

# CIELAP Newsletter

CIELAP Newsletter  
Autumn 1994  
PERIODICALS:

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CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

Autumn 1994

## CIELAP Proposes Major Revisions to Canada's Principal Environmental Protection Statute

**CIELAP Presents Recommendations for the Reform of the Canadian Environmental Protection Act to the House of Commons Committee on Environment and Sustainable Development**

On September 27, 1994, CIELAP Executive Director Anne Mitchell and Director of Research Mark Winfield presented the Institute's recommendations for the reform of the *Canadian Environmental Protection Act* (CEPA) to the House of Commons Standing Committee on Environment and Sustainable Development. The Committee, chaired by former federal Environment Minister Charles Caccia, the MP for Davenport, is conducting hearings across Canada as part of its review of the Act.

CEPA is the government of Canada's principal environmental protection statute. At the time of its passage, CEPA was described as Canada's "first environmental bill of rights", and "the most comprehensive piece of legislation in the western world." Unfortunately, the Act has not lived up to this promise. CIELAP Executive Director Anne Mitchell noted in her comments to the Standing Committee, it is difficult to identify ways in which environmental quality in Canada has, to date, been significantly affected by the existence of CEPA.

This failure is due principally to two factors. First, and perhaps most importantly, the federal government has taken a very deferential approach to its role in environmental management within Canada. This problem is particularly evident in the "harmonization" project currently taking place under the auspices of the Canadian Council of Ministers of the Environment (CCME). In its submission to the Standing Committee, CIELAP argued that the federal government must adopt a more assertive approach to the exercise of its jurisdiction in the environmental field, in order to provide national leadership and ensure minimum levels of environmental protection for all Canadians.

Secondly, the federal Department of the Environment has never fully

accepted the regulatory mandate and role which CEPA has provided it. Rather, the department has continued to emphasize its traditional "advisory" and "promotional" approaches to its functions, and has been reluctant to enforce those regulations which have (*See CEPA Review page 4*)

### CIELAP's Options to Reduce Emissions of Carbon Dioxide Provoke Debate Options paper under review at sectoral workshops

With the completion of the second transportation workshop on November 10, CIELAP has conducted 3 of a total of 5 workshops dedicated to refining options for the stabilization and reduction of carbon dioxide emissions. The topic of the first workshop was tax and quota instruments; the second workshop dealt with options to reduce CO<sub>2</sub> emissions from motor vehicles.

#### Workshop One Highlights

The panellists for this workshop on carbon taxes and quotas included:

- Louise Comeau, Campaign Director-Climate Change, Sierra Club
- Hugh Mackenzie, Assistant to the National Director, United Steelworkers of America
- George Penna, Vice-President, Taxation, Noranda Inc.

• Respecting a carbon tax, it was expressed that many (*cont'd on pg 2*)

#### What's Inside:

- ▶ *Biotechnology & the Public Interest*
- ▶ *Protection for Biodiversity*
- ▶ *New Pollution Prevention Resource*
- ▶ *International Projects*

25  
years

*In 1995, CIELAP will celebrate the 25th Anniversary of its entry into the domain of Canadian environmental law and public policy research. We will be noting the occasion in the upcoming year with special events. For more details on how you might participate, please see the Executive Director's letter of invitation on page 5.*

## Carbon Dioxide Reduction Measures Refined (from page 1)

organizations should be capable of incorporating the tax into their cost structure, particularly if it replaced existing taxes (for example, taxes on labour or investment). This would avoid penalizing employment or investment and provide a mechanism by which organizations would have an incentive to reduce energy consumption. The tax would ideally be applied on a multi-national basis.

- The European Economic Community is still actively pursuing a carbon tax which could give support to the proposal for a continent wide tax here.
- One consideration was to move away from precisely defined reduction options and toward a broad mandate for emission reduction i.e. Canada will derive new energy requirements from conservation instead of new sources.
- Taxes act best in changing behaviour when many purchasing decisions are being made and if price approaches what the consumer is willing to pay.

### Highlights of Workshop Two: Car and Light Truck Mode of Transportation

The panellists for this workshop included:

- Rick Coronado, Coordinator, Windsor & District Labour/Environment Project
- Perry Stover, Director, NGV Business Development, Consumers' Gas
- Jim Johnson, President, Canadian Renewable Fuels Association

• Fleet efficiency standards are a very sensible approach to reducing energy consumption from cars and light trucks; a number of participants endorsed their use. The workshop agreed that the transportation sector should contribute, at least proportionately, to emission stabilization and reduction.

• In the US, the Environmental Protection Agency has given tentative approval to extend the California Low Emission Vehicle regulations to 13 northeastern states. However, many were pessimistic that the full force of these regulations will be carried through given the importance of the automotive sector in some of these states. While these regulations would reduce the production of some greenhouse gas emissions they generally provide no incentive to reduce emissions of CO<sub>2</sub>. It was noted that an efficiency standard would be desirable to include in these regulations.

• High mileage fleets are the best target for less carbon intensive fuels or drive systems.

Vehicles such as buses, taxis, couriers or government and business fleet vehicles might drive at twice the rate of an average vehicle. Reducing these vehicles' emissions would be effective.

• Ethanol is gaining acceptance as a gasoline additive and may become mandated as a result of the probable elimination of MMT (an anti-knock additive) from gasoline. Under optimal conditions, ethanol use can reduce atmospheric CO<sub>2</sub>.

### Highlights of Workshop Three: Non-car Modes of Transportation

The panellists for this workshop included

- Randa Tadros, Assistant Manager, Canadian National North America
- Al Cormier, Executive Vice-President, Canadian Urban Transit Association
- Gord Perks, Better Transportation Coalition

• A vigorous debate arose over the markets in which freight movement by road and by rail actually compete. This could have a large impact on the degree to which a modal shift from truck to rail could be accommodated. It was observed that, on an emission intensity and energy efficiency basis, rail is preferable.

• It was expressed that if all users of transportation systems paid the full cost of their mode there would be a modal shift in favour of transit over motor vehicles for passengers and rail over roads for freight. This stems from the high level of financial and service support to the highway system that is (see page 8)

## Costa Rica's Legal Aid Clinic for the Environment

Institute's objective is to enhance environmental protection regime

CIELAP has just signed a contract for \$72,000 with the Environment & Development Support Program of the Canadian Environmental Network for the second phase of the project with Fundacion Ambio in Costa Rica. The Institute is continuing to work with Fundacion Ambio as they set up an environmental legal aid clinic. The program will enable Fundacion Ambio to continue to promote awareness of the importance of law and policies to environmental protection and to empower Costa Rican citizens to use these laws and policies to further protect their environment. The project has five objectives: 1) to promote and foster formal and informal organization of local communities and provide legal advice and assistance to them; 2) to collaborate with government to promote and reform laws and policies such that environmentally sound practices will be ensured; 3) to promote initiatives conducive to building awareness among government authorities regarding the importance of sustainable development and its relation to sound environmental law and policy; 4) to promote education of environmental law among students and the general public; 5) to promote the application of environmental law and policy in order to assist various industries in the transition to more sustainable industrial practices. CIELAP will be actively seeking support for this project over the course of the next 12 months as the Institute will be required to raise its contribution to the project of \$7000. For more details about this project please contact the Institute.

*Canadian Government support for this project was made through the Canadian International Development Agency.*

**Notice of Annual General Meeting**  
CIELAP will hold its Annual General Meeting on the evening of Monday January 23, 1995. For more details, please contact the Institute.

## EDITORIAL: rBGH Controversy Demonstrates Fundamental Flaws in Federal Biotechnology Regulations

On August 16, the government of Canada released its response to the Report of the Standing Committee on Agriculture and Agri-Food with respect to the use of recombinant bovine somatotropin (rbST) or synthetic bovine growth hormone (rBGH). The synthetic hormone, which is the first major product of agricultural biotechnology to reach the commercialization stage in Canada, is injected into cows to increase their milk production by about 10%-15%.

The Standing Committee had recommended in its April report *rbST in Canada*, that a one-year moratorium be placed on the sale of the product, pending a detailed review of its potential human and animal health effects, and its likely effects on the structure of the dairy sector in Canada. The Committee also recommended a review of the Canadian regulatory system for biotechnology products to ensure that the environmental, health and socio-economic impacts of these products are fully assessed. In its response to the Standing Committee, the government stated that it had obtained a voluntary moratorium on the sale of rBGH in Canada until July 1, 1995 from the manufacturers of the product, Monsanto Canada and Eli-Lilly Co. The formation of a Task Force to review outstanding human and animal health and socio-economic issues regarding rBGH was also announced. The Task Force consists of representatives of Agriculture and Agri-Food Canada, Industry Canada, the National Dairy Council of Canada, the Dairy Farmers of Canada, Monsanto Canada, Eli-Lilly Canada and the Consumers' Association of Canada.

The rBGH issue has raised critical questions regarding the regulation of biotechnology products in Canada. The furor which has surrounded its approval has demonstrated that the current regulatory structure of the assessment of biotechnology products in Canada is fundamentally flawed, and in need of a major public review. There is no apparent need for increased milk production in Canada, and many farmers and consumers have clearly indicated that they do not want rBGH used in Canadian milk production. Furthermore, the product appears likely to have major disruptive impacts on the structure of the Canadian dairy sector, it has been associated with significant animal health effects, and its effects on human health remain an open question. For all of this, the only apparent beneficiaries of the introduction of rBGH into Canada would be the product's manufacturers and a very small number of large scale dairy farms.

In sum, serious questions exist with respect to whether the approval of rBGH in Canada would serve the Canadian public interest. Similar questions have been raised with respect to other agricultural biotechnology products, such as field crops modified to be resistant to specific brands of herbicides, which are approaching commercialization. Yet the existing regulatory framework does not even permit questions of this nature to be raised, much less considered, in decision-making.

CIELAP was even more concerned by the government's response to both the Standing Committee and CIELAP regarding this flaw in the regulatory system, which was to state that beyond questions of safety and effectiveness, the marketplace alone should decide upon the acceptance of the product in question.

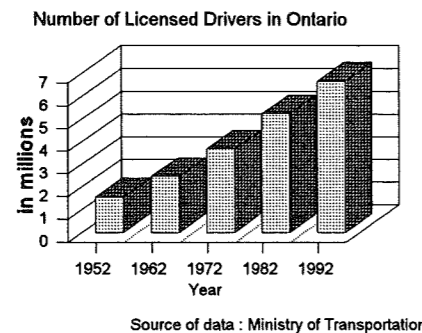
It is clear from the rBGH controversy that a broad range of Canadians, including the members of the House of Commons Standing Committee on Agriculture and Agri-Food, and many agricultural, consumer, environmental, animal welfare, international development and social justice organizations, do not support the government's approach in this regard. Such a policy is particularly problematic in the case of a product like rBGH, which may provide, in the short-term, increases in the efficiency of dairy producers using the product. This, in turn, would place pressures on farmers who do not wish to use the product to do so in order to remain competitive. In the end, they may have no choice but to use rBGH.

The government's stance is particularly troubling in the context of its refusal to require the labelling of milk products produced using rBGH, and of genetically altered foods in general. The provision of information of this nature would be essential to enabling consumers to express their preferences regarding rBGH-produced milk or other biotechnology products through the marketplace. Consumers have a fundamental right to be informed and to choose for themselves in this regard. In determining whether to approve the manufacturing or use of a new biotechnology product in Canada, CIELAP is of the view that the following factors should be considered:

- whether the purpose for which the product has been developed will serve the public interest;
- whether the product will be effective for its intended purpose;
- whether the product has the potential to cause immediate and long-term direct and indirect environmental and human health effects, including the cumulative effects of commercial scale use and impacts on biodiversity; and
- the availability of alternative means of achieving the product's purpose which may present a lower potential for harm to the environment, or to human or animal health.

Enhanced public access to information, and the establishment of meaningful opportunities for members of the public to contribute to the decision-making process regarding biotechnology products, are required. CIELAP's proposals regarding the regulation of biotechnology products have been presented in detail in the Institute's submission to the House of Commons Standing Committee on Environment and Sustainable Development for the purposes of the Committee's review of the *Canadian Environmental Protection Act*.

In conclusion, we believe that the rBGH controversy demonstrates the need for major revisions to the regulatory structure for biotechnology products to ensure the protection of environmental integrity, human and animal health, and the broader public interest.



## CIELAP Recommendations on the Reform of the Canadian Environmental Protection Act

*continued from page 1*

been made under CEPA with much vigour. CIELAP stated that if CEPA is to succeed, Environment Canada has to accept the regulatory role established for it by the statute, and act on this mandate.

In addition to these two overriding points, CIELAP proposed extensive revisions to CEPA as currently drafted. These recommendations included proposals to strengthen public accountability mechanisms regarding the use of federal-provincial intergovernmental agreements related to the Act, and the addition of a "citizen suit" provision to CEPA to ensure that the Act is adequately enforced.

### **New Chemical Substances**

Further amendments were proposed by CIELAP to improve the assessment process for new chemical substances under CEPA. In particular, CIELAP recommended that a "sunrise" provision be added to CEPA, requiring that new substances found to be toxic, persistent and bioaccumulative not be permitted to be used or manufactured in Canada. In the case of substances found to be "toxic," but not persistent or bioaccumulative, CIELAP proposed that pollution prevention plans be required to be developed before their use or manufacturing is permitted. The plans would ensure that these substances are not released into the environment. Increased opportunities for public participation in the new substances assessment process and enhanced public access to information were also proposed.

### **Biotechnology Proposal**

CIELAP recommended that a new biotechnology part for CEPA be enacted. This would expand the range of evaluative criteria employed in the assessment of new biotechnology products to include their long-term direct and indirect environmental and human health effects, including the impacts of commercial scale use and effects on biodiversity, efficacy, the availability of less environmentally harmful alternatives, and whether their intended purpose is consistent with the public interest. The capacity of the federal government to control the use of biotechnology products would also be enhanced by CIELAP's proposals through the removal of the need to establish their "toxicity" for the purposes of CEPA prior to regulatory action being taken. Greater opportunities for public input and involvement in the regulation of these products would also be provided for.

### **Economic Instruments**

CIELAP examined the potential use of "economic" policy instruments under CEPA. The institute expressed very serious concerns regarding the use of emission trading systems, particularly in relation to substances considered "toxic" for the purposes of CEPA. At the same time,

CIELAP indicated strong support for the use of taxes or charges on the use or manufacturing of "toxic" substances, both as a means of discouraging the use or manufacturing of such substances and of funding environmental remediation and pollution prevention research and development programs.

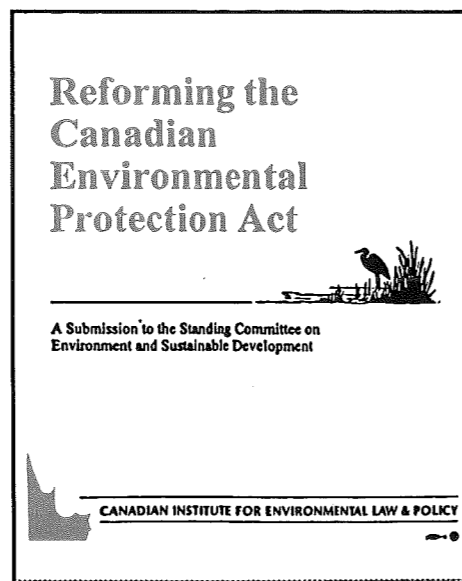
### **Federal House in Order**

Finally, CIELAP addressed the issue of environmental management within the operations of the federal government itself. CIELAP proposed a strengthening of the Minister of the Environment's capacity to address environmental management within the federal government through CEPA. A requirement that each federal department develop an internal environmental management plan, whose implementation would be subject to review by the proposed federal Environmental Commissioner, was also recommended.

Other members of the Toxics Caucus of the Canadian Environment Network (CEN) will be making submissions to the Standing Committee on CEPA over the next few months. These will address issues ranging from Citizen Environmental Rights to Coastal Zone Management. A compilation of research papers prepared by the Caucus on CEPA is available through the CEN. The Standing Committee is expected to present its CEPA review report and recommendations in early 1995.

### **Brief Available**

CIELAP's submission to the Standing Committee is available from the Institute. The submission includes 49 recommendations and contains five research papers entitled: The Constitution, Federal-Provincial Relations and CEPA; CEPA and Environmental Law Enforcement; Chemical New Substances, Biotechnology Products and CEPA; CEPA and Economic Instruments; and CEPA and the Federal House in Order.



To order this publication, please refer to the "New Publications" section on page 6 and the order form on page 7.

## CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

517 College Street, Suite 400, Toronto, Ontario M6G 4A2 (416) 923-3529 FAX (416) 923-5949

November 1994

Dear CIELAP Supporter

Nineteen Ninety-Five will be CIELAP's 25th anniversary. Founded in 1970 as the Canadian Environmental Law Research Foundation, the organization has for the past twenty-five years been a leader in environmental law and policy research and reform. We are planning a celebration for the fall of 1995 and I hope you can help us commemorate our anniversary. Keep an eye out for further details in later issues of the newsletter.

Over the course of the next few months, CIELAP will be charting its course into the 21st century. The Board of Directors, staff, research associates and volunteers, will be setting out a vision for the organization for the next five years. We will be presenting this vision, and the steps to get there at our **Annual General Meeting** which is to be held in Toronto in January 1995. There, we hope to get input from our funders and supporters. The next five years will be challenging years for CIELAP, as well as for other not-for-profit organizations in various fields.

For CIELAP one issue will be how to remain leading edge in a society that is fundamentally changing and dealing with complex economic, developmental, environmental and human rights issues. How do we remain relevant in a society where corporate interests are beginning to supersede national interests? Where poverty, homelessness and unemployment seem to be on the increase; where the safety net and social services which have always distinguished Canada from the United States are fast being eroded. How can we as an environmental law and policy research organization make the best possible contribution to **restructuring Canada for real sustainability**? And what we mean by sustainability is not just the status quo, but rather a fundamental shift in our attitudes. A shift away from the need to be constantly increasing our standard of living and economic growth, and toward a focus on quality of life, equality and justice. Where should we put our research efforts? This is the challenge that we are facing.

Our role as an organization that is working in the public interest will be crucial in the coming months and years. We are not a government body, dependant on the next election; nor are we a corporation, concerned with whether or not we are making profits for our shareholders. We have a dedicated team of researchers who are seeking to develop law and policy options which will benefit the **greater public good** rather than one segment of the public.

If we are to remain an independent organization engaged in leading edge research, we need your help in a number of ways. We need you to tell others of our research and buy our publications. We need you to become involved by helping us identify **emerging law and policy issues facing Canada and the world** and we especially need your financial support. Will you help us? For \$100 an individual can become an Associate Member of CIELAP (\$1000 for organizations). In turn, you will be part of an organization that is seeking practical solutions to the issues that are facing us - for the sake of our children and grandchildren.

Thank you for your interest in, and support to, our work in the past. We look forward to that support continuing in the future. I hope you find our newsletter informative; we welcome your comments. If you would like to attend our Annual General Meeting, to be held on **Monday, January 23 1995**, please contact Patricia Merriman at the CIELAP office, (416) 923-3529.

Yours sincerely

Anne Mitchell  
Executive Director



## Carbon Dioxide Reduction Measures

*Continued from page 2*

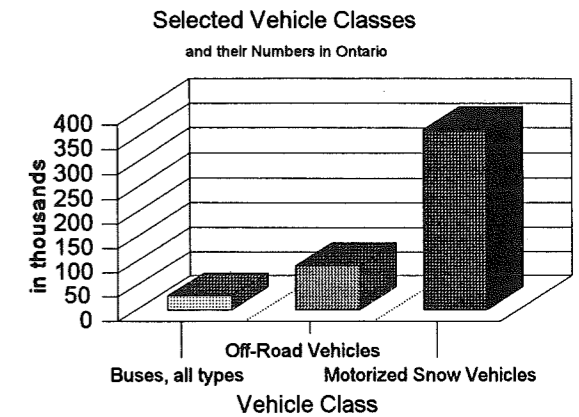
currently not charged back to users. Additionally, if environmental costs were factored into transportation decisions, transit and rail would likely gain at the expense of motor vehicles and trucking.

- A large number of vehicles and modes exist in almost every jurisdiction that could be used to enhance and make more efficient the existing transportation task in a given jurisdiction. This concept of pooling vehicles and services is referred to as a "transit brokerage" and can involve the coordinated use of buses, taxis, ambulances, school vehicles to enhance citizen mobility efficiently.

- Public transit, given its favourable emission and efficiency qualities, should be promoted. To do so, transit needs to be regarded less as a social service and more as a mode that can compete directly with motor vehicles.

CIELAP will continue the process of multistakeholder consultation on its options paper entitled *Carbon Dioxide Reduction Options For Ontario* by way of two further workshops: one on November 24 dealing with Utility and Non-utility Electricity Generation and the other dealing with Buildings and Appliances on December 8. The feedback from these consultations will be incorporated into a strategy for Ontario to reduce its emissions of carbon dioxide. For more information on either the workshops or the process ahead contact the Institute.

Our thanks go out to the panellists to date, to Ontario Hydro for providing financial support for these workshops and to the law firm of Smith, Lyons, Torrance, Stevenson and Mayer for providing exceptional facilities in which to host the series of workshops.



Source of data : Ministry of Transportation

### **CIELAP to Review Use of Pollution Prevention Voluntary Agreements in Great Lakes Basin**

CIELAP has been contracted, in conjunction with Energy Pathways Inc, William A. Neff Inc, and the West Coast Environmental Law Association, by Environment Canada to conduct a review of the use of pollution prevention voluntary agreements in the Great Lakes Basin. Agreements have been signed between Environment Canada, the Ontario Ministry of the

Environment and Energy and a number of industrial sector associations, including chemical producers, automotive manufacturers, automotive parts manufacturers, and dry cleaners. The agreements have been strongly criticized by environmental and labour groups active in the basin, who argue that the agreements are a return to a previous era of environmental policy-making through bipartite negotiations between government and industry. The review is to be completed in the spring of 1995.