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**Supreme Court Challenge of JEB Pit
Tailings Waste Dump in Northern
Saskatchewan by Environmental NGO
Needs Your Support**

Court Case History: ICUCEC v. AECB & Cogema

In July 1999 the Inter-Church Uranium Committee Educational Cooperative (ICUCEC), the flagship of the anti-nuclear movement in Saskatchewan, took the unprecedented step of bringing Canada's nuclear regulatory agency, the Atomic Energy Control Board (AECB), to Federal Court.

Why was this step taken?

JEB Pit Waste Tailings Dump

One month earlier (June 1999) the AECB licensed the French owned mining giant, Cogema Resources Inc., to mill and dump highly radioactive and toxic uranium tailings into the JEB pit. This licence was granted even though the AECB itself and uranium-mining engineers advise that the harmful long-term impacts of this massive waste dump are unknown. The dump is located 800 km northeast of the City of Saskatoon, and less than 100 kms from the Dene community of Hatchet Lake. The pit was created in 1997 by the open-pit mining of uranium ore out of what was once a marsh.

The pit, which measures four football fields wide (450m)

and thirty stories deep (150m), is located in the Wollaston Lake watershed, one of the largest fresh water systems in Canada. The watershed is a unique system that flows both east and west. The region is home to caribou, bear, fox, and pike among other northern Boreal forest species. This land dotted with lakes, bogs, marshes and wetlands is also home to the most radioactive uranium ore bodies found on earth.

The federal-provincial environmental assessment panel that reviewed this project when still in planning concluded in 1993:

[T]ailings management must contain contaminants for thousands of years before they will cease to be a radiological hazard. Moreover, the non-radioactive toxic metals, such as arsenic, will persist forever. Perhaps wisely, the public fears that whatever can go wrong, will go wrong.

In the fall of 1996 two members of the five-member panel resigned due to pro-industry interference in their decision-making and the failure of the government to follow the panel's recommendations.

In 1997 the truncated panel concluded on the basis of new information that this is **potentially one of the most dangerous waste dumps in Canada**. Given the current scientific knowledge about radioactive wastes, environmentalists know that this *is* the largest and most dangerous waste dump in Canada. Since 1990 the scientific consensus has been that **there is no safe level of radiation exposure for humans and other living things**. Even exposure to low levels of radiation can cause genetic and somatic (bodily) harm. **A recent U.S. geological survey study concluded that in the long-term uranium tailings are even more dangerous than high-level nuclear wastes.**

Improbable Decommissioning Plans

The tailings waste dump is like a giant sieve, with groundwater flowing through the thousands of mapped cracks and fissures in the walls of the pit. Therefore, the pit is surrounded by a series of perimeter wells (29 in total) whose function is to remove ground water from the vicinity of the JEB pit and divert it around the pit. As well, tailings porewater is continually pumped from the base of the pit through the underdrain filter and then to the nearby water treatment plant. The water is treated with chemicals to remove as much Radium as possible. The treated water is then dumped into Sink Lake and the

Radium rich sludge is dumped back into the JEB pit.

After the 40-year planned operating life of the pit the mining companies will be turning the pumps off following an additional 30-year monitoring period. The tailings will be covered with overburden (waste rock) and it is hoped that the hydraulic containment theory relied on by Cogema and its joint venture partners will actually work. If the theory fails, if the questionable assumptions are proven invalid, there will be an environmental catastrophe in northern Saskatchewan.

One radioactive waste analyst explained that the tailings in the pit have the consistency of toothpaste. Once heavy equipment and waste rock are placed on top (if that is even possible), there will likely be an overflow of tailings over the side walls of the pit, dispersing the contaminants.

Trial Division: Victory for Environmental Protection

On September 23, 2002 the Federal Court Trial Division ruled in ICUCEC's favour. The judge, Mr. Justice Douglas Campbell, quashed (invalidated) the operating licence for the JEB mill and JEB pit waste tailings dump. He also ruled that the mill and waste dump required a new assessment under the *Canadian Environmental Assessment Act* (new legislation that came into force in January 1995).

Mr. Justice Campbell found that each stage of the McClean Lake uranium mining project is, in fact and in law, a new project as that term is defined in s.2 of CEAA, which by s.5(d), requires an environmental assessment before a licence is issued. Section 2 of the CEAA defines a project as: the construction, operation, decommissioning, abandonment or other undertaking in relation to a physical work.

The Atomic Energy Control Board and the French-owned mining giant Cogema Resources Inc. were both shocked and angered at the win by ICUCEC.

Within two days of the victory by ICUCEC the uranium mining company filed its appeal to the Federal Court of Appeal. Cogema, a multi-national company with a track record (through its parent company) of ignoring environmental laws in various countries and finding tacit approval or a blind eye from local government regulators, was incensed by the Court's interpretation of environmental protection laws in Canada in such a way that made Cogema accountable.

In its appeal, Cogema argued that each and every legal decision made by the Trial Division was wrong.

The Canadian nuclear regulator, the AECB, also objected to the Trial Division decision, and launched its own appeal and support of a stay pending appeal.

The company and regulators do not want to be burdened by the extra paperwork and expense of new environmental assessments required by Canadian law. By contrast ICUCEC is concerned about the future of our children and generations yet unborn. The governments of Canada and Saskatchewan are permitting a shameful *perpetual* legacy of radioactive and toxic contamination in northern Saskatchewan in exchange for 20 to 40 years of uranium mining jobs and the equivalent in nuclear energy, primarily for France. In effect, today's decision makers are imposing the responsibility of dealing with dangerous nuclear wastes on future generations spanning the next 250,000 years.

Court of Appeal overturns Trial Division Ruling: Corporate Agenda Wins

On June 4, 2004 the Federal Court of Appeal overturned the ruling by the Trial Division and awarded costs against ICUCEC to Cogema. The Court of Appeal in a unanimous decision held that the transition provisions (section 74) of the new Canadian Environmental Assessment Act excluded the JEB Pit mill and waste dump from a new assessment, because the dump had already been assessed by a review panel. The mining company should not be required to spend any more time and money on a new assessment.

Why Court of Appeal Decision must be Appealed to Supreme Court of Canada

This Court case is of national significance for the environmental movement in Canada. The higher courts of the land have moved away from progressive rulings that favour environmental protection, precautionary principles, and true sustainable development. The environment is a defining issue of our day. It is necessary to fight this unacceptable trend and seek to put protection back into Canada's environmental protection laws.

The Court of Appeal ignored the warnings of a uranium industry insider (a mining process engineer) outlined in ICUCEC's evidence, that the mining company did not understand the dangers posed by the tailings over time. The company and the regulators were operating on various unproven and faulty assumptions. The process engineer was able to demonstrate that the amount of arsenic that would be leached out of the tailings would increase exponentially over time, rather than stay the same or decrease.

It was only through the mining process engineer's intervention in 1996 that a catastrophe was avoided at the JEB mill. The new and unproven chemical process proposed by Cogema and approved by the AECEB, would have led to rupture of the large containment vessels, killing nearby millworkers. At the eleventh hour the company changed the proposed chemicals to leach the uranium out of the uranium ore, following these warnings.

The Court of Appeal also failed to understand that ICUCEC was not seeking a new assessment merely as a technical requirement under Canada's environmental protection laws, but because serious scientific and technical problems arose between the time of the panel review of the JEB mill and waste dump, and the actual licensing of the operation of the facilities.

Three separate calls for a new assessment of the JEB mill and JEB pit waste dump were made to the nuclear regulator before the operating licence was issued. Firstly, in 1998 the aforementioned industry insider asked for a new public review of the JEB mill and JEB tailings waste dump listing numerous scientific and environmental issues that needed to be resolved before licensing should be considered. One year later, the Prince Albert Grand Council, representing twelve First Nations near the mining projects, asked for a new public assessment following a series of construction errors and fiascoes at the JEB pit. That same year ICUCEC called for a new assessment.

The JEB pit dump is a highly dangerous experiment. Once completely filled in forty years from today, the dump will make the devastating Sydney Tar Ponds appear like a dirty slough.

The Court of Appeal's ruling has two immediate implications: (1) establishing a dangerous and regressive precedent; and (2) the legal costs award against ICUCEC will force the organization to fold after a proud twenty year history. A corporate global giant greedy for profits at all costs will have succeeded in silencing its most vocal opponents in Canada.

Implications of Court of Appeal Ruling for other Mega-Projects and Environmental Groups

The Canadian Environmental Law Association has studied the implications of the Court of Appeal decision for other projects in Canada that have been previously assessed by a review panel under the old EARPGO regime. CELA has concluded that the various mega projects (approximately fifty in number) will not be

subject to any new assessments under the Canadian Environmental Assessment Act, or may be subject to only a very limited review.

Such mega-projects include: the Nuclear Reactor at Point Lepreau, New Brunswick; the Uranium Hexafluoride Refinery in Ontario; the Lower Churchill Hydroelectric project in Labrador; the Fraser-Thompson Corridor; the Northumberland Strait Crossing Project; the Old Man River Dam in Alberta; and the Cigar Lake uranium mining project in Saskatchewan, among many others. For example, the Point Lepreau reactor will need to be decommissioned (closed down) in the future. If the Court of Appeal ruling stands unchallenged, the decommissioning plans will not require an environmental assessment if the panel reviewing the project had considered decommissioning as part of its mandate. Thus new scientific information and public concerns will not be taken into consideration.

A victory in the Supreme Court of Canada would create a landmark ruling on the interpretation of environmental protection laws in Canada. It is time for the Canadian public interest to prevail over the global corporate agenda.

Why ICUCEC needs your Support

As you read the mining companies are filling the giant open pit with thousands of tons of waste tailings. New mines slated to feed the JEB pit are coming on-stream and present levels of radiation hazard that are orders of magnitude larger than any mines ever operated on the Earth. These same mines are so radioactive that miners and mill workers must work with remote controlled robotic devices to prevent any contact with the extremely high-grade ore. The tailings from these mines will be in direct contact with the environment. There is no protection for humans and other living things in the region. Surface and groundwater will also carry the dangerous contaminants to more distant parts of Canada.

Please help us stop the madness that would permit the foreseeable devastation that this waste dump will produce over the next 250,000 years.

What can we do?

ICUCEC is asking for donations of \$100 to \$500 to help launch this important appeal to the Supreme Court of Canada.

More info:

(1) The Federal Court Trial Division decision is on the federal court website.

Mr. Justice Campbell's decision of September 23, 2002 is found at:

<http://reports.fja.gc.ca/fc/2003/pub/v2/2003fc31308.html>

(2) The Federal Court of Appeal decision dated 4 June 2004 is found at:

<http://www.canlii.org/ca/cas/fca/2004/2004fca218.html>

(3) The Atomic Energy Control Board decision of June 30, 1999 can be found on the Canadian Nuclear Safety Commission website by conducting a search at :

<http://www.nuclearsafety.gc.ca/eng>

Once at this site, click on "search" and type "AECB-MFOL-170-0.4".

A PDF file will then appear, called: Atomic Energy Control Board Reasons for Decision in the Matter of COGEMA Resources Inc. Application for Amenment to Mining Facility Operating Licence (AECB-MFOL-170-0.4) for the McClean Lake Project

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