

Editorial

The E-Chip: Techno-Cure for Eco-Porn?

by Rick Lindgren

In recent months there has been considerable interest in the "V-chip" - the high-tech gadget that permits television viewers to block out automatically programs with unacceptable levels of sex or violence.

Although the V-chip may serve a useful purpose, it appears technically feasible and socially desirable to develop a similar device that screens out environmentally objectionable programming - a so-called "E-chip."

Television audiences are constantly bombarded with images of mass consumerism and unsustainable development. By blocking out this eco-onslaught, the E-chip would surely assist the much-needed transition from the consumer society to the conserver society.

Like the V-chip, the E-chip could be programmed to filter out varying degrees of environmentally unfriendly programs or advertisements. My suggested E-chip hierarchy would be as follows:

Level 1 Eco-Erotica

This category would include the countless commercials that tease or seduce viewers into buying ever-increasing amounts of attractive but utterly unnecessary junk. Imagine the possibilities - no more

late-night "info-mercials" to pre-empt the all-important re-runs of Star Trek.

Level 2 Soft-Core Eco-Porn

This category would include programs or movies that glorify "un-green" activities: suntanning, testing nuclear weapons, or eating Atlantic turbot. A sub-category could include shows that offend basic environmental tenets, such as *The Beverley Hillbillies* (rampant materialism based on fossil fuel development) or *The Brady Bunch* (failure to limit population growth).

Level 3 Hard-Core Eco-Porn

This category would include most new car commercials, self-serving ads by industry associations and any pro-NAFTA speech. Viewers could also use this category to block out all episodes of *Barney* - sappy sentimentalism from purple dinosaurs must be toxic.

The E-chip: coming soon to a cable company or satellite dish near you!

Rick Lindgren is a CELA lawyer.

Deregulation - A Disturbing Continental Trend

by Ken Traynor

The dramatic assault on environmental regulation being carried out by the Ontario government represents a common and disturbing trend across North America. The signing of the North American Free Trade Agreement (NAFTA) set in motion a complex series of economic impacts: corporate restructuring, the peso devaluation and a dramatic expansion of the maquila industries along the U.S.- Mexican border. But it is in the decisions made by governments, especially at local levels, where the environmental impacts of accelerated deregulation are being played out.

Given the scope of the deregulation project in the so-called "high

standard" regime of Ontario, it is interesting to hear that even in Mexico deregulation is the norm, although implementation and enforcement of its environmental statutes is often non-existent.

CELA's Executive Director, Michelle Swenarchuk and this author recently attended meetings in Mexico and Ottawa where representatives from across the Americas shared perspectives on free trade. The reports from Mexico were disturbing.

An important component of the \$45 million lobbying campaign carried out to sell NAFTA by its boosters touted Mexico's environmental law as one of the strongest among

"developing" countries. They emphasized the law's detailed requirements for environmental impact assessments of public and private projects and highlighted its strong land-use planning and environmental enforcement provisions. But once the NAFTA was signed and following the debilitating impact of the peso devaluation, these highly touted provisions came under withering attack. Last summer many environmental requirements for small and medium sized businesses were suspended. Air pollution in Mexico City soared.

In the fall, Mexico's federal environmental agency, under strong

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Deregulation (Cont'd from p.2)

pressure from industry and the Commerce Secretariat, suspended the environmental impact assessment requirement for a variety of industrial projects replacing it with a weak provision that new factories must submit a vaguely defined pollution prevention plan.

And now, just two short years into NAFTA, proposals are before the Mexican Congress which would rewrite and significantly weaken environmental laws in Mexico. The proposals include:

- ◆ the elimination of environmental impact assessments for most projects including federal projects such as huge coastal tourist developments;
- ◆ turning over critical environmental matters to state and local governments without the resources or accountability necessary to carry out effective regulation; and
- ◆ greater restrictions on public access to environmental information and to the decision-making processes.

Most revealing is a recent story out of Ciudad Juarez on the U.S. - Mexico border where the maquiladora industry (and its attendant pollution and health impacts) is booming - over 60 new plants were set up last year. The NAFTA debate has highlighted the damage U.S. corporate activity has wrought in the border cities of Mexico in recent years. After a long battle, the city of Ciudad Juarez approved a payroll tax of 1% on large local businesses, including the usually exempt maquila industry. In January 1996, this precedent setting tax was approved by the Chihuahua State Congress despite strenuous opposition and threats of legal action from both local businesses and national maquila associations.

The lack of commitment across the continent to environmental regulation and the tremendous opposition by major corporate players to even paying taxes to fund local infrastructure, shows how hollow were the corporate commitments made during the NAFTA debates.

Ken Traynor works on International Trade issues at CELA.

Lead Shot: Deadly Ammunition

by Robert Cahill

In July 1995 former Environment Minister Sheila Copps announced an initiative to eliminate lead from sport hunting and fishing by 1997. The federal government's efforts to eliminate the deposition of lead shot, split shot and jigs into the environment are proposed under the *Migratory Birds Convention Act (MBCA)*. Some organizations feel the proposed phase-in period does not allow the industry adequate time to respond to increased demand for alternatives to lead. Others have long awaited such an announcement but fear the government's efforts will be too weak, due to jurisdictional restrictions, to have any significant impact. The federal government's limited jurisdiction over natural resources leaves the Environment Minister with largely a leadership role in rallying the provinces to co-operate in a national initiative to reduce and ideally eliminate the use of lead in sport hunting and fishing.

Effects of Lead on Waterfowl

It is estimated that 3.8 million waterfowl die each year in North America after ingesting lead shot, sinkers and jigs left behind by hunters and anglers. The Canadian Wildlife Service (CWS) estimates that 1,500 - 2,000 metric tonnes of lead shot is deposited annually into the environment by Canadian sportsmen. Of the estimated 50-60 million game duck migrating from Canada every fall, up to 6 million may ingest one or more spent lead shotgun pellets while in Canada. At least 250,000 of these birds are estimated to die of lead poisoning, while the remainder suffer sublethal lead poisoning. Studies have found that the incidence of embedded shot in apparently healthy, free-flying waterfowl frequently exceeds 20%. As the U.S. banned lead shot for waterfowl hunting in 1991, Canada is responsible for an increasingly large proportion of the lead poisoning in North America.

Two distinct issues are involved: the use of lead fishing tackle (sinkers, jigs, etc.) that is being ingested by the common loon and second, lead shot used for waterfowl hunting that is being consumed by bottom-feeding waterfowl.

The common loon protected under the MBCA may be poisoned when it consumes baitfish or ingests lost sinkers. A 1992 study concluded that 52% of adult, dead and dying loons found in New England over 2 ½ years

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Lead Shot (Cont'd from p.3)

had ingested lead tackle and 51% of those fatalities were adult breeding loons. This may affect their population stability.

The angling issue seems to be solvable: find a non-toxic alternative, ensure adequate supply at a reasonable cost and eliminate lead. There is little resistance to using non-toxic fishing tackle which is readily available (bismuth, tin, copper stainless steel and composites).

The hunting issue is more difficult to resolve primarily due to perceptions regarding lead efficiency. A long-standing argument that using alternatives to lead would lead to increased crippling is now felt by the CWS to be more a function of the skill of the shooter than of the type of ammunition (lead, steel, bismuth) used. Although lead is a heavier shot, steel and bismuth shot's lighter weight is compensated by its initial higher velocity and by using larger pellets than with lead shot. Non-toxic alternatives are more expensive than lead shot, but would increase the average hunter's total yearly expenses by only about 1-2%.

The only way to eliminate waterfowl deaths from lead ingestion is to implement closed seasons or expand the use of non-toxic substitutes. However, implementing acceptable regulations and timetables has slowed the process.

Current Legislation

Until 1994, no province had tabled a phase - out of lead shot or tackle. PEI, Nova Scotia, New Brunswick, Ontario, Manitoba and BC monitored lead toxicity in waterfowl very closely to establish lead concentration hot spots on a case-by-case basis. Hot spots are defined as any area where 5% or more of found or killed waterfowl contains traces of ingested lead. A finding of more than 10% may result in regulatory measures, including "non-toxic zoning" where lead shot is restricted. Yet each incidence is evaluated on an *ad hoc* basis which may account for very few designated areas.

Of particular concern in Ontario were the effects of lead poisoning on trumpeter swans (because of their feeding habits) which were re-introduced to their habitat and the effects upon raptors such as the peregrine falcon and the bald eagle which may eat waterfowl with ingested or embedded lead shot. Studies have indicated that lead poisoning mortality of bald and golden eagles accounts for an estimated 10-15% of post-fledging mortality in these raptorial species.

There are four non-toxic shot zones in Ontario: wildlife management Unit 76 (Tiny Marsh Provincial Wildlife Area, Matchedash Bay, Minesing Swamp, the northern portion of Lake Simcoe and a portion of southern

Georgian Bay), the Lake St. Clair area; Presqu'ile Provincial Park and Darlington Provincial Park.

As most of the affected species are migratory birds, the federal government can enact regulatory restrictions under the MBCA. In 1993 an amendment was made to the MBCA to permit the use of both steel and bismuth shot in non-toxic zones. Compliance with this regulation has relied heavily upon user ethics, with regulatory enforcement in Ontario jointly undertaken by the Ministry of Natural Resources (MNR), the CWS and the RCMP.

Canadian resource legislators are still lagging behind their international counterparts. Use of lead shot for waterfowl hunting was banned in the U.S. in 1991 while Britain banned the use of lead fishing sinkers in 1987. The hot spot approach followed to date has proven to be inadequate, as a CWS survey of gizzards and wing-bones of the most commonly hunted species of duck clearly indicated that high lead exposure is not restricted to a few, well-defined hot spots.

Towards '97

With Ms. Copps' statement last summer, the federal government continued its efforts to reduce lead point sources in the environment. There are two significant pieces of legislation under which the federal government can make a strong statement on lead reduction: the Canadian Environmental Protection Act (CEPA) and the MBCA. The federal and provincial governments have regulated lead in a variety of areas: ambient air, food, drinking water, soils and consumer products and could take further steps under CEPA.

However, the most immediate prospect for legislative action is under the MBCA. Enacted in 1917 after a joint agreement with the U.S. to protect birds travelling between the two countries, the MBCA is a powerful piece of legislation which protects both game and non-game species, including loons and migratory waterfowl, using such instruments as open seasons and hunting regulation. However, the MBCA has no jurisdiction over upland game birds (with exceptions: common snipe and woodcock) or the production, import or sale of lead shot. CEPA may be required for the effective management of this issue on a national level.

BC and the Yukon are the only two jurisdictions to have instituted province - and territory - wide non-toxic shot zones for 1995. Quebec and the maritimes have embraced the 1997 date to establish non-toxic zones throughout their respective jurisdictions.

As enforcement will be difficult considering the extensive geographic region to be covered, education is key to effectively switching from lead to non-toxic alterna-

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Lead Shot (Cont'd from p.4)

tives. Management options include:

- Use the MBCA to establish, in consultation with the provinces - territories and other stakeholders, a national ban on the use of lead shot for waterfowl hunting;
- Use provincial - territorial legislation to ban the use of lead shot for all hunting where waterfowl and other waterbirds are at risk for lead shot ingestion;
- Use provincial - territorial regulations, or CEPA, to phase out lead for all hunting and fishing; and

- Institute a national hunter education program to include up-to-date information on non-toxic products and information to help improve shooting skills and knowledge of new tools.

Education, public relations and training are essential elements of the phase-out of lead and the phase-in of non-toxic alternatives to lead in hunting and fishing.

Robert Cahill is enrolled in environmental studies at Trent University and is pursuing environmentally focused legal studies. He is involved in the fur trade.

The Niagara Escarpment Litigation - Environment 2: Proponents 0

by Rick Lindgren

Two recent court decisions have reaffirmed the importance and validity of Ontario laws that protect the internationally significant Niagara Escarpment environment.

In the first case, United Aggregates Ltd. (UA) sought a judicial declaration that its proposed quarry expansion in the Niagara Escarpment Plan Area did not require a development control permit under the *Niagara Escarpment Planning and Development Act*. In the second case, Reclamation Systems Inc. (RSI) brought a multi-million dollar lawsuit against former Premier Bob Rae and the Ontario government for enacting legislation that effectively ended RSI's plans to establish a landfill in the Niagara Escarpment Plan Area. In both cases, these proponents were unsuccessful.

THE UA DECISION

UA proposed to undertake de-watering activities (i.e. facilities to pump groundwater and discharge surface water) in order to expand its quarry operations. Although UA's quarry was within the Niagara Escarpment Plan area, UA argued that it was exempt from the *Niagara Escarpment Planning and Development Act* because the quarry pre-dated the legislation and because the proposed de-watering did not constitute "development."

Concerned that the de-watering could affect groundwater levels, natural springs and water quality within nearby watercourses, the Niagara Escarpment Commission advised UA that an application for a development permit would be required. UA then went to court for a declaration that it was not subject to the *Niagara*

Escarpment Planning and Development Act. In August 1995 Mr. Justice Belleghem of the Ontario Court (General Division) rejected UA's arguments and held that a development permit was required for the proposed de-watering: see 17 C.E.L.R. (N.S.) 229. UA then appealed to the Ontario Court of Appeal.

In its decision dated March 13, 1996 the Court of Appeal unanimously dismissed the UA appeal. The Court found that although the quarry was established in 1900, the proposed expansion was "much more than the incremental movement of machines over the property to excavate and process" aggregate. Instead, the proposed expansion was a fresh stage and it constituted a "development" or "sub-development" that required fresh initiatives, approvals and construction of facilities. The Court concluded that a development permit was required for prospective quarry activities and in particular for the proposed de-watering.

THE RSI DECISION

In 1988, RSI filed applications for approval to establish a landfill site in a mined-out quarry within the Niagara Escarpment Plan Area. In late 1990 Premier Rae assured RSI in writing that the newly elected NDP government would not interfere with the ongoing environmental assessment process before the Joint Board in relation to the RSI proposal. In 1992, however, an NDP member introduced a private members' bill (Bill 62) that amended the *Environmental Protection Act* to prohibit the establishment or expansion of landfills in the Niagara Escarpment Plan Area. It contained an immu-

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Niagara Escarpment (Cont'd from p.5)

nity clause stating that no lawsuits based on the new prohibition could be brought against the Crown, the Cabinet or public employees. Bill 62 received Royal Assent in 1994, effectively defeating the RSI proposal.

RSI began an action against Premier Rae and the Ontario government for almost \$500 million in damages. RSI did not claim that Bill 62 represented an expropriation of its interests, but argued that it relied upon Premier Rae's statement that the RSI proposal would receive a fair hearing. According to RSI, Bill 62 could not have been passed without the support of the NDP government therefore Premier Rae had either breached his promise to RSI or had negligently misrepresented his government's policy regarding the RSI proposal.

Lawyers for the Crown and Premier Rae brought a motion to determine whether the "immunity clause" barred the lawsuit and whether the RSI Statement of Claim disclosed a reasonable cause of action. In a January 19 1996 decision, Mr. Justice Cumming of the Ontario Court (General Division) found that the "immunity clause" did not bar the lawsuit because the clause did not contain language retrospectively to prohibit lawsuits based upon a breach of promise or negligent misrepresentation that pre-dated Bill 62. However, Mr. Justice Cumming found that the RSI claim did not disclose a reasonable cause of action. According to the Court, although the Premier's statement was a "representation" and a "promise," the statement was not untrue, inaccurate or misleading. The government did not interfere in the ongoing hearings process and Premier Rae could not make any representations fettering the inherent power of the Ontario Legislature to enact or amend legislation. Similarly, there was no legal relationship between Premier Rae and RSI that would give rise to a lawsuit based on contractual breach. The Court struck out the RSI Statement of Claim.

Read together, these decisions provide considerable support for the Ontario government's ability to enact, amend and enforce laws that are intended to protect and conserve the Niagara Escarpment.

Rick Lindgren is a CELA lawyer.



In Brief

Water Pipeline to York Region

Recently York Region considered their options for future water supply by looking far beyond their borders. Anticipating that they will need to triple their water supply by the year 2031 due to population growth, the Region looked beyond their current primary supplier (Metro Toronto) to three bidders on the final short list: Yorkshire Water PLC (England) part of a consortium led by Union Gas (Chatham, Ont); Northwest Water (England) linked with Consumers' Gas (Toronto) and TransCanada Pipelines (Calgary) and the Ontario Clean Water Agency (Ontario Crown Corp). The winner was Consumers Gas and North West Water who will work together to supply the region's water for the next 35 years, in a project which may cost over \$500 million. The deal marks the first private-public municipal water system.

Ongoing discord between the Greater Toronto Area regions has led to this search. There are no chronic water resource shortages in the GTA, but Metro wanted York to foot the bill for the added infrastructure which would be required to increase the volume being sent between the regions. York felt the price was too steep and decided to look for alternatives.

For several years, a pipe line to Georgian Bay has been promoted to the region by TransCanada Pipeline. CELA, with other concerned groups, has written to Ministers Elliott, Hodgson and Leach about their concerns that development of new water infrastructure may go ahead without any environmental assessment. The impacts on Georgian Bay and areas downstream (the St. Clair River, Lake St. Clair and Lake Erie) of this pipeline proposal could be significant. These water bodies could suffer diminished flows as well as habitat loss and loss of biodiversity from lowered lake levels. Many riparian uses would suffer detrimental impacts. Pipelines also increase the opportunities for contamination and invasive species to migrate into new watersheds. The recreational uses of Georgian Bay could be affected as well as Aboriginal treaty rights. Pipelines from Lake Simcoe and Lake Ontario are also being considered as alternatives.

The issue of increased conservation has also been given little attention. It is estimated that up to 1/3 of the area's water supply is currently lost through leaks in the aging infrastructure which has not been maintained. The Geological Survey of Canada is conducting studies of groundwater resources in the Oak Ridges Moraine to

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Water Pipeline (Cont'd from p.6)

identify important groundwater potential.

The joint venture may not bode well for consumers. The Chair of the National Campaign for Water Justice in London, England, commented that "People are gob-smacked that Canada is considering letting the English companies in to run their systems...they can't handle the water supply in this country, never mind anywhere else." Since privatizing British water in 1989, companies such as Yorkshire Water PLC have amassed great profits (close to 100 million pounds in 1995). British consumers haven't fared so well. Prices have increased an average of 78% (in some cases 400%) since privatization and service has worsened. Yorkshire Water PLC continues to lose over 25-38% of its water per year through leaky pipes installed close to 100 years ago. Without upgrading the aging system, the company has continued to rake in its profits, blaming drought for draining its reservoirs.

York Region's choice of Consumers Gas and North West Water will certainly guarantee profits will flow far beyond their borders.

Citizens' Conference on Dioxin

by John Jackson

The grassroots movement across this continent grows ever stronger. On the weekend of March 15, approximately 550 activists from grassroots groups attended the 3rd Citizens' Conference on Dioxin and Other Synthetic Hormone Disrupters in Baton Rouge, Louisiana.

In a setting surrounded by the smoke stack lined Mississippi River, these activists reconfirmed their commitment to action and developed strategies for furthering their shared goals. The workshop had three main themes: ending the use, production and discharge of dioxin and other endocrine disrupting chemicals, eliminating the conditions that allow corporations to contaminate the world and establishing environmental justice.

Dr. J.P. Myers, co-author of *Our Stolen Future*, reminded us why it is so essential to eliminate endocrine disrupting substances with a description of the horrendous scientific findings on the impacts that those substances are now having on wildlife and humans. Thus stirred, the workshop attendees spent five hours on each of nine campaign strategy workshops: getting chlorine out of the paper and pulp industry, getting organochlorines out of manufacturing and cleaning, halting all forms of incineration, phasing out all uses of

pvc, creating a scientific and medical swat team to help communities build a health movement to address dioxin, getting dioxin out of food, developing tools to help poisoned communities and communicating dioxin issues to the public and the media. A recipe book will soon be put out presenting the conclusions from these workshops.

The conference ended with the passing of a resolution demanding that "immediate steps be taken by every relevant political institution and manufacturer to dramatically reduce and ultimately eliminate the dioxins and other endocrine disrupters going into our food and domestic products, into our children and into our communities."

Other speakers at the conference focussed on the urgent need to challenge the legitimacy of corporate power. Dr. Peter Montague, editor of *Rachel's Environment and Health Weekly* asked "who stole our future?" His answer was clear: the corporations. Much of the discussion at the conference focussed on how to return power from multi-national corporations to the community. The final conference resolution included the demand that "no waste handling or manufacturing process should be sited without the consent of any potentially-impacted population."

Perhaps the strongest recurring theme at the conference was the demand for environmental justice. This theme had a passion to it that perhaps could only be found here in the deep south where people who have been in the midst of the struggle for their basic rights for so long played a major role at the conference. But the concerns for environmental justice went beyond Afro-Americans to include indigenous peoples, the poor and Hispanics.

Several youths attended the conference, but were not originally included on the programme. They pointed out to the conference that they are the ones whose future is being stolen and that the youth must, therefore, be included in the planning of a conference such as this. They were included in subsequent panels and a commitment was made to include them in planning the next conference.

The justice issue was reinforced on the final morning of the conference. Several Cherokee Indians were badly treated when they went to breakfast. When the conference attendees were informed of this, over 200 of them quickly organized a march to the restaurant.

The fourth dioxin conference is being planned for August 1997 in Indianapolis.

John Jackson is President of Great Lakes United and has worked for 20 years on hazardous waste issues.

Books

Clayoquot Mass Trials: Defending the Rainforest by Ron MacIlsac and Anne Champagne.
New Society Publishers, 1994. 208 pgs.

reviewed by Aaron Welch

Clayoquot Mass Trials, *Defending the Rainforest* could just as easily be titled *The Trial, Part Two*. By simply recording the events of the largest mass trial in the Western world, the book makes a powerful argument that there are problems of Kafkaesque proportions in the Canadian justice system.

The first part of the book has no narrative and is essentially edited newspaper and magazine clippings about the issues surrounding Clayoquot Sound. We learn how the Sound is one of the largest tracts of temperate rainforests remaining on Earth; how the B.C. government is in a conflict of interest because it owns the logging company, MacMillan Bloedel, that it should be policing; and how the Peace Camp, the headquarters for the blockade, was run on ecofeminist principles: openness, consensus and nonviolence.

Although the clippings provide an excellent overview of the issues, some of them are repetitive and contradictory. For example, one source on p.9 tells us that only seven watersheds on Vancouver Island are undeveloped or protected. Two pages later, another source claims that only nine are unlogged.

Contradictions are less of a problem in the latter sections of the book which print the raw transcripts of the court proceedings. It makes for rivetting reading to step inside the proceedings where logic, fairness and

justice are nonexistent. For example, none of the accused were read their rights, many accused were tried without lawyers, and worst of all, the charges were changed retro-actively from civil to the more serious criminal contempt of court. Parts of these sections are genuinely funny and sad at the same time, as they show the utter absurdity of the proceedings.

This book shows us how some of the accused dealt with their own judicial insanity. Many argued that they were defending a higher good (saving the rainforest) when they disobeyed the injunction against blocking the logging road. One accused read Dr. Suess's *The Lorax* into the court record. The punishment seems far worse than the crime. Protestors were jailed up to six months. One grandmother received 85 days in jail. The book reprints her prison diary to show us how the protestors were treated as common criminals: they were handcuffed and strip searched.

By taking us from the blockade, to court and then to jail, the book allows us to bear witness to the judicial farce. The book also reprints the names of all the arrested protestors and along the inside pages are photographs of over 300 of the arrestees, showing us how everyone from a 10 year-old to an 85 year-old put their bodies on the line. After reading and seeing all these heroes who have done their part to save some of the last temperate rainforests on earth, you will wonder what you can do. Well, buying the book will be a good first step; all the royalties go to The Friends of Clayoquot Sound. Besides, it will give you something to read on the next blockade.

Aaron Welch is a CELA volunteer. He has a Journalism degree and will be attending Law School in the fall.

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