**Presentation to the House of Commons Standing Committee**
**on Environment and Sustainable Development**
**Regarding Bill C-32- The Canadian Environmental Protection Act**

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## I. Introduction

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 to use and improve laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

The Canadian Institute for Environmental Law and Policy (CIELAP) is an independent, not for profit, environmental law and policy research and education organization, founded in 1970 as the Canadian Environmental Law Research Foundation.

Both CIELAP and CELA have been involved in *Canadian Environmental Protection Act* (CEPA) review process since the first consultations hosted by Environment Canada in October 1993. Both organizations presented major briefs to the Standing Committee on the review of CEPA in the fall of 1994.

The organizations were the lead co-authors of the March 1996 responses of the Biotechnology and Toxics Caucuses of the Canadian Environmental Network to the government's December 1995 response to the Standing Committee's report on CEPA.

CIELAP was a witness in the Standing Committee's study and round tables on the Regulation of Biotechnology in the Spring and Fall of 1996. CELA appeared as a witness in the Standing Committee's study of the enforcement of federal environmental law this spring.

Both organizations have also followed harmonization issue closely since its origins in fall of 1993 and have prepared numerous commentaries and briefs on the subject. Both appeared as witnesses in the Standing Committee's Fall 1997 study of the CCME initiative.

## II. General Comments Regarding Bill C-32

CIELAP and CELA cannot support the passage of Bill C-32 as it is currently drafted. The Bill requires major amendments in a number of key areas. The enactment of the Bill without significant changes would be a backwards step in the protection of the health and environment of Canadians.

CIELAP and CELA are particularly concerned regarding the Bill's provisions regarding the

regulation of biotechnology, toxic substances, environmental 'harmonization,' citizen rights, pollution prevention, and chemical new substances. The organizations will also comment briefly on the Bill's provisions regarding environmental management within the federal government, and a number of the issues raised in the Miscellaneous part of the Bill.

CELA and CIELAP will be providing the Standing Committee with a detailed clause by clause analysis of the Bill, with recommendations for amendments, in specific legal text, when the Standing Committee reconvenes for its clause by clause consideration of the Bill in the fall.

It should be made clear that our organizations cannot support passage of the Bill as currently drafted. The Bill requires major amendments in key areas. In many respects, not only does the bill fail to improve the situation, it actually steps back in a number of provisions in terms of environmental protection. Unless these major amendments are made in the identified key areas, we will be recommending that the bill not proceed any further and that we continue to rely on the existing Act.

## SUMMARY OF RECOMMENDATIONS

**RECOMMENDATION #1: This section should be deleted or replaced with: "act in a manner with regard to the intent of intergovernmental agreements ... throughout Canada."**

**RECOMMENDATION #2: The addition of this clause is an unnecessary barrier to the taking of action under the Act and it should be deleted.**

**RECOMMENDATION #3: Section 2(2) section should be deleted.**

**RECOMMENDATIONS #4:**

- **Reporting requirements to Parliament under administrative agreements should be strengthened.**

- **The expanded use of equivalency agreements should not be permitted, given the lack of any evaluation of the effectiveness of the existing agreements.**

- **Citizen suit and whistle-blower protection provisions in provincial/ territorial/aboriginal law at least as strong as those in CEPA should be required prior to the establishment of equivalency agreements Without these requirements these rights under CEPA will be lost when equivalency agreements are entered into.**

- **Reporting requirements to Parliament under equivalency agreements should be expanded.**

- **A 5-year sunset of equivalency orders should be provided for.**

**RECOMMENDATION #5: The environmental protection provisions under Bill C-32 should be amended to allow effective access to the courts by members of the public with respect to the enforcement of the bill.**

**RECOMMENDATION #6: Amend this part to make the development of pollution prevention plans by facilities using, manufacturing or generating CEPA toxic substances or any substance found to be toxic under CEPA.**

**RECOMMENDATION #7: The definition of "virtual elimination" as stated in the TSMP and carried forward in the proposed implementation strategy should be rejected. Virtual elimination should be defined in a manner consistent with the definitions offered by the International Joint Commission (IJC) and implemented through a national pollution prevention framework. More specifically, the definition of virtual elimination should mean the elimination of the production, use and generation of substances.**

**RECOMMENDATION #8: Bill C-32 should be amended to accommodate the phase-out disruptors both in terms of those substances that already have been identified to disrupt endocrine functions and those that will be identified in the future.**

**RECOMMENDATION #9: The definition of toxicity in CEPA should recognize the concept of inherent toxicity. Toxicity should be determined on the basis of the inherent or intrinsic toxic properties of substances such as acute lethality, chronic/sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, and ability disrupt endocrine systems.**

**RECOMMENDATIONS #10:**

- **The existing provisions of CEPA regarding equivalency of notification and assessment of toxicity under other Acts of Parliament should be restored and strengthened. The provisions of sections 332-334 regarding equivalency orders should be removed.**

- **A definition of CEPA >toxic= specific to biotechnology should be provided for in the Part, making specific reference to the "conservation and sustainable use of biodiversity."**

- **The Part should apply to all products of biotechnology, as defined by CEPA, not just "living organisms." All references to "living organism" in Part VI of the Bill should be replaced with the words "biotechnology product" or "product of biotechnology."**
- **Provision should be made for public notice and comment periods for field tests,**

**variations of conditions or prohibitions, and the granting of waivers from notification and information requirements.**

**RECOMMENDATIONS #11:**

< **The exemption for aeronautics should be removed.**

< **The exemption for national defense should be limited to wartime and actions under UN Security Council Resolutions.**

< **The limitations on the application of environmental protection requirements to Crown Corporations should be removed.**

< **The provisions dealing with conflicts between regulations made under this Part of CEPA and regulations made under another Act of Parliament should be amended so that where there is a conflict, the more stringent requirement shall apply.**

< **A standard of environmental performance for federal government operations should be provided for in this section.**

**RECOMMENDATIONS #12:**

< **Amend to prohibit the establishment of trading schemes for emissions for toxic and other substances harmful to the environment or human health.**

< **Amend to permit the imposition of environmental charges and fees in relation to toxic substances, nutrients, fuels, ocean dumping, international air and water pollution and transboundary waste movements beyond administrative cost recovery.**

**RECOMMENDATION #13: The section should be amended to provide for a review of the administration and enforcement of the Act every five years by the House of Commons Standing Committee on the Environment and Sustainable Development or its successor.**

## III. Major Concerns with Bill C-32

### ADMINISTRATIVE DUTIES

#### 1. Section 2(1)(l): Bill C-32 Will be Subordinate to the Canada-Wide Accord on Environmental Harmonization

**(a) General**

On January 29, 1998, the federal Minister of the Environment and her provincial colleagues concluded the Canada-Wide Accord on Environmental Harmonization to orchestrate federal and provincial environmental laws and policies. The Accord has been severely criticized by public interest groups for many reasons, including a withdrawal of federal influence and capacity over environmental matters. The Standing Committee also voiced concerns over the Accord in its December, 1997 report.

Although there are a number of instances of the influence of the Accord on Bill C-32, the most obvious is section 2. Under section 2(1)(l) of Bill C-32, it is clear that the Accord will take precedence over CEPA; the bill creates a statutory duty that CEPA be administered in a manner consistent with the Harmonization Accord. In effect, the provision would incorporate the provisions of the National Accord and sub-agreements into CEPA by reference.

In addition, the federal government's ability to act without the agreement of the provinces would be severely constrained in key areas such as environmental emergencies and the implementation of Canada's environmental obligations under international treaties and customary international law. This is of a major concern, given the language of the Accord and sub-agreements requiring that parties "shall not act" under certain circumstances.

Moreover, Bill C-32 provides for the expanded use of "equivalency" agreements under which federal environmental laws and regulations do not apply in particular provinces.

It should also be noted that the Canadian Environmental Law Association has initiated a judicial review action challenging the Accord. It is expected that the legal challenge will be heard in the Federal Court later on this year.

> **RECOMMENDATION #1: This section should be deleted or replaced with: "act in a manner with regard to the intent of intergovernmental agreements ... throughout Canada."**

### (b) Other Relevant Sections: The 'Harmonization' Clause

A clause requiring the Minister of the Environment to consult with the governments of provinces, and aboriginal members of the National Advisory Committee before taking action has been inserted in numerous locations in the Act including: information gathering (s.47(2)); development of Objectives, Guidelines and Codes of Practice (s.54(3)); Pollution Prevention (s.62(1); Toxic Substances (General s.69(2); Priority Substances List s.76(2)); Protection of the Marine Environment from Land Based Sources of Pollution (s.121(2); Fuels (s.140(3); International Air Pollution (s.166(2); International Water Pollution (s.176(2); Environmental Emergencies (s.197); Federal Government Operations (s.208(2); and Economic Instruments (s.323).

**RECOMMENDATION #2: The addition of this clause is an unnecessary barrier to the taking of action under the Act and it should be deleted.**

## 2. Administrative Duties, Section 2: Bill C-32 will Make the Act Residue to Other Federal Statutes

Unlike the present CEPA, section 2(2) Bill C-32 proposes to make the law applicable only where measures in other departments are not "sufficient" according to the Environment Minister and the Minister responsible for those other measures. The effect of this provision is to make CEPA apply **only** when nothing else does. In other words, CEPA would become a residual statute rather than a cornerstone of federal environmental law and policy.

**RECOMMENDATION #3: This section should be deleted.**

## PART I - ADMINISTRATION - Sections 6-10

### Overview

This part provides the administrative structure for implementing aspects of CEPA, including:

- the addition of Aboriginal Representatives to the Federal-Provincial Advisory Committee (FPAC) which assists in the development of CEPA regulations;
- the expansion of administrative and equivalency agreements with provincial and territorial governments to include aboriginal governments;
- the expanded use of equivalency agreements to include regulations dealing with environmental emergencies, environmental management on federal government lands, and international air and water pollution;
- the inclusion of a public notice and comment period prior to the adoption of administrative and equivalency agreements;
- 5-year sunset requirements for equivalency and administrative.

The most troubling issue with respect to the above provisions relates to the expanded use of equivalency agreements. The following recommendations are intended to deal with this issue.

**RECOMMENDATIONS #4**

- **Reporting requirements to Parliament under administrative agreements should be strengthened.**

- **The expanded use of equivalency agreements should not be permitted, given the lack of any evaluation of the effectiveness of the existing agreements.**
- **Citizen suit and whistle-blower protection provisions in provincial/**

**territorial/aboriginal law at least as strong as those in CEPA should be required prior to the establishment of equivalency agreements Without these requirements these rights under CEPA will be lost when equivalency agreements are entered into.**

< **Reporting requirements to Parliament under equivalency agreements should be expanded.**

< **A 5-year sunset of equivalency orders should be provided for.**

## PART II - PUBLIC PARTICIPATION - Sections 11-42

### (a) General

Part 2 of the Bill C-32 does provide some new or improved rights for Canadians. For example, the establishment of an Environmental Registry is important new tool and one that should be supported.However, one of the important flaws pertains to important rights not included in the bill. In the past, both our organizations and the Standing Committee has called for the development of a federal environmental bill of rights which would include more rights than those outlined in this bill. For example, the right to notice and comment for new approvals, regulations and policies is an important right for the public

Second, not only does Bill C-32 fail to include many of the important environmental rights needed by the public, but also Bill C-32's public participation provisions have a number of flaws with the result that some of them will only give the guise of promoting public access and accountability.

### (b) Environmental Protection Action

The crux of Part II is the proposal for a new right for the public. Sections 22 to 38 of Bill C-32 enable members of the public to commence an action in civil courts in order to seek redress for violations under the Bill. This "environmental protection action" is a new right and can be said to serve three purposes: (1) to secure compliance with the Bill; (2) to facilitate public access to the courts in instances involving non-compliance; and (3) to enhance governmental accountability for its enforcement and compliance activities under Bill C-32.

We fully support the establishment of a new right of action under Bill C-32. However, these provisions are in need of a number of amendments in order to improve the effectiveness and availability of the environmental protection action. The primary problem with the proposed environmental protection action is that it inappropriately incorporates too many qualifications and

restrictions. The effect of these qualifications and restrictions is that the environmental protection action will not be used and hence will not achieved its purpose as outlined above.

More important, Bill C-32 omits two key features found in Ontario's *Environmental Bill of Rights*. First, while the environmental protection action can be commenced where an individual alleges the contravention of Bill C-32, it omits to provide an individual the ability to commence an action where someone "will imminently contravene" the Bill.

Second, it omits the ability of citizens to go immediately to court in emergency circumstances without filing prescribed investigation request with government officials. In our view, these shortcomings must be addressed through amendment to the environmental protection action provisions in Bill C-32.

Other restrictions include:

- requires an unreasonable response from the Minister for action to proceed;
- requires that there be significant harm to the environment;
- no actions are permitted if action is taken by a respondent to correct or mitigate harm (section 24);
- no actions are permitted if harm results from actions related to national security, peacekeeping, etc.;
- no actions are permitted if conduct was reasonable and consistent with public safety;
- the court may dismiss action if it is in the public interest to do so.

**RECOMMENDATION #5: The environmental protection provisions under Bill C-32 should be amended to allow effective access to the courts by members of the public with respect to the enforcement of the bill.**

## PART IV - POLLUTION PREVENTION - Sections 56-63

### Overview

The overall direction of Bill C-32 toward a pollution prevention approach should be applauded. For instance, the initiatives pertaining to pollution prevention planning and the an information clearing-house on pollution prevention are moving in the right direction. However, when reading Part 4, it is apparent that the regulatory and non- regulatory actions directed to furthering pollution prevention in Canada is in fact quite limited.

For example, the pollution prevention planning provisions are totally discretionary. Moreover, they only apply to substances on the Toxic Substances List, even if the minister exercises his or her discretion. Further, this part does not the comprehensive pollution prevention approach

recommended by the Standing Committee in the It's About Our Health! report and non-government groups.

> **RECOMMENDATION #6: Amend this part to make the development of pollution prevention plans by facilities using, manufacturing or generating CEPA toxic substances or any substance found to be toxic under CEPA.**

## PART V - TOXIC SUBSTANCES - Sections 64 to 103

### (a) General

As a general statement, the provisions governing toxic substances do provide some positive improvements over the existing CEPA. However, there are a number of significant weaknesses of this part and these weaknesses are so severe that they must be amended.

For instance, some of the positive aspects of this part include:

- C screening of Domestic Substances List (DSL) for persistent, bioaccumulative toxics and substances prohibited or substantially restricted in the OECD;
- C the virtual elimination of a substance if it is persistent, if it is bio-accumulative, if its presence in the environment results from human activity;
- C Minister's requirements that a person prepare and submit a plan for the virtual elimination of substances within time limit specified by Minister

Despite these positive attributes, there are a number of significant weaknesses which are outlined below. One of the problems pervading the evolution of these provisions is the fact that, in June 1995, two weeks before the tabling of the Standing Committee's report, the federal government released the Toxic Substances Management Policy (TSMP). The TSMP, in our view, pre-empted legitimate debate on how to deal with the most dangerous toxic substances. Despite the views of the Standing Committee, the TSMP is essentially translated into legislative provisions in Bill C-32. From the very start, non-government organisations have severely criticised the TSMP and, to this day, have provided detailed arguments as why the TSMP is both inappropriate and ineffective. Hence, the central issues with respect to Part V of CEPA will necessarily lead to a discussion as to the legitimacy of the TSMP.

### (a) Section 64 - Definition of Virtual Elimination

Section 64 defines the term "virtual elimination." Virtual Elimination is defined as the release below any measurable quantity or concentration or approaching the level of quantification that is specified by the Minister, and results or may result, in a harmful effect on the environment or human health.

The definition of virtual elimination in section 64 must be rejected. The definition is incomprehensible and it appears to link the definition to mean no release below detection level and where there is no evidence of injury to the environment or human life or health. The basic arguments against this definition are:

C The Definition Legitimizes the Use and Generation of the Most Dangerous Substances

Although the bill aims for the "virtual elimination" of some substances, the definition of this term will actually allow industry to continue to use and generate the substances so long as releases are controlled to levels that below detection and those levels can be established to cause harm.

C It Is Inconsistent with the Concept of Pollution Prevention

When the goal of virtual elimination is defined as "no measurable release," legitimacy is given to the continuing the use of pollution control techniques that attempt to reduce emissions at the end-of-the-pipe. When using the "no measurable release" definition of virtual elimination, the thrust of the initiative will be to reduce emissions, not move toward process change or other measures that avoid the use or generation of toxic substances. As such, the proposed policy reinforces present practices. It will not encourage innovation rather it will encourage industry to accept more expensive, but ultimately less efficient, end-of-the-pipe measures.

C The Debate will Now Focus on What is "No Measurable Release"

Apart from the concern with the virtual elimination definition, there are also practical problems with the "no measurable release" definition. Most importantly, who will define what is the "not measurable"? How will that limit be set? What happens if detection technology improves? The reality is that the determination of what is the "no measurable release limit" will be just as difficult, controversial and complex, as existing limits.

C It is Inconsistent with Current Legal and Policy Commitments

It is our view that the definition used in the TSMP is not consistent with the definition in the Great Lakes Water Quality Agreement (GLWQA),[1] the interpretations provided by the International Joint Commission (IJC) in their biennial reports on water quality,[2] the report by the Standing Committee on Environment and Sustainable Development,[3] the federal government response in Pollution

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Prevention: A Federal Strategy for Action, and the Liberal Red Book.

C The Section 64 Definition is Less Stringent than the TSMP Definition

Section 64(1)(b) is a provision not found in the TSMP. The TSMP stated, in effect, that virtual elimination is where releases are below the level of detection and where there are no harmful effects in the environment or to human health. Hence, not only must it be established that the releases are more than the level of detection, but it must also be established that those releases will have human health or environmental effects. It is submitted that this threshold will never be met in any circumstances since it will always be impossible to establish the correlation between minute releases of dangerous substances and specific environmental and human health effects. By their very nature, most of the effects are chronic in nature.

Hence, the section 64 definition of virtual elimination is completely non-enforceable, non-workable provision that will have the result of allowing the continued use and generation of the most dangerous substances.

**RECOMMENDATION #7: The definition of "virtual elimination" as stated in the TSMP and carried forward in the proposed implementation strategy should be rejected. Virtual elimination should be defined in a manner consistent with the definitions offered by the International Joint Commission (IJC) and implemented through a national pollution prevention framework. More specifically, the definition of virtual elimination should mean the elimination of the production, use and generation of substances.**

**(b) Part V Does Not Recognize the Need for Action for Endocrine Disruptors**

Furthermore, there is no accommodation for the phase-out of endocrine disrupters. Endocrine disrupters are not likely to be caught in the persistent, bioaccumulative and toxic (PTB) definition unless they **are** PTB. Finally, the clause "long-term harmful effect" makes no reference to long-term harmful effects on human health.

**RECOMMENDATION #8: Bill C-32 should be amended to accommodate the phase-out disruptors both in terms of those substances that already have been identified to disrupt endocrine functions and those that will be identified in the future.**

## (c) Section 65 Does Not Include the Concept of Inherent Toxicity

The government response makes the assumption that the existing definition of Atoxicity@ in section 11 of CEPA is sufficient to incorporate and implement the concept of inherent toxicity. It is respectfully submitted that the current section 11 definition of CEPA is inappropriate and does not fulfil the purposes of CEPA.

Substances may have characteristics or traits that, intrinsically, give them the potential to cause harm to human health and the environment. For example, some substances are Apersistent@ or Abioaccumulative.@ Others are suspected of disrupting the endocrine systems of wildlife and possibly humans.

The simple question is this: Do Canadians want substances with these kinds of characteristics to be freely put into commerce or remain in commerce in Canada?

The current section 11 definition, however, does no ask this question. Instead, the conditions precedent to having a substance declared toxic requires that it not only have the potential to cause adverse effects, but that Canadians and their environment are being exposed to these substances in sufficient quantities to cause harm.

The need to establish exposure was a major factor in the finding of PSL substances known to have intrinsic Atoxic@ properties no to be Atoxic@ for the purposes of CEPA. Toluene is a good example of this situation where, although the substance has toxic properties, it was not found toxic according to the definition in CEPA. Toluene is listed in virtually every provincial hazardous waste and occupational health and safety regulation in the country.

The definition of Atoxicity@ must be amended in CEPA to remove the exposure requirement and include the concept of inherent toxicity in order to deal with these problems.

**RECOMMENDATION #9: The definition of toxicity in CEPA should recognize the concept of inherent toxicity. Toxicity should be determined on the basis of the <u>inherent</u> or intrinsic toxic properties of substances such as acute lethality, chronic/sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, and ability disrupt endocrine systems.**

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## PART VI - BIOTECHNOLOGY

### Overview

Bill C-32 includes a new Part for biotechnology. However, the part, as drafted, suffers from a number of weaknesses.

### (a) Equivalency of Regulation under other Acts of Parliament

The most important of these flaws is that it would permit other Ministers to determine that their regulations meet CEPA equivalency requirements established by the existing section 26(3)(a) of CEPA for biotechnology products such as plants and fish, regulated under other Acts. As currently drafted, CEPA requires that any new product of biotechnology regulated under another Act of Parliament undergo an assessment of its potential effects on human health and the environment that is at least equivalent to that which would take place under CEPA. The proposed provisions in Bill C-32 would weaken this equivalence requirement.

Moreover, once granted by the Governor-in-Council, equivalency could only be withdrawn on recommendation of the Minister responsible for the administration of the other Act of Parliament under which the "equivalent" regulations were made. This is regardless of whether changes are made subsequently to the 'equivalent' regulation such that it is no longer equivalent to the CEPA standard.

In addition, orders by the Governor in Council regarding the equivalency to the CEPA requirements of regulations made under other Acts of Parliament are exempted from the Act's normal public notice and comment provisions or the opportunity to file a notice of objection. (s.332)

The Part also provides that regulations made under other Acts of Parliament take precedence over regulations made under CEPA biotechnology Part.

It should be noted that similar amendments are proposed for the chemical new substances provisions of the Bill.

### (b) The Definition of 'Toxic' and the *United Nations Convention on Biological Diversity*

Finally, the part fails to address requirements of article 8(g) of the *Convention on Biological Diversity* (CBD), which requires the protection of "conservation and sustainable use of biodiversity" from the use and release of biotechnology products. The current definition of CEPA Atoxic@ on which the Part, as currently drafted, relies, makes no direct reference to the conservation and sustainable use of biological diversity. Given the Supreme Court of Canada's September 1997 *Hydro Quebec* decision, serous doubts must be raised about the capacity of the existing definition of CEPA

"toxic" to accommodate consideration of impacts on the conservation and sustainable use of biological diversity.

**(c) Scope: 'Living' Products of Biotechnology**

As drafted, the Part would only apply to "living organisms" defined as "animate products of biotechnology." This is a narrower category than the current biotechnology provisions on CEPA, which are applied on the basis of definition of Abiotechnology@ in the Act. The scope of the existing provisions includes the direct or indirect use of living organisms Aor parts or products of living organisms in the natural or modified forms.@

The approach contained in Bill C-32 invites endless debates about what constitutes a "living organism" or an "animate" product of biotechnology and leaves the situation of important categories, such as viruses, prions, DNA fragments, and certain types of feeds and foods, unclear. No legal definition of "living organism" appears to exist. It is important to note that CEPA biotechnology regulations Gazetted on August 17, 1996 made explicit reference to "alive or killed" organisms (section 1(2)).

**(d) Public Notice, Comment and Accountability**

The Part makes no provision for public notice of field tests, imposition variation or withdrawal of conditions or prohibitions on biotechnology products found to be 'toxic' or suspected of being toxic, or the granting of waivers which effectively exempt certain products from the Act's notification and assessment requirements.

**RECOMMENDATIONS #10:**

- **The existing provisions of CEPA regarding equivalency of notification and assessment of toxicity under other Acts of Parliament should be restored and strengthened. The provisions of sections 332-334 regarding equivalency orders should be removed.**

- **A definition of CEPA >toxic= specific to biotechnology should be provided for in the Part, making specific reference to the "conservation and sustainable use of biodiversity."**

- **The Part should apply to all products of biotechnology, as defined by CEPA, not just "living organisms." All references to "living organism" in Part VI of the Bill should be replaced with the words "biotechnology product" or "product of biotechnology."**

- **Provision should be made for public notice and comment periods for field tests,**

**variations of conditions or prohibitions, and the granting of waivers from notification and information requirements.**

## PART IX: GOVERNMENT OPERATIONS AND FEDERAL AND ABORIGINAL LANDS - Sections 206 to 215

### Overview

This Part empowers the federal government to development measures (such as objectives, codes of practice, guidelines and regulations) with respect to federal government departments, operations and aboriginal lands.

The Part contains a number of positive elements. There are, for example, provisions to protect federal employees who report releases of substances that are in violation of the Act. The new part also removes the requirement in the existing Act for the concurrence of the affected Ministers before regulations can be made under CEPA dealing with federal government operations or activities under their jurisdiction.

However, the Part also suffers from a number of significant weaknesses. The provisions states that objectives, codes of practice, guidelines and regulations directed towards Crown Corporations "shall not impose" requirements more stringent than those imposed on the private sector.

In addition, the Part exempts activities related to aeronautics and air transportation and national defense and security from its provisions. The Part also provides that regulations in relation to federal government operations and federal and aboriginal lands made under CEPA do not apply were regulations made under another Act of Parliament apply.

More broadly, questions must be raised as to whether environmental protection on aboriginal lands would be better dealt with under a separate Part of the Act from federal government operations and lands given the qualitative differences between the situation of First Nations and Aboriginal Communities, and federal government agencies.

Furthermore, the Part imposes no specific requirements in terms of the environmental performance of federal government agencies and their activities. There is, for example, no requirement that they not cause adverse effects on the environment, as is the case with section 9 of the Ontario *Environmental Protection Act*.

**RECOMMENDATIONS #11:**

- **The exemption for aeronautics should be removed.**
- **The exemption for national defense should be limited to wartime and actions under UN Security Council Resolutions.**

- **The limitations on the application of environmental protection requirements to Crown Corporations should be removed.**

- **The provisions dealing with conflicts between regulations made under this Part of CEPA and regulations made under another Act of Parliament should be amended so that where there is a conflict, the more stringent requirement shall apply.**

- **A standard of environmental performance for federal government operations should be provided for in this section.**

## PART XI: MISCELLANEOUS MATTERS - Sections 313 to 343

### Overview

This part contains provisions dealing with a number of important issues including information disclosure, economic instruments, public notice requirements prior to the making of orders and regulations, the establishment and proceedings for Boards of review, annual reports to Parliament on the Act's administration and enforcement, and the next Parliamentary review of the Act.

**Sections 322-327** - Economic Instruments

### Overview

Section 325 permits the application of deposits in relation to CEPA toxic substances, nutrients, and federal government lands and operations.

Section 326 permits emission trading and the creation of tradeable units in relation to CEPA toxic substances, nutrients, fuels, international air and water pollution, and federal government lands and operations.

Sections 328(3) and (4) permit fees and charges for cost administrative cost recovery with respect to approvals under the Act.

**RECOMMENDATIONS #12:**

- **Amend to prohibit the establishment of trading schemes for emissions for toxic and other substances harmful to the environment or human health.**
- **Amend to permit the imposition of environmental charges and fees in relation to toxic substances, nutrients, fuels, ocean dumping, international air and water pollution and transboundary waste movements beyond administrative cost**

**recovery.**

**<u>Sections 333-341</u> - Board of Review Proceedings**

Under these sections there is a provision for cost awards but no provision for intervener funding. Provision should be made for intervener funding in Boards of Review proceedings.

**<u>Sections 342-343</u> - Report to Parliament**

These sections require an annual report to Parliament on the administration and enforcement of the Act.

The next Parliamentary review will be seven years from coming into force (i.e 2004). This review is not required to be by the Standing Committee on Environment and Sustainable Development nor its successor.

**RECOMMENDATION #13: The section should be amended to provide for a review of the administration and enforcement of the Act every five years by the House of Commons Standing Committee on the Environment and Sustainable Development or its successor.**