

## The Passage of NAFTA and Its Impact on the Environment

by Robert M. Harkins, Jr.

On August 12, 1992, the United States, Mexico, and Canada completed negotiation of the North American Free Trade Agreement (NAFTA). NAFTA's goal, according to the U.S. Administration, is to phase out barriers to trade in goods and services in North America, to eliminate investment barriers, and to strengthen the protection of intellectual property rights. Those in the United States and Mexico with environmental concerns fear that the passage of NAFTA will result in an exodus of industry to Mexico in order to skirt environmental regulations that exist in this country. This article analyzes the present environmental situation in Mexico, the environmental safeguards laid out in NAFTA, and evaluate whether these safeguards will prevent industry from evading U.S. environmental standards.

### Mexico: a Country in Environmental Crisis

Mexico City is widely regarded as having the worst air pollution problems in the world. The National Toxics Campaign has described the U.S.-Mexico border as "a two-thousand mile Love Canal," and the American Medical Association refers to it as "a virtual cesspool and breeding ground for infectious disease."<sup>1</sup> Foreign-owned factories in Mexico, called *maquiladoras*, have been the subject of news for the last few years for their devastating impact on the environment in Mexico and the United States. In many Mexican communities, the principal method of solid waste management is burning trash, and illegal dumps located near orphanages and schools expose children to carcinogenic chemicals.<sup>2</sup> Inland, thousands of plants dump raw waste into primary streams.<sup>3</sup> In the border town of Matamoros, a pattern of retardation and deformities has developed among children born to mothers who worked in *maquiladoras* at the time they became pregnant.<sup>4</sup> In the United States, toxic waste from Tijuana finds its way into California, destroying beaches,<sup>5</sup> and pollution from *maquiladoras* is the suspected cause of encephalitis (brain inflammation) in babies in Texas hospitals along the border.<sup>6</sup>

Sedesol, the recently revamped Mexican counterpart to the United States EPA, recognizes the vast environmental problems foreign-owned factories present. As proof of a tough stance with regard to pollution, Sedesol has temporarily closed 116 of 138 inspected *maquiladoras* since

its inauguration this spring. In July 1992, Sedesol jailed a hazardous waste dump operator in Mexicali for allowing *maquiladoras* to dispose of waste illegally.<sup>7</sup> Over the next three years, Mexico is committed to spend \$460 million to inspect the border area, and has overspent this year's promised \$147 million expenditure by about \$13 million.<sup>8</sup> As a result of these and similar actions, the World Bank has approved \$80

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million over the next four years to help Mexico protect the environment.<sup>9</sup>

Even with this increased concern with the environment, however, Mexico's pollution problems are far from disappearing. For all the money spent on border cleanup, there is still no

approved hazardous waste treatment or disposal facility in all of Baja California, where approximately 40% of maquiladoras reside.<sup>10</sup> Sedesol has focused its efforts almost exclusively on the border region, leaving polluters in the interior of Mexico unchecked. In the state of Queretaro, for example, 1,000 factories are regulated by a staff of one with two university interns. The type of equipment used to check contamination levels in Mexico was discarded as obsolete in the United States long ago. To meet Mexico's environment regulations, factories are required to have audits performed. The factories hire private labs to do these audits because Mexican labs simply do not have the necessary equipment. The private labs are not equipped with modern technology either, but Sedesol must trust their reports since they have no way of checking the results. Some of the equipment used for the reports has up to a 25% margin of error, according to Enrique Medina, a consultant who has trained inspectors for the Mexican government.<sup>11</sup> He estimates that "90% of the information that [Sedesol] has on its files is inaccurate."<sup>12</sup>

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Additionally, local governments in Mexico are in no position to fight over environmental standards violations with the large corporations who locate factories in their areas. In Queretaro, corporations such as Kellogg, Gerber, Black & Decker, and Texaco are responsible for two-thirds of all jobs. When inspections turn up violations, these industries are often able to shrug off the reports. Black & Decker, for example, was found to be violating air emissions standards, but Black & Decker called Sedesol's charges "highly subjective," and no action was taken.<sup>13</sup> The General Accounting Office in the United States released a report in August 1992 in which it audited six new maquiladoras. None of them complied with Sedesol's requirement for the filing of an environmental impact assessment before beginning operations.

### Fears of NAFTA's Environmental Consequences

There is only one motivation for industry to move from the United States to Mexico: Mexico is cheaper. Mexico costs less to industry because wages and environmental standards are lower than in the United States. Even if Sedesol were completely successful in the enforcement of present regulations, the regulations themselves are generally considered to be less stringent than their U.S. counterparts.

Even before the completion of negotiation of NAFTA, several corporations, including Zenith and Smith Corona, moved operations to Mexico to take advantage of lower costs. Three-fourths of all Zenith employees are now in Mexico, even though trade barriers currently exist to raise prices of goods as they come across the border.<sup>14</sup> Since 1980, the number of maquiladora plants has increased from under 600 to around 2,000.<sup>15</sup> The removal of barriers that currently discourage companies from locating in Mexico could lead to a mass exodus south of the border.

To understand the full implication of the cost difference between the United States and Mexico, one must consider the reactions of corporations to NAFTA. In a recent poll by the Roper Organization, 95% of companies with \$1 billion or more in sales endorsed NAFTA, and 55% of these companies said it is likely that they will shift some production to Mexico in the next few years.<sup>16</sup>

There are two major points of concern with this trend. First, Mexico is having difficulty meeting its current environmental standards now, without the expected influx of U.S. industries

after NAFTA. For many U.S. companies, protectionist policies still serve to offset the price differential that comes from disparate environmental standards. Mary Kelly, executive director for the Texas Center for Policy Studies, reports that within ten to fifteen years at the current pre-NAFTA levels of pollution in Mexico would result in too much water pollution even to sustain growth along the Texas-Mexico border.<sup>17</sup> A flood of new business sites created by NAFTA could overwhelm present efforts. A pro-NAFTA business group named the Border

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Trade Alliance estimates that \$5.5 billion will be necessary just to prepare the border's environment for free trade, which is quite a bit more than Mexico's \$460 million pledge or \$240 million from the United States.<sup>18</sup> Additionally, even if Mexico eventually steps up its environmental funding to meet new industry, the time lag between funding and enforcement could result in environmental devastation.

Second, some environmental groups feel that the progress Mexico has made is mostly for show, and that once the Mexican government has the agreement secured it will stop enforcing the environmental standards it presently has in an attempt to attract businesses. Without enforcement regulations built into NAFTA, the agreement could mean environmental disaster.

### NAFTA Environmental Safeguards

NAFTA is the first trade treaty in history that at least on the surface addresses the issue of environmental protection. In June 1990, when trade talks began, White House trade representative Carla Hills announced that environmentalism did not belong in consideration of new trade pacts.<sup>19</sup> But by May 1991, the desire for "fast track" status for the treaty changed the Administration's stance. "Fast track" is the term for an agreement which gave the President latitude to negotiate with other countries and then submit legislation to Congress for a yes-no vote without right to alteration. The President's proposal to renew "fast track" for two more years was in jeopardy, so the Administration dropped its opposition to environmental considerations and enlisted the help of national environmental groups to bolster support for the free trade plan.<sup>20</sup>

As a result, the agreement signed by the United States, Mexico, and Canada on August 12, 1992, includes many references to environmental needs. The provisions within NAFTA include statements condemning the notion of decreasing environmental standards to attract investment, the ability of countries to reject goods that do not themselves meet the environmental standards of that country, the right to enforce other international treaty obligations which include limits on trade of endangered species and ozone-depleting items, and an allowed limitation on investment to foreign companies that do not meet environmental standards.

Disputes that arise from NAFTA may be resolved under any international board, such as that established in the General Agreement on Trade and Tariffs (GATT), but any of the countries may ultimately have the NAFTA trilateral panel judge the dispute. The NAFTA panel is made up of members from all three countries. The board at its discretion may choose to obtain information from environmental experts about a dispute. It is not obligated to hear such testimony or take it into account in their decision making.

## The Impact of NAFTA on the Environment

Many environmental groups and Democrats in Congress have complaints about the standards set forth in NAFTA. The only provision of the agreement that has any enforceability is the allowance of a country to reject goods that are themselves environmentally unsound. Under this arrangement, a product made in a factory that habitually spews toxics into the air and water in Mexico will be allowed in the United States as long as the product itself is not harmful to the environment. Additionally, the United States must officially deny entry or the toxic products will enter this country anyway.

If the U.S. does deny a product entry, the dispute is resolved by the NAFTA board, which will be made up of officials who favor free trade above all else, and who need not consider environmental questions. If the board decides in favor of the manufacturer, the U.S. would have to allow the products entry under the agreement.<sup>21</sup> An example of the consequences of this type of procedure can be seen in a suit brought by Mexico against a U.S. law that banned tuna imports from any country whose fishing fleet killed dolphins at a significantly higher rate than the U.S. fishing fleet did. In that case Mexico turned to the GATT board, the same international board that is referenced as a dispute arbitrator under NAFTA, which invalidated the U.S. law because it attempted to impose U.S. environmental standards abroad, something the board considered too harsh.<sup>22</sup> As a result, Congress must work on legislation in 1993 that would reconcile the earlier law with the GATT ruling.<sup>23</sup> In February, Mexico's Foreign Ministry reached an alternative agreement with the United States government to ban tuna fishing in certain sensitive areas of the Pacific Ocean frequented by dolphins, but recently the Foreign Ministry changed its position and rejected the agreement.<sup>24</sup> The implications of this kind of environmental wavering in the wake of NAFTA's passage are frightening.

Additionally, William Reilly, the administrator of the Environmental Protection Agency, admitted that if Mexico chose to stop enforcement of environmental regulations to encourage American industry, "we have no direct recourse to apply sanctions to that company's products."<sup>25</sup>

Once damage is done, no plans are included in the NAFTA agreement to deal with cleanup. The magnitude of this oversight becomes clear when the advanced complexity of toxic accidents is contrasted with Mexico's state of preparation. Oscar Monsivais, chief environmental inspector for Juarez, Mexico, states, "The fire department is ready for a fire from 1950, not with the chemicals you have now."<sup>26</sup>

### Potential Solutions

Under the present state of NAFTA, the environmental situation is unsure at best. The agreement does mandate environmental protection in addition to the rhetoric contained within it. However, Mexico appears to be having a difficult time enforcing environmental regulations with trade barriers serving as disincentive for corporations to move factories there. With the passage of NAFTA, a potential flood of industry could outstrip any attempt at environmental protection even if Mexico really is dedicated to the environment, a notion held suspect by many. While the Administration cites

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independent studies that assert that increased economic well-being results in higher environmental standards, there is no evidence that this applies to a sudden influx of companies into a third world country, that Mexico will necessarily derive economic benefits in anywhere in the near future, or if it did that it would be able to allocate the necessary money to improving environmental enforcement.

On the other hand, Representative Ron Wyden (D-OR) asserts that without a major environmental reform program, there will be no long-term economic growth resulting from the agreement. Public health and sewage problems and illegal waste cleanup will outstrip any potential economic progress from NAFTA.<sup>27</sup>

National environmental groups that oppose NAFTA as it currently stands have put forward suggestions targeted to remove the incentives of polluters to evade U.S. environmental standards. First, they would have the U.S. increase funding to environmental protection and cleanup at the border and elicit a similar pledge from Mexico. Without more money to update equipment, hire more qualified inspectors, and clean up already existent problems, increased pollution will almost assuredly overwhelm any attempt at regulation.

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Second, they propose the creation of a separate panel of government and nongovernment representatives who would receive and investigate complaints about failure to comply with environmental regulations. The watchdog commission would need to have enforcement capabilities such as the ability to fine uncooperative companies.<sup>28</sup> It would thus serve to enforce health and safety laws, resolve disputes, and allow for greater public participation than would occur

by channelling compliance issues through a general trade board or GATT. President-elect Bill Clinton supports this notion and says he will require an agreement of all countries to this term before submitting the legislation to Congress.<sup>29</sup>

Third, environmental requirements of other treaties should be extended to NAFTA. Currently NAFTA does not contain such a requirement and may be used by Canada or Mexico to circumvent other treaties on environmental issues. By upholding environmental standards from other treaties as a minimum, the NAFTA agreement would not become a loophole to evade those other protective measures.

Fourth, House majority leader Richard Gephardt has supported the idea of a cross-border tax that would be imposed on products from countries with weaker environmental standards.<sup>30</sup> The tax would serve two purposes. It would counter the incentive for companies to locate plants outside of the U.S. and to exploit lower environmental standards elsewhere, by imposing an additional cost on to the cost of production. Another benefit of the proposed tax is that the money collected would go towards financing environmental improvements.

Mexico is having enough trouble attempting to cope with the environmental crisis it currently finds itself in without the impact of NAFTA. The passage of NAFTA will put Mexico in an terrifyingly vulnerable state unless stricter regulations are added to the agreement. Only then will companies lose the cost advantage of moving to Mexico to exploit its natural resources and degrade its environment. If free trade is to become the future of North America, it should be used as a way to cure the environmental problems that have plagued Mexico in the past, not

as a means to allow U.S. companies to exploit Mexican weaknesses and create an environmental debacle.

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NOTES

1. William Greider, "How We Export Jobs and Disease," *Rolling Stone*, September 3, 1992, p. 32.
2. Enrique Medina, testimony, *Protecting the Environment in North American Free Trade Agreement Negotiations, Hearings Before the Subcommittee on Regulation, Business Opportunities, and Energy, House, 102-44, September 30, 1992, p. 12.* Mr. Medina is an environmental scientist with businesses in San Diego and Mexicali who has also trained environmental inspectors for the Mexican government.
3. Dianna Solis, "Punishing Polluters," *Wall Street Journal*, September 24, 1992, p. R17.
4. Greider, *supra* note 1, at 32.
5. Joe Old, et al. "How Do You Clean Up a 2,000-Mile Garbage Dump?" *Business Week*, July 6, 1992, p. 31.
6. "High Rate of Anencephaly Continues along Mexico-U.S. Border," Notimex Mexican News Service, October 25, 1992.
7. Solis, *supra* note 3, at R17.
8. "North American Free Trade Agreement Greeted with Suspicion by Environmental Groups," *Int'l Env't Rep. (BNA)* Vol. 15, No. 17 August 15, 1992, at 561.
9. Solis, *supra* note 3, at R17.
10. Medina, *supra* note 2, at 16.
11. Medina, *supra* note 2 at 15.
12. Solis, *supra* note 3.
13. *Id.*
14. Bob Davis, "One America," *Wall Street Journal*, September 24, 1992, at R8.
15. J. Shields, "An Audit of Air Quality Data Along the Texas-Mexico Border," *Environmental Auditor*, Vol. 2, No. 3, 1991, at 173.
16. George Anders, "Heading South," *Wall Street Journal*, September 24, 1992, at R7.
17. Mary Kelly, testimony, *Protecting the Environment in North American Free Trade Agreement Negotiations, Hearings Before the Subcommittee on Regulation, Business Opportunities, and Energy, House, 102-44, September 30, 1992, at 19.*
18. Old, *supra* note 5, at 31.
19. Keith Schneider, "Trade Pact vs. Environment: A Clash at a House Hearing," *The New York Times*, September 16, 1991, at D23.
20. *Id.*
21. Rose Gutfeld, "Keeping It Green," *Wall Street Journal*, September 24, 1992, at R9.
22. Marc Levinson, "The Green Gangs," *Newsweek*, August 3, 1992, at 58.
23. Gutfeld, *supra* note 21, at R9.
24. Michael Parrish and Juanita Darling, "Mexico Backs Away From Pact on Tuna," *Los Angeles Times*, November 4, 1992, at D2.
25. Schneider, *supra* note 19, at D1.
26. Old, *supra* note 5, at 31.
27. Statement of Rep. Ron Wyden, *Protecting the Environment in North American Free Trade Agreement Negotiations, Hearings Before the Subcommittee on Regulation, Business Opportunities, and Energy, House of Representatives, September 30, 1992, at 11.*
28. Douglas Jehl, "Clinton Insists on New Accords in Trade Treaty," *Los Angeles Times*, October 10, 1992, at A12.
29. *Id.*
30. Gutfeld, *supra* note 21, at R9.

