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**Comments on the
Review of the Canadian Environmental Protection Act 1999
From the Canadian Institute for Environmental Law and Policy (CIELAP)**

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CIELAP is pleased to provide its views on some aspects that need to be included in any review of the Canadian Environmental Protection Act. Because of a lack of resources we are not able to provide a comprehensive review of the Act, but rather we have decided to focus our comments on biotechnologies, nanotechnology, public participation, pollution prevention, toxic substances and implementing the precautionary principle.

We would, however, draw your attention to our 1994 submission to the Standing Committee on Environment and Sustainable Development entitled *Reforming the Canadian Environmental Protection Act*. Many of our comments in that document remain relevant.

Biotechnologies:

In our 1994 document we proposed the establishment of a separate biotechnology part of CEPA intended to provide the basis of a regulatory structure for biotechnology products which would ensure the protection of environmental integrity and human health, and strengthen public confidence in the government of Canada's evaluative and regulatory processes for these products. A commitment to establish a national regulatory regime to address the environmental risks of the biotechnology industry by 1995 was made in the Conservative (Mulroney) government's Green Plan.

We are pleased that there is Part 6 of CEPA: Animate Products of Biotechnology. However, this part of CEPA has been underused. Environment Canada has not been using its powers under CEPA to issue notices for information or take control actions on biotechnologies. However, if the current Conservative Government wants to make good the commitment of the previous Conservative Government to establish a national regulatory regime to address the environmental risks of the biotechnology industry, the government should utilize the powers that it has in CEPA. CEPA is the only federal legislation that provides clear authority for regulation of biotechnologies.

CIELAP has been calling for a comprehensive policy framework for biotechnologies since 1985. The opportunity exists for the current Conservative Government to show a

leadership role in this regard and capacitate Environment Canada to use its powers under CEPA and establish a national regulatory regime to address the environmental risks of biotechnologies. Specifically, a regulatory regime for these processes and products should include:

- A liability regime for environmental escape and damage of genetically modified organisms (GMOs);
- Requirements for an assessment of the potential long-term impacts of products prior to authorization;
- Application of the precautionary principle;
- Provision for public participation and external review and assessment of the information and evidence on which decisions are based.
- A Living Modified Organisms regulation designed to enable Canada to ratify the Cartagena Protocol on Biosafety, which Canada signed in 2001.

Nanotechnology:

With the exploding growth of nanotechnology, exposures to synthetic nanomaterials for researchers, workers and consumers will increase, with as yet unknown results. In general substances at the nanoscale are more reactive and toxic than at the micro- or macro-scale. Tissue damage to lungs, brains, and hearts has been found in animal species exposed to carbon nanotubes and bucky-balls. Canada has taken the position that nanoscale materials are still the same substance as at the micro- and macro-scales and do not need any additional regulation beyond what is required for ordinary uses of the substance. CEPA could be used to regulate the development and use of nanotechnology. A strict liability regime entrenched in the legislation would hold producers of nanotechnology responsible for damage to human or environmental health.

Public Participation:

How can the public be encouraged to utilize the tools available under CEPA? Why are citizens not exerting their rights to act more frequently and effectively by using CEPA?

Pollution Prevention:

Pollution Prevention is described in the preamble to CEPA as a “national goal and as the priority approach to environmental protection”, but pollution prevention has not been a strong component in the implementation of CEPA. Tools such as pollution prevention planning are underutilized and have no regulatory strength.

Toxic Substances:

Assessing toxic substances on a substance by substance approach is time-consuming and costly. The CEPA review process should study programs for assessing and controlling toxic substances which exist in other countries such as, for example, the European Registration, Evaluation and Authorization of Chemicals (REACH) program. CIELAP

has begun some preliminary work on looking at what CEPA could learn from the REACH program.

Precautionary Principle:

CEPA requires the government to apply the precautionary principle such that "... where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." The CEPA review should assess how Environment Canada and Health Canada have operationalized this principle.

We would welcome the opportunity to discuss our views on the Review of the Canadian Environment Protection Act 1999 with your Committee.

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