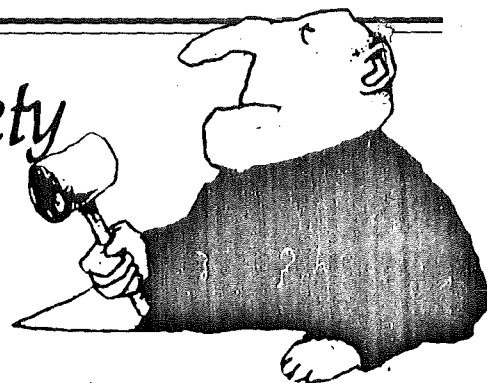


Law and the Conserver Society



by Toby Vigod, Counsel Canadian Environmental Law association

Update – Captain: Let the Consumer Beware!

In the last issue of *Alternatives*, we discussed the formation by Agriculture Canada of the Consultative Committee on IBT Pesticides, whose first task was to be an examination of captan, a widely-used fungicide. Captan was one of about 100 pesticides registered in Canada on the basis of testing data falsified by Industrial Biotest Laboratories (IBT). The committee was to address Health and Welfare Canada's recommendations made in March 1981 that:

- captan be removed from domestic use;
- commercial applications be such that no residues remain on food at the retail level; and
- the provinces be asked to regulate and educate captan applicators.

On May 31, 1982 the Consultative Committee issued their report which gave the green light to the continued use of captan. Among the Committee's recommendations were that:

- captan remain available for household use but that the risk potential be clearly stated on labels;
- minimum pre-harvest intervals be increased to 7 days;
- residue levels be reduced and pre-harvest intervals be increased for a 2 year trial period;
- an active campaign be undertaken to inform consumers of the need to wash fruits and vegetables thoroughly.

While not refuting the basis for Health and Welfare's recommendations, the Committee has basically left it to the home gardener to read labels, observe 7 day "pre-harvest intervals" (i.e. the

period of time after spraying and before harvesting) from fruit grown in his/her own backyard, and ultimately to experiment with his/her own health.

Health and Welfare had originally made their recommendations because new toxicological data indicated that captan caused cancer in mice. According to the revised criteria of the International Agency for Research on Cancer, the test results in mice indicated that captan should be regarded for practical purposes as if it were carcinogenic in humans. The Consultative Committee, by maintaining in their report that captan does not show mutagenic, teratogenic, or carcinogenic effects "in humans", ignores the generally accepted view that animal studies provide a basis for determining whether a chemical will produce similar effects in humans.

It is therefore not acceptable that the Committee reports that it feels "uncomfortable with the use of a material that has caused tumours in mice and mutations in bacteria". Surely Agriculture Canada has a responsibility to the public not to license pesticides for use when such documented evidence of adverse health effects exists. The onus should not be on the consumer.

Finally, it is disturbing to note that Agriculture Canada has disbanded the Committee and does not intend to pursue any review of the other IBT-tested pesticides. Perhaps the time has come for the issue of pesticide registration and administration to be referred to a Parliamentary Committee.

Update - Hyde Park Landfill Settlement Ratified: Future of Niagara River in Doubt

On April 30, 1982, almost one year after CELA obtained *amicus curiae* (friend of the court) status on behalf of Pollution Probe and Operation Clean-Niagara in regard

to the Hyde Park landfill, U.S. Federal District Court Judge John Curtin ratified the settlement agreement negotiated between Hooker Chemical, U.S. Environmental Protection Agency, and New York State.

As discussed in the Fall-Winter 1982 issue of this magazine, Pollution Probe and Operation Clean-Niagara has opposed the settlement agreement on the basis that it would not ensure that the 80,000 tons of hazardous wastes, including an estimated 2,000 pounds of dioxin, would not continue to leak into the Niagara River and Lake Ontario. *Amici's* evidence presented by Grant Anderson, hydrogeologist, and Dr. Douglas Hallett, a senior Environment Canada scientist, showed that chemicals from the Hyde Park landfill were at the Niagara Gorge face and seeping slowly into the Niagara River.

Judge Curtin, in ratifying the settlement agreement, noted that the Court has only limited powers of review and that "[it] is not to substitute its judgement for that of the parties . . . but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy". Further, the Court noted that it had a limited duty to inquire into the technical terms and the factual disputes underlying the proposed settlement.

The Court also noted that under the agreement Hooker is not to proceed along with any remedial action without adequate supervision from the government parties and the Court. This 'safeguard' of both agency and court supervision is stressed and the Court states that "Hooker is not to be given a free

rein at any stage with regard to any proposed remedial work".

The court noted that the fact that the plan could be implemented immediately weighed strongly in favour of approving the settlement agreement. If the plan was rejected and the governmental parties were forced to litigate, there would be expenditures of considerable time, money, and effort.

What is left unanswered by the Court is *amici's* contention that the agreement itself limits substantially the extent of Hooker's clean-up and that the governmental parties will be back in Court disputing Hooker's responsibilities. Indeed,

disagreements were in evidence the day the agreement was announced as Hooker claimed their estimated clean-up costs to be \$15.5 million while New York State stated that Hooker would have to spend \$50 million.

Further, while the Court noted that it was *amici's* concerns that led to the ordering of the fact-finding hearing held in September and October, the decision does not discuss the evidence presented by *amici* at that time. Post-hearing papers on chemical testing and ground water flow filed by the governmental parties and rebutted by *amici* as being inaccurate and

misleading were not alluded to by the Court.

The fate of the Niagara River, Lake Ontario, and the drinking-water of over 5 million Canadians and Americans is left to the 'good will' of Hooker and the ability of the U.S. and New York governments to enforce the clean-up.

Unfortunately, the clean-up plan ratified by Judge John Curtin will only slow down the rate of the chemical seepage, but will not eliminate, in any way, the continued migration of highly toxic chemicals, including dioxin, into Lake Ontario. □

BOOKS IN REVIEW

Global 2000: Implications for Canada
G.O. Barney, P.H. Freeman, C.A. Ulinski
Pergamon, Toronto, 1981,
Paperback, 171 pages, \$12.00

Reviewed by John Marsh

Whatever his faults, President Carter was at least moving in the right direction when he directed the Council on Environmental Quality and the Department of State to study the "probable changes in the world's population, natural resources and environment through the end of the century." He may well be thankful, however, for being no longer in a position to respond to the findings of this study, for, to say the least, it is alarming and demands immediate action.

The study, lasting three years and costing \$1 million, followed various modelling studies such as the one portrayed in *The Limits to Growth*. It is more comprehensive in its analysis of resource sectors but less sophisticated in its examination of relationships between sectors. This stems in part from a lack of compatibility between the models used by government agencies to examine individual sectors and the diversity of the predictions derived from such models. Methodologically, the study points to the need for more integrated modelling of population, resources

and environment by government agencies.

The main findings are not new but do bear repetition. World population will increase by 50% from 1975-2000. World production will increase by 90% but real food prices will double and distribution will remain inequitable. Arable land will increase by only 4%, and will involve more marginal land and higher production costs. World oil production will reach maximum estimated capacity and fuel demands will exceed supply by 25%. Growing stocks of commercial timber will decline 50% per capita, much of the loss being in the lesser developed tropical countries. Desertification and soil depletion will increase and water supplies will become more critical. Changes in the atmosphere's carbon dioxide and ozone levels due to pollution may cause climatic changes with severe implications, and acid rain will exert negative effects. Twenty percent of all plant and animal species will likely be eliminated by 2000. Accordingly, the report concludes that "vigorous, determined new initiatives are needed if worsening poverty and human suffering, environmental degradation and international tension and conflicts are to be prevented."

Environment Canada, recognizing the international nature of this



study, commissioned a follow up study to assess the implications of such developments for Canada. This was undertaken by the original study team, and is presented, with the aid of the Canadian Association for the Club of Rome, in this volume. The volume combines an external view of the original study's implications for Canada, with a comparison of data and model predictions from Canadian sources on the equivalent themes of population, resources and environment. Overall it concludes that Canada "with its rich resource endowment faces a relatively bright future in a world that may become subject to serious calamities."

However, warnings are cited regarding Canada's vulnerability in a number of areas. Canada's economy is largely a resource exporting economy which needs trading partners as a basis for its strength, and thus will be threatened by dislocations in the global economy. Immigration pressures will increase, yet we lack an adequate population policy. Our