

News Brief

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204, 10709 Jasper Avenue
Edmonton, Alberta T5J 3N3

PESTICIDES AND PROGRESS

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Introduction

About one year ago, the Standing Committee on Environment and Development released the most recent in a series of studies which have expressed deep concerns and increasingly urgent calls for reform of the outdated *Pest Control Products Act* and *PCP Regulations*, and the branch of Health Canada which administers the system - the Pest Management Regulatory Agency (PMRA). (1,2) Under the present system pesticides cannot be imported or sold in Canada unless they are registered and properly labelled. Applications for registration must be supported by industry data, which the PMRA evaluates for health and environmental risks, as well as for value and efficacy. (1)

As described previously in *News Brief* (Vol. 15:3, 2000) the most recent critique by the Standing Committee proposed major reforms to the entire system based on four key principles: placing an absolute priority on human health; a precautionary approach to risk of harm; pollution prevention (rather than risk mitigation); and true public participation in decisions. Specific reform ideas included the need to: define a more rigorous risk assessment process; require an assessment of all pesticide ingredients (not just the active component); conduct more independent research; develop and promote reduction of and alternatives to the use of synthetic pesticides; promote organic agriculture; ban urban cosmetic pesticide use within five years; conduct an urgent, mandatory re-evaluation of

all pre-1995 registrations; enact new legislation; and move to a system where "the use of pesticides [is] regarded as a measure of last resort." (2)

Government Response

Five months after the Standing Committee issued its critique, the official *Government Response to the Report* (3) was released by the PMRA. A few comments can, hopefully, provide some notion of its overall tone.

A. Priority and Precaution

While the official Response is to endorse the "principle of absolute priority for health and environmental protection," the government badly states that the existing legislation already accomplishes this goal, by prohibiting registration of products of "unacceptable risk" or value. (3) Thus, their focus is on the promised rigour of current risk assessment processes, and the PMRA has subsequently published its details, (4) as well as having developed a framework for assessing 'formulants' (ingredients other than the active pesticide). (5) However, the term 'unacceptable risk' is not defined in the Act, and the PMRA documents are unenforceable guidelines. So long as an applicant meets the legal requirement (1) to provide 'results of scientific investigations' respecting safety and value sufficient for an assessment, there is no ability for the public to require the formulants policy or the stated risk assessment process to be followed by the PMRA, nor is there any accountability for changes to, or errors or omissions in, their application.

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EDITOR

Arlene Kwasniak

ASSISTANT EDITORS

Cindy Chiasson
Brenda Heelan Powell
Robert R.G. Williams

PRODUCTION EDITOR

Debbie Lindskoog

ADVISORY COMMITTEE

Ron Kruhlak,
McLennan Ross
Marta Sherk,
City of Edmonton
Law Department

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Environmental Law Centre
(Alberta) Society
204, 10709 Jasper Avenue
Edmonton, Alberta
Canada T5J 3N3

Phone: (780) 424-5099
Fax: (780) 424-5133
E-mail: elc@elc.ab.ca
http://www.elc.ab.ca

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Not to worry, however, because the whole approach is (we're told) "fundamentally precautionary."⁽³⁾ A precautionary approach is one in which, faced with lack of full certainty about the degree of risk, but with concrete scientific evidence of likely harm, one acts in a risk-averse manner. (2) Is this, in fact, the PMRA approach? As one example, consider the Committee's call for household lawn chemicals to be phased out within five years, since the benefits are merely cosmetic, and the risks include significant environmental and public health concerns, especially to children's health. The government's response has been the *Action Plan on Urban Use Pesticides*, (6) which involves a commitment to apply the risk assessment policy to re-evaluate (in 2001) "the seven most common active ingredients used in lawn care products" (diazinon, carbaryl, malathion, 2,4-D, mecoprop, dicamba and MCPA), and to review the remaining organophosphate insecticides in 2002.

Lest we are too impressed, note that calls to re-evaluate organophosphates, including malathion, date back to Rachel Carson's 1962 book *Silent Spring*, (7) Canadian re-evaluations of 2,4-D and MCPA have been ongoing since 1980 and 1981 respectively, (8) and the current timetable on most of the other chemicals is driven by the U.S. Environmental Protection Agency's obligation to review these substances under their *Food Quality Protection Act*. (8) The PMRA has explicitly tied its re-evaluation to the American schedule, so is "heavily reliant" on the outcome of the EPA's programme. Assuming no change to the U.S. situation under its new administration, we can anticipate a continuation of progress. However, Canada's official policy is not to ban these chemicals, but to deliberately "maintain a choice for Canadians on whether or not to include [traditional] pest control products as an option" in the garden. (3) Attendant risks are mitigated primarily by putting conditions on the label, (4) on the assumption that it will be read, understood and followed, and which makes label rules enforceable in the sense that contravention of the statutory labelling requirements is an offence. (1)

Somehow, allowing people the choice to take these unnecessary risks fulfills (in the PMRA's view) the principles of absolute priority for health and environmental protection, and a precautionary approach to risk.

B. Prevention and Participation

On the pollution prevention issue, one can see a similar divergence between the Committee recommendations and the government Response. One example is the specific recommendation for government actively to support a full transition to organic farming. The core of the Response is this: (3)

The government has adopted the approach of de-coupling support programs from production decisions. With this approach, it does not favour any particular farming practice, whether traditional, organic or another alternative practice. De-coupling, in addition to being more economically efficient, encourages production based on market signals and reduces the possibility of a trend toward monoculture. In practice, it provides incentives to diversity into new practices, niche markets and specialty crops.

There are obvious problems with this wholesale and seemingly uncritical endorsement of the free market as a method of protecting public health, which as quoted apparently ignores relevant 'externalities' such as increased cancer risks. For example, contrary to what environmental economists might suggest as appropriate mechanisms to address known weaknesses of the market model, such as fiscal incentives techniques to internalize these costs, the government goes on and expressly rejects the suggestion that measures such as taxation be considered. (3)

Enforcement Briefs

By Jillian Flett, *Alberta Environment*

A New And Improved Administrative Penalty System

The Compliance Assurance Principles were developed to guide the compliance assurance programs delivered by Alberta Environment. These principles include the overall direction for the compliance assurance programs to be more consistent. Currently the *Environmental Protection and Enhancement Act*, *Forests Act*, *Public Lands Act*, *Water Act* and *Mines and Minerals Act* provide for separate and sometimes unique administrative penalty processes. To create a fairer, more consistent process, a review of these five Acts was conducted and legislative changes have been proposed.

The proposed *Administrative Penalty Statutes Amendment Act* provides for:

- the use of consistent terminology in the legislation,
- the public release of enforcement information under all 5 Acts,
- a consistent range of enforcement tools available under all 5 Acts including allowing for tickets and prosecution for some offences,
- a maximum penalty amount per occurrence for administrative penalties,

- administrative penalties to be issued within 2 years of the date the Department became aware of the contravention,
- a more efficient debt collection system and
- a consistent appeal process for administrative penalties.

The overall intent of the Act will be to create better service and a level playing field for regulated parties by providing the same administrative penalty process, regardless of what environmental legislation was contravened. It should also provide for a fairer process by ensuring no undue delay occurs in issuing a penalty and that anyone issued an administrative penalty will have the opportunity to appeal their case to an independent tribunal. The administrative penalty system will be more efficient through an improved penalty collection system, greater flexibility in enforcement options available and the option under all 5 Acts, of releasing enforcement information to deter future non compliance.

Public information sessions on the proposed *Administrative Penalty Statutes Amendment Act* were held in January 2001 and the legislation is scheduled to be introduced in the Spring sitting of the Legislature.

Administrative Penalties

The following administrative penalties over \$2,000 were issued under the *Environmental Protection and Enhancement Act* since the last issue of *News Brief*:

- \$4,000. to Crestar Energy Inc. operating in the MD of Taber No. 14 for contravening their Approval through excess sulphur dioxide emissions at the Travers sour gas plant on four occasions in 1999.
- \$10,500 to The Canadian Salt Company Limited of the County of St. Paul No. 19 for contravening their Approval by releasing boiler blowdown and evaporation condensates from the recycle plant to the industrial wastewater control facility and subsequently to the surrounding watershed. The Company also failed to maintain or review the Toxicity Reduction Evaluation Plan, released in excess of their maximum daily limit to Total Chloride, and failed to immediately report the contravention of their Approval.
- \$8,500. to Kedon Waste Services Ltd. of the County of Lethbridge for a number of infractions related to operating a landfill. The infractions include failing to have moveable windscreens, not submitting information and other reports on the 1999 operations, failing to report this violation of their Approval, and disposing of waste on another's land. An Appeal has been filed with the Environmental Appeal Board.
- \$5,000. to Bouvry Exports (Calgary) Ltd. operating in the Municipal District of Willow Creek No. 26 for contravening the Approval for their red meat processing plant by failing to conduct required testing and submitting their 1998 Annual Waste Management Report and Annual Waterworks Report late.

The following administrative penalties over \$1,000 were issued under the *Public Lands Act* and *Forests Act* since the last issue of *News Brief*:

- \$4,895. to Altana Exploration Ltd. of Calgary for unauthorized use of public land contrary to s.47(1) of the *Public Lands Act*.
- \$4,850. to Zargon Oil & Gas Ltd. of Calgary for unauthorized use and contravening terms and conditions of their lease in violation of s.47(1) and 47.1 respectively of the *Public Lands Act*.
- \$2,000. to Wascana Energy Inc. of Calgary for unauthorized use of public land in violation of s.47(1) of the *Public Lands Act*.
- \$1,884. to the Cloutiers; Denis, Victor, Lucien, Jacques, and Clemon of McLennan for unauthorized use of public land on a grazing lease in violation of s.47(1) of the *Public Lands Act*.
- \$1,500. to Sunpine Forest Products Limited of Sundre for contravening terms and conditions of their annual operating plan in violation of s.100(a) of the *Timber Management Regulation*.
- \$1,300. to Founders Energy Ltd. of Calgary for unauthorized use and contravening terms and conditions of their lease in violation of s.47(1) and 47.1 respectively of the *Public Lands Act*.

In the Legislature...

Federal Legislation

Bill C-5, the *Species at Risk Act*, was introduced February 2, 2001 by the Minister of the Environment. The Bill is a slightly modified version of the former Bill C-33.

Alberta Regulations

As of January 1, 2001, the *Storage Tank System Management Regulation*, under the *Government Organization Act*, is in force. The Regulation transfers authority for the registration of storage tank systems from the Administrator to the Petroleum Tank Management Association of Alberta.

Federal Guidelines

Environment Canada announced development of the *Guidelines for the Implementation of the Pollution Prevention Planning Provisions of Part 4 of the Canadian Environmental Protection Act, 1999 (CEPA 1999)* and the *Implementation Guidelines for Canadian Environmental Protection Act, 1999, Section 199, Authorities for Requiring Environmental Emergency Plans*.

Alberta Guidelines

Alberta Agriculture, Food and Rural Development released the *2000 Code of Practice for Responsible Livestock Development and Manure Management*. The 2000 Code replaces the *1995 Code of Practice for the Safe and Economic Handling of Animal Manures*. Copies of the 2000 Code are available on the website <www.agric.gov.ab.ca/agdex/400/400_27-2.html> or by phoning 1-800-292-5697.

The Alberta Energy and Utilities Board also announced major changes to their *Guide 56: Energy Development Application Guide*. The Guide sets out the Board's requirements and expectations for companies wishing to file an energy development application for approval. The Board has also released the new *Guide 63: Oilfield Waste Management Facility Inspection Manual and Check List*.

Cases and Enforcement Action. . .

The Federal Court of Appeal ruled that Canada's environmental assessment law was not violated when Parks Canada approved a seven-story convention centre at Lake Louise. The judicial review action was brought by the Bow Valley Naturalists and the Banff Environmental Action and Research Society. The ruling was released January 10, 2001.

A decision released January 25, 2001 by the Court of Appeal of British Columbia in *Interfor v. Paine and Krawczyk* reduced the sentence of one year in prison for criminal contempt to the time served. The decision notes "the sentence was clearly unfit." Ms. Krawczyk was sentenced after participating in a blockade of a logging road leading to the Elaho Valley in September 1999.

Alberta Environment issued an \$8,500 administrative penalty under s.213(c) of the *Environmental Protection and Enhancement Act* to Kedon Waste Services Ltd. of the County of Lethbridge for a number of infractions related to operating a landfill. The infractions include failing to have moveable windscreens, not submitting information and other reports on the 1999 operations, failing to report this violation of their Approval, and disposing of waste on another's land. An appeal has been filed with the Environmental Appeal Board.

Three Calgary businesses, Golden Inn Restaurant, Regency Palace, and Edgemont Palace, received \$70,000 in fines from Provincial Court Judge Robert Davie in Calgary Provincial Court after pleading guilty to illegal fish trafficking charges on November 29, 2000. The charges were laid following a year-long investigation by Alberta Environment and Saskatchewan Environment and Resource Management that fish were illegally netted in northern Saskatchewan and Alberta and sold to Calgary businesses.

An Alberta Outfitter-Guide, Kevin Shilka of Worsley, AB was fined \$10,005 in Fairview Provincial Court after pleading guilty to two counts of hunting black bear without a valid licence and one count of using bait in a prohibited area.

The Alberta Environmental Appeal Board issued a decision in *Bildson v. Director, Northern East Slopes Region, Alberta Environment, re: Smoky River Coal Ltd.* This was an appeal of the Approval issued to Smoky River Coal Ltd. for the Smoky River Coal Mine, coal processing plant, and a pit expansion. The Board dismissed the appeal, determining that the appeal was not properly before it. In dismissing the appeal, the Board based its decision on the fact that the approval holder went into receivership, by Order of the Court of Queen's Bench, the mine reverted to Alberta Environment and Alberta Resource Development, and security posted for reclamation work went into the Environmental Protection and Enhancement Fund. As well, an Enforcement Order was issued to ensure the reclamation work is completed, and an appeal on the basis on the financial stability of the approval holder was outside the Board's jurisdiction.

■ **Cindy Chiasson**, *Staff Counsel*
Dolores Noga, *Librarian*
Environmental Law Centre

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Sour Gas Public Health and Safety Review

The Provincial Advisory Committee on Public Safety and Sour Gas is a multistakeholder committee that was created by the Alberta Energy and Utilities Board ("Board" or "EUB") in early 2000. Its mandate was to review the existing regulatory system for sour gas in Alberta with respect to public health and safety. However, due to the existence of other initiatives, the Committee's terms of reference were limited to exclude matters such as:

- human health effects from long-term exposure to low concentrations of sour gas;
- chronic animal health effects of sour gas;
- sulphur recovery guidelines;
- flaring of sour gas; or
- compensation related to sour gas releases.¹

The Committee's work included two sets of public outreach sessions and production of an interim document in the fall of 2000 indicating its progress. Ultimately the Committee submitted its *Findings and Recommendations Final Report*² to the Board in December 2000. The final report contains an extensive discussion of the current state of the sour gas regulatory system in Alberta and stakeholder concerns related to sour gas. This portion of the report provides a helpful and concise overview of sour gas development and regulation in Alberta. The report also sets out 87 separate recommendations to the Board and other regulatory bodies for improvement of the regulation and administration of sour gas recovery.

Committee recommendations

The Committee's recommendations cover a wide range of topics. The recommendations include broad categories such as:

- improvement of the sour gas regulatory system, by streamlining legislation and processes and providing greater clarity and accessibility;
- more effective public consultation with respect to sour gas matters; and
- greater understanding of the health effects of sour gas.

One of the recommendations related to improved regulation of sour gas suggests that better coordination is required between mineral surface and subsurface planning and development.³ As a step to achieving such coordination, the Committee suggests the creation of a task force of senior decision makers from various sectors to consider topics such as possible changes to Alberta's mineral leasing system.

A number of recommendations deal with information about sour gas and the regulatory system, with emphasis being placed on accessibility and quality of information. Two recommendations deal with consolidation of information by the EUB. One suggests the consolidation of EUB sour gas information and data into a unified database, with greater public accessibility.⁴ Another recommends that the EUB develop a document to summarize all regulatory requirements related to sour gas.⁵

The Committee has also suggested that the EUB revise its decision reports to provide greater recognition of public input and more descriptive material about the criteria used by the Board in evaluating the public interest in matters before it.⁶ Another recommendation is that the EUB improve public access to accurate, neutral information about sour gas development through a variety of means.⁷

Increased inspections and more severe enforcement by the EUB have also been recommended by the Committee. This would include increased publication by the EUB of enforcement action taken in relation to major and serious infractions of regulatory requirements related to sour gas.⁸

The Board's response

In response to the report and requests for action by the Committee, the EUB has committed to undertake action on all recommendations made by the Committee. To do so, it has set up an implementation team of EUB staff to oversee this initiative, with a target of commencing action on at least 30 percent of the Committee's recommendations during the EUB's 2001-02 fiscal year.⁹ Many of the recommendations made by the Committee will require the involvement of government departments and agencies other than the EUB for their implementation.

The EUB has indicated that it views implementation of the Committee's recommendations as a multi-year process. It has indicated that it will report on a quarterly basis to both the Committee and the public with respect to its progress on implementation.¹⁰

■ **Cindy Chiasson**
Staff Counsel
Environmental Law Centre

¹ Provincial Advisory Committee on Public Safety and Sour Gas, *Findings and Recommendations*

Final Report, Appendix B.

² *Ibid.*

³ *Ibid.*, recommendation 5.

⁴ *Ibid.*, recommendation 16.

⁵ *Ibid.*, recommendation 20.

⁶ *Ibid.*, recommendation 41.

⁷ *Ibid.*, recommendations 73-79.

⁸ *Ibid.*, recommendations 25-31.

⁹ Energy and Utilities Board briefing note to the Clean Air Strategic Alliance Board of Directors, March 8, 2001.

¹⁰ *Ibid.*

Case Notes

Aerial Pesticide Applicator Company and Individual Given Heavy Fines

R. v. Rural Aviation Corp. and Peter Ronald Allomes (3 August 2000) Edmonton 90915893-P1-0101-0106, 90915893-P1-0201-0206 (Alta. Provincial Court)

R. v. Rural Aviation Corp. (10 October 2000) Vegreville 90915893-P1-0101 to 0106, 90915158-P1-0101 to 0103 (Alta. Provincial Court)

R. v. Rural Aviation Corp. and Donald Walter Ussher (10 October 2000) Vegreville (Alta. Provincial Court)

These three interrelated cases confirm that Alberta courts will not tolerate aerial pesticide spraying conducted carelessly with willful disregard for the law and safety, that they will be consistent in their application of the law, and that those convicted of these offences, particularly corporations, can expect high penalties. The cases also show that the courts will not hesitate to order compensation to victims of aerial spraying.

The cases arose out of two instances of aerial pesticide spraying in 1997, one on June 25 and the other on August 18, near Irma in the Municipal District of Wainwright. The company involved received a total penalty of \$22,000 and one of its employees was fined \$1,000.

On June 25, 1997, Mr. Allomes, an employee of Rural Aviation Corporation, under contract to landowner Jerry Mark, applied the pesticides Estaprop and Achieve 80DG and the adjuvant Permax to all four quarters of the Mark property. As a result of this application, spray drifted onto the canola crops of adjacent properties and damage ensued.

The accused was charged with and plead guilty of unlawfully using or applying a pesticide in a manner not in accordance with the regulations and the label for that pesticide, to wit: to use or apply a pesticide by air at a spray rate or volume other than that which is specified on the label and of unlawfully using or applying a pesticide in a manner not in accordance with the regulations and the label for that pesticide, to wit: to use or apply a pesticide by air after mixing the pesticide with an adjuvant [Permax] other than that which is recommended on the label, contrary to section 156 of the *Environmental Protection and Enhancement Act*¹ (EPEA).

Mr. Allomes was fined a total of \$1,000 (\$500 on each count). Judge Caffaro took into account in his sentencing that "there had been some financial hardship", and that although Mr. Allomes "deliberately chose to add Permax, he was under some pressure from the owner of the property." However, he dryly noted that "the doctrine of superior orders has been somewhat discredited since Nuremberg."

Mr. Allomes employer, Rural Aviation, was charged with and found guilty of unlawfully using or applying a pesticide in a manner not in accordance with the regulations and the label for that pesticide, to wit: to use or apply a pesticide by air at a spray rate or volume other than that which is specified on the label, contrary to section 156 of EPEA. The company was fined \$7,500.

The second incident occurred on August 18, 1997 when Rural Aviation employee Donald Ussher applied the pesticide Reglone to the property of Donald Haun. Unfortunately, three adjacent farmsteads (Lawson, Ford, and Firkus) received spray, which resulted in crop damage and/or damage to vegetation on the farmsteads. Charges against Donald Ussher were withdrawn. Rural Aviation was charged with and found guilty of contravening section 5(1) of the *Pesticide Sales, Handling, Use and Application Regulation*² and fined \$7,500. Restitution in the sum of \$7,000 payable to the three adjacent landowners was ordered under section 221 (Compensation for Loss of Property) of EPEA.

Rural Aviation and Donald Ussher had a previous compliance history involving the same offences.³ On July 28, 1997 the corporation was sentenced to a total penalty of \$5,000. This included a \$3,500 fine and \$1,500 restitution on two counts (unlawful use of pesticide not in accordance with the label; unlawful use or application in a manner that caused or was likely to cause adverse effect). On July 28, 1997, Mr. Ussher was also fined a total \$7,500 (\$2,500 on each of three counts; unlawful use of pesticide not in accordance with the label; unlawful use or application in a manner that caused or was likely to cause adverse effect, failure to record use of pesticide). Peter Allomes had no previous compliance history.

The court's stance in these three pesticide case is consistent with other recent aerial pesticide application cases and confirms that it is will not only fine offenders, but will order the offenders to financially compensate victims. For example, in *R. v. McGlone*⁴ Mr. McGlone was sentenced to jail for failing to comply with an enforcement order. In *R. v. Air Agro and Lynn Steudman*⁵ the court considered the economic factors associated with an environmental offence. The corporate accused was found guilty of 5 counts of applying the pesticide Roundup, in contravention of the regulations and label for the pesticide. The charges against the individual were stayed. The total penalty against the corporation was \$30,000; of which \$15,000 was an economic penalty.

■ **Robert R.G. Williams**
Staff Counsel
Environmental Law Centre

¹ S.A. 1992, c. 1-13.3 as amended.

² A.R. 2487.

³ *R. v. Donald Ussher and Rural Aviation Corp.*, see *News Brief*, Vol.12, No.3, 1997 at 3.

⁴ See *News Brief*, Vol.14, No.1, 1999 at 3.

⁵ See *News Brief*, Vol.14, No.2, 1999 at 3.

Such statements reinforce concerns about the need for mechanisms for the protection of public welfare during decision-making. As the Committee noted, the pesticide system is run at an "unacceptable level by today's standards of accountability and transparency." (2) While recent pressures on the PMRA have prompted them to publish many internal policies, and to solicit public comment on proposed decisions, obstacles remain. For one, there is no legal standard for consultation which the PMRA need meet, and therefore no accountability if periodically they choose to be less than fully forthcoming. Second, disclosure of trade secrets and business information about chemicals is limited unless the pesticide manufacturer consents to its release. While the official Response has been to agree that this is a "key area that could benefit from legislative change." (3) no new Bill is yet before Parliament.

Progress?

Overall, the Response on many issues leaves doubts about federal commitment to the key concerns of priority, precaution, prevention and participation. What of progress? The Committee's call for an urgent re-evaluation of existing registrations provides one benchmark. As of late 1999 there were 550 registered pesticides in use and 405 of these need to be re-evaluated using modern risk assessment methods. (8) Over 300 of these chemicals were approved pre-1981 and over 150 were approved prior to 1960. (9) There is no legal requirement to report any adverse effects that have come to light, nor any mandatory periodic reassessment of chemical safety. A 1986 schedule for conducting re-evaluations was never met, and as noted above some of the few that began remain incomplete a full generation later. (9) Despite the newest re-evaluation schedule, (8) there is no legal requirement that its timeline be met either.

Our over-reliance on the U.S. for much of the re-evaluation process also raises cause for concern. Back in the 1970s, fraudulent testing by laboratories undermined the validity of U.S. regulatory decisions upon which Canada had heavily relied, and raised concerns about the ability of regulators to rely on industry-provided test results. (10) Present legislation does not require the PMRA to conduct any independent testing, and promised laws on good laboratory practices have never appeared, although (again) recent pressures seem to have prompted the PMRA to make public its policies on the issue. (11)

Frankly, it is just not good enough. After 40 years, it's time that Rachel Carson's words were heard in Ottawa, and a new law passed (7, emphasis added):

The choice, after all, is *ours* to make. If, having endured much, we have at last asserted our 'right to know,' and if, knowing, we have concluded that we are being asked to take senseless and frightening risks, then we should no longer accept the counsel of those who tell us that we must fill the world with poisonous chemicals; we should look about and see what other course is open to us.

References

All PMRA documents are found at (a) http://www.hc-sc.gc.ca/pmra-arla/english/ContentPages/Publications/Guidelines_NC.htm, or (b) [/Gener_NC.htm](http://www.hc-sc.gc.ca/pmra-arla/english/ContentPages/Gener_NC.htm).

(1) *Pest Control Products Act*, RSC c. P-9 (enacted 1969), and *PCP Regulations*, CRC c. 1253 (enacted 1972).

(2) Standing Committee on Environment and Development, *Pesticides: Making the Right Choice for the Protection of Health and the Environment*, <http://www.parl.gc.ca/InfoComDoc/36/2/ENVI/Studies/Reports/envi01-e.html> (May 16, 2000).

(3) PMRA, *Government Response to the Report of the House of Commons Standing Committee on the Environment and Development*, (b), (October 16, 2000).

(4) PMRA, *A Decision Framework for Risk Assessment and Risk Management in the Pest Management Regulatory Agency*, Science Policy Notice SPN 2000-01, (a), (December 22, 2000).

(5) PMRA, *Formulants Policy*, Regulatory Proposal PRO 2000-04, (a), (May 29, 2000).

(6) PMRA, *Action Plan on Urban Use Pesticides*, (b), (October 16, 2000).

(7) Rachel Carson, *Silent Spring* (New York: Houghton Mifflin Co., 1962).

(8) PMRA, *A New Approach to Re-evaluation*, Regulatory Proposal PRO99-01, (a), (December 3, 1999).

(9) Report of the Commissioner of the Environment and Sustainable Development, 1999, http://www.oag-vg.gc.ca/domino/reports.nsf/html/c9menu_e.html.

(10) J.F. Castrilli and T. Vigod, *Pesticides in Canada: An Examination of Federal Law and Policy* (Ottawa: Law Reform Commission of Canada, 1987).

(11) PMRA, *Good Laboratory Practice*, Regulatory Directive DIR98-01, (a), (July 27, 1998).

■ **Elaine L. Hughes**
Faculty of Law
University of Alberta

Action Update

Recent Developments concerning Intensive Livestock Feeding Operations in Alberta: the Klapstein Committee

Issues regarding regulatory controls over the intensive livestock industry in Alberta continue to be controversial and hotly debated. Developments in this regard were discussed in three recent issues of News Brief¹. This Action Update very briefly recaps past events, and then outlines present and future developments regarding the regulatory regime over intensive livestock operations (ILOs) in Alberta.

The recent history of legislative proposals regarding ILOs began in 1991 when Alberta Environment made available for public comment draft regulations for the proposed Alberta Environmental Protection and Enhancement Act². One activity considered for regulation was the operation of large-scale commercial livestock operations. Public input was requested "on whether these operations should be subject to environmental regulation and approvals."³ Farmers and farm groups strongly opposed regulating livestock operations primarily because they were concerned about the potential cost of performing environmental studies on their land. They felt this would make operation expansion difficult⁴.

In January, 1998, the Minister of Agriculture requested that a process to examine the way the livestock industry is regulated be initiated. As a result, in March, 1998, the Alberta Department of Agriculture, Food and Rural Development (AAFRD) published a discussion paper called *Regulatory Options for Livestock Operations*⁵. This paper reviewed the then existing legislation applicable to intensive livestock operations and outlined options for new regulations. A public consultation process followed and the results were placed before a multi-stakeholder advisory committee, the so-called Livestock Regulations Stakeholder Advisory Group (LRSAP)⁶. After further consultation LRSAP published *A Proposed Regulatory Framework for Livestock Feeding Operations in Alberta* in January, 1999⁷. The report produced by LRSAP was released for public consultation and input. LRSAP revised its report in response to this input and circulated its revised report as a draft act, regulations and standards document called "Regulatory Options for Livestock Operations"⁸. The then AAFRD Minister, Ty Lund, responded to the report by stating that "I understand the hard work that has gone into this report" but went on to note that "We need to build a stronger consensus before we can proceed with legislation."⁹ He then appointed the "Sustainable Management of the Livestock Industry in Alberta Committee" (the Klapstein Committee) in December, 2000 "to finalize provincial recommendations on outstanding issues related to the development and operation of Alberta's livestock industry."¹⁰ Albert Klapstein, MLA for Leduc, was Committee Chair.

The Committee held six public hearings throughout Alberta concerning the future of the intensive livestock in Alberta in January and February of this year. The meetings were held in Lethbridge, Airdrie, Red Deer, Vermilion, Barrhead and Grande Prairie. Written submissions were also invited.

The mandate of the Committee was to "recommend a framework that ensures sustainable industry development" and "to examine issues including provincial and municipal roles, approval processes and on-going monitoring and enforcement."¹¹ Its "responsibilities" included developing and implementing a consultation plan, submitting a "written report and recommendations to the [AAFRD Minister], within six months, concerning: the most appropriate framework for a more coordinated review and approval process for new and expanding intensive livestock operations, actions to improve ongoing monitoring of new and existing livestock operations, [and] legislation and regulatory requirements."¹²

The Environmental Law Centre (ELC) presented a written submission to the Klapstein Committee. The submission set out the ELC's position. The ELC strongly agreed that a new regulatory framework for ILOs was required. It recommended an expanded and stronger role for the provincial government, in particular, an expanded role for Alberta Environment and Alberta Health. It was the ELC's position that a stronger and more clearly defined provincial power would better ensure that there was adequate expertise to assess environmental and health effects of all existing and future operations, and that there would be consistent standards throughout the province, which are lacking at the present. It also recommended that each application be subject to an environmental assessment process before any approvals are granted or refused.

As well, the ELC recommended improved notice requirements, expanded public involvement and a stricter monitoring and enforcement regime. It strongly opposed mere voluntary compliance in a regulatory ILO regime.

For the complete Environmental Law Centre submission outlining our position, visit the ELC web site: www.elc.ab.ca (under "Briefs and Submissions").

■ **Robert R.G. Williams**
Staff Counsel
Environmental Law Centre

¹ News Brief, Vol. 13, No. 3, 1998; News Brief, Vol. 14, No. 1, 1999; News Brief, Vol. 14, No. 3, 1999.

² Alberta Environment, *Draft Regulations Under the Proposed Alberta Environmental Protection and Enhancement Act* (1991).

³ *Ibid.*, *Regulatory Outline* at 3.

⁴ Alberta Environmental Protection, *Albertans Respond to the Proposed Environmental Regulations - a Summary of Public Comments, September 1991 - June 1992* (1993) at 14. Alberta Agriculture, Food and Rural Development, Environmental Protection, Health and Municipal Affairs, *Regulatory Options for Livestock Operations - Discussion Paper*, (March 1998).

⁵ News Brief, Vol. 14, No. 1, 1999.

⁶ AAFRD, *A Proposed Regulatory Framework for Livestock Feeding Operations In Alberta* (January 1999).

⁷ For a copy contact AAFRD at (780) 427-0674 or visit their web site at <http://www.agric.gov.ab.ca/economic/policy/filo/>

⁸ *Ibid.*

⁹ AAFRD web site at <http://www.agric.gov.ab.ca/livestock/filo/participate.html>

¹⁰ *Ibid.*

¹¹ *Ibid.*

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An Environmental Law Centre Business Connection Seminar

Topic: Lenders and Environmental Liability
By: Brenda Heelan Powell, Staff Counsel
Environmental Law Centre
Date: Wednesday, April 25, 2001
Time: 12:00 to 2:00 p.m.
Where: The Business Link - Business Service Centre
100, 10237 - 104 Street
Edmonton, Alberta
Cost: \$25 plus G.S.T. (lunch included)

This seminar will review lenders' concerns with environmental liability and review the basis for lender liability for environmental damage. As well, the seminar will review some methods that may assist lenders in avoiding liability for environmental damage.

**To register call (780) 424-5099, fax (780) 424-5133
or e-mail fschultz@elc.ab.ca**



Volume 6 of the Fisheries Pollution Reports, coming to the ELC Website

The Environmental Law Centre is pleased to announce that the 6th volume of the Fisheries Pollution Reports will soon be posted on the Centre's website at www.elc.ab.ca. Volume 6 includes an index and summaries of Canadian court cases in English and French for 1992, 1993 and 1994 which consider one or more of sections 34-42 of the federal *Fisheries Act*. The Environmental Law Centre prepared Volume 6 and will post it on its website under license with Environment Canada. Environment Canada retains copyright.

Announcements

Brown Bag Lunchtime Seminars

Join the Environmental Law Centre staff for two guest speakers at upcoming brown bag lunchtime seminars at the Centre offices in Edmonton. Please R.S.V.P. to Fran Schultz by telephone at (780) 424-5099, or 1-800-661-4238, or by email at fschultz@elc.ab.ca.

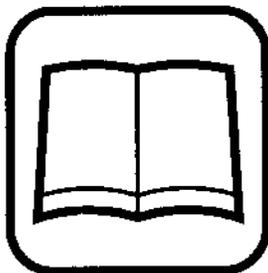
- Topic:** 2001: A Species Odyssey, Canada's Endangered Plants and Wildlife and the Proposed *Species at Risk Act*
By: Presented by representatives of Canmore based WildCanada.net (visit <http://wildcanada.net> for more information on the *Endangered Species campaign*)
Date: Wednesday, April 4, 2001
Time: 12:00 to 1:30 p.m.
Place: Environmental Law Centre
#204, 10709 Jasper Avenue, Edmonton, AB, T5J 3N3
Cost: No charge (bring your own lunch)
-

- Topic:** Private Prosecutions and the Federal *Fisheries Act*
By: Presented by Dr. Martha Kostuch (a veteran private prosecutor)
Date: Friday, May 25, 2001
Time: 12:00 to 1:30 p.m.
Place: Environmental Law Centre
#204, 10709 Jasper Avenue, Edmonton, AB, T5J 3N3
Cost: No charge (bring your own lunch)

Aboriginal Community Outreach and Information

The Environmental Law Centre is pleased to announce that it is developing its programs to more effectively extend Centre services to Aboriginal communities. As part of this development, future issues of the *News Brief* will seek to include an article relevant to both Native law and environmental concerns. Please contact Arlene Kwasniak at the Centre for more details.

Sir John A. Mactaggart Essay Prize in Environmental Law



The Environmental Law Centre is pleased to give notice of the 2001 competition for the Sir John A. Mactaggart Essay Prize in Environmental Law. The competition is open to undergraduate and graduate students attending a recognized law program in Canada. Qualifying students are encouraged to submit original essays addressing an environmental law issue that is significant and relevant to Canada. First prize is \$500 and a bound volume from Carswell. Second prize is a bound volume from Carswell. Prize-winning essays will be considered for publication in the *Journal of Environmental Law and Practice*. Entry deadline is June 15, 2001. For further information, contact the Environmental Law Centre at (780) 424-5099 or elc@elc.ab.ca, or check the Centre's website at www.elc.ab.ca.

By Brenda Heclan Powell, *Environmental Law Centre*

Practical Pointers on Petitions

Introduction

Petitions may be used by members of the public to bring issues to the attention of a governmental authority and to request that actions be taken in relation to those issues. In some cases, petitions actually may compel a governmental authority to take a particular action. A number of statutes allow for petitions. In every case it is critical that petitioners strictly follow the statutory requirements or else the petition could be rendered invalid. This article focuses on the most common petitions, being petitions to Alberta Legislature, the House of Commons and to a municipality.

Alberta Legislative Assembly and the House of Commons

Introduction

Petitions may be made provincially to the Alberta Legislative Assembly and federally to the House of Commons. Petitions to a legislative body must address a subject within the authority of the body. For example, a petition to the House of Commons should not concern a purely provincial or municipal matter, or any matter that should be brought before a court of law or tribunal. The petitioner should provide a draft of the petition to a member of the body for review prior to obtaining signatures. However, members are not obliged to present petitions that have been brought to their attention.

Alberta's Legislative Assembly

The requirements for a valid petition to the Albert Legislative Assembly are set out in guidelines available at www.assembly.ab.ca/pro/petition.htm. Important points to remember are:

- The petition must be addressed to the Legislative Assembly, preferably as follows: "The Legislative Assembly of Alberta, in Legislature Assembled".
- The prayer of the petition must be clearly indicated on the head of each page containing signatures. Signatures must be original.
- Every page of the petition must include a notice that states the name and address of every person who signs it may be made available to the public.

- The petition must not contain argument or debate.

In Alberta, a petition to the Legislative Assembly may go through two stages: presenting the petition, and reading and receiving the petition. The member who presents the petition confines his remarks to a brief description of the petition's request, the number of signatures attached, and the geographic areas represented by the signatures. The petition is then tabled and checked to ensure it is in order. If the petition is in order, the petition may be read and received. Only the prayer - that is, the portion of the petition making a request - will be read.

House of Commons

The requirements for a valid petition to the House of Commons are set out in guidelines available at www.parl.gc.ca/information/about/process/house/petition/petition-e.htm. Important points to remember are:

- The petition must be addressed to the House of Commons. The words "To the House of Commons" or "To the House of Commons in Parliament Assembled" must appear at the beginning of the petition.
- The petition must contain a prayer that clearly requests Parliament to take some action or to refrain from some action.
- If possible, some signatures and addresses should appear on the first sheet of the petition with the prayer. On other sheets containing signatures and addresses, the prayer of the petition may be summarized.
- The petition must contain a minimum of 25 original signatures accompanied with addresses.

A petition cannot be presented in the House of Commons unless the Clerk of Petitions has certified it. Once certified, a petition may be presented in two ways: by a member making a brief statement in the House about the origin and subject of the petition, or by a member filing the petition with the Clerk of the House while the House is sitting.

Once the petition is presented, the Government must table a response in the House within 45 days.

Municipalities

Sections 219 to 240 of Alberta's *Municipal Government Act*, (S.A. 1994, c. M-26.1) (the "MGA") allow petitions to municipal governments. Useful information about petitions under the MGA can be found at www.gov.edmonton.ab.ca/corp-services/city_clerk/petitions/index.html. Petitions under the MGA may be used to compel a municipal government to call a public meeting to discuss matters in the petition; to pass, amend or repeal a by-law; or to hold a vote of electors on a proposed by-law.

To compel action by the municipal government, the petition must meet the requirements of the MGA, including:

- The petition must be signed by at least 10% of the municipality's population.
- Each page of the petition must contain an identical statement of purpose.
- Each petitioner must provide his name, signature, street address or legal description of property, and the date. An adult person must witness each signature.
- The petition must have a signed statement by a person indicating that he is the contact for questions or concerns with the petition.

The petition must be filed with the Chief Administrative Officer of the municipality. Within 30 days of filing, the petition must be declared either sufficient or insufficient to meet the requirements of the MGA.

It should be noted that the subject matter of by-laws that may be affected by petitions is limited by the MGA. For example, petitions dealing with planning and development issues under Part 17 of the MGA are of no effect. This does not mean that informal petitions cannot be submitted on such matters. While informal petitions cannot compel the municipal government to act, they will bring the public's concerns to the attention of the municipal government officials.

Helicopters “Whirring” Wildlife?

Dear Staff Counsel:

I recently opened a wilderness lodge in an isolated part of the Canadian Rockies. Recently, a helicopter tour company began operating in the area after the local Municipal Planning Commission granted approval. These flights annoy and disturb my guests, and in my opinion are harmful to wildlife in the area. I had opposed the application, but the board rejected my opposition, stating that I had presented no evidence that wildlife were disturbed in the area. I plan to appeal this decision. Do you know of any scientific studies or any Canadian court cases supporting my position that I can use?

Sincerely, Lief M. Bee

Dear Mr. Bee:

Although the Environmental Law Centre does not specialize in information on scientific studies, a few have crossed our desks that support your belief that helicopter flights can negatively impact at least some species of wildlife.

Bleich et al. (1990) studied the effects of helicopter surveys on distribution and movements of desert-dwelling mountain sheep in San Bernardo County California. In a preliminary study they found that the sheep altered both distribution and movements in response to the surveys, even with low survey intensity. They concluded that (p. 202) “mountain sheep reacted severely to our helicopter surveys.”

In a later, more detailed study, Bleich et al. (1994) evaluated the effects of helicopter disturbance on movements and changes in habitat use. Their findings were dramatic. They found that (p. 5) “... mountain sheep reacted so strongly to the helicopter that the effects of other variables ... were overshadowed by the downdraft and intense noise associated with this aircraft ... the helicopters disturbed mountain sheep severely.

Caribou are also apparently negatively effected by helicopter flights. Bleich et al. (1990) relate that helicopter overflights, followed by landings up to 2 km from post-calving aggregations of caribou, elicited behavioral responses leading to displacements of at least 1-3 km.”.

However, on the other side of the coin, a preliminary study in Arizona involving the Sonoran pronghorn on a military proving ground suggests that there is no effect. Dr. Paul Krausman of the University of Arizona noted that although the animals were routinely subjected to explosions and fast-moving aircraft, they behaved the same as when they were not subjected to the same activity.

In conclusion, the scientific evidence suggests that helicopters and other low-flying aircraft can have a negative effect on wildlife, particularly large mammals. However, the degree of this effect appears to be variable and species dependent.

Regarding caselaw, (more the Environmental Law Centre's forte) a 1978 decision of the Federal Court of Canada implicitly recognized that low flying aircraft and helicopters may potentially have a negative effect on wildlife. In *Baker Lake (Hamlet), v. Canada (Minister of Indian Affairs and Northern Development)* ((1979) 1 F.C. 487) the plaintiffs sought an interlocutory injunction prohibiting the issue of mining exploration permits in an area in the North West Territories. The crucial issue was whether the prospecting and land use permits would adversely affect the Inuit's caribou harvest. The proposed mining exploration activity involved extensive use of helicopters and other low flying aircraft, as well as drilling and blasting. The court partially allowed the plaintiffs' application. The court noted that “The weight of evidence leads to the conclusion that exploration and mining activity is incompatible with the natural use of caribou of their habitat at

times when and places where they are particularly sensitive and at places where they congregate in large numbers” (para. 9) and that much of the apprehended injury to caribou involves helicopters and low-flying aircraft (para. 13). Consequently, the court rendered the permits to be invalid within a certain distance of calving and post-calving grounds between certain dates and prohibited low flying aircraft over the areas during those times.

In closing, we note that some federal laws and possibly some common law actions also might be relevant to your concern and we welcome you to contact us regarding them. The scientific references we referred to are: Bleich, V.C., et al (1990). Responses of mountain sheep to helicopter surveys. *California Fish and Game* 76(4): 197-204. Bleich, V.C., et al (1994). Mountain sheep *Ovis canadensis* and helicopter surveys: ramifications for the conservation of large mammals. *Biological Conservation* 70 (1994): 1-7. Sonoran Pronghorns and Air Force Overflights - Monitoring the effects of military activity. <http://ag.arizona.edu/pubs/general/resrpt1998/sonoran.html>

Ask Staff Counsel is based on actual inquiries made to Centre lawyers. We invite you to send us your requests for information c/o Editor, Ask Staff Counsel, or by e-mail at elc@elc.ab.ca. We caution that although we make every effort to ensure the accuracy and timeliness of staff counsel responses, the responses are necessarily of a general nature. We urge our readers, and those relying on our readers, to seek specific advice on matters of concern and not to rely solely on the information in this publication.

**Ask Staff Counsel Editor:
Arlene Kwasniak**