

CIELAP Newsletter

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

Winter 1994

What's Inside:

- ▶ *Regulatory Workshop on Agri-Biotechnology*
- ▶ *Environmental Bill of Rights Update*
- ▶ *International Projects*

Canadian Completion to the North American Conference on Environmental Law

On October 14-15, CIELAP hosted Phase III of this trilateral conference in partnership with the U.S. Environmental Law Institute (ELI) and the Fundación Mexicana para la Educación Ambiental (Fundea) in Ottawa. The conference commenced in Mexico City in 1992 and resumed in June of 1993 near Washington D.C. The first session of the Ottawa Phase was focused on the presentation of a series of overviews of regional environmental problems in North America by representatives of the three countries. These regional issues included the protection of biodiversity, transboundary air and water pollution, the transboundary movement of hazardous waste, and global climate change. In addition, Kathleen Rogers of the U.S. National Audubon Society provided an introduction to the Western Hemisphere Convention on Nature Protection and Wildlife preservation. The existence of the

Convention, signed in 1941 by Mexico, the United States and 20 other Latin American states, is virtually unknown to Canadians.

The remainder of the conference focused on potential cooperative responses to these problems. Alberto Szekely of the Fundea opened the discussion with a paper which attempted to establish a normative framework for action through the articulation of 21 basic principles for regional cooperation. CIELAP Research Associates Paul (See Conference on page 2)

Who Pays for Blue?

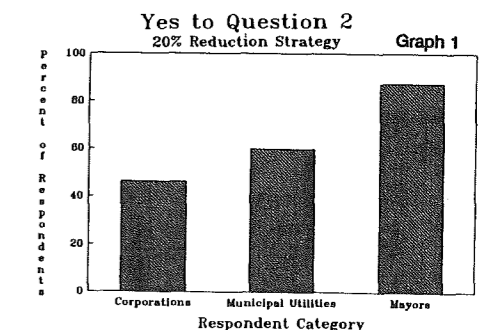
On October 4, CIELAP and the Canadian Environmental Law Association (CELA) released their report on the financing of residential waste diversion in Ontario, entitled Who Pays for Blue? Ontario's Blue Box curbside recycling system is threatened by the growing concerns of municipal governments over the costs of the system. The report, written by CIELAP Research Director Mark Winfield, and CELA Staff Counsel Zen Makuch, concludes that the (See Blue Box on Page 4)

**Environment on Trial
Has Arrived!**
(see page 3)

Climate Change Survey Results Released

On November 15th, just two days in advance of the meeting of federal and provincial energy ministers in Saskatoon, the 1993 Climate Change Survey Report was released. The survey, conducted by CIELAP, canvassed 230 political and business leaders for their commitment to stabilizing and further reducing greenhouse gas emissions.

Some key findings of the report include the support of Prime Minister Chrétien for reducing Canada's carbon dioxide emissions by 20% (relative to the 1988 level) by the year 2005. Ontario Hydro, on the other hand, did not commit to greenhouse gas emission stabilization or reduction. Of the corporations, mayors and municipal electrical utilities surveyed, there was strong support for a 20% reduction in carbon dioxide emissions by the year 2005 (See Graph 1 below). The actual question was "Do you support the establishment by the (See Climate Survey page 5)



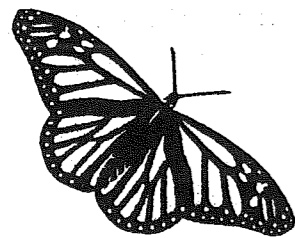
Conference Overview

(Continued from page 1)

Muldoon and Marcia Valiante contributed an overview of the potential for cooperative policy development and implementation, drawing upon the experience of the U.S.-Canada International Joint Commission (IJC) in the Great Lakes Region. Elissa Parker of ELI presented a paper on potential cooperative mechanisms for interregional information development and exchange.

The second day of the conference continued the focus on the development of responses to regional environmental concerns. Owen Saunders of the Canadian Institute for Resources Law (CIRL) presented a paper exploring the potential relationship between trilateral mechanisms for environmental management and state and provincial level governments. The need to ensure that state, provincial and local governments are permitted to continue to act as "laboratories for innovation" in environmental protection policy emerged as a key point in the discussion.

Lynn Fischer of the Natural Resources Defense Council (NRDC) addressed the question of financial mechanisms to assist adjustment to the environmental effects of increased North American trade. Ms. Fischer described efforts in the United States to establish proposals for



The Monarch Butterfly was chosen as a symbol for this trilateral conference as its migratory path takes it through all three participating nations.

development assistance for institutions to deliver adjustment assistance which were more environmentally and community friendly than has traditionally been the case. During the ensuing discussion, the issues of the potential scale and pace of change, and resulting need for major adjustment programs, were raised. Particular attention was drawn to Canada's negative experience with the effects of the 1988 Canada-U.S. Free Trade Agreement. The need to ensure that appropriate technologies are transferred to Mexico was also noted. Finally, the question of the nature of the appropriate model of development for all three North American Countries was put forward.

A second paper by Fundea's Alberto Szekeley presented a possible structure for environmental dispute resolution in the region. The proposal suggested both the employment of enhanced public scrutiny through a strengthened Commission on Environmental Cooperation, and the use of third party binding adjudication as a fall-back mechanism. The proposal prompted great interest, although it was pointed out that the United States would be unlikely to agree to a binding third party dispute resolution process.

The afternoon of the second day of the conference consisted of three workshop sessions to develop proposals for domestic environmental law reform. The group working on the United States emphasized the need to extend the application of the National Environmental Policy Act (NEPA) to the private sector, and to develop mechanisms for U.S. participation in transnational environmental impact assessment processes. In addition, the need for improved access and diffusion of information and training was

noted, as was the need for more effective regional planning processes related to hazardous waste management. Finally, the need in general for U.S. environmental policy-makers to give greater attention to continental environmental effects was identified.

In the case of Mexico four priority areas for action were identified: legislative and regulatory reform in the areas of environmental impact assessment, biodiversity protection and ecological planning; further improvements in environmental law enforcement; improved capacity for non-governmental organizations to promote positive changes in environmental policy; and the strengthening of the institutional representation of environmental interests within the Mexican government.

The Canadian group identified the need for a regional environmental protection regime, through a trilateral treaty and the need to end Canada's ongoing constitutional paralysis. Furthermore, six issues were identified as requiring interdisciplinary programs of research and advocacy. These were (in no particular order): migratory birds; biodiversity protection; fisheries protection; water resources management; hazardous waste management; and global climate change.

The conclusions of the three phases of the conference were presented to a final plenary session open to invited guests. Participants from all three countries stated that the whole process had been an enormous learning experience, and that there was a strong desire to continue to work together on regional environmental issues.

CIELAP would like to thank Environment Canada, External Affairs and the IDRC for their financial support of this project.

Donations of Time and Money have Aided Greatly

Over the past year CIELAP has benefitted from the generosity of supporters who have been able to donate their time towards environmental research projects or make financial contributions towards the maintenance of the Institute's research program. We would like to take this opportunity to thank those people and those organizations who have done so.

Volunteers:

Lisa Burley Jody Pilbeam
Syd Goldwater Jan Rabantek
Matt Jackson Richard Robinson
Shelly Kauffman Paddy Slyne
Nina Lester Claudia Santoro

The list of individuals and organizations that made financial contributions to CIELAP in 1993 was too long for this space to accommodate. We will, however, list all of our supporters in our annual general report which will be available from the Institute in the new year. Until then, we thank you for your past support and encourage you to continue the tradition in 1994. Finally, to everyone we know we extend our best wishes over the upcoming holiday season. Thank you.

EBR UPDATE

A 2-day course on Ontario's new **Environmental Bill of Rights**

will be presented by the Canadian Institute for Environmental Law and Policy, in cooperation with the Ministry of Environment and Energy on March 25-26, 1994 in Toronto. For more details on this event please contact the Institute at (416) 923-3529.

(dates to be confirmed)

NEW PUBLICATIONS FROM CIELAP

Environment on Trial

A Guide to Ontario Environmental Law and Policy
(\$44.00)

By David Estrin and John Swaigen. Third edition
edited by John Swaigen.

A project three years in the making. A culmination of the efforts of dozens of researchers, writers, word processors, proofreaders - and John Swaigen, Research Associate with CIELAP and chair of the Ontario Environmental Appeal Board.

EOT is an invaluable resource for those active in the environmental field. It includes chapters on specific environmental media as well as environmental planning process, resource preservation and protection, citizen rights, common law, and an overview of the Ontario environmental bill of rights.

The 3rd edition of "Environment on Trial" is Swaigen's most important book. Buy your copy today from CIELAP.

Environment on Trial is published jointly by CIELAP and Emond Montgomery Publications Ltd.

Other New Publications available from CIELAP:

1993 Climate Change Survey Report (\$20.00)

Who Pays for Blue? Financing Residential Waste Diversion in Ontario (\$15.00)

All Publications may be ordered through the Institute (form provided on back page of this newsletter). Please include 15% for shipping and handling. Special rates are available to students and nongovernmental organizations for CIELAP's in-house research publications (special rate does not apply to some co-published documents).

Environmental Bill of Rights Nearly Law - CIELAP Makes Presentation to Standing Committee on General Government

On October 14 CIELAP's Executive Director, Anne Mitchell, and Director of Research, Mark Winfield, made a presentation to the Standing Committee on General Government regarding Bill 26, the proposed Ontario Environmental Bill of Rights. In its presentation, CIELAP stressed its strong support for the principles of enhanced public participation in decision-making and increased political accountability which underlie the Bill. CIELAP was particularly supportive of the provisions of the Bill which would create an Office of the Environmental Commissioner, establish a registry of significant environmental decisions, provide for notice and comment periods prior to the implementation of new instruments under the Environmental Protection Act, expand standing to appeal environmentally significant decisions, permit "citizen suits" to ensure that environmental statutes are enforced, and remove limitations on the pursuit of common-law public nuisance actions. In addition, CIELAP argued for a strengthening of the powers and mandate of the Environmental Commissioner, the right to appeal significant decisions, and the whistleblowers' protection clauses. Finally, CIELAP recommended that some aspects of the Bill's provisions be simplified and clarified. The full text of CIELAP's presentation is available from the Institute.

EBR Update: CIELAP will be presenting a 2-day course in cooperation with the MOEE for persons interested in the application of this Bill on March 25-26, 1994. Please contact the Institute for more details. (dates to be confirmed)

CIELAP Participates in Waste Management Conference in Costa Rica

CIELAP's Research Director, Mark Winfield, participated in a regional conference and workshop on waste management hosted by CIELAP's Costa Rican partner organization, Fundación Ambio, from September 5-10. The event included representatives from Costa Rica, Panama, El Salvador, Nicaragua, Honduras, Chile, Mexico and Germany. Dr. Winfield presented papers on Canadian and Ontario law and policy related to solid and hazardous waste management (copies are available from CIELAP). CIELAP will be continuing its work Fundación Ambio on waste management, trade and the environment, environmental rights, and biodiversity in the coming months.

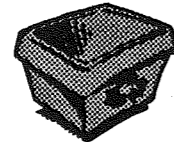
CIELAP thanks IDRC for enabling attendance at the conference.

Blue Box Financing

(continued from page 1)

costs of the post-consumer management of consumer packaging and products should be the responsibility of manufacturers and distributors.

The paper states that refillable container use requirements should be maintained and enforced by the province and proposes the application of deposit-return requirements to potential household hazardous wastes, such as car batteries. In addition, Who Pays for Blue proposes that a "waste management" levy be imposed by the province on consumer packaging and certain types of products, such as newspapers. The levy would be applied at the brand owner or distributor level.



Exemptions would be granted from the levy to producers who present acceptable waste reduction, reuse or recycling plans to the province. Such plans could include the elimination or reuse of packaging, or the provision of support to municipal Blue Box programs. Waste reduction, reuse or recycling plans would have to be able to reach a 90% diversion goal within five years.

The provincial levy would average one cent per unit of packaging sold in Ontario. Revenues received through the levy would be employed to support waste reduction, reuse and recycling programs. Anne Mitchell, CIELAP's Executive Director commented "We can save the Blue Box for 1 cent a package. Surely for the sake of the environment that is not too much to ask."

Copies of the report Who Pays for Blue: Financing Residential Waste Diversion in Ontario are available from CIELAP.

CIELAP would like to thank the Ontario MOEE for their funding of this research.

CIELAP's Annual General Meeting

WHEN: Thursday, January 20 1994, 7:30 pm
WHERE: Home of board member, Marjorie Lamb
RSVP: Patricia Merriman, CIELAP office, 923-3529

We would like to encourage friends, old and new, of CIELAP to join us for the AGM and reception to follow. Please contact Patricia Merriman at the office for further details on the AGM. We look forward to meeting you on Thursday January 20 1993. Thank you.

Growing Safely? CIELAP Participates in Workshop on the Regulation of Agricultural Biotechnology Products

In early November, CIELAP Research Director Mark Winfield and Research Associate Burkhard Mausberg participated in a workshop sponsored by Agriculture Canada dealing with the regulation of genetically engineered agricultural products. The workshop addressed such issues as food safety and labelling, animal health, and the environmental assessment of releases of genetically engineered organisms into the environment. The workshop was an open forum to discuss views and ideas, and there was disagreement among the participants on a wide range of issues.

In January 1993, the federal cabinet decided to use existing laws to regulate agricultural biotechnology products, rather than developing new legislation. CIELAP staff pointed out that, in an agricultural context, this approach suffers from a number of important limitations, including the considerations that:

- o The creation of genetically engineered organisms was not contemplated by the drafters of the existing legislation. Consequently, its applicability may be limited by its narrow scope.
- o Existing agricultural laws were not drafted as environmental protection tools. Rather, they were designed for the assessment of the efficacy of agricultural products. As a result, they do not provide an adequate legislative basis for the conduct of environmental assessments of agricultural biotechnology products.
- o The existing legislation is based on evaluative methods which have proven unsuccessful in controlling toxic chemicals. Specifically, evaluations of genetically engineered products to not include analyses of need and alternatives, do not adopt a precautionary approach to the regulation of potentially harmful substances, and generally do not provide for adequate public participation in decision-making processes.

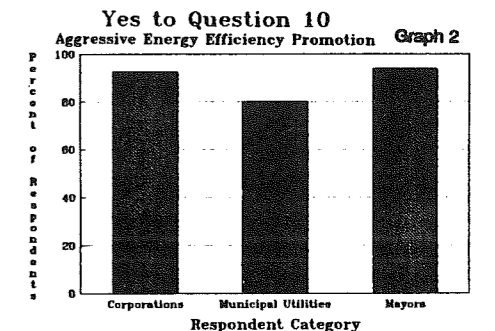
These factors have led CIELAP to conclude that the existing legislation is inadequate and inappropriately designed for the regulation of agricultural biotechnology products. CIELAP staff also raised a number of other issues during the consultation. The importance of the consideration of the interests of future generations and the broader public interest, over current private economic interests, in biotechnology regulation, was emphasized. In addition, it was argued that the proponents of biotechnology products ought to be liable for the costs of any environmental damage caused by their testing or release. The importance of scientific research focused on the ecosystem level effects of biotechnology products was also noted, as was the need for clear labelling of genetically altered foods, to ensure consumer choice in the marketplace.

Agriculture Canada's response to the results of the workshop is expected in the next few months. In the meantime, CIELAP will continue to press for law and policy reform in the environmental regulation of biotechnology products.

Climate Survey Reveals Support (continued from page 1)

Government of Ontario of a carbon dioxide emissions reduction strategy (programmes, policies, regulations and/or taxes) to reduce Ontario's carbon dioxide emissions by 20% relative to the 1988 level, by the year 2005?"

Another question which received strong support from corporate and municipal leaders was on energy efficiency (See Graph 2 below). The question asked was "Do you support the aggressive promotion of energy efficiency by Ontario Hydro, Ontario's municipal electric utilities, Centra Gas, Consumers' Gas and Union Gas?" Similarly, a question asking whether the Energy Efficiency Act and the Ontario Building Code should be used to raise minimum energy efficiency standards was strongly supported.



The results of this survey, which was sponsored by the Ontario Global Warming Coalition, will be used to encourage participation in a carbon dioxide emissions control and reduction collaborative. The goal of the collaborative will be to produce viable options for achieving the carbon dioxide emission targets set out by the Rio Treaty on Climate Change and the Ontario Round Table on Environment and Economy.

The 1993 Climate Change Survey Report is available from the Institute.

Developing a New Canadian Journal on Conservation Law

by Ian Attridge

There is considerable activity across Canada concerning conservation law and policy. One need only look to the Endangered Species campaign and its need for new protected areas legislation, the growing land trust movement's dependency upon conservation easement and income tax law reform, and recent wildlife "sting" operations to discover a growing interest in the law of conserving natural areas and wildlife.

However, there is very little reporting of cases, legal commentary or professional development that concerns conservation law in Canada. Recognizing this need, a draft proposal and business plan has been developed for a "Canadian Conservation Law Reporter." Its scope will be Canada-wide, with information clustered into regional and occasional international highlights. The Reporter will be focused on the law and related policy issues, and will provide comprehensive description and analyses to meet the needs of legal professionals. Nonetheless, it will be written in an accessible style for a conservation audience which may lack legal training.

Having developed the concept of the Reporter, the Steering Committee is now soliciting support and interest from a wide variety of individuals and organizations. Initial responses have been very enthusiastic. The next steps will be establishing an Editorial Board and national network of correspondents, and approaching organizations for funding. Should you be interested in helping to launch this important new initiative, please contact the author at: Parks and Natural Heritage Section, 90 Sheppard Avenue East, North York, ON, M2N 3A1. Phone: (416) 314-1122.

Ian Attridge chairs the Conservation Law Association. An environmental lawyer, he works on legal issues concerning parks and land stewardship at the Ontario Ministry of Natural Resources.

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