ensuring Meaningful Public and Worker Involvement in Environmental Protection under CEPA," prepared by the West Coast Environmental Law Association and the Canadian Labour Congress.



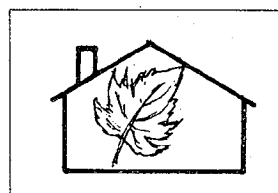
ECONOMIC INSTRUMENTS

What CEPA says. Environmental economic instruments are measures that provide monetary incentives to reduce or eliminate the creation and discharge of contaminants. Examples of environmental economic instruments are environ-

supplement but must not replace traditional regulatory regimes.

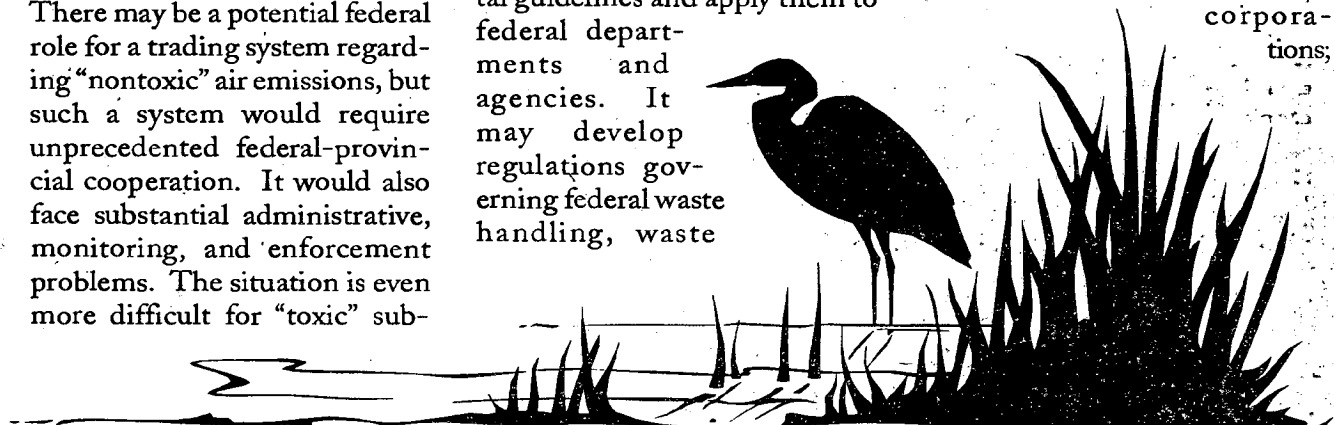
Two preconditions are essential to the use of economic instruments: 1) a discharge monitoring system that allows corporations and Environment Canada to accurately measure pollution levels, and 2) establishment of clearly enforceable standards to serve as baselines for a minimum level of environmental quality.

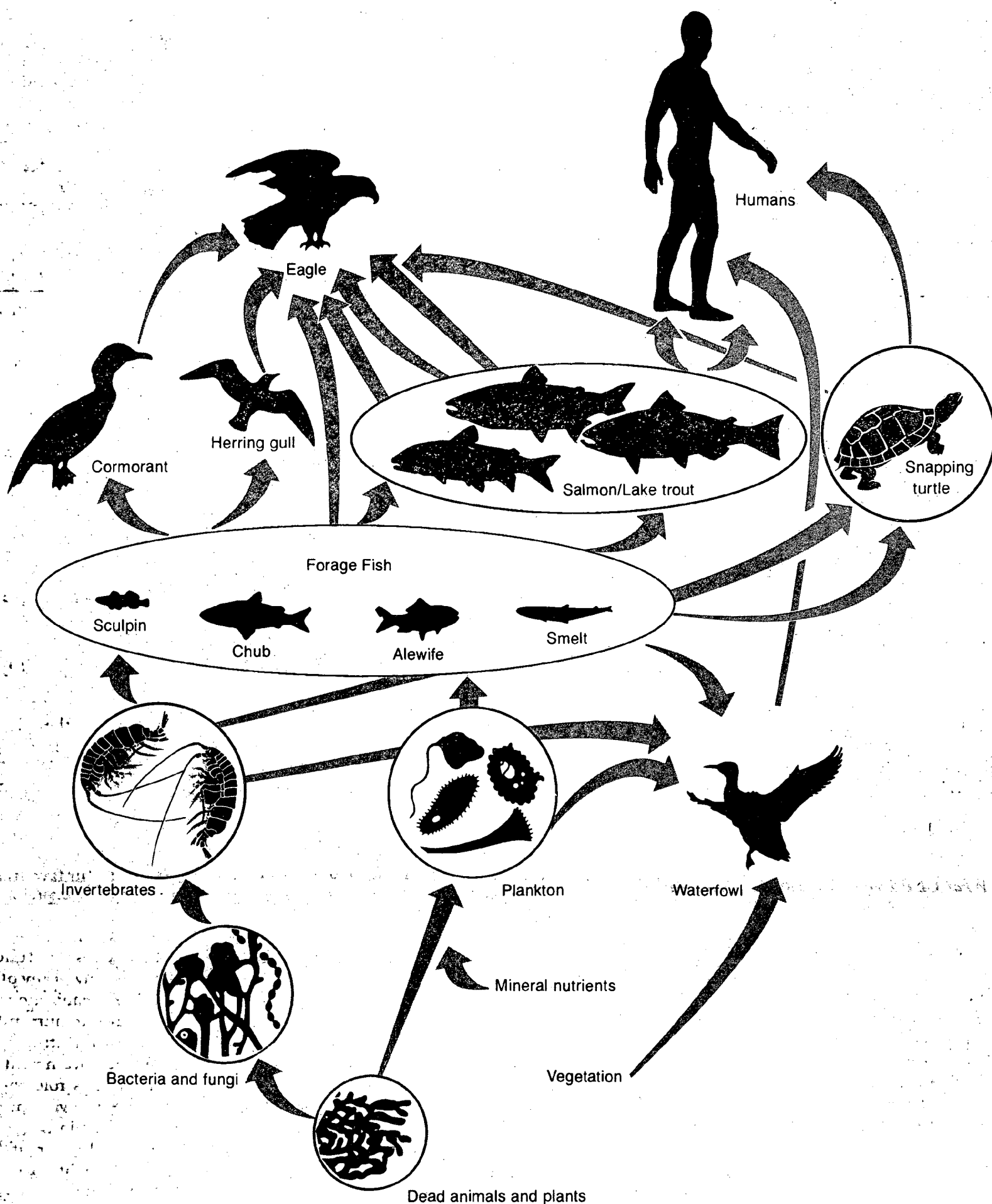
What needs to be changed. There may be a potential federal role for a trading system regarding "nontoxic" air emissions, but such a system would require unprecedented federal-provincial cooperation. It would also face substantial administrative, monitoring, and enforcement problems. The situation is even more difficult for "toxic" sub-



PUTTING THE FEDERAL HOUSE IN ORDER

What CEPA says. Part IV of CEPA gives the federal cabinet the power to issue environmental guidelines and apply them to federal departments and agencies. It may develop regulations governing federal waste handling, waste





All species have evolved the ability to selectively absorb essential chemical elements and natural compounds from their environment.

The physical and chemical properties of heavy metals and many synthetic chemicals allow them to gain entry into organisms, resist being metabolized or excreted, and thus bioaccumulate. If the organism continues to be exposed to chemicals in its environment that it cannot adequately excrete or detoxify, concentrations can increase to toxic levels.

Some of the critical pollutants can cause carcinogenic, reproductive, and developmental effects even at relatively low concentrations. In the Great Lakes, the levels of contaminants found in fish and wildlife

species depend on a variety of factors, including habitat, body size, selection of prey, energy requirements, position in the food web, ability to metabolize contaminants, and, in the case of organochlorine chemicals, fat levels in tissues.

The biomagnification of chemicals such as PCBs, dioxins and organochlorine pesticides from the lowest trophic levels (phytoplankton) through to top predators (fish-eating birds and humans) has been observed in the Great Lakes food web (see illustration).

Since organochlorines are much more soluble in fat than in water, they are absorbed from the water by phytoplankton (microscopic plants and algae) into their fats. These small organisms are eaten by larger

ones, passing the contaminants up the food web to fish and eventually to aquatic birds and mammals.

Since many smaller organisms are eaten by a single predator, the total amount of contaminant ingested is higher than in its prey. Taken together with the fact that aquatic animals excrete organochlorine chemicals very slowly (or not at all), these contaminants build up to higher concentrations at each step in the food web.

In another pathway, contaminants are absorbed from the sediments by bottom-dwelling animals such as tubificid worms, insect larvae, molluscs, or crayfish and accumulate in ducks, turtles, and bottom-feeding fish such as white suckers, brown bullheads, and carp. In

addition, fish also absorb toxic chemicals directly from the large amount of water flowing across their gills as part of their normal respiration.

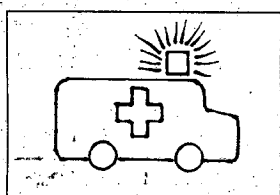
Ascending the food web, the factors of biomagnification become quite large. For example, PCBs in Great Lakes water are present in concentrations in the low parts per trillion range; PCBs in the eggs of eagles at the top of the Lake Erie food web have been measured at greater than 25 parts per million as recently as 1988. This corresponds to a biomagnification factor of 25 million. Biomagnification factors for mercury and PAHs are less spectacular (usually a thousand).

3) In the absence of regulations developed by the governor in council, the minister of the environment should be permitted to make "Environment Protection Orders" to protect the environment with respect to the lands, works, undertakings, or activities and operations of federal agencies, departments, boards, and crown corporations;

4) Each federal department should develop environmental management outlining how it will: a) reduce or eliminate pollution, b) promote natural resource conservation, and c) protect biodiversity, and

5) The proposed federal environmental commissioner should ensure that the departmental environmental management plans are implemented and publicly reviewed.

Source: "CEPA and the Federal House in Order: Reforming the Federal Government's Environmental Performance," prepared by the Canadian Institute for Environmental Law and Policy.



EMERGENCY PLANNING

What CEPA says. Industrial accidents involving hazardous chemicals are a significant threat to the health of workers and the environment. CEPA has no specific provisions directly related to planning for environmental emergencies such as chemical spills.

CEPA's Part II contains some sections that require reporting of information necessary to develop emergency planning programs. The National Pollutant Release Inventory, CEPA Section 16, is a good first step.

What's wrong with CEPA. CEPA simply does not address emergency planning. While other programs, such as that carried out by the Major Industrial Accidents Council of Canada, are useful, they do not require the development of emergency response plans or any reduction in the amount of hazardous chemicals used or stored on site.

What needs to be changed. CEPA should include provisions to prevent industrial accidents and disasters caused by hazardous chemicals:

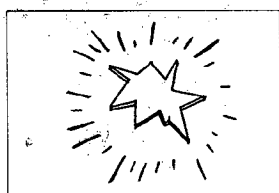
1) Environment Canada should be required to identify a list of chemicals that have the potential to cause serious accidents and determine threshold reporting quantities for them. For those substances over the threshold amount, the facilities should report the maximum and average quantities of chemicals

stored on site. This information should be public.

2) CEPA should mandate that the federal government work with the provinces, if necessary unilaterally, to prepare mandatory emergency planning requirements for industries using hazardous chemicals.

3) CEPA should be modified to put under federal jurisdiction the relevant elements of the International Labour Organization Convention on the Prevention of Major Industrial Accidents.

Source: "CEPA and Emergency Planning," prepared by the West Coast Environmental Law Association.



NEW CHEMICAL SUBSTANCES

What CEPA says. Under Section 26 of Part II, new chemicals must be screened before they can be imported into or man-

Chemical byproducts, which often cause significant environmental concern, are explicitly exempt from CEPA. Also, exempt are new chemicals that are regulated by other departments and laws. Pesticides, for example, are screened in a different way than industrial chemicals.

What needs to be changed. The screening of chemicals before they are used commercially can be the ultimate preventative activity. Rather than waiting for chemicals to cause damage, they can be severely restricted or not allowed at all:

1) CEPA's definition of "toxic" needs to be changed to reflect the intrinsic characteristics of a toxic substance. Assessments of chemicals should be based on the weight of evidence;

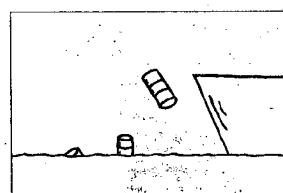
2) New chemicals that are persistent, bioaccumulative, and toxic should not be permitted in Canada (the "sunrise" clause);

3) New chemicals that are toxic, but not persistent or bioaccumulative, should only be allowed if their users develop pollution prevention plans accept-

nadian citizens a role in decisions regarding new chemicals;

7) CEPA should be changed so that new chemicals intended for export are assessed in the same way as those intended for domestic use. Substances prohibited in Canada should also be prohibited from export.

Source: "CEPA, Chemical New Substances, and Biotechnology," prepared by the Canadian Institute for Environmental Law and Policy.



OCEAN DUMPING

What CEPA says. Part VI of CEPA pertains to regulating the "deliberate disposal at sea from ships, aircraft, platforms or other anthropogenic structures". Under these provisions, no person can dispose of any substance unless a federal permit has been issued and other certain exceptions have been met. Public

notice must be given that a permit has been granted. The applicant may file a notice of objection if the permit is not issued, or is issued with unfavourable terms. CEPA also contains powers with respect to inspections, recovery of costs, and search and seizure.

What's wrong with CEPA. Historically, government regulation has discriminated against oceans compared to fresh water environments. The collapse of commercial fisheries soundly discredits the wide-

spread view that oceans are infinite systems that can absorb all abuses. Canada's approach to regulating ocean dumping ignores this reality.

CEPA does not mandate the reduction of wastes normally dumped in the ocean, nor does it prohibit ocean dumping of toxic chemicals (including radionuclides) or materials contaminated with these substances, despite the fact that once released into the marine

for more information

To receive Environment Canada's CEPA newsletter, contact:

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819-953-1652
819-997-0449 (fax)

To buy a copy of **Reforming CEPA** (1994, 200 pages, \$46, including GST and shipping), contact:

Craig Boljkovac, Canadian Environmental Network (see CEN Toxics Caucus listing for address and phone).

For free copies of **CEPA: An Agenda for Reform**, (1994, 27 pages, English and French, an emended condensation of *Reforming CEPA*), or to be put on the CEN Toxics Caucus mailing list, contact:

Fé de Leon, CEPA Review Working Group (see CEN Toxics Caucus listing for address and phone).

ufactured in Canada. If they are considered toxic as defined under CEPA, then the Minister of Environment can impose any condition on their importation, use, or release.

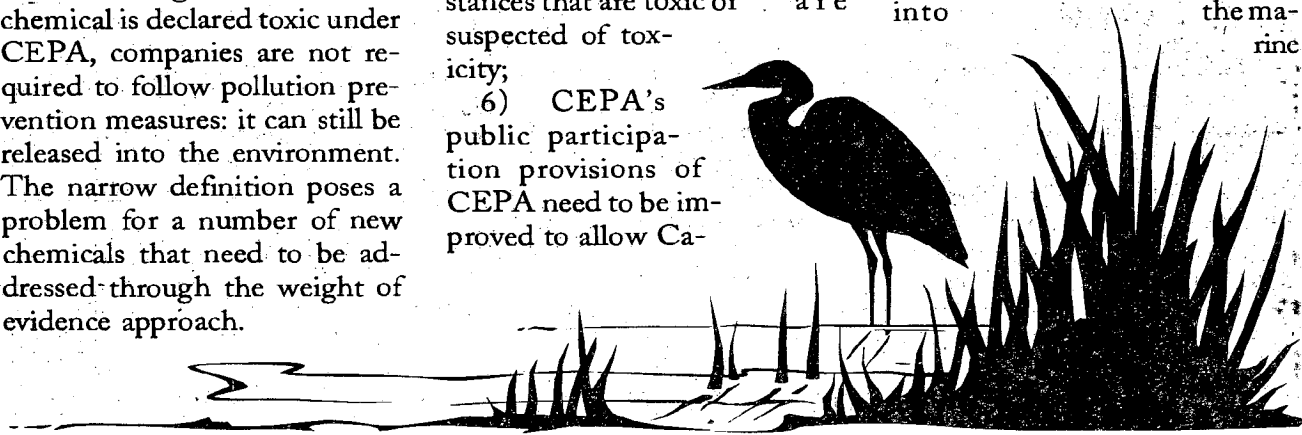
What's wrong with CEPA. CEPA's screening of new chemicals depends on the narrow definition of "toxic." Few new chemicals so far are declared "toxic" and so most new chemicals are not regulated. Even if a chemical is declared toxic under CEPA, companies are not required to follow pollution prevention measures: it can still be released into the environment. The narrow definition poses a problem for a number of new chemicals that need to be addressed through the weight of evidence approach.

able to DOE;

4) Byproducts should not be exempted from CEPA's new substance screening process;

5) Other statutes regulating new substances must ensure that all statutes regulating new substances are not exempted under CEPA and are as stringent as CEPA in: a) assessment of toxicity, b) public participation, and c) prevention options for substances that are toxic or are suspected of toxicity;

6) CEPA's public participation provisions of CEPA need to be improved to allow Ca-



Selected Chemicals on the C				
Chemical name	CEPA category	Sources and uses in Canada	Produced or consumed in Canada	Releases and
Aniline	Undetermined	Imported. Intermediates in synthesis of rubber and polymers.	No data.	About 1 tonne per year
Arsenic and its inorganic compounds	Toxic	Sources: natural: erosion; anthropogenic: metal processing, arsenic pesticides, coal-fired power, disposal of domestic/industrial waste.	Present in aquatic and terrestrial environment through natural weathering and erosion of rock and soil.	Arsenic exposure elev sources; food and wat
Benzene	Toxic	Mostly emissions: vehicle exhaust, spills, and effluent.	No data.	Source: vehicle emissi drink a minor source.
Benzidene	Toxic	Primarily an intermediate in dye and pigment manufacturing; not imported or produced in Canada; some may have been imported 1980-87.	No data.	No conclusive data. Li benzidene or benzide
Bis(2-ethylhexyl)phthalate (aka DEHP)	Toxic	Imported in plasticized PVC and plastic products. Used as a plasticizer.	5 kilotonnes used in 1991.	In the manufacturing pr
Cadmium and its inorganic compounds	Toxic	Sources: natural: forest fires, volcanic emissions, erosion; anthropogenic: base metal smelting and refining, stationary fuel combustion, transportation, solid waste disposal, sewage sludge.	Estimated 1,963 tonnes refined cadmium produced in 1992. 23 tonnes imported, 1,580 tonnes exported each year.	Anthropogenic activit from base metal smelti metal processing depe exposure.
Chlorinated paraffins	Toxic (short-chain varieties)	Produced domestically and imported; used as plasticizers, flame retardants, and extreme-pressure additives in lubricating oils.	No data.	Persistent; bioaccumul the environment, espec
Chlorinated wastewater effluent (CWWWE)	Toxic	Source: chlorine or chlorination agents. Used for disinfection or biofouling control in municipal wastewater treatment plants and power-generating stations.	Municipal wastewater treatment plants discharge an estimated 6 million cubic meters daily. Power utilities often chlorinate cooling water, generating up to 7.8 million cubic meters daily. Little information on industrial discharge.	Municipal discharge: 6 meters per day. Some and discharge their eff
Chloromethyl ethers: BCME and CMME	Toxic	Not currently used or produced.	None.	Any releases would ro
Chromium and its compounds	Toxic	Naturally occurring in metals; imported; used to make stainless and heat-resistat steels, refractory products such as bricks and mortars, and in pigments, metal finishing, leather tanning, and wood preservation.	About 74,000 tonnes (gross weight) of various chromium- containing materials imported into Canada in 1991.	Naturally occurring; re nonferrous base metal preservation facilities human exposure.
Creosote-impregnated waste material	Toxic in waste sites	Heavy-duty wood preservation for railway ties, bridge timbers, pilings, and other large-sized lumber.	Largest source is 20.2 million kilograms of creosote present in 4.5 million railway ties decommissioned each year; however, 90% of the ties are recycled.	Much waste creosote. 256,000 cubic meters creosote-treating faci creosote wood preser
Dibutyl phthalate	Nontoxic	Imported raw and in plastics; used as plasticizer in polyvinyl emulsions.	540 tonnes per year imported.	Detected in surface wa air.
1,2-Dichlorobenzene	Undetermined	Solvent to remove carbon, degrease engines, clean metal.	Produced and imported; 350 tonnes per year consumed.	Detected in industrial air, groundwater, and conditions.
1,4-Dichlorobenzene	Undetermined	Manufactured and imported; used as air freshner, urinal deodorizer, and moth and bird repellant.	3,500 tonnes per year.	Detected in municipal sediment, and biota.
3,3-Dichlorobenzidine	Toxic	Used in making ink pigments, textiles, paints, plastics, and crayons.	About 100 tonnes per year imported.	Not persistent in air, w sediment.
Dichloroethane	Nontoxic	Intermediate quantities used to synthesize vinyl chloride; small quantities used in motor antiknock fluids for export.	No data.	Air and groundwater;f atmospheric transport
Dichloromethane	Toxic	Paint removal, blowing agent in foam production, aerosol component.	13.2 kilotonnes per year.	Detected in ambient a disposal sites.
3,5-Dimethylaniline	Undetermined	Used to make Azo dyes.	Not produced in or imported into Canada.	No data.
Di-n-octyl phthalate	Undetermined	Used to make phthalic acid. Component of plasticizers used in analytical equipment.	1 tonne per year.	No data.
Hexachlorobenzene	Toxic	Crop seed fungicide until 1972; byproduct of manufacture and use of chlorinated solvents and pesticides; found in emissions from incinerators and other industrial processes.	No data.	Long-range transport c forage fish from point deposition to soil, wat
Inorganic fluorides	Toxic	Pesticides, fertilizer production, aluminum smelting.	Natural and anthropogenic sources.	23,500kt/yr released fertilizer production, c sediment, soil, and bio
Man-made vitreous fibres (aka MMVF)	Toxic	Rock, slag, and glass wools (acoustic insulation), continuous glass filaments (reinforcing plastics), aluminosilicate refractory ceramic fibres (high-temperature furnace and kiln insulation), glass microfibres.	250 to 300 kilotonnes of fibres made in 1991: 70% glass wool, 20% rock and slag wool, 10% continuous glass filaments.	Likely emitted to air; in countries, concentrati
Methyl methacrylate	Nontoxic	Imported; acrylic emulsions and cast sheet, molding & extrusion resins.	No data.	Air, water, and soil.
Methyl tertiary-butyl ether (aka MTBE)	Nontoxic	Gasoline octane enhancer.	No data.	Released in productio
Nickel and its compounds	Toxic	Naturally occurring. Automobile, shipbuilding, electrical, oil, food, and chemical industires, and metal industries such as the mining, smelting, refining, alloy processing, and scrap metal reprocessing.	197,000 tonnes per year produced in Canada, mainly exported.	Weathering and erosi combustion and indust
Polycyclic aromatic hydrocarbons (PAHs)	Toxic	Sources: natural: forest fires; anthropogenic: creosote-treated and petroleum products, metallurgical and coking activities, aluminum smelting.	Forest fires, 2000 tonnes/yr; aluminum smelters, 925 t/yr; creosote-treated products, up to 2,000 t/yr; petroleum product spills, 76 t/yr; metal processing & coking, 4 t/yr.	Air, soil, water; slow c railway and utility dit
Styrene	Undetermined	Used in the production of a number of polymers and resins.	700 kilotonnes per year produced; two-thirds is exported.	Detected mostly in am effluents.
1,1,2,2-Tetrachloroethane	Undetermined	Not produced or imported.	No data.	Byproduct of wastes c dichlaride; found inle countries.
Tetrachloroethylene	Toxic	Imported. Dry cleaning and metal cleaning solvent.	14 kilotonnes per year used.	Detected in outdoor a contamination due to c
Toluene	Nontoxic	Used in paint solvents, varnishes, pesticides, inks, adhesives, and sealants, and in benzene production.	2,200 kilotonnes consumed per year.	Evaporation from gas storage tanks to soil a
Trichlorobenzene	Undetermined	Imported. Chemical intermediate and industrial solvent; found in some electrical transformers and capacitors from past use in dielectric fluids.	50 tonnes per year imported.	Detected in surface w air, groundwater, and
Trichloroethylene	Toxic	Solvent in vapour degreasing, cold fabricated metal cleaning, dry cleaning, paints, paint removers, and household products.	Between 1 and 2 tonnes per year imported.	Detected in ambient a inappropriate disposc
Waste crankcase and mixed waste oil	Undetermined	Burned as fuel and used in re-refining, road dust suppression, landfilling, rail, marine, and air transport, mining, forestry, and agriculture.	Waste crankcase oil recovered in 1990: 229 million litres (56% of 413 mil. litres of automotive crankcase oils sold).	Burning leads to air en surface film; land dum
Xylene	Nontoxic	Used as a solvent, a gasoline component (2,600 kilotonnes per year consumed), and a chemical feedstock.	1.45 kilotonnes of purified xylene released to air.	To air from solvents a petroleum and other c

PA Priority Substances List

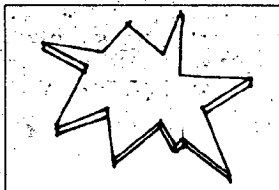
Exposures in Canada	Toxicological effects
Released to air, surface, water, biota, soil, and sediment.	Insufficient data.
Found in population residing in the vicinity of industrial and geological sources are the major sources of intake.	Inorganic arsenic demonstrated in numerous studies to cause cancer in humans exposed by both inhalation and ingestion; classified as a "nonthreshold toxicant," that is, a substance for which there is believed to be some danger of adverse health effects at any level of exposure.
Exposures: Humans exposed primarily from ambient and indoor air; food and	Demonstrated to cause cancer in experimental animals and humans; considered a nonthreshold toxicant (no safe level of exposure determined).
Primary sources are production, storage, transport, use, and disposal of dye-containing materials, such as dyes and pigments.	Shown to cause cancer in occupationally exposed workers and experimental animals; considered a nonthreshold toxicant (no safe level of exposure determined). Insufficient data on toxicity in wildlife.
Used in plastic goods.	Insufficient data to determine carcinogenicity in humans. Carcinogenic in rats and mice.
Estimated 159 tonnes per year, mainly into air, some to water, mostly from refining; estimated 340 tonnes per year cadmium waste from metal refineries; food likely the most significant source of human exposure.	Probable human carcinogen. Mean cadmium levels in kidney tissue of some Canadian mammalian wildlife and domestic species exceeded the estimated effect threshold for renal dysfunction based on critical concentrations determined in laboratory animals; renal tubular dysfunction observed in cadmium-exposed humans; mild kidney effects associated with cadmium levels near those to which some of the Canadian general population is exposed.
Found in aquatic organisms; data from other countries confirm presence in fish and shellfish near production facilities.	Short-chain varieties: insufficient data on human effects; adverse effects in fish and aquatic invertebrates; insufficient data to estimate exposure or correlate with adverse effects on biota; have caused cancer in experimental animals; considered nonthreshold toxicants (no safe level of exposure determined). Medium- and long-chain varieties: insufficient data.
Estimated 7.8 million cubic meters per day. Power utility discharge: 7.8 million cubic meters per day. Industrial plants use chlorination for disinfection or control of biofouling and release chlorine directly to the environment.	In situ testing and biological surveys downstream from Canadian municipal water treatment plants have demonstrated that CWWE causes mortality in fish and changes in the structure of benthic invertebrate communities; laboratory tests have demonstrated that CWWE from municipal waste treatment plants in Nova Scotia and Ontario were acutely lethal to fish and invertebrate species; insufficient data to compare toxic effects of chlorinated and nonchlorinated wastewater effluent in marine ecosystems; insufficient data to estimate the exposure of humans to CWWE or its products.
Does not readily break down by hydrolysis and photo-oxidation.	No reason to suspect adverse effects on aquatic and terrestrial organisms; BCME and technical grade CWWE demonstrated to cause cancer in experimental animals and in humans; considered a nonthreshold toxicant (no safe exposure determined).
Derived from industrial uses, production and combustion of fossil fuels, metal manufacturing; detected in surface water and soil near wood treatment facilities; some particulate presence in air; food the most significant source of exposure.	Trivalent chromium: dominant form in sediment, soil, and biological tissue; insufficient data on effects in organisms; weight of evidence of carcinogenicity in occupationally exposed humans; small quantities essential in human nutrition; typical concentrations of total chromium in relevant environmental media greatly exceed levels known to cause adverse effects in some animal studies. Hexavalent chromium: carcinogenic in humans; may induce skin sensitivity.
Discovered in soil, groundwater, and some surface waters; estimated 100 tonnes per year of moderately and highly contaminated soil at 11 current or former wood treatment facilities; waste creosote and PAHs found in freshwater sediment near wood treatment facilities.	Insufficient data on impacts of creosote waste on human health; no studies on its environmentally harmful effects. Adverse effects on benthic organisms and general aquatic ecosystem health linked to creosote waste pooling in sediment near a major wood treatment facility in Thunder Bay, Ontario; benthic invertebrates in Bow River, Alberta, impacted one km from a wood treatment facility in Calgary. Strong correlation between creosote-related PAHs in sediment of Eagle Harbor, Washington, and Elizabeth River, Virginia, and the number of liver tumors and level of PAHs in area fish.
Found in air; probably persistent in sediments and soil, probably not persistent in water.	Insufficient data.
Found in municipal effluents, surface water, and sediments; detection in ambient air infrequent. Persists and accumulates in sediment under anaerobic conditions.	Insufficient data.
Found in industrial effluent, ambient and indoor air, ground and surface water, and soil.	Insufficient data.
Found in air, water, and soil; insufficient data on concentration in air, water, soil, or sediment.	Insufficient data on carcinogenicity in humans; carcinogenic in several animal species; considered a non-threshold toxicant (no safe exposure determined).
From production of dichloroethane and vinyl chloride monomer; long-range transport from waste disposal sites.	Probable human carcinogen.
Found in indoor air and surface water; found in groundwater near waste disposal sites.	Probable human carcinogen.
	Insufficient data.
	Insufficient data.
Found in air and water; detected in air, water, sediments, animal fatty tissues, and biota in the Great Lakes and connecting channels; photolysis and biodegradation.	May cause adverse effects in fish-eating mammals and reproductive impairment in predatory birds, including endangered peregrine falcon; carcinogenic in experimental animals; a nonthreshold toxicant (no safe level of exposure determined).
From all sources. Anthropogenic sources: chemical and phosphate production; animal manure; natural sources: mineral smelting. Measured in air, freshwater, seawater, aquatic biota.	Insufficient data.
Refractory solid particles when airborne (based on limited data from other studies, the incidence of cancer in outdoor air is low relative to other solid phases of the substance).	Refractory ceramic fibres are a probable carcinogen in the occupationally exposed; increased incidence of pulmonary tumours in rats and in mesotheliomas in rats and hamsters.
	Predicted concentrations in air, water, and soil are less than that believed to cause adverse effects in humans.
Storage, and transport of undiluted MTBE or MTBE-blended gasoline.	Low estimated safe lifetime exposure levels.
From weathering of geological materials (glacial overburden and bedrock); fuel combustion; industrial waste. Food is the most likely route of exposure for humans.	No evidence of carcinogenicity in those exposed occupationally to metallic nickel. Adverse effects in pelagic organisms and terrestrial plants near major anthropogenic and natural sources; limited evidence of carcinogenicity in experimental animals exposed by routes less relevant to assessment of effects in humans; classified as a nonthreshold toxicant (no safe level of exposure determined). Insufficient data on individual chemicals within the group of nickels.
Biodegradation in sediment, a major environmental sink for PAHs; detected in biota.	Five PAHs classified as "probably carcinogenic to humans"; effects in laboratory biota; aquatic organisms adversely affected by PAHs in sediments such as that in Hamilton Harbour, Ontario; laboratory mortality in aquatic invertebrates and neoplastic effects such as liver tumours in aquatic organisms; neoplastic liver lesions observed in English sole caught in areas around Vancouver, British Columbia containing sediments highly contaminated with PAHs.
Found in ambient air but also in indoor air, water, and some municipal and industrial effluents.	Insufficient data.
Generated during production of vinyl chloride monomer and ethylene dichloride from waste disposal sites and in long-range transport from other sources.	Human exposure from surface water and atmosphere; thought nontoxic to freshwater biota; insufficient data on effects on terrestrial biota; studies of exposed human population and experimental animals inconclusive on human effects at current exposures levels.
Found in indoor air and in drinking and surface water. Groundwater contamination from dry cleaning facilities and in landfills.	Limited data.
Found in air and chemical manufacturing; spills and leaks from underground storage tanks and water.	Animal studies show no evidence that exposure causes cancer or birth defects.
Found in air, water, sediment, and Great Lakes biota; also found in samples of ambient air.	Insufficient data.
Found in indoor air, drinking and surface water, groundwater (the result of leaching from metal degreasing facilities and landfills).	Probable human carcinogen.
Exposure to metals and PAHs; dumping into sewers leads to formation of sludge; leaching leads to leaching from soil to groundwater, or runoff to surface water.	Insufficient data.
From transportation sources; to soil and water from spills and leakage of chemical products.	Insufficient data.

environment there is no realistic means of recovering or controlling them, or assessing their cumulative effects.

What needs to be changed. CEPA should:

- 1) Prohibit dumping of toxic substance or materials contaminated with toxic substances, including all radioactive wastes;
- 2) Require dumping permit applications to show that there are no means of avoiding creation of the waste to be dumped;
- 3) Increase ocean dumping fees consistent with the polluter pays principle and sufficient to cover associated costs (including processing the permit application, public consultation, enforcement, and remediation);
- 4) Provide for effective public participation in the permitting process, including the right to appeal a permit.

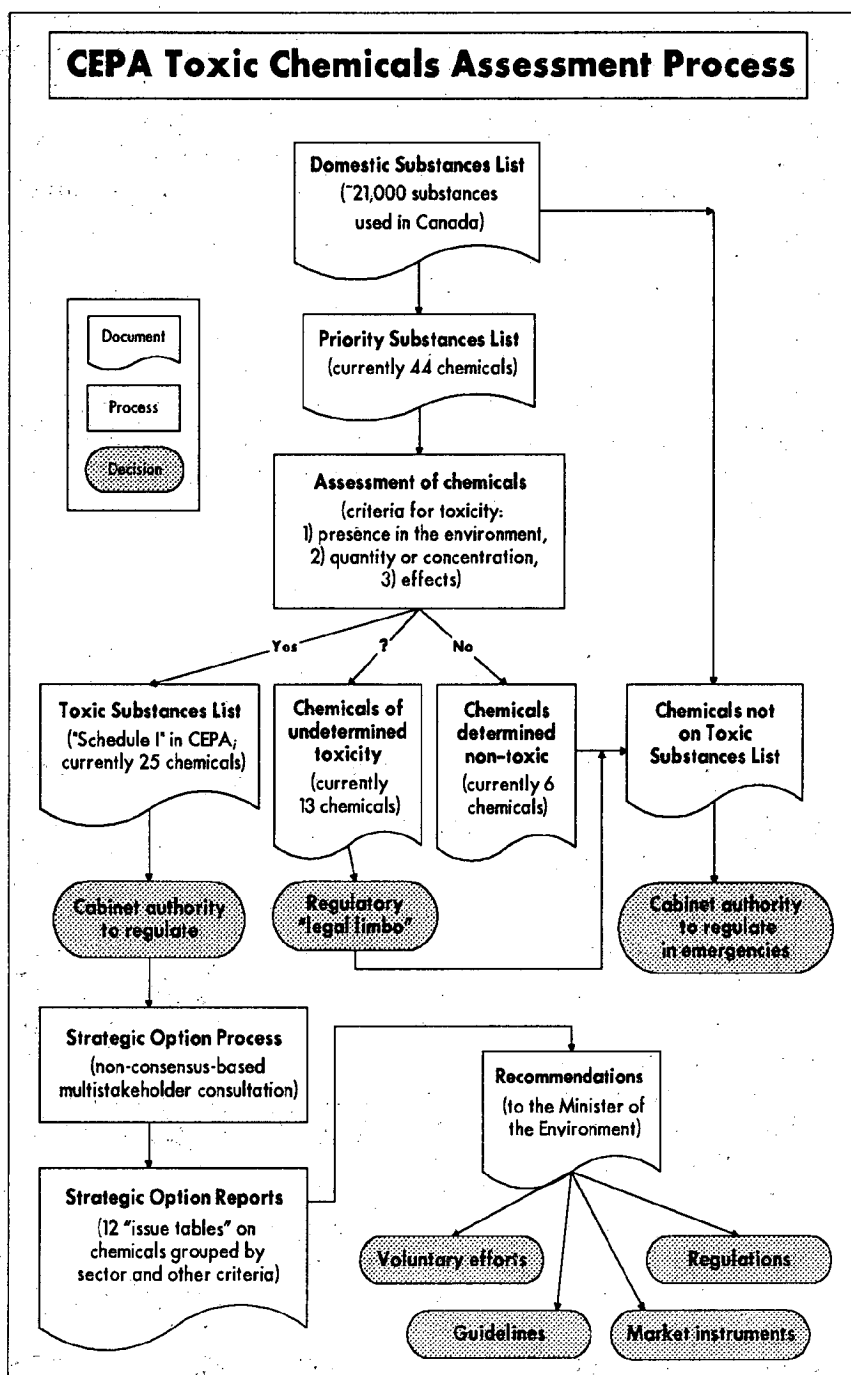
Source: "Ocean Dumping," prepared by the West Coast Environmental Law Association.



TOXIC SUBSTANCES AND POLLUTION PREVENTION

What CEPA says. Part II of CEPA establishes a process to assess and regulate toxic chemicals. Under this section, all substances used or imported in Canada are put on the Domestic Substances List (see flowchart elsewhere in this issue). From this list, a number of chemicals are selected for a full assessment and placed on the Priority Substances List (see table elsewhere in this issue). The assessment of a PSL chemical determines whether it is "toxic" as defined by CEPA. If a PSL substance is found toxic, the federal government is given extensive power to regulate it.

What's wrong with CEPA. Part II has not been an effective mechanism to regulate toxic substances. In fact, CEPA has regulated very few chemicals since its inception. It took five years to assess 44 PSL chemicals and even then, 13 of them could not be identified as either toxic or non-



cause of insufficient information. Moreover, CEPA does not recognize persistent, bioaccumulative substances as a special threat, and the definition of "toxicity" is unnecessarily onerous, making it a very difficult precondition for regulation. Finally, CEPA focuses on pollution control rather than prevention, and continues to place the onus of proof of toxicity on the public, rather than the polluter.

What needs to be changed. Part II of CEPA should undergo significant changes to ensure that the act will protect human health and the environment:

- 1) There should be a Legislated Declaration of a National Policy of Canada that the use, generation, and release of pollutants should be prevented. Further, there should be a commitment to virtually eliminate the use, generation, and discharge of persistent toxic substances by 2004, and to reduce the use, generation, and release of other toxic substances by 50 percent by the year 1999. An im-

proved National Pollutant Release Inventory could be used to measure progress in this regard;

- 2) CEPA should formally adopt a pollution prevention approach that seeks to avoid the use and generation of toxic substances. The most stringent definition of this term should be used;

- 3) CEPA should contain a Sunset Chemical Protocol designed to identify the hazard characteristics of the substances of greatest concern (such as those that are persistent and bioaccumulative) and develop timetables to phase them out;

- 4) CEPA should incorporate a chemical class approach to regulation rather than a substance-by-substance approach;

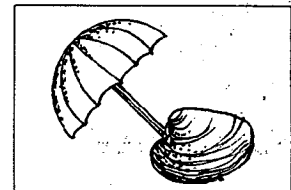
- 5) CEPA's definition of toxicity should be revised with an emphasis on understanding the intrinsic characteristics or properties of toxic chemicals. In cases that have gaps in information about a substance, CEPA should require that the party using or importing the substance ensures the availability of all information needed to make an assessment;

- 6) In addition to the Sunset Chemical Protocol, CEPA should incorporate programs to reduce

the use and generation of toxic substances, including: a) pollution prevention programs that will require facilities to develop plans for reductions and implement them, b) pollution prevention technical and financial programs, c) integration of pollution prevention into federal approvals and enforcement actions, and d) institutional reforms, such as the creation of pollution prevention institutes within universities;

- 7) CEPA should create mechanisms to ensure that the workers and communities affected by the movement toward cleaner production processes are protected in a fair way and that they have a legitimate role in the planning for transition to a non-toxic economy.

Source: "Incorporating Pollution Prevention into Part II of CEPA: An Agenda for Reform," prepared by the Canadian Environmental Law Association.



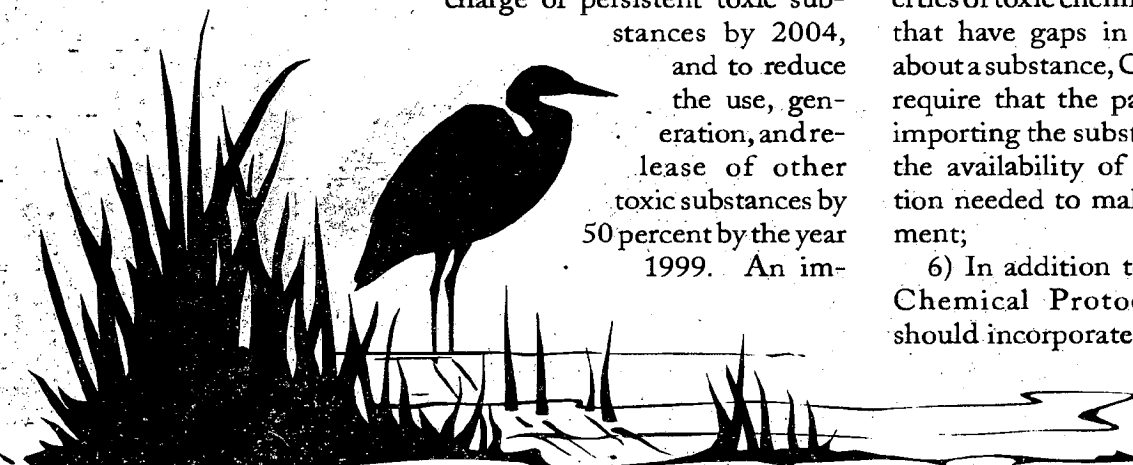
COASTAL ZONE MANAGEMENT

What CEPA says. Coastal zone management is an ecosystem-based approach to managing human activities at the land-sea interface. Since Canada is bounded by three oceans, the coastal zone is significant economically, culturally, and ecologically. CEPA contains no reference to or provision for coastal zone management.

What's wrong with CEPA. Canada does not have a coastal zone management policy or a regulatory framework. Therefore, efforts to maintain coastal ecological functions, biodiversity, and habitat, to name a few components of coastal zone management, are disjointed and on the whole ineffective. Pollution, both from point and nonpoint sources, is one of the major contributors to coastal ecosystem degradation. CEPA, largely because of its narrow substance-by-substance approach and its lack of emphasis on prevention and cumulative effect, is inadequate to protect against such degradation.

What needs to be changed. Canada must develop both a policy and a legislative framework for coastal zone management that has as its primary goal the restoration and maintenance of coastal ecological functions and biodiversity. CEPA should:

- 1) Mandate pollution prevention (see above, "toxic substances and pollution prevention") across all sources, addressing cumulative effect and restoration of de-

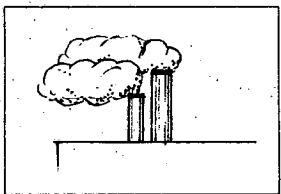


graded sites, and providing vehicles for federal-provincial co-operation in the development of pollution prevention and remediation plans;

2) Provide for public participation in decisionmaking, developing and implementing plans and measures, monitoring and reporting on environmental quality, and access to information;

3) Develop a Canada Oceans Act. This act should include provisions for protecting biodiversity, habitat, and critical natural areas, support for sustainable resource harvesting and extraction, and the development of a science and technology agenda to support these measures.

Source: "Coastal Zone Management: Issues for the Five-Year Review of CEPA," prepared by the Conservation Council of New Brunswick.



AIR POLLUTION

What CEPA says. The federal government uses Part II of CEPA to regulate some air pollutants by screening them with its definition of toxicity (see above, "toxic substances and pollution prevention"). Although the federal government regulates vehicle emissions, it does so through the Motor Vehicle Safety Act, a law primarily concerned with safety rather than environmental protection. CEPA provides Environment Canada with the authority to regulate fuel content, conduct air monitoring, and set "objectives," "guidelines," and "codes of practice" for air emission-generating industrial activities.

What's wrong with CEPA. CEPA should regulate vehicle emissions as well as fuel content because they are closely related.

CEPA does not ensure that Canadians are protected by enforceable ambient air quality standards for all significant air pollutants. The act does not stipulate the minimum requirements for an adequate ambient air quality monitoring network. Finally, under CEPA the setting of objectives, guidelines, and codes of practice occurs without public participation; timelines for implementation, or periodic review processes.

What needs to be changed. The federal government must establish authority over air pollution. CEPA can play an important role in preventing air pollution. Changes should include:

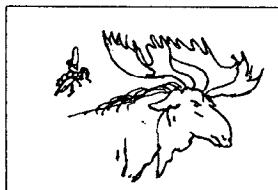
1) CEPA should provide Environment Canada the authority to set strict emission stan-

dards on all new vehicles. These standards should at the least match those of the Low Emission Vehicle Program already adopted by California, British Columbia, and several states in the U.S. Northeast;

2) CEPA should contain enforceable air standards for a variety of air pollutants.

3) "Toxic" air pollutants should either be phased out and banned, or be subject to pollution prevention plans.

Source: "Regarding Air Quality Issues and the Review of CEPA," prepared by Pollution Probe.



BIODIVERSITY/ECOSYSTEM APPROACH

What CEPA says. Biodiversity is the variety of life on earth, from microbes to animals. Because most forms of life are dependent on the existence of other forms of life, preservation of biodiversity requires measures that protect complete ecological systems. This "ecosystem approach" to environmental protection involves applying ecological principles to a wide range of human activities, including resource management and government decisionmaking. There is no direct recognition of biodiversity or the need for an ecosystem approach in CEPA.

What's wrong with CEPA. In December 1993 the Canadian government ratified the United Nations Biodiversity Convention. To fulfill its obligations under the convention, the federal government must employ an ecosystem approach to biodiversity protection. CEPA does not do this.

What needs to be changed. CEPA should give the federal government direct legislative power to preserve and improve biodiversity using an ecosystem approach:

1) The definition sections of CEPA should be amended to define the ecosystem approach and the meaning of the biological integrity of ecosystems. The definition of "environment" should be changed by adding that "ecosystems include associated biodiversity";

2) Section 7 of CEPA should be amended to ensure that biodiversity is included in provisions pertaining to research, monitoring, and publications;

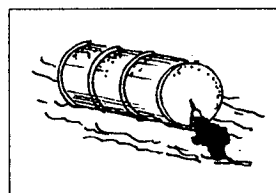
3) CEPA should include the term "jurisdictional entity," that is, the right to control parts of the environment for biodiversity pro-

tection;

4) CEPA should be amended to enable an ecosystem response approach to identify potentially toxic substances, or groups or mixtures of substances. CEPA should articulate ecosystem quality objectives, such as the maintenance of ecosystem integrity, to identify unacceptable risk or to determine the toxicity of substances.

5) To fulfill Canada's obligations under the Biodiversity Convention, CEPA sections 26 and 34 should be amended so that pesticides are assessed for toxicity and, if determined toxic, regulated under CEPA.

Source: "Biodiversity and the Ecosystem Approach: Issues for the Five-Year Review of the Canadian Environmental Protection Act," prepared by the Environmental Law Centre (Alberta) Society.



TRANSBOUNDARY WASTE MOVEMENT

What CEPA says. Sections 41 and 43 to 45 of CEPA address the import and export of toxic substances and waste materials. They allow the federal government to decide which hazardous wastes require an advanced notification for export or import. The federal government publishes these notifications in the *Canada Gazette*, and exporters and importers must then follow specific conditions in moving hazardous wastes. Substances prohibited under CEPA may only be exported for destruction purposes.

CEPA is used to fulfill Canada's obligation under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

What's wrong with CEPA. CEPA does not require minimizing the production of hazardous wastes in Canada, nor does it ban the import of such wastes into Canada. Instead, under CEPA the movement of hazardous wastes is legitimized. Only notice of import and export activities is required. Moreover, contrary to its international obligations, Canada continues to allow the export of hazardous waste to developing countries.

CEPA fails to address nonhazardous mu-

nicipal solid wastes, which are increasingly being moved between Canada and the United States.

What needs to be changed. The generation of hazardous and municipal solid wastes causes many environmental and social problems. The transboundary movement of such wastes does little to address these problems. Rather, it just places them somewhere else. Thus, changes to CEPA's waste trade provisions should include:

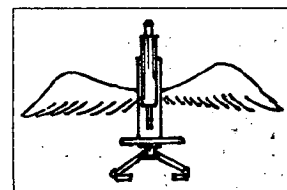
1) A ban on the import and export of prohibited substances

2) A phaseout of the export of hazardous wastes for recycling to developing countries by December 1997.

3) A requirement that exporters and importers of hazardous wastes develop plans to phase out their imports and exports.

4) CEPA should address transboundary movement of municipal solid waste and phase out its export and import.

Source: "Canadian Environmental Protection Act Review: Transboundary Waste Movement Provisions," prepared by the Ontario Toxic Waste Research Coalition.



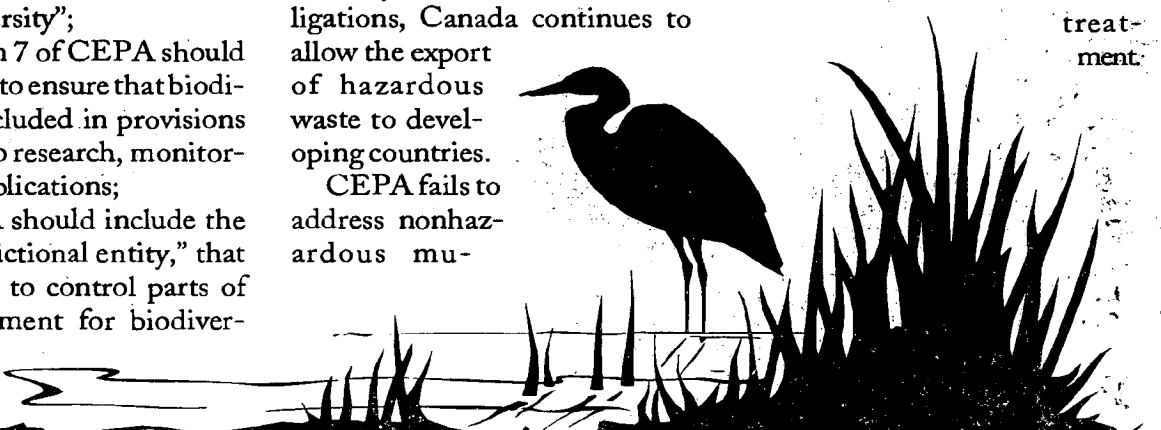
BIOTECHNOLOGY

What CEPA says. Biotechnology is defined in CEPA as "the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms." This broad definition includes many applications, including those developed by genetic engineering.

What's wrong with CEPA. Biotechnology products present a number of unique risks. Many of them include living beings, which can reproduce and spread, making it is very difficult to control them once they are released into the environment.

Most biotechnology products are regulated under other statutes, creating inconsistent screenings of biotechnology products and resulting in vastly different re-

sults in their treatment.



Under CEPA biotechnology products are regulated if they are declared toxic as defined in the act. Under this scheme, it is virtually certain that few if any biotechnology products would ever be regulated. Citizens have very little input into government decisions about biotechnology products.

What needs to be changed. CEPA should be amended to deal specifically with bio- tech-

nology products:

1) All biotechnology products released into the environment should be evaluated with the same criteria, regulated with the same standards of public participation, and subject to the same prevention options as in CEPA.

2) All biotechnology products should be evaluated on the basis of: a) their direct, indirect, long-term, and cumulative environmental and human health effects, and impact on biodiversity, b) their purpose, c) their efficacy, d) their biological and ecological characteristics,

e) the availability of alternatives to them, and f) the availability and effectiveness of monitoring, preventing, and treating the waste associated with producing them.

3) The testing of biotechnology products in the open environment should only occur with specific approval of the minister of the environment.

Any violations of the conditions of the approval should be prosecuted.

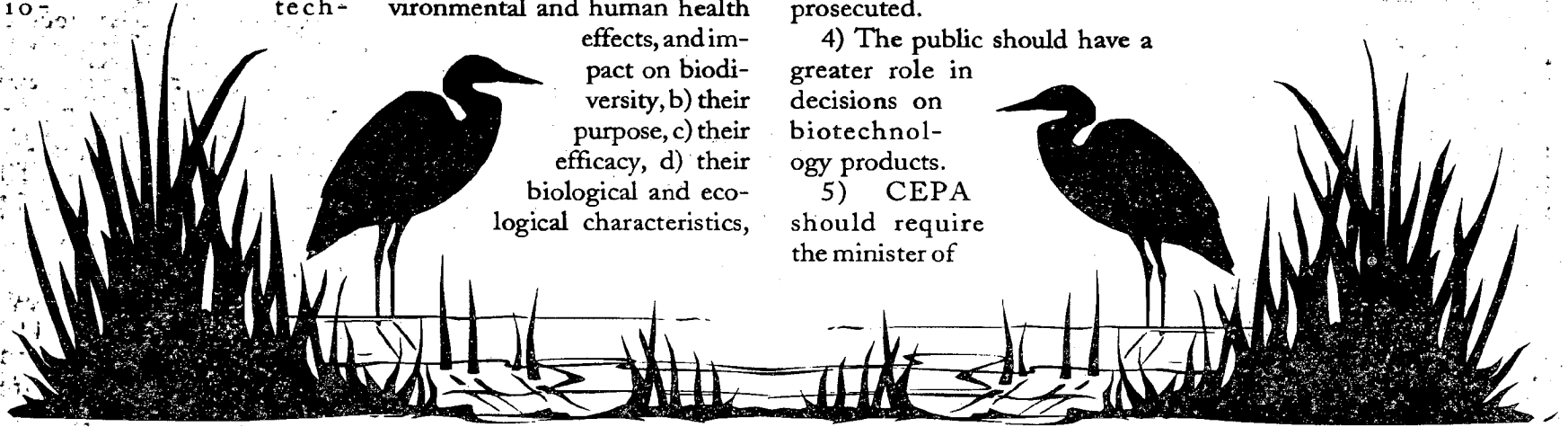
4) The public should have a greater role in decisions on biotechnology products.

5) CEPA should require the minister of

the environment to establish a publicly accessible database on all environmental releases of biotechnology products.

6) A Royal Commission on Biotechnology should be established to debate biotechnology issues broadly and conclusively.

Source: "CEPA, Chemical New Substances, and Biotechnology," prepared by the Canadian Institute for Environmental Law and Policy.



CONTACTING GOVERNMENT OFFICIALS ABOUT CEPA

Please express your opinion about CEPA or the review process:

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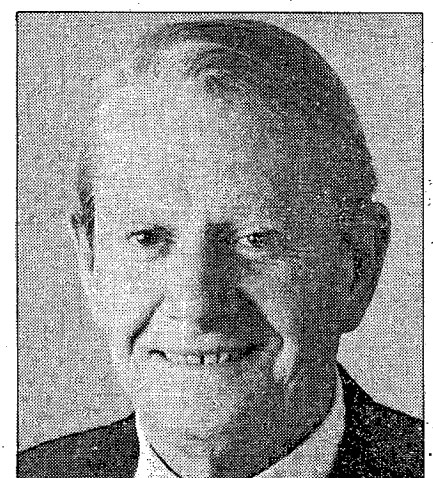
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*Note: Correspondence with the
researchers can only be guaranteed to
reach the members of the standing
committee if also sent to the clerk.*

GLU SUES CANADA FOR INACTION ON CHEMICALS

Great Lakes United has retained the Canadian Environmental Law Association (CELA) to file a suit against the government of Canada over its implementation of the Canadian Environmental Protection Act (CEPA).

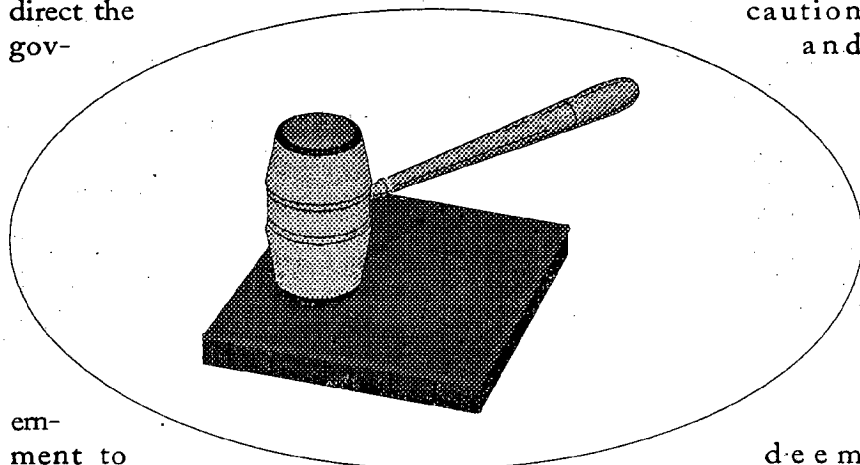
The government claims it is unable to determine the toxicity of certain chemicals as required under CEPA. The determination is the prerequisite to regulation under the act.

GLU will be represented by Paul Muldoon, a staff lawyer at CELA, which is a Toronto-based legal aid clinic.

CEPA requires the federal government to determine whether certain chemicals are "toxic" as defined in the act. But of the 44 chemicals looked at by Environment Canada scientists, the government decided it could not determine the toxicity of almost a third—13 of the 44 chemicals.

In its suit GLU claims that

CEPA does not provide for finding that toxicity cannot be determined. GLU wants the court to decide if the federal government has failed to meet its CEPA obligation to assess the chemicals and then to direct the government to



establish a board of review to investigate the matter. CEPA mandates this process.

GLU wants the board of review to address three questions. Muldoon explains:

"First, the board of review should examine how much data is really necessary to assess the toxicity of a chemical.

"Second, it should examine whether the government should err on the side of caution and

deem chemicals toxic until further data is available.

"And finally, the board should determine the legal status of the 13 chemicals—right now they are in legal limbo."

Last March GLU and

other environmental groups filed a "notice of objection" with the government, asking federal environment minister Sheila Copps to establish the board of review. Copps refused to do so and thus GLU has filed a motion with the federal court to force the government to establish the board.

Says GLU Executive Director Burkhard Mausberg, "I hope the courts agree with GLU that it is contrary to the intent of CEPA to allow chemicals of serious concern to become, in effect, completely unregulated."

Some of the chemicals whose toxicity the government says it cannot determine are: aniline (used to make rubber and polymers); 1,2-dichlorobenzene (a degreasing solvent); styrene (used to make resins and polymers); and 1,1,2,2-tetrachloroethane (a byproduct of chemical manufacturing).

WHAT CANADIANS HAVE SAID AT CEPA REVIEW HEARINGS

Société pour Vaincre

la Pollution du Québec

"So we recommend that the Committee look into the possibility of establishing a special team of lawyers, be they from Environment Canada, or the Department of Justice, but a special team of lawyers who will only work on environmental lawsuits. Otherwise, we'll have very good laws, but we'll lose in court."

Jack Vallentyne, McMaster University, Department of Civil Engineering

"In looking at CEPA and doing a revision of its toxic chemical parts, I think a great test would be how proposed changes to the act affect our ability to deal with persistent toxic substances, in particular chlorine chemistry.

"If the phraseology of the act is such that it would create a counterbalancing force to the industrial call for sound science based on proof of harm, chemical by chemical, then you'll have a good

act. If it doesn't do that, you won't. In other words, the test of the act is how it influences the behaviour of the participants. You don't have to know all the chemistry to understand that, as long as you accept that the chemistry is harmful."

William Andrews, Executive Director, West Coast Environmental Law Association

"Coming from the West Coast, I would like to bring to your attention one specific problem with the ocean dumping rules, which is that they have been interpreted as not applying to the intertidal zone. This means we have an ironic situation where, under the ocean dumping section of CEPA, it would be illegal to dump a load from a barge 10 feet beyond the low tide mark without a permit, but if you wait for high tide and go into the intertidal zone and dump from there, it does not require a permit.

The second major threat [to the effectiveness of CEPA] is the transfer of federal powers to the provinces. I regard this as a threat not because I think there is some sacred rule that federal powers should never be transferred to the provinces but because I am very concerned the initiatives under way are not motivated primarily by the objective of improving the efficiency of environmental protection. On the contrary, many of them are justified on the basis of improving competitiveness, which often translates into deregulation or less environmental regulation."

Lynda Duncan, Circumpolar Institute of Environmental Law

"How we enforce our laws, or how we achieve compliance, is just as important as the law. There isn't any point, as Tom McMillan very clearly stated in 1988, in enacting laws if we're not serious about enforcing them. That doesn't mean we want to lock everybody up and prosecute. It means we have a consistent, clearly thought-through strategy on how we're going to achieve compliance be-

fore we enact the law. Enforcement is not an after-the-fact activity. It's something you think about in advance, when you're drafting legislation. . . .

"There needs to be a much broader array of tools in the tool-box available to Environment Canada for its enforcement. . . . There shouldn't be simply, of course, the choice of issuing a warning or going to court."

Canadian Chemical Producers' Association

"We believe voluntary approaches can be relied on in a wide range of circumstances to provide the best way of achieving environmental protection . . . that approach should be reflected in Environment Canada's policy. We think they should look to voluntary solutions first, and only if they don't work should you be looking at a regulatory approach."

Canadian Environmental Law Association

"Voluntary agreements . . . are negotiated behind closed doors. The public is not allowed to negotiate, sit at the table of voluntary pollution prevention agreements, for instance. Yet they bind implicitly or explicitly government action. I want to be there as a member of the public to see what my government is doing."

Centre Québécois du Droit de l'Environnement

"One of the main problems in CEPA as it stands now is the definition of "toxic." You seem to have to wait until you have a serious public health problem or serious damage to the environment before you do something about a chemical, before it can even enter into the stream of what is regulated."

Ellen Schwartzel, Pollution Probe

"In our view, CEPA hasn't been effective in protecting air quality . . . There are two traditional ways to tackle air quality. You can set controls on what comes out of tailpipes and smokestacks. Alternatively you can set limits on what are acceptable ambient levels of air pollutants. . . . Unfortunately, CEPA is able to

take neither tack."

Canadian Institute for Environmental Law and Policy

"We are not happy about the shipment of municipal solid waste from Canada to the United States to disadvantaged communities. We're equally concerned about that Canada is a net importer of hazardous wastes for processing and disposal from the United States. Our preference is that this practice be stopped."

Canadian Chemical Producers' Association

"We reject the notion that there should be a blanket authority incorporated into CEPA that would allow the federal government to legislate anything that was agreed to internationally. A federal-provincial dialogue needs to take place in an awful lot of our environmental areas, and it should take place following the international discussions, before there are changes in our federal legislation."

David Bennett, Canadian Labour Congress

"What we mean by federal leadership is that the act should be effective for the federal jurisdiction and it should be a model for provincial legislation so we can achieve a national environment protection program, particularly in the area of pollution prevention and workers' environmental rights."

Karen Kraft Sloan, Member, the Standing Committee

"I am particularly concerned about the issue of biotechnology and what that means for CEPA . . . We don't really know what biotechnology is going to yield for us . . . It's like the PCBs of twenty or thirty years ago, when we really didn't know the effects."

Mohawk Council of Akwesasne

"We think also that the fight between Health Canada, Environment Canada, and Indian Affairs over CEPA is dangerous to native people. As they continuously pass the buck back and forth, there has to be some type of agreement between them. We would like very much to be an intimate part of that."

Bulletin of Pollution Prevention

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USE THE CEPA REVIEW TO AFFIRM, NOT ABDICATE, FEDERAL ENVIRONMENT ROLE

by Paul Muldoon

The Canadian environment and human population is under constant threat from exposure to toxic chemicals. The 1988 signing of the Canadian Environmental Protection Act was expected to protect the health of the people, wildlife, and environment against the toxic threat, so said the federal environment minister of the time. CEPA was proclaimed the most comprehensive legislation addressing toxic chemicals in the western hemisphere. It would identify the worst chemicals and take action to stop their adverse effects.

Unfortunately, CEPA's promises have not been realized. Enforcement of CEPA has proven to be bureaucratic, expensive, and ineffective. The fact that it took the government five years to carry out a central element of the act—assessing the toxicity of just forty-four chemicals—is the surest demonstration of CEPA's limitations

as currently written. (If that wasn't bad enough, thirteen of the forty-four, almost a third, have yet to be assessed for toxicity at all, because there is insufficient data to do so. As a result, the thirteen chemicals sit in a regulatory legal limbo.)

Now, after five years, CEPA is being reviewed. The review process is expected to be a long and laborious one, with

implementation of a reformed act to take place in 1996 or 1997. The review has the potential to make significant strides in protecting the human population and environment, but despite the public pressure being placed on the federal government to improve its environmental performance, a number of factors threaten to undermine this opportunity for advancement: impending budgetary cuts to federal programs and agencies, the recent announcement of Bill C-62, the Regulatory Efficiency

Act, and the work by the Canadian Council of Ministers of the Environment on "harmonization." All are unfortunate indicators that the federal government is sidestepping its role of protecting the environment.

While the public strives to improve CEPA by increasing

public involvement in the CEPA decisionmaking process and incor-

porating pollution prevention into the act, the proposed Regulatory Efficiency Act will virtually invalidate CEPA by allowing individual companies to make private deals with the federal government when it comes to actual compliance with the law.

The movement toward "harmonization" will likewise render CEPA toothless. The transfer of the duties of environmental protection from the federal government to the provinces will inevitably result in a race to-

wards the "lowest common denominator" of environmental policies among the provinces and territories. And given the current economic conditions, it does not appear feasible to transfer funds to the provincial governments to pay for the environmental protection now provided by the federal government -- the likely result is plain.

The review of CEPA is a chance for the federal government to make good on the original promise of its landmark environment protection law. But if the government bows to the pressures of austerity, "regularity efficiency," and harmonization, it will be abdicating its responsibility to govern and the review process could very well be a hollow exercise.

On the other hand, a serious review process, resulting in a comprehensively improved and enforceable CEPA, could mark the beginning of a new era of protection of human and environmental health in Canada.

EDITORIAL

Déjà vu all over again—1987's view of CEPA

by Paul Muldoon

While making some improvements over previous law, CEPA has never been as promising as government officials liked to proclaim. Still, it is surprising how clear this was even before CEPA's 1988 enactment. Here are excerpts from an editorial I wrote for the *Hamilton Spectator* in February 1987. It could easily have been written today:

"The present and proposed law share a similar weakness—the extraordinary pollution control powers given to the government are only applicable in those chemicals which have been determined dangerous. This is a slow, difficult process. In the ten-year history of the present

law, the government has made such a determination for only five chemicals—PCBs, mirex, PBBs, chlorofluorocarbons, and PCTs. . . .

"The extent to which the proposed EPA will speed up the testing process to determine which of these chemicals is hazardous is uncertain. What is apparent, though, is that, like the present law, the draft does not contain any mechanism by which the public can require that a substance be evaluated to determine its danger. Only the government can initiate the regulatory process.

"The deficiencies foreshadow a more systemic problem with the toxic substances sections of the EPA—it still employs an outmoded, 1970s approach to environmental regulation. This approach has been to legislate elaborate review and testing procedures, like those found in the EPA, in an attempt to deter-

mine which chemicals, and at what levels, can be consid-

ered "safe" in terms of human health and environmental protection. . . .

"What is needed is a more sustainable and anticipatory regulatory scheme—a scheme

that does not attempt to find an acceptable level of pollution discharge, but instills a philosophy of reducing, and eventually elimination, the use of toxic chemicals. This objective can be achieved through a regulatory framework that promotes the reformulation of products, modification of manufacturing processes, and the recycling and reusing of wastes. . . .

"In the end, the EPA consolidates, and provides some needed reform, to national environmental law and policy. It is still unclear, though, whether its 1970s outlook can cope with the problems it has to face now and on into the 1990s."

OLD EDITORIAL

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