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The regulatory cracks widen
CEPA passes

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After the Ontario election ... CEPA

Paul Muldoon, Executive Director

There is little doubt that it is tough slogging these days for those who work to protect the health and the environment of the people of Ontario. Although there were many media reports on the declining state of Ontario's environment and the dramatic downsizing of the environment ministries, the environment was not a key election issue. It is obvious that the public is still unaware of how threatened public health and the environment are by the weakening of environmental laws and policies in this province.

The question is, where do we go from here? For the past four years, CELA has undertaken enormous efforts in responding to what we have referred to as the three "Ds"—deregulation, downsizing and devolution. We are hoping that the new government will not continue the 3-D trend. We hope the government realizes that the Ontario public is seriously concerned about the reduced capacity of government to respond to environmental issues, and that it is time it gets on with the business of protecting the public interest by tackling some of the pressing environmental problems that confront all of us.

CEPA will not be the keystone law we had hoped

Those of us who had hoped that the federal government's new *Canadian Environment Protection Act* would supply the leadership the provinces seem to be lacking are bitterly disappointed with Bill C-32 (see pages 5-7, this *Intervenor*). Bill C-32 came out of the committee process in good shape. It contained a strong precautionary statement, and it called for "the phase out of generation and use" of persistent toxins. By the time industry and the Cabinet were through with it, Bill C-32 had become just another weak piece of environmental legislation that seems destined to be successfully circumvented by industry and by provinces concerned more with the business of business than with the business of the public interest.

A healthy environment is a "fundamental value"

As with governments in the past, CELA is always willing to work with agencies that want to protect our environment and our health through the development of more stringent standards, more comprehensive policies and updated regulations. CELA has the expertise and competence to provide real value to such initiatives, and we have the unique and rich experience of working with clients who are facing real environmental problems.

However, while CELA is willing to work toward better legislation and regulation, we will retain our role as being a vocal and effective critic where government efforts seek to undermine whatever protections are now in place to protect the environment and human health.

It will be interesting, over the next few years, to assess whether provincial and federal governments will understand and act upon the reality, as stated by Mr. Justice LaForest in the *Hydro-Quebec* decision, that a healthy environment is a "fundamental value" of Canadians.

In our view, there will be enormous public support—support that hasn't been seen for over a decade—for any government that strives to place this "fundamental value" at the centre of its policies and legislative agenda.

We will have to wait and see how governments respond.

CELA Briefs ...

(Some of the things that some of the staff at CELA have been up to in the past few months)

Laura Shaw, our articling student has completed her stint with us ... **Elisabeth Brückmann** takes her place for the next 12 overworked months. **Michelle Swenarchuk** has been involved, at the request of the federal government, in consultations on the Free Trade Agreement of the Americas and the World Trade Organization as Canada tries to figure out what its position should be at the WTO ministerial meeting in December 1999. **Ken Traynor** has been working on founding Mining Watch ... up and running in Ottawa as of April 1/99; it will keep an eye on the industry and promote good practices. Ken is also preparing for a popular assembly on the FTAA to take place this November 1-4 in Toronto. **Paul Muldoon** and **Theresa McClenaghan**, who argued the Harmonization case in January/99, have given notice of CELA's intention to appeal the ruling. Both are preparing to argue the *Sunpine* case and the *Oncomouse* case at the Federal Court of Appeal in Toronto. **Sarah Miller**, who has the CELA lead on water issues, is helping organize the Water Summit in Ottawa, this September 17-19 *(see WaterWatch article)*. **Kathy Cooper** is helping her and continues her work on the Children's Health Study, including a comprehensive section on lead. **Rick Lindgren** and Theresa won a significant environmental precedent for municipal land use planning at the London Municipal Board Hearing (regarding new environmental policies to be applied to the annexed areas of London. Rick is also working with community groups in the north on the proposal to use Adam's Mine as a dump for Toronto garbage.

A tale of two environmental laws

*Joseph F. Castrilli**

While the courts breathe life into federal environmental assessment law, Ontario suffocates similar provincial legislation designed to protect the public. Ontario's actions threaten rural communities in western and eastern Ontario facing mega-dump proposals.

The Federal Court of Canada, in a decision issued in April in Edmonton by Mr. Justice Douglas Campbell, quashed a federal permit for an open-pit coal mine near Jasper National Park. The project would have dumped millions of tonnes of waste rock in environmentally sensitive areas, such as migratory bird habitats, in violation of federal laws. The court ruled that a federal hearing panel had failed to consider all relevant information on, reasonable alternatives to, and cumulative environmental effects of, the project.

In contrast to this affirmation that environmental assessment law should ensure we "look before we leap," is the conduct of Ontario. Since 1997, Ontario has gutted provincial law designed to protect the public—primarily rural and farming Ontario—from literally being buried in millions of tonnes of municipal solid waste—primarily from Toronto.

Where mega-dump proponents once had to demonstrate that their proposals were needed and that there were no better alternatives, now such projects are routinely approved without demonstrating they are needed, without examining alternatives, and without public hearings. Environmentally speaking, this is not common sense.

Surprisingly, the current residents of Queen's Park have stated repeatedly their commitment to environmental assessment law. Michael D. Harris, as Opposition Leader, endorsed full environmental assessments for waste disposal sites. In October 1992, the future Premier decried the failure of the government of the day to apply Ontario's law fully to waste disposal sites: "These sites are not subject to the fullest kind of environmental assessment, and we are appalled at that ... I will commit that there will be a full environmental assessment, that all alternatives must be considered."

As Premier, Mr. Harris endorsed the application of the *Environmental Assessment Act* to waste disposal sites. In October 1995, he stated: "I want to say very clearly to the member that the last time a government decided to skip full environmental assessments, skip the wishes of the people, skip this whole process, short-circuit everything, was when his party was in power and they proceeded to try to force mega-dumps on the people in and around Metropolitan Toronto without a full environmental assessment. ... I want to tell you that we made a decision then and there that that was not the role of government—not to short-circuit the process."

> "Under the new act we are passing we will be giving waste disposal sites full environmental assessment. I don't see what has changed."
>
> —*Environment Minister Norm Sterling*

In October 1996, Ontario's environment minister, the Hon. Norman W. Sterling, on the eve of amendments that would short-circuit the province's environmental assessment law, stated: "... under the new act we are passing we will be giving waste disposal sites full environmental assessment. I don't see what has changed."

Unfortunately, everything. No waste disposal site proponent under the new amendments has been required to conduct a "full environmental assessment," to demonstrate need for, or alternatives to such proposals. None has been subject to public hearings on these issues.

Ontario has 120 million tonnes of waste disposal capacity. In western Ontario alone, we have 70 million tonnes, sufficient capacity to provide disposal services for this region for 30 years. In eastern Ontario, there is sufficient capacity for 16 years of disposal. Despite this surplus capacity, waste disposal companies seek approval for huge landfills, without proposing to demonstrate need for their projects or to examine alternatives. One company, Canadian Waste Services Inc., seeks approval for two mega-site expansions—one each in western and eastern Ontario—that would add 38 million tonnes of new disposal capacity to the 120 million tonnes we have already.

Enormous waste disposal site projects threaten to defeat public policy on waste reduction, reuse and recycling, speed up resource depletion, chew up farm land, and degrade other features of our natural heritage. When faced with such threats 25 years ago, the Davis Government enacted what turned out to be a vigorous environmental assessment law. The Harris Government needs to apply this law with equal vigor; not dismantle it.

Judge Campbell's decision points to where Ontario should head with its environmental assessment law. If we can protect the habitat of migratory birds in western Canada from being buried in millions of tonnes of waste rock, we can protect Ontario's rural and farm communities from being buried in millions of tonnes of garbage. That would be common sense.

*Joseph Castrilli is an environmental lawyer and a CELA board member.

Between the cracks—the hazards of country living

Laura Shaw, CELA Articling Student

Pat Gunby hasn't always lived in the country. In fact, when her husband asked her to consider moving to rural Burford Township 12 years ago she was skeptical. "I'll give it 2 years" she said to her husband, but after the two years were up, she liked living in "the country" so much they decided to stay and she has now lived in Harley for 12 years.

In 1994 Pat's view of country living began to change. The property next door (about 1000 feet away) was sold to the Mushroom Producers Co-operative Inc. who planned to produce mushroom growing substrate for 6 local mushroom farmers.

At first, there was little public concern about the mushroom facility. After all, Pat and her neighbours were used to the normal agricultural activities that took place on the local farms.

The president of the Co-op assured the neighbours that the facility would be "state of the art" following the most recent European construction and that at most the smell from the facility would be similar to the smell from keeping six horses. The township of Burford approved the Co-op's facility and construction began.

Mushrooms are grown in a substrate made from composting straw, horse manure, chicken manure, and gypsum. At the end of the composting process, a substrate results which is inoculated with mushroom mycelium and pasteurized. The end product has a pleasant, sweet odour.

Unfortunately for Pat and her neighbours, they soon discovered that the first phases of the composting process at the new Co-op produced intolerable odours that are best described as "rotting" and "nauseating". The smell is more than offensive. At a hearing before the Normal Farm Practices and Protection Board, Pat testified that when the odours from the Co-op roll onto her property, they make being outside impossible. Her sister-in-law vomited from the stench. Another time her husband went to the hospital with breathing problems. She says her son and the boy next door have developed skin conditions and that the odours cause nausea and headaches in her family and those of her neighbours.

The first phase of the composting takes place in outside ricks at the Co-op. At similar operations in Europe, the usual practice is to keep the whole process indoors. During the first phase, operators use aerated floors. Odours are kept to a minimum.

Initially, calls to the Ministry of the Environment gave Pat and her neighbours hope that something could be done. Officials from the Ministry of Environment investigated their complaints, and came out to visit them and the Co-op. Pat says they were sympathetic and agreed the odours were unusually powerful. But in the summer of 1996, MoE staff suddenly stopped visiting and stopped returning phone calls from Pat and her neighbours. The MoE referred them to the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA).

OMAFRA's response was that Pat and her neighbours must go before the Normal Farm Practices and Protection Board for a declaration as to whether or not the mushroom Co-op was operating in a manner consistent with normal farm practice.

The Farming and Food Production Protection Act (1998), states that an agricultural operation cannot be sued in nuisance if the activity complained of is a "normal farming practice". Moreover, townships and municipalities cannot enact by-laws to regulate farming if the by-law would interfere with what would otherwise be a normal farming practice.

A "normal farm practice", says s.44 of the *Farming and Food Protection Act,* is one that ...

(a) is conducted in a manner consistent with proper and acceptable standards as established and followed by similar agricultural operations under similar circumstances, or

(b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;

Pat retained CELA to represent her at the Normal Farm Practices Board. CELA's case focused on the similarities between mushroom composting and other types of composting, such as sewage or organic waste. CELA's expert, Dr. Lambert Otten, Director of the School of Engineering at the University of Guelph and a composting expert, testified that composting facilities can operate without odour much of the time. At times, when odour is the present, there are remedial technologies available such as biofilters.

Dr. Ron Pitblado, a former OMAFRA employee and mushroom composting expert, testified on behalf of the Co-op that they were meeting the standards of the industry in Ontario. However, he admitted that in Europe, most facilities have some processes to help remediate the odours such as aerated floors for the compost ricks.

The case is a good example of how easily people can fall between the cracks of jurisdiction once the web of regulatory protection begins to unravel. Cutbacks to the Ministry of the Environment have forced it to implement a policy of not pursuing certain kinds of complaints—including complaints of sickening odours. The referral agency, OMAFRA, has nothing comparable to the regulations in BC which require mushroom composting facilities to conduct their operations in an enclosed building with an aerated floor. No mushrooms are produced at the composting facility and yet, it is zoned agricultural. If it were zoned industrial, the Township would have more powers to deal with the situation.

And so, five years after the Co-op set up shop, Pat Gunby and her neighbours await the decision of the Normal Farm Practices Board on whether the smell that has affected the quality of their life so severely is "normal".

Feds fail to protect public's health: CEPA passes

Paul Muldoon, CELA Executive Director

Down, but not out. This is how environmental groups from across Canada have described the latest round in efforts to improve the proposed new *Canadian Environmental Protection Act* (CEPA), a cornerstone piece of federal environmental protection legislation. Important amendments were made to strengthen the bill by the House Standing Committee on Environment and Sustainable Development. Even as public interest groups were congratulating the Committee in improving a very weak bill, the Environment Minister was reversing much of the Committee's work. It is now up to the Senate, that parliamentary chamber of sober second thought, to reflect on the bill and give their views as to the adequacy of the bill.

The five year battle to improve the 1988 CEPA started in 1994 and has been described as one of the nastiest legislative battles to date. The Standing Committee on the Environment and Sustainable Development traveled across the country hearing submissions and then issued its report in June 1995 calling for a total revamping of the Act. The government then endured enormous pressure from the industry lobby to ignore the Standing Committee's report. By the time the legislation was introduced into first reading by December of 1996, industry fingerprints were all over it. When the election was called in 1997, the Bill had to be re-introduced. Even within this process, the new bill, Bill C-32, had been watered down again.

At second reading, Bill C-32 was referred to the Standing Committee for public hearings and section-by-section approval. During that stage, it was obvious there were real problems for the government. On a number of amendments, government backbenchers voted against the government. Other times, the opposition parties, with the help of some Liberal backbenchers, were successful in getting their amendments approved.

Some of the key improvements put forth by the committee include:

- inserting an appropriate definition of "*precautionary principle*" that allows governments to take action, even if there is not an absolute certainty of harm. The bill had a precautionary principle that only allowed government actions that were "cost effective";
- a clarification of the goal of "virtual elimination" that aimed to ensure that the most dangerous substances cannot be released in detectable amounts; and
- a research program of "endocrine disrupting substances" and a progressive definition of these substances.

By the time the bill left the Standing Committee, the bill had been improved, the government thoroughly embarrassed, and the public disillusioned about the process. Meanwhile, industry had put together a full court press to dismantle the work of the Committee. This strategy worked. When the Committee's report was presented to Parliament, the Minister of the Environment had withdrawn 6 of the 11 key amendments that industry had lobbied against in preceding months, including the amendments pertaining to the precautionary principle and the virtual elimination goal. In fact, the changes by the Environment Minister with respect to "virtual elimination" assures that even the most dangerous substances will not be phased out. It can be argued that the bill now legitimizes the use and generation of these dangerous substances. Other changes also makes it more difficult for the Environment Minister to act with respect to transboundary air and water pollution.

When Bill C-32 went to the House of Commons June 1st, 1999 for third and final reading, three governmental backbenchers, all members of the Standing Committee took the unprecedented move of voting against the bill.

While most thought the fight was now over, the battle ground has shifted to the Senate. Exactly what will happen at the Senate is unclear. However, the Senate has apparently agreed to hold public hearings and revisit some of the key issues that were before the Standing Committee. The CEPA story continues, but what previous chapters do reveal is the raw influence of the industry lobby and the federal government's willingness to put short term economic interests in front of long term human health and environmental health goals.

Worth Quoting (from the press):

"The bill of a thousand cuts."

—Liberal MP Karen Kraft Sloan

"This is an example of how this bill is being weakened at the report stage. It is a very regrettable development because it is, in the end, at the expense of public health and the quality also of water and air. ... This bill could have been a reasonably good one if improvements made in committee had not been dismantled (by the government), if business interests had not been put ahead of public health, and if the official Opposition had performed an effective role."

—Liberal MP Charles Caccia [House Committee Chair]

"Everybody lobbied very hard for this bill: the environment [lobby], industry, everyone. But I think most moderate people will agree that it's a significant improvement over what we have today. ... It is legislation based on a pollution prevention principle, legislation that will address the most toxic substances with virtual elimination."

—Environment Minister Christine Stewart

"Canadians are now stuck with a very flawed bill ... Nowhere in the law will it require elimination; only for reduction."

—Paul Muldoon, Executive Director, CELA

Sober second thoughts: CEPA in the Senate

(Excerpts from Hansard)

C-32 *is in the Senate—usually a quick stop to cross some t's. But the venerable men of the Standing Senate Committee on Energy, the Environment and Natural Resources are giving the folks from Environment Canada some reasons for sober second thought. The Senators are asking some rather pointed and well-informed questions of the drafters of C-32 and it's making Hansard interesting reading.*

Here, for your summer reading, are some abridged exchanges between Senators and Environment Canada officials as the Committee goes through the CEPA Bill clause by clause during meetings June 15th and 16th, 1999.

Virtual Elimination

The plot in the first exchange concerns how the phrase "virtual elimination" became part of the legislation. The "committee stage" refers to the work done by the House of Commons Standing Committee on Environment and Sustainable Development, and the "report stage" refers to the changes made to C-32 by the government after it left the House Committee. In the Chair of the Senate Committee is Senator Ron Ghitter...

Mr. Harvey Lerer, Director General, Office of the Canadian Environmental Protection Act, Department of the Environment: The language that came out of the standing committee was to "phase out". There was a change at report stage which changed that to the "virtual elimination" of persistent bioaccumulates.

Senator Spivak: Was the word "generation" not also used?

Mr. Lerer: Yes, "generation and use". The principle of the bill pertains to the virtual elimination of releases, which is the essence of the difference. Out of the standing committee, the words were "the phase out of generation and use" and at the report stage the wording of the amendment was the "virtual elimination of releases".

The Chairman: In your view, what is the difference between the two wordings?

Mr. Lerer: The basis of toxics management in Canada is risk assessment and risk management. The essence of that is controlling exposure. That is to say you may have a toxic chemical that is used in contained areas where there is no or little exposure. The risk is deemed to be lower than if the exposure is greater. Therefore, what we are focusing on is the diminishment or ensuring that exposure is as low as possible. In those instances where exposure cannot be controlled, then the bill enables us to ban generation and use.

Senator Spivak: Am I correct that this deals with the 12 most persistent chemicals and does not refer to the 23,000 which currently exist? ....

Mr. Lerer: That is correct. There are now 12 which are on the list, nine of which have already been banned in Canada. They are not used domestically. The environment is still exposed to some of them because of global wind currents. They are the subject of international protocols. Nine of the twelve have already been banned. Our best scientific guesstimate is that over the next five to ten years we may see another dozen of these among the 23,000 that the bill commands us to categorize and assess.

The Chairman: While we are on this point, the legislation originally said that the Government of Canada acknowledges the need to phase out the generation and use of these chemicals. Does that refer to the most persistent?

Mr. Lerer: For clarity, again, when the bill was tabled originally in the House, it did not have the phrase "phase out of generation and use." That was added during the standing committee process. At report stage, the government then introduced an amendment that spoke to the virtual elimination.

Cost Effective Precaution

In a later exchange, the Senators try to get at what the government means by the qualification of the precautionary principle, "cost-effective measures". A lot of the Committee's time was spent trying to gain some certainty around this issue.

Mr. Lerer: I would refer you to clause 2(1)(a), which says: *"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."* That version of the precautionary principle, the Rio version, was always in the preamble. During the standing committee process, an amendment was introduced, voted upon and accepted by the standing committee that incorporated the precautionary principle but struck the phrase "cost effective", making it different from the Rio version of the precautionary principle. At report stage, the government reverted to the Rio definition of the precautionary principle in the administrative duties. It was the precautionary principle accepted by nations at the Earth Summit in Rio de Janeiro.

Senator Spivak: Do you have a definition of "cost effective"? Would "cost effective" include the savings in health and well-being, the actual money savings that would be achieved if the precautionary principle were employed, or does it mean whether industry finds this cost effective? What is the definition of "cost effective"?

Mr. Lerer: There is no definition of "cost effective" in the bill.

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The Chairman: Let me understand how this works. Let us assume Canada is committed under Kyoto to certain standards. Let us assume that someone comes forward and suggests that the

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oil and gas industry, by virtue of their flaring or the sale of gasoline, is doing something very serious, something deleterious to the environment, although there is not total scientific information. The government moves on that basis. Then industry comes in and says it is not cost effective. Where are we? How does this work?

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Mr. Steve Mongrain, Representative, Office of Canadian Environmental Protection Act, Department of the Environment: Mr. Chairman, the term "sustainable development" provides a good example with which to compare "cost effective". The definition of sustainable development in the bill is based on the Brundtland definition, which is generally well accepted. We had discussions with our economists on a definition for "cost effective". However, we had too many different definitions within the field of economics that dealt with the term "cost effective". For that reason, we became entangled when trying to grapple with the issue. As my colleague, Mr. Lerer pointed out, certain provisions in the administrative duties emphasize and focus on the positive ecological and environmental benefits associated with the measures when looking at whether they are cost effective or not. It is a requirement to look at these benefits so there is a balance within the bill. As for a definition, as I indicated before, it was a very difficult task given the number of different definitions in the field.

The Chairman: If it is so difficult to define, and there are so many different interpretations, why have it in? One could argue that if it is so difficult to define and defies proper definition, then would it not be better to leave it out?

Mr. Mongrain: The government is committed to the precautionary principle as stated in the Rio declaration, which has been our policy since the 1995 government response. The administrative duties are general in scope. We have experience in looking at costs and benefits when we develop our regulations, so I do not believe it will present a difficulty when it is time to implement this legislation.

Is CEPA residual legislation?

Here, the Senators ask if this is primacy legislation—does it supersede other legislation? The question is important in assessing how strong CEPA will be.

Senator Spivak: This is a residual bill. There are other acts which take precedence, like the *Pesticides Management Act*. However, where there is an equivalent regulation in the provinces this act does not apply. Does the Governor in Council decide cost effectiveness? or is it also a question of consulting with all the provinces? Does this have any bearing on Canada's role in the International Convention on Persistent Organic Pollutants? I know that the virtual elimination business is a little different in the bill and in what Canada is proposing. How about this? There are three questions: The residual nature; the necessity to consult with the provinces or to leave it to them when they have equivalent measures; and the residual nature of this bill in terms of other acts which have a completely different orientation. Are you not setting yourself up a Herculean task to move through this quagmire to get at what we want to get at?

Mr. Lerer: If I may respond to some of those points. I do not characterize this as a residual act. In fact, as we speak to it, there are other acts of Parliament that other ministers are responsible for, where they must consider environmental and human health aspects. The perception of what is being called, "the residual nature" of this bill was changed during the House process. I can be more specific if necessary.

Senator Spivak: Excuse me, but the bill does state that when certain acts, like the *Pesticides Management Act* are present, then this bill does not apply. For instance, clauses 104 to 115, indicate, under the *Seeds Act*, that the requirements for notification and assessment in Bill C-32 do not apply if the new living organism is manufactured and imported for use that is regulated under another act of Parliament. The same thing happens with the *Pesticides Act*, the *Fertilizer Act*, the *Shipping Act*, and others. It happens with a number of acts, so what is the meaning of saying that this is not a residual bill? This is an important point. You have to be more specific.

Mr. Lerer: It is an important point and as we go through these clauses there will be a number of things.

Senator Spivak: It says that Bill C-32 cannot be used to regulate an aspect of a substance that is regulated under another act in a manner that provides, in the opinion of the Government in Council, sufficient protection to the environment and human health.

Mr. Lerer: Yes, it does. That is a test that has been set up through the house process to provide for.

Senator Spivak: It does not say that this act is paramount to the other acts.

Mr. Lerer: No, it does not.

The Chairman: It is clearly not primacy legislation, and it is not purported to be.

Mr. Lerer: No, it is not.

Equivalency Agreements

Mr. Lerer's answer begs the question as to whether CEPA will also be residual to equivalency agreements—agreements between the provinces and Canada about who has authority to do what on environmental issues and problems. It's a short leap from that discussion to concerns that the Canada-wide Accord on Environmental Harmonization may subvert CEPA. The federal Environmental Commissioner also expressed misgivings about equivalency agreements in his 1999 report. In general, he said they were far too vaguely formulated and too loosely implemented to know whether they actually served to protect the environment.

Senator Spivak: My question concerns equivalency agreements. I want to know if there is enforcement for

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this? There is an equivalency agreement and the provinces which may or may not enforce it. Then what? Also, I will wrap both questions in again I want to refer to the court case because this touches on the Harmonization Accord. The Federal Court case which said that, "the Accord is so devoid of factual content that it is impossible to say what it means". What is your comment on this?

The Chairman: What case is that?

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Mr. Duncan Cameron, Legal Counsel, Justice Department, Office of the Canadian Environmental Protection Act, Department of the Environment: It was a judicial review of the Harmonization Accord. The Canadian Environmental Law Association had challenged the accord on the ground that it was fettered to the discretion of the Minister and exceeded her jurisdiction. We won that case. *[And CELA is appealing it—Editor]*

Senator Spivak: But on what grounds?

Mr. Cameron: On the ground that the Accord is an agreement in principle. It is a political agreement that sets out principles under which future agreements will be entered into, such as equivalency agreements or administrative agreements.

Senator Spivak: It [the court decision] also said that it was devoid of factual content, so it was impossible to say what it means.

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Senator Spivak: Let me get this straight ... the government has various sanctions that could terminate the agreement, but it has no power to enforce. Let us say that the government terminates an agreement, and does everything else, but now it is not being enforced. What happens now? Do you know what I mean?

Mr. Mongrain: If the agreement is terminated, the federal CEPA regulation comes into force.

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Mr. Mongrain: I want to be clear again. This is not a question of the province not administering its own laws and regulations. It is a question of it not administering an equivalent regulation that exists under this act. If the government decides not to terminate an agreement, then the agreement remains in force, and the federal regulation is not applicable in that province.

Senator Spivak: Therefore, it could not be enforced.

Mr. Mongrain: As long as there is an agreement. If I may, I will confer with my justice colleague for a moment. ... The Minister of Environment does have authority to issue an interim order where a substance poses a grave and significant danger and action is needed on an emergency basis to deal with the situation.

The Chairman: That is a somewhat unprecedented action, is it not? Can you give us an example of where you have done that.

Mr. Mongrain: We have used the interim order authority on PCB exports.

The Chairman: Have you ever gone into a provincial jurisdiction where they had the power and got into that harangue?

Mr. Cameron: Not in a provincial jurisdiction, we have where there is concurrent jurisdiction. In fact, the main Supreme Court decision that underlies much of our constitutional jurisdiction for this bill is the *Hydro Québec* case. The Supreme Court issued its decision in 1997. There was a prosecution under the PCB interim order that was issued under the current CEPA of 1988. We have used the interim order power but not in the specific context that we are describing now, where we have an equivalency agreement in place. *[CELA intervened in support of the federal government in this case—see "Supreme Court Says CEPA Rules", Intervenor v.22 no.4, 1997—Ed.]*

Will industry abuse "cost-effective"?

In the following exchange, Senator Kenny broaches the touchy issue of the industry lobby on Bill C-32. He worries that the same lobby will use the "cost effective" qualification (undefined as it is in the Bill) to frustrate the application of CEPA.

Senator Kenny: What is disturbing about "cost effective" to some members of the committee is that there appears to be many intangibles here. It does not appear to be amenable to reduction to as simple a definition as you have in the *Alternative Fuels Act*. There is a fear that the words "cost effective" may be applied to any number of things in ways that would frustrate the objective of the bill.

Mr. Lerer: I understand that concern.

Senator Kenny: Can you allay that concern?

Mr. Lerer: Can I allay that concern? I think I can speak to the fact that, as things like regulations are being developed and the timing of regulations, a stakeholder process is undertaken. ... If I can perhaps put one toe over the line, there is the political process as well. Can I allay the concern? I think that there are sufficient checks and balances to ensure that that balance is not tipped in the direction that you would not want it to be tipped, sir.

Senator Kenny: If I may, chair, it is the political process that perhaps concerns some members of this committee in particular, because some of us have the impression that the way the political process is weighted, those with environmental interests do not seem to have the same political weight as those with economic interests. We all recognize that there must be a balance at some point in the day, but when we see something going in without a formula, we know how the balance works now. If there was some formula that would give us some comfort in the future or some benchmark, then I think you would go a long way towards alleviating this concern. However, if your response is, "Well, things will work out in the political process," we know who has the sway and the weight and how the decisions are made.

Mr. Lerer: There is no response that I can make to that.

Is Lands for Life a good deal for the environment?

David McLaren, Communications Coordinator & Theresa McClenaghan, CELA Counsel

As the ink dries on the various Lands for Life agreements, policies and announcements, some questions still need answers. Does the Lands for Life package adequately protect the environment? Does it respect the trust we have placed in government to use Crown lands in a sustainable manner? Does it fulfil the fiduciary obligation the Crown has for protecting Native rights? In CELA's opinion, it does none of these. Here are a few reasons why.

Protecting 12% of our land is not enough. As the authors of Canada's Biodiversity (1995) put it, "We can now conclude unequivocally that the Brundtland Commission's suggestion of 12% protected (implying 88% of the planet's natural systems can be destroyed) is not only grossly inadequate but also a formula for the destruction of the ecosphere's ancient stable norms.... The system of national parks and highly protected areas should be increased to 33% of Canada's total area, and should include all ecoregions." Studies reviewed by Canadian Parks and Wilderness Society have concluded that the 12% figure has no scientific basis and that protection of such a small amount of wilderness "is far too little to prevent mass extinction".

Even the "protected areas" are not protected because mining exploration will be allowed. When an area is taken out of a protected area for the sake of exploitation, another area of similar size is supposed to be re-designated as protected. However, there is no guarantee that the new area will contain the same valued biodiversity that prompted the protection of the old, now exploited, area in the first place. There is also no guarantee that the new protected area will not have already been exploited.

What is the environmental impact of a mine? Here is how Bob Ahrens, former manager of the Strathcona Provincial Park puts it: "That 10 acre hole influences 100,000 acres of the choicest parts of the park." Unhappily, Bill 26 (passed in the Ontario Legislature in 1997) makes it harder for the government to ensure mining companies clean up after themselves.

Lands for Life includes $23 million in subsidies to the mining industry to help them uncover specific locations across the province for prospecting and exploration.

The Forest Accord (part of the Lands for Life package) gives guarantees to the forest industry their costs will not increase and their supply of wood and pulp will not decrease. And if either happens, we the public may be on the hook for compensation to logging companies. That deal also anticipates that tourist operators may have to pay forest companies to stay away from tourist areas. The roads that miners and loggers build on Crown lands and in parks are welcomed by sports hunters and anglers who use them to access remote areas. Lands for Life allows hunting in almost all protected areas—a major departure from the former park-by-park policy.

From our review of plans for the protected areas, it seems to us that Lands for Life offers more guarantees to resource extractors than it does to the public. Instead of putting conservation first, Lands for Life has become an attempt to satisfy too many resource extraction groups.

What does that do to the government's obligation to the public interest? Professor Noel Lyons puts the case for the public in his 1994 article, "Canadian Law Meets the Seventh Generation": "Because the provinces own the territorial resource bases within their boundaries, they bear the greatest responsibility, and therefore should play the dominant role in pursuing sustainability.... Public lands are held in trust for the benefit of the people, whose lands they are, and the terms of the trust are fixed, at least in general terms, by the Charter [of Rights and Freedoms]." In our view, Lands for Life is a breach of that public trust.

The Crown also owes a fiduciary obligation to First Nations who retain certain constitutionally protected rights to the land and its resources. Those rights certainly include the right to harvest fish and wildlife for food and ceremony as the Supreme Court recognized in its *Sparrow* decision of 1990. But they may also include, as more recent Supreme Court decisions suggest, a right to harvest natural resources for trade and commerce, and a right to a significant say over how Crown lands are used.

So, now what do we do? Well, to start, we should demand full, permanent biodiversity protection of at least 30% of the Lands for Life planning area and insist that no mining or exploration be allowed in parks and protected areas. And we should support, on constitutional grounds, First Nations' assertion of their rights including a greater say on how the land is used.

The "wise use" ethic that informs Lands for Life is very dangerous: it assumes that we can manage nature in a way that will extract maximum economic benefit and still save a piece of it for our grandkids to look at. Environmentalists must strenuously resist being forced into merely tinkering with all the bits and pieces of Lands for Life to try and mitigate its consequences. The Lands for Life package assumes that we know enough science and tricks of stewardship to prevent ecological disasters; and that we can fix the disasters we cause.

What we really need is not more tinkering. We need a new conservation ethic—one that borrows, perhaps, a bit from the Hippocratic oath ("first, do no harm") and a bit from Native philosophy ("do nothing unless you can live with the consequences even to the seventh generation").

On May 21, 1999, CELA released a comprehensive report, critical of the Lands for Life policy of the Ontario government. *(Brief #373)* The report and its recommendations are posted on the CELA website: www.web.net/cela.

The law and your septic system

*Gary McKay, Barrister & Solicitor**

"It was either Isaac Newton—or maybe it was Wayne Newton who once said, 'A septic tank does not last forever.' He was right."
—Erma Bombeck, The Grass is Always Greener over the Septic Tank

On the other hand, a properly installed septic system should function without failure for many years. The emphasis is on *properly* installed, for not all septic systems are created equal. Even if a system is installed correctly, carelessness can do in a system. For example, parking your 4x4 on top of the absorption bed could compromise the work of the buried pipes.

Septic system problems reported to Ontario's new home warranty program give some more, real-life examples. In one case, a homeowner scuppered his system by rototilling the leaching bed to create a vegetable garden. Another created a winter skating rink for his children over his system and by flooding the same area every night, he ultimately froze the leaching bed solid, which caused water to back up into the house. Yet another homeowner excavated his septic area to install an in-ground swimming pool. Someone flushed a toilet and ... well, it happens.

It's a wise man who knows who does what with septic systems—before he builds. Consider this your summertime guide to the law of septics in Ontario.

There have been recent and important changes to the law affecting septic systems in Ontario. The passage of *The Services Improvement Act, 1997* and the proclamation of Schedule B to that Act into law on April 6, 1998 transferred the regulation of smaller septic systems from Part VIII of the *Environmental Protection Act* to the *Building Code Act* (1992). The building code itself has been extensively revised and a new Part 8 has been inserted to regulate the installation and operation of septic systems. Smaller septic systems are those whose design flow is for less than 10,000 litres a day, and the system is located wholly on the lot of the building which the system serves.

Formerly, regulatory provisions relating to septic sewage systems were usually administered and enforced by boards of health of Regional and District health units. Municipal Chief Building officials and their inspectors are now charged with enforcement.

Although the *Building Code Act* allows municipalities to enter agreements with upper tier municipalities or with certain agencies such as conservation authorities or health boards to have those other bodies administer the provisions of the building code as to sewage systems, the Province has only mandated that this be done in Northern Ontario. A new section 2.15.1.1 has been added to the code designating particular Northern health boards and a conservation authority as the responsible bodies.

In contrast, in the Greater Toronto Area there has been a steady devolution of the control of septic systems from regional health units to local municipalities, as part of their overall responsibilities for building code matters.

An additional feature of the legislative changes is a new requirement for the testing and licensing of installers of sewage systems. Prior to the enactment of new provisions in Part 2 of the building code there was no requirement or regulation of installers of septics. In the words of one municipal official, septics were previously installed by anyone who knew how to operate a backhoe. Now an examination must be passed to obtain a licence to be an installer.

The new Part 8 of the building code sets out 5 different classes of septic systems in a uniform and detailed fashion. The regulations describe those systems and make provision for such matters as: clearances of systems from bodies of water, requirements as to depth and anchorage of septic tanks and holding tanks, and standards for operation and maintenance of septic systems. Under the *Building Code Act*, a Chief Building Official (CBO) has an obligation to issue a building permit under Section 8 of the Act, unless specified matters are not met. He or she may refuse to issue a permit if any "applicable laws" are contravened. "Applicable laws", means any act, regulation or by-law which prohibits construction unless those laws have been adhered to. Accordingly, a CBO can refuse a building permit if provisions of the building code pertaining to septic systems are not being met.

Some people may be concerned that small septic approvals are generally no longer being handled by health unit staff and are now monitored by municipal building staff. However, the new requirements of training for inspectors of sewage systems, the requirement for the testing and licensing of installers, and a more regulated regime to govern septics under the building code, should mean our ground and surface waters will be no less protected.

* Gary McKay is a municipal law lawyer practicing in Toronto. This article was written while he was doing volunteer work for CELA. He can be reached at gary.mckay@sympatico.ca

More summer septic reading

A New Homeowner's Guide to Septic Systems, Ontario New Home Warranty Program, 1998.

Builder's Guide to Wells and Septic Systems, R. Dodge Woodson, McGraw-Hill, 1996 *(a well written and concise American text).*

The revamped building code and Act can be obtained from the Ontario Government Bookstore (phone 416-326-5324).

WaterWatch to hold Water Summit in September

David McLaren, Communicatoins Coordinator

In response to increasing pressures to commodify water, CELA has joined with the Canadian Union of Public Employees and the Council of Canadians to form WaterWatch, a national coalition committed to tracking the current state of Canada's water and the claims made on it by business and international trade laws. WaterWatch is also fostering and promoting the formation of local WaterWatch committees in communities across the country to, among other activities, prevent attempts to privatize municipal water and wastewater services.

In addition to calling on the federal government to ban the export of bulk water, CELA is continuing detailed work on a comprehensive water policy for Ontario. For example, preliminary research has revealed the sorry state of ignorance over the state of Ontario's precious groundwater resources (see the website for more information). As well, CELA's trade analyses show that provincial or federal government action to control water exports must be rooted in rigorous principles of water conservation and ecosystem integrity. Only a truly conservation-based approach will have a chance of being "trade-proof". Ultimately, trade in bulk water needs to be removed from all trade agreements.

The attempt, by Nova Corp., in 1998, to sell tanker loads of Lake Superior water to China served as a wake-up call that water is on the trading block. Public pressure from both sides of the border persuaded the Ontario Ministry of Environment to withdraw the permit to take water it had issued to Nova. *[See Intervenor vol.23 no.2 and vol. 23 no.3 for the Nova story.]*

Then, in December 1998, news broke that Sun Belt Corp. of Santa Barbara California had launched a claim under Chapter 11 of NAFTA for compensation for lost revenue resulting from a ban on water export imposed by the BC government. *[Intervenor vol.23 no.4, "Sun Belt, Nova & NAFTA"]*

For More Info....

Jamie Dunn, Water Campaigner,
Council of Canadians
jdunn@canadians.org
613-233-2773 ext. 239
1-800-387-7177

Sarah Miller or Kathleen Cooper
Canadian Environmental Law Association
sarahmil@web.net
416-960-2284

CELA's website offers some ways in which you can become involved ...

http://www.web.net/cela

WaterWatch is not waiting for the federal government to act. It is developing its own water policy which will be presented to the federal government. A **"Water Summit"** will be held September 17, 18, 19, 1999 at City Hall (where the Ottawa River and the Rideau Canal meet). The meeting is open to anyone. Contact the Council of Canadians or CELA for more information—contact people and numbers below.

The Ottawa Water Summit can be considered a citizens' response to the World Water Council (WWC). This organization includes the UN, the World Bank, some NGOs and representatives from the private sector—notably the Suez Lyonnaise des Eaux, one of the largest private water management companies in the world. Recently, the secretariat of the WWC met in Montreal to consult with various NGOs from the US and Canada. According to the Council of Canadians, the WWC report of that meeting reduced the concerns of the NGOs about privatization and trade to a checklist of what is needed to allow the privatization of publicly owned water facilities and the international trade of water supplies.

The World Water Council next meets in the Hague the week of September 23, 2000.

BLUE GOLD

In June 1999, the International Forum on Globalization (IFG) published *Blue Gold*—a fascinating and easy to grasp summary of the global water crisis and the trend toward the privatization and the international trade of water. It is written by Maude Barlow, Chair of the IFG's Committee on the Globalization of water and of the Council of Canadians.

The IFG is a research and educational institution comprised of 60 researchers from 20 countries.
1555 Pacific Ave. San Francisco, CA 94109.
Phone: 415-771-3394 Fax: 415-771-1102 Website: www.ifg.org.

Surfing the EBR Registry

Elisabeth Brückmann, CELA Articling Student

You have a right to know what your government is doing.

Ministries of the Ontario government are required, by the *Environmental Bill of Rights (EBR)*, to publicly post announcements of intended policies, instruments, legislation and regulation that have implications for the environment. The main vehicle for this posting is the EBR Environmental Registry. In the current climate of de-regulation and government cutbacks, it is virtually the only way of knowing what different ministries have up their sleeve. For example, without the EBR Registry, no one would have known that the Ministry of Environment (MoE) had issued a permit to Nova Corp. to take Lake Superior water. CELA took that information and blew the whistle, ultimately forcing the government to withdraw the permit and to review its policies.

The Registry provides:

- text of the *Environmental Bill of Rights*
- general EBR information
- Ministries' statements of environmental values
- summaries of proposed acts, regulations, policies, and instruments
- notices of appeals of instruments and appeal decisions
- notices of court actions and final results
- application forms for reviews and investigations

The Registry, originally an electronic computer bulletin board, is now a web-based system. If you have access to the Internet at your home, office, or local library or community centre, just enter this URL: **www.ene.gov.on.ca** to get to the Ontario Ministry of Environment home page, then follow the clues to click your way to the Registry. Or, if you just want to check out the postings, type in the URL at the top of the illustration.

The illustration is the form you are presented with once you find your way to the Registry's search engine.

Select, in the appropriate boxes, the Ministry (eg, Natural Resources), the Type (eg, All Types), the Status (eg, List All) and the Published Date (eg, in the last month). These choices are the easiest way to monitor what's going on in a particular ministry. Most of the types of postings are in html format now. Some may be in .pdf format which means another half-hour to down-load Acrobat Reader. The government doesn't make it easy for you to find out what it's doing.

Each posting provides a short description of the decision, the parties involved, whether comments or other actions can be taken, to whom such comments should be addressed, and most importantly, any time limitations for comment.

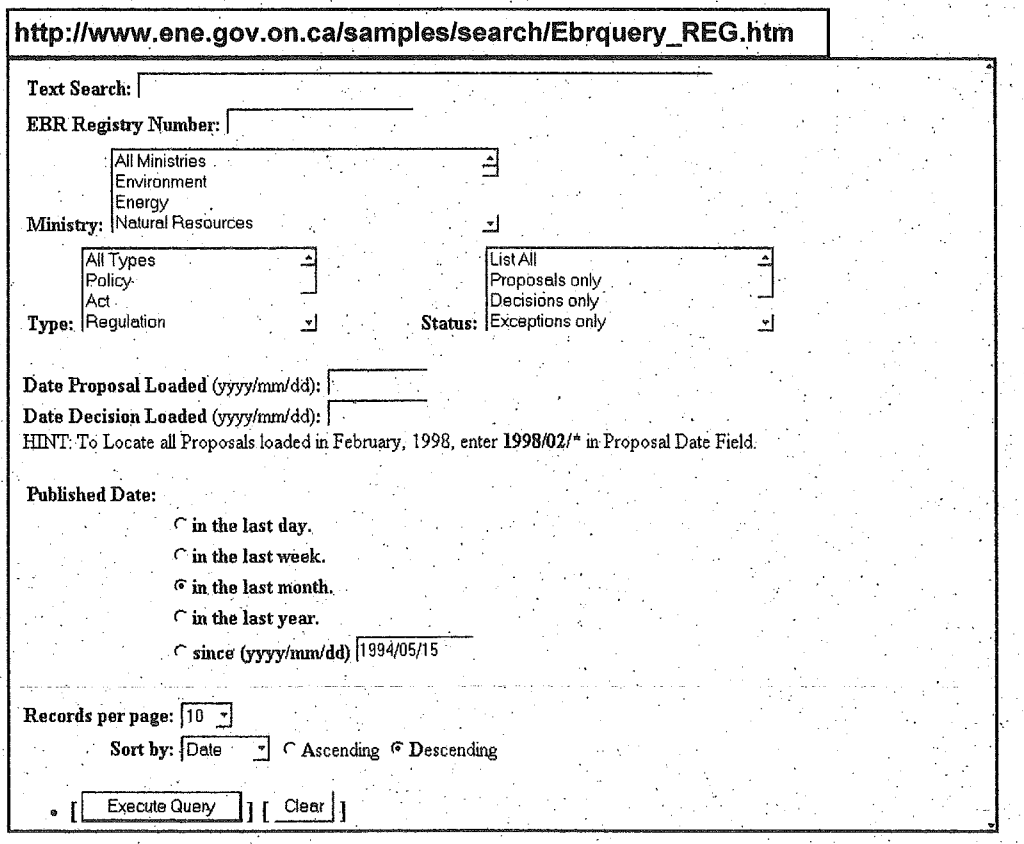
While the Registry is a crucial element of the EBR and an important first step to keeping Ontario residents informed of changes to their environment, it is not without its problems.

The Environmental Commissioner of Ontario (who administers the EBR) is working with the government to make the Registry more accessible and informative. The search program should be easier to use. The Registry should highlight and provide more information on major decisions. Language needs to be clarified throughout. Even those new to environmental regulation should be able to find what they are looking for and understand the notices when they find them.

We recommend you check the site regularly for new postings by your favourite ministry. If you are having problems, try phoning the Resource Centre at the ECO office.

The Resource Centre provides the public with access to a whole range of environmental materials and resources, and offers research assistance to boot.

Here's how to contact the Centre.
Phone: (416) 325-0363
Fax: (416) 325-1348
Web: http://www.eco.on.ca/



From the Headlines

David McLaren, Communications Coordinator

Politicians like to think the public has a short memory. So, we've decided to provide you with the following mnemonic device—a selection of headlines over the past few months. —Ed.

Inco gets environmental panel's blessing on Voisey's Bay project

Globe & Mail, Alan Robinson, April 2, 1999

An environmental review panel has given **Inco Ltd.** approval to go ahead with the $1.1-billion development of the Voisey's Bay mine project, but only if agreements can be reached with the governments and aboriginal groups involved. The review panel concluded "that, provided [its] recommendations are carried out, the project would not seriously harm the natural environment, or country foods [seals, fish, whales, caribou] and people's ability to harvest them."

Ecology groups want review of Suncor decision

CP, April 3, 1999

The Environmental Resource Centre, Toxics Watch and the Prairie Acid Rain Coalition have filed an application for a judicial review in Federal Court claiming Ottawa failed to ensure a proper environmental assessment was done before Suncor's $2-billion Project Millennium was approved. The project got the go-ahead Tuesday from the Alberta Energy and Utilities Board after hearings earlier this year.

Province urged to ban exports of fresh water

Toronto Star, Brian McAndrew, April 3, 1999

The province has failed to come up with a policy that would prevent the export of large quantities of water, says the **Canadian Environmental Law Association** in a report to be released today titled "A Sustainable Water Strategy for Ontario."

Report blames electric emissions for foul air

Globe and Mail, Martin Mittelstaedt, April 6, 1999

A report from Toronto's public health department says discharges of smog-causing nitrogen oxides from the Lakeview generating station have risen 136% from 1996-98. Sulphur-dioxide discharges have increased 96%

Ontario hiding records on environmental action

CP, April 8, 1999

Environmental reports once readily available have become scarce under the government of Mike Harris says a report by Mark Winfield of CIELAP and Paul Muldoon of **CELA**. The report criticizes the Ministry of the Environment for not releasing statistics on environmental law enforcement.

Court annuls permit for coal mine near Jasper

Globe & Mail, April 10, 1999

The Federal Court of Canada has quashed the federal permit required to build a string of open pit coal mines on the edge of Jasper Park in Alberta. J. Campbell ruled that the environmental panel that approved the plan did take into account the full environmental consequences of the proposal.

US hoping to ship PCBs to Canada

Globe & Mail, Anne McIlroy April 12, 1999

More than 130,000 kilograms of toxic PCB waste from an American military base in Japan could be shipped to Canada for disposal under a contract that has been awarded by the U.S. Department of Defence, the *Globe and Mail* has learned. The waste can't go to the U.S. because of a ban on the importation of foreign-generated polychlorinated biphenyls, said Gerda Parr, a spokeswoman for the Defence Logistics Agency, part of the U.S. Department of Defence.

Ottawa ignores advice, plans plutonium fuel test

Globe and Mail, Jeff Sallot, April 17, 1999

The federal government, ignoring a recommendation from the Commons foreign affairs committee that Canada reject the burning of MOX fuel, will test-burn plutonium from US and Russian nuclear warheads. Environmental assessments will be required before MOX can be used to generate electricity.

Micmac hope legal challenge changes ruling

Toronto Star, Kelly Toughill, April 19, 1999

By taking the case of Josh Bernard (who was arrested last May driving a load of spruce logs cut by Native loggers) to court, the Micmac of NB hope to change the precedent set in the *Paul* case and assert their aboriginal and treaty rights to the provinces natural resources.

Taxpayers may face Giant cleanup bill

Globe & Mail, Alan Robinson, April 20, 1999

Canadians could be on the hook for the $250-plus million tab for cleaning up the arsenic dust buried in the tunnels of the abandoned Giant gold mine near Yellowknife. The mine is owned by Royal Oak Mines Inc. which is now in receivership.

Decline of forests called 'relentless'

Toronto Star, April 20, 1999

The first report of the World Commission on forests says we cannot continue "shaving the earth" at the current rate of 15 million hectares a year. Plant and animals are disappearing at a rate of 130 species a year (15,000 a year in tropical regions).

Court allows dump application

Globe and Mail, Martin Mittelstaedt, April 21, 1999

Notre Development Corp. of North Bay said yesterday a divisional court judge has ruled that the company can receive an Environment Ministry certificate of approval for the dump even though environmentalists are challenging the legality of the government's approval process for the landfill. The company expects to receive its certificate of approval next week and will use it to begin soliciting contracts for garbage that would be dumped at the site, an abandoned iron-ore mine in northeastern Ontario.

Loewen Inc. puts the heat on Foreign Affairs

Hill Times (Ottawa), Kady O'Malley, April 26, 1999

Toronto law firm Goodman, Phillips and Vineberg, has been hired by embattled Loewen Group Inc. to lobby the Canadian Department of Foreign Affairs and International Trade over a NAFTA claim against the US in the funeral services industry. Meanwhile, Pope & Talbot, a US lumber company claims that the Canadian government has "unfairly reduced" its export quota as part of the implementation of the Canada-U.S. Softwood Lumber Agreement. It is filing a claim against Canada un-

(Continued on page 14)

(Continued from page 13)
der the NAFTA investment chapter.

Ontario Green Plan wins B+

Toronto Star, Brian McAndrew, April 28, 1999

Ontario's B+ rating —up from last year's barely passing grade— was the highest handed out this year by World Wildlife Fund Canada. WWF is one of the "Partners for Public Lands" that signed the Forest Accord with Ontario in February 1999.

16 firms dump toxins that kill fish—1 charged

Toronto Star, Brian McAndrew, May 3, 1999

Toxic chemicals strong enough to kill fish were dumped unlawfully in Ontario's lakes and streams by 16 companies in 1997, environment ministry records reveal. However, just one company was charged by the MoE. The Mallette Inc. pulp and paper mill near Timmins in Northern Ontario was fined $8,000 after being convicted of two pollution charges in 1997. The MoE data, obtained by the Sierra Legal Defence Fund through freedom of information appeals, show twice as many water pollution violations (2,000) in 1997 as in 1996.

Funding slashed 43% for Natural Resources

Toronto Star, Rob Ferguson. May 3, 1999

Lost amid the talk of tax cuts and increased health and education spending in yesterday's Ontario budget are more cuts. The Ministry of Natural Resources is being slashed 43% while labour and transportation also ended up on the well-used Conservative cutting block to the tune of millions of dollars.

Slash mercury emissions, panel says

Globe & Mail, Martin Mittelstaedt, May 7, 1999

Widespread contamination from the mercury inadvertently released by coal-fired power plants is such a major problem that a panel of experts organized by NAFTA's environment watchdog is recommending that electricity producers be ordered to cut emissions of the pollutant by 90 per cent.

MoE study links early deaths to smog particles

Globe and Mail, May 13, 1999

The Toronto Environmental Alliance released a draft Ministry of Environment study that says an estimated 1,359 premature deaths and up to 25 million respiratory problems occur in the province each year because of exposure to the tiny particles that make up smog.

Ontario flouts pollution laws, group charges

Toronto Star, Brian McAndrew, May 17, 1999

The Sierra Legal Defence Fund today asked the Environmental Commissioner, under the Environmental Bill of Rights to launch an investigation into allegations that the MoE is permitting the discharge of air pollutants.

Pesticide residue on produce doubles: report

Globe and Mail, Alanna Mitchell, May 25, 1999

The amount of pesticide left on fruit and vegetables grown in Canada has more than doubled since 1994, according to a report by the Canadian Food Inspection Agency, obtained through the *Access to Information Act*. Levels are now near the rate of imported produce. Canada has no over-all strategy to reduce pesticide risk, says the federal Environment Commissioner, Brian Emmett whosa annual report was released today.

Animal protection supported by public

CP, May 26, 1999

Nearly 80 per cent of Canadians believe government should enact the strongest laws possible to protect endangered species, even if those laws restrict such industries as forestry, mining and tourism, suggests a poll by Pollara to be released today.

New environment act is weak, say opponents

CP, Sue Bailey, June 1, 1999

Bill C-32 (the Canadian Environmental Protection Act) passed in the House of Commons the evening of June 1st. Charles Caccia, who led the committee that pored over the complex bill for six months, denounced it in the Commons just prior to the vote: "This bill could have been a reasonably good one if improvements made in committee had not been dismantled (by the government), if business interests had not been put ahead of public health." "Canadians are now stuck with a very flawed bill," said Paul Muldoon, a lawyer with the **Canadian Environmental Law Association.** *[See articles on C-32, this Intervenor—Ed.]*

EU pork, poultry barred from Canada

Globe & Mail, Reuters, June 4, 1999

Europe's worst food scare since mad-cow disease deepened yesterday as Belgium reported that food contaminated by dioxin initially suspected in chicken may have spread to pork and beef.

Refiners say they can't meet new gasoline rules

CP, Dennis Bueckert, June 7, 1999

The refining industry says it can't meet a federal timetable to reduce smog-causing sulphur in gasoline. The regulations, which have cabinet approval, require the average sulphur content to be no more than 150 parts per million by 2002, and 30 parts per million by 2005. It's expected the requirements will add about one cent per litre to the price of gasoline.

A long drink of water

Globe and Mail, Wallace Immen, June 14, 1999

A pipeline tall enough for an adult to stand in could bring up to 300 million litres a day of Lake Ontario water and a flood of new development to the Newmarket area. York Region is planning to build the $200-million, 50-kilometre pipeline to provide treated water to towns whose growth has been limited by their well-water supplies. [*A 19-km pipeline from Oakville to Milton is also planned—Ed.]*

Global warming threatens ocean food chain

Globe and Mail, Barrie McKenna, June 9, 1999

The survival of west coast salmon is a third of what it was a decade ago. The birthrate of polar bears is down and their average weight is declining. All symptoms of global warming, says a report by the World Wildlife Fund and the Marine Conservation Biology Institute.

Genes, corn, butterflies and choice

Toronto Star, Cameron Smith, June 12, 1999

Pollen from genetically modified corn (with the *Bacillus thuringiensis,* or "Bt", genetic material) kill monarch butterfly caterpillars, says a study released by Cornell U and reported in *Nature*, May 20, 1999. One third of the corn grown in Ontario and 85% of soy beans are genetically modified.

International Air Quality Advisory Board reports

IJC Bulletin, 23 June 1999

The IAQAB report to the International Joint Commission reviews acid gas emissions of nitrogen oxides and sulfur dioxides; binational efforts towards solutions for ground level ozone problems; and environmental impacts of Methyl Tertiary Butyl Ether (a gasoline additive). The report is at: http://www.ijc.org/boards/iaqab/progress24/.

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(from October 1998—for earlier briefs, see earlier Intervenors or phone CELA)

360. Environmental Control of the Mining Industry in Canada and Chile: A Comparative Review of Legal and Regulatory Requirements. J. Castrilli for CELA, October 1998 $40.00

361. Democracy and Environmental Accountability. Prepared for the Environmental Agenda for Ontario Project. P. Muldoon - CELA, M. Winfield - CIELAP $10.00

362. Comments to Ministry of Municipal Affairs and Housing re: *Environmental Bill of Rights* Registry Posting. T. McClenaghan and P. Muldoon, January 1999 $ 2.50

363. The Relationship Between International Law and the Practice of Domestic Environmental Law. T. McClenaghan and P. Muldoon, January 1999 $ 5.00

364. Submission on Regulation made under the *Ontario Water Resources Act*: Water Transfers EBR Registry No. RA8E0037. P. Muldoon and S. Miller, February 1999 $ 2.50

365. Comments by CELA and Citizens' Environment Alliance of Southwestern Ontario to Legislative and Regulatory Affairs, Canadian Environmental Assessment Agency regarding The Canada Port Authority Environmental Assessment Regulations. T. McClenaghan, March 3, 1999 $ 2.50

367. A Sustainable Water Strategy for Ontario. Prepared for The Environmental Agenda for Ontario Project. P. Muldoon, P. McCulloch, March 1999 $10.00

368. CNSC Draft Rules of Procedure - Section 12 "Confidentiality Provisions". T. McClenaghan, K. Cooper, April 1999 $ 2.50

369. Submission to Minister of Municipal Affairs & Housing regarding a Proposal to Classify *Planning Act* Instruments under the *Environmental Bill of Rights*. T. McClenaghan, K. Cooper, April 1999 2.50

370. Submission by CELA to Ministry of Natural Resources Re: Notice of Proposal for Policy Development Application Review Manual. T. McClenaghan, L. Shaw, April 1999 $ 2.50

371. Only Dollars Matter: The World Trade Organization and Canadian Trade Policy. A submission to the Standing Committee on Foreign Affairs and International Trade. M. Swenarchuk, April 1999 $ 5.00

372. Liberized Investment and Investor-State Suits: Threats to Governmetna Powers, M. Swenarchuk, April 1999 $2.50

373. The Lands for Life Proposals—A Preliminary Analysis, CELA Staff, May 1999 $10.00

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