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Chair

Mr. Bob Mills

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● (1530)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): As committee members know, we have the departments reporting to us today.

For the department people, we have listened to some NGOs, we're listening to you, and we're going to have some industry people here on Wednesday. At that point, we're going to get together after that to decide exactly how we're going to proceed with CEPA and the CEPA review.

You can think of this as a preliminary meeting. Please leave members as much time as possible to ask questions, so they can find out what they want to find out in order to make decisions two weeks from today.

I want to welcome you.

I'll ask you to begin. I'm not sure what order you're going in, but you can decide that, and let's go.

Mrs. Cécile Cléroux (Assistant Deputy Minister, Environment Stewardship Branch, Department of the Environment): Thank you, Mr. President.

My name is Cécile Cléroux. I'm the assistant deputy minister of the environmental stewardship branch at Environment Canada.

I think it would be best if each of us identified ourselves so that you know who's present at the table.

Mr. Paul Glover (Director General, Safe Environments Programme, Department of Health): Good afternoon. My name is Paul Glover. I'm the director general of the safe environments program, which is responsible for CEPA, at Health Canada.

Mr. John Moffet (Acting Director General, Systems and Priorities, Department of the Environment): Good afternoon. My name is John Moffet. I'm the director general for the systems and priorities directorate at Environment Canada.

Mr. Daniel Blasioli (Senior Counsel, Department of Justice): I'm Dan Blasioli, senior counsel, Department of Justice.

The Chair: Good. Thank you.

Mrs. Cécile Cléroux: Mr. Chairman, if you would allow us, we would like to first make a general presentation on CEPA 1999, so that everybody has the basic information. Shortly after, we think it would be good to have follow-up questions.

We have provided each of the members of the committee with a binder that has a number of documents that have been published over the last few years. Depending on the time that is left, we would like to explain what those documents are, because we think they're going to be a good basis for your review and to flag the main elements, if you want, of each of those documents.

We have as well received the main questions that would be of concern to this committee. They were sent to us by your clerk on Friday. We are ready to address some of them. We think it would be best to give you written replies for others, because data may be requested and we would like to be very accurate about the information we give you.

If you are comfortable with this approach, we would go right to an overview presentation of CEPA 1999.

The Chair: Great. Thank you.

Mr. John Moffet: Again, good afternoon, everybody. I'm pleased to be here on behalf of my colleagues at both Environment Canada and Health Canada. I will speak to the presentation, which you all should have before you.

As Madam Cléroux told you, we would be happy to respond to any questions you may have. As you can see, we have representatives from the two departments responsible for the implementation of the act. We also have our colleague here from Justice Canada should we require any legal clarification or help, as the case may be.

The presentation is going to be a brief overview of the act. Our main purpose in providing the presentation is to give you a broad understanding of the objectives of the act, the principles that underlie and that are stated in the act, and that guide our implementation of the act. I'm also going to speak briefly to the various areas that CEPA enables the government to address. Finally, I'm going to describe briefly the various activities that we undertook in preparation for this review and some of the general findings we concluded based on our preparation for the review.

The current act, as you probably all know, emerged out of an extensive review of CEPA 1988 in the mid-1990s. CEPA 1988 was an effort by the Government of Canada to consolidate various environmental protection statutes in order to provide the government with a multimedia authority to support its environmental protection efforts. In the mid-1990s, of course, the review was informed by concepts such as sustainable development, the precautionary principle, polluter pays principles—concepts that emerged following the Brundtland commission, which had then gained currency. There was an attempt, in modifying CEPA 1988, to embody some of these principles in the act, not just in terms of using the actual words but also in terms of providing specific authorities that would enable, or indeed in some cases require, the government to implement those provisions.

The broad objectives of the act are threefold. The first objective is to contribute to sustainable development by preventing pollution. Pollution prevention is at the very heart of the act. Pollution prevention is in some sense a very old concept—as the old adage goes, an ounce of prevention is worth more than a pound of cure—but in terms of environmental concepts, it's a relatively new one. It's derived largely from the learning within the environmental community about energy efficiency.

Of course, energy efficiency is a more efficient way to address energy demand than is enhancing energy capacity. We've learned the same thing in the environmental area. It's easier, cheaper, and more effective in the long run to prevent pollution rather than to either install expensive and technologically sophisticated mechanisms to control pollution once it's been created or to remediate pollution once it's actually had an impact on the environment or on human health. In some cases it's impossible to remediate pollution, and therefore it's much more effective to prevent it.

A second broad objective is to promote coordinated action across Canada. You will see, if you read the act carefully...or indeed, you don't even have to read it carefully; if you just skim it, you'll find repeated references throughout the act to the importance of federal-provincial collaboration. It's not just in the objectives, and not just in the preamble and in the administrative obligations and provisions of the act; throughout the act you'll see obligations on the federal government to consult with and to coordinate with provinces, territories, and aboriginal governments, both in coming to decisions and in terms of designing implementation solutions.

● (1535)

Finally, while the act addresses many issues, at its heart it is a pollution prevention act. It is focused on managing risks from harmful substances. So while the act provides broad discretion in terms of determining which substances to address and what the best way to manage those substances is, it also provides specific provisions that speak to the importance of virtual elimination of the most dangerous chemicals. Those are the three broad objectives that we have outlined on slide 3.

As I mentioned earlier, the act emerged out of the growing policy discourse that occurred in the 1980s around the importance of sustainable development. In that discourse a number of principles emerged as important, and almost all of those principles are explicitly embodied in the statute. So on slide 4 you'll see enumerated five core principles of the act.

The act emphasizes the importance of making decisions based on an understanding of risk. The act, as I'll speak to later, provides for a broad sequence of activities that the government goes through before it can make a formal regulatory intervention, starting with broad science and information gathering, through to risk assessment, through to decisions to manage an issue, and then providing a broad range of authorities to manage a substance and promote compliance in the most effective manner. At its heart, this sequence is based on acknowledging the importance of making risk-based decisions.

The act also emphasizes the importance of taking an ecosystem approach. What that means is we don't look at the effect of a pollutant or an environmental issue on one particular medium. We don't just look at the impact of a pollutant on water, for example. We need to take a look at the impact of the pollutant on all media and on the ecosystem as a whole, including, and importantly, the presence of and the impact on humans within the environment.

Indeed, starting with CEPA 1988 and then broadening with CEPA 1999, it was the bringing together of the broad range of authorities in the act that enabled us to take this multimedia approach. We have found, like many other jurisdictions in the world, that being able to take that multimedia ecosystem approach is valuable, not just in enabling us to identify the most effective solutions but also in enabling us to identify possible trade-offs between one environmental medium and another.

While the act emphasizes the importance of science-informed decision-making, it also emphasizes the importance of the precautionary principle. Indeed, it mandates the Government of Canada to implement the precautionary principle and to take the precautionary principle into account in every decision it makes under the act. It is not a principle that we invoke with respect to certain decisions; it is a principle that we must, by law, implement and account for in every decision we make under the act.

However, we could have made most decisions whether that principle was in the act or not. What it means, though, is that if we advert to that principle in every case, there are some decisions that we might not be able to make were it not for that legal obligation to look at the precautionary principle, which of course means essentially that we do not need to rely on full scientific certainty before we can take cost-effective action to prevent a serious risk to the environment or to human health.

Finally, the act requires us to account for the polluter pays principle. The importance of this is that it is not just government, it is not just taxpayers as a whole who should bear the burden of decisions by individuals, companies, municipalities, or indeed by government organizations that impose an external burden on society, it's not just up to taxpayers as a whole to bear that burden, it's not just up to our future generations to bear that burden, but as much as possible the decision-makers who are imposing that burden should actually pay for that burden. Of course, the best way to pay for that burden is to pay to prevent the burden as opposed to pay to remediate the burden, coming full circle to the pollution prevention concept I emphasized on slide 3.

What slide 5 does—and I recognize this is a rather dense slide—is emphasize the fact that CEPA is one among many federal statutes, and indeed one among many federal, provincial, territorial, and municipal statutes. If you look even further, it's just one among many federal, provincial, territorial, municipal, and industry decision-making guidance mechanisms.

● (1540)

When one looks at the overall environmental protection regime in Canada, one needs to account for the way in which all of those interact, and indeed I would suggest that you need to look even further than environmental protection documents on their own. The fiscal regime, corporate governance mechanisms, etc., all have an impact on environmental decision-making.

However, what this diagram illustrates is that the Canadian Environmental Protection Act provides the central mechanism for the federal government to address risks to Canadians and to their environment from products and from emissions and effluents. Numerous other statutes address specific risks from products, and numerous other statutes address specific risks from emissions and effluent. You can look at the Feeds Act, the Seeds Act, the Canada Water Act, etc.

The Canadian Environmental Protection Act does two things. First it provides broad statutory authority to assess and take action on specific issues, and second, it provides a baseline of environmental protection. So if another statute—for example, one that addresses new substances—is to act in place of the Canadian Environmental Protection Act, CEPA actually stipulates that the other act must provide an equivalent regime, not just equivalent in outcomes but actually equivalent in process. So there must be, in this case, equivalent assessment and notification requirements. CEPA provides that baseline protection.

The other important message from slide five that I would urge you to take is that CEPA is not a completely comprehensive statute. It does not address, in a significant way, habitat protection and land use and natural resource management. Of course, these are addressed to a certain extent by other federal statutes, but even more importantly they are within the purview of the provinces and territories and aboriginal governments, which have developed their own natural resource management regimes.

The point we're emphasizing on slide six is a key one, which, I would respectfully submit, should be taken into account by this committee in its review, and that is that collaboration is fundamentally important to the way in which the federal government makes decisions under CEPA. As I emphasized before, the act recognizes action under other federal statutes and in that sense provides a baseline for other federal statues. And if the other federal statute meets or beats—if I can use that term—the requirements in CEPA then that other federal statute applies. That only makes sense. Where an agency has specialized knowledge on a particular type of product, that agency should be doing the assessment and should be doing the management. CEPA ensures that the agency accounts for the health and environmental protection goals of CEPA.

CEPA also encourages, and in some cases requires, cooperation with other levels of government in Canada. It requires the establishment of a national advisory committee, which comprises representatives of other governments in Canada, as well as aboriginal organizations. It also requires us to consult with the national advisory committee with respect to numerous decisions that we make under the act, in advance of making those decisions and not just to inform those other levels of government.

Stepping outside of the strict legal requirements of the act, we make an observation in the final bullet on slide six: In implementing CEPA we have discovered the importance of sharing information, both with our colleagues throughout Canada who are working on the same issues and, equally as importantly, on an international level. Canada imports 80% of the products that we buy. These products are designed and produced elsewhere. We're not going to be able to completely and comprehensively address the environmental and health risks posed by these products without the collaboration of the jurisdictions in which the products are actually manufactured, so collaborating internationally is essential.

● (1545)

We also collaborate internationally on the scientific front. Why should we assess exactly the same substances for exactly the same issues when another country is already assessing them? There are active fora on a whole range of scientific issues in which Canada participates, so that we benefit from the scientific advances and the information that is being developed by other countries that are addressing similar issues to us. We similarly share as much of the information that we develop as possible.

We would emphasize that while this is the Canadian Environmental Protection Act, the act is not only designed to protect the environment and does not work with environmental blinkers on. It is an act to protect the health of Canadians, and it is an act to protect their environment.

In both the spirit and the actual provisions of the act, there is an explicit intention to enable industry in Canada to meet these environmental and health protection obligations in the most cost-effective manner possible. It requires government decision-makers to account for the ability of industry and other parties that will be subject to decisions under the act to implement those decisions in a manner that allows them to continue to make contributions to Canadians' economic and social welfare.

Of course, the final point is an important one. By providing for and requiring the government to take environmental and health protection measures, the act is not only doing so in a static context, but is doing so in a future-looking preventive context.

On areas of intervention, as I mentioned, CEPA 1988 integrated a number of statutes, and CEPA 1999 went even further and added other areas of authority for federal government action. Slide nine identifies the various areas that the act either enables the government to address or requires the government to address. At the heart of the act, and indeed most of the comments that you'll hear about the act, are the provisions related to assessing and managing risks from substances.

There are two broad regimes within the act that are important to understand. One is the new substances regime. In that regime, we require anybody who wants to import or manufacture a substance that is new to Canada to notify us and to provide information that we prescribe to enable the departments of health and environment to assess the potential risks from those substances before they can be used in Canada. It's only after we assess those risks and determine there is no risk that the substance can be used in Canada. If we determine that there is a risk, we then have the power under CEPA to impose conditions on the use of the substance or we can even ban the use of the substance.

We also have broad authority over existing substances. Of course, the new substances regime came into place in about the mid-1990s, and there were thousands of substances in use before that time. Many of those substances continue to be used in Canada, and the act gives us the power to assess and manage the risks from those substances that we consider pose a risk to human health or the environment.

The act is not, however, only about substances. The act contains specific regulatory authority over emissions from vehicles, emissions from engines, and emissions from fuels. They are different provisions from the new and existing substance provisions, and we indeed have a fairly comprehensive regulatory regime addressing emissions from vehicles, engines, and fuels.

The act also enables us to implement our international obligations with respect to disposal at sea and limits the types of substances that can be disposed of at sea. It requires a permit, and it requires permit applicants to indeed demonstrate that disposal at sea is the best alternative and that pollution prevention, recycling, and re-use alternatives are not available in the specific case.

● (1550)

The act also enables the federal government to intervene with respect to domestic sources of international air and water pollution that might otherwise be regulated by the provinces or territories. But where that particular source is emitting pollution that either is causing harm in a foreign country or where that pollution is in violation of an international agreement, the act sets out a process that the federal government has to follow, which starts with, of course, consulting with the relevant provincial or territorial regime and then, where there is a determination made that the jurisdiction is not able or is not willing to impose the appropriate controls, the federal government can intervene.

The act also provides broad authority over transboundary movement of hazardous wastes and hazardous recyclable materials. Again, it establishes a permanent regime that is based on our international obligations under the Basel Convention, as well as under additional commitments that we've made under an OECD agreement, and additional commitments that we've made under a U.S.-Canadian agreement with respect to transboundary movement of hazardous wastes and hazardous recyclable materials.

The act also provides us with broad authority over environmental emergencies. It enables us to require facilities to prepare environmental emergency prevention plans with respect to a wide range of substances.

It also gives the federal government authority to step in and take action in the event that an emergency occurs and nobody else is taking appropriate action. So we can step in and then we can basically charge back the costs of our intervention to the person or the party that was responsible.

And finally, the act gives us authority to address a wide range of issues over the federal house and aboriginal lands. The reason for this is that, generally speaking—and my legal friends will cringe if I use language that's overly simplistic here—provincial environmental laws don't apply to federal activities and to federal lands.

So whereas a facility that's located in a province might be subject to federal law and provincial law, an activity that's located on federal lands will only be subject to federal environmental law, and therefore the residents of that federal land or that Indian reserve, for example, will not benefit from the comprehensive regime that's established by federal and provincial laws operating together. Part 9 of the act gives us the authority to fill that gap.

The other important message from slide nine is that while we have a range of issues that we can address under CEPA, the act essentially requires us to address all of those issues in a common manner, starting with issues scoping where the act gives us broad authority to gather information to do monitoring, to do science, to understand an issue and define an issue. It then requires us to do risk assessment, for example, of a substance, or to define a hazardous waste or a hazardous recyclable material, or a substance that's going to be disposed of at sea. It gives us additional information-gathering authorities to further understand what the specific issue is, and then if we decide that the issue warrants federal intervention, we can turn to risk management and the act provides us with a wide range of risk management authorities.

Indeed, I would suggest that the act provides the federal government with as wide a range of risk management authorities as any equivalent statute in the world. And when the act was introduced it introduced a number of innovative environmental management tools.

The only tools really that are missing have to do with certain economic instruments. I'm talking about tools that are present in some other jurisdictions in the world, but these statutes have been introduced subsequent to CEPA 1999. The importance of the wide range of tools is that the act doesn't say that if you find a risk, you've got to manage it this way. What the act does is say that if you find a risk, here is the suite of tools that you can use and now it's up to you to identify the most effective way to address the risk.

You can take a draconian approach if you want or you can take an efficient approach, and of course the emphasis within the government is on finding the most efficient approach to manage a risk. We can all debate about whether we've been successful in identifying the most efficient approaches, and I'm not here to defend the government's record in that regard. I'm simply speaking to the fact that the act gives us a wide range of authorities from which we can choose.

● (1555)

The act also gives us a wide range of authorities to monitor and ensure compliance. Then, if we find that a party is out of compliance, it doesn't just give us one option for ensuring compliance; it gives us a whole range of enforcement options, which enable us to tailor the response on a case-by-case basis. If the violation is modest and there is good will on the part of the party, we don't have to take the party to court and send the director to jail for years. On the other hand, if the violation is significant and repeated and there's absolutely no demonstrated intention to comply, then of course we can pursue a criminal prosecution.

So again, there's flexibility built into the act, without a lot of prescription.

The way we implement the act is by coming a full circle, at least ideally, so that our understanding of how parties are implementing the act informs our understanding of the issues and our responses to them.

In speaking to slide nine at length, I've essentially spoken to slides nine to fourteen. I'd be happy in questions to come back to any of those slides, but what I propose to do so that I don't drone on all afternoon is skip to slide sixteen and speak a little bit about the preparations we did for the review. Slides nine to fifteen describe our basic approach to implementing the act; slide sixteen turns to a different subject.

We of course knew the review was approaching: the act requires a parliamentary review. In order to prepare for the review, we undertook a number of steps. For example, both departments commissioned external evaluations of our implementation of the act, and we have provided the members with a copy of the evaluation that was commissioned by Environment Canada. We'd be happy to answer questions about our response to the evaluation and would encourage you to speak with the individuals who actually took the evaluation, who are, of course, independent from the department.

We also spoke at length with stakeholders to help us identify the issues they thought would be important to bring forward for the review to consider. We did that in a number of ways. Most importantly, we prepared a discussion paper, and we've given you a copy of it. We posted that paper on the Internet and encouraged people to respond to the paper. And indeed, we received numerous responses and have provided you with a consolidation of the responses that were provided to us.

We also took that paper on a cross-country tour. My predecessor and Paul spoke to the discussion paper in six cities across Canada, and those meetings were open to the public and were attended by a wide range of stakeholders, informed members of the public, specific industry associations, NGOs, aboriginal groups. Municipal governments, some provincial governments, and some of our federal colleagues attended those meetings. The report that was prepared by an independent consultant summarizing what was heard in those reviews is also included in the binder we've provided for you.

On slide seventeen, we've tried to summarize in just one slide the key messages we think we heard from those reviews. Of course, you're going to be hearing from stakeholders and will be able to form your own views. But essentially what we heard is that the act is fundamentally sound. The act underwent a comprehensive review and a rewrite in the 1990's. I think what most people are telling us is that the act itself—the words in the statute—are fundamentally sound.

Almost everybody recognized, however, that while we've come a long way in learning how to implement the act, and while we've taken numerous actions under the act, there's still a lot to learn about how to make use of the full scope of authority in the statute. The statute is about five times as long as CEPA 1988.

● (1600)

There are authorities in here that the federal government of Canada, and indeed no national government in the world, had prior to CEPA 1999. We think we are now coming to grips with the full range of authorities in the act. We think we're learning how to implement most of the provisions in the act. But we completely recognize that we're still on a learning curve. That's the basic message the stakeholders provided to us, that more needs to be done to implement the act more effectively.

Personally, I think that's consistent with the overall structure of the act. This is an enabling statute. It doesn't actually require us to do a whole bunch of things. What it does is say that we “may” do this or we “may” do that. Really, the issue is how we are implementing this broad range of authorities under the act.

Of course, various stakeholders came forward with specific issues that they thought could be tweaked or reformed or refined within the act. We're confident you'll hear from stakeholders throughout your review about those options.

The final two points are interesting ones, but consistent with the emphasis on implementation. The stakeholders saw the effort that the federal government went through in the review of CEPA 1988. The review that occurred in the mid-1990s of CEPA 1988 was extremely resource-intensive and focused the attention of a number of departments on what should be in the Environmental Protection Act and what should not be in the Environmental Protection Act, and who should be addressing this issue and who should be addressing that one. There was a lot of concern expressed by stakeholders and there was a lot of worry that another review of that magnitude could distract the government or take away the effort from actually getting on with the business of protecting the environment and health.

So while nobody said don't do a review, while nobody said there was nothing to improve, there was also an undercurrent of making sure that Environment Canada and Health Canada get on with their jobs of protecting our health and environment.

Finally, of course, a number of stakeholders spoke to the issue of resources, and that issue is also addressed in the evaluation. You may find more detail in the evaluation itself.

I've gone on at some length. As my colleague, Madame Cléroux, emphasized at the beginning, we'd be happy to answer any questions you might have at this time. I hope that has provided you with at least a broad understanding of the act and our approach to implementing the statute.

Thanks very much.

● (1605)

The Chair: Thank you.

We'll begin our questioning with Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): Thank you very much for coming. It's good to see some of you in a new incarnation, as far as I'm concerned.

I've read through the act, and I'd like to begin by asking if it would be possible to describe part 5 of CEPA as the sort of controlling "brain", if you like. What you're defining under part 5 are substances that are dangerous, toxic, are a priority and all the rest of it.

Without part 5 you wouldn't be able to deal with emergencies or assess pollution risk and everything else, so if there are problems of definition, is part 5 the most crucial part of the act without which nothing can really happen?

Mrs. Cécile Cléroux: I will start the answer, and I will let Paul and John complete it.

Part 5 is a crucial part of the act and a tricky part of the act at the same time. It is a part where there is a lot of work that has to be done to make sure we have the right science on which to base judgment on whatever we have to do. We have to make sure that whenever we are looking at a substance, we really have the broad overview of what has to be taken into account, but if there is reason for concern, we have the capacity to put forward the steps so that we can prevent doing the work.

Correctly, the two departments are working diligently together to make sure we have the best process forward. We have learned from the first few years of working together with that part of the act, and it's clear to us that we have to improve the work that is being done so we can really have a systematic implementation.

That part is crucial for a lot of the work we have to do, but without it there are still other provisions; the act has been made with a collage of different elements. So it's one that for us is a key feature of what CEPA is providing to be able to address a lot of the substances to which citizens are exposed.

I'm sure Mr. Glover and Mr. Moffet would like to speak.

Hon. John Godfrey: Actually what I would like to do is to leave that there and move on, because I know that time is of the essence here.

Mr. Moffet described two different approaches, which he characterized as dranocian versus efficient. I'm wondering how efficient the act has been if we've only completed five pollution prevention plans. If we still rank as badly as we do—out of 29 industrialized countries, we're 29th in terms of releases of volatile organic compounds, 27 out of 28 for sulphur dioxide, and so on—I'm wondering if one of the flaws of the act is precisely because there's too much "may" and not enough "shall".

Mr. Paul Glover: That's a simple question.

I think that the act, to be frank, in my view, is as efficient as the departments have been able to make it be. The rate at which we're able to assess substances.... The science is complex. We need to move with other jurisdictions. We don't want to do work unnecessarily, so if we find another country doing something, how do we align?

That's not an attempt to be defensive, but there has been, and you'll hear about this.... The level with which the departments have been resourced to undertake this work is a long agenda. When people hear it's a 50-year assessment agenda or a 25-year assessment agenda, they get frustrated. I think the short answer is we have been as efficient as we possibly can be, given the resources we have. We have taken creative approaches, approaches no other jurisdictions are doing. We're trying to look at classes of substances rather than one at a time. So we are making some adjustments in what it is we're doing in order to be able to move as efficiently as we possibly can.

● (1610)

Hon. John Godfrey: Let me just follow up then. That does seem to lead back to your page 17, in which the word "implementation" appears in three of the five bullets. Can one be quite precise about what extra resources would do in terms of speeding up implementation? I guess that's one question. And would the insertion of timelines plus resources and the insertion of regulations plus resources—in other words, moving a little more to the draconian side of the equation—would that combination actually make things move a lot faster?

Mr. John Moffet: I won't speak to the resources question, other than to state the obvious: one can always do more with more resources. Whether there are adequate resources is a question for parliamentarians to determine.

I would like to speak to the issue of the mandatory versus the enabling nature of the statute and to the nature of the results that have been achieved to date. Regarding the results, I think you need to look at where we are under CEPA. First, you also need to think back to slide five. CEPA is not the only statute that addresses VOC emissions in Canada. Most importantly, they're addressed by provincial regulations at the moment. So it's difficult to disaggregate the precise impact of one statute on environmental conditions in a country.

Second, if you look specifically at what's been achieved, you're taking a snapshot in time. One of the issues we would like to be able to come back and speak to the committee about is the mandatory area of the act in part five, where the Government of Canada is required to categorize every substance on the domestic substances list. The list was established in 1988 by CEPA as a way of defining what a new substance is. A new substance is everything that's not on the domestic substances list. The list includes every substance that was used over a certain threshold in commercial activities in the 1980s, and we've essentially assessed everything since then under the new substances regime.

Now, every country in the world is wrestling with the issue of how to address this legacy of substances that we didn't assess before the new substances regime was put in place. We are the only country in the world with a law that requires us to categorize every single one of those substances, and we will have done so by this fall.

The question then is what should we do with that information? We will have met the mandate. The important question I suggest this committee may want to think about is what is the significance of having that baseline of information this fall that no other country in the world will have? The law required us to collect that information and now enables us to do something with it. What we do with it and what strategies we develop to use that information to help us leapfrog from where we are now to where we may want to go, I think, is an important consideration for the committee.

That's why I'm saying that if you take a snapshot now, you may not look at the whole context of the information that is about to come and at what we might be able to do with that information.

● (1615)

Mr. Paul Glover: If I might add to that very briefly, I would say we need to be doing the right work, not necessarily a lot of work. What are the substances that have the greatest impact on human health? What are the substances that have the greatest impact on the environment? As we can prioritize more clearly, we'll be able to....

Hon. John Godfrey: Thank you very much, Mr. Chairman.

Perhaps in a future round of questioning, you might like to throw the ball back in terms of what you think we might be able to do, now that we have all of these substances. From the point of view of those who have to deal with it, what would be your top priorities in terms of using that information?

Thank you.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chairman.

First of all, I would like to welcome you before the committee. We are very happy to have you here today. As the chair said, we are about to undertake our review of the act.

At the outset, I should say that I agree with Mr. Godfrey and Ms. Cléroux in that part 5 seems to be a genuinely important aspect of the act. I would like to thank you for having committed yourselves to that review until now. It was indeed very important to do so.

I would like you to tell us whether Health Canada has completed its evaluation of the act.

Mr. Paul Glover: Thank you.

That is a very important question. Unfortunately, the answer is not a simple one.

[*English*]

Unfortunately, the response to your question about whether we've completed the evaluation is not immediately simple and obvious. We have undertaken an evaluation.

[*Translation*]

Yes, it is quite true that we are conducting an evaluation.

[*English*]

Like Environment Canada, we engaged an independent consultant. Unfortunately, the draft report that was provided to us was not acceptable, as it did not reach the standards of the department as an evaluation.

[*Translation*]

Unfortunately, according to our department, the draft report prepared by the consultants is not acceptable.

[*English*]

We are in the process, and have been for quite some time, of trying to correct that. Unfortunately, the consultant company no longer does this line of work. As a result, we've been in the awkward situation of how to ensure that we have an arm's-length review when the people who were at arm's length from us no longer exist.

We do have a draft. We do have a management response. We want to be very transparent. And if that would be helpful to the committee—as we work to do this—we'd be happy to provide a final document. If there's interest in a draft, we're very open to being completely transparent about this entire situation.

[*Translation*]

Mr. Bernard Bigras: Mr. Chairman, I believe it is quite important to have Health Canada's views on the Canadian Environmental Protection Act.

I don't want to be too hard on you, but I believe we are already falling behind with the review. I find it difficult to understand why your department has not already submitted recommendations or proposed amendments to the legislation to the public. If we could at least obtain a draft on the direction you would like to take with regard to these matters, we would find it somewhat helpful in continuing our work.

I would like to come back to the equivalency accords with respect to the implementation of the legislation. As far as I understand, under the provisions of the Act — those in section 10 in particular — it has so far not been possible to effectively conclude agreements with the provinces.

I would like to know exactly how many agreements have been signed. Unless I am wrong, your officials have been working with the provinces and territories since January 2004 in an effort to conclude agreements. Why is it that there has not been more progress with those agreements? Moreover, why are some provinces unable to sign agreements with the federal government?

Mrs. Cécile Cléroux: Mr. Chairman, I would be pleased to try to shed some light on the questions put by the member.

First of all, we have signed an equivalency agreement with Alberta, and discussions are underway with each of Canada's provinces with a view to signing other agreements. However, the majority of provinces prefer to sign equivalency agreements for individual issues, or individual activities. We are therefore proceeding on a case-by-case basis. Pulp and paper effluent is a good example, and I could cite other examples.

To date, particularly in the light of the work done by the Canadian Council of Ministers of the Environment with a view to establishing Canada-wide standards, the efforts of the provinces and the federal government have tended to focus on implementing agreements in accordance with those guidelines to handle a variety of issues.

With respect to the equivalency agreements, a number of provinces have expressed interest but one of the aspects not clear in the wording of the act is the recognition of permit-based systems. Most of the provinces — within the framework of their regulations — act by issuing permits to the companies concerned.

In our view, those systems can be recognized under the current legislation, but the provinces are not convinced that the equivalency agreements would fully and properly recognize their systems. We are now trying to solve these issues with the provinces. Thus, the work to date has been focusing on the issues to be dealt with, rather than on the equivalency agreements mentioned in the legislation.

● (1620)

Mr. Bernard Bigras: Doesn't the problem stem from the fact that the Canadian Council of Ministers of the Environment want a voluntary approach rather than a regulatory approach to the enforcement of the legislation?

Doesn't the problem reside in the fact that in section 9 of the Act, which deals with agreements related to implementation of the Act, provides that even if agreements are signed with the provinces, they cannot limit the measures that the minister deems necessary for the enforcement and execution of the Act.

Essentially, doesn't the problem stem from the fact that despite all the agreements that can be signed, under section 9 of the Act, the minister always has the possibility of intervening and to throw overboard any agreement signed with the provinces? You talk about cooperation and that's fine, but basically, the power always rests with Ottawa if the minister can take any measures he deems necessary to enforce the Act.

Mrs. Cécile Cléroux: The issue here is related to the implementation of Pan-Canadian measures. If criteria are established according to which all Canadian companies and citizens are treated the same way, regardless of where they are in Canada, with regard to the implementation of regulations or specific agreements, the signing of equivalency agreements will not remove the federal minister's responsibility in this regard. However, if it is acknowledged that the provincial regime on a given matter is equivalent to the federal one, the probability that the agreement will be cast aside is rather low.

Mr. Bernard Bigras: What do you think of the agreement that was signed with Alberta? Did this province say it had an agreement and that it applied it? Has it ever happened that the minister in Ottawa has been forced to intervene under his powers, regardless of the existence of an equivalency agreement?

Mrs. Cécile Cléroux: To my knowledge, no.

[*English*]

Mr. John Moffet: I'd like to add one more point before speaking to the Alberta one.

I think the key point to understand about equivalency agreements is that the act doesn't oblige the federal minister to go out and ask provinces to look for equivalency opportunities. The act enables the minister to negotiate agreements.

The fact of the matter is that very few provinces have come forward and asked for equivalency agreements. The reason for that is that there are in fact very few areas where provincial laws overlap with federal laws. You need an equivalency agreement only where you have a provincial law addressing the same issue as the federal law. If you don't, you have no need for an equivalency agreement.

We have a complex federal-provincial regime of environmental laws in Canada, but there are in fact very few areas where there is direct overlap. Where there is, such as in a case we have in Alberta—and we do have some cases in other jurisdictions, but in Alberta we have direct overlap—the federal law does not apply with respect to the regulation that is the subject of the equivalency agreement, and that has worked out satisfactorily.

Administrative agreements are very different. An administrative agreement is a situation not where the province has a regulation in place, but where the province has expressed an interest in implementing a federal law because they already have folks on the ground who understand the industries or the institutions that are the subject of the regulation and it's more efficient for the inspector who's already going to be in the facility to go in and inspect both for compliance with the provincial law and for compliance with the federal law.

● (1625)

The Chair: Thank you, Mr. Bigras.

We will move on to Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you.

It is good to see you here today. Thanks for the overview.

I'm just subbing in for my colleague, who's in Bonn. Hopefully, he's doing good work there.

I have a couple of questions. First of all, I'm really pleased to hear you accent the precautionary principle. If people around this table don't understand it by now, then we all need a primer on it, but I'm sure we all do. For that matter, I think it's something that Canadians need to grab on to and understand, because I'm not sure that they do at this point. That's not to fault them, but to suggest that we are dealing with a fairly new conceptual framework when we're looking at the precautionary principle.

The other component, I'm glad to see, in terms of the presentation here, is having health and environment together. That's a positive indication. I think that's one that most Canadians would welcome, and they would want to see further cooperation in making sure that health and environment go hand in hand. In fact, some would suggest that we need to break outside the whole nomenclature of the environment as an external and own it as something that is for everyone a universal concept.

In the brief, in the deck, there was some mention about how we apply the precautionary principle, how jurisdictions sort things out. One area I personally have been involved with in my own community is the area of pesticides. Indeed, you'll probably hear about this tomorrow a bit. And we have provided a bill in the House.

It's an area that's very interesting when you consider that 35% of Canadians presently are protected. I advocate for a ban on the cosmetic use of pesticides. Indeed, we'll talk in a second about what's federally available. So 35% of Canadians are protected by a bylaw. In fact, we know that the whole province of Quebec is. Sadly, in my city, here in Ottawa, they aren't, notwithstanding the efforts of people locally.

So my question is, and there are a couple of others about other specific examples: how do we wrestle with that? To go back to March 2002, when there were changes to the PCPA—and it's my understanding that it's sitting there waiting to go, yet there are people who are flying on different octanes, if you will, or breathing different air, or different quality air, cleaner octane, perhaps.... So we have a problem in conductivity here, right? We have a problem in that we have bylaws that are enacted and the whole province of Quebec has protections, yet across the river, here in Ottawa, we don't. Could you tell me a little bit about your respective perspectives on that and how we can untangle that?

Mr. Paul Glover: Okay. First off, obviously, if people aren't aware but want to be clear, part of Health Canada is the Pest Management Regulatory Agency. A colleague of mine, Dr. Karen Dodds, heads that up, and I'm sure she'd be happy, if there are specific questions, to come back and answer those.

Generally, though, the department overall, whether it's about drugs or pesticide substances, takes a risk-based approach. I'm very cognizant of what has been outlined in the deck; that is, what is the hazard, what is the exposure, and when you put those two things together, do we have a problem? There isn't a single drug the department approves—sorry, there probably is a single one. Often drugs we approve have side effects, so you have to look at that and weigh those cost-benefits. It's the same when you look at agricultural uses of pesticides for the farming industry and others. What are the benefits versus the downside, and what, overall, is the total risk? That is how, fundamentally, the department approaches this. Are any of those risks acceptable? How do we manage them and make sure that Canadians are never presented with an unacceptable level of risk?

I'm very pleased to say that within CEPA and PMRA there is significant cooperation. We have memorandums of understanding to share information and agreements. So if we're looking at something that's in water, what is it from the CEPA point of view? What is it from the pesticides point of view? Are we coming to similar conclusions on the science?

More fundamentally, we feel that it is our role to regulate, where appropriate, where the risks are unacceptable, and to encourage that the information be made available to all Canadians. So if Canadians wish to do more, give them the information they need so they can also play a role in managing the risk, and allow other jurisdictions, as they see fit and appropriate, to make choices that are relevant and right for them.

We'll continue to be a sound source of science on what those risks are and try as much as possible to make sure that they are integrated across federal statutes, and provide that information as transparently as possible.

● (1630)

Mr. Paul Dewar: Notwithstanding that there is information sharing and providing of risk assessments, if I go back to the idea of the precautionary principle and apply it to pesticides and take a look at other jurisdictions, we have a situation here where not all citizens can avail themselves of the same value of the precautionary principle. That's a sad thing, which I hope Parliament will act on.

I have another question regarding how you work with partners. I'm referring to research, particularly with the universities. Presently, Bill C-2 is in front of committee; in fact, Mr. Poilievre is on the committee. With respect to how we look at access to information when it affects people's health and, in particular, new technologies, new products, is there a window for your respective departments if someone says “Look...”?

There was a case that came before me about Wiarton and some water technologies, where there were two schools of thought. How would CEPA perhaps involve itself if it were to hear concerns about new technologies or new products? Would they wait until they're invited in? If a researcher was working on a project, would they call the ministry and say they have concerns about the work that's being done and some outcomes that aren't being understood? Could they call and presumably someone would show up? How does that work just in terms of the regulation and the policing of it?

Mr. Paul Glover: First and foremost, there are a number of ways that things get onto the department's work plans. We nominate things that we feel from a science point of view are important. We are working to make those publicly available and accessible. So we consult on that. Regarding the categorization results, we've been working with industry and NGOs to let them know what we think the priorities are.

The other thing is that people can ask the ministers to look at something specifically. Citizens have that right, and that is something that can be incorporated into the work plans. That is another way into CEPA. The ministers have the obligation to look at that and say whether they feel that is more or less important than some of the other things that are already on the work plan. But that is a definite option that is available and has been used.

So whether that's a citizen or a researcher, if somebody has a concern, they can make that concern known to the ministers. They will then determine whether that is applicable under CEPA or another piece of legislation. If CEPA is the right place, we can be asked to look at it. That would apply to any substance that could be regulated under CEPA.

Mr. John Moffet: There are two other mechanisms worth considering. One is the new substances regime. If the activity you're describing actually results in the use of a substance that is new to Canada, there is a mandatory regime that must be followed to authorize the use of that substance.

The second mechanism is that CEPA contains a provision in section 70 that requires anybody who is importing, manufacturing, transporting, processing, or distributing a substance for commercial purposes and who obtains information that would reasonably lead them to believe the substance might meet the test in section 64—that it may pose a risk to environment or health—to provide that information to the minister.

● (1635)

The Chair: Thank you.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chairman.

I have a couple of questions.

I'll refer back to slide 17, which I think actually capsulizes everything in your presentation quite nicely. It's in line with what we heard from the NGOs last week, that essentially what we have is a fundamentally sound act: it's very encompassing, it covers basically what we needed to cover, and there is nothing really wrong with the act itself. Where it does seem to bog down is in implementation, and more importantly, enforcement.

What I would like to ask first of all is whether you believe there is adequate enforcement legislation within the act so that we can make sure people are conforming with the act itself.

Mr. John Moffet: Maybe we can respond in a couple of ways.

Could I first ask a clarification question? Are you asking what the authorities are in the act with respect to enforcement?

Mr. Dean Del Mastro: Right.

Mr. John Moffet: Mr. Chairman, could I respectfully suggest that the question of adequacy of resources and adequacy of authorities is one that you may want to pose to the minister?

In terms of the breadth of authorities, I would reiterate what I said in the presentation: that the act provides a wide range of authorities with respect to enforcement. What these do is enable our officials to make decisions on a case-by-case basis about the best way to enforce. Those options can range from issuing a ticket—which can be done on the spot, just like a parking ticket—right up to developing a full criminal case and prosecuting a violation. The rationale behind that is it enables appropriate decisions to be made on a case-by-case basis; we don't need to use a sledgehammer where a ticket will do—or a warning, when even less than a ticket will suffice. I would suggest there is a range of authorities and leave the answer there.

Mr. Dean Del Mastro: Further to that, can you confirm that these types of enforcements are occurring regularly and that there is enforcement of the legislation as it exists?

Mr. John Moffet: Let me suggest that we could provide you with a written summary of the types of enforcement activities that have occurred, broken down by type of enforcement mechanism—warnings, tickets, etc.

Mr. Dean Del Mastro: That would be great.

The Chair: You could send that to the clerk. I think all members would be interested.

Mr. Glover.

Mr. Paul Glover: Mr. Chair, may I respond to that question from a health point of view? It's somewhat different, but I hope this information is beneficial.

Part of being able to enforce is understanding if the actions we've taken have been effective. One of the things Canada struggles with, compared to other jurisdictions, is programs like biomonitoring, which tell how much of something is still in the blood. We take lead out of gas; we know how much is still in the environment, but we don't know how much is in people.

The act does call for the Minister of the Environment to maintain a national pollutant release inventory. It does not call for a similar requirement for the Minister of Health in terms of biomonitoring and understanding, so our ability to support enforcement is somewhat challenged by that lack of information. That doesn't mean we couldn't do it if we wanted to. There would be resource questions associated with that, obviously.

That is one area where there is a subtle difference that might help us in the information base we have.

Mr. Dean Del Mastro: Great.

I had one question with respect to the domestic substances list you mentioned. You also mentioned that substances in use in the 1980s and so forth were actually required to be reclassified, which I understand from talking to some industy officials was a fairly painful process for some of them. My question pertains to the use of the word “toxic”, and how we're attributing “toxic” to certain substances, and in fact how that may be misconstrued. Is there another term we could be using in classifying substances, a term that might not be as misleading and potentially damaging in referring to substances that may be toxic in given uses, but are not inherently toxic by nature, such as carbon dioxide?

● (1640)

Mrs. Cécile Cléroux: It's clearly one of the elements of the act that has probably had the most coverage in the consultation and comments we've had all over the place. The implementation of the act itself, for sure, uses the term “toxic”, as some of you will see in the act—it's used in part 5. We refer to the list of toxic substances, but everybody refers to the toxics.

In reality, that's exactly what it was intended to do. It's clear it has, in some discussions, completely mixed the messages around what it is exactly. One of the things that could be considered through the CEPA review is to have another objective to refer to those substances.

For us, the important thing is the process included in part 5. Everybody at the Parliamentary committee might find that the word or term we give it should be replaced; for us, it's more the principle that we are guided by assessing the risk and making sure we have the right information and the right science before we make a judgment call, so that when we need to make a judgment call, the minister can act.

Don't worry, we're not trying to prevent acting when it's required, but we want to be sure the process is very organized and that by the time we have substances that need more, I would say, presence management—I'm looking for the right expression—management that is a lot more structured, if you want—we are looking at each of the potential releases, we are making sure everything that needs to be regulated is regulated, and we are making sure it will be done under a very strict regime. That, for us, is the important thing.

We agree that the term “toxic” could be misleading in some cases.

The Chair: Thank you.

That ends our first round.

Mr. Glover, could you be sure to send us a copy of the report you mentioned?

Mr. Paul Glover: Absolutely.

The Chair: We'll go to the second round now. It will be five minutes, back and forth.

Mr. Silva, go ahead, please.

Mr. Mario Silva (Davenport, Lib.): Thank you, Mr. Chair.

As I've mentioned before at this committee, this is very far-reaching legislation. It's very encompassing legislation that deals with so many different issues that affect our country and of course the environment policies that we're trying to put forward.

I've always indicated that even though some of the legislation in the act is on the ball and we're very satisfied with it, there are many things of which I wonder whether we're meeting targets. For example, I'm not sure how we're meeting the objectives of consulting with native people and people in general.

I feel very strongly that these are things that we, as parliamentarians and members of this committee, have to discuss and about which we must also have a dialogue with our partisan stakeholders across the country. It's one of the reasons I've always felt that if we're going to put forward and review this massive piece of legislation, as we have no choice but to do under the statutes, we should make sure that we are in fact doing so properly and doing the legislation justice.

You've come before us and given us a good presentation, but there are, I think, many questions that are still outstanding and that haven't been fully addressed. Some of our targets are not being met, and that concerns me. I want to know exactly why, particularly with regard to the consultation process.

I guess what I'm trying to get at is that if we are to do justice to this piece of legislation, I think we have to have you before the committee this time, but probably several other times. I think it's very important that we have this proper consultation. So I would ask you what you see as some of the deficiencies and as things we should be working on, particularly regarding consultation with the communities.

Mrs. Cécile Cléroux: With regard to improving the efficiency of the consultations, I'm sure the ministry will want to be able to have an open discussion with you about the path forward.

As for the implementation of the act up to now, we have been respecting the obligation to have consultation regarding the act. One of the earlier questions was about the time delay involved in putting anything forward. One issue—if I can call it the perverse effect, if that's the right expression—is that when we consult people we need to allow for delays. We are not trying to say that in order to remove the consultation. We believe consultation is a fundamental principle of an act like CEPA, and one that we have to keep. So my comment is not that we should remove it, but only that it creates delays.

We are all learning the best approach for making sure the engagement with different communities and stakeholders is a constructive one that benefits us and ensures that we can really collect the information to be able to act on it, while providing the different stakeholder groups we are consulting with information they can really comment on. It's an ongoing process.

The consultation mandated under the act has been completely complied with. We consult on a very regular basis with different stakeholders; the act requires us to do so at each step. Is it as fully efficient as it can be? There is always a continuous improvement approach to make sure we do our best.

● (1645)

Mr. Paul Glover: May I?

The Chair: Yes, go ahead.

Mr. Paul Glover: I think that the committee, as it embarks on this review, will hear a significant amount about this. When we officials went cross-country to talk with industry, it came up regularly. One of the realities that we heard is that CEPA is not what could be described as “citizen friendly”. It's a rather dense piece of legislation.

The last question is about “CEPA toxic” and what it means when something is inherently toxic but not “CEPA toxic”. How do you rationalize that? They were interested in the broad objectives of the departments of the government and in how well we are meeting those. So where is the reporting on state of health and state of environment?

There are levels of conversation that I think people are interested in, and I would support Cécile's response. We are meeting the requirements of the act. I think what we're finding is that people want different discussions.

The Chair: Thank you.

Mr. Blaney.

[*Translation*]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Thank you, Mr. Chairman and I thank the witnesses for taking part in our meeting.

You've painted quite a complete picture of federal environmental regulations. We know that this is an area of shared jurisdiction. I'd like to know what your perception is of the Canadian Environmental Protection Act, which we are currently reviewing, with regard to gas emissions, and everything to do with air pollution. Do you think that the legislation covers this properly or should it be improved in this regard?

Mrs. Cécile Cléroux: Currently, the Canadian Environmental Protection Act gives us powers that enable us to intervene regarding all atmospheric emissions in virtually all fields. Whether we're talking about so-called "toxic" substances or the emission of more common gases that are part of the elements that we all have to deal with, we feel that the current legislation gives us the powers necessary to take required action to improve the quality of the air that our fellow citizens breathe. As far as this is concerned, it's always possible to improve the legislation, but we do think that we have most of the powers necessary to do our job.

Mr. Steven Blaney: Therefore, the Act does cover this sector well. Of course, it is a matter of shared jurisdiction. Therefore, when it comes to aboriginal communities we're still within the federal family. With regard to water, there is no framework or established standards for aboriginal communities. Could this particular legislation cover this sector?

Mrs. Cécile Cléroux: I will let my colleague from Health Canada respond regarding the quality of drinking water. Do you also want us to address sewage? If so, we will respond to the second part.

Mr. Steven Blaney: Yes, the quality of drinking water and sewage.

Mr. Paul Glover: With regard to drinking water, the standard is the same for everyone. My group sets standards for all of Canada.

● (1650)

Mr. Steven Blaney: But those are recommendations that don't become law.

Mr. Paul Glover: No they are guidelines.

[*English*]

It's a guideline. All the provinces use those guidelines and so do first nations communities.

[*Translation*]

The same guidelines are issued for all populations in Canada.

[*English*]

Mr. Steven Blaney: But there's no enforcement. It's a guideline, so you take it or not.

[*Translation*]

Mr. Paul Glover: That's not correct. There is the system to verify and analyze drinking water on each reserve. That's why we are now aware of the serious problems faced by aboriginals. There is an evaluation process for the implementation of guidelines.

Mr. Steven Blaney: There is a follow-up process, but it is not an act.

Mr. Paul Glover: There is an inspection process.

Mr. Steven Blaney: Has there been any consideration of making regulations to establish a standard on drinking water?

Mr. Paul Glover: No because we feel that the system operates properly. The guidelines are based on science. Every jurisdiction has recommendations and is currently implementing them.

Mrs. Cécile Cléroux: With regard to sewage, work has been underway with the provinces for the past three or four years with a view to implementing one of these famous Pan-Canadian standards. We are on the verge of signing an agreement with all the provinces. This is part of the recommendations that will be submitted shortly to all ministers. With this recommendation, we will be in a position to act in a concerted manner in order to have a common basis throughout the country. There's been much progress in this work, and we're very pleased to see that there is now convergence for all communities in this country.

Mr. Steven Blaney: Through the Canadian Council of Ministers of the Environment—

Mrs. Cécile Cléroux: Exactly.

Mr. Steven Blaney: —there's an attempt to establish a Pan-Canadian standard for sewage disposal.

Mrs. Cécile Cléroux: Yes, for sewage that is disposed of in fresh water streams or in salt water.

Mr. Steven Blaney: Is it necessary to have this kind of measure with regard to air?

Mrs. Cécile Cléroux: There are already Pan-Canadian standards for certain atmospheric pollutants. Others are the topic of discussions. For many years now, there's been talk of taking them one by one and signing agreements throughout the country. The same approach was used both for air and for sewage.

Mr. Paul Glover: Can I add something regarding air?

[*English*]

Is there time?

The Chair: You can take about half a minute, yes.

Mr. Paul Glover: With respect to air, Health Canada contributes to those Canada-wide standards, so they are both environmental and health standards.

Responding to your first question, I'd like to point out there is room for CEPA with respect to indoor environments. We spend 90% of our time in the built environment. It's important for us to look at substances in all of their mediums—not just their emissions to the environment, but also to the built environment.

The Chair: Thank you.

Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): Good afternoon. I would like to welcome all the witnesses.

In section 9 of the Act, it is indicated that agreements related to the enforcement of this Act would automatically expire after five years. It also says that with a three months notice, any agreement with the provinces can be cancelled. What guided your decision on those two points?

Mrs. Cécile Cléroux: The five-year expiry date is linked to the automatic review of the CEPA every five years. It is one of the elements of the review that does not have the scope it should have, because these agreements should last as long as the Act is not reviewed and amended. That is part of the things that the committee should consider and it comes under the prerogative of Parliament. Now, signed agreements that are working expire within the same timeframe and in our opinion that should be changed.

With regard to the three months notice, there is a follow up regarding the application of an equivalency agreement. If the federal minister of the Environment or the Health minister—that hasn't happened yet, but it could apply—feels that a province with which we have an agreement does not apply the same regime or does not provide the service that was expected, it could be amended provided there's a notice.

● (1655)

Mr. Marcel Lussier: You say that the agreements have to be made public for people to be aware of them. Do you think that this was well done in the past? We often took on projects without knowing that part of the jurisdiction had been transferred to the provincial level. Have you had good experiences in the past? Were the agreements well publicized?

Mrs. Cécile Cléroux: If you look at the evaluation, you will see that an outside opinion was sought, which indicates that the process systematically respected legal obligations. I don't know whether these obligations were systematically applied across the board. However, if you look at the obligations as they were intended—

Mr. Marcel Lussier: I'm referring to the public. Is the public well informed of agreements which were signed in the past? You seem to indicate that you want to improve the awareness of the public.

[*English*]

Mr. Daniel Blasioli: Right now the act sets out a very prescriptive duty on departments to publish any potential agreements before they're signed. They're published in the *Canada Gazette* and in any other manner the minister or ministers deem appropriate.

[*Translation*]

Mr. Marcel Lussier: So there has been no change compared to what was done in previous years. The information was published, but not enough and the public was not really aware of the situation.

[*English*]

Mr. Daniel Blasioli: The *Canada Gazette* is not a widely read publication for most people.

[*Translation*]

Mrs. Cécile Cléroux: The information is also published in the CEPA register, which is accessible on the Environment Canada's website. However, these are fairly dry subjects, and unless people are personally affected by them, they don't raise a lot of interest.

[*English*]

The Chair: Thank you.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): To the witnesses, thank you again for being with us today.

We met with Pollution Watch and Great Lakes United last Wednesday. We appreciated their input, as well your input today, primarily focusing as a group on recommendations from the witnesses on how best to do the CEPA review. Your input will hopefully provide that guidance.

Some of the questions that I had have already been answered, but I do have one.

Mr. Moffet, I believe you made a comment that we need to learn to more effectively implement the act. That's where I'd like to ask questions on the effectiveness of the act.

In your experience and in the department's experience, are there conflicts with other pieces of legislation, which would cause it to be less effective, that we need to look at? How would you recommend that we find those efficiencies and effective changes to CEPA?

Mr. John Moffet: When I said that we need to learn to implement the act more effectively, I was speaking in the context of the principle of continuous improvement that Cécile referred to.

The act provides the government with the authority to do things that it wasn't able to do previous to 1999. For example, it requires parties to develop, implement, and publish the results of a pollution prevention plan. That was a brand-new provision, a brand-ew authority. It had been explored by a couple of American states but by no other jurisdiction in the world previous to 1999.

When the government received that authority, it spent a couple of years essentially talking to stakeholders and talking to officials within the government about how to use the provision. In what circumstances would that be a useful authority to use? How would it then relate to other ongoing activities? It took two or three years to sort out.

The department then started to use those authorities. With use, we started to learn the correct assumption, and we could fine-tune it and go in a slightly different direction. There are a range of authorities like that, where we had to start from square one, figure out what it meant, look around at the rest of the world, identify lessons learned, map out a preliminary approach, start to implement it, take stock, and then improve our implementation. I think that is essentially where we are now in year six of implementation of the act.

As to your specific question on whether the act conflicts with other statutes, I think that “conflict” is possibly a harsh word. The act overlaps with other federal statutes, and the act has explicit provisions for circumstances where it overlaps with other statutes.

I'll again draw your attention to the new substances regime, where the act says that if another federal statute provides for an equivalent regime of a notification and assessment, then the government can add that act to a schedule to CEPA. Essentially CEPA won't apply, and the other act will apply. We've done that with a number of statutes.

There are a number of other statutes where we would like that to apply, and we're working with the departments that administer those statutes. Where the other statute doesn't apply and CEPA does apply, you still only have one statute applying. We want to make sure that the agency with the relevant expertise is doing the implementation and using their own statute.

We're not in a situation where we have two statutes applying at the same time with the same obligations. CEPA is very clear that there will be no overlapping obligations. Where one applies, CEPA won't apply at the federal level.

● (1700)

Mr. Mark Warawa: Thank you.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar: Thank you.

I want to go back to the precautionary principle for a moment and actually talk a bit about something connected to that idea of reverse onus of safety. It's something that has certainly been brought up in other jurisdictions. I'm thinking of situations where products have come forward that might be problematic—there might be a hazard or there might be a health concern—but you can't associate direct causality. I guess some of the problems are a result of how different substances combine and have causality with each other in the environment and that is also of concern. In other words, when you have a new substance or a new product that reacts with another one and can become a health hazard, it can be problematic.

If there is precautionary principle, as in a lens that one looks through, would it not then be a logical next step to talk about the reverse onus being placed on whomever? Typically it would be industry. It's fine to say it won't harm me, but prove it. I don't want to wait ten years to find out, as we have in the past.... If you look at any of our bodies right now, we're walking around in an interesting chemical soup. Is it not important here to look at reverse onus to, if you will, be a little more precise in how we implement the precautionary principle?

Mr. John Moffet: Perhaps I can speak to your examples that focus on new products and new substances.

First, let me suggest that it may be that the committee will decide it would be appropriate to ask us to come back and provide more detailed advice on how we implement the new substances regime.

The new substances regime is fundamentally precautionary. The new substances regime says that you cannot introduce a new substance until it has been assessed. In the regulations, it prescribes the information that you have to provide to us in order to enable us to make an assessment of whether there's a risk. It's not quite reverse onus in the sense that it doesn't say that you have to prove; it says that we decide what information we think we need to make that judgment. We don't have to go and get it. If you want to use the substance, you have to give us that information. Then we make the assessment.

● (1705)

Mr. Paul Dewar: I have one other question.

You were talking about other jurisdictions. I referred to "within Canada", that it's important to probably look around and see if we can improve things federally, and if there are good policies at the provincial level, and I hope we would certainly do that. But if we're looking at, for instance, other OECD jurisdictions and at how they've implemented policy using the precautionary principle, or followed the requirement to curtail or limit use of certain substances or products, how do we make a comparative analysis? Is there a tangible way in which...? You know, if new policies come out of OECD or other countries and we say that's really something we should be adopting in our own jurisdiction, what process do we follow in terms of doing that?

Mr. John Moffet: I'm emphasizing the new substances regime. I'll speak to that and the existing substance regime.

The reason I'm emphasizing the new substances regime is, in part, to be frank, because it's easier to address new substances. There isn't a commercial stakeholder in place. People's jobs aren't at stake. People haven't been producing and using these substances. So we can set these rules.

The other reason I'm emphasizing it is because it's widely recognized around the world as the benchmark for new substances. As an example, a number of countries are exploring the possibility of having mutual recognition among new substances notification regimes. Australia, to my knowledge, is the only one that actually has that kind of regime in their statute. To date, the only country's regime that they've recognized is Canada's. So they've looked around the world and said, "Whose assessments would we accept on par?" And they've said "Canada's."

That is to say, our regimes are being looked at by other countries. We also look at what other countries do and we're actively engaged in that mutual recognition discussion around new substances. Those discussions occur at an operational level on an ongoing basis. Similarly, with respect to assessing existing substances, we participate in international activities.

One of the first substances addressed under CEPA was a group of substances that you'll all be familiar with, ozone-depleting substances, CFCs. We didn't do an assessment in Canada. The international community had done an assessment. We participated in that assessment, but we didn't do a Canada-specific assessment. The ministers of environment and health, and then the Privy Council, said "The international assessment that concluded this is good enough for us. We're going to take action."

So we had people participating in the international forum. They brought the information back, and the government was able to act on it. We continue to do that.

Mr. Paul Glover: Just to round that out very quickly, section 75 of CEPA actually requires, on the existing substances side, that we look at decisions of other jurisdictions. So that's something we are obliged to do under the act, and will do regularly, in terms of their assessments.

The other thing I would point to is something a little bit further forward, the results of categorization, where we will have been through all the existing substances and have been able to say these things met a trigger condition that requires us to investigate further. So we will be well ahead of any other jurisdiction anywhere in the world with respect to our existing substances in use in this country and figuring out which ones require further work by governments, cooperatively with industry, and so on.

The Chair: Thank you, Mr. Dewar.

Mr. Godfrey

Hon. John Godfrey: I want to come back to the whole issue of implementation, because you're the experts on that. You're the people who actually have to live with the consequences of this act. If you can't tell us what the problems with implementation are, I don't know how we're supposed to find out—in other words, if we're supposed to go for brown envelopes, or I don't know what.

So I'd ask you as the implementers, are there obvious things that should be changed from a legislative point of view, from a resources point of view, or from a common sense point of view, to make your task easier? Is there low-hanging fruit here? Are there things where, if you could have a drink with me, you'd say, "Oh, for God's sake, if you'd only do this, you'd make it a whole lot easier," or "That's impossible; you're asking us to do the impossible"?

I'm just trying to figure out how we can usefully find out from you, the implementers, what changes, of whatever sort, would really make your lives easier, whether it's regulation or timelines, or "Gee, just do this." If we don't, I don't know what other source of information we can have to find that out. We can't do a good job if we don't understand how the legislative part interacts with the administrative and implementation part.

So go ahead. Break all the rules. Go crazy here.

● (1710)

Mrs. Cécile Cléroux: It would be better, Minister...former Minister, I'm sorry.

You see the lapses that happen. This gentleman was my minister a few months ago. So I apologize to all the members.

When the minister comes in front of you, she will be able to answer those questions for you, with great pleasure, I'm sure.

Hon. John Godfrey: I know what the rules are, but Mr. Moffet says continuous improvement and experience are part of the answer. But surely there must be things—without betraying the secrets of the ministry—common sense things, that you could point us towards. Or perhaps you could put it in the words of other people.

You've done the review, according to page 17, of what stakeholders have said. In your judgment, what useful suggestions about implementation have stakeholders made?

Mr. Paul Glover: May I go back to your comment about the drink and ask if you are buying?

Hon. John Godfrey: I'll buy, you bet.

Mr. Paul Glover: Let's go with some things that are on the public record. I think there have been numerous articles and views about the levels at which the department has been resourced. There is concern from both industry and NGOs that the pace at which we are able to do the work that is necessary is frustrating. Industry would like more certainty, and NGOs would like more action. That is the view of partners.

As bureaucrats, you tell us how much, and we'll tell you how much we can get done. But that is certainly something you will hear quite a bit about as this moves forward.

From a health point of view, I think it's fair to say that our understanding of these issues is evolving. When it comes to implementation, one of the challenges we're facing is the human dimension to this. We're exposed to these things in the products we use, the air we breathe, the water we drink, food, soil, etc. So how do we deal with those multiple exposures? How do we deal with the cumulative effects—and there's new science—and make sure we're taking action that responds to health concerns?

It's fair to say that if the environment is better, health gets better. But there are certain things that are more important to do from a human health point of view than from an environmental point of view, and the science is evolving there. We need to make sure that our understanding under CEPA and our ability to implement CEPA keep pace, and that means different information. You'll hear a lot from NGOs and industry about bio-monitoring. The inability of this government to do that kind of work under CEPA is a problem...and the transparency that creates.

Those are some of the things you will hear, if you haven't already, as this moves forward.

The Chair: Mr. Bigras.

Mrs. Cécile Cléroux: If I can, Mr. Chair....

The Chair: Yes.

● (1715)

Mrs. Cécile Cléroux: All of the members should have received a binder. In the binder you will find the evaluation that includes the management response—the official position of Environment Canada to all of the elements that were outlined in the evaluation. You will also see all of the diagnostics that were done by Environment Canada prior to the consultations that took place—the ones that were referred to earlier in the discussions, which brought us to six cities. So the basic elements that we know should have been put forward are included in those documents, and they are in the binders you should have in your offices.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chairman.

I liked what my colleague from the New Democratic Party said, which was to propose a comparative analysis of the model developed in Canada and what is done elsewhere.

Mr. Moffet, you said that Canada took part in international conferences and exchanged information with its partners. Indeed, section 75 of the Act insists on the fact that we have to share what we know with other countries.

However, in my view, we have to exchange with countries who have raised the bar as high as possible. In that regard, I would like you to talk about the REACH model, which was developed in Europe and which was presented to us last week by some NGO officials.

Given our geographical situation, do you believe that we can apply this model in Canada? Is that possible under our current legislative framework?

Mrs. Cécile Cléroux: I will answer the first part of the question and Mr. Moffet will answer the second part.

As far as a comparative analysis is concerned, every time we propose creating measures, be they with regard to environmental intervention or regulations, it doesn't matter, we must systematically conduct a comparative analysis to see what other countries are doing. This is done automatically in the course of our work. So it's something we are very familiar with.

We deal with issues on a case-by-case basis to find out what was done by which country, whether it's a country of the European community or any other country, and we then explain why we adopted a certain position with regard to the method in question.

I will let Mr. Moffet respond to your question on the REACH model.

[*English*]

Mr. John Moffet: As you can imagine, REACH has been the subject of a lot of consideration within both departments for some time now. One important thing to understand about REACH is that it's not yet in effect. Indeed, we don't know yet when it will be in effect or what it will actually contain when it does come into effect. It has been delayed and modified over many years now.

The current version of REACH would do two main things. One, it would enable the European Union to gather information. Second, it would establish a regime for enabling the European Union to manage the risks from certain substances—not all substances, but some substances.

I think what is important for members of the committee to consider is that Canada has already gathered most of that information. We've gone beyond half of REACH. We've already got the information. That's why, when I responded to Mr. Godfrey's question earlier, I said the real issue now is what to do with that information. And in terms of the authorities within CEPA, are the authorities within CEPA adequate to allow us to do what you want us to do with that information?

I come back to the breadth of authority that's provided to us. We can do a lot with that information. Really, what we need to do is to develop an appropriate strategy so that we can use that information and improve the way we manage risks from chemicals in Canada.

So we don't need the REACH authorities. If we were starting from the same place, maybe the REACH information-gathering authorities would be a useful model to look at, but we've gone beyond that. We need to ask, what kind of authorities do we need, and what kind of implementation strategy do we need, to act on the information that we actually already have and that Europe is nowhere near obtaining?

[*Translation*]

Mr. Bernard Bigras: Have you received complaints from our southern trade partners, that is, the United States, as far as the Canadian Environmental Protection Act is concerned? Have you raised complaints from other quarters under the Free Trade Agreement or under other agreements?

● (1720)

Mrs. Cécile Cléroux: Unfortunately, we don't have that information with us. But we will get it and provide it to you then.

[*English*]

The Chair: Thank you very much.

I'd like to just remind committee members that if they don't have their binders, the binders were sent out today. They should be back in your offices, certainly by tomorrow.

I also want to suggest to Mr. Glover, going back to his response to Mr. Godfrey, that if he is going for a drink, probably the entire committee should come. But each member will pay for their own, just under the new legislation....

Voices: Oh, oh!

The Chair: Also, when I look at page 9, I guess a couple of things jump out at me. Perhaps committee members would suffer through these with me.

Under areas of intervention, I see “Disposal at sea”. Of course, I immediately look at your chart and say “enforcement”; I'm thinking Bill C-15. Where does CEPA fit with something like that?

Then I look at “International movement of all wastes”, and I think about Toronto.

Then I hear you say that the entire bill should be “citizen friendly”, and I think about the two issues I mentioned as examples of how CEPA could be friendly. You'd be talking about things that people care about—about air, about water, about things that go in our oceans, about the million seabirds that show up dead in Newfoundland every year, about the 416 truckloads of garbage that go across the U.S. border every day. These are the kinds of things, it seems to me, that, put into CEPA and talked about in CEPA, would certainly make it much more user friendly and let Canadians communicate with you much better about that.

That's just something I picked up on as you talked about citizen-friendly legislation.

To our guests, thank you for being here. I'm sure we'll have you back.

Thank you.

The meeting is adjourned.

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