Follow-up to petition on federal laws, regulations and policies regarding genetically modified organisms.

September 5, 2001

Johanne Gelinas
Commissioner for the Environment and Sustainable Development
11th Floor
240 Sparks St.
Ottawa, ON
K1A 0J6

Dear Ms. Gelinas,

RE: Submission of Concerns Regarding Response to Petition under Section 22 of the Auditor General Act

On May 5, 2000, the Sierra Legal Defence Fund filed a petition under Section 22 of the Auditor-General Act. The petition was filed on behalf of the Council of Canadians, the Canadian Institute for Environmental Law and Policy, Professor E.Ann Clark of the University of Guelph and Professor Bert Christie of Prince Edward Island. The petition dealt with federal laws, regulations and policies regarding genetically modified organisms.

Specifically, the applicants sought responses to the following four questions from six Category 1 departments (Agriculture and Agri-Food Canada, Health Canada, Environment Canada, Industry Canada, Natural Resources Canada, and Fisheries and Oceans Canada) :

1. Does the existing regulatory system provide for the evaluation and assessment of biotechnology products from a sustainable development perspective before they are introduced into Canada, including their potential immediate and long-term adverse social and economic impacts?

2. Does the existing regulatory system for biotechnology provide for the clear separation of regulatory and promotional roles among different agencies involved in the promotion and regulation of biotechnology?

3. Does the existing system meet the requirements as set out in Article 8(g) of the Convention on Biological Diversity? In other words, is the government adequately considering the impacts

of biotechnology products on the conservation and sustainable use of biodiversity, taking also into account effects on human health?

4. Does the existing system meet the requirements as set out by Parliament in Parts 5 and 6 of CEPA that all products of biotechnology be subject to pre-manufacturing or import notification and assessment of their potential "toxicity," as defined by the Act, before their introduction into Canada?

The Applicants also sought the following remedies from the Category 1 Departments named in the petition:

1. The enactment of new legislation that takes into account the unique characteristics and risks of these products. Given that much of the science surrounding GMOs is new, with accompanying new risks, legislation must be enacted that incorporates appropriate safeguards and measures. With the exception of CEPA, the existing legislative framework, including the Seeds, Feeds and Fertilizers Acts were not specifically intended to deal with these products, or the specific risks that they pose.

2. The establishment of requirements for the independent, governmental evaluation and testing of all products of biotechnology. Assessments should take into account a range of growing environments, and include post-release monitoring of performance to test the potential for instability across growing locations and seasons.

3. The establishment of clear evaluative criteria, including an improved safety standard that takes into account the potential immediate and long-term direct or indirect harmful effects on human health, the environment, and the conservation and sustainable use of biological diversity of biotechnology products. This should include consideration of impacts on sustainable agricultural practices, such as integrated pest management and organic farming.

4. The clear separation of regulatory and promotional functions among agencies. In particular the promotional activities of the Canadian Food Inspection Agency must be terminated, or its regulatory functions transferred to another agency with a clear and overriding mandate to protect human health, the environment and biological diversity.

5. The requirement of mandatory labelling of GM products. This will not only ensure public and environmental health and safety, but will also allow food risks to be monitored in the long term.

6. The adoption of measures to ensure that the system is accountable and transparent. This requires provisions for public participation in decision-making including:

- public notice and comment periods prior to the approval for manufacture, use, import or export of new biotechnology products;
- public access to industry submissions for approval; and
- making public the full records of government approval decisions of GM products.

A government response to the petitioners was provided in September 2000. While we recognize and acknowledge the effort put into the development of the response by the named departments, in our view, it fails to provide an adequate response to the central issues raised in the petition.

We are particularly concerned that the government failed to provide a meaningful response to the first question raised in our petition, namely whether the government's regulatory framework for biotechnology products is consistent with the principles of sustainable development.

We raised a number of major sustainable development concerns in the petition, including the failure of the current regulatory system to consider fully the potential long-term ecological impacts of biotechnology products, and to consider at all their potential adverse social or economic impacts. The government's response on these issues was to state that the environmental and health risk assessments conducted on new products of biotechnology under the different pieces of federal legislation dealt with the environmental dimensions of the sustainable development question.

The failure of these narrowly focussed short-term assessments to consider the full potential impacts of biotechnology products on the environment and human health was one of the major points raised by the petitioners. These processes do not assess products in a strong ecological context, consider fully the potential cumulative effects of commercial scale use, the availability of more environmentally sustainable alternative ways of addressing the problems biotechnology products are intended to 'solve' or their potential impacts on such options.

The government's response on the economic and social dimensions of sustainable development was even weaker, suggesting that these factors are addressed through social and economic impact assessments of regulatory controls on the use or release of biotechnology products. This fails to address the concern that certain biotechnology products, particularly in the field of agriculture, have the potential to have significant adverse social and economic impacts, such as increasing the level of economic and technological dependency of farmers on large agricultural supply firms. These factors should be considered in an examination of biotechnology products from a sustainable development perspective.

We are also concerned by the government's assertion in response to the second question posed through the petition that there is no mixing of regulatory and promotional functions within the Canadian Food Inspection Agency. These claims are difficult to understand when a visit to the Agency's website provides access to documents which are clearly intended to promote agricultural biotechnology (e.g. "The benefits of agricultural biotechnology"), and when the agency has been involved in a number of other high profile efforts to promote agricultural biotechnology.

With respect to the third question raised in our petition, we believe the current risk assessments taking place under the legislation do not fully consider the potential impacts of biotechnology products on the conservation and sustainable use of biodiversity, as mandated by the Convention on Biological Diversity. This can only be achieved under a much wider and more ecologically focussed assessment process. We note that harmful impacts on biological diversity have been added by Parliament to the definition of "toxicity" under the Canadian Environmental Protection Act, 1999 (s. 64), and that regulatory processes under other Acts of Parliament intended to meet the equivalency requirements of part 6 of CEPA, should be modified to reflect this direction.

We are also concerned that the government has effectively rejected the specific changes to the existing regulatory regime which were sought through the petition process. We continue to believe that the adoption of these measures is necessary to protect Canadians' health, safety and environment, and to ensure that the Government of Canada's policies and practices with respect to biotechnology are consistent with the principles of environmental, social and economic sustainability.

In light of the inadequacies of the government's response to the issues raised in our petition, we would like in inquire as to what further steps your office intends to take with respect to this matter.

Given the significance and urgency of this issue for the environment and health of present and future generations of Canadians, we believe that further steps must be taken. In particular we would like to suggest that your office undertake a formal audit of the degree to which the government's current policy and regulatory framework with respect to biotechnology are consistent with the principles of sustainable development.

Would be pleased to discuss these matters with you further, or respond to any questions that you might have.

Yours sincerely,

Jerry DeMarco
Managing Lawyer
Sierra Legal Defence Fund