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Wednesday, May 17, 2006

Chair

Mr. Bob Mills

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● (1540)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): Order.

Just to bring everybody up to date, we are looking at a CEPA review, which is mandated. We've decided as a group that the way to do this is to listen to an overview of the issues around a CEPA review. So we had the NGO group one day last week; we had the officials on Monday; and today we have industry representatives, who are going to give us their overview of where they see us going. Then the committee as a whole will meet and plot our course through the rest of the CEPA review the week we get back here. So this is where we are at this point in time.

As well, I would mention to the members—and we'll see that the members who aren't here now will be informed of this—that a British delegation will be coming on the 30th, a group of five parliamentarians plus the Minister of Environment, who would like to talk to us about the whole issue of climate change, and so on. I would ask you to give consideration to attending those meetings, and we'll see that the members who aren't here get those invitations as well.

Anyway, I'd like to welcome our guests. For your benefit, if you didn't know exactly where we were going, we're looking for an overview, so I'd ask you to keep it as brief as you can and give our members a chance to ask the questions they would like answered.

I'm not sure of the order. We can go in the order you appear on the agenda.

Gordon, would you like to go first?

Mr. Gordon Lloyd (Vice-President, Technical Affairs, Canadian Chemical Producers' Association): Thank you, Mr. Chair.

I would like to thank the committee, first of all, for the opportunity to participate in the review at this early stage. We hope we can be helpful to you in figuring out what issues you should focus on.

Today you'll hear from me, representing the Chemical Producers' Association; Justyna Laurie-Lean, representing the Mining Association; and Shannon Coombs, representing the formulated products industry. This will give you some perspective of industry views on CEPA and the review process, but there are a number of other groups you may want to hear from later and who will probably want to talk to you. The steel producers wanted to be here today, but that didn't work out.

I'll be talking to you about issues that CCPA raised in a brief that we sent in on November 25, just prior to the election, when the predecessor to this committee set up a scoping committee to look at the same issue you're looking at now. CCPA will also be sending in an additional brief with more points, some of which I'll cover today. You'll be getting that shortly—hopefully within the next week or so.

Justyna Laurie-Lean will be commenting on some key issues for the Mining Association. She'll also be touching on the breadth and scope of CEPA, which is a critical issue to look at in the review. Shannon Coombs will be looking at issues that are key for the formulated products industry.

From CCPA's perspective, we want CEPA to support our members' continuous improvement in environmental health and performance. That improvement is primarily driven by responsible care, which I hope all of you have heard something of, and which I'll speak a little bit about in a minute, but we also need supportive, effective legislation.

But first, let me just touch on responsible care. This is a set of initiatives started here in Canada by the Canadian Chemical Producers' Association in the 1980s to meet public concerns about chemicals and their impact. We feel it's been very successful; it has spread to 52 countries around the world and has been recognized in a number of international statements. I think it is something that we in Canada can be quite proud of.

In Canada, responsible care means that our 65 member companies operating across Canada make safeguarding employees, the environment, and their neighbours a primary concern. I think an example of the success of responsible care is the charts that I provided to the committee, which I think you have before you. These are an extract from our *Reducing Emissions* report, which we publish annually. I've got our website on there, too, if you want more information.

As a sample, these charts show the progress our members have made in reducing overall emissions of greenhouse gases and smog-producing volatile organic compounds and NOx. Overall, I think it's important to note that our emissions per unit of output are down 85% since 1992. So we're making more, and having less emission, which is what we think is the key to sustainable development.

We think we have a good track record and we've made efforts to try to demonstrate the good and the bad of that track record through this *Reducing Emissions* report, but we do want to do better and we know that we can and must do better. And we're looking for legislation that will be effective and supportive of our efforts in that direction.

In the brief we sent to the previous committee last November, and which I'll now talk to very briefly, we raised seven issues that we hope will be addressed by this committee in its review of CEPA. I'd just like to touch on these issues.

First of all, we think that the review should be focused on the very few problems that have been identified with the very little experience with the act so far. We feel a major rewrite at this time would be premature, given the limited experience we have with CEPA 1999, and that it could actually hinder environmental performance by causing disruption and confusion at this time.

As an example of this, I'd like to talk of the DSL categorization and screening activity that CEPA 1999 required. This has been a massive effort so far by government and stakeholders, which has gone on for six years. We in Canada have invested heavily in this world-leading projects. Categorization is the first stage, and it's going to be completed this September.

CEPA also requires a second stage—screening risk assessments—to follow up on categorization and to use the information from categorization. We urge the committee to see value in bringing both of these to completion, the categorization and the screening assessments, and not to change course midstream on this important initiative.

Our second point concerns the decision of the prior government to look at using part 5, the toxic substances part of CEPA, to manage climate change. In our view, other parts of CEPA could be used outside of part 5, such as the international air pollution provisions, or possibly the clean air initiative announced by the new government.

We see greenhouse gases as a staple of life, and we just don't think it's appropriate for them to be regulated as toxics under part 5.

Furthermore, we think the term “toxic” generally has caused a lot of stigma for products in a wide range of areas. There's a wide range of risk management options under CEPA, and to stigmatize all products that fall under these as toxic we think has led to a lot of confusion. We hope the committee will review that aspect of the act and look at removing the term “toxic” from it. Shannon will be talking about that in some detail.

There is a fourth point we would like to raise, which is very narrow, perhaps, and technical, but we think it's important. CEPA requires establishing so-called limits of quantification for the substances that are subject to virtual elimination. This requirement applies even when we think it should be unnecessary—for example, when those substances are only there as irrelevant trace contaminants in a product. We believe having government, industry, and environmental groups spend the resources on figuring out and looking at the issues around what the limit of quantification should be in those cases is unwarranted. Setting those limits should be left to situations where they are needed.

A similar problem arose in the same context when the international Stockholm Convention was negotiated. It looked at persistent organic pollutants, which is a similar group to what would be subject to virtual elimination in Canada. They adopted a solution that was accepted globally and that we hope will be looked at in this review and incorporated in CEPA.

A fifth point that we'd like to see the committee look at is the administrative duties in the act. We think these need to be strengthened so that Environment Canada and Health Canada actually stick to the rules and what they're supposed to do. For example—and we'll talk about this in more detail in the next submission we send to you—there are user fees for new substance notification regulations that we feel are completely inconsistent with the User Fees Act, yet we can't get Environment Canada to move on that. We'd like to see that issue addressed in the review.

As the sixth point, we think Canadians need better information on health and environmental issues in the country. This is necessary to make the decisions that have to be made as we move forward. We believe the act should require state of the environment and state of health reporting. This will require additional resources for the department. One area in particular that we would recommend is that Health Canada get resources for bio-monitoring, population surveillance work, and the communication of those results.

The last point, which we raised in the brief we sent to you in November, is that the timeline for the CEPA review probably should be lengthened, perhaps to ten years. We just don't think that the five-year timeline that is currently in operation makes sense. There just isn't enough experience from the last review to be able to have a sound review this early.

Since we sent you the brief in November, an additional issue has arisen that we would like to look at, and that's the government's commitment to improve Canada's air quality, which CCPA absolutely supports. As we see it, this could be done under a clean air act or possibly under CEPA, outside of the part 5 toxics provisions. CCPA could support either approach. Maybe the most straightforward way would be to use CEPA, although some amendments may be required. Maybe it would be better to have a clean air act. We want to make sure the committee looks at this issue; in particular, we want to make sure there's no legislative overlap that results, because we believe that would be a problem.

Also, I think a clean air act will require working more closely with the provinces in a wide range of areas. We believe the committee should consider whether the equivalency provisions that currently exist in CEPA will hinder that work. We particularly welcome questions on that issue.

Those points are all covered in the note before you.

One last thing I'd like to raise, and it follows up on the presentation that Environment Canada gave on Monday, is that we believe you should look at the new substance regulation provisions—provisions similar to what Australia has—and the ability in the legislation to recognize assessments of other jurisdictions. We think that's an approach that recognizes the need for international cooperation and work-sharing in the assessment area, and we think adding that flexibility to CEPA would be a good idea

● (1545)

Those are CCPA's recommendations for what we think the committee should be looking at in its review. I'd be pleased to answer questions. As I said, we'll be providing an additional detailed brief in a few weeks.

I'd now like to turn to my colleague Justyna Laurie-Lean, who will talk about some of the issues for the mining sector.

Thank you.

● (1550)

Ms. Justyna Laurie-Lean (Vice-President, Mining Association of Canada): Thank you.

To start with, I won't go over who we are. It is included in our written brief, and you can read that later. I'll discuss just the key points.

First, CEPA does affect our industry. It affects every aspect of our industry. That starts with the source material that we ship, that we buy, the kinds of reagents we use, the operations themselves, and the downstream products, the market itself. We've observed that the effect of CEPA has grown over the last decade. Based on its current structure and developments, we expect that growth to accelerate in terms of impact.

The scope of CEPA is very broad. Most people focus on the management of substances part, but there are many other parts, including fuels and engines, transboundary movement, pollution, and federal lands. Our industry is impacted directly by parts 3, 4, 5, 7, 8, and 9, so several parts of CEPA.

One thing is very easily overlooked. When most people think of substances, they think very narrowly in terms of chemicals, that it is, for instance, a brown liquid in a flask, whereas the definition of a substance in CEPA applies to materials as well—the things you sit on, write with, are surrounded by. All that is considered a substance under CEPA, as are releases from a specified type of source. So it's a very broad definition, and therefore the substance management part has a very broad application.

In terms of our experience, one thing we note is that there does not seem to be a shared view among everyone about what is the role of CEPA. Some perceive it as a safety net. That expression has been used quite a lot. Others see it as a foundation that supports other legislation across jurisdictions, or as an overarching national legislation. In your review, as you're considering what, if any, changes are required in how it's functioning, you need to be clear on which role you wish CEPA to play.

There's also a lack of clarity and a lot of tangling in terms of how CEPA interacts with other federal legislation—for example, the Environmental Assessment Act, the Fisheries Act, the Hazardous Products Act. As well, how does CEPA relate to provincial legislation? Provincial environmental legislation tends to work in a different way, through things like operating permits, and therefore it is sometimes very difficult to see how they fit. They address sometimes the same issue or the same facility but from a different angle. Understanding that would be very helpful.

In practice, what we see is that at this time very few people understand CEPA and know it, and know all the parts. There are some who are experts in a particular section, but very few actually have an understanding of how the whole act is intended to work.

The act is not fully implemented. There are sections or areas that are yet to be interpreted. Even those that have been interpreted and applied haven't been tested. There may be one or two examples, or the outcomes are still not clear. So it's very difficult to say what is working well, what isn't working well, and whether any shortcomings flow out of the legislative structure or flow out of the implementation.

What concerns us is that we're observing a trend beyond CEPA. I had the great privilege of attending many of this committee's hearings during the review of CEAA. I was extremely overwhelmed by what a wonderful job you did. That came into force in October 2003, and we're waiting for the implementation. Hopefully it will happen before the next review. There was a similar experience with SARA.

We're hesitant here in terms of rushing to make recommendations about how to improve CEPA. Will it be a further setback to implementation as people go back and try to interpret? We're really torn, in approaching this review, on what to recommend to you.

We have a wish list of areas that we think you need to think about and that we would like to see. Obviously for us, clarity, predictability, and consistency are extremely important for as broad and as important an act as CEPA.

● (1555)

Clarifying the role of CEPA in the overall system, federal and provincial, of environmental legislation and health protection law is very important. We would like to see an act that not only permits but encourages complementarity or mutual support among the various pieces of legislation and between the two jurisdictions as well as minimization of conflict and inconsistencies, which are not helpful to the environment and not helpful to industry.

On a more specific note, it would be very good for us to have clarification of the relationship between the use of the word “toxic", the definition in section 64, and the role of schedule 1. A lot of people hear the word “toxic” and think of schedule 1 or substances so labelled as particularly damaging mega-uglies. Yet when you look at the definition or the criteria set out in section 64, they're a floor on which any substance that could potentially be damaging in some way to either the environment or health could be captured. So there's an inconsistency there, which makes discussion of how it should be used very difficult.

Another point we would make is we would like to see a refocusing of emphasis on real outcomes, as opposed to process. We have seen a tendency to focus too much on process: on having an instrument, on a discussion of what type of instrument, and not sufficient emphasis on the actual outcome in the environment, in human health protection that we wish to accomplish. Part of that has been a real reduction in monitoring and reporting on the state of the environment. We have not seen a state of the environment report in many years. Some of the information is available, but it appears to us that in assigning limited resources to discharge mandatory process obligations, the government has chosen to cut back on monitoring and reporting. Yet how can we make decisions, and how can we judge whether the act is working and what more we need if we don't have any information or good enough information for us and the public on whether the state of the environment is improving, where it is not improving, what needs to be done?

In that context, we need to keep clear the role of industry versus the role of government in generating information. Industry can provide and does provide information on releases from our facilities. We monitor impacts on the environment around our facilities, but we cannot provide baseline data on the overall Canadian environment. We're not going to take blood samples from Canadians. Those sorts of things have to be done by government, and the interpretation and analysis and trend-watching has to be done by government. It cannot be done by us.

The final thing from our industry perspective: We would ask you to keep in mind this broad range of substances that needs to be addressed and is addressed by CEPA. Our industry deals with inorganics, as opposed to organics, and many people think of dioxins and furans as chemicals that need to be addressed. The kinds of substances we deal with are very large in volume, but very small in number. Not many elements have been invented and put into use for thousands of years, and they're applied in a very wide range of applications. A lot is known about them, and a lot of field data is available.

The kinds of exposures in the environment to environmental organisms or to humans have many different pathways and sources, some of it natural, a lot man-made; it's very difficult to study just one thing. For example, the hazard criteria used to identify organics at the highest concern, like persistence and bioaccumulation, are not very good criteria when applied to our types of substances, because they don't differentiate between high hazard and low hazard.

● (1600)

I'll stop here.

The Chair: Thank you. Our members will have questions.

Ms. Coombs.

Ms. Shannon Coombs (Executive Director, Canadian Consumer Specialty Products Association): Thank you very much.

Good afternoon, Mr. Chair and members of Parliament. It's a pleasure to be here today to discuss the two key issues for our industry sector pertaining to your review of the Canadian Environmental Protection Act.

My name is Shannon Coombs, and I'm the executive director of the Canadian Consumer Specialty Products Association, but I'm here today representing FPIC, the Formulated Products Industry Coalition. Our unique industry coalition of 15 trade associations was formed in 2001 due to the Food and Drugs Act being subject to CEPA.

FPIC member companies provide food, personal care products, household cleaners, cosmetics, medical devices, and pharmaceuticals to Canadians. Collectively we represent 750 companies. We comprise a $66-billion a year industry, and employ over 375,000 Canadians. A list of the members of our association is in our submission.

So why are we here today, and why are substances in the Food and Drugs Act subject to CEPA? CEPA is the legislation that governs new and existing substances in Canada. In 1999 parliamentarians requested that CEPA be the safety net for all environmental assessments of substances. In section 81 of the act, there's a requirement for other acts to have a pre-market assessment to meet or exceed CEPA's environmental assessments. Other acts had two years to meet that requirement, and if they did they were scheduled for exemption under CEPA. If they did not meet the requirements, then CEPA would be the act to govern environmental assessments.

Other acts, such as the Seeds Act, the Fertilizers Act, and the Pest Control Products Act, met CEPA's requirements and were scheduled for exemption. The Food and Drugs Act did not meet the requirements of CEPA; therefore environmental assessments for substances in Food and Drugs Act products were subject to CEPA's regulations—the new substances notification regulations.

We've been working under this regime for the past five years, and we're satisfied that CEPA is the most appropriate legislative authority for these substances. However, when Food and Drugs Act substances were captured under CEPA, it left in limbo a list of approximately 9,000-plus substances that have been used safely and effectively by Canadians for almost 20 years. These substances are in limbo because they're considered to be new, and not existing, under the act. This needs to be remedied. I'll refer to these 9,000-plus substances in the rest of my presentation as the in-commerce list.

Since most of our member companies have never been subject to anything other than rigorous pre-market assessments and/or notifications under the Food and Drugs Act, being subject to CEPA was new and challenging. Despite a learning curve, FPIC has recognized that CEPA's systems and regulations provide predictable and rigorous submission reviews to member companies and protection to Canadians and their environment.

I know that you'll hear numerous issues about the act from other stakeholders, but FPIC is requesting the committee to consider two key recommendations for improving the act. They would provide legislative clarity that only Parliament—you—can provide. They are as follows.

First, we would like the in-commerce list acknowledged as a list of existing substances under the law by creating a provision in CEPA to recognize them as such. You're probably asking yourselves what's on the in-commerce list. There's quite a range of substances, including pharmaceutical actives, cosmetic ingredients such as extracts, surfactants that are used in disinfectants, food colourings, flavourings, lard, starch, kiwi essence, oil of lemon, etc., just to name a few.

Why do we want to have them treated as existing substances? The substances and products have provided and continue to provide benefits to Canadians. They've been in commerce for almost 20 years—clearly they're not new but existing—and it makes sense. To ensure there is a mechanism for the in-commerce list to be treated as existing substances, just as they are on the domestic substance list, we're suggesting that the government categorize or prioritize—whatever word you want to use—the in-commerce list, and then, if needed, provide screening-level risk assessments.

I believe the officials from Environment and Health Canada provided an overview of the categorization and screening of the domestic substances list, as did Gordon in his presentation. Treating all existing substances the same also makes sense.

I'd like to turn to the issue around the use and meaning of “CEPA toxic”. FPIC is requesting the committee to consider removing the word “toxic” from the legislation so there is clarity and understanding with respect to how substances are assessed and managed in the act. If the risk assessment of a substance meets the definition, it's placed on schedule 1, and then some type of management for that particular use is evoked.

As stated in our submission, the challenge is the misunderstanding of the term “CEPA toxic”. CEPA toxic substances have been misinterpreted as being intrinsically toxic, i.e. poisonous and/or lethal. I will give you some examples of substances on schedule 1 that cause some confusion.

First, CFCs destroy atmospheric ozone and are toxic to the environment but they're not toxic to humans, which is why they're still used in asthma inhalers, for example.

● (1605)

Two, ammonia is on schedule 1, but it is only CEPA toxic in the environment from ammonia traces found in waste water effluent. This substance, of course, is used in numerous other applications, such as fertilizer or glass cleaner. They've become targets because of the listing of CEPA toxic and the misinterpretation.

Carbon dioxide, which we also mentioned in our brief, is on schedule 1, so that greenhouse gasses can be managed. But carbon dioxide is not intrinsically toxic, as we all rely on it to breathe.

Clearly the challenge around the term “CEPA toxic” is the misunderstanding that prevails and the actions that stem from it. Groups often target products that may contain the substance, apply the label of “CEPA toxic” to all the uses of the substance, and alert Canadians to a risk that's not a risk. They've all been instances of provincial authorities making procurement statements regarding CEPA-toxic substances, stating that products cannot be purchased if they contain schedule 1 substances.

If the term is removed, we believe it will provide clarity in the act, and we believe it will increase the credibility of the act as well.

Is there anything that CEPA can do better? Always. CEPA is a huge piece of legislation, and imbedded in the act are the pillars of the precautionary approach: science-based decision-making, sustainable development, risk management, and pollution prevention. And if anything, increasing the communication to Canadians about the successes of this act and how it provides protection for Canadians is in everyone's best interest.

For example, as Gordon mentioned, the categorization and screening of the domestic substances list is a made-in-Canada program. Other OECD countries have programs in place, but Canada is definitely in the lead. And this September, the first phase, the categorization, will be completed, which is a major achievement and one that I believe Canadians should know about.

If anyone has any questions on that, we'd be happy to answer them.

The Chair: Thank you very much.

We'll start with Mr. Holland, please.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you so much to each presenter for coming today.

A common theme through all the presentations was this issue of the term "toxic". It's obviously an issue of concern for each of you, and I just want to explore it a little bit.

If you were to remove the term "toxic", what are you suggesting it be replaced by? Or are you suggesting that these substances then not be listed as anything, and so remove the title and simply remove that categorization entirely?

I can understand the concern that if there are certain products that include substances that are deemed to be toxic, they're not going to be purchased or utilized, and that impacts on market share. But when you have something like CFCs, which clearly do have toxic implications for the environment, although maybe not for individuals personally.... Or take carbon dioxide, which of course is in pop, but by the same token if you have large amounts of it, it's obviously toxic.

It's a question of amounts. How do you deal with these substances, which can be toxic, depending upon their application? What are you suggesting we replace that with?

Mr. Gordon Lloyd: I'll try first.

In the last government there was a bill that was introduced as part of the budget, which was sort of a strange process—to deal with a definition in CEPA as part of the budget bill. But that almost solved the problem. The proposal was to not call them anything. There was a lot of debate about what they should be called, and the best way to get around that was just to refer to them as substances on schedule 1.

Why I say it almost solved the problem is that there was one area where it left the definition "toxic" unchanged. The word "toxic" was left in the section dealing with virtual elimination.

The way it was done, the term "toxic" for virtual elimination would no longer have been tied to section 64, which is the risk base of the statute, and "virtual elimination" could then have been interpreted as changing from a risk-based approach to a hazard-based approach, which our association strongly objected to. So we, and I think others also, opposed this change.

I don't know why the government didn't want to make that additional change and also change it in section 65 at the time. If the committee wanted to look at that solution, I think it almost made it. It would just have required referring to substances on schedule 1 in section 65 as it did in about a hundred other sections in the change.

There's also an associated issue of some references to "toxic" in the preamble. And if "toxic" isn't in the rest of the bill, then what would the preamble refer to? I think that could be solved by, again, the preamble referring to substances on schedule 1. Environment Canada lawyers, when we discussed this with them previously, thought that was inelegant. I'm not sure if it's elegant or inelegant, but it would certainly have been clear.

So I think there's a fairly straightforward solution that was almost arrived at before, and that solution would be worth looking at again, but avoiding the errors that I've just described.

● (1610)

Mr. Mark Holland: Okay. Maybe you can help me a little further on this, because I understand, on one hand, why you're concerned with this, but on the other hand I don't.

If you don't call them "toxic", and you simply say they're "substances", under schedule 1—which, again, doesn't mean a heck of a lot, if you're going to take these substances and you're going to give them a categorization of "toxic"—what does that specifically do in each of your instances?

And Ms Coombs, you alluded to that a bit, but why does this particular label cause angst, for example, to the two other presenters, Mr. Lloyd and Mrs. Lean? What is the problem with it? Whether it's called "toxic" or "substances" under schedule 1 seems like a rather semantic thing.

Ms. Justyna Laurie-Lean: Section 64 covers substances with very different types of issues. Some are of concern to human health in even very small amounts. Some are of concern if released in very large volumes, or if not managed properly, or can be damaging to the environment in a broad sense, but not to the immediate environment. Schedule 1 and the label "toxic" don't differentiate among these characteristics, and that causes confusion. Take, for example, something like ammonia, which has certain useful applications and is of concern only in particular circumstances versus things like dioxins and furans.

So it's a label that covers such a broad range that it doesn't communicate very much, and it can lead people to make assumptions. It makes discussion on how to manage things very difficult, because people tend to assume that everything on the list needs to be managed. For example, for our sector, releases from smelters—they're defined in a particular way—are on schedule 1. How do you compare those to a very specific substance that is used in a food product? You can't, yet the label seems to apply to the whole list, and most people interpret the label in a certain way.

Ms. Shannon Coombs: Just to clarify for us, when a substance—for example, ammonia—is placed on schedule 1, there's no context provided. It's on the list; it's on schedule 1 because a risk assessment has been done about a particular use that has warranted its being placed on schedule 1, meaning it needs to be managed. When something's on the list, all of its uses automatically, across the board, are deemed CEPA-toxic, when in fact they're not.

Mr. Mark Holland: Thank you for that explanation.

I'd like to move off that for one second and ask, Mrs. Lean, about the comment you made with respect to industry being responsible for monitoring on-site impacts and monitoring implications of various activities on site, but off site—and you've given an example of taking blood samples—not being responsible. Can you try to define a little more clearly how you see that? In other words, what do you see as the responsibility of your industry to monitor its activities and the implications of its activities, both on its site and then, say, in the surrounding community? Where do you draw that line? There's an important distinction.

Ms. Justyna Laurie-Lean: I'll give you an example. One of our members has a program with the community, the province, and a local health authority that involves a children's blood lead monitoring program for the surrounding communities. It's one of the few areas in the country where there is very good data on what the trend has been in children's blood lead. But they're not going to take samples or engage in monitoring in, say, Halifax, at the other end of the country. That isn't their role, and doing so would be completely inappropriate.

So yes, you do take responsibility where your impacts are, whether they are caused by your operations or your products. You do take responsibility, and you can generate information, but you can't generate information on background. You may, for example, want to know whether certain species are recovering or healthy or being impacted. And it may be that unknown stresses or substances you didn't even think about are at play. As Canadians, we need to know that kind of background information and whether the overall trends are improving, decreasing, and so on. You can't look at just the industry, because industry's not the only cause of the problem. So you need to look at both.

● (1615)

Mr. Mark Holland: In terms of defining the limit of where the boundaries for industry are, who do you see defining that limit? Do you find the government setting that line and determining what your responsibilities are as industry, and on the opposite side, determining what its responsibility on the government side is to categorize that kind of data?

Ms. Justyna Laurie-Lean: In practice, it's usually fairly evident, and usually defined by provinces. It's part of operating permits or particular regulations where there's a definition of upstream, downstream, and sampling points. Most of the impingement and ambient monitoring is defined in the operating permit, and there's usually an agreement where you're going to do it and sign off on the sampling point.

So there are processes already; that has never been an issue. It's the gaps in-between that aren't there, particularly on diffuse sources. If you look at the national pollutant release inventory, it only has information on releases from point source facilities, or from defined operations. It doesn't have information on, for example, roads, road dust, or any of those kinds of sources, or car or vehicle emissions, because those are not the sorts of things that an individual consumer is going to go out and measure—for example, their tailpipe—and report.

Those sorts of estimates have to be done by government, and the monitoring of air quality in the city has to be done by government.

The Chair: Thank you.

Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chair. I will be sharing my time with my colleague, Mr. Lussier.

Today, I want to focus on part 5 of the CEPA, with particular emphasis on section 71. Under the current legislation, if I understand correctly, both the public and the government are responsible for proving that a substance is dangerous. Subsection 71(1)(c) stipulates that the industry must carry out tests, but it is abundantly clear that this section has rarely or never been applied. The reports and submissions that I have received say that the government has rarely implemented these sections, and when it has, it did so on a voluntary basis.

We often talk about the effectiveness of the CEPA and say that the act's effectiveness correlates to the financial resources that are allocated to it. Do you not believe that the time has come to reverse the onus of proof so that the industry is forced to demonstrate that a substance is safe? From what I gather, the act does indeed contain requirements, but the government does not apply them.

[*English*]

Mr. Gordon Lloyd: If I could, I'll respond to that.

I think you have to look at this in terms of the way the legislation divides things up. There are the so-called new chemicals, which are ones that have come about since the new chemical notification requirements came into place in the late eighties. Under those requirements, industry has to provide information to the government for making the assessment, and it's information that the government determines is necessary for assessing whether the substance is safe. So that's almost a reverse onus. It's not quite a reverse onus, because it's not industry proving it's safe, it's the government making that determination.

Now, would it be better that industry made the determination, or government? I think the public probably will have greater confidence in the government making a determination that the substance is safe, based on the data, than in industry making that determination. And I believe that's really why it doesn't go all the way in terms of reverse onus. But we are required to give the government the information it needs to make that decision, and if we don't give it enough, it can ask for more.

So that's the regime for so-called new substances, and that's basically how it works in other jurisdictions, as well.

For existing substances, there has been, in Canada and in other countries, a legacy of substances that were around before there were requirements to notify and establish the safety of new chemicals, and that's what the DSL categorization and screening is intending to address.

We have been giving the government information at the categorization stage. They've also been using modelling information. And we will give government further information as they determine they need it for the chemicals that need to be assessed at the screening risk assessment stage. I think other countries will eventually take a similar approach, but we are ahead of them.

So that's how I understand that the system is working. I think it works very well for new chemicals, and I think that five years, six years, or ten years from now, we will look back on the experience with the categorization and screening and hopefully come to the conclusion that it also worked well in this area. It is just starting in the existing chemicals area. But we are far ahead of any other country in that respect.

I hope that helps to answer your question.

● (1620)

[*Translation*]

Mr. Bernard Bigras: Mr. Chair, I would like to ask one last question.

The process has to be made as transparent as possible. I have read several submissions. I have one here that was submitted by the Groupe Intersol on March 15, 2005. The authors insist that information must be disseminated more widely to the public.

Do you not believe that the industry should be subject to requirements so that it meets a certain number of criteria regarding the collection and dissemination of information before the data is classified as confidential? One thing is true, not all data is always available to the public.

If I understand correctly, to achieve this, the Canadian Environmental Protection Act must be amended. At the very least, do you not believe that information should be made more accessible to the public before data becomes confidential?

[*English*]

Mr. Gordon Lloyd: This is a complicated issue that is getting looked at internationally. Globally, the chemical industry is becoming more forthcoming in providing data on chemicals. There are limits to that, and we do want to make sure that confidential information is protected.

Even if the information isn't confidential, there's also an issue of a particular company going to the expense of generating the data—which could run into millions of dollars—and providing it to government. Should that information become publicly available? The concern isn't that the public gets the information, but that another company gets it and free-rides at the expense of the original company.

There are conflicting issues here. In Canada and internationally, we are moving increasingly towards more of this information being public, especially in the high production volume chemicals area. For the most part, this is being led in the U.S. and largely stimulated by pressure from environmental groups that say they've done literature searches and find little or no information on chemicals being used in huge volumes. Companies replied by saying it's not that we don't have the information, it's just that it's not in public data banks. Similarly, through a U.S. challenge program that's now more broadly accepted within the OECD—Canadian industry is also participating—and through the International Council of Chemical Associations, more data is being made publicly available.

We are moving in that direction. There's a definite boundary we don't want to cross regarding confidentiality. Then there's the other issue I raised about fairness—not of the public getting information, but of another company free-riding.

● (1625)

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): I will shorten my preamble in order to respect my time limit.

Mr. Lloyd, I looked at the graphs, and I congratulate you, because I see that there has been a reduction in emissions. According to your figures, it would seem that there was an 85% reduction in emissions production. Therefore, you must not have any problem with the goal of making a 35% reduction, which is the goal that the government must reach.

Were factory shutdowns a major factor in the 85% emissions reduction? In addition, what explains the sharp drop that we see on the graphs for 1998?

[*English*]

Mr. Gordon Lloyd: First of all, I want to make it clear that it's not an 85% reduction in emissions. It's on an intensity basis. The number I've shown in this graph is emissions going down and production going up; that's how we get the 85% number.

How big an issue are shutdowns? That has been a factor in this, but I don't think a major one. The graphs you have are probably too small to see, but starting at 2000, there's another curve. We actually reviewed this issue. We have a memorandum of understanding with the federal, Ontario, and Alberta governments. British Columbia is about to join, and there are also environmental groups that participate. They asked us that question a year ago, and we worked with them in answering it. We came up with the solution of the other line in these charts that tries to show from 2000—we went back that far—what the situation was when we take out companies that are no longer CCPA members because they shut down operations.

Obviously, our improvement isn't as dramatic because part of the improvement is related to plant shutdowns, but I think the improvement still continues. This is an issue we looked at with a stakeholder group and are trying to portray in our graphs.

I hope that answers the questions.

[*Translation*]

Mr. Marcel Lussier: What about 1998?

[*English*]

Mr. Gordon Lloyd: Ahh....

Mr. Marcel Lussier: Why is that slope there?

Mr. Gordon Lloyd: I can't answer that. I can give you some guesses, but I'd rather get back to you after looking at our data more.

It depends on the substance. If you look at the specific NOx charts, that didn't exactly happen in 1988; in some of the others, it did.

I'd rather get back to you with a more precise answer.

The Chair: Mr. Lloyd, if you do have other information, other members may want to have that. Please get that back to the clerk.

Thank you.

We will go on now, please.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thanks, Mr. Chair, and thanks to our witnesses.

I just wanted to touch on this graph for a minute. Do the companies that either left the CCPA or went out of business need to be factored in here? While we struggle with numbers and accuracy of the trends—and it's clear there's some sort of trend happening—can you provide us with this graph with those two factors included?

Mr. Gordon Lloyd: Yes. As I was trying to explain, we actually have done that.

I have a bigger graph in front of me that may be clearer. If you look at the graphs, starting at 2000, there's another line and that takes that into account. If you look, for example, on the NOx graph, it continues to trend down after 2000; it's not as dramatic a trend in the second line. It's similar on the VOC graph.

We backcast to 2000. As I said earlier, that was in discussion with stakeholder groups—how far back we do this. The feeling was that it was worth the effort to take it back to 2000. So we've addressed that.

● (1630)

Mr. Nathan Cullen: I have a question for Ms. Laurie-Lean.

You talked about the government cutting back on monitoring and reporting. How critical are those two aspects to your industry's level of certainty and the ability to invest?

Ms. Justyna Laurie-Lean: I wouldn't say it's necessary to our ability to invest so much as it is to have a well-functioning, long-term act and legislative structure. When there is no state of the environment reporting, the interpretation of trends and the interpretation of where we're going basically becomes subject to stakeholders. So it's my interpretation or some other activist's interpretation—we all have our little biases. Without that factual basis, it's very difficult to discuss. We can say that things are getting much better or we can say that things are getting much worse.

I think the state of the environment report, the indicators, and the overall focus on outcomes are important. We have had the frustrating experience of spending three years in a discussion of what instrument should be used without ever knowing what objective was to be accomplished. We found it very difficult to say what instrument should be used when we didn't know where we were actually trying to get to.

In that context, I think it would help the discussion and help our decision-making. How can you make the decisions if you don't know what it is you're trying to accomplish?

Mr. Nathan Cullen: Thank you.

I have a question for Ms. Coombs.

I'm trying to understand the typical experience for a company when it's bringing a product onto the market, for example, a cosmetic that someone is trying to introduce. Can you describe the basic process they have to go through in order to be permitted to sell that on the market?

Ms. Shannon Coombs: Certainly.

Actually, could I use a disinfectant? Those are the products that my members make.

Mr. Nathan Cullen: Sure. Sorry, I thought you were representing a larger—

Ms. Shannon Coombs: I am—a coalition—but I'm most familiar with the pre-market registration process for disinfectants.

In terms of disinfectants, for example, if I wish to use a new substance, truly new to Canada, I have to go through Environment Canada and apply for an NSN. That data package will be reviewed by Health Canada and Environment Canada, and I will be given an NSN number.

However, if I want to market a disinfectant, I have to have the end-use product, such as my can of Lysol, reviewed by Health Canada.

Mr. Nathan Cullen: What happens in that review process?

Ms. Shannon Coombs: I would have to make a submission. Also, Health Canada has a data package that would be required with respect to the safety and efficacy of that particular product.

Mr. Nathan Cullen: We're talking about testing of some kind.

Ms. Shannon Coombs: We would do the testing, but we provide the data that's required by Health Canada. They make a list of all the submission data that I have to provide to support the submission being reviewed and approved.

Mr. Nathan Cullen: If this disinfectant has a toxin in it—by the classical definition of toxin, not the broader one that's under CEPA—something that's considered toxic or carcinogenic, what longitudinal studies do you folks go under? Is there a peer review process? How much do you and Health Canada know before a product is allowed on the market?

Ms. Shannon Coombs: The substances that would be in the product would have to be on the DSL, the domestic substances list, as well; however, the end use of that product would have to be approved by Health Canada.

Our companies go through extensive testing to make sure the product is safe for consumers to use. All the testing is done on the various substances and the end-use product as well, prior to a submission being made to Health Canada. The product is not approved for sale until Health Canada has given its okay.

Mr. Nathan Cullen: We've seen a number of cuts within Health Canada over the last five or ten years, particularly in this branch and some others as well.

Again, when you do those tests, is there a peer review process? Is it a submission of data? How extensive are those tests? Are they animal tests? I certainly don't expect it to be done on humans of any kind. How verifiable are these things?

● (1635)

Ms. Shannon Coombs: I can certainly provide you with a list of the submissions for what we have to go through with the test data that we have to provide. It is quite extensive and Health Canada is quite rigorous in their review with respect to all the end-use products that they regulate.

Mr. Nathan Cullen: Mr. Lloyd, on the question around toxins, there was some suggestion by witnesses who appeared before the committee last year, when the government was doing its strange mechanism around Kyoto and some other things, that the application of the word “toxin” has in a sense been redefined under Kyoto.

I know it's not common parlance to refer to carbon dioxide as a toxin, but for the purposes of the act, there was some suggestion that removing the word “toxin” would undermine the government's ability to actually use CEPA, as in previous Supreme Court challenges when CEPA was first being introduced. The government's ability to use that as a tool was mostly focused on the sections you referred to. Is there any threat of that actually coming to pass?

Mr. Gordon Lloyd: In the more detailed submission that we sent to the predecessor of this committee, we actually addressed that issue. I think you were all given a copy.

The point we made was that we strongly relied on the assurances by government lawyers, which I believe have been given to this group or the predecessor group and which we have also heard, that it would not be the case. In our submission on November 25, we said that before the changes that CCPA had suggested be made—and those were what I was talking about—it would be important for this legal opinion to be confirmed.

In putting forward our proposals, CCPA would not want to risk the constitutional authority of the federal government to appropriately regulate. I think that's an absolutely critical question. One would not want to gut the federal environmental authority by making that change.

My understanding is that federal lawyers have concluded it's not a problem, but I think that needs to be confirmed. We have certainly not spent the money in hiring an expensive law firm to come up with that, but it's our understanding of the federal legal opinion. Presumably, it's something that this committee will ask Environment Canada and Health Canada lawyers about.

Mr. Nathan Cullen: I have a further question on a different tack. When companies consider the introduction of a new product or the assembling of chemicals for new product, how is it that companies don't endeavour to hurt anybody with a product on the market and yet that inevitably can happen? When a product is introduced, it affects a population that it was not intended for, vulnerable populations, people with sicknesses, or children. How rigorous are companies when looking at the potential side effects?

The reason I was asking questions about the process to introduce a product to market is that oftentimes it can be a product meant for use on a farm. How do you get to the point of verification and knowledge to know that a product is truly safe? We've had experiences of companies introducing products, even medical products, and then finding out years later that there were unintended consequences of facing lawsuits and all kinds of other things.

Mr. Gordon Lloyd: I think companies go to great lengths in their research. They don't want to market something that, as you've said, is going to have problems, and they go to great lengths to try to avoid that.

We also have, for new substances, in Canada and in other OECD countries, the system I described earlier of companies providing data that the government feels it needs to confirm the assessment the company has already made, and the ability of the government to ask for additional data. I think that system is largely seen as effective.

I've been involved in discussions about chemicals management, both in Canada and internationally. Although there are issues on the margin of whether new substance notification requirements in Canada and elsewhere can be improved, I think the main focus is on the issue I described earlier of the chemicals that didn't benefit from that approach, that were there before it was introduced, what are sometimes called legacy chemicals or existing chemicals.

We need an approach to deal with that. That's one of the reasons that, in CEPA 1999, despite the huge amount of controversy over an awful lot of the provisions, there really wasn't much controversy at all over the sections that required DSL categorization and screening.

Conceptually that was something that the chemical industry, for one, and I think others as well, supported as a good idea, to try to figure out how we address that issue of chemicals, and other countries are trying to pick that up.

● (1640)

Mr. Nathan Cullen: I have just one last question, Mr. Chair. I'll be very quick.

The Chair: Mr. Cullen, you're over by a couple of minutes. Can we get it on the second round?

Mr. Nathan Cullen: Absolutely.

The Chair: Mr. Warawa, please.

Mr. Mark Warawa (Langley, CPC): Thank you, witnesses, for being here today.

My questions are going to focus on two different areas. Primarily, the first will be focusing on your recommendations for the CEPA review itself, and then your input on the Canadian Environmental Protection Act.

As a committee, we've agreed that this will be our number one priority, so we've started off with the CEPA review. We have a year to complete that and we want to make sure it's done properly and adequately. So could I have your input and your recommendations on doing an effective CEPA review?

It's a very general question, but we've asked each of you to be here to give us some guidance. We're legislated to do this review, and one of your comments is that we often focus on procedure rather than a good outcome. So I'm asking for your input on making sure this review, which is legislated, is still a good outcome. Could you comment on that?

Ms. Shannon Coombs: I'll jump in and my colleagues can finish.

From a CCSPA and an FPIC perspective, we've provided two key recommendations. It certainly is the committee's prerogative to look at the review however they wish, but in the last review, in 1999, there were over 150 amendments outside the scope of the bill that were included in the legislation. It certainly increased the complexity of the act and put a demand on resources for its implementation.

From our perspective, I think we still see the act as being in progress and learning about how it works. As for the two recommendations we put forward, if you would look at administrative changes, that would help provide legislative clarity and improve the act from an administrative point of view.

Mr. Gordon Lloyd: I think I tried to be very specific in the brief we sent on the very few issues that we see are essential to fix in a focused review. I'll very briefly summarize.

On the stigma issue, take the word “toxic” out of the act. On the climate change issue, do not regulate greenhouse gases under a section that was designed to deal with toxic substances. Either deal with them in the international air pollution provisions, which the previous government never used—what are they for, in the bill, if not for this?—or use the Clean Air Act.

On the narrow issue about limits of quantification that I described, we suggested in our November 25 brief a very specific fix for that, modelled on what was done in the Stockholm POPs convention.

We suggested some strengthening in the administrative duties so that departments actually do what they're supposed to do. We've suggested, for better information, that departments be mandated to have state of the environment and state of health reports, and we've suggested a change in the timeframe.

Mr. Mark Warawa: My apologies for interrupting. My question was on the procedure, not on your specific recommendations. The reports were very thorough. I appreciated reading them last night. I did have a good sleep, but it wasn't because of reading your report.

So that this review has a very positive outcome and is an effective review of CEPA, the procedure of doing this review, not the specific recommendations, is what I was hoping to get some advice on.

Mr. Gordon Lloyd: I think that unless the committee specifically nails down the areas it wants to look at, you will probably open yourself up to the same kind of free-for-all that happened last time. I think that review itself took almost five years.

If you don't want to do that, then I think you need to say that you heard from witnesses, that these are the seven, eight, ten things you're going to look at, and that you're not going to look at anything else. That's my suggestion.

● (1645)

Mr. Mark Warawa: That's helpful. Thank you.

Ms. Laurie-Lean.

Ms. Justyna Laurie-Lean: As I mentioned, in terms of actually changing the act or looking purely at where to change the act, we're really hesitant, because we think the implementation part is where there seem to be problems. As far as I know, this committee is not confined to only considering legislative change. I think it would be helpful if the committee itself looked at some of these broader questions of implementation and gave thought to where it could advise the government, maybe on non-legislative changes if it wished, and could maybe provide some clarification as to what the intent of the act was. That might help guide you further to where you want to make or not make legislative changes.

Mr. Mark Warawa: Thank you.

The second half of my question is regarding your recommendations, and again I found them helpful.

There seems to be consensus among you as presenters about dealing with the issue of "toxic" and what that means or how it could be interpreted. There was a recommendation that they be called "substances on schedule 1", yet that still left some confusion. Some substances could be toxic and some may not be. This seems to be a common concern in CEPA 1999. Could you give more suggestions on dealing with that issue of the list?

Ms. Shannon Coombs: Okay, I'll start off.

In our brief, I think we made it quite clear that schedule 1 is not a list of substances to be avoided. The list is designed to ensure that a risk management strategy is in place for the substances. So what we're looking for is contextual wording, or a brief synopsis of the risk assessment that was completed on the substance, so there is context, so people can see the link between, for example, ammonia and waste-water effluent. So there would be a direct link, instead of just having ammonia on the list.

We had suggested that you call it "schedule 1" to make it very simple, or you can call it "a list of substances to be managed", because that's truly, in fact, what it's designed to do. Those were our suggestions.

Mr. Mark Warawa: Is there a consensus on that?

Mr. Gordon Lloyd: I think the only thing I would add is that the term "toxic" is a loaded term. When the public, and also people in companies that purchase from other companies, see the term "toxic", it has a really negative connotation, and they think toxic equals banned. Some things on schedule 1 are like that—they are banned—but a lot of them aren't. They're supposed to be managed in a fairly narrow area where the risk has been identified by the risk assessment, but in other areas they're not an issue. Shannon talked about that in terms of ammonia. So the problem with the word "toxic" is that it has that loaded connotation that is maybe appropriate in some cases but carries a stigma in other cases where it's not appropriate.

And it's not just the public. Our members are worried about that from a public perspective, but they're just as worried about it from the perspective of the people in other companies who buy from them. So I think getting away from that loaded word would help. There are a variety of solutions you can use, whether it's "substances to be managed" or "substances on schedule 1" or "substances that meet the criteria of section 64". I think there's a bit of ambivalence about that.

Mr. Mark Warawa: Thank you.

The Chair: Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you, Mr. Chair.

I have two questions of clarification, since several of my questions have already been answered, but before that, I have a general comment to make. In listening to you, I had the impression that the few changes that are indeed required are very clear. I have the impression that the legislation is not very restrictive for your industry. Is this true?

[*English*]

Ms. Shannon Coombs: For our industries, because we're subject to two pieces of legislation, it was a bit daunting and overwhelming. But we now have a process in place where NSNs can be used for a variety of things. If your substance gets an NSN and you use it in a variety of substances, under the Food and Drugs Act we have that risk assessment, which is quite rigorous. Then the Food and Drugs Act regulates the end product.

For us, for our members to sell those products to consumers, we believe there is another layer of protection for Canadians and for the environment. We're pleased with the processes in place that impact our companies directly with respect to marketing and bringing new technology to Canada.

● (1650)

Ms. Justyna Laurie-Lean: Our industry is primarily regulated and controlled by provinces. We lie within the provincial jurisdiction. CEPA is a new addition, and the impact has been growing. It's very difficult to say at this stage how much of the perceived excess burden has been due to implementation or to teething pains, if you like.

A lot of the big concerns lie where there is actual conflict with provincial requirements, where there's just sufficient difference between the federal and the provincial that you're in effect prevented from complying with one if you comply with the other, or where you have a tremendous cost that is not serving any purpose.

As we see the growth of the impact of CEPA, we feel that those are some of the areas that need particular clarification. At this stage, we find it difficult to say whether that will go away by itself, as it's implemented and as people learn how to use it properly, and to what extent it flows out of the legislative structure.

[*Translation*]

Mr. Pablo Rodriguez: From the industry's perspective, how does the Canadian Environmental Protection Act compare to similar legislation in other industrialized countries?

Are you able to compare the type of restrictions imposed in this act to the types of restrictions imposed on similar industries in other industrialized countries?

[*English*]

Ms. Justyna Laurie-Lean: It's very difficult to compare legislative structures. Most countries are unitary countries that don't have the federal-provincial differentiation. You can only really compare partially with the U.S., but mostly with Australia, which is the closest country. Most of our competitors are in third world countries. Saying that Canada's requirements are more stringent than some developing countries isn't saying very much, or you can't really conclude anything from that.

Australia tends to have a very different structure. Most of the actual stringency requirements flow out of provincial requirements rather than federal. The federal is evolving over time. It's really difficult to say how some of it is going to develop in the future.

Mr. Gordon Lloyd: From our industry's perspective, a couple of the areas we pointed to where we would like to see improvements actually do relate specifically to where we find the act either restrictive or wasteful. On the idea that, like Australia, we have an ability to recognize and adopt assessments in other countries, if that were implemented in our legislation we think it would make it more efficient and less restrictive, so to speak.

On the requirement that these limits of quantification have to be developed for things that are put on the virtual elimination list, even if it's only for something that's a contaminant, if it's there at irrelevant levels in a product, I think that's overly restrictive. Now, that hasn't hit us yet, because so few things have been put on the virtual elimination list, but eventually that will be a problem.

As we get more into working with the provinces as we deal with climate change and/or clean air, if that's done under this legislation, the problems in the equivalency provisions in the legislation will start to cause great restrictions. The kind of thing that Justyna was talking about will really start to hit.

Ms. Shannon Coombs: Just quickly, on pre-market....

I'm sorry, go ahead.

[*Translation*]

Mr. Pablo Rodriguez: I have one last question to ask you. What are you doing to limit the use of substances that are classified as toxic? I know that you are disputing this classification, but are you making considerable investments in research and development to replace certain substances? For example, is a portion of the industry's profits and revenue invested in research and development to change the composition of certain products and to reduce the use of chemical substances?

● (1655)

[*English*]

Ms. Shannon Coombs: I'll just answer it briefly, Mr. Chair.

For the Food and Drugs Act sector, a lot of the substances that have been on schedule 1 and are of concern to us, for example ammonia, aren't toxic. So we continue to use it in our products because it's not toxic in glass cleaner, for example. It's toxic in waste water effluent.

With respect to other substances that we may know going under risk assessments, companies try to provide the best science that's available to Health Canada and Environment Canada during their review processes. But if there is a time when a substance may become CEPA toxic in consumer products, of course the companies would reformulate and take that into consideration.

The Chair: Mr. Del Mastro.

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

I'll start off with this question. Basically, there's been a common theme with all the witnesses we've seen. In this review, I think what we're looking for is a focused, effective, and efficient review of CEPA. We don't want to tear it apart and rebuild it—at least that's my understanding. Most of what we've heard as a very common theme is that the act essentially is a good act. What it lacks is implementation and enforcement, and a bit of clarity.

Notwithstanding the very few suggestions that you've made, would you agree that the act is essentially a good act?

Ms. Shannon Coombs: For a sector that was regulated under the Food and Drugs Act for so many years, to have a different type of risk assessment be done by a different piece of legislation, by two different departments, is.... Yes, we absolutely think it's a good act. It's a good foundation and a good safety net. It does what it was intended to do in 1999 with respect to Food and Drugs Act substances.

Mr. Dean Del Mastro: Good.

Mr. Gordon Lloyd: The act is good and bad.

One of the problems with the act is it's complicated. But I don't know how you get around that. I think it would be nice if we could have an act that is less complicated, but I think that's a wish that won't be fulfilled.

Another area in the act that I think is increasingly going to get in the way of its being a good act is its ability to support federal-provincial cooperation. I think the answers this committee was given by Environment Canada on Monday on the equivalency provisions.... I think that's an area you should delve into in your review, and see what the provinces think. Get some firm opinions from those who are trying to work out cooperative arrangements with the federal and provincial governments.

Our view is that the equivalency provisions in the act basically say, “If you do it our way—the federal way—then that's equivalency and that's okay”. We would like something broader, which recognizes there may be different ways of doing things. Provinces tend to often work through permit programs, which aren't specifically regulations. Is that recognizable as equivalency under the federal provision in section 10? I don't think so. Other provinces are increasingly experimenting, and the federal government also wants to experiment with challenge programs to industry.

Mr. Dean Del Mastro: Sorry, just for one second, without going too far into it, am I correct in assuming that you would recommend a much deeper review of the act?

Mr. Gordon Lloyd: No. I would recommend a deep review on that particular area, on whether the equivalency provisions are adequate. But I think you should have a focused review on seven or eight things.

Mr. Dean Del Mastro: All right. Great.

I had another question, and again I just want to return to the term “toxic”. I agree with you that there are some clarity issues and some understanding issues in an act that's this large and this lengthy.

I'm just wondering if we couldn't replace the term “toxic”, which I agree is a very vivid and in some cases very misleading term, with a word such as “sensitive”, which I think would be somewhat better than “substances listed on schedule 1”, or substances.... How did you describe that?

● (1700)

Mr. Gordon Lloyd: Substances that meet the criteria of section 64.

Mr. Dean Del Mastro: That meet the criteria of section 64.

Again, I think we do need a term. I think “sensitive” would indicate that there is some concern with the substance, but it wouldn't necessarily set an alarm bell off on the substance.

I'm just wondering if you could comment on that.

Ms. Shannon Coombs: Well, I don't think it's as loaded as toxic.

The Chair: Any other comments?

Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier: Did the representatives from the three associations that appeared before us today work together to ensure the consistency of their respective presentations? If so, how was it done?

I would like to know how the Canadian Association of Steel Producers will make its views known. Are there other associations in your group that wish to speak out?

Lastly, do all the representatives from these associations have a meeting place to discuss the Canadian Environmental Protection Act?

[*English*]

Mr. Gordon Lloyd: There's what I would call a networking group, which goes by the odd name of CEPA brainstorming group, where we try to share views among industry groups and let each other know what we're doing, what we think. There's an awful lot of commonality because we all have common interests, not because we've worked out some compromise proposal. There are different areas of focus. The steel producers would have liked to have come today. I think CCPA was initially invited. Two other associations wanted to come to this as well; three were enough. The steel producers agreed with that.

They wanted me to mention that they did have an interest in appearing, and they also supported many of the positions I noted. Now, that's not to say they're solidly onside with absolutely everything CCPA is saying. So there's not a united coalition, but we do share information among ourselves. That's an efficient way of doing things.

Ms. Shannon Coombs: With respect to the submissions, no, I don't think there was enough time to share submissions prior to our coming to speak to you today.

What I do find interesting is the issue of CEPA toxic appears to us distinctively within each association. It's something that transcends various associations and impacts us in very different ways, but very profoundly. I think that's what you're hearing today.

Ms. Justyna Laurie-Lean: Once you decide how you move forward on your review, you should hear from a lot of other industries that have interests in different parts of the act—for example, all the recycling industries. We're engaged in recycling. Our feed material is impacted by CEPA because of transboundary movement provisions. Other sectors or other parties in that sector also have a lot of comments on that. They would have much less interest in part 5, but they would have a lot of interest in transboundary movement. Obviously vehicle manufacturers—engines.... The petroleum product producers have a lot of interest in the fuel section, and of course truckers and people like that do too. The Canadian Chamber of Commerce has a broader view. It depends on how you're impacted by CEPA. You will have a different perspective either on a particular part or on an overall area.

Even among the three of us, I have interests in areas of the act that Shannon may not have any interest in at all. Our perspective on suspending belief and faith in how quickly and how well it will be implemented, given our experience with other acts and the lack of implementation, a very slow implementation, we're much more hesitant and much more skeptical about progress than maybe associations that have had a much more positive experience. So it does vary.

Mr. Marcel Lussier: Thank you.

● (1705)

The Chair: Thank you.

Mr. Blaney.

Mr. Steven Blaney (Lévis—Bellechasse, CPC): I just have a few questions, Mr. Chairman.

[*Translation*]

Firstly, I would like to congratulate the Mining Association of Canada for being awarded the Environmental Performance Award by the Globe Fondation. It is quite an honour.

I would like to talk about two points. You seem to be saying that there was a cutback in environmental monitoring and reporting activities. You are suggesting that additional resources be allocated to ensure a more effective implementation. I would like to hear your thoughts on this subject.

[*English*]

Ms. Justyna Laurie-Lean: I do not work in the government, so I wouldn't want to prejudge as to why that decision was made. The act has a mandatory requirement for a state of the environment report, but one has not appeared since the act was passed. I'm assuming that it was because of a reallocation of resources. The act does not specify how frequently that state of the environment report is to be produced, but one would think that between one review and the next review there would have been one.

[*Translation*]

Mr. Steven Blaney: Mr. Lloyd, earlier you said that there were two levels of jurisdiction and that we should perhaps harmonize the federal legislation with provincial regulations. You said that we could consider this matter in greater depth. Can you tell us a little bit more about this subject?

[*English*]

Mr. Gordon Lloyd: Yes, I think that would be worth looking at more in depth.

My understanding of the way the equivalency provisions in section 10 are written is that the provincial governments basically have to do things the same way as the federal government to get recognized. I don't think that should be the standard. I think they in many cases have different approaches to tackling something and there should be more flexibility in being able to recognize the provincial approach in legislation as equivalent. Again, I think the Environment Canada lawyers should come up with the specific words; perhaps "similar" or "equivalent in effect" might be an improvement. Because as I understand it, right now if you took a challenge approach in a province and not a regulatory approach, that probably wouldn't qualify you for equivalency.

It's up to the government whether it wants to enter into an equivalency agreement or not. Just because it has more flexibility in being able to enter into an equivalency agreement if the language were changed in the direction I suggest, that doesn't mean they would have to, but they would have the ability to. Right now I think there is very limited ability to enter into equivalency agreements. I think that's illustrated by the fact that there's only one with Alberta, and I'm not 100% sure if it isn't a leftover from previous to 1999. That would be a question to ask Environment Canada and Alberta. But there certainly hasn't been any more since CEPA 1999; that's the only one there is.

I believe that's an area where we need to have more flexibility in the act for cooperation.

[*Translation*]

Mr. Steven Blaney: You say that we could concentrate on five or ten aspects of the act that could be subject to amendments. You are recommending that we not completely overhaul the legislation, so as not to further delay the process and implementation.

Is that an opinion shared by your colleagues?

[*English*]

Ms. Shannon Coombs: I didn't believe that the review would stop the implementation of what's going on with CEPA at Health and Environment Canada. I still see them doing their day-to-day work. What the committee decides to do in the review is within your purview and your prerogative to do so.

Ms. Justyna Laurie-Lean: But if you introduce legislative change there is the potential of then going back and having to review guidelines and processes and arrive at an interpretation and so on. That's what we saw in other acts and amendments where there's a legislative change and then there is this stoppage of everything while new guidance and training materials and so on are produced, and sometimes it never happens and things are suspended. So there's a price to be paid for even good change.

● (1710)

[*Translation*]

Mr. Steven Blaney: All right.

[*English*]

Mr. Gordon Lloyd: I would support what Justyna said. I think if we got into another review that was as fundamental as the CEPA 1999 review, we would be into a process of continuing review, which would hang up implementation.There are also resources in the department that get swept into that kind of comprehensive review that get taken away from implementation.

So I think very much what you said: it should be a very focused review; identify what the issues are and stick to those. And we have some suggestions we've made and we hope you will listen to about what the focused areas should be.

Mr. Steven Blaney: Toxic...it's a good word.

The Chair: We should make it clear to our witnesses that our mandate is to review and recommend. This is not a legislative process. It is the government that would come up with legislative changes, which would then put us into a whole new process. This is a review-and-recommend process.

Mr. Cullen.

Mr. Nathan Cullen: Processes within processes...so we're on salary, not paid by the hour here.

On the success of the act itself and its implementation, how many products have been listed on schedule 1 for virtual elimination? Do you folks know?

Mr. Gordon Lloyd: I don't really know. I don't think very many have, and I have found that confusing.

The Chair: We have an answer here from the Library of Parliament.

Tim.

Mr. Tim Williams (Committee Researcher): As far as I understand it, none have actually made it, finally, onto the virtual elimination list. Only hexachlorobutadiene has been proposed.

Mr. Nathan Cullen: Thank you. That helps focus my question.

This act has had some life and experience with industry, new products being introduced to the market, processes going on, and money invested. What do you think about no chemicals actually having been listed for virtual elimination? Is there a presupposition that there aren't any chemicals in the Canadian manufacturing cycle that should be listed, or that the act hasn't been effectively applied? Sections 64, 65, and 66 of the act are designed so if a chemical is deemed toxic and should be eliminated—of that seriousness—we can in fact do it. That's part of the assurances.

With the act being this many years old and nothing having made the list, is this a paper tiger?

Ms. Justyna Laurie-Lean: My understanding is there is a list of prohibited substances, which is quite different from virtual elimination. So where it is a product that is prohibited from entering into commerce, it is a different list from the virtual elimination list.

But I was trying to say that a lot of the parts of the act haven't been interpreted and implemented, and there isn't a track record where we can say how it works.

Mr. Nathan Cullen: So the parliamentary secretary properly focused this conversation around us being able to do an effective and precise study. When I hear that nothing's been on the virtual elimination list, my question goes as much to the act—and this is for review by this committee—as to the implementation. We're not doing a clause-by-clause review. We're not legislative. We're looking for the cost or benefit of this act upon Canadian society and industry.

It is perplexing to me, with the gradual increase in chemicals being introduced into the Canadian marketplace, and with new and different chemicals all the time, that not one has been required to be virtually eliminated.

Mr. Gordon Lloyd: I don't think it should be perplexing that new chemicals aren't on the virtual elimination list. I think it would be very surprising if a new chemical were on the virtual elimination list.

Mr. Nathan Cullen: Or old chemicals.

Mr. Gordon Lloyd: The fact that we are a signatory to the POPs treaty and it has 12 chemicals that are in the same kind of ballpark is a question worth asking of Environment Canada—why those aren't on the list. But I can't answer that.

Mr. Nathan Cullen: From industry's perspective—the dirty dozen, as they're referred to—this is an interesting question. It seems as if they would be the most obvious, or the beginning point that industry would also support, if we had signed a treaty to this effect.

Mr. Gordon Lloyd: I participated personally in the development of the POPs treaty, and industry certainly had no objections to any of those chemicals being listed in the POPs treaty. As I said in my brief, there's an element of practicality in the POPs treaty. You don't have to worry about trace contaminants of things that are being emitted in levels that you should worry about, but don't worry about it when they're in irrelevant trace contaminants. I think that's an element of practicality that everybody agreed to in the POPs treaty that isn't in CEPA and should be built in.

I don't know if that's one of the barriers standing in the way of using those provisions or not. That's a question you'd have to ask Environment Canada. One of the reasons isn't because industry has been fighting against this. We did not push against this in the POPs treaty at all, and it's not here.

● (1715)

Mr. Nathan Cullen: There's no suggestion of that. The question is more about CEPA's process of listing chemicals. It seems to me that according to the evidence in terms of even when it comes to the 12 that were listed under POPs, we can't find our way to list them. I can't read something buried in the act suggesting that virtual elimination means all trace elements must be removed. My understanding of "virtual elimination" is virtual, but not complete, elimination. Please connect the dots for me on this.

Mr. Gordon Lloyd: As I've understood Environment Canada, they feel that when something is put on the virtual elimination list, they have to have limits of quantification for it for all circumstances, and that would appropriately include emission releases from plant operations. I think they also feel—at least, as it's been explained to me—that they have to have limits of quantification for these substances as trace contaminant levels in products. That might make sense sometimes, if there were problematic contaminant levels. But as I understand it, they feel they need to have an LOQ, a limit of quanitification, even if they're not problematic. We suggested a fix modeled on the POPs, and I think that would help.

But I can't answer your question; it is puzzling.

The Chair: Mr. Cullen, your time is up. Can we come back around?

Mr. Warawa.

Mr. Mark Warawa: Thank you.

I have a very quick question. I've been trying to make some notes here and bring it together. To repeat, the recommendations are that we do not do clause-by-clause, but look at what's working, and I think you suggested seven different parts of CEPA we could focus on.

I'm looking at your brief, Mr. Lloyd, and you provided seven points here. The first deals with the management of climate change. Then you dealt with the term "toxic" and the stigma it carries, the requirement to establish so-called "limits of quantification", state of the environment reporting, and so on. Are those your recommended points that we need to review in our CEPA review?

Mr. Gordon Lloyd: Yes, and in the additional submission we'll send you, there will be two more. One is a very simple issue, I hope, that we should do what Australia did and have an ability to recognize assessments of other jurisdictions in the legislation. Secondly, particularly as we get into clean-air issues, we should try to make sure there's not going to be overlap and duplication if those issues are dealt with outside, as opposed to inside, CEPA.

As a corollary to more cooperation with the provinces, there's the equivalency issue that I've talked about at length.

Mr. Mark Warawa: Thank you.

Ms. Shannon Coombs: If I may add to your list, he's right about the in-commerce list and that it be treated as existing substances. If the committee could take a look at making a recommendation to provide a provision in CEPA, it would be appreciated.

The Chair: Mr. Silva.

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

To state your words, it is true that we're basically reviewing and recommending to the government at this time. But when the CEPA legislation was first introduced back in 1999—and it went for extensive review and consultation—there was quite a lot of discussion about what should be toxic and non-toxic. That came about to make sense of what took place.

In briefly listening to the comments of the deputants who came before us, I know they have some issues around this, whether it's ammonia or even salt for that matter, but we do know that in fact it can be very harmful for your health. Exposure to it can also be quite dangerous.

What I'm trying to understand from the people present today is whether they want us to start weakening the legislation, which took us so long to put into place and which ensures we have protection for our citizens, especially around the issue of toxicity. Are they asking us to weaken our legislation? Is that what they're actually recommending to this committee?

● (1720)

Ms. Shannon Coombs: If I may, Mr. Chair, FPIC is simply advocating that the term "toxic" be removed from the legislation. We're not asking for any processes with respect to how risk assessments are being done or to how they arrive at their decisions. And we're not asking that schedule 1 be deleted. We're asking that it be left there, but that the term of schedule 1 be changed, so that there's clarity in the act and no misinterpretation of the substances on the list and of what risks are being managed under that list. That's what we're asking for.

Mr. Gordon Lloyd: From our perspective, I think removing the confusion that's inherent right now in the use of the term "toxic" and applying it broad-based—it applies sometimes inappropriately—removing that confusion would make the act more effective and thereby strengthen it. We're certainly not looking to weaken the act.

As I said earlier, in response to a question from one of the other members, there does need to be a legal review to make sure there's no constitutional issue around that, but that's a question you need to ask Environment Canada lawyers.

The Chair: Mr. Bigras.

[*Translation*]

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

Mr. Lloyd, I hope that during my absence, nobody asked you the question that I am about to ask. During your presentation, you said that certain provisions in the Canadian Environmental Protection Act needed to be eliminated because they stood in the way of collaborating with the provinces.

Could you elaborate further on that point, since that is all you highlighted during your presentation?

Secondly, we met with groups who said that certain sections of the act, particularly clauses on virtual elimination needed to be amended, with a view to facilitating the process and to accelerating the timeline for virtual elimination of certain substances.

What do you think of that suggestion?

[*English*]

Mr. Gordon Lloyd: On your first question, I did address that a bit while you were out, but briefly, we think that cooperation with the provinces is going to become more and more important on issues like climate change and clean air. We'll need to make sure there are provisions in the equivalency part that don't stand in the way of using provincial approaches that are somewhat different from the federal approaches. We believe there needs to be an in-depth review of that by the committee. We don't think the answers you received from Environment Canada on this on Monday should be the end of the story. We believe that should be looked at more thoroughly.

On the virtual elimination issue, we have proposed a very narrow amendment in this area. As I said, it's to try to adopt the practical approach that was taken in the Stockholm convention so that this requirement for doing LOQs was only done in areas where it was needed and not when it wasn't needed.

Going beyond that and amending the provisions more fully.... There was an awful lot of time spent on CEPA 1999 on this issue. It was very divisive. I don't think that would be a good thing to get into.

I do think the question Mr. Cullen asked is a good one. Why isn't there anything on the list? I don't know the answer to that. I don't believe it's because the provisions don't support adding things to the list.

Mr. Nathan Cullen: I have a question for Ms. Coombs. You walked us a bit through the process for disinfectants. I know the same rigour doesn't apply for other projects in the group that you represent—I'm thinking of cosmetics and even children's toys.

This afternoon I introduced a bill in the House about phthalates, which is a group of chemicals that cause all sorts of things. They've been banned in Europe and in some of the states in the U.S. They happen to exist in a group of products that don't fall under the same rigour as the one you described for disinfectants.

How would you suggest we capture, through CEPA or through this process, the same type of certainty that we have with the disinfectants you talked about?

● (1725)

Ms. Shannon Coombs: I can't speak specifically to plastics; we don't represent the plastics industry.

For the products that are regulated under the Food and Drugs Act, there are pre-market assessments and notifications, so cosmetics, for example, would go through a notification process.

Mr. Nathan Cullen: Just for my understanding, does CEPA then...? It's meant to almost overlap with the Food and Drugs Act, at times. Does it overlap, or are they separate?

Ms. Shannon Coombs: It's my understanding that if you want to market your cosmetic, you have to notify the government that you're doing so. There are different types of cosmetics. If it's a cosmetic that is not making a therapeutic claim, then it would have to have a notification. If it is making a therapeutic claim, it has a pre-market assessment. Then there's the natural health products area, where there's a list of substances and if you fall within that category you have a natural health number review process as well.

I'm not familiar enough with it to know what the distinctions are, but most of the substances are on the in-commerce list that they would use if they're not new. So if they're existing, they're on the in-commerce list or they're on the domestic substances list.

Mr. Nathan Cullen: My question is, then, if there is a chemical being used in one of your disinfectant products of the same family or order as a chemical being used in a cosmetic that doesn't purport to have any beneficial effects, is there any place for it to be scrutinized, under the process you've just described?

Ms. Shannon Coombs: If the substance is on the DSL, it would be captured under the categorization and screening of the domestic substances list. If it's a new substance, it would be captured under the new substance notification regulations.

The end use of that disinfectant would be captured under the Food and Drugs Act through a pre-market approval, and it would be given a DIN registration number. If it's a cosmetic, it would fall within one of those three categories.

Mr. Nathan Cullen: One of the things we're seeking is to know how much of the study of these types of products is done by third-party or peer review, because the ultimate goal of CEPA concerning toxics is some sort of public safety element, so that we have things in the market that have been deemed safe by credible sources.

Does the process you just described become external to the company at any point? Do those tests get done by government, or does the company have to hire a third-party consultant, or do they do it in-house, or do they do testing at all?

Ms. Shannon Coombs: Companies certainly ensure that the products and the substances they use in their products are tested for safety and efficacy prior to their being approved for sale in Canada.

Mr. Nathan Cullen: So this is an internal process, and then the company releases its data to the government. Is that the...?

Ms. Shannon Coombs: We provide the data to the government based upon their requirements, which they spell out, that we must meet Canadian law to ensure that the product is safe to be sold in Canada and for consumers to use.

Mr. Nathan Cullen: So when government gets this data on this field of products that you described, this is the way we test it? And does government repeat the testing? What's the verification process?

What's to prevent a rogue company or someone doing testing at a substandard level, or fabricating results?

Ms. Shannon Coombs: You have to meet the data requirements the government sets out, so you have to provide testing that meets the government's requirements.

Mr. Nathan Cullen: But to my specific question of someone, say, falsifying test results, what prevents it?

Ms. Shannon Coombs: I can't specifically answer that. I'm sorry.

Mr. Nathan Cullen: Okay. I would be curious, because in the scope of this, it's to the benefit of all manufacturing companies to have verifiable and safe products. That means the testing has to be verifiable and good.

Is there a lowest common denominator here, or is it a highest principle in terms of someone who chooses to...? There have been examples, in the United States in particular, of pharmaceutical companies that were a little dodgy on some of the testing they were....

Ms. Shannon Coombs: I believe the companies provide the data that meets the law, and there are requirements set out by Health Canada that we have to meet. We have to provide that data before they will approve it for sale.

● (1730)

The Chair: Mr. Cullen, I think your colleagues are getting restless —

Mr. Nathan Cullen: Are they? When I'm engaged in a particular line of—

The Chair: I think your time is just about up.

I would like to thank our witnesses. I know there will be other questions. We may well have to call you again. I thank you for your presentations.

I'd just remind members that a week from Monday we will be having an in camera meeting to decide in exactly which direction we'll go.

Thank you.

The meeting is adjourned.

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