



the newsletter of the Canadian Environmental Law Association

Surfing the EBR Registry

by Rick Lindgren

In May 1994 the Environmental Registry went on-line to facilitate public participation in environmental decision-making under Ontario's Environmental Bill of Rights (EBR). Over the past year, over 7,000 people have opened user accounts on the EBR Registry and over 14,000 log-ons have been recorded. Because the Registry is free and relatively easy to access, it is becoming one of the most popular tools under the EBR.

The purpose of this article is to:

- ◆ provide an overview of the types of information available on the Registry;
- ◆ describe how to access the Registry; and
- ◆ review techniques to avoid some of the problems and pitfalls which may occur when using the Registry.

WHAT IS ON THE REGISTRY?

The Registry is part of a government-wide Bulletin Board Service (BBS) operating under the auspices of the GONet (Government of Ontario Network). Information on the Registry is available in English and French.

The Registry contains a wide variety of EBR-related information, including:

- ◆ general information about the EBR, including the full text of the EBR and accompanying regulations;
- ◆ the Statements of Environmental Values prepared under the EBR by 14 ministries;
- ◆ ministry-specific notices about public comment opportunities for environmentally significant Acts, policies, regulations and instruments

(i.e. approvals, licences, certificates, orders, etc.), including appeal opportunities for certain instruments; information about court actions commenced under the EBR.

◆ Easy-to-read menus and help screens assist in finding the desired information, which can be down loaded onto the user's computer or to a disc drive.

HOW TO ACCESS THE REGISTRY

The Registry may be easily accessed through:

1. **Public and First Nations libraries:** Over 300 public and First Nation libraries and community information centres across Ontario have the Registry on-line. Local staff will offer assistance.

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Editorial

Survival for Greens Through Tough Times *by Michelle Swenarchuk*

It isn't easy to be a working environmentalist these days. Ottawa is getting out of environmental protection; provinces are planning roll-backs of green laws and physical attacks against activists in the U.S. are frightening people here. The triumph of a corporate right-wing ideology looks complete.

Part of the discouragement arises from a historical quality of North American society. Europeans and Third World people would never have written an article about "The End of History" just because the Cold War had come to an end; they know that history will go on as long as the human species lasts.

We need to recognize that this too is only a moment in time. Environmentalists should take a long-term view, and remember that the pendulum will swing back. It may well take 20 or 30 years and serious damage to people and the environment will occur from the current deregulated corporate expansion. However, that damage will provide the impetus for a future return to sanity.

An important issue for greens at this time is how to sustain ourselves and our work through this bleak period.

First, we have an even greater need for coalition building, but we're also entitled to recognize the exciting developments in national and international environmental coalition building that we have already achieved. For the coming struggles, I believe that we will find new allies in the mainstream of our communities.

Second, we need to commence some new long-term intellectual initiatives. The right has worked through well-financed "think tanks" for over 20 years to achieve the degree of domination of political thought that it now enjoys. Harvard economics graduates now occupy key positions in most of the Latin American countries that U.S. business seeks to penetrate. Our task is to re-establish contact with academic researchers and students at all levels and help to form the decision-makers of the next century.

Third, it's time for thoughtful capacity-building in our organizations. Activists often don't pay enough attention to the planning of systems to support our work and make it more efficient. This includes valued secretarial staff, reliable financial management and the new information systems that are invaluable for our broad national and international networking. Since volunteers comprise the backbone of many environmental organizations, performing countless hours of excellent work, we need to hear from them how we can help to sustain their energies and ability to carry on. I suspect that organizational support is a key.

Fourth, at the personal level, if we are to be in this for the long haul, there is a profound necessity for balance between our work and personal lives. Burn-out, bitterness and cynicism are almost inevitable if there isn't room in our lives for the human, family, spiritual, artistic dimensions, or for whatever it is that sustains any particular person.

Green managers, therefore, must initiate supportive staff management policies. This includes all the innovations at work that women have promoted through the women's movement and union movement, including flexible hours and as many strategies as we can devise to support working parents. Without them, carrying on becomes so difficult that people, especially women carrying the "double burden," get worn down and must find something less stressful to do. Obviously, these benefits would help our male colleagues as well.

Green puritanism about wages must go too; we need to make it possible for people to remain activists over the long term by paying attention to their desire for a decent living. We could learn much from trade unionists about this. I know many groups are struggling to survive and I don't minimize how difficult that struggle is. However, I don't think we should extol martyrdom or make it a necessity for membership in our communities. It is a great contributor to burn-out. At the community level, we could do with more celebrations of our victories, even when they're small.

We have been saying, since the consolidation of corporate dominance in the Canada-U.S. Free Trade Agreement, that it would force us to run harder and harder to stay in the same place. That reality is certainly upon us. Meanwhile, the planet is in terrible shape and getting worse.

However, the environmental movement remains a significant challenge to the neoliberal dominance. We have to keep the candle burning, support each other and be ready - ourselves and the next generation - for the better historical moment that will come.

Michelle Swenarchuk is CELA's Executive Director and a CELA lawyer.

Surfing (Cont'd from pg.1)

2. **Environmental Commissioner's Office:** The Environmental Commissioner's Office in Toronto has a public Resource Centre with the Registry on-line. Again, staff are available to assist the public.
3. **Internet and other Computer Networks:** The Registry may be accessed through a number of telnet-compatible computer networks, such as the Internet, WEB, Free-Net and GONet. At the system prompt (i.e. govonca>), enter telnet 192.75.156.92.
4. **Home or office computer and modem:** People with home or office computers equipped with a modem and communications software (i.e. CC Plus, Procomm, Windows, PC Anywhere) can access the Registry. People living within the (416) area code can dial 327-3000 to access the Registry by modem. People living outside the (416) area code can dial 1-800-667-9979 for toll-free access by modem.

In addition, the Ontario Environment Network (OEN) provides an EBR Registry Resource Service for non-profit environmental and citizens' groups that are unable to access the Registry due to time or technological restraints (phone (519) 837-2565).

HOW TO USE THE REGISTRY EFFECTIVELY

With each passing month, the information posted on the Registry increases. This is particularly true as various ministries start placing notices of proposed Acts, policies, regulations and instruments on the Registry in accordance with the five-year EBR implementation schedule. It is therefore necessary for users to become proficient at finding and retrieving the desired information. The following techniques may help focus Registry searches.

1. Check the Registry regularly

The time periods under the EBR's public participation regime are tight: 30 day comment periods and 15 day appeal periods are the norm. It is therefore important to check the Registry regularly to ensure that significant deadlines are not missed.

2. Frame search requests as narrowly as possible.

Before searching the Registry, users should know *which* Ministry is involved and what *type* of information is required (i.e. Act, policy, regulation or instrument).

If a person wants to find a specific Registry file, such as notice of a proposed order or certificate of approval for air emissions from a nearby factory, it is possible to find the file by location (i.e. city, town, or county); date (i.e. likely date or dates for the issuance of notice); company or proponent name (i.e. XYZ Ltd. or the Director of MOEE Approvals Branch); or "text string" (i.e. municipal address, type of instrument, instrument number, or other particulars). The search request should be as narrow and limited as possible; otherwise, an

excessive number of files may come up - don't simply ask for a list of all proposed air emission approvals under section 9 of the *Environmental Protection Act*. Where over 50 files result from the search request, the Registry prompts the user to narrow the search. Specific proposals are accessed by selecting "screen M" (Ministry Specific Information) on the Registry's main menu.

3. Be wary of spelling mistakes.

Search requests must be entered correctly, or the desired information may be missed. Many Registry files contain spelling errors which may cause search requests to go astray. If one is aware that a file is likely on the Registry but is unable to access it, alternate descriptors (i.e. the actual location of the factory or certificate of approval number) should be used.

4. Make timely requests for further information.

The Registry does *not* contain the entire text of the proposed Act, policy, regulation or instrument. Instead, the Registry merely offers a very brief description of the proposed decision, and provides the name, address, and fax number of a contact person from whom further information may be obtained. Given that the public comment period under the E.R. is usually only 30 days, additional information must be requested or reviewed quickly by interested Registry users. With respect to instruments, it is particularly important for users to make timely arrangements to review the instrument application and supporting technical documentation.

5. Comply with the prescribed deadlines for comments or appeals.

For *proposed* decisions respecting Acts, policies, regulations, or instruments, the Registry notice will contain a specific deadline for public comment. Where a *decision* has been made about a Class I or II instrument following the public comment period, the Registry notice of the decision will specify the deadline for filing appeals. It is imperative that Registry users comply with these prescribed deadlines. Again, given the usual 30 - day comment period and the fact that the Registry is not "interactive" (i.e. comments cannot be entered onto the Registry, but must be separately mailed or faxed to the contact person) Registry users must act efficiently and on time.

6. Be patient and persistent.

The Registry has been operational for approximately one year and a number of technical glitches and problems have inevitably arisen. These include misplaced, misspelled or incomplete Registry notices; abridged public comment periods; overabundance of insignificant proposals; and failure to place significant proposals on the Registry. There is also a need to improve and streamline the search functions so that users do not have to repeatedly scroll through previous screens or menus to adjust or re-direct search requests. If Registry users encounter technical difficulties, they should document the problem and contact the offices listed below.

Despite these problems, there is no doubt that the Registry offers important new opportunities for people to learn about, and get involved in, environmental decision-making in Ontario. The Registry should therefore be checked regularly and utilized by people who are concerned about environmental protection and resource conservation.

For more information about using the Registry, contact the Environmental Commissioner's Office (416) 325-3377 or the MOEE EBR Office (416) 323-5222.

Environmental Registry Use Stats

During the gradual implementation of the E.R., increasing numbers of Ontario residents are utilizing the various tools provided within the E.R. As of mid-June 1995, the Environmental Commissioner's Office (ECO) reported the following statistics on E.R. usage:

Number of E.R. Registry user accounts opened: 7,000

Number of E.R. Registry log-ons: 14,000

Number of Applications for Review received by ECO: 245

Number of Applications for Investigation received by ECO: 10

Number of Instrument Appeals received by ECO: 3

Number of E.R. Court Actions: 0

Forests for Tomorrow Collection *by Nicky Davis*

The Timber Environmental Assessment Decision will play a major role in shaping wildland use for the next decade or more. Reports, discussions and evidence from the Timber EA Hearings will come back both to haunt and to help wildland conservationists. Good news, then, that the FFT collection of these materials is being organized and made available at CELA's Resource Library, thanks to a grant from the Richard Ivey Foundation. These valuable resources were gathered together through the hard work of the FFT coalition, for which CELA was a counsel.

Many of the exhibits presented to the EA Board are included in the collection, from documents submitted by FFT, the Ministry of Natural Resources and many other groups, to several boxes of slides illustrating the environmental effects of logging. Over 1,800 documents provide background information on Ontario timber management issues; from old growth preservation to public participation in the timber management process.

The collection, housed as part of CELA's library, is now ready for public use and in October we will be producing a finalized FFT library catalogue. The library is open to the public from 1:00-5:00 p.m., Tuesday to Friday. Please call 960-2284 and ask for Nicky Davis, CELA/FFT collection librarian, if you are thinking of visiting or would like more information.

Endangered Species Law: An Update

by Rick Lindgren

In Canada 243 species of mammals, plants, birds, fish and reptiles have been designated as endangered, threatened or vulnerable. The threats to these species are numerous and diverse: habitat destruction, resource exploitation, incompatible land use, and toxic pollution. As these threats continue to intensify and as ever-increasing numbers of species are classified at risk, the federal and provincial governments have generally refused to enact and enforce tough endangered species laws.

The long-standing failure of the federal government to enact national endangered species legislation is particularly appalling. During the 1992 Rio Earth Summit, Canada played a key role in the development of the *Convention on Biological Diversity*. Among other things, this Convention obliged signatories, including Canada, to "develop or maintain necessary legislation... for the protection of threatened species and populations". A 1993 report by Parliament's Standing Committee on Environment confirmed that the Convention required Canada to take immediate steps to develop an integrated legislative approach for the protection of endangered species, habitat, ecosystems and biodiversity.

However, the federal government appears to be moving at glacial speed in meeting its international obligations. Countless meetings have been held between federal officials and representatives of provincial and territorial governments, culminating in a much-hyped but essentially diluted "national approach" to endangered species conservation.

This so-called "national approach" effectively amounts to a constitutional power grab by the provinces. If implemented, the proposal would leave endangered species protection to the discretion of individual provinces, and federal authority would be largely limited to fish and migratory birds. This is despite the fact that over 80% of Canada's endangered species move beyond provincial and international boundaries and are therefore beyond the effective control of individual provinces.

Endangered species conservation has undoubtedly become a matter of national concern requiring a comprehensive federal response. While there is clearly room for federal-provincial co-operation and intergovernmental agreements respecting endangered species, there is an overwhelming need for a national "safety net" - federal regulatory standards that apply

from coast to coast to coast. This is particularly true in light of the provinces' continuing failure to deal effectively with the intra provincial aspects of the endangered species problem.

During a recent round of public workshops sponsored by Environment Canada, CELA and CIELAP jointly submitted a detailed brief outlining the need for, and content of, federal endangered species legislation. The brief concluded that it is imperative for the federal government to enact effective and enforceable endangered species legislation quickly. The brief noted that there is a strong constitutional basis for such legislation and that Canada has an international obligation to enact the legislation. CELA and CIELAP recommended that at a minimum, the federal law must provide for:

- ◆ national standards covering all species at risk throughout Canada;
- ◆ listing of species at risk on a sound scientific basis by an expert and independent scientific committee;
- ◆ advance assessment and review of undertakings that may affect species at risk;
- ◆ development and implementation of recovery plans for all species at risk;
- ◆ prohibitions against harming endangered or threatened species or their habitat;
- ◆ strong penalties for violations under the statute; and
- ◆ effective enforcement and compliance mechanisms, including administrative orders and recourse to the civil courts.

Enacting a federal law without these components is ecologically, ethically, and politically unacceptable. The federal government plans to release a "plain language" version of the proposed Bill over the summer, and the actual Bill may be introduced in Parliament during the fall session. One can only hope that the Bill will be passed quickly, and that it will measure up to international requirements and the high expectations of the environmental community.

◆ Copies of the CELA/CIELAP brief may be obtained from the CELA office.

Rick Lindgren is a CELA lawyer.

Great Lakes Documentation Project Undertaken by the CELA Resource Centre

Calling all environmental groups working on water, land use, pollution prevention, bioregionalism, trade, wildlife, health and other Great Lakes related issues. The CELA Library has received a grant from the Laidlaw Foundation for the **GREAT LAKES DOCUMENTATION PROJECT** - the preparation and distribution of a cross referenced electronic database and printed **Great Lakes Catalogue** of current documentation dealing with environmental issues affecting the Great Lakes. We want to know about (and obtain) publications your group has produced to include them in our reference library, (available to you and to the public) and list them in a catalogue you and other contributors will receive.

Throughout Ontario environmental activists are working on ways of dealing with problems which directly or indirectly affect the ecology and quality of the Great Lakes. Reports, briefs, educational materials and other types of publications are being generated by groups working on diverse issues. Because organizations often have a particular focus, one group may not be aware of relevant information and documents originating from organizations with a different concern. By sending us your publications, you will be able to benefit from this 'documentation networking' initiative both by finding out what others are doing and by publicizing your work through the catalogue we will distribute. Please send us your publications - complimentary copies if possible, as the project has only received partial funding.

We look forward to hearing from you at the CELA Library, 517 College Street, Suite 401, Toronto, Ont. M6G 4A2.



Other CELA News.....

We've had a lot of extra help around here lately, with the addition of four new summer positions. Our two research assistants are Claire Farid, a law student at Osgoode Hall who is also doing her Masters in environmental studies at York University and David Oppenheim, who is doing environmental studies at Waterloo University. Claire is working on Great Lakes water quality and quantity issues and David is doing research on bio-technology issues. Two other new faces are Alison Hitchens and Tanya Spiegelberg, who are helping our librarian Nicky Davis to add to the library's online cross referenced subject catalogue.

Our articling student Bill Rouse has completed his year with us and is off - thanks for your hard work and tales of adventure in the far north.

We will have two people doing their articles with us next year - Lester de Souza will be working half time with us while he completes his Masters of Environmental Studies and Michael Wilson will be articling full time. Welcome to both.

CEPA Revisited: Standing Committee Report Calls for Overhaul of the Canadian Environmental Protection Act

by Paul Muldoon

On June 20, 1995, the federal Standing Committee on the Environment and Sustainable Development released a report detailing the results of its formal review of the Canadian Environmental Protection Act (CEPA). This massive 350 page report, titled It's About Our Health! Towards Pollution Prevention, contains over 140 recommendations urging an overhaul of the Act and commenting on a range of important public policy issues affecting the environment. Under the provisions of CEPA, a Parliamentary review of the Act was required five years from proclamation. The report is the result of extensive hearings by the standing committee across Canada.

The Standing Committee's report, chaired by M.P. Charles Caccia, is enormously important. The report's recommendations challenge a number of federal initiatives and trends. For example, it calls for a renewed and dramatically strengthened federal role in environmental protection (not the devolving role apparent over past years). Rather than affirming the trend to voluntary initiatives, the report recommends that non-regulatory measures should only proceed where there a strong regulatory base already in place. And while the enforcement resources of Environment Canada seem continually threatened, the report urges a stronger enforcement and compliance regime.

Perhaps one of the most intriguing attributes of the report is the fact is that the Reform Party did not issue a dissent to it. Similarly, the only dissent by the Bloc Québécois was with respect to the extent of the federal role in environmental protection. Hence, apart from the jurisdictional issue, the substantive directions of the report are accepted by all parties.

Apart from these attributes, other highlights of the report can be summarized as follows:

- ◆ certain principles should guide CEPA reform including pollution prevention, ecosystem approach, biodiversity, the precautionary principle and
- ◆ user/producer responsibility;
- ◆ the provisions governing toxic substances should be substantially reformed, including the definition of "toxicity," a process to phase-out bioaccumulative, persistent and toxic substances, the imposition of various timelines for actions, along with a host of other reforms in this part of CEPA;
- ◆ the imposition of a new pollution prevention regime, such as provisions for mandatory pollution prevention plans;
- ◆ substantive reforms to the ocean dumping provisions of CEPA and a new legislative base for coastal zone management;
- ◆ a new part of CEPA be enacted to deal specifically with the products of biotechnology;
- ◆ the import, sale, manufacture and all uses of lead shot be eliminated by May 31, 1997;
- ◆ various initiatives to deal with dioxins and furans in the air, including the need seek renegotiation of Canada-U.S. Air Quality Accord to reduce U.S. emissions of those substances;
- ◆ the use of CEPA to ensure that Canada complies with its international commitments, and in particular, the commitments under the Basel Convention;
- ◆ the development of a federal environmental bill of rights to provide citizen rights, including enhanced information, notice and comment and enhanced opportunities to bring lawsuits; and
- ◆ an array of other reforms and initiatives pertaining to aboriginal peoples and environmental protection; enforcement; environmental emergencies and federal house in order issues.

There is little doubt that the report It's About Our Health! is one of the most important environmental documents in the 1990s. It tackles difficult, controversial issues with a progressive, practical approach. The next challenge, of course, is to have the report accepted by the government. It is anticipated that the federal response will be ready by the end of October, 1995.

Environmentalists from across Canada welcome and support the report. They are calling on the government to implement the report as quickly as possible. The issue now is whether the federal government has the foresight to act upon a new green agenda for Canada.

Paul Muldoon is a CELA lawyer.

Books

Time to Change

by David Suzuki. Published by Stoddart 1994 230 pp.

Reviewed by Claire Farid

David Suzuki's new book "Time to Change" is an important and interesting introduction to various aspects of the ecological crisis. Current scientific, political, social, and economic systems are critiqued by Suzuki who argues that it is the worldview embodied in these disciplines that has caused many of our environmental problems. Suzuki goes further than just identifying these problems and their source. He offers several suggestions as to the transformations necessary to bring about a new relationship between humans and the environment. This book is mostly anecdotal and the stories that Suzuki has to tell of his experiences are quite engaging. This is the strongest aspect of this book, since Suzuki obviously had the opportunity to see many examples of environmental degradation first hand, encountering both those who have created these problems as well as those who are working towards change.

Beyond this brief overview, it is difficult to describe exactly what this book covers since within the basic theme of "environmentalism" there is a hodgepodge of topics. There are literally over 70 sections in the book and the titles range from "Megadams" to "Sexism and the Environment" and "Halloween and Christmas." Each of these sections is only two to three pages, thus at a number of points through the book, I was left wanting to know more about each topic of discussion - waiting in vain for the analysis to be carried further.

An example will perhaps clarify what I mean. The second section of the first chapter is entitled "Let's Transform the Military" and it is here that Suzuki suggests that some of the resources now devoted to the military should be used in order to protect the environment. On this point, Suzuki praises the idea of Charles Caccia, who suggests that military personnel be used to promote "environmental security." This idea is not elaborated upon and thus the reader is left to ponder a very strange idea with little information to go on.

Although at first glance such an idea may seem attractive (why not devote more resources to environmental protection?), upon further analysis it would seem to be highly problematic. Leaving aside the numerous examples of environmental degradation caused by the military, some would argue that the mentality upon which the military is based is the same one which informs the present unhealthy and destructive western relationship with nature. It would be difficult to use the "military machine" without invoking this understanding of nature and society and in the end, we would be trying to make part of the problem into the solution. This is by far one of the more striking suggestions of this book, yet it seems to me to be reflective of the main weakness of this exposition: the problems seem too easily identifiable and the solutions simplistic.

In conclusion, "Time to Change" is a good introduction for those who would like to learn about environmental issues. For those seeking more detailed and in-depth analysis, this is not the book to read.

Claire Farid is a law and environmental studies student researching Great Lakes issues this summer at CELA.

The INTERVENOR is published bi-monthly by the Canadian Environmental Law Association (CELA). CELA, part of the Ontario Legal Aid Clinic system, was established in 1970 to provide legal assistance on environmental matters. CELA also offers legal education, advocates law reform, publishes staff briefs and submissions, has a research library and is affiliated with many environmental groups. Opinions expressed in the INTERVENOR may not be shared by CELA.

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