The Whitehorse **STAR**, *Friday, November 5, 2004*

# Demonizing mining by piercing the veil

**By JANE GAFFIN**

**Keno, the venerable old gentleman mine, refuses to die a natural death as long as a probable hundred million ounces of silver keep its heart beating. Yet, the federal government is bent on subjecting the mine to euthanasia.**

**I believe the mine deserves a dignified burial.**

**In a series of articles being published in the *Star* each Friday, I'm saying last rites and farewell to a great mine that served as the Yukon's lifeblood off and on for more than 80 years.**

**Here's part 14.**

Pursuant to United Nations resolutions and agendas, environmentalism evolved into a secular religion. The eco-greens are paid big bucks to promote it.

It has been proved in many appeal cases throughout North America that eco-greens have no conscience nor compunctions about presenting junk science to lower court judges to achieve their goals.

The environmental doctrine pivots on the theory that pollution is evil and every human activity induces pollution. The sinfulness must be stopped and the sinful polluters must be punished for their sins.

The environmental regulations portray a Marxist-Leninist philosophy that to successfully purge humans of their evil intents to sin, they must be strictly managed under a command-and-control regime.

Land-users are classified as eco-sinners. The punishment schedule, chiseled into all environmental regulations, assumes the accused is guilty by the nature of his work.

Over their heads looms the threat of excessive fines of $100,000 — sometimes per day – imprisonment and expensive court cases, which they are destined to lose because a politically-correct societal whim has tainted judges' minds.

Does that help the environment? No.

Environmental regulations are strictly vindictive in nature and require perfection to execute. It's just a matter of time before an eco-sinner working in the elements is accused of committing a sin.

The Spanish Inquisition won its converts on the torture bed, too. But what does the constant threat of punishment do to advance "protection" and "preservation" of the environment and "saving" the fish habitat and the Earth?

Nothing. The strong undercurrent of environmental regulations is animosity toward industry, development, labour, capitalism and Constitution.

In 2001, Toronto celebrity lawyer Edward Greenspan, who believes deeply in justice and due process of the law, won an Ontario Court of Appeal ruling that should have set a precedence in how regulatory authorities conduct business.

Inco, a large mining company, had been convicted and fined for allegedly leaking heavy metals into a river from one of its Ontario facilities in 1994.

The appeal court ruled that the regulatory authorities had overstepped their legislative boundaries. Inco would be retried.

Greenspan saw the ruling as a watershed in a long-running battle to keep regulatory authorities from running roughshod over the constitutional rights of individuals and corporations.

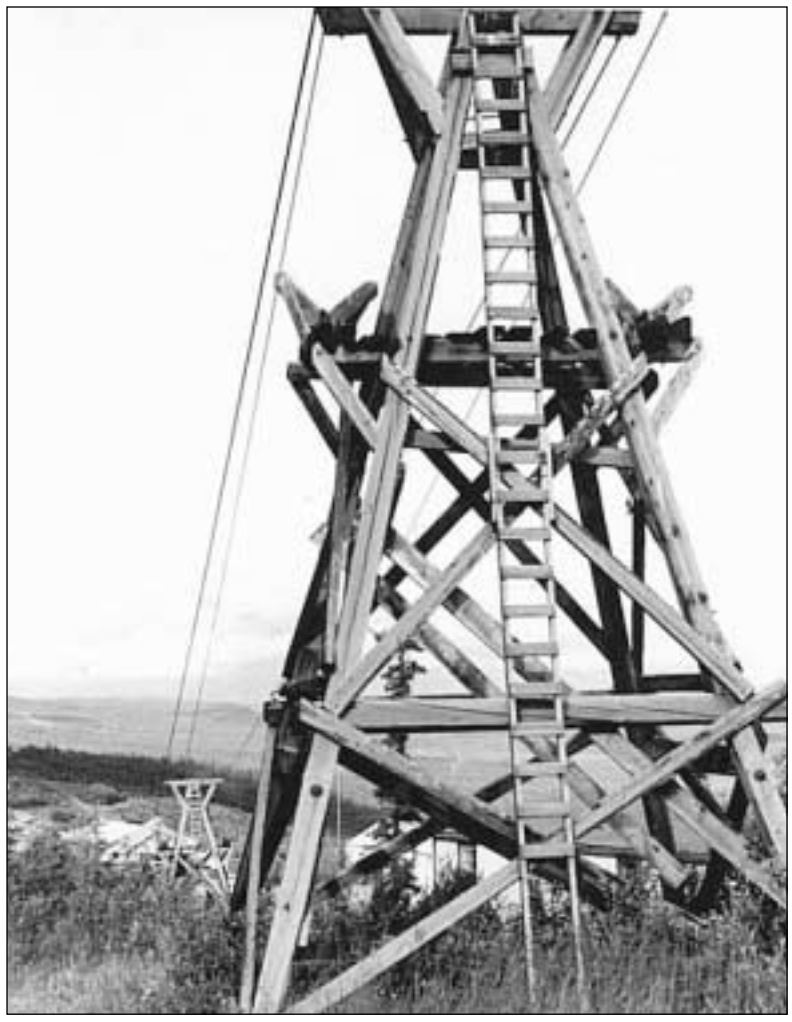

Photo by JANE GAFFIN

**MINING HISTORY – This is a tower to the tramline Livingstone Wernecke had built at the Elsa mines site in the mid-1930s. It was constructed with 4,350 metres (14,500 feet) of line draping 15 degrees downhill over 42 towers. Buckets, loaded with ore from various Treadwell Yukon mines, clanked into Elsa, where the mill had been relocated in 1936.**

In a *Globe and Mail* article (June 7/01), "Court reins in regulatory investigators", Greenspan spoke candidly about regulatory officers having sweeping powers much broader than police.

"These regulators have bullied and strong-armed people – but no more," he was quoted as saying.

Punishments for regulatory offences can be every bit as severe as those for criminal acts of force, he noted. Therefore, the same protections should be in place.

"People go to jail for these offences, and jail is jail," emphasized Greenspan. "Just because regulatory investigators wear suits instead of police uniforms doesn't mean they are not cops."

To obtain judicial authorization to search and question, investigators must convince a judge or justice not only that they have reasonable and probable grounds to believe an offence took place, but also that their request is likely to result in evidence that is relevant to it.

Thank you, Mr. Greenspan.

Where was the undisputable evidence that United Keno Hill Mines needed water-treatment facilities purported to cost a $100,000 a month and that such an extravagant program was only "makeshift"?

Were the people reliable who collected and presented the information? Was the information scientifically perfect?

On March 30, 2000, United Keno had entered guilty pleas to infractions under the Yukon Waters Act. The company was fined $51,000 and given a six-month probation order outlining conditions already reflected in its valid water licence.

In November 2000, the company and its president, Gerald Gauthier, were charged with six more probation breaches.

In corporate law, there's a pesky term "Limited". It used to mean liability was restricted to the company and not to be borne individually by directors or shareholders. If no longer true, what would be the purpose of going to the expense to "Limit" a company?

During its 10-year tenure on the Elsa property, the Toronto-based company eventually went into hock for roughly $15 million and died from cash starvation, believed mainly due to unnecessary "environmental" requirements.

But that didn't stop a Yukon territorial judge from levying a ridiculously hefty environmental fine on a company that no longer existed.

"Justice", "fairness" and "due process of the law" were just so much junk language to federal functionaries intertwined with the politically-correct Crown attorneys and judicial activists.

After a two-day trial in September 2002, a Yukon judge exonerated Gauthier of his alleged sins because he inherited the water treatment troubles and hadn't set out intentionally to aggravate the federal eco-cops.

But the judge mentioned "trend in the law" (not the law) is going in the direction of imposing personal liability on corporate heads because mining companies were shrugging off environmental fines as part of their cost of doing business these days.

The "piercing the corporate veil" case features some salient reasons why junior companies can no longer expect to take a Yukon project to mining phase.

The purpose of bringing United Keno to court and registering such a decision in local jurisprudence was primarily to serve to make converts or convicts out of the next bunch of corporate officials who were silly enough to invest in the territory.

However, one has to wonder about an outcome had the company the means to commission lawyer Edward Greenspan to come up against amateurs and fight back with the Yukon Quartz Mining Act, a legal tool which had never lost a court case.

Maybe the federal regulators would have learned they didn't have the authority to be licencing and trespassing on United Keno's property in the first place — especially the Silver King, an old Crown grant that blessed the owner with water, land, timber, hunting, and every other right handed down 800 years ago from the Magna Carta.

The territorial judge found the former owners and directors, who bequeathed the enviro-problems to Gauthier, guilty of six counts of sin.

The court further stuck United Keno for another $90,000 ($15,000 per sin), on top of the first $51,000, for no apparent reason other than to serve solely as a precedent-setter to enable the courts to nail the next eco-sinner.

When did this become the court's mandate? The court is supposed to be a government body responsible to the public for dispensing justice, fair hearings and due process of hardcore law, not be upholding a political policy.

As usual, the standard political mantra came up about mining companies leaving their "messes" to be cleaned up at taxpayers' expense.

*Touché.* If a geologist can't get blood out of a rock, neither can a court.

Prosecuting cases for the government's amusement could be viewed as an unnecessary strain on the public purse.

The involvement of government bureaucrats from Red Square, the RCMP detachment and the courthouse comes with a price tag of about $65,000 per person; plus an hourly courtroom fee of $2,000; not to mention the cost for support staff and logging a forest to supply enough paper to print a ton of documents.

It was known beforehand that the preordained fine was non-collectible from a cadaver that had been packed off to the morgue four months earlier.

If the legal system was serious, surely it would have gone after United Keno long before the Toronto Stock Exchange delisted the company on May 3, 2002.

The purpose of these types court cases is to augment environmental regulations in demonizing the mining industry in the public's eye, which was why the regulatory authorities mauled Minto Explorations Ltd.

The Vancouver-based company had negotiated a deal on the DEF/Minto copper-gold-silver project 90 kilometres northwest of Carmacks.

The DEF portion had been owned by United Keno Hill Mines, Falconbridge Nickel and Canadian Superior Exploration; the Minto portion had belonged to Silver Standard/ASARCO.

Ministerial delays in signing licences caused the November 1998 production date to be rescheduled to the fall of 1999, then extended to late 2002.

The 1996 season had focused on Pelly Construction building an access road into the property. Big Creek was notorious for flooding its banks every spring without fail.

But the companies were blamed for Mother Nature's doings. In 1997, she decided it was time to send down an abnormal amount of precipitation and runoff to create a 100-year flood.

The people working in the elements are logical; the environmental regulations and enforcers are not.

Anybody with a grain of common sense could believe on reasonable grounds that a type B water licence "allowing" for the original construction would be "authorization" to do repairs to same road and bridge and creek banks.

The water resources branch of the Department of Indian Affairs and "No" (my word) Development (DIAND) differed in opinion. The bureaucrats wanted to issue another "authorization".

The whole operation was shut down at the behest of the federal regulators who solicited police assistance. A gun-toting contingent raided the companies' Whitehorse offices and the Minto camp in 1998.

What do search and seizure of personal property that weren't remotely close to Mother Nature's "crime scene" have to do with "protecting" and "preserving" the environment and "saving" fish habitat and the Earth? Big fat zero.

It was July 23, 1999, before the RCMP finally filed criminal charges in the territorial court.

Ironically, the closest the police could pinpoint a sin date was a 10-month span of "on or between August 1, 1997 and May 28, 1998."

Three counts alleged failure to comply with conditions in a type B water licence that supposedly contravened two sections of the federal Yukon Waters Act.

Seemingly, there would not have been a violation if only the companies had been in possession of a different piece of paper "authorizing" the repairs.

How, in an emergency, can a person be expected to wait 18 months to three years for the minister to sign an amendment or a new document?

The president of Minto Explorations, Lutz Klingmann, pushed for an out-of-court settlement that would serve some useful purpose.

The federal government, Pelly Construction, Minto Explorations and all the attendant private and tax-paid lawyers finalized an agreement on Jan. 26, 2000.

The Selkirk First Nation of Pelly Crossing had an active interest in the project. The "sin fine" of $23,400 was to be paid out by the companies to undertake, implement and complete four "diversion projects": reclamation; environmental training and equipment; habitat and fish survey; and trapline training.

It would be more beneficial to donate to the villagers rather than a "sin fine" being kissed away in a court penalty fund.

* * *

*Jane Gaffin is author of **Cashing In**, a definitive history of the Yukon's hardrock mining industry, 1898 to 1977.*

*Next week: the historical connections behind United Keno Hill Mines and the DEF/Minto copper deposit.*