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Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

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● (1530)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): I would like to welcome our guest. I think most people are familiar with her, and we are certainly interested in hearing about some of her past work on this whole issue.

Ms. Gélinas, are you ready to start?

Ms. Johanne Gélinas (Commissioner, Office of the Commissioner of the Environment and Sustainable Development): Yes, I am, Mr. Chair.

Thank you very much, and thank you for the invitation.

[*Translation*]

Good afternoon, Members of the Committee.

I am joined by John Reed, Principal at the Office of the Commissioner of the Environment and Sustainable Development. He has played a major role over the last few years in our work on toxic substances.

The purpose of my presentation today is to support your evaluation of the Canadian Environmental Protection Act by recapitulating for you some of our past work that has a bearing on the Act. Specifically, we will highlight some key findings as well as ongoing concerns about the government's assessment and management of toxic substances.

I am not going to read the entire text of my presentation, which you have in front of you, since I would like to leave as much time as possible to Mr. Reed. Allow me simply to mention that up to now we have done two audits and one follow-up. The first two took place in 1999.

At the time, we released two chapters, one of which was entitled "Understanding the Risks from Toxic Substances: Cracks in the Foundation of the Federal House". In this chapter, we focused on the way federal departments provide scientific information to support decision making.

[*English*]

The fourth chapter in the 1999 report was called "Managing the Risks of Toxic Substances: Obstacles to Progress". It focused on federal departments' management of the risks created by substances identified as toxic.

Finally, in the 2002 report we did a follow-up called "Toxic Substances Revisited", where we examined the departments we had initially audited to assess their progress in implementing our 27 recommendations.

Although our work on toxic substances included aspects of the Canadian Environmental Protection Act, it was much broader than the act alone. While our findings are somewhat dated, we hope they can support the committee's evaluation.

John Reed, the principal who led our 1999 and 2002 work on toxic substances, will now lead you through a brief slide deck presentation, of which you have a copy. After that we will be more than happy to answer any of your questions.

Thank you very much.

John.

● (1535)

Mr. John Reed (Principal, Office of the Commissioner of the Environment and Sustainable Development): Thank you, Madam Gélinas, and good afternoon, everybody.

I'm going to be speaking in conjunction with a slide deck that has nine slides on it. Four of them will give a bit of history about the audits we conducted in 1999 and 2002. For the last five slides we've chosen five topic areas that fell out of our audit work. We've identified these five areas as ones we would certainly look at if we were going to audit this topic area again, and we've identified a number of questions that we would be posing in the context of those kinds of audits.

Let me recap, very quickly, the 1999 work we did. As Madame Gélinas said, this work was reported in two chapters. Those two chapters split the topics of toxic substances into assessment activities in chapter 3 and risk management activities in chapter 4.

For the purposes of this audit, we scoped the topic of toxic substances quite broadly. This was not just toxic substances as defined under CEPA. We looked at both a range of industrial chemicals that, one way or another, were called toxic in different federal programs, policies, and legislation, and we looked at pesticides. I'm not going to be speaking to any of our pesticides findings today. We did look at aspects of CEPA, and in 1999, that was the 1988 CEPA. The new act had not been passed yet, and that did change for our follow-up. We looked at six different federal departments and made, in total, 27 recommendations.

Chapter 3, again, dealt with the assessment of toxic substances. The title of our work was “Understanding the Risks From Toxic Substances: Cracks in the Foundation of the Federal House”. We chose that title because a major conclusion of the audit was that there was a sizeable and growing gap between the demands placed on departments to assess substances and the supply of information, the supply of science. In other words, while departments were increasingly being asked to assess substances, at the same time there had been cutbacks in scientific research and monitoring, so the departments were very much faced with a resource problem. The audits themselves identified a number of examples of that resource gap leading to problems in decision-making.

The second major finding from that work was that environmental monitoring in particular—that is, ambient monitoring, the monitoring of toxic substances in the environment—was not in good shape. We identified significant shortfalls in monitoring, problems with the coordination of research, and a small item that may still be relevant for you: in 1999, there were no defined procedures on how departments could incorporate new information into past assessments. That was an item we flagged in the 1999 work as well.

Chapter 4 dealt with risk management. I'm sorry if I'm going fast, but we want to just hit the highlights.

The net conclusion in this chapter was that the government was not taking adequate action to deal with toxic substances. Vis-à-vis CEPA substances and the priority substance lists 1 and 2, the audit found real problems of slow, slow progress; after ten years, some substances still did not have any risk management measures in place. Again, resource problems—gaps—came to the fore here. For example, although the departments had gone through the exercise of identifying recommendations to manage many of the declared toxics, no resources were identified for the implementation of those measures.

In 1999 the government was relying heavily on voluntary programs to manage toxic substances. We were neutral on the question of whether that was a good idea or a bad idea, and we're still neutral on that question, but we did take the position that if you're going to use voluntary instruments to manage toxic substances—substances that pose problems for health and the environment—then those voluntary instruments have to be robust and reliable and deliver the results they're intended to. We made a number of recommendations on how they can improve the use of voluntary instruments.

● (1540)

In chapter 4, on tracking releases, we identified that a great number of toxic substances, including CEPA toxics, had no tracking information, no release information. We simply didn't know the amount being released through the national pollutant release inventory.

In 2002 we undertook our follow-up work. That is reported in chapter 1 of the 2002 commissioner's report. I don't know whether you have copies of this chapter, but at the back you will see a table that indicates the follow-up status for each of the 27 recommendations in all six of the departments. If you flip through that matrix, you'll see an awful lot of empty circles, which is our code language for no action. There are far more empty circles than full ones in this case, so certainly from our standpoint, when we do follow-up again, we will start with some of those recommendations.

The progress was mixed. At that time the CEPA of 1999 had come into force, and the departments were very much on the job of trying to implement and get their heads around the requirements of the new CEPA. Maybe for that reason, many other departments became less engaged in the management of toxic substances, and I think that's why there are so many white circles in there, but many of the root causes we identified in the original work in 1999 persisted through 2002: issues around resources; issues around the gap between the knowledge that's required and the knowledge that's being provided; and, to an extent, issues around burdensome consultative and regulatory processes.

That's a quick summary of our work in 1999 and 2000. I'm going to spend the balance of my time briefly capping five thematic areas we would look at if we were going to work in this area again.

The first one is not necessarily linked to CEPA; it's the theme of scientific research and monitoring. I think you well know, committee members, that good science underlies virtually all decisions in CEPA on both the assessment and the management fronts. If you don't have good science, you're probably not going to be making the kinds of decisions you need to. I think we would very much pursue this by going substance by substance and finding out to what extent there have been changes in monitoring, in research, and in the tracking of releases.

In particular, I think we would probably also want to find out what happened to the recommendations from an exercise called the Canadian Information System for the Environment. CISE is the acronym it goes by. Just about the time we were completing our work in 2002, the government was also leading a blue-ribbon panel to look at the state of science and research and monitoring. They made a series of recommendations to the government; from what we've been able to tell on the website, none of them has been implemented. We're not sure if they've been resourced, but we would certainly start by querying the government about the status of CISE.

In 2002 we also raised the issue of biomonitoring. I raised it in the sense that we noted it wasn't present. There have been some announcements recently, I understand, and I know this committee has discussed biomonitoring, but I think we would pursue that as well.

The next thematic area would be the precautionary principle. In 1999 we didn't do a whole lot of work in this area, but we did note at the time that of the 44 substances, I believe, on the original priority substance list 1, 13 were still inconclusive on the basis of insufficient information. In 1999 we raised the question of whether the precautionary principle would have a role in helping to make those kinds of decisions.

● (1545)

In 2002 we pursued that and ended up recommending to Environment Canada that they develop operational guidance on how to apply the precautionary principle in the act. They were under way in that exercise—they had started developing that guidance—but it wasn't complete at the conclusion of our audit. At the same time, the Privy Council Office was undertaking a government-wide examination of the precautionary principle; that, too, was inconclusive at the time of the conclusion of our audit. Therefore, I think we would pursue with both of those—PCO and Environment Canada—where that operational guidance has been left now. I think it's particularly important not just for the priority substances lists assessment, but especially now for the screening exercise that's about to be undertaken on the domestic substances list. I know you've had a good discussion on the precautionary principle in the past.

The next thematic area is with respect to the PSL1 and PSL2 substances. Frankly, there was slow, slow progress in 1999, and not a lot of progress by the time 2002 came into force. In 2002 the department—Environment Canada—had redesigned the processes it was going to use for managing PSL2 substances as compared to PSL1 substances, but that process had not been implemented. Were we to do some follow-up here, we would clearly be going after almost a substance-by-substance inventory of what measures have been recommended, what measures have been put in place, whether resources were attached with those measures, what reductions have been achieved in the environment, how they know that, and so on. I think we would get down to very much a substance-by-substance review.

We would also, I think, want to ask ourselves if pollution prevention is truly being achieved. When I say “truly”, I don't mean pollution control; I mean pollution prevention, prevention at source, before a pollutant is generated in the first place. That is a preamble to the act, and it was certainly a major feature of the policies that existed prior to the enactment of the new act. I think we really just want to know if this system is working and if the substances are being managed effectively.

The fourth thematic area would be on virtual elimination. Again, I know you've had some presentations on this topic. At the time of the 1999 audit, virtual elimination was a policy objective of the Government of Canada. The departments engaged in the toxics debate at the time were almost at war with each other over virtual elimination, what it meant, and in particular how to apply it to naturally occurring substances. That was very much stopping progress.

Since then, as of 2002, the act has been amended. There is now a formal process. I think that at the time of the 2002 audit, no substances had been added to the virtual elimination list. The departments were in the process of preparing quantification limits, detection limits; I'm not sure if that's changed at this stage, but we would clearly go after virtual elimination as a topic area in the audit to see whether it is in fact being achieved where it was supposed to be.

The last slide is on the topic of the domestic substances list. Again, I think this is now well known. The department is soon to conclude the categorization of the 23,000 substances; then that goes into a process of screening.

A minor question we would ask is whether the process, specifically the categorization, is on track according to CEPA, but I think our major preoccupation on the DSL would be around resources and trying to determine whether the departments really do have the capacity to both assess and ultimately manage any substances that fall out of that exercise. As I mentioned at the outset, resources were a problem in 1999 and again in 2002. I'm not aware that there's been a major infusion of resources into either department to cope with future demands, yet the future workload is growing through the domestic substances list.

● (1550)

I hope that wasn't too short, Mr. Chairman and members of the committee. We wanted to touch some of the highlights very briefly; there's an awful lot of underlying detail, but I think I'll stop there.

We are available for questions.

The Chair: I would like to thank both of you.

I'll just let the members know that Mr. Moffet and Mr. Clarkson are here, from Environment and Health respectively, for any questions you might have.

There is also a housekeeping note for Wednesday. As discussed in our last meeting, Mr. Joe Schwartz, the gentleman from McGill who had some criticism of Mr. Smith's document, has agreed to come to counteract some of that statement.

As well, I would ask Mr. Jean to report to us on the visit of the minister.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

I was going to advise the committee that, first of all, the minister appreciates very much the work the committee is doing, but she's unavailable this week just because, obviously, it's the last week. If you would like to schedule something in the fall, I think it could be arranged, but this week is obviously not possible.

The Chair: Is there comment?

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): The motion that came from committee last week was to make any time available for the minister through the course of the House rising, whenever that is—on Thursday, I suppose. Has it been expressed to her that it's not simply the Monday or Wednesday meeting, but it was everything?

Mr. Brian Jean: Yes, my understanding is that is the case. Quite simply, there's no time right now. All members are busy, and all ministers are extremely busy. There's just no time right now, Mr. Cullen. It's not possible.

The Chair: Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): This does not relate to the visit of the minister.

I think it's always best when we have both points of view present at the same time, so if we're going to be having Mr. Schwartz here on Wednesday, I would think we should invite Mr. Smith back, or somebody else who has a—

A voice: I'll try to get hold of him.

Hon. John Godfrey: Yes. We want to hear the discussion; we can't do it seriatim.

The Chair: We'll try to get hold of him and see if he can come. We could have an interesting discussion on both sides of that issue.

Hon. John Godfrey: That's the whole idea.

Mr. Nathan Cullen: The last and follow-up is just to have on the record the disappointment I'm feeling about not being able to ask the minister some simple questions. It's an accountability and a presentation question. We've made available every committee day of this session for the minister to come to address the committee. We appreciated those visits in the last Parliament, and we had access. It's fundamentally discouraging that there's no ability to actually address the minister here in the committee with the members most interested in this issue.

The Chair: Mr. Jean.

Mr. Brian Jean: I was just going to comment for my friend. She regrets working 20 hours a day too, Mr. Cullen.

The difficulty is just the type of session and the new government and the amount of workload left over as a result of the Liberals.

Quite frankly, if you would like to put them in writing, or if any member would like to put them in writing to the minister, I'd be happy to carry them to her myself and find some sort of response for you. Certainly I would suggest you would have a more thorough examination of any issue you want in writing than you would orally, so I would be happy to present those to her, if you would like.

The Chair: I think, unless there is something new—Mr. Bigras, do you have one short intervention?

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): I would like my colleague to inform the minister that we will cooperate with her when she will be ready to cooperate with us. It would therefore be unfortunate if she decided not to take one hour of her time to come to meet with partners and people who want to improve the legislation. I am speaking on behalf of the Bloc québécois. We will cooperate with the minister when she decides to come and meet with the members of this committee.

[*English*]

Mr. Brian Jean: Mr. Chair, if she's willing to cooperate, provide your questions in writing. I would suggest that's a more thorough process and would certainly be appropriate for her reply.

● (1555)

The Chair: Well, I think everybody has stated a point of view. That certainly can be passed on through Mr. Jean, verbally or in writing, and we'll carry on with our witnesses.

We'll begin with Mr. Godfrey.

Hon. John Godfrey: Thank you very much.

It's good to see you, Commissioner.

I want to begin by recognizing the presence in the room of Mr. Charles Caccia, a former longstanding chair of this committee, who must feel that he's entered some kind of Rip Van Winkle world in which he exits doing CEPA and sees the same old thing all over again. He must have wondered where the time flies.

The Chair: I agree, Mr. Godfrey, and I should have done that as well, because I learned everything that I could learn about being chairman from Mr. Caccia.

Welcome, Mr. Caccia.

Carry on, Mr. Godfrey.

Hon. John Godfrey: In a way, the difficulty with the primary witnesses today is that their last audit was four years ago. When are you scheduled to update?

Ms. Johanne Gélinas: The update, as we speak, has started taking place. We will report back in 2007 on the implementation of some of the recommendations we have made and we will expand a little bit. At this stage I cannot tell you the details because we still have to work on it, but next year you will have an update.

To tell you the truth, it was planned so as to be done this year, but we decided 18 months ago to focus on climate change, so the upcoming report will be on climate change; in the next one we'll do a wrap-up of some of the key issues we looked at in the past.

Hon. John Godfrey: What I would like to do now is focus on two of your slides. If I were mean enough, I would get Mr. Reed to conduct a discussion with Mr. Moffet and Mr. Clarkson, because Mr. Reed has put some very good questions here. These are the questions we would be expecting to ask.

On priority substance lists 1 and 2, and on virtual elimination, first of all I'd like to give a chance to Mr. Moffet and Mr. Clarkson, as they see fit, to start answering the questions Mr. Reed has started putting to you. Mr. Reed, if you think you'd like a little more detail, don't hesitate to jump in.

Let the audit begin.

The Chair: Mr. Moffet, please go ahead.

Mr. John Moffet (Acting Director General, Systems and Priorities, Department of the Environment): Mr. Chairman, I don't think you have to worry about Mr. Reed hesitating to jump in.

I can give you an update of the status of the PSL. As I think you know, the ministers over the course of the 1990s assembled two PSL lists, PSL1 and PSL2. PSL1 contained 44 substances, some of which were individual chemicals and some of which were broad effluent streams. I'll give you a quick status on this.

All but two of those assessments are completed. Twenty-six out of 44 have been found to meet the criteria in section 64. They're toxic under the act. All 26 of those have been added to schedule 1. Twenty-five of those are managed by instruments under CEPA, and one, which is one of the phthalates, has been managed by the Minister of Health.

One has been proposed toxic, so the assessment is completed. The first notification has gone out suggesting that the substance is toxic and that it be added. That process isn't complete. That's used crankcase oil.

Thirteen of the substances are not toxic, did not meet section 64. Two of them were found to in fact not be in use and are therefore subject to the new substances notification regulations. In other words, the departments didn't conclude one way or the other. They didn't need to; the stuff's not out there. If it ever comes in it will be subject to the reverse onus provisions in the new substances regime.

Two of the assessments are in the process of being updated and revised. In terms of monitoring those substances, 23 of the 26 declared toxic are currently being monitored under the NPRI. Eleven of the 13 declared not toxic are also being monitored under the NPRI.

PSL2 had 27 substances. Nineteen of those have been found to meet section 64 criteria; they're toxic. Seventeen have been added to schedule 1. One, radionuclides, is being managed by another federal agency, the Nuclear Safety Commission. It's a much better place to manage that substance.

Road salts were not added to schedule 1 but are nonetheless being managed by a memorandum of understanding. I'm not sure exactly who it's with; I can get you that detail. Seventeen of the 19 are being monitored by the NPRI. Six of the substances have been found to not meet the criteria in schedule 1. Two of the assessments have been suspended pending further research.

So of the 71 substances, all but four of the assessments have been completed, and where appropriate, management regimes have been put in place.

● (1600)

Hon. John Godfrey: Mr. Reed, do you have a follow-up question on that?

Mr. John Reed: I think Mr. Moffet has answered some of the questions we would be posing. As I said, in 1999 some 13 of the substances that had been assessed were left incomplete, and we wanted to get some closure.

What I probably would be interested to know is a little bit more about the management side of the equation. In 1999, for example, for those 25 substances that had been declared, the department put in motion 14 major industry consultations. They were called strategic options processes at the time. At the conclusion of 1999, 9 of those 14 had finished their work; they had generated something like 50-odd recommendations that had been accepted by ministers, but there were no resources attached with those recommendations.

We would want to know whether you have implemented those recommendations. Did you get resources? They called for things like writing regulations, developing codes of practice, and getting more information.

In fact, in 1999 we broke down a number of those recommendations, and even though 55 recommendations sounds like a lot, in fact very few of those recommendations were risk reduction measures. They were education programs. They were training. They were to get more information, but there wasn't a lot that said what was going to be done on the ground to reduce the substances.

At the end of 2002 all the consultations had been completed. Now we're up to about 75 recommendations, and again we'd ask the same question: have they been implemented, and what evidence do we have that the risk is being reduced, that releases to the environment are going down as a result of these recommendations?

Hon. John Godfrey: And the answer to the question would be...?

Mr. John Moffet: Let me speak to the question about resources.

Following the 2002 audit—there's no necessary causal relationship, but external prompting is always helpful—in 2003 and in the following years, the government did allocate the environment and health departments additional resources to implement CEPA.

Compared to our funding in 2002-03, two things happened. First, parts of our implementation under CEPA were based on temporary funding. Almost $50 million of temporary funding—$48.2 million of temporary funding—has now been made permanent; in other words, it has been added to our permanent base. In addition, we received an additional $28.1 million of new funding. I believe I can give you a breakdown by program, and we can and will submit that to the committee.

● (1605)

Hon. John Godfrey: It's the management question—the very last question that Mr. Reed was asking.

Mr. John Moffet: Right. Are we making a difference?

We have implemented management measures for each of the substances declared toxic. Some of those have been in place for long enough that we can say yes, we're making a difference. Some of those have not been in place long enough to know whether we're making a difference or not.

I know this is not going to be a satisfactory answer, but what I propose is to provide the committee later in the summer, upon your return—and this is not an attempt to hide it—with a breakdown of the trends in emissions and use of each of the substances over time, and in addition an indication of when the CEPA management measure came into place, because we don't want to attribute causality; the emissions may have gone down for some other reason. We need to be careful about attributing causation to a CEPA measure. That's something we need to be constantly aware of—that we don't do something for no reason or conclude that something was successful, when in fact it may not have had an impact. But I can commit to providing you with that information towards the end of the summer.

Hon. John Godfrey: Thank you,.

The Chair: Thank you.

Mr. Bigras is next.

[*Translation*]

Mr. Bernard Bigras: Thank you very much, Mr. Chairman. First of all, I want to welcome you to the Standing Committee on Environment and Sustainable Development.

When you talked earlier about your follow-up work in Chapter 1 of your 2002 report, you asked us to pay particular attention to the progress made over the last few years and the many empty circles in your matrix. These numerous empty circles which appear in areas where there should be better coordination between departments demonstrate that progress has been very limited. It seems difficult to maintain coherence between the actions of departments. I believe that the first demonstration of this fact was given to us last week when Health Canada said that no common policy framework has been put into place.

You say that 27 recommendations were put forward in your 2002 report. My question is directed to Mr. Moffet and Mr. Clarkson. As of today, on the 27 recommendations contained in the report, how many have been implemented?

[*English*]

The Chair: Mr. Reed.

Mr. John Reed: May I just quickly interject? Not all of those 27 recommendations were directed to Environment Canada and Health Canada with respect to toxic substances under CEPA. Many of the recommendations dealt with pesticides. Some of them were with the Fisheries Act. Not all 27 would ever have applied to today's discussion.

[*Translation*]

Mr. Bernard Bigras: Whose responsibility was it to act on these recommendations? It belonged to the departments, did it not?

According to you, how many recommendations were implemented?

● (1610)

[*English*]

The Chair: Mr. Clarkson.

Mr. Steve Clarkson (Director, Environmental Contaminants Bureau, Safe Environments Program, Healthy Environments and Consumer Safety Branch, Department of Health): Mr. Chair, as Mr. Reed pointed out, some of the recommendations referred to the Pest Management Regulatory Agency. I have not prepared nor am I able to respond to those that deal with that part of my department. With respect to our activities that deal with CEPA, one of the recommendations is the 13 substances. You've heard reports that those have been completed. Those were outstanding from PSL1.

The next recommendation talks about process for being able to incorporate new information into an assessment that has been completed. We committed to initiating a response to that; however, in attempting to meet the categorization criteria and deadline, along with doing the pilot study that we started in conjunction with the categorization exercise, we have not completed the commitment.

On the other hand, I would maintain that the important part of an assessment leads to a conclusion as to whether you need risk management or not. It has always been our practice, at least from the Health Canada perspective, to incorporate new information that comes along that has an impact on our risk management decisions during that phase.

The Chair: Mr. Moffet.

Mr. John Moffet: My understanding of the status of those recommendations that Environment Canada has is that the department agreed to those recommendations. The exception is...the procedure is to incorporate new evidence that we have at least begun action to respond to each of the recommendations.

[*Translation*]

Mr. Bernard Bigras: My second question is about virtual elimination. In this document you handed out, you say, and I quote:

> Our 2002 report noted no substances have been added to the CEPA virtual elimination list [...]

I find this interesting. Indeed, last Thursday, we considered in the House of Commons a bill introduced by Ms. Minna that would add perfluorooctane sulfonate to the virtual elimination list. A regulation to deal with this substance was published first in the Gazette in 2004 and we are still sitting here wondering when it will be added to the virtual elimination list.

The Commissioner of the Environment made these findings in 2002. How do you explain that a member of Parliament has to introduce a bill in order to force the government to add this substance to the virtual elimination list? Is it due to administrative problems? What reason is there for the government to delay adding substances to the virtual elimination list?

[*English*]

Mr. John Moffet: I can respond.

I repeat what I think I said in an earlier meeting: to date the departments have not added to the virtual elimination list all substances that they have prohibited.

In 1998, after the departments developed the toxic substances management policy, the departments identified 12 substances for virtual elimination. Eight of those were pesticides, and there were four other substances. All eight of the pesticides are not registered with the Pest Control Products Act; in other words, they cannot be used as pesticides. Adding them to the virtual elimination list doesn't do anything over and above the step that's been taken by the pesticide management folks, so it would be additional government effort for no value added in terms of risk management.

The other substances have been subjected to the prohibition regulations, so again their use is prohibited in Canada. Again the conclusion was that going through the administrative steps to add those substances to the virtual elimination list would not add any benefit to the risk management of those substances, because what needed to be done had already been done.

You also asked about whether there are administrative problems with virtual elimination requirements in CEPA. I think it's fair to say the answer is yes, there are.

The virtual elimination provisions are complicated and hard to follow, but essentially what they say is that if a substance meets the criteria in the regulations to be considered persistent or bioaccumulative, and inherently toxic, the minister shall implement virtual elimination as it's defined the act. That means the minister must add the substance to the virtual elimination list, identify a level of quantification, and then develop a release limit regulation.

What we found is that many of the substances on the horizon that we anticipate may be subject to these requirements are contaminants in products; they're not being released through industrial emissions. We've learned that it's extremely hard, technically, to develop a level of quantification for a contaminant in a product that is inadvertently released, and that indeed the better approach for addressing these substances, in many cases, is simply to prohibit their use. Going the VE route—virtual elimination—would then just add some burdens that are hard to comply with and again won't add a lot of environmental or health benefit.

The additional requirement of having a release limit regulation is again something that in many cases has turned out to be unnecessary. If you ban the substance, there's not much point in developing another regulation that prescribes a release limit for it, because in theory you shouldn't be using the substance—so, yes, when we've tried to implement these provisions, we have encountered some administrative challenges.

● (1615)

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Thank you, Mr. Chair.

Thank you to our witnesses for coming today.

I'd like to step back for a moment, Mr. Reed, to the use of voluntary instruments. It was noted in your 2002 report. Could you explore this a bit more? You seem to raise a note of caution. We struggle with this, it seems, at this committee—with government inaction. It's very difficult to move them over to any mandatory legislative requirements.

I wonder if you could expand a little more. You've mentioned that your position was neutral on it, and I know you folks have to be careful in terms of policy commentary, but how effective has the voluntary application been for Canada?

Mr. John Reed: That's a tougher question to answer, but let me explain the basis of our work, again bearing in mind that at the time of the 1999 audit, we were interested in more than just CEPA toxics.

There was at least one major initiative at the time, called the ARET program—the accelerated reduction/elimination of toxics. It was in effect a program sponsored by a number of NGOs, industry groups in the government, as a means to get action faster. In those days, in the 1990s, volunteerism was in. Regulatory controls were out; they were expensive, the departments were going through program review, and industry was willing to step up to the plate and volunteer. It's probably the case that those voluntary efforts did result in reductions.

Our beef, though, was basically that ARET had a number of substances that were determined to be high-priority toxics—they were designated high priority—and there were a number of CEPA toxics that were being managed through voluntary instruments in the form of ARET. A substance would get declared toxic under CEPA and the risk management measure would be to put that under ARET; in other cases there would be a memorandum of understanding developed with an industry association, or with individual companies, and they would commit to take voluntary action on those CEPA toxics.

When I said we were neutral, the policy question of whether a voluntary instrument is better than a regulatory instrument is something we avoided. We said that's a policy choice governments can make. However, we did feel that if you're going to use voluntary instruments to manage high-priority toxic substances—substances that otherwise have the potential to create risk for people and the environment—then make sure those voluntary instruments are robust: make sure they have the characteristics of a regulatory approach without being a regulation.

● (1620)

Mr. Nathan Cullen: Before you step further into this, though, I'm looking at your testimony around our ability to track. When we dive into CEPA it gets very laden with jargon right away, and it's harder and harder for Canadians to access what's happening. If we're trying to eliminate the worst chemicals out of our environment and we're unable to track the substances being released into the environment in the first place, I'm confused as to whether we can even pass judgment and if the government can know if it's doing a good job or not. How do you know the effectiveness of a program, or whether voluntary or mandatory regulation works, or if money is being well spent, or any of those things, if you don't actually track those substances at their release point?

Mr. John Reed: I agree with you entirely. We made that point in the 1999 audit.

You have a process whereby a substance is determined to be toxic. You go through a process of identifying what you're going to do about it. Most of the time that's in the form of either a regulation or companies agreeing to voluntarily reduce the limit. The only reporting mechanism that existed at the time was the NPRI. We made the point in the chapter that many of the substances that are being declared toxic are not on the NPRI. There was no mechanism for tracking releases. By 2002 the departments had made a number of additions to the NPRI, and more and more of those declared toxics were being tracked.

I think your question remains pertinent today. That's why I said earlier that if we were approaching this topic again, we would probably go substance by substance. We would want to know what risk management measurement was in place, what reductions were you trying to achieve, what do we know about releases, and what do we know about ambient monitoring. It's one thing to know under the NPRI whether it's being released at a point facility; it's an entirely different question to know whether it's in our water, on the land, or if we're breathing it.

Most of the substances were not being monitored in 1999. I think you're onto the right thing, that if you don't have monitoring and tracking, you don't know—unless the instrument itself, like a regulation, has reporting built into it, such as an MOU sometimes. Even in a memorandum of understanding, the companies and the associations involved are often more than willing to try to report their progress. From a reliability standpoint, you have the ability to enforce a regulatory approach, but when you have a voluntary approach, we were asking the question, how do you know? And how can you use that tool to make sure it's working?

I must say, though, that on this count the Department of the Environment did respond to our recommendations. We had suggested they needed some policy guidance on when they would use voluntary instruments, when not, and what they should look like. I think we did report in 2002 that the department had made some good progress there. They actually found it quite helpful; they had some ammunition to use with industry, to say we need to have robust instruments.

Mr. Nathan Cullen: That's appreciated.

I want to go to Mr. Clarkson just for a moment.

How long have we known about the effectiveness of biomonitoring, or this ability to test humans for toxicity levels?

Mr. Steve Clarkson: I can't give you an exact time, but I would say decades, probably.

Mr. Nathan Cullen: Decades.

Do we have industrial partners or other nation states that use this tool, that you're aware of, as a way to manage the release of toxic substances?

Mr. Steve Clarkson: The program I'm most familiar with is run by the United States Centers for Disease Control and Prevention. I don't know the numbers of people in their most recent one, but it was large, as they do it in a statistically valid way. They have it set up to satisfy ethical and other criteria and have a considerable budget. I think they targeted 150 compounds in their last go-round.

● (1625)

Mr. Nathan Cullen: Why does Canada not use it?

Mr. Steve Clarkson: Well, there are a number of reasons, resources being one. We have done biomonitoring in targeted populations in the past, and continue to do so. There has been regular monitoring of human milk for contaminants, though I'm not sure of the frequency.

Mr. Nathan Cullen: Do those reports get released publicly?

Mr. Steve Clarkson: Yes.

Mr. Nathan Cullen: The resource barrier isn't so much of an answer, as the federal government has a lot of money—some say too much, some say too little. But in terms of allocating resources....

In terms of the effectiveness of bringing in public discourse as a tool, which has been shown in other regions to be effective, I think the American model is quite the one to point to; it's part of the discourse in the public about toxics and pollutants. Again, if this has been shown to be effective, why have we not allocated the resources?

Mr. Steve Clarkson: I'm not sure I agree with you that I'd call it effective.

Mr. Nathan Cullen: Oh, I see.

Mr. Steve Clarkson: It is a piece of information that contributes to the knowledge in deciding whether you have a problem in the first place, or whether the problem you're trying to resolve has successful approaches for doing so. But biomonitoring is only a piece of the puzzle. We don't necessarily get from biomonitoring what it was that led to the exposure that put the material into the person you've measured. Is it because of an industrial release? Is it through the food system?

So it's only part of the picture in terms of deciding what you have to fix—if you have something to fix—and how you're fixing it.

Mr. Nathan Cullen: As a tool, then, have we fully utilized it in our policy?

Mr. Steve Clarkson: We've used it to the extent we've been able to.

I should mention—you may have heard this already—that we have been partnering with Statistics Canada to run, in fiscal year 2007, a Canadian health measure survey. We've been planning this for two or three years now. The survey will involve 5,000 Canadians aged 6 years to 79 years, using the valid and good approaches of Statistics Canada to ensure that we can rely on the data we generate.

Mr. Nathan Cullen: Is it a written survey, or are we testing blood and all the rest?

Mr. Steve Clarkson: We'll be testing blood and urine anyway.

The Chair: You have one final question, Mr. Cullen.

Mr. Nathan Cullen: Thank you, Mr. Chair.

To Mr. Reed, one of the questions I've struggled with is that we in Canada generally trust the companies that are doing business within our borders to do well. In terms of the testing processes used by government, essentially allowing companies to test their own products, I'm trying to tease apart how it's not a conflict of interest, or there isn't a challenge.

First, have we done any analysis of how much in-house capacity we have to do the testing? Second, do we have any analysis of or research on the effectiveness of the external testing that's being done by companies? Is it peer-reviewed? Is there any further backup done? Does Canada replicate the tests that companies offer us in terms of determining that the products are safe for market?

Mr. John Reed: I'm out of my league on this one, honestly. In the 1999 and 2002 audits, we focused exclusively on existing substances as opposed to new substances. Under CEPA, when it's a new substance, my understanding is that industry carries most of the burden for providing the information on toxicity and so on. Under the existing substances, I think it was mostly government researchers who were doing the assessment work.

To a certain extent, the assessment activity for us was a black box. They are so complicated, these assessments; you have to be a toxicologist just to understand some of the language they're using. We were looking at the process, at the amount of time it took, and the outcome of the assessments. As to inside those assessments, and the extent to which industry tests and government tests, I'd have to turn to either Mr. Moffet or Mr. Clarkson; I'd be out of my league.

The Chair: Briefly, Mr. Moffet.

Mr. John Moffet: I will try to respond briefly to a number of the points that were made.

In terms of ARET, I think it's important to say that the primary risk management approach for CEPA toxic substances was never to rely on ARET. Although ARET was an important measure, it was never *the* measure that was used to address a CEPA toxic substance. Indeed, CEPA 1999 made an important change in that it requires, by law, a regulation, or "instrument", for each substance added to schedule 1. So we could not rely just on ARET, or an equivalent voluntary challenge, for a substance added to schedule 1, and have not done so.

The reporting mechanisms now extend beyond NPRI and include a number of air reporting mechanisms. Most CEPA regulations require reporting. The challenge that we have, and it's something we could do a better job on, is aggregating NPRI and similar air reporting and individual regulatory reporting to provide information to the public in a useful way.

I do want to emphasize that in 1995 there were about 1,800 facilities and 176 substances on the NPRI. A couple of years ago, in 2004, there were almost 9,000 facilities reporting on about 325 substances. So NPRI is expanding considerably, and continues to provide us with a better and better picture—not a perfect picture; it's important to understand that it's not a static tool.

The policy movement on voluntary measures, which Mr. Reed spoke about, is now documented in the form of a policy framework for environmental performance agreements. This is a formal policy that documents the circumstances in which the department will use non-regulatory performance agreements and specific requirements. Many of those requirements flow from the recommendations made by the commissioner and include such things as credible public reporting and some form of verification as a recognition that some of the voluntary measures that emerged in the 1990s were inadequate in being able to provide the information that the public and the government needed in order to determine efficacy.

In terms of ambient information, I think that is where we're weak. As Dr. Clarkson emphasized, that's not the only piece of information that is needed, but it is a critical piece of information. If releases are up or down, that's important to know, but really what we want to know is whether the environment and human health are better. You have to be able to make that connection.

Finally, in terms of the new substances regime and who does the work, and how credible that work is, the information is generated primarily by industry, but it has to be generated and provided in a form and following procedures that are prescribed in law by the government. Those procedures essentially require following standardized assessment protocols that have been developed throughout the OECD. It's not an unusual scientific thing to say that you must follow this procedure and document it in this way so that another scientist can review it and trust your data. That's the way the scientific world works, and that's essentially the way the new substances notification regime works.

● (1630)

The Chair: Mr. Harvey.

[*Translation*]

Mr. Luc Harvey (Louis-Hébert, CPC): I have been a business owner for a long time. In order to manage or make assessments, one needs daily or monthly reports in order to see how things evolve.

You said that you do produce reports and that you delayed one because you wanted to add other substances, such as CO_2.

How come we cannot have more frequent reporting on the status of the environment, on the release of chemicals into the environment?

Mme Johanne Gélinas: Mr. Chairman, I will leave to Mr. Moffet the pleasure of answering this question.

[*English*]

Mr. John Moffet: I may have misspoken. The assessment reports I was speaking about are formal assessments that the departments jointly conducted on each of the substances added to the priority substances lists. There were 71 of those substances, and assessment reports have now been completed for all but four of those substances. Those reports are all publicly available. For four of those substances, there is still ongoing work for various reasons, but primarily because the available evidence is simply inconclusive; the departments are not able to come to a conclusion one way or the other.

I think that's a different issue than what you're speaking about, which is the public availability of information on the quality of the environment and presumably some indication of whether the public ought to be concerned about the state of the environment today or tomorrow.

I think there are a couple of points that should be made. One is that over the past few years there has been an increased emphasis within Environment Canada and Health Canada on providing information about air quality and on making that information useful and available on a regular, more localized basis to Canadians. For example, the smog alert that we all experienced on the weekend—which may have been the first province-wide smog alert, and certainly the first province-wide smog alert of this year—was based on procedures put in place by the two departments.

On the other hand, while we have been working on various indicators, we have not published a comprehensive state of the environment report for many years. That's an area that has received less emphasis over the past few years, based on the allocation of resources to other priorities.

● (1635)

[*Translation*]

Mr. Luc Harvey: You also said that 28 recommendations were made. I find it strange that you are not able to tell us today how many of these recommendations were implemented. It is difficult to know where we are at. You must understand that we are trying to help you. If we do not know what the present status is, it is difficult to provide more support to you. I will not go so far as to say that I find this regrettable, but I am surprised that we are unable to identify more precisely where we are at today and what areas require more work. Do we need to add resources or manpower? We have no idea what the priority should be.

[*English*]

Mr. John Moffet: I think the reason for my hesitation is that we can say that we agreed with the recommendations made by the commissioner in the 1999 and 2002 reports, and we can also say that we have put in place measures to attempt to respond to those recommendations, but I don't think I can come before you and say that we have categorically delivered on all of those recommendations, because I think that's a qualitative judgment. That's not a judgment that I can make; that's a judgment that you may want to make.

The government provided more money to the departments. Did the government provide enough money? That's not for me to say. Did we develop a policy on use of performance agreements? Yes, we did. Is it a good policy? Again, that's not for me to say.

So we've acted on all of the recommendations. I think that's as far as I can go.

Ms. Johanne Gélinas: Please let me ask a bit more on that, Mr. Chairman.

First, I have to say that it's true that the department has agreed with all of our recommendations; that's point number one. Second, we have had a very good relationship with the department over the years. They know exactly where we're coming from, and we talk to them to make sure that whatever recommendations we make will make sense to them and will be implemented.

It's part of my duties, my mandate, to do regular follow-ups. I think you weren't there when I mentioned this, but to bring some clarification, we were planning to do a follow-up of those recommendations for 2006, and we decided to postpone it by one year.

So we will come back, and the exhibit you have in the chapter will be revisited. Then we'll come back and report to you on how much progress has been made with respect to the 2002 recommendation and also to the one we made in 1999. So we'll come back to you on that, specifically from an edit standpoint in 2007.

● (1640)

[*Translation*]

Mr. Luc Harvey: You are unable to provide the follow-up today.

Ms. Johanne Gélinas: We can only provide the follow-up we did at the time, in 2002. It is always somewhat frustrating for auditors to give testimony on an issue such as the review of the Act, because we do not have necessarily up-to-date information. This is why our approach has been to identify a number of questions that we ourselves, as auditors, would want to ask the department in order to determine what results have been produced in implementing the Canadian Environmental Protection Act.

In the end, the substantive question that needs to be asked is whether CEPA meets the objectives and produces the expected results.

Mr. Luc Harvey: Mr. Moffet stated that it was not for him to say whether there is a lack of money or resources. Who can give that answer to me?

Ms. Johanne Gélinas: Certainly not us. The minister could answer that question. We do not pass judgment on funding priorities. I fully agree that for the officials this is a very sensitive question.

Mr. Luc Harvey: I will share my time with Mr. Watson.

[*English*]

Mr. Jeff Watson (Essex, CPC): Is there any time left for questions?

The Chair: One and a half minutes.

Some hon. members: Oh, oh!

Mr. Jeff Watson: I'll wait until the next round.

The Chair: Mr. Silva.

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

Obviously, all of us have concerns about the fact that the federal government is not meeting its recommendations nor fully understanding the effects of toxic substances. We heard it today, and I think we heard in other meetings in the past that there are divisions within departments. The government is definitely not taking adequate action to manage the lack of risk to the public and the environment.

Because of all these concerns that many of us on this committee have, obviously what's fundamentally needed is leadership. My question to you is, what type of leadership do we need?

Ms. Johanne Gélinas: We have said in the past with respect to the environment, and I guess I have said this too many times before this committee, that we need leadership at all levels.

In the case of CEPA, it's clearly federal jurisdiction, and we are hoping that some progress will be made. We will be able to report on that next year. I would caution you not to use our 2002 conclusions too much, because things have evolved since then, and we cannot tell you how much progress has been made—and, in some cases, neither can the department.

What Mr. Reed was suggesting, and I will just re-emphasize this, is that the best way to see how CEPA is working is to go substance by substance and to look at what the status was a couple of years ago, before the CEPA review, and what has been accomplished since then. Then you will be able to draw your own conclusions on how much CEPA has been able to achieve.

If I may just expand a little bit, Mr. Chairman, on what we have said in the past and on what CEPA is all about.... Mr. Moffet has talked about the PSL1 and PSL2 substances. We have talked about assessment here; assessment is the first step in moving on and managing.... You still need to have a very good understanding of the status of the management of those substances.

Also, don't forget that collectively, as a country, we have to deal with the 22,000 substances on the domestic list, and some of those substances will get on the PSL2 list, so we will have to manage those too. When you raise questions related to the resourcing, you have to be forward looking and ask yourself if we will be able to manage those substances too. At the time of the 2002 follow-up, we said that if 1% of the substances were to make the CEPA list, it would take decades to deal with those substances. So always keep in mind the forward-looking aspect; there's not only the CEPA toxic list as we know it already, but we have the backlog and the upcoming substances that may end up on that list.

I haven't talked much, and I will stop here, because Mr. Reed can give you all the appropriate answers.

● (1645)

Mr. John Reed: I just wanted to give a very specific example of where I think the departments need help, but I'm not sure what the latest status is.

In the PSL1 process, a substance is assessed and is declared toxic after five years, and then it gets handed over to a risk manager, who is leading a consultation with an industry group—sometimes a hostile industry group. The major finding, or one of the findings, in 1999 was that the risk manager was not equipped with a science-based risk management objective. The substance has been declared toxic, but the risk manager doesn't know how much reduction needs to be achieved in order to make sure the risks are manageable. He or she is simply asked to engage industry and to get as much action as they can through a negotiated settlement.

I don't know whether the situation has changed for the PSL2 topics; that's one of the recommendations we made. But it was obvious to us that leadership at the commencement of that risk management exercise is needed, so that the risk managers know what they have to negotiate. And if they can't get it voluntarily, then they really have to use a regulatory approach to achieve the reduction.

I don't know what the situation is today, but that was an area of leadership, not in the sense of blue sky but of very practical direction, to help risk managers achieve the risk reduction objections they needed.

A second area where leadership is clearly going to be needed is on the DSL, the domestic substances list, and in the application of the precautionary principle. There are going to be more uncertainties in the future than there were in the past, and somebody has to make the decision on how that principle is going to fall on those substances where there's uncertainty. But you can't expect public servants to be making those kinds of decisions. I don't think it's their role.

Mr. Mario Silva: Do I have some more time or not?

The Chair: No, sorry.

Mr. Mario Silva: Okay. Thank you.

A voice: Could I provide a quick update on those two points?

The Chair: Could you just follow, Mr. Watson?

Go ahead, please.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

I appreciate the caution at the conclusion of your 2002 report that they do not apply to the performance of Canada's new government. They certainly are instructive about the poor record of the previous Liberal government.

We've identified a lot of implementation problems with CEPA 1999. They're now ours to clean up, and we're certainly grateful for your help in this process toward that goal.

After identifying a number of problems in implementation, is there anything inherent in CEPA itself, though, that is acting as a barrier to achieving the original goals of CEPA 1999? Are any of its provisions causing some of its own problems?

I'll suggest one later, but I want to hear your thoughts on that, if you can point the way.

Mr. John Reed: Honestly, the only thing I could say to you would be very anecdotal at the time of 2002.

Because of the timelines associated with the development of risk reduction measures, the fastest and easiest route for the department was to try to get a negotiated voluntary agreement, a non-regulatory measure, in effect, because it takes so long to get regulations through the system that a two-year timetable was a bit of a barrier.

But that's very anecdotal, and we did not do audit-based work that would give us evidence. It's just the things you hear as you're talking to risk managers.

● (1650)

Mr. Jeff Watson: The virtual elimination you suggested—somebody testified earlier about it being a policy of the previous Liberal government—does that not in some ways weight the focus toward pollution control, rather than applying any amount of precaution? Should CEPA now be weighted toward greater focus on the precautionary principle this time around so that we're getting to pollution prevention rather than control, or some mix? How do you split the line on that one?

Mr. John Reed: I'm not sure I understand the question. Pollution prevention is a separate principle from the precautionary principle, as I understand its application in CEPA, and I would treat them separately.

Earlier in my comments I made the point that if we were doing work in this area, we would ask ourselves to determine whether pollution prevention, as intended, is really occurring, i.e., the prevention of the generation of pollutants in the first place. The reason I raise it that way—and this has nothing to do with the new government—is because a game goes on out there; there are lots of labels as to what pollution prevention is. I can tell you some organizations will argue pollution control, “end of pipe” control, is a form of pollution prevention, but in my view it's a bit of a game, because the intent of pollution prevention is not to generate the stuff in the first place, and that's what we would want to pursue in an audit: to find out whether the pollution prevention plans, which are one of the CEPA instruments, are really achieving that.

That's separate I think from the precautionary principle, which has much more to do with the decision you take in the face of uncertainty.

Mr. Jeff Watson: Do we know enough now about certain things that we could go ahead and have some very specific targets in the areas of both environmental and human health and put them into CEPA? What could you recommend?

Mr. John Reed: I'm not sure how to approach that question, partly because we didn't audit enough of CEPA. We only looked at the provisions that dealt with the management of toxic substances. There's a lot of CEPA we did not look at. I would say it's largely a policy question, whether to use CEPA in that way.

The Chair: Madam Gélinas.

Ms. Johanne Gélinas: We can certainly ask how the pollution prevention principle and the precautionary principle are applied and have a better understanding of how those two principles applied to the implementation of CEPA, because that's very unclear.

The Chair: Mr. Lussier, go ahead, please.

I'll get to you, Mr. Moffet.

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): The monitoring of departments is one of the main responsibilities of the Commissioner of the Environment and Sustainable Development.

Why did Mr. Reed, as he pointed out, target only six departments in his 1999 report? Which ones were they? What were the reasons for this choice?

Ms. Johanne Gélinas: When you determine the subject of an audit, you do it on the basis of risk. So we try to target those departments that are most closely involved. We try to target also a number of areas to ensure that we really focus on those substances that pose the greatest risk. Very seldom, at least in my experience as a commissioner over six years, does an environmental issue involve only the Department of Environment. For example, enforcing the Canadian Environmental Protection Act is a shared responsibility between Environment Canada and Health Canada.

As far as we are concerned, as Mr. Reed mentioned, we did not audit the implementation of the full legislation, we audited the management of toxic substances. There are many aspects, among others the whole issue of pesticides, which involve one other federal agency.

Mr. Reed could tell you which departments were targeted and why.

● (1655)

[*English*]

Mr. John Reed: Very quickly, the departments that were chosen were Agriculture, Natural Resources Canada, Fisheries and Oceans, Health, Environment, Industry Canada, and the Pest Management Regulatory Agency. Those are listed, by the way, in the table in the 2002 follow-up. They were included because of the scope of the audit. At the time there was something called the toxic substances management policy that engaged all of those departments, so they were included in the scope. There was the pollution prevention policy that applied to all of the government. In effect, each one of these departments had a role in either the assessment or the management of toxic substances at that time, so they were included in the audit.

[*Translation*]

Mr. Marcel Lussier: It is also the Commissioner's responsibility to ensure that each department tables a strategic plan for sustainable development.

Do all the departments table a strategic plan? As of today has every department done so?

Ms. Johanne Gélinas: I am pleased to talk about sustainable development strategies. Very seldom do I get asked questions on this subject. In fact, I am not responsible for compelling departments to table a strategic plan. This is a provision of the Auditor General Act as amended. This Act gives me the duty to undertake audits but it compels at the same time almost all departments, with very few exceptions that are not worth mentioning, and federal agencies to produce sustainable development strategies.

The first wave of strategies has been tabled, if my memory is correct, in 1997. Those strategies, one for each department, must be reviewed and updated every three years. These strategies are tabled in the House of Commons.

As far as what we call the fourth generation strategies are concerned, we expect them by the end of 2006. This has nothing to do with which government is in power, it is an obligation of departments, set out in the Act, to table those strategies.

I take the opportunity to mention that I would be pleased to come and discuss with you in 2007 the content of these strategies, which unfortunately have not all received the attention they deserve.

Mr. Marcel Lussier: Therefore, it might be useful to remind the departments that they need to come up with a strategy.

How many departments do you expect to do so?

Ms. Johanne Gélinas: Departments know very well that they have a legal obligation to table their strategy.

Mr. Marcel Lussier: All departments?

Ms. Johanne Gélinas: Twenty-eight departments and agencies have a legal obligation to do so. Others, such as we ourselves at the Office of the Auditor General, do so on a voluntary basis. No one can escape this obligation. Under the Act, these strategies must be tabled by the end of the year, in December 2006.

Mr. Marcel Lussier: Do you have authority to reprimand?

Ms. Johanne Gélinas: No, not at all.

My mandate in terms of sustainable development strategies is to do a follow-up on the implementation of commitments contained in the strategies and to report to Parliament, which includes discussing this here, in front of parliamentary committees, especially that on the environment and sustainable development.

Mr. Marcel Lussier: Do you have an obligation to measure objectives, performance or efficiency?

Ms. Johanne Gélinas: I am not obligated to do so, but it is part of my mandate as auditor to do follow-ups. I am obligated to report to Parliament on progress made in implementing these strategies by all departments, whether they be Finance, Fisheries and Oceans or Justice.

Mr. Marcel Lussier: So we will see you again in 2007?

Ms. Johanne Gélinas: It will be much earlier, but you might see me again in 2007.

[*English*]

The Chair: Thank you very much.

Mr. Moffet, you've been trying to get in during the last couple of questions. If you would like, please just carry on.

Mr. John Moffet: Thank you.

I just thought I would try to provide a quick update on some of the comments that Mr. Reed provided.

First of all, he mentioned that the toxic substances management policy and the federal pollution prevention policy applied at the time of his audit. Both of those policies still apply and still guide the decision-making under CEPA and other federal statutes related to toxics.

He mentioned that there was a general absence of science-based goals for risk management. After the implementation of CEPA 1999, the department developed toxic management procedures—which are on the website of the department—that guide the way each risk manager undertakes his or her activities. They prescribe a process. The first step in the process is to try to identify a science-based goal for the management of a substance. Then, of course, you have to turn to what is practical and what the actual goal will be that is articulated in the management instrument. That's the policy that guides the development of risk management.

I don't want to mislead you and suggest that that is actually carried out in every case: the identification of (a) a science-based objective, and (b) making a linkage between a science-based objective and the actual risk management measure is extremely hard to do in many cases. We may want an ambient concentration of X, but if we decide to regulate sectors A, B, and C, but not D and E for various reasons, deciding what level of emission control, for example, or that a percentage of a product can contain a certain substance and then making the linkage between that and the overall environmental or health outcome that one wants is conceptually extremely hard to do. So again, this remains an ongoing challenge for both departments.

With regard to the DSL requirement—I've mentioned this a couple of times in appearing before the committee—the obligation in the act is to categorize all 23,000 substances by September 14 of this year. That obligation will be met; the departments will meet that obligation. The ministers are preparing to make those announcements.

As I have mentioned in the past, and I think as Mr. Reed emphasized, the interesting questions will be what we do with that information and how that information will change the way we both assess and manage substances. The departments are starting to talk to industrial and civil society stakeholders about a proposal for a new regime, based on that information.

The assertion was also that the regulatory process is too cumbersome, and therefore there is a tendency towards non-regulatory measures. I won't comment on the cumbersome nature of the process—there are many steps involved—but again, I want to emphasize that the law does not allow us to rely exclusively on non-regulatory measures. We must, by law, have a regulation or instrument for each substance added to schedule 1. I think that's important to recognize. Whether that's good or not is an issue for you to decide.

There was a question about virtual elimination, whether virtual elimination is precautionary and whether virtual elimination requirements in CEPA are linked to pollution prevention. I would suggest that virtual elimination requirements in CEPA are precautionary in the sense that they say if a substance is PBIT, it must be virtually eliminated. There is no question about it being subject to other types of analysis; it must be virtually eliminated.

Do those requirements necessarily drive or force pollution prevention? I would say the answer is not necessarily. The way virtual elimination is defined in the act is focused on releases. One can reduce releases through control measures or one can address releases through pollution prevention. The act does not necessarily drive us towards pollution prevention in the way that it spells out or defines “virtual elimination”.

● (1700)

That's the extent of the comments I wanted to make in response to those comments that Mr. Reed made.

● (1705)

The Vice-Chair (Mr. Mario Silva): Thank you, Mr. Moffet.

Mr. Godfrey, do you have a question?

Hon. John Godfrey: I'm just curious, because it follows on what you were saying, Mr. Moffet, about banning. In a way, you asked why you would need to classify something that can be virtually eliminated as banned. One reason might be that—and correct me if I'm wrong—some products that are banned in their pure form can be imported if they're contained within consumer products. For example, my understanding is that lead is banned in children's jewellery but might be contained in something. So “banned” may not in fact get you to the place you want. Or in the case of PFOs, can you say there are no PFOs in any consumer product that is imported into this country?

Mr. John Moffet: That's a fair observation. The prohibition regulations that I was referring to generally constitute a comprehensive ban. So when I said that we've looked at substances and determined whether to add them to the virtual elimination list and decided not to because they were already subject to the prohibition regulations, those prohibition regulations don't, for example, ban the presence of a substance in one type of product and not in another product. They're fairly comprehensive bans.

That's not the case, as you point out, for some substances like lead or mercury or other substances that have been discussed before the committee. I'm not at all trying to present the case that we have adequately addressed all substances that you might think should be candidates for virtual elimination or banning. Again, I think that's a policy judgment that I don't want to make. I just want to make sure the committee understands that in some cases, the government may have taken a step that does comprehensively address the presence of that substance in the environment and that following the additional steps prescribed by the act for virtual elimination would not, in our view, have had any environmental or health benefit.

Hon. John Godfrey: Mr. Reed, I'm trying to find the narrow line between policy and effectiveness here. Is that kind of a question, which I've raised, one to which you would say, "Well, if this is a badly constructed or an incomplete piece of legislation, that's not our domain"? Or is that your domain?

Mr. John Reed: I'm not sure I understand the question. As a matter of policy, we would not criticize legislation. But we look at its implementation, and we would structure our work to answer the question, "Are the objectives of this legislation being realized?"

So I'm not sure if I misunderstood your question.

Hon. John Godfrey: I guess what I'm really trying to find out is what happens when the nature of the legislation itself doesn't allow for what seem to be the purposes of the legislation, or when there are certain internal contradictions that don't allow the objectives to be met. Do you have anything to say about that?

Mr. John Reed: I think if we had found that, yes, I think that would not be a matter of policy to us. That would be a matter of policy implementation. If you're trying to achieve this through the act, and we do some audit work and determine that it can't be achieved for this reason or that reason, then something is wrong, and you can't achieve your own policy objectives.

In this case, we didn't find that. Plenty of other things we found.

Hon. John Godfrey: Thank you.

The Vice-Chair (Mr. Mario Silva): Thank you very much.

Mr. Cullen, go ahead, please.

Mr. Nathan Cullen: Thank you.

I think this is becoming a bit of a personal obsession, but I'm very curious about the testing component of this. I didn't see it in your report. Do you have any plans to look at the way chemicals are assessed? Mr. Moffet pointed out the process used and that there are protocols that are developed under OECD and other organizations. I'm trying to apply this to other industries and other things we consider potentially harmful.

I would never have considered it a good government policy to allow the tobacco firms to give us their tests on whether tobacco was safe or not because of their deeply vested interest in being able to continue to sell their product. Clearly the government doesn't want to do the same thing in the case of toxic substances. As auditors, have you done any assessment in terms of what the backstop is for a company that chooses to perform bad testing, to verify their product as fine for the marketplace?

● (1710)

Mr. John Reed: Mr. Moffet or Mr. Clarkson are probably better positioned to answer that. I can tell you something anecdotally, and it's more related to our future work plans and the scoping of this work.

Often when we scope work we do a number of interviews with stakeholders to find out what the issues are, what their concerns are. I think there was a generally held view that the new substance notification procedures under CEPA were okay. Nobody raised major problems with those provisions, and that's why we've tended to not look at them; we've tended to look where there are problems.

But inside the science and the robustness of industry-generated data...one of the departments needs to talk about that.

The Vice-Chair (Mr. Mario Silva): Mr. Clarkson.

Mr. Steve Clarkson: I will try. I am not a risk assessor; I manage risk assessors in Health Canada. I would like to give the message that anybody I've encountered at Health Canada doing risk assessment for human health takes a very protective and conservative approach. The basic policy undertaken is that we would rather over-protect than under-protect. So our decisions are geared to try to make sure we're protecting.

There are a couple of mechanisms that might give you some assurances about testing carried out by industry. There is data that an industry laboratory may submit, but the risk assessment process in Health Canada in my area doesn't usually benefit from a practice called "good laboratory practice", which builds on what Mr. Moffet talked about, using methodology that's been well-validated and accepted. During the carrying out of the generation of the data, there are also inspections by outside auditors to determine whether the process you're supposed to be following—the test method you're using—has been followed.

Mr. Nathan Cullen: What's the frequency of that external audit? This involves government officials going into the industrial labs to make sure they're doing the right thing.

Mr. Steve Clarkson: They're not necessarily government officials. For various parts of the good laboratory practices run in this country, it's done under the auspices of the Standards Council of Canada. In other countries they have a specific entity that carries out the good laboratory practices verification and puts on the stamp of approval—after following audits and verifying the data and the procedures—that the results are trustworthy.

Under our new substances program, I don't know how far they've implemented it, but they are working toward requiring that the data that is submitted to them for evaluation complies with good laboratory practices. In other words, the data that's submitted has to show that they have followed the practices and had the auditing I referred to.

In addition, on our existing substances side, if we had restricted ourselves to good laboratory practices data we wouldn't have reached any conclusions to speak of regarding those 69 or 71 substances that are on PSL1 and PSL2. A lot of information is generated in academia, in private labs—by industry using their private labs following GLP perhaps. But often it's just information in literature that's peer-reviewed.

In part of the risk assessment process in my department, as I understand it, the risk assessor has to evaluate the quality of the data they're looking at in the report or test. Has it been peer reviewed? Has it been reproduced elsewhere? I think you should have a fair amount of confidence that we try to ensure that the data we rely on in doing a risk assessment is credible, reliable, and contributes to our policy of being protective.

Mr. Nathan Cullen: Thank you.

I have two questions on resources.

The Vice-Chair (Mr. Mario Silva): I just want the committee to be aware that you're already past five minutes. However, I don't have a problem with you going further because I think nobody else has any other questions. So if the committee is in agreement, we're quite willing to extend the time.

Go ahead.

Mr. Nathan Cullen: Those were the fastest five minutes of my life. I was so enraptured with the testimony.

I have two questions for Mr. Reed. Has there been any assessment on the capacity? We talked earlier about resources the government has, doesn't have, or allocates. Has there been any assessment, or will there be assessment? Are there sufficient resources within these two departments to do the assessment? It seems as if they're taking the lead on most of this. Are you looking at that?

● (1715)

Mr. John Reed: When we do work on the domestic substances list, which is likely in the 2008 to 2012 period, we will definitely look at capacity. We will ask the departments to identify for us the resources they think are going to be necessary to complete all of those tasks, and we will compare those against the resources available.

Mr. Nathan Cullen: A second question is around the timeliness of this. Through all of this we've tried to understand how long it takes, after something is determined to be toxic, until there are actually recommendations made and things are enforced. It seems to vary widely. Did you have any assessment of that in your first round, and are you considering it for your second?

Mr. John Reed: Absolutely. If you can just bear with me for a moment—

Ms. Johanne Gélinas: John looked at that. Maybe you can look at your 2002 report. I have the French version, so it's probably not the same page, but just after paragraph 1.53, we were given at the time the example of Trichloroethylene. You will see, for example, that TCE was put on the list in 1989. Then in 1993 there was

...a Priority Substance Assessment Report completed ...[that] ... declared the substance toxic under CEPA

In 1994 they started the consultation process, on which John was talking about different strategic options. In 1997 this process was finished, and then a regulation was recommended. In 2000 TCE was added to the CEPA toxic list, and in 2002, at the time we did the audit, there really was no management measure put in place at the time. That's only one example, or one substance.

Mr. Nathan Cullen: But as an important example, from initiation to 13 years later, going through all the proper steps.... One of the reasons for these committee meetings is to be able to turn to Canadians and say, you're okay, we've got it under control, and the government's managing and protecting your health. For a substance like this to be known, and to be known as early as 1993, as not being good for us, and then to take until 2002 and still not have things in place, that element of timeliness is out the window. We cannot turn to Canadians and tell them, your health is being protected, because the process takes so long.

Ms. Johanne Gélinas: We clearly stated that in this chapter, and we did the same thing with respect to the chapter on pesticides, which are just a subset of toxic substances.

Mr. John Reed: If I could just add quickly, in the 1999 report, TCE was not an exception. For virtually all of the PSL1 substances whose assessments began in 1989, the departments had basically gotten to the point at the time of the 1999 audit where, on the basis of industry consultations, risk management measures had been recommended to ministers and ministers had accepted them, but the measures had not yet been implemented or resourced. That was the point I was trying to make earlier, that you go through that exercise and you're still not ready for implementation.

In the 2002 piece of work, we did not have the opportunity to follow the PSL2 risk management exercise, because it hadn't really started, as they had just come to the closure of the assessment exercise. But I think there was a view at the time—and maybe Mr. Moffet or Mr. Clarkson could add to this—that the PSL2 risk management exercise would be smoother, and probably a little quicker, than the PSL1 exercise, for a lot of reasons. But—

Mr. Nathan Cullen: Has there ever been an assessment of—

The Vice-Chair (Mr. Mario Silva): Sorry, Mr. Cullen, but you've reached the 10-minute mark and somebody else has a question.

Mr. Steve Clarkson: Mr. Chair, if I might add, to some degree the amendments made to CEPA in 1999 did impose the requirement that if a substance were added to the list of toxic substances, there would be a two-year time period for a preliminary statement of the risk management practice, or instrument, that would be used, and a further 18 months after that for it to be implemented in the government's requirements. So there has been an improvement, if you like, in terms of the timeline. Mr. Moffet may be able to add to this, but it's my impression that we've met all the timelines for those 24 months, with one possible exception, and it was a matter of weeks.

● (1720)

The Vice-Chair (Mr. Mario Silva): Thank you.

Mr. Jean, go ahead, please.

Mr. Brian Jean: Thank you, Mr. Chair, and thank you to the presenters today. It's nice to see you again, Commissioner.

I'm interested in one of the obstacles to progress, which has been touched on somewhat, and that is the inadequate tracking of releases. I would like to hear from you suggestions for solutions to this to make it more adequate.

Mr. John Reed: As we mentioned earlier, in the 1999 audit, we did indeed identify the fact that tracking wasn't in place for many of the substances. As Mr. Moffet has said, by the time the 2002 audit came around, they had in fact added a number of substances to the national pollutant release inventory. How comprehensive that is today, I really don't know.

I think it's almost as if...again, without trying to sound like a broken record, if you request from the departments on a substance by substance basis whether it is being tracked under the NPRI and under what conditions, you'll find out pretty quickly which of the releases are being tracked through that mechanism.

At the time of the 1999 audit, many were being reported through the voluntary ARET program.

Mr. Brian Jean: My interest is more on a solution base. What do you see as a proper solution to fix this problem? It appears that many of the health concerns Canadians have may be attributable to this without their even knowing it.

Mr. John Reed: Of the problems identified in the two reports, I don't think there were very many that didn't have solutions at hand. Most of the time policy choices are made because of resources. But do we have the ability to ask enterprises that release toxics to report them? Yes, we have the authority.

In some cases there are limitations or good reasons why it doesn't make sense to do so, but in many ways the answer is to use the abilities you have, to resource the abilities and the authorities you have. They're there in the act and in the affiliated mechanisms.

Mr. Brian Jean: Do you see it more as voluntary reporting with subsequent costs or penalties if they don't voluntarily report it? How do you foresee that working?

Mr. John Reed: I think the departments are having difficulty coping with the mandated obligations under the act, and I don't think they have the resources to be putting into what would be seen as stuff outside of the act. I think even though it may be an efficient way to go, they're probably putting their effort where it's mandated under the act.

There are other jurisdictions—and I think the departments could speak to this—that do a better job of tracking releases than is done federally through this act.

Mr. John Moffet: I would just remind the committee that I've committed to come back with a comprehensive report of it, substance by substance, and what's been tracked and how and what the tracking shows. Four years have passed since Ms. Gélinas' last audit, and most substances are being tracked at the moment, not just by NPRI but through various mechanisms.

The Vice-Chair (Mr. Mario Silva): Thank you.

I want to thank the members of the committee and I want to thank the witnesses for their presentations.

The meeting is adjourned until Wednesday at 3:30.

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