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Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

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● (0910)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): I'll call the meeting to order. Certainly, we welcome our guests.

As the committee knows, we are working on scheduling. I think we should thank our clerk for our last meeting. I think it went as we'd all hoped, with both sides being represented and getting deeper into the issue.

Just before we start with our witnesses, there's one small item I would like to ask the direction of the committee on, and that's the main estimates. The main estimates have to be reported back to the House by November. Basically, it's on the last budget, on the former government's budget.

I've talked to the clerk, and because we have so many things on the go in terms of the clean air act, which will be imminent, and of course our look at CEPA, we could simply send the estimates back to the House without conducting meetings and so on. I'm just asking for the will of the committee as to what they think about that as we plan the scheduling for the next couple of months.

Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): I very much appreciate how busy the committee is. It seems that the estimates are such a critical function, and I would suggest we don't actually do a great job. When I compare it to provincial legislatures and what committees will go through in terms of estimates, it seems we land at the complete opposite spectrum by simply sending them back, and I've seen too many committees do this.

This is the taxpayers' money; this is the most thorough chance we have of reviewing them. I'm not suggesting any complete and exhaustive review, but certainly more than we did last time. In the last environment committee, we just sent them back. I remember feeling regret, and it was expressed as a regret later on by all three opposition parties, because we didn't have a proper review of them at all.

So I'm going to suggest we at least take aside a day with some department officials and give the estimates a look.

The Chair: Again, I don't really want to enter into debate on this; I was simply asking for your direction, with the time constraints that are there. Very briefly, if it's the decision not to do that, let's just carry on.

Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Mr. Chairman, I agree with my colleague. I think that in this particular instance, the Committee should focus more, and with more rigour than in the past, on the Estimates. For political reasons, as you may recall, Mr. Flaherty's last budget set aside some $2 billion for climate change and environmental protection initiatives. Since programs are now being reviewed and abolished, our study of government expenditures and estimates is becoming increasingly important. The Committee should pay particular attention — far more than in previous years — to the Estimates this time around. While we haven't usually paid much attention to the budget in past years, I think we need to be more rigourous this time around.

● (0915)

[*English*]

The Chair: I'll just mention that this is the last budget we'd be looking at, not the current one.

Mr. Warawa, just very briefly, and we'll carry on.

Mr. Mark Warawa (Langley, CPC): Mr. Chair, if the consensus is that there's not an appetite to deal with it today, I'm fine with that. If we could, I think it's a good suggestion you make that we deal with them in the schedule in a timely fashion. As you point out, it was the last government's budget. I think there may be consensus for taking a quick look at it, but I think a look is necessary.

The Chair: I think I'm getting the direction....

Mr. Vellacott, very briefly.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): Very quickly, it is my understanding, too, that in terms of our look at the budget, we cannot increase the spending, but there could be issues of reduction. That's the only thing that can occur in the main estimates. Is that correct?

The Chair: That's basically correct.

Mr. Maurice Vellacott: We can carve money out of them.

The Chair: At this point, as the clerk points out, most of the money has been spent in terms of where we are in the year. So it would be an exercise in looking at the last budget.

If that's the consensus, we'll carry on; we'll plan that into our schedule. As I say, we have to report by November 10, so that would be our deadline.

Thank you very much.

I would now like to welcome our guests. I would ask you, because of the numbers, to keep it to a maximum of 10 minutes. We'll have everybody do their 10 minutes or less—notice I put emphasis on the "less"—and then we'll get to an interchange with our members and with you, each other, and hopefully make the round table work as successfully as we did last Thursday.

We'll begin with the Pembina Institute and Mr. Bramley.

Mr. Mark Winfield (Director, Environmental Governance, Pembina Institute): Thank you, Mr. Chair.

My name is Mark Winfield. I'm the director of the Pembina Institute's environmental governance program. With me today is Dr. Matthew Bramley, the director of our climate change program.

The definition of toxic substances under the Canadian Environmental Protection Act has been one of the most contentious issues in relation to the act. The assessment of substances against the definition of toxicity in CEPA is the centrepiece of the act's structure. Once substances are classified as toxic and added to the list of toxic substances, also known as schedule 1, the federal government is able to exercise a wide range of regulatory authority over their production, import, export, use, and release into the environment.

In recent years, the classification of a number of substances that are produced and released into the environment in large quantities, but which do not have high inherently toxic—for the purposes of CEPA—properties, has been a source of major controversy. These substances included road salt, certain criteria air pollutants, and greenhouse gases. These substances have been classified as toxic on the basis of the severe cumulative effects of their releases into the environment and on human health.

It has been argued by some that due to their lower inherent toxic properties relative to other substances that have been added to the list of toxic substances, these substances should not be described as toxic. Arguments have followed from this contention that they should be removed from CEPA's schedule 1 and dealt with under separate legislation, or that the substances meeting the definition provided in section 64 of the act be relabelled with some other term.

In approaching this issue, it is important to understand the legislative history behind the definition of toxic substances in section 64 of CEPA. When CEPA was originally drafted, the legislation's authors were trying to balance a number of factors. These included the need flowing from the Supreme Court's 1988 Crown Zellerbach decision to ensure that the scope of federal regulatory activity under the act was of a nature that obtained a "singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern and a scale of impact on provincial jurisdiction that is reconcilable with the fundamental distribution of legislative power under the Constitution".

This implied that regulatory activity under the act would need to be bounded in some way and simply could not cover all matters related to environmental protection.

The establishment of a limited list of substances—the development of which was subject to a series of extremely rigorous tests—in relation to which federal activity would occur, was seen as a way of addressing the need to bound the scope of federal regulatory activity with respect to the environment.

At the same time, the drafters of CEPA wished to establish a definition of toxicity that was broad enough to provide a basis for federal regulatory action in relation to global environmental threats or other serious threats to human health from the environment that did not fit the traditional model of exposure of individual organisms to substances with inherently toxic properties. Rather, they sought to provide a legislative basis for the federal government to address threats to the structure and function of the ecological and global systems on which life depends. Indeed, at the time CEPA was being drafted, its authors wanted to be certain that the act would provide a basis for federal action on a class of pollutants with low inherent toxicity, but that were having a severely adverse effect on the global atmosphere and were subject to a major international agreement, namely CFCs.

It is also important to understand how difficult it is for substances to meet the definition of toxicity as laid out in section 64. Substances are required to be identified and assessed by Environment Canada and Health Canada, a process that usually takes several years. The departments' assessments are subject to extensive external review and may be challenged before boards of review. Decisions to add substances to schedule 1 of CEPA are ultimately made by the cabinet and not by individual ministers.

It is also important to recall that the addition of substances to schedule 1 of CEPA does not mean that the federal government will actually regulate their use, production, release, or disposal. Rather the addition of substances to schedule 1 merely provides the basis for federal action. It does not, in and of itself, mean that the use, production, or release of a substance has been restricted or controlled. In fact this been identified as a major weakness in CEPA's structure.

My colleague Dr. Bramley is going to speak directly to the issue of the status of greenhouse gases as substances on schedule 1 of CEPA.

● (0920)

Mr. Matthew Bramley (Director, Climate Change, Pembina Institute): Thank you.

I'd like to make clear, at the beginning, that there is very clear and abundant evidence, underpinned by a strong scientific consensus, that greenhouse gases meet all three criteria for toxic substances as defined by CEPA. The professional climate science community—and that is to say, the people who publish their findings in peer-reviewed journals—is virtually unanimous that greenhouse gases from human activities are now a dominant cause of the very rapid global warming observed in the past half century, and that these emissions will cause far greater warming over the course of this century unless dramatic reductions are achieved in emissions.

Since 1988, governments have mandated the Intergovernmental Panel on Climate Change, the IPCC, to review and assess the wealth of scientific research on this subject. The IPCC's conclusions have been endorsed by all the leading national science academies.

Paragraph 64(a) of CEPA establishes a criterion of immediate or long-term harmful effect on the environment or its biodiversity. Specifically on the point of biodiversity, it's widely understood that the climate change that is under way is so rapid that many species simply won't be able to adapt or move in time to survive. A paper was published in the journal *Nature* in 2004 that stated: “we predict, on the basis of mid-range climate-warming scenarios for 2050, that 15–37% of species in our sample of regions and taxa will be 'committed to extinction'.”

Paragraph 64(b) of the act establishes the criterion of danger to the environment on which life depends. On this point, it's projected that by the 2080s, with only two degrees Celsius of global warming above pre-industrial levels, tens of millions of additional people worldwide would be at risk from coastal flooding and from hunger, hundreds of millions of additional people would be at risk from malaria, and three billion additional people would be at risk from water shortage.

Paragraph 64(c) of the act establishes the criterion of danger in Canada to human life or health. On this point, it's expected that rapid warming will harm life and health in Canada in a number of ways. I would mention heat stress affecting particularly the young, frail, and elderly during heat waves. We saw an example of this in southern Europe a couple of years ago; warming induced increases in the frequency of smog events and the spread of vector-borne diseases.

In summary, it's very clear, from many years of accumulation of scientific study, that greenhouse gases do meet all three criteria for toxic substances as defined by CEPA.

Mr. Mark Winfield: To conclude, it's clear, in our view, that greenhouse gases meet the definition of toxic substances provided in section 64 of CEPA 1999. Indeed, in our view, no serious challenge has been mounted to that basic conclusion. The presence of greenhouse gases, criteria air pollutants, and other priority substances on the list of toxic substances lays the groundwork for action for the federal government under the existing provisions of the act.

In our view, opening the definition of toxic in section 64 or relabelling substances that meet the definition of toxicity runs the risk of undermining the constitutional basis of parts 5 and 6 of CEPA, as established through the Supreme Court of Canada's Crown Zellerbach Canada Ltd. and Hydro-Québec decisions. Although some modifications to CEPA to strengthen the federal government's ability to act in international air pollutants would be useful, such modifications are not essential for early regulatory action on these substances.

Thank you.

● (0925)

The Chair: Thank you very much.

We will go on to the Consumers Association.

Ms. Shannon Coombs (Executive Director, Representative for Formulated Products Industry Coalition, Canadian Consumer Specialty Products Association): Good morning, Mr. Chair, members of Parliament. It's a pleasure to be here today.

As per our presentation in May, we have two key issues we wish the committee to consider and make recommendations on in your report to Parliament for amendments to the Canadian Environmental Protection Act. I will also outline a few comments on the CSDSL process as it is on the agenda today, and we did mention it in May.

My name is Shannon Coombs and I'm the executive director of the Canadian Consumer Specialty Products Association. However, I am here today representing FPIC, the Formulated Products Industry Coalition.

Our unique industry coalition is a group of 15 trade associations that formed in 2001 when the Food and Drugs Act became subject to CEPA.

FPIC's member companies provide food, personal care products, household cleaners, cosmetics, medical devices, and pharmaceuticals to Canadians. Collectively we represent over 750 member companies and we comprise a $66 billion a year industry and employ 375,000 Canadians.

Why are we here today? Why are substances in the Food and Drugs Act subject to products captured under 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, and that assessment also includes a health assessment of substances.

In section 81 of the act there is a requirement for other acts that have pre-market assessments to meet or exceed CEPA. 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 requirement, 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 those requirements, and therefore environmental assessments for substances in Food and Drugs Act products were subject to CEPA's regulations, the new substances notification regulation, the NSNR.

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

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

FPIC is requesting that the committee consider this key recommendation for improving and adding clarity to the act, which only Parliament, you, can provide. It is as follows: acknowledge the in-commerce list as a list of existing substances under the law by creating a provision in CEPA to recognize them as such.

You might be asking yourself what is on the in-commerce list. It's quite a range of substances. There are pharmaceutical actives, cosmetic ingredients such as extracts. There are surfactants, food colourings, flavourings, kiwi essence, and oil of lemon, just to name a few.

Why do we want them treated as existing? The substances and the products have and continue to provide benefits to Canadians. These substances have been in commerce for almost 20 years, and clearly they're new, not existing, and this makes sense. To ensure there is a mechanism for the in-commerce list to be treated as existing, such as those on the domestic substances have been treated, we're suggesting that the government categorize, prioritize, or whatever word you'd like to use, the in-commerce list and then, if needed, provide a screening level risk assessment.

At the meetings in May there was a session where officials provided an overview of the categorization and screening of the domestic substances list, plus there were comments made on this initiative last week.

We believe that assessing and processing all existing substances the same makes sense. We recommend that parliamentarians recommend to the government in their report that substances in the Food and Drugs Act products be ensconced in the legislation by modifying section 66 of the bill. This would outline the parameters of the in-commerce list. We'd also seek an amendment to sections 73 and 74 to ensure there is a post-categorization process as well as a form to have appropriate risk assessments conducted, and then we'd also like to see section 81 amended, which is very important, so that all substances in the Food and Drugs Act products are formally subject to CEPA's NSNs, the new substances notification assessments regulations.

FPIC did provide a brief yesterday to committee on the key areas where we'd like to have the in-commerce list addressed in the legislation, and we do note that the list is not inclusive, and we're willing to work with all partners to ensure that the list is as fulsome as possible.

● (0930)

I'd like to turn to our second issue and recommendation request to the committee, and that is the issue and meaning of the term “toxic” in CEPA.

FPIC requests that the committee considers removing the term “toxic” from the legislation so that there is clarity and understanding with respect to how substances are assessed and managed under the act. If the risk assessment of the substance meets that definition, it is placed on schedule 1, and then some type of management for that particular use will often be invoked. As stated in our submission, the challenge is the misunderstanding around the term “toxic”.

It is our belief that Canadians, regulators, and non-governmental organizations interpret CEPA's toxic substances as being intrinsically toxic, i.e., poisonous and/or lethal. There are examples that cause confusion. CFCs destroy atmospheric ozone. They're toxic to the environment, but they're not toxic to humans, which is why they have been used in the past in asthma inhalers. Ammonia, which is a substance that was debated last week, is only CEPA toxic in the environment from ammonia traces found in waste water effluent. This substance is used in numerous other applications, such as fertilizer and glass cleaner. These products have subsequently become targets, because of the listing and because of misinterpretation. Carbon dioxide is also on schedule 1 so that greenhouse gases can be managed, but it's not intrinsically toxic as we all exhale this gas and plants rely on it for photosynthesis.

I will provide two examples of where the term “CEPA toxic” is being misinterpreted.

One is from an NGO group that has all schedule 1 substances listed on a website, along with the interpretation of products that the substances would be in and how they should be avoided. The first on the list is ammonia. It clearly says that it is CEPA toxic, that it's used in glass cleaner, and that you should not use these products.

The second is from the B.C. Buildings Corporation, which has a cleaning management chemical content standard; it's a procurement criterion. It states clearly in section 6 of that document that all substances on schedule 1 are not to be used in any products. This means that ammonia and other substances are stigmatized. There's no relation to the risk assessment that was completed and the use and the risk that's being managed.

Clearly, the prevailing challenge before us all is that the term “toxic” in CEPA is misunderstood, so actions that are not warranted are taken. From my examples, groups and regulators target products that may contain the substance, apply the label “CEPA toxic” to all uses of the substance, and alert Canadians to a risk that's not a risk.

We are recommending that the committee consider removing the word “toxic” from the legislation and include the wording suggested in the last budget bill, Bill C-43, part 15, where in section 64 the definition of “toxic” remains; however, the title is “Assessment and Management of Substances”. This accurately reflects what CEPA does and would assist with the government's challenge of adding substances to schedule 1. It would put them in context, i.e., the use of a substance, the risk assessment, the results of that assessment, and how they are being managed. We believe that if the term “toxic” is removed, it would provide clarity and enhance the credibility of the act.

With respect to the issues raised about the constitutionality of changing the word “toxic”, which has been raised by other witnesses, we would assert that this issue and validity of the revisions for CEPA would have been thoroughly discussed and addressed by Department of Justice lawyers prior to part 15 being added to the last budget bill and presented to Parliament.

In our experience, legislation from this Parliament is respected and upheld, but it needs to be flexible and responsive to unintended consequences. I'm sure that's why parliamentarians in their wisdom decided on a five-year review of this act—which is why we're here today—which has also set a precedent to include review periods for other acts. I don't believe our legislators would have known about the stigmatization issue and the unforeseen challenges arising from the listing process in section 64 when they included the word “toxic” in the legislation .

I would like to turn my comments to our final issue, and that is the categorization and screening of the domestic substances list. At our meeting in May, when the question about whether there is anything that can be done better regarding CEPA was posed to witnesses, we replied that there is always room for improvement.

CEPA is a huge piece of legislation. Our key concern at the time, and which currently remains, was that we need to increase the communication about the successes of this act and how it provides protection for Canadians. We believe a proactive communication strategy would be in everyone's best interest, especially around the results of categorization. Why? The CSDSL program mandated under CEPA 1999 is a made-in-Canada program. While other OECD countries have similar programs, Canada is in the lead. There have been 23,000 substances reviewed against criteria to determine safety for humans and the environment. The diversity of the substances on that list includes everything from industrial chemicals, gasoline, water, vitamins, sugar, etc. It's a very comprehensive list. Results of the program have provided government with priorities for further review, if warranted; and products and their ingredients are safe when used according to the product's directions.

● (0935)

While the results of the program have yet to be made public with an action plan from Ministers Ambrose and Clement, CCSPA would challenge the government that the list of potentially 4,000 substances that met specific scientific criteria needs to be put in context and communicated properly to Canadians.

We were most pleased to hear from the witnesses last week that they have been involved in the process, but they have been quoted consistently in our national newspapers as characterizing the list as the “baddies of the bad” and the “worst of the worst”. We're sure that everyone has seen the last publicly available list of substances provided to all interested parties in July of this year. The 4,000 substances may include such substances as tamoxifen, which is a life-saving cancer drug. Those also include titanium oxide, a key ingredient in sunscreen, which prevents cancer; vinegar; almond flavouring; and vitamin A, just to name a few.

Instead of scaring Canadians or not advising them about the facts, we should be telling them about the enormous work the government has undertaken and its plans to address any future concerns with all stakeholders, and most importantly, put into context what the list really means to Canadians. We need some true risk-benefit communications.

We would ask that you consider our two key recommendations: remove the word “toxic”; and add provisions to ensure that the ICL, or in-commerce list, is treated as “existing” during your deliberations. Our collective priority is to ensure the protection of Canadians and our environment.

The Chair: Thank you.

From PollutionWatch, Mr. Benevides, please.

Mr. Hugh Benevides (Counsel, Canadian Environmental Law Association, PollutionWatch): Thank you, Mr. Chairman.

Good morning. I don't have prepared notes this morning, because the committee indulged me and my colleagues last week. On the issue of “toxic”, my colleagues last week and now Drs. Bramley and Winfield and Professor Collins will address that today.

I am here, however, because PollutionWatch, as you know, is very concerned that the momentum from the categorization exercise needs to continue with action on not necessarily all of those 4,000 substances immediately, but on the “worst of the worst”. To clarify in response to Ms. Coombs, what we've asked for is that indeed the worst among those 4,000 are those that need to be dealt with first, and then those that are less serious can be put on the second tier. But the emphasis is that the processes of screening and then of taking action by means of regulation is, as we've heard this morning already, a long process. So you know that we acknowledge the importance and significance of the completion of categorization, but just to repeat, it is indeed just the beginning of what needs to follow before Canada should really be celebrating a great deal.

Secondly, on the issue of the in-commerce list, I would very much like to be able to review Ms. Coombs' submission and recommendations on what they would like to do with that, before giving our own specific recommendations on it. But what we would say in general is that to simply identify or to look at those substances and ask if they are better categorized as existing substances or as new substances is not an adequate way of deciding how to deal with it.

What we would recommend is that the path taken for those substances be the one that has the most binding timelines on regulating at the end of the process, but earlier than that, where there is any hint of dangerous characteristics—not hard, complete evidence, but where there's the suspicion of harm in those substances—then that process kicks in, including that there's a requirement for industry to provide more information on that substance, so the user-producer responsibility would be engaged.

So I think this committee has the opportunity, since the act is up for review, to decide on a specific process for these substances that takes the best and the most rigorous characteristics of both the existing substances and the new substances and really design a process that perhaps also could be an example to the rest of the world.

As usual, I'm pleased to take your questions. Thank you.

● (0940)

The Chair: Thank you very much.

We'll go to the Salt Institute, and Mr. Hamilton, please.

Mr. Al Hamilton (Chemical Business Manager, Sifto Canada, Salt Institute of Canada): On behalf of Canada's salt industry, I'd like to thank the committee for giving us the opportunity to tell our story and to make some recommendations that we feel would make CEPA more efficient and effective.

The salt industry experience with CEPA really started in 1995, when we were put on PSL2. At the time, we in the industry were quite surprised, and we were on a fairly steep learning curve for a period of time. However, by 1999 we thought we had identified some problems with the statute. I went before the Senate environment committee that year and made some recommendations—similar to the recommendations we're making today, actually.

At that time we really asked three questions. First, does it make sense to structure a statute where all substances in commerce must pass one test, which is toxic or non-toxic? Second, isn't there a very real perceptual difference between substances like salt and substances like arsenic? And third, if so, how could you label them to make it more clear for everyone?

At that time we came to the conclusion that we did think there was a real difference between substances like salt and substances that meet the normal definition of toxic. We put forward a recommendation that there be a third category created, called the public good category, in which we could place beneficial substances that need to be managed in the public interest.

Since 1999 we've been through a great deal. We understand the statute better. I think the recommendations we're making today are more refined. However, they echo the same theme, really, that we believe there needs to be more than just a toxic/non-toxic categorization in the statute.

Through the PSL process the salt industry fought the toxic listing, but not because we didn't think road salt shouldn't be managed properly in the environment. As a matter of fact, the salt industry has run a program called Sensible Salting for the last 40 years, and that was really the precursor to the code of practice developed by Environment Canada. We fought the listing because we didn't think road salts belonged on the same list as other things that meet the traditional definition of toxic.

We are deeply concerned about the legal and trade implications of a toxic listing. Because salt is an approved food, we find it very inappropriate that it would be put on the same list, particularly when the salt you eat is almost exactly the same as the salt we put on the roads.

Another important point of concern in the current statute centres around the emphasis on the need to list whole classes of substances rather than zeroing in on the real environmental problems. The perception seems to be that the whole class of substance needs to be listed in case there's a need to regulate at a later date. I think a good example of that is ammonia, which was brought up earlier. Again, I don't think there was much debate about releases from waste water treatment plants. However, instead of zeroing in on that problem, the debate became much larger and took a lot of resources that could have been spent dealing with the issue rather than with the broader classification.

In our view, the current black and white decision over toxic and non-toxic and the broad-brush approach taken, particularly when the precautionary principle is drawn in, seriously conflicts with regulatory policy. It's based on continued regulation, which we think is wrong.

I know from my own experience that we in the salt industry, Environment Canada officials, and members of Parliament and their staff have spent countless hours debating this toxic/non-toxic designation. So a tremendous amount of resources could have been spent more productively elsewhere, tackling the real issues. In our case, I think most people involved agreed on the practical steps needed to manage road salts properly, as was evidenced by the work done by the working committee on road salts.

Given that our industry and others were determined to fight the toxic label and stigma, we took the opportunity to meet with many politicians and key decision-makers. It was apparent to us that the politicians in particular saw the issue the same way we did. It just doesn't make sense to legally list road salts as toxic, particularly since other levels of government are using road salts to keep roads safe, to prevent injuries, to prevent people from being killed, to keep commerce moving in the winter.

I recall a meeting with a cabinet minister right here in Ottawa on a cold and icy day. He and a group of colleagues had just come in from outside, after question period, and one of his colleagues had been commenting about the lack of de-icer on the roads and sidewalks that day. The minister asked the group what they thought about the toxic label, and at that point they all agreed that it was contradictory to the product's purpose and to its beneficial intent.

● (0945)

Since that time there have been many developments in this area, including a budgetary proposal to remove the word “toxic” from the statute. We didn't oppose this proposal, but we didn't support it either. We still believe that substances like road salts should not be on the same list as substances that are clearly understood to be toxic in the ordinary sense. I think it's also germane to this debate to note that if there is not an intent to regulate, a substance really doesn't need to be on any list.

Just to give you my own perspective on the issue of the stigma attached to the toxic listing, during the CEPA process I was the English spokesperson for the salt industry. In 2000, the draft risk assessment was issued by Environment Canada. I had many calls from reporters and the press, and everyone zeroed in on the toxic listing.

There were a lot of reports about salt being poison, and at the time many Environment Canada people and others tried to explain that “CEPA toxic” is not the same as the dictionary definition of “toxic.” However, it seems that it's very difficult for people to grasp that concept. At the time there was even a geography professor from western Canada who tried to link road salts to cancer. Again Environment Canada and Health Canada had to try to dispel that rumour, because obviously it was false. So a lot of resources were tied up.

In 2001 when the final assessment report came out, Environment Canada went to great lengths not to use the word “toxic” in the press release. But again, most of the calls I got were from reporters who wanted to talk about a toxic listing, and the word “poison” found its way into several articles. So a large amount of time was tied up dealing with this issue when we could have been doing things that were more productive to manage road salts.

The recommendation we're making today is for another list or schedule in CEPA that could be used for substances that are not toxic in the ordinary sense. In our brief we make three suggestions.

First we propose the addition of a new schedule for substances to be voluntarily managed—that is really our recommendation.

Our second suggestion is for a more descriptive contextual use of the CEPA registry, where substances that require management are on the registry and would only migrate to schedule 1 if regulation became required.

Third, we suggest that the current situation that road salts are in could be used for other substances; that is, there's been a recommendation to list, but no listing. Again, it's confusing to people, and we don't think that's the best answer.

With all our proposed solutions, we ask that you zero in on the actual problems rather than using the broad-brush approach, because with the current system and 23,000 substances to evaluate, it's going to be very difficult to fit them in. It will just take too much time.

At this point we'd like to highlight one other recommendation that we put in our submission. We find the PSL scientific risk assessment process to be far too directed and controlled by Environment Canada researchers. We think there should be more independent review, because some bias can slip into the existing system.

The reality today is that the head assessor is involved with making the recommendation and directing all the science and decision-making processes. All the comments made during the 60-day comment period go back to the same group that made the initial recommendation. We really believe that sound science requires outside influences and outside peer review. For these reasons, we recommend the statute be amended to require a formal third party peer review of the science or risk assessment conclusions.

Today the only avenue of assured appeal is to go to cabinet or a cabinet committee. When industry and others avail themselves of the cabinet appeal process, it ties up a lot of high-level resources and is expensive and time-consuming. So we recommend a peer review for the science, and more stringent application or regulatory policy for all regulatory and statutory decisions, perhaps enforced by an independent body responsible for regulatory policy.

I thank you for the opportunity to speak to you. I'll be pleased to answer any questions.

● (0950)

The Acting Chair (The Chair): Ms. Collins.

Ms. Lynda Collins (Assistant Professor, Faculty of Law, University of Ottawa): Thank you, Mr. Chair and members of the committee.

Before I begin my own comments today, I want to flag for you that I understand the committee will be receiving a letter from former Justice of the Supreme Court of Canada Gérard La Forest, in which Justice La Forest expresses his concern regarding the risks involved with removing the term “toxic” from CEPA.

I would suggest to you that Justice La Forest is perhaps the most distinguished jurist of environmental law in Canadian history. I hope you'll give very close consideration to his letter when you get it.

To summarize my comments today, the basic opinion I want to put forth is that removing some or all references to the term “toxic” in CEPA would constitute a radical conceptual restructuring of this act. It would destabilize this area of the law, provoke litigation, and almost certainly invite a challenge to federal constitutional jurisdiction.

The concept of toxicity is in fact a keystone concept in CEPA. As Justice La Forest made clear in his majority judgment in the Hydro-Québec decision, the concept is obviously the central concern of what is now part 5, but it's not limited to that part. In fact, it's an overarching organizing principle of the statute as a whole. Thus, for example, four paragraphs of the preamble refer to the word “toxic”. Section 2, which sets out the overall statutory agenda, also relies on the concept of toxicity in delineating the Government of Canada's responsibilities under CEPA.

The concept of toxicity is central in CEPA, and the administration, the regulated community, and the courts have had a chance to at least grapple with elucidating, clarifying, and understanding this concept.

The Supreme Court of Canada, for example, provided detailed guidance on the meaning of the term “toxic” in CEPA in Hydro-Québec. Several lower court judgments from across the country have also considered CEPA provisions that include this terms.

Why am I telling you this? It's because we now have a body of case law that interprets this term “toxic” in CEPA. If you remove this term, you remove the clarification and certainty in the law, and what we've seen over and over again is that as soon as you create uncertainty in environmental statutes you have litigation.

I think it's important for us all to remember that the structure of corporate law and economics in Canada creates very strong incentives to litigate against environmental legislation if there seems to be any opening there. Recall that corporate directors have a legal duty to act in the best interests of the corporation and to maximize shareholder profit. Obviously, if there's a chance to avoid or even delay compliance with potentially costly environmental provisions, corporate directors have to give serious consideration to this.

And the history of environmental legislation in Canada has been a history of litigation. We've seen it over and over again, with Ontario's Environmental Protection Act, with the pesticide bylaws that are now across the country, with “polluter pays” provisions in the Imperial Oil case This is a highly litigious area.

Obviously, responsible counsel only litigate where there's at least a colorable argument to be made. What I'm saying here is that if you remove toxicity as a keystone concept from CEPA, there's an excellent reason to litigate, because courts won't know what this new term means.

I think this issue of uncertainty is perhaps most serious in the area of constitutional jurisdiction. I know you've already heard about this, so I'll try to be brief.

Hydro-Québec is the seminal case on federal constitutional jurisdiction over CEPA. You'll see it referred to over and over again in the scholarship and in the case law: that Hydro-Québec settled this question. The difficulty is that Hydro-Québec interpreted and upheld an act that was founded in the concept of toxicity. Indeed, the term “toxic” occurs no fewer than 205 times in that judgment. The holding itself, or the *ratio decidendi*, as we call it, was based on the use of the term “toxic” in Hydro-Québec. La Forest himself said that, above all, Hydro-Québec was concerned with the term “toxic”, and in upholding the act, he held that the limitation of federal regulation to substances that have been assessed to be toxic meant it didn't impinge too far into provincial powers.

● (0955)

Now, I want to be very clear that I believe it's quite clear the federal government has constitutional jurisdiction to regulate the kinds of substances that are dealt with under CEPA. Unfortunately, my opinion doesn't govern; my opinion is immaterial in that respect.

What I'm trying to say is that by removing this concept, in my opinion, you're going to provoke constitutional litigation. I think that would be a profound waste of money, energy, and resources in an area where we urgently need to get on with the business of implementation.

Those are my comments. Thank you.

The Chair: Thank you very much.

I'd like to let the committee members know that, as you can see, Mr. Moffet was unable to attend today. If you could put any questions for Environment Canada in writing, the clerk will see that we get answers to them.

Welcome, Mr. Ethier, for Health Canada.

Mr. Cullen, I believe you have consent to change the order and go first because of a prior commitment.

Do all members agree?

Some hon. members: Agreed.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Once again, showing the incredible ability of this committee to work together, I appreciate it, folks. I have to go soon.

I have a few questions. I'm not sure any other committee members suspected we'd be dealing with a single word quite so much this session, but here we are on “toxic” again, and it's obviously of importance.

First of all, I have a question for Mr. Winfield and Mr. Bramley. The case is made by the product advocacy groups that the intuitive Canadian will look at the word “toxic” and the examples that Ms. Coombs and Mr. Hamilton raised and say there's a disjunction.

Why would you name something toxic in the common parlance that isn't by any measure what we generally define as the word “toxic”? Why would you say a certain vitamin, or road salt, or the products listed are toxic? Wouldn't simply offering a different definition or a different word enable Canadians to better understand what this is and prevent all those harassing phone calls to Mr. Hamilton about his toxic salt?

Mr. Mark Winfield: I think it's somewhat more complex than that. Indeed, if one reads the PSL assessments, one finds in fact that the substances do have toxic properties. There are a number of different things that have been classified as toxic through the different definitions in the act, some of which do have what you could consider inherently toxic properties.

When one looks at the assessment of road salt, there are various discussions. The application of road salt can result in deleterious effects on the physical and chemical properties of soil, especially in areas that suffer from poor salt-soil-vegetation management. I have documented damage to vegetation, shifts in plant community structure, behavioural and toxicological impacts, and the associated exposure of mammalian and avian wildlife to road salts.

In that case, in a sense it's perhaps even less complex than the greenhouse gas case. We're dealing with something where the effect is, again, not in its individual organism acute toxicity kind of model, but rather its impact on the global environment.

Indeed, when one looks at Justice La Forest's comments and the majority decision in Hydro-Québec, they're quite clear about the need to be able to accommodate that kind of threat within the definition of toxic. In effect, it attaches a level of warning or a level of concern to these substances, I would argue, in the sense that the consumer response in that context is not necessarily completely unwarranted. It signals the need for caution. It signals that there is a potential for harm here. It signals that there is a need to think about how we're using these substances and how that use might have an impact on the environment and human health.

Mr. Nathan Cullen: Ms. Coombs, on the point Ms. Collins raised about the potential change of the act and the opening up of litigation, you represent a number of different companies. We would assume that some are more progressive than others, and there's a scale. As an example, for the 4,000 listed substances, how long has that process taken?

● (1000)

Ms. Shannon Coombs: On the 4,000?

Mr. Nathan Cullen: Yes.

Ms. Shannon Coombs: Seven years.

Mr. Nathan Cullen: Seven years. Did the government announce the 4,000 substances with any mitigation effects or any plan of action?

Ms. Shannon Coombs: They haven't announced the final results.

Mr. Nathan Cullen: After having seven years to document and classify certain substances, we now have an unknown period of time before anything will actually be done about that. Is not going after this particular angle in CEPA the wrong place to spend time, if the prospect remains that some of the companies down the less progressive end of the scale wish delay and do not wish to have anything affect their business practices? Why go down that route if the intention, as you stated earlier, is to remove some of these substances from the ecosystem environment in general? Why spend time on that route when we've obviously seen a process that, by most accounts, has not been all that speedy?

Ms. Shannon Coombs: The government process of science-based categorization and screening of domestic substances is a mandated program under CEPA. The CEPA toxic designation is a different issue with respect to.... We're talking about what's been going on with substances that have been added to schedule 1 and how they're being stigmatized.

Mr. Nathan Cullen: Let me ask you about those substances that you raised, those products that would seem to be innocuous to most people. What is the effect of those being listed as toxic on the people making those products? As for the vitamin manufacturers, have they seen any detriment to their business practice?

Ms. Shannon Coombs: The example that I raised, ammonia, is on schedule 1, and it has a risk assessment that was completed. The risk assessment said that ammonia was CEPA toxic because it was found in the aqueous environment due to waste water effluent. What has been happening is that it's being posted on some people's websites that say that it is CEPA toxic, that it should not be used, that it is used in cleaning products, and that cleaning products should not be used altogether. So our products are being stigmatized.

Mr. Nathan Cullen: As the chair mentioned earlier, the nature of the reason we have you all together is so that you can dispute each other.

Mr. Winfield.

Mr. Mark Winfield: I would point out that gaseous ammonia is actually on the list of toxic substances as well. It's not just ammonia in an aquatic environment. Indeed, the reason that gaseous ammonia was put on the TSL is that it's a smog precursor. What underlies that is in fact that one of the major sources of smog, the third major source, is what are referred to as area sources—as opposed to smoke stacks and automobile tail pipes—which are essentially the volatilization of various substances from cleaners, paints, and other applications in both household and industrial applications. In fact, in a sense, cumulatively, the effect of ammonia in cleaners and those kinds of things is a potential contributor to smog. It also presents occupational hazards, and that's well documented as well.

So I'm actually surprised that one would point to ammonia as problematic in this context. I think it actually fits the bill rather tidily on a number of different fronts.

The Chair: Let's see if Mr. Teeter would like to get in on that.

Mr. Michael Teeter (Consultant, Principal, Hillwatch Inc., Salt Institute of Canada): I was just going to say that I think it deviates from our debate to get into the issue of smog precursors, because the science on PM_{10} and $PM_{2.5}$ is under debate right now. I think the whole issue of whether atmospheric ammonia should be on the list or not is being debated.

Mr. Nathan Cullen: With such an arduous and rigorous, but slow, process, Canada has consistently slipped to the bottom of the international list in terms of the amount of harmful chemicals existing in our environment. The concern I have with this issue of toxics is the length of delay that may be incurred if we switch the name.

My question, Ms. Collins—and this will be my last one—is about the number of years it took to define it through the courts. This is typical: legislation is enacted; someone challenges it on some level, pro or con; the courts see through it; it goes all the way to the Supreme Court; it gets defined; and clearly, we now have a definite working definition. How long would it take if we changed the definition now? If we removed the word "toxic" and replaced it with another word or another set of definitions, would we embark on another process soon?

Ms. Lynda Collins: It can take years. It can take many years.

As you know, for an appeal to make its way up to the Supreme Court of Canada can take years, up to six to ten years in the worst cases, but certainly a few years at a minimum. Then you get that court's decision. That decision is then implemented by the lower courts. As you know, we're just dealing with humans here, so there can be different interpretations at different lower courts, and it can be a long and slow process to work out the meaning of a new term.

● (1005)

Mr. Al Hamilton: I have just one point. If the real goal is to improve the environment, I think that either removing "toxic" or creating some other category to put things in so you're not arguing about that all the time would definitely speed up the process of getting things done, because then you could get to the issue rather than argue about the label. It may take a little bit of time to shake out what "toxic" means and doesn't mean, but as far as getting improvements made, I think it would improve the process.

Ms. Lynda Collins: You should also recall, then, the worst case scenario. There is a risk of losing the whole part, because remember, Hydro-Québec was won by one vote; it was a five-four decision. So the act could have fallen. That section of the act could have fallen.

Mr. Nathan Cullen: Throughout our conversation is the cost-benefit of what it is to go down this path of the removal of "toxic" or not, or to have it remain in.

Mr. Michael Teeter: Just to clarify, we're not recommending the removal of the word "toxic" at the Salt Institute, we're actually suggesting that there be another definition or another list, which would be easy to implement.

I'd also remind you—and Al said it, but it's true—that if no regulations are expected by the government or by anybody involved, you don't have to be on schedule 1 to implement a code of practice or to implement a voluntary program. Another way to skin this cat very quickly is just to have another list for those things that are voluntarily managed. That's certainly part of our recommendation.

The other thing we're recommending, which I think is also very easy to do and doesn't involve removing the word "toxic" and all the complexities that the lawyers might have with that, is we're saying to the government, when you have a problem with a substance in a particular way it's used—we call it "in context"—focus on that. If it's municipal waste water treatment plants that are the problem, get all your resources dedicated to that. If you have to list something because regulations are expected, list them in context—for instance, ammonia from municipal waste water treatment plants. It is the way the act used to be. It's much more effective at getting remedial actions faster when you focus on the nature of the problems instead of having these large categories and ending up debating over words and that kind of thing. So this is what we're recommending.

The Chair: I would ask the members to come through the chair. That might keep it a one-on-one debate.

Mr. Cullen, you're a little bit over.

Mr. Nathan Cullen: I appreciate the time from the committee.

The Chair: Thank you very much.

I will now go to Mr. Silva.

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

We have heard from several witnesses in the last little while who raised their concerns about either keeping or clarifying the word "toxic". There hasn't been too much—and maybe somebody can clarify this—discussion about whether there's been any sort of financial impact on the industry or any stigmatization of the word "toxic". It seems to me that the argument tends to centre around the whole theme of clarifying and possible legal challenges as well. However, among today's witnesses we have heard from Professor Collins, who said this is actually not clarifying things, that in fact it might be opening another can of worms, and in fact there also might be legal issues as well and legal challenges.

I've been wondering throughout this whole discussion whether in fact there is any merit to any types of changes to the word "toxic" and the present list that we have. I'm wondering whether in fact it could be actually harming the legislation of CEPA and not helping it. I think it should be the goal of the environment committee to strengthen CEPA, not to weaken it in any way.

Maybe I could have some comments from Professor Collins and maybe some others as well to that discussion.

Ms. Lynda Collins: I think you've understood my opinion quite well. It is indeed my opinion that it would be a very significant weakening of the act, in the sense that it's like painting a target on this act; you are really inviting potentially protracted and costly litigation. Again, as I said, in a worst case scenario we're risking jeopardizing the finding that we now have in federal constitutional jurisdictions.

● (1010)

Mr. Al Hamilton: I just have one comment. Salt is kind of in limbo. It hasn't been listed; there's a recommendation made, but it hasn't been listed. What we've heard from people, though, is that if it were listed there would be a lot of pressure to stop using salt in some places, even though that's not Environment Canada's intent.

But one other thing we're seeing is that people are recommending substitutes for salt, and these substitutes haven't been put through a rigorous PSL process. It's moving people away from this product to this product, and this product hasn't been tested either. That's one thing that I think probably would happen in other areas too.

Mr. Hugh Benevides: Thank you.

The committee has heard a number of comments, more or less in agreement that context is everything. Of course, it falls that when a substance is listed, or indeed when it's not even listed, the context is something that has to be communicated. It's not solely a responsibility of government, although that's important, but it's also a responsibility of the proponents.

I would add that as to the Salt Institute's recommendation of creating another list, we would strongly recommend against that approach because it would further complicate an already complicated act, but perhaps more importantly, it would create potentially even more confusion than already exists. Especially when, let's say, a substance as the Salt Institute is recommending is added to another list and then evidence emerges that action has to be taken on that substance, then you have to remove the substance again and put it on another list. I think with that kind of proposal you're creating an opening for even more confusion and more delay.

Mr. Mario Silva: Ms. Coombs spoke and mentioned the fact that there need to be amendments to sections 73, 74, and 81. I didn't quite understand. I know you are under certain time constraints, but could you clarify what the effect and purpose was that you wanted from those changes?

Ms. Shannon Coombs: Certainly. The request we are making to committee with respect to including the in-commerce list as a list of existing substances in the legislation is that we would like the parameters of the in-commerce list to be defined in the bill.

Right now, the domestic substances list is defined in the bill under section 66, so we would like it included there. Section 73 is for post-categorization. There's a mandated requirement at section 73 for what we went through with categorization and screening of the DSL. Section 74 would be with respect to having a risk assessment done if there was a need to have one done, if something had shown that a risk assessment needed to be undertaken by the department. The provision is there.

With section 81, it is to ensure that the new substance notification regulations are formally recognized as the regulations for substances included in the Food and Drugs Act products. Those provisions would just ensure that all substances in Food and Drugs Act products are covered off within the CEPA legislation formally. Right now we are subject to CEPA; we're just not formally subject to CEPA—formally in the legislation, I mean.

Mr. Mario Silva: Thank you very much for clarifying that for me.

The Chair: Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): On that last point, the very specific suggestions that Ms. Coombs has made, I thought I heard Mr. Benevides say that he wasn't in a position to comment on those changes. I'm wondering whether Mr. Winfield or Mr. Bramley might have any view of whether this is a good thing, a bad thing, a neutral thing.

Mr. Mark Winfield: As I understand the proposal being made, it is essentially to treat these in-commerce products as if they had been on the domestic substances list. They would be treated like other commercial chemicals, therefore subject to the screening process, which is now approaching completion for other commercial chemicals. It's being proposed as an alternative to running all of these in-commerce substances through the new substances notification process, which is quite a detailed assessment process for each substance. From a management perspective, it may make sense given the volume of substances involved.

I'm curious as to how these things never got onto the DSL in the first place.

● (1015)

Ms. Shannon Coombs: That's because they have pre-market assessments under the Food and Drugs Act. So the actual product, the end product that consumers buy, has had a pre-market assessment. Human health and safety and efficacy have already been determined and those products are for sale. But there are some that are on the domestic substances list as well.

Mr. Mark Winfield: Some of the constituent products are on the DSL already, but some apparently aren't.

Ms. Shannon Coombs: That's right.

Mr. Mark Winfield: Okay. I think we would want to take this one under advisement. It's an interesting proposal, and there may be some advantages from a management perspective in terms of dealing with these substances so that they do undergo some sort of screen. The new substances notification process is set up to deal with a volume of about 800 chemicals a year, so there would certainly be administrative implications for Environment Canada if you tried to run all 9,000 through it. You'd have to think about how long that would take.

Ms. Shannon Coombs: It's a proposal that was based upon treating substances all the same, whether they're existing or new. Since these substances have been in commerce for 20 years, we think they're existing and should be treated as such, and they would be subject to a type of scientific assessment. That would be a categorization process, as well as a further risk assessment if warranted.

Hon. John Godfrey: What I gather from this is that, subject to further consideration by some of the witnesses at the table, this actually might be a step that everyone could agree to. What I'm getting is that this may be the case.

On a larger point that my colleague raised, the trade-offs we're facing, if there's one comment that has been consistent about CEPA and its administration, it's how long it has taken, that as a result of the complications and length of the processes, we still are in a situation where we're in a bad place internationally with regard to the elimination or management of certain substances. I don't know whether this is a fair characterization, but I guess the trade-off we face is, on the one hand, the kind of discussion we've heard about toxics from industry representatives and the degree of inconvenience that represents to them versus what might be a larger inconvenience in making an already slow process even slower because of the element of uncertainty it introduces. Not one witness has accused CEPA of going too fast, or implementing too vigorously, or being world-class in getting ahead of other countries.

Is that a fair characterization of the trade-offs that the committee is facing?

Mr. Hugh Benevides: I think so. For example, PollutionWatch, in our submission, has recommended that mandatory timelines be placed in the act, at important stages of the act, so that action is taken at those stages, just as the categorization exercise was completed.

So going back to the question of how the in-commerce list should be handled—and I was being cautious until I knew I fully understood the proposal—I would say that the new substances notification process has some timelines in it, which is good, and the other attribute it has is that it places a greater burden of proof on industry to produce the data, which is of course something we're advocating.

Where I'm a little cautious is where things may move too fast, in a way that's not warranted. My understanding is that where a number of days pass—I believe it's 45 or 60 days in respect of a new substance—after an application to allow that new substance into commerce, where that deadline passes, the substance is automatically allowed into commerce. That's precisely the kind of approach we would like to avoid.

For example, where Europe is developing its REACH process, there will be greater, not fewer, obligations to submit data, not merely a timeline where, if you wait long enough, your substance can automatically enter in. So it is a very important issue, obviously, how to deal with timing.

Mr. Al Hamilton: If I understood properly, what you said was that if you start to create other categories, for instance, then you would slow down the process. Our position is the opposite, that if you don't spend your time debating the toxic/non-toxic issue so much and you get to the point of what needs to be done, it would go faster.

In our case, there was a working group set up that included many municipalities, provinces, and producers of salt. There were a couple of environmental groups on there as well. That work went quite well when we actually dealt with the issues, but we spent a lot of time arguing about toxic/non-toxic. So our position is that if you create another category, you actually speed up that part of it. And again, if you zero in on the issues, you speed it up.

● (1020)

Mr. Mark Winfield: In terms of the trade-off, there is a question of inconvenience and concern over perception versus the risk to the constitutional basis of parts 5 and 6. To me, that trade-off is pretty clear in terms of which side I would come down on.

In terms of accelerating the process, there are a number of possibilities regarding getting us into the conversation about what to do more quickly. One possibility, which was raised before, is that the decision about whether or not something is toxic is relatively straightforward from a scientific perspective, in terms of where Health Canada and Environment Canada end up. Indeed, the actual territory around whether or not greenhouse gases, ammonia, or even road salt are toxic in terms of their environmental effects is relatively uncontested.

Where the large argument ensued, before substances got to schedule I, was around a whole bunch of risk management issues about whether or not control on a substance would have harmful economic effects and around what sorts of measures were already in place—conversations that really belong in the risk management phase of the process, after we've put something on schedule I. A structure of processes unfolds at that stage; the regulatory policy is invoked in terms of risk management, cost benefit analysis, and consultative requirements.

Of course, one other possibility to get us to that conversation faster would be to allow the ministers of health and the environment to add directly to the list of toxic substances without having to go through cabinet, because clearly one of the sources of delay has been the interventions by other departments, for which certain industries are important client groups that have slowed the process down. It's why road salt isn't on schedule 1 yet, even though from a technical perspective it's pretty straightforward.

The issue is that once it's on schedule 1, what do you do? I agree that's a different conversation, but there are ways we can get to that conversation faster.

The Chair: Mr. Godfrey, we're considerably over time.

I know Mr. Ethier and Ms. Coombs want to make a comment.

I will go to Mr. Bigras, and if you could get your comments in as part of another answer here, we hope to get to a second round.

So could we please do that and go to Mr. Bigras right now.

[*Translation*]

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

I would like to thank the witnesses for appearing before the Committee today.

This morning, I'm going to play the devil's advocate. I have discovered that every year, huge amounts of road salt are used on Canadian roads. I was very surprised to learn that. I was also surprised to discover that highway salt is only effective as long as it stays on the road. Because of leaching and drainage directly into highway ditches, it is having a significant impact on the environment, wild life and fish habitat.

However, I was reading some material this morning that said that the provinces took quick action in response to the impact of road salt on the environment. A code of practice on environmental management of road salt is now in effect. In Quebec, we have a six-point plan that includes acquiring weather analysis tools, improved spreading techniques and environmental monitoring programs.

Can someone tell me — probably the witness from Pollution Watch — whether these management codes introduced by the provinces have made it possible to attain an appropriate balance? As far as I'm concerned, the fundamental issue is balance. The provinces are responsible for ensuring that public highways are safe. They also have to protect the environment.

So, have management codes improved the situation by achieving that essential balance and ensuring that road salt isn't added to the list? That is what we should be aiming for. I'd like to know whether there has been any analysis done in that regard.

● (1025)

[*English*]

The Chair: We'll go to Mr. Teeter.

Mr. Michael Teeter: Thank you very much for your question and comments; they really do speak to the complexity of the road salts file. The straight fact is that keeping the roads clear and safe is a provincial jurisdiction, whether it's municipalities that do it or provincial ministries of transport.

I think while everybody characterizes the salt industry as being the evil stopper of this listing process, there really was a very large national debate in which many provincial governments took strong positions, because it was their jurisdiction.

On the issue of the code of practice implemented by Quebec and other provinces, that's exactly what we're saying: the faster the provinces and the municipalities can get in to do a better job of managing road salts, the better; yet we spent years up here arguing over the word “toxic” when we could have been actually out there doing better things for the environment. Hopefully you'll see in the recommendations we're making some very small but practical suggestions to actually get at improving the environment faster.

I thank you for the question. Indeed, the Province of Quebec is doing a wonderful job with its road salt management, as are many other provinces.

Mr. Hugh Benevides: I think Monsieur Bigras has raised an important question. I'm sure those management plans as implemented in the various provinces have, as he suggests, resulted in less use of road salt.

I would simply note that without the process of investigation at the federal level of the impacts of using road salt we would never have had those results happen. The reason for that is quite straightforward: it's that we know that when there is a credible threat of regulation at any level of government, then action ensues. It's a great motivator for action. So it's an appropriate role, and we all know that protection of the environment is a responsibility that's shared by the two levels of government. Indeed, for example, if Quebec, as it often does, were to have taken earlier action on the road salt issue even without that assessment of salt—all that scientific work that was done—I don't think it would have been very likely for those other provinces to put in place effective management plans and to reduce.

A key thing about the road salt example is also the cases where there are other uses. Many of us have travelled to other parts of Canada where, in the winter, you see—based on availability and other factors—the use of sand. You also see the use of other chemical products, which may have different attributes. It's an example of where this kind of series of events motivates us to find better alternatives.

[*Translation*]

Mr. Bernard Bigras: That shows that agreement may be possible on ways of cooperating. Of course, there have been federal studies. However, I think cooperation is by far preferable to any federal law imposing rules of conduct on the provinces. Just between you and me, Ottawa is a long way from the municipalities and from Highway 175, in northern Quebec.

Mr. Bramley, you pointed out — quite rightly — that the Governor in Council added greenhouse gases to Schedule 1 of CEPA on November 22, 2005. Ms. Collins, you told us that you referred extensively to the LaForest judgment. However, you should also have said that some justices dissented with that Supreme Court judgment. Supreme Court justices — and this is of some significance politically — were not of one mind in terms of the kind of follow-up needed in relation to Canadian laws.

I'd like to hear your assessment of the impact of the November 22, 2005 federal government decision relating to transportation plans, for example. By adding greenhouse gases to Schedule 1 of CEPA, could the federal government turn around and tell some municipalities how to develop their plans or force them to adopt building codes it felt were more appropriate?

Of course, there would probably be fewer battles, but doesn't this open the door to constitutional battles?

● (1030)

[*English*]

Ms. Lynda Collins: Regarding your first point, I think I did make the point that Hydro-Québec was a five-four decision. I think that's actually a very important point for us to keep in mind because we all need to be aware of the fact that the act nearly fell. I'm sorry if I wasn't clear about that. I did mean to point that out.

On the issue of the inclusion of GHGs under CEPA, could it mean that the federal government is dictating provincial building codes? I don't think so. I don't think they would have a constitutional leg to stand on. Obviously it's a complicated area, as has been said already. It's an area of shared jurisdiction. So in other words, the federal government is allowed to go only so far. My point was that CEPA, in the context of toxicity, has been evaluated against the constitutional ruler in Hydro-Québec.

I'd like to pass on that GHG question to our experts in the GHG issue.

[*Translation*]

Mr. Matthew Bramley: When the government added greenhouse gases to that schedule of the Act last November, it clearly intended to specifically regulate the large emitters of greenhouse gases, which are responsible for almost 50% of all greenhouse gas emissions produced here in Canada.

Based on all the scientific evidence, we know that drastic cuts to greenhouse gas emissions are urgently needed. Between now and 2050, greenhouse gas emissions in Canada must be reduced by 80% For that to happen, we must immediately start addressing the most significant sources. Therefore, regulations targeting large emitters of greenhouse gases are urgently needed.

I think it's unfortunate that the timeline for greenhouse gas regulations, as established by the previous government under CEPA, has been abandoned by the new government.

As for possibly using CEPA to pass other kinds of regulations — you talked about building codes, for instance — if some provinces delay making improvements to codes for several years, at one point, the government will be able to say that it has waited long enough and that the time has come to take action. However, by adding substances, the previous government's intent was clearly not to deal with building codes.

Mr. Bernard Bigras: How do you react to what Mr. Bramley just said? He is not ruling out the possibility of government intervention, if certain provinces don't comply with so-called national standards. In his opinion, that would give the federal government an opening. I realize, of course, that the previous government's intentions were not the same, but governments do change.

Constitutionally speaking, do you think this would allow the federal government to impose codes on the provinces, including possibly building codes, or to prevent a bridge from being built because it could have an impact on greenhouse gas emissions?

● (1035)

[*English*]

The Chair: You may answer very briefly, please, Ms. Collins.

Ms. Lynda Collins: No. I don't think this opens the door to the federal government's imposing of building codes as a constitutional issue. It's not what I actually heard Dr. Bramley saying. What I heard was that it might be a good idea for the federal government to take some action if there are laggard provinces. There are actions that the federal government could take; for example, funding. As they do with health care, they could control provincial actions through the use of federal funding. However, I don't believe there is a constitutional basis for the federal government to intervene in provincial building codes.

Mr. Mark Warawa: Thank you, Mr. Chair.

Thank you to the witnesses for being here today. I really appreciate the timely provision of your written briefing. We had access to that over the weekend, and it helped us greatly. So thank you for that.

I'm going to be asking Mr. Ethier from Health Canada a question in a moment, some specifics of how we manage substances once they're on the schedule 1 list, if you could prepare a couple of comments on that.

Mr. Winfield said rightly that the science is clear if the substance is toxic or not, and he said that once it's on schedule 1, where do you go from there? I think that's a good question, and that's where I'd like to go. Mr. Hamilton said if a substance isn't going to be regulated it shouldn't be on the schedule 1 list. So what I'd like is a healthy discussion on approaches to management of substances. Once they're on the schedule 1 list, should they be voluntarily dealt with or should they be regulated? I appreciate the comments from each of you.

I'd like to start with Mr. Ethier from Health Canada and get his perspective, maybe some specific examples of how substances are managed.

Mr. Charles Ethier (Director General, Product Safety Programme, Department of Health): Thank you, Mr. Chairman.

I'd like to start my comments by saying that unfortunately Paul Glover, who is responsible for managing the existing substances program, is not here this morning. The area I'm responsible for deals more with new substances, and the risk management approaches that we take for both new and existing substances differ somewhat.

It's hard to comment on how we would manage anything that would end up on the schedule 1 list without the benefit of a very thorough risk assessment that identifies for us what the risk is that needs to be managed or controlled. Once we've managed to do that, then the appropriate risk management mechanism is put in place. That could be regulation. It could be voluntary. It could be just an issue of public awareness and restricted use of a particular substance. It's very difficult to comment on what the mechanism would be without the full benefit of the very thorough risk analysis.

Mr. Michael Teeter: I'll just explain the structure of the act, and I'm sure some of the experts here can do it as well or better. Once a risk assessment is complete, and one of the two ministers or both ministers make a recommendation to list, it starts a clock in the act that says you have two years to develop a risk management instrument, which might be voluntary, it might be regulatory, and then you have an additional three years to implement that.

You don't even have to be on the list before it triggers the development of a risk management instrument, so to some extent that is certainly the situation we are in with road salts. I agree with lots of people in saying it was helpful to some extent in triggering a process, but I'll also say this: as an assessment is being done, usually among the people involved, whether it's Environment Canada, industry, environmental groups, there's a consensus on what the risk management instruments should be, believe it or not—not always, but frequently there is. To some extent what we're saying is that the sooner we can get to what we agree on, the better. The sooner we can actually deal with risk management, which is about setting up plans and programs and procedures to more effectively manage substances, that should be our objective—always. Take action. Don't argue; take action.

So this is where our recommendations are coming from.

● (1040)

Ms. Shannon Coombs: Regarding Mr. Warawa's question, I think the proposal that was put forward to Parliament—section 15 of Bill C-43, where it looks at changing the name to "Assessment and Management of Substances"—may address some of those concerns that the witnesses have raised here as well as the issue you raised in your question. It would be prudent to have some of the lawyers who devised that piece of legislation come forward to the committee and give their views on what the intent of government was—and is, possibly—and put that forward to the committee for consideration.

The Chair: Mr. Benevides.

Mr. Hugh Benevides: Thank you.

It's true, as Mr. Teeter points out, that once the ministers responsible for CEPA announce their intention to list a substance on the list of toxic substances they have two years, and then there's a further one and a half years to develop and implement. So it really is a three-and-a-half-year timeline to develop and implement a regulation or other control instrument, which he also correctly says could be voluntary as well as regulatory.

Mr. Hamilton suggested that part of the scheme whereby a new list is created would somehow make it easier to have a voluntary approach. In fact, the existing act already allows for a voluntary approach to be taken as the sole control instrument. Our position—for three reasons—is that the act should be modified so that regulation is a mandatory centrepiece of what's developed in that plan. In other words, a voluntary measure alone cannot stand.

Those reasons are: first, it's been shown that a regulation provides the greatest motivation for change; second, it provides the certainty that industry always seeks; and third, it's the most effective. We would add, as we have advocated, that there be a requirement for substitution of a substance that's been found to be potentially harmful, and in respect of which a regulation is in place. So a substitution, as is the case in other jurisdictions like Massachusetts and California, is part of the process. It's a spur of industrial innovation that has economic benefits as well as the obvious environmental ones.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Mr. Winfield, I didn't get a comment from you. I believe you alluded to that briefly.

Mr. Mark Winfield: There are a number of things one could do to accelerate the process that I've hinted at. I've been told by Environment Canada officials that it involves something like 13 trips to cabinet to get to the point of regulating something under CEPA. So some thought could be given to removing some of the structural barriers to getting to action that are embedded in the act.

I'm quite certain that changing the word "toxic" or adding another list wouldn't help that process at all. It doesn't deal with the structural barriers embedded in the act between when we identify something as a potential problem, to actually getting to the stage of action. I think it would be far more fruitful to focus attention on removing some of those barriers.

● (1045)

The Chair: Mr. Watson.

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

I want to start with the existing substances, toxic and non-toxic, and the whole question of stigma. Of the 23,000 or so chemicals there, how many are we talking about having a stigma attached to them?

Mr. Mark Winfield: Usually there are around 78 or 80 toxic substances at this stage, a few EA classes, and a few, like road salt, that are sort of in limbo.

Mr. Jeff Watson: I want to bring this question of stigma down to the public's perception. Presumably on that list of 23,000, if you take away the 78 or 80, there will be many substances that are truly harmful, and if you remove the toxic stigma it could be misinterpreted by the public.

Is there a concern, if you remove "toxic", about sort of throwing the baby out with the bathwater here? We're only talking about 78 or 80 substances that have a question about a negative stigma from the word "toxic". Are we opening the door, in terms of public perception, to looking at truly harmful substances and saying that maybe they're not so harmful anymore?

I'd like some discussion on that.

The Chair: Ms. Coombs.

Ms. Shannon Coombs: Thank you, Mr. Chair.

Thank you for your question.

The proposal we've suggested, of removing the word "toxic" and changing it to "assessment and management", we really believe is a credible position to put forward for the committee to consider, because that's what the act does. An assessment is done on a particular use, and that assessment reflects the findings. If the findings determine that, yes, it does meet the parameters of section 64 of the legislation, then it goes on to schedule 1 and risk management is undertaken.

The challenge we have is that what the public perceives as being intrinsically toxic, poisonous, or lethal is not necessarily what is being risk-managed on that list. I think ammonia is a very good example, because ammonia is being targeted. We do have some examples—I can certainly provide those to the committee—of websites where it's posted that ammonia, a CEPA toxic, is used in glass cleaner. It doesn't mention anything about the risk assessment with respect to the aqueous environment and the ammonia found in waste water effluent. It simply says it's used in glass cleaner, so don't use it. That's the challenge we're dealing with.

I don't think it's an inconvenience for industry. The challenge we have is that some of the other regulators, such as B.C., have said in their documents on procurement criteria that you must not have any substances that are on schedule 1. Well, if people don't understand the context, the risk assessment of ammonia, then they would just say, “Oh, ammonia is used in glass cleaner, so I can't use glass cleaner.”

The Chair: Mr. Winfield.

Mr. Mark Winfield: I have a couple of comments on this.

I think it's very important to understand that Environment Canada and Health Canada have actually applied an extremely high standard of proof in their assessment of the toxicity of substances. Indeed, in order for something to be found toxic under CEPA, it would almost certainly have to be causing actual harm to the environment or human health rather than merely presenting a risk. The standard of proof they've employed is very high.

In fact, strong arguments have been made that the current process for assessing substances added to the list is excessively cautious, and things that should have been added to the list haven't been. In that context, I think the label of toxic is entirely appropriate; it sends a signal to the public that this is something to exercise caution around.

It's also, in a sense, relatively mild. I think the degree to which the public actually identifies this is still an open question. Other jurisdictions have in fact been much more aggressive. California, for example, through their proposition 65 actually requires the labelling of all consumer products that contain a number of listed substances, which runs into the hundreds. You actually see consumer products with labels on them—this is a carcinogen, or this is a developmental toxin.

Compared to that, I would say the approach under CEPA is extremely conservative.

The Chair: We'll go to the second round now. I remind members and witnesses that each member has five minutes. Let's try to stick to that so that everyone gets their questions in.

Mr. Godfrey.

Hon. John Godfrey: Ms. Coombs, let's take the case of glass cleaner. It certainly is labelled as toxic in terms of “Don't drink this.” I mean, you have a little skull and crossbones, little things that tell you not to touch the stuff and not to let small children get their mitts on it. I don't understand why, when we put on warnings that it would be a very bad thing to drink this or to leave around small children—we even use the skull and crossbones and other such identifiers—this is less insulting or less misleading than for it to be referred to as toxic. I mean, clearly it's toxic; we do that for consumers all the time.

So I don't understand why suddenly there are these gradations of stigmatization.

● (1050)

Ms. Shannon Coombs: On the issue you're raising with respect to labelling of our products, the products are designed for consumers to use, and for them to be effective. The labelling we use comes under the Hazardous Products Act, under the consumer chemical and containers regulations. There are clear warning statements and pictograms, as you were referring to, that industry puts on the label to help the consumer use the product appropriately and effectively, when used according to the directions.

The situation I'm referring to is that people misunderstand the toxic designation. Ammonia's on the list, but there's no context. When people see ammonia on the list, they don't realize that the assessment was done on the aqueous environment and that the results came back saying ammonia was found as a waste water effluent. No context like that is provided. So for people to say that there's a link between ammonia and that risk assessment, that particular use, and the management that goes in and around ammonia and glass cleaner, that is a stigmatization.

Hon. John Godfrey: But I don't get it. I'm just a consumer, and already I know from the hazardous products component that this is bad stuff if used incorrectly. Right? To have that reconfirmed in an act that I'm not going to read, as opposed to looking at it on a label that I am going to read.... I don't understand how these are gradations of stigmatization, which I think for the average customer.... Of course it's bad for you under certain conditions. The difference between calling it toxic in CEPA and having a skull and crossbones on the label is a refinement that surely the average person doesn't concern himself or herself with. They just know that you shouldn't do certain kinds of stuff with this product.

The Chair: We'll hear from Mr. Teeter now.

Mr. Michael Teeter: I would just say that I do see a very strong difference between substances that are on the list that in effect can kill humans on contact, and those that are in the air we breathe or are in foods we eat. I think that's the way the public understands it. And I think we run the risk of trivializing the word itself if we don't keep it for those things that are truly toxic in the ordinary sense. So if it's arsenic, we understand it would be toxic; if it's ammonia in the air, maybe to help public understanding a different word would be better.

The Chair: Mr. Benevides, go ahead, very briefly, please.

Mr. Hugh Benevides: Thank you, Mr. Chair.

I agree with Mr. Godfrey's point that the label "toxic" is consistent with the symbol on the label. I think what's important here is that there be a responsibility to communicate, where necessary, the meaning of that toxic designation. But let's remember about these gradations. The really important point here is whether and where some action is actually taken in response to the label of "toxic". That, of course, goes through a further rigorous and lengthy process. But we'd like to see that happen sooner, and in many cases it'll be justified. Having the simple designation is certainly a lower gradation but, as we've heard, a necessary part of the process.

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

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): Thank you, Mr. Chairman.

I'd like to come back to greenhouse gases. My question is addressed to Mr. Winfield or Mr. Bramley.

In your brief, you say that CEPA could be a vehicle through which the government could quickly introduce regulations. You mentioned that the large emitters are responsible for 50% of emissions.

Does that percentage include the oil companies? What are the five or eight priority regulations the government should tackle in order to address the greenhouse gas issue?

● (1055)

Mr. Matthew Bramley: Emissions in a number of sectors have grown more rapidly than overall emissions in Canada. Because the large industrial emitters are responsible for almost 50% of emissions, there is an urgent need to set greenhouse gas emission reduction targets, through regulation, for all heavy industry sectors, particularly electricity generation using fossil fuels, which accounts for almost 20% of our emissions in Canada. That should also be done for the oil industry, whose emissions also account for about 20% of total emissions, as well as for several other industries — for example, the chemical and pulp and paper industries, and so on.

The previous government proposed regulating all the major industries through CEPA. The approach that was advocated involved a separate regulation for each industry sector. That would probably be easier. A so-called umbrella regulation would set the main parameters of such a system, while another would establish targets to be met in each sector. Emissions trading could also be used to meet targets.

We have to move forward quickly with this kind of system, so that Canada can honour its international obligations, notably under the Kyoto Protocol.

I would just like to mention, by way of conclusion, that the 25 member countries of the European Union have implemented such a system by means of a European directive. This system has been in operation since January 2005 and applies to some 12,000 industrial facilities.

Mr. Marcel Lussier: What is the second area to target, after heavy industry? Are private vehicles an important area in terms of greenhouse gas emissions?

Mr. Matthew Bramley: In Canada, the other major source of emissions is road vehicles. Approximately 10% of emissions in Canada are produced by private vehicles, almost 8%, by industrial and commercial transportation, and some 10% by the agricultural industry.

As regards CEPA, the objective for the time being is to regulate emissions produced by the major industrial emitters. CEPA can also be used to regulate the energy efficiency of road vehicles. When a sector is responsible for 10% of total emissions, it should be considered a priority.

Mr. Marcel Lussier: Thank you.

My second question is addressed to Ms. Coombs.

Domestic waste water contains a lot of discarded pharmaceuticals. Does your association have any recommendations to make with respect to the recovery of pharmaceuticals? Are pharmacists properly supervised in terms of controlling discarded, expired or used pharmaceuticals that are recovered by consumers?

[*English*]

Ms. Shannon Coombs: Thank you, Mr. Chair, for the question. I will try to answer to the best of my abilities.

It is my understanding that there are provisions provided by some of the trade associations for pharmaceutical collection and that there are programs in place to do it. I'm also aware that Health Canada has undertaken some education programs with respect to advising consumers about not flushing their pills down the toilet but actually bringing them back to the pharmacies.

But I would refer to the Health Canada official to provide any kind of clarification on that, Mr. Ethier.

● (1100)

The Chair: Be very brief, Mr. Ethier, please.

Mr. Charles Ethier: Thank you, Mr. Chair, and thank you, Shannon.

Yes, one of the issues we are looking at in our program is best practices for recuperating some of these pharmaceuticals to prevent their getting into landfill and ultimately into our water supply. This is one of the practices for which we are continuously looking at other jurisdictions internationally to see what practices exist there that we might be able to import and implement here in Canada for better managing pharmaceutical products.

The Chair: Mr. Watson.

Mr. Jeff Watson: Thank you, Mr. Chair.

I want to turn to the in-commerce list. I have some questions on the 9,000 substances currently regulated under the Food and Drugs Act and the options on what to do with that.

This is perhaps more of a legal question, and I'm certainly not a lawyer. But is there an obligation created under section 73 to categorize these substances as either existing or new? In other words, are those the only two options we're dealing with? Is the government obliged to take that course of action or, for example, can they continue to exist being regulated under the Food and Drugs Act?

I'm trying to figure out what the full options are. I guess the specific question is this, and maybe it's a legal question. Is an obligation created to treat them as either existing or new and, from there, the government then has a certain defined course of action?

Ms. Shannon Coombs: Actually, Mr. Ethier could probably clarify it with respect to the legal obligation.

Mr. Charles Ethier: Thank you, Mr. Chair.

We need to be clear that the in-commerce list is purely an administrative list that we developed at Health Canada and Environment Canada to identify the substances that were in commerce from January 1, 1987, to September 2001. Those 9,000 substances do not currently meet the legal definition of an existing substance under the act. As such, they are considered to be new substances, although they have been in commerce for some 20 years.

The in-commerce list does not have any legal status under CEPA. One of the issues we're trying to grapple with is that we're facing the very daunting task right now of possibly having to conduct environmental assessments on all 9,000 substances, assuming that they are out of compliance with CEPA. We are more than willing to look at other mechanisms, working closely with industry and with Environment Canada, including the possibility of recognizing the in-commerce list as a legal instrument that would help us to more efficiently and more effectively manage those 9,000 substances.

Mr. Jeff Watson: If I understand you correctly, there's no option to schedule these substances, and they all have to be treated as new substances. Is that what you're saying?

Mr. Charles Ethier: Currently they are all new substances under the act. That's right.

Mr. Jeff Watson: They will therefore have to undergo the NSNR.

Mr. Charles Ethier: That's correct.

Mr. Jeff Watson: That's the only option available.

Mr. Charles Ethier: That's correct.

Mr. Jeff Watson: That leads me to a question. I'll open this up to the panel.

These are substances that have been in use for quite a lengthy period of time. Is it fair to put a reverse onus on industry to demonstrate the risk rather than government scientists establishing what the risk is? Is this a fair way to treat these?

Mr. Charles Ethier: It is a fair way. The risk assessments that will have to be done will be a shared responsibility. There will be a requirement for industry, or whoever claims ownership of a particular substance, to provide the departments with information that will allow us to conduct the appropriate assessment to determine whether or not there are either environmental impacts or health impacts to manage.

Ms. Shannon Coombs: I would again like to point out that the substances that are used in Food and Drugs Act products have been assessed under the Food and Drugs Act. They've either gone through a pre-market notification and assessment or a notification. The actual end product has been determined by Health Canada to be safe, and a lot of these products have DIN numbers put on them prior to being allowed to be for sale. We're strictly talking about ingredients.

Mr. Jeff Watson: I'm going to flip the question back to you then. Have they not then already demonstrated sufficient safety for the product?

● (1105)

Mr. Charles Ethier: Under the Food and Drugs Act, they've received a health assessment. However, they have not been assessed for their impact on the environment and the indirect impact on human health as a result of being exposed through the environment. These assessments will have to be conducted so that they can all be compliant with the act.

Mr. Hugh Benevides: I would certainly embrace Mr. Ethier's recommendation that there be a greater shared responsibility and a greater responsibility on the part of industry.

To bring in the element of the previous question on how to deal with the in-commerce list, some of these substances are pharmaceuticals or the substances contained within pharmaceuticals. Since CEPA came into force, we've had a great deal of evidence on the very environmental effects of pharmaceuticals in water and the resulting impact both on the environment and, indeed, on human health.

I again think that this committee needs to look at the adequacy of the new substances notification framework for regulating those or first looking at them and then potentially regulating them. This is the ideal opportunity to do that, because of those effects.

Thank you, Mr. Chair.

The Chair: Very, very briefly, Ms. Coombs.

Ms. Shannon Coombs: As of 2001, all substances in products under the Food and Drugs Act are regulated under CEPA using the NSNs. What we're asking for is that any of the substances used in the last 20 years simply be put on a list and put through a categorization process, just as existing substances do, and that they be treated as such under CEPA. With the scheduling of the Food and Drugs Act not taking place, it has put those substances into limbo. We would like legislative clarity and direction from Parliament on those.

Thank you.

The Chair: Thank you.

I would like to thank the members, and certainly our witnesses.

The meeting is adjourned.

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